FREE TRADE AGREEMENT BETWEEN CANADA AND CHILE

The Government of Canada and the Government of the Republic of Chile (Chile), resolved to:

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

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

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

Reduce distortions to trade;

Establish clear and mutually advantageous rules governing their trade;

Ensure a predictable commercial framework for business planning and investment;

Build on their respective rights and obligations under the Marrakesh Agreement Establishing the World Trade Organization and other multilateral and bilateral instruments of cooperation;

Enhance the competitiveness of their firms in global markets;

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

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

Preserve their flexibility to safeguard the public welfare;

Promote sustainable development;

Strengthen the development and enforcement of environmental laws and regulations;

Protect, enhance and enforce basic workers' rights;

Facilitate the accession of Chile to the North American Free Trade Agreement; and

Contribute to hemispheric integration;;

Have agreed as follows:

Part One. General Part

Chapter A. Objectives

Article A-01. Establishment of the Free Trade Area

The Parties to this Agreement, consistent with Article XXIV of the General Agreement on Tariffs and Trade 1994 and Article V of the General Agreement on Trade in Services which are part of the Marrakesh Agreement Establishing the World Trade Organization, hereby establish a free trade area.

Article A-02. Objectives

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

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

the Parties;

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

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

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

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

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

Article A-03. Relation to other Agreements

1. The Parties affirm their existing rights and obligations with respect to each other under the Marrakesh Agreement Establishing the World Trade Organization and other agreements to which such Parties are party.

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

Article A-04. Relation to Environmental and Conservation Agreements

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

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

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

(c) the Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and Their Disposal, done at Basel, March 22, 1989,

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

Article A-05. Extent of Obligations

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

Chapter B. General Definitions

Article B-01. Definitions of General Application

1. For purposes of this Agreement, unless otherwise specified:

Canada-United States Free Trade Agreement means the Canada-United States Free Trade Agreement, done on January 2, 1988;

citizen means a citizen as defined in Annex B-01.1 for the Party specified in that Annex;

Commission means the Free Trade Commission established under Article N-01(1) (The Free Trade Commission);

Customs Valuation Code means the Agreement on Implementation of Article VII of the General Agreement on Tariffs and Trade 1994, including its interpretative notes, which is part of the WTO Agreement;

days means calendar days, including weekends and holidays;

Dispute Settlement Understanding (DSU) means the Understanding on Rules and Procedures Governing the Settlement

of Disputes, which is part of the WTO Agreement;

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

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

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

GATS means the General Agreement on Trade in Services, which is part of the WTO Agreement;

GATT 1994 means the General Agreement on Tariffs and Trade 1994, which is part of the WTO Agreement;

Generally Accepted Accounting Principles means the recognized consensus or substantial authoritative support in the territory of a Party with respect to the recording of revenues, expenses, costs, assets and liabilities, disclosure of information and preparation of financial statements. These standards may be broad guidelines of general application as well as detailed standards, practices and procedures; goods of a Party means domestic products as these are understood in the GATT 1994 or such goods as the Parties may agree, and includes originating goods of that Party (1);

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

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

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

NAFTA means the North American Free Trade Agreement, done on December 17, 1992;

national means a natural person who is a citizen or permanent resident of a Party and any other natural person referred to in Annex B-01.1;

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

person means a natural person or an enterprise;

person of a Party means a national, or an enterprise of a Party;

province means a province of Canada, and includes the Yukon Territory and the Northwest Territories and their successors;

Secretariat means the Secretariat established under Article N-02(1) (The Secretariat);

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

territory means for a Party the territory of that Party as set out in Annex B-01.1;

TRIPS Agreement means the Agreement on Trade-Related Aspects of Intellectual Property Rights, which is part of the WTO Agreement; and

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

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

3. Country-specific definitions of national government are set out in Annex B-01.1.

(1) A good of a Party may include materials of other countries.

Annex B-01. Country-specific definitions

1. For purposes of this Agreement, unless otherwise specified:

citizen means:

(a) with respect to Canada, a natural person who is a citizen of Canada under the Citizenship Act, R.S.C. 1985, c. C-29, as

amended from time to time or under any successor legislation; and

(b) with respect to Chile, a Chilean as defined in Article 10 of the Political Constitution of the Republic of Chile ("Constitución Política de la República de Chile");

national also includes, with respect to Chile, a Chilean as defined in Article 10 of the Political Constitution of the Republic of Chile ("Constitución Política de la República de Chile"); and

national government means:

(a) with respect to Canada, the Government of Canada; and

(b) with respect to Chile, the Government of the Republic of Chile;

territory means:

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

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

Part Two. Trade In Goods

Chapter C. National Treatment and Market Access for Goods

Article C-00. Scope and Coverage

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

(a) goods covered by Annex C-00-A (Trade and Investment in the Automotive Sector); and

(b) goods covered by Annex C-00-B (Textile and Apparel Goods), except as provided in such Annex.

Section I. National Treatment

Article C-01. National Treatment

1. Each Party shall accord national treatment to the goods of the other Party in accordance with Article III of the GATT 1994, including its interpretative notes, and to this end Article III of the GATT 1994 and its interpretative notes, or any equivalent provision of a successor agreement to which both Parties are party, are incorporated into and made part of this Agreement.

2. The provisions of paragraph 1 regarding national treatment shall mean, with respect to a province, treatment no less favourable than the most favourable treatment accorded by such province to any like, directly competitive or substitutable goods, as the case may be, of the Party of which it forms a part (1).

3. Paragraphs 1 and 2 do not apply to the measures set out in Annex C-01.3.

(1) "Goods of the Party" includes goods produced in a province of that Party.

Section II. Tariffs

Article C-02. Tariff Elimination (2)

1. Except as otherwise provided in this Agreement, neither Party may increase any existing customs duty, or adopt any customs duty, on a good. (3)

2. Except as otherwise provided in this Agreement, each Party shall progressively eliminate its customs duties on goods in accordance with its Schedule to Annex C-02.2 (4).

3. On the request of a Party, the Parties shall consult to consider accelerating the elimination of customs duties set out in their Schedules. An agreement between the Parties to accelerate the elimination of a customs duty on a good shall supersede any duty rate or staging category determined pursuant to their Schedules for such good when approved by each such Party in accordance with its applicable legal procedures.

4. Except as otherwise provided in this Agreement, either Party may adopt or maintain import measures to allocate in-quota imports made pursuant to a tariff rate quota set out in Annex C-02.2, provided that such measures do not have trade restrictive effects on imports additional to those caused by the imposition of the tariff rate quota.

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

(2) For the purpose of Article C-02, a good may refer to an originating good or a good which benefits from tariff elimination under a TPL.

(3) This paragraph is not intended to prevent either Party from modifying its tariffs outside this Agreement on goods for which no tariff preference is claimed under this Agreement. This paragraph does not prevent either Party from raising a tariff back to an agreed level in accordance with the phase-out schedule in this Agreement following a unilateral reduction.

(4) Paragraphs 1 and 2 of this Article are not intended to prevent either Party from maintaining or increasing a customs duty as may be authorized by any dispute settlement provision of the WTO Agreement or any agreement under the WTO Agreement.

Article C-03. Waiver of Customs Duties

1. Neither Party may adopt any new waiver of customs duties, or expand with respect to existing recipients or extend to any new recipient the application of an existing waiver of customs duties, where the waiver is conditioned, explicitly or implicitly, on the fulfilment of a performance requirement.

2. Except as set out in Annex C-03.2, neither Party may, explicitly or implicitly, condition on the fulfilment of a performance requirement the continuation of any existing waiver of customs duties.

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

4. This Article shall not apply to drawback and duty deferral programs.

Article C-04. Temporary Admission of Goods

1. Each Party shall grant duty-free temporary admission, including exemption from fees as specified in Annex C-04.1 for:

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

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

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

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

2. Except as otherwise provided in this Agreement, neither Party may condition the duty-free temporary admission of a good referred to in paragraph 1(a), (b) or (c), other than to require that such good:

(a) be imported by a national or resident of the other Party who seeks temporary entry;

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

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

(d) be accompanied by a bond in an amount no greater than 110 per cent of the charges that would otherwise be owed on entry or final importation, or by another form of security, releasable on exportation of the good, except that a bond for customs duties shall not be required for an originating good (5);

(e) be capable of identification when exported;

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

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

3. Except as otherwise provided in this Agreement, neither Party may condition the dutyfree temporary admission of a good referred to in paragraph 1(d), other than to require that such good:

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

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

(c) be capable of identification when exported;

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

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

4. Where a good is temporarily admitted duty free under paragraph 1 and any condition the Party imposes under paragraph 2 and 3 has not been fulfilled, a Party may impose:

(a) the customs duty and any other charge that would be owed on entry or final importation of the good; and

(b) any applicable criminal, civil or administrative penalties that the circumstances may warrant.

5. Subject to Chapters G (Investment) and H (Cross-Border Trade in Services):

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

(b) neither Party may require any bond or impose any penalty or charge solely by reason of any difference between the port of entry and the port of departure of a vehicle or container;

(c) neither Party may condition the release of any obligation, including any bond, that it imposes in respect of the entry of a vehicle or container into its territory on its exit through any particular port of departure; and

(d) neither Party may require that the vehicle or carrier bringing a container from the territory of the other Party into its territory be the same vehicle or carrier that takes such container to the territory o f the other Party.

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

(5) Where another form of monetary security is used, it shall not be more burdensome than the bonding requirement referred to in this subparagraph. Where a Party uses a non-monetary form of security, it shall not be more burdensome than existing forms of security used by that Party.

Article C-05. Duty-free Entry of Certain Commercial Samples and Printed Advertising Materials

Each Party shall grant duty-free entry to commercial samples of negligible value, and to printed advertising materials, imported from the territory of the other Party, regardless of their origin, but may require that:

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

(b) such advertising materials be imported in packets that each contain no more than one copy of each such material and that neither such materials nor packets form part of a larger consignment.

Article C-06. Goods Re-entered after Repair or Alteration (6)

1. Neither Party may apply a customs duty to a good, regardless of its origin, that reenters its territory after that good has been exported from its territory to the territory of the other Party for repair or alteration, regardless of whether such repair or alteration could be performed in its territory.

2. Neither Party may apply a customs duty to a good, regardless of its origin, imported temporarily from the territory of the other Party for repair or alteration.

(6) This paragraph does not cover goods imported in bond, into foreign-trade zones, or in similar status, that are exported for repair and are not re-imported in bond, into foreign trade zones, or in similar status.

Article C-07. Most-favoured-nation Rates of Duty on Certain Goods

1. Each Party shall eliminate its most-favoured-nation tariff applied to the goods indicated in the Harmonized System tariff items set out in Annex C-07.

2. The schedule set out in Annex C-07 provides for the elimination of the most-favoured nation tariff of each Party for the affected goods no later than January 1, 1999.

Section III. Non-tariff Measures

Article C-08. Import and Export Restrictions

1. Except as otherwise provided in this Agreement, neither Party may adopt or maintain any prohibition or restriction on the importation of any good of the other Party or on the exportation or sale for export of any good destined for the territory of the other Party, except in accordance with Article XI of the GATT 1994, including its interpretative notes, and to this end Article XI of the GATT 1994 and its interpretative notes, or any equivalent provision of a successor agreement to which both Parties are party, are incorporated into and made a part of this Agreement.

2. The Parties understand that the GATT 1994 rights and obligations incorporated by paragraph 1 prohibit, in any circumstances in which any other form of restriction is prohibited, export price requirements and, except as permitted in enforcement of countervailing and antidumping orders and undertakings, import price requirements.

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

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

(b) requiring as a condition of export of such good of the Party to the territory of the other Party, that the good not be re-exported to the non-Party, directly or indirectly, without being consumed in the territory of the other Party.

4. In the event that a Party adopts or maintains a prohibition or restriction on the importation of a good from a non-Party, the Parties, on request of the other Party, shall consult with a view to avoiding undue interference with or distortion of pricing, marketing and distribution arrangements in the other Party.

5. Paragraphs 1 through 4 shall not apply to the measures set out in Annex C-01.3 and Annex C-08.

Article C-09. Customs User Fees

Neither Party may adopt or maintain any customs user fee of the type referred to in Annex C-09 for originating goods.

Article C-10. Wine and Distilled Spirits

1. Neither Party may adopt or maintain any measure requiring that distilled spirits imported from the territory of the other Party for bottling be blended with any distilled spirits of the Party.

2. Annex C-10.2 applies to other measures relating to wine and distilled spirits.

Article C-11. Geographical Indications

As set out in Annex C-11 and taking into account the TRIPS Agreement, the Parties shall protect the geographical indications for the products specified in that Annex.

Article C-12. Export Taxes

Neither Party may adopt or maintain any duty, tax or other charge on the export of any good to the territory of the other Party, unless such duty, tax or charge is adopted or maintained on any such good when destined for domestic consumption.

Article C-13. Other Export Measures

1. Except as set out in Annex C-08, a Party may adopt or maintain a restriction otherwise justified under Articles XI: 2(a) or XX(g), (i) or (j) of the GATT 1994 with respect to the export of a good of the Party to the territory of the other Party, only if:

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

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

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

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

Article C-14. Export Subsidies on Agricultural Goods

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

2. Effective January 1, 2003, neither Party shall introduce or maintain any export subsidy on any agricultural goods originating in, or shipped from, its territory that are exported directly or indirectly to the territory of the other Party.

3. Where an exporting Party considers that a non-Party is exporting an agricultural good to the territory of the other Party with the benefit of export subsidies, the importing Party shall, on written request of the exporting Party, consult with the exporting Party with a view to agreeing on specific measures that the importing Party may adopt to counter the effect of any such subsidized imports. During the period before January 1, 2003, if the importing Party adopts the agreed-upon measures, the exporting Party shall refrain from applying, or immediately cease to apply, any export subsidy to exports of such good to the territory of the importing Party.

4. Until January 1, 2003, should a Party introduce or re-introduce a subsidy on exports of an agricultural good, the other Party may increase the rate of duty on such exports up to the applied most-favoured-nation tariff in effect at that time.

Section IV. Consultations

Article C-15. Consultations and Committee on Trade In Goods and Rules of Origin

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

2. The Committee shall meet at least once each year, and at any other time on the request of either Party or the Commission, to ensure the effective implementation and administration of this Chapter, Chapter D, Chapter E and the Uniform Regulations. In this regard, the Committee shall:

(a) monitor the implementation and administration by the Parties of this Chapter, Chapter D, Chapter E and the Uniform Regulations to ensure their uniform interpretation;

(b) at the request of either party, review and endeavour to agree on, any proposed modification of or addition to this Chapter, Chapter D, Chapter E or the Uniform Regulations;

(c) recommend to the Commission any modification of or addition to this Chapter, Chapter D, Chapter E or the Uniform Regulations and to any other provision of this Agreement as may be required to conform with any change to the Harmonized System; and (d) consider any other matter relating to the implementation and administration by the Parties of this Chapter, Chapter D, Chapter E and the Uniform Regulations referred to it by (i) a Party, (ii) the Customs Sub-Committee established under Article E-13, or (iii) the Sub-Committee on Agriculture established under paragraph 4.

3. If the Committee fails to resolve a matter referred to it pursuant to paragraph 2 (b) or (d) within 30 days of such referral, either Party may request a meeting of the Commission under Article N-07.

4. The Parties hereby establish a Sub-Committee on Agriculture that shall:

(a) provide a forum for the Parties to consult on issues relating to market access for agricultural goods, including wine and alcoholic beverages;

(b) monitor the implementation and administration of this Chapter, Chapter D, and the Uniform Regulations as they affect agricultural goods;

(c) meet annually or whenever so requested by either Party;

(d) refer to the Committee any matter under sub-paragraph (b) on which it has been unable to reach agreement;

(e) submit to the Committee for its consideration any agreement reached under this paragraph;

(f) report annually to the Committee; and

(g) follow-up and promote cooperation in matters relating to agricultural goods.

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

6. The Parties shall convene on the request of either Party a meeting of their officials responsible for customs, immigration, inspection of food and agricultural products, border inspection facilities, and regulation of transportation for the purpose of addressing issues related to movement of goods through the Parties' ports of entry.

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

Article C-16. Customs Valuation Code

The Customs Valuation Code shall govern the customs valuation rules applied by the Parties to their reciprocal trade. The Parties agree that they will not make use in their reciprocal trade of the options and reservations permitted under Article 20 and paragraphs 2, 3 and 4 of Annex III of the Customs Valuation Code.

Article C-17. Price Band System

1. Chile may maintain its Price Band System as established in Article 12 of Law 18.525 for the products covered by that Law and listed in Annex C-17.1. Chile shall not incorporate new products in the Price Band System or modify the method by which it is calculated and applied in a manner that makes it more trade restrictive than it was on November 13, 1996.

2. With respect to soft wheat flour, the multiplication factor provided for in Article 12 of Law 18.525 shall be established by statute and for a period not less than three years, consistent with Article 14 of that Law.

3. The tariff reductions in the Schedule of Chile to Annex C-02.2 for the products covered by Law 18.525 shall apply only to the ad-valorem tariff component and not to the specific duties or rebates that could result from the application of Law 18.525.

Section V. Definitions

Article C-18. Definitions

For purposes of this Chapter:

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

agricultural goods means a good provided for in any of the following: (7)

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

(b) HS subheading 2905.43 manitol HS subheading 2905.44 sorbitol HS heading 33.01 essential oils HS headings 35.01 to 35.05 albuminoidal substances, modified starches, glues HS subheading 3809.10 finishing agents HS subheading 3823.60 sorbitol n.e.p. HS headings 41.01 to 41.03 hides and skins HS heading 43.01 raw furskins HS headings 50.01 to 50.03 raw silk and silk waste HS headings 51.01 to 51.03 wool and animal hair HS headings 52.01 to 52.03 raw cotton, cotton waste and cotton carded or combed HS heading 53.01 raw flax HS heading 53.02 raw hemp;

commercial samples of negligible value means commercial samples having a value, individually or in the aggregate as shipped, of not more than one U.S. dollar, or the equivalent amount in the currency of either of the Parties, or so marked, torn, perforated or otherwise treated that they are unsuitable for sale or for use except as commercial samples; consumed means:

(a) actually consumed; or

(b) further processed or manufactured so as to result in a substantial change in value, form or use of the good or in the production of another good;

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

(a) charge equivalent to an internal tax imposed consistently with Article III: 2 of the GATT 1994, or any equivalent provision of a successor agreement to which both Parties are party, in respect of like, directly competitive or substitutable goods of the Party, or in respect of goods from which the imported good has been manufactured or produced in whole or in part;

(b) anti-dumping or countervailing duty that is applied pursuant to a Party's domestic law and not applied inconsistently with Chapter M (Anti-dumping and Countervailing Duty Matters);

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

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

distilled spirits include distilled spirits and distilled spirit-containing beverages;

drawback program includes measures under which a Party refunds in whole or in part the amount of customs duties paid, or waives or reduces the amount of customs duties owed, on a good imported into its territory on condition that the good is:

(a) subsequently exported to the territory of the other Party;

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

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

duty deferral program includes measures such as those governing foreign-trade zones, "regímenes de zonas francas y regímenes aduaneros especiales", temporary importations under bond, bonded warehouses, "maquiladoras" and inward processing programs;

duty-free means free of customs duties;

goods imported for sports purposes means sports requisites for use in sports contests, demonstrations or training in the

territory of the Party into whose territory such goods are imported;

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

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

performance requirement means a requirement that:

(a) a given level or percentage of goods or services be exported;

(b) domestic goods or services of the Party granting a waiver of customs duties be substituted for imported goods or services;

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

(d) a person benefitting from a waiver of customs duties produce goods or provide services, in the territory of the Party granting the waiver, with a given level or percentage of domestic content; or

(e) relates in any way the volume or value of imports to the volume or value of exports or to the amount of foreign exchange inflows;

printed advertising materials means those goods classified in Chapter 49 of the Harmonized System, including brochures, pamphlets, leaflets, trade catalogues, yearbooks published by trade associations, tourist promotional materials and posters, that are used to promote,publicize or advertise a good or service, are essentially intended to advertise a good or service, and are supplied free of charge;

repair or alteration does not include an operation or process that either destroys the essential characteristics of a good or creates a new or commercially different good (8);

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

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

(a) domestic production;

(b) domestic inventory; and

(c) other imports as appropriate; and

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

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

(8) An operation or process that is part of the production or assembly of an unfinished good into a finished good is not a repair or alteration of the unfinished good; a component of a good is a good that may be subject to repair or alteration.

Chapter C bis. Sanitary and Phytosanitary Measures

Article Cbis-01. Objectives

The objectives of this Chapter are to:

(a) protect human, animal and plant life or health in the territory of each Party while facilitating trade;

(b) ensure that the Parties' sanitary and phytosanitary measures do not create unjustified barriers to trade; and

(c) enhance the implementation of the SPS Agreement.

Article Cbis-02. Scope

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

Article Cbis-03. General Provisions

1. The Parties affirm their rights and obligations under the SPS Agreement.

2. This Chapter is not subject to Chapter N, Section II (Dispute Settlement) .

Article Cbis-04. Committee on Sanitary and Phytosanitary Measures

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

2. Each Party shall designate a contact point to coordinate the Committee's agenda.

3. The Committee provides a forum to:

(a) enhance the understanding of each Party's sanitary and phytosanitary measures, including through exchange of information relating to each Party's regulatory systems;

(b) discuss matters related to the development or application of sanitary and phytosanitary measures that may directly or indirectly affect trade between the Parties;

(c) promote bilateral cooperation, between the Parties, on sanitary and phytosanitary issues that are under discussion in multilateral and international fora, including the WTO Committee on Sanitary and Phytosanitary Measures, the Codex Alimentarius Commission, the International Plant Protection Convention, and the World Organization for Animal Health;

(d) consider technical cooperation in relation to development, implementation, and application of sanitary and phytosanitary measures; and

(e) discuss and review progress on addressing sanitary and phytosanitary matters that may arise between the Parties.

4. The Parties shall ensure that the Committee will consider further cooperation on sanitary and phytosanitary matters of mutual interest.

5. Each Party shall ensure the participation, as appropriate, of representatives from its relevant government authorities that are responsible for the development, implementation and enforcement of sanitary and phytosanitary measures, in the Committee meetings referred to in paragraph 6.

6. The Committee shall meet as required, normally on an annual basis. The Committee may meet in person, through teleconference, videoconference or by any other means to ensure its effective operation and fulfillment of its responsibilities.

7. The Committee on Sanitary and Phytosanitary Measures replaces the existing Canada-Chile Sanitary and Phytosanitary Measures Committee established by the Free Trade Commission of the CCFTA on May 10, 2001.

Article Cbis-05. Sanitary and Phytosanitary Issue Avoidance and Resolution

1. The Parties shall work expeditiously to resolve any specific sanitary and phytosanitary trade-related issue and commit to carry out the necessary technical level discussion to resolve any such issue, including an assessment of the scientific basis of the measure at issue.

2. The Parties shall avail themselves of all reasonable options to avoid and resolve sanitary and phytosanitary issues, including meeting in person, using technological means (via teleconference, videoconference) and opportunities that may arise in international fora.

3. If the Parties are unable to resolve an issue expeditiously by technical level discussions, a Party may refer the issue to the Committee. The Committee should consider any matter referred to it as expeditiously as possible.

Article Cbis-06. Contact Points

1. For the purpose of facilitating communication on trade-related sanitary and phytosanitary matters, the Parties agree to establish Contact Points as follows:

(a) for Canada, the Department of Foreign Affairs, Trade and Development, or its successor; and

(b) for Chile, the General Directorate of International Economic Relations, Ministry of Foreign Affairs, or its successor.

2. Each Party, through its Contact Point, shall inform the other Party of the competent authorities that are responsible for the development and application of sanitary and phytosanitary measures.

Article Cbis-07. Definitions

For the purposes of this Chapter:

sanitary or phytosanitary measure means a sanitary or phytosanitary measure as defined in Annex A of the SPS Agreement; and

SPS Agreement means the Agreement on the Application of Sanitary and Phytosanitary Measures contained in Annex 1A to the WTO Agreement.

Chapter C ter. Technical Barriers to Trade

Article Cter-01. Scope

1. (a) This Chapter applies to the preparation, adoption and application of standards, technical regulations, and conformity assessment procedures of any national and provincial government body that may affect the trade in goods between the Parties.

(b) Each Party shall take reasonable measures as may be available to it to ensure compliance by provincial government bodies with this Chapter.

2. This Chapter does not apply to:

(a) a purchasing specification prepared by a governmental body for production or consumption requirements of such bodies; or

(b) sanitary and phytosanitary measures.

Article Cter-02. Incorporation of the Tbt Agreement

The TBT Agreement, excluding Articles 10, 11, 12, 13, 14. 1, 14. 4 and 15, is hereby incorporated into and made part of this Chapter, mutatis mutandis.

Article Cter-03. Joint Cooperation

1. The Parties shall strengthen their joint cooperation in the areas of technical regulations, standards, and conformity assessment procedures in order to facilitate trade between the Parties. In particular, the Parties shall seek to identify bilateral initiatives that are appropriate for particular issues or sectors, including initiatives for cooperation on:

(a) convergence or equivalence of technical regulations and standards;

(b) alignment with international standards;

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

(d) accreditation of conformity assessment bodies of the Parties, as well as cooperation between conformity assessment bodies.

2. The Parties recognize that a wide range of mechanisms exist to support regulatory harmonization and to eliminate unnecessary technical barriers to trade between the Parties, including mechanisms that promote:

(a) regulatory dialogue and cooperation to, inter alia:

(i) exchange information on regulatory approaches and practices;

(ii) develop good regulatory practices to improve the efficiency and effectiveness of technical regulations, standards, and conformity assessment procedures;

(iii) provide technical advice to the other Party on mutually agreed terms and conditions, on the improvement of practices related to the development, implementation and review of technical regulations, standards, conformity assessment procedures and metrology; or

(iv) build capacity and support for the implementation of this Chapter on mutually agreed terms and conditions;

(b) harmonization of national standards with relevant international standards, except where inappropriate or ineffective;

(c) greater use of relevant international standards, guides, and recommendations as the basis for the Parties' respective technical regulations and conformity assessment procedures; and

(d) equivalence of technical regulations of the other Party.

3. The Parties shall seek to strengthen their exchange of information and collaboration on mechanisms that facilitate the acceptance of conformity assessment results, to support greater regulatory harmonization and to eliminate unnecessary technical barriers to trade.

4. At the request of a Party, the other Party shall give favourable consideration to any reasonable sector-specific proposal the Party makes for cooperation under this Chapter.

5. The Parties shall encourage cooperation between their respective bodies, including both public and private bodies that are responsible for standardization, conformity assessment, and accreditation, with a view to addressing issues related to this Chapter.

Article Cter-04. International Standards

In determining whether an international standard, guide, or recommendation exists within the meaning of Articles 2 or 5 or Annex 3 of the TBT Agreement, each Party shall consider the principles set out in the Decisions and Recommendations adopted by the WTO Committee on Technical Barriers to Trade since January 1, 1995 (G/TBT/1/Rev. 12, January 21, 2015) , or a successor document issued by the WTO Committee on Technical Barriers to Trade.

Article Cter-05. Technical Regulations

1. If a Party does not accept a technical regulation of the other Party as equivalent to its own, it shall provide the reason for its decision to the other Party at that Party's request.

2. If a Party detains at a port of entry a good that is imported from the territory of the other Party on the basis that the good may not comply with a technical regulation, it shall notify, without undue delay, the importer of the reasons for the detention of the good.

Article Cter-06. Conformity Assessment

1. The Parties recognize that there is a broad range of mechanisms to facilitate the acceptance in the Party's territory of the results of conformity assessment procedures that are conducted in the other Party's territory. These mechanisms may include:

(a) the reliance by the importing Party on a supplier's declaration of conformity;

(b) voluntary arrangements between conformity assessment bodies to accept the results of each other's assessment procedures when the bodies are located in the territory of the other Party;

(c) accreditation procedures for qualifying conformity assessment bodies that are located in the territory of the other Party;

(d) designation of conformity assessment bodies that are located in the territory of the other Party; and

(e) recognition of the results of conformity assessment procedures that are conducted in the territory of the other Party.

2. Further to Article 6. 4 of the TBT Agreement, each Party shall accord to conformity assessment bodies located in the territory of the other Party treatment no less favourable than that accorded to bodies located in its own territory or the territory of a non-Party. In order to ensure that it accords such treatment, each Party shall apply to conformity assessment bodies located in the territory of the other Party the same or equivalent procedures, criteria and other conditions that it applies where it accredits, approves, licenses or otherwise recognizes conformity assessment bodies located in its own territory.

3. Paragraph 2 does not preclude a Party from undertaking conformity assessment of specific products solely by government bodies located in its own territory or in the other Party's territory, nor from verifying the results of conformity assessment procedures undertaken by conformity assessment bodies located outside its territory.

4. If a Party undertakes a conformity assessment procedure pursuant to paragraph 3 and pursuant to Articles 5. 2 and 5. 4 of the TBT Agreement concerning limitation on information requirements, the protection of legitimate commercial interests, and the adequacy of review procedures, the Party shall, at the request of the other Party, explain:

(a) why the information required is necessary to assess conformity and determine fees;

(b) how the Party ensures that the confidentiality of the information is respected in a manner that ensures that legitimate commercial interests are protected; and

(c) the procedure to review complaints concerning the operation of the conformity assessment procedure and to take corrective action if a complaint is justified.

5. Further to Article 5. 2. 5 of the TBT Agreement, each Party shall limit any conformity assessment fees imposed by the Party to the approximate cost of the services rendered to do the assessment.

6. Further to Article 9. 1 of the TBT Agreement, the Parties shall:

(a) consider adopting provisions for accreditation bodies to approve conformity assessment bodies that are signatory to an international or regional mutual recognition arrangement or agreement; and

(b) recognize that such arrangements or agreements can address the key considerations for the approval of conformity assessment bodies, including technical competence, independence, and the avoidance of conflict of interest.

7. If a Party accredits, approves, licenses or otherwise recognizes a body that assesses conformity with a specific technical regulation or standard in its territory and that Party refuses to accredit, approve, license or otherwise recognize a body that assesses conformity with that technical regulation or standard in the territory of the other Party, it shall, on request of the other Party, provide the reasons for its decision.

8. If a Party does not accept the results of a conformity assessment procedure that is conducted in the territory of the other Party it shall, on request of that other Party, provide the reasons for its decision.

9. Further to Article 6. 3 of the TBT Agreement, if a Party declines the other Party's request to engage in negotiations or to conclude an arrangement or agreement for mutual recognition of the results of the other Party's conformity assessment procedures it shall, on the request of the other Party, provide the reasons for its decision.

Article Cter-07. Transparency

1. The obligations in this Article supplement those set out in Chapter L (Publication, Notification and Administration of Laws) . In the event of an inconsistency between this Article and the obligations in Chapter L, this Article prevails.

2. A Party shall ensure that transparency procedures for the development of technical regulations and conformity assessment procedures allow an interested person to participate at an early appropriate stage, when amendments can still be introduced and comments taken into account, except when urgent problems of safety, health, environmental protection, or national security arise or threaten to arise. If a consultation process of a Party for the development of technical regulations and conformity assessment procedures is open to the public, each Party shall permit a person of the other Party to participate on terms no less favourable than those accorded to its own persons.

3. A Party shall recommend to standardization bodies in its territory to observe paragraph 2 with respect to the consultation processes for the development of a standard or voluntary conformity assessment procedure.

4. A Party shall allow a period of at least 60 days following its notification to the WTO's Central Registry of Notifications of proposed technical regulations and conformity assessment procedures for the public and the other Party to provide written comments, except where urgent problems of safety, health, environmental protection or national security arise or threaten

to arise.

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

6. A Party shall ensure that its adopted technical regulations and conformity assessment procedures are posted on official websites that are publicly accessible without charge.

7. A Party shall provide to the other Party, in print or electronic form, any information or reason requested by that Party pursuant to the provisions of this Chapter within a reasonable time. A Party shall endeavour to respond to a request by the other Party within 60 days.

Article Cter-08. Committee on Technical Barriers to Trade

1. The Parties hereby establish the Committee on Technical Barriers to Trade (the "Committee") composed of representatives of each Party as follows:

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

(b) for Canada, the Department of Foreign Affairs, Trade and Development, or its successor.

2. The Committee's functions shall include:

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

(b) promptly addressing any issue that a Party raises under this Chapter or the TBT Agreement related to the development, adoption or application of technical regulations, standards, or conformity assessment procedures;

(c) as appropriate, establishing regulatory cooperation initiatives which may include specific sectoral sub-committees with the goal of enhancing mutual understanding and facilitating trade between the Parties;

(d) overseeing enhancement of joint cooperation in the development and improvement of technical regulations, standards, and conformity assessment procedures, as outlined in Article C ter-03(1) ;

(e) exchanging information regarding technical regulations, standards, and conformity assessment procedures;

(f) at a Party's written request, managing consultations on any matter arising under this Chapter;

(g) reviewing this Chapter in the light of any developments under the TBT Agreement;

(h) taking other steps that the Parties consider will assist them in implementing this Chapter or the TBT Agreement, and in facilitating trade between the Parties; and

(i) developing and maintaining a list of arrangements or agreements referred to in Article C ter-06(6) .

3. Consultations under subparagraph 2

(f) constitute consultations under Article N-06 (Consultations) of Chapter N (Institutional Arrangements and Dispute Settlement Procedures) and are governed by the procedures set out in Section II (Dispute Settlement) of that Chapter.

4. The Committee shall meet as required in order to fulfill its functions as they relate to this Chapter.

5. The representatives of the Committee may communicate by electronic mail, video conference or other means as determined by the Parties.

Article Cter-09. Definitions

1. For the purposes of this Chapter, **TBT Agreement** means the Agreement on Technical Barriers to Trade contained in Annex 1A to the WTO Agreement.

2. Except where this Agreement, including the incorporated provisions of the TBT Agreement pursuant to Article C ter-02, defines or gives a meaning to specific terms, the general terms applying to standardization and conformity assessment procedures shall normally have the meaning given to them by definitions adopted within the United Nations system and by international standardizing bodies, taking into account their context and in the light of the object and purpose of this Agreement.

Chapter D. Rules of Origin

Article D-01. Originating Goods

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

(a) the good is wholly obtained or produced entirely in the territory of one or both of the Parties, as defined in Article D-17;

(b) each of the non-originating materials used in the production of the good undergoes an applicable change in tariff classification set out in Annex D-01 as a result of production occurring entirely in the territory of one or both of the Parties, or the good otherwise satisfies the applicable requirements of that Annex where no change in tariff classification is required, and the good satisfies all other applicable requirements of this Chapter;

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

(d) except as provided in Annex D-01 (Specific Rules of Origin) or except for a good of heading 39.01 through 39.15 or Chapter 50 through 63 of the Harmonized System,

1. the good is produced entirely in the territory of one or both of the Parties;

2. one or more of the non-originating materials used in the production of the good cannot satisfy the requirements set out in Annex D-01 (Specific Rules of Origin) because both the good and the non-originating materials are classified in the same subheading, or heading that is not further subdivided into subheadings,

3. the regional value content of the good, determined in accordance with Article D-02 is not less than 35 per cent when the transaction value method is used, or not less than 25 per cent when the net cost method is used, and

4. the good satisfies all other applicable requirements of this Chapter.

Article D-02. Regional Value Content

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

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

$$RVC = \frac{TV - VNM}{TV} \times 100$$

where

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

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

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

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

$$RVC = \frac{NC - VNM}{NC} \times 100$$

where

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

NC is the net cost of the good; and

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

4. The value of non-originating materials used by the producer in the production of a good shall not, for purposes of

calculating the regional value content of the good under paragraph 2 or 3, include the value of non-originating materials used to produce originating materials that are subsequently used in the production of the good (1).

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

(a) there is no transaction value for the good;

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

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

(d) the good is

(i) a motor vehicle,

(ii) identified in Annex D-03.1 and is for use in a motor vehicle, or

(iii) provided for in subheading 6401.10 through 6406.10

(e) the exporter or producer chooses to accumulate the regional value content of the good in accordance with Article D-04; or

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

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

7. Nothing in paragraph 6 shall be construed to prevent any review or appeal available under Article E-10 (Review and Appeal) of an adjustment to or a rejection of:

(a) the transaction value of a good; or

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

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

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

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

(c) reasonably allocate each cost that forms part of the total cost incurred with respect to the good so that the aggregate of these costs does not include any sales promotion, marketing and after-sales service costs, royalties, shipping and packing costs, and non-allowable interest costs, provided that the allocation of all such costs is consistent with the provisions regarding the reasonable allocation of costs set out in the Uniform Regulations, established under Article E-11 (Customs Procedures - Uniform Regulations) (2).

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

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

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

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

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

(ii) duties, taxes and customs brokerage fees on the material paid in the territory of one or both of the Parties, and
(iii) the cost of waste and spoilage resulting from the use of the material in the production of the good, less the value of renewable scrap or byproduct.

10. Any self-produced material that is used in the production of a good may be designated by the producer of the good as an intermediate material for the purpose of calculating the regional value content of the good under paragraph 2 or 3, provided that where the intermediate material is subject to a regional value-content requirement, no other self-produced material subject to a regional value-content requirement used in the production of that intermediate material may itself be designated by the producer as an intermediate material (3).

11. The value of an intermediate material shall be:

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

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

12. The value of an indirect material shall be based on the Generally Accepted Accounting Principles applicable in the territory of the Party in which the good is produced.
13. Notwithstanding the regional value-content requirement specified in an applicable rule in Annex D-01 for the tariff provision under which a good is classified, a good shall be an originating good where:

(a) the good is provided in tariff item 6402.19.aa (sports footwear with rubber or plastic soles and uppers, for golf, hiking, running or curling), subheading 6402.99, tariff item 6403.19.aa (sports footwear with leather uppers, for riding, golf, hiking, climbing, curling, bowling, skating or training), subheading 6403.40 or 6403.91, tariff item 6404.11.aa (hiking footwear with rubber soles and canvas uppers), 6404.11.bb (hiking footwear with plastic soles and canvas uppers) or 6404.19.aa (shoes or sandals with plastic soles and canvas uppers) or subheading 6406.10;

(b) each of the non-originating materials used in the production of the good undergoes the change of tariff classification specified in the applicable rule in Annex D-01 for that tariff provision;

(c) the regional value content of that good is not less than

(i) 40 per cent under the net cost method for the period January 1, 1997, to December 31, 1997,

(ii) 45 per cent under the net cost method for the period January 1, 1998, to December 31, 1998,

(iii) 50 per cent under the net cost method for the period January 1, 1999, to December 31, 1999, and

(iv) 55 per cent under the net cost method on January 1, 2000, and thereafter; and

(d) the good meets any other applicable requirements set out in this Chapter

14. Notwithstanding the regional value-content requirement specified in an applicable rule in Annex D-01 for the tariff provision under which a good is classified, a good shall be an originating good where:

(a) the good is provided for in heading 64.01, subheading 6402.12, tariff item 6402.19.bb (sports footwear with rubber or plastic soles and uppers, for soccer, other football, baseball or bowling), subheading 6402.20 through 6402.91 or 6403.12, tariff item 6403.19.bb (sports footwear with leather uppers, for soccer, other football or baseball) or 6403.19.cc (sports footwear with leather uppers, for other purposes), subheading 6403.20 through 6403.30, 6403.51 through 6403.59 or 6403.99, tariff item 6404.11.cc (sports footwear with rubber soles and canvas uppers, for soccer, training or tennis), 6404.11.dd (sports footwear with plastic solesand canvas uppers, for soccer, training or tennis) or 6404.19.bb (shoes or sandals with rubber soles and canvas uppers), subheading 6404.20, heading 64.05 or subheading 6406.20 through 6406.99;

(b) each of the non-originating materials used in the production of the good undergoes the change of tariff classification specified in the applicable rule in Annex D-01 for that tariff provision;

(c) the regional value content of that good is not less than

(i) 40 per cent under the net cost method for the period January 1, 1997, to December 31, 1997,

(ii) 47.5 per cent under the net cost method for the period January 1, 1998, to December 31, 1998, and

(iii) 55 per cent under the net cost method on January 1, 1999, and thereafter; and

(d) the good meets any other applicable requirements set out in this Chapter

(1) Article D-02(4) applies to intermediate materials, and VNM in paragraphs 2 and 3 does not include: i. the value of any non-originating materials used by another producer to produce an originating material that is subsequently acquired and used in the production of the good by the producer of the good, and ii. the value of non-originating materials used by the producer to produce an originating self-produced material that is designated by the producer as an intermediate material pursuant to Article D-02(10). With respect to paragraph 4, where an originating intermediate material is subsequently used by the producer with non-originating materials (whether or not produced by the producer) to produce the good, the value of such non-originating materials shall be included in the VNM of the good. Under paragraph 4, with respect to any self-produced material that is not designated as an intermediate material, only the value of non-originating materials used to produce the self-produced material shall be included in the VNM of the good.

(2) With respect to paragraph 8, sales promotion, marketing and after-sales service costs, royalties, shipping and packing costs, and non-allowable interest costs included in the value of materials used in the production of the good are not subtracted out of the net cost in the calculation under Article D-02(3).

(3) With respect to paragraph 10, an intermediate material used by another producer in the production of a material that is subsequently acquired and used by the producer of the good shall not be taken into account in applying the proviso set out in that paragraph, except where two or more producers accumulate their production under Article D-04. With respect to paragraph 10, if a producer designates a self-produced material as an originating intermediate material and the Customs Administration of the importing Party subsequently determines that the intermediate material is not originating, the producer may rescind the designation and recalculate the value content of the good accordingly. In such a case, the producer shall retain its rights of appeal or review with regard to the determination of the origin of the intermediate material.

Article D-03. Automotive Goods

1. Notwithstanding the regional value-content requirement specified in an applicable rule in Annex D-01 for the tariff provision under which a good is classified, a good shall be an originating good where:

(a) the good is provided for in a tariff provision identified in Annex D-03.1;

(b) the good is for use in a motor vehicle;

(c) each of the non-originating materials used in the production of the good undergoes the change of tariff classification specified in the applicable rule in Annex D-01 for that tariff provision;

(d) the regional value content of that good is not less than 30 per cent under the net cost method; and

(e) the good meets any other applicable requirements set out in this Chapter.

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

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

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

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

(d) if applicable, the basis set out in Annex D-03.2.

3. For purposes of calculating the regional value content for any or all goods provided for in a tariff provision listed in Annex D-03.1 produced in the same plant, the producer of the good may:

(a) average its calculation

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

(ii) over any quarter or month, or

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

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

(c) with respect to any calculation under this paragraph, calculate separately for those goods that are exported to the territory of the other Party

Article D-04. Accumulation

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

(a) all non-originating materials used in the production of the good undergo an applicable tariff classification change set out in Annex D-01, and the good satisfies any applicable regional value-content requirement, entirely in the territory of one or both of the Parties; and

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

2. For purposes of Article D-02(10), the production of a producer that chooses to accumulate its production with that of other producers under paragraph 1 shall be considered to be the production of a single producer.

Article D-05. De Minimis

1. Except as provided in paragraphs 3 through 6, a good shall be considered to be an originating good if the value of all non-originating materials used in the production of the good that do not undergo an applicable change in tariff classification set out in Annex D-01 is not more than 9 per cent of the transaction value of the good, adjusted to a F.O.B. basis, or, if the transaction value of the good is unacceptable under Article 1 of the Customs Valuation Code, the value of all such non-originating materials is not more than 9 per cent of the total cost of the good, provided that:

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

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

2. A good that is otherwise subject to a regional value-content requirement shall not be required to satisfy such requirement if the value of all non-originating materials used in the production of the good is not more than 9 per cent of the transaction value of thegood, adjusted to a F.O.B. basis, or, if the transaction value of the good is unacceptable under Article 1 of the Customs Valuation Code, the value of all non-originating materials is not more than 9 per cent of the total cost of the good, provided that the good satisfies all other applicable requirements of this Chapter.

3. Paragraph 1 does not apply to:

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

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

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

(d) a non-originating material provided for in heading 17.01 that is used in the production of a good provided for in heading

17.01 through 17.03;

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

(f) a non-originating material provided for in heading 22.03 through 22.07 that is used in the production of a good provided for in heading 22.03 through 22.07 or subheading 2208.20;

(g) a non-originating material used in the production of a good provided for in tariff item 7321.11.aa (gas stove or range), subheading 8415.10, 8415.20 through 8415.83, 8418.10 through 8418.21, 8418.29 through 8418.40, 8421.12, 8422.11, 8450.11 through 8450.20 or 8451.21 through 8451.29, heading 84.56 through 84.63 or 84.77, tariff item 8516.60.aa (electric stove or range) or subheading 8526.10;

(h) a non-originating material provided for in tariff item 8548.10.aa (spent primary cells, spent primary batteries and spent electric accumulators) that is used in the production of a good provided for in heading 85.06 or 85.07; or

(i) a printed circuit assembly, including a part that incorporates a printed circuit assembly, that is a non-originating material used in the production of a good where the applicable change in tariff classification for the good, as set

out in Annex D-01, places restrictions on the use of such non-originating material.

4. Paragraph 1 does not apply to a non-originating single juice ingredient provided for in heading 20.09 that is used in the production of a good provided for in tariff item2106.90.cc (concentrated mixtures of fruit or vegetable juice, fortified with minerals or vitamins) or 2202.90.bb (mixtures of fruit or vegetable juices, fortified with minerals or vitamins).

5. Paragraph 1 does not apply to a non-originating material used in the production of a good provided for in Chapter 1 through 21 of the Harmonized System unless the non-originating material is provided for in a different subheading than the good for which origin is being determined under this Article.

6. A good provided for in Chapter 50 through 63 of the Harmonized System that does not originate because certain fibres or yarns used in the production of the component of the good that determines the tariff classification of the good do not undergo an applicable change in tariff classification set out in Annex D-01, shall nonetheless be considered to originate if the total weight of all such fibres or yarns in that component is not more than 9 per cent of the total weight of that component (5).

Article D-06. Fungible Goods and Materials

For purposes of determining whether a good is an originating good:

(a) where originating and non-originating fungible materials are used in the production of a good, the determination of whether the materials are originating need not be made through the identification of any specific fungible material, but may be determined in accordance with any of the inventory management methods recognized in, or otherwise accepted by, the Generally Accepted Accounting Principles of the Party in which the production is performed; and

(b) where originating and non-originating fungible goods are commingled and exported in the same form, the determination may be made in accordance with any of the inventory management methods recognized in, or otherwise accepted by, the Generally Accepted Accounting Principles of the Party from which the good is exported.

Article D-07. Accessories, Spare Parts and Tools

Accessories, spare parts or tools delivered with the good that form part of the good's standard accessories, spare parts, or tools, shall be considered as originating if the good originates and shall be disregarded in determining whether all the non-originating materials used in the production of the good undergo the applicable change in tariff classification set out in Annex D- 01, provided that:

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

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

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

Article D-08. Indirect Materials

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

Article D-09. Packaging Materials and Containers for Retail Sale

Packaging materials and containers in which a good is packaged for retail sale shall, if classified with the good, be disregarded in determining whether all the non-originating materials used in the production of the good undergo the applicable change in tariff classification set out in Annex D-01, and, if the good is subject to a regional value-content requirement, the value of such packaging materials and containers shall be taken into account as originating or nonoriginating materials, as the case may be, in calculating the regional value content of the good.

Article D-10. Packing Materials and Containers for Shipment

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

(a) the non-originating materials used in the production of the good undergo an applicable change in tariff classification set out in Annex D-01; and

(b) the good satisfies a regional value-content requirement.

Article D-11. Transshipment

A good shall not be considered to be an originating good by reason of having undergone production that satisfies the requirements of Article D-01 if, subsequent to that production, the good undergoes further production or any other operation outside the territories of the Parties, other than unloading, reloading or any other operation necessary to preserve it in good condition or to transport the good to the territory of a Party.

Article D-12. Non-qualifying Operations

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

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

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

Article D-13. Interpretation and Application

For purposes of this Chapter:

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

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

(c) where applying Article D-01(d), the determination of whether a heading or subheading under the Harmonized System provides for and specifically describes both a good and its parts shall be made on the basis of the nomenclature of the heading or subheading and the relevant Section or Chapter Notes, in accordance with the General Rules for the Interpretation of the Harmonized System;

(d) in applying the Customs Valuation Agreement under this Chapter

1. the principles of the Customs Valuation Agreement shall apply to domestic transactions, with such modifications as may be required by the circumstances, as would apply to international transactions,

2. the provisions of this Chapter shall take precedence over the Customs Valuation Agreement to the extent of any difference, and

3. the definitions in Article D-17 shall take precedence over the definitions in the Customs Valuation Agreement to the extent of any difference; and

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

Article D-14. Consultation and Modifications

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

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

Article D-15. NAFTA Accession

Upon the accession o f Chile to the NAFTA, the rules of origin in this Chapter shall be replaced by the rules of origin to be negotiated as part of the terms of the accession of Chile to the NAFTA.

Article D-16. Definitions

For purposes of this Chapter:

aquaculture means the farming of aquatic organisms, including fish, molluscs, crustaceans, other aquatic invertebrates and aquatic plants, from seedstock such as eggs, fry, fingerlings and larvae, by intervention in the rearing or growth processes to enhance production, such as regular stocking, feeding, protection from predators, etc.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(g) goods taken by a Party or a person of a Party from the seabed or beneath the seabed outside territorial waters, provided that a Party has rights to exploit such seabed;

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

(i) waste and scrap derived from

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

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

(j) components that have been extracted from used goods collected in the territory of one or both of the Parties, and have undergone any process necessary to ensure their working condition; and

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

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

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

(a) fuel and energy;

(b) tools, dies and moulds;

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

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

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

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

(g) catalysts and solvents; and

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

intermediate material means a material that is self-produced and used in the production of a good, and designated pursuant to Article D-02(10);

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

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

motor vehicle means a motor vehicle provided for in heading 87.01 or 87.02, subheading 8703.21 through 8703.90 or heading 87.04 and 87.05;

net cost means total cost minus sales promotion, marketing and after-sales service costs, royalties, shipping and packing costs, and non-allowable interest costs that are included in the total cost;

net cost of a good means the net cost that can be reasonably allocated to a good using one of the methods set out in Article D-02(8);

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

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

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

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

disassembling a good;

reasonably allocate means to apportion in a manner appropriate to the circumstances; related person means a person related to another person on the basis that:

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

(b) they are legally recognized partners in business;

(c) they are employer and employee;

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

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

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

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

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

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

(b) if performed in the territory of one or both of the Parties, engineering, tooling, die-setting, software design and similar computer services, or other services;

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

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

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

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

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

(e) product liability insurance;

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

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

(h) rent and depreciation of sales promotion, marketing and after-sales service offices and distribution centres;

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

(j) payments by the producer to other persons for warranty repairs; self-produced material means a material that is produced by the producer of a good and used in the production of that good;

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

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

transaction value means the price actually paid or payable for a good or material with respect to a transaction of the producer of the good, adjusted in accordance with the principles of paragraphs 1, 3 and 4 of Article 8 of the Customs Valuation Agreement, regardless of whether the good or material is sold for export; and
used means used or consumed in the production of goods.

Chapter E. Customs Procedures

Section I. Certification of Origin

Article E-01. Certificate of Origin

1. The Parties shall establish by the date of entry into force of this Agreement, a Certificate of Origin for the purpose of certifying that a good being exported from the territory of a Party into the territory of the other Party qualifies as an originating good, and may thereafter revise the Certificate by agreement.

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

3. Each Party shall:

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

(b) provide that where an exporter in its territory is not the producer of the good, the exporter may complete and sign a Certificate on the basis of (i) its knowledge of whether the good qualifies as an originating good,

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

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

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

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

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

(b) multiple importations of identical goods into the Party's territory that occur within a specified period, not exceeding 12 months, set out therein by the exporter or producer, shall be accepted by its customs administration for four years after the date on which the Certificate was signed.

6. For any originating good that is imported into the territory of a Party on or after the date of entry into force of this Agreement, each Party shall accept a Certificate of Origin that has been completed and signed prior to that date by the exporter or producer of that good.

Article E-02. Obligations Regarding Importations

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

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

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

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

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

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

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

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

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

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

(b) a copy of the Certificate of Origin; and
(c) such other documentation relating to the importation of the good as that Party may require.

Article E-03. Exceptions

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

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

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

(c) an importation of a good for which the Party into whose territory the good is imported has waived the requirement for a Certificate of Origin, provided that the importation does not form part of a series of importations that may reasonably be considered to have been undertaken or arranged for the purpose of avoiding the certification requirements of Articles E-01 and E-02.

Article E-04. Obligations Regarding Exportations

1. Each Party shall provide that:

(a) an exporter in its territory, or a producer in its territory that has provided a copy of a Certificate of Origin to that exporter pursuant to Article E-01(3)(b)(iii), shall provide a copy of the Certificate to its customs administration on request; and

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

2. Each Party:

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

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

3. Neither Party may impose penalties on an exporter or a producer in its territory that voluntarily provides written notification pursuant to paragraph (1)(b) with respect to the making of an incorrect certification.

Section II. Administration and Enforcement

Article E-05. Records

Each Party shall provide that:

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

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

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

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

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

Article E-06. Origin Verifications

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

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

(b) visits to the premises of an exporter or a producer in the territory of the other Party to review the records referred to in Article E-05(a) and observe the facilities used in the production of the good; or

(c) such other procedure as the Parties may agree.

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

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

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

(ii) the customs administration of the other Party, and

(iii) if requested by the other Party, the embassy of the other Party in the territory of the Party proposing to conduct the visit; and
(b) obtain the written consent of the exporter or producer whose premises are to be visited.

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

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

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

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

(d) the object and scope of the proposed verification visit, including specific reference to the good that is the subject of the verification;
(e) the names and titles of the officials performing the verification visit; and
(f) the legal authority for the verification visit.

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

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

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

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

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

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

8. Each Party shall, through its customs administration, where conducting a verification of origin involving a regional value content, de minimis calculation or any other provision in Chapter D (Rules of Origin) to which Generally Accepted Accounting Principles may be relevant, apply such principles as are applicable in the territory of the Party from which the good was exported.

9. The Party conducting a verification shall provide the exporter or producer whose good is the subject of the verification with a written determination of whether the good qualifies as an originating good, including findings of fact and the legal basis for the determination.

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

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

12. A Party shall not apply a determination made under paragraph 11 to an importation made before the effective date of the determination where: (a) the customs administration of the other Party has issued an advance ruling under Article E-09 or any other ruling on the tariff classification or on the value of such materials, or has given consistent treatment to the entry of the materials under the tariff classification or value at issue, on which a person is entitled to rely; and (b) the advance ruling, other ruling or consistent treatment was given prior to notification of the determination.

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

Article E-07. Confidentiality

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

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

Article E-08. Penalties

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

2. Nothing in Article E-02(2), E-04(3) or E-06(6) shall be construed to prevent a Party from applying such measures as the circumstances may warrant.

Section III. Advance Rulings

Article E-09. Advance Rulings

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

concerning:

(a) whether materials imported from a non-Party used in the production of a good undergo an applicable change in tariff classification set out in Annex D-01 as a result of production occurring entirely in the territory of one or both of the Parties;

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

(c) for the purpose of determining whether a good satisfies a regional value-content requirement under Chapter D, the appropriate basis or method for value to be applied by an exporter or a producer in the territory of the other Party, in accordance with the principles of the Customs Valuation Code, for calculating the transaction value of the good or of the materials used in the production of the good;

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

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

(f) whether a good that re-enters its territory after the good has been exported from its territory to the territory of the other Party for repair or alteration qualifies for duty-free treatment in accordance with Article C-06 (Goods Re-Entered after Repair or Alteration);

(g) whether a good referred to in Annex C-00-B (Textiles and Apparel Goods) satisfies the conditions set out in Appendix 5.1 of that Annex regarding eligibility for a tariff preference level (TPL) referred to therein; or

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

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

3. Each Party shall provide that its customs administration:

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

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

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

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

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

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

(a) if the ruling is based on an error (i) of fact, (ii) in the tariff classification of a good or a material that is the subject of the ruling, (iii) in the application of a regional value-content requirement under Chapter D, or (iv) in the application of the rules for determining whether a good that reenters its territory after the good has been exported from its territory to the territory of the other Party for repair or alteration qualifies for duty-free treatment under Article C-06;

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

(c) if there is a change in the material facts or circumstances on which the ruling is based; (d) to conform with a modification of Chapter C, Chapter D, this Chapter or the Uniform Regulations; or (e) to conform with a judicial decision or a change in its domestic law.

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

not acted in accordance with its terms and conditions.

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

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

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

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

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

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

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

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

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

Article E-10. Review and Appeal

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

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

(b) who has received an advance ruling pursuant to Article E-09(1).

2. Further to Articles L-04 (Administrative Proceedings) and L-05 (Review and Appeal), each Party shall provide that the rights of review and appeal referred to in paragraph 1 shall include access to:

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

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

Section V. Uniform Regulations

Article E-11. Uniform Regulations

1. The Parties shall establish, and implement through their respective laws or regulations by the date of entry into force of this Agreement, and at any time thereafter, upon agreement of the Parties, Uniform Regulations regarding the interpretation, application and administration of Chapter D, this Chapter and other matters as may be agreed by the Parties.

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

Section VI. Cooperation

Article E-12. Cooperation

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

(a) a determination of origin issued as the result of a verification conducted pursuant to Article E-06(1);

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

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

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

(c) a measure establishing or significantly modifying an administrative policy that is likely to affect future determinations of origin; and (d) an advance ruling, or a ruling modifying or revoking an advance ruling, pursuant to Article E-09.

2. The Parties shall cooperate:

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

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

(i) obtains the consent of the other Party, and

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

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

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

Article E-13. The Customs Sub-committee

1. The Parties hereby establish a Customs Sub-Committee, comprising representatives of each Party's customs administration. The Sub-Committee shall meet at least once each year, and at any other time on the request of either Party and shall:

(a) endeavour to agree on

(i) the uniform interpretation, application and administration of Article C04, C-05 and C-06, Chapter D, this Chapter, and the Uniform Regulations,

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

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

(iv) revisions to the Certificate of Origin,

(v) any other matter referred to it by a Party or the Committee on Trade in Goods and Rules of Origin established under Article C-15(1), and

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

(b) consider

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

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

(c) report periodically to the Committee on Trade in Goods and Rules of Origin and notify it of any agreement reached under this paragraph; and

(d) refer to the Committee on Trade in Goods and Rules of Origin any matter on which it has been unable to reach agreement within 60 days of referral of the matter to it pursuant to subparagraph (a)(v).

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

Article E-14. Definitions

For purposes of this Chapter:

commercial importation means the importation of a good into the territory of a Party for the purpose of sale, or any commercial, industrial or other like use; customs administration means the competent authority that is responsible under the law of a Party for the administration of customs laws and regulations;

determination of origin (1) means a determination as to whether a good qualifies as an originating good in accordance with Chapter D;

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

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

intermediate material means "intermediate material" as defined in Article D-16;

material means "material" as defined in Article D-16;

net cost of a good means "net cost of a good" as defined in Article D-16;

preferential tariff treatment means the duty rate applicable to an originating good;

producer means "producer" as defined in Article D-16;

production means "production" as defined in Article D-16;

transaction value means "transaction value" as defined in Article D-16;

Uniform Regulations means "Uniform Regulations" established under Article E-11;

used means "used" as defined in Article D-16; and

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

(1) The Uniform Regulations will clarify that "determination of origin" includes a denial of preferential tariff treatment under Article E-06(4), and that such denial is subject to review and appeal.

Chapter F. Emergency Action

Article F-01. Bilateral Actions

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

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

(b) increase the rate of duty on the good to a level not to exceed the lesser of (i) the most favoured nation (MFN) applied rate of duty in effect at the time the action is taken, and (ii) the MFN applied rate of duty in effect on the day immediately preceding the date of entry into force of this Agreement; or

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

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

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

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

(c) no action may be maintained

(i) for a period exceeding three years, or

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

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

(e) on the termination of the action, the rate of duty shall be the rate that, according to the Party's Schedule to Annex C-02.2 for the staged elimination of the tariff, would have been in effect one year after the initiation of the action, and beginning January 1 of the year following the termination of the action, at the option of the Party that has taken the action

(i) the rate of duty shall conform to the applicable rate set out in its Schedule to Annex C-02.2, or

(ii) the tariff shall be eliminated in equal annual stages ending on the date set out in its Schedule to Annex C-02.2 for the elimination of the tariff.

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

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

5. This Article does not apply to emergency actions respecting goods covered by Annex C00-B (Textile and Apparel Goods).

Article F-02. Global Actions

1. Each Party retains its rights and obligations under Article XIX of the GATT 1994 and the Agreement on Safeguards of the WTO Agreement except those regarding compensation or retaliation and exclusion from an action to the extent that such rights or obligations are inconsistent with this Article. Any Party taking an emergency action under Article XIX of the GATT 1994 and the Agreement on Safeguards of the WTO Agreement shall exclude imports of a good from the other Party from

the action unless:

(a) imports from the other Party account for a substantial share of total imports; and

(b) imports from the other Party contribute importantly to the serious injury, or threat thereof, caused by imports.

2. In determining whether:

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

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

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

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

5. Neither Party may impose restrictions on a good in an action under paragraph 1 or 3:

(a) without delivery of prior written notice to the Commission, and without adequate opportunity for consultation with the other Party, as far in advance of taking the action as practicable; and

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

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

Article F-03. Administration of Emergency Action Proceedings

1. Each Party shall ensure the consistent, impartial and reasonable administration of its laws, regulations, decisions and rulings governing all emergency action proceedings.

2. Each Party shall entrust determinations of serious injury, or threat thereof, in emergency action proceedings to a competent investigating authority, subject to review by judicial or administrative tribunals, to the extent provided by domestic law. Negative injury determinations shall not be subject to modification, except by such review. The competent investigating authority empowered under domestic law to conduct such proceedings should be provided with the necessary resources to enable it to fulfill its duties.

3. Each Party shall adopt or maintain equitable, timely, transparent and effective procedures for emergency action proceedings, in accordance with the requirements set out in Annex F-03.3. 4. This Article does not apply to emergency actions taken under Annex C-00-B (Textile and Apparel Goods).

Article F-04. Dispute Settlement In Emergency Action Matters

Neither Party may request the establishment of an arbitral panel under Article N-08 (Request for an Arbitral Panel) regarding any proposed emergency action.

Article F-05. Definitions

For purposes of this Chapter:

competent investigating authority means the "competent investigating authority" of a Party as defined in Annex F-05;

contribute importantly means an important cause, but not necessarily the most important cause;

critical circumstances means circumstances where delay would cause damage that would be difficult to repair; domestic industry means the producers as a whole of the like or directly competitive good operating in the territory of a Party;

emergency action does not include any emergency action pursuant to a proceeding instituted prior to the entry into force of this Agreement;

good originating in the territory of a Party means an originating good;

serious injury means a significant overall impairment of a domestic industry;

surge means a significant increase in imports over the trend for a recent representative base period;

threat of serious injury means serious injury that, on the basis of facts and not merely on allegation, conjecture or remote possibility, is clearly imminent; and

transition period means the 6-year period beginning on January 1, 1997, except where the tariff elimination for the good against which the action is taken occurs over a longer period of time, in which case the transition period shall be the period of the staged tariff elimination for that good.

Part Three. Investment, Services and Related Matters

Chapter G. Investment

Section I. Investment

Article G-01. Scope and Coverage (1)

1. This Chapter applies to measures adopted or maintained by a Party relating to:

(a) investors of the other Party;

(b) investments of investors of the other Party in the territory of the Party; and

(c) with respect to Articles G-06 and G-14, all investments in the territory of the Party.

2. This Chapter does not apply to measures adopted or maintained by a Party relating to investors of the other Party, and investments of such investors, in financial institutions in the Party's territory.

3. (a) Notwithstanding paragraph 2, Articles G-09, G-10 and Section II for breaches by a Party of Articles G-09 and G-10 shall apply to investors of the other Party, and investments of such investors, in financial institutions in the Party's territory, which have obtained the appropriate authorization.

(b) The Parties agree to seek further liberalization as set out in Annex G-01.3(b).

4. Nothing in this Chapter shall be construed to prevent a Party from providing a service or performing a function such as law enforcement, correctional services, income security or insurance, social security or insurance, social welfare, public education, public training, health, and child care, in a manner that is not inconsistent with this Chapter.

(1) This Chapter covers investments existing on the date of entry into force of this Agreement as well as investments made or acquired thereafter.

Article G-02. National Treatment (2)

1. Each Party shall accord to investors of the other Party treatment no less favourable than that it accords, in like circumstances, to its own investors with respect to the establishment, acquisition, expansion, management, conduct, operation, and sale or other disposition of investments.

2. Each Party shall accord to investments of investors of the other Party treatment no less favourable than that it accords, in like circumstances, to investments of its own investors with respect to the establishment, acquisition, expansion, management, conduct, operation, and sale or other disposition of investments.

3. The treatment accorded by a Party under paragraphs 1 and 2 means, with respect to a province, treatment no less favourable than the most favourable treatment accorded, in like circumstances, by that province to investors, and to investments of investors, of the Party of which it forms a part.

4. For greater certainty, no Party may:

(a) impose on an investor of the other Party a requirement that a minimum level of equity in an enterprise in the territory of the Party be held by its nationals, other than nominal qualifying shares for directors or incorporators of corporations; or

(b) require an investor of the other Party, by reason of its nationality, to sell or otherwise dispose of an investment in the territory of the Party.

(2) For greater certainty, whether treatment is accorded in "like circumstances" under Article G-02 (National Treatment) or Article G-03 (Most-Favoured-Nation Treatment) depends on the totality of the circumstances, including whether the relevant treatment distinguishes between investors or investments on the basis of legitimate public policy objectives.

Article G-03. Most-favoured-nation Treatment

1. Each Party shall accord to investors of the other Party treatment no less favourable than that it accords, in like circumstances, to investors of any non-Party with respect to the establishment, acquisition, expansion, management, conduct, operation, and sale or other disposition of investments.

2. Each Party shall accord to investments of investors of the other Party treatment no less favourable than that it accords, in like circumstances, to investments of investors of any nonParty with respect to the establishment, acquisition, expansion, management, conduct, operation, and sale or other disposition of investments.

Article G-04. Standard of Treatment

1. Each Party shall accord to investors of the other Party and to investments of investors of the other Party the better of the treatment required by Articles G-02 and G-03.

2. Annex G-04.2 sets out certain specific obligations by the Party specified in that Annex.

Article G-05. Minimum Standard of Treatment (3)

1. Each Party shall accord to investments of investors of the other Party treatment in accordance with international law, including fair and equitable treatment and full protection and security.

2. Paragraph 1 prescribes the customary international law minimum standard of treatment of aliens as the minimum standard of treatment to be accorded to investments of investors of the other Party.

3. The concepts of "fair and equitable treatment" and "full protection and security" do not require treatment in addition to or beyond that which is required by the customary international law minimum standard of treatment of aliens, and do not create any additional rights. The obligation in paragraph 1 to provide:

(a) "fair and equitable treatment" includes the obligation not to deny justice in criminal, civil or administrative adjudicatory proceedings in accordance with the principle of due process; and

(b) "full protection and security" means that each Party is required to provide the level of police protection required under customary international law.

4. A determination that there has been a breach of another provision of this Agreement, or of a separate international agreement, does not establish that there has been a breach of this Article.

5. For greater certainty, the fact that a measure breaches domestic law does not, in and of itself, establish a breach of this Article. In order to ascertain whether the measure breaches this Article, the Tribunal must consider whether a Party has acted inconsistently with the obligations in paragraph 1.

6. Without prejudice to paragraph 1 and notwithstanding Article G-08(6)(b), each Party shall accord to investors of the other Party, and to investments of investors of the other Party, non-discriminatory treatment with respect to measures it adopts or maintains relating to losses suffered by investments in its territory owing to armed conflict or civil strife.

7. Paragraph 6 does not apply to existing measures relating to subsidies or grants that would be inconsistent with Article G-02 but for Article G-08(6)(b).

(3) Article G-05 (Minimum Standard of Treatment) shall be interpreted in accordance with Annex G-05 (Customary International Law).

Article G-06. Performance Requirements (4)

1. Neither Party may impose or enforce any of the following requirements, or enforce any commitment or undertaking, in connection with the establishment, acquisition, expansion, management, conduct or operation of an investment of an investor of a Party or of a non-Party in its territory:

(a) to export a given level or percentage of goods or services;

(b) to achieve a given level or percentage of domestic content;

(c) to purchase, use or accord a preference to goods produced or services provided in its territory, or to purchase goods or services from persons in its territory;

(d) to relate in any way the volume or value of imports to the volume or value of exports or to the amount of foreign exchange inflows associated with such investment;

(e) to restrict sales of goods or services in its territory that such investment produces or provides by relating such sales in any way to the volume or value of its exports or foreign exchange earnings;

(f) to transfer technology, a production process or other proprietary knowledge to a person in its territory, except when the requirement is imposed or the commitment or undertaking is enforced by a court, administrative tribunal or competition authority to remedy an alleged violation of competition laws or to act in a manner not inconsistent with other provisions of this Agreement; or

(g) to act as the exclusive supplier of the goods it produces or services it provides to a specific region or world market.

2. A measure that requires an investment to use a technology to meet generally applicable health, safety or environmental requirements shall not be construed to be inconsistent with paragraph 1(f). For greater certainty, Articles G-02 and G-03 apply to the measure.

3. Neither Party may condition the receipt or continued receipt of an advantage, in connection with an investment in its territory of an investor of a Party or of a non-Party, on compliance with any of the following requirements:

(a) to achieve a given level or percentage of domestic content;

(b) to purchase, use or accord a preference to goods produced in its territory, or to purchase goods from producers in its territory;

(c) to relate in any way the volume or value of imports to the volume or value of exports or to the amount of foreign exchange inflows associated with such investment; or

(d) to restrict sales of goods or services in its territory that such investment produces or provides by relating such sales in any way to the volume or value of its exports or foreign exchange earnings.

4. Nothing in paragraph 3 shall be construed to prevent a Party from conditioning the receipt or continued receipt of an advantage, in connection with an investment in its territory of an investor of a Party or of a non-Party, on compliance with a requirement to locate production, provide a service, train or employ workers, construct or expand particular facilities, or carry out research and development, in its territory.

5. Paragraphs 1 and 3 do not apply to any requirement other than the requirements set out in those paragraphs.

6. Provided that such measures are not applied in an arbitrary or unjustifiable manner, or do not constitute a disguised restriction on international trade or investment, nothing in paragraphs 1(b), 1(c), 3(a) or 3(b) shall be construed to prevent a Party from adopting or maintaining measures, including environmental measures:

(a) necessary to secure compliance with laws and regulations that are not inconsistent with the provisions of this Agreement;

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

(c) necessary for the conservation of living or non-living exhaustible natural resources.

(4) Article G-06 does not preclude enforcement of any commitment, undertaking or requirement between private parties.

Article G-07. Senior Management and Boards of Directors

1. Neither Party may require that an enterprise of that Party that is an investment of an investor of the other Party appoint to senior management positions individuals of any particular nationality.

2. A Party may require that a majority of the board of directors, or any committee thereof, of an enterprise of that Party that is an investment of an investor of the other Party, be of a particular nationality, or resident in the territory of the Party, provided that the requirement does not materially impair the ability of the investor to exercise control over its investment.

Article G-08. Reservations and Exceptions

1. Articles G-02, G-03, G-06 and G-07 do not apply to:

(a) any existing non-conforming measure that is maintained by:

(i) a Party at the national or provincial level, as set out in its Schedule to Annex I, or

(ii) a local government;

(b) the continuation or prompt renewal of any non-conforming measure referred to in subparagraph (a); or

(c) an amendment to any non-conforming measure referred to in subparagraph (a) to the extent that the amendment does not decrease the conformity of the measure, as it existed immediately before the amendment, with Articles G-02, G-03, G-06 and G-07.

2. Articles G-02, G-03, G-06 and G-07 do not apply to any measure that a Party adopts or maintains with respect to sectors, subsectors or activities, as set out in its Schedule to Annex II.

3. Neither Party may, under any measure adopted after the date of entry into force of this Agreement and covered by its Schedule to Annex II, require an investor of the other Party, by reason of its nationality, to sell or otherwise dispose of an investment existing at the time the measure becomes effective.

4. Articles G-02 and G-03 do not apply to any measure that is an exception to, or derogation from, a Party's obligations under the TRIPS Agreement, as specifically provided for in that Agreement.

5. Article G-03 does not apply to treatment accorded by a Party pursuant to agreements, or with respect to sectors, set out in its Schedule to Annex III.

6. Articles G-02, G-03 and G-07 do not apply to:

(a) procurement by a Party or a state enterprise; or

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

7. The provisions of:

(a) Article G-06(1)(a), (b) and (c), and (3)(a) and (b) do not apply to qualification requirements for goods or services with respect to export promotion and foreign aid programs;

(b) Article G-06(1)(b), (c), (f) and (g), and (3)(a) and (b) do not apply to procurement by a Party or a state enterprise; and

(c) Article G-06(3)(a) and (b) do not apply to requirements imposed by an importing Party relating to the content of goods necessary to qualify for preferential tariffs or preferential quotas.

Article G-09. Transfers

1. Except as provided in Annex G-09.1, each Party shall permit all transfers relating to an investment of an investor of the other Party in the territory of the Party to be made freely and without delay. Such transfers include:

(a) profits, dividends, interest, capital gains, royalty payments, management fees, technical assistance and other fees, returns in kind and other amounts derived from the investment;

(b) proceeds from the sale of all or any part of the investment or from the partial or complete liquidation of the investment;

(c) payments made under a contract entered into by the investor, or its investment, including payments made pursuant to a loan agreement;

(d) payments made pursuant to Article G-10; and

(e) payments arising under Section II.

2. Each Party shall permit transfers to be made in a freely usable currency at the market rate of exchange prevailing on the date of transfer with respect to spot transactions in the currency to be transferred.

3. Neither Party may require its investors to transfer, or penalize its investors that fail to transfer, the income, earnings, profits or other amounts derived from, or attributable to, investments in the territory of the other Party.

4. Notwithstanding paragraphs 1 and 2, a Party may prevent a transfer through the equitable, non-discriminatory and good faith application of its laws relating to:

(a) bankruptcy, insolvency or the protection of the rights of creditors;

(b) issuing, trading or dealing in securities;

(c) criminal or penal offenses;

(d) reports of transfers of currency or other monetary instruments; or

(e) ensuring the satisfaction of judgments in adjudicatory proceedings.

5. Paragraph 3 shall not be construed to prevent a Party from imposing any measure through the equitable, non-discriminatory and good faith application of its laws relating to the matters set out in subparagraphs (a) through (e) of paragraph 4.

6. Notwithstanding paragraph 1, a Party may restrict transfers of returns in kind in circumstances where it could otherwise restrict such transfers under this Agreement, including as set out in paragraph 4.

Article G-10. Expropriation and Compensation (5)

1. Neither Party may directly or indirectly nationalize or expropriate an investment of an investor of the other Party in its territory or take a measure tantamount to nationalization or expropriation of such an investment (“expropriation”), except:

(a) for a public purpose;

(b) on a non-discriminatory basis;

(c) in accordance with due process of law and Article G-05(1); and

(d) on payment of compensation in accordance with paragraphs 2 through 6.

2. Compensation shall be equivalent to the fair market value of the expropriated investment immediately before the expropriation took place (“date of expropriation”), and shall not reflect any change in value occurring because the intended expropriation had become known earlier. Valuation criteria shall include going concern value, asset value including declared tax value of tangible property, and other criteria, as appropriate, to determine fair market value.

3. Compensation shall be paid without delay and be fully realizable.

4. If payment is made in a G7 currency, compensation shall include interest at a commercially reasonable rate for that currency from the date of expropriation until the date of actual payment.

5. If a Party elects to pay in a currency other than a G7 currency, the amount paid on the date of payment, if converted into a G7 currency at the market rate of exchange prevailing on that date, shall be no less than if the amount of compensation owed on the date of expropriation had been converted into that G7 currency at the market rate of exchange prevailing on that date, and interest had accrued at a commercially reasonable rate for that G7 currency from the date of expropriation until the date of payment.

6. On payment, compensation shall be freely transferable as provided in Article G-09.

7. This Article does not apply to the issuance of compulsory licences granted in relation to intellectual property rights, or to the revocation, limitation or creation of intellectual property rights, to the extent that such issuance, revocation, limitation or creation is consistent with the TRIPS Agreement.

8. For purposes of this Article and for greater certainty, a non-discriminatory measure of general application shall not be considered a measure tantamount to an expropriation of a debt security or loan covered by this Chapter solely on the ground that the measure imposes costs on the debtor that cause it to default on the debt.

(5) Article G-10 (Expropriation and Compensation) shall be interpreted in accordance with Annex G-10 (Expropriation).

Article G-11. Special Formalities and Information Requirements

1. Nothing in Article G-02 shall be construed to prevent a Party from adopting or maintaining a measure that prescribes special formalities in connection with the establishment of investments by investors of the other Party, such as a requirement that investors be residents of the Party or that investments be legally constituted under the laws or regulations of the Party, provided that such formalities do not materially impair the protections afforded by a Party to investors of the other Party and investments of investors of the other Party pursuant to this Chapter.

2. Notwithstanding Articles G-02 or G-03, a Party may require an investor of the other Party, or its investment in its territory, to provide routine information concerning that investment solely for informational or statistical purposes. The Party shall protect such business information that is confidential from any disclosure that would prejudice the competitive position of the investor or the investment. Nothing in this paragraph shall be construed to prevent a Party from otherwise obtaining or disclosing information in connection with the equitable and good faith application of its law.

Article G-12. Relation to other Chapters

1. In the event of any inconsistency between this Chapter and another Chapter, the other Chapter shall prevail to the extent of the inconsistency.

2. A requirement by a Party that a service provider of the other Party post a bond or other form of financial security as a condition of providing a service into its territory does not of itself make this Chapter applicable to the provision of that cross-border service. This Chapter applies to that Party's treatment of the posted bond or financial security.

Article G-13. Denial of Benefits

1. A Party may deny the benefits of this Chapter to an investor of the other Party that is an enterprise of that other Party and to investments of that investor if investors of a non-Party own or control the enterprise and the denying Party:

(a) does not maintain diplomatic relations with the non-Party; or

(b) adopts or maintains measures with respect to the non-Party that prohibit transactions with the enterprise or that would be violated or circumvented if the benefits of this Chapter were accorded to the enterprise or to its investments.

2. Subject to prior notification and consultation in accordance with Articles L-03 (Notification and Provision of Information) and N-06 (Consultations), a Party may deny the benefits of this Chapter to an investor of the other Party that is an enterprise of that other Party and to investments of those investors if investors of a non-Party own or control the enterprise and the enterprise has no substantial business activities in the territory of the Party under whose law it is constituted or organized.

Article G-14. Environmental Measures

1. Nothing in this Chapter shall be construed to prevent a Party from adopting, maintaining or enforcing any measure otherwise consistent with this Chapter that it considers appropriate to ensure that investment activity in its territory is

undertaken in a manner sensitive to environmental concerns.

2. The Parties recognize that it is inappropriate to encourage investment by relaxing domestic health, safety or environmental measures. Accordingly, a Party should not waive or otherwise derogate from, or offer to waive or otherwise derogate from, such measures as an encouragement for the establishment, acquisition, expansion or retention in its territory of an investment of an investor. If a Party considers that the other Party has offered such an encouragement, it may request consultations with the other Party and the two Parties shall consult with a view to avoiding any such encouragement.

Article G-14 bis. Corporate Social Responsibility

The Parties reaffirm their commitment to internationally recognized standards, guidelines and principles of corporate social responsibility that have been endorsed or are supported by the Parties, including the OECD Guidelines for Multinational Enterprises, and each Party should encourage enterprises operating within its territory or subject to its jurisdiction to voluntarily incorporate these standards, guidelines and principles into their business practices and internal policies. These standards, guidelines and principles address issues such as labour, environment, gender equality, human rights, community relations, and anti-corruption.

Article G-15. Energy Regulatory Measures

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

Section II. Settlement of Disputes between a Party and an Investor of the other Party

Article G-16. Purpose

Without prejudice to the rights and obligations of the Parties under Chapter N (Institutional Arrangements and Dispute Settlement Procedures), this Section establishes a mechanism for the settlement of investment disputes that assures both equal treatment among investors of the Parties in accordance with the principle of international reciprocity and due process before an impartial tribunal.

Article G-17. Claim by an Investor of a Party on Its Own Behalf

An investor of a Party may submit to arbitration under this Section a claim that the other Party has breached an obligation under:

(a) Section I, other than Article G-14 or G-14 bis, or Article J-03(2) (State Enterprises); or

(b) Article J-02(3)(a) (Monopolies and State Enterprises) where the monopoly has acted in a manner inconsistent with the Party's obligations under Section I, other than Article G-14 or G-14 bis,

and that the investor has incurred loss or damage by reason of, or arising out of, that breach.

Article G-18. Claim by an Investor of a Party on Behalf of an Enterprise

1. An investor of a Party, on behalf of an enterprise of the other Party that is a juridical person that the investor owns or controls directly or indirectly, may submit to arbitration under this Section a claim that the other Party has breached an obligation under:

(a) Section I, other than Article G-14 or G-14 bis, or Article J-03(2) (State Enterprises); or

(b) Article J-02(3)(a) (Monopolies and State Enterprises) where the monopoly has acted in a manner inconsistent with the Party's obligations under Section I, other than Article G-14 or Article G-14 bis,

and that the enterprise has incurred loss or damage by reason of, or arising out of, that breach.

2. If an investor makes a claim under this Article and the investor or a non-controlling investor in the enterprise makes a claim under Article G-17 arising out of the same events that gave rise to the claim under this Article, and two or more of the

claims are submitted to arbitration under Article G-21, the claims should be heard together by a Tribunal established under Article G-27, unless the Tribunal finds that the interests of a disputing party would be prejudiced thereby.

3. An investment may not make a claim under this Section.

Article G-19. Request for Consultations

1. A dispute should, as far as possible, be settled amicably. A settlement may be agreed at any time, including after the claim has been submitted pursuant to Article G-21. Unless otherwise agreed to a longer period, consultations shall be held within 60 days of the submission of the request for consultations pursuant to paragraph 4 of this article.

2. A request for consultations must be submitted within three years from the date on which the investor or, as applicable, the enterprise referred to in Article G-18(1), first acquired or should have first acquired knowledge of the alleged breach and knowledge that the investor or, as applicable, the enterprise referred to in Article G-18(1), has incurred loss or damage.

3. Unless otherwise agreed, the place of consultation shall be:

(a) Ottawa, if the measures challenged are measures of Canada; or

(b) Santiago, if the measures challenged are measures of Chile.

4. The investor seeking consultations shall deliver to the relevant Party a written request for consultations which shall specify:

(a) the name and address of the investor and, where a claim is made under Article G-18, the name and address of the enterprise;

(b) the provisions of this Agreement alleged to have been breached and any other relevant provisions;

(c) the issues and the factual basis for the claim; and

(d) the relief sought and the approximate amount of damages claimed.

5. In the event that the investor has not submitted a claim pursuant to Article G-21 within one year of submitting the request for consultations, the investor is deemed to have withdrawn its request for consultations and shall not submit a claim under this Section with respect to the same measures. This period may be extended by mutual agreement.

6. For greater certainty, the initiation of consultations pursuant to this Article shall not be construed as recognition of the jurisdiction of any future Tribunal under this Section.

Article G-20. Mediation

1. The disputing parties may at any time agree to have recourse to mediation.

2. Recourse to mediation is without prejudice to the legal position or rights of either disputing party under this Chapter and is governed by the rules agreed to by the disputing parties including, if available, the rules for mediation adopted by the Parties.

3. The mediator is appointed by agreement of the disputing parties. The disputing parties may also request that the Secretary-General of ICSID appoint the mediator.

4. The disputing parties shall endeavour to reach a resolution of the dispute within 90 days from the appointment of the mediator.

5. If the disputing parties agree to have recourse to mediation the timelines pursuant to Articles G-19(2) and G-19(5) shall be suspended from the date on which the disputing parties agreed to have recourse to mediation and shall resume on the date on which either disputing party decides to terminate the mediation. A decision by a disputing party to terminate the mediation shall be transmitted by way of a letter to the mediator and the other disputing party.

Article G-21. Submission of a Claim to Arbitration

1. Except as provided in Annex G-21.1, and provided that 180 days have elapsed since the receipt by the disputing Party of a written request for consultations pursuant to Article G-19(2), a disputing investor may submit a claim to arbitration under:

(a) the ICSID Convention, provided that both the disputing Party and the Party of the investor are parties to the Convention;

(b) the ICSID Additional Facility Rules, provided that either the disputing Party or the Party of the investor, but not both, is a party to the ICSID Convention; or

(c) the UNCITRAL Arbitration Rules.

2. The applicable arbitration rules shall govern the arbitration except to the extent modified by this Section.

Article G-22. Conditions Precedent to Submission of a Claim to Arbitration

1. A disputing investor may submit a claim under Article G-17 to arbitration only if:

(a) the investor consents to arbitration in accordance with the procedures set out in this Agreement; and

(b) the investor and, if the claim is for loss or damage to an interest in an enterprise of the other Party that is a juridical person that the investor owns or controls directly or indirectly, the enterprise, waive their right to initiate or continue before any administrative tribunal or court under the law of a Party, or other dispute settlement procedures, any proceedings with respect to the measure of the disputing Party that is alleged to be a breach referred to in Article G-17, except for proceedings for injunctive, declaratory or other extraordinary relief, not involving the payment of damages, before an administrative tribunal or court under the law of the disputing Party.

2. A disputing investor may submit a claim under Article G-18 to arbitration only if both the investor and the enterprise:

(a) consent to arbitration in accordance with the procedures set out in this Agreement; and

(b) waive their right to initiate or continue before any administrative tribunal or court under the law of a Party, or other dispute settlement procedures, any proceedings with respect to the measure of the disputing Party that is alleged to be a breach referred to in Article G-18, except for proceedings for injunctive, declaratory or other extraordinary relief, not involving the payment of damages, before an administrative tribunal or court under the law of the disputing Party.

3. A consent and waiver required by this Article shall be in writing, shall be delivered to the disputing Party and shall be included in the submission of a claim to arbitration.

4. Only when a disputing Party has deprived a disputing investor of control of an enterprise:

(a) a waiver from the enterprise under paragraph 1(b) or 2(b) shall not be required; and

(b) paragraph 1(b) of Annex G-21.1 shall not apply.

Article G-23. Consent to Arbitration

1. Each Party consents to the submission of a claim to arbitration in accordance with the procedures set out in this Agreement, including Articles G-19, G-21 and G-22.

2. The consent given by paragraph 1 and the submission by a disputing investor of a claim to arbitration shall satisfy the requirement of:

(a) Chapter II (Jurisdiction of the Centre) of the ICSID Convention and the ICSID Additional Facility Rules for written consent of the parties;

(b) Article II of the New York Convention for an agreement in writing; and

(c) Article I of the Inter-American Convention for an agreement.

Article G-24. Number of Arbitrators and Method of Appointment

1. Except in respect of a Tribunal established under Article G-27, and unless the disputing parties agree otherwise, the Tribunal shall be composed of three arbitrators: one arbitrator appointed by each of the disputing parties and the third, who shall be the presiding arbitrator, appointed by agreement of the disputing parties.

2. Tribunal members shall be independent. They shall not be affiliated with any government. They shall not take instructions from any organization, or government with regard to matters related to the dispute. They shall not participate in the consideration of any disputes that would create a direct or indirect conflict of interest. They shall comply with the

International Bar Association Guidelines on Conflicts of Interest in International Arbitration and any supplemental rules agreed to by the Parties. In addition, upon appointment, they shall refrain from acting as counsel or as a party-appointed expert or witness in any pending or new investment dispute under this or any other international agreement.

Article G-25. Constitution of a Tribunal When a Party Fails to Appoint an Arbitrator or the Disputing Parties Are Unable to Agree on a Presiding Arbitrator

1. The Secretary-General shall serve as appointing authority for an arbitration under this Section.

2. If a Tribunal, other than a Tribunal established under Article G-27, has not been constituted within 90 days from the date that a claim is submitted to arbitration, the Secretary-General, on the request of either disputing party, shall appoint, in his or her discretion, the arbitrator or arbitrators not yet appointed, except that the presiding arbitrator shall be appointed in accordance with paragraph 3.

3. The Secretary-General shall appoint the presiding arbitrator from the roster of presiding arbitrators referred to in paragraph 4, provided that the presiding arbitrator shall not be a national of the disputing Party or a national of the Party of the disputing investor. In the event that no such presiding arbitrator is available to serve, the Secretary-General shall appoint, from the ICSID Panel of Arbitrators, a presiding arbitrator who is not a national of either of the Parties.

4. On the date of entry into force of this Agreement, the Parties shall establish, and thereafter maintain, a roster of 30 presiding arbitrators, none of whom may be a national of a Party, meeting the qualifications of the Convention and rules referred to in Article G-21 and experienced in international law and investment matters. The roster members shall be appointed by mutual agreement of the Parties.

Article G-26. Agreement to Appointment of Arbitrators

For purposes of Article 39 of the ICSID Convention and Article 7 of Schedule C to the ICSID Additional Facility Rules, and without prejudice to an objection to an arbitrator based on Article G-25(3) or on a ground other than nationality:

(a) the disputing Party agrees to the appointment of each individual member of a Tribunal established under the ICSID Convention or the ICSID Additional Facility Rules;

(b) a disputing investor referred to in Article G-17 may submit a claim to arbitration, or continue a claim, under the ICSID Convention or the ICSID Additional Facility Rules, only on condition that the disputing investor agrees in writing to the appointment of each individual member of the Tribunal; and

(c) a disputing investor referred to in Article G-18(1) may submit a claim to arbitration, or continue a claim, under the ICSID Convention or the ICSID Additional Facility Rules, only on condition that the disputing investor and the enterprise agree in writing to the appointment of each individual member of the Tribunal.

Article G-27. Consolidation

1. A Tribunal established under this Article shall be established under the UNCITRAL Arbitration Rules and shall conduct its proceedings in accordance with those Rules, except as modified by this Section.

2. If a Tribunal established under this Article is satisfied that claims have been submitted to arbitration under Article G-21 that have a question of law or fact in common, the Tribunal may, in the interests of fair and efficient resolution of the claims, and after hearing the disputing parties, by order:

(a) assume jurisdiction over, and hear and determine together, all or part of the claims; or

(b) assume jurisdiction over, and hear and determine one or more of the claims, the determination of which it believes would assist in the resolution of the others.

3. A disputing party that seeks an order under paragraph 2 shall request the Secretary-General to establish a Tribunal and shall specify in the request:

(a) the name of the disputing Party or disputing investors against which the order is sought;

(b) the nature of the order sought; and

(c) the grounds on which the order is sought.

4. The disputing party shall deliver a copy of the request to the disputing Party or disputing investors against which the order is sought.

5. Within 60 days of receipt of the request, the Secretary-General shall establish a Tribunal composed of three arbitrators. The Secretary-General shall appoint the presiding arbitrator from the roster referred to in Article G-25(4). In the event that no such presiding arbitrator is available to serve, the Secretary-General shall appoint, from the ICSID Panel of Arbitrators, a presiding arbitrator who is not a national of either Party. The Secretary-General shall appoint the two other members from the roster referred to in Article G-25(4) and, to the extent not available from that roster, from the ICSID Panel of Arbitrators and, to the extent not available from that Panel, in the discretion of the Secretary-General. One member shall be a national of the disputing Party and one member shall be a national of the Party of the disputing investors.

6. If a Tribunal has been established under this Article, a disputing investor that has submitted a claim to arbitration under Article G-17 or G-18 and that has not been named in a request made under paragraph 3 may make a written request to the Tribunal that it be included in an order made under paragraph 2, and shall specify in the request:

(a) the name and address of the disputing investor;

(b) the nature of the order sought; and

(c) the grounds on which the order is sought.

7. A disputing investor referred to in paragraph 6 shall deliver a copy of its request to the disputing parties named in a request made under paragraph 3.

8. A Tribunal established under Article G-21 shall not have jurisdiction to decide a claim, or a part of a claim, over which a Tribunal established under this Article has assumed jurisdiction.

9. On application of a disputing party, a Tribunal established under this Article, pending its decision under paragraph 2, may order that the proceedings of a Tribunal established under Article G-21 be stayed, unless the latter Tribunal has already adjourned its proceedings.

10. A disputing Party shall deliver to the Secretariat, within 15 days of receipt by the disputing Party, a copy of:

(a) a request for arbitration made under paragraph (1) of Article 36 of the ICSID Convention;

(b) a notice of arbitration made under Article 2 of Schedule C of the ICSID Additional Facility Rules; or

(c) a notice of arbitration given under the UNCITRAL Arbitration Rules.

11. A disputing Party shall deliver to the Secretariat a copy of a request made under paragraph 3:

(a) within 15 days of receipt of the request, in the case of a request made by a disputing investor; and

(b) within 15 days of making the request, in the case of a request made by the disputing Party.

12. A disputing Party shall deliver to the Secretariat a copy of a request made under paragraph 6 within 15 days of receipt of the request.

13. The Secretariat shall maintain a public register of the documents referred to in paragraphs 10, 11 and 12.

Article G-28. Notice

A disputing Party shall deliver the other Party:
a) written notice of a claim that has been submitted to arbitration no later than 30

days after the date that the claim is submitted; and

(b) copies of all pleadings filed in the arbitration

Article G-29. Participation by a Party

On written notice to the disputing parties, a Party may make submissions to a Tribunal on a question of interpretation of this Agreement.

Article G-30. Documents

1. A Party shall be entitled to receive from the disputing Party, at the cost of the requesting Party a copy of:

(a) the evidence that has been tendered to the Tribunal; and

(b) the written argument of the disputing parties.

2. A Party receiving information pursuant to paragraph 1 shall treat the information as if it were a disputing Party.

Article G-31. Place of Arbitration

Unless the disputing parties agree otherwise, a Tribunal shall hold an arbitration in the territory of a Party that is a party to the New York Convention, selected in accordance with:

(a) the ICSID Additional Facility Rules if the arbitration is under those Rules or the ICSID Convention; or

(b) the UNCITRAL Arbitration Rules if the arbitration is under those Rules.

Article G-32. Governing Law

1. A Tribunal established under this Section shall decide the issues in dispute in accordance with this Agreement and applicable rules of international law.

(a) an award of restitution of property shall provide that restitution be made to the enterprise;

2. An interpretation by the Commission of a provision of this Agreement shall be binding on a Tribunal established under this Section.

Article G-33. Interpretation of Annexes

1. Where a disputing Party asserts as a defense that the measure alleged to be a breach is within the scope of a reservation or exception set out in Annex I, Annex II or Annex III, on request of the disputing Party, the Tribunal shall request the interpretation of the Commission on the issue. The Commission, within 60 days of delivery of the request, shall submit in writing its interpretation to the Tribunal.

2. Further to Article G-32(2), a Commission interpretation submitted under paragraph 1 shall be binding on the Tribunal. If the Commission fails to submit an interpretation within 60 days, the Tribunal shall decide the issue.

Article G-34. Expert Reports

Without prejudice to the appointment of other kinds of experts where authorized by the applicable arbitration rules, a Tribunal, at the request of a disputing party or, unless the disputing parties disapprove, on its own initiative, may appoint one or more experts to report to it in writing on any factual issue concerning environmental, health, safety or other scientific matters raised by a disputing party in a proceeding, subject to such terms and conditions as the disputing parties may agree.

Article G-35. Interim Measures of Protection

A Tribunal may order an interim measure of protection to preserve the rights of a disputing party, or to ensure that the Tribunal's jurisdiction is made fully effective, including an order to preserve evidence in the possession or control of a disputing party or to protect the Tribunal's jurisdiction. A Tribunal may not order attachment or enjoin the application of the measure alleged to constitute a breach referred to in Article G-17 or G-18. For purposes of this paragraph, an order includes a recommendation.

Article G-36. Final Award

1. If a Tribunal makes a final award against a Party, the Tribunal may award, separately or in combination, only:

(a) monetary damages and any applicable interest; and

(b) restitution of property, in which case the award shall provide that the disputing Party may pay monetary damages and any applicable interest in lieu of restitution.

2. The Tribunal shall order that the costs of the proceedings be borne by the unsuccessful disputing party. In exceptional circumstances, the Tribunal may apportion costs between the disputing parties if it determines that apportionment is appropriate in the circumstances of the claim. Other reasonable costs, including costs of legal representation and assistance, shall be borne by the unsuccessful disputing party, unless the Tribunal determines that such apportionment is unreasonable in the circumstances of the claim. If only parts of the claim have been successful the costs shall be adjusted, proportionately, to the number or extent of the successful parts of the claim.

3. Subject to paragraph 1, when a claim is made under Article G-18(1):

(a) an award of restitution of property shall provide that restitution be made to the enterprise;

(b) an award of monetary damages and any applicable interest shall provide that the sum be paid to the enterprise; and

(c) the award shall provide that it is made without prejudice to any right that any person may have in the relief under applicable domestic law.

4. A Tribunal may not order a Party to pay punitive damages.

Article G-37. Finality and Enforcement of an Award

1. An award made by a Tribunal shall have no binding force except between the disputing parties and in respect of the particular case.

2. Subject to paragraph 3 and the applicable review procedure for an interim award, a disputing party shall abide by and comply with an award without delay.

3. A disputing party may not seek enforcement of a final award until:

(a) in the case of a final award made under the ICSID Convention:

(i) 120 days have elapsed from the date the award was rendered and no disputing party has requested revision or annulment of the award, or

(ii) revision or annulment proceedings have been completed; and

(b) in the case of a final award under the ICSID Additional Facility Rules or the UNCITRAL Arbitration Rules:

(i) three months have elapsed from the date the award was rendered and no disputing party has commenced a proceeding to revise, set aside or annul the award, or

(ii) a court has dismissed or allowed an application to revise, set aside or annul the award and there is no further appeal.

4. Each Party shall provide for the enforcement of an award in its territory.

5. If a disputing Party fails to abide by or comply with a final award, the Commission, on delivery of a request by a Party whose investor was a party to the arbitration, shall establish a panel under Article N-08 (Request for an Arbitral Panel). The requesting Party may seek in such proceedings:

(a) a determination that the failure to abide by or comply with the final award is inconsistent with the obligations of this Agreement; and

(b) a recommendation that the Party abide by or comply with the final award.

6. A disputing investor may seek enforcement of an arbitration award under the ICSID Convention, the New York Convention or the Inter-American Convention regardless of whether proceedings have been taken under paragraph 5.

7. A claim that is submitted to arbitration under this Section shall be considered to arise out of a commercial relationship or transaction for purposes of Article I of the New York Convention and Article I of the Inter-American Convention.

8. If a separate agreement enters into force as between the Parties that establishes a multilateral investment tribunal or appellate mechanism, the Parties shall adopt a decision providing that investment disputes arising under this Chapter shall be decided, or in the case of an appellate mechanism shall be eligible for review, pursuant to this separate agreement and make appropriate transitional arrangements.

Article G-38. General

Time when a Claim is Submitted to Arbitration

1. A claim is submitted to arbitration under this Section when:

(a) the request for arbitration under paragraph 1 of Article 36 of the ICSID Convention has been received by the Secretary-General;

(b) the notice of arbitration under Article 2 of Schedule C of the ICSID Additional Facility Rules has been received by the Secretary-General; or

(c) the notice of arbitration given under the UNCITRAL Arbitration Rules is received by the disputing Party.

Service of Documents

2. Delivery of notice and other documents on a Party shall be made to the place named for that Party in Annex G-38.2.

Receipts under Insurance or Guarantee Contracts

3. In an arbitration under this Section, a Party shall not assert, as a defense, counterclaim, right of setoff or otherwise, that the disputing investor has received or will receive, pursuant to an insurance or guarantee contract, indemnification or other compensation for all or part of its alleged damages.

Publication of an Award

4. Annex G-38.4 applies to the Parties specified in that Annex with respect to publication of an award.

Article G-39. Exclusions

1. Without prejudice to the applicability or non-applicability of the dispute settlement provisions of this Section or of Chapter N (Institutional Arrangements and Dispute Settlement Procedures) to other actions taken by a Party pursuant to Article O-02 (National Security), a decision by a Party to prohibit or restrict an investment in its territory by an investor of the other Party, or its investment, pursuant to that Article shall not be subject to such provisions.

2. The dispute settlement provisions of this Section and of Chapter N (Institutional Arrangements and Dispute Settlement Procedures) shall not apply to the matters referred to in Annex G-39.2.

Subsection III. Definitions

Article G-40. Definitions

For purposes of this Chapter:

disputing investor means an investor that makes a claim under Section II;

disputing parties means the disputing investor and the disputing Party;

disputing Party means a Party against which a claim is made under Section II;

disputing party means the disputing investor or the disputing Party;

energy and basic petrochemical goods refer to those goods classified under the Harmonized System as:

(a) subheading 2612.10;

(b) headings 27.01 through 27.06;

(c) subheading 2707.50;

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

(e) headings 27.08 and 27.09;

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

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

(h) headings 27.12 through 27.16;

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

(j) subheadings 2845.10; and

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

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

enterprise means an "enterprise" as defined in Article B-01 (Definitions of General Application), and a branch of an enterprise;

enterprise of a Party means an enterprise constituted or organized under the law of a Party, and a branch located in the territory of a Party and carrying out business activities there;

equity or **debt securities** includes voting and non-voting shares, bonds, convertible debentures, stock options and warrants;

existing means in effect on 1 January 1994 for Canada and 29 December 1995 for Chile;

financial institution means any financial intermediary or other enterprise that is authorized to do business and regulated or supervised as a financial institution under the law of the Party in whose territory it is located;

G7 currency means the currency of Canada, France, Germany, Italy, Japan, the United Kingdom of Great Britain and Northern Ireland or the United States of America;

ICSID means the International Centre for Settlement of Investment Disputes;

ICSID Convention means the Convention on the Settlement of Investment Disputes between States and Nationals of other States, done at Washington, 18 March 1965;

ICSID Additional Facility Rules means the Rules Governing the Additional Facility for the Administration of Proceedings by the Secretariat of the International Centre for the Settlement of Investment Disputes;

Inter-American Convention means the Inter-American Convention on International Commercial Arbitration, done at Panama, 30 January 1975;

investment means:

(a) an enterprise;

(b) an equity security of an enterprise;

(c) a debt security of an enterprise:

(i) where the enterprise is an affiliate of the investor, or

(ii) where the original maturity of the debt security is at least three years,

but does not include a debt security, regardless of original maturity, of a state enterprise;

(d) a loan to an enterprise:

(i) where the enterprise is an affiliate of the investor, or

(ii) where the original maturity of the loan is at least three years,

but does not include a loan, regardless of original maturity, to a state enterprise;

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

(f) an interest in an enterprise that entitles the owner to share in the assets of that enterprise on dissolution, other than a debt security or a loan excluded from subparagraph (c) or (d);

(g) real estate or other property, tangible or intangible, acquired in the expectation or used for the purpose of economic benefit or other business purposes; and

(h) interests arising from the commitment of capital or other resources in the territory of a Party to economic activity in such

territory, such as under:

(i) contracts involving the presence of an investor's property in the territory of the Party, including turnkey or construction contracts, or concessions, or

(ii) contracts where remuneration depends substantially on the production, revenues or profits of an enterprise;

but investment does not mean,

(i) claims to money that arise solely from:

(i) commercial contracts for the sale of goods or services by a national or enterprise in the territory of a Party to an enterprise in the territory of the other Party, or

(ii) the extension of credit in connection with a commercial transaction, such as trade financing, other than a loan covered by subparagraph (d); or

(j) any other claims to money, that do not involve the kinds of interests set out in subparagraphs (a) through (h).

investment of an investor of a Party means an investment owned or controlled directly or indirectly by an investor of such Party;

investor of a Party means a Party or state enterprise thereof, or a national or an enterprise of such Party, that seeks to make, is making or has made an investment;

investor of a non-Party means an investor other than an investor of a Party, that seeks to make, is making or has made an investment;

New York Convention means the United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards, done at New York, 10 June 1958;

Secretary-General means the Secretary-General of ICSID;

transfers means transfers and international payments;

Tribunal means an arbitration tribunal established under Article G-21 or G-27; and

UNCITRAL Arbitration Rules means the Arbitration Rules of the United Nations Commission on International Trade Law.

UNCITRAL Transparency Rules means the UNCITRAL Rules on Transparency in Treaty-based Investor-State Arbitration.

Annex G-04.2. Standard of treatment

1. Chile shall accord to an investor of Canada or an investment of such investor that is party to an investment contract pursuant to Decree Law 600 of 1974 ("Decreto Ley 600 de 1974"), the better of the treatment required under this Agreement or granted under the contract pursuant to the said Decree Law.

2. Chile shall permit an investor of Canada or an investment or such investor, referred to in paragraph 1, to amend the investment contract in order to reflect the rights and obligations of this Agreement.

Annex G-05. Customary international law

The Parties confirm their shared understanding that "customary international law" generally and as specifically referenced in Article G-05 results from a general and consistent practice of States that they follow from a sense of legal obligation. The customary international law minimum standard of treatment of aliens refers to all customary international law principles that protect the investments of aliens.

Annex G-09.1.

1. For the purpose of preserving the stability of its currency, Chile reserves the right:

(a) to maintain existing requirements that transfers from Chile of proceeds from the sale of all or any part of an investment of an investor of Canada or from the partial or complete liquidation of the investment may not take place until a period not to exceed:

(i) in the case of an investment made pursuant to Law 18.657 Foreign Capital Investment Fund Law ("Ley 18.657, Ley Sobre Fondo de Inversiones de Capitales Extranjeros"), five years has elapsed from the date of transfer to Chile, or

(ii) subject to subparagraph (c)(iii), in all other cases, one year has elapsed from the date of transfer to Chile;

(b) to apply a reserve requirement pursuant to Article 49 No. 2 of Law 18.840, Organic Law of the Central Bank of Chile, ("Ley 18.840, Ley Orgánica del Banco Central de Chile") on an investment of an investor of Canada, other than foreign direct investment, and on foreign credits relating to an investment, provided that such a reserve requirement shall not exceed 30 per cent of the amount of the investment, or the credit, as the case may be;

(c) to adopt:

(i) measures imposing a reserve requirement referred to in subparagraph (b) for a period which shall not exceed two years from the date of transfer to Chile,

(ii) any reasonable measure consistent with paragraph 3 necessary to implement or to avoid circumvention of the measures under subparagraphs (a) or (b), and

(iii) measures, consistent with Article G-09 and this Annex, establishing future special voluntary investment programs in addition to the general regime for foreign investment in Chile, except that any such measures may restrict transfers from Chile of proceeds from the sale of all or any part of an investment of an investor of Canada or from the partial or complete liquidation of the investment for a period not to exceed 5 years from the date of transfer to Chile; and

(d) to apply, pursuant to the Law 18.840, measures with respect to transfers relating to an investment of an investor of Canada that:

(i) require that foreign exchange transactions for such transfers take place in the Formal Exchange Market,

(ii) require authorization for access to the Formal Exchange Market to purchase foreign currency, at the rate agreed upon by the parties to the transaction, which access shall be granted without delay when such transfers are:

(A) payments for current international transactions,

(B) proceeds from the sale of all or any part, and from the partial or complete liquidation of an investment of an investor of Canada, or

(C) payments pursuant to a loan provided they are made in accordance with the maturity dates originally agreed upon in the loan agreement, and

(iii) require that foreign currency be converted into Chilean pesos, at the rate agreed upon by the parties to the transaction, except for transfers referred to in sub-subparagraphs (ii) (A) through (C) which are exempt from this requirement.

2. Where Chile proposes to adopt a measure referred to in paragraph 1(c), Chile shall, to the extent practicable:

(a) provide in advance to Canada the reasons for the proposed adoption of the measure as well as any relevant information in relation to the measure; and

(b) provide Canada with a reasonable opportunity to comment on the proposed measure.

3. A measure that is consistent with this Annex but inconsistent with Article G-02, shall be deemed not to contravene Article G-02 provided that, as required under existing Chilean law, it does not discriminate among investors that enter into transactions of the same nature.

4. This Annex applies to Law 18.840, to the Decree Law 600 of 1974 ("Decreto Ley 600 de 1974"), to Law 18.657 and any other law establishing a future special voluntary investment program consistent with sub-paragraph 1(c)(iii) and to the continuation or prompt renewal of such laws, and to amendments to those laws, to the extent that any such amendment does not decrease the conformity of the amended law with Article G-09(1) as it existed immediately before the amendment.

5. For the purposes of this Annex:

Chilean juridical person means an enterprise that is constituted or organized in Chile for profit in a form which under Chilean law is recognized as being a juridical person;

date of transfer means the settlement date when the funds that constitute the investment were converted into Chilean pesos, or the date of the importation of the equipment and technology;

existing means in effect on 22 October 1996;

foreign credit means any type of debt financing originating in foreign markets whatever its nature, form or maturity period;

foreign direct investment means an investment of an investor of Canada, other than a foreign credit, made in order:

(a) to establish a Chilean juridical person or to increase the capital of an existing Chilean juridical person with the purpose of producing an additional flow of goods or services, excluding purely financial flows; or

(b) to acquire equity of an existing Chilean juridical person and to participate in its management, but excludes such an investment that is of a purely financial character and that is designed only to gain indirect access to the financial market of Chile;

Formal Exchange Market means the market constituted by the banking entities and other institutions authorized by the competent authority; and

payments for current international transactions means "payments for current international transactions" as defined under the Articles of Agreement of the International Monetary Fund, and for greater certainty, does not include payments of principal pursuant to a loan which are not made in accordance with the maturity dates originally agreed upon in the loan agreement.

Annex G-10. Expropriation

1. The concept of a "measure tantamount to nationalization or expropriation" in paragraph 1 of Article G-10 can also be termed "indirect expropriation". Indirect expropriation results from a measure or series of measures of a Party that has an effect equivalent to direct expropriation without formal transfer of title or outright seizure.

2. The determination of whether a measure or series of measures of a Party constitutes an indirect expropriation requires a case-by-case, fact-based inquiry that considers, among other factors:

(a) the economic impact of the measure or series of measures, although the sole fact that a measure or series of measures of a Party has an adverse effect on the economic value of an investment does not establish that an indirect expropriation has occurred;

(b) the extent to which the measure or series of measures interferes with distinct, reasonable investment-backed expectations; and

(c) the character of the measure or series of measures.

3. Except in rare circumstances, such as when a measure or series of measures is so severe in the light of its purpose that it cannot be reasonably viewed as having been adopted and applied in good faith, non-discriminatory measures of a Party that are designed and applied to protect legitimate public welfare objectives, such as health, safety and the environment, do not constitute indirect expropriations.

Annex G-21.1. Submission of a claim to arbitration

Chile

1. With respect to the submission of a claim to arbitration:

(a) an investor of Canada may not allege that Chile has breached an obligation under:

(i) Section I or Article J-03(2) (State Enterprises), or

(ii) Article J-02(3)(a) (Monopolies and State Enterprises) where the monopoly has acted in a manner inconsistent with Chile's obligations under Section I,

both in an arbitration under Section II and in proceedings before a Chilean court or administrative tribunal; and

(b) where an enterprise of Chile that is a juridical person that an investor of Canada owns or controls directly or indirectly alleges in proceedings before a Chilean court or administrative tribunal that Chile has breached an obligation under:

(i) Section I or Article J-03(2) (State Enterprises), or

(ii) Article J-02(3)(a) (Monopolies and State Enterprises) where the monopoly has acted in a manner inconsistent with Chile's

obligations under Section I,

the investor may not allege the breach in an arbitration under Section II.

2. For greater certainty, if an investor of Canada or an enterprise of Chile that is a juridical person that an investor of Canada owns or controls directly or indirectly makes an allegation referred to in paragraph 1(a) or (b) before a Chilean court or administrative tribunal, the selection of the Chilean court or administrative tribunal shall be final and such investor or enterprise may not thereafter allege the breach in an arbitration under Section II.

Annex G-38.2. Service of documents on a party under section ii

1. The place for delivery of a request for consultations and other documents under this Section is:

(a) for Canada,

Office of the Deputy Attorney General of Canada

Justice Building

284 Wellington Street

Ottawa, Ontario

K1A 0H8,

or any successor designated by Canada; and

(b) for Chile,

Departamento Jurídico de la Dirección General de Relaciones Económicas

Internacionales. Ministerio de Relaciones Exteriores

Teatinos 180

Santiago, Chile,

or any successor designated by Chile.

2. A Party shall promptly make publicly available and notify the other Party by diplomatic note of any change to the place for delivery referred to above. Investors shall ensure that service of documents to a Party is made to the appropriate place.

Annex G-38.4. Publication of an award

Canada

When Canada is the disputing Party, either Canada or a disputing investor that is a party to the arbitration may make an award public.

Chile

When Chile is the disputing Party, either Chile or a disputing investor that is a party to arbitration may make an award public.

Annex G-39.2. Exclusions from dispute settlement

Canada

A decision by Canada following a review under the Investment Canada Act (R.S.C. 1985, c.28 (1st Supp.)), with respect to whether or not to permit an investment that is subject to review, shall not be subject to the dispute settlement provisions of Section II or of Chapter N (Institutional Arrangements and Dispute Settlement Procedures).

Chapter H. Cross-border Trade In Services

Article H-01. Scope and Coverage

1. This Chapter applies to measures adopted or maintained by a Party relating to crossborder trade in services by service providers of the other Party, including measures respecting:

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

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

(c) the access to and use of distribution and transportation systems in connection with the provision of a service;

(d) the presence in its territory of a service provider of the other Party; and

(e) the provision of a bond or other form of financial security as a condition for the provision of a service.

2. This Chapter does not apply to:

(a) cross-border trade in financial services;

(b) air services, including domestic and international air transportation services, whether scheduled or non-scheduled, and related services in support of air services, other than

(i) aircraft repair and maintenance services during which an aircraft is withdrawn from service, and

(ii) specialty air services;

(c) procurement by a Party or a state enterprise; or

(d) subsidies or grants provided by a Party or a state enterprise, including government-supported loans, guarantees and insurance. 3. Nothing in this Chapter shall be construed to:

(a) impose any obligation on a Party with respect to a national of the other Party seeking access to its employment market, or employed on a permanent basis in its territory, or to confer any right on that national with respect to that access or employment; or

(b) prevent a Party from providing a service or performing a function such as law enforcement, correctional services, income security or insurance, social security or insurance, social welfare, public education, public training, health, and child care, in a manner that is not inconsistent with this Chapter.

Article H-02. National Treatment

1. Each Party shall accord to service providers of the other Party treatment no less favourable than that it accords, in like circumstances, to its own service providers.

2. The treatment accorded by a Party under paragraph 1 means, with respect to a province, treatment no less favourable than the most favourable treatment accorded, in like circumstances, by that province to service providers of the Party of which it forms a part.

Article H-03. Most-favoured-nation Treatment

Each Party shall accord to service providers of the other Party treatment no less favourable than that it accords, in like circumstances, to service providers of any non-Party.

Article H-04. Standard of Treatment

Each Party shall accord to service providers of the other Party the better of the treatment required by Articles H-02 and H-03.

Article H-05. Local Presence

Neither Party may require a service provider of the other Party to establish or maintain a representative office or any form of enterprise, or to be resident, in its territory as a condition for the cross-border provision of a service.

Article H-06. Reservations

1. Articles H-02, H-03 and H-05 do not apply to:

(a) any existing non-conforming measure that is maintained by

(i) a Party at the national or provincial level, as set out in its Schedule to Annex I, or

(ii) a local government;

(b) the continuation or prompt renewal of any non-conforming measure referred to in subparagraph (a); or

(c) an amendment to any non-conforming measure referred to in subparagraph (a) to the extent that the amendment does not decrease the conformity of the measure, as it existed immediately before the amendment, with Articles H-02, H-03 and H 05.

2. Articles H-02, H-03 and H-05 do not apply to any measure that a Party adopts or maintains with respect to sectors, subsectors or activities, as set out in its Schedule to Annex II.

Article H-07. Quantitative Restrictions

1. Each Party shall set out in its Schedule to Annex IV any quantitative restriction that it maintains at the national or provincial level.

2. Each Party shall notify the other Party of any quantitative restriction that it adopts, other than at the local government level, after the date of entry into force of this Agreement and shall set out the restriction in its Schedule to Annex IV.

3. The Parties shall periodically, but in any event at least every two years endeavour to negotiate the liberalization or removal of the quantitative restrictions set out in Annex IV pursuant to paragraphs 1 and 2.

Article H-08. Liberalization of Non-discriminatory Measures

Each Party shall set out in its Schedule to Annex V its commitments to liberalize quantitative restrictions, licensing requirements, performance requirements or other nondiscriminatory measures.

Article H-09. Procedures

The Commission shall establish procedures for:

(a) a Party to notify and include in its relevant Schedule (i) quantitative restrictions in accordance with Article H-07(2), (ii) commitments pursuant to Article H-08, and (iii) amendments of measures referred to in Article H-06(1)(c); and

(b) consultations on reservations, quantitative restrictions or commitments with a view to further liberalization.

Article H-10. Licensing and Certification

1. With a view to ensuring that any measure adopted or maintained by a Party relating to the licensing or certification of nationals of the other Party does not constitute an unnecessary barrier to trade, each Party shall endeavor to ensure that any such measure:

(a) is based on objective and transparent criteria, such as competence and the ability to provide a service;

(b) is not more burdensome than necessary to ensure the quality of a service; and

(c) does not constitute a disguised restriction on the cross-border provision of a service.

2. Where a Party recognizes, unilaterally or by agreement, education, experience, licences or certifications obtained in the territory of a non-Party:

(a) nothing in Article H-03 shall be construed to require the Party to accord such recognition to education, experience, licences or certifications obtained in the territory of the other Party; and

(b) the Party shall afford the other Party an adequate opportunity to demonstrate that education, experience, licences or certifications obtained in the other Party's territory should also be recognized or to conclude an agreement or arrangement of comparable effect.

3. Each Party shall, within two years of the date of entry into force of this Agreement, eliminate any citizenship or permanent residency requirement set out in its Schedule to Annex I that it maintains for the licensing or certification of professional service providers of the other Party. Where a Party does not comply with this obligation with respect to a particular sector, the other Party may, in the same sector and for such period as the non-complying Party maintains its requirement, solely have recourse to maintaining an equivalent requirement set out in its Schedule to Annex I or reinstating:

(a) any such requirement at the national level that it eliminated pursuant to this Article; or

(b) on notification to the non-complying Party, any such requirement at the provincial level existing on the date of entry into force of this Agreement.

4. The Parties shall consult periodically with a view to determining the feasibility of removing any remaining citizenship or permanent residency requirement for the licensing or certification of each other's service providers.

5. Annex H-10.5 applies to measures adopted or maintained by a Party relating to the licensing or certification of professional service providers.

Article H-11. Denial of Benefits

1. A Party may deny the benefits of this Chapter to a service provider of the other Party where the Party establishes that:

(a) the service is being provided by an enterprise owned or controlled by nationals of a non- Party, and the denying Party adopts or maintains measures with respect to the non-Party that prohibit transactions with the enterprise or that would be violated or circumvented if the benefits of this Chapter were accorded to the enterprise; or

(b) the cross-border provision of a transportation service covered by this Chapter is provided using equipment not registered by a Party.

2. Subject to prior notification and consultation in accordance with Articles L-03 (Notification and Provision of Information) and N-06 (Consultations), a Party may deny the benefits of this Chapter to a service provider of the other Party where the Party establishes that the service is being provided by an enterprise that is owned or controlled by persons of a non-Party and that has no substantial business activities in the territory of the other Party.

Article H-12. Definitions

1. For purposes of this Chapter, a reference to a national or provincial government includes any non-governmental body in the exercise of any regulatory, administrative or other governmental authority delegated to it by that government.

2. For purposes of this Chapter:

cross-border provision of a service or **cross-border trade in services** means the provision of a service:

(a) from the territory of a Party into the territory of the other Party;

(b) in the territory of a Party by a person of that Party to a person of the other Party; or

(c) by a national of a Party in the territory of the other Party, but does not include the provision of a service in the territory of a Party by an investment, as defined in Article G-40 (Investment - Definitions), in that territory;

enterprise means an "enterprise" as defined in Article B-01 (Definitions of General Application), and a branch of an enterprise;

enterprise of a Party means an enterprise constituted or organized under the law of a Party, and a branch located in the territory of a Party and carrying out business activities there;

existing means in effect on January 1, 1994 for Canada and December 29, 1995 for Chile;

financial service means a service of a financial nature, including insurance, and services incidental or auxiliary to a service of a financial nature;

professional services means services, the provision of which requires specialized postsecondary education, or equivalent training or experience, and for which the right to practice is granted or restricted by a Party, but does not include services provided by trades-persons or vessel and aircraft crew members;

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

(a) the number of service providers, whether in the form of a quota, a monopoly or an economic needs test, or by any other quantitative means; or

(b) the operations of any service provider, whether in the form of a quota or an economic needs test, or by any other quantitative means; service provider of a Party means a person of a Party that seeks to provide or provides a service; and

specialty air services means aerial mapping, aerial surveying, aerial photography, forest fire management, fire fighting, aerial advertising, glider towing, parachute jumping, aerial construction, heli-logging, aerial sightseeing, flight training, aerial inspection and surveillance, and aerial spraying services.

Annex H-10.5. Professional services

Section I. General Provisions

Processing of applications for licences and certifications

1. Each Party shall ensure that its competent authorities, within a reasonable time after the submission by a national of the other Party of an application for a licence or certification:

(a) where the application is complete, make a determination on the application and inform the applicant of that determination; or

(b) where the application is not complete, inform the applicant without undue delay of the status of the application and the additional information that is required under the Party's law.

Development of Professional Standards

1. The Parties shall encourage the relevant bodies in their respective territories to develop mutually acceptable standards and criteria for licensing and certification of professional service providers and to provide recommendations on mutual recognition to the Commission.
2. The standards and criteria referred to in paragraph 2 may be developed with regard to the following matters:(a) education - accreditation of schools or academic programs;(b) examinations - qualifying examinations for licensing, including alternative methods of assessment such as oral examinations and interviews;(c) experience - length and nature of experience required for licensing;(d) conduct and ethics - standards of professional conduct and the nature of disciplinary action for non-conformity with those standards;(e) professional development and re-certification - continuing education and ongoing requirements to maintain professional certification;(f) scope of practice - extent of, or limitations on, permissible activities;(g) local knowledge - requirements for knowledge of such matters as local laws, regulations, language, geography or climate; and(h) consumer protection - alternatives to residency requirements, including bonding, professional liability insurance and client restitution funds, to provide for the protection of consumers.
3. On receipt of a recommendation referred to in paragraph 2, the Commission shall review the recommendation within a reasonable time to determine whether it is consistent with this Agreement. Based on the Commission's review, each Party shall encourage its respective competent authorities, where appropriate, to implement the recommendation within a mutually agreed time.

Temporary Licensing

1. Where the Parties agree, each Party shall encourage the relevant bodies in its territory to develop procedures for the temporary licensing of professional service providers of the other Party.

Review

1. The Commission shall periodically, and at least once every three years, review the implementation of this Section.

Section II. Foreign Legal Consultants

1. Each Party shall, in implementing its obligations and commitments regarding foreign legal consultants as set out in its relevant Schedules and subject to any reservations therein, ensure that a national of the other Party is permitted to practice or advise on the law of any country in which that national is authorized to practice as a lawyer.

Consultations With Professional Bodies

1. Each Party shall consult with its relevant professional bodies to obtain their recommendations on:(a) the form of

association or partnership between lawyers authorized to practice in its territory and foreign legal consultants;(b) the development of standards and criteria for the authorization of foreign legal consultants in conformity with Article H-10; and(c) other matters relating to the provision of foreign legal consultancy services.

2. Prior to initiation of consultations under paragraph 7, each Party shall encourage its relevant professional bodies to consult with the relevant professional bodies designated by the other Party regarding the development of joint recommendations on the matters referred to in paragraph 2.

Future Liberalization

1. Each Party shall establish a work program to develop common procedures throughout its territory for the authorization of foreign legal consultants.
2. Each Party shall promptly review any recommendation referred to in paragraphs 2 and 3 to ensure its consistency with this Agreement. If the recommendation is consistent with this Agreement, each Party shall encourage its competent authorities to implement the recommendation within one year.

1. Each Party shall report to the Commission within one year of the date of entry into force of this Agreement, and each year thereafter, on its progress in implementing the work program referred to in paragraph 4.
2. The Parties shall meet within one year of the date of entry into force of this Agreement with a view to:(a) assessing the implementation of paragraphs 2 through 5;(b) amending or removing, where appropriate, reservations on foreign legal consultancy services; and(c) assessing further work that may be appropriate regarding foreign legal consultancy services.

Section III. Temporary Licensing of Engineers

1. The Parties shall meet within one year of the date of entry into force of this Agreement to establish a work program to be undertaken by each Party, in conjunction with its relevant professional bodies, to provide for the temporary licensing in its territory of nationals of the other Party who are licenced as engineers in the territory of the other Party.

2. To this end, each Party shall consult with its relevant professional bodies to obtain their recommendations on:

(a) the development of procedures for the temporary licensing of such engineers to permit them to practice their engineering specialties in each jurisdiction in its territory;

(b) the development of model procedures for adoption by the competent authorities throughout its territory to facilitate the temporary licensing of such engineers;

(c) the engineering specialties to which priority should be given in developing temporary licensing procedures; and

(d) other matters relating to the temporary licensing of engineers identified by the Party in such consultations.

3. Each Party shall request its relevant professional bodies to make recommendations on the matters referred to in paragraph 2 within two years of the date of entry into force of this Agreement.

4. Each Party shall encourage its relevant professional bodies to meet at the earliest opportunity with the relevant professional bodies of the other Party with a view to cooperating in the development of joint recommendations on the matters referred to in paragraph 2 within two years of the date of entry into force of this Agreement. Each Party shall request an annual report from its relevant professional bodies on the progress achieved in developing those recommendations.

5. The Parties shall promptly review any recommendation referred to in paragraph 3 or 4 to ensure its consistency with this Agreement. If the recommendation is consistent with this Agreement, each Party shall encourage its competent authorities to implement the recommendation within one year.

6. The Commission shall review the implementation of this Section within two years of the date of entry into force of this Section.

Chapter H bis. Financial Services

Article Hbis-01. Scope and Coverage

1. This Chapter applies to measures adopted or maintained by a Party relating to:

1. a. financial institutions of the other Party;

2. b. investors of the other Party, and investments of such investors, in financial institutions in the Party's territory; and
3. c. cross-border trade in financial services.

2. Articles G-09 (Investment – Transfers), G-10 (Investment – Expropriation and Compensation), G-11 (Investment – Special Formalities and Information Requirements), G-13 (Investment – Denial of Benefits), G-14 (Investment – Environmental Measures) and H-11 (Cross-Border Trade in Services – Denial of Benefits), including any Annex relevant to their interpretation and application, are hereby incorporated into and made a part of this Chapter. Section II of Chapter G (Investment) is hereby incorporated into and made a part of this Chapter solely for breaches by a Party of Articles G-09 (Investment –Transfers), G-10 (Investment – Expropriation and Compensation), G 11 (Investment – Special Formalities and Information Requirements) and G-13 (Investment – Denial of Benefits) as incorporated into this Chapter. No other provision of Chapter G (Investment) or H (Cross – Border Trade in Services) shall apply to a measure described in paragraph 1.

3. Nothing in this Chapter shall be construed to prevent a Party, including its public entities, from exclusively conducting or providing in its territory:

1. a. activities or services forming part of a public retirement plan or statutory system of social security; or
2. b. activities or services for the account or with the guarantee or using the financial resources of the Party, including its public entities.

Article Hbis-02. National Treatment

1. Each Party shall accord to investors of the other Party treatment no less favourable than that it accords to its own investors, in like circumstances, with respect to the establishment, acquisition, expansion, management, conduct, operation, and sale or other disposition of financial institutions and investments in financial institutions in its territory.

2. Each Party shall accord to financial institutions of the other Party and to investments of investors of the other Party in financial institutions treatment no less favourable than that it accords to its own financial institutions and to investments of its own investors in financial institutions, in like circumstances, with respect to the establishment, acquisition, expansion, management, conduct, operation, and sale or other disposition of financial institutions and investments.

3. For purposes of the national treatment obligations in Article H bis-05(1), a Party shall accord to cross-border financial service suppliers of the other Party treatment no less favourable than that it accords to its own financial service suppliers, in like circumstances, with respect to the supply of the relevant service.

4. The treatment that a Party is required to accord under paragraphs 1, 2 and 3 means, with respect to measures adopted or maintained by a government of a Province, treatment no less favourable than the most favourable treatment accorded, in like circumstances, by that subnational government to investors in financial institutions, financial institutions, investments of investors in financial institutions and financial service suppliers of the Party of which it forms a part.

5. Differences in market share, profitability or size do not in themselves establish a breach of any of the obligations under this Article.

Article Hbis-03. Most-favoured-nation Treatment

1. Each Party shall accord to investors of the other Party, financial institutions of the other Party, investments of investors of the other Party in financial institutions and cross border financial service suppliers of the other Party treatment no less favourable than that it accords to the investors, financial institutions, investments of investors in financial institutions and cross-border financial service suppliers of a non-Party, in like circumstances.

2. A Party may recognize prudential measures of a non-Party in the application of measures covered by this Chapter. Such recognition may be:

a. accorded unilaterally;

b. achieved through harmonization or other means; or

c. based upon an agreement or arrangement with the non-Party.

3. A Party according recognition of prudential measures under paragraph 2 shall provide adequate opportunity to the other Party to demonstrate that circumstances exist in which there are or will be equivalent regulation, oversight, implementation of regulation, and, if appropriate, procedures concerning the sharing of information between the Parties.

4. Where a Party accords recognition of prudential measures under paragraph 2(c) and the circumstances set out in

paragraph 3 exist, the Party shall provide adequate opportunity to the other Party to negotiate accession to the agreement or arrangement or to negotiate a comparable agreement or arrangement.

Article Hbis-04. Right of Establishment

1. A Party shall permit an investor of the other Party that does not own or control a financial institution in the Party's territory to establish a financial institution permitted to supply financial services that such an institution may supply under the domestic law of the Party at the time of establishment, without the imposition of numerical restrictions or requirements to take a specific juridical form. The obligation not to impose requirements to take a specific juridical form does not prevent a Party from imposing conditions or requirements in connection with the establishment of a particular type of entity chosen by an investor of the other Party.

2. A Party shall permit an investor of the other Party that owns or controls a financial institution in the Party's territory to establish such additional financial institutions as may be necessary for the supply of the full range of financial services allowed under the domestic law of the Party at the time of establishment of the additional financial institutions. Subject to Article H bis-02, a Party may impose terms and conditions on the establishment of additional financial institutions and determine the institutional and juridical form that shall be used for the supply of specified financial services or the carrying out of specified activities.

3. The right of establishment under paragraphs 1 and 2 shall include the acquisition of entities which already exist.

4. Subject to Article H bis-02, a Party may prohibit a particular financial service or activity. Such a prohibition may not apply to all financial services or to a complete financial services sub-sector such as banking.

5. For the purposes of this Article:

a. investor of the other Party means an investor of the other Party engaged in the business of providing financial services in the territory of that Party; and

b. numerical restrictions means limitations imposed, either on the basis of a regional subdivision or on the basis of the entire territory of a Party, on the number of financial institutions whether in the form of numerical quotas, monopolies, exclusive service suppliers or the requirements of an economic needs test.

Article Hbis-05. Cross-border Trade

1. Each Party shall permit, under terms and conditions that accord national treatment, cross-border financial service suppliers of the other Party to supply the financial services specified in Annex H bis-05.

2. Each Party shall permit persons located in its territory, and its nationals wherever located, to purchase financial services from cross-border financial service suppliers of the other Party located in the territory of the other Party. This obligation does not require a Party to permit such suppliers to do business or solicit in its territory. Subject to paragraph 1, each Party may define "doing business" and "solicitation" for purposes of this obligation.

3. Without prejudice to other means of prudential regulation of cross-border trade in financial services, a Party may require the registration of cross-border financial service suppliers of the other Party and of financial instruments.

Article Hbis-06. New Financial Services

1. Each Party shall permit a financial institution of the other Party, on request or notification to the relevant regulator, where required, to supply any new financial service that the first Party would permit its own financial institutions, in like circumstances, to supply under its domestic law, provided that the introduction of the financial service does not require the Party to adopt a new statute or modify an existing one.

2. A Party may determine the institutional and juridical form through which the new financial service may be supplied and may require authorization for the supply of the service. Where such authorization is required, the decision shall be made within a reasonable time and authorization may only be refused for prudential reasons.

3. Nothing in this Article shall be construed to prevent a financial institution of a Party from applying to the other Party to consider authorizing the supply of a financial service that is not supplied within either Party's territory. Such application shall be subject to the domestic law of the Party to which the application is made and shall not be subject to the obligations of this Article.

Article Hbis-07. Treatment of Certain Information

Nothing in this Chapter requires a Party to furnish or allow access to:

a. information related to the financial affairs and accounts of individual customers of financial institutions or cross-border financial service suppliers; or

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

Article Hbis-08. Senior Management and Boards of Directors

1. A Party may not require financial institutions of the other Party to engage individuals of any particular nationality as senior managerial or other essential personnel.

2. A Party may not require that more than a simple majority of the board of directors of a financial institution of the other Party be composed of nationals of the Party, persons residing in the territory of the Party, or a combination thereof.

Article Hbis-09. Non-conforming Measures and Certain Specific Commitments

1. Articles H bis-02, H bis-03 and H bis-08 do not apply to:

a. any existing non-conforming measure that is maintained by:

i. a Party at the national level, as set out in Section I of its Schedule to Annex VI, or

ii. a province or local government;

b. the continuation or prompt renewal of any non-conforming measure referred to in subparagraph (a); or

c. an amendment to any non-conforming measure referred to in subparagraph (a) to the extent that the amendment does not decrease the conformity of the measure, as it existed immediately before the amendment, with

2. Articles H bis-04 and H bis-05 do not apply to:

a. any existing non-conforming measure that is maintained by:

i. a Party at the national level, as set out in Section I of its Schedule to Annex VI, or

ii. a province or local government;

b. the continuation or prompt renewal of any non-conforming measure referred to in subparagraph (a); or

c. an amendment to any non-conforming measure referred to in subparagraph (a) to the extent that the amendment does not decrease the conformity of the measure, as it existed upon the entry into force of the Amending Agreement, with Articles H bis-04 and H bis-05.

3. Articles H bis-02, H bis-03, H bis-04, H bis-05 and H bis-08 do not apply to any non-conforming measure that a Party adopts or maintains in accordance with Section II of its Schedule to Annex VI.

4. Where a Party has set out a reservation to Article G-02 (Investment – National Treatment), G-03 (Investment – Most Favoured Nation Treatment), H-02 (Cross-Border Trade in Services – National Treatment) or H-03 (Cross-Border Trade in Services – Most Favoured-Nation-Treatment) in its Schedule to Annex I, II, or III, the reservation also constitutes a reservation to Article H bis-02 or H bis-03, as the case may be, to the extent that the measure, sector, subsector or activity set out in the reservation is covered by this Chapter.

5. Annex H bis-09 sets out certain specific commitments by each Party.

Article Hbis-10. Exceptions

1. Nothing in this Chapter or Chapters G (Investment), H (Cross-Border Trade in Services), I (Telecommunications), J (Competition Policy, Monopolies and State Enterprises) or K (Temporary Entry for Business Persons) of this Agreement shall be construed to prevent a Party from adopting or maintaining measures for prudential reasons, including for the protection of investors, depositors, policy holders, persons to whom a fiduciary duty is owed by a financial institution or cross-border

financial service supplier, or to ensure the integrity and stability of the financial system (1). Where such measures do not conform with the provisions of this Chapter or of Chapters G (Investment), H (Cross-Border Trade in Services), I (Telecommunications), J (Competition Policy, Monopolies and State Enterprises) or K (Temporary Entry for Business Persons) of this Agreement, they shall not be used as a means of avoiding the Party's obligations under such provisions (2).

2. Nothing in this Chapter or Chapters G (Investment), H (Cross-Border Trade in Services), I (Telecommunications), J (Competition Policy, Monopolies and State Enterprises) or K (Temporary Entry for Business Persons) of this Agreement applies to non-discriminatory measures of general application taken by any public entity in pursuit of monetary and related credit policies or exchange rate policies. This paragraph shall not affect a Party's obligations under Article G-06 (Investment – Performance Requirements) with respect to measures covered by Chapter G (Investment) or Article G-09 (Investment – Transfers).

3. Notwithstanding Article G-09 (Investment – Transfers), as incorporated into this Chapter, a Party may prevent or limit transfers by a financial institution or cross-border financial service supplier to, or for the benefit of, an affiliate of or person related to such institution or supplier, through the equitable, non-discriminatory and good faith application of measures relating to maintenance of the safety, soundness, integrity or financial responsibility of financial institutions or cross-border financial service suppliers. This paragraph does not prejudice any other provision of this Agreement that permits a Party to restrict transfers.

4. For greater certainty, nothing in this Chapter shall be construed to prevent the adoption or enforcement by a Party of measures necessary to secure compliance with laws or regulations that are not inconsistent with this Chapter, including those relating to the prevention of deceptive and fraudulent practices or to deal with the effects of a default on financial services contracts, subject to the requirement that such measures are not applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination between countries where like conditions prevail, or a disguised restriction on investment in financial institutions or cross-border trade in financial services as covered in this Chapter.

(1) The Parties understand that the term "prudential reasons" includes the maintenance of the safety, soundness, integrity, or financial responsibility of individual financial institutions or cross-border financial service suppliers.

(2) The Parties understand that a Party may take measures for prudential reasons through regulatory or administrative authorities, in addition to those who have regulatory responsibilities with respect to financial institutions, such as ministries or departments of labour.

Article Hbis-11. Transparency

1. The Parties recognize that transparent regulations and policies governing the activities of financial institutions and financial service suppliers, as well as the reasonable, objective, and impartial administration of such regulations and policies are important in facilitating both access of financial institutions and financial service suppliers to, and their operations in, each other's markets. Each Party commits to promoting regulatory transparency in financial services.

2. In lieu of Article L-02 (Publication, Notification and Administration of Laws – Publication) each Party shall, to the extent practicable:

1. a. publish in advance any regulations of general application relating to the subject matter of this Chapter that it proposes to adopt;
2. b. provide interested persons and the other Party a reasonable opportunity to comment on such proposed regulations; and
3. c. allow reasonable time between publication of final regulations and their effective date.

3. Each Party's regulatory authorities shall make available to interested persons their requirements, including any documentation required, for completing applications relating to the supply of financial services.

4. On the request of an applicant, a regulatory authority shall inform the applicant of the status of its application. If such authority requires additional information from the applicant, it shall notify the applicant without undue delay.

5. A regulatory authority shall make an administrative decision on a completed application of an investor in a financial institution, a financial institution or a cross-border financial service supplier of the other Party relating to the supply of a financial service within 120 days, and shall promptly notify the applicant of the decision. An application shall not be considered complete until all relevant hearings are held and all necessary information is received. Where it is not practicable for a decision to be made within 120 days, the regulatory authority shall notify the applicant without undue delay and shall

endeavour to make the decision within a reasonable time thereafter.

6. Each Party shall maintain or establish appropriate mechanisms that will, as soon as practicable, respond to inquiries from interested persons regarding measures of general application covered by this Chapter.

Article Hbis-12. Self-regulatory Organizations

Where a Party requires a financial institution or a cross-border financial service supplier of the other Party to be a member of, participate in or have access to a self regulatory organization to provide a financial service in or into the territory of that Party, the Party shall ensure observance of the obligations of this Chapter by such a self regulatory organization.

Article Hbis-13. Payment and Clearing Systems

Under terms and conditions that accord national treatment, each Party shall grant to financial institutions of the other Party established in its territory access to payment and clearing systems operated by public entities, or to payment and clearing systems operated by any entity pursuant to governmental authority delegated to it by a Party, as well as to official funding and refinancing facilities available in the normal course of ordinary business. This Article is not intended to confer access to the Party's lender of last resort facilities.

Article Hbis-14. State Enterprises

Each Party shall ensure, through regulatory control, administrative supervision or the application of other measures, that any state enterprise that it maintains or establishes, whenever such enterprise exercises any regulatory, administrative or other governmental authority that the Party has delegated to it, acts in a manner that is not inconsistent with the Party's obligations under this Chapter.

Article Hbis-15. Financial Services Committee

1. The Parties hereby establish the Financial Services Committee (the "Committee"). The principal representative of each Party shall be an official of the Party's authority responsible for financial services set out in Annex H bis-15.

2. In accordance with Article N-01(2)(d) (Institutional Arrangements and Dispute Settlement Procedures – the Free Trade Commission) the Committee shall:

1. a. supervise the implementation of this Chapter and its further elaboration;
2. b. consider issues regarding financial services that are referred to it by a Party; and
3. c. participate in the dispute settlement procedures in accordance with Article H bis-18.

3. The Committee shall meet annually, or as otherwise agreed, to assess the functioning of this Agreement as it applies to financial services. The Committee shall inform the Commission of the results of each meeting.

Article Hbis-16. Consultations

1. A Party may request in writing consultations with the other Party regarding any matter arising under this Agreement that affects financial services. The other Party shall give sympathetic consideration to the request. The Parties shall report the results of their consultations to the Committee.

2. Officials from the authorities specified in Annex H bis-15 shall participate in the consultations under this Article.

3. A Party may request that regulatory authorities of the other Party participate in consultations under this Article regarding that other Party's measures of general application which may affect the operations of financial institutions or cross-border financial service suppliers in the requesting Party's territory.

4. Nothing in this Article shall be construed to require regulatory authorities participating in consultations to disclose information or take any action that would interfere with specific regulatory, supervisory, administrative or enforcement matters.

5. Where a Party requires information for supervisory purposes concerning a financial institution in the other Party's territory or a cross-border financial service supplier in the other Party's territory, the Party may approach the competent regulatory authority in the other Party's territory to seek the information.

6.Nothing in this Article shall be construed to require a Party to derogate from its domestic law regarding the sharing of information among financial regulators or the requirements of an agreement or arrangement between financial authorities of the Parties.

Article Hbis-17. Dispute Settlement

1. Section II of Chapter N (Institutional Arrangements and Dispute Settlement Procedures), as modified by this Article, applies to the settlement of disputes arising under this Chapter.

2. Consultations held pursuant to Article H bis-16 with respect to a measure or matter constitute consultations under Article N-06 (Institutional Arrangements and Dispute Settlement Procedures – Consultations), unless the Parties otherwise agree. Upon initiation of consultations, the Parties shall provide information and give confidential treatment to the information exchanged in accordance with Article N-06(4)(b). If the matter has not been resolved within 45 days after commencing consultations under Article H bis-16 or 90 days after the delivery of the request for consultations under Article H bis-16, whichever is earlier, the complaining Party may request in writing the establishment of an arbitral panel.

3. The following procedures shall replace Article N-09 (Institutional Arrangements and Dispute Settlement Procedures – Panel Selection):

a. the panel shall be composed of three members;

b. each Party shall, within 30 days of the delivery of the request for the establishment of the panel, appoint a panelist who may be a national of that Party and notify the other Party in writing of the appointment. If a Party fails to appoint a panelist within 30 days, the other Party may request the Appointing Authority to appoint, in the discretion of the Appointing Authority, and subject to paragraph 4, the panelist not yet appointed;

c. the Parties shall endeavour to agree on the appointment of the third panelist who shall chair the panel and, unless the Parties agree otherwise, shall not be a national of either Party. If the chair of the panel has not been appointed within 30 days of the most recent appointment under subparagraph (b), either Party may request the Appointing Authority to appoint, in the discretion of the Appointing Authority, and subject to paragraph 4, the chair of the panel, who shall not be a national of either Party; and

d. subparagraphs (b) and (c) shall apply mutatis mutandis where a panelist or the chair of the panel withdraws, is removed or becomes unable to serve on the panel. In such a case, any time period applicable to the panel proceeding shall be suspended for a period beginning on the date the panelist ceases to serve and ending on the date the replacement is appointed.

4. Each panelist on panels constituted for disputes arising under this Chapter shall have the qualifications required by Article N-10 (Institutional Arrangements and Dispute Settlement Procedures – Qualifications of Panelists). In addition, each panelist shall have expertise or experience in financial services law or practice, which may include the regulation of financial institutions.

5. In any dispute where a panel finds a measure to be inconsistent with the obligations of this Agreement and the measure affects:

a. only the financial services sector, the complaining Party may suspend benefits only in the financial services sector;

b. the financial services sector and any other sector, the complaining Party may suspend benefits in the financial services sector that have an effect equivalent to the effect of the measures in the Party's financial services sector; or

c. only a sector other than the financial services sector, the complaining Party may not suspend benefits in the financial services sector.

Article Hbis-18. Investment Disputes In Financial Services

1. Where an investor of a Party submits a claim under Article G-17 (Investment – Claim by an Investor of a Party on Its Own Behalf) or G-18 (Investment – Claim by an Investor of a Party on Behalf of an Enterprise) to arbitration under Section II of Chapter G (Investment) and the respondent Party invokes Article H bis-10, on request of the respondent Party the Tribunal shall refer the matter in writing to the Committee for a decision. The Tribunal may not proceed pending receipt of a decision or report under this Article.

2. In a referral pursuant to paragraph 1, the Committee shall decide the issue of whether and to what extent Article H bis-10 is a valid defence to the claim of the investor. The Committee shall transmit a copy of its decision to the Tribunal and to the

Commission. The decision shall be binding on the Tribunal.

3. Where the Committee has not decided the issue within 60 days of the receipt of the referral under paragraph 1, either Party may request the establishment of an arbitral panel under Article N-08 (Institutional Arrangements and Dispute Settlement Procedures – Request for an Arbitral Panel) to decide the issue. The panel shall be constituted in accordance with Article H bis-17. Further to Article N-15 (Institutional Arrangements and Dispute Settlement Procedures – Final Report), the panel shall transmit its final report to the Committee and to the Tribunal. The report shall be binding on the Tribunal.

4. Where no request for the establishment of a panel pursuant to paragraph 3 has been made within 10 days of the expiration of the 60 day period referred to in paragraph 3, the Tribunal may proceed to decide the matter.

Article Hbis-19. Definitions

For purposes of this Chapter:

Amending Agreement means the Agreement to Amend the Free Trade Agreement between the Government of Canada and the Government of the Republic of Chile, done at Santiago on 5 December 1996, as amended, between the Government of Canada and the Government of the Republic of Chile;

Appointing Authority means the President, the Vice-President or next senior Judge of the International Court of Justice, who is not a national of either Party;

cross-border financial service supplier of a Party means a person of a Party that is engaged in the business of supplying a financial service within the territory of the Party and that seeks to supply or supplies a financial service through the cross-border supply of such services;

cross-border trade in financial services or **cross-border supply of financial services** means the supply of a financial service:

1. from the territory of one Party into the territory of the other Party;
2. in the territory of a Party by a person of that Party to a person of the other Party; or
3. by a national of a Party in the territory of the other Party;

but does not include the supply of a service in the territory of a Party by an investment in that territory;

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

financial institution means any financial intermediary or other enterprise that is authorized to do business and regulated or supervised as a financial institution under the law of the Party in whose territory it is located;financial institution of the other Party means a financial institution, including a branch, located in the territory of a Party that is controlled by persons of the other Party;

financial service means any service of a financial nature. Financial services include all insurance and insurance-related services, and all banking and other financial services (excluding insurance), as well as services incidental or auxiliary to a service of a financial nature. Financial services include the following activities:

Insurance and insurance-related services

1. Direct insurance (including co-insurance)

Life

Non-Life

2. Reinsurance and retrocession;

3. Insurance intermediation, such as brokerage and agency;

4. Services auxiliary to insurance, such as consultancy, actuarial, risk assessment, and claim settlement services.

Banking and other financial services (excluding insurance)

5. Acceptance of deposits and other repayable funds from the public;

6. Lending of all types, including consumer credit, mortgage credit, factoring and financing of commercial transactions;

7. Financial leasing;

8. All payment and money transmission services, including credit, charge and debit cards, travelers checks, and bankers drafts;

9. Guarantees and commitments;

10. Trading for own account or for account of customers, whether on an exchange, in an over-the-counter market, or otherwise, the following:

a. money market instruments (including checks, bills, certificates of deposits),

b. foreign exchange,

c. derivative products including, futures and options,

d. exchange rate and interest rate instruments, including products such as swaps, forward rate agreements,

e. transferable securities, or

f. other negotiable instruments and financial assets, including bullion;

11. Participation in issues of all kinds of securities, including underwriting and placement as agent (whether publicly or privately) and provision of services related to such issues;

12. Money broking;

13. Asset management, such as cash or portfolio management, all forms of collective investment management, pension fund management, custodial, depository, and trust services;

14. Settlement and clearing services for financial assets, including securities, derivative products, and other negotiable instruments;

15. Provision and transfer of financial information, and financial data processing and related software by suppliers of other financial services;

16. Advisory, intermediation, and other auxiliary financial services on all the activities listed in subparagraphs (e) through (o), including credit reference and analysis, investment and portfolio research and advice, advice on acquisitions and on corporate restructuring and strategy;

financial service supplier of a Party means a person of a Party that is engaged in the business of supplying a financial service within the territory of that Party;

investment means "investment" as defined in Article G-40 (Investment – Definitions), except that, with respect to "loans" and "debt securities" referred to in that Article:

1. a loan to or debt security issued by a financial institution is an investment only where it is treated as regulatory capital by the Party in whose territory the financial institution is located; and
2. a loan granted by or debt security owned by a financial institution, other than a loan to or debt security of a financial institution referred to in subparagraph (a), is not an investment;

for greater certainty a loan to, or debt security issued by, a Party or a state enterprise thereof is not an investment; and a loan granted by or debt security owned by a cross border financial service supplier, other than a loan to or debt security issued by a financial institution, is an investment if such loan or debt security meets the criteria for investments set out in Article G-40 (Investment – Definitions);

investor of a Party means a Party or state enterprise thereof, or a person of that Party, that seeks to make, is making, or has made an investment;

new financial service means a financial service not supplied in the Party's territory that is supplied within the territory of the other Party, and includes any new form of delivery of a financial service or the sale of a financial product that is not sold in the Party's territory;

person of a Party means "person of a Party" as defined in Article B-01 (Definitions of General Application) and, for greater certainty, does not include a branch of an enterprise of a non-Party;

public entity means a central bank or monetary authority of a Party, or any financial institution owned or controlled by a Party; and

self-regulatory organization means any non-governmental body, including any securities or futures exchange or market, clearing agency, other organization or association, that exercises its own or delegated regulatory or supervisory authority over financial service suppliers or financial institutions.

Annex H-bis 05. Cross-border trade

Canada

Insurance and Insurance-Related Services

1. Article H bis-05(1) applies to cross-border trade in financial services with respect to:

a. insurance of risks relating to:

i. maritime transport, commercial aviation and space launching and freight (including satellites), with such insurance to cover any or all of the following: the goods being transported, the vehicle transporting the goods, and any liability deriving therefrom, and

ii. goods in international transit; and

iii. reinsurance and retrocession, services auxiliary to insurance as described in subparagraph (d) of the definition of financial service, and insurance intermediation such as brokerage and agency as described in subparagraph (c) of the definition of financial service.

2. Paragraph 1 applies only where a Chilean entity is not in itself or through an agent insuring in Canada a risk.

Banking and Other Financial Services (excluding insurance)

3. Article H bis-05(1) applies to cross-border trade in financial services with respect to:

a. the provision and transfer of financial information and financial data processing as described in subparagraph (o) of the definition of financial service; (3) and

b. advisory and other auxiliary financial services, and credit reference and analysis, excluding intermediation, relating to banking and other financial services as described in subparagraph (p) of the definition of financial service.

4. Paragraph 3 applies only if neither the foreign bank nor one of its affiliates, if subject to the Bank Act, S.C. 1991, c. 46, maintains a financial establishment in Canada.

Chile

Insurance and insurance-related services

1. Article H bis-05 applies to cross-border trade in financial services with respect to:

a. insurance of risk relating to:

i. international maritime transport and international commercial aviation, with such insurance to cover any or all of the following: the goods being transported, the vehicle transporting the goods, and any liability deriving therefrom, and

ii. goods in international transit;

b. brokerage of insurance of risks relating to subparagraphs (a)(i) and (a)(ii); and

c. reinsurance and retrocession; reinsurance brokerage; and consultancy, actuarial, and risk assessment.

Banking and other financial services (excluding insurance)

2. Article H bis-05 applies to cross-border trade in financial services with respect to:

a. provision and transfer of financial information as described in subparagraph (o) of the definition of financial service;

b. financial data processing as described in subparagraph (o) of the definition of financial service, subject to prior authorization from the relevant regulator, as required; (4) and

c. advisory and other auxiliary financial services, excluding intermediation and credit reference and analysis, relating to banking and other financial services as described in subparagraph (p) of the definition of financial service.

3. It is understood that Chile's commitments on cross-border advisory services shall not, in and of themselves, be construed to require Chile to permit the public offering of securities (as defined under its relevant law) in the territory of Chile by cross-border suppliers of Canada who supply or seek to supply such advisory services. Chile may subject the cross-border suppliers of advisory services to regulatory and registration requirements.

(3) The Parties understand that, where the provision and transfer of financial information and financial data processing involves personal information, the treatment of such personal information shall be subject to all applicable legislation in Canada governing the protection of personal information.

(4) It is understood that where the financial information or financial data processing referred to in subparagraphs (a) and (b) involve personal data, the treatment of such personal data shall be in accordance with Chilean law regulating the protection of such data.

Annex H-bis 09. Certain specific commitments

Canada

A. Portfolio Management

1. Subject to paragraph 2, Canada shall allow a financial institution organized outside its territory to provide the following services to a collective investment scheme located in its territory:

a. investment advice, and

b. portfolio management services, excluding:

i. custodial services, unless they are related to managing a collective investment scheme,

ii. trustee services, but not excluding the holding in trust of investments by a collective investment scheme established as a trust, and

iii. execution services, unless they are related to managing a collective investment scheme.

2. This commitment is subject to Article H bis-01, Article H bis-05(3) and the Appendix to this Section.

3. Notwithstanding paragraph 1, Canada may require a collective investment scheme located in Canada to retain ultimate responsibility for the management of the collective investment scheme or the funds that it manages.

4. For purposes of this commitment, in Canada collective investment scheme means investment funds or fund management companies regulated or registered under provincial securities laws and regulations.

Appendix Hbis-09.

1. Canada's commitment in Annex H bis-09, section (A) (Portfolio Management) applies at the sub-national level only to the following provinces or territories and subject to paragraph 2:

Ontario; and

Manitoba.

2. The commitment in respect of any of the provinces or territories listed in paragraph 1 does not apply to any existing non-conforming measure of any of those provinces or territories, the continuation or prompt renewal of any such measure or any amendment to any such measure to the extent that the amendment does not decrease the conformity of the measure, as it existed upon the entry into force of this Amending Agreement, with the commitment.

3. Not later than four (4) years after the entry into force of the Amending Agreement, the Parties shall consult on the liberalization of cross-border trade in portfolio management services, further to that set out in this specific commitment. In such consultations, the Parties shall determine whether Canada's specific commitment shall be maintained or further liberalized.

Chile

Section A: Voluntary Savings Plans; Non-Discriminatory Treatment of Canadian Investors

1. Notwithstanding the inclusion of the non-conforming measures of Chile in Annex VI, Section II, referring to social services, with respect to voluntary savings pension plans established under Ley 19.768, Chile shall extend the obligations of Article H bis-03 and of paragraphs 1 and 2 of Article H bis-02 to financial institutions of Canada, investors of Canada, and investments of such investors in financial institutions established in Chile.

2. Notwithstanding the inclusion of the nonconforming measures of Chile in Annex VI, Section II, referring to social services, Chile, as required by its domestic law, shall not establish arbitrary differences with respect to Canadian investors in Administradoras de Fondos de Pensiones under Decreto Ley 3.500.

Section B: Portfolio Management

1. Chile shall allow a financial institution (other than a trust company or insurance company), organized outside its territory, to provide investment advice and portfolio management services, excluding (1) custodial services, (2) trustee services, and (3) execution services that are not related to managing a collective investment scheme, to a collective investment scheme located in Chile's territory. This commitment is subject to Article H bis-01 and to the provisions of Article H bis-05(3) regarding the right to require registration, without prejudice to other means of prudential regulation.

2. Notwithstanding paragraph 1, Chile may require the collective investment scheme located in Chile's territory to retain ultimate responsibility for the management of the collective investment scheme or the funds that it manages.

3. For purposes of paragraphs 1 and 2, collective investment scheme means in Chile, the following fund management companies subject to supervision by the Superintendencia de Valores y Seguros:

a. Compañías Administradoras de Fondos Mutuos (Decreto Ley 1.328 de 1976);

b. Compañías Administradoras de Fondos de Inversión (Ley 18.815 de 1989);

c. Compañías Administradoras de Fondos de Inversión de Capital Extranjero (Ley 18.657 de 1987);

d. Compañías Administradoras de Fondos para la Vivienda (Ley 18.281 de 1993); and

e. Compañías Administradoras Generales de Fondos (Ley 18.045 de 1981).

Annex Hbis-15. Authorities responsible for financial services

The authority of each Party responsible for financial services shall be:

a. for Canada, the Department of Finance of Canada; and

b. for Chile, the Ministerio de Hacienda,

or a successor that is notified to the other Party in writing.

Chapter I. Telecommunications

Article I-01. Scope and Coverage

1. This Chapter applies to:

(a) measures adopted or maintained by a Party relating to access to and use of public telecommunications transport networks or services by persons of the other Party, including access and use by such persons operating private networks;

(b) measures adopted or maintained by a Party relating to the provision of enhanced or value-added services by persons of the other Party in the territory, or across the borders, of a Party; and

(c) standards-related measures relating to attachment of terminal or other equipment to public telecommunications transport networks.

2. Except to ensure that persons operating broadcast stations and cable systems have continued access to and use of public telecommunications transport networks and services, this Chapter does not apply to any measure adopted or maintained by a Party relating to broadcast or cable distribution of radio or television programming.

3. Nothing in this Chapter shall be construed to:

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

(b) require a Party, or require a Party to compel any person, to establish, construct, acquire, lease, operate or provide telecommunications transport networks or telecommunications transport services not offered to the public generally;

(c) prevent a Party from prohibiting persons operating private networks from using their networks to provide public telecommunications transport networks or services to third persons; or

(d) require a Party to compel any person engaged in the broadcast or cable distribution of radio or television programming to make available its cable or broadcast facilities as a public telecommunications transport network.

Article I-02. Access to and Use of Public Telecommunications Transport Networks and Services

1. Each Party shall ensure that persons of the other Party have access to and use of any public telecommunications transport network or service, including private leased circuits, offered in its territory or across its borders for the conduct of their business, on reasonable and nondiscriminatory terms and conditions, including as set out in paragraphs 2 through 8.

2. Subject to paragraphs 6 and 7, each Party shall ensure that such persons are permitted to:

(a) purchase or lease, and attach terminal or other equipment that interfaces with the public telecommunications transport network;

(b) interconnect private leased or owned circuits with public telecommunications transport networks in the territory, or across the borders, of that Party, including for use in providing dialup access to and from their customers or users, or with circuits leased or owned by another person on terms and conditions mutually agreed by those persons;

(c) perform switching, signalling and processing functions; and

(d) use operating protocols of their choice.

3. Each Party shall ensure that:

(a) the pricing of public telecommunications transport services reflects economic costs directly related to providing the services; and

(b) private leased circuits are available on a flat-rate pricing basis. Nothing in this paragraph shall be construed to prevent crosssubsidization between public telecommunications transport services.

4. Each Party shall ensure that persons of the other Party may use public telecommunications transport networks or services for the movement of information in its territory or across its borders, including for intracorporate communications, and for access to information contained in data bases or otherwise stored in machine-readable form in the territory of the other Party.

5. Further to Article O-01 (General Exceptions), nothing in this Chapter shall be construed to prevent a Party from adopting or enforcing any measure necessary to:

(a) ensure the security and confidentiality of messages; or

(b) protect the privacy of subscribers to public telecommunications transport networks or services.

6. Each Party shall ensure that no condition is imposed on access to and use of public telecommunications transport networks or services, other than that necessary to:

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

(b) protect the technical integrity of public telecommunications transport networks or services.

7. Provided that conditions for access to and use of public telecommunications transport networks or services satisfy the criteria set out in paragraph 6, such conditions may include:

(a) a restriction on resale or shared use of such services;

(b) a requirement to use specified technical interfaces, including interface protocols, for interconnection with such networks or services;

(c) a restriction on interconnection of private leased or owned circuits with such networks or services or with circuits leased or owned by another person, where the circuits are used in the provision of public telecommunications transport networks or services; and

(d) a licensing, permit, registration or notification procedure which, if adopted or maintained, is transparent and applications filed thereunder are processed expeditiously.

8. For purposes of this Article, "non-discriminatory" means on terms and conditions no less favorable than those accorded to any other customer or user of like public telecommunications transport networks or services in like circumstances.

Article I-03. Conditions for the Provision of Enhanced or Value-added Services

1. Each Party shall ensure that:

(a) any licensing, permit, registration or notification procedure that it adopts or maintains relating to the provision of enhanced or value-added services is transparent and nondiscriminatory, and that applications filed thereunder are processed expeditiously; and

(b) information required under such procedures is limited to that necessary to demonstrate that the applicant has the financial solvency to begin providing services or to assess conformity of the applicant's terminal or other equipment with the Party's applicable standards or technical regulations. 2. Neither Party may require a person providing enhanced or value-added services to:

(a) provide those services to the public generally;

(b) cost justify its rates;

(c) file a tariff;

(d) interconnect its networks with any particular customer or network; or

(e) conform with any particular standard or technical regulation for interconnection other than for interconnection to a public telecommunications transport network.

3. Notwithstanding paragraph 2(c), a Party may require the filing of a tariff by:

(a) such provider to remedy a practice of that provider that the Party has found in a particular case to be anticompetitive under its law; or

(b) a monopoly to which Article I-05 applies.

Article I-04. Standards-related Measures

1. Further to the WTO Agreement on Technical Barriers to Trade each Party shall ensure that its standards-related measures relating to the attachment of terminal or other equipment to the public telecommunications transport networks, including those measures relating to the use of testing and measuring equipment for conformity assessment procedures, are adopted or maintained only to the extent necessary to:

(a) prevent technical damage to public telecommunications transport networks;

(b) prevent technical interference with, or degradation of, public telecommunications transport services; (c) prevent electromagnetic interference, and ensure compatibility, with other uses of the electromagnetic spectrum; (d) prevent billing equipment malfunction; or (e) ensure users' safety and access to public telecommunications transport networks or services.

2. A Party may require approval for the attachment to the public telecommunications transport network of terminal or other equipment that is not authorized, provided that the criteria for that approval are consistent with paragraph 1.

3. Each Party shall ensure that the network termination points for its public telecommunications transport networks are defined on a reasonable and transparent basis.

4. Neither Party may require separate authorization for equipment that is connected on the customer's side of authorized equipment that serves as a protective device fulfilling the criteria of paragraph 1.

5. Further to the WTO Agreement on Technical Barriers to Trade each Party shall:

(a) ensure that its conformity assessment procedures are transparent and nondiscriminatory and that applications filed thereunder are processed expeditiously;

(b) permit any technically qualified entity to perform the testing required under the Party's conformity assessment procedures for terminal or other equipment to be attached to the public telecommunications transport network, subject to the Party's right to review the accuracy and completeness of the test results; and

(c) ensure that any measure that it adopts or maintains requiring persons to be authorized to act as agents for suppliers of telecommunications equipment before the Party's relevant conformity assessment bodies is non-discriminatory.

6. No later than one year after the date of entry into force of this Agreement, each Party shall adopt, as part of its conformity assessment procedures, provisions necessary to accept the test results from laboratories or testing facilities in the territory of the other Party for tests performed in accordance with the accepting Party's standards-related measures and procedures.

7. The Parties hereby establish a Committee on Telecommunications Standards, comprising representatives of each Party.

8. The Committee on Telecommunications Standards shall perform the functions set out in Annex I-04.

Article I-05. Monopolies (1)

1. Where a Party maintains or designates a monopoly to provide public telecommunications transport networks or services, and the monopoly, directly or through an affiliate, competes in the provision of enhanced or value-added services or other telecommunications-related services or telecommunications-related goods, the Party shall ensure that the monopoly does not use its monopoly position to engage in anticompetitive conduct in those markets, either directly or through its dealings with its affiliates, in such a manner as to affect adversely a person of the other Party. Such conduct may include cross-subsidization, predatory conduct and the discriminatory provision of access to public telecommunications transport networks or services.

2. To prevent such anticompetitive conduct, each Party shall adopt or maintain effective measures, such as:

(a) accounting requirements;

(b) equirements for structural separation;

(c) rules to ensure that the monopoly accords its competitors access to and use of its public telecommunications transport networks or services on terms and conditions no less favourable than those it accords to itself or its affiliates; or

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

(1) For purposes of this Article, "monopoly" means an entity, including a consortium or government agency, that in any relevant market in the territory of a Party is maintained or designated as the sole provider of public telecommunications transport networks or services.

Article I-06. Transparency

Further to Article L-02 (Publication), each Party shall make publicly available its measures relating to access to and use of public telecommunications transport networks or services, including measures relating to:

(a) tariffs and other terms and conditions of service;

(b) specifications of technical interfaces with the networks or services;

(c) information on bodies responsible for the preparation and adoption of standards-related measures affecting such access and use;

(d) conditions applying to attachment of terminal or other equipment to the networks; and

(e) notification, permit, registration or licensing requirements.

Article I-07. Relation to other Chapters

In the event of any inconsistency between this Chapter and another Chapter, this Chapter shall prevail to the extent of the inconsistency.

Article I-08. Relation to International Organizations and Agreements

The Parties recognize the importance of international standards for global compatibility and interoperability of telecommunication networks or services and undertake to promote those standards through the work of relevant international bodies, including the International Telecommunication Union and the International Organization for Standardization.

Article I-09. Technical Cooperation and other Consultations

1. To encourage the development of interoperable telecommunications transport services infrastructure, the Parties shall cooperate in the exchange of technical information, the development of governmentto-government training programs and other related activities. In implementing this obligation, the Parties shall give special emphasis to existing exchange programs.

2. The Parties shall consult with a view to determining the feasibility of further liberalizing trade in all telecommunications services, including public telecommunications transport networks and services.

Article I-10. Definitions

For purposes of this Chapter:

authorized equipment means terminal or other equipment that has been approved for attachment to the public telecommunications transport network in accordance with a Party's conformity assessment procedures;

conformity assessment procedure means "conformity assessment procedure" as defined in the WTO Agreement on Technical Barriers to Trade and includes the procedures referred to in Annex I-10;

enhanced or value-added services means those telecommunications services employing computer processing applications that:

(a) act on the format, content, code, protocol or similar aspects of a customer's transmitted information;

(b) provide a customer with additional, different or restructured information; or

(c) involve customer interaction with stored information;

flat-rate pricing basis means pricing on the basis of a fixed charge per period of time regardless of the amount of use; intracorporate communications means telecommunications through which an enterprise communicates:

(a) internally or with or among its subsidiaries, branches or affiliates, as defined by each Party; or

(b) on a noncommercial basis with other persons that are fundamental to the economic activity of the enterprise and that have a continuing contractual relationship with it, but does not include telecommunications services provided to persons other than those described herein;

network termination point means the final demarcation of the public telecommunications transport network at the customer's premises;

private network means a telecommunications transport network that is used exclusively for intracorporate communications;

protocol means a set of rules and formats that govern the exchange of information between two peer entities for purposes of transferring signaling or data information;

public telecommunications transport network means public telecommunications infrastructure that permits telecommunications between defined network termination points;

public telecommunications transport networks or services means public telecommunications transport networks or public telecommunications transport services;

public telecommunications transport service means any telecommunications transport service required by a Party,

explicitly or in effect, to be offered to the public generally, including telegraph, telephone, telex and data transmission, that typically involves the real-time transmission of customer-supplied information between two or more points without any end-to-end change in the form or content of the customer's information;

standard means a document, approved by a recognized body, that provides, for common and repeated use, rules, guidelines or characteristics for goods or related processes and production methods, or for services or related operating methods, with which compliance is not mandatory. It may also include or deal exclusively with terminology, symbols, packaging, marking or labelling requirements as they apply to a good, process, or production or operating method;

standards-related measure means a standard, technical regulation or conformity assessment procedure;

telecommunications means the transmission and reception of signals by any electromagnetic means; technical regulation means a document which lays down goods' characteristics or their related processes and production methods, or services' characteristics or their related operating methods, including the applicable administrative provisions, with which compliance is mandatory. It may also include or deal exclusively with terminology, symbols, packaging, marking or labelling requirements as they apply to a good, process, or production or operating method;

telecommunications service means a service provided by means of the transmission and reception of signals by any electromagnetic means, but does not mean the cable, broadcast or other electromagnetic distribution of radio or television programming to the public generally;

terminal equipment means any digital or analog device capable of processing, receiving, switching, signaling or transmitting signals by electromagnetic means and that is connected by radio or wire to a public telecommunications transport network at a termination point; and

WTO Agreement on Technical Barriers to Trade means the Agreement on Technical Barriers to Trade which forms part of the WTO Agreement.

Chapter J. Competition Policy, Monopolies and State Enterprises

Article J-01. Competition Law (1)

1. Each Party shall adopt or maintain measures to proscribe anti-competitive business conduct and take appropriate action with respect thereto, recognizing that such measures will enhance the fulfillment of the objectives of this Agreement. To this end the Parties shall consult from time to time about the effectiveness of measures undertaken by each Party.

2. Each Party recognizes the importance of cooperation and coordination among their authorities to further effective competition law enforcement in the free trade area. The Parties shall cooperate on issues of competition law enforcement policy, including mutual legal assistance, notification, consultation and exchange of information relating to the enforcement of competition laws and policies in the free trade area.

3. Neither Party may have recourse to dispute settlement under this Agreement for any matter arising under this Article.

(1) No investor may have recourse to investor-state arbitration under the Investment Chapter for any matter arising under this Article.

Article J-02. Monopolies and State Enterprises (2)

1. Nothing in this Agreement shall be construed to prevent a Party from designating a monopoly.

2. Where a Party intends to designate a monopoly and the designation may affect the interests of persons of the other Party, the Party shall: (a) wherever possible, provide prior written notification to the other Party of the designation; and (b) endeavor to introduce at the time of the designation such conditions on the operation of the monopoly as will minimize or eliminate any nullification or impairment of benefits in the sense of Annex N-04 (Nullification and Impairment).

3. Each Party shall ensure, through regulatory control, administrative supervision or the application of other measures, that any privately-owned monopoly that it designates and any government monopoly that it maintains or designates:

(a) acts in a manner that is not inconsistent with the Party's obligations under this Agreement wherever such a monopoly exercises any regulatory, administrative or other governmental authority that the Party has delegated to it in connection with the monopoly good or service, such as the power to grant import or export licences, approve commercial transactions or impose quotas, fees or other charges (3);

(b) except to comply with any terms of its designation that are not inconsistent with subparagraph (c) or (d), acts solely in accordance with commercial considerations in its purchase or sale of the monopoly good or service in the relevant market, including with regard to price, quality, availability, marketability, transportation and other terms and conditions of purchase or sale (4);

(c) provides non-discriminatory treatment to investments of investors, to goods and to service providers of the other Party in its purchase or sale of the monopoly good or service in the relevant market; and

(d) does not use its monopoly position to engage, either directly or indirectly, including through its dealings with its parent, its subsidiary or other enterprise with common ownership, in anticompetitive practices in a non-monopolized market in its territory that adversely affect an investment of an investor of the other Party, including through the discriminatory provision of the monopoly good or service, cross-subsidization or predatory conduct.

4. Paragraph 3 does not apply to procurement by governmental agencies of goods or services for governmental purposes and not with a view to commercial resale or with a view to use in the production of goods or the provision of services for commercial sale.

5. For purposes of this Article "maintain" means designate prior to the date of entry into force of this Agreement and existing on that date.

(2) Nothing in this Article shall be construed to prevent a monopoly from charging different prices in different geographic markets, where such differences are based on normal commercial considerations, such as taking account of supply and demand conditions in those markets.

(3) A "delegation" includes a legislative grant, and a government order, directive or other act transferring to the monopoly, or authorizing the exercise by the monopoly of, governmental authority.

(4) Differences in pricing between classes of customers, between affiliated and non-affiliated firms, and cross-subsidization are not in themselves inconsistent with the provision; rather, they are subject to this subparagraph when they are used as instruments of anticompetitive behaviour by the monopoly firm.

Article J-03. State Enterprises

1. Nothing in this Agreement shall be construed to prevent a Party from maintaining or establishing a state enterprise.

2. Each Party shall ensure, through regulatory control, administrative supervision or the application of other measures, that any state enterprise that it maintains or establishes acts in a manner that is not inconsistent with the Party's obligations under Chapter G (Investment) wherever such enterprise exercises any regulatory, administrative or other governmental authority that the Party has delegated to it, such as the power to expropriate, grant licences, approve commercial transactions or impose quotas, fees or other charges.

3. Each Party shall ensure that any state enterprise that it maintains or establishes accords non-discriminatory treatment in the sale of its goods or services to investments in the Party's territory of investors of the other Party.

Article J-04. Definitions

For purposes of this Chapter:

designate means to establish, designate or authorize, or to expand the scope of a monopoly to cover an additional good or service, after the date of entry into force of this Agreement; discriminatory provision includes treating:

(a) a parent, a subsidiary or other enterprise with common ownership more favourably than an unaffiliated enterprise, or

(b) one class of enterprises more favourably than another, in like circumstances;

government monopoly means a monopoly that is owned, or controlled through ownership interests, by the national government of a Party or by another such monopoly;

in accordance with commercial considerations means consistent with normal business practices of privately-held enterprises in the relevant business or industry;

market means the geographic and commercial market for a good or service;

monopoly means an entity, including a consortium or government agency, that in any relevant market in the territory of a Party is designated as the sole provider or purchaser of a good or service, but does not include an entity that has been granted an exclusive intellectual property right solely by reason of such grant;

non-discriminatory treatment means the better of national treatment and most-favoured-nation treatment, as set out in the relevant provisions of this Agreement; and
state enterprise means, except as set out in Annex J-04, an enterprise owned, or controlled through ownership interests, by a Party.

Chapter K. Temporary Entry for Business Persons

Article K-01. General Principles

Further to Article A-02 (Objectives), this Chapter reflects the preferential trading relationship between the Parties, the desirability of facilitating temporary entry on a reciprocal basis and of establishing transparent criteria and procedures for temporary entry, and the need to ensure border security and to protect the domestic labour force and permanent employment in their respective territories.

Article K-02. General Obligations

Each Party shall apply its measures relating to the provisions of this Chapter in accordance with Article K-01 and, in particular, shall apply expeditiously those measures so as to avoid unduly impairing or delaying trade in goods or services or conduct of investment activities under this Agreement.

Article K-03. Grant of Temporary Entry

1. Each Party shall grant temporary entry to business persons who are otherwise qualified for entry under applicable measures relating to public health and safety and national security, in accordance with this Chapter, including the provisions of Annex K-03 and Annex K-03.1.

2. A Party may refuse to issue an immigration document authorizing employment to a business person where the temporary entry of that person might affect adversely:

(a) the settlement of any labour dispute that is in progress at the place or intended place of employment; or

(b) the employment of any person who is involved in such dispute.

3. When a Party refuses pursuant to paragraph 2 to issue an immigration document authorizing employment, it shall:

(a) inform in writing the business person of the reasons for the refusal; and

(b) promptly notify the other Party in writing of the reasons for the refusal.

4. Each Party shall limit any fees for processing applications for temporary entry of business persons to the approximate cost of services rendered.

Article K-04. Provision of Information

1. Further to Article L-02 (Publication), each Party shall:

(a) provide to the other Party such materials as will enable it to become acquainted with its measures relating to this Chapter; and

(b) no later than one year after the date of entry into force of this Agreement, prepare, publish and make available in its own territory, and in the territory of the other Party, explanatory material in a consolidated document regarding the requirements for temporary entry under this Chapter in such a manner as will enable business persons of the other Party to become acquainted with them.

2. Each Party shall collect and maintain, and make available to the other Party in accordance with its domestic law, data respecting the granting of temporary entry under this Chapter to business persons of the other Party who have been issued

immigration documentation, including data specific to each occupation, profession or activity.

Article K-05. Working Group

The Parties hereby establish a Temporary Entry Working Group, comprising representatives of each Party, including immigration officials, to consider the implementation and administration of this Chapter and any measures of mutual interest.

Article K-06. Dispute Settlement

1. A Party may not initiate proceedings under Article N-07 (Commission - Good Offices, Conciliation and Mediation) regarding a refusal to grant temporary entry under this Chapter or a particular case arising under Article K-02 unless:

(a) the matter involves a pattern of practice; and

(b) the business person has exhausted the available administrative remedies regarding the particular matter.

2. The remedies referred to in paragraph (1)(b) shall be deemed to be exhausted if a final determination in the matter has not been issued by the competent authority within one year of the institution of an administrative proceeding, and the failure to issue a determination is not attributable to delay caused by the business person.

Article K-07. Relation to other Chapters

Except for this Chapter, Chapters A (Objectives), B (General Definitions), N (Institutional Arrangements and Dispute Settlement Procedures) and P (Final Provisions) and Articles L-01 (Contacts Points), L-02 (Publication), L-03 (Notification and Provision of Information) and L-04 (Administrative Proceedings), no provision of this Agreement shall impose any obligation on a Party regarding its immigration measures.

Article K-08. Definitions:

For purposes of this Chapter:

business person means a citizen of a Party who is engaged in trade in goods, the provision of services or the conduct of investment activities; and

temporary entry means entry into the territory of a Party by a business person of the other Party without the intent to establish permanent residence.

Annex K-03. Temporary entry for business persons

Section I. Business Visitors

1. Each Party shall grant temporary entry to a business person seeking to engage in a business activity set out in Appendix K-03.I.1, without requiring that person to obtain an employment authorization, provided that the business person otherwise complies with existing immigration measures applicable to temporary entry, on presentation of:

(a) proof of citizenship of a Party;

(b) documentation demonstrating that the business person will be so engaged and describing the purpose of entry; and

(c) evidence demonstrating that the proposed business activity is international in scope and the business person is not seeking to enter the local labour market.

2. Each Party shall provide that a business person may satisfy the requirements of paragraph 1(c) by demonstrating that:

(a) the primary source of remuneration for the proposed business activity is outside the territory of the Party granting temporary entry; and

(b) the business person's principal place of business and the actual place of accrual of profits, at least, predominantly, remain outside such territory.

A Party shall normally accept an oral declaration as to the principal place of business and the actual place of accrual of

profits. Where the Party requires further proof, it shall normally consider a letter from the employer attesting to these matters as sufficient proof.

3. Each Party shall grant temporary entry to a business person seeking to engage in a business activity other than those set out in Appendix K-03.I.1, without requiring that person to obtain an employment authorization, on a basis no less favourable than that provided under the existing provisions of the measures set out in Appendix K-03.I.3, provided that the business person otherwise complies with existing immigration measures applicable to temporary entry.

4. Neither Party may:

(a) as a condition for temporary entry under paragraph 1 or 3, require prior approval procedures, petitions, labour certification tests or other procedures of similar effect; or

(b) impose or maintain any numerical restriction relating to temporary entry under paragraph 1 or 3.

5. Notwithstanding paragraph 4, a Party may require a business person seeking temporary entry under this Section to obtain a visa or its equivalent prior to entry. Before imposing a visa requirement, the Party shall consult with the other Party with a view to avoiding the imposition of the requirement. With respect to an existing visa requirement, a Party shall consult, on request, with the other Party with a view to its removal.

Section II. Traders and Investors

1. Each Party shall grant temporary entry and provide confirming documentation to a business person seeking to:

(a) carry on substantial trade in goods or services principally between the territory of the Party of which the business person is a citizen and the territory of the other Party into which entry is sought, or

(b) establish, develop,administer or provide advice or key technical services to the operation of an investment to which the business person or the business person's enterprise has committed, or is in the process of committing, a substantial amount of capital,

in a capacity that is supervisory, executive or involves essential skills, provided that the business person otherwise complies with existing immigration measures applicable to temporary entry.

2. Neither Party may:

(a) as a condition for temporary entry under paragraph 1, require labour certification tests or other procedures of similar effect; or

(b) impose or maintain any numerical restriction relating to temporary entry under paragraph 1.

3. Notwithstanding paragraph 2, a Party may require a business person seeking temporary entry under this Section to obtain a visa or its equivalent prior to entry.

Section III. Intra-company Transferees

1. Each Party shall grant temporary entry and provide confirming documentation to a business person employed by an enterprise who seeks to render services to that enterprise or a subsidiary or affiliate thereof, in a capacity that is managerial, executive or involves specialized knowledge, provided that the business person otherwise complies with existing immigration measures applicable to temporary entry. A Party may require the business person to have been employed continuously by the enterprise for one year within the three-year period immediately preceding the date of the application for admission.

2. Neither Party may:

(a) as a condition for temporary entry under paragraph 1, require labour certification tests or other procedures of similar effect; or

(b) impose or maintain any numerical restriction relating to temporary entry under paragraph 1.

3. Notwithstanding paragraph 2, a Party may require a business person seeking temporary entry under this Section to obtain a visa or its equivalent prior to entry. Before imposing a visa requirement, the Party shall consult with the other Party with a view to avoiding the imposition of the requirement. With respect to an existing visa requirement, a Party shall consult,

on request, with the other Party with a view to its removal.

Section IV. Professionals

1. Each Party shall grant temporary entry and provide confirming documentation to a business person seeking to engage in a business activity at a professional level in a profession set out in Appendix K-03.IV.1, if the business person otherwise complies with existing immigration measures applicable to temporary entry, on presentation of:

(a) proof of citizenship of a Party; and

(b) documentation demonstrating that the business person will be so engaged and describing the purpose of entry.

2. Neither Party may:

(a) as a condition for temporary entry under paragraph 1, require prior approval procedures, petitions, labour certification tests or other procedures of similar effect; or

(b) impose or maintain any numerical restriction relating to temporary entry under paragraph 1.

3. Notwithstanding paragraph 2, a Party may require a business person seeking temporary entry under this Section to obtain a visa or its equivalent prior to entry. Before imposing a visa requirement, the Party shall consult with the other Party with a view to avoiding the imposition of the requirement. With respect to an existing visa requirement, a Party shall consult, on request, with the other Party with a view to its removal.

4. Notwithstanding paragraphs 1 and 2, a Party may establish an annual numerical limit, which shall be set out in Appendix K-03.IV.4, regarding temporary entry of business persons of the other Party seeking to engage in business activities at a professional level in a profession set out in Appendix K-03.IV.1, if the Parties have not agreed otherwise prior to the date of entry into force of this Agreement. In establishing such a limit, the Party shall consult with the other Party.

5. A Party establishing a numerical limit pursuant to paragraph 4, unless the Parties agree otherwise:

(a) shall, for each year after the first year after the date of entry into force of this Agreement, consider increasing the numerical limit set out in Appendix K-03.IV.4 by an amount to be established in consultation with the other Party, taking into account the demand for temporary entry under this Section;

(b) shall not apply its procedures established pursuant to paragraph 1 to the temporary entry of a business person subject to the numerical limit, but may require the business person to comply with its other procedures applicable to the temporary entry of professionals; and

(c) may, in consultation with the other Party, grant temporary entry under paragraph 1 to a business person who practices in a profession where accreditation, licensing, and certification requirements are mutually recognized by the Parties.

6. Nothing in paragraph 4 or 5 shall be construed to limit the ability of a business person to seek temporary entry under a Party's applicable immigration measures relating to the entry of professionals other than those adopted or maintained pursuant to paragraph 1.

7. Three years after a Party establishes a numerical limit pursuant to paragraph 4, it shall consult with the other Party with a view to determining a date after which the limit shall cease to apply.

Annex K-03.1.

1. Business persons who enter Chile under any of the categories set out in Annex K-03 shall be deemed to be engaged in activities which are in the country's interest.

2. Business persons who enter Chile under any of the categories set out in Annex K-03 and are issued a temporary visa shall have that temporary visa extended for subsequent periods provided the conditions on which it is based remain in effect, without requiring that person to apply for permanent residence.

3. Business persons who enter Chile may also obtain an identity card for foreigners.

Appendix K-03.I.1.

Business Visitors

Research and Design

Technical, scientific and statistical researchers conducting independent research or research for an enterprise located in the territory of the other Party.

Growth, Manufacture and Production

Purchasing and production management personnel conducting commercial transactions for an enterprise located in the territory of the other Party.

Marketing

- Market researchers and analysts conducting independent research or analysis or research or analysis for an enterprise located in the territory of the other Party.

- Trade fair and promotional personnel attending a trade convention.

Sales

- Sales representatives and agents taking orders or negotiating contracts for goods or services for an enterprise located in the territory of the other Party but not delivering goods or providing services.

- Buyers purchasing for an enterprise located in the territory of the other Party.

Distribution

Customs brokers providing consulting services regarding the facilitation of the import or export of goods.

After-sales Service

Installers, repair and maintenance personnel, and supervisors, possessing specialized knowledge essential to a seller's contractual obligation, performing services or training workers to perform services, pursuant to a warranty or other service contract incidental to the sale of commercial or industrial equipment or machinery, including computer software, purchased from an enterprise located outside the territory of the Party into which temporary entry is sought, during the life of the warranty or service agreement.

General Service

- Professionals engaging in a business activity at a professional level in a profession set out in Appendix K-03.IV.1.

- Management and supervisory personnel engaging in a commercial transaction for an enterprise located in the territory of the other Party.

- Financial services personnel (insurers, bankers or investment brokers) engaging in commercial transactions for an enterprise located in the territory of the other Party.

- Public relations and advertising personnel consulting with business associates, or attending or participating in conventions.

- Tourism personnel (tour and travel agents, tour guides or tour operators) attending or participating in conventions or conducting a tour that has begun in the territory of the other Party.

- Translators or interpreters performing services as employees of an enterprise located in the territory of the other Party.

Definitions

For purposes of this Appendix:

territory of the other Party means the territory of the Party other than the territory of the Party into which temporary entry is sought.

Appendix K-03.I.3.

Existing Immigration Measures

1. In the case of Canada, subsection 19(1) of the Immigration Regulations, 1978, SOR/78-172, as amended, made under the Immigration Act R.S.C. 1985, c. I-2, as amended.

2. In the case of Chile, Title I, paragraph 6 of Decree Law 1094, Official Gazette, July 19, 1975, Immigration Law ("Decreto Ley 1094, Diario Oficial, julio 19, 1975, Ley de Extranjería"), and Title III of Immigration Regulation("Decreto Supremo 597 del Ministerio del Interior, Diario Oficial noviembre 24, 1984, Reglamento de Extranjería").

Appendix K.03.IV.1.

Professionals

Profession (1) and Minimum Education Requirements and Alternative Credentials (2)

General

Accountant - Baccalaureate or Licenciatura Degree; or C.P.A., C.A., C.G.A. or C.M.A.; or Contador auditor or Contador público (University Title) (3)

Architect - Baccalaureate or Licenciatura Degree; or state/provincial licence (4)

Computer Systems Analyst - Baccalaureate or Licenciatura Degree; or Post-Secondary Diploma (5) or Post-Secondary Certificate (6), and three years experience

Disaster Relief Insurance Claims Adjuster (claims adjuster employed by an insurance company located in the territory of a Party, or an independent claims adjuster) - Baccalaureate or Licenciatura Degree, and successful completion of training in the appropriate areas of insurance adjustment pertaining to disaster relief claims; or three years experience in claims adjustment and successful completion of training in the appropriate areas of insurance adjustment pertaining to disaster relief claims

Economist (including Commercial - Baccalaureate or Licenciatura Degree Engineer in Chile)

Engineer - Baccalaureate or Licenciatura Degree; or state/provincial licence

Forester - Baccalaureate or Licenciatura Degree; or state/provincial licence

Graphic Designer - Baccalaureate or Licenciatura Degree; or Post-Secondary Diploma or Post-Secondary Certificate, and three years experience

Hotel Manager - Baccalaureate or Licenciatura Degree in hotel/restaurant management; or Post-Secondary Diploma or Post-Secondary Certificate in hotel/restaurant management, and three years experience in hotel/restaurant management

Industrial Designer - Baccalaureate or Licenciatura Degree; or Post-Secondary Diploma or Post-Secondary Certificate, and three years experience

Interior Designer - Baccalaureate or Licenciatura Degree; or Post-Secondary Diploma or Post-Secondary Certificate, and three years experience

Land Surveyor - Baccalaureate or Licenciatura Degree; or state/provincial/national licence

Landscape Architect Baccalaureate or Licenciatura Degree

Lawyer (including Notary in the Province of Quebec) - LL.B., J.D., LL.L., B.C.L. or Licenciatura Degree (five years) or Abogado, or membership in a state/provincial bar

Librarian - M.L.S. or B.L.S. or Magister en Bibliotecología (for which another Baccalaureate or Licenciatura Degree was a prerequisite)

Management Consultant - Baccalaureate or Licenciatura Degree; or equivalent professional experience as established by statement or professional credential attesting to five years experience as a management consultant, or five years experience in a field of specialty related to the consulting agreement

Mathematician (including Statistician) - Baccalaureate or Licenciatura Degree

Range Manager/Range Conservationalist Baccalaureate or Licenciatura Degree

Research Assistant (working in a post-secondary educational institution) - Baccalaureate or Licenciatura Degree

Scientific Technician/Technologist (7) - Possession of (a) theoretical knowledge of any of the following disciplines: agricultural sciences, astronomy, biology, chemistry, engineering, forestry, geology, geophysics, meteorology or physics; and (b) the

ability to solve practical problems in any of those disciplines, or the ability to apply principles of any of those disciplines to basic or applied research

Social Worker - Baccalaureate or Licenciatura Degree or Asistente Social/Trabajador social (University Title)

Sylviculturist (including Forestry Specialist) - Baccalaureate or Licenciatura Degree

Technical Publications Writer - Baccalaureate or Licenciatura Degree; or Post-Secondary Diploma or Post-Secondary Certificate, and three years experience

Urban Planner (including Geographer) - Baccalaureate or Licenciatura Degree

Vocational Counsellor - Baccalaureate or Licenciatura Degree

Medical/Allied Professional

Dentist - D.D.S., D.M.D., Doctor en Odontologia or Doctor en Cirugia Dental or Licenciatura en Odontologia; or state/provincial licence

Dietitian - Baccalaureate or Licenciatura Degree or Dietista Nutricional (University Title); or state/provincial licence

Medical Laboratory Technologist (Canada)/Medical Technologist (Chile, Mexico and the United States of America) (8) - Baccalaureate or Licenciatura Degree; or Post-Secondary Diploma or Post-Secondary Certificate, and three years experience

Nutritionist - Baccalaureate or Licenciatura Degree or Nutricionista/Dietista Nutricional (University Title)

Occupational Therapist - Baccalaureate or Licenciatura Degree or Terapeuta Ocupacional (University Title); or state/provincial licence

Pharmacist - Baccalaureate or Licenciatura Degree; or state/provincial licence

Physician (teaching or research only) - M.D. or Doctor en Medicina or Médico Cirujano/ Médico (University Title); or state/provincial licence

Physiotherapist/Physical Therapist - Baccalaureate or Licenciatura Degree or Kinesiólogo/Kinesioterapeuta (University Title); or state/provincial licence

Psychologist - State/provincial licence; or Licenciatura Degree

Recreational Therapist - Baccalaureate or Licenciatura Degree

Registered Nurse State/provincial licence, or Licenciatura Degree, or Enfermera (University Title)

Veterinarian - D.V.M., D.M.V. or Doctor en Veterinaria or Médico Veterinario (University Title); or state/provincial licence

Scientist

Agriculturist (including Agronomist) - Baccalaureate or Licenciatura Degree

Animal Breeder - Baccalaureate or Licenciatura Degree

Animal Scientist - Baccalaureate or Licenciatura Degree

Apiculturist - Baccalaureate or Licenciatura Degree

Astronomer - Baccalaureate or Licenciatura Degree

Biochemist - Baccalaureate or Licenciatura Degree

Biologist - Baccalaureate or Licenciatura Degree

Chemist - Baccalaureate or Licenciatura Degree

Dairy Scientist - Baccalaureate or Licenciatura Degree

Entomologist - Baccalaureate or Licenciatura Degree

Epidemiologist - Baccalaureate or Licenciatura Degree

Geneticist - Baccalaureate or Licenciatura Degree

Geologist - Baccalaureate or Licenciatura Degree or Geólogo (University Title)

Geochemist

Geophysicist (including Oceanographer in Mexico and the United States of America) - Baccalaureate or Licenciatura Degree

Baccalaureate or Licenciatura Degree

Horticulturist - Baccalaureate or Licenciatura Degree

Meteorologist - Baccalaureate or Licenciatura Degree

Pharmacologist

Physicist (including Oceanographer in Canada and Chile) - Baccalaureate or Licenciatura Degree

Baccalaureate or Licenciatura Degree for Physicist; Oceanógrafo (University Title) for Oceanographer

Plant Breeder - Baccalaureate or Licenciatura Degree

Poultry Scientist - Baccalaureate or Licenciatura Degree

Soil Scientist - Baccalaureate or Licenciatura Degree

Zoologist - Baccalaureate or Licenciatura Degree

Teacher

College - Baccalaureate or Licenciatura Degree - Baccalaureate or Licenciatura Degree

Seminary - Baccalaureate or Licenciatura Degree

University - Baccalaureate or Licenciatura Degree

Appendix K-03.IV.4.

Notwithstanding Annex K-03.IV.4, for the purposes of this Agreement, neither Party shall establish an annual numerical limit regarding temporary entry of business persons of the other Party seeking to engage in business activities at a professional level set out in Appendix K-03.IV.1.

(1) A business person seeking temporary entry under this Appendix may also perform training functions relating to the profession, including conducting seminars.

(2) Accountant - C.P.A.: Certified Public Accountant; C.A.:Chartered Accountant; C.G.A.: Certified General Accountant; C.M.A.: Certified Management Accountant; Dentist - D.D.S.: Doctor of Dental Surgery; D.M.D.: Doctor of Dental Medicine; Lawyer - LL.B.: Bachelor of Laws; J.D.: Doctor of Jurisprudence (not a doctorate); LL.L: Licence en Droit (Québec universities and University of Ottawa); B.C.L.: Bachelor of Civil Law; Librarian - M.L.S.: Master of Library Science; B.L.S.: Bachelor of Library Science; Physician - M.D.: Medical Doctor; Veterinarian - D.V.M.: Doctor of Veterinary Medicine; D.M.V.: Docteur en Médicine Vétérinaire

(3) "University Title" means any document conferred by universities recognized by the Government of Chile and shall be deemed to be equivalent to the Minimum Education Requirements and Alternative Credentials for that profession. In the case of the profession of Lawyer (Abogado), the title is conferred by the Supreme Court of Chile.

(4) "State/provincial licence" and "state/provincial/national licence" mean any document issued by a provincial or national government, as the case may be, or under its authority, but not by a local government, that permits a person to engage in a regulated activity or profession.

(5) "Post-Secondary Diploma" means a credential issued, on completion of two or more years of post-secondary education, by an accredited academic institution in Canada or the United States of America.

(6) "Post-Secondary Certificate" means a certificate issued, on completion of two or more years of post-secondary education at an academic institution: in the case of Mexico, by the federal government or a state government, an academic institution recognized by the federal government or a state overnment, or an academic institution created by federal or state law; and in the case of Chile, by an academic institution recognized by the Government of Chile.

(7) A business person in this category must be seeking temporary entry to work in direct support of professionals in agricultural sciences, astronomy, biology, chemistry, engineering, forestry, geology, geophysics, meteorology or physics.

(8) A business person in this category must be seeking temporary entry to perform in a laboratory chemical, biological, hematological, immunologic, microscopic or bacteriological tests and analyses for diagnosis, treatment or prevention of disease.

Part Three bis. Government Procurement

Chapter K bis. Government Procurement

Article Kbis-01. Scope and Coverage

1. This Chapter applies to any measure adopted or maintained by a Party relating to procurement by an entity listed in Annex Kbis-01:

a. by any contractual means, including purchase and rental or lease, with or without an option to buy; and

b. subject to the terms of Annex Kbis-01.

2. This Chapter does not apply to:

a. non-contractual agreements or any form of assistance provided by a Party or a state enterprise, including grants, loans, equity infusions, fiscal incentives, subsidies, guarantees, cooperative agreements, government provision of goods and services to persons or to a regional or local level of government, and purchases for the direct purpose of providing foreign assistance;

b. purchases funded by international grants, loans, or other assistance, where the provision of such assistance is subject to conditions inconsistent with the provisions of this Chapter;

c. hiring of government employees and related employment measures;

d. acquisition of fiscal agency or depository services, liquidation and management services for regulated financial institutions, and sale and distribution services for government debt; and

e. procurements made by an entity or state enterprise from another entity or state enterprise of that Party.

3. Where an entity awards a contract that is not covered by this Chapter, nothing in this Chapter shall be construed to cover any good or service component of that contract.

4. No entity may prepare, design, or otherwise structure or divide, in any stage of the procurement, any procurement in order to avoid the obligations of this Chapter.

5. In calculating the value of a contract for the purpose of ascertaining whether the procurement is covered by this Chapter, an entity shall include the maximum total estimated value of the procurement over its entire duration, taking into account all options, premiums, fees, commissions, interest and other revenue streams or other forms of remuneration provided for in such contracts.

6. Nothing in this Chapter shall prevent either Party from developing new procurement policies, procedures, or contractual means, provided they are not inconsistent with this Chapter.

Article Kbis-02. General Principles

National Treatment and Non-Discrimination

1. With respect to any measure relating to procurement covered by this Chapter, each Party shall accord to the goods and services of the other Party, and to the suppliers of the other Party of such goods and services, treatment no less favourable than the most favourable treatment the Party accords to its own goods, services, and suppliers.

2. With respect to any measure relating to procurement covered by this Chapter, neither Party may:

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 the other Party.

3. **Measures Not Specific to Procurement**

Paragraphs 1 and 2 do not apply to measures respecting customs duties or other charges of any kind imposed on or in connection with importation, the method of levying such duties and charges or other import regulations, including restrictions and formalities, or measures affecting trade in services other than measures specifically governing procurement covered by this Chapter.

4. **Offsets** An entity shall not consider, seek, or impose offsets at any stage of a procurement.

Article Kbis-03. Publication of Procurement Measures

Consistent with Article L-02 (Publication), each Party shall promptly publish:

1. its measures of general application specifically governing procurement covered by this Chapter; and

2. any changes in such measures in the same manner as the original publication.

Article Kbis-04. Publication of Notice of Intended Procurement

1. For each procurement covered by this Chapter, an entity shall publish in advance a notice inviting interested suppliers to submit tenders for that procurement (“notice of intended procurement”). Each such notice shall be accessible during the entire period established for tendering for the relevant procurement.

2. Each notice of intended procurement shall include a description of the intended procurement, any conditions that suppliers must fulfill to participate in the procurement, the name of the entity issuing the notice, the address where suppliers may obtain all documents relating to the procurement, the time limits for submission of tenders, and the dates for delivery of the goods or services to be procured.

Article Kbis-05. Time Limits for the Tendering Process

1. An entity shall prescribe time limits for the tendering process that allow sufficient time for suppliers to prepare and submit responsive tenders, taking into account the nature and complexity of the procurement. An entity shall provide no less than 30 days between the date on which it publishes the notice of intended procurement and the deadline for submitting tenders.

2. Notwithstanding paragraph 1, entities may establish a time limit of less than 30 days, but in no case less than 10 days, in the following circumstances:

a. where the entity has published a notice containing the information specified in Article Kbis-04(2) at least 30 days and not more than 12 months in advance;

b. in the case of the second or subsequent publications of notices for procurement of a recurring nature;

c. where an entity procures commercial goods or services that are sold or offered for sale to, and customarily purchased and used by, non-governmental buyers for non-governmental purposes; or

d. where an unforeseeable state of urgency duly substantiated by the entity renders impracticable the time limits specified in paragraph 1.

3. A procuring entity may reduce the time limit for the submission of a tender in accordance with paragraph 1 by up to five days if:

(a) the notice of intended procurement is published by electronic means;

(b) all the tender documentation is made available by electronic means from the date of the publication of the notice of intended procurement; or

(c) the entity accepts tenders by electronic means.

4. The use of Article Kbis-05(3) in conjunction with Kbis-05(2) shall in no case result in the reduction of the time limit for tendering to less than 10 days from the date on which the notice of intended procurement is published.

Article Kbis-06. Information on Intended Procurements

1. An entity shall provide interested suppliers tender documentation that includes all the information necessary to permit suppliers to prepare and submit responsive tenders. The documentation shall include all criteria that the entity will consider in awarding the contract, including all cost factors, technical requirements and the weights or, where appropriate, the relative values, that the entity will assign to these criteria in evaluating tenders.

2. Where an entity does not publish all the tender documentation by electronic means, the entity shall, on request of any supplier, promptly make the documentation available in written form to the supplier.

3. Where an entity, prior to the award of a contract, modifies the criteria referred to in paragraph 1, it shall transmit all such modifications in writing:

a. to all suppliers that are participating in the procurement at the time the criteria are modified, if the identities of such suppliers are known, and in all other cases, in the same manner as the original information was transmitted; and

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

Article Kbis-07. Technical Specifications

1. An entity shall not prepare, adopt, or apply any technical specification with the purpose or the effect of creating unnecessary obstacles to trade between the Parties.

2. Any technical specification prescribed by an entity shall be, where appropriate:

a. specified in terms of performance requirements rather than design or descriptive characteristics; and

b. based on international standards, where applicable, otherwise on national technical regulations, recognized national standards, or building codes.

3. An entity shall not prescribe technical specifications that require or refer to a particular trademark or trade name, patent, design or type, specific origin or producer or supplier unless there is no sufficiently precise or intelligible way of otherwise describing the procurement requirements and provided that, in such cases, words such as “or equivalent” are included in the tender documentation.

4. An 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 that procurement.

Article Kbis-08. Conditions for Participation

1. Where an entity requires suppliers to satisfy registration, qualification, or any other requirements or conditions for participation (“conditions for participation”) in a separate process in order to participate in a procurement, the entity shall publish a notice inviting suppliers to apply for participation. The entity shall publish the notice sufficiently in advance to provide interested suppliers sufficient time to prepare and submit applications and for the entity to evaluate and make its determinations based on such applications.

2. Each entity shall:

a. Limit any conditions for participation in a procurement to those that are essential to ensure that the potential supplier has the legal, technical, and financial capacity to fulfill the requirements and technical specifications of the procurement;

b. base qualification decisions solely on the conditions for participation that it has specified in advance in notices or tender documentation; and

c. recognize as qualified all suppliers of the other Party that meet the requisite conditions for participation in a procurement covered by this Chapter.

3. Entities may establish publicly available lists of suppliers qualified to participate in procurements. Where an entity requires suppliers to qualify for such a list in order to participate in a procurement, and a supplier that has not yet qualified applies to be included on the list, the entity shall promptly start the qualification procedures for the supplier and shall allow the supplier to participate in the procurement, provided there is sufficient time to complete the procedures within the time period established for tendering.

4. No entity may 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 an entity of that Party or that the supplier has prior work experience in the territory of that Party. An entity shall judge a supplier's financial and technical capacities on the basis of its global business activities including both its activity in the territory of the Party of the supplier, and its activity, if any, in the territory of the Party of the entity.

5. An entity shall promptly communicate to any supplier that has applied for qualification its decision on whether that supplier is qualified. Where an entity rejects an application for qualification or ceases to recognize a supplier as qualified, that entity shall, on request of the supplier, promptly provide it a written explanation of the reasons for its decision.

6. Nothing in this Article shall preclude an entity from excluding a supplier from a procurement on grounds such as bankruptcy or false declarations.

Article Kbis-09. Tendering Procedures

1. Entities may award contracts by means other than open tendering procedures, provided that the tendering procedure is not used to avoid competition or to protect domestic suppliers in the following circumstances, where applicable:

a. in the absence of tenders in response to an open tendering procedure, or where tenders submitted have resulted from collusion under domestic law, or do not conform to the essential requirements in the tender documentation provided in a prior invitation to tender, including any conditions for participation, on condition that the requirements of the initial procurement are not substantially modified in the contract as awarded;

b. where, for works of art, or for reasons connected with the protection of patents, copyrights or other exclusive rights, or proprietary information or where there is an absence of competition for technical reasons, the goods or services can be supplied only by a particular supplier and no reasonable alternative or substitute exists;

c. for additional deliveries by the original supplier that are intended either as replacement parts, extensions, or continuing services for existing equipment, software, services or installations, where a change of supplier would compel the entity to procure goods or services not meeting requirements of interchangeability with existing equipment, software, services, or installations;

d. for goods purchased on a commodity market;

e. where an entity procures a prototype or a first good or service that is developed at its request in the course of, and for, a particular contract for research, experiment, study, or original development. When such contracts have been fulfilled, subsequent procurements of such goods or services shall be subject to Articles Kbis-2 through Kbis-8 and Article Kbis-17;

f. where additional construction services that were not included in the initial contract but that were within the objectives of the original tender documentation have, due to unforeseeable circumstances, become necessary to complete the construction services described therein. However, the total value of contracts awarded for additional construction services may not exceed 50 percent of the amount of the initial contract;

g. in so far as is strictly necessary where, for reasons of extreme urgency brought about by events unforeseeable by the entity, the goods or services could not be obtained in time by means of an open tendering procedure;

h. in the case of a contract awarded to a winner of a design contest provided that:

i. the contest has been organized in a manner that is consistent with the principles of this Chapter; and

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

i. where an entity needs to procure consulting services regarding matters of a confidential nature, the disclosure of which could reasonably be expected to compromise government confidences, cause economic disruption or similarly be contrary

to the public interest; or

j. for purchases made under exceptionally advantageous conditions that only arise in the very short term, such as unusual disposals by enterprises that are not normally suppliers or disposal of assets of businesses in liquidation or receivership, but not routine purchases from regular suppliers.

2. An entity shall maintain a record or prepare a written report providing specific justification for any contract awarded by means other than open tendering procedures, as provided in paragraph 1.

Article Kbis-10. Awarding of Contracts

1. An entity shall require that in order to be considered for award, a tender must be submitted in writing and must, at the time it is submitted:

a. conform to the essential requirements of the tender documentation; and

b. be submitted by a supplier that has satisfied the conditions for participationthat the entity has provided to all participating suppliers.

2.Unless an entity determines that it is not in the public interest to award a contract, it shall award the contract to the supplier that the entity has determined to be fully capable of undertaking the contract and whose tender is determined to be the most advantageous in terms of the requirements and evaluation criteria set out in the tender documentation.

Article Kbis-11. Information on Awards

Information Provided to Suppliers

1. Subject to Article Kbis-15, an entity shall promptly inform suppliers participating in a tendering procedure of its contract award decision. On request, an entity shall provide a supplier whose tender was not selected for award the reasons for not selecting its tender and the relative advantages of the tender the entity selected.

2. **Publication of Award Information** After awarding a contract covered by this Chapter, an entity shall promptly publish a notice that includes at least the following information about the award:

a. the name of the entity;

b. a description of the goods or services procured;

c. the name of the winning supplier;

d. the value of the contract award; and

e. where the entity has not used open tendering procedures, an indication of the circumstances justifying the procedures used.

3. **Maintenance of Records** An entity shall maintain records and reports relating to tendering procedures and contract awards covered by this Chapter, including the records and reports provided for in Article Kbis-09(2), for a period of at least three years.

Article Kbis-12. Ensuring Integrity In Procurement Practices

Each Party shall ensure that criminal or administrative penalties exist to address corruption in its government procurement, and that the Party and its entities have in place policies and procedures to eliminate any potential conflict of interest on the part of those engaged in or having influence over a procurement.

Article Kbis-13. Domestic Review of Supplier Challenges

Consultations between the Procuring Entity and Supplier

1. Each Party shall ensure that its entities accord impartial and timely consideration to any complaints from suppliers regarding an alleged breach of measures implementing this Chapter arising in the context of a procurement in which they have, or have had, an interest. Where appropriate, a Party may encourage suppliers to seek clarification from its entities with a view to facilitating the resolution of any such complaints.

2. Independent Review Authorities 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 complaints of suppliers arising in the context of a procurement covered by this Chapter in which it has or has had an interest.

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 10 days from the time when the basis of the complaint became known to the supplier or reasonably should have become known to the supplier.

4. Each Party shall provide that an authority it establishes or designates under paragraph 2 has authority to take interim measures, pending the resolution of a complaint, to preserve the supplier's opportunity to participate in the procurement. Such interim measures may result in suspension of the procurement process. However, 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.

5. Notwithstanding other review procedures provided for or developed by each of the Parties, each Party shall ensure that any authority it establishes or designates under paragraph 2 shall have procedures which shall be in writing and made generally available. Such procedures shall be timely, effective, transparent and non-discriminatory and shall provide that:

a. the procuring entity respond in writing to the complaint and disclose all relevant documents to the review body;

b. the participants to the proceedings have the right to legal representation, and to be heard prior to a decision of the review body being made on the complaint;

c. the participants to the proceedings have access to all proceedings; and

d. the findings and recommendations relating to supplier complaints be provided in a timely fashion, in writing, with an explanation of their basis.

6. Each party shall ensure that a supplier's submission of a complaint will not prejudice the supplier's participation in ongoing or future procurements.

Article Kbis-14. Modifications and Rectifications

1. Where a Party modifies its coverage under this Chapter, the Party shall

a. notify the other Party in writing; and

b. propose appropriate compensatory adjustments to the other Party to maintain a level of coverage comparable to that existing prior to the modification.

2. Notwithstanding paragraph 1(b), a Party need not provide compensatory adjustments where the Parties agree that:

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 a Party has effectively eliminated its control or influence.

3. If the other Party does not agree to the compensatory adjustments proposed under paragraph 1(b), or that the modification is a minor amendment or rectification of a purely formal nature, or that government control or influence has been effectively eliminated from the entity in question, the other Party must object in writing within 30 days of receipt of the notification or be deemed to have agreed.

4. Where a Party has raised its objection in writing within the time periods prescribed in paragraph 3 and considers that:

a. an adjustment proposed under paragraph 1(b) is not adequate to maintain a comparable level of mutually agreed coverage;

b. the proposed amendment is not a minor modification or rectification under paragraph 2 (a);

c. the proposed modification covers an entity over which a Party has not effectively eliminated its control or influence under paragraph 2(b),

the Party may have recourse to dispute settlement procedures under Chapter N (Institutional Arrangements and Dispute Settlement Procedures).

5. Where the Parties are in agreement on the proposed modification, rectification, or minor amendment, including where a

Party has not objected within 30 days under paragraph 3, the Commission shall give effect to the agreement by modifying forthwith the relevant Section of Annex Kbis-01.

Article Kbis-15. Non-disclosure of Information

1. The Parties, their entities, and their review authorities shall not disclose confidential information the disclosure of which would prejudice legitimate commercial interests of a particular person or might prejudice fair competition between suppliers, without the formal authorization of the person that provided the information to the Party.

2. Nothing in this Chapter shall be construed as requiring a Party or its entities to disclose confidential information the disclosure of which would impede law enforcement or otherwise be contrary to the public interest.

Article Kbis-16. Exceptions

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

2. Provided that such measures are not applied in a manner that would constitute a means of arbitrary or unjustifiable discrimination between Parties where the same conditions prevail or a disguised restriction on trade between the Parties, nothing in this Chapter shall be construed to prevent a Party from adopting or maintaining measures:

a. necessary to protect public morals, order, or safety;

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

c. necessary to protect intellectual property; or

d. relating to goods or services of handicapped persons, of philanthropic institutions, or of prison labour.

Article Kbis-17. Public Information

1. In order to facilitate access to information on commercial opportunities under this Chapter, each Party shall ensure that electronic databases that provide current information on all procurements covered by this Chapter that are conducted by entities listed in Annex Kbis-01, including information that can be disaggregated by detailed categories of goods and services, are made available to interested suppliers of the other Party, through the Internet or a comparable computer-based telecommunications network. Each Party shall, on request of the other Party, provide information on:

a. the classification system used to disaggregate information on procurement of different goods and services in such databases; and

b. the procedures for obtaining access to such databases.

2. For each covered procurement, a procuring entity shall publish a notice of intended procurement through the Internet or a comparable electronic network that is widely disseminated and readily accessible to the public. Each Party shall maintain a gateway electronic site that includes links to all notices of procuring entities.

3. Each Party shall encourage its entities to publish, as early as possible in the fiscal year, information regarding the entity's procurement plans.

Article Kbis-18. Committee on Procurement

The Parties hereby establish a Committee on Procurement to address matters such as increasing the understanding of their respective government procurement systems, with a view to maximizing access to government procurement.

Article Kbis-19. Further Negotiations

1. If, after the entry into force of the provisions of this Chapter, either Party enters into another international agreement that revises procurement procedures and practices, including the introduction of shorter bid periods, on the request of either Party the Parties shall enter into negotiations with a view to harmonising the current Chapter with the new international agreement.

2. If, after the entry into force of the provisions of this Chapter, either Party enters into another international agreement that provides greater access to its procurement market than is provided through this Chapter, including with respect to sub-federal government procurement, either Party may request that the Parties enter into negotiations with a view to achieving an equivalent level of market access through this Chapter as is contained in the other international agreement.

Article Kbis-20. Definitions

For purposes of this Chapter:

construction services means a contractual arrangement for the realization by any means of civil or building works, whether paid for directly by the Party or through, for a specified period of time, any grant to the supplier of temporary ownership or a right to control and operate, and demand payment for the use of such works, for the duration of the contract;

entity means an entity listed in Annex Kbis-01;

in writing or **written** means any expression of information in words, numbers, or other symbols, including electronic expressions, that can be read, reproduced, and stored;

international standard means a standard that has been developed in conformity with the document Decisions and Recommendations adopted by the Committee since 1 January 1995, G/TBT/1/Rev.7, 28 November 2000, Section IX (Decision of the Committee on Principles for the Development of International Standards, Guides and Recommendations with relation to Articles 2, 5 and Annex 3 of the Agreement), issued by the WTO Committee on Technical Barriers to Trade;

offsets means conditions imposed or considered by an entity prior to, or in the course of, its procurement process that encourage local development or improve a Party's balance of payments accounts by means of requirements of local content, licensing of technology, investment, counter-trade, or similar requirements;

procurement means the process by which a government obtains the use of or acquires goods or services, or any combination thereof, for governmental purposes and not with a view to commercial sale or resale, or use in the production or supply of goods or services forcommercial sale or resale;

procurement official means a person who performs procurement functions;

publish means to disseminate information in an electronic or paper medium that is distributed widely and is readily accessible to the general public;

supplier means a person that provides or could provide goods or services to an entity;

technical specification means a specification that lays down the characteristics of goods to be procured or their related processes and production methods, or the characteristics of services to be procured or their related operating methods, including the applicable administrative provisions, and a requirement relating to conformity assessment procedures that an entity prescribes. A technical specification may also include or deal exclusively with terminology, symbols, packaging, marking or labelling requirements, as they apply to a good, process, service or production or operating method.

Part Four. Administrative and Institutional Provisions

Chapter L. Publication, Notification and Administration of Laws

Article L-01. Contact Points

Each Party shall designate a contact point to facilitate communications between the Parties on any matter covered by this Agreement. On the request of the other Party, the contact point shall identify the office or official responsible for the matter and assist, as necessary, in facilitating communication with the requesting Party.

Article L-02. Publication

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

2. To the extent possible, each Party shall:

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

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

Article L-03. Notification and Provision of Information

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

2. On request of the other Party, a Party shall promptly provide information and respond to questions pertaining to any actual or proposed measure, whether or not the other Party has been previously notified of that measure.

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

Article L-04. Administrative Proceedings

With a view to administering in a consistent, impartial and reasonable manner all measures of general application affecting matters covered by this Agreement, each Party shall ensure that in its administrative proceedings applying measures referred to in Article L-02 to particular persons, goods or services of the other Party in specific cases that:

(a) wherever possible, persons of the other Party that are directly affected by a proceeding are provided reasonable notice, in accordance with domestic procedures, when a proceeding is initiated, including a description of the nature of the proceeding, a statement of the legal authority under which the proceeding is initiated and a general description of any issues in controversy;

(b) such persons are afforded a reasonable opportunity to present facts and arguments in support of their positions prior to any final administrative action, when time, the nature of the proceeding and the public interest permit; and

(c) its procedures are in accordance with domestic law.

Article L-05. Review and Appeal

1. Each Party shall establish or maintain judicial, quasi-judicial or administrative tribunals or procedures for the purpose of the prompt review and, where warranted, correction of final administrative actions regarding matters covered by this Agreement. Such tribunals shall be impartial and independent of the office or authority entrusted with administrative enforcement and shall not have any substantial interest in the outcome of the matter.

2. Each Party shall ensure that, in any such tribunals or procedures, the parties to the proceeding are provided with the right to:

(a) a reasonable opportunity to support or defend their respective positions; and

(b) a decision based on the evidence and submissions of record or, where required by domestic law, the record compiled by the administrative authority.

3. Each Party shall ensure, subject to appeal or further review as provided in its domestic law, that such decisions shall be implemented by, and shall govern the practice of, the offices or authorities with respect to the administrative action at issue.

Article L-06. Definitions

For purposes of this Chapter:

administrative ruling of general application means an administrative ruling or interpretation that applies to all persons and fact situations that fall generally within its ambit and that establishes a norm of conduct but does not include:

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

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

Chapter M. Anti-dumping and Countervailing Duty Matters

Article M-01. Reciprocal Exemption from the Application of Anti-dumping Duty Laws

1. Subject to Article M-03, as of the date of entry into force of this Agreement each Party agrees not to apply its domestic anti-dumping law to goods of the other Party. Specifically:

(a) neither Party shall initiate any anti-dumping investigations or reviews with respect to goods of the other Party;

(b) each Party shall terminate any ongoing anti-dumping investigations or inquiries in respect of such goods;

(c) neither Party shall impose new anti-dumping duties or other measures in respect of such goods; and

(d) each Party shall revoke all existing orders levying anti-dumping duties in respect of such goods.

2. Each Party shall amend, and publish as appropriate, its relevant domestic anti-dumping law in relation to goods of the other Party to ensure that the objectives of this Article are achieved.

Article M-02. Rules of Origin

Article M-01 applies only to goods that the competent investigating authority of the importing Party, applying the importing Party's anti-dumping law to the facts of a specific case, determines are goods of the other Party.

Article M-03. Phase-in Provisions

1. Article M-01 applies to all goods of the other Party as of:

(a) the date on which the tariff of both Parties is eliminated at the subheading level; or (b) January 1, 2003, whichever comes first.

2. For the purpose of paragraph 1, elimination at the subheading level occurs when the tariff for each eight-digit tariff line under the six-digit subheading is zero under this Agreement.

Article M-04. Exceptional Circumstances

1. Either Party may request, in writing, consultations with the other Party regarding exceptional circumstances that may arise with respect to the operation of this Chapter.

2. Exceptional circumstances may include significant changes in recent trading conditions.

3. The Parties shall enter into consultations within 10 days of receipt of a request and shall conclude such consultations within 30 days of such receipt, except where the matter involves perishable goods, in which case the consultations shall be concluded within 20 days.

4. In the consultations, the Parties shall make every attempt to arrive at a mutually satisfactory resolution of the particular matter, with a view to promptly restoring recent trading conditions. To this end, the Parties shall:

(a) provide sufficient information to enable a full examination of the exceptional circumstances; and

(b) treat any confidential or proprietary information exchanged in the course of consultations on the same basis as the Party providing the information.

5. These consultations shall be without prejudice to a Party's right to invoke any applicable government-to-government dispute settlement procedures available under this Agreement or the WTO Agreement.

Article M-05. Committee on Anti-dumping and Countervailing Measures

The Parties hereby establish a Committee on Anti-dumping and Countervailing Measures to:

(a) consult with a view to defining subsidy disciplines further and eliminating the need for domestic countervailing duty measures on trade between them;

(b) work together in multilateral fora, including the World Trade Organization, and in the context of negotiating Chile's full accession to the NAFTA and the establishment of a Free Trade Area of the Americas, with a view to improving trade remedy

regimes to minimize their potential to impede trade;

(c) consult on opportunities for working together with other like-minded countries with a view to expanding agreement on the elimination of the application of anti-dumping measures within free trade areas;

(d) facilitate Chile's full accession to the NAFTA, and in particular Chapter Nineteen, by examining the current domestic anti-dumping and countervailing duty regimes and the operation of the Parties' legal systems, including judicial review of administrative agency decisions; and

(e) meet annually, and on the request of either Party, to review the operation of this Chapter and other related matters including competition laws and policies.

Article M-06. Review

The Parties shall, not later than 5 years after the coming into force of this Agreement, meet to review this Chapter and to determine whether any changes should be made to its provisions.

Article M-07. Dispute Resolution

1. The dispute settlement provisions of Chapter N (Institutional Arrangements and Dispute Settlement Procedures) shall apply with respect to the avoidance or settlement of all disputes between the Parties regarding the interpretation or application of Articles M-01, M-02, M-03 or M-04 and paragraphs 7 through 9 of this Article.

2. Apart from this Chapter, no provision of this Agreement shall be construed as imposing obligations on a Party with respect to either Party's anti-dumping or countervailing duty law.

3. Except as otherwise provided in paragraph 1, all disputes between the Parties arising in respect of the application of anti-dumping measures or countervailing duty measures by either Party shall be settled in accordance with the WTO Agreement.

4. Where a dispute referred to in paragraph 3 involves, as disputing Parties, Canada and Chile exclusively, the Parties shall act in accordance with the following procedures consistent with the DSU:

(a) if a request for consultations under Article 4 of the DSU is made, the Parties shall enter into consultations within 10 days of receipt of the request and shall conclude such consultations within 30 days of such receipt, except where the matter involves perishable goods, in which case consultations shall be concluded within 20 days;

(b) a Party shall not object to the establishment of a panel that has been requested by the other Party under Article 6(1) of the DSU at the first meeting of the DSB at which the request is examined; and

(c) unless the Parties otherwise agree, the terms of reference of the panel shall be to determine whether the imposition of an anti-dumping measure or a countervailing duty measure against a good of the complaining Party by the Party complained against is in accordance with Article VI of the GATT 1994, or the Agreement on Subsidies and Countervailing Measures or the Agreement on Implementation of Article VI of the GATT 1994.

5. Unless the Parties otherwise agree, where a DSU panel issues a final report concluding that the imposition by either Canada or Chile of an anti-dumping measure or a countervailing duty measure against a good of the other Party is not in accordance with Article VI of the GATT 1994, or the Agreement on Subsidies and Countervailing Measures or the Agreement on Implementation of Article VI of the GATT 1994, the Party complained against shall direct its competent authorities to take action not inconsistent with the panel report with respect to the goods of the complaining Party, including, where appropriate, the refund, with interest, of the whole or part of the duty paid.

6. The final report of the DSU panel shall be deemed to be a final report of a panel under Article N-16.

7. The Party complained against shall not be required to take action pursuant to paragraph 5 until:

(a) the time period for notification to the DSB of a decision to appeal under Article 16(4) of the DSU has expired; or

(b) the panel report is adopted following completion of the appeal procedure under Article 17 of the DSU.

8. Following the expiration of the time period referred to in subparagraph 7(a) or the adoption of the panel report referred to in subparagraph 7(b), if the Party complained against fails to comply with the final report of a DSU panel pursuant to paragraph 4 within a reasonable period of time, and no compensation has been offered in lieu thereof and no other mutually satisfactory resolution of the matter has been reached, the complaining Party may suspend the application to the Party complained against of benefits of equivalent effect under Article N-18 until such time as the matter is resolved.

9. If a Party chooses to suspend benefits in accordance with Article N-18 as well as under the DSU, the combined effect of such suspension of benefits may not be greater than the effect of the violation.

Article M-08. Definitions

For purposes of this Chapter:

Agreement on Implementation of Article VI of the GATT 1994 means the Agreement on Implementation of Article VI of the General Agreement on Tariff and Trade 1994, which forms part of the WTO Agreement;

Agreement on Subsidies and Countervailing Measures means the Agreement on Subsidies and Countervailing Measures, which forms part of the WTO Agreement;

Competent investigating authority means:

(a) in the case of Canada

(i) the Canadian International Trade Tribunal or its successor; or

(ii) the Deputy Minister of National Revenue as defined in the Special Import Measures Act, as amended, or the Deputy Minister's successor; and

(b) in the case of Chile, the National Commission for the Investigation of the Existence of Price Distortions in Imported Goods ("Comisión Nacional Encargada de Investigar la Existencia de Distorsiones en el Precio de las Mercaderías Importadas"), or its successor;

domestic anti-dumping law means a Party's relevant statutes, regulations and administrative guidelines;

DSB means the Dispute Settlement Body established in Article 2 of the DSU; and

reasonable period of time means the period necessary for review and the taking of action not inconsistent with the panel report, taking into account the factual and legal issues involved. In no event shall the reasonable period of time exceed an amount of time equal to the maximum permitted for investigation (from initiation to final order) to be carried out under the relevant WTO Agreements.

Chapter N. Institutional Arrangements and Dispute Settlement Procedures

Article N-01. The Free Trade Commission

1. The Parties hereby establish the Free Trade Commission, comprising cabinet-level representatives of the Parties or their designees.

2. The Commission shall:

(a) supervise the implementation of this Agreement;

(b) oversee its further elaboration;

(c) resolve disputes that may arise regarding its interpretation or application;

(d) supervise the work of all committees and working groups established under this Agreement, referred to in Annex N-01.2; and

(e) consider any other matter that may affect the operation of this Agreement.

3. The Commission may:

(a) establish, and delegate responsibilities to, ad hoc or standing committees, working groups or expert groups;

(b) seek the advice of nongovernmental persons or groups; and

(c) take such other action in the exercise of its functions as the Parties may agree.

4. The Commission shall establish its rules and procedures. All decisions of the Commission shall be taken by mutual

agreement.

5. The Commission shall convene at least once a year in regular session. Regular sessions of the Commission shall be chaired alternately by each Party.

Article N-02. The Secretariat

1. The Commission shall establish and oversee a Secretariat comprising national Sections.

2. Each Party shall:

(a) establish a permanent office of its Section;

(b) be responsible for (i) the operation and costs of its Section, and

(ii) the remuneration and payment of expenses of panelists and members of committees and scientific review boards established under this Agreement, as set out in Annex N-02.2;

(c) designate an individual to serve as Secretary for its Section, who shall be responsible for its administration and management; and

(d) notify the Commission of the location of its Section's office.

3. The Secretariat shall: (a) provide assistance to the Commission;

(b) provide administrative assistance to panels established under this Chapter, in accordance with procedures established pursuant to Article N-12; and

(c) as the Commission may direct

(i) support the work of other committees and groups established under this Agreement, and

(ii) otherwise facilitate the operation of this Agreement.

Article N-03. Cooperation

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 to arrive at a mutually satisfactory resolution of any matter that might affect its operation.

Article N-04. Recourse to Dispute Settlement Procedures

Except as otherwise provided in this Agreement, the dispute settlement provisions of this Chapter shall apply with respect to the avoidance or settlement of all disputes between the Parties regarding the interpretation or application of this Agreement or wherever a Party considers that an actual or proposed measure of the other Party is or would be inconsistent with the obligations of this Agreement or cause nullification or impairment in the sense of Annex N-04.

Article N-05. Wto Dispute Settlement

1. Subject to paragraph 2, disputes regarding any matter arising under both this Agreement and the WTO Agreement, any agreement negotiated thereunder, or any successor agreement, may be settled in either forum at the discretion of the complaining Party.

2. In any dispute referred to in paragraph 1 where the responding Party claims that its action is subject to Article A-04 (Relation to Environmental and Conservation Agreements) and requests in writing that the matter be considered under this Agreement, the complaining Party may, in respect of that matter, thereafter have recourse to dispute settlement procedures solely under this Agreement.

3. The responding Party shall deliver a copy of a request made pursuant to paragraph 2 to its Section of the Secretariat and the other Party. Where the complaining Party has initiated dispute settlement proceedings regarding any matter subject to paragraph 2, the responding Party shall deliver its request no later than 15 days thereafter. On receipt of such request, the complaining Party shall promptly withdraw from participation in those proceedings and may initiate dispute settlement procedures under Article N-07.

4. Once dispute settlement procedures have been initiated under Article N-07 or dispute settlement proceedings have been initiated under the WTO Agreement, the forum selected shall be used to the exclusion of the other, unless a Party makes a request pursuant to paragraph 2.

5. For purposes of this Article, dispute settlement proceedings under the WTO Agreement are deemed to be initiated by a Party's request for a panel, such as under Article 6 of the DSU.

Article N-06. Consultations

1. A Party may request in writing consultations with the other Party regarding any actual or proposed measure or any other matter that it considers might affect the operation of this Agreement.

2. The requesting Party shall deliver the request to its Section of the Secretariat and the other Party.

3. Consultations on matters regarding perishable agricultural goods shall commence within 15 days of the date of delivery of the request.

4. The Parties shall make every attempt to arrive at a mutually satisfactory resolution of any matter through consultations under this Article or other consultative provisions of this Agreement. To this end, the Parties shall:

(a) provide sufficient information to enable a full examination of how the actual or proposed measure or other matter might affect the operation of this Agreement; and

(b) treat any confidential or proprietary information exchanged in the course of consultations on the same basis as the Party providing the information.

Article N-07. Commission - Good Offices, Conciliation and Mediation

1. If the Parties fail to resolve a matter pursuant to Article N-06 within:

(a) 30 days of delivery of a request for consultations;

(b) 15 days of delivery of a request for consultations in matters regarding perishable agricultural goods; or

(c) such other period as they may agree, either Party may request in writing a meeting of the Commission.

2. A Party may also request in writing a meeting of the Commission where:

(a) it has initiated dispute settlement proceedings under the WTO Agreement regarding any matter subject to Article N-05(2), and has received a request pursuant to Article N-05(3) for recourse to dispute settlement procedures under this Chapter; or

(b) consultations have been held in the Committee on Trade in Goods and Rules of Origin pursuant to Article C-15.

3. The requesting Party shall state in the request the measure or other matter complained of and indicate the provisions of this Agreement that it considers relevant, and shall deliver the request to its Section of the Secretariat and the other Party.

4. Unless it decides otherwise, the Commission shall convene within 10 days of delivery of the request and shall endeavour to resolve the dispute promptly.

5. The Commission may:

(a) call on such technical advisers or create such working groups or expert groups as it deems necessary;

(b) have recourse to good offices, conciliation, mediation or such other dispute resolution procedures; or

(c) make recommendations, as may assist the Parties to reach a mutually satisfactory resolution of the dispute.

6. Unless it decides otherwise, the Commission shall consolidate two or more proceedings before it pursuant to this Article regarding the same measure. The Commission may consolidate two or more proceedings regarding other matters before it pursuant to this Article that it determines are appropriate to be considered jointly.

Article N-08. Request for an Arbitral Panel

1. If the Commission has convened pursuant to Article N-07(4), and the matter has not been resolved within:

(a) 30 days thereafter;

(b) 30 days after the Commission has convened in respect of the matter most recently referred to it, where proceedings have been consolidated pursuant to Article N-07(6); or

(c) such other period as the Parties may agree, a Party may request in writing the establishment of an arbitral panel. The requesting Party shall deliver the request to its Section of the Secretariat and the other Party.

2. On delivery of the request, the Commission shall establish an arbitral panel.

3. Unless otherwise agreed by the Parties, the panel shall be established and perform its functions in a manner consistent with the provisions of this Chapter.

Article N-09. Roster

1. The Parties shall establish by January 1, 1998 at the latest and maintain a roster of up to 20 individuals, 4 of whom must not be citizens of either of the Parties, who are willing and able to serve as panelists. The roster members shall be appointed by agreement of the Parties for terms of three years, and may be reappointed.

2. Roster members shall:

(a) have expertise or experience in law, international trade, other matters covered by this Agreement or the resolution of disputes arising under international trade agreements, and shall be chosen strictly on the basis of objectivity, reliability and sound judgment;

(b) be independent of, and not be affiliated with or take instructions from, any Party; and

(c) comply with a code of conduct to be established by the Commission.

Article N-10. Qualifications of Panelists

1. All panelists shall meet the qualifications set out in Article N-09(2).

2. Individuals may not serve as panelists for a dispute in which they have participated pursuant to Article N-07(5).

Article N-11. Panel Selection

1. The following procedures shall apply to panel selection:

(a) The panel shall comprise five members;

(b) The Parties shall endeavour to agree on the chair of the panel within 15 days of the delivery of the request for the establishment of the panel. If the Parties are unable to agree on the chair within this period, the Party chosen by lot shall select within five days as chair an individual who is not a citizen of a Party;

(c) Within 15 days of selection of the chair, each Party shall select two panelists who are citizens of the other Party; and

(d) If a Party fails to select its panelists within such period, such panelists shall be selected by lot from among the roster members who are citizens of the other Party.

2. Panelists shall normally be selected from the roster. A Party may exercise a peremptory challenge against any individual not on the roster who is proposed as a panelist by the other Party within 15 days after the individual has been proposed.

3. If a Party believes that a panelist is in violation of the code of conduct, the Parties shall consult and if they agree, the panelist shall be removed and a new panelist shall be selected in accordance with this Article.

Article N-12. Rules of Procedure

1. The Commission shall establish, by the date of entry into force of this Agreement, Model Rules of Procedure, in accordance with the following principles:

(a) the procedures shall assure a right to at least one hearing before the panel as well as the opportunity to provide initial and rebuttal written submissions; and

(b) the panel's hearings, deliberations and initial report, and all written submissions to and communications with the panel shall be confidential.

2. The Commission may amend from time to time the Model Rules of Procedure referred to in paragraph 1.

3. Unless the Parties otherwise agree, the panel shall conduct its proceedings in accordance with the Model Rules of Procedure.

4. Unless the Parties otherwise agree within 20 days from the date of the delivery of the request for the establishment of the panel, the terms of reference shall be: "To examine, in the light of the relevant provisions of the Agreement, the matter referred to the Commission (as set out in the request for a Commission meeting) and to make findings, determinations and recommendations as provided in Article N-15(2)."

5. If the complaining Party wishes to argue that a matter has nullified or impaired benefits, the terms of reference shall so indicate.

6. If a Party wishes the panel to make findings as to the degree of adverse trade effects on a Party of any measure found not to conform with the obligations of the Agreement or to have caused nullification or impairment in the sense of Annex N-04, the terms of reference shall so indicate.

Article N-13. Role of Experts

On request of a Party, or on its own initiative, the panel may seek information and technical advice from any person or body that it deems appropriate, provided that the Parties so agree and subject to such terms and conditions as the Parties may agree.

Article N-14. Scientific Review Boards

1. On request of a Party or, unless the Parties disapprove, on its own initiative, the panel may request a written report of a scientific review board on any factual issue concerning environmental, health, safety or other scientific matters raised by a Party in a proceeding, subject to such terms and conditions as the Parties may agree.

2. The board shall be selected by the panel from among highly qualified, independent experts in the scientific matters, after consultations with the Parties and the scientific bodies set out in the Model Rules of Procedure established pursuant to Article N-12(1).

3. The Parties shall be provided: (a) advance notice of, and an opportunity to provide comments to the panel on, the proposed factual issues to be referred to the board; and (b) a copy of the board's report and an opportunity to provide comments on the report to the panel.

4. The panel shall take the board's report and any comments by the Parties on the report into account in the preparation of its report.

Article N-15. Initial Report

1. Unless the Parties otherwise agree, the panel shall base its report on the submissions and arguments of the Parties and on any information before it pursuant to Article N-13 or N-14.

2. Unless the Parties otherwise agree, the panel shall, within 90 days after the last panellist is selected or such other period as the Model Rules of Procedure established pursuant to Article N-12(1) may provide, present to the Parties an initial report containing:

(a) findings of fact, including any findings pursuant to a request under Article N12(6);

(b) its determination as to whether the measure at issue is or would be inconsistent with the obligations of this Agreement or cause nullification or impairment in the sense of Annex N-04, or any other determination requested in the terms of reference; and

(c) its recommendations, if any, for resolution of the dispute.

3. Panelists may furnish separate opinions on matters not unanimously agreed.

4. A Party may submit written comments to the panel on its initial report within 14 days of presentation of the report.

5. In such an event, and after considering such written comments, the panel, on its own initiative or on the request of a Party, may:

(a) request the views of a Party;

(b) reconsider its report; and

(c) make any further examination that it considers appropriate.

Article N-16. Final Report

1. The panel shall present to the Parties a final report, including any separate opinions on matters not unanimously agreed, within 30 days of presentation of the initial report, unless the Parties otherwise agree.

2. No panel may, either in its initial report or its final report, disclose which panelists are associated with majority or minority opinions.

3. The Parties shall transmit to the Commission the final report of the panel, including any report of a scientific review board established under Article N-14, as well as any written views that a Party desires to be appended, on a confidential basis within a reasonable period of time after it is presented to them.

4. Unless the Commission decides otherwise, the final report of the panel shall be published 15 days after it is transmitted to the Commission.

Implementation of Panel Reports

Article N-17. Implementation of Final Report

1. On receipt of the final report of a panel, the Parties shall agree on the resolution of the dispute, which normally shall conform with the determinations and recommendations of the panel, and shall notify their Sections of the Secretariat of any agreed resolution of any dispute.

2. Wherever possible, the resolution shall be nonimplementation or removal of a measure not conforming with this Agreement or causing nullification or impairment in the sense of Annex N-04 or, failing such a resolution, compensation.

Article N-18. Non-implementation - Suspension of Benefits

1. If in its final report a panel has determined that a measure is inconsistent with the obligations of this Agreement or causes nullification or impairment in the sense of Annex N-04 and the Party complained against has not reached agreement with the complaining Party on a mutually satisfactory resolution pursuant to Article N-17(1) within 30 days of receiving the final report, the complaining Party may suspend the application to the Party complained against of benefits of equivalent effect until such time as they have reached agreement on a resolution of the dispute.

2. In considering what benefits to suspend pursuant to paragraph 1:

(a) the complaining Party should first seek to suspend benefits in the same sector or sectors as that affected by the measure or other matter that the panel has found to be inconsistent with the obligations of this Agreement or to have caused nullification or impairment in the sense of Annex N-04; and

(b) if the complaining Party considers that it is not practicable or effective to suspend benefits in the same sector or sectors, it may suspend benefits in other sectors.

3. On the written request of a Party delivered to its Section of the Secretariat and the other Party, the Commission shall establish a panel to determine whether the level of benefits suspended by a Party pursuant to paragraph 1 is manifestly excessive.

4. The panel proceedings shall be conducted in accordance with the Model Rules of Procedure. The panel shall present its determination within 60 days after the last panelist is selected or such other period as the Parties may agree.

Section III. Domestic Proceedings and Private Commercial Dispute Settlement

Article N-19. Referrals of Matters from Judicial or Administrative Proceedings

1. If an issue of interpretation or application of this Agreement arises, in any domestic judicial or administrative proceeding of a Party, that either Party considers would merit its intervention, or if a court or administrative body solicits the views of a Party, that Party shall notify its Section of the Secretariat and the other Party. The Commission shall endeavour to agree on an appropriate response as expeditiously as possible.

2. The Party in whose territory the court or administrative body is located shall submit any agreed interpretation of the Commission to the court or administrative body in accordance with the rules of that forum.

3. If the Commission is unable to agree, each Party may submit its own views to the court or administrative body in accordance with the rules of that forum.

Article N-20. Private Rights

Neither Party may provide for a right of action under its domestic law against the other Party on the ground that a measure of the other Party is inconsistent with this Agreement.

Article N-21. Alternative Dispute Resolution

1. Each Party shall, to the maximum extent possible, encourage and facilitate the use of arbitration and other means of alternative dispute resolution for the settlement of international commercial disputes between private parties in the free trade area.

2. To this end, each Party shall provide appropriate procedures to ensure observance of agreements to arbitrate and for the recognition and enforcement of arbitral awards in such disputes.

3. A Party shall be deemed to be in compliance with paragraph 2 if it is a party to and is in compliance with the 1958 United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards or the 1975 Inter-American Convention on International Commercial Arbitration.

Inter-American Convention on International Commercial Arbitration.

4. The Commission shall establish an Advisory Committee on Private Commercial Disputes comprising persons with expertise or experience in the resolution of private international commercial disputes. The Committee shall report and provide recommendations to the Commission on general issues referred to it by the Commission respecting the availability, use and effectiveness of arbitration and other procedures for the resolution of such disputes in the free trade area.

(a) paragraph 1(a), to the extent that the benefit arises from any cross-border trade in services provision of Part Two or Three; or

(b) paragraph 1(b), with respect to any measure subject to an exception under Article O-01 (General Exceptions).

Chapter N bis. Trade and Gender

Article Nbis-01. General Provisions

1. The Parties acknowledge the importance of incorporating a gender perspective into the promotion of inclusive economic growth, and the key role that gender-responsive policies can play in achieving sustainable socioeconomic development. Inclusive economic growth aims to distribute benefits among the entire population by providing equitable opportunities for the participation of women and men in business, industry and the labour market.

2. The Parties recall Goal 5 of the Sustainable Development Goals in the United Nations 2030 Agenda for Sustainable Development, which is to achieve gender equality and empower all women and girls. The Parties reaffirm the importance of promoting gender equality policies and practices, and building the capacity of the Parties in this area, including in non-government sectors, in order to promote equal rights, treatment and opportunity between men and women and the elimination of all forms of discrimination against women.

3. The Parties reaffirm the obligations in the Agreement on Labour Cooperation or its successor relating to gender equality and the elimination of gender discrimination. The Parties also reaffirm commitments made in Article G-14bis as they relate to gender, including the Parties' commitments to the OECD Guidelines for Multinational Enterprises, and the requirement under the Guidelines to establish a National Contact Point.

4. The Parties acknowledge that international trade and investment are engines of economic growth, and that improving women's access to opportunities and removing barriers in their countries enhances their participation in national and international economies, and contributes to sustainable economic development.

5. The Parties also acknowledge that women's enhanced participation in the labour market and their economic independence and access to, and ownership of, economic resources contribute to sustainable and inclusive economic growth, prosperity, competitiveness, and the well-being of society.

6. The Parties affirm their commitment to adopt, maintain and implement effectively their gender equality laws, regulations, policies and best practices.

7. Each Party shall domestically promote public knowledge of its gender equality laws, regulations, policies and practices.

Article Nbis-02. International Agreements

1. Each Party reaffirms its commitment to effectively implement the obligations under the Convention on the Elimination of all Forms of Discrimination Against Women, adopted by the United Nations General Assembly on 18 December 1979.

2. Each Party reaffirms its commitment to implement the obligations under other international agreements addressing gender equality or women's rights to which it is a party.

Article Nbis-03. Cooperation Activities

1. The Parties acknowledge the benefit of sharing their respective experiences in designing, implementing, monitoring and strengthening policies and programs to encourage women's participation in national and international economies.

2. Accordingly, the Parties shall carry out cooperation activities designed to improve the capacity and conditions for women, including workers, businesswomen and entrepreneurs, to access and fully benefit from the opportunities created by this Agreement. These activities shall be carried out with inclusive participation of women.

3. Cooperation activities shall be carried out on issues and topics agreed upon by the Parties through the interaction of their respective government institutions, businesses, labour unions, education and research organizations, other non-governmental organizations, and their representatives, as appropriate.

4. Areas of cooperation may include:

(a) developing programs to promote women's full participation and advancement in society by encouraging capacity-building and skills enhancement of women at work, in business, and at senior levels in all sectors of society (including on corporate boards);

(b) improving women's access to, and participation and leadership in, science, technology and innovation, including education in science, technology, engineering, mathematics and business;

(c) promoting financial inclusion and education as well as promoting access to financing and financial assistance;

(d) advancing women's leadership and developing women's networks;

(e) developing better practices to promote gender equality within enterprises;

(f) fostering women's participation in decision-making positions in the public and private sectors;

(g) promoting female entrepreneurship;

(h) advancing care policies and programs with a gender and shared social responsibility perspective;

(i) conducting gender-based analysis;

(j) sharing methods and procedures for the collection of sex-disaggregated data, the use of indicators, and the analysis of gender-focused statistics related to trade; and

(k) other issues as agreed by the Parties.

5. The Parties may carry out activities in the cooperation areas set out in paragraph 4 through:

(a) workshops, seminars, dialogues and other forums for exchanging knowledge, experiences and best practices;

(b) internships, visits and research studies to document and study policies and practices;

(c) collaborative research and development of best practices in subject-matters of mutual interest;

(d) specific exchanges of specialized technical knowledge and technical assistance, as appropriate; and

(e) other activities as agreed by the Parties.

6. The priorities for cooperation activities shall be decided by the Parties based on their interests and available resources.

7. The Trade and Gender Committee may refer any proposed cooperation activities related to labour or labour market development to the Council established under the Agreement on Labour Cooperation or its successor, for its consideration.

Article Nbis-04. Trade and Gender Committee

1. The Parties hereby establish a Trade and Gender Committee composed of representatives from each Party's government institutions responsible for trade and gender.

2. The Committee shall:

(a) determine, organize and facilitate the cooperation activities under Article N bis-03;

(b) report to the Commission and make recommendations to the Commission on any matter related to this Chapter;

(c) facilitate the exchange of information on each Party's experiences with respect to the establishment and implementation of policies and programs that address gender concerns in order to achieve the greatest possible benefit under this Agreement;

(d) facilitate the exchange of information on the Parties' experiences and lessons learned through the cooperation activities carried out under Article N bis-03;

(e) discuss joint proposals to support policies on trade and gender;

(f) invite international donor institutions, private sector entities, non-governmental organizations, or other relevant institutions, as appropriate, to assist with the development and implementation of cooperation activities;

(g) consider matters related to the implementation and operation of this Chapter;

(h) at the request of a Party, consider and discuss any matter that may arise related to the interpretation and application of this Chapter; and

(i) carry out other duties as determined by the Parties.

3. The Committee shall meet annually and as otherwise agreed by the Parties, in person or by any other technological means available, to consider any matter arising under this Chapter.

4. The Committee and Parties may exchange information and coordinate activities by email, videoconference or other means of communication.

5. In the performance of its duties, the Committee may work with other committees, working groups and subsidiary bodies established under this Agreement, the Council established under the Agreement on Labour Cooperation or, as appropriate, the Council established under the Agreement on Environmental Cooperation. In the context of this work, the Committee shall encourage efforts by these committees, working groups, subsidiary bodies, and these Councils, to integrate gender-related commitments, considerations and activities into their work.

6. The Committee may request that the Commission refer work to be conducted under this Article to any other committees, working groups and other subsidiary bodies established under this Agreement, the Agreement on Labour Cooperation or its successor, or, as appropriate, the Agreement on Environmental Cooperation or its successor.

7. The Parties may decide to invite experts or relevant organizations to Committee meetings to provide information.

8. Within two years of the first meeting of the Committee, the Committee shall review the implementation of this Chapter and shall report to the Commission.

9. Each Party shall develop mechanisms to report publically on the activities developed under this Chapter.

10. To facilitate communication between the Parties regarding the implementation of this Chapter, each Party designates the following point of contact and shall promptly notify the other Party if there is any change in the point of contact identified below:

(a) for Chile, the General Directorate of International Economic Relations ("Dirección General de Relaciones Económicas Internacionales") or its successor; and

(b) for Canada, the Trade Agreements and NAFTA Secretariat Division of the Department of Foreign Affairs, Trade and Development, or its successor.

Article Nbis-05. Consultations

The Parties shall make all possible efforts, through dialogue, consultations and cooperation, to resolve any matter that may arise in regard to the interpretation and application of this Chapter.

Article Nbis-06. Non-application of Dispute Resolution

A Party shall not avail itself of the dispute resolution mechanism provided for in Chapter N (Institutional Arrangements and Dispute Settlement Procedures) with respect to any matter arising under this Chapter.

Article Nbis-07. Relation to the Agreement on Labour Cooperation

In the event of any inconsistency between this Chapter and the Agreement on Labour Cooperation or its successor, the Agreement on Labour Cooperation or its successor shall prevail to the extent of the inconsistency.

Article Nbis-08. Definitions

For the purposes of this Chapter:

Agreement on Labour Cooperation means the Agreement on Labour Cooperation between the Government of Canada and the Government of the Republic of Chile, done at Ottawa on February 6, 1997; and

Agreement on Environmental Cooperation means the Agreement on Environmental Cooperation between the Government of Canada and the Government of the Republic of Chile, done at Ottawa on February 6, 1997.

Part Five. Other Provisions

Chapter O. Exceptions

Article O-01. General Exceptions

1. For purposes of Part Two (Trade in Goods), except to the extent that a provision of that Part applies to services or investment, Article XX of the GATT 1994 and its interpretative notes, or any equivalent provision of a successor agreement to which both Parties are party, are incorporated into and made part of this Agreement. The Parties understand that the measures referred to in Article XX(b) of the GATT 1994 include environmental measures necessary to protect human, animal or plant life or health, and that Article XX(g) of the GATT 1994 applies to measures relating to the conservation of living and non-living exhaustible natural resources.

2. Provided that such measures are not applied in a manner that would constitute a means of arbitrary or unjustifiable discrimination between countries where the same conditions prevail or a disguised restriction on trade between the Parties, nothing in:

(a) Part Two (Trade in Goods), to the extent that a provision of that Part applies to services;

(b) Chapter H (Cross-Border Trade in Services); and

(c) Chapter I (Telecommunications), shall be construed to prevent the adoption or enforcement by either Party of measures necessary to secure compliance with laws or regulations that are not inconsistent with the provisions of this Agreement, including those relating to health and safety and consumer protection.

Article O-02. National Security

1. Nothing in this Agreement shall be construed:

(a) to require either Party to furnish or allow access to any information the disclosure of which it determines to be contrary to its essential security interests;

(b) to prevent either Party from taking any actions that it considers necessary for the protection of its essential security interests

(i) relating to the traffic in arms, ammunition and implements of war and to such traffic and transactions in other goods, materials, services and technology undertaken directly or indirectly for the purpose of supplying a military or other security establishment,

(ii) taken in time of war or other emergency in international relations, or

(iii) relating to the implementation of national policies or international agreements respecting the non-proliferation of nuclear weapons or other nuclear explosive devices; or

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

Article O-03. Taxation

1. Except as set out in this Article and in Annex O-03.1, nothing in this Agreement shall apply to taxation measures.

2. Nothing in this Agreement shall affect the rights and obligations of either Party under any tax convention. In the event of any inconsistency between this Agreement and any such convention, that convention shall prevail to the extent of the inconsistency.

3. Notwithstanding paragraph 2:

(a) Article C-01 (Market Access - National Treatment) and such other provisions of this Agreement as are necessary to give effect to that Article shall apply to taxation measures to the same extent as does Article III of the GATT 1994; and

(b) Article C-12 (Market Access - Export Taxes) shall apply to taxation measures.

4. Subject to paragraph 2:

(a) Article H-02 (Cross-Border Trade in Services - National Treatment) shall apply to taxation measures on income, capital gains or the taxable capital of corporations that relate to the purchase or consumption of particular services; and

(b) Articles G-02 and G-03 (Investment - National Treatment and Most-Favoured Nation Treatment) and Articles H-02 and H-03 (Cross-Border Trade in Services National Treatment and Most-Favoured-Nation Treatment) shall apply to all taxation measures, other than those on income, capital gains or on the taxable capital of corporations, taxes on estates, inheritances, gifts and generation-skipping transfers, except that nothing in those Articles shall apply:

(c) any most-favoured-nation obligation with respect to an advantage accorded by a Party pursuant to a tax convention;

(d) to a non-conforming provision of any existing taxation measure;

(e) to the continuation or prompt renewal of a non-conforming provision of any existing taxation measure;

(f) to an amendment to a non-conforming provision of any existing taxation measure to the extent that the amendment does not decrease its conformity, at the time of the amendment, with any of those Articles; or

(g) to any new taxation measure aimed at ensuring the equitable and effective imposition or collection of taxes and that does not arbitrarily discriminate between persons, goods or services of the Parties or arbitrarily nullify or impair benefits accorded under those Articles, in the sense of Annex N-04.

5. Subject to paragraph 2 and without prejudice to the rights and obligations of the Parties under paragraph 3, Article G-06(3), (4) and (5) (Performance Requirements) shall apply to taxation measures.

6. Article G-10 (Expropriation and Compensation) shall apply to taxation measures except that no investor may invoke that Article as the basis for a claim under Article G-17 (Claim by an Investor of a Party on Its Own Behalf) or G-18 (Claim by an Investor of a Party on Behalf of an Enterprise), where it has been determined pursuant to this paragraph that the measure is

not an expropriation. The investor shall refer the issue of whether the measure is not an expropriation for a determination to the appropriate competent authorities set out in Annex O-03.6 at the time that it gives notice under Article G-20 (Notice of Intent to Submit a Claim to Arbitration). If the competent authorities do not agree to consider the issue or, having agreed to consider it, fail to agree that the measure is not an expropriation within a period of six months of such referral, the investor may submit its claim to arbitration under Article G-21 (Submission of a Claim to Arbitration).

Article O-04. Balance of Payments

1. Nothing in this Agreement shall be construed to prevent a Party from adopting or maintaining measures that restrict transfers where the Party experiences serious balance of payments difficulties, or the threat thereof, and such restrictions are consistent with this Article.

2. As soon as practicable after a Party imposes a measure under this Article, the Party shall:

(a) submit any current account exchange restrictions to the IMF for review under Article VIII of the Articles of Agreement of the IMF;

(b) enter into good faith consultations with the IMF on economic adjustment measures to address the fundamental underlying economic problems causing the difficulties; and

(c) adopt or maintain economic policies consistent with such consultations.

3. A measure adopted or maintained under this Article shall:

(a) avoid unnecessary damage to the commercial, economic or financial interests of the other Party;

(b) not be more burdensome than necessary to deal with the balance of payments difficulties or threat thereof;

(c) be temporary and be phased out progressively as the balance of payments situation improves;

(d) be consistent with paragraph 2(c) and with the Articles of Agreement of the IMF; and

(e) be applied on a national treatment or most-favoured-nation treatment basis, whichever is better.

4. A Party may adopt or maintain a measure under this Article that gives priority to services that are essential to its economic program, provided that a Party may not impose a measure for the purpose of protecting a specific industry or sector unless the measure is consistent with paragraph 2(c) and with Article VIII(3) of the Articles of Agreement of the IMF.

5. Restrictions imposed on transfers:

(a) where imposed on payments for current international transactions, shall be consistent with Article VIII(3) of the Articles of Agreement of the IMF;

(b) where imposed on international capital transactions, shall be consistent with Article VI of the Articles of Agreement of the IMF and be imposed only in conjunction with measures imposed on current international transactions under paragraph 2(a);

(c) where imposed on transfers covered by Article G-09 (Investment -Transfers) and transfers related to trade in goods, may not substantially impede transfers from being made in a freely usable currency at a market rate of exchange; and

(d) may not take the form of tariff surcharges, quotas, licences or similar measures.

Article O-05. Disclosure of Information

Nothing in this Agreement shall be construed to require a Party to furnish or allow access to information the disclosure of which would impede law enforcement or would be contrary to the Party's law protecting personal privacy or the financial affairs and accounts of individual customers of financial institutions.

Article O-06. Cultural Industries

Annex O-06 applies to the Parties with respect to cultural industries. Article O-07:

Article O-07. Definitions

For purposes of this Chapter:

cultural industries means persons engaged in any of the following activities:

(a) the publication, distribution, or sale of books, magazines, periodicals or newspapers in print or machine readable form but not including the sole activity of printing or typesetting any of the foregoing;

(b) the production, distribution, sale or exhibition of film or video recordings;

(c) the production, distribution, sale or exhibition of audio or video music recordings;

(d) the publication, distribution or sale of music in print or machine readable form; or

(e) radiocommunications in which the transmissions are intended for direct reception by the general public, and all radio, television and cable broadcasting undertakings and all satellite programming and broadcast network services;

international capital transactions means "international capital transactions" as defined under the Articles of Agreement of the IMF;

IMF means the International Monetary Fund;

payments for current international transactions means "payments for current international transactions" as defined under the Articles of Agreement of the IMF;

tax convention means a convention for the avoidance of double taxation or other international taxation agreement or arrangement;

taxes and taxation measures do not include:

(a) a "customs duty" as defined in Article C-18 (Market Access Definitions); or

(b) the measures listed in exceptions (b), (c) and (d) of that definition; and

transfers means international transactions and related international transfers and payments.

Annex O-03.1. Double taxation

1. The Parties agree to conclude a bilateral double taxation agreement within a reasonable time after the date that this Agreement enters into force.

2. The Parties agree that upon conclusion of a bilateral double taxation agreement, they will agree to an exchange of letters setting out the relationship between the double taxation agreement and Article O-03 of the Agreement.

Chapter P. Final Provisions

Article P-01. Annexes, Appendices and Notes

The Annexes, Appendices and Notes to this Agreement constitute integral parts of this Agreement.

Article P-02. Amendments

1. The Parties may agree on any modification of or addition to this Agreement.

2. When so agreed, and approved in accordance with the applicable legal procedures of each Party, a modification or addition shall constitute an integral part of this Agreement.

Article P-03. Entry Into Force

This Agreement shall enter into force on June 2, 1997, on an exchange of written notifications certifying the completion of necessary legal procedures.

Article P-04. Accession of Chile to the NAFTA

The Parties shall work toward the early accession of Chile to the NAFTA.

Article P-05. Duration and Termination

This Agreement shall remain in force unless terminated by either Party on six months' notice to the other Party.

Article P-06. Authentic Texts

The English, French and Spanish texts of this Agreement are equally authentic.

IN WITNESS WHEREOF, the undersigned, being duly authorized by their respective Governments, have signed this Agreement. DONE in Santiago, on the 5th day of December, one thousand nine hundred ninety six, in duplicate, in the English, French and Spanish languages.

FOR THE GOVERNMENT OF CANADA

FOR THE GOVERNMENT OF THE REPUBLIC OF CHILE

Annex I. Reservations for existing measures and liberalization commitments (chapters g and h)

1. The Schedule of a Party sets out, pursuant to Articles G-08(1) (Investment) and H-06(1) (Cross-Border Trade in Services), the reservations taken by that Party with respect to existing measures that do not conform with obligations imposed by:

a. Article G-02 or H-02 (National Treatment);

b. Article G-03 or H-03 (Most-Favored-Nation Treatment);

c. Article H-05 (Local Presence);

d. Article G-06 (Performance Requirements); or

e. Article G-07 (Senior Management and Boards of Directors), and, in certain cases, sets out commitments for immediate or future liberalization.

2. Each reservation sets out the following elements:

a. Sector refers to the general sector in which the reservation is taken;

b. Sub-Sector refers to the specific sector in which the reservation is taken;

c. Industry Classification refers, where applicable, to the activity covered by the reservation according to domestic industry classification codes;

d. Type of Reservation specifies the obligation referred to in paragraph 1 for which a reservation is taken;

e. Level of Government indicates the level of government maintaining the measure for which a reservation is taken;

f. Measures identifies the laws, regulations or other measures, as qualified, where indicated, by the Description element, for which the reservation is taken.

A measure cited in the Measures element

i. means the measure as amended, continued or renewed as of the date of entry into force of this Agreement, and

ii. includes any subordinate measure adopted or maintained under the authority of and consistent with the measure

g. Description sets out commitments, if any, for liberalization on the date of entry into force of this Agreement, and the remaining non-conforming aspects of the existing measures for which the reservation is taken; an

h. Phase-Out sets out commitments, if any, for liberalization after the date of entry into force of this Agreement.

3. In the interpretation of a reservation, all elements of the reservation shall be considered. A reservation shall be

interpreted in the light of the relevant provisions of the Chapters against which the reservation is taken. To the extent that:

a. the Phase-Out element provides for the phasing out of non-conforming aspects of measures, the Phase-Out element shall prevail over all other elements;

b. the Measures element is qualified by a liberalization commitment from the Description element, the Measures element as so qualified shall prevail over all other elements; and

c. the Measures element is not so qualified, the Measures element shall prevail over all other elements, unless any discrepancy between the Measures element and the other elements considered in their totality is so substantial and material that it would be unreasonable to conclude that the Measures element should prevail, in which case the other elements shall prevail to the extent of that discrepancy.

4. Where a Party maintains a measure that requires that a service provider be a citizen, permanent resident or resident of its territory as a condition to the provision of a service in its territory, a reservation for that measure taken with respect to Article H-02, H-03 or H-05 shall operate as a reservation with respect to Article G-02, G-03 or G-06 to the extent of that measure.

5. The listing of a measure in this Annex is without prejudice to a future claim that Annex II may apply to the measure or some application of the measure.

6. Unless otherwise stated in the Description element, a Chilean juridical person includes an enterprise of the other Party that is constituted or organized in Chile in a form which under Chilean law is recognized as being a juridical person.

7. For purposes of this Annex:

CPC means Central Product Classification (CPC) numbers as set out in Statistical Office of the United Nations, Statistical Papers, Series M, No. 77, Provisional Central Product Classification, 1991; and

SIC means with respect to Canada, Standard Industrial Classification (SIC) numbers as set out in Statistics Canada, Standard Industrial Classification, fourth edition, 1980.

Annex I. Schedule of Canada

Sector:

Agriculture

Sub-Sector:

Industry Classification:

Type of Reservation:

National Treatment (Article G-02)

Level of Government:

Federal

Measures:

Farm CreditCorporation Act, S.C. 1993, c. 14

Description:

Investment

Loans by the Farm Credit Corporation may be made only to:

1. individuals who are Canadian citizens or permanent residents;

2. corporations related to farming in Canada controlled by Canadian citizens or permanent residents; or

3. cooperative farm associations, all members of which are Canadian citizens or permanent residents.

Phase-Out:

None

Sector:

All Sectors

Sub-Sector:

Industry Classification:

Type of Reservation:

National Treatment (Articles G-02, H-02)

Most-Favoured Nation Treatment (Articles G-03, H-03)

Local Presence (Article H-05)

Performance Requirements (Article G-06)

Senior Management and Boards of Directors (Article G-07)

Level of Government:

Provincial

Measures:

All existing non-conforming measures of all provinces and territories

Description:

Phase-Out:

None

Sector:

All Sectors

Sub-Sector:

Industry Classification:

Type of Reservation:

National Treatment (Article G-02)

Performance Requirements (Article G-06)

Senior Management and Boards of Directors (Article G-07)

Level of Government:

Federal

Measures:

Investment Canada Act, R.S.C. 1985, c. 28 (1st Supp.)

Investment Canada Regulations, SOR/85611

As qualified by paragraphs 8 through 12 of the Description element

Description:

Investment

1. Under the Investment Canada Act, the following acquisitions of Canadian businesses by "non-Canadians" are subject to review by the Director of Investments:

a. all direct acquisitions of Canadian businesses with assets of C$5 million or more;

b. all indirect acquisitions of Canadian businesses with assets of C$50 million or more; and

c. indirect acquisitions of Canadian businesses with assets between C$5 million and C$50 million that represent more than 50 percent of the value of the assets of all the entities the control of which is being acquired, directly or indirectly, in the transaction in question.

2. A "non-Canadian" is an individual, government or agency thereof or an entity that is not "Canadian". "Canadian" means a Canadian citizen or permanent resident, government in Canada or agency thereof or Canadian-controlled entity as provided for in the Investment Canada Act.

3. In addition, specific acquisitions or new businesses in designated types of business activities relating to Canada's cultural heritage or national identity, which are normally notifiable, may be reviewed if the Governor in Council authorizes a review in the public interest.

4. An investment subject to review under the Investment Canada Act may not be implemented unless the Minister responsible for the Investment Canada Act advises the applicant that the investment is likely to be of net benefit to Canada. Such a determination is made in accordance with six factors described in the Act, summarized as follows:

a. the effect of the investment on the level and nature of economic activity in Canada, including the effect on employment, on the utilization of parts, components and services produced in Canada, and on exports from Canada;

b. the degree and significance of participation by Canadians in the investment;

c. the effect of the investment on productivity, industrial efficiency, technological development and product innovation in Canada;

d. the effect of the investment on competition within any industry or industries in Canada;

e. the compatibility of the investment with national industrial, economic and cultural policies, taking into consideration industrial, economic and cultural policy objectives enunciated by the government or legislature of any province likely to be significantly affected by the investment; and

f. the contribution of the investment to Canada's ability to compete in world markets.

5. In making a net benefit determination, the Minister, through the Director of Investments, may review plans under which the applicant demonstrates the net benefit to Canada of the proposed acquisition. An applicant may also submit undertakings to the Minister in connection with any proposed acquisition which is the subject of review. In the event of noncompliance with an undertaking by an applicant, the Minister may seek a court order directing compliance or any other remedy authorized under the Act.

6. Non-Canadians who establish or acquire Canadian businesses, other than those described above, must notify the Director of Investments.

7. The Director of Investments will review an "acquisition of control", as defined in the Investment Canada Act, of a Canadian business by an investor of Chile if the value of the gross assets of the Canadian business is not less than the applicable threshold.

8. The review threshold applicable to investors of Chile, calculated as set out in the Phase-Out element, is higher than those described in paragraph 1. However, this higher review threshold does not apply in the following sectors: uranium production and ownership of uranium producing properties; financial services; transportation services; and cultural businesses.

9. Notwithstanding the definition of "investor of a Party" in Article G-39, only investors who are nationals, or entities controlled by nationals as provided for in the Investment Canada Act, of Chile may benefit from the higher review threshold.

10. An indirect "acquisition of control" of a Canadian business by an investor of Chile is not reviewable.

11. Notwithstanding Article G-06(1), Canada may impose requirements, or enforce any commitment or undertaking, in connection with the establishment, acquisition, expansion, conduct or operation of an investment of an investor of Chile or of a non-Party for the transfer of technology, production process or other proprietary knowledge to a national or enterprise, affiliated to the transferor, in Canada, in connection with the review of an acquisition of an investment under the Investment Canada Act.

12. Except for requirements, commitments or undertakings relating to technology transfer as set out in paragraph 11, Article G-06(1) shall apply to requirements, commitments or undertakings imposed or enforced under the Investment Canada Act. Article G-06(1) shall not be construed to apply to any requirement, commitment or undertaking imposed or enforced in connection with a review under the Investment Canada Act, to locate production, carry out research and development, employ or train workers, or to construct or expand particular facilities, in Canada.

Phase-Out:

For investors of Chile, the applicable threshold for the review of a direct acquisition of control of a Canadian business will be $168 million dollars for the year 1996 and for each year thereafter the amount determined by the Minister in January of that year arrived at by using the following formula:

Annual Adjustment = Current Nominal GDP at Market Prices

---------- x amount determined for Previous Year Nominal GDP previous year at Market Prices

"Current Nominal GDP at Market Prices" means the average of the Nominal Gross Domestic Products at Market Prices for the most recent four consecutive quarters.

"Previous Year Nominal GDP at Market Prices" means the average of the Nominal Gross Domestic Product for the four consecutive quarters for the comparable period in the year preceding the year used in calculating the "Current Nominal GDP at Market Prices".

The amounts determined in this manner will be rounded to the nearest million dollars.

Sector:

All Sectors

Sub-Sector:

Industry Classification:

Type of Reservation:

National Treatment (Article G-02)

Senior Management and Boards of Directors (Article G-07)

Level of Government:

Federal

Provincial

Measures:

As set out in the Description element

Description:

Investment

Canada or any province, when selling or disposing of its equity interests in, or the assets of, an existing state enterprise or an existing governmental entity, may prohibit or impose limitations on the ownership of such interests or assets, and on the ability of owners of such interests or assets to control any resulting enterprise, by investors of the other Party or of a non-Party or their investments. With respect to such a sale or other disposition, Canada or any province may adopt or maintain any measure relating to the nationality of senior management or members of the board of directors.

For purposes of this reservation:

1. any measure maintained or adopted after the date of entry into force of this Agreement that, at the time of sale or other disposition, prohibits or imposes limitations on the ownership of equity interests or assets or imposes nationality requirements described in this reservation shall be deemed to be an existing measure; and

2. "state enterprise" means an enterprise owned or controlled through ownership interests by Canada or a province and includes an enterprise established after the date of entry into force of this Agreement solely for the purposes of selling or

disposing of equity interests in, or the assets of, an existing state enterprise or governmental entity.

Phase-Out:

None

Sector:

All Sectors

Sub-Sector:

Industry Classification:

Type of Reservation:

National Treatment (Article G-02)

Level of Government:

Federal

Measures:

Canada Business Corporations Act, R.S.C. 1985, c. C44

Canada Corporations Act, R.S.C. 1970, c. C32

Canada Business Corporations Act Regulations, SOR/79316

Description:

Investment

"Constraints" may be placed on the issue, transfer and ownership of shares in federally incorporated corporations. The object is to permit corporations to meet Canadian ownership requirements, under certain laws set out in the Canada Business Corporations Act Regulations, in sectors where Canadian ownership is required as a condition to operate or to receive licenses, permits, grants, payments or other benefits. In order to maintain certain "Canadian" ownership levels, a corporation is permitted to sell shareholders' shares without the consent of those shareholders, and to purchase its own shares on the open market. "Canadian" is defined in the Canada Business Corporations Act Regulations.

Phase-Out:

None

Sector:

All Sectors

Sub-Sector:

Industry Classification:

Type of Reservation:

Senior Management and Boards of Directors (Article G-07)

Level of Government:

Federal

Measures:

Description:

Canada Business Corporations Act, R.S.C. 1985, c. C-44

Canada Business Corporations Act Regulations, SOR/79-316

Canada Corporations Act, R.S.C. 1970, c. C-32

Special Acts of Parliament incorporating specific companies

Investment

The Canada Business Corporations Act requires that a simple majority of the board of directors, or of a committee thereof, of a federally-incorporated corporation be resident Canadians. For purposes of the Act, "resident Canadian" means an individual who is a Canadian citizen ordinarily resident in Canada, a citizen who is a member of a class set out in the Canada Business Corporations Act Regulations, or a permanent resident as defined in the Immigration Act other than one who has been ordinarily resident in Canada for more than one year after he became eligible to apply for Canadian citizenship.

In the case of a holding corporation, not more than one-third of the directors need be resident Canadians if the earnings in Canada of the holding corporation and its subsidiaries are less than five percent of the gross earnings of the holding corporation and its subsidiaries.

Under the Canada Corporations Act, a simple majority of the elected directors of a Special Act corporation must be resident in Canada and citizens of a Commonwealth country. This requirement applies to every joint stock company incorporated subsequent to June 22, 1869 by any Special Act of Parliament.

Phase-Out:

None

Sector:

All Sectors

Sub-Sector:

Industry Classification:

Type of Reservation:

National Treatment (Article G-02)

Level of Government:

Federal

Measures:

Citizenship Act, R.S.C. 1985, c. C29

Foreign Ownership of Land Regulations, SOR/79-416

Description:

Investment

The Foreign Ownership of Land Regulations are made pursuant to the Citizenship Act and the Alberta Agricultural and Recreational Land Ownership Act. In Alberta, an ineligible person or foreign-owned or controlled corporation may only hold an interest in controlled land consisting of not more than two parcels containing, in the aggregate, not more than 20 acres. An "ineligible person" is:

1. an individual who is not a Canadian citizen or permanent resident;

2. a foreign government or agency thereof; or

3. a corporation incorporated elsewhere than in Canada.

"Controlled land" means land in Alberta but does not include:

1. land of the Crown in right of Alberta;

2. land within a city, town, new town, village or summer village; and

3. mines or minerals.

Phase-Out:

None

Sector:

All Sectors

Sub-Sector:

Industry Classification:

Type of Reservation:

National Treatment (Article G-02)

Level of Government:

Federal

Measures:

Air Canada Public Participation Act, R.S.C. 1985, c. 35 (4th Supp.)

PetroCanada Public Participation Act, S.C. 1991, c. 10

Canadian Arsenals Limited Divestiture Authorization Act, S.C. 1986, c. 20

Eldorado Nuclear Limited Reorganization and Divestiture Act, S.C. 1988, c. 41

Nordion and Theratronics Divestiture Authorization Act, S.C. 1990, c. 4

Description:

Investment

A "nonresident" may not own more than a specified percentage of the voting shares of the corporation to which each Act applies. For each company the restriction is as follows:

Air Canada: 25 per cent

PetroCanada Inc: 25 per cent

Canadian Arsenals Limited: 25 per cent

Eldorado Nuclear Limited: 5 per cent

Nordion Limited: 25 per cent

Theratronics Limited: 49 per cent

"Nonresident" generally means:

1. an individual, other than a Canadian citizen, who is not ordinarily resident in Canada;

2. a corporation incorporated, formed or otherwise organized outside Canada;

3. the government of a foreign State or any political subdivision thereof, or a person empowered to perform a function or duty on behalf of such a government;

4. a corporation that is controlled directly or indirectly by nonresidents as defined in any of paragraphs (a) through (c);

5. a trust

a. established by a nonresident as defined in any of paragraphs (b) through (d), other than a trust for the administration of a pension fund for thebenefit of individuals a majority of whom are residents, or

b. in which nonresidents as defined in any of paragraphs (a) through (d) have more than 50 percent of the beneficial interest; or

6. a corporation that is controlled directly or indirectly by a trust referred to in paragraph (e).

Phase-Out:

None

Sector:

All Sectors

Sub-Sector:

Industry Classification:

Type of Reservation:

Local Presence (Article H-05)

Level of Government:

Federal

Measures:

Export and Import Permits Act, R.S.C. 1985, c. E-19

Description:

Cross-Border Services

Only individuals ordinarily resident in Canada, enterprises having their head offices in Canada or branch offices in Canada of foreign enterprises may apply for and be issued import or export permits or transit authorization certificates for goods and related services subject to controls under the Export and Import Permits Act.

Phase-Out:

None

Sector:

Automotive

Sub-Sector:

Industry Classification:

Type of Reservation:

Level of Government:

Performance Requirements (Article G-06)

Federal

Measures:

Canada - United States Free Trade Agreement Implementation Act, S.C. 1988, c. 65

Description:

Investment

Canada may grant waivers of customs duties conditioned explicitly on the fulfillment of performance requirements:

1. to those manufacturers of automotive goods set out in Part One of Annex 1002.1 of the Canada - United States Free Trade Agreement, in accordance with the headnote to that Part; and

2. for the applicable periods specified in Article 1002(2) of the Canada - United States Free Trade Agreement to those manufacturers of automotive goods set out in Part Two of Annex 1002.1 of that Agreement.

Phase-Out:

1. None

2. Until January 1, 1998

Sector:

Business Service Industries

Sub-Sector:

Customs Brokerages and Brokers

Industry Classification:

SIC 7794 Customs Brokers

Type of Reservation:

National Treatment (Article H-02)

Local Presence (Article H-05)

Senior Management and Boards of Directors (Article G-07)

Level of Government:

Federal

Measures:

Customs Act, R.S.C. 1985, c. 1 (2nd Supp.)

Customs Brokers Licensing Regulations, SOR/86-1067

Description:

Cross-Border Services and Investment

To be a licensed customs broker or brokerage in Canada:

1. an individual must be a Canadian citizen or permanent resident;

2. corporation must be incorporated in Canada with a majority of its directors being Canadian citizens or permanent residents; and

3. partnership must be composed of persons who are Canadian citizens or permanent residents, or corporations incorporated in Canada with a majority of their directors being Canadian citizens or permanent residents.

An individual who is not a licensed customs broker but who transacts business as a customs broker on behalf of a licensed customs broker or brokerage must be a Canadian citizen or permanent resident.

Phase-Out:

None. Subject to discussion by the Parties two years after the date of entry into force of this Agreement.

Sector:

Business Service Industries

Sub-Sector:

Duty Free Shops

Industry Classification:

SIC 6599 Other Retail Stores, Not Elsewhere Classified (limited to duty free shops)

Type of Reservation:

National Treatment (Articles G-02, H-02)

Local Presence (Article H-05)

Level of Government:

Federal

Measures:

Customs Act, R.S.C. 1985, c. 1 (2nd Supp.)

Duty Free Shop Regulations, SOR/86-1072

Description:

Cross-Border Services and Investment

1. To be a licensed duty free shop operator at a land border crossing in Canada, an individual must:

a. be a Canadian citizen or permanent resident;

b. be of good character;

c. be principally resident in Canada; and

d. have resided in Canada for at least 183 days of the year preceding the year of application for the license.

2. To be a licensed duty free shop operator at a land border crossing in Canada, a corporation must:

a. be incorporated in Canada; and

b. have all of its shares beneficially owned by Canadian citizens or permanent residents who meet the requirements of paragraph 1.

Phase-Out:

None

Sector:

Business Service Industries

Sub-Sector:

Examination Services relating to the Export and Import of Cultural Property

Industry Classification:

SIC 999 Other Services, Not Elsewhere Classified (limited to cultural property examination services)

Type of Reservation:

Local Presence (Article H-05)

Level of Government:

Federal

Measures:

Cultural Property Export and Import Act, R.S.C. 1985, c. C-51

Description:

Cross-Border Services

Only a "resident of Canada" or an "institution" in Canada may be designated as an "expert examiner" of cultural property for purposes of the Cultural Property Export and Import Act. A "resident" of Canada is an individual who is ordinarily resident in Canada, or a corporation that has its head office in Canada or maintains one or more establishments in Canada to which

employees employed in connection with the business of the corporation ordinarily report for work. An "institution" is an institution that is publicly owned and operated solely for the benefit of the public, that is established for educational or cultural purposes and that conserves objects and exhibits them.

Phase-Out:

None

Sector:

Business Service Industries

Sub-Sector:

Patent Agents and Agencies

Industry Classification:

SIC 999 Other Services, Not Elsewhere Classified (limited to patent agency)

Type of Reservation:

National Treatment (Article H-02)

Local Presence (Article H-05)

Level of Government:

Federal

Measures:

Patent Act, R.S.C. 1985, c. P-4

Patent Rules, C.R.C. 1978, c. 1250

Patent Cooperation Treaty Regulations, SOR/89-453

Description:

Cross-Border Services

To represent persons in the presentation and prosecution of applications for patents or in other business before the Patent Office, a patent agent must be resident in Canada and registered by the Patent Office.

A registered patent agent who is not resident in Canada must appoint a registered patent agent who is resident in Canada as an associate to prosecute an application for a patent.

An enterprise may be added to the patent register provided that it has at least one member who is also on the register.

Phase-Out:

None.

Sector:

Business Service Industries

Sub-Sector:

Trade-Mark Agents

Industry Classification:

SIC 999 Other Services, Not Elsewhere Classified (limited to trade-mark agency)

Type of Reservation:

National Treatment (Article H-02)

Local Presence (Article H-05)

Level of Government:

Federal

Measures:

Trade-Marks Act, R.S.C. 1985, c. T-13

Trade-mark Regulations (1996), SOR/96-195

Description:

Cross-Border Services

To represent persons in the presentation and prosecution of applications for trade-marks or in other business before the Trade-Mark Office, a trade-mark agent must be resident in Canada and registered by the Trade-Mark Office.

A registered trade-mark agent who is not resident in Canada must appoint a registered trade-mark agent who is resident in Canada as an associate to prosecute an application for a trade-mark.

Phase-Out:

None

Sector:

Energy

Sub-Sector:

Oil and Gas

Industry Classification:

SIC 071 Crude Petroleum and Natural Gas Industries

Type of Reservation:

National Treatment (Article G-02)

Level of Government:

Federal

Measures:

Federal Real Property Act, R.S.C. 1985, c. F-8.4

Canada Oil and Gas Land Regulations, C.R.C. 1978, c. 1518

Description:

Investment

This reservation applies to production licences issued with respect to "frontier lands" and "offshore areas" (areas not under provincial jurisdiction) as defined in the applicable measures.

Persons who hold oil and gas production licenses or shares therein for discoveries made after March 5, 1982 must be Canadian citizens ordinarily resident in Canada, permanent residents or corporations incorporated in Canada. No production licence may be issued for discoveries made after March 5, 1982 unless the Minister of Energy, Mines and Resources is satisfied that the Canadian ownership rate of the interestowner in relation to the production licence on the date of issuance would not be less than 50 per cent. "Interest-owner" is defined in the Canada Petroleum Resources Act to mean "the interest holder who owns an interest or the group of interest holders who hold all the shares of an interest".

The Canadian ownership requirements for oil and gas production licenses for discoveries made prior to March 5, 1982, are set out in the Canada Oil and Gas Land Regulations.

Phase-Out:

None

Sector:

Energy

Sub-Sector:

Oil and Gas

Industry Classification:

SIC 071 Crude Petroleum and Natural Gas Industries

Type of Reservation:

Local Presence (Article H-05)

Performance Requirements (Article G-06)

Level of Government:

Federal

Measures:

Description:

Phase-out:

Canada Oil and Gas Production and Conservation Act, R.S.C. 1985, c. O-7, as amended by Canada Oil and Gas Operations Act, S.C. 1992, c. 35

Canada - Nova Scotia Offshore Petroleum Resources Accord Implementation Act, S.C. 1988, c. 28

Canada - Newfoundland Atlantic Accord Implementation Act, S.C. 1987, c. 3

Measures implementing Yukon Oil and Gas Accord

Measures implementing Northwest Territories Oil and Gas Accord

Cross-Border Services and Investment

1. Under the Canada Oil and Gas Operations Act, the approval of the Minister of Energy, Mines and Resources of a "benefits plan" is required to receive authorization to proceed with any oil and gas development project.

2. A "benefits plan" is a plan for the employment of Canadians and for providing Canadian manufacturers, consultants, contractors and service companies with a full and fair opportunity to participate on a competitive basis in the supply of goods and services used in any proposed work or activity referred to in the benefits plan.

The Act permits the Minister to impose an additional requirement on the applicant, as part of the benefits plan, to ensure that disadvantaged individuals or groups have access to training and employment opportunities or can participate in the supply of goods and services used in any proposed work referred to in the benefits plan.

3. The Canada - Nova Scotia Offshore Petroleum Resources Accord Implementation Act and the Canada - Newfoundland Atlantic Accord Implementation Act have the same requirement for a benefits plan but also require that the benefits plan ensure that:

a. prior to carrying out any work or activity in the offshore area, the corporation or other body submitting the plan establish in the applicable province an office where appropriate levels of decision-making are to take place;

b. expenditures be made for research and development to be carried out in the province, and for education and training to be provided in the province; and

c. first consideration be given to goods produced or services provided from within the province, where those goods or services are competitive in terms of fair market price, quality and delivery.

d. The Boards administering the benefits plan under these Acts may also require that the plan include provisions to ensure that disadvantaged individuals or groups, or corporations owned or cooperatives operated by them, participate in the supply of goods and services used in any proposed work or activity referred to in the plan.

e. In addition, Canada may impose any requirement or enforce any commitment or undertaking for the transfer of technology, a production process or other proprietary knowledge to a person of Canada in connection with the approval of development projects under the applicable Acts.

f. Provisions similar to those set out above will be included in laws or regulations to implement the Yukon Oil and Gas Accord and Northwest Territories Oil and Gas Accord which for purposes of this reservation shall be deemed, once concluded, to be existing measures.

None

Sector:

Energy

Sub-Sector:

Oil and Gas

Industry Classification:

SIC 071 Crude Petroleum and Natural Gas Industries

Type of Reservation:

Performance Requirements (Article G-06)

Level of Government:

Federal

Measures:

Canada - Newfoundland Atlantic Accord Implementation Act, S.C. 1987, c. 3

Hibernia Development Project Act, S.C. 1990, c. 41

Description:

Investment

Pursuant to the Hibernia Development Project Act, Canada and the "Hibernia Project Owners" may enter into agreements whereby the Project Owners undertake to perform certain work in Canada and Newfoundland and to use their "best efforts" to achieve specific Canadian and Newfoundland "target levels" in relation to the provisions of any "benefit plan" required under the Canada-Newfoundland Atlantic Accord Implementation Act. "Benefits plans" are further described in Schedule of Canada, Annex I, page I-C-20.

In addition, Canada may impose in connection with the Hibernia project any requirement or enforce any commitment or undertaking for the transfer of technology, a production process or other proprietary knowledge to a national or enterprise in Canada.

Phase-Out:

None

Sector:

Energy

Sub-Sector:

Uranium

Industry Classification:

SIC 0616 Uranium Mines

Type of Reservation:

National Treatment (Article G-02)

Most-Favoured-Nation Treatment (Article G-03)

Level of Government:

Federal

Measures:

Investment Canada Act, R.S.C. 1985, c. 28 (1st Supp.)

Investment Canada Regulations, SOR/85-611

Policy on NonResident Ownership in the Uranium Mining Sector, 1987

Description:

Investment

Ownership by "non-Canadians", as defined in the Investment Canada Act, of a uranium mining property is limited to 49 per cent at the stage of first production. Exceptions to this limit may be permitted if it can be established that the property is in fact "Canadiancontrolled" as defined in the Investment Canada Act.

Exemptions from the policy are permitted, subject to approval of the Governor in Council, only in cases where Canadian participants in the ownership of the property are not available. Investments in properties by nonCanadians, made prior to December 23, 1987 and that are beyond the permitted ownership level, may remain in place. No increase in nonCanadian ownership is permitted.

Phase-Out:

None

Sector:

Fisheries

Sub-Sector:

Fish Harvesting and Processing

Industry Classification:

SIC 031 Fishing Industry

Type of Reservation:

National Treatment (Article G-02)

Most-Favored-Nation Treatment (Article G-03)

Level of Government:

Federal

Measures:

Coastal Fisheries Protection Act, R.S.C. 1985, c. C33

Fisheries Act, R.S.C. 1985, c. F14

Coastal Fisheries Protection Regulations, C.R.C. 1978, c. 413

Policy on Foreign Investment in the Canadian Fisheries Sector, 1985

Commercial Fisheries Licensing Policy

Description:

Investment

Under the Coastal Fisheries Protection Act, foreign fishing vessels are prohibited from entering Canada's Exclusive Economic Zone except under authority of a licence or under treaty. "Foreign" vessels are those which are not "Canadian" as defined in the Coastal Fisheries Protection Act. Under the Fisheries Act, the Minister of Fisheries and Oceans has discretionary authority with respect to the issuance of licences.

Fish processing enterprises that have a foreign ownership level of more than 49 per cent are prohibited from holding Canadian commercial fishing licences.

Phase-Out:

None

Sector:

Fisheries

Sub-Sector:

Fishing-Related Services

Industry Classification:

SIC 032 Services Incidental to Fishing

Type of Reservation:

National Treatment (Article H-02)

Most-Favored-Nation Treatment (Article H-03)

Level of Government:

Federal

Measures:

Coastal Fisheries Protection Act, R.S.C. 1985, c. C-33

Description:

Cross-Border Services

Under the Coastal Fisheries Protection Act, the Department of Fisheries and Oceans is responsible for controlling the activities of foreign fishing vessels in Canada's Exclusive Economic Zone, including access to Canadian ports (port privileges).

In general, the Department grants such port privileges, including the purchase of fuel and supplies, ship repair, crew exchanges and transshipment of fish catches, only to fishing vessels from a country with which it has favourable fishery relations, based primarily on adherence by that country to Canadian and international conservation practices and policies. Exceptions to this general rule are permitted in cases of emergency ("force majeure") and where the specific provisions of bilateral fisheries treaties apply.

Phase-Out:

None

Sector:

Professional, Technical and Specialized Services

Sub-Sector:

Professional Services

Industry Classification:

SIC 862 Auditing Services

Type of Reservation:

National Treatment (Article H-02)

Local Presence (Article H-05)

Level of Government:

Federal

Measures:

Bank Act, S.C. 1991, c. 46

Insurance Companies Act, S.C. 1991, c. 47

Cooperative Credit Associations Act, 1991, c. 48

Trust and Loan Companies Act, 1991, c. 45

Description:

Cross-Border Services

Banks are required to have a firm of accountants to be auditors of the bank. A firm of accountants must be qualified as set out in the Bank Act. Among the qualifications required is that two or more members of the firm must be ordinarily resident in Canada and that the member of the firm jointly designated by the firm and the bank to conduct the audit must be ordinarily resident in Canada.

An insurance company, a cooperative credit association, and a trust or loan company require an auditor who can either be a natural person or a firm of accountants. An auditor of such an institution must be qualified as set out in the Insurance Companies Act, the Cooperative Credit Associations Act or the Trust and Loan Companies Act, as the case may be. In the case where a natural person is appointed to be the auditor of such a financial institution, among the qualifications required is that the person must be ordinarily resident in Canada. In the case where a firm of accountants is appointed to be the auditor of such a financial institution, the member of the firm jointly designated by the firm and the financial institution to conduct the audit must be ordinarily resident in Canada.

Phase-Out:

None

Sector:

Transportation

Sub-Sector:

Air Transportation

Industry Classification:

SIC 451 Air Transport Industries

Type of Reservation:

National Treatment (Article G-02)

Most-Favored-Nation Treatment (Article G-03)

Senior Management and Boards of Directors (Article G-07)

Level of Government:

Federal

Measures:

Canada Transportation Act, S.C. 1996, c. 10

Aeronautics Act, R.S.C. 1985, c. A2

Air Regulations, C.R.C. 1978, c. 2

Aircraft Marking and Registration Regulations, SOR/90591

Description:

Investment

Only "Canadians" may provide the following commercial air transportation services:

1. "domestic services" (air services between points, or from and to the same point, in the territory of Canada, or between a point in the territory of Canada and a point not in the territory of another country);

2. "scheduled international services" (scheduled air services between a point in the territory of Canada and a point in the territory of another country) where those services have been reserved to Canadian carriers under existing or future bilateral agreements; and

3. "nonscheduled international services" (non-scheduled air services between a point in the territory of Canada and a point in the territory of another country) where those services have been reserved to Canadian carriers under the Canada Transportation Act.

"Canadian" is defined in the Canada Transportation Act to mean a Canadian citizen or permanent resident, a government in Canada or agent thereof or any other person or entity that is controlled in fact by, and of which at least 75 per cent of the voting interests are owned and controlled by, persons otherwise meeting these requirements.

Regulations made under the Aeronautics Act also require that a Canadian air carrier operate Canadian-registered aircraft. To be qualified to register aircraft in Canada, a carrier must be a Canadian citizen or permanent resident, or a corporation incorporated and having its principal place of business in Canada, its chief executive officer and not fewer than two-thirds of its directors as Canadian citizens or permanent residents and not less than 75 percent of its voting interest owned and controlled by persons otherwise meeting these requirements. In addition, all commercial air services in Canada require a Canadian operating certificate to ensure their safety and security. An operating certificate for the provision of servicesrestricted to Canadian carriers is issued only to qualified persons.

A corporation incorporated in Canada but that does not meet the Canadian ownership and control requirements may only register a private aircraft when the corporation is the sole owner of the aircraft. The regulations also have the effect of limiting "nonCanadian" corporations operating foreign-registered private aircraft within Canada to the carriage of their own employees.

For specialty air services, see Schedule of Canada, Annex II, page II-C-8.

Phase-Out:

None

Sector:

Transportation

Sub-Sector:

Air Transportation

Industry Classification:

SIC 4513 Non-Scheduled Air Transport, Specialty, Industry

Type of Reservation:

National Treatment (Articles G-02, H-02)

Local Presence (Article H-05)

Senior Management and Boards of Directors (Article G-07)

Level of Government:

Federal

Measures:

Aeronautics Act, R.S.C. 1985, c. A-2

Air Regulations, C.R.C. 1978, c. 2

Aircraft Marking and Registration Regulations, SOR/90-591

Foreign Air Carrier Certification Manual, TP 11524, and the Personnel Licensing Handbook, TP 193 (Department of Transport)

As qualified by paragraph 2 of the Description element

Description:

Cross-Border Services

1. An operating certificate issued by the Department of Transport is required to provide specialty air services in the territory of Canada. The Department of Transport will issue an operating certificate to a person applying for authority to provide specialty air services, subject to compliance by that person with Canadian safety requirements. An operating certificate for the provision of aerial construction, heli-logging, aerial inspection, aerial surveillance, flight training, aerial sightseeing, and aerial spraying services is not issued to a person that is not Canadian as provided for in the applicable regulations. For Investment, see Schedule of Canada, Annex II, page II-C-8.

2. A person of Chile may obtain an operating certificate, subject to compliance by that person with Canadian safety requirements, for the provision of aerial mapping, aerial surveying, aerial photography, forest fire management, fire-fighting, aerial advertising, glider towing, parachute jumping, aerial construction, heli-logging, aerial inspection, aerial surveillance, flight training, and aerial sightseeing services.

Phase-Out:

Beginning on January 1, 2000, a person of Chile will be permitted to obtain an operating certificate, subject to compliance by that person with Canadian safety requirements, for the provision of aerial spraying services.

Sector:

Transportation

Sub-Sector:

Air Transportation

Industry Classification:

SIC 4523 Aircraft Servicing Industry

SIC 3211 Aircraft and Aircraft Parts Industry

Type of Reservation:

Most-Favored-Nation Treatment (Article H-03)

Local Presence (H-05)

Level of Government:

Federal

Measures:

Aeronautics Act, R.S.C. 1985, c. A-2

Airworthiness Manual, chapters 573 and 575, made under the authority of Air Regulations, C.R.C. 1978, c. 2

Agreement Concerning Airworthiness Certification, Exchange of Letters between Canada and the United States, dated August 31, 1984, CTS 1984/26

Description:

Cross-Border Services

Aircraft repair, overhaul or maintenance activities required to maintain the airworthiness of Canadian-registered aircraft must be performed by Canadian-certified persons (approved maintenance organizations and aircraft maintenance engineers). Certifications are not provided for persons located outside Canada, except sub-organizations of approved maintenance organizations that are themselves located in Canada.

Pursuant to an airworthiness agreement between Canada and the United States, Canada recognizes the certifications and oversight provided by the United States for all repair, overhaul and maintenance facilities and individuals performing the work located in the United States.

Phase-Out:

None

Sector:

Transportation

Sub-Sector:

Land Transportation

Industry Classification:

SIC 456 Truck Transport Industries

SIC 4572 Interurban and Rural Transit Systems Industry

SIC 4573 School Bus Operations Industry

SIC 4574 Charter and Sightseeing Bus Services Industry

Type of Reservation:

National Treatment (Article H-02)

Local Presence (Article H-05)

Measures:

Motor Vehicle Transport Act, 1987, R.S.C. 1985, c. 29 (3rd Supp.), Parts I and II

Canada Transportation Act, S.C. 1996, c.10

Customs Tariff, R.S.C. 1985, c. 41 (3rd Supp.)

Description:

Cross-Border Services

Only persons of Canada, using Canadian-registered and either Canadian-built or duty-paid trucks or buses, may provide truck or bus services between points in the territory of Canada.

Phase-Out:

None

Sector:

Transportation

Sub-Sector:

Water Transportation

Industry Classification:

SIC 4541 Freight and Passenger Water Transport Industry

SIC 4542 Ferry Industry

SIC 4543 Marine Towing Industry

SIC 4549 Other Water Transport Industries

SIC 4553 Marine Salvage Industry

SIC 4559 Other Service Industries Incidental to Water Transport

Type of Reservation:

National Treatment (Article H-02)

Most-Favored-Nation Treatment (Article H-03)

Local Presence (Article H-05)

Level of Government:

Federal

Measures:

Canada Shipping Act, R.S.C. 1985, c. S-9, Part II

Description:

Cross-Border Services

To register a vessel in Canada for purposes of providing international maritime transportation services, the owner of that vessel must be:

1. a Canadian citizen or a citizen of a Commonwealth country; or

2. a corporation incorporated under the laws of, and having its principal place of business in, Canada or a Commonwealth country.

For domestic maritime transportation services (cabotage), see Schedule of Canada, Annex II, page II-C-9.

Phase-Out:

None

Sector:

Transportation

Sub-Sector:

Water Transportation

Industry Classification:

SIC 4541 Freight and Passenger Water Transport Industry

SIC 4542 Ferry Industry

SIC 4543 Marine Towing Industry

SIC 4549 Other Water Transport Industries

SIC 4553 Marine Salvage Industry

SIC 4554 Piloting Service, Water Transport Industry

SIC 4559 Other Service Industries Incidental to Water Transport

Type of Reservation:

National Treatment (Article H-02)

Local Presence (Article H-05)

Level of Government:

Federal

Measures:

Canada Shipping Act, R.S.C. 1985, c. S-9, Part II

Description:

Cross-Border Services

Masters, mates, engineers and certain ratings must be certified by the Department of Transport as ship's officers while engaged on a Canadian-registered vessel. Only Canadian citizens or permanent residents may be certified as ship's officers or ratings.

Phase-Out:

None

Sector:

Transportation

Sub-Sector:

Water Transportation

Industry Classification:

SIC 4554 Piloting Service, Water Transport Industry

Type of Reservation:

National Treatment (Article H-02)

Local Presence (Article H-05)

Level of Government:

Federal

Measures:

Pilotage Act, R.S.C. 1985, c. P-14

General Pilotage Regulations, C.R.C. 1978, c. 1263

Atlantic Pilotage Authority Regulations, C.R.C. 1978, c. 1264

Laurentian Pilotage Authority Regulations, C.R.C. 1978, c. 1268

Great Lakes Pilotage Regulations, C.R.C. 1978, c. 1266

Pacific Pilotage Regulations, C.R.C. 1978, c. 1270

Description:

Cross-Border Services

Subject to Schedule of Canada, Annex II, page II-C-13, a license issued by the relevant regional Pilotage Authority is required to provide pilotage services in the territory of Canada. Only Canadian citizens or permanent residents may obtain such a license. A permanent resident of Canada who has been issued a pilot's license must become a Canadian citizen within five years of receipt of the license in order to retain it.

Phase-Out:

None

Sector:

Transportation

Sub-Sector:

Water Transportation

Industry Classification:

SIC 454 Water Transport Industries

Type of Reservation:

Local Presence (Article H-05)

Level of Government:

Federal

Measures:

Shipping Conferences Exemption Act, 1987, R.S.C. 1985, c. 17 (3rd Supp.)

Description:

Cross-Border Services

Members of a shipping conference must maintain jointly an office or agency in the region of Canada where they operate. A shipping conference is an association of ocean carriers that has the purpose or effect of regulating rates and conditions for the transportation by those carriers of goods by water.

Phase-Out:

None

Sector:

Transportation

Sub-Sector:

Water Transportation

Industry Classification:

SIC 4541 Freight and Passenger Water Transport Industry

SIC 4542 Ferry Industry

SIC 4543 Marine Towing Industry

Type of Reservation:

Most-Favored-Nation Treatment (Article H-03)

Level of Government:

Federal

Measures:

Coasting Trade Act, S.C. 1992, c. 31

Description:

Cross-Border Services

The prohibitions under the Coasting Trade Act, set out in Schedule of Canada, Annex II, page II-C-11, do not apply to any vessel that is owned by the U.S. Government when used solely for the purpose of transporting goods owned by the U.S. Government from the territory of Canada to supply Distant Early Warning sites.

Phase-Out:

None

Annex I. Schedule of Chile

Sector:

All Sectors

Sub-Sector:

Industry Classification:

Type of Reservation:

National Treatment (Article G-02)

Measures:

Decreto Ley 1.939, Diario Oficial, noviembre 10, 1977,

Normas sobre adquisición, administración y disposición de bienes del Estado

Decreto con Fuerza de Ley 4 del Ministerio de Relaciones Exteriores, Diario Oficial, noviembre 10, 1967

Description:

Investment

Chile when disposing of the ownership or any other right over State land may only do so to Chilean natural or juridical persons. State land for these purposes refers to State land up to a distance of 10 kilometres from the borderfront and up to a distance of 5 kilometres from the oceanfront.

Corporeal immovable property situated in borderland and declared "borderland zone" by virtue of Decreto con Fuerza de Ley 4, 1967, by the Ministerio de Relaciones Exteriores may not be acquired, either as property or in another quality, by natural persons with nationality in a neighbouring country or juridical persons with its principal seat in a neighbouring country or with 40 per cent or more of its capital belonging to such natural persons or its effective control is exercised by such natural persons.

Phase-Out::

None

Sector:

All Sectors

Sub-Sector:

Industry Classification:

Type of Reservation:

National Treatment (Article H-02)

Most-Favoured Nation Treatment (Article H-03)

Local Presence (Article H-05)

Measures:

Additional non-conforming measures

Description:

Cross-Border Services

Additional non-conforming measures with respect to a sector or sub-sector for which a reservation has not been taken pursuant to Article H-06(1) in Chile's Schedule to Annex I. This reservation does not include computer-related services, and technical testing and analysis services.

Phase-out:

None

Sector:

All Sectors

Sub-Sector:

Industry Classification:

Type of Reservation:

National Treatment (Article G-02)

Senior Management and Boards of Directors (Article G-07)

Measures:

As set out in the Description element

Description:

Investment

Chile, when selling or disposing of its equity interests in, or the assets of, an existing state enterprise or an existing governmental entity, may prohibit or impose limitations on the ownership of such interests or assets, and on the ability of owners of such interests or assets to control any resulting enterprise, by investors of Canada or of a non-Party or their investments. With respect to such a sale or other disposition, Chile may adopt or maintain any measure relating to the nationality of senior management or members of the board of directors.

For purposes of this reservation:

1. any measure maintained or adopted after the date of entry into force of this Agreement that, at the time of sale or other disposition, prohibits or imposes limitations on the ownership of equity interests or assets or imposes nationality requirements described in this reservation shall be deemed to be an existing measure; and

2. "state enterprise" means an enterprise owned or controlled through ownership interests by Chile and includes an enterprise established after the date of entry into force of this Agreement solely for the purposes of selling or disposing of equity interests in, or the assets of, an existing state enterprise or governmental entity.

Phase-Out:

None

Sector:

All Sectors

Sub-Sector:

Industry Classification:

Type of Reservation:

National Treatment (Article G-02)

Measures:

Decreto con Fuerza de Ley 1 del Ministerio del Trabajo y Prevision Social, Diario Oficial, enero 24, 1994, Código del Trabajo

Description:

Investment

A minimum of 85 per cent of employees who work for the same employer shall be Chilean natural persons. This rule applies to employers with more than 25 employees under a contract of employment (contrato de trabajo). Expert technical personnel, who cannot be replaced by national personnel, shall not be subject to this provision as determined by the Dirección General del Trabajo.

An employee shall be understood to mean any natural person who renders intellectual or material services, under dependence or subordination, pursuant to a contract of employment.

Phase-out:

None

Sector:

Automotive

Sub-Sector:

Industry Classification:

CPC

Type of Reservation:

Performance requirements (Article G-06)

Measures:

Ley 18.483, Diario Oficial, diciembre 28, 1985, Régimen Legal para la Industria Automotriz

Description:

Investment

In order to qualify for the benefits established in Ley 18.483, it is required to be registered in the Registros de la Comisión Automotriz and comply with the minimum national content, as set out in Annex C-03.2

Phase-Out:

As set out in Annex C-03.2.

Sector:

Business Services

Sub-Sector:

Research Services

Industry Classification:

CPC 851 Research and experimental development services on natural sciences and engineering

CPC 853 Interdisciplinary research and experimental development services

CPC 882 Services incidental to fishing

Type of Reservation:

National Treatment (Article H-02)

Measures:

Decreto Supremo 711 del Ministerio de Defensa Nacional, Diario Oficial, octubre 15, 1975

Description:

Cross-Border Services

Foreign juridical persons or natural persons intending to conduct research in the Chilean 200-mile maritime zone, shall be required to submit a request six months in advance and shall comply with the requirements established by the corresponding regulations.

Phase-out:

None

Sector:

Business Services

Sub-Sector:

Research Services

Industry Classification:

CPC 851 Research and experimental development services on natural sciences and engineering

CPC 853 Interdisciplinary research and experimental development services

CPC 8675 Related scientific and technical consulting services

Type of Reservation:

National Treatment (Article H-02)

Measures:

Decreto con Fuerza de Ley 11 del Ministerio de Relaciones Exteriores, Diario Oficial, diciembre 5, 1968

Decreto 559 del Ministerio de Relaciones Exteriores, Diario Oficial, enero 24, 1968

Decreto con Fuerza de Ley 83 del Ministerio de Relaciones Exteriores, Diario Oficial, marzo 27, 1979

Description:

Cross-Border Services

Natural persons representing foreign juridical persons or natural persons residing abroad and intending to perform explorations for work of a scientific or technical nature, or connected to mountain climbing in areas that are adjacent to Chilean borders shall apply for the appropriate authorization through a Chilean Consul in the corresponding country. The Chilean Consul shall then send such request directly to the Dirección de Fronteras y Límites del Estado. The Dirección shall determine whether one or more Chilean natural persons working in the appropriate related activities shall join the expedition in order to become acquainted with the studies to be undertaken.

The Departamento de Operaciones de la Dirección de Fronteras y Límites del Estado shall pronounce itself on whether to authorize or reject geographic or scientific explorations to be carried out by foreign juridical or natural persons in Chile. The Dirección Nacional de Fronteras y Límites del Estado shall authorize and will supervise all explorations involving work of a scientific or technical nature, or related to mountain climbing, that foreign juridical persons or natural persons residing abroad intend to carry out in areas adjacent to Chilean borders.

Phase-out:

None

Sector:

Business Services

Sub-Sector:

Research in Social Sciences

Industry Classification:

CPC 8675 Related scientific and technical consulting services

Type of Reservation:

National Treatment (Article H-02)

Measures:

Ley 17.288, Diario Oficial, febrero 4, 1970

Decreto Supremo 484 del Ministerio de Educación, Diario Oficial, abril 2, 1991

Description:

Cross-Border Services

Foreign juridical persons or foreign natural persons intending to perform excavations, surveys, probings and/or collect anthropological, archaeological and paleontological material must apply for a permit from the Consejo de Monumentos Nacionales. In order to obtain the permit, the person in charge of the research must be engaged by a reliable foreign scientific institution and must be working in collaboration with a Chilean state-owned scientific organization or a Chilean university.

The aforementioned permit can be granted to Chilean researchers having the pertinent scientific background in archaeology, anthropology, paleontology, duly certified as appropriate, and who also have a research project and appropriate institutional sponsorship; and to foreign researchers provided that they are engaged by a reliable scientific institution and that they work in collaboration with a Chilean state-owned scientific organization or a Chilean university. Museum Directors or Curators acknowledged by the Consejo de Monumentos Nacionales, professional archaeologists, anthropologists or paleontologists, as appropriate, and the members of the Sociedad Chilena de Arqueología shall be authorized to perform salvage-related works. Salvage involves the urgent recovery of data or archaeological, anthropological or paleontological artifacts or species threatened by imminent loss.

Phase-out:

None

Sector:

Energy

Sub-Sector:

Industry Classification:

CPC 12 Crude petroleum and natural gas

CPC 13 Uranium and Thorium minerals

CPC 14 Metallic minerals

CPC 16 Other minerals

Type of Reservation:

National Treatment (Article G-02)

Performance Requirements (Article G-06)

Measures:

Constitución Política de la República de Chile

Ley 18.097, Diario Oficial, enero 21, 1982, Ley Orgánica Constitucional sobre concesiones mineras

Ley 18.248, Diario Oficial, octubre 14, 1983, Código de Minería

Ley 16.319, Diario Oficial, octubre 23, 1965, que crea la Comisión Chilena de Energía Nuclear

Description:

Investment

The exploration, exploitation and treatment (beneficio) of liquid or gaseous hydrocarbons, deposits of any kind existing in sea waters subject to national jurisdiction and deposits of any kind wholly or partially located in areas classified as important to national security with mining effects, which qualification shall be made by law only, can be the object of administrative concessions or special operating contracts, subject to the requirements and the conditions to be determined, in each case by a supreme decree of the President of the Republic. For greater certainty, it is understood that the term beneficio shall not include the storage, transportation or refining of the energy material referred to in this paragraph.

The production of nuclear energy for peaceful purposes may only be carried out by the Comisión Chilena de Energía Nuclear or, with its authorization, jointly with third persons. Should the Comisión deem it advisable to authorize, it may determine, in turn, the terms and conditions therein.

Phase-Out:

None

Sector:

Fisheries

Sub-Sector:

Aquaculture

Industry Classification:

CPC 04 Fish and other fishing products

Type of Reservation:

National Treatment (Article G-02)

Measures:

Ley 18.892, Diario Oficial, enero 21 1992, Ley General de Pesca y Acuicultura

Description:

Investment

A concession or permit is required for the use of beaches, land adjacent to beaches (terrenos de playas), water-column (porciones de agua) and sea-bed lots (fondos marinos) to engage in aquaculture activities.

Only Chilean natural or juridical persons constituted in accordance with Chilean law and foreigners with permanent residency may be holders of a permit or concession to carry out aquaculture activities.

Phase-Out:

None

Sector:

Fisheries

Sub-Sector:

Industry Classification:

CPC 04 Fish and other fishing products

Type of Reservation:

National Treatment (Article G-02)

Most-Favoured-Nation Treatment (Article G-03)

Measures:

Ley 18.892, Diario Oficial, enero 21, 1992, Ley General de Pesca y Acuicultura

Decreto Ley 2.222, Diario Oficial, mayo 31, 1978, Ley de Navegación

Description:

Investment

In order to harvest and to catch hydrobiological species in interior waters, in the territorial sea and Exclusive Economic Zone of Chile, a permit issued by the Subsecretaría de Pesca is required.

Only Chilean natural persons or juridical persons constituted in accordance with Chilean law and foreigners with permanent residency may be holders of permits to harvest and to catch hydrobiological species.

Only Chilean vessels are permitted to fish in interior waters, in the Territorial sea and Chile's Exclusive Economic Zone. Chilean vessels are those defined in the Ley de Navegación.

Access to extractive industrial fishing activities shall be subject to the previous registration of the vessel in Chile.

Only a Chilean natural or juridical person may register a vessel in Chile. A juridical person must be constituted in Chile with principal domicile and real and effective seat in Chile with its president, manager and majority of the directors or administrators being Chilean natural persons. In addition, more than 50 percent of its equity capital must be held by Chilean natural or juridical persons. For these purposes, a juridical person with ownership participation in another juridical person that owns a vessel has to comply with all the aforementioned requisites.

A joint ownership (comunidad) may register a vessel if the majority of the joint owners are Chilean with domicile and residency in Chile. The administrators must be Chilean natural persons and the majority of the rights of the joint ownership (comunidad) must belong to a Chilean natural or juridical person. For these purposes, a juridical person with ownership participation in a joint ownership (comunidad) that owns a vessel, has to comply with all the aforementioned requisites.

An owner (natural or juridical person) of a fishing vessel registered in Chile prior to June 30, 1991, shall not be subject to the nationality requirement above mentioned.

Fishing vessels specifically authorized by the maritime authorities, pursuant to powers conferred by law in cases ofreciprocity granted to Chilean vessels by other States may be exempted from the above mentioned requisites on equivalent terms provided to Chilean vessels by that State.

Access to small scale fishing activities (pesca artesanal) shall be subject to registration in the Registro de Pesca Artesanal. Registration for small scale fishing (pesca artesanal) is only granted to Chilean natural persons and foreign natural persons with permanent residency, or a Chilean juridical person constituted by the aforementioned persons.

Phase-Out:

None

Sector:

Mining

Subsector:

Industrial

Classification:

CPC 13 Uranium and Thorium minerals

CPC 14 Metallic minerals

CPC 16 Other minerals

Type of Reservation:

National Treatment (Article G-02)

Performance Requirements (Article G-06)

Measures:

Constitución Política de la República de Chile

Ley 18.097, Diario Oficial, enero 21, 1982, Ley Orgánica Constitucionalsobre concesiones mineras

Ley 18.248, Diario Oficial, octubre 14, 1983, Código de Minería

Ley 16.319, Diario Oficial, octubre 23, 1965, que crea la Comisión Chilena de Energía Nuclear

Description:

Investment

The State has the right of first refusal, at the customary market prices and terms, for the purchase of mineral products from mining operations in the country, when thorium or uranium are contained in significant amounts therein.

The State may demand that producers separate from mining products, the portion of substances which cannot be granted in mining concessions which exist, in significant amounts, in said products, and which can be economically and technically separated, for delivery to or for sale on behalf of the State. For these purposes, economically and technically separated requires that the costs incurred to recover the substances concerned through a sound technical procedure, and to commercialize and deliver the same shall be lower than its commercial value.

The exploration, exploitation and treatment ("beneficio") of lithium, deposits of any kind existing in sea waters subject to national jurisdiction and on deposits of any kind wholly or partially located in areas classified as important to national security with mining effects, which qualification shall be made by law only, can be the object of administrative concessions or special operating contracts, subject to the requirements and the conditions to be determined, in each case by a supreme decree of the President of the Republic.

Natural atomic materials and lithium extracted, and concentrates, derivatives and compounds of both of them, cannot be subject to any kind of juridical acts, unless executed or entered into by the Comisión Chilena de Energía Nuclear, with the same or with its prior authorization. Should the Comisión deem it advisable to grant the authorization, it shall determine, in turn, the conditions granted therein.

Phase-out:

None

Sector:

Professional, Technical and Specialized Services

Subsector:

Professional Services

Industry Classification:

CPC 86211 Financial Auditing Services (refers only to financial auditing or financial institutions)

Type of Reservation:

National Treatment (Article H-02)

Local Presence (Article H-05)

Measures:

Ley 18.046, Diario Oficial, octubre 22, 1981, Ley de Sociedades Anónimas

Decreto Supremo 587 del Ministerio de Hacienda, Diario Oficial, noviembre 13, 1982, Reglamento de Sociedades Anónimas

Decreto Ley 1097, Diario Oficial, julio 25, 1975

Decreto Ley 3.538, Diario Oficial, diciembre 23, 1980

Circular 2714, de 1982; Circular 1, octubre 17, 1989, de la Superintendencia de Bancos e Instituciones Financieras; capítulo 19 de la Recopilación de Normas de la Superintendencia de Bancos e Instituciones Financieras, sobre Auditores Externos

Circulares 327, junio 29, 1983 y 350, octubre 21, 1983, de la Superintendencia de Bancos e Instituciones Financieras

Description:

Cross-Border Services

External auditors of financial institutions must be registered in the Registry of External Auditors kept by the Superintendencia de Bancos e Instituciones Financieras and the Superintendencia de Valores y Seguros. Only firms legally incorporated in Chile as partnerships (sociedades de personas) or associations (asociaciones) and whose main line of business is auditing services may be inscribed in the Registry.

Phase out:

None

Sector:

Professional Services

Sub-Sector:

Engineering and Technicians

Industry Classification:

CPC 8672 Engineering Services

CPC 8673 Integrated engineering services

CPC 8675 Related scientific and technical consulting services

Type of Reservation:

National Treatment (Article H-02)

Measures:

Ley 12.851, Diario Oficial, febrero 6, 1958

Description:

Cross-Border Services

Engineers and technicians holding foreign degrees who have been hired to provide services in Chile will require an authorization, entailing registration in a special register, from the corresponding professional association (colegio profesional) and will be subject to the tutelage and the disciplinary authority of such association.

Sector:

Professional Services

Sub-Sector:

Legal Services

Industry Classification:

CPC 861 Legal Services

Type of Reservation:

National Treatment (Article H-02)

Measures:

Código Orgánico de Tribunales

Decreto 110 del Ministerio de Justicia, Diario Oficial, marzo 20, 1979

Ley 18.120, Diario Oficial, mayo 18, 1982

Description:

Cross-Border Services

Only Chileans shall be authorized to practice as lawyers.

Only lawyers shall be authorized to plead a case in Chilean courts and the first legal action or claim filed by each party shall be done so by a lawyer duly qualified to practise law. Among others, the following documents shall be drawn up solely by lawyers: drafting of articles of incorporation and amendments thereto, mutual termination of obligations or liquidation of corporations, liquidation of community property between spouses, distribution of property, articles of incorporation of juridical persons, of associations of irrigation channel members, of cooperative associations, agreements governing financial transactions, the issue of bonds by corporations, and requests asking for the juridical person for corporations and foundations.

Phase-out:

None

Sector:

Professional, Technical and Specialized Services

Sub-Sector:

Justice - Ancillary Services

Industry Classification:

CPC 861 Legal Services

Type of Reservation:

National Treatment (Article H-02)

Local Presence (Article H-05)

Measures:

Código Orgánico de Tribunales

Reglamento del Registro Conservador de Bienes Raíces

Ley 18.118, Diario Oficial, mayo 22, 1982

Decreto 197, del Ministerio de Economía, Diario Oficial, agosto 8, 1985

Ley 18.175, Diario Oficial, octubre 28, 1982

Description:

Cross-Border Services

Justice ancillaries must have their residence in the same city or place where the court house for which they render services

is domiciled.

Public defenders ("defensores públicos"), public notaries ("notarios publicos"), and custodians ("conservadores") must be Chilean natural persons and fulfill the same requirements that are needed to become a judge.

Archivists ("archiveros") and arbitrators at law ("árbitros de derecho") must be lawyers, and therefore, need to be Chilean natural persons.

Only Chilean natural persons with the right to vote and foreign natural persons with permanent residence and the right to vote can act as process servers ("receptores judiciales") and superior court attorneys ("procuradores del número").

Only Chilean natural persons, foreign natural persons with permanent residence in Chile or Chilean juridical persons may be public auctioneers ("martilleros públicos").

Receivers in bankruptcy ("síndicos de quiebra") must have a professional or technical degree granted by a university, or a professional or technical institute recognized by the State of Chile. Receivers in bankruptcy must have experience in the commercial, economic or juridical field of no less than three years and they must be duly authorized by the Ministry of Justice and can only work in the place where they reside.

Phase-out:

None

Sector:

Specialized Services

Sub-Sector:

Customs Agents and Brokers

Industry Classification:

CPC 748 Freight transport agency services

CPC 749 Other supporting and auxiliary transport services

Type of Reservation:

National Treatment (Article H-02)

Local Presence (Article H-05)

Measures:

Decreto con Fuerza de Ley 30 del Ministerio de Hacienda, Diario Oficial; abril 13, 1983

Description:

Cross-Border Services

Only Chilean natural persons may act as customs brokers or agents. These duties shall be carried out in person and with due diligence.

Phase-out:

None

Sector:

Specialized Services

Sub-Sector:

Private Armed Guards

Industry Classification:

CPC 873 Investigation and Security

Type of Reservation:

National Treatment (Article H-02)

Measures:

Decreto 1.773 del Ministerio del Interior, Diario Oficial, noviembre 14, 1994

Description:

Cross-Border Services

Only Chilean natural persons shall be able to render services as private armed guards.

Phase-out:

None

Sector:

Sports Services, Industrial Fishing and Hunting

Sub-Sector:

Industry Classification:

CPC 881 Services incidental to agriculture, hunting and forestry

CPC 882 Services incidental to fishing

CPC 96599 Otros servicios de esparcimiento

Type of Reservation:

Local Presence (Article H-05)

Measures:

Ley 17.798,Diario Oficial, diciembre 6, 1977

Decreto Supremo 77 del Ministerio de Defensa Nacional, Diario Oficial, abril 29, 1982

Description:

Cross-Border Services

Any person who own guns, explosives or similar substances must apply for registration to the appropriate authority for the corresponding domicile, for which purpose a request shall be submitted to the Dirección General de Movilización Nacional del Ministerio de DefensaNacional.

Phase-out:

None

Sector:

Transportation

Sub-Sector:

Air transportation

Industry Classification:

CPC 734 Rental services of aircraft with operator

CPC 7469 Other complementary air services

Type of Reservation:

National Treatment (Articles G-02, H-02)

Most-Favoured-Nation Treatment (Article H-03)

Local Presence (Article H-05)

Senior Management and Boards of Directors (Article

G-07)

Measures:

Ley 18.916, Diario Oficial, febrero 8, 1990, Código Aeronáutico

Decreto Ley 2.564, Diario Oficial, junio 22, 1979, Normas sobre Aviación Comercial

Decreto Supremo 624del Ministerio de Defensa Nacional, Diario Oficial, enero 5, 1995

Ley 16.752, Diario Oficial, febrero 17, 1968

Decreto 34 del Ministerio de Defensa, Diario Oficial, febrero 10, 1968

Decreto Supremo 102del Ministerio de Transportes y Telecomunicaciones, Diario Oficial, junio 17, 1981

Decreto Supremo 172del Ministerio de Defensa Nacional, Diario Oficial, marzo 5, 1974

Decreto Supremo 37del Ministerio de Defensa Nacional, Diario Oficial, diciembre 10, 1991

Decreto 234del Ministerio de Defensa Nacional, Diario Oficial, junio 19, 1971

Description:

Cross-Border Services and Investment

Only a Chilean natural or juridical person may register an aircraft in Chile. A juridical person must be constituted in Chile with principal domicile and real effective seat in Chile. In addition, a majority of its ownership must be held by Chilean natural or juridical persons, which in turn must comply with the aforementioned requisites.

The president, manager, majority of directors and/or administrators of the juridical person must be Chilean natural persons.

Foreign registered aircraft engaged in non-commercial activities may not remain in Chile more than 30 days of its date of entry into Chile, unless authorized by the Dirección Generalde Aeronáutica Civil. For greater clarity, this measure shall not apply to specialty air services as defined in Article H-12(2) of this Agreement, except for glider towing and parachute jumping.

In order to work as crew members on aircraft used by a Chilean aviation company, foreign aviation staff shall be required to first obtain a Chilean license with the appropriate permits enabling them to discharge the pertinent duties.

Foreign aviation personnel shall be allowed to work in that capacity in Chile provided that the license or authorization granted by a foreign country is validated by Chilean civil aviation authorities. In the absence of an international agreement regulating such validation, the license or authorization shall be granted under conditions of reciprocity. In that case, proof shall be submitted showing that the licenses or authorizations were issued or validated by the pertinent authorities in the State where the aircraft is registered, that the documents are in force and that the requirements for issuing or validating such licenses and authorizations meet or exceed the standards required in Chile for analogous cases.

Air transportation services may be provided by Chilean or foreign companies subject to the condition that, along the routes in which they operate, foreigners grant similar conditions to Chilean aviation companies when so requested. The Junta Aeronáutica Civil, by means of a substantiated resolution (resolución fundada), may terminate, suspend or limit domestic traffic services (cabotage) or any other class of commercial aviation services carried out solely in Chilean territory by foreign companies or aircraft if in their country of origin the right to equal treatment for Chilean companies and aircraft is denied.

Foreign civil aircraft not engaging in commercial transport activities or non-scheduled commercial air transport intending to enter Chilean territory, including its territorial waters, to fly over Chile and to make stop-overs for non-commercial purposes, shall be required to notify the Dirección General de Aeronáutica Civil at least twenty-four hours in advance. Commercial traffic aircraft not operating on a regular basis shall not be allowed to carry passengers, cargo or mail in Chilean territory without prior authorization by the Junta de Aeronáutica Civil.

Phase-Out:

None

Sector:

Transportation

Sub-Sector:

Land Transportation

Industry Classification:

CPC 712 Other land transport services

Type of Reservation:

National Treatment (Article H-02)

Most-Favoured Nation (Article H-03)

Local Presence (Article H-05)

Measures:

Decreto Supremo 212 del Ministerio de Transportes y Telecomunicaciones, Diario Oficial, noviembre 21, 1992

Decreto 163 del Ministerio de Transportes y Telecomunicaciones, Diario Oficial, enero 4, 1985

Decreto Supremo 257 del Ministerio de Relaciones Exteriores, Diario Oficial, octubre 17, 1991

Description:

Cross-Border Services

Ground transportation service providers must be registered with the Registro Nacional by means of an application submitted to the Secretario Regional Ministerial de Transportes y Telecomunicaciones. In the case of urban services, the request must be submitted to the Secretario Regional of the area where the services are to be rendered and, in the case of rural and inter-city services, in the region where the applicant resides. All information required by law must be included on the registration request and the following documents, among others, must be attached: photocopy of the National Identification card and in the case of juridical persons, public documents verifying incorporation, the name and domicile of the legal representative and a document certifying such status. Foreign natural and juridical persons authorized to provide international transportation in Chilean territory cannot provide local transportation services and/or participate, in any form, in such activities within Chilean territory.

Only companies with real and effective domicile and incorporated under the laws of the following countries can provide international land transportation between Chile, Argentina, Bolivia, Brasil, Peru, Uruguay and Paraguay. Furthermore, in the case of foreign juridical persons more than half of the capital and the effective control of such juridical persons must be in the hands of nationals of Chile, Argentina, Bolivia, Brasil, Peru, Uruguay or Paraguay to obtain a permit to provide international land transportation services.

Phase-out:

None

Sector:

Transportation

Sub-Sector:

Land Transportation

Industry Classification:

CPC 712 Other land transport services

Type of Reservation:

National Treatment (Article H-02)

Most-Favoured-Nation Treatment (Article H-03)

Level of Government:

Measures:

Ley 18.290, Diario Oficial, febrero 7, 1984

Decreto Supremo 485 del Ministerio de Relaciones Exteriores, Diario Oficial, septiembre 7, 1960, Convención de Ginebra.

Description:

Cross-Border Services

Motor vehicles with foreign licence plates entering Chile on a temporary basis under the provisions set forth in the "Convention on Highway Traffic" adopted in Geneva in 1949 shall be authorized to travel freely on Chilean territory for the period established in the above mentioned Convention, provided that they meet the requirements established by Chilean law.

Holders of valid international driving licences or certificates, issued by a foreign country pursuant to the Geneva Convention shall be authorized to travel throughout Chilean territory. Drivers of vehicles with foreign licence plates who hold international driving licences shall present, upon request by the authorities, documents proving that the vehicle is duly authorized for traffic in addition to the documents that authorize the holder to drive.

Phase-out:

None

Sector:

Transportation

Sub-Sector:

Water transportation

Industry Classification:

CPC 721 Transport services by sea-going vessels

CPC 722 Cargo transportation

Type of Reservation:

National Treatment (Articles G-02, H-02)

Most-Favoured-Nation Treatment (Articles G-03, H-03)

Local Presence (Article H-05)

Senior Management and Boards of Directors (Article G-07)

Measures:

Decreto Ley 3.059, Diario Oficial, diciembre 22, 1979, Ley de Fomento a la Marina Mercante

Decreto Supremo 24, Diario Oficial, marzo 10, 1986, Reglamento del Decreto Ley 3.059

Decreto Ley 2.222, Diario Oficial, mayo 31, 1978, Ley de Navegación

Decreto Supremo 153, Diario Oficial, marzo 11, 1966, Aprueba el Reglamento General de Matrícula del Personal de Gente de Mar, Fluvial y Lacustre

Código de Comercio

Description:

Cross-Border Services

and Investment

Only a Chilean natural or juridical person may register a vessel in Chile. A juridical person must be constituted with principal domicile and real and effective seat in Chile with its president, manager and majority of the directors or administrators being Chilean natural persons. In addition, more than 50 per cent of its equity capital must be held by Chilean natural or juridical persons. For these purposes, a juridical person with ownership participation in another juridical person that owns a vessel has to comply with all the aforementioned requisites.

A joint ownership (comunidad) may register a vessel if the majority of the joint owners are Chileans with domicile and residency in Chile, the administrators must be Chileans and the majority of the rights of the joint ownership must belong to a Chilean natural or juridical person. For these purposes, a juridical person with ownership participation in a joint ownership (comunidad) that owns a vessel has to comply with all the aforementioned requisites.

Special vessels owned by foreign natural or juridical persons domiciled in Chile may under certain conditions be registered in the country. For these purposes a special vessel does not include a fishing vessel. The conditions required are the following: domicile in Chile, principal head office in the country or undertaking a profession or commercial activity in a permanent way in Chile. The maritime authority may, for reasons of national security, impose certain special restrictions on the operation of these vessels.

The maritime authority may concede a better treatment based on the principle of reciprocity.

Cabotage is reserved to Chilean vessels. The maritime authority may concede a better treatment based on the principle of reciprocity with respect to the transportation of passengers and cargo on seas, rivers and lakes between points on the national territory and between such points and naval artifacts installed in territorial waters or in the Exclusive Economic Zone.

Foreign vessels shall be required to use pilotage, anchoring and harbor pilotage services when the maritime authorities so require it. In tugging activities or other maneuvers performed in Chilean ports, only tugboats flying the Chilean flag shall be used.

Captains shall be required to be Chilean nationals and to be acknowledged as such by the pertinent authorities. Officers on Chilean vessels shall be required to be Chilean natural persons registered in the Officers' Registry (Registro de oficiales). To become crew members of a Chilean vessel is required to be Chilean, to have the permit granted by the Maritime Authority and to be registered in the respective Registry. Professional titles and licenses granted by a foreign country shall be considered valid for the discharge of officers' duties on national vessels pursuant to a substantiated resolution (resolución fundada) issued by the Director.

Ship Captains ("patrón de nave") shall be Chilean nationals. The Ship Captains ("patr F3¢n de nave") is the natural person who, pursuant to the corresponding title awarded by the Director, is empowered to exercise command on smaller vessels and on certain special larger vessels.

Only Chilean nationals, or foreigners with domicile in Chile, shall be authorized to act as fishing boat Captains ("patrones de Pesca"), machinists ("mecánicos-motoristas"), machine operators ("motoristas"), sea-faring fishermen ("marineros pescadores"), small-scale fishermen ("pescadores"), industrial or maritime trade technical employees or workers, and as industrial and general ship service crews on fishing factories or fishing boats when so requested by ship operators ("armadores") in order to initiate such work.

In order to fly the national flag, the Captain of the ship, its officers and crew shall be required to be Chilean nationals. Nevertheless, the Dirección Marítima, on the basis of a substantiated resolution (resolucíon fundada), shall authorize the hiring of foreign personnel, on a temporary basis if essential, with the exception of the Captain who, at all times, shall be required to be a Chilean national.

Shipping agents or representatives of ship operators, owners or Captains, whether they are natural or juridical persons, shall be required to be Chilean nationals. Agents responsible for stowing and unstowing, and mooring, i.e., the persons responsible for moving the cargo from ship to port facilities and to overland transport vehicles and vice-versa, whether fully or in part, shall also be required to comply with this provision. Furthermore, the persons responsible for unloading and transferring goods andgenerally using Chilean continental or insular ports, particularly with regard to fishing catches or to fishing catches processed on board shall also be required to be Chilean nationals.

Only a Chilean natural or juridical person shall be authorized to work in Chile as a multimodal operator.

Phase-out:

None

Annex II. Reservations for future measures (chapters g and h)

Annex II. Schedule of Canada

Sector:

Aboriginal Affairs

Sub-Sector:

Industry Classification:

Type of Reservation:

National Treatment (Articles G-02, H-02)

Most-Favoured-Nation Treatment (Articles G-03, H-03)

Local Presence (Article H-05)

Performance Requirements (Article G-06)

Senior Management and Boards of Directors (Article G-07)

Description:

Cross-Border Services and Investment

Canada reserves the right to adopt or maintain any measure denying investors of Chile and their investments, or service providers of Chile, any rights or preferences provided to aboriginal peoples.

Existing Measures:

Constitution Act, 1982, being Schedule B of the Canada Act 1982 (U.K.), 1982, c. 11

Sector:

All Sectors

Sub-Sector:

Industry Classification:

Type of Reservation:

National Treatment (Article G-02)

Description:

Investment

Canada reserves the right to adopt or maintain any measure relating to residency requirements for the ownership by investors of Chile, or their investments, of oceanfront land.

Existing Measures:

Sector:

Communications

Sub-Sector:

Telecommunications Transport Networks and Services, Radiocommunications and Submarine Cables

Industry Classification:

CPC 752 Telecommunications Services

CPC 7543 Connection Services

CPC 7549 Other Telecommunications Services Not Elsewhere Classified (limited to telecommunications transport networks and services)

Type of Reservation:

National Treatment (Article G-02)

Most-Favoured-Nation Treatment (Article G-03)

Senior Management and Boards of Directors (Article G-07)

Description:

Investment

Canada reserves the right to adopt or maintain any measure relating to investment in telecommunications transport networks and telecommunications transport services, radiocommunications and submarine cables, including ownership restrictions and measures concerning corporate officers and directors and place of incorporation.

This reservation does not apply to providers of enhanced or value-added services whose underlying telecommunications transmission facilities are leased from providers of public telecommunications transport networks.

Existing Measures:

Bell Canada Act, S.C. 1987, c. 19

British Columbia Telephone Company Special Act, S.C. 1916, c. 66

Teleglobe Canada Reorganization and Divestiture Act, S.C. 1987, c. 12

Telesat Canada Reorganization and Divestiture Act, S.C 1991, c. 52

Radiocommunication Act, R.S.C. 1985, c. R-2

Telegraphs Act, R.S.C. 1985, c. T-5

Telecommunications Policy Framework, 1987

Sector:

Communications

Sub-Sector:

Telecommunications Transport Networks and Services, Radiocommunications and Submarine Cables

Industry Classification:

CPC 752 Telecommunications Services (not including enhanced or value-added services)

CPC 7543 Connection Services

CPC 7549 Other Telecommunications Services Not Elsewhere Classified (limited to telecommunications transport networks and services)

Type of Reservation:

National Treatment (Article H-02)

Most-Favoured-Nation Treatment (Article H-03)

Local Presence (Article H-05)

Description:

Cross-Border Services

Canada reserves the right to adopt or maintain any measure relating to radiocommunications, submarine cables and the provision of telecommunications transport networks and telecommunications transport services. These measures may apply to such matters as market entry, spectrum assignment, tariffs, intercarrier agreements, terms and conditions of service, interconnection between networks and services, and routing requirements that impede the provision on a cross-border basis of telecommunications transport networks and telecommunications transport services, radiocommunications and submarine cables.

Telecommunications transport services typically involve the real-time transmission of customer-supplied information between two or more points without any end-to-end change in the form or content of the customer's information, whether or not such services are offered to the public generally. These services include voice and data services by wire, radiocommunications or any other electromagnetic means of transmission.

Existing Measures:

This reservation does not apply to measures relating to the cross-border provision of enhanced or value-added services.

Bell Canada Act, S.C. 1987, c. 19

British Columbia Telephone Company Special Act, S.C. 1916, c. 66

Railway Act, R.S.C. 1985, c. R-3

Radiocommunication Act, R.S.C. 1985, c. R-2

Telegraphs Act, R.S.C. 1985, c. T-5

Telecommunications Policy Framework, 1987

Telecommunications Decisions, C.R.T.C., including (85-19), (90-3), (91-10), (91-21), (92-11) and (92-12)

Sector:

Government Finance

Sub-Sector:

Securities

Industry Classification:

SIC 8152 Finance and Economic Administration

Type of Reservation:

National Treatment (Article G-02)

Description:

Investment

Canada reserves the right to adopt or maintain any measure relating to the acquisition, sale or other disposition by nationals of Chile of bonds, treasury bills or other kinds of debt securities issued by the Government of Canada, a province or local government.

Existing Measures:

Financial Administration Act, R.S.C. 1985, c. F-11

Sector:

Minority Affairs

Sub-Sector:

Industry Classification:

Type of Reservation:

National Treatment (Articles G-02, H-02)

Local Presence (Article H-05)

Performance Requirements (Article G-06)

Senior Management and Boards of Directors (Article G-07)

Description:

Cross-Border Services and Investment

Canada reserves the right to adopt or maintain any measure according rights or preferences to socially or economically disadvantaged minorities.

Existing Measures:

Sector:

Social Services

Sub-Sector:

Industry Classification:

Type of Reservation:

National Treatment (Articles G-02, H-02)

Most-Favoured-Nation Treatment (Article H-03)

Local Presence (Article H-05)

Senior Management and Boards of Directors (Article G-07)

Description:

Cross-Border Services and Investment

Canada reserves the right to adopt or maintain any measure with respect to the provision of public law enforcement and correctional services, and the following services to the extent that they are social services established or maintained for a public purpose: income security or insurance, social security or insurance, social welfare, public education, public training, health, and child care.

Existing Measures:

Sector:

Transportation

Sub-Sector:

Air Transportation

Industry Classification:

SIC 4513 Non-Scheduled Air Transport, Specialty Industry

Type of Reservation:

National Treatment (Article G-02)

Most-Favoured-Nation Treatment (Article G-03)

Senior Management and Boards of Directors (Article G-07)

Description:

Investment

Canada reserves the right to adopt or maintain any measure that restricts the acquisition or establishment of an investment in Canada for the provision of specialty air services to a Canadian national or a corporation incorporated and having its principal place of business in Canada, its chief executive officer and not fewer than two-thirds of its directors as Canadian nationals, and not less than 75 percent of its voting interest owned and controlled by persons otherwise meeting these requirements.

Existing Measures:

Aeronautics Act, R.S.C. 1985, c. A-2

Air Regulations, C.R.C. 1978, c. 2

Aircraft Marking and Registration Regulations, SOR/90-591

Sector:

Transportation

Sub-Sector:

Water Transportation

Industry Classification:

SIC 4129 Other Heavy Construction (limited to dredging)

SIC 4541 Freight and Passenger Water Transport Industry

SIC 4542 Ferry Industry

SIC 4543 Marine Towing Industry

SIC 4549 Other Water Transport Industries

SIC 4552 Harbour and Port Operation Industries (limited to berthing, bunkering and other vessel operations in a port)

SIC 4553 Marine Salvage Industry

SIC 4554 Piloting Service, Water Transport Industry

SIC 4559 Other Service Industries Incidental to Water Transport (not including landside aspects of port activities)

Type of Reservation:

National Treatment (Articles G-02, H-02)

Most-Favoured-Nation Treatment (Articles G-03, H-03)

Local Presence (Article H-05)

Performance Requirements (Article G-06)

Senior Management and Boards of Directors (Article G-07)

Description:

Existing Measures:

Cross-Border Services and Investment

Canada reserves the right to adopt or maintain any measure relating to investment in or provision of maritime cabotage services, including:

a. the transportation of goods or passengers by vessel between points in the territory of Canada and in its Exclusive Economic Zone;

b. with respect to waters above the continental shelf, the transportation of goods or passengers in relation to the

exploration, exploitation or transportation of the mineral or non-living natural resources of the continental shelf; and

c. the engaging by vessel in any maritime activity of a commercial nature in the territory of Canada and in its Exclusive Economic Zone and, with respect to waters above the continental shelf, in such other maritime activities of a commercial nature in relation to the exploration, exploitation or transportation of mineral or non-living natural resources of the continental shelf.

This reservation relates to, among other things, local presence requirements for service providers entitled to participate in these activities, criteria for the issuance of a temporary cabotage license to foreign vessels and limits on the number of cabotage licenses issued to foreign vessels.

Coasting Trade Act, S.C. 1992, c. 31

Canada Shipping Act, R.S.C. 1985, c. S-9

Customs Act, R.S.C. 1985, c. 1 (2nd Supp.)

Customs and Excise Offshore Application Act, R.S.C. 1985, c. C-53

Sector:

Transportation

Sub-Sector:

Water Transportation

Industry Classification:

SIC 4541 Freight and Passenger Water Transport Industry

SIC 4542 Ferry Industry

SIC 4543 Marine Towing Industry

SIC 4549 Other Water Transport Industries

SIC 4551 Marine Cargo Handling Industry

SIC 4552 Harbour and Port Operation Industries

SIC 4553 Marine Salvage Industry

SIC 4554 Piloting Service, Water Transport Industry

SIC 4559 Other Service Industries Incidental to Water Transport

Type of Reservation:

Most-Favoured-Nation Treatment (Article H-03)

Description:

Cross-Border Services

Canada reserves the right to adopt or maintain any measure relating to the implementation of agreements, arrangements and other formal or informal undertakings with other countries with respect to maritime activities in waters of mutual interest in such areas as pollution control (including double hull requirements for oil tankers), safe navigation, barge inspection standards, water quality, pilotage, salvage, drug abuse control and maritime communications.

Existing Measures:

United States Wreckers Act, R.S.C. 1985, c. U-3

Various agreements and arrangements, including:

a. Memorandum of Arrangements on Great Lakes Pilotage;

b. Canada - United States Joint Marine Pollution Contingency Plan;

c. Agreement with the United States on Loran "C" Service on the East and West Coasts; and

d. Denmark - Canada Joint Marine Pollution Circumpolar Agreement.

Annex II. Schedule of Chile

Sector:

Aboriginal Affairs

Sub-Sector:

Industry Classification:

Type of Reservation:

National Treatment (Articles G-02, H-02)

Most-Favoured-Nation Treatment (Articles G-03, H-03)

Local Presence (Article H-05)

Performance Requirements (Article G-06)

Senior Management and Boards of Directors (Article G-07)

Description:

Cross-Border Services

and Investment

Chile reserves the right to adopt or maintain any measure denying investors of Canada and their investments, or service providers of Canada, any rights or preferences provided to aboriginal peoples.

Existing Measures:

Sector:

All Sectors

Sub-Sector:

Industry Classification:

Type of Reservation:

National Treatment (Article G-02)

Description:

Investment

Chile reserves the right to adopt or maintain any measure relating to residency requirements for the ownership by investors of the other Party, or their investments, of oceanfront land.

A Chilean natural person, a person resident in Chile or a Chilean juridical person may own or control land used for agriculture. Chile otherwise reserves the right to adopt or maintain any measure relating to the ownership or control of such land. In the case of a juridical person, the majority of each class of shares may be required to be owned by Chilean natural persons or persons resident in the country. A resident is considered a person residing in Chile for 183 days a year or more.

Existing Measures:

Decreto Ley 1.939, Diario Oficial, noviembre 10, 1977, Normas sobre Adquisición, administración y disposición de bienes de Estado.

Sector:

Communications

Sub-Sector:

Telecommunications Transport Networks and Services, Radiocommunications and Submarine Cables

Industry Classification:

Type of Reservation:

National Treatment (Article G-02)

Most-Favoured-Nation Treatment (Article G-03)

Senior Management and Board of Directors (Article G-07)

Description:

Investment

Chile reserves the right to adopt or maintain any measure relating to investment in telecommunications transport networks and telecommunications transport services, radiocommunications and submarine cables, including ownership restrictions and measures concerning corporate officers and directors and place of incorporation.

This reservation does not apply to providers of enhanced or value-added services whose underlying telecommunications transmission facilities are leased from providers of public telecommunications transport networks.

Existing Measures:

Sector:

Communications

Sub-Sector:

Telecommunications Transport Networks and Services, and Radiocommunications and Submarine Cables

Industry Classification:

Type of Reservation:

National Treatment (Article H-02)

Most-Favoured-Nation Treatment (Article H-03)

Local Presence (Article H-05)

Description:

Cross-Border Services

Chile reserves the right to adopt or maintain any measure relating to radiocommunications, submarine cables and the provision of telecommunications transport networks and telecommunications transport services. These measures may apply to such matters as market entry, spectrum assignment, tariffs, intercarrier agreements, terms and conditions of service, interconnection between networks and services, and routing requirements that impede the provision, on a cross-border basis, of telecommunications transport networks and telecommunications transport services, radiocommunications and submarine cables.

Telecommunications transport services typically involve, the real time transmission of customer-supplied information between two or more points, without any end-to-end change in the form or content of the customer's information whether or not such services are offered to the public generally. These services include voice and data services by wire, radiocommunications or any other electromagnetic means of transmission.

This reservation does not apply to measures relating to the cross-border provision of enhanced or value-added services.

Existing Measures:

Sector:

Construction Services

Sub-Sector:

Industry Classification:

CPC 551

CPC 552

Type of Reservation:

National Treatment (Article H-02)

Local Presence (Article H-05) Level of Government:

Description:

Cross-Border Services

Chile reserves the right to adopt or maintain any measure with respect to the provision of construction services rendered by foreign juridical persons or legal entities imposing requirements of residence, registration and/or any other form of local presence, or imposing the obligation of giving financial security for work as a condition for the provision of construction services.

Existing Measures:

Sector:

Education

Sub-Sector:

Industry Classification:

CPC 92 Education Services

Type of Reservation:

National Treatment (Article H-02)

Most-Favoured-Nation Treatment (Article H-03)

Local Presence (Article H-05)

Description:

Cross-Border Services

Chile reserves the right to adopt or maintain any measure relating to natural persons who render education services, including teachers and ancillary personnel rendering educational services in elementary education, kindergarten, pre-school, special education, primary and high school education, higher education, professional, technical, and university education, including educational establishments of any kind as well as sponsors of educational establishments, schools, lyceums, academies, training centres, professional and technical institutes, and/or universities.

This reservation does not apply to the provision of services related to second language training, corporate, business and industrial training and skill upgrading which includes consulting services relating to technical support and advice and curriculum and program development in education.

Existing Measures:

Sector:

Environmental Services

Sub-Sector:

Industry Classification:

CPC 94 Sewage and refuse disposal, sanitation and other environmental protection services

Type of Reservation:

National Treatment (Article H-02)

Most-Favoured-Nation Treatment (Article H-03)

Local Presence (Article H-05) Level of Government:

Description:

Cross-Border Services

Chile reserves the right to adopt or maintain any measure imposing the requirement that the production and distribution of potable water and the collection and disposal of waste water, sanitation services such as sewage, waste disposal and waste water treatment can only be provided by Chilean juridical persons.

This reservation does not apply to consultancy services contracted by Chilean juridical persons.

Existing Measures:

Sector:

Fisheries

Sub-Sector:

Fishing-Related Activities

Industry Classification:

CPC 882 Services incidental to fishing

CPC 04 Fish and other fishing products

Type of Reservation:

National Treatment (Article G-02, H-02)

Most-Favoured-Nation Treatment (Article H-03)

Description:

Cross-Border Services and Investment

Chile retains the right to control the activities of foreign fishing, including fish landings, the first landing of fish processed at sea and access to Chilean ports (port privileges).

Chile reserves the right to control the use of beaches, land adjacent to beaches (terrenos de playas), water-columns (porciones de agua) and sea-bed lots (fondos marinos) for the issuance of maritime concessions. For greater certainty, "maritime concessions" does not include aquaculture.

Existing Measures:

Decreto Ley 2.222, Diario Oficial, mayo 31, 1978, Ley de Navegación

Decreto con Fuerza de Ley 340, Diario Oficial, abril 6, 1960, sobre Concesiones Marítimas

Decreto Supremo 660 del Ministerio de Defensa Nacional, Diario Oficial, noviembre 28, 1988, Reglamento de Concesiones Marítimas.

Sector:

Government Finance

Sub-Sector:

Securities

Industry Classification:

CPC 91112 Administrative Services of Government - Financial and Fiscal Services

Type of Reservation:

National Treatment (Article G-02)

Description:

Investment

Chile reserves the right to adopt or maintain any measure relating to the acquisition, sale or other disposition by nationals of Canada, of bonds, treasury bills or other kinds of debt securities issued by the Central Bank or Government of Chile.

Existing Measures:

Sector:

Minority Affairs

Sub-Sector:

Industry Classification:

Type of Reservation:

National Treatment (Articles G-02, H-02)

Most-Favoured-Nation Treatment (Article H-03)

Local Presence (Article H-05)

Performance Requirements (Article G-06)

Senior Management and Boards of Directors (Article G-07)

Description:

Cross-Border Services

and Investment

Chile reserves the right to adopt or maintain any measure according rights or preferences to socially or economically disadvantaged minorities.

Existing Measures:

Sector:

Social Services

Sub-Sector:

Industry Classification:

CPC 913 Compulsory Social Security Services

CPC 92 Education Services

CPC 93 Health and Social Services

Type of Reservation:

National Treatment (Articles G-02, H-02)

Most-Favoured-Nation Treatment (Article H-03)

Local Presence (Article H-05)

Senior Management and Board of Directors (Article G-07)

Description:

Cross-Border Services and Investment

Chile reserves the right to adopt or maintain any measure with respect to the provision of public law enforcement and correctional services, and the following services to the extent that they are social services established or maintained for a public purpose: income security or insurance, social security or insurance, social welfare, public education, public training, health, and child care.

Existing Measures:

Sector:

Professional, Technical and Specialized Services

Sub-Sector:

Industry Classification:

Type of Reservation:

National Treatment (Articles G-02, H-02)

Local Presence (Article H-05)

Description:

Investment and Cross-Border Services

Where Canada, at the federal or the provincial level, maintains a measure respecting citizenship, permanent residency or local presence in a sector, Chile reserves the right to adopt or maintain an equivalent measure with respect to such service providers in the same sector and for the same period of time as Canada, at the federal or provincial level, maintains the measure.

Existing Measures:

Annex III. Exceptions to most-favored-nation treatment (chapter g)

Annex III. Schedule of Canada

Canada takes an exception to Article G-03 for treatment accorded under all bilateral or multilateral international agreements in force or signed prior to the date of entry into force of this Agreement.

For international agreements in force or signed after the date of entry into force of this Agreement, Canada takes an exception to Article G-03 for treatment accorded under those agreements involving:

a. aviation;

b. fisheries;

c. maritime matters, including salvage; or

d. telecommunications transport networks and telecommunications transport services (this exception does not apply to measures covered by Chapter I (Telecommunications)).

For greater certainty, Article G-03 does not apply to any current or future foreign aid program to promote economic development, such as those governed by the Energy Economic Cooperation Program with Central America and the Caribbean (Pacto de San José) and the OECD Agreement on Export Credits.

Annex III. Schedule of Chile

Chile takes an exception to Article G-03 for treatment accorded under all bilateral or multilateral international agreements in force or signed prior to the date of entry into force of this Agreement.

For international agreements in force or signed after the date of entry into force of this Agreement, Chile takes an exception to Article G-03 for treatment accorded under those agreements involving:

a. aviation;

b. fisheries;

c. maritime matters, including salvage; or

d. telecommunications transport networks and telecommunications transport services (this exception does not apply to measures covered by Chapter I (Telecommunications)).

For greater certainty, Article G-03 does not apply to any current or future foreign aid program to promote economic development, including export credit practices in conformity with the interest rate provisions of the OECD Agreement on Export Credits.

Canada-Chile Agreement on Environmental Cooperation

Preamble

The Government of Canada and the Government of the Republic of Chile:

Convinced of the importance of the conservation, protection and enhancement of the environment in their territories and the essential role of cooperation in these areas in achieving sustainable development for the well-being of present and future generations;

Reaffirming the sovereign right of States to exploit their own resources pursuant to their own environmental and development policies and their responsibility to ensure that activities within their jurisdiction or control do not cause damage to the environment of other States or of areas beyond the limits of national jurisdiction;

Recognizing the global nature of the environment;

Acknowledgments the growing economic and social links between them, including the Canada-Chile Free Trade Agreement (CCFTA);

Recalling that Canada and Chile share a commitment to pursue policies which promote sustainable development, and that sound environmental management is an essential element of sustainable development;

Reconfirming the importance of the environmental goals and objectives of the CCFTA, including enhanced levels of environmental protection;

Emphasizing the importance of public participation in conserving, protecting and enhancing the environment;

Noting the existence of differences in their respective natural endowments, climatic and geographical conditions, and economic, technological and infrastructural capabilities;

Reaffirming the Stockholm Declaration on the Human Environment of 1972 and the Rio Declaration on Environment and Development of 1992;

Recalling their tradition of environmental cooperation and expressing their desire to support and build on international environmental agreements and existing policies and laws, in order to promote cooperation between them;

Recognizing the desire to build on progress made through the cooperative activities of the Memorandum of Understanding on Environmental Cooperation between the Department of the Environment of Canada and the Department of Industry Canada and the National Commission on the Environment of Chile;

Convinced of the benefits to be derived from a framework, including a Commission, to facilitate effective cooperation on the conservation, protection and enhancement of the environment in their territories; and

Desiring to facilitate the accession of Chile to the North American Agreement on Environmental Cooperation;

Have Agreed as follows:

Part One

Objectives

Article 1: Objectives

The objectives of this Agreement are to:

(a) foster the protection and improvement of the environment in the territories of the Parties for the well-being of present and future generations;

(b) promote sustainable development based on cooperation and mutually supportive environmental and economic policies;

(c) increase cooperation between the Parties to better conserve, protect, and enhance the environment, including wild flora and fauna;

(d) support the environmental goals and objectives of the CCFTA;

(e) avoid creating trade distortions or new trade barriers;

(f) strengthen cooperation on the development and improvement of environmental laws, regulations, procedures, policies and practices;

(g) enhance compliance with, and enforcement of, environmental laws and regulations;

(h) promote transparency and public participation in the development of environmental laws, regulations and policies;

(i) promote economically efficient and effective environmental measures; and

(j) promote pollution prevention policies and practices.

Part Two

Obligations

Article 2: General Commitments

1. Each Party shall, with respect to its territory:

periodically prepare and make publicly available reports on the state of the environment;

develop and review environmental emergency preparedness measures;

promote education in environmental matters, including environmental law;

further scientific research and technology development in respect of environmental matters;

assess, as appropriate, environmental impacts; and

promote the use of economic instruments for the efficient achievement of environmental goals.

2. Each Party shall consider implementing in its law any recommendation developed by the Council under Article 10(6)(b).

3. Each Party shall consider prohibiting the export to the territory of the other Party of a pesticide or toxic substance whose use is prohibited within the Party's territory. When a Party adopts a measure prohibiting or severely restricting the use of a pesticide or toxic substance in its territory, it shall notify the other Party of the measure, either directly or through an appropriate international organization.

Article 3: Levels of Protection

Recognizing the right of each Party to establish its own levels of domestic environmental protection and environmental development policies and priorities, and to adopt or modify accordingly its environmental laws and regulations, each Party shall ensure that its laws and regulations provide for high levels of environmental protection and shall strive to continue to improve those laws and regulations.

Article 4: Publication

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

To the extent possible, each Party shall:

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

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

Article 5: Government Enforcement Action

1. With the aim of achieving high levels of environmental protection and compliance with its environmental laws and regulations, each Party shall effectively enforce its environmental laws and regulations through appropriate governmental action, subject to Article 37, such as:

(a) appointing and training inspectors;

(b) monitoring compliance and investigating suspected violations, including through on-site inspections;

(c) seeking assurances of voluntary compliance and compliance agreements;

(d) publicly releasing non-compliance information;

(e) issuing bulletins or other periodic statements on enforcement procedures;

(f) promoting environmental audits;

(g) requiring record keeping and reporting;

(h) providing or encouraging mediation and arbitration services;

(i) using licenses, permits or authorizations;

(j) initiating, in a timely manner, judicial, quasi-judicial or administrative proceedings to seek appropriate sanctions or remedies for violations of its environmental laws and regulations;

(k) providing for search, seizure or detention; or

(l) issuing administrative orders, including orders of a preventative, curative or emergency nature.

2. Each Party shall ensure that judicial, quasi-judicial or administrative enforcement proceedings are available under its law to sanction or remedy violations of its environmental laws and regulations.

3. Sanctions and remedies provided for a violation of a Party's environmental laws and regulations shall, as appropriate:

(a) take into consideration the nature and gravity of the violation, any economic benefit derived from the violation by the violator, the economic condition of the violator, and other relevant factors; and

(b) include compliance agreements, fines, imprisonment, injunctions, the closure of facilities, and the cost of containing or cleaning up pollution.

Article 6: Private Access to Remedies

Each Party shall ensure that interested persons may request the Party's competent authorities to investigate alleged violations of its environmental laws and regulations and shall give such requests due consideration in accordance with law.

Each Party shall ensure that persons with a legally recognized interest under its law in a particular matter have appropriate access to administrative, quasi-judicial or judicial proceedings for the enforcement of the Party's environmental laws and regulations.

Private access to remedies shall include rights, in accordance with the Party's law, such as:

(a) to sue another person under that Party's jurisdiction for damages;

(b) to seek sanctions or remedies such as monetary penalties, emergency closures or orders to mitigate the consequences of violations of its environmental laws and regulations;

(c) to request the competent authorities to take appropriate action to enforce that Party's environmental laws and regulations in order to protect the environment or to avoid environmental harm; or

(d) to seek injunctions where a person suffers, or may suffer, loss, damage or injury as a result of conduct by another person under that Party's jurisdiction contrary to that Party's environmental laws and regulations or from tortious conduct.

Article 7: Procedural Guarantees

1. Each Party shall ensure that its administrative, quasi-judicial and judicial proceedings referred to in Articles 5(2) and 6(2) are fair, open and equitable, and to this end shall provide that such proceedings:

(a) comply with due process of law;

(b) are open to the public, except where the administration of justice otherwise requires;

(c) entitle the parties to the proceedings to support or defend their respective positions and to present information or evidence; and

(d) are not unnecessarily complicated and do not entail unreasonable charges or time limits or unwarranted delays.

2. Each Party shall provide that final decisions on the merits of the case in such proceedings are:

(a) in writing and preferably state the reasons on which the decisions are based;

(b) made available without undue delay to the parties to the proceedings and, consistent with its law, to the public; and

(c) based on information or evidence in respect of which the parties were offered the opportunity to be heard.

3. Each Party shall provide, as appropriate, that parties to such proceedings have the right, in accordance with its law, to seek review and, where warranted, correction of final decisions issued in such proceedings.

4. Each Party shall ensure that tribunals that conduct or review such proceedings are impartial and independent and do not have any substantial interest in the outcome of the matter.

Part Three

Canada-Chile Commission for Environmental Cooperation

Article 8: The Commission

The Parties hereby establish the Canada-Chile Commission for Environmental Cooperation.

The Commission shall comprise a Council, a Joint Submission Committee and a Joint Public Advisory Committee. The Commission shall be assisted by the National Secretariat of each Party.

Section A: The Council

Article 9: Council Structure and Procedures

The Council shall comprise cabinet-level or equivalent representatives of the Parties, or their designees.

The Council shall establish its rules and procedures.

The Council shall convene:

(a) at least once a year in regular session; and

(b) in special session at the request of either Party.

Regular sessions shall be chaired alternately by each Party.

4. The Council shall hold public meetings in the course of all regular sessions. Other meetings held in the course of regular or special sessions shall be public where the Council so decides.

5. The Council may:

(a) establish, and assign responsibilities to, ad hocor standing committees, working groups or expert groups;

(b) seek the advice of non-governmental organizations or persons, including independent experts; and

(c) take such other action in the exercise of its functions as the Parties may agree.

6. All decisions and recommendations of the Council shall be taken by mutual agreement, except as the Council may otherwise decide or as otherwise provided in this Agreement.

7. All decisions and recommendations of the Council shall be made public, except as the Council may otherwise decide or as otherwise provided in this Agreement.

Article 10: Council Functions

1. The Council shall be the governing body of the Commission and shall:

(a) serve as a forum for the discussion of environmental matters within the scope of this Agreement;

(b) oversee the implementation and develop recommendations on the further elaboration of this Agreement and, to this end, the Council shall, within three years after the date of entry into force of this Agreement, review its operation and effectiveness in the light of experience;

(c) oversee the functions assigned to the National Secretariats within the scope of this Agreement;

(d) address questions and differences that may arise between the Parties regarding the interpretation or application of this Agreement;

(e) approve the annual program of work and budget of the Commission; and

(f) promote and facilitate cooperation between the Parties with respect to environmental matters.

2. The Council may consider, and develop recommendations regarding:

(a) comparability of techniques and methodologies for data gathering and analysis, data management and electronic data communications on matters covered by this Agreement;

(b) pollution prevention techniques and strategies;

(c) approaches and common indicators for reporting on the state of the environment;

(d) the use of economic instruments for the pursuit of domestic and internationally agreed environmental objectives;

(e) scientific research and technology development in respect of environmental matters;

(f) promotion of public awareness regarding the environment;

(g) global environmental issues, such as the long-range transport of air and marine pollutants;

(h) exotic species that may be harmful;

(i) the conservation and protection of wild flora and fauna and their habitat, and specially protected natural areas;

(j) the protection of endangered and threatened species;

(k) environmental emergency preparedness and response activities;

(l) environmental matters as they relate to economic development;

(m) the environmental implications of goods throughout their life cycles;

(n) human resource training and development in the environmental field;

(o) the exchange of environmental scientists and officials;

(p) approaches to environmental compliance and enforcement;

(q) ecologically sensitive national accounts;

(r) eco-labelling; and

(s) other matters as it may decide.

3. The Council shall strengthen cooperation on the development and continuing improvement of environmental laws and regulations, including by:

(a) promoting the exchange of information on criteria and methodologies used in establishing domestic environmental standards; and

(b) without reducing levels of environmental protection, establishing a process for developing recommendations on greater compatibility of environmental technical regulations, standards and conformity assessment procedures in a manner consistent with the CCFTA.

4. At the request of the Council, either National Secretariat, or both, shall prepare a report on any environmental matter related to the cooperative functions of this Agreement.

5. The Council shall encourage:

(a) effective enforcement by each Party of its environmental laws and regulations;

(b) compliance with those laws and regulations; and

(c) technical cooperation between the Parties.

6. The Council shall promote and, as appropriate, develop recommendations regarding:

(a) public access to information concerning the environment that is held by public authorities of each Party, including information on hazardous materials and activities in its communities, and opportunity to participate in decision-making processes related to such public access; and

(b) appropriate limits for specific pollutants, taking into account differences in ecosystems.

7. The Council shall cooperate with the CCFTA Free Trade Commission to achieve the environmental goals and objectives of the CCFTA by:

(a) acting as a point of inquiry and receipt for comments from non-governmental organizations and persons concerning those goals and objectives;

(b) providing assistance in consultations under Article G-14 of the CCFTA where a Party considers that the other Party is waiving or derogating from, or offering to waive or otherwise derogate from, an environmental measure as an encouragement to establish, acquire, expand or retain an investment of an investor, with a view to avoiding any such encouragement;

(c) contributing to the prevention or resolution of environment-related trade disputes by:

(i) seeking to avoid disputes between the Parties,

(ii) making recommendations to the Free Trade Commission with respect to the avoidance of such disputes, and

(iii) identifying experts able to provide information or technical advice to CCFTA committees, working groups and other CCFTA bodies;

(d) considering on an ongoing basis the environmental effects of the CCFTA; and

(e) otherwise assisting the Free Trade Commission in environment-related matters.

Section B: The National Secretariats

Article 11: National Secretariat

Each Party shall establish a National Secretariat and notify the other Party of its location.

Each Party shall designate an Executive Secretary for its National Secretariat, who shall be responsible for its administration and management.

The National Secretariats shall provide technical, administrative and operational support to the Council and to committees and groups established by the Council, and such other support as the Council may direct.

The National Secretariats shall jointly submit for the approval of the Council the annual program of work and budget of the Commission, including provisions for proposed cooperative activities and for the National Secretariats to respond to contingencies. The annual program of work shall identify how its implementation shall be financed and clearly define how it shall be implemented, including identification of institutions, agencies, individuals, and/or cooperative arrangements whereby it shall be implemented. In developing the annual program of work, the National Secretariats shall consider issues arising from factual records previously prepared, or under preparation, by the Commission.

The National Secretariats shall, as appropriate, provide the public information on where they may receive technical advice

and expertise with respect to environmental matters.

The National Secretariats and the Joint Submission Committee shall safeguard:

(a) from disclosure information they receive that could identify a non-governmental organization or person making a submission if the person or organization so requests or the National Secretariats or the Joint Submission Committee otherwise consider it appropriate; and

(b) from public disclosure any information they receive from any non-governmental organization or person where the information is designated by that non-governmental organization or person as confidential or proprietary.

Article 12: The Joint Submission Committee

A Joint Submission Committee consisting of two members, one from each Party, shall be established within six months of the entry into force of this Agreement. The members shall be chosen by the Council for a three year term, which may be renewed by the Council for one additional three year term.

The members of the Joint Submission Committee shall be chosen in accordance with general standards to be established by the Council. The general standards shall provide that the members shall:

(a) be familiar with environmental law and its enforcement;

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

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

(d) comply with a code of conduct.

Article 13: Annual Report of the Commission

The National Secretariats shall jointly prepare an annual report of the Commission in accordance with instructions from the Council. The National Secretariats shall submit jointly a draft of the report for review by the Council. The final report shall be released publicly.

The report shall cover:

(a) activities and expenses of the Commission during the previous year;

(b) the approved program and budget of the Commission for the subsequent year;

(c) the actions taken by each Party in connection with its obligations under this Agreement, including data on the Party's environmental enforcement activities;

(d) relevant views and information submitted by non-governmental organizations and persons, including summary data regarding submissions, and any other relevant information the Council deems appropriate;

(e) recommendations made on any matter within the scope of this Agreement; and

(f) any other matter that the Council instructs the National Secretariats to include.

3. The report shall periodically address the state of the environment in the territories of the Parties.

Article 14: Submissions on Enforcement Matters

1. A submission on enforcement matters may be sent to either National Secretariat. When a National Secretariat receives a submission it will provide a copy to the other National Secretariat. The National Secretariats may consider in consultation with each other a submission from any non-governmental organization or person asserting that a Party is failing to effectively enforce its environmental law. The submission will be forwarded to the Joint Submission Committee if either National Secretariat finds that a submission:

(a) is in writing in one of the official languages of the Agreement;

(b) clearly identifies the person or organization making the submission;

(c) provides sufficient information to allow for the review of the submission, including any documentary evidence on which the submission may be based;

(d) appears to be aimed at promoting enforcement rather than at harassing industry;

(e) indicates that the matter has been communicated in writing to the relevant authorities of the Party and indicates the Party's response, if any;

(f) is filed by a person or organization residing or established in the territory of a Party; and

(g) includes, in the case of submissions sent by a person or organization residing or established in the territory of Canada, a declaration to the effect that the matter will not subsequently be submitted to the Secretariat of the Commission for Environmental Cooperation under the North American Agreement on Environmental Cooperation, with a view to avoiding duplication in the handling of submissions.

2. In deciding whether the submission merits requesting a response from the Party, the Joint Submission Committee shall be guided by whether:

(a) the submission alleges harm to the person or organization making the submission;

(b) the submission, alone or in combination with other submissions, raises matters whose further study in this process would advance the goals of this Agreement;

(c) private remedies available under the Party's law have been pursued; and

(d) the submission is drawn exclusively from mass media reports.

Where the Joint Submission Committee makes such a request, it shall forward to the Party a copy of the submission and any supporting information provided with the submission.

3. The Party shall advise the Joint Submission Committee within 30 days or, in exceptional circumstances and on notification to the Joint Submission Committee, within 60 days of delivery of the request:

(a) whether the matter is the subject of a pending judicial or administrative proceeding, or whether the matter has previously been or is presently being considered by the Secretariat of the Commission for Environmental Cooperation of the North American Agreement on Environmental Cooperation, in which case the Joint Submission Committee shall proceed no further; and

(b) of any other information that the Party wishes to submit, such as

i) whether the matter was previously the subject of a judicial or administrative proceeding, and

ii) whether private remedies in connection with the matter are available to the person or organization making the submission and whether they have been pursued.

Article 15: Factual Record

If the Joint Submission Committee considers that the submission, in light of any response provided by the Party, warrants developing a factual record, the Joint Submission Committee shall so inform the Council and provide its reasons.

A factual record shall be prepared if a Party so decides. In cases to which paragraph 2 of Annex 41 applies, a factual record shall be prepared if the Council so agrees. The National Secretariat of the Party which is not the subject of the submission shall then commission an expert in environmental matters, selected from a roster of such experts established by the Parties within 6 months following the entry into force of this Agreement, to prepare a factual record.

The preparation of a factual record pursuant to this Article shall be without prejudice to any further steps that may be taken with respect to any submission.

In preparing a factual record, the expert in environmental matters shall consider any information furnished by a Party and may consider any relevant technical, scientific or other information:

(a) that is publicly available;

(b) submitted by interested non-governmental organizations or persons;

(c) submitted by the Joint Public Advisory Committee; or

(d) developed by independent experts.

5. The expert in environmental matters shall submit a draft factual record for consideration by the Council. Any Party may

provide comments on the accuracy of the draft within 45 days thereafter.

6. The expert in environmental matters shall incorporate, as appropriate, any such comments in the final factual record and submit it for the consideration of the Council.

7. At the request of either Party, the Council shall make the final factual record publicly available within 60 days following its submission.

Section C: Advisory Committees

Article 16: Joint Public Advisory Committee

The Joint Public Advisory Committee shall comprise six members, unless the Council otherwise decides. Each Party shall appoint an equal number of members.

The Council shall establish the rules of procedure for the Joint Public Advisory Committee, which shall choose its own chair.

The Joint Public Advisory Committee shall convene at least once a year at the time of the regular session of the Council and at such other times as the Council, or the Committee's chair with the consent of a majority of its members, may decide.

The Joint Public Advisory Committee may provide advice to the Council on any matter within the scope of this Agreement, including on any documents provided to it under paragraph 6, and on the implementation and further elaboration of this Agreement, and may perform such other functions as the Council may direct.

The Joint Public Advisory Committee may provide relevant technical, scientific or other information to the National Secretariats, including for purposes of developing a factual record under Article 15. The National Secretariats shall provide to the Council copies of any such information.

The National Secretariats shall provide to the Joint Public Advisory Committee at the time they are submitted to the Council copies of the proposed annual program of work and budget of the Commission and the draft annual report.

Article 17: National Advisory Committees

Each Party may convene a national advisory committee, comprising members of its public, including representatives of non-governmental organizations and persons, to advise it on the implementation and further elaboration of this Agreement.

Article 18: Governmental Committees

Each Party may convene a governmental committee, which may comprise or include representatives of national and provincial governments, to advise it on the implementation and further elaboration of this Agreement.

Section D: Official Languages

Article 19: Official Languages

The official languages of the Commission shall be English, French and Spanish. All annual reports under Article 13, factual records submitted to the Council under Article 15(6) and panel reports under Part Five shall be available in each official language at the time they are made public. The Council shall establish rules and procedures regarding interpretation and translation.

Part Four

Cooperation and Provision of Information

Article 20: Cooperation

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 to resolve any matter that might affect its operation.

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

On request of the other Party, a Party shall promptly provide information and respond to questions pertaining to any such actual or proposed environmental measure, whether or not the other Party has been previously notified of that measure.

A Party may notify the other Party of, and provide to that Party, any credible information regarding possible violations of its

environmental law, specific and sufficient to allow the other Party to inquire into the matter. The notified Party shall take appropriate steps in accordance with its law to so inquire and to respond to the other Party.

Article 21: Provision of Information

1. On request of the Council, a National Secretariat or the members of the Joint Submission Committee, each Party shall, in accordance with its law, provide such information as the Council, a National Secretariat or the members of the Joint Submission Committee may require, including:

(a) promptly making available any information in its possession required for the preparation of a report or factual record, including compliance and enforcement data; and

(b) taking all reasonable steps to make available any other such information requested.

2. If a Party considers that a request for information from a National Secretariat or the members of the Joint Submission Committee is excessive or otherwise unduly burdensome, it may so notify the Council. The National Secretariat or the members of a Joint Submission Committee shall revise the scope of the request to comply with any limitations established by the Council.

3. If a Party does not make available information requested by a National Secretariat, or the Joint Submission Committee, as may be limited pursuant to paragraph 2, it shall promptly advise the National Secretariat or the Joint Submission Committee, as appropriate, of its reasons in writing.

Part Five

Consultation and Resolution of Disputes

Article 22: Consultations

Either Party may request in writing consultations with the other Party regarding whether there has been a persistent pattern of failure by the other Party to effectively enforce its environmental law.

In such consultations, the Parties shall make every attempt to arrive at a mutually satisfactory resolution of the matter.

Article 23: Initiation of Procedures

If the Parties fail to resolve the matter pursuant to Article 22 within 60 days of delivery of a request for consultations, or such other period as the Parties may agree, either Party may request in writing a special session of the Council.

The requesting Party shall state in the request the matter complained of and shall deliver the request to the other Party.

Unless agreed otherwise, the Council shall convene within 20 days of the delivery of the request and shall endeavour to resolve the dispute promptly.

The Council may:

(a) call on such technical advisers or create such working groups or expert groups as it deems necessary,

(b) have recourse to good offices, conciliation, mediation or such other dispute resolution procedures, or

(c) make recommendations,

as may assist the Parties to reach a mutually satisfactory resolution of the dispute. Any such recommendations shall be made public if the Council so decides.

5. Where the Council decides that a matter is more properly covered by another agreement or arrangement to which the Parties are party, it shall refer the matter for appropriate action in accordance with such other agreement or arrangement.

Article 24: Request for an Arbitral Panel

1. If the matter has not been resolved within 60 days after the Council has convened pursuant to Article 23, the Council shall, on the written request of either Party, convene an arbitral panel to consider the matter where the alleged persistent pattern of failure by the Party complained against to effectively enforce its environmental law relates to a situation involving workplaces, firms, companies or sectors that produce goods or provide services:

(a) traded between the territories of the Parties; or

(b) that compete, in the territory of the Party complained against, with goods or services produced or provided by persons of the other Party.

2. Unless otherwise agreed by the Parties, the panel shall be established and perform its functions in a manner consistent with the provisions of this Part.

Article 25: Roster

The Council shall establish and maintain a roster of up to 30 individuals, six of whom must not be citizens of either of the Parties, who are willing and able to serve as panelists. The roster members shall be appointed by mutual agreement for terms of three years, and may be reappointed.

Roster members shall:

(a) have expertise or experience in environmental law or its enforcement, or in the resolution of disputes arising under international agreements, or other relevant scientific, technical or professional expertise or experience;

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

(c) be independent of, and not be affiliated with or take instructions from, either Party or the Joint Public Advisory Committee; and

(d) comply with a code of conduct to be established by the Council.

Article 26: Qualifications of Panelists

All panelists shall meet the qualifications set out in Article 25(2).

Individuals may not serve as panelists for a dispute in which:

(a) they have participated pursuant to Article 23(4); or

(b) they have, or a person or organization with which they are affiliated has, an interest, as set out in the code of conduct established under Article 25(2)(d).

Article 27: Panel Selection

1. For purposes of selecting a panel, the following procedures shall apply:

(a) The panel shall comprise five members.

(b) The Parties shall endeavour to agree on the chair of the panel within 15 days after the Council decides to convene the panel. If the Parties are unable to agree on the chair within this period, the Party chosen by lot shall select within five days a chair who is not a citizen of that Party.

(c) Within 15 days of selection of the chair, each Party shall select two panelists who are citizens of the other Party.

(d) If either Party fails to select its panelists within such period, such panelists shall be selected by lot from among the roster members who are citizens of the other Party.

2. Panelists shall normally be selected from the roster. Either Party may exercise a peremptory challenge against any individual not on the roster who is proposed as a panelist by the other Party within 30 days after the individual has been proposed.

3. If either Party believes that a panelist is in violation of the code of conduct, the Parties shall consult and, if they agree, the panelist shall be removed and a new panelist shall be selected in accordance with this Article.

Article 28: Rules of Procedure

1. The Council shall establish Model Rules of Procedure. The procedures shall provide:

(a) a right to at least one hearing before the panel;

(b) the opportunity to make initial and rebuttal written submissions; and

(c) that no panel may disclose which panelists are associated with majority or minority opinions.

2. Unless the Parties otherwise agree, panels convened under this Part shall be established and conduct their proceedings in

accordance with the Model Rules of Procedure.

3. Unless the Parties otherwise agree within 20 days after the Council convenes the panel, the terms of reference shall be:

"To examine, in light of the relevant provisions of the Agreement, including those contained in Part Five, whether there has been a persistent pattern of failure by the Party complained against to effectively enforce its environmental law, and to make findings, determinations and recommendations in accordance with Article 30(2)."

Article 29: Role of Experts

On request of either Party, or on its own initiative, the panel may seek information and technical advice from any person or body that it deems appropriate, provided that the Parties so agree and subject to such terms and conditions as the Parties may agree.

Article 30: Initial Report

Unless the Parties otherwise agree, the panel shall base its report on the submissions and arguments of the Parties and on any information before it pursuant to Article 29.

Unless the Parties otherwise agree, the panel shall, within 180 days after the last panelist is selected, present to the Parties an initial report containing:

(a) findings of fact;

(b) its determination as to whether there has been a persistent pattern of failure by the Party complained against to effectively enforce its environmental law, or any other determination requested in the terms of reference; and

(c) in the event the panel makes an affirmative determination under subparagraph (b), its recommendations, if any, for the resolution of the dispute, which normally shall be that the Party complained against adopt and implement an action plan sufficient to remedy the pattern of non-enforcement.

3. Panelists may furnish separate opinions on matters not unanimously agreed.

4. Either Party may submit written comments to the panel on its initial report within 30 days of presentation of the report.

5. In such an event, and after considering such written comments, the panel, on its own initiative or on the request of either Party, may:

(a) request the views of the Parties;

(b) reconsider its report; and

(c) make any further examination that it considers appropriate.

Article 31: Final Report

The panel shall present to the Parties a final report, including any separate opinions on matters not unanimously agreed, within 60 days of presentation of the initial report, unless the Parties otherwise agree.

The Parties shall transmit to the Council the final report of the panel, as well as any written views that either Party desires to be appended, on a confidential basis within 15 days after it is presented to them.

The final report of the panel shall be published five days after it is transmitted to the Council.

Article 32: Implementation of Final Report

If, in its final report, a panel determines that there has been a persistent pattern of failure by the Party complained against to effectively enforce its environmental law, the Parties may agree on a mutually satisfactory action plan, which normally shall conform with the determinations and recommendations of the panel.

Article 33: Review of Implementation

1. If, in its final report, a panel determines that there has been a persistent pattern of failure by the Party complained against to effectively enforce its environmental law, and:

(a) the Parties have not agreed on an action plan under Article 32 within 60 days of the date of the final report, or

(b) the Parties cannot agree on whether the Party complained against is fully implementing

(i) an action plan agreed under Article 32,

(ii) an action plan deemed to have been established by a panel under paragraph 2, or

(iii) an action plan approved or established by a panel under paragraph 4,

either Party may request that the panel be reconvened by delivering a request in writing to the other Party. The Council shall reconvene the panel on delivery of the request to the other Party.

2. No Party may make a request under paragraph 1(a) earlier than 60 days, or later than 120 days, after the date of the final report. If the Parties have not agreed to an action plan and if no request was made under paragraph 1(a), the last action plan, if any, submitted by the Party complained against to the other Party within 60 days of the date of the final report, or such other period as the Parties may agree, shall be deemed to have been established by the panel 120 days after the date of the final report.

3. A request under paragraph 1(b) may be made no earlier than 180 days after an action plan has been:

(a) agreed under Article 32,

(b) deemed to have been established by a panel under paragraph 2, or

(c) approved or established by a panel under paragraph 4,

and only during the term of any such action plan.

4. Where a panel has been reconvened under paragraph 1(a), it:

(a) shall determine whether any action plan proposed by the Party complained against is sufficient to remedy the pattern of non-enforcement and

(i) if so, shall approve the plan, or

(ii) if not, shall establish such a plan consistent with the law of the Party complained against, and

(b) may, where warranted, impose a monetary enforcement assessment in accordance with Annex 33, within 90 days after the panel has been reconvened or such other period as the Parties may agree.

5. Where a panel has been reconvened under paragraph 1(b), it shall determine either that:

(a) the Party complained against is fully implementing the action plan, in which case the panel may not impose a monetary enforcement assessment, or

(b) the Party complained against is not fully implementing the action plan, in which case the panel shall impose a monetary enforcement assessment in accordance with Annex 33,

within 60 days after it has been reconvened or such other period as the Parties may agree.

6. A panel reconvened under this Article shall provide that the Party complained against shall fully implement any action plan referred to in paragraph 4(a)(ii) or 5(b), and pay any monetary enforcement assessment imposed under paragraph 4(b) or 5(b), and any such provision shall be final.

Article 34: Further Proceeding

A complaining Party may, at any time beginning 180 days after a panel determination under Article 33(5)(b), request in writing that a panel be reconvened to determine whether the Party complained against is fully implementing the action plan. On delivery of the request to the other Party, the Council shall reconvene the panel. The panel shall make the determination within 60 days after it has been reconvened or such other period as the Parties may agree.

Article 35: Domestic Enforcement and Collection

1. For the purposes of this Article, "panel determination" means:

(a) a determination by a panel under Article 33(4)(b) or 5(b)that provides that the Party complained against shall pay a monetary enforcement assessment; and

(b) a determination by a panel under Article 33(5)(b) that provides that the Party complained against shall fully implement an action plan where the panel:

(i) has previously established an action plan under Article 33(4)(a)(ii) or imposed a monetary enforcement assessment under Article 33(4)(b); or

(ii) has subsequently determined under Article 34 that the Party complained against is not fully implementing an action plan.

2. In Canada, the procedures shall be the following:

(a) subject to subparagraph (b), the National Secretariat of Chile, acting on behalf of the Commission, may in the name of the Commission file in a court of competent jurisdiction a certified copy of a panel determination;

(b) the National Secretariat of Chile, acting on behalf of the Commission, may file in court a panel determination that is a panel determination described in paragraph 1(a) only if Canada has failed to comply with the determination within 180 days of when the determination was made;

(c) when filed, the panel determination, for purposes of enforcement, shall become an order of the court;

(d) the National Secretariat of Chile, acting on behalf of the Commission, may take proceedings for enforcement of a panel determination that is made an order of the court, in that court, against the person against whom the panel determination is addressed in accordance with paragraph 6 of Annex 41;

(e) proceedings to enforce a panel determination that has been made an order of the court shall be conducted by way of summary proceedings;

(f) in proceedings to enforce a panel determination that is a panel determination described in paragraph 1(b) and that has been made an order of the court, the court shall promptly refer any question of fact or any question of interpretation of the panel determination to the panel that made the panel determination, and the decision of the panel shall be binding on the court;

(g) a panel determination that has been made an order of the court shall not be subject to domestic review or appeal; and

(h) an order made by the court in proceedings to enforce a panel determination that has been made an order of the court shall not be subject to review or appeal.

3. In Chile, the procedures shall be the following:

(a) subject to subparagraph (b), the National Secretariat of Canada, acting on behalf of the Commission, may in the name of the Commission file in a court of competent jurisdiction a certified copy of a panel determination;

(b) the National Secretariat of Canada, acting on behalf of the Commission, may file in court a panel determination that is a panel determination described in paragraph 1(a) only if Chile has failed to comply with the determination within 180 days of when the determination was made;

(c) the court of competent jurisdiction is the Supreme Court;

(d) the National Secretariat of Canada, acting on behalf of the Commission, shall certify that the panel determination is final and not subject to appeal;

(e) the Supreme Court shall issue a resolution ordering the enforcement of the panel determination within 10 days of when the petition was filed; and

(f) the resolution of the Supreme Court shall be addressed to the competent administrative authority for its prompt compliance.

4. Any change by the Parties to the procedures adopted and maintained by each of them pursuant to this Article that has the effect of undermining the provisions of this Article shall be considered a breach of this Agreement.

Article 36: Funding of Panel Proceedings

The Parties shall agree on a separate budget for each set of panel proceedings pursuant to Articles 24 to 34. The Parties shall contribute equally to this budget.

Part Six

General Provisions

Article 37: Enforcement Principle

Nothing in this Agreement shall be construed to empower a Party's authorities to undertake environmental law enforcement activities in the territory of the other Party.

Article 38: Private Rights

No Party may provide for a right of action under its law against the other Party on the ground that the other Party has acted in a manner inconsistent with this Agreement.

Article 39: Protection of Information

1. Nothing in this Agreement shall be construed to require a Party to make available or allow access to information:

(a) the disclosure of which would impede its environmental law enforcement; or

(b) that is protected from disclosure by its law governing business or proprietary information, personal privacy or the confidentiality of governmental decision making.

2. If a Party provides confidential or proprietary information to the other Party, the Council, a National Secretariat, the Joint Submission Committee or the Joint Public Advisory Committee, the recipient shall treat the information on the same basis as the Party providing the information.

3. Confidential or proprietary information provided by a Party to a panel under this Agreement shall be treated in accordance with the rules of procedure established under Article 28.

Article 40: Relation to Other Environmental Agreements

Nothing in this Agreement shall be construed to affect the existing rights and obligations of either Party under other international environmental agreements, including conservation agreements, to which such Party is a party.

Article41: Extent of Obligations

Annex 41 applies to the Parties specified in that Annex.

Article 42: National Security

Nothing in this Agreement shall be construed:

(a) to require a Party to make available or provide access to information the disclosure of which it determines to be contrary to its essential security interests; or

(b) to prevent a Party from taking any actions that it considers necessary for the protection of its essential security interests relating to

(i) arms, ammunition and implements of war, or

(ii) the implementation of national policies or international agreements respecting the non-proliferation of nuclear weapons or other nuclear explosive devices.

Article 43: Funding of the Commission

Each Party shall contribute an equal share of the annual budget of the Commission, subject to the availability of appropriated funds in accordance with the Party's legal procedures. Neither Party shall be obligated to pay more than the other Party in respect of an annual budget.

Article 44: Definitions

1. For purposes of this Agreement:

A Party has not failed to "effectively enforce its environmental law" or to comply with Article 5(1) in a particular case where the action or inaction in question by agencies or officials of that Party:

(a) reflects a reasonable exercise of their discretion in respect of investigatory, prosecutorial, regulatory or compliance matters; or

(b) results from bona fide decisions to allocate resources to enforcement in respect of other environmental matters determined to have higher priorities;

"citizen" means a citizen as defined in Annex 44.1 for the Party specified in that Annex;

"non-governmental organization" means any scientific, professional, business, non-profit, or public interest organization or association which is neither affiliated with, nor under the direction of, a government;

"persistent pattern" means a sustained or recurring course of action or inaction beginning after the date of entry into force of this Agreement;

"province" means a province of Canada, and includes the Yukon Territory and the Northwest Territories and their successors; and

"territory" means for a Party the territory of that Party as set out in Annex 44.1.

2. Except as otherwise provided in Annex 44.2, for purposes of Article 14(1) and Part Five:

(a) "environmental law" means any statute or regulation of a Party, or provision thereof, the primary purpose of which is the protection of the environment, or the prevention of a danger to human life or health, through

(i) the prevention, abatement or control of the release, discharge, or emission of pollutants or environmental contaminants,

(ii) the control of environmentally hazardous or toxic chemicals, substances, materials and wastes, and the dissemination of information related thereto, or

(iii) the protection of wild flora or fauna, including endangered species, their habitat, and specially protected natural areas

in the Party's territory, but does not include any statute or regulation, or provision thereof, directly related to worker safety or health.

(b) For greater certainty, the term "environmental law" does not include any statute or regulation, or provision thereof, the primary purpose of which is managing the commercial harvest or exploitation, or subsistence or aboriginal harvesting, of natural resources.

(c) The primary purpose of a particular statutory or regulatory provision for purposes of subparagraphs (a) and (b) shall be determined by reference to its primary purpose, rather than to the primary purpose of the statute or regulation of which it is part.

3. For purposes of Article 14(3),"judicial or administrative proceeding" means:

(a) a domestic judicial, quasi-judicial or administrative action pursued by the Party in a timely fashion and in accordance with its law. Such actions comprise: mediation; arbitration; the process of issuing a license, permit, or authorization; seeking an assurance of voluntary compliance or a compliance agreement; seeking sanctions or remedies in an administrative or judicial forum; and the process of issuing an administrative order; and

(b) an international dispute resolution proceeding to which the Party is party.

Part Seven

Final Provisions

Article 45: Annexes

The Annexes to this Agreement constitute an integral part of the Agreement.

Article 46: Entry into Force

This Agreement shall enter into force on June 2, 1997, immediately after entry into force of the CCFTA, on an exchange of written notifications certifying the completion of necessary legal procedures.

Article 47: Amendments

The Parties may agree on any modification of or addition to this Agreement.

When so agreed, and approved in accordance with the applicable legal procedures of each Party, a modification or addition shall constitute an integral part of this Agreement.

Article 48: Accession of Chile to theNorth American Agreement on Environmental Cooperation

The Parties shall work toward the early accession of Chile to the North American Agreement on Environmental Cooperation.

Article 49: Termination

Either Party may terminate this Agreement by giving written notice to the other Party. Such termination shall take effect six months after the date of receipt of written notice by the other Party.

Article 50: Authentic Texts

The English, French, and Spanish texts of this Agreement are equally authentic.

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

DONE in duplicate, in Ottawa, this 6th day of February, 1997.

For the Government of Canada

For the Government of Republic of Chile

Agreement on Labour Cooperation Between the Government of Canada and the Government of the Republic of Chile

Preamble

The Government of Canada and the Government of the Republic of Chile (Chile):

Recalling their resolve in the Canada-Chile Free Trade Agreement (CCFTA) to:

create an expanded and secure market for the goods and services produced in their territories,

enhance the competitiveness of their firms in global markets,

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

protect, enhance and enforce basic workers' rights;

Affirming their continuing respect for each other's Constitution and law;

Desiring to build on their respective international commitments and to strengthen their cooperation on labour matters;

Recognizing that their prosperity depends on the promotion of competition based on innovation and rising levels of productivity and quality;

Seeking to complement the economic opportunities created by the CCFTA with the human resource development, labour-management cooperation and continuous learning that characterize high-productivity economies;

Acknowledging that protecting basic workers' rights will encourage firms to adopt high-productivity competitive strategies;

Resolved to promote, in accordance with their respective laws, high-skill, high-productivity economic development in their countries by:

investing in continuous human resource development, including for entry into the workforce and during periods of unemployment;

promoting employment security and career opportunities for all workers through employment services;

strengthening labour-management cooperation to promote greater dialogue between worker organizations and employers and to foster creativity and productivity in the workplace;

promoting higher living standards as productivity increases;

encouraging consultation and dialogue between labour, business and government;

fostering investment with due regard for the importance of labour laws and principles;

encouraging employers and employees in each country to comply with labour laws and to work together in maintaining a progressive, fair, safe and healthy working environment;

Building on existing institutions and mechanisms in Canada and Chile to achieve the preceding economic and social goals;

Convinced of the benefits to be gained from further cooperation between them on labour matters; and

Desiring to facilitate the accession of Chile to the North American Agreement on Labor Cooperation;

Have Agreed as follows:

Part One - Objectives

Article 1: Objectives

The objectives of this Agreement are to:

improve working conditions and living standards in each Party's territory;

promote, to the maximum extent possible, the labour principles set out in Annex;1

encourage cooperation to promote innovation and rising levels of productivity and quality;

encourage publication and exchange of information, data development and coordination, and joint studies to enhance mutually beneficial understanding of the laws and institutions governing labour in each Party's territory;

pursue cooperative labour-related activities on the basis of mutual benefit;

promote compliance with, and effective enforcement by each Party of, its labour law; and

foster transparency in the administration of labour law.

Part Two - Obligations

Article 2: General Commitments

Affirming full respect for each Party's Constitution, and recognizing the right of each Party to establish its own domestic labour standards, and to adopt or modify accordingly its labour laws and regulations, each Party shall ensure that its labour laws and regulations provide for high labour standards, consistent with high quality and productivity workplaces, and shall continue to strive to improve those standards in that light.

Article 3: Government Enforcement Action

Each Party shall promote compliance with and effectively enforce its labour law through appropriate government action, subject to Article 39, such as:

appointing and training inspectors;

monitoring compliance and investigating suspected violations, including through on-site inspections;

seeking assurances of voluntary compliance;

requiring record keeping and reporting;

encouraging the establishment of worker-management committees to address labour regulation of the workplace;

providing or encouraging mediation, conciliation and arbitration services; or

initiating, in a timely manner, proceedings to seek appropriate sanctions or remedies for violations of its labour law.

Each Party shall ensure that its competent authorities give due consideration in accordance with its law to any request by an employer, employee or their representatives, or other interested person, for an investigation of an alleged violation of the Party's labour law.

Article 4: Private Action

Each Party shall ensure that persons with a legally recognized interest under its law in a particular matter have appropriate access to administrative, quasi-judicial, judicial or labour tribunals for the enforcement of the Party's labour law.

Each Party's law shall ensure that such persons may have recourse to, as appropriate, procedures by which rights arising under:

its labour law, including in respect of occupational safety and health, employment standards, industrial relations and migrant workers, and

collective agreements,

can be enforced.

Article 5: Procedural Guarantees

Each Party shall ensure that its administrative, quasi-judicial, judicial and labour tribunal proceedings for the enforcement of its labour law are fair, equitable and transparent and, to this end, each Party shall provide that:

such proceedings comply with due process of law;

any hearings in such proceedings are open to the public, except where the administration of justice otherwise requires;

the parties to such proceedings are entitled to support or defend their respective positions and to present information or evidence; and

such proceedings are not unnecessarily complicated and do not entail unreasonable charges or time limits or unwarranted delays.

Each Party shall provide that final decisions on the merits of the case in such proceedings are:

in writing and preferably state the reasons on which the decisions are based;

made available without undue delay to the parties to the proceedings and, consistent with its law, to the public; and

based on information or evidence in respect of which the parties were offered the opportunity to be heard.

Each Party shall provide, as appropriate, that parties to such proceedings have the right, in accordance with its law, to seek review and, where warranted, correction of final decisions issued in such proceedings.

Each Party shall ensure that tribunals that conduct or review such proceedings are impartial and independent and do not have any substantial interest in the outcome of the matter.

Each Party shall provide that the parties to administrative, quasi-judicial, judicial or labour tribunal proceedings may seek remedies to ensure the enforcement of their labour rights. Such remedies may include, as appropriate, orders, compliance agreements, fines, penalties, imprisonment, injunctions or emergency workplace closures.

Each Party may, as appropriate, adopt or maintain labour defence offices to represent or advise workers or their organizations.

Nothing in this Article shall be construed to require a Party to establish, or to prevent a Party from establishing, a judicial system for the enforcement of its labour law distinct from its system for the enforcement of laws in general.

For greater certainty, decisions by each Party's administrative, quasi-judicial, judicial or labour tribunals, or pending decisions, as well as related proceedings shall not be subject to revision or reopened under the provisions of this Agreement.

Article 6: Publication

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

When so established by its law, each Party shall:

publish in advance any such measure that it proposes to adopt; and

provide interested persons a reasonable opportunity to comment on suchproposed measures.

Article 7: Public Information and Awareness

Each Party shall promote public awareness of its labour law, including by:

ensuring that public information is available related to its labour law and enforcement and compliance procedures; and

promoting public education regarding its labour law.

Part Three - Institutional Mechanisms

Article 8: The Canada-Chile Commission for Labour Cooperation

The Parties hereby establish the Canada-Chile Commission for Labour Cooperation.

The Commission shall comprise a ministerial Council and shall be assisted by the National Secretariat of each Party.

Section A: The Council

Article 9: Council Structure and Procedures

The Council shall comprise labour ministers of the Parties or their designees.

The Council shall establish its rules and procedures.

The Council shall convene:

at least once a year in regular session, and

in special session at the request of either Party.

Regular sessions shall be chaired alternately by each Party.

The Council may hold public sessions to report on appropriate matters.

The Council may:

establish, and assign responsibilities to, committees, working groups or expert groups; and

seek the advice of independent experts.

All decisions and recommendations of the Council shall be taken by mutual agreement, except as the Council may otherwise decide or as otherwise provided in this Agreement.

Article 10: Council Functions

The Council shall:

oversee the implementation and develop recommendations on the further elaboration of this Agreement and, to this end, the Council shall, within three years after the date of entry into force of this Agreement, review its operation and effectiveness in the light of experience;

direct the work and activities of any committees or working groups convened by the Council;

establish priorities for cooperative action and, as appropriate, develop technical assistance programs on the matters set out in Article 11;

approve the annual plan of activities of the Commission;

approve for publication, subject to such terms or conditions as it may impose, reports and studies prepared by independent experts or working groups;

approve any reports or studies prepared jointly by the National Secretariats at the request of the Council;

facilitate consultations through the exchange of information;

address questions and differences that may arise regarding the interpretation or application of this Agreement; and

promote the collection and publication of comparable data on enforcement, labour standards and labour market indicators.

The Council may periodically request the National Secretariats to undertake projects and activities, as appropriate.

The Council may consider any other matter within the scope of this Agreement and take such other action in the exercise of its functions as the Parties may agree.

Article 11: Cooperative Activities

The Council shall promote cooperative activities between the Parties, as appropriate, regarding:

occupational safety and health;

child labour;

migrant workers of the Parties;

human resource development;

labour statistics;

work benefits;

social programs for workers and their families;

programs, methodologies and experiences regarding productivity improvement;

labour-management relations and collective bargaining procedures;

employment standards and their implementation;

compensation for work-related injury or illness;

legislation relating to the formation and operation of unions, collective bargaining and the resolution of labour disputes, and its implementation;

the equality of women and men in the workplace;

forms of cooperation among workers, management and government;

the provision of technical assistance for the development of their labour standards; and

such other matters as the Parties may agree.

In carrying out the activities referred to in paragraph 1, the Parties may, commensurate with the availability of resources in each Party, cooperate through:

seminars, training sessions, working groups and conferences;

joint research projects, including sectoral studies;

technical assistance; and

such other means as the Parties may agree.

The Parties shall carry out the cooperative activities referred to in paragraph 1 with due regard for the economic, social, cultural and legislative differences between them. They shall jointly select, implement and fund all projects falling within the category of cooperative activities referred to in paragraph 1.

Article 12: Reports and Studies

The Council may periodically engage independent experts of recognized experience to prepare background reports setting out publicly available information supplied by each Party on:

labour law and administrative procedures;

trends and administrative strategies related to the implementation and enforcement of labour law;

labour market conditions such as employment rates, average wages and labour productivity; and

human resource development issues such as training and adjustment programs.

The Council may periodically engage independent experts of recognized experience to prepare studies on any other matter.

Any such study shall be prepared in accordance with terms of reference established by the Council.

The Council may periodically request that the National Secretariats prepare joint reports referred to in paragraph 1 or studies referred to in paragraph 2. In making such a request, the Council shall take into account the availability of resources and expertise in the National Secretariats. In responding to such a request, either National Secretariat may engage independent experts in the preparation of such reports or studies.

The independent experts engaged pursuant to paragraph 1 or 2 shall submit a draft of any report or study to the Council. The National Secretariats shall submit to the Council a draft of any report or study referred to in paragraph 3. If the Council considers that a report or study is materially inaccurate or otherwise deficient, the Council may remand it to the independent experts or the National Secretariats for reconsideration or other disposition.

Such reports and studies shall be made public 45 days after their approval by the Council, unless the Council otherwise decides.

When the Council requests the preparation of background reports or studies, it shall also decide on the funding involved in the preparation and publication of such reports or studies, as appropriate.

Section B: The National Secretariats

Article 13: National Secretariat

Each Party shall establish a National Secretariat at the national government level and notify the other Party of its location.

Each Party shall designate an Executive Secretary for its National Secretariat, who shall be responsible for its administration and management.

Each Party shall be responsible for the operation and costs of its National Secretariat.

Article 14: National Secretariat Functions

Each National Secretariat shall serve as a point of contact with:

governmental agencies of the Party in whose territory the National Secretariat is located; and

the National Secretariat of the other Party.

Each National Secretariat shall promptly provide publicly available information requested by:

independent experts preparing reports and studies pursuant to a request by the Council under Article 12;

the National Secretariat of the other Party; and

an Evaluation Committee of Experts.

Each National Secretariat shall provide for the submission and receipt, and periodically publish a list, of public communications on labour law matters arising in the territory of the other Party. Each National Secretariat shall review such matters, as appropriate, in accordance with domestic procedures.

The National Secretariats shall submit joint annual reports to the Council on their activities.

Pursuant to a request by the Council, the National Secretariats shall periodically publish a joint list of matters resolved under Part Four or referred to Evaluation Committees of Experts.

Section C: National Committees

Article 15: National Advisory Committees

Each Party may convene a national advisory committee, comprising members of its public, including representatives of its labour and business organizations and other persons, to advise it on the implementation and further elaboration of this Agreement.

Article 16: Governmental Committees

Each Party may convene a governmental committee, which may comprise or include representatives of national and provincial governments, to advise it on the implementation and further elaboration of this Agreement.

Section D: Official Languages

Article 17: Official Languages

The official languages of the Council shall be English, French and Spanish. The Council shall establish rules and procedures regarding interpretation and translation.

Part Four - Cooperative Consultations and Evaluations

Article 18: Cooperation

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 to resolve any matter that might affect its operation.

Section A: Cooperative Consultations

Article 19: Consultations between National Secretariats

A National Secretariat may request consultations, to be conducted in accordance with the procedures set out in paragraph 2, with the other National Secretariat in relation to the other Party's labour law, its administration, or labour market conditions in its territory.

In such consultations, the requested National Secretariat shall promptly provide such publicly available data or information, including:

descriptions of its laws, regulations, procedures, policies or practices,

proposed changes to such procedures, policies or practices, and

such clarifications and explanations related to such matters,

as may assist the National Secretariats to understand better and respond to the issues raised.

Article 20: Ministerial Consultations

Either Party may request in writing consultations with the other Party at the ministerial level regarding any matter within the scope of this Agreement. The requesting Party shall provide specific and sufficient information to allow the requested Party to respond.

In such consultations, the Parties shall make every attempt to resolve the matter, including through the exchange of sufficient publicly available information to enable a full examination of the matter.

Section B: Evaluations

Article 21: Evaluation Committee of Experts

If a matter has not been resolved after ministerial consultations pursuant to Article 20, either Party may request in writing the establishment of an Evaluation Committee of Experts (ECE). The requesting Party shall deliver the request to the other Party. Subject to paragraphs 3 and 4, the Council shall establish an ECE on delivery of the request.

The ECE shall analyze, in the light of the objectives of this Agreement and in a non-adversarial manner, patterns of practice of both Parties in the enforcement of their occupational safety and health or other technical labour standards as they apply to the particular matter considered by the Parties under Article 20.

No ECE may be convened if a Party obtains a ruling under Annex 21 that the matter:

is not trade-related; or

is not covered by mutually recognized labour laws.

No ECE may be convened regarding any matter that was previously the subject of an ECE report in the absence of such new information as would warrant a further report.

Article 22: Rules of Procedure

The Council shall establish rules of procedure for ECEs, which shall apply unless the Council otherwise decides. The rules of procedure shall provide that:

an ECE shall normally comprise three members;

the chair shall be selected by the Council from a roster of experts developed in consultation with the International Labour Organization (ILO) pursuant to Article 42 and, where possible, other members shall be selected from a roster developed by the Parties;

ECE members shall

have expertise or experience in labour matters or other appropriate disciplines,

be chosen strictly on the basis of objectivity, reliability and sound judgment,

be independent of, and not be affiliated with or take instructions from, either Party, and

comply with a code of conduct to be established by the Council;

an ECE may invite written submissions from the Parties and the public;

an ECE may consider, in preparing its report, any information provided by

the National Secretariat of each Party,

organizations, institutions and persons with relevant expertise, and

the public; and

each Party shall have a reasonable opportunity to review and comment on information that the ECE receives and to make written submissions to the ECE.

The National Secretariats shall provide appropriate administrative assistance to an ECE, in accordance with the rules of procedure established by the Council under paragraph 1.

The Parties shall agree on a separate budget for each ECE. The Parties shall contribute equally to the ECE budget.

Article 23: Draft Evaluation Reports

Within 120 days after it is established, or such other period as the Council may decide, the ECE shall present a draft report for consideration by the Council, which shall contain:

a comparative assessment of the matter under consideration;

its conclusions; and

where appropriate, practical recommendations that may assist the Parties in respect of the matter.

Each Party may submit written views to the ECE on its draft report within 30 days. The ECE shall take such views into account in preparing its final report.

Article 24: Final Evaluation Reports

The ECE shall present a final report to the Council within 60 days after presentation of the draft report, unless the Council otherwise decides.

The final report shall be published within 30 days after its presentation to the Council, unless the Council otherwise decides.

The Parties shall provide to each other written responses to the recommendations contained in the ECE report within 90 days of its publication.

The final report and such written responses shall be tabled for consideration by the Council. The Council may keep the matter under review.

Part Five - Resolution of Disputes

Article 25: Consultations

Following presentation to the Council under Article 24(1) of an ECE final report that addresses the enforcement of a Party's occupational safety and health, child labour or minimum wage technical labour standards, either Party may request in writing consultations with the other Party at a special session of the Council regarding whether there has been a persistent

pattern of failure by the other Party to effectively enforce such standards in respect of the general subject matter addressed in the report.

In such consultations, the Parties shall make every attempt to arrive at a mutually satisfactory resolution of the matter.

Unless agreed otherwise, the Council shall convene within 60 days of the delivery of the request and shall endeavour to resolve the dispute promptly.

The Council may:

call on such technical advisers or create such working groups or expert groups as it deems necessary, or

have recourse to good offices, conciliation, mediation or such other dispute resolution procedures,

as may assist the Parties to reach a mutually satisfactory resolution of the dispute.

Where the Council decides that a matter is more properly covered by another agreement or arrangement to which the Parties are party, it shall refer the matter for appropriate action in accordance with such other agreement or arrangement.

Article 26: Request for an Arbitral Panel

If the matter has not been resolved within 60 days after the Council has convened pursuant to Article 25, the Council shall, on the written request of either Party, convene an arbitral panel to consider the matter where the alleged persistent pattern of failure by the Party complained against to effectively enforce its occupational safety and health, child labour or minimum wage technical labour standards is:

trade-related; and

covered by mutually recognized labour laws.

Unless otherwise agreed by the Parties, the panel shall be established and perform its functions in a manner consistent with the provisions of this Part.

Article 27: Roster

The Council shall establish and maintain a roster of up to 30 individuals, six of whom must not be citizens of either of the Parties, who are willing and able to serve as panelists. The roster members shall be appointed by mutual agreement for terms of three years, and may be reappointed.

Roster members shall:

have expertise or experience in labour law or its enforcement, or in the resolution of disputes arising under international agreements, or other relevant scientific, technical or professional expertise or experience;

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

be independent of, and not be affiliated with or take instructions from, either Party; and

comply with a code of conduct to be established by the Council.

Article 28: Qualifications of Panelists

All panelists shall meet the qualifications set out in Article 27(2).

Individuals may not serve as panelists for a dispute in which:

they have participated pursuant to Article 25(4) or participated as members of an ECE that addressed the matter; or

they have, or a person or organization with which they are affiliated has, an interest, as set out in the code of conduct established under Article 27(2)(d).

Article 29: Panel Selection

For purposes of selecting a panel, the following procedures shall apply:

The panel shall comprise five members.

The Parties shall endeavour to agree on the chair of the panel within 15 days after the Council decides to convene the panel.

If the Parties are unable to agree on the chair within this period, the Party chosen by lot shall select within five days a chair who is not a citizen of that Party.

Within 15 days of selection of the chair, each Party shall select two panelists who are citizens of the other Party.

If either Party fails to select its panelists within such period, such panelists shall be selected by lot from among the roster members who are citizens of the other Party.

Panelists shall normally be selected from the roster. Either Party may exercise a peremptory challenge against any individual not on the roster who is proposed as a panelist by the other Party within 30 days after the individual has been proposed.

If either Party believes that a panelist is in violation of the code of conduct, the Parties shall consult and, if they agree, the panelist shall be removed and a new panelist shall be selected in accordance with this Article.

Article 30: Rules of Procedure

The Council shall establish Model Rules of Procedure. The procedures shall provide:

a right to at least one hearing before the panel;

the opportunity to make initial and rebuttal written submissions; and

that no panel may disclose which panelists are associated with majority or minority opinions.

Unless the Parties otherwise agree, panels convened under this Part shall be established and conduct their proceedings in accordance with the Model Rules of Procedure.

Unless the Parties otherwise agree within 20 days after the Council convenes the panel, the terms of reference shall be:

"To examine, in light of the relevant provisions of the Agreement, including those contained in Part Five, whether there has been a persistent pattern of failure by the Party complained against to effectively enforce its occupational safety and health, child labour or minimum wage technical labour standards, and to make findings, determinations and recommendations in accordance with Article 32(2)."

Article 31: Role of Experts

On request of either Party, or on its own initiative, the panel may seek information and technical advice from any person or body that it deems appropriate, provided that the Parties so agree and subject to such terms and conditions as the Parties may agree.

Article 32: Initial Report

Unless the Parties otherwise agree, the panel shall base its report on the submissions and arguments of the Parties and on any information before it pursuant to Article 31.

Unless the Parties otherwise agree, the panel shall, within 180 days after the last panelist is selected, present to the Parties an initial report containing:

findings of fact;

its determination as to whether there has been a persistent pattern of failure by the Party complained against to effectively enforce its occupational safety and health, child labour or minimum wage technical labour standards in a matter that is trade-related and covered by mutually recognized labour laws, or any other determination requested in the terms of reference; and

in the event the panel makes an affirmative determination under subparagraph (b), its recommendations, if any, for the resolution of the dispute, which normally shall be that the Party complained against adopt and implement an action plan sufficient to remedy the pattern of non-enforcement.

Panelists may furnish separate opinions on matters not unanimously agreed.

Either Party may submit written comments to the panel on its initial report within 30 days of presentation of the report.

In such an event, and after considering such written comments, the panel, on its own initiative or on the request of either Party, may:

request the views of the Parties;

reconsider its report; and

make any further examination that it considers appropriate.

Article 33: Final Report

The panel shall present to the Parties a final report, including any separate opinions on matters not unanimously agreed, within 60 days of presentation of the initial report, unless the Parties otherwise agree.

The Parties shall transmit to the Council the final report of the panel, as well as any written views that either Party desires to be appended, on a confidential basis within 15 days after it is presented to them.

The final report of the panel shall be published five days after it is transmitted to the Council.

Article 34: Implementation of Final Report

If, in its final report, a panel determines that there has been a persistent pattern of failure by the Party complained against to effectively enforce its occupational safety and health, child labour or minimum wage technical labour standards, the Parties may agree on a mutually satisfactory action plan, which normally shall conform with the determinations and recommendations of the panel.

Article 35: Review of Implementation

If, in its final report, a panel determines that there has been a persistent pattern of failure by the Party complained against to effectively enforce its occupational safety and health, child labour or minimum wage technical labour standards, and:

the Parties have not agreed on an action plan under Article 34 within 60 days of the date of the final report, or

the Parties cannot agree on whether the Party complained against is fully implementing

an action plan agreed under Article 34,

an action plan deemed to have been established by a panel under paragraph 2, or

an action plan approved or established by a panel under paragraph 4,

either Party may request that the panel be reconvened by delivering a request in writing to the other Party. The Council shall reconvene the panel on delivery of the request to the other Party.

No Party may make a request under paragraph 1(a) earlier than 60 days, or later than 120 days, after the date of the final report. If the Parties have not agreed to an action plan and if no request was made under paragraph l(a), the last action plan, if any, submitted by the Party complained against to the other Party within 60 days of the date of the final report, or such other period as the Parties may agree, shall be deemed to have been established by the panel 120 days after the date of the final report.

A request under paragraph l(b) may be made no earlier than 180 days after an action plan has been:

agreed under Article 34,

deemed to have been established by a panel under paragraph 2, or

approved or established by a panel under paragraph 4,

and only during the term of any such action plan.

Where a panel has been reconvened under paragraph l(a), it:

shall determine whether any action plan proposed by the Party complained against is sufficient to remedy the pattern of non-enforcement and

if so, shall approve the plan, or

if not, shall establish such a plan consistent with the law of the Party complained against, and

may, where warranted, impose a monetary enforcement assessment in accordance with Annex 35,

within 90 days after the panel has been reconvened or such other period as the Parties may agree.

Where a panel has been reconvened under paragraph l(b), it shall determine either that:

the Party complained against is fully implementing the action plan, in which case the panel may not impose a monetary enforcement assessment, or

the Party complained against is not fully implementing the action plan, in which case the panel shall impose a monetary enforcement assessment in accordance with Annex 35,

within 60 days after it has been reconvened or such other period as the Parties may agree.

A panel reconvened under this Article shall provide that the Party complained against shall fully implement any action plan referred to in paragraph 4(a)(ii) or 5(b), and pay any monetary enforcement assessment imposed under paragraph 4(b) or 5(b), and any such provision shall be final.

Article 36: Further Proceeding

A complaining Party may, at any time beginning 180 days after a panel determination under Article 35(5)(b), request in writing that a panel be reconvened to determine whether the Party complained against is fully implementing the action plan. On delivery of the request to the other Party, the Council shall reconvene the panel. The panel shall make the determination within 60 days after it has been reconvened or such other period as the Parties may agree.

Article 37: Domestic Enforcement and Collection

For the purposes of this Article, "panel determination" means:

a determination by a panel under Article 35(4)(b) or 5(b) that provides that the Party complained against shall pay a monetary enforcement assessment; and

a determination by a panel under Article 35(5)(b) that provides that the Party complained against shall fully implement an action plan where the panel:

has previously established an action plan under Article 35(4)(a)(ii) or imposed a monetary enforcement assessment under Article 35(4)(b); or

has subsequently determined under Article 36 that the Party complained against is not fully implementing an action plan.

In Canada, the procedures shall be the following:

subject to subparagraph (b), the National Secretariat of Chile, acting on behalf of the Commission, may in the name of the Commission file in a court of competent jurisdiction a certified copy of a panel determination;

the National Secretariat of Chile, acting on behalf of the Commission, may file in court a panel determination that is a panel determination described in paragraph 1(a) only if the Party complained against has failed to comply with the determination within 180 days of when the determination was made;

when filed, the panel determination, for purposes of enforcement, shall become an order of the court;

the National Secretariat of Chile, acting on behalf of the Commission, may take proceedings for enforcement of a panel determination that is made an order of the court, in that court, against the person in Canada against whom the panel determination is addressed in accordance with paragraph 6 of Annex43;

proceedings to enforce a panel determination that has been made an order of the court shall be conducted in Canada by way of summary proceedings;

in proceedings to enforce a panel determination that is a panel determination described in paragraph 1(b) and that has been made an order of the court, the court shall promptly refer any question of fact or any question of interpretation of the panel determination to the panel that made the panel determination, and the decision of the panel shall be binding on the court;

a panel determination that has been made an order of the court shall not be subject to domestic review or appeal; and

an order made by the court in proceedings to enforce a panel determination that has been made an order of the court shall not be subject to review or appeal.

In Chile, the procedures shall be the following:

subject to subparagraph (b), the National Secretariat of Canada, acting on behalf of the Commission, may in the name of the Commission file in a court of competent jurisdiction a certified copy of a panel determination;

the National Secretariat of Canada, acting on behalf of the Commission, may file in court a panel determination that is a panel determination described in paragraph 1(a) only if the Party complained against has failed to comply with the determination within 180 days of when the determination was made;

the court of competent jurisdiction is the Supreme Court;

the National Secretariat of Canada, acting on behalf of the Commission, shall certify that the panel determination is final and not subject to appeal;

the Supreme Court shall issue a resolution ordering the enforcement of the panel determination within 10 days of when the petition was filed;

the resolution of the Supreme Court shall be addressed to the competent administrative authority for its prompt compliance.

Any change by the Parties to the procedures adopted and maintained by each of them pursuant to this Article that has the effect of undermining the provisions of this Article shall be considered a breach of this Agreement.

Article 38: Funding of Panel Proceedings

The Parties shall agree on a separate budget for each set of panel proceedings pursuant to Articles 26 to 36. The Parties shall contribute equally to this budget.

Part Six - General Provisions

Article 39: Enforcement Principle

Nothing in this Agreement shall be construed to empower a Party's authorities to undertake labour law enforcement activities in the territory of the other Party.

Article 40: Private Rights

Neither Party may provide for a right of action under its domestic law against the other Party on the ground that the other Party has acted in a manner inconsistent with this Agreement.

Article 41: Protection of Information

If a Party provides confidential or proprietary information to the other Party, including its National Secretariat, or the Council, the recipient shall treat the information on the same basis as the Party providing the information.

Confidential or proprietary information provided by a Party to an ECE or a panel under this Agreement shall be treated in accordance with the rules of procedure established under Articles 22 and 30.

Article 42: Cooperation with the ILO

The Parties shall seek to establish cooperative arrangements with the ILO to enable the Council and Parties to draw on the expertise and experience of the ILO for purposes of implementing Article 22(1).

Article 43: Extent of Obligations

Annex 43 applies to the Parties specified in that Annex.

Article 44: Definitions

For purposes of this Agreement:

A Party has not failed to "effectively enforce its occupational safety and health, child labour or minimum wage technical labour standards" or comply with Article 3(1) in a particular case where the action or inaction by agencies or officials of that Party:

reflects a reasonable exercise of the agency's or the official's discretion with respect to investigatory, prosecutorial, regulatory or compliance matters; or

results from bona fide decisions to allocate resources to enforcement in respect of other labour matters determined to have

higher priorities;

"citizen" means a citizen as defined in Annex 44 for the Party specified in that Annex;

"labour law" means laws and regulations, or provisions thereof, that are directly related to:

freedom of association and protection of the right to organize;

the right to bargain collectively;

the right to strike;

prohibition of forced labour;

labour protections for children and young persons;

minimum employment standards, such as minimum wages and overtime pay, covering wage earners, including those not covered by collective agreements;

elimination of employment discrimination on the basis of grounds such as race, religion, age, sex, or other grounds as determined by each Party's domestic laws;

equal pay for men and women;

prevention of occupational injuries and illnesses;

compensation in cases of occupational injuries and illnesses; or

protection of migrant workers;

"mutually recognized labour laws" means laws of both Parties that address the same general subject matter in a manner that provides enforceable rights, protections or standards;

"pattern of practice" means a course of action or inaction beginning after the date of entry into force of the Agreement, and does not include a single instance or case;

"persistent pattern" means a sustained or recurring pattern of practice;

"province" means a province of Canada, and includes the Yukon Territory and the Northwest Territories and their successors;

"publicly available information" means information to which the public has a legal right under the statutory laws of the Party;

"technical labour standards" means laws and regulations, or specific provisions thereof, that are directly related to subparagraphs (d) through (k) of the definition of labour law. For greater certainty and consistent with the provisions of this Agreement, the setting of all standards and levels in respect of minimum wages and labour protections for children and young persons by each Party shall not be subject to obligations under this Agreement. Each Party's obligations under this Agreement pertain to enforcing the level of the general minimum wage and child labour age limits established by that Party;

"territory" means for a Party the territory of that Party as set out in Annex 44; and

"trade-related" means related to a situation involving workplaces, firms, companies or sectors that produce goods or provide services:

traded between the territories of the Parties; or

that compete, in the territory of the Party whose labour law was the subject of ministerial consultations under Article 20, with goods or services produced or provided by persons of the other Party.

Part Seven - Final Provisions

Article 45: Annexes

The Annexes to this Agreement constitute an integral part of the Agreement.

Article 46: Entry into Force

This Agreement shall enter into force on June 2, 1997, immediately after entry into force of the CCFTA, on an exchange of written notifications certifying the completion of necessary legal procedures.

Article 47: Amendments

The Parties may agree on any modification of or addition to this Agreement.

When so agreed, and approved in accordance with the applicable legal procedures of each Party, a modification or addition shall constitute an integral part of this Agreement.

Article 48: Accession of Chile to the North American Agreement on Labor Cooperation

The Parties shall work toward the early accession of Chile to the North American Agreement on Labor Cooperation.

Article 49: Termination

Either Party may terminate this Agreement by giving written notice to the other Party. Such termination shall take effect six months after the date of receipt of the written notice by the other Party.

Article 50: Authentic Texts

The Spanish, English and French texts of this Agreement are equally authentic.

In Witness Whereof , the undersigned, being duly authorized by the respective Governments, have signed this Agreement.

Done in duplicate, in Ottawa, this 6th day of February, 1997.

For the Government of

Canada

For the Government of

the Republic of Chile

Annex 1 - Labour Principles

The following are guiding principles that the Parties are committed to promote, subject to each Party's domestic law, but do not establish common minimum standards for their domestic law. They indicate broad areas of concern where the Parties have developed, each in its own way, laws, regulations, procedures and practices that protect the rights and interests of their respective workforces.

Freedom of association and protection of the right to organize

The right of workers exercised freely and without impediment to establish and join organizations of their own choosing to further and defend their interests.

The right to bargain collectively

The protection of the right of organized workers to freely engage in collective bargaining on matters concerning the terms and conditions of employment.

The right to strike

The protection of the right of workers to strike in order to defend their collective interests.

Prohibition of forced labour

The prohibition and suppression of all forms of forced or compulsory labour, except for types of compulsory work generally considered acceptable by the Parties, such as compulsory military service, certain civic obligations, prison labour not for private purposes and work exacted in cases of emergency.

Labour protections for children and young persons

The establishment of restrictions on the employment of children and young persons that may vary taking into consideration relevant factors likely to jeopardize the full physical, mental and moral development of young persons, including schooling and safety requirements.

Minimum employment standards

The establishment of minimum employment standards, such as minimum wages and overtime pay, for wage earners, including those not covered by collective agreements.

Elimination of employment discrimination

Elimination of employment discrimination on such grounds as race, religion, age, sex or other grounds, subject to certain reasonable exceptions, such as, where applicable, bona fide occupational requirements or qualifications and established practices or rules governing retirement ages, and special measures of protection or assistance for particular groups designed to take into account the effects of discrimination.

Equal pay for women and men

Equal wages for women and men by applying the principle of equal pay for equal work in the same establishment.

Prevention of occupational injuries and illnesses

Prescribing and implementing standards to minimize the causes of occupational injuries and illnesses.

Compensation in cases of occupational injuries or illnesses

The establishment of a system providing benefits and compensation to workers or their dependents in cases of occupational injuries, accidents or fatalities arising out of, linked with or occurring in the course of employment.

Protection of migrant workers

Providing migrant workers in a Party's territory with the same legal protection as the Party's nationals in respect of working conditions.

Annex 21 - Interpretive Ruling

Where a Party has requested the Council to convene an ECE, the Council shall, on the written request of the other Party, select an independent expert to make a ruling concerning whether the matter is:

trade-related; or

covered by mutually recognized labour laws.

The Council shall establish rules of procedure for the selection of the expert and for submissions by the Parties. Unless the Council decides otherwise, the expert shall present a ruling within 15 days after the expert is selected.

Annex 35 - Monetary Enforcement Assessments

Any monetary enforcement assessment shall be no greater than 10 million dollars (U.S.) or its equivalent in the currency of the Party complained against.

In determining the amount of the assessment, the panel shall take into account:

the pervasiveness and duration of the Party's persistent pattern of failure to effectively enforce its occupational safety and health, child labour or minimum wage technical labour standards;

the level of enforcement that could reasonably be expected of a Party given its resource constraints;

the reasons, if any, provided by the Party for not fully implementing an action plan;

efforts made by the Party to begin remedying the pattern of non-enforcement after the final report of the panel; and

any other relevant factors.

All monetary enforcement assessments shall be paid in the currency of the Party complained against into a fund established in the name of the Commission by the Council and shall be expended at the direction of the Council to improve or enhance the labour law enforcement in the Party complained against, consistent with its law.

Annex 43 - Extent of Obligations

On the date of signature of this Agreement, or of the exchange of written notifications under Article 46, Canada shall set out in a declaration a list of any provinces for which Canada is to be bound in respect of matters within their jurisdiction. The

declaration shall be effective on delivery to Chile, and shall carry no implication as to the internal distribution of powers within Canada. Canada shall notify Chile six months in advance of any modification to its declaration.

Unless a communication relates to a matter that would be under federal jurisdiction if it were to arise within the territory of Canada, the Canadian National Secretariat shall identify the province of residence or establishment of the author of any communication regarding the labour law of Chile that it forwards to the Chilean National Secretariat. The Chilean National Secretariat may choose not to respond if that province is not included in the declaration made under paragraph 1.

Canada may not request consultations under Article 20, the establishment of an Evaluation Committee of Experts under Article 21, consultations under Article 25, or the establishment of a panel under Article 26 at the instance, or primarily for the benefit, of the government of a province not included in the declaration made under paragraph 1.

Canada may not request consultations under Article 20, the establishment of an Evaluation Committee of Experts under Article 21, consultations under Article 25, or the establishment of a panel under Article 26, unless Canada states in writing that the matter would be under federal jurisdiction if it were to arise within the territory of Canada, or:

Canada states in writing that the matter would be under provincial jurisdiction if it were to arise within the territory of Canada; and

the federal government and the provinces included in the declaration account for at least 35 percent of Canada's labour force for the most recent year in which data are available; and

where the matter concerns a specific industry or sector, at least 55 percent of the workers concerned are employed in provinces included in Canada's declaration under paragraph 1.

Chile may not request consultations under Article 20, the establishment of an Evaluation Committee of Experts under Article 21, consultations under Article 25, or the establishment of a panel under Article 26, concerning a matter related to a labour law of a province unless that province is included in the declaration made under paragraph 1 and the requirements of subparagraphs 4(b) and (c) have been met.

Canada shall, no later than the date on which an arbitral panel is convened pursuant to Article 26 respecting a matter within the scope of paragraph 5 of this Annex, notify Chile in writing of whether any monetary enforcement assessment or action plan imposed by a panel under Article 35(4) or (5) against Canada shall be addressed to Her Majesty in right of Canada or Her Majesty in right of the province concerned.

Canada shall use its best efforts to make the Agreement applicable to as many of its provinces as possible.

Annex 44 - Country-Specific Definitions

For purposes of this Agreement:

"citizen" means:

with respect to Canada, a natural person who is a citizen of Canada under the Citizenship Act, R.S.C. 1985, c. C-29, as amended from time to time or under any successor legislation; and

with respect to Chile, a Chilean as defined in Article 10 of the Political Constitution of the Republic of Chile (Constitución Política de la República de Chile); and

"territory" means:

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

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