

# **COMPREHENSIVE ECONOMIC PARTNERSHIP AGREEMENT BETWEEN THE EFTA STATES AND THE REPUBLIC OF ECUADOR**

## **PREAMBLE**

Iceland, the Principality of Liechtenstein, the Kingdom of Norway and the Swiss Confederation (EFTA States),  
and The Republic of Ecuador (Ecuador), hereinafter each individually referred to as a "Party" or collectively as the "Parties",

RECOGNISING the common wish to strengthen the links between the EFTA States and Ecuador by establishing close and lasting relations;

DESIRING to create favourable conditions for the development and diversification of trade between the Parties and for the promotion of commercial and economic cooperation in areas of common interest on the basis of equality, mutual benefit, non-discrimination and international law;

DETERMINED to promote and further strengthen the multilateral trading system, building on their respective rights and obligations under the Marrakesh Agreement establishing the World Trade Organization (WTO Agreement) and the other agreements negotiated thereunder, thereby contributing to the harmonious development and expansion of world trade;

REAFFIRMING their commitment to democracy, the rule of law, human rights and fundamental freedoms in accordance with their obligations under international law, including as set out in the United Nations (UN) Charter and the Universal Declaration of Human Rights;

AIMING to promote comprehensive economic development with the objective of reducing poverty, to create new employment opportunities, to improve living standards, and to ensure high levels of protection of health and safety and of the environment;

REAFFIRMING their commitment to pursue the objective of sustainable development and recognising the importance of coherent and mutually supportive trade, environmental and labour policies in this respect;

DETERMINED to implement this Agreement in line with the objectives to preserve and protect the environment through sound environmental management and to promote an optimal use of the world's resources in accordance with the objective of sustainable development;

RECALLING their rights and obligations under multilateral environmental agreements to which they are a party, and the respect for the fundamental principles and rights at work, including the principles set out in the relevant International Labour Organisation (ILO) Conventions to which they are a party;

RECOGNISING the importance of ensuring predictability for the trading communities of the Parties, while ensuring the protection of public interest;

AFFIRMING their commitment to prevent and combat corruption in international trade and investment and to promote the principles of transparency and good public governance;

ACKNOWLEDGING the importance of good corporate governance and corporate social responsibility for sustainable development, and affirming their aim to encourage enterprises to observe and adhere to internationally recognised guidelines and principles in this respect, such as the UN Global Compact;

CONVINCED that this Agreement will enhance the competitiveness of their firms in global markets and create conditions encouraging economic, trade and investment relations between the Parties;

HAVE AGREED, in pursuit of the above, to conclude the following Comprehensive Economic Partnership Agreement (Agreement):

# **Chapter 1. GENERAL PROVISIONS**

## **Article 1.1. Objectives**

1. The EFTA States and Ecuador hereby establish a free trade area in accordance with the provisions of this Agreement, which is based on trade relations between market economies and on the respect for democratic principles and human rights, with a view to spurring prosperity and sustainable development.

2. The objectives of this Agreement are:

(a) to liberalise trade in goods, in conformity with Article XXIV of the General Agreement on Tariffs and Trade 1994 (GATT 1994);

(b) to liberalise trade in services, in conformity with Article V of the General Agreement on Trade in Services (GATS);

(c) to mutually enhance investment opportunities;

(d) to prevent, eliminate or reduce unnecessary technical barriers to trade and unnecessary sanitary and phytosanitary measures;

(e) to promote competition in their economies, particularly as it relates to the economic relations between the Parties;

(f) to achieve further liberalisation on a mutual basis of the government procurement markets of the Parties;

(g) to ensure adequate and effective protection of intellectual property rights, in accordance with the principles and objectives of the WTO Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS Agreement);

(h) to develop international trade in such a way as to contribute to the objective of sustainable development and to ensure that this objective is integrated and reflected in the Parties' trade relations;

(i) to foster cooperation in order to contribute to the implementation of this Agreement, and to improve the benefits thereof; and

(j) to contribute to the harmonious development and expansion of world trade.

## **Article 1.2. Coverage and Application**

1. This Agreement applies, except as otherwise specified in Annex I (Rules of Origin and Mutual Administrative Cooperation in Customs Matters), to:

(a) the land territory, internal waters and the territorial sea of a Party, and the air-space above the territory of a Party, in accordance with domestic and international law; and

(b) the exclusive economic zone and the continental shelf of a Party, in accordance with domestic and international law.

2. This Agreement shall not apply to the Norwegian territory of Svalbard, with the exception of trade in goods.

## **Article 1.3. Trade and Economic Relations Governed by this Agreement**

1. This Agreement applies to the trade and economic relations between, on the one side, the individual EFTA States and, on the other side, Ecuador, but not to the trade and economic relations between individual EFTA States, unless otherwise provided in this Agreement.

2. In accordance with the Customs Treaty of 29 March 1923 between Switzerland and Liechtenstein, Switzerland shall represent Liechtenstein in matters covered thereby.

## **Article 1.4. Relation to other International Agreements**

1. The Parties confirm their rights and obligations under the WTO Agreement and the other agreements negotiated thereunder to which they are a party, and any other international agreement to which they are a party.

2. If a Party considers that the maintenance or establishment of a customs union, free trade area, arrangement for frontier trade or another preferential agreement by another Party has the effect of altering the trade regime provided for by this

Agreement, it may request consultations. The Party concluding such agreement shall afford adequate opportunity for consultations with the requesting Party.

## **Article 1.5. Fulfilment of Obligations**

1. Each Party shall take any general or specific measures required to fulfil its obligations under this Agreement.
2. Each Party shall ensure the observance of all obligations and commitments under this Agreement by its respective central, regional and local governments and authorities, and by non-governmental bodies in the exercise of governmental powers delegated to them by central, regional and local governments or authorities.

## **Article 1.6. Transparency**

1. The Parties shall publish, or otherwise make publicly available, their laws, regulations, judicial decisions, administrative rulings of general application as well as their respective international agreements, that may affect the operation of this Agreement.
2. The Parties shall promptly respond to specific questions and provide, upon request, information to each other on matters referred to in paragraph 1.
3. Nothing in this Agreement shall require any Party to disclose confidential information, the disclosure of which would impede law enforcement, or otherwise be contrary to the public interest, or which would prejudice the legitimate commercial interests of any economic operator.
4. In case of any inconsistency between this Article and provisions relating to transparency in other parts of this Agreement, the latter shall prevail to the extent of the inconsistency.

## **Article 1.7. Taxation**

1. This Agreement shall not restrict a Party's fiscal sovereignty to adopt measures related to taxes.
2. Notwithstanding paragraph 1:
  - a) Article 2.8 (National Treatment on Internal Taxation and Regulations) and such other provisions of this Agreement, as are necessary to give effect to that Article to the same extent as Article II of the GATT 1994, apply to taxation measures;
  - b) Articles 3.4 (Most-Favoured-Nation Treatment) and 3.6 (National Treatment) to the extent relevant for taxation according to Article 3.17 (Exceptions) apply to taxation measures;
  - c) Article 4.3 (National Treatment) to the extent relevant for taxation according to Article 4.10 (General Exceptions) applies to taxation measures; and
  - d) Article 6.4 (National Treatment and Non-Discrimination) applies to taxation measures.
3. Nothing in this Agreement shall affect the rights and obligations of a Party under a tax convention applicable between an EFTA State and Ecuador. In the event of an inconsistency between this Agreement and such tax convention, that convention shall prevail to the extent of the inconsistency. The competent authorities under that tax convention shall have the sole responsibility to determine whether an inconsistency exists between this Agreement and that tax convention. If a Party considers that a taxation measure pursuant to a tax convention adversely affects trade between the Parties, the Parties shall consult in the Joint Committee with a view to finding a mutually satisfactory solution, but shall not have recourse to dispute settlement.
4. For the purposes of this Article, taxation measures shall not include any import duties as defined in Article 2.2 (Import Duties) nor export duties as defined in Article 2.3 (Export Duties).

# **Chapter 2. TRADE IN GOODS**

## **Article 2.1. Scope**

This Chapter applies to trade in goods between the Parties.

## **Article 2.2. Import Duties**

1. Unless otherwise provided for in this Agreement, each Party shall grant tariff concessions on goods originating in another Party in accordance with Annexes II to V (Schedules on Tariff Commitments on Goods).
2. Unless otherwise provided for in this Agreement, a Party shall not increase import duties, or introduce new import duties, on goods originating in another Party covered by Annexes II to V (Schedules on Tariff Commitments on Goods).
3. Paragraph 2 shall not preclude a Party from:
  - (a) raising an import duty to the level established in Annexes II to V (Schedules on Tariff Commitments on Goods) following a unilateral reduction; or
  - (b) maintaining or increasing an import duty as authorised by the Dispute Settlement Body of the WTO.
4. If a Party, after the entry into force of this Agreement, reduces its applied most favoured nation (MFN) import duty, that import duty shall apply to trade in goods originating in another Party if it is lower than the import duty calculated in accordance with Annexes II to V (Schedules on Tariff Commitments on Goods).
5. Consultations may be held in the Joint Committee to consider further improvements of the tariff concessions set out in the respective Annexes II to V (Schedules on Tariff Commitments on Goods), taking account of the pattern of trade between the Parties and the sensitivities of the goods.
6. For the purposes of this Agreement, "import duties" means any duties, taxes or charges applied in connection with the importation of goods, except those applied in conformity with:
  - (a) Article II of the GATT 1994;
  - (b) Articles 2.14 (Subsidies and Countervailing Measures), 2.15 (Anti-dumping), 2.16 (Global Safeguard Measures) or 2.17 (Bilateral Safeguard Measures);
  - (c) Article VIII of the GATT 1994.

## **Article 2.3. Export Duties**

A Party shall not adopt or maintain any duties, taxes or charges other than internal charges applied in conformity with Article 2.8 (National Treatment on Internal Taxation and Regulations), in connection with the exportation of goods to another Party.

## **Article 2.4. Rules of Origin and Administrative Cooperation In Customs Matters**

1. The rules of origin and administrative cooperation in customs matters are set out in Annex I (Rules of Origin and Mutual Administrative Cooperation in Customs Matters).
2. For the purposes of this Agreement, "originating product" is that which qualifies under the rules of origin set out in Annex I (Rules of Origin and Mutual Administrative Cooperation in Customs Matters).

## **Article 2.5. Customs Valuation (1)**

Article VII of the GATT 1994 and Part I of the Agreement on Implementation of Article VII of the GATT 1994 apply and are hereby incorporated into and made part of this Agreement, mutatis mutandis.

(1) Switzerland applies customs duties based on weight and quantity rather than ad valorem duties.

## **Article 2.6. Quantitative Restrictions**

1. Article XI of the GATT 1994 applies and is hereby incorporated into and made part of this Agreement, mutatis mutandis.
2. A Party intending to apply a measure in accordance with paragraph 2 of Article XI of the GATT 1994, which may affect trade between the Parties, shall notify the Joint Committee.
3. A measure applied in accordance with this Article may be discussed in the Joint Committee with a view to mitigating the effects on trade between the Parties.

4. Paragraph 1 shall not apply to the measures set out in Annex VI (National Treatment and Quantitative Restrictions).

## **Article 2.7. Fees and Formalities**

Without prejudice to Article 9 (Fees and Charges) of Annex VII (Trade Facilitation), Article VII of the GATT 1994 applies and is hereby incorporated into and made part of this Agreement, mutatis mutandis.

## **Article 2.8. National Treatment on Internal Taxation and Regulations**

1. Article I of the GATT 1994 applies and is hereby incorporated into and made part of this Agreement, mutatis mutandis.

2. Paragraph 1 shall not apply to the measures set out in Annex VI (National Treatment and Quantitative Restrictions).

## **Article 2.9. Andean Price Band System**

Ecuador may maintain the Andean Price Band System established in 1994 by Decision 371 of the Andean Community and its modifications, or subsequent systems for agricultural goods covered by such Decision.

## **Article 2.10. Agricultural Export Subsidies**

1. The Parties shall not apply export subsidies, as defined in the WTO Agreement on Agriculture, to trade in originating goods for which tariff concessions are granted in accordance with this Agreement.

2. If a Party adopts, maintains, introduces or re-introduces export subsidies on a product subject to a tariff concession in accordance with Article 2.2 (Import Duties), the other Parties may increase the duty rate on imports of that product to the applied MFN tariff duty rate. The Party increasing its duty rate shall notify the other Parties within 30 days from the date the duty is applied.

## **Article 2.11. Technical Regulations**

1. With respect to technical regulations, standards and conformity assessments, the WTO Agreement on Technical Barriers to Trade (TBT Agreement) applies and is hereby incorporated into and made part of this Agreement, mutatis mutandis.

2. The Parties shall ensure that all adopted technical regulations are officially published.

3. Upon request of a Party, the Parties shall initiate negotiations with a view to extend to each other equivalent treatment related to technical regulations, standards and conformity assessments, mutually agreed between each Party and a non-party. (2)

4. Upon request of a Party, which considers that another Party has taken a measure relating to technical regulations, standards or conformity assessments procedures, which is likely to create, or has created, an obstacle to trade, consultations shall be held with the objective of finding a mutually acceptable solution. Such consultations shall take place within 30 days from the receipt of the request and may be conducted by any technical method agreed by the consulting Parties. The Joint Committee shall be informed thereof.

5. The Parties shall exchange names and addresses of contact points in order to facilitate communication and the exchange of information regarding technical regulations, standards and conformity assessments and the implementation of this Article.

(2) In case the unilateral preferential treatment granted to a non-Party may create competitive disadvantages, the Parties shall immediately enter into consultations, with the aim to remove these competitive disadvantages related to technical regulations, standards and conformity assessments.

## **Article 2.12. Sanitary and Phytosanitary Measures**

1. Except as otherwise provided for in this Article, the WTO Agreement on the Application of Sanitary and Phytosanitary Measures (SPS Agreement) applies and is hereby incorporated into and made part of this Agreement, mutatis mutandis. The Parties acknowledge and bear in mind the decisions and reference documents adopted by the WTO Committee on Sanitary and Phytosanitary Measures.

2. The Parties shall jointly work towards the effective implementation of the SPS Agreement and this Article with the purpose of facilitating trade between them.
3. In accordance with the SPS Agreement, the application of sanitary and phytosanitary measures related to inter alia control, inspection, approval or certification shall be based on scientific justification.
4. To facilitate trade between them, the Parties shall, when agreed, develop bilateral arrangements or agreements, including between regulatory authorities in the field of sanitary and phytosanitary measures.
5. If the importing Party has decided to carry out a risk assessment process in accordance with its domestic laws and regulations, or has detained a consignment at the border due to a perceived serious non-compliance with the relevant import requirements, the importing Party shall notify, as soon as possible, the exporting Party that a risk assessment process has been initiated and provide all relevant information.
6. If a Party rejects a product at a port of entry due to a verified serious sanitary or phytosanitary issue, it shall inform the competent authority of the exporting Party as soon as possible about the reasons for the rejection. Upon request, the factual basis and scientific justification for the rejection shall be provided.
7. If a Party detains a product at the border due to a perceived risk, it shall take a decision on clearance as soon as possible and shall make every effort to avoid deterioration of perishable goods. That Party shall promptly inform the importer about the factual justification for the detention.
8. Goods subject to random and routine checks should not be detained at the border pending test results.
9. Upon request of a Party, which considers that another Party has taken or is considering taking a sanitary or phytosanitary measure not in conformity with the SPS Agreement or this Article, which is likely to create, or has created, an obstacle to trade, consultations shall be held with the objective of finding a mutually acceptable solution. Such consultations shall take place within 30 days from the request and may be conducted by any technical method agreed by the consulting Parties. The Joint Committee shall be informed thereof.
10. Upon request of a Party, the Parties shall initiate negotiations, without undue delay, to extend to each other equivalent (3) treatment related to sanitary and phytosanitary measures mutually agreed between each Party and the European Union (EU).
11. The Parties shall exchange names and addresses of contact points in order to facilitate communication and the exchange of information regarding sanitary and phytosanitary measures and the implementation of this Article.

(3) For the purposes of this Article, "equivalent" shall not be understood as the term "equivalence" in the WTO SPS Agreement.

## **Article 2.13. Trade Facilitation**

The provisions regarding Trade Facilitation are set out in Annex VII (Trade Facilitation).

## **Article 2.14. Subsidies and Countervailing Measures**

1. The rights and obligations of the Parties with respect to subsidies and countervailing measures shall be governed by Articles VI and XVI of the GATT 1994 and the WTO Agreement on Subsidies and Countervailing Measures.
2. Before a Party initiates an investigation to determine the existence, degree and effect of an alleged subsidy in another Party, as provided for in Article 11 of the WTO Agreement on Subsidies and Countervailing Measures, the Party considering initiating an investigation shall notify in writing the Party whose products are subject to an investigation and allow for a 30 day period for consultations with a view to finding a mutually acceptable solution. Consultations may take place in the Joint Committee, if the Parties agree.

## **Article 2.15. Anti-dumping**

1. The rights and obligations of the Parties with respect to anti-dumping measures shall be governed by Article VI of the GATT 1994 and the WTO Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994 (WTO Anti-dumping Agreement), subject to paragraphs 2 to 6.
2. When a Party receives a properly documented application and before initiating an investigation concerning imports of

another Party, the Party shall immediately notify in writing the other Party whose goods are allegedly being dumped and allow for a 30 day period for consultations with a view to finding a mutually acceptable solution. Consultations may take place in the Joint Committee, if the Parties agree.

3. If an anti-dumping measure is applied by a Party, the measure shall be terminated no later than five years from its imposition.

4. A Party shall not initiate an anti-dumping investigation with regard to the same product from the same Party within one year from the termination of an anti-dumping measure or a determination, which resulted in the non-application or revocation of anti-dumping measures.

5. When anti-dumping margins are established, assessed or reviewed under Articles 2, 9.3, 9.5, and 11 of the WTO Anti-dumping Agreement regardless of the comparison bases under Article 2.4.2 of the WTO Anti-dumping Agreement, all individual margins, whether positive or negative, shall be counted toward the average.

6. The Parties shall exchange views about the application of this Article and its effects on trade between the Parties at the meetings of the Joint Committee.

## **Article 2.16. Global Safeguard Measures**

The rights and obligations of the Parties with respect to global safeguards shall be governed by Article XIX of the GATT 1994 and the WTO Agreement on Safeguards. In taking measures under these WTO provisions, a Party shall, consistent with its obligations under the WTO Agreements, endeavour to exclude imports of an originating product from one or several Parties if such imports do not in and of themselves cause or threaten to cause serious injury.

## **Article 2.17. Bilateral Safeguard Measures**

1. Where, as a result of the reduction or elimination of a customs duty under this Agreement, any product originating in a Party is imported into the territory of another Party in such increased quantities, in absolute terms or relative to domestic production, and under such conditions as to cause or threaten to cause serious injury to the domestic industry of like or directly competitive products in the territory of the importing Party, the importing Party may take bilateral safeguard measures to the minimum extent necessary to remedy or prevent the injury, subject to paragraphs 2 to 10 (4).

2. Bilateral safeguard measures shall only be taken upon clear evidence that increased imports have caused or are threatening to cause serious injury pursuant to an investigation in accordance with the procedures laid down in the WTO Agreement on Safeguards.

3. The Party intending to take a bilateral safeguard measure pursuant to this Article shall immediately, and in any case before taking a measure, notify the other Parties. The notification shall contain all pertinent information, including evidence of serious injury or threat thereof caused by increased imports, a precise description of the product concerned, and the proposed measure, as well as the proposed date of introduction, expected duration and timetable for the progressive removal of the measure. A Party that may be affected by the bilateral safeguard measure shall be offered compensation in the form of substantially equivalent trade liberalisation in relation to the imports from such Party.

4. If the conditions set out in paragraph 1 are met, the importing Party may take measures consisting in:

(a) suspending the further reduction of any rate of customs duty provided for under this Agreement for the product; or

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

(i) the MFN rate of duty applied at the time the bilateral safeguard measure is taken; or

(ii) the MFN rate of duty applied on the day immediately preceding the date of the entry into force of this Agreement.

5. Bilateral safeguard measures shall be taken for a period not exceeding two years. In very exceptional circumstances measures may be taken up to a total maximum period of three years. No bilateral safeguard measures shall be applied to the import of a product, which has previously been subject to such a measure, except for a single time, provided that the period of non-application is at least one year.

6. The Parties shall, within 30 days from the receipt of the notification, examine the information provided under paragraph 3 in order to facilitate a mutually acceptable solution. In the absence of such solution, the importing Party may adopt a bilateral safeguard measure pursuant to paragraph 4 to remedy the problem, and, in the absence of mutually agreed compensation, the Party against whose product the bilateral safeguard measure is taken may take compensatory action.

The bilateral safeguard measure and the compensatory action shall be immediately notified to the other Parties. In the selection of the bilateral safeguard measure and the compensatory action, priority must be given to the action or measure which least disturbs the functioning of this Agreement. The Party taking compensatory action shall apply the action only for the minimum period necessary to achieve the substantially equivalent trade effects and in any event, only while the bilateral safeguard measure pursuant to paragraph 4 is being applied.

7. The right of taking compensatory action shall not be exercised for the first two years that a bilateral safeguard measure is in effect. (5)

8. Upon the termination of the bilateral safeguard measure, the rate of customs duty shall be the rate, which would have been in effect but for the measure.

9. In critical circumstances, where delay would cause damage, which would be difficult to repair, a Party may take a provisional bilateral safeguard measure pursuant to a preliminary determination that there is clear evidence that increased imports constitute a substantial cause of serious injury, or threat thereof, to the domestic industry. The Party intending to take such a measure shall immediately notify the other Parties thereof. Within 30 days from the receipt of the notification, the pertinent procedures set out in paragraphs 2 to 6 shall be initiated.

10. A provisional bilateral safeguard measure shall be terminated within 200 days at the latest. The period of application of such provisional bilateral safeguard measure shall be counted as part of the duration, and any extension thereof, of the bilateral safeguard measure, set out in paragraphs 4 and 5 respectively. Tariff increases shall be promptly refunded if the investigation described in paragraph 2 does not result in a finding that the conditions of paragraph 1 are met.

11. Five years from the date of entry into force of this Agreement, the Parties shall review the possibility to take safeguard measures between them and may decide not to apply this Article any longer. If the Article continues to apply, biennial reviews shall take place thereafter in the Joint Committee. 12. For the purposes of this Article, notifications shall be sent to:

(a) The EFTA Secretariat, for the EFTA States; and

(b) The Ministry of Foreign Trade, or its successor, for Ecuador.

(4) It is understood that a serious injury or a threat of serious injury to domestic producers shall also mean a serious injury or a threat of serious injury in an infant industry.

(5) A Party which extends a bilateral safeguard measure beyond two years may request that no compensatory actions shall be taken if its industry is in the process of readjustment. Upon request of a Party, consultations shall be held within 30 days from the receipt of the request with a view to finding a mutually satisfactory solution.

## **Article 2.18. State Trading Enterprises**

Article XVII of the GATT 1994 and the Understanding on the Interpretation of Article XVII of the GATT 1994 apply and are hereby incorporated into and made part of this Agreement, mutatis mutandis.

## **Article 2.19. General Exceptions**

Article XX of the GATT 1994 applies and is hereby incorporated into and made part of this Agreement, mutatis mutandis.

## **Article 2.20. Security Exceptions**

Article XXI of the GATT 1994 applies and is hereby incorporated into and made part of this Agreement, mutatis mutandis.

## **Article 2.21. Balance-of-Payments**

1. A Party may, in accordance with the GATT 1994, in particular Articles XI, XV and XVIII section B, and the WTO Understanding on the Balance of Payments Provisions of the GATT 1994, adopt or maintain trade restrictive measures.

2. A Party adopting or maintaining measures according to this Article shall promptly notify the Joint Committee thereof.

## **Article 2.22. Sub-Committee on Trade In Goods**

1. A Sub-Committee on Trade in Goods (Sub-Committee) is hereby established.
2. The mandate of the Sub-Committee is set out in Annex VIII (Mandate of the Sub-Committee on Trade in Goods).

## **Chapter 3. TRADE IN SERVICES**

### **Article 3.1. Scope and Coverage**

1. This Chapter applies to measures by Parties affecting trade in services and taken by central, regional or local governments and authorities as well as by non-governmental bodies in the exercise of powers delegated by central, regional or local governments or authorities.
2. With respect to air transport services, this Chapter shall not apply to measures affecting air traffic rights or measures affecting services directly related to the exercise of air traffic rights, except as provided for in paragraph 3 of the GATS Annex on Air Transport Services. The definitions of paragraph 6 of the GATS Annex on Air Transport Services are hereby incorporated and made part of this Agreement.
3. Nothing in this Chapter shall be construed to impose any obligation with respect to government procurement, which is subject to Chapter 6 (Government Procurement).

### **Article 3.2. Incorporation of Provisions from the GATS**

Where a provision of this Chapter provides that a provision of the GATS is incorporated into and made part of this Agreement, the meaning of the terms used in the GATS provision shall be understood as follows:

- (a) "Member" means Party;
- (b) "Schedule" means a Schedule referred to in Article 3.18 (Schedules of Specific Commitments) and contained in Annex [X (Schedules of Specific Commitments)]; and
- (c) "specific commitment" means a specific commitment in a Schedule referred to in Article 3.18 (Schedules of Specific Commitments).

### **Article 3.3. Definitions**

1. For the purposes of this Chapter, the following definitions of Article I of the GATS are hereby incorporated into and made part of this Agreement:
  - (a) "trade in services";
  - (b) "services"; and
  - (c) "a service supplied in the exercise of governmental authority."
2. For the purposes of this Chapter:
  - (a) "service supplier" means any person that supplies, or seeks to supply, a service; (6)
  - (b) "natural person of another Party" means a natural person who, under the legislation of that other Party, is:
    - (i) a national of that other Party who resides in the territory of any Member of the WTO; or
    - (ii) a permanent resident of that other Party who resides in the territory of a Party, if that other Party accords substantially the same treatment to its permanent residents as to its nationals in respect of measures affecting trade in services. For the purpose of the supply of a service through presence of natural persons (Mode 4), this definition covers a permanent resident of that other Party who resides in the territory of a Party or in the territory of any Member of the WTO;
  - (c) "juridical person of another Party" means a juridical person which is either:
    - (i) constituted or otherwise organised under the law of that other Party, and is engaged in substantive business operations in the territory of:
      - (aa) a Party; or

(bb) any Member of the WTO and is owned or controlled by natural persons of that other Party or by juridical persons that meet all the conditions of subparagraph (i)(aa); or

(ii) in the case of the supply of a service through commercial presence, owned or controlled by:

(aa) natural persons of that other Party; or

(bb) juridical persons of that other Party identified under subparagraph (c)(i).

(6) Where the service is not supplied or sought to be supplied directly by a juridical person but through other forms of commercial presence such as a branch or a representative office, the service supplier (ie. the juridical person) shall, nonetheless, through such commercial presence be accorded the treatment provided for service suppliers under this Chapter. Such treatment shall be extended to the commercial presence through which the service is supplied or sought to be supplied and need not be extended to any other parts of the service supplier located outside the territory where the service is supplied or sought to be supplied.

3. For the purposes of this Chapter, the following definitions of Article XXVIII of the GATS are hereby incorporated into and made part of this Agreement:

(a) "measure" ;

(b) "supply of a service";

(c) "measures by Members affecting trade in services";

(d) "commercial presence";

(e) "sector" of a service;

(f) "service of another Member";

(g) "monopoly supplier of a service";

(h) "service consumer";

(i) "person";

(j) "juridical person";

(k) "owned", "controlled" and "affiliated"; and

(l) "direct taxes".

### **Article 3.4. Most-Favoured-Nation Treatment**

1. Without prejudice to measures taken in accordance with Article VI of the GATS, and except as provided for in its List of MFN Exemptions contained in Annex X (List of MEN Exemptions), each Party shall accord immediately and unconditionally, in respect of all measures affecting the supply of services, to services and service suppliers of another Party treatment no less favourable than the treatment it accords to like services and service suppliers of any non-party.

2. Treatment granted under other existing or future agreements concluded by a Party and notified under Article V or Article Vbis of the GATS shall not be subject to paragraph 1.

3. If a Party enters into an agreement with a non-Party which has been notified under Article V or Article Vbis of the GATS, it shall, upon request from another Party, afford adequate opportunity to the other Parties to negotiate, on a mutually advantageous basis, the benefits granted therein.

4. The provision of this Chapter shall not be construed so as to prevent any Party from conferring or according advantages to adjacent countries in order to facilitate exchanges limited to contiguous zones of services that are both locally produced and consumed.

### **Article 3.5. Market Access**

Article XVI of the GATS applies and is hereby incorporated into and made part of this Agreement.

## Article 3.6. National Treatment

Article XVII of the GATS applies and is hereby incorporated into and made part of this Agreement.

## Article 3.7. Additional Commitments

Article XVII of the GATS applies and is hereby incorporated into and made part of this Agreement.

## Article 3.8. Domestic Regulation

1. Each Party shall ensure that all measures of general application affecting trade in services are administered in a reasonable, objective and impartial manner.
2. Each Party shall maintain or institute, as soon as practicable, judicial, arbitral or administrative tribunals or procedures which provide, at the request of an affected service supplier of another Party, for the prompt review of, and where justified, appropriate remedies for, administrative decisions affecting trade in services. Where such procedures are not independent of the agency entrusted with the administrative decision concerned, the Party shall ensure that the procedures in fact provide for an objective and impartial review.
3. Where authorisation is required by a Party for the supply of a service, the competent authorities of that Party shall, within a reasonable period of time after the submission of an application is considered complete under that Party's domestic laws and regulations, inform the applicant of the decision concerning the application. At the request of the applicant, the competent authorities of that Party shall provide, without undue delay, information concerning the status of the application.
4. Each Party shall ensure that measures relating to qualification requirements and procedures, technical standards and licensing requirements and procedures, in all services sectors, are based on objective and transparent criteria, such as competence and the ability to supply the service.
5. With a view to ensuring that measures relating to qualification requirements and procedures, technical standards and licensing requirements and procedures do not constitute unnecessary barriers to trade in services, the Joint Committee shall take a decision aiming at incorporating into the Agreement any disciplines developed in the WTO in accordance with paragraph 4 of Article VI of the GATS. The Parties may also, jointly or bilaterally, decide to develop further disciplines.
6. (a) In sectors in which a Party has undertaken specific commitments, pending the entry into force of a decision incorporating WTO disciplines for these sectors pursuant to paragraph 5, and, if agreed between Parties, disciplines developed jointly or bilaterally under this Agreement pursuant to paragraph 5, the Party shall not apply qualification requirements and procedures, technical standards and licensing requirements and procedures that nullify or impair such specific commitments in a manner which is:
  - (i) more burdensome than necessary to ensure the quality of the service; or
  - (ii) in the case of licensing procedures, in itself a restriction on the supply of the service.
- (b) In determining whether a Party is in conformity with the obligation under subparagraph (a), account shall be taken of international standards of relevant international organisations (7) applied by that Party.
7. Each Party shall provide for adequate procedures to verify the competence of professionals of another Party.

(7) The term "relevant international organisations" refers to international bodies whose membership is open to the relevant bodies of at least all Parties.

## Article 3.9. Recognition

1. For the purposes of the fulfilment of its relevant standards or criteria for the authorisation, licensing or certification of service suppliers, each Party shall give due consideration to any requests by another Party to recognise the education or experience obtained, requirements met, or licences or certifications granted in that other Party. Such recognition may be based upon an agreement or arrangement with that other Party, or otherwise be accorded autonomously.
2. Where a Party recognises, by agreement or arrangement, the education or experience obtained, requirements met, or licences or certifications granted, in the territory of a non-party, that Party shall afford another Party adequate opportunity

to negotiate its accession to such an agreement or arrangement, whether existing or future, or to negotiate a comparable agreement or arrangement with it. Where a Party accords recognition autonomously, it shall afford adequate opportunity for another Party to demonstrate that the education or experience obtained, requirements met, or licences or certifications granted, in the territory of that other Party should also be recognised.

3. Any such agreement or arrangement or autonomous recognition shall be in conformity with the relevant provisions of the WTO Agreement, in particular paragraph 3 of Article VII of the GATS.

### **Article 3.10. Movement of Natural Persons**

1. This Article applies to measures affecting natural persons who are service suppliers of a Party, and natural persons of a Party who are employed by a service supplier of a Party, with respect to the supply of a service.

2. This Chapter shall not apply to measures affecting natural persons seeking access to the employment market of a Party, nor shall it apply to measures regarding nationality, residence or employment on a permanent basis.

3. Natural persons covered by a specific commitment shall be allowed to supply the service in accordance with the terms of that commitment.

4. This Chapter shall not prevent a Party from applying measures to regulate the entry of natural persons of another Party into, or their temporary stay in, its territory, including those measures necessary to protect the integrity of, and to ensure the orderly movement of natural persons across its borders, provided that such measures are not applied in such a manner as to nullify or impair the benefits accruing to any Party under the terms of a specific commitment. (8)

(8) The sole fact of requiring a visa for natural persons shall not be regarded as nullifying or impairing benefits under a specific commitment.

### **Article 3.11. Transparency**

Paragraphs 1 and 2 of Article II and Article [bis] of the GATS apply and are hereby incorporated into and made part of this Agreement.

### **Article 3.12. Monopolies and Exclusive Service Suppliers**

Paragraphs 1, 2 and 5 of Article VII of the GATS apply and are hereby incorporated into and made part of this Agreement.

### **Article 3.13. Business Practices**

Article IX of the GATS applies and is hereby incorporated into and made part of this Agreement.

### **Article 3.14. Payments and Transfers**

1. Except under the circumstances envisaged in Article 3.15 (Restriction to Safeguard the Balance of Payments), a Party shall not apply restrictions on international transfers and payments for current transactions with another Party.

2. Nothing in this Chapter shall affect the rights and obligations of the Parties under the Articles of the Agreement of the International Monetary Fund (IMF), including the use of exchange actions which are in conformity with the Articles of the Agreement of the IMF, provided that a Party shall not impose restrictions on capital transactions inconsistently with its specific commitments regarding such transactions, except under Article 3.15 (Restriction to Safeguard the Balance of Payments) or at the request of the IMF.

### **Article 3.15. Restrictions to Safeguard the Balance of Payments**

1. Paragraphs 1 to 3 of Article XII of the GATS apply and are hereby incorporated into and made part of this Agreement.

2. A Party adopting or maintaining such restrictions shall promptly notify the Joint Committee thereof.

### **Article 3.16. Subsidies**

1. A Party which considers that it is adversely affected by a subsidy of another Party may request ad hoc consultations with

that Party on such matters. The requested Party shall enter into such consultations.

2. The Parties shall review any disciplines agreed under Article XV of the GATS with a view to incorporating them into this Agreement.

### **Article 3.17. Exceptions**

Article XIV and paragraph 1 of Article XIV bis of the GATS apply and are hereby incorporated into and made part of this Agreement.

### **Article 3.18. Schedules of Specific Commitments**

1. Each Party shall set out in a Schedule the specific commitments it undertakes under Articles 3.5 (Market Access), 3.6 (National Treatment) and 3.7 (Additional Commitments). With respect to sectors where such commitments are undertaken, each Schedule shall specify:

(a) terms, limitations and conditions on market access;

(b) conditions and qualifications on national treatment;

(c) undertakings relating to additional commitments referred to in Article 3.7 (Additional Commitments); and

(d) where appropriate, the time-frame for implementation of such commitments and the date of entry into force of such commitments.

2. Measures inconsistent with both Articles 3.5 (Market Access) and 3.6 (National Treatment) shall be subject to paragraph 2 of Article XX of the GATS.

3. The Parties' Schedules of Specific Commitments are set out in Annex IX (Schedules of Specific Commitments).

### **Article 3.19. Modification of Schedules**

The Parties shall, upon written request by a Party, hold consultations to consider any modification or withdrawal of a specific commitment in the requesting Party's Schedule of Specific Commitments. The consultations shall be held within three months from the receipt of the request. In the consultations, the Parties shall aim to ensure that a general level of mutually advantageous commitments no less favourable to trade than that provided for in the Schedule of Specific Commitments prior to such consultations is maintained. Modifications of Schedules are subject to the procedures set out in Articles 10 (Joint Committee) and 12.2 (Amendments).

### **Article 3.20. Review**

With the objective of further liberalising trade in services between them, the Parties shall review at least every three years, or more frequently if so agreed, their Schedules of Specific Commitments and their Lists of MFN Exemptions, taking into account in particular any autonomous liberalisation and on-going work under the auspices of the WTO. The first such review shall take place no later than three years from the entry into force of this Agreement.

### **Article 3.21. Annexes**

The following Annexes form an integral part of this Chapter:

(a) Annex IX (Schedules of Specific Commitments);

(b) Annex X (List of MFN Exemptions);

(c) Annex XI (Financial Services);

(d) Annex XII (Telecommunications Services);

(e) Annex XII (Movement of Natural Persons Supplying Services);

(f) Annex XIV (Maritime Transport and Related Services).

# Chapter 4. ESTABLISHMENT

## Article 4.1. Scope and Coverage

1. This Chapter applies to commercial presence in all sectors, with the exception of services sectors as set out in Article 3.1 (Scope and Coverage). (9)
2. This Chapter shall be without prejudice to the interpretation or application of other international agreements relating to investment or taxation to which one or several EFTA States and Ecuador are parties.
3. Nothing in this Chapter shall be construed to impose any obligation with respect to government procurement, which is subject to Chapter 6 (Government Procurement).

(9) It is understood that services specifically exempted from the scope of Chapter 3 (Trade in Services) do not fall within the scope of this Chapter.

## Article 4.2. Definitions

For the purposes of this Chapter:

- (a) "Juridical person" means any legal entity duly constituted or otherwise organised under applicable law, whether for profit or otherwise, and whether privately owned or governmentally-owned, including any corporation, trust, partnership, joint venture, sole proprietorship or association;
- (b) "Juridical person of a Party" means a juridical person constituted or otherwise organised under the law of a Party and engaged in substantive business operations in that Party;
- (c) "natural person" means a person who has the nationality of a Party in accordance with its domestic laws and regulations, or is a permanent resident of a Party in accordance with its domestic laws and regulations, who resides in the territory of a Party, if that Party accords substantially the same treatment to its permanent residents as to its nationals in respect of measures affecting commercial presence;
- (d) "commercial presence" means any type of business establishment, including through:
  - (i) the constitution, acquisition or maintenance of a juridical person, or
  - (ii) the creation or maintenance of a branch or a representative office, within the territory of another Party for the purpose of performing an economic activity.

## Article 4.3. National Treatment

Each Party shall, subject to Article 4.4 (Reservations) and the reservations set out in Annex XV (List of Reservations), accord to juridical and natural persons of another Party, and to the commercial presence of such persons, treatment no less favourable than that it accords, in like situations (10), to its own juridical and natural persons, and to the commercial presence of such persons. (11)

(10) It is understood that subject to the reservations set out in Annex XV (List of Reservations), a Party shall not treat natural and juridical persons of another Party and their commercial presence less favourably on the basis of their nationality. Whether treatment is accorded in "like situations" depends on the totality of the circumstances.

(11) For greater certainty, nothing in this Article shall be construed to create obligations on market access other than national treatment.

## Article 4.4. Reservations

1. Article 4.3 (National Treatment) shall not apply to:
  - (a) any reservation in Annex XV (List of Reservations);

(b) an amendment to a reservation referred to in sub-paragraph (a) to the extent that the amendment does not decrease the conformity of the reservation with Article 4.3 (National Treatment);

(c) any new reservation adopted by a Party, and incorporated into Annex XV (List of Reservations) which does not affect the overall level of commitments of that Party under this Agreement;

to the extent that such reservations are inconsistent with Article 4.3 (National Treatment).

2. A Party may, at any time, either upon request of another Party or unilaterally, remove in whole or in part its reservations set out in Annex XV (List of Reservations) by written notification to the other Parties.

3. A Party may, at any time, incorporate a new reservation into Annex XV (List of Reservations) in accordance with subparagraph 1 (c), by written notification to the other Parties. On receiving such written notification, another Party may request consultations regarding the reservation. On receiving the request for consultations, the Party incorporating the new reservation shall enter into consultations with the requesting Party.

## **Article 4.5. Key Personnel**

1. Each Party shall, subject to its domestic laws and regulations, grant natural persons of another Party, and key personnel who are employed by natural or juridical persons of another Party, entry and temporary stay in its territory in order to engage in activities connected with commercial presence, including the provision of advice or key technical services.

2. Each Party shall, subject to its domestic laws and regulations, permit natural or juridical persons of another Party, and their commercial presence, to employ, in connection with commercial presence, any key personnel of the natural or juridical person's choice regardless of nationality and citizenship provided that such key personnel has been permitted to enter, stay and work in its territory and that the employment concerned conforms to the terms, conditions and time limits of the permission granted to such key personnel.

3. Each Party shall, subject to its domestic laws and regulations, grant entry and temporary stay and provide any necessary confirming documentation to the spouse and minor children of a natural person who has been granted temporary entry, stay and authorisation to work in accordance with paragraphs 1 and 2. The spouse and minor children shall be admitted for the period of the stay of that person.

## **Article 4.6. Right to Regulate**

1. Subject to the provisions of this Chapter, a Party may, on a non-discriminatory basis, adopt, maintain or enforce any measure that is in the public interest, such as measures to meet health, safety or environmental concerns or reasonable measures for prudential purposes.

2. A Party should not waive or otherwise derogate from, or offer to waive or otherwise derogate from, such measures as an encouragement for the establishment, acquisition, expansion or retention in its territory of a commercial presence of persons of another Party or a non-party.

## **Article 4.7. Transparency**

1. Laws, regulations, judicial decisions and administrative rulings of general application made effective by a Party, and agreements in force between the Parties, which affect matters covered by this Chapter shall be published promptly, or otherwise made publicly available, in such a manner as to enable the Parties and their juridical and natural persons to become acquainted with them.

2. Nothing in this Article shall require a Party to disclose confidential information, the disclosure of which would impede law enforcement, or otherwise be contrary to the public interest, or would prejudice the legitimate commercial interests of any juridical or natural person.

## **Article 4.8. Payments and Transfers**

1. Except under the circumstances envisaged in Article 4.9 (Restrictions to Safeguard the Balance-of-Payments), no Party shall apply restrictions on current payments and capital movements relating to commercial presence activities in non-services sectors.

2. Nothing in this Chapter shall affect the rights and obligations of the Parties under the Agreement of the IMF, including the

use of exchange actions, which are in conformity with that Agreement, provided that a Party shall not impose restrictions on capital transactions inconsistent with its obligations under this Chapter.

## **Article 4.9. Restrictions to Safeguard the Balance of Payments**

1. The Parties shall endeavour to avoid the imposition of restrictions to safeguard the balance of payments.
2. Paragraphs 1 to 3 of Article XII of the GATS apply and are hereby incorporated into and made part of this Agreement, *mutatis mutandis*.
3. A Party adopting or maintaining such restrictions shall promptly notify the Joint Committee.

## **Article 4.10. General Exceptions**

Article XIV of the GATS and the chapeau and subparagraph (g) of Article XX of the GATT 1994 apply and are hereby incorporated into and made part of this Agreement, *mutatis mutandis*.

## **Article 4.11. Security Exceptions**

Paragraph 1 of Article XIVbis of the GATS applies and is hereby incorporated into and made part of this Agreement, *mutatis mutandis*.

## **Article 4.12. Review**

This Chapter shall be subject to periodic review by the Joint Committee with a view to further developing the Parties' commitments.

# **Chapter 5. PROTECTION OF INTELLECTUAL PROPERTY**

## **Article 5.1. Protection of Intellectual Property (12)**

1. The Parties shall grant and ensure adequate, effective and non-discriminatory protection of intellectual property rights, and provide for measures for the enforcement of such rights against infringement thereof, including counterfeiting and piracy, in accordance with the provisions of this Chapter and Annex XVI (Protection of Intellectual Property), and the international agreements referred to therein.
2. The Parties shall accord to each other's nationals treatment no less favourable than that they accord to their own nationals. Exemptions from this obligation must be in accordance with the substantive provisions of Articles 3 and 5 of the TRIPS Agreement.
3. The Parties shall grant to each other's nationals treatment no less favourable than that accorded to nationals of a non-party. If a Party concludes a trade agreement containing provisions on the protection of intellectual property rights with a non-party, notified under Article XXIV of the GATT 1994, it shall notify the other Parties without delay and accord to them treatment no less favourable than that provided under such agreement. The Party concluding such an agreement shall, upon request by another Party, negotiate the incorporation of provisions of the agreement granting a treatment no less favourable than that provided under that agreement into this Agreement. Exemptions from this obligation must be in accordance with the substantive provisions of the TRIPS Agreement, in particular Articles 4 and 5.
4. Upon request of a Party, the Joint Committee shall review the provisions on the protection of intellectual property rights contained in this Chapter and in Annex XVI (Protection of Intellectual Property), with a view to further improving the levels of protection and to avoiding or remedying trade distortions caused by actual levels of protection of intellectual property rights.

(12) The Parties acknowledge their right to make use of exceptions, flexibilities and limitations that they have agreed to in multilateral agreements, provided that the measures taken are consistent with this Agreement.

# **Chapter 6. GOVERNMENT PROCUREMENT**

## **Article 6.1. Scope and Coverage**

1. This Chapter applies to any measure of a Party regarding covered procurement. For the purposes of this Chapter, "covered procurement" means procurement for governmental purposes:

(a) of goods, services, or any combination thereof:

(i) as specified in each Party's Appendices to Annex XVII (Government Procurement); and

(ii) not procured with a view to commercial sale or resale, or for use in the production or supply of goods or services for commercial sale or resale;

(b) by any contractual means, including purchase, lease, rental or hire purchase, with or without an option to buy and public works concessions;

(c) for which the value, as estimated in accordance with the rules specified in Appendix 9 to Annex XVII (Government Procurement) equals or exceeds the relevant threshold specified in Appendices 1 to 3 to Annex XVII (Government Procurement) at the time of publication of a notice in accordance with Article 6.10 (Notices);

(d) by a procuring entity; and

(e) which is not otherwise excluded pursuant to paragraph 2 or Annex XVII (Government Procurement).

2. This Chapter shall not apply to:

(a) acquisition or rental of land, existing buildings, or other immovable property or the rights thereon;

(b) non-contractual agreements or any form of assistance that a Party provides, including cooperative agreements, grants, loans, equity infusions, guarantees and fiscal incentives;

(c) procurement or acquisition of fiscal agency or depository services, liquidation and management services for regulated financial institutions or

(d) services related to sale, redemption and distribution of public debt, including loans and government bonds, notes and other securities; (13)

(e) public employment contracts and related measures; procurement conducted:

(i) for the specific purpose of providing international assistance, including development aid;

(ii) under a particular procedure or condition of an agreement relating to:

(aa) the stationing of troops; or

(bb) the joint implementation of a project by the signatory countries to such agreement;

(iii) under a particular procedure or condition:

(aa) of an international organisation; or

(bb) funded by international grants, loans or other assistance; where the applicable procedure or condition would be inconsistent with this Chapter.

(13) It is understood that this Chapter shall not apply to procurement of banking, financial, or specialised services related to the following activities: (a) the incurring of public indebtedness; or (b) public debt management.

## Article 6.2. Definitions

For the purposes of this Chapter:

(a) "commercial goods or services" means goods or services of a type generally sold or offered for sale in the commercial marketplace to, and customarily purchased by, non-governmental buyers for non-governmental purposes;

(b) "construction service" means a service that has as its objective the realisation by whatever means of civil or building works, based on Division 51 of the United Nations Provisional. Central Product Classification (CPC);

- (c) "days" means calendar days;
- (d) "electronic auction" means an iterative process that involves the use of electronic means for the presentation by suppliers of either new prices, or new values for quantifiable non-price elements of the tender related to the evaluation criteria, or both, resulting in a ranking or re-ranking of tenders;
- (e) "in writing or written" means any worded or numbered expression that can be read, reproduced, and later communicated, including electronically transmitted and stored information;
- (f) "limited tendering" means a procurement method whereby the procuring entity contacts a supplier or suppliers of its choice;
- (g) "measure" means any law, regulation, procedure, administrative guidance or practice, or any action of a procuring entity relating to a covered procurement;
- (h) "multi-use list" means a list of suppliers that a procuring entity has determined satisfy the conditions for participation in that list, and that the procuring entity intends to use more than once;
- (i) "notice of intended procurement" means a notice published by a procuring entity inviting interested suppliers to submit a request for participation, a tender, or both;
- (j) "notice of planned procurement" means a notice published by a procuring entity regarding its future procurement plans;
- (k) "offset" means any condition or undertaking that encourages local development or improves a Party's balance-of-payments accounts, such as the use of domestic content, the licensing of technology, investment, counter-trade, and similar actions or requirements;
- (l) "open tendering" means a procurement method where all interested suppliers may submit a tender;
- (m) "person" means a natural person or a juridical person;
- (n) "procuring entity" means an entity covered under Appendices 1 to 3 to Annex XVII (Government Procurement);
- (o) "qualified supplier" means a supplier that a procuring entity recognises as having satisfied the conditions for participation;
- (p) "selective tendering" means a procurement method whereby only qualified suppliers are invited by the procuring entity to submit a tender;
- (q) "services" includes construction services, unless otherwise specified;
- (r) "standard" means a document approved by a recognised body, that provides for common and repeated use, rules, guidelines, or characteristics for goods or services, or related processes and production methods, with which compliance is not mandatory. It may also include or deal exclusively with terminology, symbols, packaging, marking, or labelling requirements as they apply to a good, service, process, or production method;
- (s) "supplier" means a person or group of persons that provides or could provide goods or services;
- (t) "technical specification" means a tendering requirement that:
  - (i) lays down the characteristics of goods or services to be procured, including quality, performance, safety and dimensions, or the processes and methods for their production or provision; or
  - (ii) addresses terminology, symbols, packaging, marking, or labelling requirements, as they apply to a good or service.
- (u) "public works concessions" means a contract of the same type as construction services contracts, except for the fact that the remuneration for the works to be carried out consists either solely in the right to exploit the construction or in this right together with a payment; and
- (v) "conditions for participation" means any registration, qualification or other pre-requisites for participation in a procurement.

## **Article 6.3. Security and General Exceptions**

1. Nothing in this Chapter shall be construed to prevent a Party from taking any action or not disclosing any information that it considers necessary for the protection of its essential security interests relating to the procurement of arms, ammunition,

or war materials, or to procurement indispensable for national security or for national defence purposes.

2. Subject to the requirement 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 imposing maintaining or enforcing measures:

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

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

(c) necessary to protect intellectual property; or

(d) relating to goods or services of persons with disabilities, philanthropic institutions, or prison labour.

3. Subparagraph 2(b) includes environmental measures such as measures for the conservation of natural resources, necessary to protect human, animal, or plant life or health.

## **Article 6.4. National Treatment and Non-Discrimination**

1. With respect to any measure regarding covered procurement, each Party, including its procuring entities, shall accord immediately and unconditionally to the goods and services of another Party and to the suppliers of another Party offering such goods or services, treatment no less favourable than the treatment accorded to domestic goods, services and suppliers.

2. With respect to any measure regarding covered procurement, no Party, including its procuring entities, shall:

(a) treat a locally established supplier less favourably than another locally established supplier on the basis of degree of foreign affiliation or ownership; or

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

## **Article 6.5. Use of Electronic Means**

1. The Parties shall, to the extent possible, endeavour to use electronic means of communication to permit efficient dissemination of information on government procurement, particularly as regards tender opportunities offered by entities, while respecting the principles of transparency and non-discrimination.

2. When conducting covered procurement by electronic means, a procuring entity shall:

(a) ensure that the procurement is conducted using information technology systems and software, including those related to authentication and encryption of information, that are generally available and interoperable with other generally available information technology systems and software; and

(b) maintain mechanisms that ensure the integrity of requests for participation and tenders, including establishment of the time of receipt and the prevention of inappropriate access.

## **Article 6.6. Conduct of Procurement**

A procuring entity shall conduct covered procurement in a transparent and impartial manner that:

(a) is consistent with this Chapter, using methods such as open tendering, selective tendering, and limited tendering;

(b) avoids conflicts of interest; and

(c) prevents corrupt practices.

## **Article 6.7. Rules of Origin**

For the purposes of covered procurement, a Party may not apply rules of origin to goods or services imported from or supplied by another Party which are different from the rules of origin the Party applies at the same time in the normal course of trade to imports and supplies of the same goods and services from the same Party.

## **Article 6.8. Offsets**

With regard to covered procurement, a Party, including its procuring entities, shall not seek, take account of, impose or enforce any offset.

## **Article 6.9. Information on the Procurement System**

1. Each Party shall promptly publish any measure of general application regarding covered procurement and any modification to this information, in an officially designated electronic or paper medium that is widely disseminated and remains readily accessible to the public.
2. Each Party shall, on request, provide to another Party an explanation relating to such information.

## **Article 6.10. Notices**

1. For each covered procurement, a procuring entity shall publish a notice of intended procurement, except in the circumstances referred to in Article 6.19 (Limited Tendering). The notice shall be published in the electronic or paper medium listed in Appendix 7 to Annex XVII (Government Procurement). Such medium shall be widely disseminated and the notice shall remain accessible, at least, until expiration of the time period indicated in the notice. The notice shall:
  - (a) for procuring entities covered under Appendix 1 to Annex XVII (Government Procurement), be accessible by electronic means free of charge through a single point of access; and
  - (b) for procuring entities covered under Appendices 2 or 3 to Annex XVII (Government Procurement), where accessible by electronic means, be provided, at least through links in a gateway electronic site that is accessible free of charge.
2. Parties, including such procuring entities covered under Appendices 2 or 3 to Annex XVII (Government Procurement), are encouraged to publish their notices by electronic means free of charge through a single point of access.
3. Except as otherwise provided in this Chapter, each notice of intended procurement shall include the information specified in Appendix 10 to Annex XVII (Government Procurement).
4. Each Party shall encourage its procuring entities to publish in the medium listed in Appendix 7 to Annex XVII (Government Procurement), as early as possible in each fiscal year, a notice regarding their future procurement plans. The notice of planned procurement should include the subject matter of the procurement and the planned date of the publication of the notice of intended procurement.
5. A procuring entity covered under Appendices 2 or 3 to Annex XVII (Government Procurement) may use a notice of planned procurement as a notice of intended procurement, provided that the notice of planned procurement includes as much of the information referred to in paragraph 3 as is available to the entity and a statement that interested suppliers should express their interest in the procurement to the procuring entity.

## **Article 6.11. Conditions for Participation**

1. In establishing the conditions for participation and assessing whether a supplier satisfies such conditions, a Party, including its procuring entities:
  - (a) shall limit any conditions for participation in a procurement to those that are essential to ensure that a supplier has the legal and financial capacities and the commercial and technical abilities to undertake the relevant procurement;
  - (b) shall evaluate the financial capacity and the commercial and technical abilities of a supplier on the basis of that supplier's business activities both inside and outside the territory of the Party of the procuring entity;
  - (c) shall base its evaluation solely on the conditions that the procuring entity has specified in advance in notices or tender documentation;
  - (d) shall not impose the condition that, in order for a supplier to participate in a procurement, the supplier has previously been awarded one or more contracts by a procuring entity of a given Party; and
  - (e) may require relevant prior experience where essential to meet the requirements of the procurement.
2. Where there is supporting evidence, a Party, including its procuring entities, may exclude a supplier on grounds such as:

- (a) bankruptcy;
- (b) false declarations;
- (c) significant or persistent deficiencies in performance of any substantive requirement or obligation under a prior contract or contracts;
- (d) final judgments in respect of serious crimes or other serious offences;
- (e) professional misconduct or acts or omissions that adversely reflect upon the commercial integrity of the supplier; or
- (f) failure to pay taxes.

## **Article 6.12. Registration Systems and Qualification Procedures**

1. A Party, including its procuring entities, may maintain a supplier registration system under which interested suppliers are required to register and provide certain information.
2. A Party, including its procuring entities, shall not adopt or apply any registration system or qualification procedure creating unnecessary obstacles to the participation of suppliers of another Party in its procurement.
3. Where a procuring entity intends to use selective tendering, it shall allow all qualified suppliers to participate in a particular procurement, unless the procuring entity states in the notice of intended procurement any limitation on the number of suppliers that will be permitted to tender and the criteria for selecting the limited number of suppliers.

## **Article 6.13. Information on Procuring Entity Decisions**

1. A procuring entity shall promptly inform any supplier that submits a request for participation in a procurement or application for inclusion on a multi-use list of its decision with respect to the request.
2. Where a procuring entity rejects a supplier's request for participation in a procurement or application for inclusion on a multi-use list, ceases to recognise a supplier as qualified, or removes a supplier from a multi-use list, that entity shall promptly inform the supplier and, upon request of the supplier, promptly provide the supplier with a written explanation of the reasons for its decision.

## **Article 6.14. Multi-Use Lists**

1. A procuring entity may maintain a multi-use list of suppliers, provided that a notice inviting interested suppliers to apply for inclusion on the list is published annually in the appropriate medium listed in Appendix 7 to Annex XVII (Government Procurement), and where published by electronic means, made available continuously in the electronic medium listed in Appendix 7 to Annex XVII (Government Procurement). Where a multi-use list will be valid for three years or less, a procuring entity may publish the notice only once, at the beginning of the period of validity of the list.
2. The notice provided for in paragraph 1 shall include the information specified in paragraph 3 of Appendix 10 to Annex XVII (Government Procurement).
3. A procuring entity shall allow suppliers to apply at any time for inclusion on a multi-use list and shall include on that list all qualified suppliers within a reasonably short time.
4. A procuring entity may use a notice inviting suppliers to apply for inclusion in a multi-use list as a notice of intended procurement, provided that:
  - (a) the notice is published in accordance with paragraph 1 and includes the information required under paragraph 3 of Appendix 10 to Annex XVII (Government Procurement) and as much of the information required by paragraph 1 of Appendix 10 to Annex XVII (Government Procurement) as is available, and contains a statement that it constitutes a notice of intended procurement;
  - (b) the entity promptly provides to suppliers that have expressed an interest to the entity in a given procurement, sufficient information to permit them to assess their interest in the procurement, including all relevant information required under paragraph 1 of Appendix 10 to Annex XVII (Government Procurement) to the extent that such information is available; and
  - (c) a supplier having applied for inclusion on a multi-use list in accordance with paragraph 3 may be allowed to tender in a given procurement, where there is sufficient time for the procuring entity to examine whether it satisfies the conditions for

participation.

## **Article 6.15. Tender Documentation**

1. A procuring entity shall make available to suppliers tender documentation that includes all information necessary to permit suppliers to prepare and submit responsive tenders. Unless already provided for in the notice of intended procurement, such documentation shall include a complete description of the information specified in Appendix 10 to Annex XVII (Government Procurement).

2. Where contracting entities do not offer free direct access to the entire tender documents and any supporting documents by electronic means, entities shall make promptly available the tender documentation at the request of any interested supplier of the Parties. The procuring entities shall also promptly reply to any reasonable request for relevant information by any interested or participating supplier, provided that such information does not give that supplier an advantage over other suppliers.

## **Article 6.16. Technical Specifications**

1. A procuring entity shall not prepare, adopt or apply any technical specification nor prescribe any conformity assessment procedure with the purpose or the effect of creating unnecessary obstacles to trade between the Parties.

2. In prescribing the technical specifications for the goods or services being procured, a procuring entity shall, where appropriate:

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

(b) base the technical specification on international standards, where such exist or otherwise, on national technical regulations, recognised national standards or building codes.

3. Where design or descriptive characteristics are used in the technical specifications, a procuring entity should indicate, where appropriate, that it will consider tenders of equivalent goods or services that demonstrably fulfil the requirements of the procurement by including words such as "or equivalent" in the tender documentation.

4. A procuring entity shall not prescribe any technical specifications that require or refer to a particular trademark or trade name, patent, copyright, design or type, specific origin, producer or supplier, unless there is no other sufficiently precise or intelligible way of describing the procurement requirements and provided that, in such cases, the entity includes words such as "or equivalent" in the tender documentation.

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

6. For greater certainty, a Party, including its procuring entities, may, in accordance with this Article, prepare, adopt or apply technical specifications to promote the conservation of natural resources or protect the environment.

## **Article 6.17. Modifications of the Tender Documentation and Technical Specifications**

Where, prior to the award of a contract, a procuring entity modifies the criteria or requirements set out in a notice or tender documentation provided to participating suppliers, or amends or reissues a notice or tender documentation, it shall transmit in writing all such modifications, amended or re-issued notice or tender documentation:

(a) to all suppliers that are participating at the time of the modification, amendment or re-issuance, if known, and in all other cases, in the same manner as the original information was made available; and

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

## **Article 6.18. Time-Periods**

A procuring entity shall, consistent with its own reasonable needs, provide suppliers sufficient time to prepare and submit requests for participation and respond to tenders, taking into account in particular the nature and complexity of the procurement. Each Party shall apply time periods according to the conditions specified in Appendix 8 to Annex XVII (Government Procurement). Such time-periods, including any extension of the time-periods, shall be the same for all

interested or participating suppliers.

## **Article 6.19. Limited Tendering**

Provided that it does not use this provision for the purpose of avoiding competition among suppliers or in a manner that discriminates against suppliers of another Party or protects domestic suppliers, a procuring entity may use limited tendering and may choose not to apply Articles 6.10 (Notices), 6.11 (Conditions for Participation), 6.12 (Registration Systems and Qualification Procedures), 6.14 (Multi-Use Lists), 6.15 (Tender Documentation), 6.18 (Time-Periods), 6.20 (Electronic Auctions), 6.21 (Negotiations), 6.22 (Treatment of Tenders) and 6.23 (Awarding of Contracts) only under the following circumstances:

(a) where:

(i) no tenders were submitted, or no supplier requested participation;

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

(iii) no suppliers satisfied the conditions for participation; or

(iv) the tenders submitted have been collusive provided that the requirements of the tender documentation are not substantially modified;

(b) where the goods or services can be supplied only by a particular supplier and no reasonable alternative or substitute goods or services exist for any of the following reasons:

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

(ii) the protection of patents, copyrights or other exclusive rights; or

(iii) due to an absence of competition for technical reasons as in the case of the procurement of *intuitu personae* services;

(c) for additional deliveries by the original supplier of goods and services that were not included in the initial procurement where a change of supplier for such additional goods and services:

(i) cannot be made for economic or technical reasons such as requirements of interchangeability or interoperability with existing equipment, software, services or installations procured under the initial procurement; and

(ii) would cause significant inconvenience or substantial duplication of costs to the procuring entity;

(d) in so far as strictly necessary where, for reasons of extreme urgency brought about by events unforeseeable by the procuring entity, the goods or services could not be obtained in time using an open or selective tendering procedure;

(e) for goods purchased on a commodity market;

(f) where a procuring entity procures a prototype or a first good or service that is developed at its request in the course of, and for, a particular contract for research, experiment, study or original development. Original development of a first good or service may include limited production or supply in order to incorporate the results of field testing and to demonstrate that the good or service is suitable for production or supply in quantity to acceptable quality standards, but does not include quantity production or supply to establish commercial viability or to recover research and development costs;

(g) for purchases made under exceptionally advantageous conditions that only arise in the very short term in the case of unusual disposals such as those arising from liquidation, receivership, or bankruptcy, but not for routine purchases from regular suppliers; or

(h) where a contract is awarded to a winner of a design contest provided that:

(i) the contest has been organised in a manner that is consistent with the principles of this Chapter, in particular relating to the publication of a notice of intended procurement; and

(ii) the participants are judged by an independent jury with a view to a design contract being awarded to a winner.

2. A procuring entity shall prepare a report in writing on each contract awarded under paragraph 1. The report shall include the name of the procuring entity, the value and kind of goods or services procured, and a statement indicating the circumstances and conditions described in paragraph 1 that justified the use of limited tendering.

## **Article 6.20. Electronic Auctions**

Where a procuring entity intends to conduct a covered procurement using an electronic auction, the entity shall provide each participant, before commencing the electronic auction, with:

- (a) the automatic evaluation method, including the mathematical formula, that is based on the evaluation criteria set out in the tender documentation and that will be used in the automatic ranking or re-ranking during the auction;
- (b) the results of any initial evaluation of the elements of its tender where the contract is to be awarded on the basis of the most advantageous tender; and
- (c) any other relevant information relating to the conduct of the auction.

## **Article 6.21. Negotiations**

1. A Party may provide for its procuring entities to conduct negotiations where:

- (a) the entity has indicated such intent in the notice of intended procurement pursuant to Article 6.10 (Notices); or
- (b) it appears from the evaluation that no tender is obviously the most advantageous in terms of the specific evaluation criteria set out in the notice or tender documentation.

2. A procuring entity shall:

- (a) ensure that any elimination of suppliers participating in negotiations is carried out in accordance with the evaluation criteria set out in the notice or tender documentation; and
- (b) if applicable, where negotiations are concluded, provide a common deadline for the remaining participating suppliers to submit any new or revised tenders.

## **Article 6.22. Treatment of Tenders**

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

## **Article 6.23. Awarding of Contracts**

- 1. To be considered for award, a tender shall be submitted in writing and shall, at the time of opening, comply with the essential requirements set out in the notices and tender documentation and be from a supplier that satisfies the conditions for participation.
- 2. Unless a procuring entity determines that it is not in the public interest to award a contract, the entity shall award the contract to the supplier that it has determined to be capable of fulfilling the terms of the contract and that, based solely on the evaluation criteria specified in the notices and tender documentation, has submitted:
  - (a) the most advantageous tender; or
  - (b) where price is the sole criterion, the lowest price.
- 3. Where a procuring entity receives a tender with a price that is abnormally lower than the prices in other tenders submitted, it may verify with the supplier that it satisfies the conditions for participation and is capable of fulfilling the terms of the contract.
- 4. A procuring entity shall not use option clauses, cancel a procurement or modify awarded contracts in a manner that circumvents the obligations of this Chapter.

## **Article 6.24. Transparency of Procurement Information**

1. A procuring entity shall promptly inform participating suppliers of its contract award decisions and, on request, shall do so in writing. Subject to Article 6.25 (Disclosure of Information), a procuring entity shall, on request, provide an unsuccessful supplier with an explanation of the reasons why the entity did not select its tender and the relative advantages of the successful supplier's tender.
2. No later than 72 days from the award of each contract, a procuring entity shall publish in a paper or electronic medium listed in Appendix 7 to Annex XVII (Government Procurement), a notice that includes at least the following information about the contract:
  - (a) a description of the goods or services procured;
  - (b) the name and address of the procuring entity;
  - (c) the name and address of the successful supplier;
  - (d) the value of the successful tender or the highest and lowest offers taken into account in the award of the contract;
  - (e) the date of award; and
  - (f) the type of procurement method used, and in cases where limited tendering was used pursuant to Article 6.19 (Limited Tendering), a description of the circumstances justifying the use of limited tendering.
3. Where the entity publishes the notice only in an electronic medium, the information shall remain readily accessible for a reasonable period of time.
4. Each procuring entity shall, for a period of at least three years from the date it awards a contract, maintain the documentation and reports of tendering procedures and contract awards relating to covered procurement, including the reports provided for in Article 6.19 (Limited Tendering), and the data that ensure the appropriate traceability of the conduct of covered procurement by electronic means.

## **Article 6.25. Disclosure of Information**

1. Upon request of another Party, a Party shall promptly provide any information necessary to determine whether a procurement was conducted fairly, impartially and in accordance with this Chapter, including information on the characteristics and relative advantages of the successful tender.
2. Where the release of such information would prejudice competition in future tenders, the Party that receives the information shall not disclose it to any supplier, except after consulting with, and obtaining the agreement of, the Party that provided the information.
3. Notwithstanding any other provision of this Chapter, a Party, including its procuring entities, shall not provide information to a particular supplier that might prejudice fair competition between suppliers.
4. Nothing in this Chapter shall be construed to require a Party, including its procuring entities, authorities, and review bodies, to release confidential information under this Chapter where disclosure:
  - (a) would impede law enforcement;
  - (b) might prejudice fair competition between suppliers;
  - (c) would prejudice the legitimate commercial interests of particular persons, including the protection of intellectual property; or
  - (d) would otherwise be contrary to the public interest.

## **Article 6.26. Domestic Review Procedures for Supplier Challenges**

1. Each Party shall provide a timely, effective, transparent and non-discriminatory administrative or judicial review procedure according to the due process principle through which a supplier may challenge:
  - (a) breaches of this Chapter; or
  - (b) where the supplier does not have a right to challenge directly a breach of this Chapter under the domestic laws and regulations of a Party, failure to comply with a Party's measures implementing this Chapter,arising in the context of a covered procurement, in which the supplier has, or has had, an interest. The procedural rules for all challenges shall be in writing and made generally available.

2. In the event of a complaint by a supplier, arising in the context of covered procurement in which the supplier has, or has had, an interest, that there has been a breach or a failure as referred to in paragraph 1, the Party of the procuring entity shall encourage that entity and the supplier to seek resolution of the complaint through consultations.
3. Each supplier shall be allowed a sufficient period of time to prepare and submit a challenge, which in no case shall be less than ten days from the time when the basis of the challenge became known or reasonably should have become known to the supplier.
4. Each Party shall establish or designate at least one impartial administrative or judicial authority that is independent of its procuring entities to receive and review a challenge by a supplier arising in the context of a covered procurement.
5. Where a body, other than an authority referred to in paragraph 4, initially reviews a challenge, the Party shall ensure that the supplier may appeal the initial decision to an impartial administrative or judicial authority that is independent of the procuring entity whose procurement is the subject of the challenge.
6. Each Party shall ensure that a review body that is not a court shall either have its decisions subject to judicial review or have procedures that provide that:
  - (a) the procuring entity shall respond in writing to the challenge and disclose all relevant documents to the review body;
  - (b) the participants to the proceedings (âparticipantsâ) shall have the right to be heard prior to a decision of the review body being made on the challenge;
  - (c) the participants shall have the right to be represented and accompanied;
  - (d) the participants shall have access to all proceedings;
  - (e) the participants shall have the right to request that the proceedings take place in public and that witnesses may be presented; and
  - (f) the review body shall make its decisions or recommendations in a timely fashion, in writing, and shall include an explanation of the basis for each decision or recommendation.
7. Each Party shall adopt or maintain procedures, that provide for:
  - (a) rapid interim measures to preserve the supplier's opportunity to participate in the procurement. Such interim measures may result in the suspension of the procurement process. The procedures may provide that overriding adverse consequences for the interests concerned, including the public interest, may be taken into account when deciding whether such measures should be applied. Just cause for not acting shall be provided in writing; and
  - (b) where a review body has determined that there has been a breach of this Chapter or a failure as referred to in paragraph 1, corrective action or compensation for the loss or damages suffered, which may be limited to either the costs for the preparation of the tender or the costs relating to the challenge, or both.

## **Article 6. Modifications and Rectifications to Coverage**

1. Where a Party modifies its coverage of procurement under this Chapter, that Party shall:
  - (a) notify the other Parties in writing; and
  - (b) include in the notification a proposal of appropriate compensatory adjustments to the other Parties to maintain a level of coverage comparable to that existing prior to the modification.
2. Notwithstanding subparagraph 1(b), a Party does not need to provide compensatory adjustments where:
  - (a) the modification in question is a minor amendment or rectification of a purely formal nature; or
  - (b) the proposed modification covers an entity over which the Party has effectively eliminated its control or influence.
3. If a Party does not agree that:
  - (a) the adjustment proposed under subparagraph 1(b) is adequate to maintain a comparable level of mutually agreed coverage;
  - (b) the proposed modification is a minor amendment or a rectification under subparagraph 2(a); or

(c) the proposed modification covers an entity over which another Party has effectively eliminated its control or influence under subparagraph 2(b);

that Party must object in writing within 45 days following the date of circulation of the notification referred to in paragraph 1 or be deemed to have agreed to the adjustment or proposed modification.

4. If a Party objects to the proposed modification under subparagraph 2(b), that Party may request further information or explanation with a view to clarifying the nature of any government control or influence and reaching agreement on the procuring entity's continued coverage under this Chapter.

## **Article 6.28. Further Negotiations**

In case a Party offers in the future to a non-party additional benefits with regard to its respective government procurement market access coverage agreed under this Chapter, it shall agree, upon request of another Party, to enter into negotiations with a view to extending coverage on a reciprocal and mutually beneficial basis.

# **Chapter 7. COMPETITION**

## **Article 7.1. General Principles**

The Parties recognise the importance of undistorted competition in their trade relations and acknowledge that anticompetitive practices have the potential to undermine the trade benefits arising from this Agreement.

## **Article 7.2. Rules of Competition**

1. The following practices of enterprises are incompatible with the proper functioning of this Agreement in so far as they may affect trade between the Parties:

(a) agreements between enterprises, decisions by associations of enterprises and concerted practices between enterprises, which have as their object or effect the prevention, restriction or distortion of competition;

(b) abuse by one or more enterprises of a dominant position in the territory of a Party as a whole or in a substantial part thereof.

2. Nothing in this Chapter shall be construed so as to prevent a Party from establishing or maintaining state enterprises, enterprises with special and exclusive rights and designated monopolies. Paragraph 1 shall also apply to the activities of public enterprises, and enterprises to which the Parties grant special or exclusive rights, in so far as the application of these provisions does not obstruct the performance, in law or in fact, of the particular public tasks assigned to them.

3. Paragraphs 1 and 2 shall not be construed so as to create any direct obligations for enterprises.

4. This Chapter shall be without prejudice to the autonomy of each Party to establish, develop and implement its own public and economic policies and competition laws and regulations.

## **Article 7.3. Cooperation**

1. The Parties shall cooperate and consult in their dealings with anti-competitive practices as outlined in paragraph 1 of Article 7.2 (Rules of Competition), with the aim of putting an end to such practices or their adverse effects on trade. Such cooperation and consultations shall not prevent the Parties concerned from taking independent decisions.

2. Cooperation may include the exchange of pertinent information that is available to the Parties. A Party shall not be required to disclose information that is confidential according to its domestic laws and regulations.

## **Article 7.4. Consultations**

If a Party considers that a given practice continues to affect trade after cooperation or consultations in accordance with Article 7.3 (Cooperation), it may request consultations in the Joint Committee. The Party requesting consultations shall indicate how such practice undermines trade benefits arising from this Agreement. The Party to which a request for consultations has been made shall give sympathetic considerations to the concerns of the requesting Party. The Parties concerned shall give to the Joint Committee all the assistance required in order to examine the case and, where appropriate, eliminate the practice objected to. The Joint Committee shall, within 60 days from the receipt of the request, examine the

information provided in order to facilitate a mutually acceptable solution on the matter.

## **Article 7.5. Dispute Settlement**

The Parties shall not have recourse to Chapter 11 (Dispute Settlement) for any matter arising under this Chapter.

# **Chapter 8. TRADE AND SUSTAINABLE DEVELOPMENT**

## **Article 8.1. Context and Objectives**

1. The Parties recall the Declaration of the United Nations Conference on the Human Environment of 1972, the Rio Declaration on Environment and Development and the Agenda 21 adopted by the United Nations Conference on Environment and Development of 1992, the Johannesburg Declaration on Sustainable Development and its Plan of Implementation on Sustainable Development of 2002, the Rio+20 Outcome Document "The Future We Want" of 2012, the outcome document of the UN Summit on Sustainable Development "Transforming Our World: the 2030 Agenda for Sustainable Development" of 2015, the International Labour Organisation (ILO), Declaration on Fundamental Principles and Rights at Work and its Follow-up of 1998, the Ministerial Declaration of the UN Economic and Social Council on Full and Productive Employment and Decent Work of 2006 and the ILO Declaration on Social Justice for a Fair Globalization of 2008.
2. The Parties recognise that economic development, social development and environmental protection are interdependent and mutually supportive components of sustainable development.
3. The Parties reaffirm their commitment to promote the development of international trade in such a way as to contribute to the objective of sustainable development, and to ensure that this objective is integrated and reflected in the Parties' trade relations.
4. The Parties will promote dialogue and cooperation on trade-related labour and environmental issues as part of a global approach to trade and sustainable development.

## **Article 8.2. Scope**

Except as otherwise provided in this Chapter, this Chapter applies to measures adopted or maintained by the Parties affecting trade-related and investment-related aspects of labour and environmental issues. (14)

(14) It is understood that the reference to labour in this Chapter includes the issues relevant to the Decent Work Agenda as agreed in the ILO.

## **Article 8.3. Right to Regulate and Levels of Protection**

1. Recognising the sovereign right of each Party, in a manner consistent with this Agreement, to establish its priorities and its levels of environmental and labour protection, and to adopt or modify accordingly its relevant laws, policies and practices, each Party shall seek to ensure that its laws, policies and practices provide for and encourage high levels of environmental and labour protection consistent with the standards, principles and agreements referred to in Articles 8.5 (International Labour Standards and Agreements) and 8.6 (Multilateral Environmental Agreements and Environmental Principles) and shall strive to further improve the level of protection provided for in those laws, policies and practices.
2. The Parties recognise the importance of taking account of scientific, technical and other information, and relevant international standards, guidelines and recommendations, if existing, when preparing and implementing measures related to the environment and labour conditions that affect trade and investment between them.

## **Article 8.4. Upholding Levels of Protection In the Application and Enforcement of Laws, Regulations or Standards**

1. A Party shall not fail to effectively enforce its environmental and labour laws, regulations or standards in a manner affecting trade or investment between the Parties.
2. Subject to Article 8.3 (Right to Regulate and Levels of Protection), no Party shall:
  - (a) weaken or reduce the level of environmental or labour protection provided by its domestic laws, regulations or standards with the sole intention to encourage trade or investment from another Party or to seek or enhance a competitive trade

advantage of producers or service providers operating in its territory; or

(b) waive or otherwise derogate from, or offer to waive or otherwise derogate from, laws, regulations or standards relevant to environment and labour, in order to encourage trade or investment from another Party or to seek or enhance a competitive trade advantage of producers or service providers operating in its territory.

## **Article 8.5. International Labour Standards and Agreements**

1. The Parties recall the obligations deriving from membership of the ILO and the ILO Declaration on Fundamental Principles and Rights at Work and its Follow-up adopted by the International Labour Conference at its 86th Session in 1998 to respect, promote and realise the principles concerning the fundamental rights, namely:

(a) freedom of association and the effective recognition of the right to collective bargaining;

(b) elimination of all forms of forced or compulsory labour;

(c) effective abolition of child labour; and

(d) elimination of discrimination in respect of employment and occupation.

2. The Parties recall the obligations deriving from membership of the ILO to effectively implement the ILO Conventions, which they have ratified and to make continued and sustained efforts towards ratifying the fundamental ILO Conventions as well as the other conventions that are classified as "up-to-date" by the ILO.

3. The Parties reaffirm their commitment, under the Ministerial Declaration of the UN Economic and Social Council on Full Employment and Decent Work of 2006, to recognise the importance of full and productive employment and decent work for all as key elements of sustainable development for all countries and as a priority objective of international cooperation and to promote the development of international trade in a way that is conducive to full productive employment and decent work for all.

4. The Parties shall promote decent work and reaffirm in this regard the ILO Declaration on Social Justice for a Fair Globalization, adopted by the International Labour Conference at its 97th session in 2008.

5. The Parties shall pay particular attention to developing and enhancing measures for:

(a) occupational safety and health, including compensation in case of occupational injury or illness;

(b) decent working conditions for all, with regard to, inter alia, wages and earnings, working hours and other conditions of work;

(c) effective labour inspection systems; and

(d) equality of treatment in respect of working conditions.

6. The Parties reaffirm that the violation of fundamental principles and rights at work, shall not be invoked or otherwise used as a legitimate comparative advantage and that labour standards shall not be used for protectionist trade purposes.

## **Article 8.6. Multilateral Environmental Agreements and Environmental Principles**

1. The Parties recognise the importance of international environmental governance and multilateral environmental agreements as a response of the international community to global or regional environmental challenges and stress the need to enhance the mutual supportiveness between trade and environmental policies.

2. The Parties reaffirm their commitment to the effective implementation in their laws, policies and practices of the multilateral environmental agreements to which they are a party, as well as their adherence to environmental principles reflected in the international instruments, referred to in Article 8.1 (Context and Objectives).

## **Article 8.7. Promotion of Trade and Investment Favouring Sustainable Development**

1. The Parties shall strive to facilitate and promote foreign investment, trade in and dissemination of goods and services beneficial to the environment, including environmental technologies, renewable energy, energy efficient and eco-labelled goods, organic production and services. Related non-tariff barriers will be addressed as part of these efforts.

2. The Parties shall strive to facilitate and promote foreign investment, trade in and dissemination of goods and services that

contribute to sustainable development, including goods and services that are the subject of schemes such as fair and ethical trade.

3. The Parties shall encourage corporate social responsibility practices, as well as cooperation between enterprises in relation to goods, services and technologies that are beneficial to the environment and contribute to sustainable development in its economic, environmental and social dimension.

4. The Parties shall promote sustainable consumption and production patterns.

5. To this end, the Parties agree to exchange views and may consider, jointly or bilaterally, cooperation in this area.

## **Article 8.8. Trade and Biological Diversity**

1. The Parties recognise the importance of the conservation and sustainable use of biological diversity and the role of trade in pursuing these objectives.

2. To this end, the Parties commit to:

(a) promote the inclusion of animal and plant species in the Appendices to the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) where a species is threatened or may be threatened with extinction;

(b) implement effective measures to combat illegal wildlife trade;

(c) prevent or control the introduction and spread of invasive alien species in connection with trade activities; and

(d) cooperate where applicable on issues concerning trade and the conservation and sustainable use of biological diversity, including initiatives to reduce demand for illegal wildlife products.

## **Article 8.9. Trade and Sustainable Management of Fisheries**

1. The Parties recognise the importance of ensuring the conservation and sustainable management of living marine resources and marine ecosystems and the role of trade in pursuing these objectives.

2. To this end, the Parties commit to:

(a) implement comprehensive, effective and transparent policies and measures to combat illegal, unreported and unregulated (IUU) fishing and aim to exclude IUU products from trade flows;

(b) promote the use of FAO's Voluntary Guidelines for Catch Documentation Schemes;

(c) cooperate bilaterally and in relevant international fora in the fight against IUU fishing with the aim of achieving sustainable fisheries management by inter alia facilitating the exchange of information on IUU fishing activities; and

(d) continue to engage constructively in the fisheries subsidies negotiations in the WTO with a view to adopting an agreement on comprehensive and effective disciplines, that prohibit certain forms of fisheries subsidies that contribute to overcapacity and overfishing, and eliminate subsidies that contribute to IUU fishing, recognising that appropriate and effective special and differential treatment for developing and least developed countries should be an integral part of the WTO fisheries subsidies negotiations.

## **Article 8.10. Sustainable Forest Management and Associated Trade**

1. The Parties recognise the importance of effective forest law and governance in order to ensure sustainable forest management and thereby contribute to the reduction of greenhouse gas emissions and biodiversity loss resulting from deforestation and degradation of natural forest and peatlands including from land-use change for economic activities.

2. With the aim of contributing to sustainable forest management, the Parties commit to promote trade in goods which derive from sustainably managed forests. To this end, the Parties undertake to, inter alia:

(a) promote the effective use of CITES with regard to endangered timber species;

(b) promote the development and use of certification schemes for forest products from sustainably managed forests;

(c) combat illegal logging by improving forest law enforcement and governance and by ensuring that only legally sourced timber is traded among the Parties; and

(d) cooperate on issues relating to sustainable forest management through existing bilateral arrangements if applicable and in the relevant multilateral fora in which they participate, in particular in Reducing Emissions from Deforestation and Forest Degradation (REDD+) as encouraged by the Paris Agreement.

## **Article 8.11. Trade and Climate Change**

1. The Parties recognise the importance of achieving the objectives of the United Nations Framework Convention on Climate Change (UNFCCC) and the Paris Agreement in order to address the urgent threat of climate change and the role of trade in achieving these objectives.

2. Pursuant to paragraph 1, the Parties shall:

(a) effectively implement the UNFCCC;

(b) effectively implement the Paris Agreement under which each Party's successive nationally determined contribution will represent a progression beyond the Party's then current nationally determined contribution and reflect its highest possible ambition, reflecting its common but differentiated responsibilities and respective capabilities, in the light of different national circumstances;

(c) promote the contribution of trade to the transition to a low-carbon-, sustainable and climate resilient economy; and

(d) cooperate bilaterally, regionally and in international fora, as appropriate, on trade-related climate change issues.

## **Article 8.12. Cooperation In International Fora**

The Parties shall strive to strengthen their cooperation on trade and investment related labour and environmental issues of mutual interest in relevant bilateral, regional and multilateral fora in which they participate.

## **Article 8.13. Implementation and Consultations**

1. The Parties shall designate contact points for the purpose of implementing this Chapter.

2. A Party may through the contact points referred to in paragraph 1 request consultations at experts level or consultations within the Joint Committee regarding any matter arising under this Chapter. The Parties shall make every attempt to reach a mutually satisfactory solution of the matter. Subject to the agreement of the Parties, they may seek advice of the relevant international organisations or bodies.

3. The Parties shall not have recourse to Chapter 11 (Dispute Settlement) for matters arising under this Chapter. If the Parties agree, they may have recourse to good offices, conciliation or mediation under Article 11.2 (Good Offices, Conciliation or Mediation). These procedures may begin and be suspended or terminated at any time.

## **Article 8.14. Review**

The Joint Committee shall periodically review progress achieved in pursuing the objectives set out in this Chapter, and consider relevant international developments in order to identify areas where further action could promote these objectives.

# **Chapter 9. COOPERATION**

## **Article 9.1. Objectives**

The Parties declare their readiness to foster trade and economic cooperation in order to facilitate the implementation of the overall objectives of this Agreement, in particular to enhance trade and investment opportunities arising from this Agreement and contribute to sustainable development.

## **Article 9.2. Scope and Means**

1. Means of cooperation may include technical assistance, development and implementation of joint actions as agreed between the Parties.

2. Cooperation and technical assistance provided by the EFTA States for the implementation of this Chapter shall be carried

out through programmes administered by the EFTA Secretariat, without prejudice to other bilateral cooperation and technical assistance programmes that the Parties may develop in fields covered by this Agreement, including complementary arrangements.

3. Cooperation under this Chapter shall be subject to the availability of funds and resources of each Party. Costs of cooperation under this Chapter shall be borne by the Parties within the limits of their own capacities and through their own channels, in a manner to be agreed between the Parties.

### **Article 9.3. Fields of Cooperation**

1. Cooperation and technical assistance may cover any fields jointly identified by the Parties that may serve to enhance the Parties' and their economic operators' capacities to benefit from increased trade and investment arising from this Agreement, including:

(a) promotion and facilitation of exports of goods and services to the other Parties and fostering competitiveness and innovation;

(b) strengthening of institutional capacities in the following areas, in addition to the areas provided in specific provisions of this Chapter:

(i) customs and origin matters;

(ii) encouraging technological innovation and dissemination of technological information;

(iii) facilitation of trade in services, by exchanging information on trade in services and where appropriate qualifications and standards;

(iv) promotion of investment and technology flows, by identifying investment opportunities and information channels on investment regulations, exchange of information on measures to promote investment abroad, and furthering of legal environment conducive to increased investment flows;

(v) facilitation in the collaboration on and development of intellectual property laws and practices, including training of stakeholders from the public, private sector and civil society, and to promote awareness on intellectual property rights in the general public; and

(vi) trade and investment related aspects of sustainable development;

(c) encouraging and stimulating business contacts, including between enterprises, with the aim of developing long lasting business relationships.

### **Article 9.4. Trade Facilitation**

1. The Parties shall promote international cooperation in relevant multilateral fora on trade facilitation and review relevant international initiatives in order to identify further areas where joint actions could contribute to their common objectives.

2. Within the scope of this Chapter and Annex VII (Trade Facilitation), technical cooperation may cover areas such as:

(a) institutional capacity building;

(b) transfer technology within the scope of Annex VII (Trade Facilitation);

(c) targeted training activities for customs or other border control agencies; and

(d) identification of specific projects, partnerships or other forms of cooperation between entities of the Parties.

3. The Parties may submit to the Joint Committee additional measures with a view to facilitating trade between them.

4. The Parties may, if deemed necessary, conclude complementary cooperation agreements which allow the fulfilment of the objectives of Annex VII (Trade Facilitation).

### **Article 9.5. Technical Regulations**

The Parties shall strengthen cooperation in the field of technical regulations, standards and conformity assessment, with a view to increasing the mutual understanding of their respective systems and facilitating access to their respective markets.

To this end, they shall in particular cooperate in:

- (a) reinforcing the role of international standards as a basis for technical regulations, including conformity assessment procedures;
- (b) promoting the accreditation of conformity assessment bodies on the basis of relevant Standards and Guides of the International Organization for Standardization (ISO) and the International Electrotechnical Commission (IEC); and
- (c) promoting mutual acceptance of conformity assessment results of conformity assessment bodies, which have been recognised under appropriate multilateral agreements between their respective accreditation systems or bodies.

## **Article 9.6. Sanitary and Phytosanitary Measures**

The Parties shall cooperate in the field of sanitary and phytosanitary measures, with the aim of increasing the mutual understanding of their respective systems and to improve their sanitary and phytosanitary systems.

## **Article 9.7. Competition**

The Parties acknowledge the importance of technical assistance and capacity building with regard to competition law and policy. To that effect and subject to the availability of funding under the Parties' cooperation instruments and programmes, the Parties shall endeavour to engage in technical assistance activities with regard to:

- (a) capacity building;
- (b) development and implementation of competition laws and regulations;
- (c) exchange of information on competition laws and policies; and
- (d) other cooperation activities in the development and implementation of competition laws and regulations.

## **Article 9.8. Government Procurement**

1. The Parties recognise the importance of cooperation with a view to achieving a better understanding of their respective government procurement systems, as well as a better access to their respective markets, in particular for Micro, Small and Medium business suppliers. In the case of Ecuador, Micro Small and Medium business suppliers includes the Actores de la Economía Popular y Solidaria ("AEPYS") (Popular and Solidarity Stakeholders).

2. The Parties shall endeavour to cooperate in matters such as:

- (a) development and use of electronic communications in government procurement systems;
- (b) exchange of experience and information, such as regulatory frameworks, best practices, government procurement opportunities and statistics;
- (c) capacity building and technical assistance to suppliers with respect to access to the government procurement market;
- (d) institutional strengthening for the implementation of this Chapter, including training to government personnel; or
- (e) facilitation of the identification of specific projects, partnerships or other forms of cooperation between them.

## **Article 9.9. Contact Points**

The Parties shall exchange names and addresses of designated contact points for matters pertaining to cooperation.

## **Article 9.10. Sub-Committee on Cooperation**

1. A Sub-Committee on Cooperation is hereby established.
2. The mandate of the Sub-Committee on Cooperation is set out in Annex XVII (Mandate of the Sub-Committee on Cooperation).

## **Article 9.11. Non-Application of Dispute Settlement**

The provisions set out in this Chapter shall have a cooperative nature and shall not be subject to dispute settlement under Chapter 11 (Dispute Settlement).

## **Chapter 10. INSTITUTIONAL PROVISIONS**

### **Article 10. Joint Committee**

1. The Parties hereby establish the EFTA-Ecuador Joint Committee (hereinafter referred to as the "Joint Committee") comprising representatives of each Party.
2. The Joint Committee shall:
  - (a) supervise and review the implementation of this Agreement;
  - (b) keep under review the possibility of further removal of barriers to trade and other restrictive measures concerning trade between the Parties;
  - (c) oversee any further elaboration of this Agreement;
  - (d) supervise the work of all sub-committees and working groups established under this Agreement;
  - (e) endeavour to resolve disputes that may arise regarding the interpretation or application of this Agreement; and
  - (f) consider any other matter that may affect the operation of this Agreement.
3. The Joint Committee may establish subcommittees and working groups in order to assist it in the performance of its tasks. Except where otherwise provided for in this Agreement, the Joint Committee shall determine their composition and mandate.
4. The Joint Committee may take decisions as provided for in this Agreement. On other matters the Joint Committee may make recommendations.
5. The Joint Committee shall take decisions and make recommendations by consensus. The Joint Committee may adopt decisions and make recommendations regarding issues related to only one or several EFTA states and Ecuador. Consensus shall only involve, and the decision or recommendation shall only apply to, those Parties.
6. The Joint Committee shall meet within one year of the entry into force of this Agreement. Thereafter, it shall meet whenever necessary but normally every two years. Its meetings shall be chaired jointly by one of the EFTA States and Ecuador.
7. Each Party may request at any time, through a notice in writing to the other Parties, that a special meeting of the Joint Committee be held. Such a meeting shall take place within 30 days from the receipt of the request, unless the Parties agree otherwise.
8. If a representative of a Party in the Joint Committee has accepted a decision subject to the fulfilment of domestic legal requirements, the decision shall enter into force on the date that the last Party notifies that its internal requirements have been fulfilled, unless otherwise agreed. The Joint Committee may decide that the decision enters into force for those Parties that have fulfilled their internal requirements, provided that Ecuador is one of those Parties.
9. The Joint Committee shall establish its rules of procedure.

## **Chapter 11. DISPUTE SETTLEMENT**

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

1. The objective of this Chapter is the settlement of any disputes concerning the interpretation or application of this Agreement, in particular if a Party considers that a measure is inconsistent with this Agreement. Unless otherwise provided in this Agreement, this Chapter applies.
2. Disputes regarding the same matter arising under both this Agreement and the WTO Agreement may be settled in either forum at the discretion of the complaining Party. (15) The forum thus selected shall be used to the exclusion of the other.
3. For the purposes of paragraph 2, dispute settlement procedures under the WTO Agreement are deemed to be selected by a Party's request for the establishment of a panel under Article 6 of the WTO Understanding on Rules and Procedures

Governing the Settlement of Disputes, whereas dispute settlement procedures under this Agreement are deemed to be selected upon a request for arbitration pursuant to paragraph 1 of Article 11.4 (Establishment of Arbitration Panel).

(15) For the purposes of this Chapter, the terms "Party", "party to the dispute", "complaining Party" and "Party complained against" can denote one or more Parties.

## **Article 11.2. Good Offices, Conciliation or Mediation**

1. Good offices, conciliation and mediation are undertaken voluntarily if the parties to the dispute so agree. They may begin and be suspended or terminated at any time. They may continue while proceedings of an arbitration panel established in accordance with this Chapter are in progress.
2. Proceedings involving good offices, conciliation and mediation shall be confidential and without prejudice to the rights of the parties to the dispute in any further proceedings.

## **Article 11.3. Consultations**

1. The Parties shall at all times endeavour to agree on the interpretation and application of this Agreement, and shall make every attempt through cooperation and consultations in good faith to reach a mutually agreed solution of any matter raised in accordance with this Article.
2. A Party may request in writing consultations with another Party, if it considers that a measure is inconsistent with this Agreement. The request shall identify the measure at issue and the legal basis for the complaint. The Party requesting consultations shall at the same time notify the other Parties in writing of the request. The Party to which the request is made shall reply within ten days from the receipt of the request. Consultations shall take place in the Joint Committee, unless the Parties making and receiving the request for consultations agree otherwise. Upon agreement of the parties to the dispute, the consultations may be held by any technological means available.
3. Consultations shall commence within 30 days from the receipt of the request for consultations. Consultations on urgent matters, including those on perishable goods, shall commence within 15 days from the receipt of the request for consultations. If the Party to which the request is made does not reply within ten days or does not enter into consultations within 30 days from the receipt of the request for consultations, or within 15 days for urgent matters, the Party making the request is entitled to request the establishment of an arbitration panel in accordance with Article 11.4 (Establishment of Arbitration Panel).
4. The parties to the dispute shall provide sufficient information to enable a full examination of whether the measure is inconsistent with this Agreement or not and treat any confidential information exchanged in the course of consultations in the same manner as the Party providing the information.
5. The consultations shall be confidential and without prejudice to the rights of the parties to the dispute in any further proceedings.
6. The parties to the dispute shall inform the other Parties of any mutually agreed resolution of the matter.

## **Article 11.4. Establishment of Arbitration Panel**

1. If the consultations referred to in Article 11.3 (Consultations) fail to settle a dispute within 60 days, or 30 days in relation to urgent matters, including those on perishable goods, from the receipt of the request for consultations by the Party complained against, the complaining Party may request the establishment of an arbitration panel by means of a written request to the Party complained against. A copy of this request shall be communicated to the other Parties so that they may determine whether to participate in the arbitration process.
2. The request for the establishment of an arbitration panel shall identify the specific measure at issue and provide a brief summary of the legal and factual basis of the complaint.
3. The arbitration panel shall consist of three members who shall be appointed in accordance with the procedures of the Optional Rules for Arbitrating Disputes between Two States of the Permanent Court of Arbitration, as effective from 20 October 1992 (Optional Rules) *mutatis mutandis*.
4. Notwithstanding paragraph 3, if not all three members have been appointed, the necessary appointments shall be made at the request of any party to the dispute by the Director-General of the WTO, acting as appointing authority. If the Director-

General of the WTO is unable to act or is a national of a party to the dispute, the Deputy Director-General of the WTO shall act as the appointing authority. If the Director-General of the WTO or the Deputy Director-General of the WTO refuses to act or fails to appoint the arbitrator within 60 days of the receipt of a request by a party to the dispute, either party to the dispute may request the President of the International Court of Justice (ICJ) to make the appointments.

5. The arbitrators shall be independent, impartial and have specialised knowledge or experience in law, international trade or in the settlement of disputes under international trade agreements.

6. Unless the parties to the dispute otherwise agree within 30 days from the receipt of the request for the establishment of the arbitration panel, the terms of reference for the arbitration panel shall be:

"To examine, in light of the relevant provisions of this Agreement, the matter referred to in the request for the establishment of an arbitration panel pursuant to Article 11.4 (Establishment of Arbitration Panel) and to make findings of law and fact together with the reasons, as well as recommendations, if any, for the resolution of the dispute and the implementation of the ruling."

7. Where more than one Party requests the establishment of an arbitration panel relating to the same matter or where the request involves more than one Party complained against, and whenever feasible, a single arbitration panel should be established to examine complaints relating to the same matter.

8. A Party which is not a party to the dispute shall be entitled, on delivery of a written notice to the parties to the dispute, to make written submissions to the arbitration panel, receive written submissions, including annexes, from the parties to the dispute, attend hearings and make oral statements.

## **Article 11.5. Procedures of the Arbitration Panel**

1. Unless otherwise specified in this Agreement or agreed between the parties to the dispute, the procedures of the panel shall be governed by the Optional Rules, *mutatis mutandis*. (16)

2. The arbitration panel shall examine the matter referred to it in the request for the establishment of an arbitration panel, in conformity with the terms of reference and in light of the relevant provisions of this Agreement interpreted in accordance with the rules of interpretation of public international law.

3. The arbitration panel shall establish its working schedule allowing the parties to the dispute adequate time to comply with all steps of the proceedings.

4. The language of any proceedings shall be English, and the hearings of the arbitration panel shall be open to the public, unless the parties to the dispute agree otherwise.

5. The location of any hearing of the arbitration panel shall be decided by mutual agreement of the parties to the dispute, failing which, it shall be held in The Hague, The Netherlands.

6. There shall be no *ex parte* communication with the arbitration panel concerning matters under its consideration.

7. All documents or information submitted by a Party to the arbitration panel, shall, at the same time, be transmitted by that Party to the other party to the dispute.

8. The Parties shall treat as confidential the information submitted to the arbitration panel which has been designated as confidential by the Party submitting the information.

9. Decisions of the arbitration panel shall be taken by a majority of its members, if consensus cannot be reached. Any member may furnish separate opinions on matters not unanimously agreed. The arbitration panel shall disclose which members are associated with majority or minority opinions.

10. The costs of arbitration shall be borne by the parties to the dispute in equal shares.

(16) The following articles of the Optional Rules shall not apply: Article 26 (Interim Measures of Protection), Article 35 (Interpretation of the Award) and Article 37 (Additional Award).

## **Article 11.6. Panel Reports**

1. The arbitration panel should submit an initial report containing its findings and rulings to the parties to the dispute not

later than 90 days from the date of establishment of the arbitration panel. A party to the dispute may submit written comments to the arbitration panel within 30 days from the receipt of the initial report. The arbitration panel should present to the parties to the dispute a final report within 45 days from the receipt of the initial report. In urgent matters, including those on perishable goods, the panel shall endeavour to accelerate the proceedings accordingly.

2. The final report, as well as any report under Articles 11.8 (Implementation of the Final Panel Report) and 11.9 (Compensation and Suspension of Benefits), shall be communicated to the Parties. The reports shall be made public, unless the parties to the dispute decide otherwise.

3. Any ruling of the arbitration panel under any provision of this Chapter shall be final and binding upon the parties to the dispute.

## **Article 11.7. Suspension or Termination of Arbitration Panel Proceedings**

1. Where the parties to the dispute agree, an arbitration panel may suspend its work at any time for a period not exceeding 12 months. If the work of an arbitration panel has been suspended for more than 12 months, the arbitration panel's authority for considering the dispute shall lapse, unless the parties to the dispute agree otherwise.

2. A complaining Party may withdraw its complaint at any time before the initial report has been issued. Such withdrawal is without prejudice to its right to introduce a new complaint regarding the same issue at a later point in time.

3. The parties to the dispute may agree at any time to terminate the proceedings of an arbitration panel established under this Agreement by jointly notifying in writing the Chairperson of that arbitration panel.

4. An arbitration panel may, at any stage of the proceedings prior to release of the final report, propose that the parties to the dispute seek to settle the dispute amicably.

## **Article 11.8. Implementation of the Final Panel Report**

1. The Party complained against shall take all necessary measures to promptly comply with the ruling in the final report. If it is impracticable to comply immediately, the parties to the dispute shall endeavour to agree on a reasonable period of time to do so. In the absence of such agreement within 45 days from the issuance of the final report, either party to the dispute may request the original arbitration panel to determine the length of the reasonable period of time, in light of the particular circumstances of the case. The ruling of the arbitration panel should be given within 60 days from the receipt of that request.

2. The Party complained against shall notify the other party to the dispute of the measure adopted in order to comply with the ruling in the final report, as well as provide a detailed description of how the measure ensures compliance sufficient to allow the other party to the dispute to assess the measure.

3. In case of disagreement as to the existence of a measure complying with the ruling in the final report or to the consistency of that measure with the ruling, such disagreement shall be decided by the same arbitration panel upon the request of either party to the dispute before compensation can be sought or suspension of benefits can be applied in accordance with Article 11.9 (Compensation and Suspension of Benefits). The ruling of the arbitration panel should be rendered within 90 days from the receipt of that request.

## **Article 11.9. Compensation and Suspension of Benefits**

1. If the Party complained against does not comply with a ruling of the arbitration panel referred to in Article 11.8 (Implementation of the Final Panel Report), or notifies the complaining party that it does not intend to comply with the ruling in the final panel report, that Party shall, if so requested by the complaining party, enter into consultations with a view to agreeing on mutually acceptable compensation. If no such agreement has been reached within 30 days from the receipt of the request, the complaining Party shall be entitled to suspend the application of benefits granted under this Agreement but only equivalent to those affected by the measure that the arbitration panel has found to be inconsistent with this Agreement.

2. In considering what benefits to suspend, the complaining Party should first seek to suspend benefits in the same sector or sectors as that affected by the measure that the arbitration panel has found to be inconsistent with this Agreement. The complaining Party that considers it is not practicable or effective to suspend benefits in the same sector or sectors may suspend benefits in other sectors.

3. The complaining Party shall notify the Party complained against of the benefits, which it intends to suspend, the grounds

for such suspension and when suspension will commence, no later than 30 days before the date on which the suspension is due to take effect. Within 15 days from the receipt of that notification, the Party complained against may request the original arbitration panel to rule on whether the benefits, which the complaining Party intends to suspend are equivalent to those affected by the measure found to be inconsistent with this Agreement, and whether the proposed suspension is in accordance with paragraphs 1 and 2. The ruling of the arbitration panel should be given within 45 days from the receipt of that request. Benefits shall not be suspended until the arbitration panel has issued its ruling.

4. Compensation and suspension of benefits shall be temporary measures and shall only be applied by the complaining Party until the measure found to be inconsistent with this Agreement has been withdrawn or amended so as to bring it into conformity with this Agreement, or until the parties to the dispute have resolved the dispute otherwise.

5. At the request of a party to the dispute, the original arbitration panel shall rule on the conformity with the final report of any implementing measures adopted after the suspension of benefits and, in light of such ruling, whether the suspension of benefits should be terminated or modified. The ruling of the arbitration panel should be given within 30 days from the receipt of that request.

## **Article 11.10. Other Provisions**

1. Whenever possible, the arbitration panel referred to in Articles 11.8 (Implementation of the Final Panel Report) and 11.9 (Compensation and Suspension of Benefits) shall comprise the same arbitrators who issued the final report. If a member of the original arbitration panel is unavailable, the appointment of a replacement arbitrator shall be conducted in accordance with the selection procedure for the original arbitrator.

2. Any time period mentioned in this Chapter may be modified by mutual agreement of the parties to the dispute or, upon request of a party to the dispute, by the arbitration panel.

3. When an arbitration panel considers that it cannot comply with a time period imposed on it under this Chapter, it shall inform the parties to the dispute in writing and provide an estimate of the additional time required. Any additional time required should not exceed 30 days.

## **Chapter 12. FINAL PROVISIONS**

### **Article 12.1. Annexes and Appendices**

The Annexes and Appendices to this Agreement constitute an integral part of this Agreement.

### **Article 12.2. Amendments**

1. Any Party may submit proposals for amendments to this Agreement to the Joint Committee for consideration and recommendation.

2. Amendments to this Agreement shall be subject to ratification, acceptance or approval.

3. Unless otherwise agreed, amendments shall enter into force on the first day of the third month following the date on which at least one EFTA State and Ecuador have deposited their instruments of ratification, acceptance or approval with the Depositary. In relation to an EFTA State depositing its instrument of ratification, acceptance or approval after the date on which at least one EFTA State and Ecuador have deposited their instruments of ratification, acceptance or approval with the Depositary, the amendment shall enter into force on the first day of the third month following the deposit of its instrument.

4. Notwithstanding paragraphs 1 to 3, the Joint Committee may decide to amend the Annexes and Appendices to this Agreement. If a Party has accepted a decision subject to the fulfilment of domestic legal requirements, the decision shall enter into force on the first day of the third month following the date that the last Party notifies the Depositary that its internal requirements have been fulfilled, unless otherwise specified in the decision.

5. Amendments regarding issues related only to one or several EFTA States and Ecuador shall be agreed upon by the Parties concerned.

6. The text of the amendments and the instruments of ratification, acceptance or approval shall be deposited with the Depositary.

7. A Party may apply an amendment provisionally, subject to its domestic legal requirements. Provisional application of amendments shall be notified to the Depositary.

### **Article 12.3. Accession**

1. Any State becoming a Member of EFTA may accede to this Agreement on terms and conditions agreed by the Parties and the acceding State.
2. In relation to an acceding State, this Agreement shall enter into force on the first day of the third month following the date on which the acceding State and the last Party have deposited their instruments of ratification, acceptance or approval of the terms of accession.

### **Article 12.4. Withdrawal and Expiration**

1. Each Party may withdraw from this Agreement by means of a written notification to the Depositary. The withdrawal shall take effect six months after the date on which the notification is received by the Depositary.
2. If Ecuador withdraws, this Agreement shall expire when its withdrawal becomes effective.
3. Any EFTA State, which withdraws from the Convention establishing the European Free Trade Association shall, ipso facto on the same day as the withdrawal takes effect, cease to be a Party to this Agreement.

### **Article 12.5. Entry Into Force**

1. This Agreement is subject to ratification, acceptance or approval. The instruments of ratification, acceptance or approval shall be deposited with the Depositary.
2. This Agreement shall enter into force on the first day of the third month following the date on which at least one EFTA State and Ecuador have deposited their instruments of ratification, acceptance or approval with the Depositary.
3. In relation to an EFTA State depositing its instrument of ratification, acceptance or approval after the date on which at least one EFTA State and Ecuador have deposited their instruments of ratification, acceptance or approval with the Depositary, this Agreement shall enter into force on the first day of the third month following the deposit of its instrument.
4. A Party may apply this Agreement provisionally, subject to its domestic legal requirements. Provisional application of this Agreement shall be notified to the Depositary.

### **Article 12.6. Depositary**

The Government of Norway shall act as Depositary.

IN WITNESS WHEREOF the undersigned, being duly authorised thereto, have signed this Agreement.

Done at Saudarkrokur, this 25<sup>th</sup> day of June 2018, in one original in the English language and one original in the Spanish language, both texts being equally authentic. In case of divergence, the English text shall prevail. The originals shall be deposited with the Depositary, who shall transmit certified copies to all the Parties.

For Iceland For the Republic of Ecuador

For the Principality of Liechtenstein

For the Kingdom of Norway

For the Swiss Confederation