FREE TRADE AGREEMENT

BETWEEN

CANADA

AND

THE REPUBLIC OF HONDURAS

PREAMBLE

CANADA ANDTHE REPUBLIC OF HONDURAS(“Honduras”),hereinafter referred to as “the Parties”,resolved to:

STRENGTHEN the special bonds of friendship and cooperation between their peoples;

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

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

RECOGNIZE the differences in the level of development and the size of their economies and create opportunities for economic development;

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

REDUCE distortions to trade;

ESTABLISH clear and mutually advantageous rules to govern their trade;

ENSURE a predictable commercial framework for business planning and investment;

BUILD on their respective rights and obligations under the WTO Agreement and other multilateral and bilateral instruments of cooperation;

ENHANCE the competitiveness of their respective firms in global markets;

ENSUREthat the benefits of trade liberalization are not undermined by anticompetitive activities;

PROMOTE sustainable development;

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

ENFORCE environmental law, while recognizing the importance of cooperation to protect the environment and the importance ofeach Party complying with its domestic and international environmental commitments;

PRESERVE their flexibility to safeguard the public welfare;

PROTECT, ENHANCE, AND ENFORCE basic workers' rights;

and

RECOGNIZING the importance of trade facilitation in promoting efficient and transparent procedures to reduce costs and ensure predictability for their importers and exporters;

RECOGNIZING the importance of corporate social responsibility standards and principles and the pursuit of best voluntary practices with enterprises;

AFFIRMING their commitment to respect the values and principles of democracy and to promote and protect the human rights and fundamental freedoms identified in the *Universal Declaration of Human Rights*;

AFFIRMINGthe right to fully avail themselves of the flexibilities established in the TRIPS Agreement, including those related to the protection of public health and in particular those to promotethe access to medicines for all;

RECOGNIZING that States must maintain the ability to preserve, develop, and implement their cultural policies for the purpose of strengthening cultural diversity, given the essential role that cultural goods and services play in the identity and diversity of societies, and the lives of individuals; and

RECOGNIZING the importance of increased cooperation between them in the areas of labour and environment;

HAVE AGREED as follows:

CHAPTERONE

OBJECTIVES AND INITIAL PROVISIONS

Article 1.1: Establishment of the Free Trade Area

The Parties to this Agreement, consistent with Article XXIV of the GATT 1994and Article V of the GATS, hereby establish a free trade area.

Article 1.2: Objectives

1. The objectives of this Agreement are:

(a) tocreate opportunities for economic development;

(b) toeliminate barriers to trade in, and facilitate the cross-border movement of goods and services between the territories of the Parties;

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

(d) topromote conditions of fair competition in the free trade area;

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

(f) toestablisheffective procedures for the implementation and application of this Agreement, for its joint administration, and for the resolution of disputes.

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

Article 1.3: Relation to Other Agreements

1. The Parties affirm their existing rights and obligations with respect to each other under the WTO Agreement and other agreements to which they are party.

2. In the event of any inconsistency between this Agreement and the agreements referred to in paragraph 1, this Agreement prevails, except as otherwise provided in this Agreement.

3. The WTO Agreement exclusively governs the rights and obligations of the Parties regarding subsidies and the application of anti-dumping and countervailing measures, including the settlement of any disputes about those matters.

Article 1.4: Relation to Multilateral Environmental Agreements

In the event of any inconsistency between an obligation in this Agreement and an obligation of a Party under:

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

(b) the *Montreal Protocol on Substances that Deplete the Ozone Layer*, done at Montreal on 16 September 1987, as amended 29 June 1990, as amended 25 November 1992, as amended 17 September 1997, as amended 3 December 1999;

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

(d) the *Rotterdam Convention on the Prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides in International Trade*, done at Rotterdam on 10 September 1998; or

(e) the *Stockholm Convention on Persistent Organic Pollutants*, done at Stockholm on 22 May 2001,

the obligation in the agreements listed in sub-paragraphs (a) through (e) prevails. If, however, a Party has a choice among equally effective and reasonably available means of complying with that obligation, the Party shall choose the alternative that is the least inconsistent with the other provisions of this Agreement.

Article 1.5: Extent of Obligations

Each Party is fully responsible for the observance of all provisions of this Agreement and shall take reasonable measures available to it to ensure that the sub-national governments and authorities within its territoryobserve the provisions of this Agreement.

Article 1.6:Reference to Other Agreements

When this Agreement refers to or incorporates by reference other agreements or legal instruments in whole or in part, those references include:

(a) related footnotes, interpretative notes, and explanatory notes; and

(b) successor agreements to which the Parties are party or amendments binding on the Parties, except when the reference affirms existing rights.

CHAPTER TWO

GENERAL DEFINITIONS

Article 2.1: Definitions of General Application

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

Agreement on Safeguards means the *Agreement on Safeguards*, which is part of the WTO Agreement;

Commission means the Free Trade Commission established under Article 21.1 (Institutional Arrangements and Dispute Settlement Procedures – Free Trade Commission);

Coordinators means the Free Trade Coordinators established under Article 21.2(1) (Institutional Arrangements and Dispute Settlement Procedures – Free Trade Coordinators);

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

(a) charge equivalent to an internal tax imposed consistently with Article III:2 of the GATT 1994, in respect of:

(i) like, directly competitive, or substitutable goods of a Party, or

(ii) goods from which the imported good has been manufactured or produced in whole or in part,

(b) an anti-dumping or countervailing duty that is applied under a Party's domestic law,

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

(d) a premium offered or collected on an imported good arising out of a tendering system in respect of the administration of a quantitative import restriction, a tariff rate quota, or a tariff preference level;

Customs Valuation Agreement means the *Agreement on Implementation of Article VII of the General Agreement on Tariffs and Trade 1994*, 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 an entity constituted or organized under applicable law, whether or not for profit, and whether privately owned or governmentally owned, including a corporation, trust, partnership, sole proprietorship, joint venture, or other association;

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;

goods of a Party means domestic products as these are understood in the GATT 1994 or such goods as the Parties may decide, and includes originating goods of that Party;

Harmonized System (HS) means the *Harmonized Commodity Description and Coding System*, including its General Rules of Interpretation, Section Notes, Chapter Notes, and subheading notes;

heading means a 4-digit number, or the 4 first digits of a number, used in the nomenclature of the Harmonized System;

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

national means a natural person according to Article 2.2, or a permanent resident of a Party;

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

person means a natural person or an enterprise;

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

sanitary or phytosanitary measure means a measure referred to in Annex A, paragraph 1 of the SPS Agreement;

Secretariat means the Secretariat established under Article 21.3 (Institutional Arrangements and Dispute Settlement Procedures – Secretariat);

SPS Agreement means the *Agreement on the Application of Sanitary and Phytosanitary Measures*, which is part of the WTO Agreement;

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

subheading means a 6-digit number, or the first 6 digits of a number, used in the nomenclature of the Harmonized System;

tariff classification means the classification of a good or material under a chapter, heading, subheading, or tariff subheading;

tariff elimination schedule means Annex 3.4.1 (National Treatment and Market Access for Goods – Tariff Elimination Schedule);

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

Uniform Regulations means "Uniform Regulations" established under Article 5.12 (Customs Procedures – Uniform Regulations); and

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

2. For purposes of this Agreement, a word in the singular includes that word in the plural, except where otherwise indicated.

Article 2.2: Country-Specific Definitions

For the purposes of this Agreement:

national government means:

(a) for Canada, the Government of Canada; and

(b) for Honduras, the Government of the Republic of Honduras;

sub-national government means:

(a) for Canada, provincial, territorial, or local governments; and

(b) for Honduras, local governments;

natural person means:

(a) for 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) for Honduras, a Honduran as defined in Articles 23 and 24 of the Constitution of the Republic of Honduras;

territory means:

(a) for Canada, (i) the land territory, internal waters and territorial sea, including the air space above these areas, of Canada; (ii) the exclusive economic zone of Canada, as determined by its domestic law, consistent with Part V of the *United Nations Convention on the Law of the Sea*, done at Montego Bay on 10 December 1982 (UNCLOS); and (iii) the continental shelf of Canada, as determined by its domestic law, consistent with Part VI of UNCLOS; and

(b) for Honduras, the land, maritime, and air space under its sovereignty; its exclusive economic zone; and the continental shelf within which it exercises sovereign rights and jurisdiction in accordance with international law and its domestic law.

CHAPTER THREE

NATIONAL TREATMENT AND MARKET ACCESS FOR GOODS

Article 3.1: Scope of Coverage

This Chapter applies to trade in goods of a Party, including goods covered by Annex 3.1, except as otherwise provided in this Agreement.

Section A – Definitions

Article 3.2: Definitions

For the purposes of this Chapter:

advertising films means a recorded visual media, with or without a soundtrack, consisting essentially of images showing the nature or operation of a good or service offered for sale or lease by a person established or resident in the territory of a Party, provided that the film is:

(a) of a kind suitable for exhibition to prospective customers but not for broadcast to the general public, and

(b) imported in a packet that does not contain more than one copy of each film and that does not form part of a larger consignment;

Agreement on Agriculture means the *Agreement on Agriculture*, of the WTO Agreement;

Agreement on Import Licensing Procedures means the *Agreement on Import Licensing Procedures*, of the WTO Agreement;

agricultural good means a product listed in Annex 1 of the Agreement on Agriculture;

agricultural safeguard measure means an additional customs duty permitted under Article 3.15(1);

commercial sample of negligible value means a commercial sample having a value, individually or in the aggregate as shipped, of not more than 1 U.S. dollar, or the equivalent amount in the currency of a Party, or so marked, torn, perforated or otherwise treated so that it is unsuitable for sale or for use except as a commercial sample;

commercial sample means:

(a) a good that is:

(i) representative of a particular category of good produced outside the territory of a Party, and

(ii) imported only for the purpose of being exhibited or demonstrated to solicit orders for a similar good to be supplied from outside the territory of a Party; or

(b) a film, chart, projector, scale model or similar item, imported only for the purpose of illustrating a particular category of good produced outside the territory of a Party to solicit orders for a similar good to be supplied from outside the territory of a Party;

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;

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

duty-free means free of customs duties;

export subsidies for agricultural goods means export subsidies as defined in Article 1(e) of the Agreement on Agriculture;

good imported for sports purposes means a sports good required for use in a sports contest, demonstration, or training in the territory of the Party into whose territory that good is imported;

good intended for display or demonstration includes its component parts, ancillary apparatus, and accessories;

printed advertising material means a good classified in Chapter 49 of the Harmonized System including a brochure, pamphlet, leaflet, trade catalogue, yearbook published by trade associations, tourist promotional material, and poster, that is:

(a) used to promote, publicize, or advertise a good or service,

(b) essentially intended to advertise a good or service, and

(c) supplied free of charge;

year 1 means the year this Agreement enters into force as provided in Article 23.4 (Final provisions – Entry into Force); and

TRQ means a tariff rate quota described in Annex 3.4.2.

Section B - National Treatment

Article 3.3: National Treatment

1. Each Party shall accord national treatment to the goods of the other Party in accordance with Article III of the GATT 1994, and to this end Article III of the GATT 1994 is incorporated into and made part of this Agreement.

2. The treatment to be accorded by a Party under paragraph 1 means, with respect to a sub-national government, treatment no less favourable than the most favourable treatment accorded by that sub-national government to a like, directly competitive, or substitutable good of the Party of which it forms a part. For the purposes of this paragraph, "goods of a Party" includes goods produced in the territory of the sub-national government of that Party.

3. Paragraphs 1 and 2 do not apply to a measure set out in Annex 3.3.

Section C – Tariffs

Article 3.4: Tariff Elimination

1. Except as otherwise provided in this Agreement, a Party may not increase any existing customs duty, or adopt any customs duty, on an originating good.

2. Except as otherwise provided in this Agreement, each Party shall progressively eliminate its customs duties on originating goods in accordance with its Schedule to Annex 3.4.1.

3. Each Party shall apply to an originating good the lesser of:

(a) the customs duties rate established in accordance with its Schedule to Annex 3.4.1; or

(b) the existing rate pursuant to Article II of GATT 1994**.**

4. For greater certainty, a Party may:

(a) modify a tariff outside this Agreement on a good for which a tariff preference is not claimed under this Agreement;

(b) raise a customs duty to the level applicable under its Schedule to Annex 3.4.1 following a unilateral reduction; or

(c) maintain or increase a customs duty as authorized by a dispute settlement provision of the WTO Agreement.

5. At the request of a Party, the Parties shall discuss accelerating the elimination of customs duties set out in their Schedules or incorporating into a Party's Schedule to Annex 3.4.1 a good that is not subject to tariff elimination. An agreement between the Parties to accelerate the elimination of a customs duty on a good or to include a good in a Schedule to Annex 3.4.1 shall supersede a duty rate or staging category determined pursuant to that Schedule for that good when approved by each Party in accordance with its applicable legal procedures.

6. Except as otherwise provided in this Agreement, a Party shall establish a TRQ set out in Annex 3.4.2. A Party may adopt or maintain import measures to allocate in-quota imports made pursuant to a TRQ set out in Annex 3.4.2, provided that such measures comply with Article 3.16.

Article 3.5: Export Contingent Programs

The Parties agree that in their reciprocal trade they shall maintain their rights and obligations according to the *Agreement on Subsidies and Countervailing Measures* of the WTO Agreement.

Article 3.6: Temporary Admission of Goods

1. Each Party shall grant duty-free temporary admission for the following goods admitted from the territory of the other Party, regardless of their origin and regardless of whether a like, directly competitive, or substitutable good is available in the territory of the importing Party:

(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 Fourteen (Temporary Entry for Business Persons);

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

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

(d) a commercial sample and advertising films.

2. Except as otherwise provided in this Agreement, a Party may not impose a condition on the duty-free temporary admission of a good referred to in paragraph 1(a), (b) or (c), other than to require that the good:

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

(b) be used only by or under the personal supervision of that person in the exercise of the business activity, sport, 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% 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;

(e) be capable of identification when exported;

(f) be exported on the departure of that person or within another period of time that is reasonably related to the purpose of the temporary importation; and

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

3. If another form of monetary security is used under sub-paragraph 2(d), it shall not be a more burdensome form of security than a bonding requirement referred to in that sub-paragraph. If a Party requires a non-monetary form of security, it shall not require a more burdensome form of security than existing forms of security used by that Party.

4. Except as otherwise provided in this Agreement, a Party may not impose a condition on the duty-free temporary admission of a good referred to in paragraph 1(d), other than to require that such good:

(a) be imported only for the solicitation of orders for a good or service provided from the territory of the other Party or a non-Party;

(b) not be sold, leased, or used for anything other than exhibition or demonstration while in its territory;

(c) be capable of identification when exported;

(d) be exported within a period that is reasonably related to the purpose of the temporary importation; and

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

5. If a good is temporarily admitted duty-free under paragraph 1 and a condition that a Party imposes under paragraph 2 or 3 has not been fulfilled, that 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.

6. Except as otherwise provided in this Agreement, a Party may not:

(a) prevent a vehicle or container used in international traffic that enters its territory from the territory of the other Party from exiting its territory on a route that is reasonably related to the economic and prompt departure of that vehicle or container;

(b) require a bond or impose a penalty or charge only because of a difference between the port of entry and the port of departure of a vehicle or container;

(c) condition the release of an obligation, including a bond, based on the entry of a vehicle or container into its territory on exiting through a particular port of departure; and

(d) require that a vehicle or carrier bringing a container from the territory of the other Party into its territory be the same vehicle or carrier that takes that container to the territory of the other Party.

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

Article 3.7: Duty-Free Entry of Certain Commercial Samples of Negligible Value and Printed Advertising Materials

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

(a) the commercial sample of negligible value be imported only for the solicitation of an order for a good or service provided from the territory of the other Party or a non-Party; or

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

Article 3.8: Goods Re-Entered after Repair or Alteration

1. A Party may not apply a customs duty to a good, regardless of its origin, that re-enters 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 the repair or alteration could be performed in its territory.

2. A Party may not apply a customs duty to a good, regardless of its origin, imported temporarily from the territory of the other Party for repair or alteration.

3. For the purposes of this Article, repair or alteration does not include an operation or process that:

(a) destroys the essential characteristics of a good or creates a new or commercially different good; or

(b) transforms an unfinished good into a finished good.

4. Paragraph 1 does not apply to a good imported in bond, into foreign trade zones, or in similar status, that is exported for repair and is not re-imported in bond, into foreign trade zones, or in similar status.

Section D – Non-Tariff Measures

Article 3.9: Import and Export Restrictions

1. Except as otherwise provided in this Agreement, a Party may not adopt or maintain a prohibition or restriction on the importation of a good of the other Party or on the exportation or sale for export of a good to the territory of the other Party, except in accordance with Article XI of the GATT 1994, and to this end Article XI of the GATT 1994 is incorporated into and made a part of this Agreement.

2. The Parties understand that the rights and obligations of the GATT 1994 incorporated by paragraph 1 prohibit, in a circumstance in which any other form of restriction is prohibited:

(a) an export price requirement; and

(b) an import price requirement, except as permitted in enforcement of countervailing and anti-dumping orders and undertakings.

3. If a Party adopts or maintains a prohibition or restriction on the importation from or exportation to a non-Party of a good, this Agreement does not prevent that Party from:

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

(b) requiring as a condition of export of that good of that 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. If a Party adopts or maintains a prohibition or restriction on the importation of a good from a non-Party, the Parties, at the request of the other Party, shall discuss how to avoid undue interference with or distortion of pricing, marketing, and distribution arrangements in the other Party.

5. Paragraphs 1 through 4 do not apply to a measure set out in Annex 3.3.

Article 3.10: Distilled Spirits

A Party may not adopt or maintain a measure requiring that distilled spirits imported from the territory of the other Party for bottling be blended with distilled spirits of the Party.

Article 3.11: Export Taxes

A Party may not adopt or maintain a duty, tax, or other charge on the export of a good to the territory of the other Party unless the duty, tax, or charge is adopted or maintained on the good if it is destined for domestic consumption.

Article 3.12: Customs Fees and Similar Charges

1. A Party may not adopt or maintain any customs fee or other similar charge in connection with the importation of a good of the other Party that is not commensurate with the cost of services rendered.

2. Nothing in this Article modifies Article VIII of GATT 1994 as it applies to the Parties.

Article 3.13: Export Subsidies for Agricultural Goods

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

2. Notwithstanding any other provisions of this Agreement, each Party shall eliminate, as of the date of entry into force of this Agreement, any form of export subsidies for agricultural goods exported to the other Party, and shall not reintroduce such subsidies in any form.

Article 3.14: Domestic Support for Agricultural Goods

1. The Parties recognize that domestic support measures can be of crucial importance to their agricultural sectors, but may also have distorting effects on the production or trade of agricultural goods.

2. The Parties shall cooperate in the WTO agricultural negotiations in order to achieve a substantial reduction of production and trade-distorting domestic support measures.

3. Pending the elimination of trade-distorting domestic support measures, if a Party maintains, introduces or re-introduces such a measure that the other Party considers to be distortive of bilateral trade covered under this Agreement or its internal market, the Party applying the measure shall, at the request of the other Party, consult with a view to making a best efforts endeavour to eliminate such distortion or avoid nullification or impairment of concessions granted under this Agreement. Such consultations shall be deemed to satisfy the requirements of Article 21.8 (Institutional Arrangements and Dispute Settlement Procedures – Consultations).

Article 3.15: Agricultural Safeguard Measures

1. Notwithstanding Article 3.4, Honduras may apply an additional customs duty on an originating agricultural good listed in Annex 3.15, if the volume of imports into Honduras of the originating agricultural good during a calendar year exceeds the quantity of the good, set out in Annex 3.15, for that year.

2. Honduras shall not apply a customs duty on a good, including the additional customs duty referred to in paragraph 1, which exceeds the lesser of the applied most favoured nation duty rate for that good:

(a) at the time the measure is adopted; or

(b) applied on the day immediately preceding the entry into force of this Agreement.

3. Honduras may maintain an agricultural safeguard measure until the end of the calendar year in which it was imposed.

4. Honduras may not impose an agricultural safeguard measure on an originating agricultural good in connection with the same good:

(a) if the good is subject to a TRQ and the agricultural safeguard measure increases an in-quota duty;

(b) after the expiration of the tariff elimination period for that good set out in Honduras' schedule to Annex 3.4.1; or

(c) at the same time as Honduras applies to that good:

(i) an emergency action, under Chapter Nine (Emergency Action), or

(ii) a safeguard under Article XIX of GATT 1994 and the Agreement on Safeguards.

5. For greater certainty:

(a) sub-paragraph 4(a) does not limit Honduras from applying an agricultural safeguard measure on imports above the volumes specified in the Annex 3.4.2 for that good; and

(b) an agricultural safeguard measure is not subject to compensation.

6. Honduras shall apply an agricultural safeguard measure in a transparent manner. Honduras shall inform Canada in writing within 30 days of the application of that measure, and shall provide all relevant data. At the request of Canada, Honduras shall facilitate discussions with Canada on the conditions for the application of that agricultural safeguard measure.

Article 3.16: Administration and Implementation of Tariff Rate Quotas

1. Each Party shall implement and administer its TRQs in accordance with Article XIII of the GATT 1994, and the Agreement on Import Licensing Procedures.

2. Each Party shall ensure that:

(a) its procedures for administering its TRQs are transparent, made available to the public, timely, non-discriminatory, responsive to market conditions, and are designed to minimize any burden on trade;

(b) subject to subparagraph (c), a person of a Party that fulfills that Party's legal and administrative requirements for TRQs shall be eligible to apply, and to be considered, for an import license or an in-quota quantity allocation under the Party's TRQs;

(c) it does not, under its TRQs:

(i) allocate a portion of an in-quota quantity to a producer or a producer's group,

(ii) make access to an in-quota quantity conditional on purchase of domestic production, or

(iii) limit access to an in-quota quantity only to processors or to distributors;

(d) its national government, sub-national governments, or state enterprises administer its TRQs and that the administration is not delegated to another person; and

(e) it allocates in-quota quantities under its TRQs in commercially viable shipping quantities and, to the extent possible, in the amounts that importers request.

3. Each Party shall make every effort to administer its TRQs in a manner that allows importers to fully utilize them.

4. A Party may not impose a condition on the application for or use of an in-quota quantity allocation under a TRQ on the re-export of an agricultural good.

5. A Party may not count food aid or other non-commercial shipments in determining whether an in-quota quantity under a TRQ has been filled.

6. At the request of the exporting Party, the importing Party shall consult with the exporting Party regarding the administration of the importing Party's TRQs and licenses. Those consultations shall be deemed to satisfy the requirements of Article 21.8 (Institutional Arrangements and Dispute Settlement Procedures – Consultations).

7. The in-quota quantities set out in Annex 3.4.2 correspond to calendar years, except as otherwise indicated. If this Agreement enters into force after January 31 of year 1, a Party shall pro-rate the in-quota quantity of that year for the remainder of the calendar year.

Article 3.17: Country of Origin Marking

1. Each Party shall apply, when applicable, its country of origin marking rules to a good of the other Party in accordance with Article IX of the GATT 1994. To this end, Article IX of the GATT 1994 is incorporated into and made part of this Agreement.

2. Each Party shall accord to the goods of the other Party, treatment no less favourable than that which it accords to the goods of a non-Party country with respect to the application of its country of origin marking rules in accordance with Article IX of the GATT 1994.

3. Each Party shall, in adopting, maintaining and applying a measure relating to country of origin marking, minimize the difficulties, costs and inconveniences that the measure may cause to the commerce and industry of the other Party. A Party shall permit the country of origin marking of a good of the other Party to be indicated in English, French, or Spanish. A Party may, however, as part of its general consumer information measures, require that an imported good be marked with its country of origin in the same manner as a good of that Party.

Article 3.18: Customs Valuation

The Customs Valuation Agreement governs the customs valuation rules applied by the Parties to their reciprocal trade. A Party may not make use, in that reciprocal trade, of the options and reservations permitted under Article 20 and paragraphs 2, 3, and 4 of Annex III of the Customs Valuation Agreement.

Section E – Institutional Provisions

Article 3.19: Committee on Trade in Goods and Rules of Origin

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

2. The Committee shall meet periodically, and at any other time at the request of either Party, or the Commission, to ensure the effective implementation and administration of this Chapter, Chapter Four (Rules of Origin), Chapter Five (Customs Procedures), Chapter Six (Trade Facilitation), Chapter Nine (Emergency Action), and the Uniform Regulations. In this regard, the Committee shall:

(a) monitor the implementation and administration by the Parties of this Chapter, Chapter Four (Rules of Origin), Chapter Five (Customs Procedures), Chapter Six (Trade Facilitation), Chapter Nine (Emergency Action), and the Uniform Regulations, to ensure their uniform interpretation;

(b) at the request of either Party, review a proposed modification of or addition to this Chapter, Chapter Four (Rules of Origin), Chapter Five (Customs Procedures), Chapter Six (Trade Facilitation), Chapter Nine (Emergency Action), or the Uniform Regulations;

(c) recommend to the Commission any modification of or addition to this Chapter, Chapter Four (Rules of Origin), Chapter Five (Customs Procedures), Chapter Six (Trade Facilitation), Chapter Nine (Emergency Action), the Uniform Regulations, or any other provision of this Agreement, which may be required to conform with a change to the Harmonized System; and

(d) consider any other matter relating to the Parties' implementation and administration of this Chapter, Chapter Four (Rules of Origin), Chapter Five (Customs Procedures), Chapter Six (Trade Facilitation), Chapter Nine (Emergency Action), and the Uniform Regulations referred to it by:

(i) a Party,

(ii) the Customs Procedures Sub-Committee established under Article 5.14 (Customs Procedures - The Customs Procedures Sub-Committee), 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 sub-paragraph 2 (b) or (d) within 30 days of that referral, either Party may request a meeting of the Commission under Article 21.1 (Institutional Arrangements and Dispute Settlement Procedures – Free Trade Commission).

4. The Parties hereby establish a Sub-Committee on Agriculture, composed of representatives of each Party, that:

(a) shall provide a forum for the Parties to discuss issues relating to market access for agricultural goods;

(b) shall monitor the implementation and administration of this Chapter, Chapter Four (Rules of Origin), Chapter Six (Trade Facilitation), Chapter Nine (Emergency Action), and the Uniform Regulations as they affect agricultural goods;

(c) shall meet periodically, or whenever so requested by either Party;

(d) shall refer to the Committee on Trade in Goods and Rules of Origin any matter under sub-paragraph (b) on which it has been unable to reach a decision;

(e) shall submit to the Committee on Trade in Goods and Rules of Origin for its consideration any decision reached under this paragraph;

(f) shall report to the Committee on Trade in Goods and Rules of Origin;

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

(h) may review the overall operation of the agricultural special safeguard mechanism in Article 3.15.

5. Each Party, to the extent possible, shall take the measures necessary to implement any modification of or addition to this Chapter, Chapter Four (Rules of Origin), Chapter Five (Customs Procedures), Chapter Six (Trade Facilitation), Chapter Nine (Emergency Action), and the Uniform Regulations within 180 days of the date on which the Commission approves the modification or addition.

6. The Parties shall convene at the request of either Party a meeting of their officials responsible for customs, immigration, inspection of food and agricultural products, border inspection facilities, or regulation of transportation, to address issues related to movement of goods through a Party’s port of entry.

7. This Chapter does not preclude a Party from issuing a determination of origin or an advance ruling relating to a matter under consideration by the Committee on Trade in Goods and Rules of Origin, or from taking other action it considers necessary, pending a resolution of the matter under this Agreement.

Annex 3.1

Textile and Apparel Goods

Section 1: Scope and Coverage

This Annex applies to the textile and apparel goods set out in the Section XI: Textiles and Textile Articles (Chapters 50 through 63) and subheading 9404.90 of the Harmonized System.

Section 2: Definitions

For the purposes of this Annex:

competent investigating authority means the "competent investigating authority" of a Party as defined in Article 9.1 (Emergency Action – Definitions);

exporting Party means the Party from whose territory a textile or apparel good is exported;

importing Party means the Party into whose territory a textile or apparel good is imported;

square metres equivalent (SME) means that unit of measurement that results from the application of the conversion factors set out in Schedule 1 (Conversion Factors) to a primary unit of measure such as unit, dozen or kilogram;

tariff preference level (TPL) means a mechanism that provides for the application of a customs duty at a preferential rate to imports of a particular good up to a specified quantity, and at a different rate to imports of that good that exceed that quantity;

textile and apparel transition period means the 5 year period beginning on the date of entry into force of this Agreement.

Section 3: Bilateral Emergency Actions (Tariff Actions)

1. A Party may adopt an action described in paragraph 2 if, as a result of the reduction or elimination of a duty provided for in this Agreement, a textile or apparel good benefiting from preferential tariff treatment under this Agreement is being imported into the Party's territory in such increased quantities, in absolute terms or relative to the domestic market for that good, and under such conditions as to cause serious damage, or actual threat of serious damage, to a domestic industry producing a like or directly competitive good.

2. If the conditions set out in paragraphs 1, and 3 through 6 are met, a Party may, to the extent necessary to remedy the serious damage, or actual threat thereof:

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

(b) increase the rate of duty on the good to a level not exceeding the lesser of the most favoured nation (MFN) applied rate of duty in effect:

(i) at the time the action is taken, and

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

3. In determining serious damage, or actual threat thereof, the Party:

(a) shall examine the effect of increased imports on the particular industry, as reflected in changes in such relevant economic variables as output, productivity, utilization of capacity, inventories, market share, exports, wages, employment, domestic prices, profits, and investment, none of which is necessarily decisive; and

(b) may not consider changes in technology or consumer preference as factors supporting a determination of serious damage or actual threat of serious damage.

4. The importing Party may apply an action described in paragraph 2 only following an investigation by its competent investigating authority.

5. A Party shall deliver without delay to the other Party written notice of its intent to take an action described in paragraph 2, and on request shall enter into consultations with that Party.

6. A Party may not maintain an action described in paragraph 2:

(a) for a period exceeding 3 years, unless the Party whose good is subject to the action consents; or

(b) beyond the expiration of the textile and apparel transition period.

7. A Party may not apply an action described in paragraph 2 to the same good more than once.

8. On termination of an action described in paragraph 2, the rate of duty shall not exceed the rate that, according to the Party's Schedule to Annex 3.4.1 for the staged elimination of the tariff, would have been in effect 1 year after the adoption of the action. Beginning on January 1 of the year after the termination of the action, the Party that has taken the action shall:

(a) set the rate of duty at the rate that would have been in effect, but for the action, according to its Schedule to Annex 3.4.1 for the staged elimination of the tariff; or

(b) eliminate the tariff in equal annual stages ending on the date determined by Annex 3.4.1 for the elimination of the tariff.

9. A Party that applies an action under paragraph 2 shall provide to the other Party mutually accepted trade liberalizing compensation in the form of concessions with substantially equivalent trade effects or with a value equivalent to the value of the additional duties expected to result from the action. Those concessions shall be limited to the textile and apparel goods set out in Section 1, unless the Parties decide otherwise. If the Parties are unable to decide on compensation, the Party against whose good the action is taken may take tariff action with trade effects substantially equivalent to the action taken under this Section against any goods imported from the other Party. The Party taking the tariff action shall only apply the action for the period necessary to achieve the substantially equivalent effects.

10. A Party may not apply, with respect to the same good at the same time, an action under paragraph 2 and:

(a) an emergency action under Chapter Nine (Emergency Action); or

(b) a measure under Article XIX of GATT 1994 and the Agreement on Safeguards.

Section 4: Short Supply

1. For the purposes of this Section, “short-supply allowance” means temporarily considering a yarn or fabric from non-Parties as originating for the purpose of determining whether a good of Chapters 50 through 63 of the Harmonized System is originating.

2. The Party shall implement a short-supply allowance following a request from the other Party, based on information it considers necessary, if it determines that the yarn or fabric is not available in commercial quantities in a timely manner in the territory of either Party.

3. The Party receiving a request from the other Party shall, to the extent possible, make a short-supply determination within 45 days of receiving the request.

4. A person of a Party may request a short supply determination from that Party. The Party receiving that request shall notify the other Party of the request to the extent possible within 10 days of receiving the request.

5. A Party shall implement a short-supply allowance in accordance with its legal procedures.

6. A Party may decline to implement a short-supply allowance if the other Party does not implement a short-supply allowance for the same yarn or fabric.

7. Soon after the entry into force of this Agreement, the Parties shall commence work towards establishing procedures to guide the administration of the short-supply determinations and allowances referred to in this Section.

Section 5: Tariff Preference Levels

Apparel

1. Each Party shall apply the rate of duty applicable to originating goods set out in its Schedule to Annex 3.4.1, up to an annual quantity of 4 million SME, to apparel goods provided for in Chapters 61 and 62 of the Harmonized System, that are both cut (or knit to shape) and sewn or otherwise assembled in the territory of a Party from fabric or yarn produced or obtained outside the territory of the Parties, and that meet other applicable conditions for preferential tariff treatment under this Agreement.

Fabric and Made-Up Goods

2. Each Party shall apply the rate of duty applicable to originating goods set out in its Schedule to Annex 3.4.1, up to an annual quantity of 1 million SME, to the following goods that meet other applicable conditions for preferential tariff treatment under this Agreement:

(a) fabric and made-up textile goods provided for in Chapters 51 through 55, 58, 60 and 63 of the Harmonized System, that are:

(i) woven or knit in a Party from yarn produced or obtained outside the territory of the Parties, or

(ii) knit in a Party from yarn spun in a Party from fiber or filaments produced or obtained outside the territory of the Parties; or

(b) goods of subheading 9404.90 that are finished and cut and sewn or otherwise assembled in the territory of a Party from fabric or yarn produced or obtained outside the territory of the Parties.

3. The SME quantities specified in paragraphs 1 and 2 are determined in accordance with the conversion factors in Schedule 1 (Conversion Factors).

4. Textile or apparel goods that enter the territory of a Party under paragraphs 1 or 2 are not considered to be originating goods.

Section 6: Certification and Verification Requirements

Before a non-originating good may benefit from preferential tariff treatment under Section 5, the Parties must:

(a) establish the documentation or certification requirements for the importation of the goods for which the preferential tariff treatment may be claimed; and

(b) notify each other in writing of the way eligibility of the goods for that preferential tariff treatment will be verified by the exporting Party.

Schedule 1 to Annex 3.1

(Textiles and Apparel Goods)

Conversion Factors

1. The conversion factor for the primary units of measure of kilograms, numbers and pairs is one-to-one SME, unless otherwise specified in this Schedule.

2. For the purposes of this Schedule only, reference to the sub-heading code is based on the 2012 Harmonized Commodity Description and Coding System (HS).

3. For the following HS codes, with kilograms as the primary unit of measure, the conversion factors are as follows:

HS Code	Kilograms/SME
511119	1.9
551323	1.1
580110	2.8
580300	1.9
580410	13.6
580421	13.6
580429	13.6
580430	13.6
580500	9.7
580610	2.8
580620	13.6
580631	13.6
580632	13.6
580639	11.1
580640	13.5
580710	12.0
580790	11.4
580810	13.6
580890	12.5

HS Code	Kilograms/SME
580900	13.6
581010	12.5
581091	13.6
581092	13.6
581099	12.5
581100	13.6
600110	6.0
600121	6.0
600122	6.0
600129	6.0
600191	6.0
600192	6.0
600199	6.0
600240	6.0
600290	6.0
600310	2.8
600320	6.0
600330	6.0
600340	6.0
600390	6.0
600410	6.0
600490	6.0
600521	6.0
600522	6.0
600523	6.0
600524	6.0
600531	6.0
600532	6.0
600533	6.0
600534	6.0
600541	6.0
600542	6.0
600543	6.0
600544	6.0
600590	6.0
600610	2.8

HS Code	Kilograms/SME
600621	6.0
600622	6.0
600623	6.0
600624	6.0
600631	6.0
600632	6.0
600633	6.0
600634	6.0
600641	6.0
600642	6.0
600643	6.0
600644	6.0
600690	6.0
611090	2.6
611120	6.3
611130	6.3
611190	6.3
611220	10.3
611231	14.4
611239	12.1
611241	14.4
611249	12.1
611490	12.5
611510	9.3
611521	14.4
611522	14.4
611780	9.5
611790	10.3
620920	6.3
620930	6.3
620990	6.3
621010	13.9
621111	12.1
621112	12.5
621120	10.3
621410	14.4

HS Code	Kilograms/SME
621420	3.7
621430	14.4
621440	14.4
621510	14.4
621520	14.4
621590	8.2
621710	9.8
621790	10.3
630120	2.4
630130	8.5
630140	5.5
630190	5.5
630229	3.7
630239	3.7
630240	12.4
630251	8.5
630253	14.4
630259	14.4
630291	8.5
630293	14.4
630312	14.4
630319	12.4
630391	8.5
630392	14.4
630399	14.4
630491	8.9
630492	8.5
630493	14.4
630499	9.0
630510	14.4
630520	8.5
630532	14.4
630533	14.4
630539	14.4
630590	14.4
630612	14.4

HS Code	Kilograms/SME
630619	12.4
630622	12.4
630629	12.4
630630	12.4
630691	8.5
630699	14.4
630710	11.4
630720	11.4
630790	11.4
630800	10.8
630900	8.5

4. For the following HS Codes, with units as the primary unit of measure, the conversion factors are as follows:

HS Code	Units/SME
610120	2.9
610130	2.9
610190	3.2
610210	3.8
610220	2.9
610230	2.9
610290	2.9
610310	3.8
610322	3.5
610323	3.5
610329	3.5
610331	2.5
610332	2.5
610333	2.5
610339	2.5
610341	2.1
610342	3.7
610343	5.6
610349	5.2

HS Code	Units/SME
610413	3.8
610419	3.8
610422	3.5
610423	3.5
610429	3.5
610431	3.8
610432	2.9
610433	2.9
610439	2.9
610441	3.4
610442	3.2
610443	3.2
610444	3.2
610449	3.2
610451	1.3
610452	1.2
610453	1.2
610459	1.2
610461	2.1
610462	3.7
610463	5.6
610469	5.2
610510	0.5
610520	1.3
610590	1.0
610610	0.5
610620	1.0
610690	1.0
610711	0.7
610712	1.1
610719	1.0
610721	3.6
610722	3.6
610729	3.7
610791	3.5
610799	3.6

HS Code	Units/SME
610811	1.1
610819	0.9
610821	0.8
610822	1.1
610829	0.9
610831	3.6
610832	3.6
610839	3.7
610891	3.5
610892	3.5
610899	3.6
610910	0.6
610990	1.4
611011	1.0
611012	1.0
611019	1.0
611020	1.5
611030	1.9
611211	3.5
611212	3.5
611219	3.5
611300	12.6
611420	6.1
611430	10.4
611710	8.1
620111	3.8
620112	2.9
620113	2.9
620119	2.9
620191	3.8
620192	2.9
620193	2.9
620199	2.9
620211	3.8
620212	2.9
620213	2.9

HS Code	Units/SME
620219	2.9
620291	3.8
620292	2.9
620293	2.9
620299	2.9
620311	3.8
620312	3.8
620319	3.8
620322	3.5
620323	3.5
620329	3.5
620331	2.5
620332	2.5
620333	2.5
620339	2.5
620341	2.2
620342	4.1
620343	7.8
620349	4.5
620411	3.8
620412	3.8
620413	3.8
620419	3.8
620421	3.5
620422	3.5
620423	3.5
620429	3.5
620431	3.8
620432	2.9
620433	2.9
620439	2.9
620441	3.4
620442	3.2
620443	3.2
620444	3.2
620449	3.2

HS Code	Units/SME
620451	1.3
620452	1.2
620453	1.2
620459	1.2
620461	2.2
620462	4.1
620463	6.5
620469	4.5
620520	1.6
620530	1.6
620590	1.4
620610	1.7
620620	1.6
620630	1.0
620640	1.0
620690	1.4
620711	0.8
620719	1.1
620721	3.6
620722	3.6
620729	3.7
620791	1.7
620799	2.4
620811	1.1
620819	0.9
620821	3.6
620822	3.6
620829	3.7
620891	1.5
620892	1.7
620899	2.3
621020	2.9
621030	2.9
621040	11.1
621050	11.1
621132	6.2

HS Code	Units/SME
621133	10.0
621139	6.9
621141	3.3
621142	5.7
621143	8.8
621149	9.3
621210	7.6
621220	7.6
621230	7.6
621290	12.5
621490	12.5
630110	5.5
630210	5.7
630221	4.3
630222	4.0
630231	4.3
630232	4.0
630260	5.3
630299	11.1
630411	5.7
630419	5.5
630640	14.4

5. For the following HS Codes, with pairs as the primary unit of measure, the conversion factors are as follows:

HS Code	Pairs/SME
611529	8.2
611530	0.3
611594	0.2
611595	0.3
611596	0.3
611599	0.3
611610	0.2
611691	0.2

HS Code	Pairs/SME
611692	0.2
611693	0.2
611699	0.2
621600	0.2

6. For the following HS Codes, with dozens as the primary unit of measure, the conversion factors are as follows:

HS Code	Dozens/SME
621320	1.4
621390	6.9

Annex 3.3

Exceptions to Articles 3.3 and 3.9

Section I – Canadian Measures

Notwithstanding Articles 3.3 and 3.9, Canada may adopt or maintain:

(a) a measure, including that measure's continuation, prompt renewal, or amendment, in respect of the following:

(i) the export of logs of all species,

(ii) the export of unprocessed fish pursuant to applicable provincial legislation,

(iii) the importation of goods of the prohibited provisions of tariff items 9897.00.00, 9898.00.00, and 9899.00.00 referred to in the Schedule of the *Customs Tariff*,

(iv) Canadian excise duties on absolute alcohol used in manufacturing under the existing provisions of the *Excise Act, 2001*, S.C. 2002, c.22, as amended,

(v) the use of ships in the coasting trade of Canada, or

(vi) the internal sale and distribution of wine and distilled spirits; or

(b) an action authorized by the Dispute Settlement Body of the WTO in a dispute between the Parties under the WTO Agreement.

Section II – Honduras Measures

Notwithstanding Articles 3.3 and 3.9, Honduras may adopt or maintain:

(a) a measure, including that measure's continuation, prompt renewal, or amendment, in respect of the following:

(i) controls on the exportation of wood from broadleaved forests pursuant to Decree No. 323-98 of December 29, 1998,

(ii) controls on the importation of arms and ammunitions pursuant to Article 292 of Decree No. 131 of January 11, 1982, or

(iii) controls on the importation of motor vehicles older than 7 years and buses older than 10 years pursuant to Article 7 of Decree No. 194-2002 of May 15, 2002, which do not apply to remanufactured goods; or

(b) an action authorized by the Dispute Settlement Body of the WTO.

Annex 3.4.1

Tariff Elimination

1. For the purposes of eliminating customs duties in accordance with Article 3.4, interim staged rates shall be rounded down, except as set out in each Party's Schedule to this Annex, at least to the nearest tenth of a percentage point or, if the rate of duty is expressed in monetary units, at least to the nearest 0.001 of the official monetary unit of the Party.

2. Except as otherwise provided in a Party's Schedule to this Annex, the following staging categories apply to the elimination of customs duties by each Party pursuant to Article 3.4:

(a) duties on originating goods shall be eliminated entirely and those goods shall be duty-free on the date this Agreement enters into force:

(i) for Honduras, for goods provided for in the items in staging category A in the Schedule of Honduras, and

(ii) for Canada, for goods of Chapters 1 through 97 that are not listed in the Schedule of Canada;

(b) duties on originating goods provided for in the items in staging category B in a Party's Schedule shall be removed in 3 equal annual stages beginning on the date this Agreement enters into force, and such goods shall be duty-free, effective January 1 of year 3;

(c) duties on originating goods provided for in the items in staging category C in a Party's Schedule shall be removed in 5 equal annual stages beginning on the date this Agreement enters into force, and such goods shall be duty-free, effective January 1 of year 5;

(d) duties on originating goods provided for in the items in staging category D in a Party's Schedule shall be removed in 7 equal annual stages beginning on the date this Agreement enters into force, and such goods shall be duty-free, effective January 1 of year 7;

(e) duties on originating goods provided for in the items in staging category F in a Party's Schedule shall be removed in 10 equal annual stages beginning on the date this Agreement enters into force, and such goods shall be duty-free, effective January 1 of year 10;

(f) duties on originating goods provided for in the items in staging category F1 shall be removed in 10 stages. On the date this Agreement enters into force, duties shall be reduced by 2% of the base rate, and by an additional 2% of the base rate on January 1 of year 2. On January 1 of year 3 duties shall be reduced by an additional 8% of the base rate, and by an additional 8% of the base rate each year thereafter through year 6. On January 1 of year 7, duties shall be reduced by an additional 16% of the base rate, and by an additional 16% of the base rate each year thereafter through year 9, and such goods shall be duty-free effective January 1 of year 10;

(g) duties on originating goods provided for in the items in staging category G in a Party's Schedule shall be removed in 12 equal annual stages beginning on the date this Agreement enters into force, and such goods shall be duty-free, effective January 1 of year 12;

(h) duties on originating goods provided for in the items in staging category H in a Party's Schedule shall be removed in 15 equal annual stages beginning on the date this Agreement enters into force, and such goods shall be duty-free, effective January 1 of year 15;

(i) duties on originating goods provided for in the items in staging category H1 shall remain at base rates for years 1 through 6. Beginning January 1 of year 7, duties shall be reduced by 8% of the base rate, and by an additional 8% of the base rate each year thereafter through year 11. On January 1 of year 12, duties shall be reduced by an additional 15% of the base rate, and by an additional 15% of the base rate each year thereafter through year 14, and such goods shall be duty-free effective January 1 of year 15;

(j) goods provided for in the items in staging category E in a Party's Schedule shall continue to receive most-favoured-nation treatment.

3. The base rate of customs duty and staging category for determining the interim rate of customs duty at each stage of reduction for an item is specified in a Party's Schedule to this Annex.

4. For the purposes of this Annex and a Party's Schedule to this Annex, beginning in year 2, each annual stage of tariff reduction shall take effect on January 1 of the relevant year.

5. The Parties agree that:

(a) Canada's Schedule is authentic in the English and French languages; and

(b) Honduras' Schedule is authentic in the Spanish language.

Schedule of Canada

(TARIFF SCHEDULE ATTACHED AS SEPARATE VOLUME)

Schedule of Honduras

(TARIFF SCHEDULE ATTACHED AS SEPARATE VOLUME)

Annex 3.4.2

Tariff Rate Quotas

Schedule of Honduras

1. For the purposes of this Schedule, “Prime”, “AAA”, “AA” and “A” beef means “Canada Prime”, “Canada AAA”, “Canada AA” and “Canada A” grades of beef as defined in the Canadian *Livestock and Poultry Carcass Grading Regulations* (SOR/92-541), as amended.

Prime and AAA Beef

2. Honduras shall eliminate customs duties on originating goods provided in the items listed below, in accordance with staging category H, described in paragraph 2(h) of Annex 3.4.1. Honduras shall also provide duty free access for originating goods in the calendar years specified below, up to the quantity specified below for that year:

Sistema Arancelario Centroamericano (SAC)	Year	Quantity (Metric Tonnes)
02012000A 02013000A 02022000A 02023000A	1	300
	2	315
	3	330
	4	345
	5	360
	6	375
	7	390
	8	405
	9	420
	10	435
	11	450
	12	465
	13	480
	14	495
	15	Unlimited

AA and A Beef

3. Honduras shall eliminate customs duties on originating goods provided in the items listed below, in accordance with staging category H1, described in paragraph 2(i) of Annex 3.4.1. Honduras shall also provide duty free access for originating goods in the calendar years specified below, up to the quantity specified below for that year:

Sistema Arancelario Centroamericano (SAC)	**Year**	**Quantity (Metric Tonnes)**
02012000B 02013000B 02022000B 02023000B	1	200
	2	210
	3	220
	4	230
	5	240
	6	250
	7	260
	8	270
	9	280
	10	290
	11	300
	12	310
	13	320
	14	330
	15	Unlimited

Pork

4. Honduras shall eliminate customs duties on originating goods provided in the items listed below, in accordance with staging category H1, described in paragraph 2(i) of Annex 3.4.1. Honduras shall also provide duty free access for originating goods in the calendar years specified below, up to the quantity specified below for that year:

Sistema Arancelario Centroamericano (SAC)	**Year**	**Quantity (Metric Tonnes)**
02031100 02031200 02031900 02032100 02032200 02032900	1	1,644
	2	1,726
	3	1,808
	4	1,890
	5	1,972
	6	2,054
	7	2,136
	8	2,218
	9	2,300
	10	2,382
	11	2,464
	12	2,546
	13	2,628
	14	2,710
	15	Unlimited

Sugar – with net exporter condition

5. Customs duties on originating goods provided for in the items listed below are exempt from tariff elimination in accordance with staging category “E”, described in paragraph 2(j) of Annex 3.4.1. Nevertheless, provided that Canada meets the “net exporter” condition, the following aggregate quantities shall be free of customs duty in a calendar year specified below, and shall not exceed the quantity specified below for Canada in each such year.

For purpose of this section, in any given year the “net exporter” condition for a good classified under subheadings: HS1701.91 and HS1701.99, will have been met if during the previous 3 years, the average Canadian production of refined beet sugar exceeds the average consumption of Canadian refined beet sugar over the same period. In order to export under this paragraph, Canada shall provide Honduras with official statistics to sufficiently demonstrate compliance under this paragraph.

Sistema Arancelario Centroamericano (SAC)	**Year**	**Aggregate Quantity (Metric Tonnes)**
1701.91.00 1701.99.00	1	1,000
	2	1,107
	3	1,214
	4	1,321
	5	1,428
	6	1,535
	7	1,642
	8	1,749
	9	1,856
	10	1,963
	11	2,070
	12	2,177
	13	2,284
	14	2,392
	15 and following	2,500

Schedule of Canada

Sugar

Customs duties on originating goods provided for in the items listed below are exempt from tariff elimination in accordance with staging category E, described in paragraph 2(j) of Annex 3.4.1. Nevertheless, Canada shall provide duty-free access for originating goods in the calendar years specified below, up to the quantity specified below for that year:

Tariff Items	Year	Aggregate Quantity (Metric Tonnes)
1701.91.00 1701.99.00 1702.90.11 1702.90.12 1702.90.13 1702.90.14 1702.90.15 1702.90.16 1702.90.17 1702.90.18 1702.90.20 1702.90.30 1702.90.60	1	2,500
	2	2,678
	3	2,857
	4	3,035
	5	3,214
	6	3,392
	7	3,571
	8	3,749
	9	3,928
	10	4,106
	11	4,285
	12	4,463
	13	4,642
	14	4,821
	15 and following	5,000

Annex 3.15

Agricultural Safeguard Measures

The quantity of a good for the purposes of Article 3.15(1) is determined as follows:

(a) for pork listed below, for a year it is the amount set out in the Trigger Level column; and

(b) for the other goods listed below, the quantity during year 1 is the amount set out in the Trigger Level column, and increases cumulatively in each subsequent year by an amount equal to the figure in the column for Annual Trigger Growth Rate.

Good	Tariff Classification	Trigger Level	Annual Trigger Growth Rate
Pork	0203.11.00 0203.12.00 0203.19.00 0203.21.00 0203.22.00 0203.29.00	130% of the amount in Annex 3.4.2	Not applicable
Other dairy products	2202.90.90	90 MT	5 MT
Onions	0703.10.11 0703.10.12	260 MT	26 MT
Vegetable oil	1507.90.00 1512.19.00 1512.29.00 1515.29.00 1516.20.90 1517.10.00 1517.90.10 1517.90.90	320 MT	32 MT

CHAPTER FOUR

RULES OF ORIGIN

Article 4.1: Definitions

For the 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, or protection from predators;

ex-factory price means the total value of materials, parts, factory overhead, labour, any other reasonable costs incurred during the normal manufacturing process, and a reasonable profit. Any costs incurred subsequent to the goods leaving the factory, such as freight, loading, and temporary storage, are not included in the ex-factory price calculation;

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

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

Generally Accepted Accounting Principles means accounting principles accepted and commonly used in the territory of each Partywith regard to the recording of income, costs, expenses, assets, and liabilities involved in the disclosure of information and preparation of financial statements. These principles may be broad guidelines of general application, as well as those standards, practices, and procedures usually employed in accounting;

goodincludes a product, article, or material;

good wholly obtained or produced entirely in the territory of one or bothof the Parties means:

(a) amineral or other non-living natural resource extracted in or taken from the territory of one or both of the Parties;

(b) aplant or plant product harvested or gathered in the territory of one or both of the Parties;

(c) alive animal born and raised entirely in the territory of one or both of the Parties;

(d) agood obtained from a live animal in the territory of one or both of the Parties;

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

(f) fish, shellfish,or other marine life taken from the sea, seabed, or the subsoil outside the territory of one or both of the Parties by:

(i) a vessel registered or listed with a Party and entitled to fly its flag,

(ii) a vessel leased by a company established in the territory of a Party and entitled to fly its flag, or

(iii) a vessel not exceeding 15 tons gross tonnage that is licensed by a Party,

except any fish, shellfish, and other marine life subject to unilateral Canadian restrictions pursuant to Canada's *Special Economic Measures Act*, S.C. 1992, c. 17, as amended;

(g) a good produced on board a factory vessel from a good referred to in subparagraph (f), provided thatthe factory vessel is registered or listed with a Party, or leased by a company established in the territory of a Party, and entitled to fly its flag;

(h) agood, other than fish, shellfish, or other marine life, taken or extracted from the seabed or the subsoil of the continental shelf or the exclusive economic zone of a Party;

(i) a good, other than fish, shellfish or other marine life, taken or extracted from the seabedor the subsoil, in the area outside both the continental shelf and the exclusive economic zone of a Party or of any other State, by a vessel registered or listed with a Party and entitled to fly its flag, or by a Party or person of a Partyprovided that the Party or person of the Party has rights to exploit that seabed or subsoil;

(j) waste and scrap derived from:

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

(ii) aused good collected in the territory of one or both of the Parties, provided that the good is fit only for the recovery of raw materials;

(k) a recovered good collected in the territory of one or both of the Parties and used in the territory of one or both of the Parties in the production of a remanufactured good; and

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

identical goods means “identical goods” as defined in Article 15.2(a) of the Customs Valuation Agreement;

indirect material means a good used in the production, testing, or inspection of a good but which is 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) aspare part or material used in the maintenance of equipment or buildings;

(d) alubricant, grease, compounding material,or other material used in the production of a good or in the operation of equipment or a building;

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

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

(g) acatalyst or solvent; or

(h) any other good that is 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 produced by a producer of a good and used in the production of that good;

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

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 4.3(6);

non-allowable interest cost means interest cost incurred by a producer that exceed, by 700 basis points or more, the applicable national government interest rate identified for comparable maturities;

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

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

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

production means growing, mining, raising, harvesting, fishing, trapping, hunting, manufacturing, processing, assembling, or disassembling a good;

reasonably allocate means to apportion in a manner appropriate to the circumstances;

recovered good means a material in the form of an individual part that is the result of:

(a) the disassembly of a used good fit only for recovery into individual parts; and

(b) cleaning, inspecting, testing, or other processes as necessary for improvement to working condition;

remanufactured good means a good classified under Chapter 84, 85, 87, or 90 of the Harmonized System, except goods classified underheading 84.18, 84.24, or 85.16,subheading 8414.51 or 8414.59,or parts of fans classified under subheading 8414.90, that:

(a) is entirely or partially composed of recovered goods;

(b) has a life expectancy and factory warranty similar to a like new good; and

(c) is identified as a remanufactured good if required under the domestic law of the importing Party;

royalty means a payment, including a payment under a technical assistance or similar agreement, made as consideration for the use or right to use a copyright, literary, artistic, or scientific work, patent, trademark, design, model, plan, secret formula, or process;but does not include a payment under a technical assistance or similar agreement that is related to specific services, such as:

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

(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 cost means a cost related to:

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

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

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

(d) recruiting or training of sales promotion, marketing,or after-sales service personnel, or after-sales training of customers' employees, if those costs are identified separately for sales promotion, marketing,or after-sales service of a good on the financial statements or cost accounts of the producer;

(e) product liability insurance;

(f) office supplies for sales promotion, marketing,or after-sales service of a good if those costs are identified separately for sales promotion, marketing,or after-sales service of a good on the financial statements or cost accounts of the producer;

(g) telephone, mail, or other communications, if those costs are identified separately for sales promotion, marketing,or after-sales service of a good on the financial statements or cost accounts of the producer;

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

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

(j) payment by the producer to other persons for warranty repairs;

shipping and packing cost means a cost incurred for packing a good for shipment and forshipping the good from the point of direct shipment to the buyer, but does not include the cost of preparing or packaging the good for retail sale;

similar goods means "similar goods"as defined in Article 15.2(b) of the Customs Valuation Agreement;

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

transaction value means:

(a) the price actually paid or payable for a good or material in a transaction with the producer of the good or material in accordance with the principles of Article 1 of the Customs Valuation Agreement, adjusted according to 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; or

(b) ifthere is no transaction value or the transaction value is unacceptable under Article 1 of the Customs Valuation Agreement, the value determined in accordance with Articles 2 through 7 of the Customs Valuation Agreement;

used means used or consumed in the production of a good.

Article 4.2: Originating Goods

Except as otherwise provided in this Chapter, a good originates in the territory of a Party if:

(a) the good is wholly obtained or produced entirely in the territory of one or both of theParties;

(b) each of the non-originating materials used in the production of the goodundergoes an applicable change in tariff classification as set out in Annex 4.1, as a result of production occurring entirely in the territory of one or both of the Parties; or otherwise satisfies the applicable requirements of that Annex if a change in tariff classification is not 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 material; or

(d) except for a good of Chapter 39 or Chapters 50 through 63 of the Harmonized Systemor except as provided in Annex 4.1:

(i) the good is produced entirely in the territory of one or both of the Parties,

(ii) anon-originating material used in the production of the good cannot undergo a change in tariff classification because both the good and the non-originating material are classified in the same subheading or heading that is not further subdivided into subheadings,

(iii) the regional value content of the good, determined in accordance with Article 4.3, is not lower than 35% when the transaction value method is used, or 25% when the net cost method is used, and

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

Article 4.3: Regional Value Content

1. For the purposes of this Article:

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

NC means the net cost of the good;

TV means the transaction value of the goodadjusted on an ex-factory price basis as defined in Article 4.1; and

VNM means the value of non-originating materials used by the producer in the production of the good calculated in accordance with paragraph 8.

2. Except as provided in paragraphs 3 and 4, each Party shall provide that an exporter or a producer calculates the regional value content of a good on the basis of the following transaction value method:

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

3. Each Party shall provide that an exporter or a producer of an automotive good of heading 87.01, subheading 8703.21 through 8703.90, or heading 87.04 through 87.08 may calculate the regional value content on the basis of the following net cost method:

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

4. Each Party shall provide that an exporter or a producer of an automotive good of subheading 8407.31 through 8407.34, heading 87.02, or subheading 8703.10 may calculate the regional value content 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.

5. For the purposes of calculating the regional value content of a good under paragraph 2 or 3, the value of non-originating materials used by the producer in the production of a good does not include the value of:

(a) Non-originating material or non-originating intermediate material used to produce originating material that is subsequently used in the production of a good; or

(b) Non-originating material used by another producer to produce an originating material that is subsequently acquired and used in the production of a good.

6. For the 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 cost, royalty, shipping and packing cost, andnon-allowable interest cost that is included in the total cost of all those 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,or after-sales service cost, royalty, shipping and packing cost, and non-allowable interest cost that is 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 cost, royalty, shipping and packing cost, or non-allowable interest cost.

7. If a producer calculates the net cost in accordance with paragraph 6, any sales promotion, marketingand after-sales service cost, royalty, shipping and packing cost, and non-allowable interest cost that are included in the value of a material used in the production of the good are not subtracted from the net cost in the calculation under paragraph 3.

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

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

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

(c) if not covered under subparagraph (a) or (b), includes freight, insurance, packing and all other costs incurred in transporting the material to the place of importation; or

(d) in the case of a domestic transaction, is determined in accordance with the principles of the Customs Valuation Agreement in the same manner as an international transaction, with any modificationsrequired by the circumstances.

9. The value of an intermediate material is:

(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 sum of all costs that comprise the total cost incurred with respect to that intermediate material that can be reasonably allocated to that intermediate material.

10. The value of an indirect material is based on the Generally Accepted Accounting Principles applicable in the territory of the Party in which the indirect material is used in the production, testing, or inspection of a good, or in the maintenance of buildings or the operation of equipment associated with the production of a good.

Article 4.4: Accumulation

1. For the purposes of determining whether a good is originating, the production of the good in the territory of one or both of the Parties by one or more producers is, at the choice of the exporter or producer of the good, considered to have been performed in the territory of either of the Parties by that exporter or producer, if:

(a) all non-originating material used in the production of the good undergoes an applicable tariff classification change set out in Annex 4.1 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. Subject to paragraph 3, if each Party has a trade agreement thatestablishes or that leads to the establishment of a free trade area or customs union with the same non-Party, as permitted by the WTO Agreement, the territory of that non-Party is deemed to form part of the territory of the free trade area established by this Agreement for the purposes of determining whether a good is originating under this Agreement.

3. A Party shall give effect to paragraph 2 only once provisions with an effect equivalent to paragraph 2 are in force between each Party and the non-Party, and upon agreement by the Parties on whether to limit those provisions to specified goods or under specified conditions.

Article 4.5: ***De Minimis***

1. Except as provided in paragraphs 2 through 4, a good is originating if the value of all non-originating materialused in the production of the good that does not undergo an applicable change in tariff classification, set out in Annex 4.1,does not exceed 10% of the transaction value of the good, calculated in accordance with Article 4.3, provided that:

(a) if the good is subject to a regional value-content requirement, the value of the non-originating material is 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. Except as provided in Annex 4.1, paragraph 1 does not apply to a non-originating material used in the production of a good of Chapters 1 through 24 of the Harmonized System unless the non-originating material is provided for in a different subheading from the good for which origin is being determined under this Article.

3. A good of Chapters 50 through 60of the Harmonized System that does not originate because certain non-originating yarn used in the production of the good does not fulfil the requirementsset out for that good in Annex 4.1 is nonetheless originating if the total weight of all such yarn does not exceed 10**%** of the total weight of that good.

4. A good of Chapters 61 through 63 or subheading 9404.90 of the Harmonized System that does not originate because certain non-originating yarn used in the production of the component of the good that determines the tariff classification of that good does not fulfil the requirements set out for that good in Annex 4.1 is nonetheless originating if the total weight of all such yarn in that component does not exceed 10% of the total weight of that component.

Article 4.6: Fungible Goods and Materials

For the purposes of determining whether a good is originating:

(a) if originating and non-originating fungible materials are used in the production of a good, the determination of whether the fungible material is originating need not be made through the identification of any specific fungible material, but may be made in accordance with the Generally Accepted Accounting Principles of the Party in which the production takes place, applied asset out in Annex 4.5; and

(b) if originating and non-originating fungible goods are physically combined or mixed in inventory and, prior to their exportation, do not undergo any production or any other operation in the territory of the Party in which they were physically combined or mixed in inventory, other than unloading, reloading, or any other operation necessary to preserve the goods in good condition or to transport the goods for exportation tothe other Party's territory, the determination of whether the good is originating may be made in accordance with the Generally Accepted Accounting Principles of the Party from which the good is exported, applied as set out in Annex 4.5.

Article 4.7: Sets or Assortments of Goods

Except as provided in Annex 4.1, a set as referred to in Rule 3 of the *General Rules for the Interpretation of the Harmonized System*, or an assortment of goodsis originating if:

(a) all of the component goods in the set or assortment are originating; or

(b) when the set or assortment contains non-originating component goods:

(i) at least one of the component goodsis originating, and

(ii) the regional value content of the set or assortment is not less than 50%of the set or assortment's transaction value.

Article 4.8: Accessories, Spare Parts and Tools

1. An accessory, spare part,or tool delivered with a good that forms part of the good's standard accessories, spare parts, or tools, is originating if the good is originating.

2. The accessory, spare part, or tool is disregarded in determining whether all non-originating material used in the production of the good undergoes the applicable change in tariff classification set out in Annex 4.1, provided that:

(a) the accessory, spare part,or tool is not invoiced separately from the good, whether or not each is listed or detailed on the invoice; and

(b) the quantity and value of the accessory, spare part, or tool are customary for the good.

Article 4.9: Indirect Materials

An indirect material is originating regardless of where it is produced.

Article 4.10: Packaging Materials and Containers for Retail Sale

If classified with a good, a packaging material or container in which a good is packaged for retail sale is disregarded in determining whether the non-originating material used in the production of the good undergoes the applicable change in tariff classification set out in Annex 4.1.

Article 4.11: Packing Materials and Containers for Shipment

A packing material or container in which a good is packed for shipment is disregarded in determining:

(a) whetherthe non-originating material used in the production of the good undergoes an applicable change in tariff classification set out in Annex 4.1; and

(b) whetherthe good satisfies any applicable regional valuecontent requirement.

Article 4.12: Transshipment

An originating good that is exported from a Party maintains its originating status only if the good:

(a) does not undergo 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; and

(b) remains under customs control while outside the territories of the Parties.

Article 4.13: Interpretation and Application

For the purposes of this Chapter:

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

(b) ifapplying Article 4.2(d)(ii), the determination of whether a heading or subheading under the Harmonized System provides for both a good and the materials that are used in the production of the good 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*;

(c) in applying the Customs Valuation Agreement under this Chapter:

(i) the principles of the Customs Valuation Agreement apply to domestic transactions, with any modifications required by the circumstances, as they would apply to international transactions,

(ii) the provisions of this Chapter take precedence over the Customs Valuation Agreement to the extent of any difference, and

(iii) the definitions in Article 4.1 take precedence over the definitions in the Customs Valuation Agreement to the extent of any difference; and

(d) all costs referred to in this Chapter must 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 4.14: Discussions and Modifications

1. The Parties shall discuss regularly to ensure that this Chapter is administered effectively, uniformly, and consistently with the spirit and objectives of this Agreement, and cooperate in the administration of this Chapter in accordance with Chapter Five (Customs Procedures).

2. If problems arise between the Parties concerning the interpretation of this Chapter, the Parties shall discuss establishing and implementing, through their respective laws or regulations, Uniform Regulations regarding the interpretation, application, and administration of this Chapter.

3. 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 actionunder Article 3.19(National Treatment and Market Access of Goods –Committee on Trade in Goods and Rules of Origin).

CHAPTER FIVE

CUSTOMS PROCEDURES

Section A – Definitions

Article 5.1: Definitions

For the purposes of this Chapter:

commercial importation means the importation of a good into the territory of a Party for:

(a) Sale; or

(b) a commercial, industrial, or like use;

competent authority means:

(a) for Canada, Canada Border Services Agency or a successor notified in writing to the other Party; and

(b) for Honduras, the Secretary of State of Industry and Commerce (*Secretaría de Estado en los Despachos de Industria y Comercio*), or a successor notified in writing to the other Party;

customs administration means the governmental authority that is responsible, under the law of a Party, for the administration of customs laws and regulations;

determination of origin means a determination regarding whether a good qualifies as originating in accordance with Chapter Four (Rules of Origin);

exporter in the territory of a Party means an exporter located in the territory of a Party that is required under this Chapter to maintain records in the territory of that Party regarding the exportation of a good;

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

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

value means value of a good or material, determined in accordance with the Customs Valuation Agreement.

The following terms have the same meaning as in Article 4.1 (Rules of Origin – Definitions):

(a) Generally accepted accounting principles,

(b) good,

(c) identical goods,

(d) indirect material,

(e) material,

(f) net cost of a good,

(g) producer,

(h) production, and

(i) transaction value.

Section B – Certification of Origin

Article 5.2: 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 originating. The Certificate of Origin may be modified after the date of entry into force, if the Parties so decide.

2. Each Party shall permit the Certificate of Origin for a good imported into its territory to be completed in English, French or Spanish.

3. Each Party shall:

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

(b) provide that, when an exporter in its territory is not the producer of the good, the exporter may complete and sign a Certificate of Origin on the basis of:

(i) the exporter's knowledge of whether the good qualifies as originating,

(ii) the exporter's reasonable reliance on the producer's written declaration that the good qualifies as originating, or

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

4. Paragraph 3 does not require a producer to provide a Certificate of Origin to an exporter.

5. A Party shall permit a Certificate of Origin to apply to:

(a) a single importation of one or more goods into the Party's territory; or

(b) multiple importations of identical goods into the Party's territory by the same importer within the period identified in the Certificate of Origin, provided that the period does not exceed 12 months.

6. A Party shall ensure that the Certificate of Origin is accepted by its customs administration for at least 1 year after the date on which the Certificate of Origin was signed.

7. A Party shall accept a Certificate of Origin that is completed and signed by the exporter or producer of a good prior to entry into force of this Agreement, if the good is originating and is imported into the territory of a Party on or after entry into force of this Agreement.

Article 5.3: 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, in the import document provided by its laws and regulations, based on a valid Certificate of Origin, that the good qualifies as originating;

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

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

(d) promptly make a corrected declaration in a manner required by the customs administration of the importing Party and pay any duties owing if the importer has reason to believe that a Certificate of Origin on which a declaration is based contains incorrect information.

2. When an importer in the territory of a Party claims preferential tariff treatment for a good imported into its territory from the territory of the other Party:

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

(b) the importing Party shall not subject the importer to penalties for making an incorrect declaration if:

(i) the importer voluntarily makes a correction to the declaration pursuant to paragraph 1(d), and

(ii) the competent authority of the importing Party has not initiated a verification of origin pursuant to Article 5.7.

3. If a good would have qualified as originating when it was imported into the territory of a Party but a claim for preferential tariff treatment was not made at that time, the importing Party shall permit the importer of the good, within 4 years after the date the good was imported, to apply for a refund of any excess duties paid because the good was not accorded preferential tariff treatment. The importer applying for a refund must submit:

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

(b) a copy of the Certificate of Origin; and

(c) any other documentation required by the importing Party that relates to the importation of the good.

Article 5.4: Exceptions

A Party shall not require a Certificate of Origin 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 a higher amount that the Party establishes, except that it may require that the invoice accompanying the importation include a statement from the exporter certifying that the good qualifies as originating;

(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 a higher amount that the Party establishes; or

(c) an importation of a good for which the importing Party has waived the requirement for a Certificate of Origin,

provided that the importation is not part of a series of importations that may reasonably be considered to have been undertaken or arranged for the purposes of avoiding the certification requirements of Articles 5.2 and 5.3.

Article 5.5: Obligations regarding Exportations

1. Each Party shall provide that:

(a) at the request of its customs administration, 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 5.2(3)(b)(iii), must provide a copy of the Certificate of Origin to the customs administration;

(b) if an exporter or a producer in its territory provided a Certificate of Origin and has reason to believe that it contains information that is incorrect, the exporter or producer must promptly notify in writing every person who received a Certificate of Origin from them of a change that could affect the accuracy or validity of the Certificate of Origin; and

(c) a false Certificate of Origin provided by an exporter or a producer in its territory for a good to be exported to the territory of the other Party is subject to legal consequences of an equivalent effect, in accordance with the customs law of that Party, as would apply to an importer in its territory that makes a false statement or representation.

2. A Party may apply a measure that the circumstances warrant if an exporter or a producer in its territory fails to comply with a requirement of this Chapter.

3. A Party may not impose penalties on an exporter or a producer in its territory that voluntarily provides written notification pursuant to paragraph (1)(b) for an incorrect Certificate of Origin.

Section C – Administration and Enforcement

Article 5.6: Records

1. Each Party shall provide that an exporter or a producer in its territory that completes and signs a Certificate of Origin must maintain in its territory for 5 years after the date on which the Certificate of Origin was signed, or for a longer period specified by the Parties, 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:

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

(b) 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

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

2. Each Party shall provide that an importer claiming preferential tariff treatment for a good imported into the Party's territory must maintain in its territory documentation relating to the importation of the good, including a copy of the Certificate of Origin, for 5 years after the date of importation of the good or for a longer period specified by the Party.

Article 5.7: Origin Verifications

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

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

(b) A visit to the premises of an exporter or a producer in the territory of the other Party to review the records referred to in Article 5.6(1) and to observe the facilities used in the production of the good; or

(c) another procedure set out in the Uniform Regulations.

2. Each Party shall allow an exporter or producer who receives a questionnaire pursuant to paragraph 1(a) at least 30 days, and no more than 60 days, from the date of receipt to return the completed questionnaire. On written request by the exporter or producer made during that period, the importing Party may grant the exporter or producer a single extension of the deadline of no more than:

(a) 30 days; or

(b) a longer period if the exceptional circumstances set out in the Uniform Regulations apply.

3. If an exporter or producer fails to provide a properly completed questionnaire within the period or extension set out in paragraph 2, the importing Party may deny preferential tariff treatment to the good in question.

4. Before conducting a verification visit under paragraph 1(b), a Party shall, through its competent authority:

(a) deliver a notification in writing of its intention to conduct the visit to:

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

(ii) the competent authority of the other Party, no less than 5 working days prior to notifying the exporter or producer referred to in sub-subparagraph (i), and

(iii) if requested by the Party in whose territory the visit is to occur, the embassy of that 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.

5. The notification referred to in paragraph 4 must include:

(a) the identity of the competent authority 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.

6. If an exporter or producer has not given its consent, in writing, to a proposed verification visit within 30 days of receipt of a notification under paragraph 4, the notifying Party may deny preferential tariff treatment to the good that was the subject of the visit.

7. The Party whose competent authority receives a notification under paragraph 4 may, within 15 days of receipt of the notification, postpone the proposed verification visit for up to 60 days from the date of that receipt or for a longer period that the Parties may decide.

8. Each Party shall allow an exporter or producer that receives notification under paragraph 4 to, on a single occasion within 15 days of receipt of the notification, request in writing that the postponement of the proposed verification visit for no more than:

(a) 60 days from the date of that receipt, or

(b) a longer period permitted by the notifying Party.

9. A Party may not deny preferential tariff treatment to a good based only on the postponement of a verification visit under paragraphs 7 or 8.

10. A Party shall permit an exporter or a producer of a good that is the subject of a verification visit by the other Party to designate 2 observers to be present during the visit, provided that:

(a) the observers participate only as observers; and

(b) the exporter or producer designate observers in time for the visit.

11. When a Party conducts a verification of origin involving a regional value content, *de minimis* calculation or any other provision in Chapter Four (Rules of Origin) to which Generally Accepted Accounting Principles may be relevant, it shall apply those principles as they apply in the territory of the Party from which the good was exported.

12. When a Party conducts a verification of origin, it shall, within 120 days after it receives the necessary information, provide the exporter or producer of the good that is the subject of the verification with a written determination of whether the good is originating, including findings of fact and the legal basis for the determination. A Party may extend that period by up to 90 days by providing a notification of extension to the exporter or producer.

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

14. Each Party shall provide that if 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 a material used in the production of the good, which differs from the tariff classification or value applied to the material by the other Party, the Party's determination does 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.

15. A Party shall not apply a determination made under paragraph 14 to an importation made before the effective date of the determination if:

(a) the competent authority of the other Party has issued an advance ruling under Article 5.10 or any other ruling on the tariff classification or on the value of that material, or has given consistent treatment to the entry of the material 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.

16. If a Party denies preferential tariff treatment to a good pursuant to a determination made under paragraph 14, it shall postpone the effective date of the denial for a period not exceeding 90 days if 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 that material by the customs administration of the other Party.

Article 5.8: Confidentiality

1. Each Party shall maintain, in accordance with its domestic law, the confidentiality of the information collected under this Chapter and shall protect that information from disclosure that could prejudice the competitive position of the person providing the information. If the Party receiving or obtaining the information is required by its domestic law to disclose the information, that Party shall notify the person or Party who provided that information.

2. Subject to paragraph 3, each Party shall ensure that the confidential information collected under this Chapter is not used for purposes other than the administration and enforcement of determinations of origin and for customs matters, except with the authorization of the person or Party who provided the confidential information.

3. A Party may allow information collected under this Chapter to be used in an administrative, judicial, or quasi-judicial proceedings instituted for failure to comply with customs related laws and regulations implementing Chapter Four (Rules of Origin) and this Chapter. A Party shall notify the person or Party who provided the information in advance of that use.

Article 5.9: Penalties

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

2. Articles 5.3(2), 5.5(3) or 5.7(9) do not prevent a Party from applying measures that are warranted by the circumstances, in accordance with its domestic law.

Section D – Advance Rulings

Article 5.10: Advance Rulings

1. Each Party shall, through its competent authority, 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 that importer, exporter, or producer of the good, concerning:

(a) whether a material imported from a non-Party used in the production of a good undergoes an applicable change in tariff classification set out in Annex 4.1 (Rules of Origin – Specific Rules of Origin) 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 set out in Article 4.3 (Rules of Origin – Regional Value Content);

(c) for the purpose of determining whether a good satisfies a regional value-content requirement under Chapter Four (Rules of Origin), 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 Agreement, for calculating the transaction value of the good or of the materials used in production of the good;

(d) whether a good is originating;

(e) 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 3.8 (National Treatment and Market Access for Goods – Goods Re-Entered after Repair or Alteration); or

(f) any other matter that the Parties decide.

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 competent authority:

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

(b) shall issue a ruling within 120 days of it obtaining all necessary information from the person requesting an advance ruling; and

(c) shall provide to the person requesting the ruling 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 either on the date of its issuance or a later date specified in the ruling.

5. Each Party shall provide to a person requesting an advance ruling the same treatment, including the same interpretation and application of provisions of Chapter Four (Rules of Origin) regarding a determination of origin, as it provides 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 Article 4.3 (Rules of Origin – Regional Value Content), or

(iv) in the application of the rules for determining 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 under Article 3.8 (National Treatment and Market Access for Goods – Goods Re-Entered after Repair or Alteration);

(b) if the ruling is not in accordance with an interpretation decided on by the Parties under Article 21.1(3)(a) (Institutional Arrangements and Dispute Settlement Procedures – Free Trade Commission) regarding Chapter Three (National Treatment and Market Access of Goods) or Chapter Four (Rules of Origin);

(c) if there is a change in a material fact or circumstance on which the ruling is based;

(d) to conform with an amendment to Chapter Three (National Treatment and Market Access of Goods), Chapter Four (Rules of Origin), this Chapter, or a modification to the Uniform Regulations; or

(e) to conform with a judicial decision or a change in its domestic law.

7. Each Party shall provide that a modification or revocation of an advance ruling:

(a) is effective on the date on which the modification or revocation is issued, or on a later date specified in the ruling; and

(b) may not be applied to a good imported before 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 the modification or revocation for up to 90 days if the person to whom the advance ruling was issued demonstrates that it has relied in good faith on that ruling to that person's detriment.

9. Each Party shall provide that, if its competent authority examines the regional value content of a good for which it has issued an advance ruling pursuant to paragraph 1(b), (c), (d) or (e), the competent authority 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. If a Party's competent authority determines that a requirement in paragraph 9 has not been satisfied, the Party may modify or revoke the advance ruling if the circumstances warrant.

11. Each Party shall provide that, if 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 if the competent authority of a Party determines that the ruling was based on incorrect information, the person to whom the ruling was issued is not subject to penalties.

12. If a Party issues an advance ruling to a person that has misrepresented or omitted the 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 the measures that are warranted by the circumstances, in accordance with its domestic law.

13. Each Party shall provide that an advance ruling will remain in effect and will be honoured if there is no change in the material facts or circumstances on which it is based.

14. A Party may decline or postpone the issuance of an advance ruling if the application involves an issue that is the subject of:

(a) a verification of origin;

(b) a review by or appeal to the competent authority; or

(c) judicial or quasi-judicial review in its territory.

Section E – Review and Appeal of Advance Rulings and Origin Determinations

Article 5.11: Review and Appeal

1. Each Party shall grant substantially the same rights of review and appeal of determinations of origin and advance rulings issued by its competent authority as it provides to importers in its territory, to a person who:

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

(b) has received an advance ruling under Article 5.10(1).

2. Further to Articles 20.5 (Transparency – Administrative Proceedings) and 20.6 (Transparency – 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 F – Uniform Regulations

Article 5.12: Uniform Regulations

1. The Parties shall establish and implement, through their respective laws, regulations or administrative policies Uniform Regulations regarding the interpretation, application and administration of this Chapter, or other matters decided by the Parties.

2. Each Party shall implement any modification of or addition to the Uniform Regulations within the period that the Parties decide.

Section G – Cooperation

Article 5.13: Cooperation

1. A Party shall notify the other Party of the following determinations, measures, and rulings:

(a) a determination of origin of a good that the Party is aware is contrary to a ruling issued by the competent authority of the other Party; or

(b) a measure establishing or significantly modifying an administrative policy that is likely to affect a future determination of origin.

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) to the extent possible, and for the purposes of facilitating the flow of trade between them, in customs related matters such 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;

(c) to the extent possible, in the harmonization of customs laboratories methods and exchange of information and personnel between the customs laboratories; and

(d) to the extent possible, in jointly organizing training programs on customs related issues, which include training for the officials and users who participate directly in customs procedures.

3. For purposes of this Article, the Parties may enter into a Customs Mutual Assistance Agreement between their customs administrations.

Article 5.14: The Customs Procedures Sub-Committee

1. The Parties hereby establish a Customs Procedures Sub-Committee, composed of representatives of the competent authorities or customs administrations of each Party. The Sub-Committee shall meet periodically at the request of a Party and shall:

(a) endeavour to decide on:

(i) the uniform interpretation, application and administration of Articles 3.6 (National Treatment and Market Access for Goods – Temporary Admission of Goods), 3.7. (National Treatment and Market Access for Goods – Duty-Free Entry of Certain Commercial Samples of Negligible Value and Printed Advertising Materials) and 3.8 (National Treatment and Market Access for Goods – Goods Re-Entered after Repair or Alteration), Chapter Four (Rules of Origin), this Chapter, and any 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) revision of 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 3.19(1) (National Treatment and Market Access for Goods – Committee on Trade in Goods and Rules of Origin), 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 or 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 decisions reached under this paragraph; and

(d) refer to the Committee on Trade in Goods and Rules of Origin a matter on which it has been unable to reach a decision.

2. This Agreement does not prevent a Party from issuing a determination of origin or an advance ruling relating to a matter under consideration by the Customs Procedures Sub-Committee or from taking any other action it considers necessary, pending a resolution of the matter under this Agreement.

CHAPTER SIX

TRADE FACILITATION

Article 6.1: Objectives and Principles

With the objectives of facilitating trade under this Agreement and of cooperating in pursuing trade facilitation initiatives on multilateral and hemispheric bases, each Party shall administer its import and export procedures and measures for goods traded under this Agreement, to the extent possible, on the basis that:

(a) procedures be efficient so as to reduce costs for importers and exporters and simplified where appropriate in order to achieve such efficiency;

(b) procedures be based on international trade instruments or international standards agreed upon by the Parties;

(c) entry procedures be transparent so as to ensure predictability for importers and exporters;

(d) measures to facilitate trade also support mechanisms for the effective enforcement of and compliance with national requirements;

(e) the personnel and procedures involved in these processes comply with international standards of integrity;

(f) the development of significant modifications to procedures of a Party include, in advance of implementation, consultations with the representatives of the trading community of that Party;

(g) procedures be based on risk assessment principles to focus compliance efforts on transactions that merit attention, thereby promoting both the effective use of resources and compliance with the obligations of importers and exporters; and

(h) the Parties encourage cooperation, technical assistance, and the exchange of information, including information on best practices, for the purpose of promoting both the application of and compliance with the trade facilitation measures in this Agreement.

Article 6.2: Specific Obligations

1. The Parties affirm their rights and obligations under Article VIII and Article X of the GATT 1994.

2. A Party shall release a good promptly, particularly a good that is unrestricted or uncontrolled. Subject to paragraph 3, each Party shall provide the option of releasing a good:

(a) at the time of the good's entry, based on the required documentation that is submitted before or at the time of arrival of the good. This does not prevent a Party, through its customs authorities, from requiring the submission of more extensive documentation through post-entry accounting and verifications, as appropriate; or

(b) at the time of arrival of the good, based on the submission of all the information necessary to obtain a final accounting of the good.

3. The Parties recognize that, for certain goods or under certain circumstances, such as goods subject to quota or to health-related or public safety requirements, a Party may require, before releasing the good, the submission of more extensive information, before or at the time of arrival of the good, to allow the competent authorities to examine the good for release.

4. Each Party shall facilitate and simplify the process and procedures for the release of low-risk goods and improve controls on the release of high-risk goods. For these purposes, each Party shall base its examination, release, and post-entry verification procedures on risk assessment principles rather than on examinations of every shipment of goods entering its territory in a comprehensive manner for compliance with all import requirements. This paragraph does not prevent a Party from conducting quality control and compliance reviews, which may require more extensive examination.

5. Each Party shall ensure that the procedures and activities of the competent authorities that maintain requirements on the import or export of goods are coordinated to facilitate trade. To this end, each Party shall take steps to harmonize the data requirements of the competent authorities with the objective of allowing importers and exporters to present all required data only once.

6. In its procedures for the clearance of express consignments, each Party shall apply, to the extent possible, the World Customs Organization's *Guidelines for the Immediate Release of Consignments by Customs*.

7. Each Party shall introduce or maintain simplified clearance procedures for the entry of goods that:

(a) are low in value; and

(b) do not generate revenue that is considered significant by the Party maintaining the simplified clearance procedures.

8. The Parties shall endeavour to both achieve common processes and to simplify the information necessary for the release of goods. To this end, the Parties shall, when appropriate, both apply existing international standards and establish a means of facilitating the electronic exchange of information between customs administrations, importers, exporters, and their agents or representatives, for the purpose of encouraging rapid release procedures.

9. For the purposes of this Article, the Parties shall use formats based on international standards for the electronic exchange of information. In addition, the Parties shall take into account, to the extent possible, the World Customs Organization Recommendations "Concerning the Use of UN/EDIFACT Rules for Electronic Data Interchange" and "Concerning the Use of Codes for the Representation of Data Elements". This paragraph does not preclude the use of additional electronic data transmission standards.

10. The Parties, through their customs administrations, shall establish formal discussion mechanisms with their trade and business communities in order to promote greater cooperation and the exchange of electronic information.

11. Upon written request, a Party shall, in accordance with Article 5.10 (Customs Procedures – Advance Rulings), issue a written ruling prior to importation pertaining to:

(a) tariff classification;

(b) the applicable rate of customs duty or any other tax applicable upon importation; or

(c) whether a good is originating and is entitled to preferential tariff treatment under this Agreement.

These requests may be made by an importer, exporter, or on their behalf by a representative.

12. Each Party shall ensure that the rulings referred to in paragraph 11 are as detailed as both the nature of the request and the details provided by the person requesting the ruling permit.

13. When a Party determines that a request for a ruling referred to in paragraph 11 is incomplete, it may request additional information including, if appropriate, a sample of the good or material in question from the person requesting the ruling.

14. Rulings issued pursuant to paragraph 11 bind the customs administration of the Party that issued the ruling at the time that the goods that were the subject of the ruling are imported if the facts and circumstances that provided the basis of the ruling remain in effect.

15. A Party may, at any time, without retroactive effect, modify or revoke a ruling issued pursuant to paragraph 11 after notifying the person that requested the ruling.

16. If a ruling referred to in paragraph 11 is based on inaccurate or false information, the Party that issued the ruling may modify or revoke the ruling and, as appropriate and with prompt notification, may collect any uncollected duties, taxes, or other charges in accordance with its domestic law.

17. Each Party shall ensure that an administrative action or official decision in respect of the import or export of a good is reviewable promptly by a judicial, arbitral, or administrative tribunal or procedure that:

(a) is independent of the authority that issued the administrative action or official decision; and

(b) has the authority to maintain, modify, or reverse the administrative action or official decision in accordance with the domestic law of the Party.

18. Before requiring a person to seek redress at a judicial level, each Party shall provide for an administrative level of appeal or review that is independent of the official or office responsible for the administrative action or official decision that is being appealed.

19. Each Party shall promptly make available the following requirements relating to imported and exported goods: laws, regulations, judicial decisions, administrative rulings, and policies of general application. Each Party shall also make available administrative notices regarding matters such as the following: general agency requirements, entry procedures, hours of operation, and points of contact for information enquiries.

20. Each Party shall, in accordance with its domestic law, treat business information that is by its nature confidential or that is provided on a confidential basis as confidential.

Article 6.3: Cooperation

1. The Parties recognize that technical cooperation is fundamental both to facilitating compliance with the obligations set forth in this Agreement and to reaching a better degree of trade facilitation.

2. The Parties, through their customs administrations, shall develop a Technical Cooperation Program on customs-related matters on the basis of mutually decided terms relating to issues such as the scope, timing, and cost of cooperative measures. Customs-related matters include:

(a) training;

(b) risk assessment;

(c) prevention and detection of contraband and illegal activities, in collaboration with other authorities;

(d) implementation of the Customs Valuation Agreement;

(e) audit and verification frameworks;

(f) customs laboratories; and

(g) electronic exchange of information.

3. The Parties shall cooperate in the development of effective mechanisms for communicating with the trade and business communities.

Article 6.4: Future Work Program

1. With the objective of developing further steps to facilitate trade under this Agreement, the Parties hereby establish the following work program:

(a) to develop the Technical Cooperation Program referred to in Article 6.3(2) for the purpose of facilitating compliance with the obligations set forth in this Agreement; and

(b) as appropriate, to identify and submit for the Commission's consideration new measures aimed at both facilitating trade between the Parties and advancing the objectives and principles set out in Article 6.1, including:

(i) common processes,

(ii) general measures to facilitate trade,

(iii) official controls,

(iv) transportation,

(v) the promotion and use of standards,

(vi) the use of automated systems and Electronic Data Interchange (EDI),

(vii) the availability of information,

(viii) customs and other official procedures concerning the means of transportation and transportation equipment including containers,

(ix) official requirements for imported goods,

(x) simplification of the information necessary for the release of goods,

(xi) customs clearance of exports,

(xii) transhipment of goods,

(xiii) goods in international transit,

(xiv) commercial trade practices, and

(xv) payment procedures.

2. The Parties may periodically review the work program referred to in paragraph 1 to decide on new cooperation initiatives that are needed to promote the application of the trade facilitation objectives and principles listed in Article 6.1, or any new measures that might be decided on by the Parties.

3. The Parties shall review relevant international initiatives on trade facilitation, including the *Compendium of Trade Facilitation Recommendations* developed by the United Nations Conference on Trade and Development and the United Nations Economic Commission for Europe, to identify areas where further joint action would facilitate trade between the Parties and promote shared multilateral objectives.

CHAPTER SEVEN

SANITARY AND PHYTOSANITARY MEASURES

Article 7.1: Objectives

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

2. The WTO Agreement exclusively governs the settlement of any formal disputes about the matters referred to in paragraph 1.

Article 7.2: Scope

This Chapter applies to sanitary and phytosanitary measures that may affect trade between the Parties.

Article 7.3: Committee on Sanitary and Phytosanitary Measures

1. Recognizing the benefits of a bilateral program of technical and institutional cooperation, the Parties hereby establish a Committee on sanitary and phytosanitary measures, composed of representatives of each Party who are responsible for sanitary and phytosanitary matters.

2. The Committee provides a forum for discussions and cooperation:

(a) to enhance the effectiveness of each Party's sanitary and phytosanitaryregulations in a manner which is fully consistent with, and supportive of, relevant WTO rights and obligations, with a view to improving food safety, animal health and plant health; and

(b) to facilitate discussions on bilateral issues with a view to avoiding disputes between the Parties.

3. The Committee may consider the following:

(a) the design, implementation and review of technical and institutional cooperation programs;

(b) the development of operational guidelines to facilitate implementation of, *inter alia*, mutual recognition and equivalence agreements, and product control, inspection and approval procedures;

(c) the promotion of enhanced transparency of sanitary and phytosanitary measures;

(d) the identification and resolution of problems related to sanitary and phytosanitary matters;

(e) the recognition of pest- or disease-free areas; and

(f) the promotion of bilateral discussions on sanitary and phytosanitary issues under discussion in multilateral and international fora.

4. The Committee shouldmeet annuallyif the Parties so decide. To the extent possible, the Committee shall meet using any technological means available, such as teleconference or videoconference. The Committee shall report on its activities and work plans to the Coordinators.

CHAPTER EIGHT

TECHNICAL BARRIERS TO TRADE

Article 8.1: Objectives

The objectives of this Chapter are to:

(a) improve the implementation of the *Agreement on Technical Barriers to Trade* (TBT Agreement), which is part of the WTO Agreement;

(b) ensure that standards, technical regulations, and conformity assessment procedures, including those related to metrology, do not create unnecessary obstacles to trade; and

(c) enhance joint cooperation between the Parties in order to resolve specific issues related to the development and application of standards, technical regulations, and conformity assessment procedures, thereby facilitating the conduct of international trade in goods.

Article 8.2:Affirmation of the TBT Agreement

1. Further to Article 1.3(1) (Objectives and Initial Provisions – Relation to Other Agreements), the Parties affirm their existing rights and obligations with respect to each other under the TBT Agreement.

2. The WTO Agreement exclusively governs the settlement of any formal disputes about the matters referred to in paragraph 1.

Article 8.3: Scope

1. This Chapter applies to the preparation, adoption and application of standards, technical regulations and conformity assessment procedures of national governmental bodies that may affect the trade in goods between the Parties.

2. This Chapter does not apply to:

(a) a purchasing specificationprepared by a governmental body for production or consumption requirements of a governmental body; or

(b) a sanitary or phytosanitary measure.

Article 8.4: Cooperation

1. The Parties shall engage in technical cooperation activities directed at reaching effective and full compliance with the obligations set forth in the TBT Agreement, while taking into account the different levels of development of each Party's standardizing, accreditation, conformity assessment, and metrology institutions. To this end, each Partyshall encourage its national government bodies responsible for coordinating its standardization,notification, and conformity assessment systems to undertake:

(a) the design, implementation, and review of technical and institutional cooperation activities;

(b) the promotion of institutional and regulatory information exchange and technical cooperation; and

(c) the promotion of co-ordination in international fora.

2. At the request of a Party, the Parties shall discuss an issue related to standards, technical regulations, or conformity assessment procedures at the next Commission meeting.

CHAPTER NINE

EMERGENCY ACTION

Article 9.1: Definitions

For the purposes of this Chapter:

competent investigating authority means:

(a) for Canada, the Canadian International Trade Tribunal, or its successor; and

(b) for Honduras, the Directorate General for Economic Integration and Trade Policy of the Secretary of State of Industry and Trade (*Dirección General de Integración Económica y Política Comercial de la Secretaría del Estado en los Despachos de Industria y Comercio*), or its successor;

domestic industry means, with respect to an originating good, the producers as a whole of the like or directly competitive good operating in the territory of the importing Party or those producers whose collective production of a like or directly competitive good constitutes a major proportion of the total domestic production of that good;

emergency action means an emergency action described in Article 9.3;

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

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

transition period means the 8 year period beginning on the date that this Agreement enters into force, unless, in the case of Honduras, the tariff elimination for the good against which the emergency action is taken occurs over a longer period of time, in which case the transition period is the period of the staged tariff elimination for that good plus 2 years.

Article 9.2: Global Safeguard Measures

Each Party retains its rights and obligations under Article XIX of the GATT 1994 and the Agreement on Safeguards.

Article 9.3: Bilateral Emergency Actions

1. A Party may, during the transition period only, adopt an emergency action described in paragraph 2 if, as a result of the reduction or elimination of a duty provided for in this Agreement, an originating good is being imported into the Party's territory in such increased quantities and under such conditions as to constitute a substantial cause of serious injury or threat of serious injury to a domestic industry.

2. If the conditions set out in paragraphs 1, and 3 through 9 are met, a Party may, to the extent necessary to remedy or prevent serious injury or threat of serious injury to a domestic industry:

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

(b) increase the rate of duty on the good to a level not exceeding the lesser of:

(i) the most-favoured-nation (MFN) applied rate of duty in effect at the time the emergency 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 exceeding 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.

3. A Party shall, in writing and without delay, notify the other Party and request discussions regarding the institution of a proceeding that could result in the application of an emergency action against an originating good.

4. An emergency action shall be adopted no later than 1 year after the date the proceeding is instituted.

5. A Party may not maintain an emergency action:

(a) for a period exceeding 3 years; or

(b) beyond the expiration of the transition period, unless the Party whose good is subject to the emergency action consents.

6. During the transition period, a Party may not apply an emergency action to the same good more than twice.

7. On the termination of a first emergency action, the rate of duty shall not exceed the rate that, according to the Party's Schedule to Annex 3.4.1 (National Treatment and Market Access for Goods – Tariff Elimination) for the staged elimination of the tariff, would have been in effect 1 year after the adoption of the action. Beginning on January 1 of the year after the termination of the action, the Party that has taken the action shall:

(a) set the rate of duty at the rate that would have been in effect, but for the emergency action, according to its Schedule to Annex 3.4.1 (National Treatment and Market Access for Goods – Tariff Elimination) for the staged elimination of the tariff; or

(b) eliminate the tariff in equal annual stages ending on the date determined by Annex 3.4.1 (National Treatment and Market Access for Goods – Tariff Elimination) for the elimination of the tariff.

8. A Party may apply a second emergency action to the same good provided that:

(a) a period of time has elapsed since the termination of the first emergency action equal to at least one half the initial period of application;

(b) the rate of duty for the first year of the second emergency action is not greater than the rate that would have been in effect under the Party's Schedule to Annex 3.4.1 (National Treatment and Market Access for Goods – Tariff Elimination) at the time the first action was adopted; and

(c) the rate of duty applicable to any subsequent year shall be reduced in equal increments such that the rate of duty in the final year of the emergency action is equal to the rate provided for in that Party's Schedule to Annex 3.4.1 (National Treatment and Market Access for Goods – Tariff Elimination) for that year.

9. A Party may adopt a bilateral emergency action after the expiration of the transition period only with the consent of the other Party.

10. A Party that applies an emergency action under this Article shall provide to the other Party mutually accepted trade liberalizing compensation in the form of concessions with substantially equivalent trade effects or with a value equivalent to the value of the additional duties expected to result from the action. If the Parties are unable to decide on compensation, the Party against whose good the action is taken may take tariff action with trade effects substantially equivalent to the emergency action taken under this Article. The Party taking the tariff action shall apply the action only for the period necessary to achieve the substantially equivalent effects.

Article 9.4: Administration of Emergency Action Proceedings

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

2. Each Party shall:

(a) entrust a determination of serious injury, or threat of serious injury, in an emergency action proceeding to a competent investigating authority empowered under domestic law to conduct proceedings;

(b) ensure that these determinations are subject to review by judicial or administrative tribunals, to the extent provided by domestic law;

(c) ensure that negative injury determinations are not subject to modification, except through a review referred to in subparagraph (b).

3. Each Party should provide its competent investigating authority with the resources necessary to enable it to fulfill its duties.

4. 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 9.4.

Article 9.5: Relation to Textile and Apparel Annex

This Chapter does not apply to an emergency action taken under Annex 3.1 (National Treatment and Market Access for Goods – Textile and Apparel Goods).

Annex 9.4

Administration of Emergency Action Proceedings

Institution of a Proceeding

1. A person specified in domestic law may, by a petition or complaint, request the competent investigating authority to institute an emergency action proceeding. The person filing the petition or complaint shall demonstrate that it is representative of the domestic industry producing a good like or directly competitive with the originating good.

2. A Party may institute a proceeding on its own initiative or request the competent investigating authority to conduct a proceeding.

3. Except as provided in this Annex, the time periods applicable to the proceeding are established by the domestic law of the Party.

Contents of a Petition or Complaint

4. If the basis for an investigation is a petition or complaint, the petitioning person shall, in their petition or complaint, provide the following information if it is publicly available, or a best estimate and the basis for that estimate, if the information is not publicly available:

(a) product description: the name and description of the originating good, the tariff subheading under which that good is classified, its current tariff treatment, and the name and description of the like or directly competitive domestic good;

(b) representativeness:

(i) the name and address of the person filing the petition or complaint, and the location of the establishment in which that person produces the domestic good,

(ii) the percentage of domestic production of the like or directly competitive good that the person accounts for and the basis for claiming that the person is representative of an industry, and

(iii) the name and location of all other domestic establishments in which the like or directly competitive good is produced;

(c) import data: import data for each of the 5 most recent full years forming the basis of the claim that the originating good is being imported in increased quantities, either in absolute terms or relative to domestic production as appropriate;

(d) domestic production data: data on total domestic production of the like or directly competitive good for each of the 5 most recent full years;

(e) data showing injury: quantitative and objective data indicating the nature and extent of injury to the domestic industry, such as data showing changes in the level of sales, prices, production, productivity, capacity utilization, market share, profits and losses, and employment;

(f) cause of injury: an enumeration and description of the alleged causes of the serious injury or threat of serious injury, and a summary of the basis for the assertion, supported by relevant data, that increased imports of the originating good, either actual or relative to domestic production, are causing or threatening to cause serious injury; and

(g) contribution of originating good to injury: quantitative and objective data indicating the share of imports accounted for by the originating good and the petitioner’s views on the extent to which those imports are substantially contributing to the serious injury or threat of serious injury caused by imports of the good.

5. Petitions or complaints, except to the extent that they contain confidential business information shall promptly be made available for public inspection after they are filed.

Notification Requirement

6. When an emergency action proceeding is instituted, the competent investigating authority shall publish a notice of the institution of the proceeding in the official journal of the Party within a period of 30 days. The notice shall identify the following:

(a) the petitioning person or other requester;

(b) the originating good that is the subject of the proceeding and its tariff subheading;

(c) the nature and timing of the determination to be made;

(d) the deadlines for filing briefs, statements, and other documents;

(e) the place at which the petition and other documents filed in the course of the proceeding may be inspected; and

(f) the name, address, and telephone number of the office to be contacted for more information.

7. With respect to an emergency action proceeding instituted on the basis of a petition or complaint, the competent investigating authority may not publish the notice required by paragraph 6 without first carefully assessing whether the petition or complaint meets the requirements of paragraph 4, including representativeness.

Public Hearing

8. In the course of each proceeding, the competent investigating authority shall:

(a) provide reasonable notice of a public hearing, including the time and place of the hearing;

(b) hold a public hearing allowing an interested person and any association representing the interests of consumers in the territory of the Party instituting the proceeding to:

(i) appear in person or by counsel,

(ii) present evidence,

(iii) be heard on the questions of serious injury, or threat of serious injury, and the appropriate remedy, and

(iv) cross-question an interested person or consumer association making a presentation at that hearing.

Confidential Information

9. The competent investigating authority shall adopt or maintain procedures for the treatment of confidential information protected under domestic law that is submitted in the course of a proceeding. The competent investigating authority shall require interested persons and consumer associations that provide confidential information to furnish a non-confidential summary, in writing, of that confidential information or indicate the reasons why they are unable to provide that summary.

Evidence of Injury and Causation

10. The competent investigating authority, while conducting its proceeding, shall gather, to the best of its ability, all relevant information appropriate to the determination it must make. It shall evaluate all relevant factors of an objective and quantifiable nature having a bearing on the situation of the domestic industry, including the rate and amount of the increase in imports of the originating good; the share of the domestic market taken by those increased imports; and changes in the level of sales, production, productivity, capacity utilization, profits and losses, and employment. In making its determination, the competent investigating authority may also consider other economic factors, such as changes in price and inventory, and the ability of firms in the industry to generate capital.

11. The competent investigating authority may not make an affirmative injury determination unless its investigation demonstrates, on the basis of objective evidence, the existence of a clear causal link between increased imports of the originating good and serious injury or threat of serious injury. If factors other than increased imports of the originating good are causing injury to the domestic industry at the same time, this injury may not be attributed to those increased imports.

Deliberation and Report

12. The competent investigating authority, before making an affirmative determination in an emergency action proceeding, shall allow sufficient time to gather and consider the relevant information, hold a public hearing, and provide an opportunity for interested persons and consumer associations to prepare and submit their views.

13. The competent investigating authority shall promptly publish a report, including a summary of that report in the official journal of the Party, setting out its findings and reasoned conclusions on relevant issues of law and fact. The report shall describe the originating good and its tariff item number, the standard applied and the finding made. The statement of reasons shall set out the basis for the determination, including a description of:

(a) the domestic industry;

(b) information supporting a finding that imports of the originating good are increasing, the domestic industry is seriously injured or threatened with serious injury, and the increasing imports are causing or threatening serious injury; and

(c) if provided for by domestic law, a finding or recommendation regarding the appropriate remedy and the basis for that remedy.

14. In its report, the competent investigating authority may not disclose confidential information.

CHAPTER TEN

INVESTMENT

Section A – Definitions

Article 10.1: Definitions

For the purposes of this Chapter:

confidential information means confidential business information or information that is privileged or otherwise protected from disclosure;

disputing investor means an investor that makes a claim under Section C;

disputing Party means a Party against which a claim is made under Section C;

disputing party means the disputing investor or the disputing Party;

enterprise means an enterprise as defined in Article 2.1 (General Definitions – Definitions of General Application), and a branch of any such entity;

equity or **debt security** includes voting and non-voting shares, bonds, convertible debentures, stock options and warrants;

ICSID Additional Facility Rules means the Rules Governing the Additional Facility for the Administration of Proceedings by the Secretariat of 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 on 18 March 1965;

intellectual property rights means copyright and related rights, trademark rights, rights in geographical indications, rights in industrial designs, patent rights, rights in layout designs on integrated circuits, rights in relation to protection of undisclosed information, and plant breeders' rights;

Inter-American Convention means the *Inter-American Convention on International Commercial Arbitration*, done at Panama on 30 January 1975;

investment means:

(a) an enterprise;

(b) a share, stock or other form of equity participation in an enterprise;

(c) a bond, debenture, or other debt instrument of an enterprise:

(i) if the enterprise is an affiliate of the investor, or

(ii) if the original maturity of the debt security is at least 3 years,

but does not include a debt security, regardless of original maturity, of a state enterprise;

(d) a loan to an enterprise:

(i) if the enterprise is an affiliate of the investor, or

(ii) if the original maturity of the loan is at least 3 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 a share in income or profits of the enterprise;

(f) an interest in an enterprise that entitles the owner to a 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 of, or used for, economic benefit or another business purpose; 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) a contract involving the presence of an investor's property in the territory of the Party, including a turnkey or construction contract, or a concession, or

(ii) a contract in which remuneration depends substantially on the production, revenues or profits of an enterprise;

but **investment** does not mean:

(i) a claim to money that arises solely from:

(i) a commercial contract 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 claim to money,

that does not involve the kinds of interests set out in subparagraphs (a) through (h);

(k) for greater certainty, the following is not an investment:

(i) an order or judgment obtained in a judicial or administrative action,

(ii) a loan issued by one Party to the other Party,

(iii) a public debt operation of a Party or state enterprise, or

(iv) an investment allowed or made pursuant to fraudulent misrepresentation, bribery, or corruption,

investment of an investor of a Party means an investment owned or controlled directly or indirectly by an investor of that Party;

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; for greater certainty, an investor "seeks to make an investment" only when the investor has taken concrete steps to make the investment, such as when the investor has applied for a permit or license authorizing the establishment of an investment;

investor of a Party means a Party or state enterprise, or a national or an enterprise of that Party, that seeks to make, is making, or has made an investment; for greater certainty:

(a) an investor "seeks to make an investment" only when the investor has taken concrete steps to make the investment, such as when the investor has applied for a permit or license authorizing the establishment of an investment;

(b) a natural person who is a dual citizen is deemed to be exclusively a citizen of the State of their dominant and effective citizenship; a natural person who is a citizen of a Party and a permanent resident of the other Party is deemed to be exclusively a national of the Party of which that natural person is a citizen;

legal stability agreement means an agreement entered into by a national government authority of a Party and an investor of the other Party, or an investment of an investor of the other Party that accords certain benefits, including, but not limited to, a commitment to maintain an existing tax regime during a specified time;

New York Convention means the United Nations *Convention on the Recognition and Enforcement of Foreign Arbitral Awards*, done at New York on 10 June 1958;

non-disputing Party means the Party that is not a party to an investment dispute under Section C;

Secretary-General means the Secretary-General of ICSID;

transfers means transfers and international payments;

Tribunal means an arbitration tribunal established under Article 10.27 or 10.29; and

UNCITRAL Arbitration Rules means the arbitration rules of the United Nations Commission on International Trade Law.

Section B – Investment

Article 10.2: Scope and Coverage

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

   (a) an investor of the other Party;

   (b) an investment of an investor of the other Party in the territory of the Party; and

   (c) with respect to Articles 10.7, 10.15 and 10.16, an investment in its territory.

2. This Chapter does not apply to an act or fact that took place or a situation that ceased to exist before the date of entry into force of this Agreement.

Article 10.3: Relation to Other Chapters

1. In the event of an inconsistency between this Chapter and another Chapter, the other Chapter prevails.

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 for providing a service in 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 if the bond or financial security is an investment of an investor of the other Party.

3. This Chapter does not apply to a measure adopted or maintained by a Party to the extent that the measure is covered by Chapter Thirteen (Financial Services).

Article 10.4: National Treatment

1. Each Party shall accord to an investor 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 in its territory.

2. Each Party shall accord to an investment of an investor of the other Party in its territory 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 in its territory.

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

Article 10.5: Most-Favoured-Nation Treatment

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

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

3. For greater certainty, treatment "with respect to establishment, acquisition, expansion, management, conduct, operation, and sale or other disposition of investments" referred to in paragraphs 1 and 2 does not include dispute settlement mechanisms, such as those referred to in Section C of this Chapter, that are provided for in an international treaty or trade agreement.

4. For greater certainty, the treatment accorded by a Party under this Article means, with respect to a sub-national government, treatment accorded, in like circumstances, by that sub-national government to investors, and to investments of investors, of a non-Party.

Article 10.6: Minimum Standard of Treatment

1. Each Party shall accord to an investment of an investor of the other Party treatment in accordance with the customary international law minimum standard of treatment of aliens, including fair and equitable treatment and full protection and security.

2. The concepts of "fair and equitable treatment" and "full protection and security" in paragraph 1 do not require treatment in addition to or beyond that which is required by the customary international law minimum standard of treatment of aliens.

3. A breach of another provision of this Agreement, or of a separate international agreement, does not establish a breach of this Article.

Article 10.7: Performance Requirements

1. A Party may not impose or enforce the following requirements, or enforce a 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 a good or service;

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

(c) to purchase, use, or accord a preference to a good produced or service provided in its territory, or to purchase a good or service from a person in its territory;

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

(e) to restrict sales of a good or service in its territory that the investment produces or provides by relating those sales 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; or

(g) to supply exclusively from the territory of the Party a good that the investment produces or a service that the investment provides to a specific regional market or to the world market.

2. A measure that requires an investment to use a technology to meet generally applicable health, safety, or environmental requirements is not inconsistent with paragraph 1(f). For greater certainty, Articles 10.4 and 10.5 apply to the measure.

3. A Party may not make 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, conditional 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 a good produced in its territory, or to purchase a good from a producer in its territory;

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

(d) to restrict sales of a good or service in its territory that the investment produces or provides by relating those sales to the volume or value of its exports or foreign exchange earnings.

4. Paragraph 3 does not prevent a Party from making 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, conditional on compliance with a requirement to locate production, provide a service, train or employ workers, construct or expand particular facilities, or to carry out research and development, in its territory.

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

6. This Article does not preclude enforcement of a commitment, undertaking, or requirement between private parties.

Article 10.8: Senior Management and Boards of Directors

1. A Party may not require an enterprise of that Party, that is also an investment of an investor of the other Party, to appoint individuals of a particular nationality to senior management positions.

2. A Party may require that a majority of the board of directors, or a committee, 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 10.9: Reservations and Exceptions

1. Articles 10.4, 10.5, 10.7 and 10.8 do not apply to:

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

(i) the national government of a Party, as set out in its Schedule to Annex I, or

(ii) a sub-national government of a Party;

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

(c) an amendment to a non-conforming measure referred to in subparagraph (a) to the extent that the amendment does not diminish the conformity of the measure, with Articles 10.4, 10.5, 10.7 and 10.8, as it existed immediately before the amendment.

2. Articles 10.4, 10.5, 10.7 and 10.8 do not apply to a measure that a Party adopts or maintains with respect to sectors, subsectors or activities, as set out in its Schedule to Annex II.

3. A Party may not, under a measure adopted after the date of entry into force of this Agreement and set out in 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. In respect of intellectual property rights, a Party may derogate from Articles 10.4, 10.5 and subparagraph 1(f) of 10.7 in a manner that is consistent with the TRIPS Agreement and with the waivers to the TRIPS Agreement adopted pursuant to Article IX of the WTO Agreement.

5. Article 10.5 does not apply to treatment accorded by a Party pursuant to agreements, or with respect to sectors, set out in its Schedule to Annex II.

6. Articles 10.4, 10.5 and 10.8 do not apply to:

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

(b) a subsidy or grant provided by a Party or a state enterprise, including a government-supported loan, guarantee or insurance.

7. The provisions of:

(a) Articles 10.7(1)(a), (b) and (c), and (3)(a) and (b) do not apply to a qualification requirement for a good or service with respect to export promotion and foreign aid programs;

(b) Articles 10.7(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) Articles 10.7(3)(a) and (b) do not apply to a requirement imposed by an importing Party relating to the content of a good necessary to qualify for a preferential tariff or preferential quota.

Article 10.10: Transfers

1. Each Party shall permit 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. Those transfers include:

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

(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 10.11 and Article 10.12;

(e) payments arising under Section C; and

(f) contributions to capital.

2. Each Party shall permit transfers relating to an investment of an investor of the other Party to be made in a freely usable currency at the market rate of exchange in effect on the date of transfer.

3. A Party may not require one of its investors to transfer or penalize one of its investors for failure to transfer the income, earnings, profits, or other amounts derived from, or attributable to, an investment 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 domestic law relating to:

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

(b) issuing, trading, or dealing in securities;

(c) a criminal or penal offence;

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

(e) compliance with an order or judgment in judicial or administrative proceedings.

5. Paragraph 3 does not prevent a Party from imposing a measure through the equitable, non-discriminatory and good faith application of its domestic law relating to the matters referred to in paragraph 4.

6. Notwithstanding paragraph 1, a Party may restrict transfers of returns in kind in circumstances where it could otherwise restrict those transfers under Article XI of the GATT 1994, and as set out in paragraph 4.

Article 10.11: Expropriation

1. A Party may not expropriate or nationalize an investment of an investor of the other Party in its territory, directly or indirectly, through a measure that has an effect equivalent to expropriation or nationalization ("expropriation"), except:

(a) for a public purpose;

(b) on a non-discriminatory manner;

(c) in accordance with due process of law; and

(d) on payment of prompt, adequate, and effective compensation in accordance with paragraphs 2 through 6.

2. The compensation referred to in paragraph 1(d) 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 that occurs as a result of prior knowledge of the intended expropriation. The valuation criteria includes 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 and freely transferable. Compensation shall be payable in a freely convertible currency and shall include interest at a commercially reasonable rate for that currency from the date of expropriation until the date of payment.

4. The affected investor shall have the right under the law of the expropriating Party to a prompt review of its case and of the valuation of the investment by a judicial or other independent authority of that Party in accordance with the principles set out in this Article.

5. This Article does not apply to a compulsory license granted in relation to intellectual property rights, or to the revocation, limitation, or creation of an intellectual property right, provided that the issuance, revocation, limitation or creation is consistent with the WTO Agreement.

6. For the purposes of this Article, a non-discriminatory measure of general application is not be considered a measure equivalent to an expropriation of a debt security or loan covered by this Chapter solely on the ground that the measure imposes a cost on the debtor that causes the debtor to default on the debt.

7. For greater certainty, Article 10.11(1) shall be interpreted in accordance with Annex 10.11.

Article 10.12: Compensation for Losses

1. Notwithstanding Article 10.9(6)(b), each Party shall accord to an investor of the other Party, and to an investment of an investor of the other Party, non-discriminatory treatment with respect to a measure it adopts or maintains relating to losses suffered by investments in its territory owing to armed conflict or civil strife.

2. Paragraph 1 does not apply to an existing measure relating to a subsidy or grant that would be inconsistent with Article 10.4, but for Article 10.9(6)(b).

Article 10.13: Special Formalities and Information Requirements

1. Article 10.4 does not prevent a Party from adopting or maintaining a measure that prescribes special formalities in connection with the establishment of an investment by an investor of the other Party, such as a requirement that an agent of an investor be a resident of the Party or that an investment be legally constituted under the laws or regulations of the Party, provided that those formalities do not materially impair the protections afforded by a Party to investors of the other Party or investments of investors of the other Party under this Chapter.

2. Notwithstanding Articles 10.4 and 10.5, 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 any confidential information from disclosure that would prejudice the competitive position of the investor or the investment. This paragraph does not prevent a Party from otherwise obtaining or disclosing information in connection with the equitable and good faith application of its law.

Article 10.14: 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 Party and to an investment of that investor if the investor of a non-Party owns or controls the enterprise 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 to its investment.

2. A Party may deny the benefits of this Chapter to an investor of the other Party that is an enterprise of that Party and to an investment of that investor if the investor of a non-Party or of the denying Party owns or controls the enterprise and the enterprise does not have substantial business activity in the territory of the Party under whose domestic law it is constituted or organized.

Article 10.15: Health, Safety and Environmental Measures

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, those measures to encourage 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 this encouragement, it may request discussions with the other Party and the two Parties shall enter into discussions with a view to avoiding any such encouragement.

Article 10.16: Corporate Social Responsibility

Each Party should encourage enterprises operating within its territory, or entreprises subject to its jurisdiction, to voluntarily incorporate internationally recognized standards of corporate social responsibility in their internal policies, such as those statements of principle that are endorsed or supported by the Parties. These principles address issues such as labour, the environment, human rights, community relations, and anti-corruption.

Article 10.17: Subrogation

1. If a Party or an agency of a Party makes a payment to one of its investors under a guarantee or a contract of insurance that it has entered into in respect of an investment, the other Party shall recognize the validity of the subrogation in favour of that Party or agency to a right or title held by the investor.

2. A Party or an agency of a Party, which is subrogated to the rights of an investor in accordance with paragraph 1, is entitled the same rights as those of the investor in respect of the investment. These rights may be exercised by the Party or an agency of the Party, or by the investor if the Party or an agency of the Party so authorizes.

Section C – Settlement of Disputes between a Party and an Investor of the Other Party

Article 10.18: Purpose

Without prejudice to the rights and obligations of the Parties under Chapter Twenty-One (Institutional Arrangements and Dispute Settlement Procedures), this Section establishes a mechanism for the settlement of investment disputes**.**

Article 10.19: Claim by an Investor of a Party on Its Own Behalf

1. 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 B, other than an obligation under Articles 10.3(2), 10.10, 10.13, 10.15 or 10.16;

(b) Article 15.3(a) (Competition Policy, Monopolies and State Enterprises – Monopolies) or Article 15.4(2) (Competition Policy, Monopolies and State Enterprises – State Enterprises), only to the extent that a designated monopoly or state enterprise has acted in a manner inconsistent with the Party's obligations under Section B, other than an obligation under Article 10.10, 10.13, 10.15 or 10.16; or

(c) a legal stability agreement referred to in paragraph 2,

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

2. A claim by an investor that a tax measure of a Party is in breach of a legal stability agreement between a national government authority of a Party and the investor concerning an investment may be submitted to arbitration under this Section unless:

(a) the legal stability agreement between the national government authority of a Party and the investor precede the entry into force of this Agreement; or

(b) the taxation authorities of the Parties, within 6 months of being notified by the investor of its intention to submit the claim to arbitration, jointly determine that the measure does not contravene that legal stability agreement. The investor shall refer the issue of whether a taxation measure does not contravene a legal stability agreement for a determination to the taxation authorities of the Parties when the investor gives notice under Article 10.21.

3. An investor may not make a claim if more than 3 years have elapsed from the date on which the investor first acquired, or should have first acquired, knowledge of the alleged breach and knowledge that the investor has incurred loss or damage.

Article 10.20: 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 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 B other than an obligation under Articles 10.3(2), 10.10, 10.13, 10.15 or 10.16;

(b) Article 15.3(a) (Competition Policy, Monopolies and State Enterprises – Monopolies) or Article 15.4(2) (Competition Policy, Monopolies and State Enterprises – State Enterprises), only to the extent that a designated monopoly or state enterprise has acted in a manner inconsistent with the Party's obligations under Section B, other than an obligation under Article 10.10, 10.13, 10.15 or 10.16; or

(c) a legal stability agreement referred to in paragraph 2, and that the enterprise has incurred loss or damage by reason of, or arising out of, that breach.

2. An investor of a Party may submit a claim under this Section on behalf of an enterprise that the investor owns or controls directly or indirectly, that a tax measure of that Party is in breach of a legal stability agreement between a national government authority of that Party and the enterprise unless:

(a) the legal stability agreement between the national government authority of a Party and the enterprise preceded the entry into force of this Agreement; or

(b) the taxation authorities of the Parties, within 6 months of being notified by the investor of its intention to submit the claim to arbitration, jointly determine that the measure does not contravene that legal stability agreement. The investor shall refer the issue of whether a taxation measure contravenes a legal stability agreement for a determination to the taxation authorities of the Parties at the same time that it gives notice under Article 10.21.

3. An investor may not make a claim on behalf of an enterprise described in paragraph 1 if more than 3 years have elapsed from the date on which the enterprise first acquired, or should have first acquired, knowledge of the alleged breach and knowledge that the enterprise has incurred loss or damage.

4. 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 10.19 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 10.23, the claims should be heard together by a Tribunal established under Article 10.29, unless the Tribunal finds that the interests of a disputing party would be prejudiced as a result.

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

Article 10.21: Notice of Intent to Submit a Claim to Arbitration

1. The disputing investor shall deliver to the disputing Party written notice of its intent to submit a claim to arbitration at least 6 months before submitting the claim. The notice shall include the following:

(a) the name and address of the disputing investor and, if a claim is made under Article 10.20, 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 legal and the factual basis for the claim, including the measures at issue; and

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

2. The disputing investor shall also deliver, with its notice of intent to submit a claim to arbitration, evidence that it is an investor of the other Party.

Article 10.22: Settlement of a Claim through Consultation

1. Before a disputing investor may submit a claim to arbitration, the disputing parties shall first hold consultations to attempt to settle a claim amicably.

2. Consultations shall be held within 6 months of the submission of the notice under Article 10.21, unless the disputing parties decide otherwise.

3. The place of consultation shall be the capital of the disputing Party, unless the disputing parties decide otherwise.

Article 10.23: Submission of a Claim to Arbitration

1. Except as provided in Annex 10.23, a disputing investor who meets the conditions precedent provided for in Article 10.24 may submit the claim to arbitration under:

(a) the ICSID Convention, if both Parties are party to the Convention;

(b) the ICSID Additional Facility Rules , if only one Party is a party to the ICSID Convention;

(c) the UNCITRAL Arbitration Rules; or

(d) any other rules designated by the Commission that are available for arbitration under this Section.

2. The Commission has the power to make rules supplementing the applicable arbitral rules and may amend any rules of its own making. Those rules shall be binding on a Tribunal established under this Section, and on individual arbitrators serving on that Tribunal.

3. The applicable arbitration rules shall govern the arbitration unless they are modified by this Agreement or supplemented by any rules adopted by the Commission under this Section.

Article 10.24: Conditions Precedent to Submission of a Claim to Arbitration

1. A disputing investor may submit a claim to arbitration under Article 10.19 only if:

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

(b) at least 6 months have elapsed since the events giving rise to the claim;

(c) not more than 3 years have elapsed from the date on which the disputing investor first acquired, or should have first acquired, knowledge of the alleged breach and knowledge that the disputing investor has incurred loss or damage;

(d) the disputing investor has delivered the notice required under Article 10.21, in accordance with the requirements of that Article, at least 6 months prior to submitting the claim; and

(e) the disputing investor and, if the claim is for loss or damage to an interest in an enterprise of the other Party that the disputing investor owns or controls directly or indirectly, the enterprise, waive their right to initiate or continue before an administrative tribunal or court under the domestic law of the other Party, or other dispute settlement procedures, proceedings with respect to the measure of the disputing Party that is alleged to be a breach referred to in Article 10.19, except for proceedings for injunctive, declaratory, or other extraordinary relief, not involving the payment of monetary damages, before an administrative tribunal or court under the domestic law of the disputing Party.

2. A disputing investor may submit a claim to arbitration under Article 10.20 only if:

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

(b) at least 6 months have elapsed since the events giving rise to the claim;

(c) not more than 3 years have elapsed from the date on which the enterprise first acquired, or should have first acquired, knowledge of the alleged breach and knowledge that the enterprise has incurred loss or damage thereby;

(d) the disputing investor has delivered the notice required under Article 10.21, in accordance with the requirements of that Article, at least 6 months prior to submitting the claim; and

(e) both the disputing investor and the enterprise waive their right to initiate or continue before an administrative tribunal or court under the domestic law of the other Party, or other dispute settlement procedures, proceedings with respect to the measure of the disputing Party that is alleged to be a breach referred to in Article 10.19, except for proceedings for injunctive, declaratory or other extraordinary relief, not involving the payment of monetary damages, before an administrative tribunal or court under the domestic law of the disputing Party.

3. A consent and waiver required by this Article shall be in the form provided for in Annex 10.24, shall be delivered to the disputing Party and shall be included in the submission of a claim to arbitration.

4. A waiver from the enterprise under paragraph 1(e) or 2(e) shall not be required if a disputing Party has deprived a disputing investor of control of an enterprise.

5. Failure to meet any of the conditions precedent provided for in paragraphs 1 through 3 nullifies the consent of the Parties given in Article 10.25.

6. An investor may submit a claim relating to a taxation measure covered by this Agreement to arbitration, only if the taxation authorities of the Parties fail to reach the joint determinations specified in Article 22.4 (Exceptions – Taxation), Articles 10.19(2) or 10.20(2) within 6 months of being notified in accordance with these provisions.

Article 10.25: Consent to Arbitration

1. Each Party consents to the submission of a claim to arbitration in accordance with the terms set out in this Agreement.

2. The consent given in paragraph 1 and a disputing investor's submission of a claim to arbitration satisfies the following requirements:

(a) Chapter II of the ICSID Convention (Jurisdiction of the Centre) 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 1 of the Inter-American Convention for an agreement.

Article 10.26: Arbitrators

1. Except in respect of a Tribunal established under Article 10.29, and unless the disputing parties decide otherwise, the Tribunal shall consist of 3 arbitrators. Each disputing party shall appoint one arbitrator. The disputing parties shall jointly appoint the third, who shall be the presiding arbitrator.

2. Arbitrators shall:

(a) have expertise or experience in public international law, international trade or international investment rules, or the settlement of disputes arising under international trade or international investment agreements;

(b) be independent of, and not be affiliated with or take instructions from, either Party or the disputing investor; and

(c) comply with the Code of Conduct for Dispute Settlement established by the Commission**.**

3. If the disputing parties do not agree on the remuneration of the arbitrators before the Tribunal is constituted, the prevailing ICSID rate for arbitrators applies.

4. The Commission may establish rules relating to the expenses incurred by the Tribunal.

Article 10.27: 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 10.29, is not constituted within 90 days from the date that a claim is submitted to arbitration, the Secretary-General, at the request of either disputing party, shall appoint the arbitrator or arbitrators not yet appointed. The presiding arbitrator shall not be a national of either Party.

Article 10.28: Decision to Appoint Arbitrators

For the 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 a ground other than citizenship or permanent residence:

(a) the disputing Party consents 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 10.19 may submit a claim to arbitration, or continue a claim, under the ICSID Convention or the ICSID Additional Facility Rules, only if the disputing investor consents in writing to the appointment of each individual member of the Tribunal; and

(c) a disputing investor referred to in Article 10.20(1) may submit a claim to arbitration, or continue a claim, under the ICSID Convention or the ICSID Additional Facility Rules, only if the disputing investor and the enterprise consent in writing to the appointment of each individual member of the Tribunal.

Article 10.29: Consolidation

The consolidation of claims shall be governed by the rules set out in Annex 10.29.

Article 10.30: Notice to the Non-Disputing Party

A disputing Party shall deliver to the non-disputing Party a copy of the notice under Article 10.21 and other documents, within 30 days of the date that those documents are delivered to the disputing Party.

Article 10.31: Participation of the Non-Disputing Party

1. The non-disputing Party may make submissions to a Tribunal on a question of interpretation of this Agreement, if it gives notice in writing to the disputing parties.

2. The non-disputing Party has the right to attend a hearing held under this Section, whether or not it makes submissions to the Tribunal.

Article 10.32: Documents

1. The non-disputing Party is entitled, at its cost, to receive from the disputing Party, a copy of:

(a) the evidence that has been tendered to the Tribunal;

(b) the written argument of the disputing parties; and

(c) all pleadings filed in the arbitration.

2. The non-disputing Party receiving information pursuant to paragraph 1 shall treat the information as if it were a disputing Party.

Article 10.33: Place of Arbitration

Unless the disputing parties decide 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 10.34: Preliminary Objections to Jurisdiction or Admissibility

1. The Tribunal shall have the power to rule on issues of jurisdiction and admissibility.

2. If those issues are raised as preliminary objections, the Tribunal shall, whenever possible, decide the matter before proceeding to the merits.

Article 10.35: Public Access to Hearings and Documents

1. Hearings held under this Section shall be open to the public. The Tribunal may hold portions of the hearings *in camera* to the extent necessary to protect confidential information, including business confidential information.

2. The Tribunal shall, in consultation with the disputing parties, establish procedures to protect confidential information and make logistical arrangements for open hearings.

3. The Tribunal or the disputing Party shall make publicly available all documents submitted to, or issued by, the Tribunal, unless the disputing parties decide otherwise, subject to the redaction of confidential information.

4. Notwithstanding paragraph 3, the Tribunal or the disputing party shall make publicly available a Tribunal award under this Section, subject to the redaction of confidential information.

5. A disputing party may disclose to other persons in connection with the arbitral proceedings any unredacted documents that it considers necessary to prepare its case, but it shall ensure that those persons protect the confidential information in those documents.

6. The Parties may share relevant unredacted documents with officials of their respective national and sub-national governments in the course of dispute settlement under this Chapter, but they shall ensure that those persons protect any confidential information in those documents.

7. As provided under Article 22.3 (Exceptions – National Security) and Article 22.6 (Exceptions – Disclosure of Information), the Tribunal may not require a Party to furnish or allow access to information which, if disclosed, would impede law enforcement or would be contrary to the Party's domestic law protecting the deliberative and policy-making processes of the executive branch of government at the cabinet level, personal privacy or the financial affairs and accounts of individual customers of financial institutions, or which it determines to be contrary to its essential security.

8. If a Tribunal's confidentiality order designates information as confidential and a Party's domestic law on access to information requires public access to that information, the Party's domestic law on access to information prevails. However, a Party should endeavour to apply its domestic law on access to information to protect information that is designated confidential by the Tribunal.

Article 10.36: Submission by a Non-Disputing Party

1. Any person or entity of a Party, or a person with a significant presence in the territory of a Party, that wishes to file a written submission with the Tribunal (the "applicant") may apply for leave from the Tribunal to file a non-disputing party submission, in accordance with Annex 10.36. The applicant shall attach the submission to the application.

2. The applicant shall provide the application for leave to file a non-disputing party submission and the submission to all disputing parties and the Tribunal.

3. The Tribunal shall set an appropriate date for the disputing parties to comment on the application for leave to file a non-disputing party submission.

4. In determining whether to grant leave to file a non-disputing party submission, the Tribunal shall consider, among other things, the extent to which:

(a) the non-disputing party submission would assist the Tribunal in the determination of a factual or legal issue related to the arbitration by bringing a perspective, particular knowledge or insight that is different from that of the disputing parties;

(b) the non-disputing party submission would address a matter within the scope of the dispute;

(c) the non-disputing party has a significant interest in the arbitration; and

(d) there is a public interest in the subject-matter of the arbitration.

5. The Tribunal shall ensure that:

(a) a non-disputing party submission does not disrupt the proceedings; and

(b) the submission does not unduly burden or unfairly prejudice either disputing party.

6. The Tribunal shall decide whether to grant leave to file a non-disputing party submission. If leave to file a non-disputing party submission is granted, the Tribunal shall set an appropriate date for the disputing parties to respond in writing to the non-disputing party submission. By that date, the non-disputing Party may, pursuant to Article 10.31, address any issues raised in the non-disputing party submission regarding the interpretation of this Chapter.

7. The Tribunal that grants leave to file a non-disputing party submission is not required to address the submission at any point in the arbitration, and the non-disputing party that files the submission is not entitled to make further submissions in the arbitration.

8. The provisions pertaining to public access to hearings and documents under Article 10.35 govern access to hearings and documents by non-disputing parties that file applications under this Article.

Article 10.37: 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.

2. Subject to the other terms of this Section, a Tribunal shall apply the following when a claim is submitted to arbitration for a breach of a legal stability agreement referred to in Articles 10.19(2) or 10.20(2):

(a) the rules of law specified in the legal stability agreement, or as the disputing parties may otherwise decide; or

(b) if the rules of law have not been specified or otherwise decided:

(i) the law that a domestic court or tribunal of proper jurisdiction of the disputing Party would apply in the same case, including its rules on the conflict of laws, and

(ii) the rules of international law that may apply.

3. The Commission’s interpretation of a provision of this Agreement shall be binding on a Tribunal established under this Section and an award under this Section shall be consistent with that interpretation.

Article 10.38: Interpretation of Annexes

1. If 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 or Annex II, the Tribunal shall, at the request of that disputing Party, request the Commission to interpret the issue. Within 60 days of delivery of the request, the Commission shall submit in writing its interpretation to the Tribunal.

2. Further to Article 10.37(2), an interpretation of the Commission 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 10.39: Expert Reports

1. Subject to paragraph 2, a Tribunal 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, subject to such terms and conditions as the disputing parties may decide.

2. The Tribunal may not exercise the power conferred to it under paragraph 1 if the disputing parties decide the Tribunal may not do so.

3. Paragraph 1 does not affect the appointment of other kinds of experts where the appointment is authorized by the applicable arbitration rules.

Article 10.40: 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. This interim measure may include 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 10.19 or 10.20. For the purposes of this paragraph, an order includes a recommendation.

Article 10.41: Final Award

1. If a Tribunal makes a final award against a disputing Party, the Tribunal may award, separately or in combination, only:

(a) monetary damages and any applicable interest; or

(b) the 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.

The Tribunal may also award costs in accordance with the applicable arbitration rules.

2. Subject to paragraph 1, if a claim is made under Article 10.20(1):

(a) an award of monetary damages and any applicable interest shall state that the monetary damages and interest are payable to the enterprise;

(b) an award of restitution of property shall provide that restitution be made to the enterprise; and

(c) the award shall provide that it is made without prejudice to a right that a person may have in monetary damages or property awarded under subparagraphs (a) or (b) under domestic law.

3. A Tribunal may not order a Party to pay punitive damages.

Article 10.42: Finality and Enforcement of an Award

1. An award made by a Tribunal does not have binding force except between the disputing parties and in respect of that particular case.

2. A disputing party shall abide by and comply with an award without delay, subject to paragraph 3, and the applicable review procedure for an interim award.

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 is rendered, provided that a disputing party does not request the 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) 90 days have elapsed from the date the award is rendered, and a disputing party has not commenced a proceeding to revise, set aside or annul the award, or

(ii) a court dismisses or allows 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 Chapter Twenty-One (Institutional Arrangements and Dispute Settlement Procedures). The requesting Party may seek the following in these 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 to enforce an arbitration award under the ICSID Convention, the New York Convention or the Inter-American Convention, regardless of whether proceedings are taken under paragraph 5.

7. A claim that is submitted to arbitration under this Section is considered to arise out of a commercial relationship or transaction for the purposes of Article I of the New York Convention and Article 1 of the Inter-American Convention.

Article 10.43: 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 Article 36(1) of the ICSID Convention is received by the Secretary-General;

(b) the notice of arbitration under Article 2 of Schedule C of the ICSID Additional Facility Rules is 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. Notices and other documents shall be delivered to a Party at the place named for that Party below:

For Canada:

Office of the Deputy Attorney General of Canada
Justice Building
284 Wellington Street
Ottawa, Ontario K1A 0H8
Canada

For Honduras:

Dirección General de Integración Económica y Política Comercial
Secretaría de Estado en los Despachos de Industria y Comercio
Edificio San José
Boulevard José Cecilio del Valle
Tegucigalpa, Honduras

Receipts under Insurance or Guarantee Contracts

3. In an arbitration under this Section, a disputing Party may not assert, as a defence, counterclaim, right of setoff, or otherwise that the disputing investor has received or will receive, under an insurance or guarantee contract, indemnification or other compensation for all or part of its alleged damages.

Article 10.44: Exclusions

The dispute settlement provisions of this Section and of Chapter Twenty-One (Institutional Arrangements and Dispute Settlement Procedures) do not apply to the matters referred to in Annex 10.44.

Annex 10.11

Indirect Expropriation

The Parties confirm their shared understanding that:

(a) indirect expropriation results from a Party's a measure or series of measures that has an effect equivalent to direct expropriation without formal transfer of title or outright seizure;

(b) the determination of whether a measure or series of measures by a Party constitutes an indirect expropriation requires a case-by-case, fact-based inquiry that considers, among other factors:

(i) the economic impact of a measure or a series of measures, although the sole fact that a measure or series of measures by a Party has an adverse effect on the economic value of an investment does not establish that an indirect expropriation has occurred,

(ii) the extent to which the measure or series of measures interferes with distinct, reasonable, investment-backed expectations, and

(iii) the character of the measure or series of measures; and

(c) except in rare circumstances, such as when a measure or series of measures is so severe in light of its purpose that it cannot be reasonably viewed to have been adopted and applied in good faith, a non-discriminatory measure of a Party that is designed and applied to protect legitimate public welfare objectives, such as health, safety and the environment, does not constitute an indirect expropriation.

Annex 10.23

Submission of a Claim to Arbitration

1. An investor of Canada may not submit to arbitration under Section C a claim that Honduras has breached an obligation under Section B:

(a) on the investor's own behalf under subparagraphs 1(a) or (b) of Article 10.19; or

(b) on behalf of an enterprise of Honduras that the investor owns or controls, directly or indirectly, under subparagraphs 1(a) or (b) of Article 10.20,

if the investor or the enterprise, respectively, has alleged that breach in proceedings before a court or administrative tribunal of Honduras.

2. An investor of Canada may not submit to arbitration under Section C a claim that Honduras has breached a legal stability agreement referred to in paragraph 3 of Article 10.19 or paragraph 3 of Article 10.20:

(a) on the investor's own behalf under subparagraph 1(c) of Article 10.20; or

(b) on behalf of an enterprise of Honduras that the investor owns or controls directly or indirectly under subparagraph 1(c) of Article 10.20,

if the investor or the enterprise, respectively, has alleged that breach in proceedings before a court or administrative tribunal of Honduras or has submitted that claim to any other binding dispute settlement proceedings.

3. For greater certainty, if an investor of Canada elects to submit:

(a) a claim described in paragraph 1 to a court or administrative tribunal of the Honduras; or

(b) a claim described in paragraph 2 to a court or administrative tribunal of Honduras or to any other binding dispute settlement proceedings,

that election is definitive and the investor may not then submit the same claim to arbitration under Section C.

Annex 10.24

Standard Waiver and Consent in Accordance with Article 10.24

1. In the interest of facilitating the filing of a waiver as required by Article 10.24, and to facilitate the orderly conduct of the dispute settlement procedures set out in Section C, the following standard waiver forms shall be used, depending on the type of claim.

2. Claims filed under Article 10.19 must be accompanied by Form 1, if the investor is a national of a Party, or Form 2, if the investor is a Party, a state enterprise of a Party, or an enterprise of that Party.

3. If the claim is based on loss or damage to an interest in an enterprise of the other Party that the investor owns or controls, directly or indirectly, Form 1 or 2 must be accompanied by Form 3.

4. Claims made under Article 10.20 must be accompanied by Form 4 and:

   (a) Form 1, if the investor is a national of a Party; or

   (b) Form 2, if the investor is a Party, a state enterprise of a Party, or an enterprise of a Party.

Form 1

Consent and waiver for an investor of a Party that submits a claim under Article 10.19 or Article 10.20 (if the investor is a national of a Party) of the *Free Trade Agreement between Canada and Honduras*:

I, (Name of investor), consent to arbitration in accordance with the procedures set out in this Agreement, and waive my right to initiate or continue before an administrative tribunal or court under the law of a Party to the Agreement, or other dispute settlement procedures, a proceeding with respect to the measure of (Name of disputing Party) that is alleged to be a breach referred to in Article 10.19 or Article 10.20, except for a proceeding for injunctive, declaratory or other extraordinary relief that does not involve the payment of damages, before an administrative tribunal or court under the law of (Name of disputing Party).

(To be signed and dated)

Form 2

Consent and waiver for an investor of a Party that submits a claim under Article 10.19 or Article 10.20 (if the investor is a Party, a state enterprise of a Party, or an enterprise of a Party) of the *Free Trade Agreement between Canada and Honduras*:

I, (Name of declarant), on behalf of (Name of investor), consent to arbitration in accordance with the procedures set out in this Agreement, and waive the right of (Name of investor) to initiate or continue before an administrative tribunal or court under the law of a Party to the Agreement, or other dispute settlement procedures, a proceeding with respect to the measure of (Name of disputing Party) that is alleged to be a breach referred to in Article 10.19 or Article 10.20, except for a proceeding for injunctive, declaratory or other extraordinary relief, not involving the payment of damages before an administrative tribunal or court under the law of (Name of disputing Party).

I hereby solemnly declare that I am duly authorised to execute this consent and waiver on behalf of (Name of investor).

(To be signed and dated)

Form 3

Waiver of an enterprise that is the subject of a claim submitted by an investor of a Party under Article 10.19 of the *Free Trade Agreement between Canada and Honduras*:

I, (Name of declarant), waive the right of (Name of the enterprise) to initiate or continue before an administrative tribunal or court under the law of a Party to this Agreement, or other dispute settlement procedures, a proceeding with respect to the measure of (Name of disputing Party) that is alleged by (Name of investor) to be a breach referred to in Article 10.19, except for a proceeding for injunctive, declaratory or other extraordinary relief, not involving the payment of damages, before an administrative tribunal or court under the law of (Name of disputing Party).

I hereby solemnly declare that I am duly authorised to execute this waiver on behalf of (Name of the enterprise).

(To be signed and dated)

Form 4

Consent and waiver of an enterprise that is the subject of a claim by an investor of a Party under Article 10.20 of the *Free Trade Agreement between Canada and Honduras*:

I, (Name of declarant), on behalf of (Name of enterprise), consent to arbitration in accordance with the procedures set out in this Agreement, and waive the right of (Name of enterprise) to initiate or continue before an administrative tribunal or court under the law of a Party to the Agreement, or other dispute settlement procedures, a proceeding with respect to the measure of (Name of disputing Party) that is alleged by (Name of investor) to be a breach referred to in Article 10.20, except for a proceeding for injunctive, declaratory or other extraordinary relief, not involving the payment of damages before an administrative tribunal or court under the law of (Name of disputing Party).

I hereby solemnly declare that I am duly authorised to execute this consent and waiver on behalf of (Name of the enterprise).

(To be signed and dated)

Annex 10.29

Consolidation

1. A Tribunal established under this Annex shall be established under the UNCITRAL Arbitration Rules and shall conduct its proceedings in accordance with those Rules, unless otherwise provided in this Section.

2. If a Tribunal established under this Annex is satisfied that claims submitted to arbitration under Article 10.23 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, 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 that the Secretary-General establish a Tribunal and shall specify in the request:

(a) the name of the disputing Party or disputing investor against which the order is sought;

(b) the nature of the order sought; and

(c) the grounds for the order sought.

4. The disputing party shall deliver a copy of the request to the disputing Party or disputing investor against which the order is sought.

5. The Secretary-General shall, within 60 days of the receipt of the request, establish a Tribunal consisting of 3 arbitrators. The Secretary-General shall appoint one member who is a national of the disputing Party, one member who is a national of the Party of the disputing investor and a presiding arbitrator, who is not a national of either Party.

6. If a Tribunal is established under this Annex, a disputing investor that submits a claim to arbitration under Article 10.19 or 10.20 and that has not been named in a request made under paragraph 3 may submit 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 for the order 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 10.23 does not have jurisdiction to decide a claim, or a part of a claim, over which a Tribunal established under Article 10.29 has assumed jurisdiction.

9. On the application of a disputing party, a Tribunal established under this Annex may stay the proceedings of a Tribunal established under Article 10.23 pending its decision under paragraph 2, unless those proceedings have already been adjourned.

Annex 10.36

Submission by a Non-Disputing Party

1. An application for leave to file a non-disputing party submission must:

   (a) be made in writing, and be dated and signed by the person filing the application, and include the address and other contact details of the applicant;

   (b) not exceed 5 typed pages;

   (c) describe the applicant, including, if relevant, its membership and legal status (for example, company, trade association or other non-governmental organization), its general objectives, the nature of its activities, and any parent organization (including any organization that directly or indirectly controls the applicant);

   (d) disclose whether or not the applicant has an affiliation, direct or indirect, with a disputing party;

   (e) identify any government, person or organization that has provided financial or other assistance to prepare the submission;

   (f) specify the nature of the applicant's interest in the arbitration;

   (g) identify the specific issues of fact or law in the arbitration that the applicant has addressed in its written submission;

   (h) explain, by referring to the factors specified in Article 10.36(4), why the Tribunal should accept the submission; and

   (i) be made in a language of the arbitration.

2. The submission filed by a non-disputing party must:

(a) be dated and signed by the person filing the submission;

(b) be concise, and not exceed 20 typed pages, including any appendices;

(c) set out a precise statement supporting the applicant’s position on the issues; and

(d) only address matters within the scope of the dispute.

Annex 10.44

Exclusions from Dispute Settlement

1. A decision by Canada following a review under the *Investment Canada Act*, R.S.C. 1985, c.28, 1st supp., with respect to whether to permit an acquisition that is subject to review, is not subject to the dispute settlement provisions of Section C of this Chapter or of Chapter Twenty-One (Institutional Arrangements and Dispute Settlement Procedures).

2. A decision by a Party to prohibit or restrict the acquisition of an investment in its territory by an investor of the other Party, or its investment, under Article 22.3. (Exceptions – National Security) is not subject to the dispute settlement provisions of Section C of this Chapter or of Chapter Twenty-One (Institutional Arrangements and Dispute Settlement Procedures).

CHAPTER ELEVEN

CROSS-BORDER TRADE IN SERVICES

Article 11.1: Definitions

For the purposes of this Chapter:

aircraft repair and maintenance services mean these activities when undertaken on an aircraft or a part of an aircraft while it is withdrawn from service and do not include so-called line maintenance;

computer reservation system (CRS) services means services provided by computerized systems that contain information about air carriers' schedules, availability, fares, and fare rules, through which reservations can be made or tickets may be issued;

cross-border trade in services means providing 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 10.1 (Investment – Definitions), in that territory;

enterprise means an enterprise as defined in Article 2.1 (General Definitions - Definitions of General Application), and a branch of an enterprise;

enterprise of a Party means an enterprise that is organized or constituted under the laws of a Party, and a branch of that enterprise, located in the territory of a Party, that carries on business activities there;

measure adopted or maintained by a Party means a measure adopted or maintained by:

(a) a national or sub-national government authority; or

(b) a non-governmental body exercising national or sub-national governmental authority;

professional service means a service the provision of which requires specialized post-secondary education, or equivalent training or experience, and for which the right to practice is granted or restricted by a Party, but does not include a service provided by a tradesperson or crew member of a vessel or aircraft;

selling and marketing of an air transport service means opportunities for the air carrier concerned to sell and market freely its air transport services including all aspects of marketing such as market research, advertising, and distribution, but does not include the pricing of air transport services or the applicable conditions;

service provider of a Party means a person of a Party that seeks to provide, or provides, a service; and

state enterprise means a state enterprise as defined in Article 2.1 (General Definitions - Definitions of General Application).

Article 11.2: Scope and Coverage

1. This Chapter applies to a measure adopted or maintained by a Party that relates to cross-border trade in services by a service provider of the other Party, including a measure relating to:

(a) the production, distribution, marketing, sale, or delivery of a service;

(b) the purchase of, 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 requirement 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) a financial service, as defined in Chapter Thirteen (Financial Services);

(b) an air service or related service in support of air services, other than:

(i) an aircraft repair and maintenance service,

(ii) the selling and marketing of an air transport service, or

(iii) a computer reservation system (CRS) service;

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

(d) a subsidy or grant provided by a Party or a state enterprise, including a government-supported loan, guarantee or insurance.

3. This Chapter does not impose an obligation on a Party with respect to a national of the other Party seeking access to its employment market, or a national of the other Party employed on a permanent basis in its territory. This Chapter does not confer that national a right with respect to that access or employment.

4. Article 11.6 applies to a measure of a Party affecting the provision of a service in its territory by an investment of an investor of a Party as defined in Article 10.1 (Investment – Definitions).

5. A reservation taken by a Party pursuant to Article 11.7 against Article 11.6 applies to an investment of an investor of that Party covered under paragraph 4.

6. An allegation that a Party has breached Article 11.6 as described in paragraph 4 is not subject to investor-state dispute settlement under Section C of Chapter Ten (Investment – Settlement of Disputes between a Party and an Investor of the Other Party).

Article 11.3: National Treatment

1. Each Party shall accord to a service provider 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 measure adopted or maintained by a sub-national government, treatment no less favourable than the most favourable treatment accorded, in like circumstances, by that sub-national government, to service providers of the Party of which it forms a part.

Article 11.4: Most-Favoured-Nation Treatment

Each Party shall accord to a service provider of the other Party treatment no less favourable than that it accords, in like circumstances, to service providers of a non-Party.

Article 11.5: Local Presence

A Party may not require a service provider of the other Party to establish or maintain a representative office or a form of enterprise, or to be resident, in its territory as a condition for the cross-border provision of a service.

Article 11.6: Market Access

A Party may not adopt or maintain a measure that:

(a) imposes limitations on:

(i) the number of service providers, whether in the form of a numerical quota, monopoly, exclusive service provider, or the requirement of an economic needs test,

(ii) the total value of service transactions or assets in the form of a numerical quota or the requirement of an economic needs test,

(iii) the total number of service operations or the total quantity of service output expressed in terms of a designated numerical unit in the form of a quota or the requirement of an economic needs test, excluding a measure of a Party that limits inputs for the provision of a service, or

(iv) the total number of natural persons that may be employed in a particular service sector or that a service provider may employ and who are necessary for, and directly related to, the provision of a specific service in the form of a numerical quota or the requirement of an economic needs test; or

(b) restricts or requires a specific type of legal entity or joint venture through which a service provider may provide a service.

Article 11.7: Reservations

1. Articles 11.3, 11.4, 11.5, and 11.6 do not apply to:

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

(i) a national government, as set out in its Schedule to Annex I, or

(ii) a sub-national government;

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

(c) an amendment to a non-conforming measure referred to in subparagraph (a) provided that the amendment does not decrease the conformity of the measure with Articles 11.2, 11.3 , 11.4 and 11.5 as it existed immediately before the amendment.

2. Articles 11.2, 11.3, 11.4 and 11.5 do not apply to a measure that a Party adopts or maintains with respect to a sector, subsector or activity, as set out in its Schedule to Annex II.

Article 11.8: Domestic Regulation

1. The Parties note their mutual obligations related to domestic regulation in Article VI:4 of the GATS and affirm their commitment to develop necessary disciplines under Article VI:4. If any of those disciplines are adopted by the WTO Members, the Parties shall, as appropriate, jointly review them with a view to determining whether this Article should be supplemented.

2. Pending the incorporation of disciplines under paragraph 1, the Parties shall aim to ensure that measures relating to qualification requirements and procedures, technical standards, and licensing requirements are:

(a) based on objective and transparent criteria, such as competence and the ability to provide the service;

(b) not more burdensome than necessary to ensure the quality of the service; and

(c) in the case of licensing procedures, not in themselves a restriction on the provision of the service.

3. If authorization is required for the provision of a service, the Party, through its competent authorities, shall, within a reasonable period of time after the submission of an application that is considered complete under its domestic law, inform the applicant of the decision concerning the application. At the request of the applicant, the Party, through its competent authorities, shall provide, without undue delay, information concerning the status of the application. This obligation does not apply to authorization requirements that are within the scope of Article 11.7(2).

Article 11.9: Recognition

1. For the purposes of fulfillment, in whole or in part, of its standards or criteria for the authorization, licensing or certification of services providers, and subject to the requirements of paragraph 3, a Party may recognize the education or experience obtained, requirements met, or licenses or certifications granted in a particular country. That recognition, which may be achieved through harmonization or otherwise, may be based on-an agreement or arrangement with the country concerned or may be accorded autonomously.

2. A Party that is a party to an agreement or arrangement of the type referred to in paragraph 1 shall afford to the other Party, if the other Party is interested, adequate opportunity to negotiate its accession to that agreement or arrangement or to negotiate a comparable agreement or arrangement. If a Party accords recognition autonomously, it shall afford adequate opportunity for the other Party to demonstrate that the education, experience, licences or certifications obtained or requirements met in that other Party's territory should be recognized.

3. A Party may not accord recognition in a manner that would constitute a means of discrimination in the application of its standards or criteria for the authorization, licensing, or certification of services providers, or a disguised restriction on trade in services.

4. The Parties shall endeavour to ensure that the relevant professional service bodies in their respective territories:

(a) exchange information on existing standards and criteria for the authorization, licensing and certification of professional service providers;

(b) meet within 18 months to discuss the development of an agreement or arrangement referred to in paragraph 1; and

(c) notify the Commission following the conclusion of an agreement or arrangement.

5. The professional service sectors to which paragraph 4 applies shall be determined by the Parties within 1 year following the entry into force of this Agreement.

6. On receipt of a notification referred to in subparagraph 4(c), the Commission shall review the agreement or arrangement within a reasonable time to determine whether it is consistent with this Agreement. Based on the Commission's review, each Party shall ensure that its competent authorities, if appropriate, implement the agreement or arrangement within a mutually agreed time.

7. If a Party recognizes, autonomously or by agreement or arrangement, the education or experience obtained, requirements met, or licenses or certifications granted in the territory of a non-Party, Article 11.4 does not require the Party to accord that recognition to the education or experience obtained, requirements met, or licenses or certifications granted in the territory of the other Party.

Article 11.10: Denial of Benefits

1. A Party may deny the benefits of this Chapter to a service provider of the other Party if the Party establishes that the service is provided by an enterprise owned or controlled by nationals of a non-Party, and the denying Party adopts or maintains a measure with respect to the non-Party that prohibits transactions with the enterprise or that would be violated or circumvented if the benefits of this Chapter were accorded to the enterprise.

2. Subject to prior notification and consultation in accordance with Articles 20.4 (Transparency – Notification and Provision of Information) and 21.8 (Institutional Arrangements and Dispute Settlement Procedures and Dispute Settlement – Consultations), a Party may deny the benefits of this Chapter to a service provider of the other Party if the Party establishes that the service 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 11.11: Temporary Licensing

1. If the Parties so decide, each Party shall encourage the relevant professional bodies in its territory to develop procedures for the temporary licensing of professional services providers of the other Party.

2. The Parties shall consider establishing a work program to provide for the temporary licensing, in their respective territories, of nationals of the other Party for a specific professional services sector. To this end, each Party shall coordinate with the relevant professional bodies of its territory, as appropriate.

3. The Commission shall review the implementation of this provision at least once every two years.

CHAPTER TWELVE

TELECOMMUNICATIONS

Article 12.1: Definitions

For the purposes of this Chapter:

commercial mobile services means a public telecommunications service provided through mobile wireless means;

cost-oriented means based on cost, may include a reasonable profit, and may involve different cost methodologies for different facilities or services;

end-user means a final consumer of, or subscriber to, a public telecommunications service, including a service provider other than a provider of a public telecommunications service;

enterprise means an "enterprise" as defined in Article 2.1 (General Definitions – Definitions of General Application) and a branch of an enterprise;

essential facilities means facilities of a public telecommunications network or service that:

(a) are exclusively or predominantly provided by a single or limited number of providers; and

(b) cannot feasibly be economically or technically substituted in order to provide a service;

interconnection means linking suppliers providing a public telecommunications service to allow the users of one supplier to communicate with users of another supplier and to access a service provided by another supplier;

intra-corporate communications means telecommunications through which a company communicates within the company or with or among its subsidiaries, branches and, subject to a Party's domestic law, affiliates, but does not include a commercial or non-commercial service that is provided to a company that is not a related subsidiary, branch or affiliate, or that is offered to a customer or potential customer; for the purposes of this definition, "subsidiaries", "branches" and, where applicable, "affiliates" are as defined by each Party in its domestic law;

leased circuits means telecommunications facilities between 2 or more designated points that are set aside for the dedicated use of or availability to a particular customer or other users of the customer's choice;

major provider means a provider of a public telecommunications network or service that has the ability to materially affect the terms of participation having regard to price and supply in the relevant market for a public telecommunications network or service as a result of:

(a) control over essential facilities; or

(b) the use of its position in the market;

network termination points means the final demarcation of the public telecommunications network at the user's premises;

non-discriminatory means treatment no less favourable than that accorded to another user of like public telecommunications networks or services in like circumstances;

public telecommunications network means the public telecommunications infrastructure that permits telecommunications between and among defined network termination points;

public telecommunications service means a telecommunications service that a Party requires, explicitly or in effect, to be offered to the public generally that involves the real-time transmission of customer-supplied information between 2 or more points without an end-to-end change in the form or content of the customer's information; this service may include, among other things, telephone and data transmission;

reference interconnection offer means an interconnection offer extended by a major provider and filed with or approved by a telecommunications regulatory body, that is sufficiently detailed to enable a provider of a public telecommunications service that is willing to accept its rates, terms, and conditions to obtain interconnection without having to engage in negotiations with the major provider;

service provider means a person of a Party who is seeking to provide or who provides a service, including a provider of a telecommunications network or service;

provision of a service means providing 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;

(c) by a service provider of a Party, through an enterprise in the territory of the other Party; or

(d) by a national of a Party in the territory of the other Party;

telecommunications means the transmission and reception of signals by any electromagnetic means, including by photonic means;

telecommunications regulatory body means a national body that is responsible for the regulation of telecommunications; and

user means an end-user or a provider of a public telecommunications service.

Article 12.2: Scope and Coverage

1. This Chapter applies to:

(a) a measure adopted or maintained by a Party relating to access and use of a public telecommunications network or service;

(b) a measure adopted or maintained by a Party relating to an obligation of a provider of a public telecommunications network or service; and

(c) any other measure adopted or maintained by a Party relating to a public telecommunications network or service.

2. This Chapter does not apply to a measure of a Party affecting the transmission by any means of telecommunications, including broadcast or cable distribution, of radio or television programming intended for direct reception by the public.

3. This Chapter does not:

(a) require a Party (or require a Party to compel a service provider) to establish, construct, acquire, lease, operate, or provide a telecommunications network or service where that network or service is not offered to the public generally;

(b) prevent a Party from prohibiting a service provider operating a private network from using that service provider's network to provide a public telecommunications network or service to a third party; or

(c) require a Party to authorize a service provider of the other Party to establish, construct, acquire, lease, operate, or provide a telecommunications network or service, other than as specifically provided in this Agreement.

Article 12.3: Access to and Use of a Public Telecommunications Network or Service

1. Subject to a Party's right to restrict the provision of a service in accordance with the reservations in its Schedule to Annex I or II, a Party shall ensure that an enterprise of the other Party has access to and use of a public telecommunications network or service, including leased circuits, offered in its territory or across its borders, on reasonable and non-discriminatory terms and conditions, including as set out in paragraphs 2 through 7.

2. Each Party shall ensure that an enterprise of the other Party is permitted to:

(a) purchase or lease, and attach terminal or other equipment that interfaces with a public telecommunications network;

(b) provide a service to individual or multiple end-users over leased or owned circuits;

(c) connect owned or leased circuits with a public telecommunications network and service in the territory, or across the borders, of that Party or with circuits leased or owned by another enterprise;

(d) perform a switching, signalling, processing, or conversion function; and

(e) use an operating protocol of its choice.

3. Each Party shall ensure that an enterprise of the other Party may use a public telecommunications network and service for the movement of information in its territory or across its borders, including for intra-corporate communications of this enterprise, and for access to information contained in a database or otherwise stored in machine-readable form in the territory of either Party.

4. Further to Article 22.2 (Exceptions – General Exceptions), and notwithstanding paragraph 3, a Party may take a measure necessary to:

(a) ensure the security and confidentiality of messages; or

(b) protect the privacy of non-public personal data of users of a public telecommunications service.

5. A measure taken under paragraph 4 may not be applied in a manner that would constitute a means of arbitrary or unjustifiable discrimination or a disguised restriction on trade in services.

6. Each Party shall ensure that a condition is not imposed on access to and use of a public telecommunications network or service other than as necessary to:

(a) safeguard the public service responsibilities of providers of a public telecommunications network or service, in particular their ability to make their network or service available to the public generally;

(b) protect the technical integrity of a public telecommunications network or service; or

(c) ensure that a service provider of the other Party does not provide a service limited by a Party's reservations in its Schedule to Annex I or II.

7. Provided that they satisfy the criteria in paragraph 6, conditions for access to and use of a public telecommunications network or service may include:

(a) a requirement to use a specified technical interface, including an interface protocol, for connection with that network or service;

(b) a licensing, permit, registration, or notification procedure which, if adopted or maintained, is transparent and provides for the processing of applications filed in accordance with a Party's domestic law;

(c) a restriction on resale or shared use of that service;

(d) a requirement, where necessary, for the inter-operability of that service;

(e) type approval of terminal or other equipment that interfaces with the network and technical requirements relating to the attachment of that equipment to the network; and

(f) a restriction on connection of leased or owned circuits with that network or service or with circuits leased or owned by another enterprise.

Article 12.4: Obligations relating to Major Providers of Public Telecommunications Services

1. With respect to Honduras, this Article is subject to Annex 12.4 and does not apply to commercial mobile services. For greater certainty, nothing in this Article precludes a Party from imposing the requirements set out in this Article on providers of commercial mobile services.

Competitive Safeguards

2. Each Party shall maintain appropriate measures to prevent providers who, alone or together, are a major provider in its territory, from engaging in or continuing anti-competitive practices.

3. The anti-competitive practices referred to in paragraph 2 include in particular:

(a) engaging in anti-competitive cross-subsidization;

(b) using information obtained from competitors with anti-competitive results; and

(c) not making available to another service provider, on a timely basis, technical information about essential facilities and commercially relevant information that is necessary for that service provider to provide a public telecommunications service.

Interconnection

4. (a) <u>General Terms and Conditions</u>

Subject to a Party's reservations in its Schedule to Annex I or II, each Party shall ensure that a major provider in its territory provides interconnection for the facilities and equipment of a provider of a public telecommunications service of the other Party:

(i) at any technically feasible point in the major provider's network,

(ii) under non-discriminatory terms, conditions (including technical standards and specifications), and rates,

(iii) of a quality no less favourable than that provided by that major provider to its own like services, for like services of non-affiliated service providers, or for its subsidiaries or other affiliates,

(iv) in a timely fashion, on terms, conditions (including technical standards and specifications), and cost-oriented rates that are transparent and reasonable, having regard to economic feasibility, and sufficiently unbundled so that a provider need not pay for network components or facilities that it does not require for the service to be provided, and

(v) on request, at points in addition to the network termination points offered to the majority of users, subject to charges that reflect the cost of construction of necessary additional facilities.

(b) Options for Interconnecting with Major Providers

Each Party shall ensure that a provider of a public telecommunications service of the other Party may interconnect its facilities and equipment with those of a major provider in its territory through:

(i) a reference interconnection offer or another standard interconnection offer containing the rates, terms, and conditions that the major provider offers generally to providers of a public telecommunications service,

(ii) the terms and conditions of an interconnection agreement in force, or

(iii) negotiation of a new interconnection agreement.

(c) Public Availability of Interconnection Offers

Each Party shall require a major provider in its territory to make publicly available its reference interconnection offers or other standard interconnection offers containing the rates, terms, and conditions that the major provider offers generally to providers of a public telecommunications service.

(d) Public Availability of the Procedures for Interconnection Negotiations

Each Party shall make publicly available the applicable procedures for interconnection negotiations with a major provider in its territory.

(e) Public Availability of Interconnection Agreements Concluded with Major Suppliers

(i) Each Party may require a major provider in its territory to file all interconnection agreements to which it is party with its telecommunications regulatory body or other relevant body.

(ii) Each Party shall make publicly available the interconnection agreements in force between a major provider in its territory and other providers of a public telecommunications service in its territory.

Article 12.5: Independent Regulatory Bodies

1. Each Party shall ensure that its telecommunications regulatory body is separate from, and not accountable to, a provider of a public telecommunications network or service.

2. Each Party shall ensure that the decisions and procedures of its telecommunications regulatory body are impartial with respect to interested persons.

Article 12.6: Universal Service

Each Party shall administer a universal service obligation that it adopts or maintains in a transparent, non-discriminatory, and competitively neutral manner, and shall ensure that a universal service obligation is not more burdensome than necessary for the kind of universal service that it has defined.

Article 12.7: Licenses and Other Authorizations

1. If a Party requires a provider of a public telecommunications network or service to have a license, concession, permit, registration, or other type of authorization, that Party shall make publicly available:

(a) all applicable licensing or authorization criteria and procedures it applies;

(b) the amount of time that is normally required to reach a decision concerning an application for a license, concession, permit, registration, or other type of authorization; and

(c) the terms and conditions of all licenses, concessions, permits, registrations, or other types of authorizations it has issued.

2. Each Party shall ensure that, on request, an applicant is advised of the reasons for the denial of a license, concession, permit, registration, or other type of authorization.

Article 12.8: Allocation and Use of Scarce Resources

1. Each Party shall administer its procedures for the allocation and use of scarce telecommunications resources, including frequencies, numbers, and rights of way, in an objective, timely, transparent, and non-discriminatory manner.

2. Each Party shall make publicly available the current state of allocated frequency bands, but shall not be required to provide detailed identification of frequencies allocated for a specific government use.

3. Notwithstanding Article 11.6 (Cross-Border Trade in Services – Market Access), a Party may adopt or maintain a measure that allocates and assigns spectrum and that manages frequencies. Accordingly, each Party retains the right to establish and apply its spectrum and frequency management policies, which may limit the number of providers of a public telecommunications service, provided that the Party does so in a manner that is consistent with this Agreement. Each Party also retains the right to allocate frequency bands based on existing and future needs.

Article 12.9: Enforcement

Each Party shall adopt or maintain appropriate procedures and authority to enforce compliance with the Party's measures relating to the obligations set out in Articles 12.3 and 12.4. Those procedures must include the ability to impose sanctions, which may include financial penalties, corrective orders, injunctive relief (on an interim or final basis), or the modification, suspension, or revocation of licenses, concessions, permits, registrations, or other types of authorizations.

Article 12.10: Resolution of Domestic Telecommunications Disputes

Recourse to Telecommunications Regulatory Bodies

1. Further to Article 20.5 (Transparency – Administrative Proceedings) and Article 20.6 (Transparency – Review and Appeal) each Party shall ensure that:

   (a) an enterprise of the other Party has, within a reasonable period of time, recourse to a telecommunications regulatory body or other relevant body to resolve disputes regarding a measure that relates to matters covered in Articles 12.3 and 12.4 and that, under the domestic law of the Party, are within the body's jurisdiction; and

(b) a provider of a public telecommunications network or service of the other Party requesting interconnection with a major provider in the Party's territory has recourse, within a reasonable and publicly specified period of time after the provider requests interconnection, to a telecommunications regulatory body to resolve disputes regarding the terms, conditions, and rates for interconnection with that major provider.

2. Each Party shall ensure that an enterprise that is aggrieved or whose interests are adversely affected by a determination or decision of a Party's telecommunications regulatory body may request the body to reconsider that determination or decision.

3. With respect to Canada, reconsideration shall not apply to a determination or decision related to the establishment and application of spectrum and frequency management policies.

Article 12.11: Transparency

Further to Article 20.3 (Transparency – Publication) and Article 20.4 (Transparency – Notification and Provision of Information), and in addition to the other provisions in this Chapter relating to the publication of information, each Party shall ensure that:

(a) regulations, including the basis for those regulations, of its telecommunications regulatory body and end-user tariffs filed with its telecommunications regulatory body are promptly published or otherwise made publicly available;

(b) interested persons are provided with adequate advance public notice of, and the opportunity to comment on, any regulation that its telecommunications regulatory body proposes;

(c) its measures relating to a public telecommunications network or service are made publicly available, including measures relating to:

(i) tariffs and other terms and conditions of service,

(ii) procedures relating to judicial and other adjudicatory proceedings,

(iii) specifications of technical interfaces,

(iv) conditions for attaching terminal or other equipment to a public telecommunications network, and

(v) notification, licensing, concession, permit, registration, or other types of authorization. requirements, if any; and

(d) information on bodies responsible for preparing, amending, and adopting standards-related measures affecting access and use is made publicly available.

Article 12.12: Forbearance

The Parties recognize the importance of relying on market forces to achieve wide choices in the provision of telecommunications services. To this end, each Party may refrain from applying a regulation to a public telecommunications service, if its telecommunications regulatory body determines that:

(a) enforcement of that regulation is not necessary to prevent an unreasonable or discriminatory practice;

(b) enforcement of that regulation is not necessary to protect consumers; or

(c) it is consistent with the public interest, including promoting and enhancing competition between providers of a public telecommunications network or service.

Article 12.13: Relationship to Other Chapters

In the event of an inconsistency between this Chapter and another Chapter of this Agreement, this Chapter prevails to the extent of the inconsistency.

Article 12.14: International Standards and Organizations

The Parties recognize the importance of international standards for global compatibility and interoperability of telecommunications 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.

Annex 12.4

Rural Telephone Suppliers

1. Honduras may designate and exempt a rural telephone company in its territory from Article 12.4, provided that the rural telephone company provides public telecommunications services to fewer than 2% of the subscriber lines installed in the territory of Honduras. The number of subscriber lines supplied by a rural telephone company includes all subscriber lines supplied by the company, its owners, its subsidiaries, and its affiliates.

2. This Annex does not preclude Honduras from imposing the requirements set out in Article 12.4 on rural telephone companies.

CHAPTER THIRTEEN

FINANCIAL SERVICES

Article 13.1: Definitions

For the purposes of this Chapter:

Appointing Authority means the Secretary-General, Deputy Secretary-General or next senior member of the staff of the International Centre for Settlement of Investment Disputes, who is not a national of either Party;

cross-border financial service provider of a Party means a person of a Party that is engaged in the business of providing a financial service within the territory of the Party and that seeks to provide or provides a financial service through the cross-border trade in that service;

cross-border provision of a financial service or **cross-border trade in financial services** means providing a financial service:

(a) from the territory of a Party into the territory of the other Party;

(b) in the territory of a Party by a person of that Party to a person of the other Party; or

(c) by a national of a Party in the territory of the other Party,

but does not include providing a service in the territory of a Party by an investment in that territory;

financial institution means a financial intermediary or other enterprise that is authorized to do business and regulated or supervised as a financial institution under the domestic 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 a person of the other Party;

financial service means a service of a financial nature. Financial services include insurance and insurance-related services, and 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:

(a) direct insurance (including co-insurance):

(i) life, or

(ii) non-life;

(b) reinsurance and retrocession;

(c) insurance intermediation, such as brokerage and agency;

(d) services auxiliary to insurance, such as consultancy, actuarial, risk assessment, and claim settlement services;

Banking and other financial services (excluding insurance):

(e) acceptance of deposits and other repayable funds from the public;

(f) lending, including consumer credit, mortgage credit, factoring and financing of commercial transactions;

(g) financial leasing;

(h) payment and money transmission services, including credit, charge and debit cards, travelers cheque, and bankers drafts;

(i) guarantees and commitments;

(j) trading for own account or for account of customers, whether on an exchange, in an over-the-counter market or otherwise, the following:

(i) money market instruments (including cheques, bills, or certificates of deposits),

(ii) foreign exchange,

(iii) derivative products including futures and options,

(iv) exchange rate and interest rate instruments, including products such as a swaps and forward rate agreements,

(v) transferable securities,

(vi) other negotiable instruments and financial assets, including bullion;

(k) participation in issues of securities, including underwriting and placement as an agent (whether publicly or privately) and provision of services related to such issues;

(l) money broking;

(m) asset management such as cash or portfolio management, collective investment management, pension fund management, custodial depository and trust service;

(n) settlement and clearing services for financial assets, including securities, derivative products and other negotiable instruments;

(o) provision and transfer of financial information, and financial data processing and related software by providers of other financial services; and

(p) advisory, intermediation, and other auxiliary financial services on 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 provider of a Party means a person of a Party that is engaged in the business of providing a financial service within the territory of that Party;

investment means "investment" as defined in Article 10.1 (Investment – Definitions), except that with respect to a "loan" or "debt instrument" referred to in that Article:

(a) a loan to or debt instrument issued by a financial institution is an investment only if it is treated as regulatory capital by the Party in whose territory the financial institution is located; and

(b) a loan granted by or debt instrument owned by a financial institution, other than a loan to or debt instrument of a financial institution referred to in subparagraph (a), is not an investment;

for greater certainty:

(c) a loan to, or debt instrument issued by, a Party, or a state enterprise of that Party, is not an investment; and

(d) a loan granted by or debt instrument owned by a cross-border financial service provider, other than a loan to or debt instrument issued by a financial institution, is an investment if that loan or debt instrument meets the criteria for investments set out in Article 10.1 (Investment – Definitions);

investor of a Party means "investor of a Party" as defined in Article 10.1 (Investment – Definitions);

new financial service means a financial service not provided in the Party's territory that is provided within the territory of the other Party, and includes a 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 2.1 (General Definitions – 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 a financial institution owned or controlled by a Party; and

self-regulatory organization means a non-governmental body, including a securities or futures exchange or market, clearing agency, or other organization or association, that exercises its own or delegated regulatory or supervisory authority over financial service providers or financial institutions.

Article 13.2: Scope and Coverage

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

   (a) a financial institution of the other Party;

   (b) an investor of the other Party, and an investment of that investor, in a financial institution in the Party's territory; and

   (c) cross-border trade in financial services.

2. Chapters Ten (Investment) and Eleven (Cross-Border Trade in Services) apply to measures described in paragraph 1 only to the extent that those Chapters are incorporated into this Chapter.

3. Articles 10.10 (Investment – Transfers), 10.11 (Investment – Expropriation), 10.13 (Investment – Special Formalities and Information Requirements), 10.14 (Investment – Denial of Benefits), 10.15 (Investment – Health, Safety and Environmental Measures) and 11.10 (Cross-Border Trade in Services – Denial of Benefits) are incorporated into and made a part of this Chapter.

4. Section C of Chapter Ten (Investment) is incorporated into and made a part of this Chapter solely for claims that a Party has breached Articles 10.10 (Investment – Transfers), 10.11 (Investment – Expropriation), 10.13 (Investment – Special Formalities and Information Requirements), or 10.14 (Investment – Denial of Benefits).

5. This Chapter does not prevent a Party, including its public entities, from exclusively conducting or providing in its territory:

(a) an activity or service forming part of a public retirement plan or statutory system of social security; or

(b) an activity or service for the account, with the guarantee or using the financial resources of the Party, including its public entities.

Article 13.3: National Treatment

1. Each Party shall accord to an investor 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 a financial institution or an investment in a financial institution in its territory.

2. Each Party shall accord to a financial institution of the other Party and to an investment of an investor of the other Party in a financial institution 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 a financial institution or investment.

3. For the purposes of national treatment obligations in Article 13.6(1), a Party shall accord to a cross-border financial service provider of the other Party treatment no less favourable than that it accords to its own financial service providers, in like circumstances, with respect to the provision of the relevant service.

4. The treatment that a Party is required to accord under paragraphs 1, 2 and 3 means, with respect to a measure adopted or maintained by a sub-national government, treatment no less favourable than the most favourable treatment accorded, in like circumstances, by that sub-national government to an investor in a financial institution, a financial institution, an investment of an investor in a financial institution and a financial service provider 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 the obligations under this Article.

Article 13.4: Most-Favoured-Nation Treatment

1. Each Party shall accord to an investor of the other Party, a financial institution of the other Party, an investment of an investor in a financial institution, and a cross-border financial service provider of the other Party, treatment no less favourable than that it accords to an investor, financial institution, investment of an investor in a financial institution, and a cross-border financial service provider of a non-Party, in like circumstances.

2. A Party may recognize a prudential measure of a non-Party when the Party applies a measure covered by this Chapter. That recognition may be:

(a) accorded unilaterally;

(b) achieved through harmonization or other means; or

(c) based on an agreement or arrangement with the non-Party.

3. A Party that recognizes a prudential measure under paragraph 2 shall provide adequate opportunity to the other Party to demonstrate that circumstances exist in which there are or would be equivalent regulation, oversight, implementation of regulation, and if appropriate, procedures concerning the sharing of information between the Parties.

4. If a Party recognizes a prudential measure under subparagraph 2(c) and the circumstances set out in paragraph 3 exist, the Party shall provide adequate opportunity for the other Party to negotiate accession to the agreement or arrangement, or to negotiate a comparable agreement or arrangement.

Article 13.5: 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, without imposing a numerical restriction or a requirement to take a specific juridical form, a financial institution that is permitted to provide a financial service that a like institution of the Party may provide under the domestic law of the Party at the time of establishment. The obligation not to impose a requirement to take a specific juridical form does not prevent a Party from imposing a condition or a requirement 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 in that territory such additional financial institutions as may be necessary to provide the full range of financial services allowed under the domestic law of the Party when the additional financial institutions are established. Subject to Article 13.3, a Party may impose a term or condition on the establishment of additional financial institutions and determine the institutional and juridical form to be used to provide a specified financial service or to carry out a specified activity.

3. The right of establishment under paragraphs 1 and 2 includes the right to acquire an existing entity.

4. Subject to Article 13.3, a Party may prohibit a particular financial service or activity but may not prohibit all financial services or a complete financial service sub-sector, such as banking.

5. For the purposes of this Article, without prejudice to other measures taken for prudential reasons, a Party may require that an investor of the other Party be engaged in the business of providing a financial service in the territory of that other Party.

6. For the purposes of this Article, "a numerical restriction" means a limitation that is imposed on the number of financial institutions either on the basis of a regional subdivision, or on the basis of the entire territory of a Party, whether that limitation is in the form of a numerical quota, a monopoly, an exclusive service provider or the requirements of an economic needs test.

Article 13.6: Cross-Border Trade

1. Each Party shall permit, under terms and conditions that accord national treatment, a cross-border financial service provider of the other Party to provide a financial service specified in Annex 13.6.

2. Each Party shall permit a person located in its territory, and its nationals, wherever they are located, to purchase a financial service from a cross-border financial service provider of the other Party located in the territory of that other Party. This obligation does not require a Party to permit such a provider to do business or solicit in its territory. Subject to paragraph 1, each Party may define "doing business" and "solicitation" for the purposes of this obligation.

3. Without prejudice to other measures taken for prudential reasons of cross-border trade in financial services, a Party may require the registration of a cross-border financial service provider of the other Party and of financial instruments.

Article 13.7: New Financial Services

1. A Party shall permit a financial institution of the other Party to provide a new financial service that the first Party would permit its own financial institutions, in like circumstances, to provide under its domestic law. A Party may:

(a) require the financial institution to request permission or notify the relevant regulator in order to obtain that permission; and

(b) refuse to grant permission if the introduction of the financial service would require the Party to adopt or amend a statute.

2. A Party may determine the institutional and juridical form through which the new financial service may be provided and may require authorization for the provision of the service. If a Party would permit the new financial service, and authorization is required, the decision shall be made within a reasonable time and authorization may only be refused for prudential reasons.

3. This Article does not prevent a financial institution of a Party from applying to the other Party to consider authorizing the provision of a financial service that is not provided within either Party's territory. That application is subject to the domestic law of the Party to which the application is made and, for greater certainty, is not subject to the obligations of this Article.

Article 13.8: Senior Management and Boards of Directors

1. A Party may not require a financial institution of the other Party to engage natural persons of a 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 or natural persons residing in the territory of the Party.

Article 13.9: Non-Conforming Measures

1. Articles 13.3, 13.4, 13.5, and 13.8 do not apply to:

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

(i) the national government of a Party, as set out in Section I of its Schedule to Annex III, or

(ii) a sub-national government of a Party;

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

(c) an amendment to a 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 13.3, 13.4,13.5 and 13.8.

2. Article 13.6 does not apply to:

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

(i) the national government of a Party, as set out in Section I of its Schedule to Annex III, or

(ii) a sub-national government of a Party;

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

(c) an amendment to a 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 on the entry into force of this Agreement, with Article 13.6.

3. Articles 13.3, 13.4, 13.5, 13.6, and 13.8 do not apply to a non-conforming measure that a Party adopts or maintains in accordance with Section II of its Schedule to Annex III.

4. If a Party sets out a reservation to Articles 10.4 (Investment – National Treatment), 10.5 (Investment – Most-Favoured-Nation Treatment), 11.3 (Cross-Border Trade in Services – National Treatment) or 11.4 (Cross-Border Trade in Services – Most-Favoured-Nation Treatment) in its Schedule to Annex I or II, the reservation is deemed to constitute a reservation to Articles 13.3 or 13.4, to the extent that the measure, sector, subsector or activity set out in the reservation is covered by this Chapter.

Article 13.10: Exceptions

1. This Chapter, or Chapter Ten (Investment), Chapter Eleven (Cross-Border Trade in Services), Chapter Twelve (Telecommunications), Chapter Fourteen (Temporary Entry for Business Persons), Chapter Fifteen (Competition Policy, Monopolies and State Enterprises), or Chapter Sixteen (Electronic Commerce) do not prevent a Party from adopting or maintaining a measure for prudential reasons including:

(a) the protection of investors, depositors, financial market participants, policy-holders, policy-claimants, or persons to whom a fiduciary duty is owed by an individual financial institution or cross-border financial service provider;

(b) the maintenance of the safety, soundness, integrity or financial responsibility of an individual financial institution or cross-border financial service provider; and

(c) ensuring the integrity and stability of the financial system of a Party.

If these measures do not conform with the provisions of this Agreement referred to in this paragraph, they may not be used as a means of avoiding the Party’s commitments or obligations under those provisions.

2. This Chapter, Chapter Ten (Investment), Chapter Eleven (Cross-Border Trade in Services), Chapter Twelve (Telecommunications), Chapter Fourteen (Temporary Entry for Business Persons), Chapter Fifteen (Competition Policy, Monopolies and State Enterprises), or Chapter Sixteen (Electronic Commerce) do not apply to a non-discriminatory measure of general application taken by a public entity in pursuit of a monetary and related credit policy or an exchange rate policy. This paragraph does not affect a Party's obligations under Article 10.7 (Investment – Performance Requirements) with respect to measures covered by Chapter Ten (Investment) or Article 10.10 (Investment – Transfers).

3. Notwithstanding Article 10.10 (Investment – Transfers), as incorporated into this Chapter, a Party may prevent or limit transfers by a financial institution or a cross-border financial services provider to, or for the benefit of, an affiliate of or person related to that institution or provider, 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 providers. This paragraph does not prejudice any other provision of this Agreement that permits a Party to restrict transfers.

4. Article 13.3 does not apply if a Party grants to a financial institution an exclusive right to provide a financial service referred to in Article 13.2(5)(a).

5. A Party may adopt or enforce a measure necessary to secure compliance with its laws or regulations that is consistent with this Chapter, including a measure relating to the prevention of deceptive and fraudulent practices or to deal with the effects of a default on financial services contracts. A Party may not apply that measure in a manner that would constitute a means of arbitrary or unjustifiable discrimination between countries where like conditions prevail, or a disguised restriction on investment in a financial institution or on a cross-border trade in financial services.

Article 13.11: Transparency

1. Article 20.3(2) (Transparency – Publication) does not apply to a regulation of general application that a Party proposes to adopt where that proposed regulation relates to the subject matter of this Chapter. For that regulation each Party shall, to the extent practicable:

(a) publish that proposed regulation in advance;

(b) provide interested persons and the other Party reasonable opportunity to comment on that proposed regulation; and

(c) allow a reasonable period of time to elapse between final publication of the regulation and its effective date.

2. Each Party shall ensure that its regulatory authorities shall make available to interested persons their requirements for completing applications relating to the provision of financial services.

3. At the request of an applicant, the Party, through its regulatory authority, shall inform the applicant of the status of its application. If that authority requires additional information from the applicant, it shall notify the applicant without undue delay.

4. A Party, through its regulatory authority, shall make an administrative decision on a completed application of an investor in a financial institution, a cross-border financial service provider, or a financial institution of the other Party relating to the provision of a financial service within 120 days and shall promptly notify the applicant of the decision. An application is not considered complete until all relevant hearings are held and all necessary information is received. If it is not practicable for a decision to be made within 120 days, the Party, through its regulatory authority, shall notify the applicant without undue delay and shall endeavour to make the decision within a reasonable period of time.

5. Each Party shall maintain, or establish appropriate mechanisms to respond, as soon as practicable, to inquiries from interested persons regarding a measure of general application covered by this Chapter.

Article 13.12: Treatment of Certain Information

This Chapter does not require a Party to furnish or allow access to:

(a) information related to the financial affairs or accounts of individual customers of financial institutions or cross-border financial service providers; or

(b) confidential information which, if disclosed, would impede law enforcement or otherwise be contrary to the public interest or prejudice legitimate commercial interests of a particular enterprise.

Article 13.13: Self-Regulatory Organizations

If a Party requires a financial institution or a cross-border financial service provider of the other Party to be a member of, participate in, or have access to, a self-regulatory organization in order to provide a financial service in or into the territory of that Party, then the requiring Party shall ensure that the self-regulatory organization observes the obligations of this Chapter.

Article 13.14: Payment and Clearing Systems

Under terms and conditions that accord national treatment, each Party shall grant to a financial institution of the other Party established in its territory access to payment and clearing systems operated by a public entity, as well as access to official funding and refinancing facilities available in the normal course of ordinary business. This Article does not confer access to the Party's lender of last resort facilities.

Article 13.15: Financial Services Committee

1. The Parties establish a 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 13.15.

2. The Committee shall:

(a) supervise the implementation of this Chapter and its further elaboration;

(b) consider issues regarding financial services that are referred to it by a Party; and

(c) participate in the dispute settlement procedures in accordance with Article 13.18.

3. The Committee shall meet annually, or as it otherwise decides, 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 13.16: Consultations

1. A Party may request consultations with the other Party regarding a matter arising under this Agreement that affects a financial service. The other Party shall give sympathetic consideration to the request. The Parties shall report the results of their consultations to the Committee.

2. Officials of the authorities specified in Annex 13.15 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 providers in the requesting Party's territory.

4. This Article does not require regulatory authorities participating in consultations under paragraph 3 to disclose information or take action that would interfere with individual regulatory, supervisory, administrative or enforcement matters.

5. If a Party requires information for a supervisory purpose concerning a financial institution in the other Party's territory or a cross-border financial service provider 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. This Article does not require a Party to derogate from its relevant domestic law regarding sharing of information among financial regulators or the requirements of an agreement or arrangement between financial authorities of the Parties.

Article 13.17: Dispute Settlement

1. The provisions of Chapter Twenty-One (Institutional Arrangements and Dispute Settlement Procedures), as modified by this Article, apply to the settlement of disputes arising under this Chapter.

2. Consultations held pursuant to Article 13.16 regarding a measure or matter constitute consultations under Article 21.8 (Institutional Arrangements and Dispute Settlement Procedures – Consultations), unless the Parties decide otherwise. If the matter has not been resolved within 45 days after the beginning of consultations under Article 13.16 or 90 days after the delivery of the request for consultations pursuant to Article 13.16 whichever is earlier, the complaining Party may request in writing the establishment of a panel.

3. The following procedures shall replace Article 21.11 (Institutional Arrangements and Dispute Settlement Procedures – Panel Composition):

(a) the panel shall consist of 3 members;

(b) each Party shall, within 30 days of the receipt of the request for the establishment of the panel, appoint a panel member 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 panel member within 30 days, the other Party may request the Appointing Authority to appoint, at its discretion, the panel member not yet appointed, subject to paragraph 4;

(c) the Parties shall endeavour to jointly appoint the third panel member who shall chair the panel and, unless the Parties decide 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, at its discretion, subject to paragraph 4, the chair of the panel, who shall not be a national of either Party;

(d) subparagraphs (b) and (c) shall apply if a panel member or the chair of the panel withdraws, is removed or becomes unable to serve on the panel. In that case, the time periods applicable to the panel proceeding shall be suspended for a period beginning on the date a panel member ceases to serve and ending on the date the replacement is appointed.

4. Each member of a panel established for disputes arising under this Chapter shall have the qualifications required by Article 21.12 (Institutional Arrangements and Dispute Settlement Procedures – Qualifications of Panel Members), with the exception of subparagraph 2(b). In addition, each panel member shall have expertise or experience in financial services law or practice, which may include the regulation of financial institutions.

5. If 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 another 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 13.18: Investment Disputes in Financial Services

1. If an investor of a Party submits a claim under Articles 10.19 (Investment – Claim by an Investor of a Party on Its Own Behalf) or 10.20 (Investment – Claim by an Investor of a Party on Behalf of an Enterprise) to arbitration under Section C of Chapter Ten (Investment) and the disputing Party invokes an exception under Article 13.10, the Tribunal, at the request of the disputing Party, shall refer the matter in writing to the Committee for a decision in accordance with paragraph 2. The Tribunal may not proceed until it receives the decision or report under this Article.

2. In a referral under paragraph 1, the Committee shall decide whether and to what extent Article 13.10 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. If the Committee has not decided the issue within 60 days of receiving the referral under paragraph 1, either Party may, within 10 days, request the establishment of a panel under Article 21.10 (Institutional Arrangements and Dispute Settlement Procedures – Establishment of a Panel). The panel shall be constituted in accordance with Article 13.17. Further to Article 21.16 (Institutional Arrangements and Dispute Settlement Procedures – Panel Reports), the panel shall transmit its final report to the Committee and to the Tribunal. The report is binding on the Tribunal.

4. If a Party does not request the establishment of a panel under paragraph 3 within 10 days after the expiration of the 60-day period, the Tribunal may proceed to decide the matter.

Annex 13.6

Cross-Border Trade

Canada

Insurance and Insurance-Related Services

1. Article 13.6(1) applies to cross-border trade in financial services, as defined in subparagraph (a) of the definition of cross-border provision of a financial service in Article 13.1 with respect to:

(a) insurance of risks relating to:

(i) maritime transport, commercial aviation and space launching and freight (including satellites), when that insurance covers any or all of the following: the goods being transported, the vehicle transporting the goods, or any liability deriving therefrom, and

(ii) goods in international transit; and

(b) 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. Canada's commitments on cross-border insurance and insurance-related services apply only where a Honduran entity is not in itself or through an agent insuring in Canada a risk.

Banking and Other Financial Services (excluding insurance)

3. Article 13.6(1) applies to cross-border provision of or trade in financial services, as defined in subparagraph (a) of the definition of cross-border provision of a financial service in Article 13.1 with respect to:

(a) the provision and transfer of financial information and financial data processing and related software as described in subparagraph (o) of the definition of financial service; 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. Canada's commitments on cross-border trade of banking and other financial services (excluding insurance) are made on the basis that 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.

Honduras

Insurance and Insurance-Related Services

1. For Honduras, Article 13.6(1) applies to the cross-border provision of or trade in financial services as defined in subparagraph (a) of the definition of cross-border provision of a financial service in Article 13.1 with respect to:

(a) insurance of risk relating to:

(i) maritime shipping and 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 arising therefrom, and

(ii) goods in international transit;

(b) reinsurance and retrocession;

(c) services auxiliary to insurance as referred to in subparagraph (d) of the definition of financial services; and

(d) insurance intermediation such as brokerage and agency only for the services included in subparagraphs (a) and (b).

2. For Honduras, Article 13.6(1) applies to the cross-border provision of or trade in financial services as defined in subparagraph (c) of the definition of cross-border provision of a financial service with respect to services listed in paragraph 1 above. It is understood that the commitment for cross-border movement of persons is limited to those insurance and insurance-related services listed in paragraph 1.

3. Honduras's commitments on cross-border insurance and insurance-related services apply only where a Canadian entity is not in itself or through an agent insuring in Honduras a risk.

Banking and Other Financial Services (Excluding Insurance)

4. For Honduras, Article 13.6(1) applies with respect to the provision and transfer of financial information and financial data processing and related software as referred to in subparagraph (o) of the definition of financial service, and advisory and other auxiliary services, excluding intermediation, relating to banking and other financial services as referred to in subparagraph (p) of the definition of financial service.

Annex 13.15

Authorities Responsible for Financial Services

The authority of each Party responsible for financial services is:

(a) for Canada, the Department of Finance of Canada; and

(b) for Honduras, the Secretary of State at the Offices of Industry and Trade (*la Secretaría de Estado en los Despachos de Industria y Comercio)*, in consultation with the corresponding competent authorities (National Commission of Banking and Insurance (*Comisión Nacional de Bancos y Seguros*) and the Central Bank of Honduras (*Banco Central de Honduras*)),

or their respective successors.

CHAPTERFOURTEEN

TEMPORARY ENTRY FOR BUSINESS PERSONS

Article 14.1:Definitions

For the purposes of this Chapter:

after-sales service includesa service provided by a person:

(a) to repair, service, supervise installers, and set up and testcommercial or industrial equipment (including computer software), provided the service isperformed as part of an original or extended sales or lease agreement, warranty, or service contract; but does not include hands-on installation generally performed by construction or building trades; or

(b) toprovide familiarization or training sessions to potential users;

business visitor means a short-term visitor who does not intend to enter the labour market of a Party, but who seeksentry to engage in activities such as buying or selling goods or services, negotiating contracts, conferring with colleagues, or attending conferences; and

temporary entry means the right to enter and remain in the territory of a Party for the period authorized.

Article 14.2:Obligations

1. The Parties recognize the importance of temporary entry for business persons to support international trade in goods, services, and investment.In accordance with their applicable domestic law, the Parties shall grant the temporary entry of:

(a) nationals who are intra-company transferees (managers, executives, specialists), and business visitors;

(b) nationals who are providingan after-sales service directly related to the exportation of a good by an exporter of the same Party into the territory of the other Party; or

(c) spouses or common-law partners and children of nationals who are intra-company transferees, as described in subparagraph (a).

2. With a view to developing and deepening their relations under this Agreement, the Parties agree that within 3 years of the date of entry into force of this Agreement, they will review developments related to temporary entry and consider the need for further disciplines in this area, including the removal of labour market tests,and procedures of similar effect,and numerical quotas where appropriate.The Parties also agree to deal with implementation and administration issues through bilateral discussions.

3. Within 1 year of the date of entry into force of this Agreement, each Party shall make available explanatory material regarding the requirements for temporary entry under this Chapterso that nationals of the other Party may become acquainted with it.

CHAPTER FIFTEEN

COMPETITION POLICY, MONOPOLIES AND STATE ENTERPRISES

Article 15.1: Definitions

For the purposes of this Chapter:

designate means to establish, 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;

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 sector 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 a 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 or most-favoured-nation treatment, as set out in the relevant provisions of this Agreement; and

state enterprise means, except as set out in Annex 15.4, a state enterprise as defined in Article 2.1 (General Definitions – Definitions of General Application).

Article 15.2: Competition Policy

1. The Parties recognize the importance of competition law and policy for the efficient functioning of markets within the free trade area and for contributing to the fulfilment of the objectives of this Agreement.

2. Each Party shall adopt or maintain measures to proscribe anti-competitive business conduct and take appropriate action with respect to that conduct.

3. Each Party shall maintain its independence in developing and enforcing its competition laws and regulations.

4. Each Party shall ensure that the measures it adopts or maintains to protect or promote competition in its own market by proscribing anti-competitive business conduct are consistent with the principles of transparency, non-discrimination and procedural fairness.

Article 15.3: Monopolies

1. This Agreement does not prevent a Party from designating or maintaining a monopoly.

2. If a Party intends to designate a monopoly and the designation may affect the interests of a person of the other Party, the designating Party shall, whenever possible, provide prior written notification of the designation to the other Party.

3. Each Party shall ensure that a privately owned monopoly that it designates or a government monopoly that it maintains or designates:

(a) acts in a manner that is consistent with the Party's obligations under this Agreement whenever that monopoly exercises 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 licenses, approve commercial transactions, or impose quotas, fees or other charges;

(b) except to comply with a term of its designation that is consistent 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;

(c) provides non-discriminatory treatment to investments of investors of the other Party, to goods of the other Party, and to service providers of the other Party when it purchases or sells the monopoly good or service in the relevant market; and

(d) does not use its monopoly position to engage, directly or indirectly, including through its dealings with its parent, subsidiaries, or other enterprises with common ownership, in anti-competitive practices in a non-monopolized market in its territory that adversely affect an investment of an investor of the other Party.

4. Paragraph 3 does not apply to procurement by governmental agencies of a good or service for governmental purposes as long as the good or service is not intended for:

(a) commercial resale; or

(b) use in the production of a good or the provision of a service for commercial sale.

Article 15.4: State Enterprises

1. This Agreement does not prevent a Party from establishing or maintaining a state enterprise.

2. Each Party shall ensure that a state enterprise that it establishes or maintains acts in a manner that is consistent with the Party's obligations under Chapters Ten (Investment) and Thirteen (Financial Services), whenever that enterprise exercises regulatory, administrative, or other governmental authority that the Party has delegated to it, such as the power to expropriate, grant licenses, approve commercial transactions, or impose quotas, fees, or other charges.

3. Each Party shall ensure that a state enterprise that it establishes or maintains 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 15.5: Interpretation and Application

The Parties shall endeavour to come to a mutual understanding on the interpretation and application of this Chapter, and shall make every attempt through cooperation and discussions to resolve, to their mutual satisfaction, a matter that might affect the operation of this Chapter.

Article 15.6: Dispute Settlement

An investor may not have recourse to investor-state dispute settlement under Article 10.19 (Investment – Claim by an Investor of a Party on Its Own Behalf) or Article 10.20 (Investment – Claim by an Investor of a Party on Behalf of an Enterprise) for a matter arising under this Chapter, except for a matter arising under Article 15.3(3)(a) or Article 15.4(2).

Annex 15.4

Country-Specific Definitions of State Enterprise

For the purposes of Article 15.4(3) “state enterprise” means, with respect to Canada, a “Crown corporation” within the meaning of the *Financial Administration Act*, R.S.C. 1985, c. F-11, a Crown corporation within the meaning of any comparable provincial law, or an equivalent entity that is incorporated under other applicable provincial law.

CHAPTER SIXTEEN

ELECTRONIC COMMERCE

Article 16.1: Definitions

For the purposes of this Chapter:

digital product means a computer program, text, video, image, sound recording, or other product that is digitally encoded; but does not include a digitized representation of a financial instrument;

transmitted electronically means to transfer a digital product by electromagnetic means, including by photonic means.

Article 16.2: General Provisions

1. The Parties recognize the economic growth and opportunities provided by electronic commerce and recognize that WTO rules apply to electronic commerce to the extent that they affect electronic commerce**.**

2. Considering the potential of electronic commerce as a social and economic development tool, the Parties recognize the importance of:

(a) clarity, transparency, and predictability in their domestic regulatory frameworks in facilitating, to the maximum extent possible, the development of electronic commerce;

(b) encouraging self-regulation by the private sector to promote trust and confidence in electronic commerce;

(c) facilitating electronic commerce through interoperability, innovation, and competition;

(d) facilitating the use of electronic commerce by micro-, small-, and medium- sized enterprises; and

(e) protecting personal information in the on-line environment.

Article 16.3: Customs Duties on Digital Products Transmitted Electronically

1. A Party may not impose a customs duty, fee, or charge, on or in connection with the importation or exportation of a digital product transmitted electronically.

2. For greater certainty, paragraph 1 does not preclude a Party from imposing an internal tax or other internal charge on a digital product transmitted electronically, provided that the tax or charge is not prohibited by this Agreement.

Article 16.4: Consumer Protection

1. The Parties recognize the importance of maintaining and adopting transparent and effective measures to protect consumers from fraudulent or deceptive commercial practices in electronic commerce.

2. To this end, the Parties should exchange information and experiences related to national approaches for the protection of consumers engaging in electronic commerce.

Article 16.5: Cooperation

Recognizing the global nature of electronic commerce, the Parties affirm the importance of:

(a) working together to facilitate the use of electronic commerce by micro-, small-, and medium-sized enterprises;

(b) sharing information and experiences on laws, regulations, and programs involving electronic commerce, including those related to data privacy, consumer confidence, security in electronic communications, authentication, intellectual property rights, and electronic government;

(c) working to maintain cross-border flows of information as an essential element in fostering a vibrant environment for electronic commerce;

(d) fostering electronic commerce through the encouragement of the private sector to adopt codes of conduct, model contracts, guidelines, and enforcement mechanisms; and

(e) actively participating in regional and multilateral fora to promote the development of electronic commerce.

Article 16.6: Transparency

Further to Article 20.3 (Transparency – Publication), each Party shall promptly publish or otherwise make publicly available its laws, regulations, procedures, and administrative rulings of general application, that pertain to electronic commerce.

Article 16.7: Relation to Other Chapters

In the event of an inconsistency between this Chapter and another Chapter of this Agreement, the other Chapter prevails to the extent of the inconsistency.

CHAPTER SEVENTEEN

GOVERNMENT PROCUREMENT

Article 17.1: Definitions

For the purposes of this Chapter:

in writing or **written** means a worded or numbered expression that can be read, reproduced and later communicated; it may include electronically transmitted and stored information;

limited tendering means a procurement method by which the procuring entity contacts a supplier of its choice and may, in the circumstances set out in Article 17.11(2), choose not to apply Articles 17.6, 17.7, 17.9, 17.10, 17.12 and 17.13;

offsets means a condition or undertaking that encourages local development or improves a Party's balance-of-payments accounts, such as the use of domestic content, investment, counter-trade, the licensing of technology or similar actions or requirements;

open tendering procedure means a procurement method by which all interested suppliers may submit a tender;

original development includes limited production or supply in order to incorporate the results of field testing and to demonstrate that the good or service is suitable for production or supply in quantity to acceptable quality standards, but does not include quantity production or supply to establish commercial viability or to recover research and development costs;

procurement means the process by which a procuring entity obtains the use of or acquires a good or service for a governmental purpose and not with a view to commercial sale or resale, or use in the production or supply of a good or service for commercial sale or resale;

procuring entity means an entity of a Party listed in Annexes 17.1 or 17.2;

publish means to disseminate information in an electronic or paper medium that is widely distributed and that is readily accessible to the general public;

service includes a construction service, unless otherwise specified;

supplier means a person that has provided, provides or could provide a good or service to a procuring entity; and

technical specification means a tendering requirement that:

(a) lays down the characteristics of a good or service to be procured, including quality, performance, safety and dimensions, or the processes and methods for their production or provision; or

(b) addresses terminology, symbols, packaging, marking or labeling requirements, as they apply to a good or service.

Article 17.2: Scope and Coverage

1. This Chapter applies to a measure regarding a covered procurement.

2. For the purposes of this Chapter, covered procurement means procurement for a governmental purpose:

(a) of a good, service, or both:

(i) as specified in each Party's schedules to the annexes of this Chapter; and

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

(b) by a contractual means, including: purchase; lease, rental or hire purchase, with or without an option to buy;

(c) for which the value, as estimated in accordance with paragraph 6, equals or exceeds the relevant threshold specified in a Party's annexes to this Chapter, at the time of publication of a notice in accordance with Article 17.6;

(d) by a procuring entity; and

(e) that is not otherwise excluded from coverage in paragraph 3 or a Party's schedules to the annexes of this Chapter.

3. This Chapter does not apply to:

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

(b) a non-contractual agreement or form of assistance that a Party including a state enterprise provides, such as a grant, loan, equity infusion, fiscal incentive, subsidy, guarantee, or cooperative agreement;

(c) government provision of a good or service to a person or a sub-national government;

(d) a purchase for the direct purpose of providing foreign assistance;

(e) a purchase funded by a grant, loan or other assistance made to a Party or an entity of a Party by a person, international entity, association, international organization, or other State or foreign government if the provision of that assistance is subject to conditions that are inconsistent with this Chapter;

(f) the procurement of a fiscal agency or depository service, liquidation and management service for a regulated financial institution, or a service related to the sale, redemption and distribution of public debt;

(g) the procurement of a banking, financial, or specialized service related to:

(i) the incurring of public indebtedness, or

(ii) public debt management;

(h) the hiring of a government employee or related employment measure;

(i) a good or service component of a contract awarded by an entity that is not listed in Annexes 17.1 or 17.2;

(j) a purchase made under exceptionally advantageous conditions that only arises in the very short term such as an unusual disposal by an enterprise or a disposal of business assets due to liquidation or receivership but not a routine purchase from a regular supplier.

4. If a procuring entity awards a contract that is not covered by this Chapter, this Chapter does not cover a good or service component of that contract.

5. Nothing in this Chapter prevents a Party from developing new procurement policies, procedures or contractual means, provided they are not inconsistent with this Chapter.

Valuation

6. In estimating the value of a procurement in order to ascertain whether it is a procurement covered by this Chapter, a procuring entity shall:

(a) not divide a procurement into separate procurements or select or use a particular valuation method for estimating the value of a procurement with the intention of totally or partially excluding it from the application of this Chapter;

(b) include the estimated maximum total value of the procurement over its entire duration, whether awarded to one or more suppliers, taking into account all forms of remuneration, including:

(i) premiums, fees, commissions, and interest, and

(ii) the estimated maximum total value of the procurement, inclusive of optional purchases, if the procurement provides for the possibility of an options clause; and

(c) base its calculation of the total maximum value of the procurement over its entire duration, if the procurement is to be conducted in multiple parts with contracts to be awarded at the same time or over a given period to one or more suppliers.

Article 17.3: Security and General Exceptions

1. This Chapter does not prevent a Party from taking an action or not disclosing information that it considers necessary for the protection of its essential security interests relating to procurement:

(a) of arms, ammunition or war materials;

(b) indispensable for national security; or

(c) for national defence purposes.

2. Provided that a measure is not applied in a manner that would constitute a means of arbitrary or unjustifiable discrimination against a Party if the same conditions prevail, or a disguised restriction on trade between the Parties, a Party may adopt or maintain a measure:

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

(b) including an environmental measure, necessary to protect human, animal or plant life or health;

(c) necessary to protect intellectual property; or

(d) relating to a good or service of a person with a disability, a philanthropic institution or prison labour.

Article 17.4: General Principles

National Treatment and Non-Discrimination

1. With respect to a measure regarding a covered procurement, each Party, including its procuring entities, shall accord to a good or service of the other Party, and to a supplier of the other Party of that good or service, treatment no less favourable than the most favourable treatment the Party or entity accords to a domestic good, service or supplier.

2. With respect to a measure regarding a covered procurement, a Party, including its procuring entities, may not:

(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 good or service offered by that supplier for a particular procurement is a good or service of the other Party.

Rules of Origin

3. With regard to the procurement of a good covered by this Chapter, each Party shall apply the rules of origin that it applies to that good in the normal course of trade.

Offsets

4. Subject to this Chapter, a Party, including its procuring entities, shall not seek, take account of, or impose offsets at a stage of a procurement process.

Measures Not Specific to Procurement

5. This Article does not apply to:

(a) a measure regarding a customs duty or other charge imposed on or in connection with, importation, or regarding the method of levying that duty or charge;

(b) another import regulation, including a restriction or formality; or

(c) a measure affecting trade in a service, other than a measure specifically governing procurement covered by this Chapter.

Article 17.5: Information on the Procurement Process

1. Each Party shall promptly:

(a) publish a law, regulation, or modification to those measures; and

(b) make publicly available a judicial decision, administrative ruling of general application, or a procedure,

specifically governing procurement covered by this Chapter.

2. At the request of a Party, the other Party shall provide it with a copy of a judicial decision or administrative ruling of general application or procedure.

Article 17.6: Publication of Notices

Notice of Intended Procurement

1. Unless otherwise provided in Article 17.11(2), a procuring entity shall, for each procurement covered by this Chapter, publish a notice of intended procurement that remains readily accessible to the public inviting suppliers to submit tenders. A procuring entity shall publish the notice in publications that are widely disseminated and remain readily accessible to the public.

2. Each notice of intended procurement shall include:

(a) an indication that the procurement is covered by this Chapter;

(b) a description of the intended procurement;

(c) a list of the conditions that a supplier must fulfill to participate in the procurement process;

(d) the name of the procuring entity;

(e) the address where documents relating to the procurement process may be obtained;

(f) if applicable, the cost for obtaining the tender documentation;

(g) the time limits for submission of tenders;

(h) the address for submission of tenders; and

(i) the timeframe for delivery of the good or service to be procured.

Notice of Planned Procurement

3. Each Party shall encourage its procuring entities to publish, as early as possible in each fiscal year, a notice regarding that procuring entity's future procurement plans.

Article 17.7: Conditions for Participation

1. If a procuring entity requires a supplier to satisfy a registration, qualification, or other requirement or condition for participation in order to participate in a procurement process, the procuring entity shall publish a notice inviting suppliers to apply for registration, qualification or demonstration of suppliers' satisfaction of any other conditions for participation. The procuring entity shall publish the notice sufficiently in advance to provide interested suppliers sufficient time to prepare and submit applications and to provide the procuring entity with sufficient time to evaluate and make its determinations based on those applications. The procuring entity may establish a final date for the submission of requests for participation, provided that date allows suppliers a reasonable time to prepare and submit such requests, taking into account the nature and complexity of the procurement.

2. In establishing the conditions for participation, a procuring entity shall:

(a) limit the conditions for participation in a covered procurement to those that are essential to ensure that the supplier has the legal and financial capacity and the technical ability to fulfill the requirements and technical specifications of the procurement;

(b) refrain from imposing the condition that, in order for a supplier to participate in a procurement process, the supplier has:

(i) previously been awarded a contract by a procuring entity of a Party, or

(ii) prior experience in the territory of that Party.

3. To assess whether a supplier satisfies the conditions for participation, a procuring entity shall:

(a) evaluate the financial capacity and technical ability of a supplier on the basis of that supplier's business activity inside and outside the territory of the Party of the procuring entity;

(b) recognize as qualified the suppliers of the other Party that satisfy the conditions for participation; and

(c) base its evaluation solely on the conditions for participation that the procuring entity has specified in advance in its notices or tender documentation.

List of Suppliers

4. A procuring entity may establish or maintain a publicly available list of suppliers qualified to participate in a procurement process. If a procuring entity requires a supplier to qualify for a list as a condition for participation in a procurement process, and a supplier that has not yet qualified applies for inclusion in the list, the procuring entity shall promptly start the qualification procedures and shall allow the supplier to submit a tender, if it is determined to be a qualifying supplier, provided there is sufficient time to fulfill the conditions for participation within the time period established for tendering.

Information on Procuring Entity Decisions

5. A procuring entity shall promptly inform a supplier that applies for participation in a procurement process or for inclusion on a list of suppliers of the procuring entity's decision with respect to the application.

6. If a procuring entity:

(a) rejects a supplier's application for participation in a procurement process or an application for inclusion on a list of suppliers; or

(b) ceases to recognize a supplier as qualified,

the procuring entity shall promptly inform the supplier of its decision and, at the request of the supplier, promptly provide the supplier with a written explanation of the reasons for its decision.

7. A procuring entity may exclude a supplier from a procurement process on grounds such as bankruptcy or false declarations.

Article 17.8: Technical Specifications

1. A procuring entity may not prepare, adopt or apply a technical specification with the purpose or the effect of creating an unnecessary obstacle to trade between the Parties.

2. In prescribing a technical specification for a good or service being procured, a procuring entity, shall, if appropriate:

(a) specify the technical specification in terms of a performance requirement rather than a design or descriptive characteristic; and

(b) base the technical specification on an international standard, if one exists; otherwise, base the technical specification on a national technical regulation, recognized national standard or building code.

3. A procuring entity shall not prescribe a technical specification requiring or referring to a particular trademark or trade name, patent, design, type, specific origin, or producer or supplier, unless there is no other sufficiently precise or intelligible way of describing the procurement requirement, provided that, in those cases, the procuring entity includes words such as “or equivalent” in the tender documentation.

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

5. For greater certainty, this Article does not preclude a procuring entity from preparing, adopting, or applying a technical specification to promote the conservation of natural resources.

Article 17.9: Tender Documentation

1. A procuring entity shall make available to interested suppliers tender documentation that includes the information necessary for a supplier to prepare and submit a responsive tender. The documentation shall include the evaluation criteria that the procuring entity intends to use to award the contract, including the cost factors and the weights or, if appropriate, the relative values, that the procuring entity will assign to the criteria in evaluating tenders.

2. A procuring entity may make available the tender documentation required by paragraph 1 by publishing that documentation by electronic means accessible to interested suppliers. If a procuring entity does not publish tender documentation by electronic means accessible to interested suppliers, it shall promptly make the documentation available at the request of a supplier.

Modifications

3. If, in the course of a procurement process, a procuring entity modifies the criteria referred to in paragraph 1, it shall transmit the amended tender documentation in writing:

(a) to all suppliers that are participating in the procurement process at the time the criteria are modified, if the procuring entity knows the identities of those suppliers, and in all other cases, in the same manner as the original documentation was made available; and

(b) in adequate time to allow those suppliers to modify or submit amended tenders, as appropriate.

Article 17.10: Time Limits for the Submission of Tenders

1. A procuring entity shall provide suppliers sufficient time to submit applications to participate in a procurement and to prepare and submit responsive tenders, taking into account the nature and complexity of the procurement.

Deadlines

2. Except as provided for in paragraphs 3 and 4, a procuring entity shall establish that the final date for the submission of tenders is not less than 40 days from the date on which the notice of intended procurement is published.

3. If domestic law allows, a procuring entity may reduce by 5 days the time limit established under paragraph 2 for the submission of tenders, for each one of the following circumstances:

(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; and

(c) the procuring entity accepts tenders by electronic means.

4. A procuring entity may establish a time limit of less than 40 days for suppliers to submit tenders, but not less than 10 days, if:

(a) the procuring entity publishes a separate notice at least 40 days and not more than 12 months before the final date for the submission of tenders that contains a description of the procurement, the approximate time limits for the submission of tenders or, if applicable, conditions for participation in a procurement process, and the address from which documents relating to the procurement may be obtained;

(b) there is a second or subsequent publication of a notice for procurement of a recurring nature;

(c) the procuring entity procures a commercial good or service that is sold or offered for sale to, and customarily purchased and used by, a non-governmental buyer for a non-governmental purpose; or

(d) a state of urgency duly substantiated by the procuring entity renders the time periods specified in paragraph 2, or, if applicable, paragraph 3, impracticable.

Article 17.11: Limited Tendering

1. Subject to paragraph 2, a procuring entity shall award a contract by means of open tendering procedures.

2. Provided that a procuring entity does not use this paragraph to avoid competition among suppliers or to protect domestic suppliers, the procuring entity may award a contract by limited tendering or other equivalent tendering procedures if:

(a) the requirements of the tendering documentation are not substantially modified and:

(i) no tenders were submitted or no suppliers applied to participate in a procurement,

(ii) the tenders submitted were collusive, or

(iii) no tenders conforming to the essential requirements of the tender documentation, including any conditions for participation, provided in a prior tendering procedure were submitted;

(b) a good or service being procured can be supplied only by a particular supplier and a reasonable alternative or substitute does not exist because:

(i) the good or service is a work of art,

(ii) the good or service is protected by a patent, copyright or other exclusive intellectual property right, or

(iii) there is an absence of competition for technical reasons;

(c) for additional deliveries by the original supplier of a good or service that are intended either as replacement parts, extensions, or continuing services for existing equipment, software, services or installations, a change of supplier would compel the procuring entity to procure a good or service not meeting requirements of interchangeability with existing equipment, software, services, or installations procured under the initial procurement;

(d) the good is purchased on a commodity market;

(e) a procuring entity procures a prototype or a first good or service that is developed at its request in the course of, and for, a particular contract for research, experiment, study or original development;

(f) an additional construction service that was not included in the initial contract but that is within the objectives of the original tender documentation has become necessary, due to unforeseeable circumstances, to complete the construction service described in the original tender documentation. However, the total value of the contracts awarded for additional construction services may not exceed 50% of the total amount of the initial contract;

(g) to the extent that it is strictly necessary, for reasons of urgency brought about by events unforeseeable by the procuring entity, the good or service cannot be obtained in time using an open tendering procedure;

(h) a contract is awarded to a winner of an architectural design contest, provided that:

(i) the contest was organized in a manner that is consistent with the principles of this Chapter, including regarding the publication of an invitation to suitably qualified suppliers to participate in the contest, and

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

(i) a procuring entity needs to procure a consulting service regarding matters of a confidential nature, the disclosure of which can reasonably be expected to compromise government confidences, cause economic disruption or otherwise be contrary to the public interest.

3. A procuring entity shall maintain a record or prepare a written report for each contract awarded under paragraph 2 in a manner consistent with Article 17.13(3). The record or report shall indicate the circumstances and conditions described in paragraph 2 that justify the use of limited tendering.

Article 17.12: Awarding of Contracts

1. To be considered for award, a tender shall be submitted in writing by a supplier that has satisfied the conditions for participation and shall, at the time it is submitted, conform to the essential requirements of the tender documentation.

2. Unless a procuring entity determines that it is not in the public interest to award a contract, it shall award the contract to the supplier that the procuring entity determines is fully able to undertake the contract and, based on the requirements and evaluation criteria set out in the tender documentation, submits the most advantageous tender.

Article 17.13: Information on Awarded Contracts

Information Provided to Suppliers

1. A procuring entity shall promptly inform suppliers that submit tenders of the procuring entity's contract award decision. Subject to Article 17.14, a procuring entity shall, on request, provide an unsuccessful supplier with the reasons why the procuring entity did not select that supplier's tender and the relative advantages of the successful supplier's tender.

Publication of Award Information

2. Promptly after awarding a contract, a procuring entity shall publish a notice that includes the following information about the contract award:

(a) the name of the procuring entity;

(b) a description of the good or service procured;

(c) the name of the supplier awarded the contract;

(d) the value of the contract award; and

(e) if the procuring entity used limited tendering procedures, an indication of the circumstances justifying the use of those procedures.

Maintenance of Records

3. A procuring entity shall maintain records and reports of tendering procedures and contract awards, including the records and reports provided for in Article 17.11(3), and shall retain those records and reports for a period of at least 3 years after the award of a contract.

Article 17.14: Non-Disclosure of Information

1. A Party, including its procuring entities, administrative authorities, and judicial authorities, may not disclose confidential information that would prejudice the legitimate commercial interests of a particular person or that could prejudice fair competition between suppliers, without the formal authorization of the person that provided the information to the Party.

2. A Party, including its procuring entities, is not required under this Chapter to release confidential information if the release:

(a) would impede law enforcement;

(b) could prejudice fair competition between suppliers;

(c) would prejudice the legitimate commercial interests of particular persons, including the protection of intellectual property; or

(d) would otherwise be contrary to the public interest.

Article 17.15: Domestic Review Procedures

1. Each Party shall establish or designate at least one impartial administrative or judicial authority that is independent from its procuring entities to:

(a) receive and review a challenge submitted by a supplier relating to the obligations of this Chapter; and

(b) make appropriate findings and recommendations.

2. Each Party shall ensure that an authority it establishes or designates under paragraph 1 provides a supplier with:

(a) sufficient time to prepare and submit a written challenge, which may not be less than 10 days from the time when the basis of the complaint became known or reasonably should have become known to the supplier;

(b) the opportunity to review relevant documents and be heard by the authority in a timely manner;

(c) the opportunity to reply to the procuring entity's written response to the supplier's challenge; and

(d) a decision or recommendation relating to a challenge with an explanation of the basis for each decision or recommendation that is promptly delivered in writing.

3. Each Party shall ensure that an authority it establishes or designates under paragraph 1 may take a prompt interim measure to preserve the supplier's opportunity to participate in the procurement process, including the suspension of the procurement process. The procedures for taking an interim measure may provide that overriding adverse consequences for the interests concerned, including the public interest, may be taken into account when deciding whether an interim measure should be applied.

4. Each Party shall ensure that its review procedures are made generally available in writing and that those procedures are timely, transparent, effective, and consistent with the principle of due process.

5. Each Party shall ensure that a document related to a supplier's challenge of a procurement process is available to the authority established or designated under paragraph 1.

6. A procuring entity shall respond in writing to a supplier's challenge.

7. Each Party shall ensure that a supplier's challenge is reviewed in a manner that does not prejudice that supplier's participation in an ongoing or future procurement process.

8. If a body other than an authority established or designated under paragraph 1 initially reviews a supplier's challenge, the Party shall ensure that the supplier may appeal the initial decision to an impartial administrative or judicial authority that is independent of the procuring entity whose procurement process is the subject of the challenge.

Article 17.16: Modifications and Rectifications to Coverage

1. A Party may make technical rectifications of a purely formal nature to its coverage under this Chapter, or minor amendments to the Annexes to this Chapter, provided that it notifies the other Party in writing and that the other Party does not object in writing within 30 days of receipt of the notification. A Party is not required to provide compensatory adjustments to the other Party for these technical rectifications or minor amendments.

2. A Party may modify its coverage under this Chapter if it:

(a) notifies the other Party in writing and the other Party does not object in writing within 30 days of receipt of the notification; and

(b) offers acceptable compensatory adjustments to the other Party to maintain a level of coverage comparable to that existing prior to the modification within 30 days of notifying the other Party.

3. Notwithstanding paragraph 2(b), a Party is not required to provide compensatory adjustments if the proposed modification covers a procuring entity on which the Parties decide that the Party has effectively eliminated its control or influence.

4. If a Party disputes that government control or influence has been effectively eliminated, the objecting Party may request further information or discussions with a view to clarifying the nature of any government control or influence and jointly determining the procuring entity's status under this Chapter.

5. If the Parties at the Commission agree to the proposed modification, rectification, or minor amendment, or if a Party has not objected within 30 days under paragraphs 1 or 2(a), they shall give effect to the agreement by promptly modifying the relevant Annex according to national legislation.

6. If a Party does object within 30 days under paragraphs 1 or 2(a), or does not accept the compensatory adjustment offered under paragraph 2(b), then the change to coverage proposed by the other Party under that paragraph does not take effect.

Article 17.17: Updating Provision

In the interest of promoting the modernization of procurement systems and ensuring consistency with the procedural obligations of the Parties' other trade agreements relating to procurement, if one Party enters into another international agreement that updates procurement procedures and practices, then, at the request of either Party, the Parties shall consider whether they should modify this Chapter.

CHAPTER EIGHTEEN

ENVIRONMENT

Article 18.1: Affirmations

1. The Parties affirm their respect for their Constitutions and recognize that each Party has sovereign rights and responsibilities to conserve and protect its environment. The Parties affirm their environmental obligations under their domestic law, their right to establish their own levels of domestic environmental protection under theirdomestic law, as well as their international obligations under multilateral environmental agreements.

2. The Parties recognize the mutual supportiveness between trade and environment policies and the need to implement this Agreement in a manner consistent with environmental protection and conservation and the sustainable use of their resources.

Article 18.2:Agreement on Environmental Cooperation

Further toArticle 18.1, the Parties have set out their mutual obligations in the*Agreement on Environmental Cooperationbetween Canada and the Republic of Honduras* (the "Agreement on Environmental Cooperation")that addresses, among other things:

(a) conservation, protection and improvement of the environment in the territory of each Party for the well-being of present and future generations;

(b) non-derogationfrom domestic environmental law in order to encourage trade or investment;

(c) development of, compliance with and enforcement of domestic environmental law;

(d) transparency and public participation in environmental matters; and

(e) cooperation between the Parties to advanceenvironmental issues of common interest.

Article 18.3: Relationship between this Agreement and the Agreement on Environmental Cooperation

1. The Parties recognize the importance of balancing trade obligationswith environmental obligations, and affirm that the Agreement onEnvironmental Cooperation complements this Agreement and that the 2 are mutually supportive.

2. The Commission may consider reports and recommendations from the Committee on the Environment established under the Agreement on EnvironmentalCooperation, in respect of an issue related to trade and the environment.

CHAPTER NINETEEN

LABOUR

Article 19.1:Affirmations

The Parties affirm their respect for their Constitutions and their rights to establish their own level of domestic labour protection under their respectivedomestic law, consistent with their obligations as members of the International Labour Organization (ILO) and their commitments to the *ILO Declaration on Fundamental Principles and Rights at Work* (1998).

Article19.2:Objectives

The Parties wish to build on their respective international commitments, strengthen their cooperation on labour and, in particular,they wish to:

(a) improve working conditions and living standards in each Party's territory;

(b) promote their commitment tointernationally recognized labour principles and rights;

(c) promote compliance with and effective enforcement by each Party of its domestic labour law;

(d) promote social dialogue on labour matters among workers, employers, their organizations, and governments;

(e) pursue cooperative labour-related activities forthe Parties' mutual benefit;

(f) strengthen the capacity of the ministries responsible for labour affairs, and the capacity of other institutions responsible for administering and enforcing domestic labour law in their respective territories; and

(g) foster a full and open exchange of information between those ministries and institutions in regard to domestic labour law and its application in each Party's territory.

Article19.3:Obligations

In order to further the foregoingobjectives, the Parties'mutual obligations are set out in the*Agreement on Labour Cooperation between Canada and the Republic of Honduras*(the "Agreement on Labour Cooperation") that addresses, among other things:

(a) general obligations concerning internationally recognized labour principles and rights to be embodied in each Party's domestic labour law;

(b) acommitment not to derogatefrom domestic labour law in order toencourage trade or investment;

(c) effective enforcement of domesticlabour laws through appropriate government action, private rights of action, procedural guarantees, public information and awareness;

(d) institutional mechanisms to oversee the implementation of the Agreementon Labour Cooperation,such as a Ministerial Counciland National Points of Contact,to receive and review public communications on specificlabour law matters and to enable cooperative activities to further the objectives of the Agreement onLabour Cooperation;

(e) general and ministerial consultations regarding the implementation of theAgreement on Labour Cooperation and its obligations; and

(f) independent review panels to hold hearings and make determinations regarding alleged non-compliance with the terms of the Agreement on Labour Cooperationand, if requested by a Party, monetary assessments.

Article19.4: Cooperative Activities

The Parties recognize that labour cooperation plays an important role in advancing the level of compliance with labour principles and rights and that the Agreement on Labour Cooperationprovides for the development of a plan of action for cooperative labour activities to promote the objectives of the Agreement on Labour Cooperation. An indicative list of areas of possible cooperation between the Parties is set out in the Agreement on Labour Cooperation.

CHAPTER TWENTY

TRANSPARENCY

Section A – Publication, Notification and Administration of Domestic Law

Article 20.1:Definitions

For the purposes of this Section:

administrative ruling of general application means an administrative ruling or interpretation that applies to persons and fact situations that fall within the general scope of that ruling or interpretation 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.

Article 20.2: Contact Points

Each Party shall designate, within 60 days of the entry into force of this Agreement, a contact point to facilitate communications between the Parties on a matter covered by this Agreement. Atthe 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 between the Parties.

Article 20.3: Publication

1. Each Party shall ensure that its laws, regulations, procedures and administrative rulings of general application respecting a 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 these proposed measures.

Article 20.4: Notification and Provision of Information

1. To the extent possible, each Party shall notify the other Party of any actual or proposed 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. At the request of the other Party, a Party shall promptly provide information and respond to questions pertaining to an actual or proposed measure, even if the other Party was previously notified of that measure.

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

Article 20.5: Administrative Proceedings

In order to administer measures of general application affecting matters covered by this Agreement in a consistent, impartial, and reasonable manner, each Party shall ensure that in its administrative proceedings applying measures referred to in Article 20.3 to particular persons, goods, or services of the other Party in specific cases:

(a) whenever possible, a person of the other Party who is directly affected by a proceeding is given reasonable notice, in accordance with domestic procedures, when it 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 the issues;

(b) a person referred to in subparagraph (a) is afforded a reasonable opportunity to present facts and arguments in support of its position prior to any final administrative action, when permitted by time, the nature of the proceeding, and the public interest; and

(c) apply procedures consistent with domestic law.

Article 20.6: Review and Appeal

1. Each Party shall, regarding matters covered by this Agreement, establish or maintain procedures or judicial, quasi-judicial, or administrative tribunals for:

(a) the purpose of the prompt review; and

(b) when warranted, correction of final administrative actions.

2. Each Party shall ensure that the tribunals or those that administer the procedures referred to in paragraph 1 are impartial and independent of the office or authority entrusted with administrative enforcement and do not have a substantial interest in the outcome of the matter.

3. Each Party shall ensure thatthe parties to the proceeding have the following rights in regard to the tribunals or procedures referred to in paragraph 1:

(a) a reasonable opportunity to support or defend their respective positions; and

(b) a decision based on:

(i) the evidence and submissions of record, or

(ii) where if required by domestic law, the record compiled by the administrative authority.

4. Each Party shall ensure, subject to appeal or further review as provided in its domestic law, that the decision referred to in paragraph 3(b) is implemented by, and governs the practice of the competent office or authority.

Section B – Anti-Corruption

Article 20.7: Definitions

For the purposes of this Section:

act or refrain from acting in relation to the performance of official duties includes use of the official's position within the official's authorized competence;

foreign publicofficial means:

(a) a person holding a legislative, executive, administrative, or judicial office of a foreign country, at any level of government, whether that person is appointed or elected; and

(b) a person exercising a public function for a foreign country at any level of government, including a public function in a public agency or public enterprise;

official of a public international organization means an international civil servant or a person who is authorized by a public international organization to act on its behalf;

public function means a temporary or permanent, paid or honorary activity, performed by a natural person in the name of a Party or in the service of a Party, suchas procurement, at the central level of government;and

public official means an official or employee of a Party at the central level of government, whether appointed or elected.

Article 20.8: Statement of Principles

The Parties affirm their resolve to prevent and combat bribery and corruption in international trade and investment.

Article 20.9: Anti-Corruption Measures

1. Each Party shall adopt or maintain the necessary legislative or other measures to establish, in matters affecting international trade or investment, as criminal offences under its lawwhen committed intentionally:

(a) a public official of that Party or a person who performs public functions for that Party soliciting or accepting, directly or indirectly, an article of monetary value or other benefit, such as a favour, promise, or advantage, for himself or herself or for another person, in order that the official act or refrain from acting in the exercise of his or her public functions;

(b) offering, promising, or giving, directly or indirectly, to a public official of that Party or a person who performs public functions for that Party an article of monetary value or other benefit, such as a favour, or advantage, for himself or herself or for another person, in order that the official act or refrain from acting in the exercise of his or her public functions;

(c) offering, promising, or giving an undue pecuniary or other advantage, directly or indirectly, to a foreign public official or an official of a public international organization, for that official himself or herself or for another person, in order that the official act or refrain from acting in relation to the performance of his or her official duties, in order to obtain or retain business or other improper advantage in the conduct of international business; and

(d) aiding, abetting, or conspiringto commitan offensedescribed in subparagraphs (a) through (c).

2. Each Party shall take any measures necessary to establish its jurisdiction over the offences referred to in paragraph 1 that are committed in its territory.

3. Each Party shall adopt or maintain penalties and procedures to enforce the criminal measures that it adopts or maintains in conformity with paragraph 1.

4. If, under the legal system of a Party, enterprises cannot be held criminallyliable, the Party shall ensure that enterprises are subject to effective, proportionate, and dissuasive non-criminal sanctionsfor the offenses described in paragraph 1.

5. Each Party shall endeavour to adopt or maintain measures to protect a person who, in good faith, reportsan act described in paragraph 1.

Article 20.10: Cooperation in International Fora

The Parties recognize the importance of regional and multilateral initiatives to prevent and combat bribery and corruption in international trade and investment. The Parties agree to work together to advance efforts in regional and multilateral fora to prevent and combat bribery and corruption in international trade and investment, and to encourage and support appropriate initiatives.

CHAPTER TWENTY-ONE

INSTITUTIONAL ARRANGEMENTS AND DISPUTE SETTLEMENT PROCEDURES

Section A – Institutions

Article 21.1: Free Trade Commission

1. The Parties hereby establish the Free Trade Commission, composed of cabinet-level representatives of the Parties, or their designees.

2. The Commission shall:

(a) supervise the implementation of this Agreement;

(b) oversee the further elaboration of this Agreement; and

(c) consider any other matter that may affect the operation of this Agreement.

3. The Commission may:

(a) adopt interpretive decisions concerning this Agreement, which shall be binding on the dispute settlement panels established under Article 21.10 and on Tribunals established under Section C of Chapter Ten (Investment – Settlement of Disputes between a Party and an Investor of the Other Party);

(b) request the advice of non-governmental persons or groups;

(c) take any other action in the exercise of its functions as the Parties may decide; and

(d) advance the objectives of the Agreement by approving the following:

(i) a revision of the schedule of a Party contained in Annex 3.4.1 (National Treatment and Market Access for Goods – Tariff Elimination), with the purpose of adding one or more goods excluded in the Tariff Elimination Schedule,

(ii) a revision of a phase-out period established in Annex 3.4.1 (National Treatment and Market Access for Goods – Tariff Elimination), with the purpose of accelerating a tariff reduction,

(iii) a revision of the rules of origin established in Annex 3.1 (National Treatment and Market Access for Goods – Textile and Apparel Goods) and Annex 4.1 (Rules of Origin – Specific Rules of Origin),

(iv) a revision of the Uniform Regulations on Customs Procedures, and

(v) a revision of Annex 17 (Government Procurement).

4. At the request of the Committee on the Environment established under the *Agreement on Environmental Cooperation between Canada and the Republic of Honduras*, the Commission may consider modifying Article 1.4 (Objectives and Initial Provisions – Relation to Multilateral Environmental Agreements) to include another multilateral environmental agreement (MEA) or to include an amendment to an MEA or to remove an MEA listed in that Article.

5. Annex 21.1 applies to a revision or a modification approved by the Commission under paragraphs 3(d) or 4.

6. The acceptance by a Party of a revision or a modification referred to in paragraphs 3(d) or 4 is subject to the completion of any necessary internal procedures of that Party.

7. The Commission may establish committees, subcommittees, or working groups taking into consideration any recommendation of the Coordinators. Unless otherwise specified in this Agreement, the committees, subcommittees and working groups shall work under a mandate which is recommended by the Coordinators and approved by the Commission.

8. The Commission shall establish its own rules and procedures. All decisions of the Commission shall be taken by consensus, unless the Commission decides otherwise.

9. The Commission shall normally convene once a year, or at the request, in writing, of either Party. Unless otherwise decided by the Parties, sessions of the Commission shall be held alternately in the territory of each Party, or by any technological means available.

Article 21.2: Free Trade Coordinators

1. Each Party shall appoint a Free Trade Coordinator. The Coordinators are as follows:

(a) for Canada, whoever Canada designates as a Coordinator by notice in writing to Honduras; and

(b) for Honduras, the Director General of Economic Integration and Trade Policy in the Secretariat of State of Industry and Trade (*Director General de Integracion Económica y Politica Comercial de la Secretaría de Estado en los Despachos de Industria y Comercio*) or any successor in function.

2. The Coordinators shall:

(a) supervise the work of all committees, subcommittees, and working groups, established under this Agreement;

(b) recommend to the Commission the establishment of committees, subcommittees and working groups that they consider necessary to assist the Commission;

(c) follow up on any decisions taken by the Commission, as appropriate;

(d) receive notifications provided pursuant to this Agreement; and

(e) consider any other matter that may affect the operation of this Agreement, as mandated by the Commission.

3. The Coordinators shall meet as often as required.

4. Either Party may at any time request the other Party in writing that the Coordinators hold a special meeting. The meeting shall take place within 30 days of receipt of the request.

Article 21.3: Secretariat

1. The Commission shall establish and oversee a Secretariat composed of national Sections.

2. Each Party shall:

(a) establish a permanent office for its Section;

(b) be responsible for:

(i) the operation of its Section and the related costs, and

(ii) the remuneration and payment of expenses of members of panels, committees, subcommittees and working groups established under this Agreement, as set out in Annex 21.3;

(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 administrative assistance to a dispute settlement panel established under this Chapter, in accordance with the procedures established pursuant to Article 21.13; and

(b) as the Commission may direct:

(i) support the work of other committees, subcommittees and working groups established under this Agreement, and

(ii) facilitate the operation of this Agreement.

Section B – Dispute Settlement

Article 21.4: Definitions

For the purposes of this Section:

chair candidates means all of the candidates for chair proposed by each Party under Article 21.11(3), as modified by paragraph 21.11(4) if applicable;

Code of Conduct means the Code of Conduct that the Commission shall establish under Article 21.12(1)(d);

complaining Party means the Party that initiates a dispute settlement procedure under this Section; and

Party complained against means the Party against which a dispute settlement procedure is initiated.

Article 21.5: Cooperation

The Parties shall endeavour to come to an understanding on the interpretation and application of this Agreement and, make every attempt through cooperation and consultations to arrive at a mutually satisfactory resolution of a matter that may affect its operation.

Article 21.6: Sphere of Application

1. Except as provided in paragraph 2, the dispute settlement provisions of this Chapter 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:

(a) an actual or proposed measure of the other Party is or would be inconsistent with one of its obligations under this Agreement;

(b) the other Party otherwise fails to carry out one of its obligation under this Agreement; or

(c) there is nullification or impairment in the sense of Annex 21.6.

2. This Section does not apply to disputes regarding the provisions of Chapters Seven (Sanitary and Phytosanitary Measures), Eight (Technical Barriers to Trade), Eighteen (Environment), Nineteen (Labour), Section B of Chapter Twenty (Transparency – Anti-Corruption) and Articles 15.2 (Competition Policy, Monopolies, and State Enterprises – Competition Policy) and 11.8(2) (Cross-Border Trade in Services – Domestic Regulation).

Article 21.7: Choice of Forum

1. Subject to paragraph 2, a dispute regarding a matter arising under this Agreement and the WTO Agreement, or any other free trade agreement to which the Parties are party, may be settled in any of those fora at the discretion of the complaining Party.

2. In a dispute referred to in paragraph 1, if the Party complained against claims that a matter is subject to Article 1.4 (Objectives and Initial Provisions – Relation to Multilateral Environmental Agreements) and requests in writing that the matter be considered under this Agreement, the complaining Party may, in respect of that matter, only have recourse to dispute settlement procedures under this Agreement**.**

3. If the complaining Party requests the establishment of a dispute settlement panel under one of the agreements referred to in paragraph 1, the forum selected shall be used to the exclusion of the others, unless the Party complained against makes a request under paragraph 2.

4. For the purposes of this Article, a dispute settlement procedure is initiated on the date of a Party's request for the establishment of a panel, such as under Article 6 of the Dispute Settlement Understanding of the WTO.

Article 21.8: Consultations

1. A Party may request in writing consultations with the other Party regarding a matter referred to in Article 21.6.

2. The Party requesting consultations shall deliver the request to its Section of the Secretariat and the other Party.

3. The Parties, unless they otherwise decide, shall enter into consultations within 25 days of the date of receipt of the request for consultations by the Party complained against.

4. In cases of urgency, including those that concern perishable goods, the Parties shall enter into consultations within 15 days of the date of receipt of the request for consultations by the Party complained against.

5. The complaining Party may request the establishment of a panel if the Party complained against:

(a) does not respond to a request for consultations within 10 days of receiving the request for consultations;

(b) does not enter into consultations within 25 days of receiving the request for consultations, or a period otherwise decided by the Parties; or

(c) does not enter into consultations within 15 days of receiving the request for consultations regarding a matter referred to in paragraph 4.

6. The Parties shall make every attempt to arrive at a mutually satisfactory resolution of a matter through consultations under this Article, or through any other consultative provisions of this Agreement. To this end, each Party 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.

7. Consultations are confidential and without prejudice to the rights of either Party in the other stages of dispute settlement established in this Chapter.

8. Consultations may be held in person or by any other means decided by the Parties.

Article 21.9: Good Offices, Conciliation and Mediation

The Parties may decide to undertake voluntarily an alternative method of dispute resolution, such as good offices, conciliation, or mediation.

Article 21.10: Establishment of a Panel

1. Subject to any decision by agreement of the Parties to have recourse to an alternative method of dispute resolution, the complaining Party may request the establishment of a dispute settlement panel if the Parties fail to resolve a matter under Article 21.8:

(a) within 35 days of the date of receipt of the request for consultations; or

(b) within 18 days of the date of receipt of the request for consultations for a matter referred to in Article 21.8(4).

2. The request to establish a panel must be made in writing.

3. The complaining Party shall deliver the request to establish a panel to its Section of the Secretariat and to the Party complained against, stating the measure or other matter complained of and indicating the relevant provisions of this Agreement.

4. The panel is deemed to be established on the date that the request for the establishment of the panel is received by the Party complained against.

5. Unless otherwise decided by the Parties, the panel shall be established and perform its functions in a manner consistent with the provisions of this Chapter.

6. If either Party requests the establishment of 2 or more panels in regard to the same matter, the Parties may consolidate proceedings before a single panel. The Parties may also consolidate 2 or more proceedings regarding distinct matters that they determine are appropriate to have considered jointly.

7. A panel may not be established to review a proposed measure.

Article 21.11: Panel Composition

1. The panel shall consist of 3 members.

2. Each Party shall, within 30 days of the date referred to in Article 21.10(4), appoint 1 panel member and propose 4 candidates to serve as chair of the panel. The Party shall then notify the other Party in writing of the panel member appointment and its proposed candidates to serve as chair. If a Party fails to appoint a panel member in accordance with this paragraph or fails to propose its chair candidates, the panel member or the chair shall be selected from the chair candidates of the other Party.

3. The Parties shall endeavour to decide on and appoint the chair from among the chair candidates within 60 days of the date referred to in Article 21.10(4). If the Parties fail to decide on the chair within this time period, a chair shall be selected by lot within a further 7 days, from the candidates proposed.

4. If a panel member withdraws, is removed, or becomes unable to serve, the time periods applicable to that panel's proceedings are suspended until a replacement is appointed. The replacement shall be appointed as follows:

(a) a panel member appointed by a Party shall be replaced by that Party within 30 days, failing which the replacement shall be appointed in accordance with the third sentence of paragraph 2; or

(b) a chair shall be replaced within 30 days by a person decided on by both Parties, failing which the replacement shall be appointed in accordance with the second sentence of paragraph 3; or

(c) if there are no remaining chair candidates, each Party shall propose up to 3 additional chair candidates within a further 30 days, and the Parties shall select a panel member by lot within seven 7 days thereafter from the chair candidates in accordance with sub-paragraph (a) or (b).

5. If a Party believes that a panel member is in violation of the Code of Conduct, the Parties shall consult and if they so decide, may dismiss the panel member and select a new panel member in accordance with this Article.

Article 21.12: Qualifications of Panel Members

1. Each panel member shall:

(a) have expertise or experience in law, international trade, other matters covered by this Agreement, or in the settlement of disputes arising under international trade agreements;

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

(c) be independent of all Parties; and

(d) comply with a Code of Conduct that the Commission shall establish at its first session following the entry into force of this Agreement.

2. A panel member may not:

(a) have dealt with the matter at issue in any capacity, or have been involved in an alternative dispute settlement procedure referred to in Article 21.9; and

(b) be a national of a Party, or have their usual place of residence in the territory of a Party.

Article 21.13: Rules of Procedure

1. Unless the Parties otherwise decide, the panel shall conduct its proceedings in accordance with the Model Rules of Procedure. A panel may establish, in consultation with the Parties, supplementary rules of procedure that do not conflict with the provisions of this Chapter.

2. The Commission shall establish the Model Rules of Procedure at its first session following the entry into force of this Agreement. The Commission shall establish the Model Rules of Procedure in accordance with the following principles:

(a) the right to at least one hearing before the panel, as well as the opportunity for each Party to provide initial and rebuttal submissions, in writing, before the preparation of the panel's preliminary report;

(b) subject to sub-paragraph (f), a Party may make available to the public any Party's written submissions to the panel and any transcript of a hearing before the panel 15 days after the report of the panel is published pursuant to Article 21.16(9);

(c) unless the Parties decide otherwise, the hearings of the panel shall be open to the public, provided that the hearings are held in closed session to the extent necessary to protect any information that the Model Rules of Procedure require be confidential;

(d) the panel shall allow a non-governmental person of a Party to provide views, in writing, regarding the dispute that may assist the panel in evaluating the submissions and arguments of the Parties;

(e) submissions and comments made to the panel shall be available to the other Party; and

(f) information designated by either Party for confidential treatment shall be protected.

3. The Commission may modify the Model Rules of Procedure if it considers it necessary.

Article 21.14: Terms of Reference of the Panel

1. Unless the Parties otherwise decide within 20 days from the date of the establishment of the panel, the terms of reference of the panel shall be:

> "To examine, in the light of the relevant provisions of the Agreement, the matter referred by (name of the complaining Party) (as set out in the request for the establishment of the panel) and to make determinations and recommendations as provided in Article 21.17(2)."

2. If the complaining Party wishes to argue that a matter has nullified or impaired benefits in the sense of Annex 21.6, the terms of reference shall so indicate.

3. If a Party wishes the panel to make findings as to the degree of adverse trade effects on a Party of any measure determined:

(a) to be inconsistent with the obligations of the Agreement; or

(b) to have caused nullification or impairment in the sense of Annex 21.6,

the terms of reference shall so indicate.

4. The panel may rule on its own competence.

5. The panel may, in consultation with the Parties, modify a time period applicable in the panel proceedings and make other procedural or administrative adjustments that may be required for the fairness or efficiency of the proceeding.

6. A panel member may issue a separate opinion on a matter that is not unanimously agreed on by the panel.

7. The Parties shall bear the expenses of the panel, including the remuneration of the panel members, in accordance with Annex 21.3 and the Model Rules of Procedure.

Article 21.15: Function of Experts

At the request of a Party, or on its own initiative, the panel may seek information and technical advice from a person or body it deems appropriate, subject to any terms and conditions that the Parties decide on.

Article 21.16: Panel Reports

1. Unless the Parties decide otherwise, the panel shall base its report on the submissions and arguments of the Parties and on any information before it pursuant to Article 21.15.

2. Unless the Parties decide otherwise, the panel shall, within 90 days after the last panel member is selected, present to the Parties a preliminary report containing:

(a) findings of fact;

(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 21.6, or any other determination requested in the terms of reference; and

(c) any recommendations for resolution of the dispute.

3. A Party may submit comments, in writing, to the panel regarding its preliminary report within 14 days of presentation of the report.

4. After considering the comments referred to in paragraph 3, the panel, on its own initiative or at the request of a Party, may:

(a) request the views of the other Party;

(b) reconsider its report; or

(c) make any further examination that it considers appropriate.

5. If the panel determines that a measure at issue is inconsistent with the obligations of this Agreement or causes nullification or impairment in the sense of Annex 21.6, at least 15 days prior to issuing the final report, it shall invite the Parties to make submissions in accordance with the Model Rules of Procedure so that the panel may:

(a) make any findings required pursuant to Article 21.14(3); or

(b) determine the period of time to implement the final report.

6. Unless the Parties decide otherwise, the panel shall present to the Parties a final report, including any separate opinions:

(a) within 30 days of presentation of the preliminary report, if the panel determines that all measures at issue are not inconsistent with the obligations of this Agreement and do not cause nullification or impairment in the sense of Annex 21.6; or

(b) within 60 days of presentation of the preliminary report, if the panel determines that a measure at issue is inconsistent with the obligations of this Agreement or causes nullification or impairment in the sense of Annex 21.6.

7. In addition to the elements required by paragraphs 2(a), (b) and (c), the final report shall include the following:

(a) the panel's findings, if required pursuant to Article 21.14(3), as to the degree of adverse trade effects on the complaining Party of any measure determined to be inconsistent with the obligations of the Agreement or to have caused nullification or impairment in the sense of Annex 21.6; and

(b) the panel's determination regarding the period of time to implement the final report, which should not exceed 6 months from the date that the last Party receives the final report.

8. The panel may not disclose which panel members are associated with a majority or minority opinion in its preliminary report or its final report.

9. Unless the Parties decide otherwise, the final report of the panel may be published by a Party or the Secretariat 15 days after it is presented to the Parties, subject to Article 21.13(2)(f).

Article 21.17: Implementation of the Final Report

1. A Party shall promptly implement the panel's final report to ensure effective dispute resolution.

2. On receipt of the final report, the Parties shall endeavour to come to a resolution of the dispute taking into account the determinations and any recommendations of the panel. The Parties shall notify their respective sections of the Secretariat of any resolution of the dispute.

3. Whenever possible, the resolution shall be the non-implementation or removal of a measure not conforming to this Agreement, or failing such a resolution, compensation.

4. If a panel determines that a measure nullifies or impairs benefits in the sense of Annex 21.6, the Party complained against is not obliged to withdraw the measure. In such a case, notwithstanding Article 21.18(1), compensation may be part of a mutually satisfactory resolution as final settlement of the dispute.

Article 21.18: Compensation and Suspension of Benefits

1. The Parties recognize that compensation, suspension of benefits, and suspension of other obligations are temporary measures and that the non-implementation or removal of a measure not complying with this Agreement is preferable to compensation and to suspension of benefits or other obligations. A Party has the discretion to decide whether or not to compensate the other Party. If it does decide to compensate the other Party, the compensation shall be consistent with the obligations of this Agreement.

2. If the final report includes a determination that a measure is inconsistent with the obligations of this Agreement or causes nullification or impairment in the sense of Annex 21.6, the complaining Party may, after receiving the final report, request specific compensation from the Party complained against that the complaining Party considers would constitute a satisfactory resolution of the dispute. The Party complained against shall give sympathetic consideration to any such request.

3. If the Parties do not reach a mutually satisfactory resolution of the dispute within 30 days of the expiry of the period of time for implementation of the final report, the complaining Party may suspend benefits or other obligations equivalent to the degree of adverse trade effects until:

(a) the Parties have reached a mutually satisfactory resolution of the dispute; or

(b) the Party complained against has removed the measure inconsistent with the Agreement.

4. The complaining Party may not suspend benefits or other obligations until 10 days after it has delivered to the Party complained against notice, in writing, identifying the benefits or other obligations that it intends to suspend.

5. In considering which benefits to suspend pursuant to paragraph 3:

(a) the complaining Party should first seek to suspend benefits or other obligations in the same sector or sectors as that or those 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 21.6; and

(b) the complaining Party that does not consider it practicable or effective to suspend benefits or other obligations in the same sector or sectors may suspend benefits in other sectors.

6. A Party may, by notice in writing delivered to its Section of the Secretariat and to the other Party, request the establishment of a compliance panel:

(a) to determine whether the level of benefits or other obligations suspended by the complaining Party pursuant to paragraph 3 is excessive; or

(b) to rule on any disagreement regarding the non-implementation or removal of a measure determined by the previous panel to be inconsistent with the Agreement.

7. The compliance panel shall consist of the members of the original panel. If a member of the original panel is unable to serve on the panel, that panel member shall be replaced under the provisions of Article 21.11(4).

8. The compliance panel is deemed to have been established on the date that the request for the establishment of the compliance panel is received by the other Party.

9. The compliance panel proceedings shall be conducted in accordance with the Model Rules of Procedure. The panel shall present its report within 60 days after the later of the date of establishment of the compliance panel or the date on which the last panel member is selected, or within another period decided by the Parties.

Article 21.19: Modification of Time Periods

The Parties may decide to modify or waive a time period stipulated in this Section of this Chapter.

Section C – Domestic Proceedings and Private Commercial Dispute Settlement

Article 21.20: Referral of a Matter from a Judicial or Administrative Proceeding

1. A Party shall notify its Section of the Secretariat and the other Party if:

   (a) an issue of interpretation or application of this Agreement arises in a domestic, judicial, or administrative proceeding of a Party, and a Party considers that issue could merit its intervention; or

   (b) a court or administrative body solicits the views of a Party.

2. The Commission shall endeavour to decide on any appropriate response to a matter raised under paragraph 1 as expeditiously as possible.

3. The Party in whose territory the court or administrative body is located shall submit any interpretation of the Commission to the court or administrative body in accordance with the rules of that forum.

4. If the Commission is unable to decide on the interpretation, each Party may submit its own views to the court or administrative body in accordance with the rules of that forum.

Article 21.21: Private Rights

A Party may not provide for a right of action under its domestic law against the other Party on the ground that a measure of that Party is inconsistent with this Agreement.

Article 21.22: Alternative Dispute Resolution

1. Each Party shall, to the extent possible, encourage and facilitate the use of arbitration and other means of alternative dispute resolution to settle 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 awards in such disputes.

3. A Party is deemed to comply with paragraph 2 if it is a party to and complies with the United Nations *Convention on the Recognition and Enforcement of Foreign Arbitral Awards*, done at New York on 10 June 1958 or the *Inter-American Convention on International Commercial Arbitration*, done at Panama City on 30 January 1975.

4. The Commission may establish an Advisory Committee on Private Commercial Disputes composed of persons with expertise or experience in the resolution of private international commercial disputes. The Committee may report and provide recommendations to the Commission on general issues referred to it by the Commission regarding the availability, use and effectiveness of arbitration and other procedures for the resolution of those disputes in the free trade area.

Annex 21.1

Implementation of Revisions or Modifications Approved by the Commission

In the case of Honduras, a revision or a modification approved by the Commission under Article 21.1(3)(d) or Article 21.1(4) is equivalent to the instruments referred to in Article 21 of the Constitution of the Republic of Honduras (*Constitución Política de la Republica de Honduras*).

Annex 21.3

Remuneration and Payment of Expenses

1. The Commission shall establish the amounts of remuneration and expenses to be paid to the members of a panel, committee, subcommittee, or working group.

2. Each Party shall bear in equal shares the following:

(a) The remuneration of members of a panel, committee, subcommittee, or working group;

(b) the remuneration of assistants of the persons set out in subparagraph (a);

(c) the travel and lodging expenses of the persons referred to in subparagraphs (a) and (b); and

(d) general expenses of the panel, committee, subcommittee, or working group.

3. Each member of a panel, committee, subcommittee, or working group shall keep a record and render a final account of the person's time and expenses, and those of any assistant. The panel, committee, subcommittee, or working group shall keep a record and render a final account of general expenses.

Annex 21.6

Nullification or Impairment

1. A Party may have recourse to dispute settlement under this Chapter if it considers that any benefit it could reasonably have expected to accrue to it under any provision of one of the following:

(a) Chapter Three (National Treatment and Market Access for Goods); Chapter Four (Rules of Origin), Chapter Five (Customs Procedures), Chapter Six (Trade Facilitation), Chapter Nine (Emergency Action), and Chapter Seventeen (Government Procurement); or

(b) Chapter Eleven (Cross-Border Trade in Services),

is nullified or impaired as a result of the application of any measure that is not inconsistent with this Agreement. A panel established under this Chapter shall consider the jurisprudence interpreting Article XXIII:1(b) of the GATT 1994, or Article XXIII(3) of the GATS.

2. A Party may not invoke paragraph 1(b), with respect to any measure subject to an exception under Article 22.2 (Exceptions – General Exceptions).

3. A Party may not invoke paragraph 1 with respect to any measure subject to the exception under Article 22.7 (Exceptions – Cultural Industries).

CHAPTER TWENTY-TWO

EXCEPTIONS

Article 22.1: Definitions

For the purposes of this Chapter:

competition authority means:

(a) for Canada, the Commissioner of Competition or a successor; and

(b) for Honduras, the Commission for the Defence and Promotion of Competition(*Comisiónpara la Defensa y Promoción de la Competencia)*, or a successor;

designated authority means:

(a) for Canada, the Assistant Deputy Minister for Tax Policy, Department of Finance or a successor; and

(b) for Honduras, the Executive Director of Income (*Director Ejecutivo de Ingresos)* or a successor;

information protected under its competition laws means:

(a) for Canada, information within the scope of section 29 of the *Competition Act*, R.S.C. 1985, c.34, or a successor provision; and

(b) for Honduras, information within the scope of:

(i) Article 47 of the Regulation of the Law for the Defence and Promotion of Competition (*Reglamento de la Ley para la Defensa y Promoción de la Competencia*), Approved No. 001-2007, made under the Law for the Defence and Promotion of the Competition (*Ley para la Defensa y Promoción de la Competencia*), Decree No. 357-2005, or a successor provision,

(ii) Articles 3(6), 16, 17 and 18 of the Law for Transparency and Access to Public Information(*Ley de Transparencia y Acceso a la InformaciónPública*), Decree No. 170-2006, or a successor provision, and

(iii) those provisions relating to competition matters in the Regulation of the Lawon Transparency and Access to Public Information (*Reglamento de la Ley de Transparencia y Acceso a la InformaciónPública*), Order No. IAIP-0001-2008, made under Decree No, 170-2006,including Articles 4(1), 4(15), 24, 25, 26, 27, 28, 30, 31, 32, and 33, or a successor provision;

international capital transactions means transactions "for the purpose of transferring capital" as the term is used in Article XXX of the *Articles of Agreement of the International Monetary Fund*, done at Washington on 27 December 1945 ("Articles of Agreement of the IMF");

investor has the same meaning as in Article 10.1 (Investment – Definitions);

payments for current international transactions means "payments for current transactions" as defined under Article XXX of the Articles of Agreement of the IMF;

person engaged in a cultural industry means a person engaged in 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) radio communications in which the transmissions are intended for direct reception by the general public; radio, television and cable broadcasting undertakings; and satellite programming and broadcast network services;

tax convention means a convention for the avoidance of double taxation or other international taxation agreement or arrangement;

taxation measures does not include:

(a) a customs duty as defined in Article 2.1 (General Definitions – Definitions of General Application); or

(b) a measure listed in exceptions (b), (c), or (d) in that definition;

transfers means international transactions and related international transfers and payments; and

Tribunal has the same meaning as in Article 10.1 (Investment – Definitions).

Article 22.2:General Exceptions

1. For the purposes of Chapters Three through Nine and Chapter Sixteen (National Treatment and Market Access for Goods, Rules of Origin, Customs Procedures, Trade Facilitation, Sanitary and Phytosanitary Measures, Technical Barriers to Trade, Emergency Action,and Electronic Commerce), Article XX of the GATT 1994 isincorporated into and made part of this Agreement, mutatis mutandis. 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. For the purposes of Chapters Eleven, Twelve, Fourteen, and Sixteen (Cross-Border Trade in Services, Telecommunications, Temporary Entry for Business Persons,and Electronic Commerce), Article XIV (a), (b) and (c) of GATS is incorporated into and made part of this Agreementmutatis mutandis. The Parties understand that the measures referred to in Article XIV (b) of GATS include environmental measures necessary to protect human, animal, or plant life or health.

3. For the purposes of Chapter Ten (Investment):

(a) a Party may adopt or enforcea measure necessary:

(i) to protect human, animal or plant life or health, which the Parties understand to include environmental measures necessary to protect human, animal or plant life or health,

(ii) to ensure compliance with laws and regulations that are not inconsistent with this Agreement, or

(iii) for the conservation of living or non-living exhaustible natural resources;

(b) provided that the measure referred to in sub-paragraph (a) is not:

(i) applied in a manner that constitutes arbitrary or unjustifiable discrimination between investments or between investors, or

(ii) a disguised restriction on international trade or investment.

Article 22.3:National Security

This Agreement does not:

(a) require a Party to furnish or allow access to information if that Party determines that the disclosure of the information would be contrary to its essential security interests;

(b) prevent a Party from taking an action that it considers necessary to protect its essential security interests:

(i) relating to the traffic in arms, ammunition, and implements of war and to traffic and transactions in other goods, materials, services, and technology that is 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 a national policy or international agreement respecting the non-proliferation of nuclear weapons or other nuclear explosive devices; or

(c) preventa Party from fulfilling its obligations under the *Charter of the United Nations* for the maintenance of international peace and security.

Article 22.4:Taxation

1. Except as set out in this Article, this Agreement does not apply to a taxation measure.

2. This Agreement does not affect the rights and obligations of a Party under a tax convention. In the event of inconsistency between this Agreement and a tax convention, the tax convention prevails.

3. If a provision with respect to a taxation measure under this Agreement is similar to a provision of a tax convention, the competent authorities identified in the tax convention shall use the procedural provision of thattax convention to resolve an issue that may arise under this Agreement.

4. Notwithstanding paragraphs 2 and 3:

(a) Article 3.3 (National Treatment and Market Access for Goods – National Treatment) and the provisions of this Agreement necessary to give effect to that Article apply to a taxation measure to the same extent as Article III of the GATT 1994; and

(b) Article 3.11 (National Treatment and Market Access for Goods – Export Taxes) applies to a taxation measure.

5. Subject to paragraphs 2, 3, and 6:

(a) Article 11.3 (Cross-Border Trade in Services – National Treatment) and Article 13.3 (Financial Services – National Treatment) apply to a taxation measure on income, capital gains, or on the taxable capital of corporations that relate to the purchase or consumption of particular services, except that this subparagraph does not prevent a Party from making the receipt or continued receipt of an advantage relating to the purchase or consumption of particular services conditional on providing the service in its territory; and

(b) Articles 10.4 and 10.5 (Investment – National Treatment and Most – Favoured-Nation Treatment), Articles 11.3 and 11.4(Cross-Border Trade in Services – National Treatment and Most-Favoured-Nation Treatment) and Articles 13.3 and 13.4 (Financial Services – National Treatment and Most-Favoured-Nation Treatment) apply to a taxation measure, other than a taxation measureon income, capital gains, the taxable capital of corporations, estates, inheritances, and gifts.

6. Paragraph 5 does not:

(a) impose a most-favoured-nation obligation with respect to an advantage accorded by a Party pursuant to a tax convention;

(b) impose on a Party a national treatment obligation with respect to the conditioning of a receipt, or continued receipt, of an advantage relating to the contributions to, or income of, pension trusts or pension plans on a requirement that the Party maintain continuous jurisdiction over the pension trust or pension plan;

(c) apply to a non-conforming provision of an existing taxation measure;

(d) apply to the continuation or prompt renewal of a non-conforming provision of an existing taxation measure;

(e) apply to an amendment to a non-conforming provision of an existing taxation measure provided that the amendment does not decrease its conformity, before the amendment, with the Articles referred to in paragraph 5; or

(f) apply to a new taxation measure that is aimed at ensuring the equitable and effective imposition or collection of taxes (including, for greater certainty, a measure that is taken by a Party in order to ensure compliance with the Party's taxation system or to prevent the avoidance or evasion of taxes) and that does not arbitrarily discriminate between persons, goods, or services of the Parties.

7. Subject to paragraphs 2 and 3, and without prejudice to the rights and obligations of the Parties under Article 10.7(4)(Investment – Performance Requirements) applies to a taxation measure.

8. Notwithstanding paragraphs 2 and 3, Article 10.11(Investment – Expropriation) applies to a taxation measure, butan investor may not invoke that Article as the basis for a claim under Article 10.19 (Investment –Claim by an Investor of a Party on its Own Behalf) or Article 10.20 (Investment –Claim by an Investor of a Party on Behalf of an Enterprise), if the designated authorities of the Parties have determined under this paragraph that a taxation measure is not an expropriation. The investor shall refer the issue of determining whether a measure is not an expropriation to the designated authorities of the Parties at the time that the investor gives notice under Article 10.21 (Investment – Notice of Intent to Submit a Claim to Arbitration). If, within a period of 6 months from the date of this referral, the designated authorities do not agree to consider the issue or, having decided to consider it, fail to decide that the measure is not an expropriation, the investor may submit its claim to arbitration under Article 10.23(Investment – Submission of a Claim to Arbitration).

9. In order to give effect to paragraphs 1 to 3:

(a) If an issue arises as to whether a measure of a Party is a taxation measure in a dispute between the Parties, a Party may refer the issue to the designated authorities of the Parties. The designated authorities shall decide the issue of whether the measure is a taxation measure, and their decision shall bind a panel established under Article 21.11 (Institutional Arrangements and Dispute Settlement Procedures –Panel Composition) for the dispute. If a Party has referred the issue to the designated authorities and they have not decided the issue within 6 months of the referral, the panel shall decide the issue.

(b) If an issue arises as to whether a measure of a Party is a taxation measure in connection with a claim by an investor of a Party, the Party that has received notice of intention to submit a claim to arbitration or against which an investor of the other Party has submitted a claim may refer the issue to the designated authorities the Parties. The designated authorities shall decide whether the measure is a taxation measure, and their decision shall bind a Tribunal with jurisdiction over the claim. A Tribunal seized of a claim in which the same issue arises may not proceed while the designated authorities are considering the issue. If a Party has referred the issue to the designated authorities and they have not decided the issue within 6 months of the referral, the Tribunal shall decide the issue.

(c) If an issue arises as to whether a tax convention prevails over this Agreement in a dispute between the Parties, a Party may refer the issue to the designated authorities of the Parties. The designated authorities shall consider the issue and decide whether the tax convention prevails. If within 6 months of the referral of the issue to the designated authorities, they decide with respect to the measure that gives rise to the issue that the tax convention prevails, procedures concerning that measure may not be initiated under Article 21.10 (InstitutionalArrangements and Dispute Settlement Procedures – Establishment of a Panel). Procedures concerning the measure may not be initiated while the designated authoritiesare considering the issue. If a Party has referred the issue to the designated authorities and they have not decided the issue within 6 months of the referral, the panel shall decide the issue.

(d) If an issue arises as to whether a tax convention prevails over this Agreement prior to the submission of a claim by an investor of a Party, the Party that has received notice of intention to submit a claim to arbitration may refer the issue to the designated authorities of the Parties. The designated authorities shall consider the issue and decide whether the tax convention prevails. If within 6 months of the referral of the issue to the designated authorities, they decide with respect to the measure that gives rise to the issue that the tax convention prevails, a claim concerning that measure may not be submitted under Article 10.23 (Investment – Submission of a Claim to Arbitration). A claim concerning the measure may not be submitted while the designated authorities are considering the issue. An investor of a Party that fails to identify a taxation measure in its notice of intention to submit a claim may not submit a claim to arbitration concerning that measure under Article 10.23 (Investment – Submission of a Claim to Arbitration). If a Party has referred the issue to the designated authorities and they have not decided the issue within 6 months of the referral, the Tribunal shall decide the issue.

10. If an investor invokes Article 10.11(Investment – Expropriation) as the basis for a claim under Article 10.19 (Investment – Claim by an Investor of a Party on Its Own Behalf) or Article 10.20 (Investment – Claim by an Investor of a Party on Behalf of an Enterprise), the designated authorities shall make a determination under paragraph 8 of whether a measure is an expropriation concurrently with a decision under paragraph 9(b) of whether the measure is a taxation measure.

11. The designated authorities seized of an issue under paragraphs 8 or 9 may modify the time period allowed to decide the issue.

12. This Agreement does not require a Party to furnish or allow access to information the disclosure of which would be contrary to the Party's law protecting information concerning the taxation affairs of a taxpayer.

Article 22.5: Balance of Payments

1. This Agreement does not prevent a Party from adopting or maintaining a measure that restricts transfers if:

(a) the Party experiences serious balance of payments difficulties, or the threat of balance of payment difficulties; and

(b) the restriction is consistent with:

(i) paragraphs 2 through 4,

(ii) paragraph 5 to the extent that the restriction is imposed on transfers other than transfers related to cross-border trade in financial services,and

(iii) paragraphs 6 and 7 to the extent the restriction is imposed on cross-border trade in financial services.

General Rules

2. As soon as practicable after a Party imposes a measure permitted by paragraph 1, 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 those consultations.

3. A measure permitted by paragraph 1must:

(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 of balance of payment difficulties;

(c) be temporary and be phased out progressively as the balance of payments situation improves;

(d) be consistent with sub-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 adopting or maintaining a measure referred to in paragraph 1may give priority to services that are essential to its economic program, if:

(a) the Party does not impose a measure for the purpose of protecting a specific industry or sector; or

(b) further to sub-paragraph 3(d), the measure is consistent with sub-paragraph 2(c) and with Article VIII(3) of the Articles of Agreement of the IMF.

Restrictions on Transfers other than transfers related to Cross-Border Trade in Financial Services

5. Restrictions imposed on transfers, other than on cross-border trade in financial services:

(a) if imposed on payments for current international transactions must, further to sub-paragraph 3(d), be consistent with the Articles of Agreement of the IMF, including Article VIII(3);

(b) if imposed on international capital transactions must, further to sub-paragraph 3(d), be consistent with the Articles of Agreement of the IMF, including Article VI, and be imposed only in conjunction with a measure imposed on current international transactions under sub-paragraph 2(a);

(c) if imposed on transfers covered by Article 10.10 (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, licenses, or similar measures.

Restrictions on Cross-Border Trade in Financial Services

6. A Party imposing a restriction on cross-border trade in financial services:

(a) may not impose more than 1 measure on a transfer, unless, further to paragraph 3(d), it is consistent with paragraph 2(c) andthe Articles of Agreement of the IMF, including Article VIII(3); and

(b) shall promptly notify and discuss with the other Party to assess the balance of payments situation of the Party and the measures it has adopted, taking into account among other elements:

(i) the nature and extent of the balance of payments difficulties of the Party,

(ii) the external economic and trading environment of the Party, and

(iii) alternative corrective measures that may be available.

7. In discussions under sub-paragraph 6(b), the Parties shall accept all statistical and other findings presented by the IMF relating to foreign exchange, monetary reserves, and balance of payments, and shall base their conclusions on the assessment by the IMF regarding the balance of payments and the external financial situation of the Party adopting the measures.

Article 22.6:Disclosure of Information

1. This Agreement does not require a Party to furnish or allow access to information that:

(a) would impede law enforcement, if disclosed; or

(b) would be contrary to the Party's law protecting the deliberative and policy-making processes of the executive branch of government at the cabinet level, personal privacy, or the financial affairs and accounts of individual customers of financial institutions.

2. This Agreement does not require, in the course of dispute settlement procedures under this Agreement:

(a) a Party to furnish or allow access to information protected under its competition laws; or

(b) a competition authority of a Party to furnish or allow access to information that is privileged or otherwise protected from disclosure.

Article 22.7:Cultural Industries

This Agreement does not apply to a measure adopted or maintained by a Party with respect toa person engaged in a cultural industry, except as specifically provided for in Article 3.4 (National Treatment and Market Access for Goods – Tariff Elimination)**.**

Article 22.8:World Trade Organization Waivers

If a right or obligation in this Agreement duplicates a right or obligation in the WTO Agreement, a measure adopted by a Party in conformity with a waiver decision adopted by the WTO pursuant to Article IX:3 of the WTO Agreement isalso deemed to be in conformity with this Agreement, except as otherwise decided by the Parties. Theconforming measure of either Party may not give rise to a claim under Section C of ChapterTen (Investment – Settlement of Disputes between a Party and an Investor of the Other Party).

CHAPTER TWENTY-THREE

FINAL PROVISIONS

Article 23.1: Annexes, Appendices and Footnotes

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

Article23.2:Amendments

1. The Parties may agree,in writing,to amend this Agreement.

2. Unless otherwise agreed by the Parties, anamendment enters into force following an exchange of written notifications by the Parties certifying the completion of their respective internalprocedures, and on a date agreed on by the Parties.

3. Anamendment shall constitute an integral part of this Agreement.

Article23.3: Reservations

This Agreement may not be subject to unilateral reservations or unilateral interpretative declarations.

Article23.4: Entry into Force

Each Party shall notify the other Party, in writing,once it has completedtheinternal procedures required for the entry into force of this Agreement. This Agreement enters into force on the first day of the second month following the later notification.

Article23.5: Termination

A Party may terminate this Agreement by notification in writing to the other Party. This Agreement terminates180 days after the date of that notification.

Article23.6: Accession

A country or group of countries may accede to this Agreement onthe terms and conditions agreed between that country or group of countries and the Parties and following approval in accordance with the applicable internalprocedures of each Party and acceding country.

Article23.7: 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 duplicateat , this day of 2013,in the English, French and Spanish languages.

FOR CANADA	**FOR THE REPUBLIC OF HONDURAS**