Free Trade Agreement
between the Government of the United States of America and the Government of the Republic of Chile

The Government of the Republic of Chile and the Government of the United States of America,

resolved to:

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

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

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

AVOID distortions in their reciprocal trade;

ESTABLISH clear and mutually advantageous rules governing their trade;

ENSURE a predictable commercial framework for business planning and investment;

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

ENHANCE the competitiveness of their firms in global markets;

FOSTER creativity and innovation, and promote trade in goods and services that are the subject of intellectual property rights;

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

BUILD on their respective international commitments and strengthen their cooperation on labor matters;

PROTECT, enhance, and enforce basic workers' rights;

IMPLEMENT this Agreement in a manner consistent with environmental protection and conservation;

PROMOTE sustainable development;

CONSERVE, protect, and improve the environment, including through managing natural resources in their respective territories and through multilateral environmental agreements to which they are both parties;

PRESERVE their flexibility to safeguard the public welfare; and

CONTRIBUTE to hemispheric integration and the fulfillment of the objectives of the *Free Trade Area of the Americas*;

HAVE AGREED as follows:

Chapter One

Initial Provisions

Article 1.1: Establishment of a Free Trade Area

The Parties to this Agreement, consistent with Article XXIV of the *General Agreement on Tariffs and Trade 1994* and Article V of the *General Agreement on Trade in Services*, hereby establish a free trade area.

Article 1.2: Objectives

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

(a) encourage expansion and diversification of trade between the Parties;

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

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

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

(e) provide adequate and effective protection and enforcement of intellectual property rights in each Party's territory;

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

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

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

Article 1.3: Relation to Other Agreements

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

Article 1.4: Extent of Obligations

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

Chapter Two

General Definitions

Article 2.1: Definitions of General Application

For purposes of this Agreement, unless otherwise specified:

central level of government means:

(a) for the United States, the federal level of government; and

(b) for Chile, the national level of government;

Commission means the Free Trade Commission established under Article 21.1 (The Free Trade Commission); **covered investment** means, with respect to a Party, an investment in its territory of an investor of the other Party in existence as of the date of entry into force of this Agreement or established, acquired, or expanded thereafter;

customs authority means the competent authority that is responsible under the law of a Party for the administration of customs laws and regulations; **customs duty** includes any customs or import duty and a charge of any kind imposed in connection with the importation of a good, including any form of surtax or surcharge in connection with such importation, but does not include any:

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

(b) antidumping or countervailing duty; and

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

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;

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

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

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

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

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

goods of a Party means domestic products as these are understood in the GATT 1994 or such goods as the Parties may agree, and includes originating goods of that Party. A good of a Party may include materials of other countries;

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

heading means the first four digits in the tariff classification number under the Harmonized System;

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

national means a natural person who has the nationality of a Party according to Annex 2.1 or a permanent resident of a Party;

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

person means a natural person or an enterprise;

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

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

procurement means the process by which a government obtains the use of or acquires goods or services, or any combination thereof, for governmental purposes and not with a view to commercial sale or resale, or use in the production or supply of goods or services for commercial sale or resale;

regional level of government means, for the United States, a state of the United States, the District of Columbia, or Puerto Rico. For Chile, as a unitary state, “regional level of government” is not applicable;

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

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 the first six digits in the tariff classification number under the Harmonized System;

TBT Agreement means the *Agreement on Technical Barriers to Trade*, which is part of the WTO Agreement;

territory means for a Party the territory of that Party as set out in Annex 2.1;

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

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

Annex 2.1

Country-Specific Definitions

For purposes of this Agreement, unless otherwise specified:

natural person who has the nationality of a Party means:

(a) with respect to Chile, a *chileno* as defined in Article 10 of the *Constitución Política de la República de Chile*; and

(b) with respect to the United States, “national of the United States” as defined in the existing provisions of the *Immigration and Nationality Act*; and

territory means:

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

(b) with respect to the United States,

(i) the customs territory of the United States, which includes the 50 states, the District of Columbia, and Puerto Rico,

(ii) the foreign trade zones located in the United States and Puerto Rico, and

(iii) any areas beyond the territorial seas of the United States within which, in accordance with international law and its domestic law, the United States may exercise rights with respect to the seabed and subsoil and their natural resources.

Chapter Three

National Treatment and Market Access for Goods

Article 3.1: Scope and Coverage

Except as otherwise provided, this Chapter applies to trade in goods of a Party.

Section A - National Treatment

Article 3.2: National Treatment

1. Each Party shall accord national treatment to the goods of the other Party in accordance with Article III of GATT 1994, including its interpretative notes, and to this end Article III of GATT 1994, and its interpretative notes, are incorporated into and made part of this Agreement, *mutatis mutandis*.

2. The provisions of paragraph 1 regarding national treatment shall mean, with respect to a regional level of government, treatment no less favorable than the most favorable treatment that regional level of government accords to any like, directly competitive, or substitutable goods, as the case may be, of the Party of which it forms a part.[1]

3. Paragraphs 1 and 2 shall not apply to the measures set out in Annex 3.2.

Section B - Tariff Elimination

Article 3.3: Tariff Elimination

1. Except as otherwise provided in this Agreement, neither Party may 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 Annex 3.3.

3. The United States shall eliminate customs duties on any non-agricultural originating goods that, after the date of entry into force of this Agreement, are designated as articles eligible for duty-free treatment under the U.S. *Generalized System of Preferences*, effective from the date of such designation.

4. On the request of either Party, the Parties shall consult to consider accelerating the elimination of customs duties set out in their Schedules to Annex 3.3. An agreement between the Parties to accelerate the elimination of a customs duty on a good shall supercede any duty rate or staging category determined pursuant to their Schedules to Annex for such good when approved by each Party in accordance with Article 21.1(3)(b) (The Free Trade Commission) and its applicable legal procedures.

5. For greater certainty, a Party may:

(a) raise a customs duty back to the level established in its Schedule to Annex 3.3 following a unilateral reduction; or

(b) maintain or increase a customs duty as authorized by the Dispute Settlement Body of the WTO.

Article 3.4: Used Goods

On entry into force of this Agreement, Chile shall cease applying the 50 percent surcharge established in the *Regla General Complementaria N° 3* of *Arancel Aduanero* with respect to originating goods of the other Party that benefit from preferential tariff treatment.

Article 3.5: Customs Valuation of Carrier Media

1. For purposes of determining the customs value of carrier media bearing content, each Party shall base its determination on the cost or value of the carrier media alone.
2. For purposes of the effective imposition of any internal taxes, direct or indirect, each Party shall determine the tax basis according to its domestic law.

Section C - Special Regimes

Article 3.6: Waiver of Customs Duties

1. Neither Party may adopt any new waiver of customs duties, or expand with respect to existing recipients or extend to any new recipient the application of an existing waiver of customs duties, where the waiver is conditioned, explicitly or implicitly, on the fulfillment of a performance requirement.
2. Neither Party may, explicitly or implicitly, condition on the fulfillment of a performance requirement the continuation of any existing waiver of customs duties.
3. This Article shall not apply to measures subject to Article 3.8.

Article 3.7: Temporary Admission of Goods

1. Each Party shall grant duty-free temporary admission for:

(a) professional equipment, including equipment for the press or television, software and broadcasting and cinematographic equipment, necessary for carrying out the business activity, trade or profession of a business person who qualifies for temporary entry pursuant to the laws of the importing Party;

(b) goods intended for display or demonstration;

(c) commercial samples and advertising films and recordings; and

(d) goods admitted for sports purposes, regardless of their origin.

2. Each Party shall, at the request of the person concerned and for reasons deemed valid by its customs authority, extend the time limit for temporary admission beyond the period initially fixed.
3. Neither Party may condition the duty-free temporary admission of goods referred to in paragraph 1, other than to require that such goods:

(a) be used solely by or under the personal supervision of a national or resident of the other Party in the exercise of the business activity, trade, profession, or sport of that person;

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

(c) be accompanied by a security in an amount no greater than the charges that would otherwise be owed on entry or final importation, releasable on exportation of the good;

(d) be capable of identification when exported;

(e) be exported on the departure of the person referenced in subparagraph (a), or within such other period, related to the purpose of the temporary admission, as the Party may establish, or within one year, unless extended;

(f) be admitted in no greater quantity than is reasonable for their intended use; and

(g) be otherwise admissible into the Party's territory under its laws.

4. If any condition that a Party imposes under paragraph 3 has not been fulfilled, the Party may apply the customs duty and any other charge that would normally be owed on the good plus any other charges or penalities provided for under its domestic law.
5. Each Party, through its customs authority, shall adopt procedures providing for the expeditious release of goods admitted under this Article. To the extent possible, such procedures shall provide that when such a good accompanies a national or resident of the other Party who is seeking temporary entry, the good shall be released simultaneously with the entry of that national or resident.
6. Each Party shall permit a good temporarily admitted under this Article to be exported through a customs port other than that through which it was admitted.
7. Each Party, through its customs authority, consistent with domestic law, shall relieve the importer or other person responsible for a good admitted under this Article from any liability for failure to export the good on presentation of satisfactory proof to customs authorities that the good has been destroyed within the original period fixed for temporary admission or any lawful extension.
8. Subject to Chapters Ten (Investment) and Eleven (Cross-Border Trade in Services):

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

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

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

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

9. For purposes of paragraph 8, **vehicle** means a truck, a truck tractor, tractor, trailer unit or trailer, a locomotive, or a railway car or other railroad equipment.

Article 3.8: Drawback and Duty Deferral Programs
1. Except as otherwise provided in this Article, neither Party may refund the amount of customs duties paid, or waive or reduce the amount of customs duties owed, on a good imported into its territory, on condition that the good is:

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

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

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

2. Neither Party may, on condition of export, refund, waive, or reduce:

(a) an antidumping or countervailing duty;

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

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

3. Where a good is imported into the territory of a Party pursuant to a duty deferral program and is subsequently exported to the territory of the other Party, or is used as a material in the production of another good that is subsequently exported to the territory of the other Party, or is substituted by an identical or similar good used as a material in the production of another good that is subsequently exported to the territory of the other Party, the Party from whose territory the good is exported shall assess the customs duties as if the exported good had been withdrawn for domestic consumption.
4. This Article does not apply to:

(a) a good entered under bond for transportation and exportation to the territory of the other Party;

(b) a good exported to the territory of the other Party in the same condition as when imported into the territory of the Party from which the good was exported (testing, cleaning, repacking, inspecting, sorting, marking, or preserving a good shall not be considered to change the good’s condition). Where such a good has been commingled with fungible goods and exported in the same condition, its origin for purposes of this subparagraph may be determined on the basis of such inventory management methods as first-in, first-out or last-in, first-out. Nothing in this subparagraph shall be construed to permit a Party to waive, refund, or reduce a customs duty contrary to paragraph 2(c);

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

(i) delivery to a duty-free shop,

(ii) delivery for ship's stores or supplies for ships or aircraft, or

(iii) delivery for use in joint undertakings of the Parties and that will subsequently become the property of the Party into whose territory the good was deemed to be exported;

(d) a refund of customs duties by a Party on a particular good imported into its territory and subsequently exported to the territory of the other Party, where that refund is granted by reason of the failure of such good to conform to sample or specification, or by reason of the shipment of such good without the consent of the consignee; or

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

5. This Article shall take effect beginning eight years after the date of entry into force of this Agreement, and thereafter a Party may refund, waive, or reduce duties paid or owed under the Party's duty drawback or deferral programs according to the following schedule:

(a) no more than 75 percent in year nine;

(b) no more than 50 percent in year 10;

(c) no more than 25 percent in year 11; and

(d) zero in year 12 and thereafter.

6. For purposes of this Article:

good means "good" as defined in Article 4.18 (Definitions);

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

material means "material" as defined in Article 4.18 (Definitions); and

used means used or consumed in the production of goods.

Article 3.9: Goods Re-entered after Repair or Alteration

1. Neither Party may apply a customs duty to a good, regardless of its origin, that reenters its territory after that good has been temporarily exported from its territory to the territory of the other Party for repair or alteration, regardless of whether such repair or alteration could be performed in its territory.
2. Neither Party may apply a customs duty to a good, regardless of its origin, admitted temporarily from the territory of the other Party for repair or alteration.
3. For purposes of this Article, **repair or alteration** does not include an operation or process that:

(a) destroys a good's essential characteristics or creates a new or commercially different good; or

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

Article 3.10: Duty-Free Entry of Commercial Samples of Negligible Value and Printed Advertising Materials

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

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

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

Section D - Non-Tariff Measures

Article 3.11: Import and Export Restrictions

1. Except as otherwise provided in this Agreement, neither Party may adopt or maintain any prohibition or restriction on the importation of any good of the other Party or on the exportation or sale for export of any good destined for the territory of the other Party, except in accordance with Article XI of GATT 1994 and its interpretative notes and to this end Article XI of GATT 1994 and its interpretative notes are incorporated into and made a part of this Agreement, *mutatis mutandis*.
2. The Parties understand that the GATT rights and obligations incorporated by paragraph 1 prohibit, in any circumstances in which any other form of restriction is prohibited, a Party from adopting or maintaining:

(a) export and import price requirements, except as permitted in enforcement of countervailing and antidumping orders and undertakings;

(b) import licensing conditioned on the fulfilment of a performance requirement; or

(c) voluntary export restraints not consistent with Article VI of GATT 1994, as implemented under Article 18 of the SCM Agreement and Article 8.1 of the AD Agreement.

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

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

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

4. In the event that a Party adopts or maintains a prohibition or restriction on the importation of a good from a non-Party, the Parties, on the request of either Party, shall consult with a view to avoiding undue interference with or distortion of pricing, marketing, and distribution arrangements in the other Party.
5. Paragraphs 1 through 4 shall not apply to the measures set out in Annex 3.2.

Article 3.12: Administrative Fees and Formalities

1. Each Party shall ensure, in accordance with Article VIII:1 of GATT 1994 and its interpretive notes, that all fees and charges of whatever character (other than customs duties, charges equivalent to an internal tax or other internal charge applied consistently with Article III:2 of GATT 1994, and antidumping and countervailing duties) imposed on or in connection with importation or exportation are limited in amount to the approximate cost of services rendered and do not represent an indirect protection to domestic goods or a taxation of imports or exports for fiscal purposes.
2. Neither Party may require consular transactions, including related fees and charges, in connection with the importation of any good of the other Party.
3. Each Party shall make available through the Internet or a comparable computer based telecommunications network a current list of the fees and charges it imposes in connection with importation or exportation.
4. The United States shall eliminate its merchandise processing fee on originating goods of Chile.

Article 3.13: Export Taxes

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

Article 3.14: Luxury Tax

Chile shall eliminate the Luxury Tax established in Article 46 of *Decreto Ley 825* of 1974, according to the schedule set out in Annex 3.14.

Section E - Other Measures

Article 3.15: Distinctive Products

1. Chile shall recognize Bourbon Whiskey and Tennessee Whiskey, which is a straight Bourbon Whisky authorized to be produced only in the State of Tennessee, as distinctive products of the United States. Accordingly, Chile shall not permit the sale of any product as Bourbon Whiskey or Tennessee Whiskey, unless it has been manufactured in the United States in accordance with the laws and regulations of the United States governing the manufacture of Bourbon Whiskey and Tennessee Whiskey.
2. The United States shall recognize *Pisco Chileno* (Chilean Pisco), *Pajarete*, and *Vino Asoleado*, which is authorized in Chile to be produced only in Chile, as distinctive products of Chile. Accordingly, the United States shall not permit the sale of any product as *Pisco Chileno* (Chilean Pisco), *Pajarete*, or *Vino Asoleado*, unless it has been manufactured in Chile in accordance with the laws and regulations of Chile governing the manufacture of *Pisco*, *Pajarete*, and *Vino Asoleado*.

Section F - Agriculture

Article 3.16: Agricultural Export Subsidies

1. The Parties share the objective of the multilateral elimination of export subsidies for agricultural goods and shall work together toward an agreement in the World Trade Organization to eliminate those subsidies and prevent their reintroduction in any form.
2. Except as provided in paragraph 3, neither Party shall introduce or maintain any export subsidy on any agricultural good destined for the territory of the other Party.
3. Where an exporting Party considers that a non-Party is exporting an agricultural good to the territory of the other Party with the benefit of export subsidies, the importing Party shall, on written request of the exporting Party, consult with the exporting Party with a view to agreeing on specific measures that the importing Party may adopt to counter the effect of such subsidized imports. If the importing Party adopts the agreed-upon measures, the exporting Party shall refrain from applying any export subsidy to exports of such good to the territory of the importing Party.

Article 3.17: Agricultural Marketing and Grading Standards

1. Where a Party adopts or maintains a measure respecting the classification, grading, or marketing of a domestic agricultural good, or a measure to expand, maintain, or develop its domestic market for an agricultural good, it shall accord treatment to a like good of the other Party that is no less favorable than it accords under the measure to the domestic agricultural good, regardless of whether the good is intended for direct consumption or for processing.
2. Paragraph 1 shall be without prejudice to the rights of either Party under the WTO Agreement or under this Agreement regarding measures respecting the classification, grading, or marketing of an agricultural good.
3. The Parties hereby establish a Working Group on Agricultural Trade, comprising representatives of the Parties, which shall meet annually or as otherwise agreed. The Working Group shall review, in coordination with the Committee on Technical Barriers to Trade established in Article 7.8 (Committee on Technical Barriers to Trade), the operation of agricultural grade and quality standards and programs of expansion and development that affect trade between the Parties, and shall resolve any issues that may arise regarding the operation of those standards and programs. The Group shall report to the Committee on Trade in Goods established in Article 3.23.
4. Each Party shall recognize the other Party's grading programs for beef, as set out in Annex 3.17.

Article 3.18: Agricultural Safeguard Measures

1. Notwithstanding Article 3.3(2), each Party may impose a safeguard measure in the form of additional import duties, consistent with paragraphs 2 through 7, on an originating agricultural good listed in its section of Annex 3.18. The sum of any such additional duty and any import duties or other charges applied pursuant to Article 3.3(2) shall not exceed the lesser of:

    (a) the prevailing most-favored-nation (MFN) applied rate; or

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

2. A Party may impose a safeguard measure only if the unit import price of the good enters the Party's customs territory at a level below a trigger price for that good as set out in that Party's section of Annex 3.18.

(a) The unit import price shall be determined on the basis of the C.I.F. import price of the good in U.S. dollars for goods entering Chile, and on the basis of the F.O.B. import price of the good in U.S. dollars for goods entering the United States.

(b) The trigger prices for the goods eligible for a safeguard measure, which reflect historic unit import values for the products concerned, are listed in Annex 3.18. The Parties may mutually agree to periodically evaluate and update the trigger prices.

3. The additional duties under paragraph 2 shall be set in accordance with the following schedule:

(a) if the difference between the unit import price of the item expressed in terms of domestic currency (the "import price") and the trigger price as defined under paragraph 2(b) is less than or equal to 10 percent of the trigger price, no additional duty shall be imposed;

(b) if the difference between the import price and the trigger price is greater than 10 percent but less than or equal to 40 percent of the trigger price, the additional duty shall equal 30 percent of the difference between the MFN rate applicable under paragraph 1 and the preferential tariff rate;

(c) if the difference between the import price and the trigger price is greater than 40 percent but less than or equal to 60 percent of the trigger price, the additional duty shall equal 50 percent of the difference between the MFN rate applicable under paragraph 1 and the preferential tariff rate;

(d) if the difference between the import price and the trigger price is greater than 60 percent but less than or equal to 75 percent, the additional duty shall equal 70 percent of the difference between the MFN rate applicable under paragraph 1 and the preferential tariff rate; and

(e) if the difference between the import price and the trigger price is greater than 75 percent of the trigger price, the additional duty shall equal 100 percent of the difference between the MFN rate applicable under paragraph 1 and the preferential tariff rate.

4. Neither Party may, with respect to the same good, at the same time:

(a) impose a safeguard measure under this Article; and

(b) take a safeguard action under Section A of Chapter Eight (Trade Remedies).

5. Neither Party may impose a safeguard measure on a good that is subject to a measure that the Party has imposed pursuant to Article XIX of GATT 1994 and the Safeguards Agreement, and neither Party may continue maintaining a safeguard measure on a good that becomes subject to a measure that the Party imposes pursuant to Article XIX of GATT 1994 and the Safeguards Agreement.
6. A Party may impose a safeguard measure only during the 12-year period beginning on the date of entry into force of this Agreement. Neither Party may impose a safeguard measure on a good once the good achieves duty-free status under this Agreement. Neither Party may impose a safeguard measure that increases a zero in-quota duty on a good subject to a tariff-rate quota.
7. Each Party shall implement any safeguard measure in a transparent manner. Within 60 days after imposing a measure, a Party shall notify the other Party, in writing, and shall provide it relevant data

concerning the measure. On request, the Party imposing the measure shall consult with the other Party with respect to the conditions of application of the measure.
8. The general operation of the agricultural safeguard provisions and the trigger prices for their implementation may be the subject of discussion and review in the Committee on Trade in Goods.
9. For purposes of this Article, **safeguard measure** means an agricultural safeguard measure described in paragraph 1.

Section G - Textiles and Apparel

Article 3.19: Bilateral Emergency Actions

1. If, as a result of the 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 territory of a Party 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 thereof, to a domestic industry producing a like or directly competitive good, the importing Party may, to the extent and for such time as may be necessary to prevent or remedy such damage and to facilitate adjustment, take emergency action, consisting of an increase in the rate of duty on the good to a level not to exceed the lesser of:

(a) the most-favored-nation (MFN) applied rate of duty in effect at the time the action is taken; and

(b) the MFN applied rate of duty in effect on the date of entry into force of this Agreement.

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

(a) shall examine the effect of increased imports from the other Party 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) shall not consider changes in technology or consumer preference as factors supporting a determination of serious damage or actual threat thereof.

3. The importing Party may take an emergency action under this Article only following an investigation by its competent authorities.
4. The importing Party shall deliver to the other Party, without delay, written notice of its intent to take emergency action, and, on request of the other Party, shall enter into consultations with that Party.
5. The following conditions and limitations shall apply to any emergency action taken under this Article:

(a) no emergency action may be maintained for a period exceeding three years;

(b) no emergency action may be taken or maintained beyond the period ending eight years after duties on a good have been eliminated pursuant to this Agreement;

(c) no emergency action may be taken by an importing Party against any particular good of the other Party more than once; and

(d) on termination of the action, the good will return to duty-free status.

6. The Party taking an emergency action under this Article shall provide to the Party against whose good the action is taken mutually agreed trade liberalizing compensation in the form of concessions having substantially equivalent trade effects or equivalent to the value of the additional duties expected to result from the emergency action. Such concessions shall be limited to textile and apparel goods, unless the Parties otherwise agree. If the Parties are unable to agree on compensation, the Party against whose good the emergency action is taken may take tariff action having trade effects substantially equivalent to the trade effects of the emergency action taken under this Article. Such tariff action may be taken against any goods of the Party taking the emergency action. The Party taking the tariff action shall apply such action only for the minimum period necessary to achieve the substantially equivalent trade effects. The importing Party's obligation to provide trade compensation and the exporting Party's right to take tariff action shall terminate when the emergency action terminates.
7. Nothing in this Agreement shall be construed to limit a Party's right to restrain imports of textile and apparel goods in a manner consistent with the Agreement on Textiles and Clothing or the Safeguards Agreement. However, a Party may not take or maintain an emergency action under this Article against a textile or apparel good that is subject, or becomes subject, to a safeguard measure that a Party takes pursuant to either such WTO agreement.

Article 3.20: Rules of Origin and Related Matters

Application of Chapter Four

1. Except as provided in this Section, Chapter Four (Rules of Origin and Origin Procedures) applies to textile and apparel goods.
2. The rules of origin set forth in this Agreement shall not apply in determining the country of origin of a textile or apparel good for non-preferential purposes.

Consultations

3. On the request of either Party, the Parties shall consult to consider whether the rules of origin applicable to particular textile and apparel goods should be revised to address issues of availability of supply of fibers, yarns or fabrics in the territories of the Parties.
4. In the consultations referred to in paragraph 3, each Party shall consider all data presented by the other Party showing substantial production in its territory of the particular good. The Parties shall consider that substantial production has been shown if a Party demonstrates that its domestic producers are capable of supplying commercial quantities of the good in a timely manner.
5. The Parties shall endeavor to conclude consultations within 60 days of a request. An agreement between the Parties resulting from the consultations shall supersede any prior rule of origin for such good when approved by the Parties in accordance with Article 24.2 (Amendments).

De Minimis

6. A textile or apparel good provided for in Chapters 50 through 63 of the Harmonized System that is not an originating good, because certain fibers or yarns used in the production of the component of the good that determines the tariff classification of the good do not undergo an applicable change in tariff classification set out in Annex 4.1 (Specific Rules of Origin), shall nonetheless be considered to be an originating good if the total weight of all such fibers or yarns in that component is not more than seven percent of the total weight of that component. Notwithstanding the preceding sentence, a good containing elastomeric yarns in the component of the good that determines the tariff classification of the good shall be considered to be an originating good only if such yarns are wholly formed in the territory of a Party.

Treatment of Sets

7. Notwithstanding the good specific rules in Annex 4.1 (Specific Rules of Origin), textile and apparel goods classifiable as goods put up in sets for retail sale as provided for in General Rule of Interpretation 3 of the Harmonized System shall not be regarded as originating goods unless each of the goods in the set is an originating good or the total value of the non-originating goods in the set does not exceed 10 percent of the customs value of the set.

Preferential Tariff Treatment for Non-Originating Cotton and Man-made Fiber Fabric Goods (Tariff Preference Levels)

8. Subject to paragraph 9, the following goods, if they meet the applicable conditions for preferential tariff treatment under this Agreement other than the condition that they be originating goods, shall be accorded preferential tariff treatment as if they were originating goods:

(a) cotton or man-made fiber fabric goods provided for in Chapters 52, 54, 55, 58, and 60 of the Harmonized System that are wholly formed in the territory of a Party from yarn produced or obtained outside the territory of a Party; and

(b) cotton or man-made fiber fabric goods provided for in Annex 4.1 (Specific Rules of Origin) that are wholly formed in the territory of a Party from yarn spun in the territory of a Party from fiber produced or obtained outside the territory of a Party.

9. The treatment described in paragraph 8 shall be limited to goods imported into the territory of a Party up to an annual total quantity of 1,000,000 SME.

Preferential Tariff Treatment for Non-Originating Cotton and Man-made Fiber Apparel Goods (Tariff Preference Levels)

10. Subject to paragraph 11, cotton or man-made fiber 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 a Party, and that meet the applicable conditions for preferential tariff treatment under this Agreement other than the condition that they be originating goods, shall be accorded preferential tariff treatment as if they were originating goods.

11. The treatment described in paragraph 10 shall be limited as follows:

(a) in each of the first 10 years after the date of entry into force of this Agreement, the treatment shall apply to goods described in that paragraph imported into the territory of a Party up to a quantity of 2,000,000 SME; and

(b) in the eleventh year, and for each year thereafter, the treatment shall apply to goods described in that paragraph imported into the territory of a Party up to a quantity of 1,000,000 SME.

Certification for Tariff Preference Level

12. A Party, through its competent authorities, may require that an importer claiming preferential tariff treatment for a textile or apparel good under paragraph 8 or 10 present to such competent authorities at the time of importation a certification of eligibility for preferential tariff treatment under such paragraph. A certification of eligibility shall be prepared by the importer and shall consist of information demonstrating that the good satisfies the requirements for preferential tariff treatment under paragraph 8 or 10.

Article 3.21: Customs Cooperation

1. The Parties shall cooperate for purposes of:

(a) enforcing or assisting in the enforcement of their laws, regulations, and procedures implementing this Agreement affecting trade in textile and apparel goods;

(b) ensuring the accuracy of claims of origin; and

(c) preventing circumvention of laws, regulations, and procedures of either Party or international agreements affecting trade in textile and apparel goods.

2. On the request of the importing Party, the exporting Party shall conduct a verification for purposes of enabling the importing Party to determine that a claim of origin for a textile or apparel good is accurate. The exporting Party shall conduct such a verification, regardless of whether an importer claims preferential tariff treatment for the good. The exporting Party also may conduct such a verification on its own initiative.

3. Where the importing Party has a reasonable suspicion that an exporter or producer of the exporting Party is engaging in unlawful activity relating to trade in textile and apparel goods, the importing Party may request the exporting Party to conduct a verification for purposes of enabling the importing Party to determine that the exporter or producer is complying with applicable customs laws, regulations, and procedures regarding trade in textile and apparel goods, including laws, regulations, and procedures that the exporting Party adopts and maintains pursuant to this Agreement and laws, regulations, and

procedures of either Party implementing other international agreements regarding trade in textile and apparel goods, and to determine that claims of origin regarding textile or apparel goods exported or produced by that person are accurate. For purposes of this paragraph, a reasonable suspicion of unlawful activity shall be based on factors including relevant factual information of the type set forth in Article 5.5 (Cooperation) or that, with respect to a particular shipment, indicates circumvention by the exporter or producer of applicable customs laws, regulations, or procedures regarding trade in textile and apparel goods, including laws, regulations, or procedures adopted to implement this Agreement, or international agreements affecting trade in textile and apparel goods.

4. The importing Party, through its competent authorities, may undertake or assist in a verification conducted pursuant to paragraph 2 or 3, including by conducting, along with the competent authorities of the exporting Party, visits in the territory of the exporting Party to the premises of an exporter, producer, or any other enterprise involved in the movement of textile or apparel goods from the territory of the exporting Party to the territory of the importing Party.

5. Each Party shall provide to the other Party, consistent with its laws, regulations, and procedures, production, trade, and transit documents and other information necessary to conduct verifications under paragraphs 2 and 3. Any documents or information exchanged between the Parties in the course of such a verification shall be considered confidential, as provided for in Article 5.6 (Confidentiality).

6. While a verification is being conducted, the importing Party may take appropriate action, which may include suspending the application of preferential tariff treatment to:

(a) the textile or apparel good for which a claim of origin has been made, in the case of a verification under paragraph 2; or

(b) the textile and apparel goods exported or produced by the person subject to a verification under paragraph 3, where the reasonable suspicion of unlawful activity relates to those goods.

7. The Party conducting a verification under paragraph 2 or 3 shall provide the other Party with a written report on the results of the verification, which shall include all documents and facts supporting any conclusion that the Party reaches.

8.

(a) If the importing Party is unable to make the determination described in paragraph 2 within 12 months after its request for a verification, it may take action as permitted under its law with respect to the textile and apparel good subject to the verification, and with respect to similar goods exported or produced by the person that exported or produced the good.

(b) If the importing Party is unable to make the determinations described in paragraph 3 within 12 months after its request for a verification, it may take action as permitted under its law with respect to any textile or apparel goods exported or produced by the person subject to the verification.

9. Prior to commencing appropriate action under paragraph 8, the importing Party shall notify the other Party. The importing Party may continue to take appropriate action under paragraph 8 until it receives information sufficient to enable it to make the determination described in paragraph 2 or 3, as the case may be.

10. Chile shall implement its obligations under paragraphs 2, 3, 6, 7, 8, and 9 no later than two years after the date of entry into force of this Agreement. Before Chile fully implements those provisions, if the importing Party requests a verification, the verification shall be conducted principally by that Party, including through means described in paragraph 4. Nothing in this paragraph shall be construed to waive or limit the importing Party's rights under paragraphs 6 and 8.

11. On the request of either Party, the Parties shall enter into consultations to resolve any technical or interpretive difficulties that may arise under this Article or to discuss ways to improve the effectiveness of their cooperative efforts. In addition, either Party may request technical or other assistance from the other Party in implementing this Article. The Party receiving such a request shall make every effort to respond favorably and promptly to it.

Article 3.22: Definitions
For purposes of this Section:

claim of origin means a claim that a textile or apparel good is an originating good or a good of a Party;

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;

SME means square meter equivalents, as calculated in accordance with the conversion factors set out in the *Correlation: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States, 2002* (or successor publication), published by the United States Department of Commerce, International Trade Administration, Office of Textiles and Apparel, Trade and Data Division, Washington, D.C.; and

textile or apparel good means a good listed in the Annex to the Agreement on Textiles and Clothing.

Section H - Institutional Provisions

Article 3.23: Committee on Trade in Goods
1. The Parties hereby establish a Committee on Trade in Goods, comprising representatives of each Party.
2. The Committee shall meet on the request of either Party or the Commission to consider any matter arising under this Chapter, Chapter Four (Rules of Origin and Origin Procedures), or Chapter Five (Customs Administration).
3. The Committee's functions shall include:
(a) promoting trade in goods between the Parties, including through consultations on accelerating tariff elimination under this Agreement and other issues as appropriate; and
(b) addressing barriers to trade in goods between the Parties, especially those related to the application of non-tariff measures, and, if appropriate, referring such matters to the Commission for its consideration.

Section I - Definitions

Article 3.24: Definitions
For purposes of this Chapter:

AD Agreement means the *Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994*, which is part of the WTO Agreement;

advertising films and recordings means recorded visual media or audio materials, consisting essentially of images and/or sound, showing the nature or operation of goods or services offered for sale or lease by a person established or resident in the territory of a Party, provided that such materials are of a kind suitable for exhibition to prospective customers but not for broadcast to the general public, and provided that they are imported in packets that each contain no more than one copy of each film or recording and that do not form part of a larger consignment.

Agreement on Textiles and Clothing means the *Agreement on Textiles and Clothing*, which is part of the WTO Agreement;

agricultural goods means those goods referred to in Article 2 of the *Agreement on Agriculture*, which is part of the WTO Agreement;

articles eligible for duty-free treatment under the U.S. Generalized System of Preferences does not include articles eligible only when imported from least-developed beneficiary developing countries or from beneficiary sub-Saharan African countries under the *African Growth and Opportunity Act*;

carrier media means any good of heading 8523 or 8524;

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

consular transactions means requirements that goods of a Party intended for export to the territory of the other Party must first be submitted to the supervision of the consul of the importing Party in the territory of the exporting Party for the purpose of obtaining consular invoices or consular visas for commercial invoices, certificates of origin, manifests, shippers' export declarations, or any other customs documentation required on or in connection with importation;

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;

duty-free means free of customs duty;

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

export subsidies shall have the meaning assigned to that term in Article 1(e) of the WTO Agreement on Agriculture, including any amendment of that article;

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

goods temporarily admitted for sports purposes means sports requisites for use in sports contests, demonstrations, or training in the territory of the Party into whose territory such goods are admitted;

import licensing means an administrative procedures requiring the submission of an application or other documentation (other than that generally required for customs clearance purposes) to the relevant administrative body as a prior condition for importation into the territory of the importing Party;

performance requirement means a requirement that:

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

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

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

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

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

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

SCM Agreement means the *Agreement on Subsidies and Countervailing Measures*, which is part of the WTO Agreement.

Annex 3.2
National Treatment and Import and Export Restrictions
Section A - Measures of the United States

Article 3.2 and Article 3.11 shall not apply to:

(a) controls by the United States on the export of logs of all species;

(b)

(i) measures under existing provisions of the *Merchant Marine Act of 1920*, 46 App. U.S.C. § 883; the *Passenger Vessel Act*, 46 App. U.S.C. §§ 289, 292 and 316; and 46 U.S.C. § 12108, to the extent that such measures were mandatory legislation at the time of the United States accession to the General Agreement on Tariffs and Trade 1947 and have not been amended so as to decrease their conformity with Part II of GATT 1947;

(ii) the continuation or prompt renewal of a non-conforming provision of any statute referred to in clause (i); and

(iii) the amendment to a non-conforming provision of any statute referred to in clause (i) to the extent that the amendment does not decrease the conformity of the provision with Articles 3.2 and 3.11;

(c) actions by the United States authorized by the Dispute Settlement Body of the WTO; and

(d) actions by the United States authorized by the Agreement on Textiles and Clothing.

Section B - Measures of Chile

1. Article 3.2 and Article 3.11 shall not apply to actions by Chile authorized by the Dispute Settlement Body of the WTO.
2. Article 3.11 shall not apply to measures of Chile relating to imports of used vehicles.

Annex 3.3
Tariff Elimination

1. Except as otherwise provided in a Party's Schedule attached to this Annex, the following staging categories apply to the elimination of customs duties by each Party pursuant to Article 3.3(2):

02109900	LAS DEMAS CARNES O DESPOJOS COMESTIBLES	3.49
04070010	HUEVOS DE AVES CON CASCARA, FRESCOS, CONSERVADOS O COCIDOS, PARA CONSUMO	23.61
04070090	LOS DEMAS HUEVOS DE AVE CON CASCARA, FRESCOS, CONSERVADOS O COCIDOS	23.61
10062000	ARROZ DESCASCARILLADO (ARROZ CARGO O ARROZ PARDO)	0.52
10063010	ARROZ SEMIBLANQUEADO O BLANQUEADO, INCLUSO PULIDO O GLASEADO, CON UN CONTENIDO DE GRANO PARTIDO INFERIOR O IGUAL AL 5% EN PESO	0.27
10063020	ARROZ SEMIBLANQUEADO O BLANQUEADO, INCLUSO PULIDO O GLASEADO, CONUN CONTENIDO DE GRANO PARTIDO SUPERIOR AL 5% PERO INFERIOR O IGUAL AL 15%, EN PESO	0.27
10063090	LOS DEMAS ARROZ SEMIBLANQUEADO O BLANQUEADO, INCLUSO PULIDO O GLASEADO	0.27
10064000	ARROZ PARTIDO	0.21
11023000	HARINA DE ARROZ	0.74
11031100	GRANONES Y SEMOLA, DE TRIGO	0.35
11081100	ALMIDON DE TRIGO	0.30
11090000	GLUTEN DE TRIGO, INCLUSO SECO	0.85

Chapter Four

Rules of Origin and Origin Procedures

Section A - Rules of Origin

Article 4.1: Originating Goods

1. Except as otherwise provided in this Chapter, a good is originating where:

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

(b) the good is produced entirely in the territory of one or both of the Parties and

(i) each of the non-originating materials used in the production of the good undergoes an applicable change in tariff classification specified in Annex 4.1, or

(ii) the good otherwise satisfies any applicable regional value content or other requirements specified in Annex 4.1, and the good satisfies all other applicable requirements of this Chapter; or

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

2. A good shall not be considered to be an originating good and a material shall not be considered to be an originating material by virtue of having undergone:

(a) simple combining or packaging operations; or

(b) mere dilution with water or with another substance that does not materially alter the characteristics of the good or material.

Article 4.2: Regional Value Content

1. Where Annex 4.1 specifies a regional value content test to determine whether a good is originating, each Party shall provide that the person claiming preferential tariff treatment for the good may calculate regional value content on the basis of one or the other of the following methods:

(a) Builddown method

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

(b) Buildup method

$$RVC = \frac{VOM}{AV} \times 100$$

where

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

AV is the adjusted value;

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

VOM is the value of originating materials used by the producer in the production of the good.

Article 4.3: Value of Materials

1. Each Party shall provide that for purposes of calculating the regional value content of a good, and for purposes of applying the *de minimis* rule, the value of a material:

(a) for a material that is imported by the producer of the good, is the adjusted value of the material with respect to that importation;

(b) for a material acquired in the territory where the good is produced, is the producer's price actually paid or payable for the material, except for materials within the meaning of subparagraph (c);

(c) for a material provided to the producer without charge, or at a price reflecting a discount or similar reduction, is determined by computing the sum of:

(i) all expenses incurred in the growth, production, or manufacture of the material, including general expenses; and

(ii) an amount for profit; and

(d) for a material that is self-produced, is determined by computing the sum of:

(i) all expenses incurred in the production of the material, including general expenses; and

(ii) an amount for profit.

2. Each Party shall provide that the person claiming preferential tariff treatment for a good may adjust the value of materials as follows:

(a) for originating materials, the following expenses may be added to the value of the material where not included under paragraph 1:

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

(ii) duties, taxes, and customs brokerage fees on the material paid in the territory of one or both of the Parties, other than duties and taxes that are waived, refunded, refundable, or otherwise recoverable, including credit against duty or tax paid or payable; and

(iii) the cost of waste and spoilage resulting from the use of the material in the production of the good, less the value of renewable scrap or byproduct.

(b) for non-originating materials, the following expenses may be deducted from the value of the material where included under paragraph 1:

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

(ii) duties, taxes, and customs brokerage fees on the material paid in the territory of one or both of the Parties, other than duties and taxes that are waived, refunded, refundable, or otherwise recoverable, including credit against duty or tax paid or payable;

(iii) the cost of waste and spoilage resulting from the use of the material in the production of the good, less the value of renewable scrap or byproducts; and

(iv) the cost of originating materials used in the production of the nonoriginating material in the territory of a Party.

Article 4.4: Accessories, Spare Parts, and Tools

Each Party shall provide that accessories, spare parts, or tools delivered with a good that form part of the good's standard accessories, spare parts, or tools, shall be regarded as a material used in the production of the good, provided that:

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

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

Article 4.5: Fungible Goods and Materials

1. Each Party shall provide that the person claiming preferential tariff treatment for a good may claim that a fungible good or material is originating based on either the physical segregation of each fungible good or material, or through the use of any inventory management method, such as averaging, last-in, first-out, or first-in, first-out, recognized in the Generally Accepted Accounting Principles of the Party in which the production is performed or otherwise accepted by the Party in which the production is performed.
2. Each Party shall provide that the inventory management method selected under paragraph 1 for particular fungible goods or materials shall continue to be used for those goods or materials throughout the fiscal year of the person that selected the inventory management method.

Article 4.6: Accumulation

1. Each Party shall provide that originating goods or materials of a Party, incorporated into a good in the territory of the other Party, shall be considered to originate in the territory of the other Party.

2. Each Party shall provide that a good is originating where the good is produced in the territory of one or both Parties by one or more producers, provided that the good satisfies the requirements in Article 4.1 and all other applicable requirements in this Chapter.

Article 4.7: De Minimis Rule

1. Each Party shall provide that a good that does not undergo a change in tariff classification pursuant to Annex 4.1 is nonetheless originating if the value of all nonoriginating materials that are used in the production of the good and that do not undergo the applicable change in tariff classification does not exceed 10 percent of the adjusted value of the good, provided that the value of such non-originating materials shall be included in the value of non-originating materials for any applicable regional value content requirement and that the good meets all other applicable requirements in this Chapter.
2. Paragraph 1 does not apply to:

(a) a non-originating material provided for in Chapter 4 of the Harmonized System, or a non-originating dairy preparation containing over 10 percent by weight of milk solids provided for in subheadings 1901.90 or 2106.90 of the Harmonized System, that is used in the production of a good provided for in Chapter 4 of the Harmonized System;

(b) a non-originating material provided for in Chapter 4 of the Harmonized System, or non-originating dairy preparations containing over 10 percent by weight of milk solids provided for in subheading 1901.90 of the Harmonized System, that are used in the production of the following goods: infant preparations containing over 10 percent in weight of milk solids provided for in subheading 1901.10 of the Harmonized System; mixes and doughs, containing over 25 percent by weight of butterfat, not put up for retail sale, provided for in subheading 1901.20 of the Harmonized System; dairy preparations containing over 10 percent by weight of milk solids provided for in subheadings 1901.90 or 2106.90 of the Harmonized System; goods provided for in heading 2105 of the Harmonized System; beverages containing milk provided for in subheading 2202.90 of the Harmonized System; or animal feeds containing over 10 percent by weight of milk solids provided for in subheading 2309.90 of the Harmonized System;

(c) a non-originating material provided for in heading 0805 of the Harmonized System or subheadings 2009.11 through 2009.30 of the Harmonized System that is used in the production of a good provided for in subheadings 2009.11through 2009.30 of the Harmonized System, or in fruit or vegetable juice of any single fruit or vegetable, fortified with minerals or vitamins, concentrated or unconcentrated, provided for in subheadings 2106.90 or 2202.90 of the Harmonized System;

(d) a non-originating material provided for in Chapter 15 of the Harmonized System that is used in the production of a good provided for in headings 1501 through 1508, 1512, 1514, or 1515 of the Harmonized System;

(e) a non-originating material provided for in heading 1701 of the Harmonized System that is used in the production of a good provided for in headings 1701 through 1703 of the Harmonized System;

(f) a non-originating material provided for in Chapter 17 or in heading 1805 of the Harmonized System that is used in the production of a good provided for in subheading 1806.10 of the Harmonized System;

(g) a non-originating material provided for in headings 2203 through 2208 of the Harmonized System that is used in the production of a good provided for in heading 2207 or 2208 of the Harmonized System; and

(h) a non-originating material used in the production of a good provided for in Chapters 1 through 21 of the Harmonized System unless the non-originating material is provided for in a different subheading than the good for which origin is being determined under this Article.

3. With respect to a textile and apparel good provided for in Chapters 50 through 63 of the Harmonized System, Article 3.20(6) (Rules of Origin and Related Matters) applies in place of paragraph 1.

Article 4.8: Indirect Materials Used in Production

Each Party shall provide that an indirect material shall be considered to be an originating material without regard to where it is produced.

Article 4.9: Packaging Materials and Containers for Retail Sale

Each Party shall provide that packaging materials and containers in which a good is packaged for retail sale, if classified with the good, shall be disregarded in determining whether all non-originating materials used in the production of the good undergo the applicable change in tariff classification set out in Annex 4.1, and, if the good is subject to a regional value content requirement, the value of such packaging materials and containers shall be taken into account as originating or non-originating materials, as the case may be, in calculating the regional value content of the good.

Article 4.10: Packing Materials and Containers for Shipment

Each Party shall provide that packing materials and containers for shipment shall be disregarded in determining whether:

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

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

Article 4.11: Transit and Transshipment

1. Each Party shall provide that a good shall not be considered an originating good if the good undergoes subsequent production or any other operation outside the territories of the Parties, other than unloading, reloading, or any other process necessary to preserve the good in good condition or to transport the good to the territory of a Party.
2. The importing Party may require that a person claiming that a good is originating demonstrate, to the satisfaction of the Party's customs authority, that any subsequent operations on the good performed outside the territories of the Parties comply with the requirements in paragraph 1.

Section B - Origin Procedures

Article 4.12: Claims of Origin

1. Each Party shall require that an importer claiming preferential tariff treatment for a good:

(a) make a written declaration in the importation document that the good qualifies as originating;

(b) be prepared to submit, on the request of the importing Party's customs authority, a certificate of origin or information demonstrating that the good qualifies as originating;

(c) promptly make a corrected declaration and pay any duties owing where the importer has reason to believe that the certificate or other information on which the declaration was based is incorrect.

2. Each Party, where appropriate, may request that an importer claiming preferential tariff treatment for a good demonstrate to the Party's customs authority that the good qualifies as originating under Section A, including that the good satisfies the requirements in Article 4.11.
3. Each Party shall provide that, where an originating good was imported into the territory of that Party but no claim for preferential tariff treatment was made at the time of importation, the importer of the good may, no later than one year after the date on which the good was imported, apply for a refund of any excess duties paid as the result of the good not having been accorded preferential tariff treatment, on presentation of:

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

(b) a copy of a certificate of origin or other information demonstrating that the good qualifies as originating; and

(c) such other documentation relating to the importation of the good as the importing Party may require.

Article 4.13: Certificates of Origin

1. Each Party shall provide that an importer may satisfy a request under Article 4.12(1)(b) by providing a certificate of origin that sets forth a valid basis for a claim that a good is originating. Each Party shall provide that the certificate of origin need not be in a prescribed format, and that the certificate may be submitted electronically.
2. Each Party shall provide that a certificate of origin may be issued by the importer, exporter, or producer of the good. Where an exporter or importer is not the producer of the good, each Party shall provide that the exporter or importer may issue a certificate of origin based on:

(a) a certificate of origin issued by the producer; or

(b) knowledge of the exporter or importer that the good qualifies as an originating good.

3. Each Party shall provide that a certificate of origin may cover the importation of one or more goods or several importations of identical goods within a period specified in the certificate.
4. Each Party shall provide that a certificate of origin is valid for four years from the date on which the certificate was issued.
5. A Party may require that a certificate of origin for a good imported into its territory be completed in either Spanish or English.
6. For an originating good that is imported into the territory of a Party on or after the date of entry into force of this Agreement, each Party shall accept a certificate of origin issued by the importer, exporter, or producer of the good prior to that date, unless the Party possesses information indicating that the certificate is invalid.
7. Neither Party may require a certificate of origin or information demonstrating that the good qualifies as originating for:

(a) the importation of goods with a customs value not exceeding US$2,500, or the equivalent amount in Chilean currency, or such higher amount as may be established by the importing Party; or

(b) the importation of other goods as may be identified in the importing Party's laws governing claims of origin under this Agreement, unless the importation can be considered to have been carried out or planned for the purpose of evading compliance with the Party's laws governing claims of origin under this Agreement.

Article 4.14: Obligations Relating to Importations

1. Each Party shall provide that the importer is responsible for submitting a certificate of origin or other information demonstrating that the good qualifies as originating, for the truthfulness of the information and data contained therein, for submitting any supporting documents requested by the Party's customs authority, and for the truthfulness of the information contained in those documents.
2. Each Party shall provide that the fact that the importer has issued a certificate of origin based on information provided by the exporter or the producer shall not relieve the importer of the responsibility referred to in paragraph 1.
3. Each Party shall provide that an importer claiming preferential tariff treatment for a good imported into the Party's territory shall maintain, for a period of five years after the date of importation of the good, a certificate of origin or other information demonstrating that the good qualifies as originating, and all other documents that the Party may require relating to the importation of the good, including records associated with:

(a) the purchase, cost, value of, and payment for, the good;

(b) where appropriate, the purchase, cost, value of, and payment for, all materials, including recovered goods and indirect materials, used in the production of the good; and

(c) where appropriate, the production of the good in its exported form.

Article 4.15: Obligations Relating to Exportations

1. For purposes of cooperation under Article 5.5 (Cooperation), each Party shall provide that an exporter or producer that issues a certificate of origin for a good exported from the Party's territory shall provide a copy of the certificate to the Party's customs authority upon its request.
2. Each Party shall provide that an exporter or producer that has issued a certificate of origin for a good exported from the Party's territory shall maintain, for a period of at least five years after the date the certificate was issued, all records and supporting documents related to the origin of the good, including:

(a) purchase, cost, value of, and payment for, the good;

(b) where appropriate, the purchase, cost, value of, and payment for, all materials, including recovered goods, used in the production of the good; and

(c) where appropriate, the production of the good in the form in which it was exported.

3. Each Party shall provide that where an exporter or producer has issued a certificate of origin, and has reason to believe that the certificate contains or is based on incorrect information, the exporter or producer shall immediately notify, in writing, every person to whom the exporter or producer issued the certificate of any change that could affect the accuracy or validity of the certificate. Neither Party may impose penalties on an exporter or producer in its territory for issuing an incorrect certificate if it voluntarily provides written notification in conformity with this paragraph.

Article 4.16: Procedures for Verification of Origin

1. Each Party shall grant any claim for preferential tariff treatment made in accordance with this Section, unless the Party possesses information indicating that the importer's claim fails to comply with any requirement under Section A or Article 3.20 (Rules of Origin and Related Matters), except as otherwise provided in Article 3.21 (Customs Cooperation).
2. To determine whether a good imported into its territory qualifies as originating, the importing Party may, through its customs authority, verify the origin in accordance with its customs laws and regulations.
3. Where a Party denies a claim for preferential tariff treatment, it shall issue a written determination containing findings of fact and the legal basis for its determination. The Party shall issue the determination within a period established under its law.
4. A Party shall not subject an importer to penalties where the importer that made an incorrect declaration voluntarily makes a corrected declaration.
5. Where a Party determines through verification that an importer has certified more than once, falsely or without substantiation, that a good qualifies as originating, the Party may suspend preferential tariff treatment to identical goods imported by that person until the importer proves that it has complied with the Party's laws and regulations governing claims of origin under this Agreement.
6. Each Party that carries out a verification of origin in which Generally Accepted Accounting Principles are pertinent shall apply those principles in the manner that they are applied in the territory of the Party from which the good was exported.

Article 4.17: Common Guidelines

By the date of entry into force of this Agreement, the Parties shall agree on and publish common guidelines for the interpretation, application, and administration of this Chapter and the relevant provisions of Chapter Three (National Treatment and Market Access for Goods). As appropriate, the Parties may subsequently agree to modify the common guidelines.

Section C - Definitions

Article 4.18: Definitions
For purposes of this Chapter:

adjusted value means the value determined in accordance with Articles 1 through 8, Article 15, and the corresponding interpretative notes of the Customs Valuation Agreement, adjusted, if necessary, to exclude any costs, charges, or expenses incurred for transportation, insurance, and related services incident to the international shipment of the merchandise from the country of exportation to the place of importation;

exporter means a person who exports goods from the territory of a Party;

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

Generally Accepted Accounting Principles means the principles, rules, and procedures, including both broad and specific guidelines, that define the accounting practices accepted in the territory of a Party;

good means any merchandise, product, article, or material;

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

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

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

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

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

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

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

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

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

(i) waste and scrap derived from

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

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

(j) recovered goods derived in the territory a Party from used goods, and utilized in the Party's territory in the production of remanufactured goods; and

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

importer means a person who imports goods into the territory of a Party;

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

(a) fuel and energy;

(b) tools, dies, and molds;

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

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

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

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

(g) catalysts and solvents; and

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

issued means prepared by and, where required under a Party's domestic law or regulation, signed by the importer, exporter, or producer of the good;

location of the producer means site of production of a good;

material means a good that is used in the production of another good, including a part, ingredient, or indirect material;

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

packing materials and containers for shipment means the goods used to protect a good during its transportation, and does not include the packaging materials and containers in which a good is packaged for retail sale;

producer means a person who engages in the production of a good in the territory of a Party;

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

recovered goods means materials in the form of individual parts that are the result of: (1) the complete disassembly of used goods into individual parts; and (2) the cleaning, inspecting, testing, or other processing of those parts as necessary for improvement to sound working condition one or more of the following processes: welding, flame spraying, surface machining, knurling, plating, sleeving, and rewinding in order for such parts to be assembled with other parts, including other recovered parts in the production of a remanufactured good of Annex 4.18;

remanufactured goods means industrial goods assembled in the territory of a Party, listed in Annex 4.18, that: (1) are entirely or partially comprised of recovered goods; and (2) have the same life expectancy and meet the same performance standards as new goods; and (3) enjoy the same factory warranty as such new goods;

self-produced material means an originating material that is produced by a producer of a good and used in the production of that good; and

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

ANNEX 4.18

Goods classified in the following Harmonized System subheadings may be considered remanufactured goods, except for those designed principally for use in automotive goods of Harmonized System headings or subheadings 8702, 8703, 8704.21, 8704.31, 8704.32, 8706, and 8707:

8408.10
8408.20
8408.90
8409.91
8409.99
8412.21
8412.29
8412.39
8412.90
8413.30
8413.50
8413.60
8413.91
8414.30
8414.80
8414.90
8419.89
8431.20
8431.49
8481.20
8481.40
8481.80
8481.90
8483.10
8483.30
8483.40
8483.50
8483.60
8483.90
8503.00
8511.40
8511.50
8526.10
8537.10
8542.21
8708.31
8708.39
8708.40
8708.60
8708.70
8708.93
8708.99
9031.49

Chapter Five

Customs Administration

Article 5.1: Publication

1. Each Party shall publish its customs laws, regulations, and administrative procedures on the Internet or a comparable computer-based telecommunications network.

2. Each Party shall designate one or more inquiry points to address inquiries from interested persons concerning customs matters, and shall make available on the Internet information concerning procedures for making such inquiries.

3. To the extent possible, each Party shall publish in advance any regulations of general application governing customs matters that it proposes to adopt and provide interested persons the opportunity to comment on such proposed regulations prior to their adoption.

Article 5.2: Release of Goods

Each Party shall:

(a) adopt or maintain procedures providing for the release of goods within a period of time no greater than that required to ensure compliance with its customs laws and, to the extent possible, within 48 hours of arrival;

(b) adopt or maintain procedures allowing, to the extent possible, goods to be released at the point of arrival, without temporary transfer to warehouses or other locations;

(c) adopt or maintain procedures allowing the release of goods prior to, and without prejudice to, the final determination by its customs authority of the applicable customs duties, taxes and fees;[1] and

(d) otherwise endeavor to adopt or maintain simplified procedures for the release of goods.

Article 5.3: Automation

Each Party's customs authority shall:

(a) endeavor to use information technology that expedites procedures; and

(b) in deciding on the information technology to be used for this purpose, take into account international standards.

Article 5.4: Risk Assessment

Each Party shall endeavor to adopt or maintain risk management systems that enable its customs authority to concentrate inspection activities on high risk goods and that simplify the clearance and movement of low risk goods.

Article 5.5: Cooperation

1. Each Party shall endeavor to provide the other Party with advance notice of any significant modification of administrative policy regarding the implementation of its customs laws that is likely to substantially affect the operation of this Agreement.

2. The Parties shall cooperate in achieving compliance with their laws and regulations pertaining to:

(a) the implementation and operation of the provisions of this Agreement relating to the importation of goods, including Chapter Three (National Treatment and Market Access for Goods), Chapter Four (Rules of Origin and Origin Procedures), and this Chapter;

(b) the implementation and operation of the Customs Valuation Agreement;

(c) restrictions or prohibitions on imports or exports; or

(d) such other customs matters as the Parties may agree.

3. Where a Party has a reasonable suspicion of unlawful activity related to its laws or regulations governing importations, the Party may request that the other Party provide specific confidential information normally collected by the other Party in association with the importation of goods pertaining to trade transactions relevant to that activity. The Party shall make its request in writing, shall identify the requested information with sufficient specificity for the other Party to locate it, and shall specify the purposes for which the information is sought.
4. The other Party shall respond by providing any information that it has collected that is material to the request.
5. For purposes of paragraph 3, a reasonable suspicion of unlawful activity means a suspicion based on relevant factual information obtained from public or private sources, including:

(a) historical evidence that a specific importer, exporter, producer, or other enterprise involved in the movement of goods from the territory of one Party to the territory of the other Party has not complied with a Party's laws or regulations governing importations;

(b) historical evidence that some or all of the enterprises involved in the movement from the territory of one Party to the territory of the other Party of goods within a specific product sector have not complied with a Party's laws or regulations governing importations; or

(c) other information that the Parties agree is sufficient in the context of a particular request.

6. Each Party shall endeavor to provide the other Party with any other information that would assist in determining whether imports from or exports to the other Party are in compliance with the other Party's laws or regulations governing importations, in particular those related to the prevention of unlawful activities.
7. Each Party shall endeavor to provide the other with technical advice and assistance for the purpose of improving risk assessment techniques, simplifying and expediting customs procedures, advancing technical skills, and enhancing the use of technologies that can lead to improved compliance with laws and regulations governing importations.
8. Building on the procedures established in this Article, the Parties shall use best efforts to explore additional avenues of cooperation to enhance each Party's ability to enforce its laws and regulations governing importations, including by:

(a) concluding a mutual assistance agreement between their respective customs authorities within six months after the date of entry into force of this Agreement; and

(b) considering whether to establish additional channels of communication to facilitate the secure and rapid exchange of information and to improve coordination on customs issues.

Article 5.6: Confidentiality

1. Where a Party providing information to the other Party in accordance with this Chapter designates the information as confidential, the other Party shall maintain the confidentiality of the information. The Party providing the information may, in accordance with its domestic law, require written assurances from the other Party that the information will be held in confidence, will be used only for the purposes specified in the other Party's request for information, and will not be disclosed without the Party's specific permission.
2. A Party may decline to provide information requested by the other Party where the other Party has failed to act in conformity with assurances provided under paragraph 1.
3. Each Party shall adopt or maintain procedures in which confidential information, including information the disclosure of which could prejudice the competitive position of the person providing the information, submitted in connection with the Party's administration of its customs laws shall be protected from unauthorized disclosure.

Article 5.7: Express Shipments

Each Party shall adopt or maintain separate, expedited customs procedures for express shipments, while maintaining appropriate customs control and selection, including procedures:

(a) in which the information necessary for the release of an express shipment may be submitted, and processed by the Party's customs authority, prior to the arrival of the shipment;

(b) allowing a shipper to submit a single manifest covering all goods contained in a shipment transported by the express shipment service, through, if possible, electronic means;

(c) that, to the extent possible, minimize the documentation required for the release of express shipments; and

(d) that, under normal circumstances, allow for an express shipment that has arrived at a point of entry to be released no later than six hours after the submission of the information necessary for release.

Article 5.8: Review and Appeal

Each Party shall ensure that with respect to its determinations on customs matters, importers in its territory have access to:

(a) administrative review independent of the official or office that issued the determination; and

(b) judicial review of the determination or decision taken at the final level of administrative review.

Article 5.9: Penalties

Each Party shall adopt or maintain measures that provide for the imposition of civil, administrative, and, where appropriate, criminal sanctions for violations of its customs laws and regulations, including those governing tariff classification, customs valuation, rules of origin, and the entitlement to preferential tariff treatment under this Agreement.

Article 5.10: Advance Rulings

1. Each Party, through its customs authority, shall issue written advance rulings prior to the importation of a good into its territory at the written request of an importer in its territory, or an exporter or producer in the territory of the other Party, on the basis of the facts and circumstances provided by the requester, concerning:

(a) tariff classification;

(b) the application of customs valuation criteria for a particular case, in accordance with the application of the provisions set forth in the Customs Valuation Agreement;

(c) duty drawback;

(d) whether a good qualifies as an originating good under Chapter Four (Rules of Origin and Origin Procedures); and

(e) whether a good qualifies for duty-free treatment in accordance with Article 3.9 (Goods Re-entered after Repair or Alteration).

2. Each Party shall provide that its customs authority shall issue advance rulings within 150 days of a request, provided that the requester has submitted all necessary information.
3. Each Party shall provide that advance rulings shall be in force from their date of issuance, or such other date specified by the ruling, for at least three years, provided that the facts or circumstances on which the ruling is based remain unchanged.
4. The issuing Party may modify or revoke an advance ruling where facts or circumstances warrant, such as where the information on which the ruling is based is false or inaccurate.
5. Where an importer claims that the treatment accorded to an imported good should be governed by an advance ruling, the customs authority may evaluate whether the facts and circumstances of the importation are consistent with the facts and circumstances upon which the advance ruling was based.
6. Each Party shall make its advance rulings publicly available, subject to confidentiality requirements in its domestic law, for purposes of promoting the consistent application of advance rulings to other goods.
7. If a requester provides false information or omits relevant circumstances or facts in its request for an advance ruling, or does not act in accordance with the ruling's terms and conditions, the importing Party may apply appropriate measures, including civil, criminal, and administrative actions, penalties, or other sanctions.

Article 5.11: Implementation

1. With respect to the obligations of Chile, Articles 5.1(1) and (2), 5.7(b), and 5.10(1)(b) shall enter into force three years after the date of entry into force of this Agreement.
2. Within 120 days after the date of entry into force of this Agreement, the Parties shall consult on the procedures that Chile needs to adopt to implement Article 5.10(1)(b) and on related technical assistance to be provided by the United States, and shall establish a work program outlining the steps needed for Chile to implement Article 5.10(1)(b).
3. Not later than 18 months after the date of entry into force of this Agreement, the Parties shall consult to discuss the progress made by Chile in implementing Article 5.10(1)(b) and to consider whether to engage in further cooperative efforts.

Chapter Six

Sanitary and Phytosanitary Measures

Objectives

The objectives of this Chapter are to protect human, animal, and plant health conditions in the Parties' territories, enhance the Parties' implementation of the SPS Agreement, provide a forum for addressing bilateral sanitary and phytosanitary matters, resolve trade issues, and thereby expand trade opportunities.

Article 6.1: Scope and Coverage

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

Article 6.2: General Provisions

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

2. Neither Party may have recourse to dispute settlement under this Agreement for any matter arising under this Chapter.

Article 6.3: Committee on Sanitary and Phytosanitary Matters

1. The Parties hereby agree to establish a Committee on Sanitary and Phytosanitary Matters comprising representatives of each Party who have responsibility for sanitary and phytosanitary matters.

2. The Parties shall establish the Committee not later than 30 days after the date of entry into force of this Agreement through an exchange of letters identifying the primary representative of each Party to the Committee and establishing the Committee's terms of reference.

3. The objectives of the Committee shall be to enhance the implementation by each Party of the SPS Agreement, protect human, animal, and plant life and health, enhance consultation and cooperation on sanitary and phytosanitary matters, and facilitate trade between the Parties.

4. The Committee shall seek to enhance any present or future relationships between the Parties' agencies with responsibility for sanitary and phytosanitary matters.

5. The Committee shall provide a forum for:

(a) enhancing mutual understanding of each Party's sanitary and phytosanitary measures and the regulatory processes that relate to those measures;

(b) consulting on matters related to the development or application of sanitary and phytosanitary measures that affect, or may affect, trade between the Parties;

(c) consulting on issues, positions, and agendas for meetings of the *WTO SPS Committee*, the various *Codex* committees (including the *Codex Alimentarius Commission*), the *International Plant Protection Convention*, the *International Office of Epizootics*, and other international and regional fora on food safety and human, animal, and plant health;

(d) coordinating technical cooperation programs on sanitary and phytosanitary matters;

(e) improving bilateral understanding related to specific implementation issues concerning the SPS Agreement; and

(f) reviewing progress on addressing sanitary and phytosanitary matters that may arise between the Parties' agencies with responsibility for such matters.

6. The Committee shall meet at least once a year unless the Parties otherwise agree.
7. The Committee shall perform its work in accordance with the terms of reference referenced in paragraph 2. The Committee may revise the terms of reference and may develop procedures to guide its operation.
8. Each Party shall ensure that appropriate representatives with responsibility for the development, implementation, and enforcement of sanitary and phytosanitary measures from its relevant trade and regulatory agencies or ministries participate in meetings of the Committee. The official agencies and ministries of each Party responsible for such measures shall be set out in the Committee's terms of reference.

9. The Committee may agree to establish *ad hoc* working groups in accordance with the Committee's terms of reference.

Article 6.4: Definitions
For purposes of this Chapter, **sanitary or phytosanitary measure** means any measure referred to in Annex A, paragraph 1, of the SPS Agreement.

Chapter Seven

Technical Barriers to Trade

Objectives

The objectives of this Chapter are to increase and facilitate trade through the improvement of the implementation of the TBT Agreement, the elimination of unnecessary technical barriers to trade, and the enhancement of bilateral cooperation.

Article 7.1: Scope and Coverage

1. Except as provided in paragraphs 2 and 3 of this Article, this Chapter applies to all standards, technical regulations, and conformity assessment procedures that may, directly or indirectly, affect trade in goods between the Parties. Notwithstanding Article 1.4 (Extent of Obligations), this Chapter applies only to central government bodies.

2. Technical specifications prepared by governmental bodies for production or consumption requirements of such bodies are not subject to the provisions of this Chapter, but are addressed in Chapter Nine (Government Procurement), according to its coverage.

3. This Chapter does not apply to sanitary and phytosanitary measures as defined in Annex A of the SPS Agreement.

Article 7.2: Affirmation of Agreement on Technical Barriers to Trade

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

Article 7.3: International Standards

In determining whether an international standard, guide, or recommendation within the meaning of Articles 2, 5, and Annex 3 of the TBT Agreement exists, each Party shall apply the principles set out in *Decisions and Recommendations adopted by the Committee since 1 January 1995*, G/TBT/1/Rev.7, 28 November 2000, Section IX (*Decision of the Committee on Principles for the Development of International Standards, Guides and Recommendations with relation to Articles 2, 5 and Annex 3 of the Agreement*), issued by the WTO Committee on Technical Barriers to Trade.

Article 7.4: Trade Facilitation

The Parties shall intensify their joint work in the field of standards, technical regulations, and conformity assessment procedures with a view to facilitating access to each other's markets. In particular, the Parties shall seek to identify bilateral initiatives that are appropriate for particular issues or sectors. Such initiatives may include cooperation on regulatory issues, such as convergence or equivalence of technical regulations and standards, alignment with international standards, reliance on a supplier's declaration of conformity, and use of accreditation to qualify conformity assessment bodies, as well as cooperation through mutual recognition.

Article 7.5: Technical Regulations

1. Where a Party provides for the acceptance of a foreign technical regulation as equivalent to a particular technical regulation of its own, and the Party does not accept a technical regulation of the other Party as equivalent to that technical regulation, it shall, at the request of the other Party, explain the reasons for not accepting the technical regulation of the other Party as equivalent.

2. Where a Party does not provide for the acceptance of foreign technical regulations as equivalent to its own, that Party may, at the request of the other Party, explain the reasons for not accepting the other Party's technical regulations as equivalent.

Article 7.6: Conformity Assessment

1. The Parties recognize that a broad range of mechanisms exists to facilitate the acceptance of conformity assessment results, including:

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

(b) voluntary arrangements between conformity assessment bodies from each Party's territory;

(c) agreements on mutual acceptance of the results of conformity assessment procedures with respect to specified regulations conducted by bodies located in the territory of the other Party;

(d) accreditation procedures for qualifying conformity assessment bodies;

(e) government designation of conformity assessment bodies; and

(f) recognition by one Party of the results of conformity assessments performed in the other Party's territory.

The Parties shall intensify their exchange of information on the range of mechanisms to facilitate the acceptance of conformity assessment results.
2. Where a Party does not accept the results of a conformity assessment procedure performed in the territory of the other Party, it shall, on request of the other Party, explain its reasons.
3. Each Party shall accredit, approve, license, or otherwise recognize conformity assessment bodies in the territory of the other Party on terms no less favorable than those it accords to conformity assessment bodies in its territory. If a Party accredits, approves, licenses, or otherwise recognizes a body assessing conformity with a particular technical regulation or standard in its territory and it refuses to accredit, approve, license, or otherwise recognize a body assessing conformity with that technical regulation or standard in the territory of the other Party, it shall, on request, explain the reasons for its refusal.
4. Where a Party declines a request from the other Party to engage in or conclude negotiations to reach agreement on facilitating recognition in its territory of the results of conformity assessment procedures conducted by bodies in the territory of the other Party, it shall, on request, explain its reasons.

Article 7.7: Transparency
1. Further to Article 20.2 (Publication), each Party shall allow persons of the other Party to participate in the development of standards, technical regulations, and conformity assessment procedures. Each Party shall permit persons of the other Party to participate in the development of such measures on terms no less favorable than those accorded to its own persons.
2. Each Party shall recommend that non-governmental standardizing bodies in its territory observe paragraph 1.
3. In order to enhance the opportunity for persons to provide meaningful comments, a Party publishing a notice under Article 2.9 or 5.6 of the TBT Agreement shall:

(a) include in the notice a statement describing the objective of the proposal and the rationale for the approach the Party is proposing; and

(b) transmit the proposal electronically to the other Party through the inquiry point established under Article 10 of the TBT Agreement at the same time as it notifies WTO Members of the proposal pursuant to the TBT Agreement.

Each Party should allow at least 60 days from the transmission under subparagraph (b) for persons and the other Party to make comments in writing on the proposal.
4. Where a Party makes a notification under Article 2.10 or 5.7 of the TBT Agreement, it shall at the same time transmit the notification to the other Party, electronically, through the inquiry point referenced in paragraph 3(b).
5. Each Party shall publish, in print or electronically, or otherwise make available to the public, its responses to significant comments at the same time as the publication of the final technical regulation or conformity assessment procedure.
6. Each Party shall, on request of the other Party, provide information regarding the objective of, and rationale for, a standard, technical regulation, or conformity assessment procedure that the Party has adopted or is proposing to adopt.
7. Each Party shall implement this Article as soon as is practicable and in no event later than five years from the date of entry into force of this Agreement.

Article 7.8: Committee on Technical Barriers to Trade
1. The Parties hereby establish the Committee on Technical Barriers to Trade, comprising representatives of each Party, pursuant to Annex 7.8.
2. The Committee's functions shall include:

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

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

(c) enhancing cooperation in the development and improvement of standards, technical regulations, and conformity assessment procedures;

(d) where appropriate, facilitating sectoral cooperation among governmental and non-governmental conformity assessment bodies in the Parties' territories;

(e) exchanging information on developments in non-governmental, regional, and multilateral fora engaged in activities related to standardization, technical regulations, and conformity assessment procedures;

(f) taking any other steps the Parties consider will assist them in implementing the TBT Agreement and in facilitating trade in goods between them;

(g) at a Party's request, consulting on any matter arising under this Chapter;

(h) reviewing this Chapter in light of any developments under the TBT Agreement, and developing recommendations for amendments to this Chapter in light of those developments; and

(i) as it considers appropriate, reporting to the Commission on the implementation of this Chapter.

3. Where the Parties have had recourse to consultations under paragraph 2(g) such consultations shall, on the agreement of the Parties, constitute consultations under Article 22.4 (Consultations).
4. A Party shall, on request, give favorable consideration to any sector-specific proposal the other Party makes for further cooperation under this Chapter.
5. The Committee shall meet at least once a year unless the Parties otherwise agree.
Article 7.9: Information Exchange

Any information or explanation that is provided on request of a Party pursuant to the provisions of this Chapter shall be provided in print or electronically within a reasonable period of time.

Article 7.10: Definitions

For purposes of this Chapter, **technical regulation**, **standard**, **conformity assessment procedures**, and **central government body** shall have the meanings assigned to those terms in Annex 1 of the TBT Agreement.

Annex 7.8

Committee on Technical Barriers to Trade

For purposes of Article 7.8, the Committee shall be coordinated by:

(a) in the case of Chile, the *Ministerio de Economia* through the *Departamento de Comercio Exterior*, or its successor; and

(b) in the case of the United States, the Office of the United States Trade Representative, or its successor.

Chapter Eight

Trade Remedies

Section A - Safeguards

Article 8.1: Imposition of a Safeguard Measure

1. A Party may impose a safeguard measure described in paragraph 2, during the transition period only, if as a result of the reduction or elimination of a duty pursuant to this Agreement,[1] a good originating in the territory of the other Party is being imported into the Party's territory in such increased quantities, in absolute terms or relative to domestic production, and under such conditions as to constitute a substantial cause of serious injury, or threat thereof, to a domestic industry producing a like or directly competitive good.

2. If the conditions in paragraph 1 are met, a Party may to the extent as may be necessary to prevent or remedy serious injury, or threat thereof, and facilitate adjustment:

(a) suspend the further reduction of any 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 to exceed the lesser of

(i) the most-favored-nation (MFN) applied rate of duty in effect at the time the action is taken, or

(ii) the MFN applied rate of duty in effect on the day immediately preceding the date of entry into force of this Agreement.[2]

Article 8.2: Standards for a Safeguard Measure

1. A Party may apply a safeguard measure, including any extension thereof, for no longer than three years. Regardless of its duration, such measure shall terminate at the end of the transition period.
2. In order to facilitate adjustment in a situation where the expected duration of a safeguard measure is over one year, the Party applying the measure shall progressively liberalize it at regular intervals during the period of application.
3. Neither Party may impose a safeguard measure more than once on the same good.
4. Neither Party may impose a safeguard measure on a good that is subject to a measure that the Party has imposed pursuant to Article XIX of GATT 1994 and the Safeguards Agreement, and neither Party may continue maintaining a safeguard measure on a good that becomes subject to a measure that the Party imposes pursuant to Article XIX of GATT 1994 and the Safeguards Agreement.
5. On the termination of a safeguard measure, the rate of duty shall be no higher than the rate that, according to the Party's Schedule to Annex 3.3 (Tariff Elimination), would have been in effect one year after the imposition of the measure. Beginning on January 1 of the year following the termination of the action, the Party that has applied the measure shall:

(a) apply the rate of duty set out in the Party's Schedule to Annex 3.3 (Tariff Elimination) as if the safeguard measure had never been applied; or

(b) eliminate the tariff in equal annual stages ending on the date set out in the Party's Schedule to Annex 3.3 (Tariff Elimination) for the elimination of the tariff.

Article 8.3: Investigation Procedures and Transparency Requirements
1. A Party shall impose a safeguard measure only following an investigation by the Party's competent authorities in accordance with Articles 3 and 4.2(c) of the Safeguards Agreement; and to this end, Articles 3 and 4.2(c) of the Safeguards Agreement are incorporated into and made a part of this Agreement, *mutatis mutandis*.
2. In the investigation described in paragraph 1, a Party shall comply with the requirements of Article 4.2(a) of the Safeguards Agreement; and to this end, Article 4.2(a) of the Safeguards Agreement is incorporated into and made a part of this Agreement, *mutatis mutandis*.

Article 8.4: Notification
1. A Party shall promptly notify the other Party, in writing, on:

(a) initiating an investigation under Article 8.3;

(b) making a finding of serious injury or threat thereof caused by increased imports under Article 8.1;

(c) taking a decision to impose or extend a safeguard measure; and

(d) taking a decision to modify a safeguard measure previously undertaken.

2. A Party shall provide to the other Party a copy of the public version of the report of its competent authorities required under Article 8.3(1).

Article 8.5: Compensation
1. The Party taking a safeguard measure shall, in consultation with the other Party, provide to the other Party mutually agreed trade liberalizing compensation in the form of concessions having substantially equivalent trade effects or equivalent to the value of the additional duties expected to result from the measure. Such consultations shall begin within 30 days of the imposition of the measure.
2. If the Parties are unable to reach agreement on compensation within 30 days after the consultations commence, the exporting Party shall be free to suspend the application of substantially equivalent concessions to the trade of the Party applying the safeguard measure.
3. A Party shall notify the other Party in writing at least 30 days before suspending concessions under paragraph 2.

4. The obligation to provide compensation under paragraph 1 and the right to suspend substantially equivalent concessions under paragraph 2 shall terminate on the later of: (a) the termination of the safeguard measure; or (b) the date on which the rate of duty returns to the rate of duty set out in the Party's Schedule to Annex 3.3 (Tariff Elimination).

Article 8.6: Global Actions
1. Each Party retains its rights and obligations under Article XIX of GATT 1994 and the Safeguards Agreement.
2. This Agreement does not confer any additional rights or obligations on the Parties with regard to actions taken pursuant to Article XIX of GATT 1994 and the Safeguards Agreement.

Article 8.7: Definitions
For purposes of this Section:

domestic industry means, with respect to an imported good, the producers as a whole of the like or directly competitive good or those producers whose collective production of the like or directly competitive good constitutes a major proportion of the total domestic production of such good;

safeguard measure means a safeguard measure described in Article 8.1(2);

serious injury means a significant overall impairment in the position of a domestic industry;

substantial cause means a cause which is important and not less than any other cause;

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

transition period means the 10-year period beginning on the date of entry into force of this Agreement, except that **transition period** shall mean the 12-year period beginning on the date of entry into force of this Agreement in any case in which a safeguard measure is applied against an agricultural good and the Schedule to Annex 3.3 (Tariff Elimination) of the Party applying the measure provides for the Party to eliminate its tariffs on the good over 12 years.

Section B - Antidumping and Countervailing Duties

Article 8.8: Antidumping and Countervailing Duties
1. Each Party retains its rights and obligations under the WTO Agreement with regard to the application of antidumping and countervailing duties.
2. No provisions of this Agreement, including the provisions of Chapter Twenty-Two (Dispute Settlement), shall be construed as imposing any rights or obligations on the Parties with respect to antidumping or countervailing duty measures.

Chapter Nine

Government Procurement

Objectives

The objectives of this Chapter are to recognize the importance of conducting government procurement in accordance with the fundamental principles of openness, transparency, and due process; and to strive to provide comprehensive coverage of procurement markets by eliminating market access barriers to the supply of goods and services, including construction services.

Article 9.1: Scope and Coverage

1. This Chapter applies to any measure adopted or maintained by a Party relating to procurement by an entity listed in Annex 9.1:

(a) by any contractual means, including purchase and rental or lease, with or without an option to buy, build-operate-transfer contracts, and public works concession contracts; and

(b) subject to the conditions specified in Annex 9.1.

2. This Chapter does not apply to:

(a) non-contractual agreements or any form of assistance provided by a Party or a state enterprise, including grants, loans, equity infusions, fiscal incentives, subsidies, guarantees, cooperative agreements, government provision of goods and services to persons or to a regional or local level of government, and purchases for the direct purpose of providing foreign assistance;

(b) purchases funded by international grants, loans, or other assistance, where the provision of such assistance is subject to conditions inconsistent with the provisions of this Chapter;

(c) hiring of government employees and related employment measures; and

(d) acquisition of fiscal agency or depository services, liquidation and management services for regulated financial institutions, and sale and distribution services for government debt.

3. Each Party shall ensure that its procuring entities listed in Annex 9.1 comply with this Chapter in conducting procurement covered by this Chapter.
4. Where an entity awards a contract that is not covered by this Chapter, nothing in this Chapter shall be construed to cover any good or service component of that contract.
5. No entity may prepare, design, or otherwise structure or divide, in any stage of the procurement, any procurement in order to avoid the obligations of this Chapter.
6. Nothing in this Chapter shall prevent either Party from developing new procurement policies, procedures, or contractual means, provided they are not inconsistent with this Chapter.

Article 9.2: General Principles

National Treatment and Non-Discrimination

1. With respect to any measure governing procurement covered by this Chapter, each Party shall accord to the goods and services of the other Party, and to the suppliers of the other Party of such goods and services, treatment no less favorable than the most favorable treatment the Party accords to its own goods, services, and suppliers.
2. With respect to any measure governing procurement covered by this Chapter, neither Party may:

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

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

Determination of Origin

3. For purposes of paragraphs 1 and 2, determination of the origin of goods shall be made on a non-preferential basis.

Offsets

4. An entity shall not consider, seek, or impose offsets at any stage of a procurement.

Measures Not Specific to Procurement

5. Paragraphs 1 and 2 do not apply to measures respecting customs duties or other charges of any kind imposed on or in connection with importation, the method of levying such duties and charges or other import regulations, including restrictions and formalities, or measures affecting trade in services other than measures specifically governing procurement covered by this Chapter.

Article 9.3: Publication of Procurement Measures

Each Party shall promptly publish:

(a) its measures of general application specifically governing procurement covered by this Chapter; and

(b) any changes in such measures in the same manner as the original publication.

Article 9.4: Publication of Notice of Intended Procurement

1. For each procurement covered by this Chapter, an entity shall publish in advance a notice inviting interested suppliers to submit tenders for that procurement ("notice of intended procurement"), except as provided in Article 9.9(2). Each such notice shall be accessible during the entire period established for tendering for the relevant procurement.
2. Each notice of intended procurement shall include a description of the intended procurement, any conditions that suppliers must fulfill to participate in the procurement, the name of the entity issuing the notice, the address where suppliers may obtain all documents relating to the procurement, the time limits for submission of tenders, and the dates for delivery of the goods or services to be procured.

Article 9.5: Time Limits for the Tendering Process

1. An entity shall prescribe time limits for the tendering process that allow sufficient time for suppliers to prepare and submit responsive tenders, taking into account the nature and complexity of the procurement. An entity shall provide no less than 30 days between the date on which it publishes the notice of intended procurement and the deadline for submitting tenders.
2. Notwithstanding paragraph 1, where there are no qualification requirements for suppliers, entities may establish a time limit of less than 30 days, but in no case less than 10 days, in the following circumstances:

(a) where the entity has published a notice containing the information specified in Article 9.4(2) at least 30 days and not more than 12 months in advance;

(b) in the case of the second or subsequent publications of notices for procurement of a recurring nature;

(c) where an entity procures commercial goods or services that are sold or offered for sale to, and customarily purchased and used by, non-governmental buyers for non-governmental purposes; or

(d) where an unforeseen state of urgency duly substantiated by the entity renders impracticable the time limits specified in paragraph 1.

Article 9.6: Information on Intended Procurements

1. An entity shall provide interested suppliers tender documentation that includes all the information necessary to permit suppliers to prepare and submit responsive tenders. The documentation shall include all criteria that the entity will consider in awarding the contract, including all cost factors, and the weights or, where appropriate, the relative values, that the entity will assign to these criteria in evaluating tenders.
2. Where an entity does not publish all the tender documentation by electronic means, the entity shall, on request of any supplier, promptly make the documentation available in written form to the supplier.
3. Where an entity, during the course of a procurement, modifies the criteria referred to in paragraph 1, it shall transmit all such modifications in writing:

(a) to all suppliers that are participating in the procurement at the time the criteria are modified, if the identities of such suppliers are known, and in all other cases, in the same manner as the original information was transmitted; and

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

Article 9.7: Technical Specifications

1. An entity shall not prepare, adopt, or apply any technical specification with the purpose or the effect of creating unnecessary obstacles to trade between the Parties.
2. Any technical specification prescribed by an entity shall be, where appropriate:

(a) specified in terms of performance requirements rather than design or descriptive characteristics; and

(b) based on international standards, where applicable, otherwise on national technical regulations, recognized national standards, or building codes.

3. An entity shall not prescribe technical specifications that require or refer to a particular trademark or trade name, patent, design or type, specific origin or producer or supplier unless there is no sufficiently precise or intelligible way of otherwise describing the procurement requirements and provided that, in such cases, words such as “or equivalent” are included in the tender documentation.
4. An entity shall not seek or accept, in a manner that would have the effect of precluding competition, advice that may be used in the preparation or adoption of any technical specification for a specific procurement from a person that may have a commercial interest in that procurement.
5. For greater certainty, this Article is not intended to preclude a Party from preparing, adopting, or applying technical specifications to promote the conservation of natural resources.

Article 9.8: Conditions for Participation

1. Where an entity requires suppliers to satisfy registration, qualification, or any other requirements or conditions for participation (“conditions for participation”) in order to participate in a procurement, the entity shall publish a notice inviting suppliers to apply for participation. The entity shall publish the notice sufficiently in advance to provide interested suppliers sufficient time to prepare and submit applications and for the entity to evaluate and make its determinations based on such applications.
2. Each entity shall:

(a) limit any conditions for participation in a procurement to those that are essential to ensure that the potential supplier has the legal, technical, and financial capacity to fulfill the requirements and technical specifications of the procurement;

(b) base qualification decisions solely on the conditions for participation that it has specified in advance in notices or tender documentation; and

(c) recognize as qualified all suppliers of the other Party that meet the requisite conditions for participation in a procurement covered by this Chapter.

3. Entities may establish publicly available lists of suppliers qualified to participate in procurements. Where an entity requires suppliers to qualify for such a list in order to participate in a procurement, and a supplier that has not yet qualified applies to be included on the list, the entity shall promptly start the qualification procedures for the supplier and shall allow the supplier to participate in the procurement, provided there is sufficient time to complete the procedures within the time period established for tendering.
4. No entity may impose the condition that, in order for a supplier to participate in a procurement, the supplier has previously been awarded one or more contracts by an entity of that Party or that the supplier has prior work experience in the territory of that Party. An entity shall judge a supplier’s financial and technical capacities on the basis of its global business activities including both its activity in the territory of the Party of the supplier, and its activity, if any, in the territory of the Party of the entity.
5. An entity shall promptly communicate to any supplier that has applied for qualification its decision on whether that supplier is qualified. Where an entity rejects an application for qualification or ceases to recognize a supplier as qualified, that entity shall, on request of the supplier, promptly provide it a written explanation of the reasons for its decision.
6. Nothing in this Article shall preclude an entity from excluding a supplier from a procurement on grounds such as bankruptcy or false declarations.

Article 9.9: Tendering Procedures

1. Entities shall award contracts by means of open tendering procedures, in the course of which any interested supplier may submit a tender.

2. Provided that the tendering procedure is not used to avoid competition or to protect domestic suppliers, entities may award contracts by means other than open tendering procedures in the following circumstances, where applicable:

(a) in the absence of tenders that conform to the essential requirements in the tender documentation provided in a prior invitation to tender, including any conditions for participation, on condition that the requirements of the initial procurement are not substantially modified in the contract as awarded;

(b) where, for works of art, or for reasons connected with the protection of exclusive rights, such as patents or copyrights, or proprietary information, or where there is an absence of competition for technical reasons, the goods or services can be supplied only by a particular supplier and no reasonable alternative or substitute exists;

(c) for additional deliveries by the original supplier that are intended either as replacement parts, extensions, or continuing services for existing equipment, software, services or installations, where a change of supplier would compel the entity to procure goods or services not meeting requirements of interchangeability with existing equipment, software, services, or installations;

(d) for goods purchased on a commodity market;

(e) where an entity procures a prototype or a first good or service that is developed at its request in the course of, and for, a particular contract for research, experiment, study, or original development. When such contracts have been fulfilled, subsequent procurements of such goods or services shall be subject to Articles 9.2 through 9.8 and Article 9.17;

(f) where additional construction services that were not included in the initial contract but that were within the objectives of the original tender documentation have, due to unforeseeable circumstances, become necessary to complete the construction services described therein. However, the total value of contracts awarded for additional construction services may not exceed 50 percent of the amount of the initial contract; or

(g) in so far as is strictly necessary where, for reasons of extreme urgency brought about by events unforeseeable by the entity, the goods or services could not be obtained in time by means of an open tendering procedure and the use of an open tendering procedure would result in serious injury to the entity, or the entity's program responsibilities, or the Party. For purposes of this subparagraph, lack of advance planning by an entity or its concerns relating to the amount of funds available to it within a particular period do not constitute unforeseeable events.

3. An entity shall maintain a record or prepare a written report providing specific justification for any contract awarded by means other than open tendering procedures, as provided in paragraph 2.

Article 9.10: Awarding of Contracts

1. An entity shall require that in order to be considered for award, a tender must be submitted in writing and must, at the time it is submitted:

(a) conform to the essential requirements of the tender documentation; and

(b) be submitted by a supplier that has satisfied the conditions for participation that the entity has provided to all participating suppliers.

2. Unless an entity determines that it is not in the public interest to award a contract, it shall award the contract to the supplier that the entity has determined to be fully capable of undertaking the contract and whose tender is determined to be the most advantageous in terms of the requirements and evaluation criteria set out in the tender documentation.
3. No entity may cancel a procurement, or terminate or modify awarded contracts, in order to avoid the obligations of this Chapter.

Article 9.11: Information on Awards
Information Provided to Suppliers
1. Subject to Article 9.15, an entity shall promptly inform suppliers participating in a tendering procedure of its contract award decision. On request, an entity shall provide a supplier whose tender was not selected for award the reasons for not selecting its tender and the relative advantages of the tender the entity selected.
Publication of Award Information
2. After awarding a contract covered by this Chapter, an entity shall promptly publish a notice that includes at least the following information about the award:

(a) the name of the entity;

(b) a description of the goods or services procured;

(c) the name of the winning supplier;

(d) the value of the contract award; and

(e) where the entity has not used open tendering procedures, an indication of the circumstances justifying the procedures used.

Maintenance of Records
3. An entity shall maintain records and reports relating to tendering procedures and contract awards covered by this Chapter, including the records and reports provided for in Article 9.9(3), for a period of at least three years.

Article 9.12: Ensuring Integrity in Procurement Practices
Each Party shall adopt the necessary legislative or other measures to establish that it is a criminal offense under its law for:

(a) a procurement official of that Party to solicit or accept, directly or indirectly,any article of monetary value or other benefit, for that procurement official or for another person, in exchange for any act or omission in the performance of that procurement official's procurement functions;

(b) any person to offer or grant, directly or indirectly, to a procurement official of that Party, any article of monetary value or other benefit, for that procurement official or for another person, in exchange for any act or omission in the performance of that procurement official's procurement functions; and

(c) any person intentionally to offer, promise or give any undue pecuniary or other advantage, whether directly or through intermediaries, to a foreign procurement official, for that foreign procurement official or for a third party, in order that the foreign procurement official act or refrain from acting in relation to the performance of procurement duties, in order to obtain or retain business or other improper advantage.

Article 9.13: Domestic Review of Supplier Challenges
Independent Review Authorities
1. Each Party shall establish or designate at least one impartial administrative or judicial authority that is independent from its entities to receive and review challenges that suppliers submit relating to the Party's measures implementing this Chapter in connection with a procurement covered by this

Chapter and make appropriate findings and recommendations. Where a challenge by a supplier is initially reviewed by a body other than such an impartial authority, the Party shall ensure that the supplier may appeal the initial decision to an impartial administrative or judicial authority that is independent of the entity that is the subject of the challenge.
2. Each Party shall provide that an authority it establishes or designates under paragraph 1 has authority to take prompt interim measures pending the resolution of a challenge to preserve the supplier's opportunity to participate in the procurement and to ensure that the Party complies with its measures implementing this Chapter, including by suspending the contract award or the performance of a contract that has already been awarded.
3. Each Party shall ensure that its review procedures are published and are timely, transparent, effective, and consistent with due process principles.
4. Each Party shall ensure that all documents related to a challenge to a procurement covered by this Chapter are made available to any authority it establishes or designates under paragraph 1.
5. Notwithstanding other review procedures provided for or developed by each of the Parties, each Party shall ensure that any authority it establishes or designates under paragraph 1 provides at least the following:

(a) an opportunity for the supplier to review relevant documents and to be heard by the authority in a timely manner;

(b) sufficient time for the supplier to prepare and submit written challenges, which in no case shall 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;

(c) a requirement that the entity respond in writing to the supplier's challenge;

(d) an opportunity for the supplier to reply to the entity's response to the challenge; and

(e) prompt delivery in writing of the decisions relating to the challenge, with an explanation of the grounds for each decision.

6. Each Party shall ensure that a supplier's submission of a challenge will not prejudice the supplier's participation in ongoing or future procurements.

Article 9.14: Modifications and Rectifications
1. Either Party may modify its coverage under this Chapter provided that it:

(a) notifies the other Party in writing and the other Party does not object in writing within 30 days of the notification; and

(b) offers within 30 days acceptable compensatory adjustments to the other Party to maintain a level of coverage comparable to that existing prior to the modification, except as provided in paragraphs 2 and 3.

2. Either Party may make rectifications of a purely formal nature to its coverage under this Chapter, or minor amendments to its Schedules to Annex 9.1, Sections (A) through (C), provided that it notifies the other Party in writing and the other Party does not object in writing within 30 days of the notification. A Party that makes such a rectification or minor amendment shall not be required to provide compensatory adjustments.
3. A Party need not provide compensatory adjustments in those circumstances where the Parties agree that the proposed modification covers an entity over which a Party has effectively eliminated its control or influence. Where the Parties do not agree that such government control or influence has been effectively eliminated, the objecting Party may request further information or consultations with a view to clarifying the nature of any government control or influence and reaching agreement on the entity's continued coverage under this Chapter.
4. Where the Parties are in agreement on the proposed modification, rectification, or minor amendment, including where a Party has not objected within 30 days under paragraph 1 or 2, the

Commission shall give effect to the agreement by modifying forthwith the relevant Section of Annex 9.1.

Article 9.15: Non-Disclosure of Information

1. The Parties, their entities, and their review authorities shall not disclose confidential information the disclosure of which would prejudice legitimate commercial interests of a particular person or might prejudice fair competition between suppliers, without the formal authorization of the person that provided the information to the Party.
2. Nothing in this Chapter shall be construed as requiring a Party or its entities to disclose confidential information the disclosure of which would impede law enforcement or otherwise be contrary to the public interest.

Article 9.16: Exceptions

Provided that such measures are not applied in a manner that would constitute a means of arbitrary or unjustifiable discrimination between Parties where the same conditions prevail or a disguised restriction on trade between the Parties, nothing in this Chapter shall be construed to prevent a Party from adopting or maintaining measures:

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

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

(c) necessary to protect intellectual property; or

(d) relating to goods or services of handicapped persons, of philanthropic institutions, or of prison labor.

The Parties understand that subparagraph (b) includes environmental measures necessary to protect human, animal, or plant life or health.

Article 9.17: Public Information

1. In order to facilitate access to information on commercial opportunities under this Chapter, each Party shall ensure that electronic databases that provide current information on all procurements covered by this Chapter that are conducted by entities listed in Annex 9.1(A), including information that can be disaggregated by detailed categories of goods and services, are made available to interested suppliers of the other Party, through the Internet or a comparable computer-based telecommunications network. Each Party shall, on request of the other Party, provide information on:

(a) the classification system used to disaggregate information on procurement of different goods and services in such databases; and

(b) the procedures for obtaining access to such databases. 2. Entities listed in Annex 9.1(A) shall publish notices of intended procurement in a government-wide, single point of entry electronic publication that is accessible through the Internet or a comparable computer-based telecommunications network. For entities listed in Annex 9.1(B), each Party shall facilitate a reasonable means for suppliers of the other Party to easily identify procurement opportunities, which should include a single point of entry.

3. Each Party shall encourage its entities to publish, as early as possible in the fiscal year, information regarding the entity's procurement plans.

Article 9.18: Committee on Procurement

The Parties hereby establish a Committee on Procurement comprising representatives of each Party. On request, the Committee shall meet to address matters related to the implementation of this Chapter, such as:

(a) bilateral cooperation relating to the development and use of electronic communications in government procurement systems, including developments that may lead to reducing the time limits for tendering set out in Article 9.5;

(b) exchange of statistics and other information to assist the Parties in monitoring the implementation and operation of this Chapter;

(c) consideration of further negotiations aimed at broadening the coverage of this Chapter, including with respect to sub-federal or sub-central entities and state-owned enterprises; and

(d) efforts to increase understanding of their respective government procurement systems, with a view to maximizing access to government procurement opportunities for small business suppliers. To that end, either Party may request the other to provide trade-related technical assistance, including training of government personnel or interested suppliers on specific elements of each Party's government procurement system.

Article 9.19: Further Negotiations
On request of either Party, the Parties shall enter into negotiations with a view to extending coverage under this Chapter on a reciprocal basis, if a Party provides, through an international agreement entered into after entry into force of this Agreement, access to its procurement market for suppliers of a non-Party beyond what it provides under this Agreement to suppliers of the other Party.

Article 9.20: Definitions
For purposes of this Chapter:

build-operate-transfer contract and **public works concession contract** mean any contractual arrangement, the primary purpose of which is to provide for the construction or rehabilitation of physical infrastructure, plant, buildings, facilities, or other government owned works and under which, as consideration for a supplier's execution of a contractual arrangement, the entity grants to the supplier, for a specified period of time, temporary ownership or a right to control and operate, and demand payment for the use of, such works for the duration of the contract;

entity means an entity listed in Annex 9.1;

in writing or **written** means any expression of information in words, numbers, or other symbols, including electronic expressions, that can be read, reproduced, and stored;

international standard means a standard that has been developed in conformity with the document referenced in Article 7.3 (International Standards);

offsets means conditions imposed or considered by an entity prior to, or in the course of, its procurement process that encourage local development or improve a Party's balance of payments accounts by means of requirements of local content, licensing of technology, investment, counter-trade, or similar requirements;

procurement official means a person who performs procurement functions;

publish means to disseminate information in an electronic or paper medium that is distributed widely and is readily accessible to the general public;

supplier means a person that provides or could provide goods or services to an entity; and

technical specification means a specification that lays down the characteristics of goods to be procured or their related processes and production methods, or the characteristics of services to be procured or their related operating methods, including the applicable administrative provisions, and a requirement relating to conformity assessment procedures that an entity prescribes. A technical specification may also include or deal exclusively with terminology, symbols, packaging, marking or labeling requirements, as they apply to a good, process, service or production or operating method.

(d) the Parties agree that if a major change in a national currency vis-a-vis the SDR during a year were to create a significant problem with regard to the application of the Chapter, they shall consult as to whether an interim adjustment is appropriate.

Section H - General Notes
Schedule of Chile

None.

Schedule of the United States

1. This Chapter does not apply to set-asides on behalf of small and minority businesses.
2. This Chapter does not apply to the procurement of transportation services that form a part of, or are incidental to, a procurement contract.
3. Where a contract to be awarded by an entity is not covered by this Chapter, nothing in this Chapter shall be construed to cover any good or service component of that contract.

Chapter Ten

Investment

Section A - Investment

Article 10.1: Scope and Coverage[1]

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

(a) investors of the other Party;

(b) covered investments; and

(c) with respect to Articles 10.5 and 10.12, all investments in the territory of the Party.

2. In the event of any inconsistency between this Chapter and another Chapter, the other Chapter shall prevail to the extent of the inconsistency.
3. A requirement by a Party that a service provider of the other Party post a bond or other form of financial security as a condition of providing a service into its territory does not of itself make this Chapter applicable to the provision of that cross-border service. This Chapter applies to that Party's treatment of the posted bond or financial security.
4. This Chapter does not apply to measures adopted or maintained by a Party to the extent that they are covered by Chapter Twelve (Financial Services).

Article 10.2: National Treatment

1. Each Party shall accord to investors of the other Party treatment no less favorable 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 covered investments treatment no less favorable than that it accords, in like circumstances, to investments in its territory of its own investors with respect to the establishment, acquisition, expansion, management, conduct, operation, and sale or other disposition of investments.
3. The treatment to be accorded by a Party under paragraphs 1 and 2 means, with respect to a regional level of government, treatment no less favorable than the most favorable treatment accorded, in like circumstances, by that regional level of government to investors, and to investments of investors, of the Party of which it forms a part.

Article 10.3: Most-Favored-Nation Treatment

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

Article 10.4: Minimum Standard of Treatment[2]

1. Each Party shall accord to covered investments treatment in accordance with customary international law, including fair and equitable treatment and full protection and security.
2. For greater certainty, paragraph 1 prescribes the customary international law minimum standard of treatment of aliens as the minimum standard of treatment to be afforded to covered investments. The concepts of "fair and equitable treatment" and "full protection and security" do not require treatment in addition to or beyond that which is required by that standard, and do not create additional substantive rights. The obligation in paragraph 1 to provide:

> (a) "fair and equitable treatment" includes the obligation not to deny justice in criminal, civil, or administrative adjudicatory proceedings in accordance with the principle of due process embodied in the principal legal systems of the world; and
>
> (b) "full protection and security" requires each Party to provide the level of police protection required under customary international law.

3. A determination that there has been a breach of another provision of this Agreement, or of a separate international agreement, does not establish that there has been a breach of this Article.
4. Notwithstanding Article 10.7(5)(b), each Party shall accord to investors of the other Party, and to covered investments, non-discriminatory treatment with respect to measures it adopts or maintains relating to losses suffered by investments in its territory owing to armed conflict or civil strife.
5. Notwithstanding paragraph 4, if an investor of a Party, in the situations referred to in that paragraph, suffers a loss in the territory of the other Party resulting from:

> (a) requisitioning of its covered investment or part thereof by the latter's forces or authorities; or
>
> (b) destruction of its covered investment or part thereof by the latter's forces or authorities, which was not required by the necessity of the situation,

the latter Party shall provide the investor restitution or compensation, which in either case shall be prompt, adequate, and effective, and, with respect to compensation, shall be in accordance with Article 10.9(2) through (4).
6. Paragraph 4 does not apply to existing measures relating to subsidies or grants that would be inconsistent with Article 10.2 but for Article 10.7(5)(b).

Article 10.5: Performance Requirements

Mandatory Performance Requirements

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

> (a) to export a given level or percentage of goods or services;
>
> (b) to achieve a given level or percentage of domestic content;
>
> (c) to purchase, use, or accord a preference to goods produced in its territory, or to purchase goods from persons in its territory;

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

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

(f) to transfer a particular 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 the goods that it produces or the services that it supplies to a specific regional market or to the world market.

Advantages Subject to Performance Requirements

2. Neither Party may condition the receipt or continued receipt of an advantage, in connection with the establishment, acquisition, expansion, management, conduct, operation, or sale or other disposition of an investment in its territory of an investor of a Party or of a non-Party, on compliance with any of the following requirements:

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

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

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

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

Exceptions and Exclusions

3. (a) Nothing in paragraph 2 shall be construed to prevent a Party from conditioning the receipt or continued receipt of an advantage, in connection with an investment in its territory of an investor of a Party or of a non-Party, on compliance with a requirement to locate production, supply a service, train or employ workers, construct or expand particular facilities, or carry out research and development, in its territory.

(b) Paragraph 1(f) does not apply:

(i) when a Party authorizes use of an intellectual property right in accordance with Article 31[3] of the TRIPS Agreement, or to measures requiring the disclosure of proprietary information that fall within the scope of, and are consistent with, Article 39 of the TRIPS Agreement; or

(ii) when the requirement is imposed or the commitment or undertaking is enforced by a court, administrative tribunal, or competition authority to remedy a practice determined after judicial or administrative process to be anticompetitive under the Party's competition laws.[4]

(c) Provided that such measures are not applied in an arbitrary or unjustifiable manner, or do not constitute a disguised restriction on international trade or investment, paragraphs 1(b), (c), and (f), and 2(a) and (b), shall not be construed to

prevent a Party from adopting or maintaining measures, including environmental measures:

(i) necessary to secure compliance with laws and regulations that are not inconsistent with this Agreement;

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

(iii) related to the conservation of living or non-living exhaustible natural resources.

(d) Paragraphs 1(a), (b), and (c), and 2(a) and (b), do not apply to qualification requirements for goods or services with respect to export promotion and foreign aid programs.

(e) Paragraphs 1(b), (c), (f), and (g), and 2(a) and (b), do not apply to procurement.

(f) Paragraphs 2(a) and (b) do not apply to requirements imposed by an importing Party relating to the content of goods necessary to qualify for preferential tariffs or preferential quotas.

4. For greater certainty, paragraphs 1 and 2 do not apply to any requirement other than the requirements set out in those paragraphs.
5. This Article does not preclude enforcement of any commitment, undertaking, or requirement between private parties, where a Party did not impose or require the commitment, undertaking, or requirement.

Article 10.6: Senior Management and Boards of Directors

1. Neither Party may require that an enterprise of that Party that is a covered investment appoint to senior management positions individuals of any particular nationality.
2. A Party may require that a majority of the board of directors, or any committee thereof, of an enterprise of that Party that is a covered investment, 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 10.7: Non-Conforming Measures[5]

1. Articles 10.2, 10.3, 10.5, and 10.6 do not apply to:

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

(i) the central level of government, as set out by that Party in its Schedule to Annex I,

(ii) a regional level of government, as set out by that Party in its Schedule to Annex I, or

(iii) a local level of government;

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

(c) an amendment to any non-conforming measure referred to in subparagraph (a) to the extent that the amendment does not decrease the conformity of the measure, as it existed immediately before the amendment, with Articles 10.2, 10.3, 10.5, and 10.6.

2. Articles 10.2, 10.3, 10.5, and 10.6 do not apply to any measure that a Party adopts or maintains with respect to sectors, subsectors, or activities, as set out in its Schedule to Annex II.
3. Neither Party may, under any measure adopted after the date of entry into force of this Agreement and covered by its Schedule to Annex II, require an investor of the other Party, by reason of its

nationality, to sell or otherwise dispose of an investment existing at the time the measure becomes effective.
4. Articles 10.2 and 10.3 do not apply to any measure that is an exception to, or derogation from, the obligations under Article 17.1(6) (General Provisions) as specifically provided for in that Article.
5. Articles 10.2, 10.3, and 10.6 do not apply to:

(a) procurement; or

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

Article 10.8: Transfers[6]
1. Each Party shall permit all transfers relating to a covered investment to be made freely and without delay into and out of its territory. Such transfers include:

(a) contributions to capital;

(b) profits, dividends, interest, capital gains, royalty payments, management fees, and technical assistance and other fees;

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

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

(e) payments made pursuant to Article 10.4(4) and (5) and Article 10.9; and

(f) payments arising under Section B.

2. Each Party shall permit returns in kind relating to a covered investment to be made as authorized or specified in an investment authorization or other written agreement[7] between the Party and a covered investment or an investor of the other Party.
3. Each Party shall permit transfers relating to a covered investment to be made in a freely usable currency at the market rate of exchange prevailing on the date of transfer.
4. Neither Party may require its investors to transfer, or penalize its investors that fail to transfer, the income, earnings, profits, or other amounts derived from, or attributable to, investments in the territory of the other Party.
5. Notwithstanding paragraphs 1 through 3, a Party may prevent a transfer through the equitable, nondiscriminatory, and good faith application of its laws relating to:

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

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

(c) criminal or penal offenses;

(d) financial reporting or record keeping of transfers when necessary to assist law enforcement or financial regulatory authorities; or

(e) ensuring compliance with orders or judgments in judicial or administrative proceedings.

6. Notwithstanding paragraph 2, a Party may restrict transfers of returns in kind in circumstances where it could otherwise restrict such transfers under this Agreement, including as set out in paragraph 5.

Article 10.9: Expropriation and Compensation[8]

1. Neither Party may expropriate or nationalize a covered investment either directly or indirectly through measures equivalent to expropriation or nationalization ("expropriation"), except:

(a) for a public purpose;

(b) in a non-discriminatory manner;

(c) on payment of prompt, adequate, and effective compensation in accordance with paragraphs 2 through 4; and

(d) in accordance with due process of law and Article 10.4(1) through (3).

2. Compensation shall:

(a) be paid without delay;

(b) be equivalent to the fair market value of the expropriated investment immediately before the expropriation took place ("the date of expropriation");

(c) not reflect any change in value occurring because the intended expropriation had become known earlier; and

(d) be fully realizable and freely transferable.

3. If the fair market value is denominated in a freely usable currency, the compensation paid shall be no less than the fair market value on the date of expropriation, plus interest at a commercially reasonable rate for that currency, accrued from the date of expropriation until the date of payment.

4. If the fair market value is denominated in a currency that is not freely usable, the compensation paid – converted into the currency of payment at the market rate of exchange prevailing on the date of payment – shall be no less than:

(a) the fair market value on the date of expropriation, converted into a freely usable currency at the market rate of exchange prevailing on that date, plus

(b) interest, at a commercially reasonable rate for that freely usable currency, accrued from the date of expropriation until the date of payment.

5. This Article does not apply to the issuance of compulsory licenses granted in relation to intellectual property rights in accordance with the TRIPS Agreement, or to the revocation, limitation, or creation of intellectual property rights, to the extent that such revocation, limitation, or creation is consistent with Chapter Seventeen (Intellectual Property Rights).

Article 10.10: Special Formalities and Information Requirements

1. Nothing in Article 10.2 shall be construed to prevent a Party from adopting or maintaining a measure that prescribes special formalities in connection with covered.10-10 investments, such as a requirement that investors be residents of the Party or that covered investments be legally constituted under the laws or regulations of the Party, provided that such formalities do not materially impair the protections afforded by a Party to investors of the other Party and covered investments pursuant to this Chapter.

2. Notwithstanding Articles 10.2 and 10.3, a Party may require an investor of the other Party, or a covered investment, to provide information concerning that investment solely for informational or statistical purposes. The Party shall protect such information that is confidential from any disclosure that would prejudice the competitive position of the investor or the covered investment. Nothing in this paragraph shall be construed to prevent a Party from otherwise obtaining or disclosing information in connection with the equitable and good faith application of its domestic law.

Article 10.11: 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 such other Party and to investments of that investor if an investor of a non-Party owns or controls the enterprise and the denying Party:

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

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

2. Subject to Article 22.4 (Consultations), a Party may deny the benefits of this Chapter to:

(a) an investor of the other Party that is an enterprise of such other Party and to investments of that investor if an investor of a non-Party owns or controls the enterprise and the enterprise has no substantial business activities in the territory of the other Party; or

(b) an investor of the other Party that is an enterprise of such other Party and to investments of that investor if an investor of the denying Party owns or controls the enterprise and the enterprise has no substantial business activities in the territory of the other Party.

Article 10.12: Investment and Environment
Nothing in this Chapter shall be construed to prevent a Party from adopting, maintaining, or enforcing any measure otherwise consistent with this Chapter that it.10-11 considers appropriate to ensure that investment activity in its territory is undertaken in a manner sensitive to environmental concerns.

Article 10.13: Implementation The Parties shall consult annually, or as otherwise agreed, to review the implementation of this Chapter and consider any investment matter of mutual interest, including consideration of the development of procedures that could contribute to greater transparency of measures described in Article 10.7(1)(c).

Section B - Investor-State Dispute Settlement Article

10.14: Consultation and Negotiation
In the event of an investment dispute, the claimant and the respondent should initially seek to resolve the dispute through consultation and negotiation, which may include the use of non-binding, third-party procedures.

Article 10.15: Submission of a Claim to Arbitration[9]
1. In the event that a disputing party considers that an investment dispute cannot be settled by consultation and negotiation:

(a) the claimant, on its own behalf, may submit to arbitration under this Section a claim

(i) that the respondent has breached

(A) an obligation under Section A or Annex 10-F,

(B) an investment authorization, or

(C) an investment agreement; and

(ii) that the claimant has incurred loss or damage by reason of, or arising out of, that breach; and

(b) the claimant, on behalf of an enterprise of the respondent that is a juridical person that the claimant owns or controls directly or indirectly, may submit to arbitration under this Section a claim

(i) that the respondent has breached

(A) an obligation under Section A or Annex 10-F,

(B) an investment authorization, or

(C) an investment agreement; and

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

2. For greater certainty, a claimant may submit to arbitration under this Section a claim that the respondent has breached an obligation under Section A or Annex 10-F through the actions of a designated monopoly or a state enterprise exercising delegated government authority as described in Article 16.3(3)(a) (Designated Monopolies) and Article 16.4(2) (State Enterprises), respectively.
3. Without prejudice to Article 12.1(2) (Scope and Coverage), no claim may be submitted under this Section that alleges a violation of any provision of this Agreement other than an obligation under Section A or Annex 10-F.
4. At least 90 days before submitting any claim to arbitration under this Section, a claimant shall deliver to the respondent a written notice of its intention to submit the claim to arbitration ("notice of intent"). The notice shall specify:

(a) the name and address of the claimant and, where a claim is submitted on behalf of an enterprise, the name, address, and place of incorporation of the enterprise;

(b) for each claim, the provision of this Agreement, investment authorization, or investment agreement alleged to have been breached and any other relevant provisions;

(c) the legal and factual basis for each claim; and

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

5. Provided that six months have elapsed since the events giving rise to the claim, a claimant may submit a claim referred to in paragraph 1:

(a) under the ICSID Convention, provided that both the non-disputing Party and the respondent are parties to the ICSID Convention;

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

(c) under the UNCITRAL Arbitration Rules; or

(d) if the disputing parties agree, to any other arbitration institution or under any other arbitration rules.

6. A claim shall be deemed submitted to arbitration under this Section when the claimant's notice of or request for arbitration ("notice of arbitration"):

(a) referred to in paragraph 1 of Article 36 of the ICSID Convention is received by the Secretary-General;

(b) referred to in Article 2 of Schedule C of the ICSID Additional Facility Rules is received by the Secretary-General;

(c) referred to in Article 3 of the UNCITRAL Arbitration Rules, together with the statement of claim referred to in Article 18 of the UNCITRAL Arbitration Rules, are received by the respondent; or

(d) referred to under any other arbitral institution or arbitral rules selected under paragraph 5(d) is received by the respondent.

7. The arbitration rules applicable under paragraph 5, and in effect on the date the claim or claims were submitted to arbitration under this Section, shall govern the arbitration except to the extent modified by this Agreement.
8. The claimant shall provide with the notice of arbitration referred to in paragraph 6:

(a) the name of the arbitrator that the claimant appoints; or

(b) the claimant's written consent for the Secretary-General to appoint the claimant's arbitrator.

Article 10.16: Consent of Each Party to Arbitration
1. Each Party consents to the submission of a claim to arbitration under this Section in accordance with this Agreement.
2. The consent under paragraph 1 and the submission of a claim to arbitration under this Section shall satisfy the requirements of:

(a) Chapter II of the ICSID Convention (Jurisdiction of the Centre) and the ICSID Additional Facility Rules for written consent of the parties to the dispute;

(b) Article II of the New York Convention for an "agreement in writing;" and

(c) Article I of the Inter-American Convention for an "agreement."

Article 10.17: Conditions and Limitations on Consent of Each Party
1. No claim may be submitted to arbitration under this Section if more than three years have elapsed from the date on which the claimant first acquired, or should have first acquired, knowledge of the breach alleged under Article 10.15(1) and knowledge that the claimant (for claims brought under Article 10.15(1)(a)) or the enterprise (for claims brought under Article 10.15(1)(b)) has incurred loss or damage.
2. No claim may be submitted to arbitration under this Section unless:

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

(b) the notice of arbitration referred to in Article 10.15(6) is accompanied,

(i) for claims submitted to arbitration under Article 10.15(1)(a), by the claimant's written waiver, and

(ii) for claims submitted to arbitration under Article 10.15(1)(b), by the claimant's and the enterprise's written waivers

of any right to initiate or continue before any administrative tribunal or court under the law of either Party, or other dispute settlement procedures, any proceeding with respect to the events alleged to give rise to the claimed breach.

3. Notwithstanding paragraph 2(b), the claimant (for claims brought under Article 10.15(1)(a)) and the claimant or the enterprise (for claims brought under Article 10.15(1)(b)) may initiate or continue an action that seeks interim injunctive relief and does not involve the payment of monetary damages before a judicial or administrative tribunal of the respondent, provided that the action is brought for the sole purpose of preserving the claimant's or the enterprise's rights and interests during the pendency of the arbitration.

Article 10.18: Selection of Arbitrators

1. Unless the disputing parties otherwise agree, the tribunal shall comprise three arbitrators, one arbitrator appointed by each of the disputing parties and the third, who shall be the presiding arbitrator, appointed by agreement of the disputing parties.
2. The Secretary-General shall serve as appointing authority for an arbitration under this Section.
3. If a tribunal has not been constituted within 75 days from the date that a claim is submitted to arbitration under this Section, the Secretary-General, on the request of a disputing party, shall appoint, in his or her discretion, the arbitrator or arbitrators not yet appointed.
4. For purposes of Article 39 of the ICSID Convention and Article 7 of Schedule C to the ICSID Additional Facility Rules, and without prejudice to an objection to an arbitrator on a ground other than nationality:

> (a) the respondent agrees to the appointment of each individual member of a tribunal established under the ICSID Convention or the ICSID Additional Facility Rules;
>
> (b) a claimant referred to in Article 10.15(1)(a) may submit a claim to arbitration under this Section, or continue a claim, under the ICSID Convention or the ICSID Additional Facility Rules, only on condition that the claimant agrees in writing to the appointment of each individual member of the tribunal; and
>
> (c) a claimant referred to in Article 10.15(1)(b) may submit a claim to arbitration under this Section, or continue a claim, under the ICSID Convention or the ICSID Additional Facility Rules, only on condition that the claimant and the enterprise agree in writing to the appointment of each individual member of the tribunal.

Article 10.19: Conduct of the Arbitration

1. The disputing parties may agree on the legal place of any arbitration under the arbitral rules applicable under Article 10.15(5)(b), (c), or (d). If the disputing parties fail to reach agreement, the tribunal shall determine the place in accordance with the applicable arbitral rules, provided that the place shall be in the territory of a State that is a party to the New York Convention.
2. The non-disputing Party may make oral and written submissions to the tribunal regarding the interpretation of this Agreement.
3. The tribunal shall have the authority to accept and consider *amicus curiae* submissions from a person or entity that is not a disputing party (the "submitter"). The submissions shall be provided in both Spanish and English, and shall identify the submitter and any Party, other government, person, or organization, other than the submitter, that has provided, or will provide, any financial or other assistance in preparing the submission.
4. Without prejudice to a tribunal's authority to address other objections as a preliminary question, such as an objection that a dispute is not within a tribunal's competence, a tribunal shall address and decide as a preliminary question any objection by the respondent that, as a matter of law, a claim submitted is not a claim for which an award in favor of the claimant may be made under Article 10.25.

> (a) Such objection shall be submitted to the tribunal as soon as possible after the tribunal is constituted, and in no event later than the date the tribunal fixes for the respondent to submit its counter-memorial (or, in the case of an amendment to the notice of arbitration referred to in Article 10.15(6), the date the tribunal fixes for the respondent to submit its response to the amendment).
>
> (b) On receipt of an objection under this paragraph, the tribunal shall suspend any proceedings on the merits, establish a schedule for considering the objection consistent with any schedule it has established for considering any other preliminary question, and issue a decision or award on the objection, stating the grounds therefor.

(c) In deciding an objection under this paragraph, the tribunal shall assume to be true claimant's factual allegations in support of any claim in the notice of arbitration (or any amendment thereof) and, in disputes brought under the UNCITRAL Arbitration Rules, the statement of claim referred to in Article 18 of the UNCITRAL Arbitration Rules. The tribunal may also consider any relevant facts not in dispute.

(d) The respondent does not waive any objection as to competence or any argument on the merits merely because the respondent did or did not raise an objection under this paragraph or make use of the expedited procedure set out in the following paragraph.

5. In the event that the respondent so requests within 45 days after the tribunal is constituted, the tribunal shall decide on an expedited basis an objection under paragraph 4 or any objection that the dispute is not within the tribunal's competence. The tribunal shall suspend any proceedings on the merits and issue a decision or award on the objection(s), stating the grounds therefor, no later than 150 days after the date of the request. However, if a disputing party requests a hearing, the tribunal may take an additional 30 days to issue the decision or award. Regardless of whether a hearing is requested, a tribunal may, on a showing of extraordinary cause, delay issuing its decision or award by an additional brief period of time, which may not exceed 30 days.
6. When it decides a respondent's objection under paragraph 4 or 5, the tribunal may, if warranted, award to the prevailing disputing party reasonable costs and attorneys' fees incurred in submitting or opposing the objection. In determining whether such an award is warranted, the tribunal shall consider whether either the claimant's claim or the respondent's objection was frivolous, and shall provide the disputing parties a reasonable opportunity to comment.
7. A respondent may not assert as a defense, counterclaim, right of set-off, or for any other reason that the claimant has received or will receive indemnification or other compensation for all or part of the alleged damages pursuant to an insurance or guarantee contract.
8. A tribunal may order an interim measure of protection to preserve the rights of a disputing party, or to ensure that the tribunal's jurisdiction is made fully effective, including an order to preserve evidence in the possession or control of a disputing party or to protect the tribunal's jurisdiction. A tribunal may not order attachment or enjoin the application of a measure alleged to constitute a breach referred to in Article 10.15. For purposes of this paragraph, an order includes a recommendation.
9.

(a) At the request of a disputing party, a tribunal shall, before issuing an award on liability, transmit its proposed award to the disputing parties and to the non-disputing Party. Within 60 days after the tribunal transmits its proposed award, only the disputing parties may submit written comments to the tribunal concerning any aspect of its proposed award. The tribunal shall consider any such comments and issue its award not later than 45 days after the expiration of the 60-day comment period.

(b) Subparagraph (a) shall not apply in any arbitration for which an appeal has been made available pursuant to paragraph 10.

10. If a separate multilateral agreement enters into force as between the Parties that establishes an appellate body for purposes of reviewing awards rendered by tribunals constituted pursuant to international trade or investment agreements to hear investment disputes, the Parties shall strive to reach an agreement that would have such appellate body review awards rendered under Article 10.25 in arbitrations commenced after the appellate body's establishment.

Article 10.20: Transparency of Arbitral Proceedings
1. Subject to paragraphs 2 and 4, the respondent shall, after receiving the following documents, promptly transmit them to the non-disputing Party and make them available to the public:

(a) the notice of intent referred to in Article 10.15(4);

(b) the notice of arbitration referred to in Article 10.15(6);

(c) pleadings, memorials, and briefs submitted to the tribunal by a disputing party and any written submissions submitted pursuant to Article 10.19(2) and (3) and Article 10.24;

(d) minutes or transcripts of hearings of the tribunal, where available; and

(e) orders, awards, and decisions of the tribunal.

2. The tribunal shall conduct hearings open to the public and shall determine, in consultation with the disputing parties, the appropriate logistical arrangements. However, any disputing party that intends to use information designated as confidential business information or information that is privileged or otherwise protected from disclosure under a Party's law in a hearing shall so advise the tribunal. The tribunal shall make appropriate arrangements to protect the information from disclosure.
3. Nothing in this Section requires a respondent to disclose confidential business information or information that is privileged or otherwise protected from disclosure under a Party's law or to furnish or allow access to information that it may withhold in accordance with Article 23.2 (Essential Security) or Article 23.5 (Disclosure of Information).
4. Confidential business information or information that is privileged or otherwise protected from disclosure under a Party's law shall, if such information is submitted to the tribunal, be protected from disclosure in accordance with the following procedures:

(a) Subject to subparagraph (d), neither the disputing parties nor the tribunal shall disclose to the non-disputing Party or to the public any confidential business information or information that is privileged or otherwise protected from disclosure under a Party's law where the disputing party that provided the information clearly designates it in accordance with subparagraph (b);

(b) Any disputing party claiming that certain information constitutes confidential business information or information that is privileged or otherwise protected from disclosure under a Party's law shall clearly designate the information at the time it is submitted to the tribunal;

(c) A disputing party shall, at the same time that it submits a document containing information claimed to be confidential business information or information that is privileged or otherwise protected from disclosure under a Party's law, submit a redacted version of the document that does not contain the information. Only the redacted version shall be provided to the non-disputing Party and made public in accordance with paragraph 1; and

(d) The tribunal shall decide any objection regarding the designation of information claimed to be confidential business information or information that is privileged or otherwise protected from disclosure under a Party's law. If the tribunal determines that such information was not properly designated, the disputing party that submitted the information may:

(i) withdraw all or part of its submission containing such information; or

(ii) agree to resubmit complete and redacted documents with corrected designations in accordance with the tribunal's determination and subparagraph (c).

In either case, the other disputing party shall, whenever necessary, resubmit complete and redacted documents which either remove the information withdrawn under subparagraph (d)(i) by the disputing party that first submitted the information or redesignate the information consistent with the designation under subparagraph (d)(ii) of the disputing party that first submitted the information.

5. Nothing in this Section authorizes a respondent to withhold from the public information required to be disclosed by its laws.

Article 10.21: Governing Law

1. Subject to paragraph 3, when a claim is submitted under Article 10.15(1)(a)(i)(A) or Article 10.15(1)(b)(i)(A), the tribunal shall decide the issues in dispute in accordance with this Agreement and applicable rules of international law.
2. Subject to paragraph 3, when a claim is submitted under Article 10.15(1)(a)(i)(B) or (C), or Article 10.15(1)(b)(i)(B) or (C), the tribunal shall decide the issues in dispute in accordance with the rules of law specified in the pertinent investment agreement or investment authorization, or as the disputing parties may otherwise agree. If the rules of law have not been specified or otherwise agreed, the tribunal shall apply the law of the respondent (including its rules on the conflict of laws), the terms of the investment agreement or investment authorization, such rules of international law as may be applicable, and this Agreement.
3. A decision of the Commission declaring its interpretation of a provision of this Agreement under Article 21.1 (Free Trade Commission) shall be binding on a tribunal established under this Section, and any award must be consistent with that decision.

Article 10.22: Interpretation of Annexes

1. Where a respondent asserts as a defense that the measure alleged to be a breach is within the scope of a non-conforming measure set out in Annex I or Annex II, the tribunal shall, on request of the respondent, request the interpretation of the Commission on the issue. The Commission shall submit in writing any decision declaring its interpretation under Article 21.1 (Free Trade Commission) to the tribunal within 60 days of delivery of the request.
2. A decision issued by the Commission under paragraph 1 shall be binding on the tribunal, and any award must be consistent with that decision. If the Commission fails to issue such a decision within 60 days, the tribunal shall decide the issue.

Article 10.23: Expert Reports

Without prejudice to the appointment of other kinds of experts where authorized by the applicable arbitration rules, a tribunal, at the request of a disputing party or, unless the disputing parties disapprove, on its own initiative, may appoint one or more experts to report to it in writing on any factual issue concerning environmental, health, safety, or other scientific matters raised by a disputing party in a proceeding, subject to such terms and conditions as the disputing parties may agree.

Article 10.24: Consolidation

1. Where two or more claims have been submitted separately to arbitration under Article 10.15(1) and the claims have a question of law or fact in common and arise out of the same events or circumstances, any disputing party may seek a consolidation order in accordance with the agreement of all the disputing parties sought to be covered by the order or the terms of paragraphs 2 through 10.
2. A disputing party that seeks a consolidation order under this Article shall deliver, in writing, a request to the Secretary-General and to all the disputing parties sought to be covered by the order and shall specify in the request:

(a) the names and addresses of all the disputing parties sought to be covered by the order;

(b) the nature of the order sought; and

(c) the grounds on which the order is sought.

3. Unless the Secretary-General finds within 30 days after receiving a request under paragraph 2 that the request is manifestly unfounded, a tribunal shall be established under this Article.
4. Unless all the disputing parties sought to be covered by the order otherwise agree, a tribunal established under this Article shall comprise three arbitrators:

(a) one arbitrator appointed by agreement of the claimants;

(b) one arbitrator appointed by the respondent; and

(c) the presiding arbitrator appointed by the Secretary-General, provided, however, that the presiding arbitrator shall not be a national of either Party.

5. If, within 60 days after the Secretary-General receives a request made under paragraph 2, the respondent fails or the claimants fail to appoint an arbitrator in accordance with paragraph 4, the Secretary-General, on the request of any disputing party sought to be covered by the order, shall appoint the arbitrator or arbitrators not yet appointed. If the respondent fails to appoint an arbitrator, the Secretary-General shall appoint a national of the respondent, and if the claimants fail to appoint an arbitrator, the Secretary-General shall appoint a national of the non-disputing Party.
6. Where a tribunal established under this Article is satisfied that two or more claims that have been submitted to arbitration under Article 10.15(1) have a question of law or fact in common, and arise out of the same events or circumstances, the tribunal may, in the interest of fair and efficient resolution of the claims, and after hearing the disputing parties, by order:

(a) assume jurisdiction over, and hear and determine together, all or part of the claims;

(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; or

(c) instruct a tribunal previously established under Article 10.18 to assume jurisdiction over, and hear and determine together, all or part of the claims, provided that

(i) that tribunal, at the request of any claimant not previously a disputing party before that tribunal, shall be reconstituted with its original members, except that the arbitrator for the claimants shall be appointed pursuant to paragraphs 4(a) and 5; and

(ii) that tribunal shall decide whether any prior hearing shall be repeated.

7. Where a tribunal has been established under this Article, a claimant that has submitted a claim to arbitration under Article 10.15(1) and that has not been named in a request made under paragraph 2 may make a written request to the tribunal that it be included in any order made under paragraph 6, and shall specify in the request:

(a) the name and address of the claimant;

(b) the nature of the order sought; and

(c) the grounds on which the order is sought.

The claimant shall deliver a copy of its request to the Secretary-General.
8. A tribunal established under this Article shall conduct its proceedings in accordance with the UNCITRAL Arbitration Rules, except as modified by this Section.
9. A tribunal established under Article 10.18 shall not have jurisdiction to decide a claim, or a part of a claim, over which a tribunal established or instructed under this Article has assumed jurisdiction.
10. On application of a disputing party, a tribunal established under this Article, pending its decision under paragraph 6, may order that the proceedings of a tribunal established under Article 10.18 be stayed, unless the latter tribunal has already adjourned its proceedings.

Article 10.25: Awards
1. Where a tribunal makes a final award against a respondent, the tribunal may award, separately or in combination, only:

(a) monetary damages and any applicable interest;

(b) restitution of property, in which case the award shall provide that the respondent may pay monetary damages and any applicable interest in lieu of restitution. A tribunal may also award costs and attorneys' fees in accordance with this Section and the applicable arbitration rules.

2. Subject to paragraph 1, where a claim is submitted to arbitration under Article 10.15(1)(b):

(a) an award of restitution of property shall provide that restitution be made to the enterprise;

(b) an award of monetary damages and any applicable interest shall provide that the sum be paid to the enterprise; and

(c) the award shall provide that it is made without prejudice to any right that any person may have in the relief under applicable domestic law.

3. A tribunal may not award punitive damages.
4. An award made by a tribunal shall have no binding force except between the disputing parties and in respect of the particular case.
5. Subject to paragraph 6 and the applicable review procedure for an interim award, a disputing party shall abide by and comply with an award without delay.
6. 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.10-24

(i) 120 days have elapsed from the date the award was rendered and no disputing party has requested revision or annulment of the award; or

(ii) revision or annulment proceedings have been completed; and

(b) in the case of a final award under the ICSID Additional Facility Rules, the UNCITRAL Arbitration Rules, or the rules selected pursuant to Article 10.15(5)(d)

(i) 90 days have elapsed from the date the award was rendered and no disputing party has commenced a proceeding to revise, set aside, or annul the award, or

(ii) a court has dismissed or allowed an application to revise, set aside, or annul the award and there is no further appeal.

7. Each Party shall provide for the enforcement of an award in its territory.
8. If the respondent fails to abide by or comply with a final award, on delivery of a request by the non-disputing Party, a panel shall be established under Article 22.6 (Request for an Arbitral Panel). The requesting Party may seek in such proceedings:

(a) a determination that the failure to abide by or comply with the final award is inconsistent with the obligations of this Agreement; and

(b) if the Parties agree, a recommendation that the respondent abide by or comply with the final award.

9. A disputing party may seek enforcement of an arbitration award under the ICSID Convention, the New York Convention, or the Inter-American Convention regardless of whether proceedings have been taken under paragraph 8.

10. A claim that is submitted to arbitration under this Section shall be considered to arise out of a commercial relationship or transaction for purposes of Article I of the New York Convention and Article I of the Inter-American Convention.

Article 10.26: Service of Documents
Delivery of notice and other documents on a Party shall be made to the place named for that Party in Annex 10-G.

Section C - Definitions

Article 10.27: Definitions

For purposes of this Chapter:

Centre means the International Centre for Settlement of Investment Disputes (ICSID) established by the ICSID Convention;

claimant means an investor of a Party that is a party to an investment dispute with the other Party;

disputing parties means the claimant and the respondent;

disputing party means either the claimant or the respondent;

enterprise means an "enterprise" as defined in Article 2.1 (Definitions of General Application), and a branch of an enterprise;

enterprise of a Party means an enterprise constituted or organized under the law of a Party, and a branch located in the territory of a Party and carrying out business activities there;

freely usable currency means "freely usable currency" as determined by the International Monetary Fund under its *Articles of Agreement*;

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 Dispute*s;

ICSID Convention means the *Convention on the Settlement of Investment Disputes between States and Nationals of other State*s, done at Washington, March 18, 1965;

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

investment means every asset that an investor owns or controls, directly or indirectly, that has the characteristics of an investment, including such characteristics as the commitment of capital or other resources, the expectation of gain or profit, or the assumption of risk. Forms that an investment may take include:

(a) an enterprise;

(b) shares, stock, and other forms of equity participation in an enterprise;

(c) bonds, debentures, loans, and other debt instruments;[10]

(d) futures, options, and other derivatives;

(e) rights under contract, including turnkey, construction, management, production, concession, or revenue-sharing contracts;

(f) intellectual property rights;

(g) rights conferred pursuant to domestic law, such as concessions, licenses, authorizations, and permits;[11] and

(h) other tangible or intangible, movable or immovable property, and related property rights, such as leases, mortgages, liens, and pledges;

but investment does not mean an order or judgment entered in a judicial or administrative action;

investment agreement means a written agreement[12] that takes effect at least two years after the date of entry into force of this Agreement between a national authority[13] of a Party and a covered investment or an investor of the other Party:

(a) that grants rights with respect to natural resources or other assets that a national authority controls; and

(b) that the covered investment or the investor relies on in establishing or acquiring a covered investment;

investment authorization means an authorization that the foreign investment authority of a Party grants to a covered investment or an investor of the other Party;[14]

investor of a non-Party means, with respect to a Party, an investor that attempts to make, is making, or has made an investment in the territory of that Party, that is not an investor of either Party;

investor of a Party means a Party or state enterprise thereof, or a national or an enterprise of a Party, that attempts to make, is making, or has made an investment in the territory of the other Party; provided, however, that a natural person who is a dual national shall be deemed to be exclusively a national of the State of his/her dominant and effective nationality;

monopoly means “monopoly” as defined in Article 16.9 (Definitions);

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

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

respondent means the Party that is a party to an investment dispute; **Secretary-General** means the Secretary-General of ICSID;

tribunal means an arbitration tribunal established under Article 10.18 or 10.24; and

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

Annex 10-A
Customary International Law

The Parties confirm their shared understanding that “customary international law” generally and as specifically referenced in Articles 10.4 and 10.9 results from a general and consistent practice of States that they follow from a sense of legal obligation. With regard to Article 10.4, the customary international law minimum standard of treatment of aliens refers to all customary international law principles that protect the economic rights and interests of aliens.

Annex 10-B
Public Debt Chile

The rescheduling of the debts of Chile, or of its appropriate institutions owned or controlled through ownership interests by Chile, owed to the United States and the rescheduling of its debts owed to creditors in general are not subject to any provision of Section A other than Articles 10.2 and 10.3.

Annex 10-C

Special Dispute Settlement Provisions
Chile

1. Where a claimant submits a claim alleging that Chile has breached an obligation under Section A, other than Article 10.3, that arises from its imposition of restrictive measures with regard to payments and transfers, Section B shall apply except as modified below:

(a) A claimant may submit any such claim only after one year has elapsed since the events giving rise to the claim;

(b) If the claim is submitted under Article 10.15(1)(b), the claimant may, on behalf of the enterprise, only seek damages with respect to the shares of the enterprise for which the claimant has a beneficial interest;

(c) Loss or damages arising from restrictive measures on capital inflows shall be limited to the reduction in value of the transfers and shall exclude loss of profits or business and any similar consequential or incidental damages;

(d) Paragraph 1(a) shall not apply to claims that arise from restrictions on:

(i) transfers of proceeds of foreign direct investment by investors of the United States, excluding external debt financing covered in subparagraph (d)

(ii), and excluding investments designed with the purpose of gaining direct or indirect access to the financial market; or (ii) payments pursuant to a loan or bond issued in a foreign market, including inter- and intra-company debt financing between affiliated enterprises made exclusively for the conduct, operation, management, or expansion of such affiliated enterprises, provided that these payments are made in accordance with the maturity date agreed on in the loan or bond agreement;

(e) Excluding restrictive measures referred to in paragraph 1(d), Chile shall incur no liability, and shall not be subject to claims, for damages arising from its imposition of restrictive measures with regard to payments and transfers that were incurred within one year from the date on which the restrictions were imposed, provided that such restrictive measures do not substantially impede transfers;.10-31

(f) A restrictive measure of Chile with regard to payments and transfers that is consistent with this Annex shall be deemed not to contravene Article 10.2 provided that, as required under existing Chilean law, it does not discriminate among investors that enter into transactions of the same nature; and

(g) Claims arising from Chile's imposition of restrictive measures with regard to payments and transfers shall not be subject to Article 10.24 unless Chile consents.

2. The United States may not request the establishment of an arbitral panel under Chapter Twenty-Two (Dispute Settlement) relating to Chile's imposition of restrictive measures with regard to payments and transfers until one year has elapsed since the events giving rise to the dispute.
3. Restrictive measures on payments and transfers related to claims under this Annex shall otherwise be subject to applicable domestic law.

Annex 10-D
Expropriation

The Parties confirm their shared understanding that:

1. Article 10.9(1) is intended to reflect customary international law concerning the obligation of States with respect to expropriation.
2. An action or a series of actions by a Party cannot constitute an expropriation unless it interferes with a tangible or intangible property right or property interest in an investment.
3. Article 10.9(1) addresses two situations. The first is direct expropriation, where an investment is nationalized or otherwise directly expropriated through formal transfer of title or outright seizure.
4. The second situation addressed by Article 10.9(1) is indirect expropriation, where an action or series of actions by a Party has an effect equivalent to direct expropriation without formal transfer of title or outright seizure.

(a) The determination of whether an action or series of actions by a Party, in a specific fact situation, constitutes an indirect expropriation, requires a case-by- case, fact-based inquiry that considers, among other factors:

(i) the economic impact of the government action, although the fact that an action or series of actions by a Party has an adverse effect on the economic value of an investment, standing alone, does not establish that an indirect expropriation has occurred;

(ii) the extent to which the government action interferes with distinct, reasonable investment-backed expectations; and

(iii) the character of the government action.

(b) Except in rare circumstances, nondiscriminatory regulatory actions by a Party that are designed and applied to protect legitimate public welfare objectives, such as public health, safety, and the environment, do not constitute indirect expropriations.

Annex 10-E
Submission of a Claim to Arbitration
Chile

1. An investor of the United States may not submit to arbitration under Section B:

(a) a claim that Chile has breached an obligation under Section A or Annex 10-F either:

(i) on its own behalf under Article 10.15(1)(a), or

(ii) on behalf of an enterprise of Chile that is a juridical person that the investor owns or controls directly or indirectly under Article 10.15(1)(b),

if the investor or the enterprise, respectively, has alleged that breach of an obligation under Section A or Annex 10-F in proceedings before a court or administrative tribunal of Chile; or

(b) a claim that Chile has breached an investment agreement or investment authorization either:

(i) on its own behalf under Article 10.15(1)(a), or

(ii) on behalf of an enterprise of Chile that is a juridical person that the investor owns or controls directly or indirectly under Article 10.15(1)(b),

if the investor or the enterprise, respectively, has alleged that breach of an investment agreement or investment authorization in proceedings before a court or administrative tribunal of Chile.

2. For greater certainty, if an investor of the United States elects to submit a claim of the type described in this Annex to a court or administrative tribunal of Chile, that election shall be definitive and the investor may not thereafter submit the claim to arbitration under Section B.

Annex 10-F
DL 600
Chile

1. Without prejudice to paragraphs 3 through 7, Chile shall accord to an investor of the United States or to a covered investment that is a party to an investment contract under *Estatuto de la Inversión Extranjera, Decreto Ley 600 de 1974* (DL 600) the better of the treatment required under this Agreement or the treatment under the investment contract.
2. Without prejudice to paragraphs 3 through 7, Chile shall permit an investor of the United States or a covered investment that has entered into an investment contract under DL 600 to amend the investment contract to make it consistent with Chile's obligations under this Agreement.
3. Subject to paragraph 4, when an investor of the United States or a covered investment has entered into an investment contract under DL 600, an investor, on its own behalf or on behalf of the investment, may only submit a claim against Chile under Section B with regard to the contract if the investor alleges that Chile has breached an obligation under:

(a) Section A in connection with the investment contract; or

(b) this Annex; provided, however, that such an investor may not submit any claim under Section B on the basis of the equity/debt ratio requirement of an investment contract under DL 600 except for claims that Chile has accorded the investor or its covered investment treatment less favorable than Chile accords under DL 600 to an investor of a non-Party or its investment in like circumstances.

4. When an investor of the United States or a covered investment has entered into an investment contract under DL 600, and the investor, on its own behalf or on behalf of the investment, claims that Chile has breached the tax provisions of that contract, it shall, with regard to that claim, only have recourse to the dispute settlement provisions of the investment contract or the dispute settlement provisions of this Agreement relevant to taxation measures.
5. For greater certainty, execution of an investment contract under DL 600 by an investor of the United States or a covered investment does not create any right on the part of the investor or covered investment to engage in particular activities in Chile.
6. Nothing in this Agreement shall limit the right of Chile's *Comite de Inversiones Extranjera*s, its *Vicepresidencia Ejecutiv*a, or their successors to decide whether to authorize an investor of the United States or a covered investment to enter into an investment contract under DL 600, or to establish conditions in such contract, provided that Chile does so in a manner that is not inconsistent with Chile's obligations under Section A.
7. Notwithstanding any other provision in this Agreement, Chile may prohibit an investor of the United States or a covered investment from transferring from Chile proceeds of the sale of all or any part of an investment made pursuant to a contract under DL 600 for up to one year after the date that the investor or covered investment transferred funds to Chile to establish the investment.

Annex 10-G
Service of Documents on a Party Under Section B
Chile

Notices and other documents in disputes under Section B shall be served on Chile by delivery to:

Dirección de Asuntos Jurídicos del Ministerio de Relaciones Exteriores de la República de Chile
Morandé 441 Santiago, Chile

United States

Notices and other documents in disputes under Section B shall be served on the United States by delivery to:

Executive Director (L/EX)
Office of the Legal Adviser
Department of State
Washington, D.C. 20520
United States of America

Annex 10-H
Possibility of a Bilateral Appellate Body/Mechanism

Within three years after the date of entry into force of this Agreement, the Parties shall consider whether to establish a bilateral appellate body or similar mechanism to review awards rendered under Article 10.25 in arbitrations commenced after they establish the appellate body or similar mechanism.

---

1 For greater certainty, the provisions of this Chapter do not bind either Party in relation to any act or fact that took place or any situation that ceased to exist before the date of entry into force of this Agreement. Also, for greater certainty, this Chapter is subject to and shall be interpreted in accordance with Annexes 10-A through 10-H.
2 For greater certainty, Article 10.4 shall be interpreted in accordance with Annex 10-A.
3 The reference to "Article 31" includes footnote 7 to Article 31.
4 The Parties recognize that a patent does not necessarily confer market power.
5 For greater certainty, Article 10.7 is subject to Annex 10-B.
6 For greater certainty, Article 10.8 is subject to Annex 10-C.
7 Notwithstanding any other provision of this Chapter, this paragraph takes effect on the date of entry into force of this Agreement.
8 For greater certainty, Article 10.9 shall be interpreted in accordance with Annex 10-A and Annex 10-D
9 For greater certainty, Article 10.15 is subject to Annex 10-E.
10 Some forms of debt, such as bonds, debentures, and long-term notes, are more likely to have the characteristics of an investment, while other forms of debt, such as claims to payment that are immediately due and result from the sale of goods or services, are less likely to have such characteristics.
11 Whether a particular right conferred pursuant to domestic law, as referred to in paragraph (g), has the characteristics of an investment depends on such factors as the nature and extent of the rights that the holder has under the domestic law of the Party. Among such rights that do not have the characteristics of an investment are those that do not create any rights protected under domestic law. For greater certainty, the foregoing is without prejudice to whether any asset associated with such right has the characteristics of an investment.
12 For purposes of this definition, "written agreement" means an agreement in writing, executed and entered into by both parties or their representatives, which sets forth an exchange of rights and obligations, for value. Neither a unilateral act of an administrative or judicial authority, such as a decree, order, or judgment, nor a consent decree, shall be considered a written agreement.
13 For purposes of this definition, "national authority" means (a) for the United States, an authority at the central level of government; and (b) for Chile, an authority at the ministerial level of government. "National authority" does not include state enterprises.
14 The Parties recognize that neither Party has a foreign investment authority, as of the date this Agreement enters into force

Chapter Eleven

Cross-Border Trade in Services

Article 11.1: Scope and Coverage

1. This Chapter applies to measures adopted or maintained by a Party affecting cross-border trade in services by service suppliers of the other Party. Such measures include measures affecting:

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

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

(c) the access to and use of distribution, transport, or telecommunications networks and services in connection with the supply of a service;

(d) the presence in its territory of a service supplier of the other Party; and

(e) the provision of a bond or other form of financial security as a condition for the supply of a service.

2. For purposes of this Chapter, “measures adopted or maintained by a Party” means measures adopted or maintained by:
(a) central, regional, or local governments and authorities; and
(b) non-governmental bodies in the exercise of powers delegated by central, regional, or local governments or authorities.
3. Articles 11.4, 11.7, and 11.8 also apply to measures by a Party affecting the supply of a service in its territory by an investor of the other Party as defined in Article 10.27 (Definitions) or a covered investment.[1]
4. This Chapter does not apply to:

(a) financial services, as defined in Article 12.19 (Definitions), except as provided in paragraph 3;

(b) air services, including domestic and international air transportation services, whether scheduled or non-scheduled, and related services in support of air services, other than:

(i) aircraft repair and maintenance services during which an aircraft is withdrawn from service, and

(ii) specialty air services;

(c) procurement; or

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

5. This Chapter does not impose any obligation on a Party with respect to a national of the other Party seeking access to its employment market, or employed on a permanent basis in its territory, and does not confer any right on that national with respect to that access or employment.
6. This Chapter does not apply to services supplied in the exercise of governmental authority. A “service supplied in the exercise of governmental authority” means any service which is supplied neither on a commercial basis, nor in competition with one or more service suppliers.

Article 11.2: National Treatment

1. Each Party shall accord to service suppliers[2] of the other Party treatment no less favorable than that it accords, in like circumstances, to its own service suppliers.
2. The treatment to be accorded by a Party under paragraph 1 means, with respect to a regional level of government, treatment no less favorable than the most favorable treatment accorded, in like circumstances, by that regional level of government to service suppliers of the Party of which it forms a part.

Article 11.3: Most-Favored-Nation Treatment

Each Party shall accord to service suppliers[3] of the other Party treatment no less favorable than that it accords, in like circumstances, to service suppliers of a non-Party.

Article 11.4: Market Access

Neither Party may, either on the basis of a regional subdivision or on the basis of its entire territory, adopt or maintain measures that:

(a) impose limitations on:

(i) the number of service suppliers,[4] whether in the form of numerical quotas, monopolies, exclusive service suppliers, or the requirement of an economic needs test,

(ii) the total value of service transactions or assets in the form of numerical quotas or the requirement of an economic needs test,

(iii) the total number of service operations or on the total quantity of services output expressed in terms of designated numerical units in the form of quotas or the requirement of an economic needs test,[5] or

(iv) the total number of natural persons that may be employed in a particular service sector or that a service supplier may employ and who are necessary for, and directly related to, the supply of a specific service in the form of a numerical quotas or the requirement of an economic needs test; or

(b) restrict or require specific types of legal entity or joint venture through which a service supplier may supply a service.

Article 11.5: Local Presence

Neither Party may require a service supplier of the other Party to establish or maintain a representative office or any form of enterprise, or to be resident, in its territory as a condition for the cross-border supply of a service.

Article 11.6: Non-conforming Measures

1. Articles 11.2, 11.3, 11.4, and 11.5 do not apply to:

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

(i) the central level of government, as set out by that Party in its Schedule to Annex I,

(ii) a regional level of government, as set out by that Party in its Schedule to Annex I, or

(iii) a local level of government;

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

(c) an amendment to any non-conforming measure referred to in subparagraph (a) to the extent that the amendment does not decrease the conformity of the measure, as it existed immediately before the amendment, with Articles 11.2, 11.3 , 11.4, or 11.5.

2. Articles 11.2, 11.3, 11.4, and 11.5 do not apply to any measure that a Party adopts or maintains with respect to sectors, sub-sectors, or activities, as set out in its Schedule to Annex II.

3. Annex 11.6 sets out specific commitments by the Parties.

Article 11.7: Transparency in Development and Application of Regulations[6]

Further to Chapter Twenty (Transparency):

(a) each Party shall maintain or establish appropriate mechanisms for responding to inquiries from interested persons regarding their regulations relating to the subject matter of this Chapter;[7]

(b) at the time it adopts final regulations relating to the subject matter of this Chapter, each Party shall, to the extent possible, including upon request, address in writing substantive comments received from interested persons with respect to the proposed regulations; and

(c) to the extent possible, each Party shall allow a reasonable period of time between publication of final regulations and their effective date.

Article 11.8: Domestic Regulation

1. Where a Party requires authorization for the supply of a service, the competent authorities of that Party shall, within a reasonable period of time after the submission of an application considered complete under domestic laws and regulations, inform the applicant of the decision concerning the application. At the request of the applicant, the competent authorities of the Party shall provide, without undue delay, information concerning the status of the application. This obligation shall not apply to authorization requirements that are within the scope of Article 11.6(2).

2. With a view to ensuring that measures relating to qualification requirements and procedures, technical standards, and licensing requirements do not constitute unnecessary barriers to trade in services, each Party shall endeavor to ensure, as appropriate for individual sectors, that any such measures that it adopts or maintains are:

(a) based on objective and transparent criteria, such as competence and the ability to supply 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 supply of the service.

3. If the results of the negotiations related to Article VI:4 of GATS (or the results of any similar negotiations undertaken in other multilateral fora in which both Parties participate) enter into effect, this Article shall be amended, as appropriate, after consultations between the Parties, to bring those results into effect under this Agreement. The Parties agree to coordinate on such negotiations as appropriate.

Article 11.9: Mutual Recognition

1. For the purposes of the fulfillment, in whole or in part, of its standards or criteria for the authorization, licensing, or certification of services suppliers, and subject to the requirements of paragraph 4, a Party may recognize the education or experience obtained, requirements met, or licenses or certifications granted in a particular country. Such recognition, which may be achieved through harmonization or otherwise, may be based upon an agreement or arrangement with the country concerned or may be accorded autonomously.

2. Where 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, nothing in Article 11.3 shall be construed to require the Party to accord such recognition to the education or experience obtained, requirements met, or licenses or certifications granted in the territory of the other Party.

3. A Party that is a party to an agreement or arrangement of the type referred to in paragraph 1, whether existing or future, shall afford adequate opportunity for the other Party, if the other Party is interested, to negotiate its accession to such an agreement or arrangement or to negotiate comparable ones with it. Where a Party accords recognition autonomously, it shall afford adequate opportunity for the other Party to demonstrate that education, experience, licenses, or certifications obtained or requirements met in that other Party's territory should be recognized.

4. A Party shall not accord recognition in a manner which would constitute a means of discrimination between countries in the application of its standards or criteria for the authorization, licensing, or certification of services suppliers, or a disguised restriction on trade in services.

5. Annex 11.9 applies to measures adopted or maintained by a Party relating to the licensing or certification of professional service suppliers as set out in the provisions of that Annex.

Article 11.10: Implementation

The Parties shall consult annually, or as otherwise agreed, to review the implementation of this Chapter and consider other trade in services issues of mutual interest. Among other issues, the Parties will consult with a view to determining the feasibility of removing any remaining citizenship or permanent residency requirement for the licensing or certification of each other's services suppliers. Such consultations will also include consideration of the development of procedures that could contribute to greater transparency of measures described in Article 11.6(1)(c).

Article 11.11: Denial of Benefits

1. A Party may deny the benefits of this Chapter to a service supplier of the other Party if the service is being supplied by an enterprise owned or controlled by nationals of a non-Party, and the denying Party:

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

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

2. Subject to Article 22.4 (Consultations), a Party may deny the benefits of this Chapter to:

(a) service suppliers of the other Party where the service is being supplied by an enterprise that is owned or controlled by persons of a non-Party and the enterprise has no substantial business activities in the territory of the other Party, or

(b) service suppliers of the other Party where the service is being supplied by an enterprise that is owned or controlled by persons of the denying Party and the enterprise has no substantial business activities in the territory of the other Party.

Article 11.12: Definitions

For purposes of this Chapter:

cross-border trade in services or **cross-border supply of services** means the supply of a service:

(a) from the territory of one Party into the territory of the other Party;

(b) in the territory of one 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 supply of a service in the territory of a Party by an investor of the other Party as defined in Article 10.27 (Investment-Definitions) or a covered investment;
enterprise means an “enterprise” as defined in Article 2.1 (Definitions of General Application), and a branch of an enterprise;
enterprise of a Party means an enterprise constituted or organized under the law of a Party, and a branch located in the territory of a Party and carrying out business activities there;
professional services means services, 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 services provided by trades-persons or vessel and aircraft crew members;
service supplier of a Party means a person of a Party that seeks to supply or supplies a service; and
specialty air services means any non-transportation air services, such as aerial fire-fighting, sightseeing, spraying, surveying, mapping, photography, parachute jumping, glider towing, and helicopter-lift for logging and construction, and other airborne agricultural, industrial, and inspection services.

Annex 11.6
Express Delivery

1. The Parties affirm that measures affecting express delivery services are subject to the provisions of this Agreement.
2. For purposes of this Agreement, express delivery services shall be defined as the expedited collection, transport, delivery, tracking, and maintaining control of documents, printed matter, parcels, and/or other goods throughout the supply of the service.
3. The Parties express their desire to maintain the level of open market access existing on the date this Agreement is signed.
4. Chile agrees that it will not impose any restrictions on express delivery services which are not in existence on the date this Agreement is signed. Chile confirms that it has no intention to direct revenues from its postal monopoly to benefit express delivery services as defined in paragraph 2.

Annex 11.9
Professional Services
Section A - General Provisions

Development of Professional Standards

1. The Parties shall encourage the relevant bodies in their respective territories to develop mutually acceptable standards and criteria for licensing and certification of professional service providers and to provide recommendations on mutual recognition to the Commission.

2. The standards and criteria referred to in paragraph 1 may be developed with regard to the following matters:

(a) education - accreditation of schools or academic programs;

(b) examinations - qualifying examinations for licensing, including alternative methods of assessment such as oral examinations and interviews;

(c) experience - length and nature of experience required for licensing;

(d) conduct and ethics - standards of professional conduct and the nature of disciplinary action for non-conformity with those standards;

(e) professional development and re-certification - continuing education and ongoing requirements to maintain professional certification;

(f) scope of practice - extent of, or limitations on, permissible activities;

(g) local knowledge - requirements for knowledge of such matters as local laws, regulations, language, geography, or climate; and

(h) consumer protection - alternatives to residency requirements, including bonding, professional liability insurance, and client restitution funds, to provide for the protection of consumers.

3. On receipt of a recommendation referred to in paragraph 1, the Commission shall review the recommendation within a reasonable time to determine whether it is consistent with this Agreement. Based on the Commission's review, each Party shall encourage its respective competent authorities, where appropriate, to implement the recommendation within a mutually agreed time.

Temporary Licensing

4. Where the Parties agree, each Party shall encourage the relevant bodies in its territory to develop procedures for the temporary licensing of professional service providers of the other Party.

Review

5. The Commission shall periodically, and at least once every three years, review the implementation of this Section. The Commission shall include within the scope of its review any differences in regulatory approaches between the Parties. Among other issues, a Party may raise issues connected with the development of international standards of relevant international organizations related to professional services.[8]

Section B - Foreign Legal Consultants

1. Each Party shall, in implementing its obligations and commitments regarding foreign legal consultants as set out in its relevant Schedules to Annex I or II and subject to any non-conforming measures therein, ensure that a national of the other Party is permitted to practice or advise on the law of any country in which that national is authorized to practice as a lawyer.

Consultations With Professional Bodies

2. Each Party shall consult with its relevant professional bodies to obtain their recommendations on:

(a) the form of association or partnership between lawyers authorized to practice in its territory and foreign legal consultants;

(b) the development of standards and criteria for the authorization of foreign legal consultants in conformity with Article 11.9; and

(c) other matters relating to the provision of foreign legal consultancy services.

3. Prior to initiation of consultations under paragraph 7, each Party shall encourage its relevant professional bodies to consult with the relevant professional bodies designated by the other Party regarding the development of joint recommendations on the matters referred to in paragraph 2.

Future Liberalization

4. Each Party shall establish a work program to develop common procedures throughout its territory for the authorization of foreign legal consultants.

5. Each Party shall promptly review any recommendation referred to in paragraphs 2 and 3 to ensure its consistency with this Agreement. If the recommendation is consistent with this Agreement, each Party shall encourage its competent authorities to implement the recommendation within one year.

6. Each Party shall report to the Commission within one year of the date of entry into force of this Agreement, and each year thereafter, on its progress in implementing the work program referred to in paragraph 4.

7. The Parties shall meet within one year of the date of entry into force of this Agreement with a view to:

(a) assessing the implementation of paragraphs 2 through 5;

(b) amending or removing, where appropriate, non-conforming measures on foreign legal consultancy services; and

(c) assessing further work that may be appropriate regarding foreign legal consultancy services.

Section C - Temporary Licensing of Engineers

1. The Parties shall meet within one year of the date of entry into force of this Agreement to establish a work program to be undertaken by each Party, in conjunction with its relevant professional bodies, to provide for the temporary licensing in its territory of nationals of the other Party who are licensed as engineers in the territory of that other Party.

2. To this end, each Party shall consult with its relevant professional bodies to obtain their recommendations on:

(a) the development of procedures for the temporary licensing of such engineers to permit them to practice their engineering specialties in each jurisdiction in its territory;

(b) the development of model procedures for adoption by the competent authorities throughout its territory to facilitate the temporary licensing of such engineers;

(c) the engineering specialties to which priority should be given in developing temporary licensing procedures; and

(d) other matters relating to the temporary licensing of engineers identified by the Party in such consultations.

3. Each Party shall request its relevant professional bodies to make recommendations on the matters referred to in paragraph 2 within two years of the date of entry into force of this Agreement.

4. Each Party shall encourage its relevant professional bodies to meet at the earliest opportunity with the relevant professional bodies of the other Party with a view to cooperating in the development of joint recommendations on the matters referred to in paragraph 2 within two years of the date of entry into force of this Agreement. Each Party shall request an annual report from its relevant professional bodies on the progress achieved in developing those recommendations.

5. The Parties shall promptly review any recommendation referred to in paragraphs 3 or 4 to ensure its consistency with this Agreement. If the recommendation is consistent with this Agreement, each Party shall encourage its competent authorities to implement the recommendation within one year.
6. The Commission shall review the implementation of this Section within two years of the date of entry into force of this Section. 7. Appendix 11.9-C applies to the Parties specified therein.

Appendix 11.9-C
Civil Engineers

The rights and obligations of Section C of Annex 11.9 apply to Chile with respect to civil engineers ("ingenieros civiles") and to such other engineering specialties that Chile may designate.

Chapter Twelve

Financial Services

Article 12.1: Scope and Coverage

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

(a) financial institutions of the other Party;

(b) investors of the other Party, and investments of such investors, in financial institutions in the Party's territory; and

(c) cross-border trade in financial services.

2. Articles 10.8 through 10.12 and 11.11 are hereby incorporated into and made a part of this Chapter. Section B of Chapter Ten (Investment) is hereby incorporated into and made a part of this Chapter solely for breaches by a Party of Articles 10.8 through 10.11, as incorporated into this Chapter.[1] No other provision of Chapter Ten (Investment) or Chapter Eleven (Cross Border Trade in Services) shall apply to a measure described in paragraph 1.
3. This Chapter does not apply to measures adopted or maintained by a Party relating to:

(a) activities or services forming part of a public retirement plan or statutory system of social security; or

(b) activities or services conducted for the account or with the guarantee or using the financial resources of the Party, including its public entities, except that this Chapter shall apply if a Party allows any of the activities or services referred to in subparagraphs (a) or (b) to be conducted by its financial institutions in competition with a public entity or a financial institution.

Article 12.2: National Treatment

1. Each Party shall accord to investors of the other Party treatment no less favorable than that it accords to its own investors, in like circumstances, with respect to the establishment, acquisition, expansion, management, conduct, operation, and sale or other disposition of financial institutions and investments in financial institutions in its territory.
2. Each Party shall accord to financial institutions of the other Party and to investments of investors of the other Party in financial institutions treatment no less favorable than that it accords to its own financial institutions, and to investments of its own investors in financial institutions, in like circumstances, with respect to the establishment, acquisition, expansion, management, conduct, operation, and sale or other disposition of financial institutions and investments.
3. For purposes of the national treatment obligations in Article 12.5(1), a Party shall accord to cross-border financial service suppliers of the other Party treatment no less favorable than that it accords to its own financial service suppliers, in like circumstances, with respect to the supply of the relevant service.

Article 12.3: Most-Favored-Nation Treatment

1. Each Party shall accord to investors of the other Party, financial institutions of the other Party, investments of investors in financial institutions, and cross-border financial service suppliers of the other Party treatment no less favorable than that it accords to the investors, financial institutions, investments of investors in financial institutions and crossborder financial service suppliers of a non-Party, in like circumstances.
2. A Party may recognize prudential measures of a non-Party in the application of measures covered by this Chapter. Such recognition may be:

(a) accorded unilaterally;

(b) achieved through harmonization or other means; or

(c) based upon an agreement or arrangement with the non-Party.

3. A Party according recognition of prudential measures under paragraph 2 shall provide adequate opportunity to the other Party to demonstrate that circumstances exist in which there are or will be equivalent regulation, oversight, implementation of regulation, and, if appropriate, procedures concerning the sharing of information between the Parties.
4. Where a Party accords recognition of prudential measures under paragraph 2(c) and the circumstances set out in paragraph 3 exist, the Party shall provide adequate opportunity to the other Party to negotiate accession to the agreement or arrangement, or to negotiate a comparable agreement or arrangement.

Article 12.4: Market Access for Financial Institutions
Neither Party may, with respect to investors of the other Party, either on the basis of a regional subdivision or on the basis of its entire territory adopt or maintain measures that:

(a) impose limitations on:

(i) the number of financial institutions whether in the form of numerical quotas, monopolies, exclusive financial service suppliers, or the requirements of an economic needs test,

(ii) the total value of financial service transactions or assets in the form of numerical quotas or the requirement of an economic needs test,

(iii) the total number of financial service operations or on the total quantity of financial services output expressed in terms of designated numerical units in the form of quotas or the requirement of an economic needs test, or

(iv) the total number of natural persons that may be employed in a particular financial service sector or that a financial institution may employ and who are necessary for, and directly related to, the supply of a specific financial service in the form of a numerical quota or the requirement of an economic needs test; or

(b) restrict or require specific types of legal entity or joint venture through which a financial institution may supply a service.

Article 12.5: Cross-Border Trade
1. Each Party shall permit, under terms and conditions that accord national treatment, cross-border financial service suppliers of the other Party to supply the financial services specified in Annex 12.5.
2. Each Party shall permit persons located in its territory, and its nationals wherever located, to purchase financial services from cross-border financial service suppliers of the other Party located in the territory of the other Party. This obligation does not require a Party to permit such suppliers to do business or solicit in its territory. Each Party may define “doing business” and “solicitation” for

purposes of this Article as long as such definitions are not inconsistent with the obligations of paragraph 1.
3. Without prejudice to other means of prudential regulation of cross-border trade in financial services, a Party may require the registration of cross-border financial service suppliers of the other Party and of financial instruments.

Article 12.6: New Financial Services [2]
1. Each Party shall permit a financial institution of the other Party, on request or notification to the relevant regulator, where required, to supply any new financial service that the first Party would permit its own financial institutions, in like circumstances, to supply under its domestic law, provided that the introduction of the financial service does not require the Party to adopt a new law or modify an existing law.
2. A Party may determine the institutional and juridical form through which the new financial service may be supplied and may require authorization for the supply of the service. Where 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.

Article 12.7: Treatment of Certain Information
Nothing in this Chapter requires a Party to furnish or allow access to:

(a) information related to the financial affairs and accounts of individual customers of financial institutions or cross-border financial service suppliers; or

(b) any confidential information, the disclosure of which would impede law enforcement or otherwise be contrary to the public interest or prejudice legitimate commercial interests of particular enterprises.

Article 12.8: Senior Management and Boards of Directors
1. Neither Party may require financial institutions of the other Party to engage individuals of any particular nationality as senior managerial or other essential personnel.
2. Neither Party may require that more than a minority of the board of directors of a financial institution of the other Party be composed of nationals of the Party, persons residing in the territory of the Party, or a combination thereof.
Article 12.9: Non-Conforming Measures
1. Articles 12.2 through 12.5 and 12.8 and Section A of Annex 12.9 do not apply to:

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

(i) the central level of government, as set out by that Party in its Schedule to Annex III,

(ii) a regional level of government, as set out by that Party in its Schedule to Annex III, or

(iii) a local level of government;

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

(c) an amendment to any non-conforming measure referred to in subparagraph (a) to the extent that the amendment does not decrease the conformity of the measure, as it existed immediately before the amendment, with Articles 12.2, 12.3, 12.4, and 12.8 and Section A of Annex 12.9.

2. Articles 12.2 through 12.5 and 12.8 and Section A of Annex 12.9 do not apply to any measure that a Party adopts or maintains with respect to sectors, subsectors, or activities, as set out in its Schedule to Annex III.
3. Annex 12.9 sets out certain specific commitments by each Party.

4. Where a Party has set out in its Schedule to Annexes I and II a measure that does not conform to Articles 10.2, 10.3, 11.2, 11.3, or 11.4 pursuant to paragraphs 1 and 2 of Articles 10.7 and 11.6, that measure shall be deemed to constitute a non-conforming measure, pursuant to paragraphs 1 and 2 of this Article, with respect to Article 12.2, Article 12.3, or Article 12.4, or Section A of Annex 12.9, as the case may be, to the extent that the measure, sector, sub-sector, or activity set out in the Schedule of non-conforming measures is covered by this Chapter.

Article 12.10: Exceptions

1. Notwithstanding any other provision of this Chapter or of Chapters Ten (Investment), Eleven (Cross-Border Trade in Services), Thirteen (Telecommunications), Fifteen (Electronic Commerce), and Sixteen (Competition Policy, Designated Monopolies, and State Enterprises), including specifically Article 13.16 (Telecommunications - Relationship to Other Chapters), a Party shall not be prevented from adopting or maintaining measures for prudential reasons,[3] including for the protection of investors, depositors, policy holders, or persons to whom a fiduciary duty is owed by a financial institution or crossborder financial service supplier, or to ensure the integrity and stability of the financial system. Where such measures do not conform with the provisions of this Agreement referred to in this paragraph, they shall not be used as a means of avoiding the Party's commitments or obligations under such provisions.[4]
2. Nothing in this Chapter or Chapters Ten (Investment), Eleven (Cross-Border Trade in Services), Thirteen (Telecommunications), Fifteen (Electronic Commerce), and Sixteen (Competition Policy, Designated Monopolies, and State Enterprises), including specifically Article 13.16 (Telecommunications – Relationship to Other Chapters), applies to nondiscriminatory measures of general application taken by any public entity in pursuit of monetary and related credit policies or exchange rate policies. This paragraph shall not effect a Party's obligations under Article 10.5 (Performance Requirements) with respect to measures covered by Chapter Ten (Investment) or Article 10.8 (Transfers).
3. Notwithstanding Article 10.8 (Transfers), as incorporated into this Chapter, a Party may prevent or limit transfers by a financial institution or cross-border financial service supplier to, or for the benefit of, an affiliate of or person related to such institution or supplier, through the equitable, non-discriminatory and good faith application of measures relating to maintenance of the safety, soundness, integrity, or financial responsibility of financial institutions or cross-border financial service suppliers. This paragraph does not prejudice any other provision of this Agreement that permits a Party to restrict transfers.
4. For greater certainty, nothing in this Chapter shall be construed to prevent the adoption or enforcement by a Party of measures necessary to secure compliance with laws or regulations that are not inconsistent with this Chapter, including those relating to the prevention of deceptive and fraudulent practices or to deal with the effects of a default on financial services contracts, subject to the requirement that such measures are not applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination between countries where like conditions prevail, or a disguised restriction on investment in financial institutions or cross-border trade in financial services as covered by this Chapter.

Article 12.11: Transparency

1. The Parties recognize that transparent regulations and policies and reasonable, objective, and impartial administration governing the activities of financial institutions and financial service suppliers are important in facilitating both access of financial institutions and financial service suppliers to, and their operations in, each other's markets.
2. In lieu of Article 20.2 (Publication), each Party shall, to the extent practicable:

(a) publish in advance any regulations of general application relating to the subject matter of this Chapter that it proposes to adopt; and

(b) provide interested persons and the other Party a reasonable opportunity to comment on such proposed regulations.

3. Each Party's regulatory authorities shall make available to interested persons their requirements, including any documentation required, for completing applications relating to the supply of financial services.

4. On the request of an applicant, the regulatory authority shall inform the applicant of the status of its application. If such authority requires additional information from the applicant, it shall notify the applicant without undue delay.
5. A regulatory authority shall make an administrative decision on a completed application of an investor in a financial institution, a financial institution, or a cross-border financial service supplier of the other Party relating to the supply of a financial service within 120 days, and shall promptly notify the applicant of the decision. An application shall not be considered complete until all relevant hearings are held and all necessary information is received. Where it is not practicable for a decision to be made within 120 days, the regulatory authority shall notify the applicant without undue delay and shall endeavor to make the decision within a reasonable time thereafter.
6. Each Party shall maintain or establish appropriate mechanisms that will respond to inquiries from interested persons regarding measures of general application covered by this Chapter.
7. Each Party shall ensure that the rules of general application adopted or maintained by self-regulatory organizations of the Party are promptly published or otherwise made available in such a manner as to enable interested persons to become acquainted with them.
8. To the extent practicable, each Party should allow reasonable time between publication of final regulations and their effective date.
9. At the time it adopts final regulations, a Party should, to the extent practicable, address in writing substantive comments received from interested persons with respect to the proposed regulations.

Article 12.12: Self-Regulatory Organizations

Where a Party requires a financial institution or a cross-border financial service supplier of the other Party to be a member of, participate in, or have access to, a self regulatory organization to provide a financial service in or into the territory of that Party, the Party shall ensure observance of the obligations of Articles 12.2 and 12.3 by such self regulatory organization.

Article 12.13: Payment and Clearing Systems

Under terms and conditions that accord national treatment, each Party shall grant to financial institutions of the other Party established in its territory access to payment and clearing systems operated by public entities, and to official funding and refinancing facilities available in the normal course of ordinary business. This paragraph is not intended to confer access to the Party's lender of last resort facilities.

Article 12.14: Expedited Availability of Insurance Services

The Parties recognize the importance of maintaining and developing regulatory procedures to expedite the offering of insurance services by licensed suppliers.

Article 12.15: Financial Services Committee

1. The Parties hereby establish the Financial Services Committee. The principal representative of each Party shall be an official of the Party's authority responsible for financial services set out in Annex 12.15.
2. In accordance with Article 21.1(2)(d) (The Free Trade Commission), 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 Articles 12.17 and 12.18.

3. The Committee shall meet annually, or as otherwise agreed, to assess the functioning of this Agreement as it applies to financial services. The Committee shall inform the Commission of the results of each meeting.

Article 12.16: Consultations

1. A Party may request in writing consultations with the other Party regarding any matter arising under this Agreement that affects financial services. The other Party shall give sympathetic consideration to the request. The Parties shall report the results of their consultations to the Committee.
2. Officials from the authorities specified in Annex 12.15 shall participate in the consultations under this Article.

3. Nothing in this Article shall be construed to require regulatory authorities participating in consultations under paragraph 1 to disclose information or take any action that would interfere with specific regulatory, supervisory, administrative, or enforcement matters.
4. Nothing in this Article shall be construed to require a Party to derogate from its relevant law regarding sharing of information among financial regulators or the requirements of an agreement or arrangement between financial authorities of the Parties.

Article 12.17: Dispute Settlement
1. Chapter Twenty-Two (Dispute Settlement) applies as modified by this Article to the settlement of disputes arising under this Chapter.
2. For purposes of Article 22.4 (Consultations), consultations held under Article 12.16 with respect to a measure or matter shall be deemed to constitute consultations under Article 22.4(1), unless the Parties otherwise agree. Upon initiation of consultations, the Parties shall provide information and give confidential treatment under Article 22.4(4)(b) to the information exchanged. If the matter has not been resolved within 45 days after commencing consultations under Article 12.16 or 90 days after the delivery of the request for consultations under Article 12.16, whichever is earlier, the complaining Party may request in writing the establishment of an arbitral panel. The Parties shall report the results of their consultations to the Commission.
3. The Parties shall establish by January 1, 2005, and maintain a roster of up to 10 individuals who are willing and able to serve as financial services panelists, up to four of whom shall be non-Party nationals. The roster members shall be appointed by mutual agreement of the Parties, and may be reappointed. Once established, a roster shall remain in effect for a minimum of three years, and shall remain in effect thereafter until the Parties constitute a new roster.
4. Financial services roster members shall:

(a) have expertise or experience in financial services law or practice, which may include the regulation of financial institutions;

(b) be chosen strictly on the basis of objectivity, reliability, and sound judgment;

(c) be independent of, and not affiliated with or take instructions from, either Party; and

(d) comply with a code of conduct to be established by the Commission.

5. Where a Party claims that a dispute arises under this Chapter, Article 22.9 (Panel Selection) shall apply, except that, unless the Parties otherwise agree, the panel shall be composed entirely of panelists meeting the qualifications in paragraph 4.
6. In any dispute where a panel finds a measure to be inconsistent with the obligations of this Agreement and the measure affects:

(a) only the financial services sector, the complaining Party may suspend benefits only in the financial services sector;

(b) the financial services sector and any other sector, the complaining Party may suspend benefits in the financial services sector that have an effect equivalent to the effect of the measure 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 12.18: Investment Disputes in Financial Services
1. Where an investor of one Party submits a claim under Article 10.15 (Submission of a Claim to Arbitration) to arbitration under Section B of Chapter Ten (Investment) against the other Party and the respondent invokes Article 12.10, on request of the respondent, the tribunal shall refer the matter in writing to the Committee for a decision. The tribunal may not proceed pending receipt of a decision or report under this Article.

2. In a referral pursuant to paragraph 1, the Committee shall decide the issue of whether and to what extent Article 12.10 is a valid defense to the claim of the investor. The Committee shall transmit a copy of its decision to the tribunal and to the Commission. The decision shall be binding on the tribunal.
3. Where the Committee has not decided the issue within 60 days of the receipt of the referral under paragraph 1, the respondent or the Party of the claimant may request the establishment of an arbitral panel under Article 22.6 (Request for an Arbitral Panel). The panel shall be constituted in accordance with Article 12.17. Further to Article 22.13 (Final Report), the panel shall transmit its final report to the Committee and to the tribunal. The report shall be binding on the tribunal.
4. Where no request for the establishment of a panel pursuant to paragraph 3 has been made within 10 days of the expiration of the 60-day period referred to in paragraph 3, the tribunal may proceed to decide the matter.

Article 12.19: Definitions
For purposes of this Chapter:

cross-border financial service supplier of a Party means a person of a Party that is engaged in the business of supplying a financial service within the territory of the Party and that seeks to supply or supplies a financial service through the cross-border supply of such services;

cross-border trade in financial services or **cross-border supply of financial services** means the supply of a financial service:

(a) from the territory of one 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 supply of a service in the territory of a Party by an investment in that territory;

financial institution means any financial intermediary or other enterprise that is authorized to do business and regulated or supervised as a financial institution under the law of the Party in whose territory it is located;

financial institution of the other Party means a financial institution, including a branch, located in the territory of a Party that is controlled by persons of the other Party;
financial service means any service of a financial nature. Financial services include all insurance and insurance-related services, and all banking and other financial services (excluding insurance), as well as services incidental or auxiliary to a service of a financial nature. Financial services include the following activities:
Insurance and insurance-related services

(a) Direct insurance (including co-insurance):

(i) life

(ii) non-life

(b) Reinsurance and retrocession;

(c) Insurance intermediation, such as brokerage and agency;

(d) Service 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 of all types, including consumer credit, mortgage credit, factoring and financing of commercial transactions;

(g) Financial leasing;

(h) All payment and money transmission services, including credit, charge and debit cards, travelers checks, 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 checks, bills, certificates of deposits);

(ii) foreign exchange;

(iii) derivative products including, futures and options;

(iv) exchange rate and interest rate instruments, including products such as swaps, forward rate agreements;

(v) transferable securities;

(vi) other negotiable instruments and financial assets, including bullion;

(k) Participation in issues of all kinds of securities, including underwriting and placement as agent (whether publicly or privately) and provision of services related to such issues;

(l) Money broking;

(m) Asset management, such as cash or portfolio management, all forms of collective investment management, pension fund management, custodial, depository, and trust services;

(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 suppliers of other financial services;

(p) Advisory, intermediation, and other auxiliary financial services on all the activities listed in subparagraphs (e) through (o), including credit reference and analysis, investment and portfolio research and advice, advice on acquisitions and on corporate restructuring and strategy;

financial service supplier of a Party means a person of a Party that is engaged in the business of supplying a financial service within the territory of that Party;

investment means “investment” as defined in Article 10.27 (Definitions), except that, with respect to “loans” and “debt instruments” referred to in that Article:
(a) a loan to or debt instrument issued by a financial institution is an investment only where it is treated as regulatory capital by the Party in whose territory the financial institution is located; and

(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, a loan granted by or debt instrument owned by a cross-border financial service supplier, other than a loan to or debt instrument issued by a financial institution, is an investment if such loan or debt instrument meets the criteria for investments set out in Article 10.27 (Definitions);

investor of a Party means a Party or state enterprise thereof, or a person of a Party, that attempts to make, is making, or has made an investment in the territory of the other Party; provided, however, that a natural person who is a dual national shall be deemed to be exclusively a national of the State of his/her dominant and effective nationality;

new financial service means a financial service not supplied in the Party's territory that is supplied within the territory of the other Party, and includes any new form of delivery of a financial service or the sale of a financial product that is not sold in the Party's territory;

person of a Party means "person of a Party" as defined in Article 2.1 (General Definitions) and, for greater certainty, does not include a branch of an enterprise of a non-Party;

public entity means a central bank or monetary authority of a Party, or any financial institution owned or controlled by a Party;

self-regulatory organization means any non-governmental body, including any securities or futures exchange or market, clearing agency, other organization or association, that exercises its own or delegated regulatory or supervisory authority over financial service suppliers or financial institutions; and

tribunal means an arbitration tribunal established under Article 10.18 (Selection of Arbitrators).

Annex 12.5
Cross-Border Trade

Insurance and insurance-related services

1. For the United States, Article 12.5(1) applies to the cross-border supply of or trade in financial services as defined in subparagraph (a) of the definition of cross-border supply of financial services in Article 12.19 with respect to:

(a) insurance of risks 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, 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. For the United States, Article 12.5(1) applies to the cross-border supply of or trade in financial services as defined in subparagraph (c) of the definition of cross-border supply of financial services in Article 12.19 with respect to insurance services.

3. For Chile, Article 12.5(1) applies to the cross-border supply of or trade in financial services as defined in subparagraph (a) of the definition of cross-border supply of financial services in Article 12.19 with respect to:

(a) insurance of risk relating to:

(i) international maritime transport, international commercial aviation with such insurance to cover any or all of the following: the goods being transported, the vehicle transporting the goods, and any liability deriving therefrom; and

(ii) goods in international transit.

(b) brokerage of insurance of risks relating to subparagraph (a)(i) and (a)(ii).

(c) reinsurance and retrocession; reinsurance brokerage; and consultancy, actuarial, and risk assessment.

4. Chile's commitments regarding sale and brokerage of insurance for international maritime transport, international commercial aviation, and goods in international transit shall apply one year after the entry into force of this Agreement or when Chile has made and implemented the necessary amendments to its pertinent legislation, whichever occurs first.

Banking and other financial services (excluding insurance)

5. For the United States, Article 12.5(1) applies with respect to the provision and transfer of financial information and financial data processing as described in subparagraph (o) of the definition of financial service and advisory and other auxiliary financial services, excluding intermediation, relating to banking and other financial services as described in subparagraph (p) of the definition of financial service.

6. For Chile, Article 12.5(1) applies with respect to:

(a) provision and transfer of financial information as described in subparagraph (o) of the definition of financial service.

(b) financial data processing as described in subparagraph (o) of the definition of financial service, subject to prior authorization from the relevant regulator, as required.[5]

(c) advisory and other auxiliary financial services, excluding intermediation and credit reference and analysis, relating to banking and other financial services as described in subparagraph (p) of the definition of financial service.

Notwithstanding subparagraph (c), in the event that after the date of entry into force of this Agreement Chile allows credit reference and analysis to be supplied by cross-border financial service suppliers, it shall accord national treatment (as specified in Article 12.2(3)) to cross-border financial service suppliers of the United States. Nothing in this commitment shall be construed to prevent Chile from subsequently restricting or prohibiting the supply of credit reference and analysis services by cross-border financial service suppliers.

7. It is understood that a Party's commitments on cross-border investment advisory services shall not, in and of themselves, be construed to require the Party to permit the public offering of securities (as defined under its relevant law) in the territory of the Party by cross-border suppliers of the other Party who supply or seek to supply such investment advisory services. A Party may subject the cross-border suppliers of investment advisory services to regulatory and registration requirements.

Annex 12.9
Specific Commitments

Section A: Right of Establishment with Respect to Certain Financial Services

1. In lieu of Article 12.4 with respect to banking and other financial services (excluding insurance):

(a) Each Party shall permit an investor of the other Party

(i) that does not own or control a financial institution in the Party's territory to establish in that territory a financial institution permitted to supply financial services that such an institution may supply under the domestic law of the Party at the time of establishment, without the imposition of numerical restrictions, and

(ii) 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 permit the supply of the full range of financial services allowed under the domestic law of the Party at the time of establishment of the additional financial institutions.

The right of establishment shall include the acquisition of existing entities.

(b) Neither Party may restrict or require specific types of juridical form with respect to the initial financial institution that the investor seeks to establish pursuant to subparagraph (a)(i).

(c) Except with respect to the imposition of numerical or juridical form restrictions on establishment of the initial financial institution described in subparagraph (a)(i), a Party may, consistent with Article 12.2, impose terms and conditions on establishment of additional financial institutions described in subparagraph (a)(ii) and determine the institutional and juridical form through which particular permitted financial services or activities are supplied.

(d) A Party may, consistent with Article 12.2, prohibit a particular financial service or activity.[6]

2. For purposes of this Annex:

(a) an "investor of the other Party" means an investor of the other Party engaged in the business of providing banking and other financial services (excluding insurance) in the territory of that Party.

(b) "numerical restrictions" means limitations imposed, either on the basis of a regional subdivision or on the basis of the entire territory of the Party, on the number of financial institutions whether in the form of numerical quotas, monopolies, exclusive service suppliers, or the requirements of an economic needs test.

3. Notwithstanding the inclusion of the non-conforming measures of Chile in Annex III, Section II, referring to social services, Chile, with respect to the establishment by an investor of the United States of an *Administradora de Fondos de Pensiones* under *Decreto Ley* 3.500, shall:

(a) apply subparagraph 1(a) of Section A of this Annex, and

(b) not apply an economic needs test.

No other modification of the effect of the non-conforming measures referring to social services is intended or shall be construed under this paragraph.
4. The specific commitments of the United States under paragraph 1 are subject to the headnotes and non-conforming measures set forth in Sections A and B of Annex III with respect to banking and other financial services (excluding insurance).
5. The specific commitments of Chile under paragraphs 1 and 3 are subject to the headnotes and non-conforming measures set forth in Annex III of Chile with respect to banking and other financial services (excluding insurance).
Section B: Voluntary Savings Plans; Non-Discriminatory Treatment of U.S. Investors
1. Notwithstanding the inclusion of the non-conforming measures of Chile in Annex III, Section II, referring to social services, with respect to voluntary savings pension plans established under *Ley*

19.768, Chile shall extend the obligations of Article 12.2(1) and (2) and of Article 12.3 to financial institutions of the United States, investors of the United States, and investments of such investors in financial institutions established in Chile. The specific commitment contained in this paragraph shall enter into force by March 1, 2005.

2. Notwithstanding the inclusion of the nonconforming measures of Chile in Annex III, Section II, referring to social services, Chile, as required by its domestic law, shall not establish arbitrary differences with respect to U.S. investors in *Administradoras de Fondos de Pensiones* under *Decreto Ley* 3.500.

Section C: Portfolio Management

1. Each Party shall allow a financial institution (other than a trust company or insurance company), organized outside its territory, to provide investment advice and portfolio management services, excluding (1) custodial services, (2) trustee services, and (3) execution services that are not related to managing a collective investment scheme, to a collective investment scheme located in the Party's territory. This commitment is subject to Article 12.1 and to the provisions of Article 12.5(3) regarding the right to require registration, without prejudice to other means of prudential regulation. 2. Notwithstanding paragraph 1, a Party may require the collective investment scheme located in the Party's territory to retain ultimate responsibility for the management of the collective investment scheme or the funds that it manages.

3. For purposes of paragraphs 1 and 2, **collective investment scheme** means:

(a) in the United States, an investment company registered with the Securities and Exchange Commission under the *Investment Company Act of 1940*; and

(b) in Chile, the following fund management companies subject to supervision by the *Superintendencia de Valores y Seguros*:

(i) *Compañías Administradoras de Fondos Mutuos* (*Decreto Ley* 1.328 de 1976);

(ii) *Compañías Administradoras de Fondos de Inversión* (*Ley* 18.815 de 1989);

(iii) *Compañías Administradoras de Fondos de Inversión de Capital Extranjero* (*Ley* 18.657 de 1987);

(iv) *Compañías Administradoras de Fondos para la Vivienda* (*Ley* 18.281 de 1993); and

(v) *Compañías Administradoras Generales de Fondos* (*Ley* 18.045 de 1981).

Section D: Expedited Availability of Insurance Services

Each Party should endeavor to maintain existing opportunities or may wish to consider policies or procedures such as: not requiring product approval for insurance other than sold to individuals or compulsory insurance; allowing introduction of products unless those products are disapproved within a reasonable period of time; and not imposing limitations on the number or frequency of product introductions. This Section does not apply to the specific category of Chilean government-supported insurance programs, such as climate insurance.

Section E: Insurance Branching

1. Notwithstanding the inclusion of the nonconforming measures of Chile in Annex III, Section II, referring to insurance market access, excluding any portion of those nonconforming measures referring to financial conglomerates and social services, no later than four years after the date of entry into force of this Agreement, Chile shall allow U.S. insurance suppliers to establish in its territory through branches. Chile may choose how to regulate branches, including their characteristics, structure, relationship to their parent company, capital requirements, technical reserves, and obligations regarding risk patrimony and their investments.[7]

2. Recognizing the principles of federalism under the U.S. Constitution, the history of state regulation of insurance in the United States, and the *McCarran-Ferguson Act*, the United States will work with the National Association of Insurance Commissioners (NAIC) in its review of those states that do not allow initial entry of a non-US insurance company as a branch to supply life, accident, health (excluding worker's compensation) insurance, non-life insurance, or reinsurance and retrocession to determine whether such entry could be provided in the future. Those states are Arkansas, Arizona, Connecticut, Georgia, Hawaii (branching allowed for reinsurance), Kansas, Maryland, Minnesota, Nebraska, New Jersey, North Carolina, Pennsylvania, Tennessee, Vermont, and Wyoming.

Annex 12.11

The Parties recognize that Chile's implementation of the obligations of paragraphs 2 and 9 of Article 12.11 may require legislative and regulatory changes. Chile shall implement the obligations of these paragraphs no later than two years after the date of entry into force of this Agreement.

Annex 12.15
Authorities Responsible for Financial Services

The authority of each Party responsible for financial services shall be:

(a) for Chile, the *Ministerio de Hacienda*; and

(b) for the United States, the Department of the Treasury for banking and other financial services and the Office of the United States Trade Representative, in coordination with the Department of Commerce and other agencies, for insurance services.

---

1 For greater certainty, the provisions of Chapter Ten (Investment) hereby incorporated include, are subject to, and shall be interpreted in conformity with, Annexes 10-A through 10-H of that Chapter, as applicable.
2 The Parties understand that nothing in Article 12.6 prevents a financial institution of a Party from applying to the other Party to consider authorizing the supply of a financial service that is supplied within neither Party's territory. Such application shall be subject to the domestic law of the Party to which the application is made and, for greater certainty, shall not be subject to the obligations of Article 12.6.
3 It is understood that the term "prudential reasons" includes the maintenance of the safety, soundness, integrity, or financial responsibility of individual financial institutions or cross-border financial service suppliers.
4 The Parties understand that a Party may take measures for prudential reasons through regulatory or administrative authorities, in addition to those who have regulatory responsibilities with respect to financial institutions, such as ministries or departments of labor.
5 It is understood that where the financial information or financial data processing referred to in subparagraphs (a) and (b) involve personal data, the treatment of such personal data shall be in accordance with Chilean law regulating the protection of such data.
6 The Parties understand that a Party may not prohibit all financial services or a complete financial services subsector such as banking.
7 The Parties understand that for this purpose, Chile may establish the following requirements among others:

(a) that the capital and reserves that foreign insurance companies assign to their branches must be effectively transferred and converted into domestic currency in conformity with Chilean law;

(b) that the increases of capital and reserves that do not come from capitalization of other reserves will have the same treatment as initial capital and reserves;

(c) that in the transactions between a branch and its parent or other related companies each shall be considered as independent entities;

(d) that the branch owners or shareholders meet the solvency and integrity requirements established in Chile's insurance legislation;

(e) that branches of foreign insurance companies that operate in Chile may transfer liquid profits only if they do not have an investment deficit in their technical reserves and risk patrimony, nor a deficit of risk patrimony.

Chapter Thirteen

Telecommunications

Article 13.1: Scope and Coverage

1. This Chapter applies to:

(a) measures adopted or maintained by a Party relating to access to and use of the public telecommunications network and services;

(b) measures adopted or maintained by a Party relating to obligations of major suppliers of public telecommunications services;

(c) measures adopted or maintained by a Party relating to the provision of information services; and

(d) other measures relating to public telecommunication networks or services.

2. Except to ensure that enterprises operating broadcast stations and cable systems have continued access to and use of public telecommunications networks and services, this Chapter does not apply to any measure adopted or maintained by a Party relating to cable or broadcast distribution of radio or television programming.
3. Nothing in this Chapter shall be construed to:

(a) require a Party or require a Party to compel any enterprise to establish, construct, acquire, lease, operate, or provide telecommunications networks or telecommunications services, where such networks or services are not offered to the public generally;

(b) require a Party to compel any enterprise exclusively engaged in the cable or broadcast distribution of radio or television programming to make available its cable or broadcast facilities as a public telecommunications network; or

(c) prevent a Party from prohibiting persons operating private networks from using their networks to provide public telecommunications networks or services to third persons.

Article 13.2: Access to and Use of Public Telecommunications Networks and Services[1]

1. Each Party shall ensure that enterprises of the other Party have access to and use of any public telecommunications 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 6.
2. Each Party shall ensure that such enterprises are permitted to:

(a) purchase or lease, and attach terminal or other equipment that interfaces with the public telecommunications network;

(b) provide services to individual or multiple end-users over any leased or owned circuit(s);

(c) connect owned or leased circuits with public telecommunications networks and services in the territory, or across the borders, of that Party or with circuits leased or owned by another person;

(d) perform switching, signaling, processing, and conversion functions; and

(e) use operating protocols of their choice.

3. Each Party shall ensure that enterprises of the other Party may use public telecommunications services for the movement of information in its territory or across its borders and for access to

information contained in databases or otherwise stored in machine-readable form in the territory of either Party.
4. Further to Article 23.1 (General Exceptions) and notwithstanding paragraph 3, a Party may take such measures as are necessary to:

(a) ensure the security and confidentiality of messages; or

(b) protect the privacy of non-public personal data of subscribers to public telecommunications services, subject to the requirement that such measures are not applied in a manner that would constitute a means of arbitrary or unjustifiable discrimination or disguised restriction on trade in services.

5. Each Party shall ensure that no condition is imposed on access to and use of public telecommunications networks or services, other than that necessary to:

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

(b) protect the technical integrity of public telecommunications networks or services.

6. Provided that conditions for access to and use of public telecommunications networks or services satisfy the criteria set out in paragraph 5, such conditions may include:

(a) a requirement to use specified technical interfaces, including interface protocols, for interconnection with such networks or services; and

(b) a licensing, permit, registration, or notification procedure which, if adopted or maintained, is transparent and applications filed thereunder are processed expeditiously.

Article 13.3: Obligations Relating to Interconnection with Suppliers of Public Telecommunications Services
1. Each Party shall ensure that suppliers of public telecommunications services in its territory provide, directly or indirectly, interconnection with the suppliers of public telecommunications services of the other Party.
2. In carrying out paragraph 1, each Party shall ensure, in accordance with its domestic law and regulations, that suppliers of public telecommunications services in its territory take reasonable steps to protect the confidentiality of commercially sensitive information of, or relating to, suppliers and end-users of public telecommunications services and only use such information for the purpose of providing those services.
Article 13.4: Additional Obligations Relating to Conduct of Major Suppliers of Public Telecommunications Services[2]
Treatment by Major Suppliers
1. Subject to Annex 13.4(1), each Party shall ensure that major suppliers in its territory accord suppliers of public telecommunications services of the other Party non-discriminatory treatment regarding:

(a) the availability, provisioning, rates, or quality of like public telecommunications services; and

(b) the availability of technical interfaces necessary for interconnection.

Competitive Safeguards
2.

(a) Each Party shall maintain appropriate measures for the purpose of preventing suppliers who, alone or together, are a major supplier in its territory from engaging in or continuing anti-competitive practices.

(b) For purposes of subparagraph (a), examples of anti-competitive practices include:

(i) engaging in anti-competitive cross-subsidization;

(ii) using information obtained from competitors with anti-competitive results; and

(iii) not making available, on a timely basis, to suppliers of public telecommunications services, technical information about essential facilities and commercially relevant information which are necessary for them to provide public telecommunications services.

Unbundling of Network Elements
3.

(a) Each Party shall provide its competent body the authority to require that major suppliers in its territory provide suppliers of public telecommunications services of the other Party access to network elements on an unbundled basis for the supply of those services on terms and conditions and at cost-oriented rates that are reasonable and non-discriminatory.

(b) Which network elements will be required to be made available in its territory, and which suppliers may obtain such elements, will be determined in accordance with national law and regulation(s).

(c) In determining the network elements to be made available, each Party's competent body shall consider, at a minimum, in accordance with national law and regulation:

(i) whether access to such network elements as are proprietary in nature is necessary, and whether the failure to provide access to such network elements would impair the ability of suppliers of public telecommunications services of the other Party to provide the services they seek to offer; or

(ii) other factors as established in national law or regulation, as that body construes these factors.

Co-Location
4.

(a) Each Party shall ensure that major suppliers in its territory provide to suppliers of public telecommunications services of the other Party physical co-location of equipment necessary for interconnection or access to unbundled network elements on terms, conditions, and at cost-oriented rates that are reasonable and non-discriminatory.

(b) Where physical co-location is not practical for technical reasons or because of space limitations, each Party shall ensure that major suppliers in its territory provide:

(i) alternative solutions; or

(ii) facilitate virtual co-location, on terms, conditions, and at cost-oriented rates that are reasonable and non-discriminatory.

(c) Each Party may determine which premises shall be subject to subparagraphs (a) and (b).

Resale

5. Each Party shall ensure that major suppliers in its territory:

(a) offer for resale, at reasonable rates,[3] to suppliers of public telecommunications services of the other Party, public telecommunications services that such major supplier provides at retail to end users that are not suppliers of public telecommunications services; and

(b) subject to Annex 13.4(5)(b), do not impose unreasonable or discriminatory conditions or limitations on the resale of such services.

Number Portability

6. Each Party shall ensure that major suppliers in its territory provide number portability to the extent technically feasible, on a timely basis, and on reasonable terms and conditions.

Dialing Parity

7. Each Party shall ensure that major suppliers in its territory provide dialing parity to suppliers of public telecommunications services of the other Party and afford suppliers of public telecommunications services of the other Party non-discriminatory access to telephone numbers and related services with no unreasonable dialing delays.

Interconnection

8.

(a) General Terms and Conditions Each Party shall ensure that major suppliers in its territory provide interconnection for the facilities and equipment of suppliers of public telecommunications services of the other Party:

(i) at any technically feasible point in the major supplier's network;

(ii) under non-discriminatory terms, conditions (including technical standards and specifications), and rates;

(iii) of a quality no less favorable than that provided by such major supplier for its own like services, or for like services of non-affiliated service suppliers or for like services of 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, reasonable, having regard to economic feasibility, and sufficiently unbundled so that the supplier 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 Suppliers

Each Party shall ensure that suppliers of public telecommunications services of the other Party may interconnect their facilities and equipment with those of major suppliers in its territory pursuant to at least one of the following options:

(i) a reference interconnection offer or other standard interconnection offer containing the rates, terms, and conditions that the major

supplier offers generally to suppliers of public telecommunications services; or

(ii) the terms and conditions of an existing interconnection agreement or through negotiation of a new interconnection agreement.

(c) Public Availability of Interconnection Offers Each Party shall require each major supplier in its territory to make publicly available a reference interconnection offer or other standard interconnection offer containing the rates, terms, and conditions that the major supplier offers generally to suppliers of public telecommunications services.

(d) Public Availability of the Procedures for Interconnection Each Party shall make publicly available the applicable procedures for interconnection negotiations with major suppliers in its territory.

(e) Public Availability of Interconnection Agreements with Major Suppliers Each Party shall:

(i) require major suppliers in its territory to file all interconnection agreements to which they are party with its telecommunications regulatory body, and

(ii) make publicly available interconnection agreements in force between major suppliers in its territory and other suppliers of public telecommunications services in such territory.

Leased Circuits Services[4]
9.

(a) Each Party shall ensure that major suppliers in its territory provide enterprises of the other Party leased circuits services that are public telecommunications services, on terms, conditions, and at rates that are reasonable and non-discriminatory.

(b) In carrying out subparagraph (a), each Party shall provide its telecommunications regulatory body the authority to require major suppliers in its territory to offer leased circuits that are part of the public telecommunications services to enterprises of the other Party at flat-rate prices that are cost-oriented.

Article 13.5: Submarine Cable Systems

1. Each Party shall ensure that enterprises in its territory that operate submarine cable systems accord non-discriminatory treatment for access to submarine cable systems.
2. Whether to apply paragraph 1 may be based on classification by a Party of such submarine cable system within its territory as a public telecommunications service supplier.

Article 13.6: Conditions for Supplying Information Services

1. Neither Party may require an enterprise in its territory that it classifies as a supplier of information services (which supplies such services over facilities that it does not own) to:

(a) supply those services to the public generally;

(b) cost-justify its rates for such services;

(c) file a tariff for such services;

(d) interconnect its networks with any particular customer for the supply of such services; or

(e) conform with any particular standard or technical regulation for interconnection for the supply of such services other than for interconnection to a public telecommunications network.

2. Notwithstanding paragraph 1, a Party may take appropriate action, including any of the actions described in paragraph 1, to remedy a practice of an information services supplier that the Party has found in a particular case to be anti-competitive under its law or regulation(s), or to otherwise promote competition or safeguard the interests of consumers.

Article 13.7: Independent Telecommunications Regulatory Bodies

1. Each Party shall ensure that its telecommunications regulatory body is separate from, and not accountable to, any supplier of public telecommunications services. To this end, each Party shall ensure that its telecommunications regulatory body does not hold a financial interest or maintain an operating role in any such supplier.

2. Each Party shall ensure that the decisions and procedures of its telecommunications regulatory body are impartial with respect to all interested persons. To this end, each Party shall ensure that any financial interest that it holds in a supplier of public telecommunications services does not influence the decisions and procedures of its telecommunications regulatory body.

Article 13.8: Universal Service

Each Party shall administer any universal service obligation that it maintains or adopts in a transparent, non-discriminatory, and competitively neutral manner and shall ensure that its universal service obligation is not more burdensome than necessary for the kind of universal service that it has defined.

Article 13.9: Licensing Procedures

1. When a Party requires a supplier of public telecommunications services to have a license, the Party shall make publicly available:

(a) the licensing criteria and procedures it applies, and the time it normally requires to act on an application, for issuing a license; and

(b) the terms and conditions of all licenses it has issued.

2. Each Party shall ensure that, upon request, an applicant receives the reasons for the denial of a license.

Article 13.10: Allocation and Use of Scarce Resources

1. Each Party shall administer its procedures for allocating and using 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 specific uses.

3. Decisions on allocating and assigning spectrum and frequency management are not measures that are inconsistent with Article 11.4 (Market Access), which is applied to Chapter Ten (Investment) through Article 11.1(3) (Scope and Coverage). Accordingly, each Party retains the right to exercise its spectrum and frequency management policies, which may affect the number of suppliers of public telecommunications services, provided that this is done in a manner that is consistent with the provisions of this Agreement. The Parties also retain the right to allocate frequency bands taking into account existing and futureneeds.

Article 13.11: Enforcement

Each Party shall ensure that its competent authority is authorized to enforce domestic measures relating to the obligations set out in Articles 13.2 through 13.5. Such authority shall include the ability to impose effective sanctions, which may include financial penalties, injunctive relief (on an interim or final basis), or the modification, suspension, and revocation of licenses.

Article 13.12: Procedures for Resolving Domestic Telecommunications Disputes

Further to Articles 20.4 (Administrative Proceedings) and 20.5 (Review and Appeal), each Party shall ensure the following:

Recourse to Telecommunications Regulatory Bodies

(a)

(i) Each Party shall ensure that enterprises of the other Party may have recourse to a national telecommunications regulatory body or other relevant body to resolve disputes arising under domestic measures addressing a matter set out in Articles 13.2 through 13.5.

(ii) Each Party shall ensure that suppliers of public telecommunications services of the other Party that have requested interconnection with a major supplier in its territory may have recourse, within a reasonable and publicly available period of time after the supplier requests interconnection, to a national telecommunications regulatory body or other relevant body to resolve disputes regarding the terms, conditions, and rates for interconnection with such major supplier.

Reconsideration

(b) Each Party shall ensure that an enterprise that is aggrieved or whose interests are adversely affected by a determination or decision of a national telecommunications regulatory body or other relevant body may petition the body to reconsider its determination or decision. Neither Party may permit such a petition to constitute grounds for non-compliance with such determination or decision of the telecommunications regulatory body or other relevant body unless an appropriate authority stays such determination or decision.

Judicial Review

(c) Each Party shall ensure that any enterprise aggrieved by a determination or decision of the national telecommunications regulatory body or other relevant body may obtain judicial review of such determination or decision by an impartial and independent judicial authority.

Article 13.13: Transparency

Further to Article 20.2 (Publication), each Party shall make publicly available its measures relating to access to and use of public telecommunications services including its measures relating to:

(a) tariffs and other terms and conditions of service;

(b) specifications for technical interfaces;

(c) bodies responsible for preparing, amending, and adopting standards-related measures affecting access and use;

(d) conditions for attaching terminal or other equipment to the public telecommunications network; and

(e) notification, permit, registration, or licensing requirements, if any.

Article 13.14: Flexibility in the Choice of Technologies

Each Party shall endeavor to not prevent suppliers of public telecommunications services from having the flexibility to choose the technologies that they use to supply their services, including commercial mobile wireless services.

Article 13.15: Forbearance

The Parties recognize the importance of relying on market forces to achieve wide choices in the supply of telecommunications services. To this end, where provided for under domestic law, each Party may forbear from applying regulation to a telecommunication service that the Party classifies as a public telecommunications service if its telecommunications regulatory body determines that:

(a) enforcement of such regulation is not necessary to prevent unreasonable or discriminatory practices;

(b) enforcement of such regulation is not necessary for the protection of consumers; and

(c) forbearance is consistent with the public interest, including promoting and enhancing competition among suppliers of public telecommunications services.

Article 13.16: Relationship to Other Chapters
In the event of any inconsistency between this Chapter and another Chapter, this Chapter shall prevail to the extent of the inconsistency.

Article 13.17: Definitions
For purposes of this Chapter:

commercial mobile services means public telecommunications services supplied through mobile wireless means;

cost-oriented means based on cost, and may include a reasonable profit, and may involve different cost methodologies for different facilities or services;

dialing parity means the ability of a subscriber to use of an equal number of digits to access a public telecommunications service, regardless of the public telecommunications services supplier chosen by such end-user;

enterprise means an “enterprise” as defined in Article 2.1 (Definitions of General Application) and includes a branch of an enterprise;

end-user means a final consumer of or subscriber to a public telecommunications service, including any service supplier other than a supplier of public telecommunications services;

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 suppliers, and

(b) cannot feasibly be economically or technically substituted in order to provide a service;

information service means the offering of a capability for generating, acquiring, storing, transforming, processing, retrieving, utilizing, or making available information via telecommunications, and includes electronic publishing, but does not include any use of any such capability for the management, control, or operation of a telecommunications system or the management of a telecommunications service;
interconnection means linking with suppliers providing public telecommunications services in order to allow the users of one supplier to communicate with users of another supplier and to access services provided by another supplier;
leased circuit means telecommunications facilities between two or more designated points that are made available solely to, or dedicated exclusively for use by, a particular customer or other users of the customer’s choosing;
major supplier means a supplier of public telecommunications services that has the ability to materially affect the terms of participation (having regard to price and supply) in the relevant market for public telecommunications services as a result of:

(a) control over essential facilities; or

(b) use of its position in the market;

network element means a facility or equipment used in supplying a public telecommunications service, including features, functions, and capabilities provided by means of such facility or equipment;

non-discriminatory means treatment no less favorable than that accorded to any other user of like public telecommunications services in like circumstances;

number portability means the ability of end-users of public telecommunications services to retain, at the same location, existing telephone numbers without impairment of quality, reliability, or convenience when switching like suppliers of public telecommunications services;

physical co-location means physical access to and control over space in order to install, maintain, or repair equipment, at premises owned or controlled and used by a major supplier to provide public telecommunications services;

private network means a telecommunications network that is used exclusively for intra enterprise communications;

public telecommunications network means telecommunications infrastructure which a Party requires to provide public telecommunications services between defined network termination points;

public telecommunications service means any telecommunications service which a Party requires, explicitly or in effect, to be offered to the public generally. Such services may include, *inter alia*, telephone and data transmission typically involving customer-supplied information between two or more points without any end-to-end change in the form or content of the customer's information, but does not include the offering of information services;

reference interconnection offer means an interconnection offer that a major supplier extends and that is filed with or approved by a telecommunications regulatory body and that is sufficiently detailed to enable a supplier of public telecommunications services that is willing to accept its rates, terms, and conditions to obtain interconnection without having to engage in negotiations with the major supplier concerned;

telecommunications means the transmission and reception of signals by any electromagnetic means, including by photonic means;

telecommunications regulatory body means a body responsible for the regulation of telecommunications; and

user means an end-user or a supplier of public telecommunications services.

Annex 13.4(1)

Article 13.4 does not apply to rural telephone companies, as defined in section 3(37) of the Communications Act of 1996, unless a state regulatory authority orders otherwise.Moreover, a state regulatory authority may exempt a rural local exchange carrier, as defined in section 251(f)(2) of the Communications Act of 1996, from the obligations contained in Article 13.4.

Annex 13.4(5)(b)

In the United States, a reseller that obtains at wholesale rates a telecommunications service that is available at retail only to a category of subscribers may be prohibited from offering such service to a different category of subscribers.

---

1 For greater certainty, access to unbundled network elements, including access to leased circuits as an unbundled network element, is addressed in Article 13.4(3).
2 For purposes of this Agreement, this Article does not apply to suppliers of commercial mobile services. Nothing in this Agreement shall be construed to preclude an authority from imposing measures set forth in this Article upon suppliers of commercial mobile services.
3 The standard of reasonableness in this paragraph is satisfied, among others, by wholesale rates or cost-oriented rates set pursuant to domestic law and regulations.
4 For greater certainty, access to unbundled network elements, including access to leased circuits as anunbundled network element, is addressed in Article 13.4(3).

Chapter Fourteen

Temporary Entry for Business Persons

Article 14.1: General Principles

1. Further to Article 1.2 (Objectives), this Chapter reflects the preferential trading relationship between the Parties, the mutual desire of the Parties to facilitate temporary entry of business persons under the provisions of Annex 14.3 on a reciprocal basis and of establishing transparent criteria and procedures for temporary entry, and the need to ensure border security and to protect the domestic labor force and permanent employment in their respective territories.

2. This Chapter does not apply to measures regarding citizenship, nationality, permanent residence, or employment on a permanent basis.

Article 14.2: General Obligations

1. Each Party shall apply its measures relating to the provisions of this Chapter in accordance with Article 14.1(1) and, in particular, shall apply expeditiously those measures so as to avoid unduly impairing or delaying trade in goods or services or conduct of investment activities under this Agreement.

2. For greater certainty, nothing in this Chapter shall be construed to prevent a Party from applying measures to regulate the entry of natural persons into, or their temporary stay in, its territory, including those measures necessary to protect the integrity of, and to ensure the orderly movement of natural persons across, its borders, provided that such measures are not applied in such a manner as to unduly impair or delay trade in goods or services or conduct of investment activities under this Agreement. The sole fact of requiring a visa for natural persons shall not be regarded as unduly impairing or delaying trade in goods or services or conduct of investment activities under this Agreement.

Article 14.3: Grant of Temporary Entry

1. Each Party shall grant temporary entry to business persons who are otherwise qualified for entry under applicable measures relating to public health and safety and national security, in accordance with this Chapter, including the provisions of Annex 14.3.

2. A Party may refuse to issue an immigration document authorizing employment to a business person where the temporary entry of that person might affect adversely:

(a) the settlement of any labor dispute that is in progress at the place or intended place of employment; or

(b) the employment of any person who is involved in such dispute.

3. When a Party refuses pursuant to paragraph 2 to issue an immigration document authorizing employment, it shall:

(a) inform in writing the business person of the reasons for the refusal; and

(b) promptly notify the other Party in writing of the reasons for the refusal.

4. Each Party shall limit any fees for processing applications for temporary entry of business persons in a manner consistent with Article 14.2(1).

Article 14.4: Provision of Information

1. Further to Article 20.2 (Publication), each Party shall:

(a) provide to the other Party such materials as will enable it to become acquainted with its measures relating to this Chapter; and

(b) no later than six months after the date of entry into force of this Agreement, prepare, publish, and make available in its own territory, and in the territory of the other Party, explanatory material, including references to applicable laws and regulations, in a consolidated document regarding the requirements for temporary entry under this Chapter in such a manner as will enable business persons of the other Party to become acquainted with them.

2. Each Party shall collect and maintain, and make available upon request to the other Party in accordance with its domestic law, data respecting the granting of temporary entry under this Chapter to business persons of the other Party who have been issued immigration documentation, with a view towards including data specific to each occupation, profession, or activity.

Article 14.5: Committee on Temporary Entry

1. The Parties hereby establish a Committee on Temporary Entry, comprising representatives of each Party, including immigration officials.
2. The Committee shall:

(a) establish a schedule for its meetings;

(b) establish procedures to exchange information on measures that affect the temporary entry of business persons under this Chapter;

(c) consider the development of measures to further facilitate temporary entry of business persons on a reciprocal basis under the provisions of Annex 14.3;

(d) consider the implementation and administration of this Chapter; and

(e) consider the development of common criteria and interpretations for the implementation of this Chapter.

Article 14.6: Dispute Settlement

1. A Party may not initiate proceedings under Article 22.5 (Commission – Good Offices, Conciliation, and Mediation) regarding a refusal to grant temporary entry under this Chapter or a particular case arising under Article 14.2 unless:

(a) the matter involves a pattern of practice; and

(b) the business person has exhausted the available administrative remedies regarding the particular matter.

2. The remedies referred to in paragraph (1)(b) shall be deemed to be exhausted if a final determination in the matter has not been issued by the competent authority within one year of the institution of an administrative proceeding, and the failure to issue a determination is not attributable to delay caused by the business person.

Article 14.7: Relation to Other Chapters

1. Except for this Chapter, Chapters One (Initial Provisions), Two (General Definitions), Twenty-One (Administration of the Agreement), Twenty-Two (Dispute Settlement), and Twenty-Four (Final Provisions), and Articles 20.1 (Contact Points), 20.2 (Publication), 20.3 (Notification and Provision of Information), and 20.4 (Administrative Proceedings), no provision of this Agreement shall impose any obligation on a Party regarding its immigration measures.
2. Nothing in this Chapter shall be construed to impose obligations or commitments with respect to other Chapters of this Agreement.

Article 14.8: Transparency in Development and Application of Regulations[1]

1. Further to Chapter Twenty (Transparency), each Party shall establish or maintain appropriate mechanisms to respond to inquiries from interested persons regarding regulations relating to the temporary entry of business persons.
2. Further to Article 20.2 (Publication), to the extent possible, each Party shall, on request, provide to interested persons a concise statement addressing comments received on proposed regulations relating to the temporary entry of business persons at the time that it adopts the final regulations.
3. Further to Article 20.2 (Publication), to the extent possible, each Party shall allow a reasonable period of time between the date it publishes final regulations governing entry of business persons and the date they take effect.
4. Each Party shall, within a reasonable period after an application requesting temporary entry is considered complete under its domestic laws and regulations, inform the applicant of the decision concerning the application. At the request of the applicant, the Party shall provide, without undue delay, information concerning the status of the application.

Article 14.9: Definitions

For purposes of this Chapter:

business person means a national of a Party who is engaged in trade in goods, the supply of services, or the conduct of investment activities;

immigration measure means any law, regulation, or procedure affecting the entry and sojourn of aliens;

national has the same meaning as the term “natural person who has the nationality of a Party” as defined in Annex 2.1 (Country-Specific Definitions);

professional means a national of a Party who is engaged in a specialty occupation requiring:
(a) theoretical and practical application of a body of specialized knowledge, and
(b) attainment of a post-secondary degree in the specialty requiring four or more years of study[2] (or the equivalent of such a degree) as a minimum for entry into the occupation; and

temporary entry means entry into the territory of a Party by a business person of the other Party without the intent to establish permanent residence.

Annex 14.3
Temporary Entry for Business Persons
Section A – Business Visitors

1. Each Party shall grant temporary entry to a business person seeking to engage in a business activity set out in Appendix 14.3(A)(1), without requiring that person to obtain an employment authorization, provided that the business person otherwise complies with immigration measures applicable to temporary entry, on presentation of:

(a) proof of nationality of a Party;

(b) documentation demonstrating that the business person will be so engaged and describing the purpose of entry; and

(c) evidence demonstrating that the proposed business activity is international in scope and that the business person is not seeking to enter the local labor market.

2. Each Party shall provide that a business person may satisfy the requirements of paragraph 1(c) by demonstrating that:

(a) the primary source of remuneration for the proposed business activity is outside the territory of the Party granting temporary entry; and

(b) the business person’s principal place of business and the actual place of accrual of profits, at least predominantly, remain outside such territory.

A Party shall normally accept an oral declaration as to the principal place of business and the actual place of accrual of profits. Where the Party requires further proof, it shall normally consider a letter from the employer attesting to these matters as sufficient proof.
3. Neither Party may:

(a) as a condition for temporary entry under paragraph 1, require prior approval procedures, petitions, labor certification tests, or other procedures of similar effect; or

(b) impose or maintain any numerical restriction relating to temporary entry under paragraph 1.

Section B – Traders and Investors

1. Each Party shall grant temporary entry and provide confirming documentation to a business person seeking to:

(a) carry on substantial trade in goods or services principally between the territory of the Party of which the business person is a national and the territory of the other Party into which entry is sought, or

(b) establish, develop, administer, or provide advice or key technical services to the operation of an investment to which the business person or the business person's enterprise has committed, or is in the process of committing, a substantial amount of capital, in a capacity that is supervisory, executive, or involves essential skills, provided that the business person otherwise complies with immigration measures applicable to temporary entry.

2. Neither Party may:

(a) as a condition for temporary entry under paragraph 1, require labor certification tests or other procedures of similar effect; or

(b) impose or maintain any numerical restriction relating to temporary entry under paragraph 1.

Section C – Intra-Company Transferees

1. Each Party shall grant temporary entry and provide confirming documentation to a business person employed by an enterprise who seeks to render services to that enterprise or a subsidiary or affiliate thereof, in a capacity that is managerial, executive, or involves specialized knowledge, provided that the business person otherwise complies with immigration measures applicable to temporary entry. A Party may require the business person to have been employed continuously by the enterprise for one year within the three-year period immediately preceding the date of the application for admission.
2. Neither Party may:

(a) as a condition for temporary entry under paragraph 1, require labor certification tests or other procedures of similar effect; or

(b) impose or maintain any numerical restriction relating to temporary entry under paragraph 1.

Section D – Professionals

1. Each Party shall grant temporary entry and provide confirming documentation to a business person seeking to engage in a business activity as a professional, or to perform training functions related to a particular profession, including conducting seminars, if the business person otherwise complies with immigration measures applicable to temporary entry, on presentation of:

(a) proof of nationality of a Party;

(b) documentation demonstrating that the business person will be so engaged and describing the purpose of entry; and

(c) documentation demonstrating the attainment of the relevant minimum educational requirements or alternative credentials.

2. Notwithstanding the educational requirements set out in the definition of "professional" in Article 14.9, each Party shall grant temporary entry to a business person seeking to engage in a business activity as a professional in a profession set out in Appendix 14.3(D)(2), provided that the business person possesses the credentials specified in the Appendix and complies with the requirements of paragraph 1 of this Section.
3. To assist in the implementation of this Chapter, the Parties shall exchange by the date of entry into force of this Agreement illustrative lists of professions that meet the definition of professional. To facilitate the evaluation of applications for temporary entry, the Parties shall also exchange information on post-secondary education.
4. Neither Party may:

(a) as a condition for temporary entry under paragraph 1, require prior approval procedures, petitions, labor certification tests, or other procedures of similar effect; or

(b) impose or maintain any numerical restriction relating to temporary entry under paragraph 1.

5. Notwithstanding paragraph 4(a), a Party may require a business person seeking temporary entry under this Section to comply with procedures applicable to temporary entry of professionals, such as an attestation of compliance with the Party's labor and immigration laws.
6. Notwithstanding paragraphs 1 and 4, a Party may establish an annual numerical limit, which shall be set out in Appendix 14.3(D)(6), regarding temporary entry of business persons of the other Party seeking to engage in business activities as a professional.
7. A Party establishing a numerical limit pursuant to paragraph 6, unless the Parties otherwise agree, may, in consultation with the other Party, grant temporary entry under paragraph 1 to a business person who practices in a profession where accreditation, licensing, and certification requirements are mutually recognized by the Parties.
8. Nothing in paragraphs 6 or 7 shall be construed to limit the ability of a business person to seek temporary entry under a Party's applicable immigration measures relating to the entry of professionals other than those adopted or maintained pursuant to paragraph 1.

Appendix 14.3(A)(1)
Business Visitors

Meetings and Consultations
– Business persons attending meetings, seminars, or conferences; or engaged in consultations with business associates.
Research and Design
– Technical, scientific, and statistical researchers conducting independent research or research for an enterprise located in the territory of the other Party.
Growth, Manufacture, and Production
– Purchasing and production management personnel conducting commercial transactions for an enterprise located in the territory of the other Party.
Marketing
– Market researchers and analysts conducting independent research or analysis or research or analysis for an enterprise located in the territory of the other Party.

	certificate[1] requiring three years of study in the specialty and three years experience in the specialty.
Physical Therapist	Baccalaureate or *Licenciatura* degree; or *Titulo Profesional*; or post-secondary certificate requiring three years of study in the specialty and three years experience in the specialty.

1 **Post-secondary certificate** means a certificate issued on completion of post-secondary study, by an institution recognized by the Government of Chile, or accredited by the relevant competent authority in the United States.

Appendix 14.3(D)(6)
United States

1. Beginning on the date of entry into force of this Agreement, the United States shall annually approve as many as 1,400 initial applications of business persons of Chile seeking temporary entry under Section D of Annex 14.3 to engage in a business activity at a professional level.
2. For purposes of paragraph 1, the United States shall not take into account:

(a) the renewal of a period of temporary entry;

(b) the entry of a spouse or children accompanying or following to join the principal business person;

(c) an admission under section 101(a)(15)(H)(i)(b) of the *Immigration and Nationality Act*, 1952, as may be amended, including the worldwide numerical limit established by section 214(g)(1)(A) of that Act; or

(d) an admission under any other provision of section 101(a)(15) of that Act relating to the entry of professionals.

---

1 For greater certainty, “regulations” includes regulations establishing or applying to licensing authorization or criteria.
2 Chile recognizes the Baccalaureate Degree, Master’s Degree, and the Doctoral Degree conferred by institutions in the United States as such degrees. The United States recognizes the *licenciatura* degree and *titulo profesional* and higher degrees conferred by institutions in Chile as such degrees.

Chapter Fifteen

Electronic Commerce

Article 15.1: General Provisions

1. The Parties recognize the economic growth and opportunity provided by electronic commerce and the importance of avoiding unnecessary barriers to its use and development.

2. Nothing in this Chapter shall be construed to prevent a Party from imposing internal taxes, directly or indirectly, on digital products, provided they are imposed in a manner consistent with this Agreement.

3. This Chapter is subject to any other relevant provisions, exceptions, or nonconforming measures set forth in other Chapters or Annexes of this Agreement.

Article 15.2: Electronic Supply of Services

The Parties recognize that the supply of a service using electronic means falls within the scope of the obligations contained in the relevant provisions of Chapter Eleven (Cross- Border Trade in Services) and Chapter Twelve (Financial Services), subject to any nonconforming measures or exceptions applicable to such obligations.[1]

Article 15.3: Customs Duties on Digital Products

Neither Party may apply customs duties on digital products of the other Party.

Article 15.4: Non-Discrimination for Digital Products

1. A Party shall not accord less favorable treatment to a digital product than it accords to other like digital products, on the basis that:

> (a) the digital product receiving less favorable treatment is created, produced, published, stored, transmitted, contracted for, commissioned, or first made available on commercial terms in the territory of the other Party; or
>
> (b) the author, performer, producer, developer, or distributor of such digital products is a person of the other Party.[2]

2.

> (a) A Party shall not accord less favorable treatment to a digital product created, produced, published, stored, transmitted, contracted for, commissioned, or first made available on commercial terms in the territory of the other Party than it accords to a like digital product created, produced, published, stored, transmitted, contracted for, commissioned, or first made available on commercial terms in the territory of a non-Party.
>
> (b) A Party shall not accord less favorable treatment to digital products whose author, performer, producer, developer, or distributor is a person of the other Party than it accords to like digital products whose author, performer, producer, developer, or distributor is a person of a non-Party.

3. A Party may maintain an existing measure that does not conform with paragraph 1 or 2 for one year after the date of entry into force of this Agreement. A Party may maintain the measure thereafter, if the treatment the Party accords under the measure is no less favorable than the treatment the Party accorded under the measure on the date of entry into force of this Agreement, and the Party has set out the measure in its Schedule to Annex 15.4. A Party may amend such a measure only to the extent that the amendment does not decrease the conformity of the measure, as it existed immediately before the amendment, with paragraphs 1 and 2.

Article 15.5: Cooperation

Having in mind the global nature of electronic commerce, the Parties recognize the importance of:

> (a) working together to overcome obstacles encountered by small and medium enterprises in the use of electronic commerce;
>
> (b) sharing information and experiences on regulations, laws, and programs in the sphere of electronic commerce, including those related to data privacy, consumer confidence, cyber-security, electronic signatures, intellectual property rights, and electronic government;
>
> (c) working to maintain cross-border flows of information as an essential element for a vibrant electronic commerce environment;

(d) encouraging the development by the private sector of methods of selfregulation, including codes of conduct, model contracts, guidelines, and enforcement mechanisms that foster electronic commerce; and

(e) actively participating in international for a, at both a hemispheric and multilateral level, with the purpose of promoting the development of electronic commerce.

Article 15.6: Definitions

For purposes of this Chapter:

digital products means computer programs, text, video, images, sound recordings, and other products that are digitally encoded and transmitted electronically, regardless of whether a Party treats such products as a good or a service under its domestic law;[3]

electronic means means employing computer processing; and

electronic transmission or **transmitted electronically** means the transfer of digital products using any electromagnetic or photonic means.

Annex 15.4
Non-Discrimination for Digital Products

The Schedule of a Party sets out the non-conforming measures maintained by that Party pursuant to Article 15.4(3).

---

1 For greater certainty, nothing in this Chapter imposes obligations to allow the electronic supply of a service nor the electronic transmission of content associated with those services except in accordance with the provisions of Chapter Eleven (Cross-Border Trade in Services) or Chapter Twelve (Financial Services), including their Annexes (Non-Conforming Measures).

2 For greater certainty, if one or more of the criteria of paragraph 1(a) or (b) is satisfied, the obligation to accord no less favorable treatment to that digital product applies even if one or more of the activities listed in paragraph 1(a) occurs outside of the territory of the other Party, or one or more persons listed in paragraph 1(b) are persons of the other Party or a non-Party.

3 For greater certainty, digital products do not include digitized representations of financial instruments, including money. The definition of digital products is without prejudice to the on-going WTO discussions on whether trade in digital products transmitted electronically is a good or a service.

Chapter Sixteen

Competition Policy, Designated Monopolies, and State Enterprises

Article 16.1: Anticompetitive Business Conduct

1. Each Party shall adopt or maintain competition laws that proscribe anticompetitive business conduct, with the objective of promoting economic efficiency and consumer welfare, and shall take appropriate action with respect to such conduct.

2. Each Party shall maintain an authority responsible for the enforcement of its national competition laws. The enforcement policy of each Party's national competition authorities is not to discriminate on the basis of the nationality of the subjects of their proceedings. Each Party shall ensure that:

(a) before it imposes a sanction or remedy against any person for violating its competition law, it affords the person the right to be heard and to present evidence, except that it may provide for the person to be heard and present evidence within a reasonable time after it imposes an interim sanction or remedy; and

(b) an independent court or tribunal imposes or, at the person's request, reviews any such sanction or remedy.

3. Nothing in this Chapter shall be construed to infringe each Party's autonomy in developing its competition policies or in deciding how to enforce its competition laws.

Article 16.2: Cooperation

The Parties agree to cooperate in the area of competition policy. The Parties recognize the importance of cooperation and coordination between their respective authorities to further effective competition law enforcement in the free trade area. Accordingly, the Parties shall cooperate on issues of competition law enforcement, including notification, consultation, and exchange of information relating to the enforcement of the Parties' competition laws and policies.

Article 16.3: Designated Monopolies

1. Nothing in this Chapter shall be construed to prevent a Party from designating a monopoly.
2. Where a Party designates a monopoly and the designation may affect the interests of persons of the other Party, the Party shall:

(a) at the time of the designation endeavor to introduce such conditions on the operation of the monopoly as will minimize or eliminate any nullification or impairment of benefits in the sense of Annex 22.2 (Nullification or Impairment); and

(b) provide written notification, in advance wherever possible, to the other Party of the designation and any such conditions.

3. Each Party shall ensure that any privately-owned monopoly that it designates after the date of entry into force of this Agreement and any government monopoly that it designates or has designated:

(a) acts in a manner that is not inconsistent with the Party's obligations under this Agreement wherever such a monopoly exercises any regulatory, administrative, or other governmental authority that the Party has delegated to it in connection with the monopoly good or service, such as the power to grant import or export licenses, approve commercial transactions, or impose quotas, fees, or other charges;

(b) 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, except to comply with any terms of its designation that are not inconsistent with subparagraph (c) or (d);

(c) provides non-discriminatory treatment to covered investments, to goods of the other Party, and to service suppliers of the other Party in its purchase or sale of the monopoly good or service in the relevant market; and

(d) does not use its monopoly position to engage, either directly or indirectly, including through its dealings with its parent, subsidiaries, or other enterprises with common ownership, in anticompetitive practices in a non-monopolized market in its territory that adversely affect covered investments.

4. This Article does not apply to procurement.

Article 16.4: State Enterprises

1. Nothing in this Agreement shall be construed to prevent a Party from establishing or maintaining a state enterprise.
2. Each Party shall ensure that any state enterprise that it establishes or maintains acts in a manner that is not inconsistent with the Party's obligations under this Agreement wherever such enterprise exercises any regulatory, administrative, or other governmental authority that the Party has delegated to it, such as the power to expropriate, grant licenses, approve commercial transactions, or impose quotas, fees, or other charges.
3. Each Party shall ensure that any state enterprise that it establishes or maintains accords non-discriminatory treatment in the sale of its goods or services to covered investments.

Article 16.5: Differences in Pricing
The charging of different prices in different markets, or within the same market, where such differences are based on normal commercial considerations, such as taking account of supply and demand conditions, is not in itself inconsistent with Articles 16.3 and 16.4.

Article 16.6: Transparency and Information Requests
1. The Parties recognize the value of transparency of government competition policies.
2. On request, each Party shall make available to the other Party public information concerning its:

(a) competition law enforcement activities; and

(b) state enterprises and designated monopolies, public or private, at any level of government.

Requests under subparagraph (b) shall indicate the entities or localities involved, specify the particular products and markets concerned, and include indicia of practices that may restrict trade or investment between the Parties.
3. On request, each Party shall make available to the other Party public information concerning exemptions provided under its competition laws. Requests shall specify the particular goods and markets of interest and include indicia that the exemption may restrict trade or investment between the Parties.

Article 16.7: Consultations
To foster understanding between the Parties, or to address specific matters that arise under this Chapter, each Party shall, on request of the other Party, enter into consultations regarding representations made by the other Party. In its request, the Party shall indicate, if relevant, how the matter affects trade or investment between the Parties. The Party addressed shall accord full and sympathetic consideration to the concerns of the other Party.

Article 16.8: Disputes
Neither Party may have recourse to dispute settlement under this Agreement for any matter arising under Article 16.1, 16.2, or 16.7.

Article 16.9: Definitions
For purposes of this Chapter:
a **delegation** includes a legislative grant, and a government order, directive, or other act, transferring to the monopoly or state enterprise, or authorizing the exercise by the monopoly or state enterprise of, governmental authority;

designate means to establish, designate, or authorize, formally or in effect, a monopoly or to expand the scope of a monopoly to cover an additional good or service;

government monopoly means a monopoly that is owned, or controlled through ownership interests, by the national government of a Party or by another such monopoly;

in accordance with commercial considerations means consistent with normal business practices of privately-held enterprises in the relevant business or industry;

market means the geographic and commercial market for a good or service;

monopoly means an entity, including a consortium or government agency, that in any relevant market in the territory of a Party is designated as the sole provider or purchaser of a good or service, but does not include an entity that has been granted an exclusive intellectual property right solely by reason of such grant; and

non-discriminatory treatment means the better of national treatment and most-favored nation treatment, as set out in the relevant provisions of this Agreement.

Chapter Seventeen

Intellectual Property Rights

The Parties,

Desiring to reduce distortions and impediments to trade between the Parties;

Desiring to enhance the intellectual property systems of the two Parties to account for the latest technological developments and to ensure that measures and procedures to enforce intellectual property rights do not themselves become barriers to legitimate trade;

Desiring to promote greater efficiency and transparency in the administration of intellectual property systems of the Parties;

Desiring to build on the foundations established in existing international agreements in the field of intellectual property, including the World Trade Organization (WTO) *Agreement on Trade-Related Aspects of Intellectual Property Rights* (TRIPS Agreement) and affirming the rights and obligations set forth in the TRIPS Agreement;

Recognizing the principles set out in the Declaration on the TRIPS Agreement on Public Health, adopted on November 14, 2001, by the WTO at the Fourth WTO Ministerial Conference, held in Doha, Qatar;

Emphasizing that the protection and enforcement of intellectual property rights is a fundamental principle of this Chapter that helps promote technological innovation as well as the transfer and dissemination of technology to the mutual advantage of technology producers and users, and that encourages the development of social and economic well-being;

Convinced of the importance of efforts to encourage private and public investment for research, development, and innovation;

Recognizing that the business community of each Party should be encouraged to participate in programs and initiatives for research, development, innovation, and the transfer of technology implemented by the other Party;

Recognizing the need to achieve a balance between the rights of right holders and the legitimate interests of users and the community with regard to protected works;

Agree as follows:

Article 17.1: General Provisions

1. Each Party shall give effect to the provisions of this Chapter and may, but shall not be obliged to, implement in its domestic law more extensive protection than is required by this Chapter, provided that such protection does not contravene the provisions of this Chapter.

2. Before January 1, 2007, each Party shall ratify or accede to the *Patent Cooperation Treaty* (1984).

3. Before January 1, 2009, each Party shall ratify or accede to:

(a) the *International Convention for the Protection of New Varieties of Plants* (1991);

(b) the *Trademark Law Treaty* (1994); and

(c) the *Convention Relating to the Distribution of Programme-Carrying Signals Transmitted by Satellite* (1974).

4. Each Party shall undertake reasonable efforts to ratify or accede to the following agreements in a manner consistent with its domestic law:

(a) the *Patent Law Treaty* (2000);

(b) the *Hague Agreement Concerning the International Registration of Industrial Designs* (1999); and

(c) the *Protocol Relating to the Madrid Agreement Concerning the International Registration of Marks* (1989).

5. Nothing in this Chapter concerning intellectual property rights shall derogate from the obligations and rights of one Party with respect to the other by virtue of the TRIPS Agreement or multilateral intellectual property agreements concluded or administered under the auspices of the World Intellectual Property Organization (WIPO).
6. In respect of all categories of intellectual property covered in this Chapter, each Party shall accord to persons of the other Party treatment no less favorable than it accords to its own persons with regard to the protection[1] and enjoyment of such intellectual property rights and any benefits derived from such rights. With respect to secondary uses of phonograms by means of analog communications and free over-the-air radio broadcasting, however, a Party may limit the rights of the performers and producers of the other Party to the rights its persons are accorded within the jurisdiction of the other Party.
7. Each Party may derogate from paragraph 6 in relation to its judicial and administrative procedures, including the designation of an address for service or the appointment of an agent within the jurisdiction of that Party, only where such derogations are necessary to secure compliance with laws and regulations that are not inconsistent with the provisions of this Chapter and where such practices are not applied in a manner that would constitute a disguised restriction on trade.
8. Paragraphs 6 and 7 do not apply to procedures provided in multilateral agreements concluded under the auspices of WIPO relating to the acquisition or maintenance of intellectual property rights.
9. This Chapter does not give rise to obligations in respect of acts that occurred before the date of entry into force of this Agreement.
10. Except as otherwise provided for in this Chapter, this Chapter gives rise to obligations in respect of all subject matter existing at the date of entry into force of this Agreement, and which is protected by a Party on that date, or which meets or comes subsequently to meet the criteria for protection under the terms of this Chapter. In respect of paragraphs 10 and 11, copyright and related rights obligations with respect to existing works and phonograms shall be determined solely under Article 17.7(7).
11. Neither Party shall be obligated to restore protection to subject matter which on the date of entry into force of this Chapter has fallen into the public domain in that Party.
12. Each Party shall ensure that all laws, regulations, and procedures concerning the protection or enforcement of intellectual property rights, and all final judicial decisions and administrative rulings of general applicability pertaining to the enforcement of such rights, shall be in writing and shall be published,[2] or where such publication is not practicable, made publicly available, in a national language in such a manner as to enable the other Party and right holders to become acquainted with

them, with the object of making the protection and enforcement of intellectual property rights transparent. Nothing in this paragraph shall require a Party to disclose confidential information the disclosure of which would impede law enforcement or otherwise be contrary to the public interest or would prejudice the legitimate commercial interests of particular enterprises, public or private.
13. Nothing in this Chapter prevents a Party from adopting measures necessary to prevent anticompetitive practices that may result from the abuse of the intellectual property rights set forth in this Chapter.
14. For the purposes of strengthening the development and protection of intellectual property, and implementing the obligations of this Chapter, the Parties will cooperate, on mutually agreed terms and subject to the availability of appropriated funds, by means of:

(a) educational and dissemination projects on the use of intellectual property as a research and innovation tool, as well as on the enforcement of intellectual property;

(b) appropriate coordination, training, specialization courses, and exchange of information between the intellectual property offices and other institutions of the Parties; and

(c) enhancing the knowledge, development, and implementation of the electronic systems used for the management of intellectual property.

Article 17.2: Trademarks
1. Each Party shall provide that trademarks shall include collective, certification, and sound marks, and may include geographical indications[3] and scent marks. Neither Party is obligated to treat certification marks as a separate category in its domestic law, provided that the signs as such are protected.
2. Each Party shall afford an opportunity for interested parties to oppose the application for a trademark**.**
3. Pursuant to Article 20 of the TRIPS Agreement, each Party shall ensure that any measures mandating the use of the term customary in common language as the common name for a good ("common name") including, *inter alia*, requirements concerning the relative size, placement, or style of use of the trademark in relation to the common name, do not impair the use or effectiveness of trademarks used in relation to such good.
4. Each Party shall provide that the owner of a registered trademark shall have the exclusive right to prevent third parties not having the owner's consent from using in the course of trade identical or similar signs, including subsequent geographical indications, for goods or services that are related to those goods or services in respect of which the trademark is registered, where such use would result in a likelihood of confusion.[4]
5. Each Party may provide limited exceptions to the rights conferred by a trademark, such as fair use of descriptive terms, provided that such exceptions take account of the legitimate interests of the owner of the trademark and of third parties.
6. Article 6*bis* of the *Paris Convention for the Protection of Industrial Property* (1967) (Paris Convention) shall apply, *mutatis mutandis*, to goods or services which are not similar to those identified by a well-known trademark, whether registered or not, provided that use of that trademark in relation to those goods or services would indicate a connection between those goods or services and the owner of the trademark and provided that the interests of the owner of the trademark are likely to be damaged by such use.
7. Each Party shall, according to its domestic law, provide for appropriate measures to prohibit or cancel the registration of a trademark identical or similar to a well-known trademark, if the use of that trademark by the registration applicant is likely to cause confusion, or to cause mistake, or to deceive or risk associating the trademark with the owner of the well-known trademark, or constitutes unfair exploitation of the reputation of the trademark. Such measures to prohibit or cancel registration shall not apply when the registration applicant is the owner of the well-known trademark.
8. In determining whether a trademark is well-known, a Party shall not require that the reputation of the trademark extend beyond the sector of the public that normally deals with the relevant goods or services.
9. Each Party recognizes the importance of the *Joint Recommendation Concerning Provisions on the Protection of Well-Known Marks* (1999), adopted by the Assembly of the Paris Union for the Protection

of Industrial Property and the General Assembly of WIPO and shall be guided by the principles contained in this Recommendation.
10. Each Party shall provide a system for the registration of trademarks, which shall include:

(a) providing to the applicant a communication in writing, which may be electronic, of the reasons for any refusal to register a trademark;

(b) providing to the applicant an opportunity to respond to communications from the trademark authorities, contest an initial refusal, and appeal judicially any final refusal to register; and

(c) a requirement that decisions in opposition or cancellation proceedings be reasoned and in writing.

11. Each Party shall work to provide, to the maximum degree practical, a system for the electronic application, processing, registration, and maintenance of trademarks.
12. In relation to trademarks, Parties are encouraged to classify goods and services according to the classification of the *Nice Agreement Concerning the International Classification of Goods and Services for the Purposes of the Registration of Marks* (1979). In addition, each Party shall provide that:

(a) each registration or publication which concerns a trademark application or registration and which indicates the relevant goods or services shall indicate the goods or services by their names; and

(b) goods or services may not be considered as being similar to each other simply on the ground that, in any registration or publication, they appear in the same class of any classification system, including the Nice Classification. Conversely, goods or services may not be considered as being dissimilar from each other simply on the ground that, in any registration or publication, they appear in different classes of any classification system, including the Nice Classification.

Article 17.3: Domain Names on the Internet
1. Each Party shall require that the management of its country-code top level domain (ccTLD) provide an appropriate procedure for the settlement of disputes, based on the principles established in the *Uniform Domain-Name Dispute-Resolution Policy* (UDRP), in order to address the problem of trademark cyber-piracy.
2. Each Party shall, in addition, require that the management of its respective ccTLD provide online public access to a reliable and accurate database of contact information for domain-name registrants, in accordance with each Party's law regarding protection of personal data.
Article 17.4: Geographical Indications [5]
1. Geographical indications, for the purposes of this Article, are indications which identify a good as originating in the territory of a Party, or a region or locality in that territory, where a given quality, reputation, or other characteristic of the good is essentially attributable to its geographical origin. Any sign or combination of signs (such as words, including geographical and personal names, letters, numerals, figurative elements, and colors), in any form whatsoever, shall be eligible for protection or recognition as a geographical indication.
2. Chile shall:

(a) provide the legal means to identify and protect geographical indications of United States persons that meet the criteria in paragraph 1; and

(b) provide to United States geographical indications of wines and spirits the same recognition as Chile accords to wines and spirits under the Chilean geographical indications registration system.

3. The United States shall:

(a) provide the legal means to identify and protect the geographical indications of Chile that meet the criteria in paragraph 1; and

(b) provide to Chilean geographical indications of wines and spirits the same recognition as the United States accords to wines and spirits under the Certificate of Label Approval (COLA) system as administered by the Alcohol and Tobacco Tax and Trade Bureau, Department of Treasury (TTB), or any successor agencies. Names that Chile desires to be included in the regulation set forth in 27 CFR Part 12 (Foreign Nongeneric), or any successor to that regulation, will be governed by paragraph 4 of this Article.

4. Each Party shall provide the means for persons of the other Party to apply for protection or petition for recognition of geographical indications. Each Party shall accept applications or petitions, as the case may be, without the requirement for intercession by a Party on behalf of its persons.
5. Each Party shall process applications or petitions, as the case may be, for geographical indications with a minimum of formalities.
6. Each Party shall make the regulations governing filing of such applications or petitions, as the case may be, available to the public in both printed and electronic form.
7. Each Party shall ensure that applications or petitions, as the case may be, for geographical indications are published for opposition, and shall provide procedures to effect opposition of geographical indications that are the subject of applications or petitions. Each Party shall also provide procedures to cancel any registration resulting from an application or a petition.
8. Each Party shall ensure that measures governing the filing of applications or petitions, as the case may be, for geographical indications set out clearly the procedures for these actions. Such procedures shall include contact information sufficient for applicants or petitioners to obtain specific procedural guidance regarding the processing of applications or petitions.
9. The Parties acknowledge the principle of exclusivity incorporated in the Paris Convention and TRIPS Agreement, with respect to rights in trademarks.
10. After the date of entry into force of this Agreement, each Party shall ensure that grounds for refusing protection or registration of a geographical indication include the following:

(a) the geographical indication is confusingly similar to a pre-existing pending good faith application for a trademark or a pre-existing trademark registered in that Party; or

(b) the geographical indication is confusingly similar to a pre-existing trademark, the rights to which have been acquired through use in good faith in that Party.

11. Within six months of the entry into force of this Agreement, each Party shall communicate to the public the means by which it intends to implement paragraphs 2 through 10.

Article 17.5: Copyright [6]

1. Each Party shall provide that authors[7] of literary and artistic works have the right[8] to authorize or prohibit all reproductions of their works, in any manner or form, permanent or temporary (including temporary storage in electronic form).
2. Without prejudice to the provisions of Articles 11(1)(ii), 11*bis*(1)(i) and (ii), 11*ter*(1)(ii), 14(1)(ii), and 14*bis*(1) of the *Berne Convention for the Protection of Literary and Artistic Works* (1971) (Berne Convention), each Party shall provide to authors of literary and artistic works the right to authorize or prohibit the communication to the public of their works, by wire or wireless means, including the making available to the public of their works in such a way that members of the public may access these works from a place and at a time individually chosen by them.[9]
3. Each Party shall provide to authors of literary and artistic works the right to authorize the making available to the public of the original and copies[10] of their works through sale or other transfer of ownership.
4. Each Party shall provide that where the term of protection of a work (including a photographic work) is calculated:

(a) on the basis of the life of a natural person, the term shall be not less than the life of the author and 70 years after the author's death; and

(b) on a basis other than the life of a natural person, the term shall be

(i) not less than 70 years from the end of the calendar year of the first authorized publication of the work, or

(ii) failing such authorized publication within 50 years from the creation of the work, not less than 70 years from the end of the calendar year of the creation of the work.

Article 17.6: Related Rights[11]

1. Each Party shall provide that performers and producers of phonograms[12] have the right to authorize or prohibit all reproductions of their performances or phonograms, in any manner or form, permanent or temporary (including temporary storage in electronic form).
2. Each Party shall provide to performers and producers of phonograms the right to authorize the making available to the public of the original and copies[13] of their performances or phonograms through sale or other transfer of ownership.
3. Each Party shall accord the rights provided under this Chapter to the performers and producers of phonograms who are persons of the other Party and to performances or phonograms first published or first fixed in a Party. A performance or phonogram shall be considered first published in any Party in which it is published within 30 days of its original publication.[14]
4. Each Party shall provide to performers the right to authorize or prohibit:

(a) the broadcasting and communication to the public of their unfixed performances except where the performance is already a broadcast performance, and

(b) the fixation of their unfixed performances.

5.

(a) Each Party shall provide to performers and producers of phonograms the right to authorize or prohibit the broadcasting or any communication to the public of their fixed performances or phonograms, by wire or wireless means, including the making available to the public of those performances and phonograms in such a way that members of the public may access them from a place and at a time individually chosen by them.

(b) Notwithstanding paragraph 5(a) and Article 17.7(3), the right to authorize or prohibit the broadcasting or communication to the public of performances or phonograms through analog communication and free over-the-air broadcasting, and the exceptions or limitations to this right for such activities, shall be a matter of domestic law. Each Party may adopt exceptions and limitations, including compulsory licenses, to the right to authorize or prohibit the broadcasting or communication to the public of performances or phonograms in respect of other non interactive transmissions in accordance with Article 17.7(3). Such compulsory licenses shall not prejudice the right of the performer or producer of a phonogram to obtain equitable remuneration.

6. Neither Party shall subject the enjoyment and exercise of the rights of performers and producers of phonograms provided for in this Chapter to any formality.
7. Each Party shall provide that where the term of protection of a performance or phonogram is to be calculated on a basis other than the life of a natural person, the term shall be:

(a) not less than 70 years from the end of the calendar year of the first authorized publication of the performance or phonogram, or

(b) failing such authorized publication within 50 years from the fixation of the performance or phonogram, not less than 70 years from the end of the calendar year of the fixation of the performance or phonogram.

8. For the purposes of Articles 17.6 and 17.7, the following definitions apply with respect to performers and producers of phonograms:

(a) **performers** means actors, singers, musicians, dancers, and other persons who act, sing, deliver, declaim, play in, interpret, or otherwise perform literary or artistic works or expressions of folklore;

(b) **phonogram** means the fixation of the sounds of a performance or of other sounds, or of a representation of sounds, other than in the form of a fixation incorporated in a cinematographic or other audiovisual work;[15]

(c) **fixation** means the embodiment of sounds, or of the representations thereof, from which they can be perceived, reproduced, or communicated through a device;

(d) **producer of a phonogram** means the person, or the legal entity, who or which takes the initiative and has the responsibility for the first fixation of the sounds of a performance or other sounds, or the representations of sounds;

(e) **publication** of a fixed performance or a phonogram means the offering of copies of the fixed performance or the phonogram to the public, with the consent of the right holder, and provided that copies are offered to the public in reasonable quantity;

(f) **broadcasting** means the transmission by wireless means for public reception of sounds or of images and sounds or of the representations thereof; such transmission by satellite is also broadcasting; transmission of encrypted signals is broadcasting where the means for decrypting are provided to the public by the broadcasting organization or with its consent; and

(g) **communication to the public** of a performance or a phonogram means the transmission to the public by any medium, otherwise than by broadcasting, of sounds of a performance or the sounds or the representations of sounds fixed in a phonogram. For the purposes of Article 17.6(5) “communication to the public” includes making the sounds or representations of sounds fixed in a phonogram audible to the public.

Article 17.7: Obligations Common to Copyright and Related Rights[16]

1. Each Party shall establish that in cases where authorization is needed from both the author of a work embodied in a phonogram and a performer or producer owning rights in the phonogram, the need for the authorization of the author does not cease to exist because the authorization of the performer and producer is also required. Likewise, each Party shall establish that in cases where authorization is needed from both the author of a work embodied in a phonogram and a performer or producer owning rights in the phonogram, the need for the authorization of the performer or producer does not cease to exist because the authorization of the author is also required.
2.

(a) Each Party shall provide that for copyright and related rights:

(i) any person owning any economic right, *i.e.*, not a moral right, may freely and separately transfer such right by contract; and

(ii) any person who has acquired or owns any such economic right by virtue of a contract, including contracts of employment underlying the creation of works and phonograms, shall be permitted to exercise that right in its own name and enjoy fully the benefits derived from that right.

(b) Each Party may establish:

(i) which contracts of employment underlying the creation of works or phonograms shall, in the absence of a written agreement, result in a transfer of economic rights by operation of law; and

(ii) reasonable limits to the provisions in paragraph 2(a) to protect the interests of the original right holders, taking into account the legitimate interests of the transferees.

3. Each Party shall confine limitations or exceptions to rights to certain special cases which do not conflict with a normal exploitation of the work, performance, or phonogram, and do not unreasonably prejudice the legitimate interests of the right holder.[17]
4. In order to confirm that all federal or central government agencies use computer software only as authorized, each Party shall issue appropriate laws, orders, regulations, or administrative or executive decrees to actively regulate the acquisition and management of software for such government use. Such measures may take the form of procedures such as preparing and maintaining inventories of software present on agencies' computers and inventories of software licenses.
5. In order to provide adequate legal protection and effective legal remedies against the circumvention of effective technological measures that are used by authors, performers, and producers of phonograms in connection with the exercise of their rights and that restrict unauthorized acts in respect of their works, performances, and phonograms, protected by copyright and related rights:

(a) each Party shall provide that any person who knowingly[18] circumvents without authorization of the right holder or law consistent with this Agreement any effective technological measure that controls access to a protected work, performance, or phonogram shall be civilly liable and, in appropriate circumstances, shall be criminally liable, or said conduct shall be considered an aggravating circumstance of another offense.[19] No Party is required to impose civil or criminal liability for a person who circumvents any effective technological measure that protects any of the exclusive rights of copyright or related rights in a protected work, but does not control access to such work.

(b) each Party shall also provide administrative or civil measures, and, where the conduct is willful and for prohibited commercial purposes, criminal measures with regard to the manufacture, import, distribution, sale, or rental of devices, products, or components or the provision of services which:

(i) are promoted, advertised, or marketed for the purpose of circumvention of any effective technological measure, or

(ii) do not have a commercially significant purpose or use other than to circumvent any effective technological measure, or

(iii) are primarily designed, produced, adapted, or performed for the purpose of enabling or facilitating the circumvention of any effective technological measures.

Each Party shall ensure that due account is given, *inter alia*, to the scientific or educational purpose of the conduct of the defendant in applying criminal measures under any provisions implementing this subparagraph. A Party may exempt from criminal liability, and if carried out in good faith without knowledge that the conduct is prohibited, from civil liability, acts prohibited under this subparagraph that are carried out in connection with a nonprofit library, archive or educational institution.

(c) Each Party shall ensure that nothing in subparagraphs (a) and (b) affects rights, remedies, limitations, or defenses with respect to copyright or related rights infringement.

(d) Each Party shall confine limitations and exceptions to measures implementing subparagraphs (a) and (b) to certain special cases that do not impair the adequacy of legal protection or the effectiveness of legal remedies against the circumvention of effective technological measures. In particular, each Party may establish exemptions and limitations to address the following situations and activities in accordance with subparagraph (e):

(i) when an actual or likely adverse effect on non infringing uses with respect to a particular class of works or exceptions or limitation to copyright or related rights with respect to a class of users is demonstrated or recognized through a legislative or administrative proceeding established by law, provided that any limitation or exception adopted in reliance upon this subparagraph (d)(i) shall have effect for a period of not more than three years from the date of conclusion of such proceeding;

(ii) noninfringing reverse engineering activities with regard to a lawfully obtained copy of a computer program, carried out in good faith with respect to particular elements of that computer program that have not been readily available to that person,[20] for the sole purpose of achieving interoperability of an independently created computer program with other programs;[21]

(iii) noninfringing good faith activities, carried out by a researcher who has lawfully obtained a copy, performance, or display of a work, and who has made a reasonable attempt to obtain authorization for such activities, to the extent necessary for the sole purpose of identifying and analyzing flaws and vulnerabilities of encryption technologies;[22]

(iv) the inclusion of a component or part for the sole purpose of preventing the access of minors to inappropriate online content in a technology, product, service, or device that does not itself violate any measures implementing subparagraphs (a) and (b);

(v) noninfringing good faith activities that are authorized by the owner of a computer, computer system, or computer network for the sole purpose of testing, investigating, or correcting the security of that computer, computer system, or computer network;

(vi) noninfringing activities for the sole purpose of identifying and disabling a capability to carry out undisclosed collection or dissemination of personally identifying information reflecting the online activities of a natural person in a way that has no other effect on the ability of any person to gain access to any work;

(vii) lawfully authorized activities carried out by government employees, agents, or contractors for the purpose of law enforcement, intelligence, or similar government activities; and

(viii) access by a nonprofit library, archive, or educational institution to a work not otherwise available to it, for the sole purpose of making acquisition decisions.

(e) Each Party may apply the exceptions and limitations for the situations and activities set forth in subparagraph (d) as follows:

(i) any measure implementing subparagraph (a) may be subject to the exceptions and limitations with respect to each situation and activity set forth in subparagraph (d).

(ii) any measure implementing subparagraph (b), as it applies to effective technological measures that control access to a work, may be subject to exceptions and limitations with respect to the activities set forth in subparagraphs (d)(ii), (iii), (iv), (v), and (vii).

(iii) any measure implementing subparagraph (b), as it applies to effective technological measures that protect any copyright or any rights related to copyright, may be subject to exceptions and limitations with respect to the activities set forth in subparagraph (d)(ii) and (vii).

(f) **Effective technological measure** means any technology, device, or component that, in the normal course of its operation, controls access to a work, performance, phonogram, or any other protected material, or that protects any copyright or any rights related to copyright, and cannot, in the usual case, be circumvented accidentally.

6. In order to provide adequate and effective legal remedies to protect rights management information:

(a) each Party shall provide that any person who without authority, and knowing, or, with respect to civil remedies, having reasonable grounds to know, that it will induce, enable, facilitate, or conceal an infringement of any copyright or related right,

(i) knowingly removes or alters any rights management information;

(ii) distributes or imports for distribution rights management information knowing that the rights management information has been altered without authority; or

(iii) distributes, imports for distribution, broadcasts, communicates, or makes available to the public copies of works or phonograms, knowing that rights management information has been removed or altered without authority, shall be liable, upon the suit of any injured person, and subject to the remedies in Article 17.11(5). Each Party shall provide for application of criminal procedures and remedies at least in cases where acts prohibited in the subparagraph are done willfully and for purposes of commercial advantage. A Party may exempt from criminal liability prohibited acts done in connection with a nonprofit library, archive, educational institution, or broadcasting entity established without a profit-making purpose.

(b) **Rights management information** means:

(i) information which identifies a work, performance, or phonogram; the author of the work, the performer of the performance, or the producer of the phonogram; or the owner of any right in the work, performance, or phonogram;

(ii) information about the terms and conditions of the use of the work, performance, or phonogram; and

(iii) any numbers or codes that represent such information, when any of these items is attached to a copy of the work, performance, or phonogram or appears in conjunction with the communication or

making available of a work, performance, or phonogram to the public. Nothing in paragraph 6(a) requires the owner of any right in the work, performance, or phonogram to attach rights management information to copies of the owner's work, performance, or phonogram or to cause rights management information to appear in connection with a communication of the work, performance, or phonogram to the public.

7. Each Party shall apply Article 18 of the Berne Convention, *mutatis mutandis*, to all the protections of copyright and related rights and effective technological measures and rights management information in Articles 17.5, 17.6, and 17.7.

Article 17.8: Protection of Encrypted Program-Carrying Satellite Signals

1. Each Party shall make it:

(a) a civil or criminal offense to manufacture, assemble, modify, import, export, sell, lease, or otherwise distribute a tangible or intangible device or system, knowing[23] that the device or system's principal function is solely to assist in decoding an encrypted program-carrying satellite signal without the authorization of the lawful distributor of such signal; and

(b) a civil or criminal offense willfully to receive or further distribute an encrypted program-carrying satellite signal knowing that it has been decoded without the authorization of the lawful distributor of the signal.

2. Each Party shall provide that any person injured by any activity described in subparagraphs 1(a) or 1(b), including any person that holds an interest in the encrypted programming signal or the content of that signal, shall be permitted to initiate a civil action under any measure implementing such subparagraphs.

Article 17.9: Patents

1. Each Party shall make patents available for any invention, whether a product or a process, in all fields of technology, provided that the invention is new, involves an inventive step, and is capable of industrial application. For purposes of this Article, a Party may treat the terms "inventive step" and "capable of industrial application" as being synonymous with the terms "non-obvious" and "useful", respectively.
2. Each Party will undertake reasonable efforts, through a transparent and participatory process, to develop and propose legislation within 4 years from the entry into force of this Agreement that makes available patent protection for plants that are new, involve an inventive step, and are capable of industrial application.
3. Each Party may provide limited exceptions to the exclusive rights conferred by a patent, provided that such exceptions do not unreasonably conflict with a normal exploitation of the patent and do not unreasonably prejudice the legitimate interests of the patent owner, taking account of the legitimate interests of third parties.
4. If a Party permits the use by a third party of the subject matter of a subsisting patent to support an application for marketing approval or sanitary permit of a pharmaceutical product, the Party shall provide that any product produced under such authority shall not be made, used, or sold in the territory of the Party other than for purposes related to meeting requirements for marketing approval or the sanitary permit, and if export is permitted, the product shall only be exported outside the territory of the Party for purposes of meeting requirements for issuing marketing approval or sanitary permits in the exporting Party.
5. A Party may revoke or cancel a patent only when grounds exist that would have justified a refusal to grant the patent.[24]
6. Each Party shall provide for the adjustment of the term of a patent, at the request of the patent owner, to compensate for unreasonable delays that occur in granting the patent. For the purposes of this paragraph, an unreasonable delay shall be understood to include a delay in the issuance of the patent of more than five years from the date of filing of the application in the Party, or three years after a request for examination of the application has been made, whichever is later, provided that periods of time attributable to actions of the patent applicant need not be included in the determination of such delays.

7. Neither Party shall use a public disclosure to bar patentability based upon a lack of novelty or inventive step if the public disclosure (a) was made or authorized by, or derived from, the patent applicant and (b) occurs within 12 months prior to the date of filing of the application in the Party.

Article 17.10: Measures Related to Certain Regulated Products

1. If a Party requires the submission of undisclosed information concerning the safety and efficacy of a pharmaceutical or agricultural chemical product which utilizes a new chemical entity, which product has not been previously approved, to grant a marketing approval or sanitary permit for such product, the Party shall not permit third parties not having the consent of the person providing the information to market a product based on this new chemical entity, on the basis of the approval granted to the party submitting such information. A Party shall maintain this prohibition for a period of at least five years from the date of approval for a pharmaceutical product and ten years from the date of approval for an agricultural chemical product.[25] Each Party shall protect such information against disclosure except where necessary to protect the public.

2. With respect to pharmaceutical products that are subject to a patent, each Party shall:

> (a) make available an extension of the patent term to compensate the patent owner for unreasonable curtailment of the patent term as a result of the marketing approval process;
>
> (b) make available to the patent owner the identity of any third party requesting marketing approval effective during the term of the patent; and
>
> (c) not grant marketing approval to any third party prior to the expiration of the patent term, unless by consent or acquiescence of the patent owner.

Article 17.11: Enforcement of Intellectual Property Rights

General Obligations

1. Each Party shall ensure that procedures and remedies set forth in this Article for enforcement of intellectual property rights are established in accordance with its domestic law.[26] Such administrative and judicial procedures and remedies, both civil and criminal, shall be made available to the holders of such rights in accordance with the principles of due process that each Party recognizes as well as with the foundations of its own legal system.

2. This Article does not create any obligation:

> (a) to put in place a judicial system for the enforcement of intellectual property rights distinct from that already existing for the enforcement of law in general, or
>
> (b) with respect to the distribution of resources for the enforcement of intellectual property rights and the enforcement of law in general.

The distribution of resources for the enforcement of intellectual property rights shall not excuse a Party from compliance with the provisions of this Article.

3. Final decisions on the merits of a case of general application shall be in writing and shall state the reasons or the legal basis upon which decisions are based.

4. Each Party shall publicize or make available to the public information that each Party might collect regarding its efforts to provide effective enforcement of intellectual property rights, including statistical information.

5. Each Party shall make available the civil remedies set forth in this Article for the acts described in the Articles 17.7(5) and 17.7(6).

6. In civil, administrative, and criminal proceedings involving copyright or related rights, each Party shall provide that:

> (a) the natural person or legal entity whose name is indicated as the author, producer, performer, or publisher of the work, performance, or phonogram in the usual manner,[27] shall, in the absence of proof to the contrary, be presumed to be the designated right holder in such work, performance, or phonogram.

(b) it shall be presumed, in the absence of proof to the contrary, that the copyright or related right subsists in such subject matter. A Party may require, as a condition for according such presumption of subsistence, that the work appear on its face to be original and that it bear a publication date not more than 70 years prior to the date of the alleged infringement.

Civil and Administrative Procedures[28] *and Remedies*

7. Each Party shall make available to right holders[29] civil judicial procedures concerning the enforcement of any intellectual property right.

8. Each Party shall provide that:

(a) In civil judicial proceedings, the judicial authorities shall have the authority to order the infringer to pay the right holder:

(i) damages adequate to compensate for the injury the right holder has suffered because of an infringement of that person's intellectual property right by an infringer engaged in infringing activity, and

(ii) at least in the case of infringements of trademark, copyright, or related rights, the profits of the infringer that are attributable to the infringement and are not already taken into account in determining injury.

(b) In determining injury to the right holder, the judicial authorities shall, *inter alia*, consider the legitimate retail value of the infringed goods.

9. In civil judicial proceedings, each Party shall, at least with respect to works protected by copyright or related rights and trademark counterfeiting, establish pre-established damages, prescribed by each Party's domestic law, that the judicial authorities deem reasonable in light of the goals of the intellectual property system and the objectives set forth in this Chapter.

10. Each Party shall provide that, except in exceptional circumstances, its judicial authorities have the authority to order, at the conclusion of civil judicial proceedings concerning infringement of copyright or related rights and trademark counterfeiting, that the prevailing right holder shall be paid the court costs or fees and reasonable attorney's fees by the infringing party.

11. In civil judicial proceedings concerning copyright and related rights infringement and trademark counterfeiting, each Party shall provide that its judicial authorities shall have the authority to order the seizure of suspected infringing goods, and of material and implements by means of which such goods are produced where necessary to prevent further infringement.

12. In civil judicial proceedings, each Party shall provide that:

(a) its judicial authorities shall have the authority to order, at their discretion, the destruction, except in exceptional cases, of the goods determined to be infringing goods;

(b) the charitable donation of goods that infringe copyright and related rights shall not be ordered by the judicial authorities without the authorization of the right holder other than in special cases that do not conflict with the normal exploitation of the work, performance, or phonogram, and do not unreasonably prejudice the legitimate interests of the right holder;

(c) the judicial authorities shall have the authority to order, at their discretion, that material and implements actually used in the manufacture of the infringing goods be destroyed. In considering such requests, the judicial authorities shall take into account, *inter alia*, the need for proportionality between the gravity of the infringement and remedies ordered, as well as the interests of third parties holding an ownership, possessory, contractual, or secured interest; and

(d) in regard to counterfeited trademarked goods, the simple removal of the trademark unlawfully affixed shall not permit release of the goods into the channels of commerce. However, such goods may be donated to charity when the removal of the trademark eliminates the infringing characteristic of the good and the good is no longer identifiable with the removed trademark.

13. In civil judicial proceedings, each Party shall provide that the judicial authorities shall have the authority to order the infringer to provide any information the infringer may have regarding persons involved in the infringement, and regarding the distribution channels of infringing goods. Judicial authorities shall also have the authority to impose fines or imprisonment on infringers who do not comply with such orders, in accordance with each Party's domestic law.
14. To the extent that any civil remedy can be ordered as a result of administrative procedures on the merits of a case, such procedures shall conform to principles equivalent in substance to those set forth in paragraphs 1 through 13.
Provisional Measures
15. Each Party shall provide that requests for relief *inaudita altera parte* shall be acted upon expeditiously in accordance with the judicial procedural rules of that Party.
16. Each Party shall provide that:

(a) its judicial authorities have the authority to require the applicant for any provisional measure to provide any reasonably available evidence in order to satisfy themselves to a sufficient degree of certainty that the applicant is the holder of the right in question[30] and that infringement of such right is imminent, and to order the applicant to provide a reasonable security or equivalent assurance in an amount that is sufficient to protect the defendant and prevent abuse, set at a level so as not to unreasonably deter recourse to such procedures.

(b) in the event that judicial or other authorities appoint experts, technical or otherwise, that must be paid by the parties, such costs shall be set at a reasonable level taking into account the work performed, or if applicable, based on standardized fees, and shall not unreasonably deter recourse to provisional relief.

Special Requirements Related to Border Measures
17. Each Party shall provide that any right holder initiating procedures for suspension by the customs authorities of the release of suspected counterfeit trademark or pirated copyright goods[31] into free circulation is required to provide adequate evidence to satisfy the competent authorities that, under the laws of the Party of importation, there is *prima facie* an infringement of the right holder's intellectual property right and to supply sufficient information to make the suspected goods reasonably recognizable to the customs authorities.
The sufficient information required shall not unreasonably deter recourse to these procedures.
18. Each Party shall provide the competent authorities with the authority to require an applicant to provide a reasonable security or equivalent assurance sufficient to protect the defendant and the competent authorities and to prevent abuse. Such security or equivalent assurance shall not unreasonably deter recourse to these procedures.
19. Where the competent authorities have made a determination that goods are counterfeit or pirated, a Party shall grant the competent authorities the authority to inform the right holder, at the right holder's request, of the names and addresses of the consignor, the importer, and the consignee, and of the quantity of the goods in question.
20. Each Party shall provide that the competent authorities are permitted to initiate border measures *ex officio*, without the need for a formal complaint from a person or right holder. Such measures shall be used when there is reason to believe or suspect that goods being imported, destined for export, or moving in transit are counterfeit or pirated. In case of goods in transit, each Party, in conformity with other international agreements subscribed to by it, may provide that *ex officio* authority shall be exercised prior to sealing the container, or other means of conveyance, with the customs seal, as applicable.[32]
21. Each Party shall provide that:

(a) goods that have been found to be pirated or counterfeit by the competent authorities shall be destroyed, except in exceptional cases.

(b) in regard to counterfeit trademark goods, the simple removal of the trademark unlawfully affixed shall not be sufficient to permit the release of goods into the channels of commerce.

(c) in no event shall the competent authorities engage in, or permit, the re-exportation of counterfeit or pirated goods, nor shall they permit such goods to be subject to other customs procedures.

Criminal Procedures and Remedies
22. Each Party shall provide for application of criminal procedures and penalties at least in cases of willful trademark counterfeiting or piracy, on a commercial scale, of works, performances, or phonograms protected by copyright or related rights. Specifically, each Party shall ensure that:

(a)

(i) willfull infringement[33] of copyright and related rights for a commercial advantage or financial gain, is subject to criminal procedures and penalties;[34]

(ii) copyright or related rights piracy on a commercial scale includes the willful infringing reproduction or distribution, including by electronic means, of copies with a significant aggregate monetary value, calculated based on the legitimate retail value of the infringed goods;

(b) available remedies include sentences of imprisonment and/or monetary fines that are sufficient to provide a deterrent to future infringements and present a level of punishment consistent with the gravity of the offense, which shall be applied by the judicial authorities in light of, *inter alia,* these criteria;

(c) judicial authorities have the authority to order the seizure of suspected counterfeit or pirated goods, assets legally traceable to the infringing activity, documents and related materials, and implements that constitute evidence of the offense. Each Party shall further provide that its judicial authorities have the authority to seize items in accordance with its domestic law. Items that are subject to seizure pursuant to a search order need not be individually identified so long as they fall within general categories specified in the order;

(d) judicial authorities have the authority to order, among other measures, the forfeiture of any assets legally traceable to the infringing activity, and the forfeiture and destruction of all counterfeit and pirated goods and, at least with respect to copyright and related rights piracy, any related materials and implements actually used in the manufacture of the pirated goods. Parties shall not make compensation available to the infringer for any such forfeiture or destruction; and

(e) Appropriate authorities, as determined by each Party, have the authority, in cases of copyright and related rights piracy and trademark counterfeiting, to exercise legal action *ex officio* without the need for a formal complaint by a person or right holder.

Limitations on Liability for Internet Service Providers
23.

(a) For the purpose of providing enforcement procedures that permit effective action against any act of infringement of copyright[35] covered under this Chapter, including

expeditious remedies to prevent infringements and criminal and civil remedies, each Party shall provide, consistent with the framework set forth in this Article:

(i) legal incentives for service providers to cooperate with copyright owners in deterring the unauthorized storage and transmission of copyrighted materials; and

(ii) limitations in its law regarding the scope of remedies available against service providers for copyright infringements that they do not control, initiate, or direct, and that take place through systems or networks controlled or operated by them or on their behalf, as set forth below.

(b) These limitations shall preclude monetary relief and provide reasonable limitations on court-ordered relief to compel or restrain certain actions for the following functions and shall be confined to those functions:

(i) transmitting, routing, or providing connections for material without modification of its content;[36]

(ii) caching carried out through an automatic process;

(iii) storage at the direction of a user of material residing on a system or network controlled or operated by or for the provider, including e-mails and its attachments stored in the provider's server, and web pages residing on the provider's server; and

(iv) referring or linking users to an online location by using information location tools, including hyperlinks and directories.

These limitations shall apply only where the provider does not initiate the transmission, or select the material or its recipients (except to the extent that a function described in subparagraph (iv) in itself entails some form of selection). This paragraph does not preclude the availability of other defenses to copyright infringement that are of general applicability, and qualification for the limitations as to each function shall be considered separately from qualification for the limitations as to other functions.

(c) With respect to function (b)(ii), the limitations shall be conditioned on the service provider:

(i) complying with conditions on user access and rules regarding the updating of the cached material imposed by the supplier of the material;

(ii) not interfering with technology consistent with widely accepted industry standards lawfully used at the originating site to obtain information about the use of the material, and not modifying its content in transmission to subsequent users; and

(iii) expeditiously removing or disabling access, upon receipt of an effective notification of claimed infringement in accordance with subparagraph (f), to cached material that has been removed or access to which has been disabled at the originating site.

With respect to functions (b)(iii) and (iv), the limitations shall be conditioned on the service provider:

(i) not receiving a financial benefit directly attributable to the infringing activity, in circumstances where it has the right and ability to control such activity;

(ii) expeditiously removing or disabling access to the material residing on its system or network upon obtaining actual knowledge of the infringement or becoming aware of facts or circumstances from which the infringement was apparent, including through effective notifications of claimed infringement in accordance with subparagraph (f); and

(iii) publicly designating a representative to receive such notifications.

(d) Eligibility for application of the limitations in this paragraph shall be conditioned on the service provider:

(i) adopting and reasonably implementing[37] a policy that provides for termination in appropriate circumstances of the accounts of repeat infringers; and

(ii) accommodating and not interfering with standard technical measures that lawfully protect and identify copyrighted material, that are developed through an open, voluntary process by a broad consensus of interested parties, approved by relevant authorities, as applicable, that are available on reasonable and nondiscriminatory terms, and that do not impose substantial costs on service providers or substantial burdens on their systems or networks.

Eligibility for application of the limitations in this paragraph may not be conditioned on the service provider monitoring its service, or affirmatively seeking facts indicating infringing activity, except to the extent consistent with such technical measures.

(e) If the service provider qualifies for the limitation with respect to function (b)(i), court-ordered relief to compel or restrain certain actions shall be limited to measures to terminate specified accounts, or to take reasonable steps to block access to a specific, non-domestic online location. If the service provider qualifies for the limitations with respect to any other function in subparagraph (b), court-ordered relief to compel or restrain certain actions shall be limited to removing or disabling access to the infringing material, terminating specified accounts, and other remedies that a court may find necessary provided that such other remedies are the least burdensome to the service provider and users or subscribers among comparably effective forms of relief. Any such relief shall be issued with due regard for the relative burden to the service provider, to users or subscribers and harm to the copyright owner, the technical feasibility and effectiveness of the remedy and whether less burdensome, comparably effective enforcement methods are available. Except for orders ensuring the preservation of evidence, or other orders having no material adverse effect on the operation of the service provider's communications network, such relief shall be available only where the service provider has received notice and an opportunity to appear before the judicial authority.

(f) For purposes of the notice and take down process for functions (b)(ii), (iii), and (iv), each Party shall establish appropriate procedures through an open and transparent process which is set forth in domestic law, for effective notifications of claimed infringement, and effective counter-notifications by those whose material is removed or disabled through mistake or misidentification. At a minimum, each Party shall require that an effective notification of claimed infringement be a written communication, physically or electronically[38] signed by a person who represents, under penalty of perjury or other criminal penalty, that he is an authorized representative of a right holder in the material that is claimed to have been infringed,

and containing information that is reasonably sufficient to enable the service provider to identify and locate material that the complaining party claims in good faith to be infringing and to contact that complaining party. At a minimum, each Party shall require that an effective counter-notification contain the same information, *mutatis mutandis*, as a notification of claimed infringement, and in addition, contain a statement that the subscriber making the counter-notification consents to the jurisdiction of the courts of the Party. Each Party shall also provide for monetary remedies against any person who makes a knowing material misrepresentation in a notification or counter-notification which causes injury to any interested party as a result of a service provider relying on the misrepresentation.

(g) If the service provider removes or disables access to material in good faith based on claimed or apparent infringement, it shall be exempted from liability for any resulting claims, provided that, in the case of material residing on its system or network, it takes reasonable steps promptly to notify the supplier of the material that it has done so and, if the supplier makes an effective counter-notification and is subject to jurisdiction in an infringement suit, to restore the material online unless the original notifying party seeks judicial relief within a reasonable time.

(h) Each Party shall establish an administrative or judicial procedure enabling copyright owners who have given effective notification of claimed infringement to obtain expeditiously from a service provider information in its possession identifying the alleged infringer.

(i) **Service provider** means, for purposes of function (b)(i), a provider of transmission, routing, or connections for digital online communications without modification of their content between or among points specified by the user of material of the user's choosing, or for purposes of functions (b)(ii) through (iv) a provider or operator of facilities for online services (including in cases where network access is provided by another provider) or network access.

Article 17.12: Final Provisions

1. Except as otherwise provided in this Chapter, each Party shall give effect to the provisions of this Chapter upon the date of entry into force of this Agreement.
2. In those cases in which the full implementation of the obligations contained in this Chapter requires a Party to amend its domestic legislation or additional financial resources, those amendments and financial resources shall be in force or available as soon as practicable, and in no event later than:

(a) two years from the date of entry into force of this Agreement, with respect to the obligations in Article 17.2 on trademarks, Article 17.4(1) through17.4(9) on geographical indications, Article 17.9(1), 17.9(3) through 17.9(7) on patents, and Articles 17.5(1) and 17.6(1) on temporary copies;

(b) four years from the date of entry into force of this Agreement, with respect to the obligations in Article 17.11 on enforcement (including border measures), and Article 17.6(5) with respect to the right of communication to the public, and non-interactive digital transmissions, for performers and producers of phonograms; and

(c) five years from the date of entry into force of this Agreement, with respect to the obligations in Article 17.7(5) on effective technological measures.

---

1 For purposes of paragraphs 6 and 7, "protection" shall include matters affecting the availability, acquisition, scope, maintenance, and enforcement of intellectual property rights as well as matters affecting the use of intellectual property rights specifically covered by this Chapter. For purposes of paragraphs 6 and 7, "protection" shall also include the prohibition on circumvention of effective technological measures pursuant to Article 17.7(5) and the provisions concerning rights management information pursuant to Article 17.7(6).
2 The requirement for publication is satisfied by making the written document available to the public via the Internet.
3 A geographical indication is capable of constituting a trademark to the extent that the geographical indication consists of any sign, or any combination of signs, capable of identifying a good or service as originating in the territory of a Party, or a region or locality in that

territory, where a given quality, reputation, or other characteristic of the good or service is essentially attributable to its geographical origin.
4 It is understood that likelihood of confusion is to be determined under the domestic trademark law of each Party.
5 For the purposes of this Article, persons of a Party shall also mean government agencies.
6 Except as provided in Article 17.12(2), each Party shall give effect to this Article upon the date of entry into force of this Agreement.
7 References to "authors" in this chapter refer also to any successors in interest.
8 With respect to copyrights and related rights in this Chapter, a right to authorize or prohibit or a right to authorize shall mean an exclusive right.
9 It is understood that the mere provision of physical facilities for enabling or making a communication does not in itself amount to communication within the meaning of this Chapter or the Berne Convention. It is further understood that nothing in this Article precludes a Party from applying Article 11*bis*(2) of the Berne Convention.
10 The expressions "copies" and "original and copies", being subject to the right of distribution under this paragraph, refer exclusively to fixed copies that can be put into circulation as tangible objects, *i.e.*, for this purpose, "copies" means physical copies.
11 Except as provided in Article 17.12(2), each Party shall give effect to this Article upon the date of entry into force of this Agreement.
12 References to "performers and producers of phonograms" in this Chapter refer also to any successors in interest.
13 The expressions "copies" and "original and copies", being subject to the right of distribution under this paragraph, refer exclusively to fixed copies that can be put into circulation as tangible objects, *i.e.*, for this purpose, "copies" means physical copies.
14 For the application of Article 17.6(3), fixation means the finalization of the master tape or its equivalent.
15 It is understood that the definition of phonogram provided in this Chapter does not suggest that rights in the phonogram are in any way affected through their incorporation into a cinematographic or other audiovisual work.
16 Except as provided in Article 17.12(2), each Party shall give effect to this Article upon the date of entry into force of this Agreement.
17 Article 17.7(3) permits a Party to carry forward and appropriately extend into the digital environment limitations and exceptions in its domestic laws which have been considered acceptable under the Berne Convention. Similarly, these provisions permit a Party to devise new exceptions and limitations that are appropriate in the digital network environment. For works, other than computer software, and other subject matter, such exceptions and limitations may include temporary acts of reproduction which are transient or incidental and an integral and essential part of a technological process and whose sole purpose is to enable (a) a lawful transmission in a network between third parties by an intermediary; or (b) a lawful use of a work or other subject-matter to be made; and which have no independent economic significance.
Article 17.7(3) neither reduces nor extends the scope of applicability of the limitations and exceptions permitted by the Berne Convention, the *WIPO Copyright Treaty* (1996), and the *WIPO Performances and Phonograms Treaty* (1996).
18 For purposes of paragraph 5, knowledge may be demonstrated through reasonable evidence taking into account the facts and circumstances surrounding the alleged illegal act.
19 Paragraph 5 does not obligate a Party to require that the design of, or the design and selection of parts and components for, a consumer electronics, telecommunications, or computing product provide for a response to any particular technological measure, so long as such product does not otherwise violate any measure implementing paragraph 5(b).
20 For greater certainty, elements of a computer program are not readily available to a person seeking to engage in noninfringing reverse engineering when they cannot be obtained from the literature on the subject, from the copyright holder, or from sources in the public domain.
21 Such activity occurring in the course of research and development is not excluded from this exception.
22 Such activity occurring in the course of research and development is not excluded from this exception.
23 For purposes of paragraph 1, knowledge may be demonstrated through reasonable evidence, taking into account the facts and circumstances surrounding the alleged illegal act.
24 Fraud in obtaining a patent may constitute grounds for revocation or cancellation.
25 Where a Party, on the date of its implementation of the TRIPS Agreement, had in place a system for protecting pharmaceutical or agricultural chemical products not involving new chemical entities from unfair commercial use which conferred a period of protection shorter than that specified in paragraph 1, that Party may retain such system notwithstanding the obligations of paragraph 1.
26 Nothing in this Chapter prevents a Party from establishing or maintaining appropriate judicial or administrative procedural formalities for this purpose that do not impair each Party's rights and obligations under this Agreement.
27 Each Party may establish the means by which it shall determine what constitutes the "usual manner" for a particular physical support.
28 For the purposes of this Article, civil judicial procedures mean those procedures as applied to the protection and enforcement of intellectual property rights.
29 For the purposes of this Article, the term "right holder" shall include duly authorized licensees as well as federations and associations having legal standing and authorization to assert such rights.
30 In accordance with the provisions in paragraph 6(a).
31 For the purposes of paragraphs 17 through 19:

> (a) **counterfeit trademark goods** means any goods, including packaging, bearing without authorization a trademark which is identical to the trademark validly registered in respect of such goods, or which cannot be distinguished in its essential aspects from such a trademark, and which thereby infringes the rights of the owner of the trademark in question under the law of the country of importation;
>
> (b) **pirated copyright goods** means any goods which are copies made without the consent of the right holder or person duly authorized by the right holder in the country of production and which are made directly or indirectly from an article where the making of that copy would have constituted an infringement of a copyright or a related right under the law of the country of importation.

32 The Parties recognize their obligations with respect to technological cooperation and other matters set forth in Chapter Five (Customs Administration), concerning, *inter alia,* improved customs enforcement, including with respect to intellectual property rights.
33 For purposes of paragraph 22, evidence of reproduction or distribution of a copyrighted work, by itself, shall not be sufficient to establish willful infringement.
34 For purposes of paragraph 22, commercial advantage or financial gain shall be understood to exclude *de minimis* infringements. Nothing in this Agreement prevents prosecutors from exercising any discretion that they may have to decline to pursue cases.
35 For purposes of paragraph 23, "copyright" shall also include related rights.
36 Modification of the content of material shall not include technological manipulation of material for the purpose of facilitating network transmission, such as division into packets.
37 A Party may determine in its domestic law that "reasonably implementing" entails, *inter alia*, making such policy continuously available to its users of its system or network.
38 In accordance with domestic law.

Chapter Eighteen

Labor

Article 18.1: Statement of Shared Commitment

1. The Parties reaffirm their obligations as members of the *International Labor Organization* (ILO) and their commitments under the *ILO Declaration on Fundamental Principles and Rights at Work and its Follow-up (1998)*. Each Party shall strive to ensure that such labor principles and the internationally recognized labor rights set forth in Article 18.8 are recognized and protected by its domestic law.

2. Recognizing the right of each Party to establish its own domestic labor standards, and to adopt or modify accordingly its labor laws, each Party shall strive to ensure that its laws provide for labor standards consistent with the internationally recognized labor rights set forth in Article 18.8 and shall strive to improve those standards in that light.

Article 18.2: Enforcement of Labor Laws

1.

(a) A Party shall not fail to effectively enforce its labor laws, through a sustained or recurring course of action or inaction, in a manner affecting trade between the Parties, after the date of entry into force of this Agreement.

(b) The Parties recognize that each Party retains the right to exercise discretion with respect to investigatory, prosecutorial, regulatory, and compliance matters and to make decisions regarding the allocation of resources to enforcement with respect to other labor matters determined to have higher priorities. Accordingly, the Parties understand that a Party is in compliance with subparagraph (a) where a course of action or inaction reflects a reasonable exercise of such discretion, or results from a *bona fide* decision regarding the allocation of resources.

2. The Parties recognize that it is inappropriate to encourage trade or investment by weakening or reducing the protections afforded in domestic labor laws. Accordingly, each Party shall strive to ensure that it does not waive or otherwise derogate from, or offer to waive or otherwise derogate from, such laws in a manner that weakens or reduces adherence to the internationally recognized labor rights referred to in Article 18.8 as an encouragement for trade with the other Party, or as an encouragement for the establishment, acquisition, expansion, or retention of an investment in its territory.

3. Nothing in this Chapter shall be construed to empower a Party's authorities to undertake labor law enforcement activities in the territory of the other Party.

Article 18.3: Procedural Guarantees and Public Awareness

1. Each Party shall ensure that persons with a legally recognized interest under its law in a particular matter have appropriate access to judicial tribunals of general, labor or other specific jurisdiction, quasi-judicial tribunals, or administrative tribunals, as appropriate, for the enforcement of the Party's labor laws.

2. Each Party shall ensure that its proceedings for the enforcement of its labor laws are fair, equitable, and transparent.

3. Each Party shall provide that the parties to such proceedings may seek remedies to ensure the enforcement of their rights under domestic labor laws.

4. For greater certainty, decisions by each Party's judicial tribunals of general, labor, or other specific jurisdiction, quasi-judicial tribunals, or administrative tribunals, as appropriate, or pending decisions, as well as related proceedings, shall not be subject to revision or reopened under the provisions of this Chapter.

5. Each Party shall promote public awareness of its labor laws.

Article 18.4: Labor Affairs Council

1. The Parties hereby establish a Labor Affairs Council, comprising cabinet-level or equivalent representatives of the Parties, or their designees.

2. The Council shall meet within the first year after the date of entry into force of this Agreement and thereafter as often as it considers necessary to oversee the implementation of and review progress under this Chapter, including the activities of the Labor Cooperation Mechanism established under Article 18.5, and to pursue the labor objectives of this Agreement. Each meeting of the Council shall include a public session, unless the Parties otherwise agree.

3. Each Party shall designate an office within its labor ministry that shall serve as a point of contact with the other Party, and with the public, for purposes of carrying out the work of the Council.

4. The Council shall establish its work program and procedures and may, in carrying out its work, establish governmental working or expert groups and consult with or seek advice of non-governmental organizations or persons, including independent experts.

5. All decisions of the Council shall be taken by mutual agreement of the Parties and shall be made public, unless the Council decides otherwise.

6. Each Party may convene a national consultative or advisory committee, as appropriate, comprising members of its public, including representatives of its labor and business organizations and other persons to provide views regarding the implementation of this Chapter.

7. Each Party's point of contact shall provide for the submission, receipt, and consideration of public communications on matters related to this Chapter, and shall make such communications available to the other Party and the public. Each Party shall review such communications, as appropriate, in accordance with its domestic procedures.

Article 18.5: Labor Cooperation Mechanism

Recognizing that cooperation provides enhanced opportunities for the Parties to promote respect for the principles embodied in the *ILO Declaration on Fundamental Principles and Rights at Work and its Follow-up (1998)*, compliance with *ILO Convention 182 Concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labor (1999),* and to advance other common commitments, the Parties hereby establish a Labor Cooperation Mechanism, as set out in Annex 18.5.

Article 18.6: Cooperative Consultations

1. A Party may request consultations with the other Party regarding any matter arising under this Chapter by delivering a written request to the point of contact that the other Party has designated under Article 18.4(3).

2. The Parties shall consult promptly after delivery of the request. The requesting Party shall provide specific and sufficient information in the request for the other Party to respond.

3. The Parties shall make every attempt to arrive at a mutually satisfactory resolution of the matter and may seek advice or assistance from any person or body they deem appropriate in order to fully examine the matter at issue.

4. If the Parties fail to resolve a matter through consultations, either Party may request that the Council be convened to consider the matter by delivering a written request to the other Party's point of contact.

5. The Council shall promptly convene and shall endeavor to resolve the matter, including, where appropriate, by consulting outside experts and having recourse to such procedures as good offices, conciliation, or mediation.

6. If the matter concerns whether a Party is conforming to its obligations under Article 18.2(1)(a), and the Parties have failed to resolve the matter within 60 days of a request under paragraph 1, the complaining Party may request consultations under Article 22.4 (Consultations) or a meeting of the Commission under Article 22.5 (Commission – Good Offices, Conciliation, and Mediation) and, as provided in Chapter Twenty-Two (Dispute Settlement), thereafter have recourse to the other provisions of that Chapter.

7. Neither Party may have recourse to dispute settlement under this Agreement for any matter arising under any provision of this Chapter other than Article 18.2(1)(a).

8. Neither Party may have recourse to dispute settlement under this Agreement for a matter arising under Article 18.2(1)(a) without first pursuing resolution of the matter in accordance with this Article.

Article 18.7: Labor Roster

1. The Parties shall establish within six months after the date of entry into force of this Agreement and maintain a roster of up to 12 individuals who are willing and able to serve as panelists in disputes arising under Article 18.2(1)(a). Unless the Parties otherwise agree, four members of the roster shall be selected from among individuals who are non-Party nationals. Labor roster members shall be appointed by mutual agreement of the Parties and may be reappointed. Once established, a roster shall remain in effect for a minimum of three years, and shall remain in effect thereafter until the Parties constitute a new roster.

2. Labor roster members shall:

(a) have expertise or experience in labor law or its enforcement, or in the resolution of disputes arising under international agreements;

(b) be chosen strictly on the basis of objectivity, reliability, and sound judgment;

(c) be independent of, and not affiliated with or take instructions from, either Party; and

(d) comply with a code of conduct to be established by the Commission.

3. Where a Party claims that a dispute arises under Article 18.2(1)(a), Article 22.9 (Panel Selection) shall apply, except that the panel shall be composed entirely of panelists meeting the qualifications in paragraph 2.

Article 18.8: Definitions

For purposes of this Chapter:

labor laws means a Party's statutes or regulations, or provisions thereof, that are directly related to the following internationally recognized labor rights:

(a) the right of association;

(b) the right to organize and bargain collectively;

(c) a prohibition on the use of any form of forced or compulsory labor;

(d) a minimum age for the employment of children and the prohibition and elimination of the worst forms of child labor; and

(e) acceptable conditions of work with respect to minimum wages, hours of work, and occupational safety and health.

For greater certainty, the setting of standards and levels in respect of minimum wages by each Party shall not be subject to obligations under this Chapter. Each Party's obligations under this Chapter pertain to enforcing the level of the general minimum wage established by that Party.
statutes or regulations means:

(a) for the United States, acts of the Congress or regulations promulgated pursuant to acts of the Congress that are enforceable by action of the federal government; and

(b) for Chile, acts or regulations promulgated pursuant to acts that are enforceable by the agency charged with enforcing Chile's labor laws.

ANNEX 18.5
Labor Cooperation Mechanism

Establishment of a Labor Cooperation Mechanism

1. Recognizing that bilateral cooperation on labor matters will provide enhanced opportunities for the Parties to improve labor standards, and to further advance their common commitments, including the *ILO Declaration on Fundamental Principles and Rights at Work and its Follow-up (1998)*, the Parties have established a Labor Cooperation Mechanism.

Organization and Principal Functions

2. Each Party shall designate an office within its ministry of labor to serve as a point of contact to support the work of the Labor Cooperation Mechanism.

3. The Parties' labor ministries shall carry out the work of the Labor Cooperation Mechanism by developing and pursuing cooperative activities on labor matters, including by working jointly to:

(a) establish priorities for cooperative activities;

(b) develop and periodically revise a work program of specific cooperative activities in accord with such priorities;

(c) exchange information regarding labor policies and the observance and effective application of labor law and practice in the Parties' territories;

(d) exchange information on and encourage best labor practices, including best practices adopted by multinational firms, small and medium enterprises, and other private enterprises, as well as by labor organizations;

(e) advance understanding of, respect for, and effective implementation of the principles reflected in the *ILO Declaration on Fundamental Principles and Rights at Work and its Follow-up (1998)*;

(f) promote the collection and publication of comparable data on labor standards, labor market indicators, and enforcement activity;

(g) arrange periodic labor cooperation review sessions at the request of either Party, review current cooperative activities, and provide guidance for future cooperative activities between the Parties; and

(h) develop recommendations to their respective governments for their consideration.

Cooperative Activities

4. The Labor Cooperation Mechanism may undertake cooperative activities on any labor matter it considers appropriate, such as on:

(a) *fundamental rights and their effective application*: legislation, practice, and implementation related to the core elements of the *ILO Declaration on Fundamental Principles and Rights at Work and its Follow-up (1998)* (freedom of association and the effective recognition of the right to collective bargaining, elimination of all forms of forced or compulsory labor, abolition of child labor, including the worst forms of child labor in compliance with the ILO Convention Nº182 on the *Worst Forms of Child Labour (1999)*, and elimination of employment discrimination);

(b) *labor relations*: forms of cooperation among workers, management, and governments, including the resolution of labor disputes;

(c) *working conditions*: legislation, practice, and implementation related to occupational safety and health; prevention of and compensation for work-related injuries and illness; and employment conditions;

(d) *issues related to small and medium enterprises*: promotion of fundamental rights at work; improvement of working conditions; forms of cooperation between employers and worker representatives; and social protection services agreed between workers' organizations and employers or their associations;

(e) *social protections*: human resource development and employment training; work benefits; social programs for workers and their families; migrant workers; worker adjustment programs; and social protection, including social security, income security, and health care services;

(f) *technical issues and information exchange*: programs, methodologies, and experiences regarding productivity improvement; labor statistics, including comparable data; current ILO issues and activities; consideration and encouragement of best labor practices; and the effective use of technologies, including those that are Internet-based; and

(g) implications of economic integration between the Parties for advancing each Party's labor objectives.

Implementation of Cooperative Activities

5. The Parties may carry out cooperative activities under this Annex through any form they deem appropriate, including by:

(a) exchanging government delegations, professionals, and specialists, including through study visits;

(b) sharing information, standards, regulations and procedures and best practices including through the exchange of pertinent publications and monographs;

(c) organizing joint conferences, seminars, workshops, meetings, training sessions, and outreach and education programs;

(d) developing collaborative projects or demonstrations;

(e) undertaking joint research projects, studies, and reports, including by engaging independent experts with relevant expertise;

(f) drawing on the expertise of academic and other institutions in their territories in developing and implementing cooperative programs and by encouraging relationships between such institutions on technical labor issues; and

(g) engaging in technical exchanges and cooperation.

6. In identifying areas for cooperation and carrying out cooperative activities, the Parties shall consider views of their respective worker and employer representatives, as well as other members of civil society.

Chapter Nineteen

Environment

Objectives

The objectives of this Chapter are to contribute to the Parties' efforts to ensure that trade and environmental policies are mutually supportive and to collaboratively promote the optimal use of resources in accordance with the objective of sustainable development; and to strive to strengthen the links between the Parties' trade and environment policies and practices to further the trade expanding goals of this Agreement, including through promoting non-discriminatory measures, avoiding disguised barriers to trade, and eliminating trade distortions where the result can directly benefit both trade and the environment.

Article 19.1: Levels of Protection

Recognizing the right of each Party to establish its own levels of domestic environmental protection and environmental development policies and priorities, and to adopt or modify accordingly its environmental laws, each Party shall ensure that its laws provide for high levels of environmental protection and shall strive to continue to improve those laws.

Article 19.2: Enforcement of Environmental Laws

1.

(a) A Party shall not fail to effectively enforce its environmental laws, through a sustained or recurring course of action or inaction, in a manner affecting trade between the Parties, after the date of entry into force of this Agreement.

(b) The Parties recognize that each Party retains the right to exercise discretion with respect to investigatory, prosecutorial, regulatory, and compliance matters and to make decisions regarding the allocation of resources to enforcement with respect to other environmental matters determined to have higher priorities. Accordingly, the Parties understand that a Party is in compliance with subparagraph (a) where a course of action or inaction reflects a reasonable exercise of such discretion, or results from a *bona fide* decision regarding the allocation of resources.

2. The Parties recognize that it is inappropriate to encourage trade or investment by weakening or reducing the protections afforded in domestic environmental laws. Accordingly, each Party shall strive to ensure that it does not waive or otherwise derogate from, or offer to waive or otherwise derogate from, such laws in a manner that weakens or reduces the protections afforded in those laws as an encouragement for trade with the other Party, or as an encouragement for the establishment, acquisition, expansion, or retention of an investment in its territory.
3. Nothing in this Chapter shall be construed to empower a Party's authorities to undertake environmental law enforcement activities in the territory of the other Party.

Article 19.3: Environment Affairs Council

1. The Parties hereby establish an Environment Affairs Council comprising cabinet level or equivalent representatives of the Parties, or their designees. The Council shall meet once a year, or more often if the Parties agree, to discuss the implementation of, and progress under, this Chapter. Meetings of the Council shall include a public session, unless the Parties otherwise agree.
2. In order to share innovative approaches for addressing environmental issues of interest to the public, the Council shall ensure a process for promoting public participation in its work, including by seeking advice from the public in developing agendas for Council meetings and by engaging in a dialogue with the public on those issues.
3. The Council shall seek appropriate opportunities for the public to participate in the development and implementation of cooperative environmental activities, including through the United States - Chile Environmental Cooperation Agreement, as set out in Annex 19.3.
4. All decisions of the Council shall be taken by mutual agreement and shall be made public, unless the Council decides otherwise, or as otherwise provided in this Agreement.

Article 19.4: Opportunities for Public Participation

1. Each Party shall provide for the receipt and consideration of public communications on matters related to this Chapter. Each Party shall promptly make available to the other Party and to its public all communications it receives and shall review and respond to them in accordance with its domestic procedures.
2. Each Party shall make best efforts to respond favorably to requests for consultations by persons or organizations in its territory regarding the Party's implementation of this Chapter.
3. Each Party may convene, or consult an existing, national consultative or advisory committee, comprising members of its public, including representatives of business and environmental organizations, and other persons, to advise it on the implementation of this Chapter.

Article 19.5: Environmental Cooperation

1. The Parties recognize the importance of strengthening capacity to protect the environment and promote sustainable development in concert with strengthening trade and investment relations between them. The Parties agree to undertake cooperative environmental activities, in particular through:

> (a) pursuing, through their relevant ministries or agencies, the specific cooperative projects that the Parties have identified and set out in Annex 19.3; and
>
> (b) promptly negotiating a United States – Chile Environmental Cooperation Agreement to establish priorities for further cooperative environmental activities, as elaborated in Annex 19.3, while recognizing the ongoing importance of environmental cooperation undertaken outside this Agreement.

2. Each Party shall take into account public comments and recommendations it receives regarding cooperative environmental activities the Parties undertake pursuant to this Chapter.
3. The Parties shall, as they deem appropriate, share information on their experiences in assessing and taking into account positive or negative environmental effects of trade agreements and policies.

Article 19.6: Environmental Consultations

1. A Party may request consultations with the other Party regarding any matter arising under this Chapter by delivering a written request to the other Party.
2. The Parties shall consult promptly after delivery of the request. The requesting Party shall provide specific and sufficient information in the request for the other Party to respond.
3. The Parties shall make every attempt to arrive at a mutually satisfactory resolution of the matter and may seek advice or assistance from any person or body they deem appropriate in order to fully examine the matter at issue.
4. If the Parties fail to resolve the matter through consultations, either Party may request that the Council be convened to consider the matter by delivering a written request to the other Party.
5. The Council shall promptly convene and shall endeavor to resolve the matter, including, where appropriate, by consulting governmental or outside experts and having recourse to such procedures as good offices, conciliation, or mediation.

6. If the matter concerns whether a Party is conforming to its obligations under Article 19.2(1)(a), and the Parties have failed to resolve the matter within 60 days of a request for consultations under paragraph 1, the complaining Party may request consultations under Article 22.4 (Consultations) or a meeting of the Commission under Article 22.5 (Commission - Good Offices, Conciliation, and Mediation) and, as provided in Chapter Twenty-Two (Dispute Settlement), thereafter have recourse to the other provisions of that Chapter.
7. The Council may, where appropriate, provide information to the Commission regarding any consultations held on the matter.
8. Neither Party may have recourse to dispute settlement under this Agreement for any matter arising under any provision of this Chapter other than Article 19.2(1)(a).
9. Neither Party may have recourse to dispute settlement under this Agreement for a matter arising under Article 19.2(1)(a) without first pursuing resolution of the matter in accordance with this Article.
10. In cases where the Parties agree that a matter arising under this Chapter is more properly covered by another agreement to which the Parties are party, they shall refer the matter for appropriate action in accordance with that agreement.

Article 19.7: Environment Roster
1. The Parties shall establish within six months after the date of entry into force of this Agreement and maintain a roster of at least 12 individuals who are willing and able to serve as panelists in disputes arising under Article 19.2(1)(a). Unless the Parties otherwise agree, four members of the roster shall be selected from among individuals who are non-Party nationals. Environment roster members shall be appointed by mutual agreement of the Parties, and may be reappointed. Once established, a roster shall remain in effect for a minimum of three years, and shall remain in effect thereafter until the Parties constitute a new roster.
2. Environment roster members shall:

(a) have expertise or experience in environmental law or its enforcement, international trade, or the resolution of disputes arising under international trade agreements;

(b) be chosen strictly on the basis of objectivity, reliability, and sound judgment;

(c) be independent of, and not affiliated with or take instructions from, either Party; and

(d) comply with a code of conduct to be established by the Commission.

3. Where a Party claims that a dispute arises under Article 19.2(1)(a), Article 22.9 (Panel Selection) shall apply, except that:

(a) where the Parties so agree, the panel shall be composed entirely of panelists meeting the qualifications in paragraph 2; and

(b) if the Parties cannot so agree, each Party may select panelists meeting the qualifications set out in paragraph 2 or in Article 22.8 (Qualifications of Panelists).

Article 19.8: Procedural Matters
1. Each Party shall ensure that judicial, quasi-judicial, or administrative proceedings are available under its law to sanction or remedy violations of its environmental laws.

(a) Such proceedings shall be fair, open, and equitable, and to this end shall comply with due process of law, and be open to the public (except where the administration of justice otherwise requires).

(b) Each Party shall provide appropriate and effective remedies or sanctions for a violation of its environmental laws that:

(i) take into consideration the nature and gravity of the violation, any economic benefit the violator has derived from the violation, the economic condition of the violator, and other relevant factors; and

(ii) may include compliance agreements, penalties, fines, imprisonment, injunctions, the closure of facilities, and the cost of containing or cleaning up pollution.

2. Each Party shall ensure that interested persons may request the Party's competent authorities to investigate alleged violations of its environmental laws and that the competent authorities give such requests due consideration in accordance with its law.
3. Each Party shall ensure that persons with a legally recognized interest under its law in a particular matter have appropriate access to judicial, quasi-judicial, or administrative proceedings for the enforcement of the Party's environmental laws.
4. Each Party shall provide persons appropriate and effective rights of access to remedies in accordance with its laws, which may include the right:

(a) to sue another person under that Party's jurisdiction for damages under that Party's environmental laws;

(b) to seek sanctions or remedies such as monetary penalties, emergency closures, or orders to mitigate the consequences of violations of its environmental laws;

(c) to request the competent authorities to take appropriate action to enforce the Party's environmental laws in order to protect the environment or to avoid environmental harm; or

(d) to seek injunctions where a person suffers, or may suffer, loss, damage, or injury as a result of conduct by another person under that Party's jurisdiction contrary to that Party's environmental laws or from tortious conduct that harms human health or the environment.

Article 19.9: Relationship to Environmental Agreements
The Parties recognize the importance of multilateral environmental agreements, including the appropriate use of trade measures in such agreements to achieve specific environmental goals. Recognizing that in paragraph 31(i) of the *Ministerial Declaration adopted on November 14, 2001 in Doha*, WTO members have agreed to negotiations on the relationship between existing WTO rules and specific trade obligations set out in multilateral environmental agreements, the Parties shall consult on the extent to which the outcome of the negotiations applies to this Agreement.
Article 19.10: Principles of Corporate Stewardship
Recognizing the substantial benefits brought by international trade and investment as well as the opportunity for enterprises to implement policies for sustainable development that seek to ensure coherence between social, economic and environmental objectives, each Party should encourage enterprises operating within its territory or jurisdiction to voluntarily incorporate sound principles of corporate stewardship in their internal policies, such as those principles or agreements that have been endorsed by both Parties.
Article 19.11: Definitions
For purposes of this Chapter:
environmental law means any statute or regulation of a Party, or provision thereof, the primary purpose of which is the protection of the environment, or the prevention of a danger to human life or health, through:

(a) the prevention, abatement, or control of the release, discharge, or emission of pollutants or environmental contaminants;

(b) the control of environmentally hazardous or toxic chemicals, substances, materials, and wastes, and the dissemination of information related thereto; or

(c) the protection or conservation of wild flora and fauna, including endangered species, their habitat, and specially protected natural areas, in the Party's territory, but does not include any statute or regulation, or provision thereof, directly related to worker safety or health.

For greater certainty, **environmental law** does not include any statute or regulation, or provision thereof, the primary purpose of which is managing the commercial harvest or exploitation, or subsistence or aboriginal harvesting, of natural resources.
For purposes of the definition of "environmental law," the primary purpose of a particular statutory or regulatory provision shall be determined by reference to its primary purpose, rather than to the primary purpose of the statute or regulation of which it is part.
For the United States, **statute or regulation** means an act of Congress or regulation promulgated pursuant to an act of Congress that is enforceable by action of the federal government.
For the United States, **territory** means its territory as set out in Annex 2.1 as well as other areas with respect to which it exercises sovereignty, sovereign rights, or jurisdiction.

Annex 19.3
Environmental Cooperation

1. Recognizing that cooperation on environmental matters provides enhanced opportunities to improve the environment and to advance common commitments on sustainable development, the Parties agree, pursuant to Article 19.5(1)(a) of this Agreement, to pursue, through their relevant ministries or agencies, the following cooperative projects identified during the negotiation of this Agreement:

(a) *Developing a Pollutant Release and Transfer Register (PRTR) in Chile*. The PRTR is a publicly available database of chemicals that have been released to air, water and land or transferred off-site for further waste management. In developing the register, the Parties will cooperate and draw on lessons learned from other PRTR projects. Industrial facilities will report annually on the amounts of chemicals they have released or transferred and the final destination of those chemicals. Reported data will be made publicly available;

(b) *Reducing Mining Pollution.* The United States will assist Chile in reducing contamination and pollution resulting from past mining practices by working with Chile to identify sources of pollution and explore cost-effective remediation methods;

(c) *Improving Environmental Enforcement and Compliance Assurance.* The Parties will provide training and exchange of information to enhance each Party's capacity to enforce its environmental laws and regulations, and will develop and strengthen their cooperative relationships to promote compliance, enforcement, and environmental performance;

(d) *Sharing Private Sector Expertise.* The Parties will seek to increase environmental stewardship by inviting enterprises of each Party to share their experiences in developing and implementing programs that have reduced pollution, including, where appropriate, demonstrating the financial benefits of these measures;

(e) *Improving Agricultural Practices*. To help reduce pollution from agricultural practices in Chile, the Parties will adapt and implement a training program for Chilean farmers and other workers to promote appropriate handling of chemical pesticides and fertilizers, and to promote sustainable agriculture practices. The Parties will work jointly to modify existing training programs to fit Chilean agricultural practices and customs;

(f) *Reducing Methyl Bromide Emissions.* To mitigate methyl bromide emissions the Parties will seek to develop effective alternatives to that chemical, which Chile and the United States have committed to phase out under the *Montreal Protocol on Substances That Deplete the Ozone Layer*;

(g) *Improving Wildlife Protection and Management.* To protect wildlife in Chile and the Latin American region, the Parties will work together to build capacity to promote the management and protection of biological resources in the region, such as by collaborating with universities and providing programs for wildlife managers, other professionals and local communities in Chile and the region;

(h) *Increasing the use of cleaner fuels.* The Parties will work to improve the environmental quality of fuels, especially diesel fuel and gasoline, used in their territories by providing joint training and technical assistance on a variety of fuels-related environmental issues. The Parties will publicize the benefits of this work.

2. The Parties shall pursue additional cooperative environmental activities under a United States – Chile Environmental Cooperation Agreement, as set out in Article 19.5(1)(b), and in other fora.

(a) In negotiating the Cooperation Agreement, the Parties have agreed to take into account public input regarding priority areas for bilateral cooperation;

(b) The Cooperation Agreement will, *inter alia:*

(i) establish any institutional framework needed to coordinate the various elements of the Cooperation Agreement;

(ii) establish procedures for the development of periodic work programs that set priorities for cooperative activities;

(iii) provide for consultation and review, at regular intervals, of the work program for those cooperative activities;

(iv) create appropriate opportunities for the public to participate in the development of new cooperative activities and the implementation of agreed activities;

(v) encourage the exchange of information on the Parties' environmental policies, laws, and practices;

(vi) promote the understanding and effective implementation of multilateral environmental agreements to which both Parties are party;

(vii) promote the collection and publication of comparable information on the Parties' environmental regulations, indicators, and enforcement activities; and

(viii) provide for regular consultation with the Environment Affairs Council established in Article 19.3 (Environment Affairs Council) regarding the priorities that the Parties identify, as well as future cooperative work.

3. Cooperation under the Cooperation Agreement may include work in the following fields of activity:

(a) improving capacity to achieve environmental compliance assurance, including enforcement and voluntary environmental stewardship;

(b) encouraging small- and medium-size enterprises to adopt sound environmental practices and technologies;

(c) developing public-private partnerships to achieve environmental objectives;

(d) promoting sustainable management of environmental resources, including wild fauna and flora, and protected wild areas;

(e) exploring environmental activities pertinent to trade and investment and the improvement of environmental performance;

(f) developing and implementing economic instruments for environmental management.

4. The Parties may implement cooperative activities under the Cooperation Agreement by:

(a) exchanging professionals, technicians, and specialists, including through study visits, to promote the development of environmental policies and standards;

(b) organizing joint conferences, seminars, workshops, meetings, training sessions, and outreach and education programs;

(c) supporting, developing, and implementing collaborative projects and demonstrations, including joint research projects, studies, and reports;

(d) facilitating linkages among representatives from academia, industry, and government to promote exchange of scientific and technical information and best practices, and the development and implementation of cooperative projects; and

(e) engaging in other activities, that the Parties may undertake pursuant to the Cooperation Agreement.

5. The Parties recognize that the funding, scope, and duration of the projects listed in paragraph 1 and cooperative activities pursued under the Cooperation Agreement will be undertaken in accordance with the Parties' personnel and financial resources.
6. The Parties shall make publicly available information regarding the projects and activities they undertake pursuant to this Annex.

Chapter Twenty

Transparency

Article 20.1: Contact Points

1. Each Party shall designate a contact point to facilitate communications between the Parties on any matter covered by this Agreement.

2. On the request of the other Party, the contact point shall identify the office or official responsible for the matter and assist, as necessary, in facilitating communication with the requesting Party.

Article 20.2: Publication

1. Each Party shall ensure that its laws, regulations, procedures, and administrative rulings of general application respecting any matter covered by this Agreement are promptly published or otherwise made available in such a manner as to enable interested persons and the other Party to become acquainted with them.

2. To the extent possible, each Party shall:

(a) publish in advance any such measure that it proposes to adopt; and

(b) provide interested persons and the other Party a reasonable opportunity to comment on such proposed measures.

Article 20.3: Notification and Provision of Information

1. To the maximum extent possible, each Party shall notify the other Party of any proposed or actual measure that the Party considers might materially affect the operation of this Agreement or otherwise substantially affect the other Party's interests under this Agreement.
2. On request of the other Party, a Party shall promptly provide information and respond to questions pertaining to any actual or proposed measure, whether or not the other Party has been previously notified of that measure.
3. Any notification or information provided under this Article shall be without prejudice as to whether the measure is consistent with this Agreement.

Article 20.4: Administrative Proceedings

With a view to administering in a consistent, impartial, and reasonable manner all measures of general application affecting matters covered by this Agreement, each Party shall ensure that in its administrative proceedings applying measures referred to in Article 20.2 to particular persons, goods, or services of the other Party in specific cases that:

(a) wherever possible, persons of the other Party that are directly affected by a proceeding are provided reasonable notice, in accordance with domestic procedures, when a proceeding is initiated, including a description of the nature of the proceeding, a statement of the legal authority under which the proceeding is initiated, and a general description of any issues in controversy;

(b) such persons are afforded a reasonable opportunity to present facts and arguments in support of their positions prior to any final administrative action, when time, the nature of the proceeding, and the public interest permit; and

(c) its procedures are in accordance with domestic law.

Article 20.5: Review and Appeal

1. Each Party shall establish or maintain judicial, quasi-judicial, or administrative tribunals or procedures for the purpose of the prompt review and, where warranted, correction of final administrative actions regarding matters covered by this Agreement.
Such tribunals shall be impartial and independent of the office or authority entrusted with administrative enforcement and shall not have any substantial interest in the outcome of the matter.
2. Each Party shall ensure that, in any such tribunals or procedures, the parties to the proceeding are provided with the right to:

(a) a reasonable opportunity to support or defend their respective positions; and

(b) a decision based on the evidence and submissions of record or, where required by domestic law, the record compiled by the administrative authority.

3. Each Party shall ensure, subject to appeal or further review as provided in its domestic law, that such decisions shall be implemented by, and shall govern the practice of, the office or authority with respect to the administrative action that is the subject of the decision.

Article 20.6: Definitions

For purposes of this Chapter:
administrative ruling of general application means an administrative ruling or interpretation that applies to all persons and fact situations that fall generally within its ambit and that establishes a norm of conduct but does not include:

(a) a determination or ruling made in an administrative or quasi-judicial proceeding that applies to a particular person, good, or service of the other Party in a specific case; or

(b) a ruling that adjudicates with respect to a particular act or practice.

Chapter Twenty-One

Administration of the Agreement

Article 21.1: The Free Trade Commission

1. The Parties hereby establish the Free Trade Commission, comprising cabinet-level representatives of the Parties or their designees.

2. The Commission shall:

(a) supervise the implementation of this Agreement;

(b) oversee the further elaboration of this Agreement;

(c) seek to resolve disputes that may arise regarding the interpretation or application of this Agreement;

(d) supervise the work of all committees and working groups established under this Agreement;

(e) establish the amounts of remuneration and expenses that will be paid to panelists; and

(f) consider any other matter that may affect the operation of this Agreement.

3. The Commission may:

(a) establish and delegate responsibilities to committees and working groups;

(b) in accordance with Annex 21.1, further the implementation of the Agreement's objectives by approving any modifications of:

(i) the Schedules attached to Annex 3.3 (Tariff Elimination), by accelerating tariff elimination,

(ii) the rules of origin established in Annex 4.1 (Specific Rules of Origin),

(iii) the Common Guidelines referenced in Article 4.17 (Common Guidelines), and

(iv) the Sections of Annex 9.1 (Government Procurement);

(c) seek the advice of non-governmental persons or groups; and

(d) take such other action in the exercise of its functions as the Parties may agree.

4. The Commission shall establish its rules and procedures. All decisions of the Commission shall be taken by mutual agreement.
5. The Commission shall convene at least once a year in regular session. Regular sessions of the Commission shall be chaired successively by each Party.

Article 21.2: Administration of Dispute Settlement Proceedings

1. Each Party shall designate an office that shall provide administrative assistance to panels established under Chapter Twenty-Two (Dispute Settlement) and perform such other functions as the Commission may direct.
2. Each Party shall be responsible for the operation and costs of its designated office, and shall notify the Commission of the location of its office.

Annex 21.1
Implementation Of Modifications Approved By The Commission

Chile shall implement the actions of the Commission referenced in Article 21.1(3)(b) through *Acuerdos de Ejecución*, in accordance with article 50, numeral 1, second paragraph, of the *Constitución Política de la República de Chile*.

Chapter Twenty-Two

Dispute Settlement

Article 22.1: Cooperation

The Parties shall at all times endeavor to agree on the interpretation and application of this Agreement, and shall make every attempt through cooperation and consultations to arrive at a mutually satisfactory resolution of any matter that might affect its operation.

Article 22.2: Scope of Application

Except as otherwise provided in this Agreement, the dispute settlement provisions of this Chapter shall apply:

(a) with respect to the avoidance or settlement of all disputes between the Parties regarding the interpretation or application of this Agreement;

(b) wherever a Party considers that a measure of the other Party is inconsistent with the obligations of this Agreement or that the other Party has otherwise failed to carry out its obligations under this Agreement; and

(c) wherever a Party considers that a measure of the other Party causes nullification or impairment in the sense of Annex 22.2.

Article 22.3: Choice of Forum

1. Where a dispute regarding any matter arises under this Agreement and under another free trade agreement to which both Parties are party or the WTO Agreement, the complaining Party may select the forum in which to settle the dispute.
2. Once the complaining Party has requested a panel under an agreement referred to in paragraph 1, the forum selected shall be used to the exclusion of the others.

Article 22.4: Consultations

1. Either Party may request in writing consultations with the other Party with respect to any actual or proposed measure or any other matter that it considers might affect the operation of this Agreement.
2. The requesting Party shall set out the reasons for the request, including identification of the measure or other matter at issue and an indication of the legal basis for the complaint, and shall deliver the request to the other Party.
3. Consultations on matters regarding perishable goods shall commence within 15 days of the date of delivery of the request.
4. The Parties shall make every attempt to arrive at a mutually satisfactory resolution of any matter through consultations under this Article or other consultative provisions of this Agreement. To this end, the Parties shall:

(a) provide sufficient information to enable a full examination of how the actual or proposed measure or other matter might affect the operation and application of this Agreement; and

(b) treat any confidential information exchanged in the course of consultations on the same basis as the Party providing the information.

5. In consultations under this Article, a Party may request the other Party to make available personnel of its government agencies or other regulatory bodies who have expertise in the matter subject to consultations.

Article 22.5: Commission - Good Offices, Conciliation, and Mediation

1. A Party may request in writing a meeting of the Commission if the Parties fail to resolve a matter pursuant to Article 22.4 within:

(a) 60 days of delivery of a request for consultations;

(b) 15 days of delivery of a request for consultations in matters regarding perishable goods; or

(c) such other period as they may agree.

2. A Party may also request in writing a meeting of the Commission where consultations have been held pursuant to Article 18.6 (Cooperative Consultations), Article 19.6 (Environmental Consultations) or Article 7.8 (Committee on Technical Barriers to Trade).

3. The requesting Party shall state in the request the measure or other matter complained of and deliver the request to the other Party.

4. Unless it decides otherwise, the Commission shall convene within 10 days of delivery of the request and shall endeavor to resolve the dispute promptly. The Commission may:

(a) call on such technical advisers or create such working groups or expert groups as it deems necessary;

(b) have recourse to good offices, conciliation, mediation, or such other dispute resolution procedures; or

(c) make recommendations, as may assist the Parties to reach a mutually satisfactory resolution of the dispute.

Article 22.6: Request for an Arbitral Panel

1. If the Parties fail to resolve a matter within:

(a) 30 days of the Commission convening pursuant to Article 22.5;

(b) 75 days after a Party has delivered a request for consultations under Article 22.4, if the Commission has not convened pursuant to Article 22.5(4);

(c) 30 days after a Party has delivered a request for consultations under Article 22.4 in a matter regarding perishable goods, if the Commission has not convened pursuant to Article 22.5(4); or

(d) such other period as the Parties agree, either Party may request in writing the establishment of an arbitral panel to consider the matter. The requesting Party shall state in the request the measure or other matter complained of and indicate the provisions of this Agreement that it considers relevant, and shall deliver the request to the other Party. An arbitral panel shall be established upon delivery of a request.

2. Unless the Parties otherwise agree, the panel shall be established and perform its functions in a manner consistent with the provisions of this Chapter.
3. Notwithstanding paragraphs 1 and 2, an arbitral panel may not be established to review a proposed measure.

Article 22.7: Roster

1. The Parties shall establish within six months of the entry into force of this Agreement and maintain a roster of at least 20 individuals who are willing and able to serve as panelists. Unless the Parties otherwise agree, six roster members shall be selected from among individuals who are non-Party nationals. The roster members shall be appointed by mutual agreement of the Parties, and may be reappointed. Once established, a roster shall remain in effect for a minimum of three years, and shall remain in effect thereafter until the Parties constitute a new roster.
2. Roster members shall:

> (a) have expertise or experience in law, international trade, other matters covered by this Agreement, or the resolution of disputes arising under international trade agreements;
>
> (b) be chosen strictly on the basis of objectivity, reliability, and sound judgment; (c) be independent of, and not be affiliated with or take instructions from, any Party; and
>
> (d) comply with a code of conduct to be established by the Commission.

Article 22.8: Qualifications of Panelists

All panelists shall meet the qualifications set out in Article 22.7(2). Individuals may not serve as panelists for a dispute in which they have participated pursuant to Article 22.5(4)(a).

Article 22.9: Panel Selection

1. The Parties shall apply the following procedures in selecting a panel:

> (a) the panel shall comprise three members;
>
> (b) the Parties shall endeavor to agree on the chair of the panel within 15 days of the delivery of the request for the establishment of the panel. If the Parties are unable to agree on the chair within this period, the chair shall be selected by lot within three days from among the roster members who are non-Party nationals;
>
> (c) within 15 days of selection of the chair, each Party shall select one panelist;
>
> (d) if a Party fails to select its panelist within such period, the panelist shall be selected by lot within three days from among the roster members who are nationals of the Party; and
>
> (e) each Party shall endeavor to select panelists who have expertise or experience relevant to the subject matter of the dispute.

2. Panelists shall normally be selected from the roster. A Party may exercise a peremptory challenge against any individual not on the roster who is proposed as a panelist by the other Party within 15 days after the individual has been proposed.
3. If a Party believes that a panelist is in violation of the code of conduct, the Parties shall consult and if they agree, the panelist shall be removed and a new panelist shall be selected in accordance with this Article.

Article 22.10: Rules of Procedure

1. The Commission shall establish, by the date of entry into force of this Agreement, Rules of Procedure, which shall ensure:

> (a) a right to at least one hearing before the panel, which, subject to subparagraph (e), shall be open to the public;
>
> (b) an opportunity for each Party to provide initial and rebuttal submissions;

(c) that each Party's written submissions, written versions of its oral statement, and written responses to a request or questions from the panel will be made public within 10 days after they are submitted, subject to subparagraph (e);

(d) that the panel will consider requests from non-governmental entities located in the Parties' territories to provide written views regarding the dispute that may assist the panel in evaluating the submissions and arguments of the Parties; and

(e) the protection of confidential information.

2. Unless the Parties otherwise agree, the panel shall conduct its proceedings in accordance with the Rules of Procedure and may, after consulting with the Parties, adopt additional procedural rules not inconsistent with the Rules of Procedure.
3. The Commission may modify the Rules of Procedure.
4. Unless the Parties otherwise agree within 20 days from the date of the delivery of the request for the establishment of the panel, the terms of reference shall be:

"To examine, in the light of the relevant provisions of this Agreement, the matter referenced in the panel request and to make findings, determinations and recommendations as provided in Article 22.12(3) and to deliver the written reports referred to in Articles 22.12 and 22.13."

5. If the complaining Party wishes to argue that a matter has nullified or impaired benefits, the terms of reference shall so indicate.
6. If a Party wishes the panel to make findings as to the degree of adverse trade effects on a Party of any measure or other matter found not to conform with the obligations of this Agreement or to have caused nullification or impairment in the sense of Annex 22.2, the terms of reference shall so indicate.

Article 22.11: Experts and Technical Advice

1. On request of a Party, or, unless the Parties disapprove, on its own initiative, the panel may seek information and technical advice, including information and technical advice concerning environmental, labor, health, safety, or other technical matters raised by a Party in a proceeding, from any person or body that it deems appropriate.
2. Before a panel seeks information or technical advice, it shall establish appropriate procedures in consultation with the Parties. The panel shall provide the Parties:

(a) advance notice of, and an opportunity to provide comments to the panel on, proposed requests for information and technical advice pursuant to paragraph 1; and

(b) a copy of any information or technical advice submitted in response to a request pursuant to paragraph 1 and an opportunity to provide comments.

3. Where the panel takes the information or technical advice into account in the preparation of its report, it shall also take into account any comments by the Parties on the information or technical advice.

Article 22.12: Initial Report

1. Unless the Parties otherwise agree, the panel shall base its report on the relevant provisions of this Agreement and the submissions and arguments of the Parties.
2. If the Parties agree, the panel may make recommendations for resolution of the dispute.
3. Unless the Parties otherwise agree, the panel shall, within 120 days after the last panelist is selected, present to the Parties an initial report containing:

(a) findings of fact, including any findings pursuant to a request under Article 22.10(6);

(b) its determination as to whether a Party has not conformed with its obligations under this Agreement or that a Party's measure is causing nullification or impairment

in the sense of Annex 22.2, or any other determination requested in the terms of reference; and

(c) its recommendations, if the Parties have requested them, for resolution of the dispute.

4. Panelists may furnish separate opinions on matters not unanimously agreed.
5. A Party may submit written comments to the panel on its initial report within 14 days of presentation of the report or within such other period as the Parties may agree.
6. After considering any written comments on the initial report, the panel may reconsider its report and make any further examination it considers appropriate.

Article 22.13: Final Report

1. The panel shall present a final report to the Parties, including any separate opinions on matters not unanimously agreed, within 30 days of presentation of the initial report, unless the Parties otherwise agree. The Parties shall release the final report to the public within 15 days thereafter, subject to the protection of confidential information.
2. No panel may, either in its initial report or its final report, disclose which panelists are associated with majority or minority opinions.

Article 22.14: Implementation of Final Report

1. On receipt of the final report of a panel, the Parties shall agree on the resolution of the dispute, which normally shall conform with the determinations and recommendations, if any, of the panel.
2. If, in its final report, the panel determines that a Party has not conformed with its obligations under this Agreement or that a Party's measure is causing nullification or impairment in the sense of Annex 22.2, the resolution, whenever possible, shall be to eliminate the non-conformity or the nullification or impairment.[1]
3. Where appropriate, the Parties may agree on a mutually satisfactory action plan to resolve the dispute, which normally shall conform with the determinations and recommendations, if any, of the panel. If the Parties agree on such an action plan, the complaining Party may have recourse to Article 22.15(2) or Article 22.16(1), as the case may be, only if it considers that the Party complained against has failed to carry out the action plan.

Article 22.15: Non-Implementation - Suspension of Benefits

1. If a panel has made a determination of the type described in Article 22.14(2) and the Parties are unable to reach agreement on a resolution pursuant to Article 22.14 within 45 days of receiving the final report, or such other period as the Parties agree, the Party complained against shall enter into negotiations with the other Party with a view to developing mutually acceptable compensation.
2. If the Parties:

(a) are unable to agree on compensation within 30 days after the period for developing such compensation has begun; or

(b) have agreed on compensation or on a resolution pursuant to Article 22.14 and the complaining Party considers that the other Party has failed to observe the terms of the agreement,

the complaining Party may at any time thereafter provide written notice to the other Party that it intends to suspend the application to the other Party of benefits of equivalent effect. The notice shall specify the level of benefits that the Party proposes to suspend. Subject to paragraph 5, the complaining Party may begin suspending benefits 30 days after the later of the date on which it provides notice under this paragraph or the panel issues its determination under paragraph 3, as the case may be.
3. If the Party complained against considers that:

(a) the level of benefits proposed to be suspended is manifestly excessive; or

(b) it has eliminated the non-conformity or the nullification or impairment that the panel has found,

it may, within 30 days after the complaining Party provides notice under paragraph 2, request that the panel be reconvened to consider the matter. The Party complained against shall deliver its request in writing to the other Party. The panel shall reconvene as soon as possible after delivery of the request and shall present its determination to the Parties within 90 days after it reconvenes to review a request under subparagraph (a) or (b), or within 120 days for a request under subparagraphs (a) and (b). If the panel determines that the level of benefits proposed to be suspended is manifestly excessive, it shall determine the level of benefits it considers to be of equivalent effect.
4. The complaining Party may suspend benefits up to the level the panel has determined under paragraph 3 or, if the panel has not determined the level, the level the Party has proposed to suspend under paragraph 2, unless the panel has determined that the Party complained against has eliminated the non-conformity or the nullification or impairment.
5. The complaining Party may not suspend benefits if, within 30 days after it provides written notice of intent to suspend benefits or, if the panel is reconvened under paragraph 3, within 20 days after the panel provides its determination, the Party complained against provides written notice to the other Party that it will pay an annual monetary assessment. The Parties shall consult, beginning no later than 10 days after the Party complained against provides notice, with a view to reaching agreement on the amount of the assessment. If the Parties are unable to reach an agreement within 30 days after consultations begin, the amount of the assessment shall be set at a level, in U.S. dollars, equal to 50 percent of the level of the benefits the panel has determined under paragraph 3 to be of equivalent effect or, if the panel has not determined the level, 50 percent of the level that the complaining Party has proposed to suspend under paragraph 2.
6. Unless the Commission otherwise decides, a monetary assessment shall be paid to the complaining Party in U.S. currency, or in an equivalent amount of Chilean currency, in equal, quarterly installments beginning 60 days after the Party complained against gives notice that it intends to pay an assessment. Where the circumstances warrant, the Commission may decide that an assessment shall be paid into a fund established by the Commission and expended at the direction of the Commission for appropriate initiatives to facilitate trade between the Parties, including by further reducing unreasonable trade barriers or by assisting a Party in carrying out its obligations under the Agreement.
7. If the Party complained against fails to pay a monetary assessment, the complaining Party may suspend the application to the Party complained against of benefits in accordance with paragraph 4.
8. This Article shall not apply with respect to a matter described in Article 22.16(1).

Article 22.16: Non-Implementation in Certain Disputes

1. If, in its final report, a panel determines that a Party has not conformed with its obligations under Article 18.2(1)(a) (Enforcement of Labor Laws) or Article 19.2(1)(a) (Enforcement of Environmental Laws), and the Parties:

> (a) are unable to reach agreement on a resolution pursuant to Article 22.14 within 45 days of receiving the final report; or
>
> (b) have agreed on a resolution pursuant to Article 22.14 and the complaining Party considers that the other Party has failed to observe the terms of the agreement,

the complaining Party may at any time thereafter request that the panel be reconvened to impose an annual monetary assessment on the other Party. The complaining Party shall deliver its request in writing to the other Party. The panel shall reconvene as soon as possible after delivery of the request.
2. The panel shall determine the amount of the monetary assessment in U.S. dollars within 90 days after it reconvenes under paragraph 1. In determining the amount of the assessment, the panel shall take into account:

> (a) the bilateral trade effects of the Party's failure to effectively enforce the relevant law;
>
> (b) the pervasiveness and duration of the Party's failure to effectively enforce the relevant law;
>
> (c) the reasons for the Party's failure to effectively enforce the relevant law;
>
> (d) the level of enforcement that could reasonably be expected of the Party given its resource constraints;

(e) the efforts made by the Party to begin remedying the non-enforcement after the final report of the panel, including through the implementation of any mutually agreed action plan; and

(f) any other relevant factors.

The amount of the assessment shall not exceed 15 million dollars annually, adjusted forinflation as specified in Annex 22.16.

3. On the date on which the panel determines the amount of the monetary assessment under paragraph 2, or at any time thereafter, the complaining Party may provide notice in writing to the other Party demanding payment of the monetary assessment. The monetary assessment shall be payable in U.S. currency, or in an equivalent amount of Chilean currency, in equal, quarterly, installments beginning 60 days after the complaining Party provides such notice.

4. Assessments shall be paid into a fund established by the Commission and shall be expended at the direction of the Commission for appropriate labor or environmental initiatives, including efforts to improve or enhance labor or environmental law enforcement, as the case may be, in the territory of the Party complained against, consistent with its law. In deciding how to expend monies paid into the fund, the Commission shall consider the views of interested persons in the Parties' territories.

5. If the Party complained against fails to pay a monetary assessment, the complaining Party may take other appropriate steps to collect the assessment or otherwise secure compliance. These steps may include suspending tariff benefits under the Agreement as necessary to collect the assessment, while bearing in mind the Agreement's objective of eliminating barriers to bilateral trade and while seeking to avoid unduly affecting parties or interests not party to the dispute.

Article 22.17: Compliance Review

1. Without prejudice to the procedures set out in Article 22.15(3), if the Party complained against considers that it has eliminated the non-conformity or the nullification or impairment that the panel has found, it may refer the matter to the panel by providing written notice to the other Party. The panel shall issue its report on the matter within 90 days after the Party complained against provides notice.

2. If the panel decides that the Party complained against has eliminated the nonconformity or the nullification or impairment, the complaining Party shall promptly reinstate any benefits it has suspended under Article 22.15 or 22.16 and the Party complained against shall no longer be required to pay any monetary assessment it has agreed to pay under Article 22.15(5) or that has been imposed on it under Article 22.16(1).

Article 22.18: Five-Year Review

The Commission shall review the operation and effectiveness of Articles 22.15 and 22.16 not later than five years after the Agreement enters into force, or within six months after benefits have been suspended or monetary assessments have been imposed in five proceedings initiated under this Chapter, whichever occurs first.

Article 22.19: Referral of Matters from Judicial or Administrative Proceedings

1. If an issue of interpretation or application of this Agreement arises in any domestic judicial or administrative proceeding of a Party that any Party considers would merit its intervention, or if a court or administrative body solicits the views of a Party, that Party shall notify the other Party. The Commission shall endeavor to agree on an appropriate response as expeditiously as possible.

2. The Party in whose territory the court or administrative body is located shall submit any agreed interpretation of the Commission to the court or administrative body in accordance with the rules of that forum.

3. If the Commission is unable to agree, either Party may submit its own views to the court or administrative body in accordance with the rules of that forum.

Article 22.20: Private Rights

Neither Party may provide for a right of action under its domestic law against the other Party on the ground that a measure of the other Party is inconsistent with this Agreement.

Article 22.21: Alternative Dispute Resolution

1. Each Party shall, to the maximum extent possible, encourage and facilitate the use of arbitration and other means of alternative dispute resolution for the settlement of international commercial disputes between private parties in the free trade area.

2. To this end, each Party shall provide appropriate procedures to ensure observance of agreements to arbitrate and for the recognition and enforcement of arbitral awards in such disputes.

3. A Party shall be deemed to be in compliance with paragraph 2 if it is a party to and is in compliance with the 1958 *United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards* or the 1975 *Inter-American Convention on International Commercial Arbitration.*

Annex 22.2
Nullification or Impairment

1. If either Party considers that any benefit it could reasonably have expected to accrue to it under any provision of:

(a) Chapters Three through Five (National Treatment and Market Access for Goods, Rules of Origin and Origin Procedures, and Customs Administration);

(b) Chapter Seven (Technical Barriers to Trade);

(c) Chapter Nine (Government Procurement);

(d) Chapter Eleven (Cross-Border Trade in Services); or

(e) Chapter Seventeen (Intellectual Property Rights), is being nullified or impaired as a result of the application of any measure that is not inconsistent with this Agreement, the Party may have recourse to dispute settlement under this Chapter.

2. Neither Party may invoke paragraph 1(d) or (e) with respect to any measure subject to an exception under Article 23.1 (General Exceptions).

Annex 22.16
Inflation Adjustment Formula for Monetary Assessments

1. An annual monetary assessment imposed before December 31, 2004 shall not exceed 15 million dollars (U.S.).
2. Beginning January 1, 2005, the 15 million dollar (U.S.) annual cap shall be adjusted for inflation in accordance with paragraphs 3 through 5.
3. The period used for the accumulated inflation adjustment shall be calendar year 2003 through the most recent calendar year preceding the one in which the assessment is owed.
4. The relevant inflation rate shall be the U.S. inflation rate as measured by the Producer Price Index for Finished Goods published by the U.S. Bureau of Labor Statistics.
5. The inflation adjustment shall be estimated according to the following formula:

$15 million x (1+ P*i*) = A

P*i* = accumulated U.S. inflation rate from calendar year 2003 through the most recent calendar year preceding the one in which the assessment is owed.

A = cap for the assessment for the year in question.

Chapter Twenty-Three

Exceptions

Article 23.1: General Exceptions

1. For purposes of Chapters Three through Seven (National Treatment and Market Access for Goods, Rules of Origin and Origin Procedures, Customs Administration, Sanitary and Phytosanitary Measures, and Technical Barriers to Trade), Article XX of GATT 1994 and its interpretive notes are incorporated into and made part of this Agreement, *mutatis mutandi*s. The Parties understand that the measures referred to in Article XX(b) of GATT 1994 include environmental measures necessary to protect human, animal, or plant life or health, and that Article XX(g) of GATT 1994 applies to measures relating to the conservation of living and non-living exhaustible natural resources.

2. For purposes of Chapters Eleven, Thirteen, and Fifteen[1] (Cross-Border Trade in Services, Telecommunications, and Electronic Commerce), Article XIV of GATS (including its footnotes) is incorporated into and made part of this Agreement. [2]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.

Article 23.2: Essential Security

Nothing in this Agreement shall be construed:

> (a) to require a Party to furnish or allow access to any information the disclosure of which it determines to be contrary to its essential security interests; or
>
> b) to preclude a Party from applying measures that it considers necessary for the fulfillment of its obligations under the United Nations Charter with respect to the maintenance or restoration of international peace or security, or the protection of its own essential security interests.

Article 23.3: Taxation

1. Except as set out in this Article, nothing in this Agreement shall apply to taxation measures.
2. Nothing in this Agreement shall affect the rights and obligations of either Party under any tax convention. In the event of any inconsistency between this Agreement and any such convention, that convention shall prevail to the extent of the inconsistency. In the case of a tax convention between the Parties, the competent authorities under that convention shall have sole responsibility for determining whether any inconsistency exists between this Agreement and that convention.
3. Notwithstanding paragraph 2:

> (a) Article 3.2 (Market Access – National Treatment) and such other provisions of this Agreement as are necessary to give effect to that Article shall apply to taxation measures to the same extent as does Article III of the GATT 1994; and
>
> (b) Articles 3.13 (Market Access – Export Taxes) and 3.14 (Market Access – Luxury Tax) shall apply to taxation measures.

4. Subject to paragraph 2:

> (a) Article 11.2 (Cross-Border Trade in Services – National Treatment) and Article 12.2 (Financial Services – National Treatment) shall apply to taxation measures on income, capital gains, or on the taxable capital of corporations that relate to the purchase or consumption of particular services, except that nothing in this subparagraph shall prevent a Party from conditioning the receipt or continued receipt of an advantage relating to the purchase or consumption of particular services on requirements to provide the service in its territory; and
>
> (b) Articles 10.2 (Investment – National Treatment) and 10.3 (Investment – Most-Favored-Nation Treatment), Articles 11.2 (Cross-Border Trade in Services – National Treatment) and 11.3 (Cross-Border Trade in Services – Most-Favored Nation Treatment), and Articles 12.2 (Financial Services – National Treatment) and 12.3 (Financial Services – Most-Favored-Nation Treatment) shall apply to all taxation measures, other than those on income, capital gains, or on the taxable capital of corporations, taxes on estates, inheritances, gifts, and generation-skipping transfers,

except that nothing in those Articles shall apply:

> (c) any most-favored-nation obligation with respect to an advantage accorded by a Party pursuant to a tax convention;
>
> (d) to a non-conforming provision of any existing taxation measure;

(e) to the continuation or prompt renewal of a non-conforming provision of any existing taxation measure;

(f) to an amendment to a non-conforming provision of any existing taxation measure to the extent that the amendment does not decrease its conformity, at the time of the amendment, with any of those Articles;

(g) to the adoption or enforcement of any taxation measure aimed at ensuring the equitable or effective imposition or collection of taxes (as permitted by Article XIV(d) of GATS);

(h) to a provision that conditions the 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; or

(i) to any excise tax on insurance premiums adopted by Chile to the extent that such tax would, if levied by the United States, be covered by subparagraphs (d), (e), or (f).

5. Subject to paragraph 2 and without prejudice to the rights and obligations of the Parties under paragraph 3, Article 10.5(2), (3), and (4) (Investment – Performance Requirements) shall apply to taxation measures.
6. Article 10.9 (Expropriation and Compensation) and Article 10.15 (Submission of a Claim to Arbitration) shall apply to a taxation measure alleged to be an expropriation or a breach of an investment agreement or investment authorization. However, no investor may invoke Article 10.9 as the basis of a claim where it has been determined pursuant to this paragraph that the measure is not an expropriation. An investor that seeks to invoke Article 10.9 with respect to a taxation measure must first refer to the competent authorities set out in Annex 23.3 at the time that it gives its notice of intent under Article 10.15(4) the issue of whether that taxation measure involves an expropriation. If the competent authorities do not agree to consider the issue or, having agreed to consider it, fail to agree that the measure is not an expropriation within a period of six months of such referral, the investor may submit its claim to arbitration under Article 10.15.

Article 23.4: Balance of Payments Measures on Trade in Goods
Should a Party decide to impose measures for balance of payments purposes, it shall do so only in accordance with that Party's rights and obligations under GATT 1994, including the *Declaration on Trade Measures Taken for Balance of Payments Purposes* (1979 Declaration) and the *Understanding on the Balance of Payments Provisions of the GATT 1994* (BOP Understanding). In adopting such measures, the Party shall immediately consult with the other Party and shall not impair the relative benefits accorded to the other Party under this Agreement.[3]

Article 23.5: Disclosure of Information
Nothing in this Agreement shall be construed to require a Party to furnish or allow access to information the disclosure of which would impede law enforcement or would be contrary to the Party's law protecting personal privacy or the financial affairs and accounts of individual customers of financial institutions.
Article 23.6: Definitions

For purposes of this Chapter:

tax convention means a convention for the avoidance of double taxation or other international taxation agreement or arrangement; and

taxes and taxation measures do not include:
(a) a customs duty; or
(b) the measures listed in exceptions (b) and (c) of the definition of customs duty.

Annex 23.3
Competent Authorities

For purposes of this Chapter:

competent authorities means

(a) in the case of Chile, the *Director del Servicio de Impuestos Internos, Ministerio de Hacienda*; and

(b) in the case of the United States, the Assistant Secretary of the Treasury (Tax Policy), Department of the Treasury.

Chapter Twenty Four

Final Provisions

Article 24.1: Annexes, Appendices, and Footnotes

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

Article 24.2: Amendments

1. The Parties may agree on any modification of or addition to this Agreement.

2. When so agreed, and approved in accordance with the applicable legal procedures of each Party, a modification or addition shall constitute an integral part of this Agreement.

Article 24.3: Amendment of the WTO Agreement

If any provision of the WTO Agreement that the Parties have incorporated into this Agreement is amended, the Parties shall consult on whether to amend this Agreement.

Article 24.4: Entry into Force and Termination

1. The entry into force of this Agreement is subject to the completion of necessary domestic legal procedures by each Party.

2. This Agreement shall enter into force 60 days after the date on which the Parties exchange written notification that such procedures have been completed, or after such other period as the Parties may agree.

3. Either Party may terminate this Agreement by written notification to the other Party. This Agreement shall expire 180 days after the date of such notification.

Article 24.5: Authentic Texts

The English 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 at Miami, in duplicate, this sixth day of June, 2003.

FOR THE GOVERNMENT OF THE REPUBLIC OF CHILE:

FOR THE GOVERNMENT OF THE UNITED STATES OF AMERICA: