# ADDITIONAL PROTOCOL
# TO THE FRAMEWORK AGREEMENT OF
# THE PACIFIC ALLIANCE

**PREAMBLE**

The Republic of Colombia, the Republic of Chile, the United Mexican States and the Republic of Peru, henceforth referred to as "the Parties",

In development of the objectives and principals established in the Framework Agreement for the Pacific Alliance, signed in Paranal, Antofagasta, Republic of Chile on 6 June 2012 with a view to:

**STRENGTHENING** the ties of friendship, solidarity and cooperation between their peoples;

**RATIFYING** their desire to build a common space with the purpose of deepening political, economic, social and cultural integration as well as establishing an effective commitment to joint action in order to improve the wellbeing and living standards of their inhabitants and promote sustainable development in their respective territories;

**STRENGTHENING** regional integration to achieve greater growth, development and competitiveness in their economies and advance progressively towards the free circulation of goods, services, capital and people;

**ESTABLISHING** clear and mutually beneficial rules with the objective of stimulating the expansion and diversification of the trade of goods and services between the Parties, as well as attracting investment in their territories;

**REAFFIRMING** the objective of eliminating obstacles to trade with the goal of generating greater dynamism in the flow of trade of goods and services and investment between the Parties;

**FACILITATING** trade, promoting efficient, transparent and predictable customs procedures for their importers and exporters;

**AVOIDING** disruption in reciprocal trade and promote conditions for fair competition;

**STIMULATING** trade in the innovation sectors of their economies;

**PROMOTING** transparency in the trade of goods and services and investment;

**RECOGNISING** that this process of integration is based upon economic and commercial treaties and upon integration at a bilateral, regional and multilateral level between the Parties;

**REAFFIRMING** the rights and obligations defined in the Treaty of Marrakech which established the World Trade Organisation, the Treaty of Montevideo of 1980 as well as free trade and integration agreements between the Parties;

**CONSIDERING** the condition of the Members of the Andean Community of Nations the Republic of Colombia and the Republic of Peru and the commitments that concern these States;

**FURTHERING** greater ties with other regions, in particular Asia Pacific, and

**DEEPENING** cooperation and intensifying the flow of trade in goods and services and investment with other markets;

**HAVE AGREED** to this Additional Protocol to the Framework Agreement for the Pacific Alliance (henceforth referred to as "Additional Protocol")

## CHAPTER 1: INITIAL PROVISIONS

### ARTICLE 1.1: Establishment of a Free Trade Area

The Parties, in accordance with Article XXIV of the General Agreement on Customs Duties and Trade of 1994 and Article V of the General Agreement on the Trade in Services which form part of the Treaty of Marrakech which established the World Trade Organisation, establish a free trade area.

### ARTICLE 1.2: Relationship to other International Agreements

1. In accordance with the Framework Agreement for the Pacific Alliance and recognising the intent of the Parties that their existing international agreements should coexist alongside this Additional Protocol, the Parties confirm:

   (a) Their rights and obligations in regards to the existing international treaties of which all the Parties may be part, including the Treaty of Marrakech which established the World Trade Organisation and,

   (b) Their rights and obligations in regards to the existing international treaties of which one Party and at least one other Party are part.

2. If one Party considers a provision of this Additional Protocol to be incompatible[1] with a provision in another treaty of which that Party and at least one other Party are part, the Parties shall, upon request, hold consultations with the objective of reaching a mutually satisfactory resolution. The foregoing is without prejudice to the rights and obligations of the Parties in accordance with Chapter 17 (Dispute Resolution).[2]

### ARTICLE 1.3: Interpretation of the Additional Protocol

The Parties will interpret and apply the provisions of this Additional Protocol in light of the objectives, principals and other recitals established in the Preamble and in accordance with the applicable norms of international law.

### ARTICLE 1.4: Observance of the Additional Protocol

Each Party will ensure the adoption of all necessary measures to implement the provisions of this Additional Protocol in its territory and at all levels of government.

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[1] For the effects of the application of this Additional Protocol, the Parties recognise the fact that a treaty may award more favourable treatment to the goods, services, investments or people, that what is awarded, in accordance with this Additional Protocol, does not constitute a case of incompatibility in the sense implied in paragraph 2.

[2] For greater certainty, the consultations envisaged in this paragraph do not constitute a stage in the Dispute Resolution process established in Chapter 17 (Dispute Resolution).

## CHAPTER 2: GENERAL DEFINTIONS

### SECTION 2.1: General definitions

For the purposes of this Additional Protocol, unless otherwise specified:
**Anti-dumping Agreement** means the Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994, which is part of the Agreement on the WTO;

**WTO Agreement** means the Marrakesh Agreement by which the World Trade Organization is established;

**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 Agreement on the WTO;

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

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

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

**Customs Duties** means any import duty or tax, and any charge of any type applied to the import of goods, including any import surcharge or additional fee, but it does not include:

(a) Any fee equivalent to an excise tax applied in compliance with Section III:2 of GATT 1994, with regard of similar, directly competing or substitute goods of one Party, or in respect of goods out of which the imported goods have been manufactured or produced totally or partially;

(b) Any antidumping duty or countervailing measure applied in compliance with Section VI of GATT 1994, the Antidumping Agreement, or the WTO Agreement on Subsidies and Countervailing Measures;

(c) Any premium offered, paid or collected, if any, on imported goods, deriving from any bidding system, with respect to the administration of quantitative restrictions to import or of tariff quota, or tariff preference quotas, and

(d) Any duty or any charge related to import, proportional to the cost of the services rendered;

**Customs Authority** means the authority that, according to the respective laws of each Party, is responsible for administering, as well as implementing customs laws and regulations:

(a) In the case of Chile, the Servicio Nacional de Aduanas (the National Customs Service), or its succesor;

(b) In the case of Colombia, the Dirección de Impuestos y Aduanas Nacionales DIAN (Customs and Taxes National Directorate), or its succesor;

(c) In the case of Mexico; the Servicio de Administración Tributaria (Tax and Administration Service) of the Secretaría de Hacienda y Crédito Público (Department of Finance and Public Credit), or its succesor, and

(d) In the case of Peru: the Superintendencia Nacional de Aduanas y de Administración Tributaria - SUNAT, (National Superintendence of Customs and Tax Administration) or its succesor;

**Chapter** means the first two digits of the tariff classification code of the Harmonized System (HS);

**Free Trade Commission** means the Free Trade Commission established in compliance with Section 16.1 (Free Trade Commission);

**Government procurement** means the process through which a government obtains goods or services, or any other combination of the two, for governmental purposes, and not with a view of commercial sale or resale or for its use in the production or supply of goods and services for commercial sale or resale;

**Days** means calendar days, including weekends and holidays;

**Company** means any entity formed or organized in compliance with the applicable legislation, be it for- profit or for-non-profit, and whether privately owned or governmentally owned, including any corporation, trust, partnership, sole proprietorship, joint venture or other association, and the branch of a company;

**Company of a Party** means the company formed or organized in compliance with the legislation of a Party and a branch located in the territory of a Party and that carries commercial activities in that territory;

**Existing** means in effect on the date of the signature of this Additional Protocol;

**GATT 1994** means the General Agreement on Tariffs and Trade 1994, which is part of the 2-2 Agreement on the WTO;

**Measure** means any law, regulation, procedure, provision, requirement, or practice;

**Goods** means any product, item or material;

**Goods of a Party** means the national products as understood in GATT 1994 or those goods that the Parties have agreed upon, including the goods originating of that Party. Goods of a Party may incorporate materials of another Party and of a non-Party country;

**Originating goods** means goods in compliance with the applicable provisions of Chapter 4 (Rules of Origin and Procedures related to Origin);

**National** means a natural person who is a national of a Party in accordance with its applicable legislation;

**WTO** means the World Trade Organization;

**Party** means every State for which this Additional Protocol has come into force;

**Heading** means the first four digits of the tariff classification code of the Harmonized System (HS);

**Person** means a natural person, or a company;

**Person of a Party** means a national or a company of a Party;

**Harmonized System** (HS) means the Harmonized Commodity Description and Coding System, including its General Rules of Interpretation, and the notes to its section, chapters and subheadings, in the manner that the Parties have adopted and implemented in their respective legislation;

**Subheading** means the first six digits of the tariff classification code of the Harmonized System (HS), and

**Preferential tariff treatment** means the tariff applicable to originating goods established in the Annex 3.4 of this Additional Protocol.

**ARTICLE 2.2: Specific Definition**

**Territory** means:

(a) With respect to Chile, the land, sea and air space under their sovereignty, and the exclusive economic zone and the continental shelf over which they have sovereignty rights and jurisdiction in accordance with international law and its internal legislation;

(b) With respect to Colombia, in addition to its mainland territory, the Archipelago of San Andrés, Providencia and Santa Catalina, Malpelo Island and all other islands, islets, keys, “morros” and banks, as well as its airspace and maritime areas over which the country has sovereignty, or sovereign rights, or jurisdiction in accordance with domestic legislation and international law, including applicable international treaties;

(c) With respect to Mexico:
   (i) The states of the Federation and the Federal District;
   (ii) The islands, including the reefs and keys in adjacent seas;
   (iii) The islands of Guadalupe and of Revillagigedo, situated in the Pacific Ocean;
   (iv) The continental shelf and the submarine shelf of the islands, keys and reefs;
   (v) The waters of the territorial seas, to the extent and terms established by the international law and its interior maritime waters;
   (vi) The space above the national territory, to the extent and in accordance with the rules established by their own international law, and
   (vii) Any areas beyond the territorial seas of Mexico over which Mexico may exercise rights on the seafloor and the sea subsoil, and on the natural resources they have, in accordance with international law, including the United Nations Convention on the Law of the Sea, as well as its national legislation;

(d) With respect to Peru, the mainland territory, the islands, the maritime zones and the airspace above them, over which Peru exercises sovereignty or sovereignty and jurisdiction rights, in accordance with its national legislation and international law.

## CHAPTER 3: MARKET ACCESS

### Section A: Definitions and Scope

### ARTICLE 3.1 Definitions

For the purposes of this Chapter:
**Agreement on Import Licensing** means the Agreement on Import Licensing Procedures, that is part of the Agreement on WTO;

**Subsidies Agreement** means the Agreement on Subsidies and Countervailing measures that is part of the WTO Agreement;

**Import license or permit** means the document issued by the appropriate administrative body, issued under an administrative procedure used for the implementation of import licensing;

**Printed advertising materials** means those goods classified on Chapter 49 of the Harmonized System (HS), including brochures, prints, flyers, sales catalogs, directories published by business associations, tourism promotional materials and posters used to promote, publicize or advertise a good or service, to be used for publicity of a good or service, and be distributed free of charge;

**Goods temporarily admitted for sports purposes** means sport equipment for use in sports contests, events or training in the territory of the Party to which they are admitted;

**Commercial samples of negligible value** means commercial samples valued, individually or as a whole shipment, of not more than one U.S. dollar or the equivalent amount in the currency of a Party, or so marked, broken, perforated or otherwise treated that they are not suitable for sale or for any use other than for samples;

**Advertising films and recordings** means recorded visual media or recorded audio material consisting essentially of images and/ or sound showing the nature or functioning of goods or services offered for sale or lease by a person established or residing in the territory of a Party, provided that such materials are suitable for exhibition to prospective customers, but not for its dissemination to the general public

**Performance requirement** means the requirement of:

(a) Exporting a given volume or percentage of goods or services;

(b) Substituting imported goods or services by goods or services of the Party granting the waiver of customs duties or the import license

(c) That a person benefiting from a waiver of customs duties or from 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 the goods produced in the territory of that Party;

(d) That a person who benefits from a waiver of customs duties or from an import license produce goods or 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) Relating in any way the volume or value of the imports to the volume or value of the exports or to the amount of foreign currency inflow;

But does not include a requirement that an imported good be:

(a) Subsequently exported;

(b) Used as a material in the production of other commodity that is subsequently exported;

(c) Substituted by an identical or similar good used as a material in the production of another good that is subsequently exported, or

(d) Substituted by an identical or similar good that is subsequently exported;

**Consular requirements or transactions** means requirements for the goods of a Party intended for export to the territory of another Party to first be submitted to the supervision of the consul of the importing Party in the territory of the exporting Party to the effect of obtaining consular invoices or consular visas for commercial invoices, certificates of origin, manifests, export declarations of the shipper or any other customs document required for import or in connection therewith;

**Export subsidies** means those mentioned in Section 1 (e) of the Agreement on Agriculture, which is part of the WTO Agreement, including any amendment of this Article, and

**Import licensing procedure** means an administrative procedure used for the implementation of import licensing regulations that require the submission of an application or other documentation, different from the one required for customs purposes, to the appropriate administrative body as a prior condition for the import to the importing Party.

**ARTICLE 3.2 Scope and Coverage**

Unless otherwise provided in this Additional Protocol, this Chapter applies to the trade in goods between the Parties.

**Section B: National Treatment**

**ARTICLE 3.3: National Treatment**

1. Each Party shall grant national treatment to the goods of another Party in accordance with Section III of GATT 1994, including its interpretative notes. For such purpose, Section III of GATT 1994 and its interpretative notes are incorporated into this Additional Protocol and are an integral part thereof, mutatis mutandis.

2. The provisions of paragraph 1 mean, with respect to a regional or state or local level government a treatment no less favorable than the most favorable treatment that a regional or state or local level government gives to any of the similar goods, directly competitive or substitutable as applicable, of the Party of which such government is part.

3. Paragraphs 1 and 2 shall not apply to the measures set out in Annex 3.3.

**Section C: Tariff Elimination**

**ARTICLE 3.4 Elimination of Tariffs**

1. Unless otherwise provided in this Additional Protocol, each Party shall eliminate its tariffs on originating goods in accordance with its Tariff Elimination List set out in Annex 3.4.

2. Unless otherwise provided in this Additional Protocol, none of the Parties may increase any existing tariff, or adopt any new customs duty, on originating goods.

3. If at any time after the date of the entry into force of this Additional Protocol, a Party reduces its most-favored-nation- tariff applied, such tariff shall apply only if is less than the tariff resulting from the application of Annex 3.4.

4. At the request of any Party, such Party and one or more Parties shall consult, in accordance with this Chapter, to examine the possibility of improving the tariff market access conditions on originating goods set out in their lists of tariff elimination in Annex 3.4. Such agreements between two or more parties shall be adopted by the decisions of the Free Trade Commission.

5. An agreement between two or more Parties to improve tariff market access conditions on originating goods, based on paragraph 4, shall prevail over any duty rate or tariff relief category set out in their respective lists of tariff elimination in Annex 3.4.

6. When a Party decides to unilaterally accelerate the elimination of customs tariffs on originating goods of the other Parties set out in its own list of tariff elimination in Annex 3.4, the Party shall inform the other Parties before the new customs tariff comes into force.

7. If a party improves tariff market access conditions in accordance with paragraphs 4 or 6, the benefits of this improvement will extend to the other Parties.

8. A Party may:

(a) Increase a customs tariff to be applied to originating goods to a level not higher than the one set out in Annex 3.4, after a unilateral reduction of such customs tariff, or

(b) Maintain or increase a customs tariff on an originating good, when authorized by the WTO Dispute Settlement Body.

**ARTICLE 3.5: Customs Valuation**

Customs valuation principles applied to trade between the Parties will be governed by the provisions of the Customs Valuation Agreement. To this end, the Customs Valuation Agreement is incorporated to this Additional Protocol and is an integral part thereof, *mutatis mutandis.*

**Section D: Non-Tariff Measures**

**ARTICLE 3.6 Restrictions on Imports and Exports**

1. Unless otherwise provided in this Additional Protocol, no Party may adopt or maintain a non-tariff measure that prohibits or restricts the import of any good of another Party or the export or sale for export of any good destined for the territory of another Party, with the exception of the provisions of Section XI of GATT 1994, and its interpretative notes. To this end Section XI of GATT 1994 and its interpretative notes are incorporated to this Additional Protocol and are an integral part thereof *mutatis mutandis.*

2. The Parties understand that the rights and obligations of GATT 1994 incorporated in paragraph 1 prohibit, in any circumstances in which it is prohibited any other restriction, that a Party adopt or maintain:

(a) Requirements of export and import prices, except as permitted in the performance of duties and obligations of antidumping rights or countervailing measures;

(b) Import licensing conditioned to the fulfillment of a performance requirement, or

(c) Voluntary restrictions to exports, except the ones permitted in Section VI of GATT 1994,

as were established by Section 8 of the Agreement on Subsidies and Section 8.1 of the Antidumping Agreement.

3. Paragraphs 1 and 2 shall not apply to the measures set out in Annex 3.3.

4. No Party may require, as a condition of its commitment to import or to the import of a good, that a person of another Party establish or maintain a contractual or other relationship with a distributor in its territory.

5. Nothing in paragraph 4 shall prevent a Party from requiring the appointment of an agent for the purpose of facilitating communications between regulatory authorities of a Party and a person of other Party.

6. For the purposes of paragraph 4, **distributor** means a person of a Party who is responsible for the commercial distribution, agency, concession or representation in the territory of that Party, of goods of another Party.

**ARTICLE 3.7: Other Non-Tariff Measures**

A measure that could affect the marketing of goods in the territory of a Party shall be in accordance with the obligations of this Additional Protocol. Notwithstanding the foregoing, the Party intending to adopt such measure shall consult with the affected Parties. Measures of this type should be notified to the Parties at least 60 days prior to their implementation and must not diminish the obligations established in this Additional Protocol.

**ARTICLE 3.8: Import Licenses or Permits**

1. No Party shall adopt or maintain a measure inconsistent with the Agreement on Import Licensing

2. And to this end, the Agreement is incorporated to this Additional Protocol and is an integral part thereof, mutatis mutandis.

3. Unless otherwise provided in this Additional Protocol, licenses or import permits are granted and issued within a maximum period of 20 working days from the date on which the importing Party receives the request, in accordance with the regulating legislation.

4. Upon entry into force of this Additional Protocol, each Party shall notify the other Parties of any existing import licensing procedure.

5. From the date of entry into force of this Additional Protocol, each Party shall notify the other Parties, of any new import licensing procedure and of any amendment to their existing import licensing procedures, within 20 days before their entry into force.

6. A notice provided under this Article shall include the information set out in Section 5 of the Agreement on Import Licensing.

7. Before applying any new or amended import licensing procedure a Party shall publish the new procedure or its amendment on the official government website or in its official journal. The Party shall do so at least 20 days before the new procedure or amendment enters into force. The Party adopting or amending any import licensing procedure, shall notify the representatives of the other parties in the Committee on Market Access.

8. The Parties shall apply the provisions of this Article to import licensing procedures to goods of any other Party.

**ARTICLE 3.9: Administrative Fees and Formalities**

1. Each Party shall ensure, in accordance with paragraph 1 of Section VIII of GATT 1994 and its interpretative notes, that all fees and charges of whatever nature, different from customs duties, charges equivalent to an excise tax or other internal taxes applied in accordance with paragraph 2 of Section III of GATT 1994, and antidumping rights and countervailing measures, taxes on imports or exports or in connection therewith, shall be limited to the approximate cost of services rendered and shall not represent an indirect protection to domestic goods or a duty on imports or exports for tax purposes.

2. No Party shall demand consular transactions or requirements, including fees or charges related, in connection with the importation of any merchandise of the other Party.

3. Each Party shall make available the fees and charges imposed in connection with import or export, and make the best effort to keep them updated through Internet.

**ARTICLE 3.10: Taxes, Duties or Charges to Export**

Unless otherwise provided in Annex 3.10, no Party shall adopt or maintain any tax, duty or other charge on the export of any good destined for the territory of another Party, unless such tax, duty or charge is also adopted or maintained on such good when destined to domestic consumption.

**Section E: Special Customs Procedures**

**ARTICLE 3.11: Customs Duty Waiver**

1. No Party shall adopt any new customs duty waiver, or extend the application of an existing customs duty waiver, in respect of the current beneficiaries, or will extend such waiver to new beneficiaries, when the waiver is conditioned, explicitly or implicitly, on the fulfillment of a performance requirement.

2. No Party shall condition, explicitly or implicitly, the continuation of an existing customs duty waver on the fulfillment of a performance requirement.

3. Each Party incorporates the rights and obligations arising under the Subsidies Agreement.

**ARTICLE 3.12: Temporary Admission or Import of Goods**

1. Each Party, in accordance with its law, shall authorize the temporary admission or import free of customs duties to the following goods, admitted or imported into its territory from the territory of other Party, regardless of their origin:

(a) Professional equipment, including press or television equipment, computer programs, and broadcasting and filmmaking equipment, necessary in the conduct of business, trade or professional activity of the person who qualifies for temporary entry pursuant to the legislation of the importing Party;

(b) Goods intended for display or demonstration including their component parts, auxiliary devices and accessories;

(c) Commercial samples and advertising films and recordings, and

(d) Goods imported or admitted for sports purposes.

2. Each Party, at the request of the interested person and for reasons its customs authority considers valid, shall extend the time-limit for the temporary admission or import, beyond the initial deadline, in accordance with its legislation.

3. No Party shall impose a condition on the temporary admission or import free of customs duties to a good referred to in paragraph 1, other than that the good:

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

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

(c) Be accompanied by a bond, if required by the importing Party in an amount not exceeding the charges that would be owed, if applicable, for the permanent entry or import, refundable upon exit of the goods;

(d) Be susceptible of identification when exported;

(e) Be exported on the departure of the person referred to in sub-paragraph (a), or within the time-limit set for the temporary admission or import that the Party may establish, in accordance with the time-limit established by its legislation;

(f) Be admitted or imported in a quantity no greater than what is reasonable for the use to which it is intended, and

(g) Be admitted or imported in another manner into the territory of the Party in accordance with its law.

4. If any of the conditions imposed by a Party under paragraph 3 has not been met, such Party may apply the customs duties or any other charge that would be normally owed for the permanent admission or import of the goods, plus any other charge or penalty in accordance with the provisions of its legislation.

5. Each Party shall adopt or maintain procedures in order to facilitate the expedited clearance of the goods admitted or imported under this Section. In so far as possible, when such goods accompany a national or resident of other Party who is seeking temporary entry, such procedures shall allow that the goods be released simultaneously with the arrival of that national or resident.

6. Each Party shall permit that a good temporarily admitted or imported under this Article be exported through a customs port different from the one through which it was temporarily admitted or imported.

7. Each Party shall provide that its customs authority or other competent authority release the importer, or any other person responsible for a good admitted or imported pursuant to this section, of any liability for the inability to export the good, by the submission of satisfactory evidence to the customs authority or other competent authority of the importing Party, that the good has been destroyed within the time-frame originally scheduled for temporary admission or import or any lawful extension.

8. No Party:

(a) shall prohibit that a vehicle or container used in international transportation and that has entered into its territory from another Party, exit its territory on any route that is reasonably related to the inexpensive and prompt departure of such vehicle or

container;

(b) shall require a bond or impose any penalty or charge solely on the reason that the port of entry of the vehicle or container is different from the port of exit.

(c) shall condition the release of any obligation, including any bond imposed at the entry of a vehicle or container to its territory, to its exit through a specific port, and

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

9. For the purposes of paragraph 8, **vehicle** means a truck, track-truck, tractor, trailer or trailer unit, locomotive or train wagon, or other railroad equipment.

**ARTICLE 3.13: Goods Re- imported after Repair or Alteration**

1. No Party shall impose a customs duty on a good, regardless of its origin, that has been re-entered into its territory after having been temporarily exported from its territory or the territory of other Party to be repaired or altered, regardless of whether such repair or alteration could have been performed in the territory of the Party from which the good was exported for repair or alteration.

2. No Party shall impose a customs duty to a good that, regardless of its origin, is temporarily admitted from the territory of other Party for repair or alteration.

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

(a) Destroys the essential characteristics of a product or creates a new or commercially different good, or

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

**ARTICLE 3.14: Duty-Free Import of Commercial Samples of Negligible Value and Printed Advertising Materials**

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

(a) Such samples be imported solely for the purpose of ordering goods or services provided from the territory of other Party, or from other country which is not a Party, or

(b) Such advertising materials be imported in packets that do not contain, each one, more than one copy of each print, and that neither the materials or the packets form part of a larger consignment.

**Section F: Agriculture**

**ARTICLE 3.15: Scope**

This Section applies to measures adopted or maintained by the Parties in connection with the trade in agricultural goods as defined by Annex I of the Agreement on Agriculture, which is part of the Agreement on WTO (hereinafter referred to as "agricultural goods").

**ARTICLE 3.16: Export Subsidies**

1. The Parties share the objective of achieving the multilateral elimination of export subsidies on agricultural goods and shall work together with a view to an agreement in the WTO to eliminate those subsidies and prevent their reintroduction in any form.

2. No Party shall adopt, maintain or reintroduce subsidies to the export of any agricultural good destined for the territory of other Party[3].

**Part G: Committee on Market Access**

**ARTICLE 3.17: Committee on Market Access**

1. The Parties hereby establish a Committee on Market Access (hereinafter the "Committee"), composed of representatives of each of the Parties, that will assist the Free Trade Commission in the performance of their duties. The meetings of the Committee and of any *ad-hoc* working group will be coordinated by:

(a) In the case of Chile, the Dirección General de Relaciones Económicas Internacionales (General Directorate for International Economic Relations) of the Ministry of Foreign Affairs, or its successor;

(b) In the case of Colombia, the Ministerio de Comercio, Industria y Turismo (Ministry of Commerce, Industry and Tourism) or its successor;

(c) In the case of México, the Secretaría de Economía (Department of Economy), or its successor, and

(d) In the case of Peru, the Ministerio de Comercio Exterior y Turismo (Ministry of Foreign Trade and Tourism), or its successor.

2. The Committee shall meet at the place and in the opportunity agreed by the Parties, at the request of any of the Parties or of the Free Trade Commission in order to consider any matter arising under this Chapter.

3. The decisions of the Committee shall be adopted by consensus and reported to the appropriate instances.

4. Committee meetings may be held in person or through any technological means.

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3 For greater certainty, in the case a Party seeks the dispute settlement mechanism set out on Chapter 17 (Dispute Settlement) for a measure inconsistent with the obligation set out in this paragraph, the terms of Section 17.21 (Urgent Cases) shall apply.

5. Notwithstanding the provisions of paragraph 1, the Committee may conduct sessions to discuss bilateral issues, provided that the other Parties are given sufficient notice in advance so that, if appropriate, they can participate in the meeting. The agreements reached at the meeting shall be adopted by consensus between the Parties concerned and shall shall have effect only in respect of them.

6. The Committee shall have the following functions:

(a) Monitor compliance, implementation and correct interpretation of the provisions of this Chapter and its Annexes, including future amendments to the Harmonized System (HS) to ensure the obligations of each Party under this Additional Protocol;

(b) Serve as a discussion forum for the Parties to consult and resolve on issues related to this Chapter, in coordination with any instance established in this Additional Protocol;

(c) Address barriers to the trade in goods between the Parties, especially those related to the implementation of non- tariff measures and, if appropriate, refer such matters to the Free Trade Commission for consideration;

(d) Make appropriate recommendations on matters within its competence to the Free Trade Commission;

(e) Coordinate the exchange of information on trade in goods between the Parties;

(f) Foster cooperation for the implementation and administration of this Chapter;

(g) Consult and address any differences that may arise between the Parties on matters related to the classification of goods under the Harmonized System (HS);

(h) Establish *ad-hoc* working groups with specific mandates, and

(i) Other functions entrusted by the Free Trade Commission.

## CHAPTER 4: RULES OF ORIGIN AND PROCEDURES RELATED TO ORIGIN

### Section A: Rules of Origin

### ARTICLE 4.1: Definitions

For the purposes of this Chapter:

**Aquaculture** means the farming of aquatic organisms including fish, molluscs, crustaceans, other aquatic invertebrates and aquatic plants, from reproduction material such as eggs, small fish, fry, larvae, post-larvae and seedlings in order to increase production through the intervention in the rearing or growing processes, such as the regulation designed for preservation of livestock, feeding or protection from predators;

**Competent authority for issuing certificates of origin** means the authority, according to the respective laws of each Party, that is responsible for the issuance of the certificate of origin, which may delegate such function to authorized entities:

(a) In the case of Chile, the Dirección General de Relaciones Económicas Internacionales (Directorate General for International Economic Relations) or its successor;

(b) In the case of Colombia, the Dirección de Impuestos y Aduanas DIAN (Customs and Taxes National Directorate) or its successor;

(c) In the case of Mexico, the Secretaría de Economía, (Department of Economy), or its successor, and

(d) In the case of Peru, the Ministerio de Comercio Exterior y Turismo, (the Ministry of Foreign Trade and Tourism), or its successor;

**Competent authority for verification of origin** means the authority, which according to the respective laws of each party is responsible for verifying origin:

(a) In the case of Chile, the Servicio Nacional de Aduanas (National Customs Service), or its successor;

(b) In the case of Colombia, the Dirección de Impuestos y Aduanas Nacionales DIAN, or its successor;

(c) In the case of Peru, the Ministerio de Comercio Exterior y Turismo, (Ministry of Foreign Trade and Tourism) or its successor, and

(d) In the case of Mexico, the Servicio de Administración Tributaria de la Secretaría de Hacienda y Crédito Público (Tax Administration Service of the Department of Finance and Public Credit), or its successor;

**CIF** means the value of imported goods and includes the cost of insurance and freight to the port or place of entry into the importing country, regardless of the means of transport;

**Shipping and repacking costs** means costs incurred in the repacking and transport of goods outside the territory where the producer or the exporter of the goods is located;

**Costs of sales promotion, marketing and after-sales services of goods** means the following costs:

(a) Sales promotion and marketing; media advertising; advertising and market research; promotion and demonstration materials; displayed goods; sales promotion

conferences, trade shows and trade conventions; banners; marketing exhibitions; free samples; publications on sales, marketing and after-sales services such as goods brochures, catalogs, technical publications, price lists, service manuals and information to support sales; creation and protection of logos and trademarks; sponsorships; restocking fees for wholesale and retail, and entertainment expenses;

(b) Sales and marketing incentives, discounts to wholesalers, retailers and consumers;

(c) For personnel for sales promotion, marketing and after-sales services: wages and salaries, sales commissions; bonuses; medical, insurance and pension benefits; travel, lodging and meals expenses; and membership and professional dues;

(d) Recruitment and training of personnel for sales promotion, marketing and after-sale services, and training to employees of the customer after the sale, when in the financial statements and cost accounts of the producer, such costs are identified separately for sales promotion, marketing and after-sales services of goods;

(e) Insurance premiums for civil liability derived from the goods;

(f) Office supplies for sales promotion, marketing and post-sale services, when in the financial statements and cost accounts of the producer, such costs are identified separately for sales promotion, marketing and after-sales services of goods;

(g) Telephone, mail and other means of communication, when in the financial statements and cost accounts of the producer, such costs are identified separately for sales promotion, marketing and after-sales services of goods;

(h) Rents and depreciation of the offices of sales promotion, marketing and after-sales service, as well as of the distribution centers;

(i) Premiums for property insurance, taxes, utility costs and repair and maintenance costs of the offices and distribution centres, when in the financial statements and cost accounts of the producer, such costs are identified separately for sales promotion, marketing and after-sales services of goods;

(j) Payments by the producer to other persons for repairs covered by a warranty;

**Net cost** means total cost minus costs of sales promotion, marketing and after-sale services, shipping and repacking, and royalties;

**Total cost** means the sum of the following elements:

(a) The costs or the value of direct manufacturing materials used in the production of the good;

(b) The costs of direct labor used in the production of of the good, and

(c) An amount for direct and indirect costs and expenses incurred for the manufacture of the goods, reasonably allocated thereto, except for the following:
    (i) The costs and expenses of a service provided by the producer of goods to another person, where the service is not related to the good;
    (ii) The costs and losses resulting from the sale of a portion of the company of the producer, which constitutes a discontinued operation;
    (iii) The costs related to the cumulative effect of changes in the application of Generally Accepted Accounting Principles;

(iv) The costs or losses resulting from the sale of a capital asset of the producer;
(v) The costs and expenses related to acts of God or force majeure;
(vi) The profits obtained by the producer of the goods, regardless of whether they were retained by the producer or paid to other persons as dividends and the taxes paid on those profits, including the taxes on capital gains, and
(vii) The interest costs that have been agreed between related persons and that exceed the interest paid at market interest rates;

**Direct costs and expenses of manufacture** means the costs and expenses incurred in a period, directly related to the goods, different from the costs or value of direct materials and costs of direct labor;

**Indirect costs and expenses of manufacture** means the costs and expenses incurred in a period, other than the direct costs and expenses of manufacture, the direct costs of labor, and the costs or the value of direct materials;

**Determination of origin** means the written document issued by the authority competent for the verification of origin as a result of a process of verification of origin of goods in accordance with this Chapter;

**FOB** means the value of the good free on board, including the costs of transport to the port or site of final shipment abroad regardless of means of transport;

**Material** means a good or any material such as components, ingredients, raw materials, parts or component parts that are used in the production of another good;

**Packaging materials and containers for shipment** means goods used to protect the goods during transport, different from the containers or packaging materials used for retail;
**Indirect material** means a good used in the production, testing or inspection of another good but not physically incorporated into the good, such as:

(a) Fuel, energy, catalysts and solvents;

(b) Equipment, devices and accessories used for testing or inspection of the goods;

(c) Gloves, glasses, footwear, clothing, equipment and accessories;

(d) Tools, dies and molds;

(e) Spare parts and materials used in the maintenance of equipment and buildings;

(f) Lubricants, greases, composite materials and other materials used in production, equipment operation or maintenance of buildings, and

(g) Any other material that is not incorporated into the good but that can reasonably be demonstrated that is part of the process of production;

**Intermediate material** means an originating material that is produced by the producer of the good and used in the production of that good;

**Fungible goods or materials** means goods or materials that are interchangeable for commercial purposes and whose properties are essentially identical and it is not possible to differentiate one from the other by the naked eye;

**Generally Accepted Accounting Principles** means the recognized consensus or substantial authorized support in the territory of a Party, with respect to records of income, expenses, costs, assets and liabilities; the disclosure of information; and the preparation of financial statements. These principles may encompass broad guidelines of general application as well as standards, practices and detailed procedures, and

**Production** means methods for obtaining goods, including, but not limited to, growing, raising, harvesting, fishing, hunting, capture, aquaculture, gathering, extraction, manufacturing, processing or assembling a good.

**ARTICLE 4.2: Origin Criteria**

Unless otherwise provided in this Chapter, a good shall be considered as originating in a Party where it is:

(a) Wholly obtained or produced entirely in the territory of one or more Parties in accordance with Article 4.3;

(b) Produced entirely in the territory of one or more Parties, exclusively from materials that qualify as originating in accordance with this Chapter, or

(c) Produced in the territory of one or more Parties, from materials non- originating, provided they comply with the Specific Requirements of Origin pursuant to Annex 4.2;

And the good satisfies all other applicable provisions in this Chapter.

**ARTICLE 4.3: Wholly Obtained or Entirely Produced Goods**

The following goods shall be considered as wholly obtained or produced entirely in the territory of one or more Parties:

(a) Vegetable goods, plants and plant products, harvested or gathered in the territory of one or more Parties;

(b) Live animals, born and raised in the territory of one or more Parties;

(c) Goods obtained from live the animals referred to in sub-paragraph (b);

(d) Goods obtained from hunting, fishing, aquaculture or gathering from the natural environment, carried out in the territory of one or more Parties;

(e) Mineral goods and other commodities naturally produced, extracted from the territory of one or more Parties;

(f) Goods, other than fish, crustaceans, molluscs and other forms of marine life captured by a Party from the waters, seabed or marine subsoil outside the territory of a Party, provided that such Party has the right to exploit those waters, seabed or marine subsoil in accordance with international law;

(g) Goods such as fish, crustaceans, molluscs and other forms of marine life captured from the territory of a Party by fishing vessels, including leased or chartered ones, provided that they are registered and flying the flag of such Party;

(h) Goods obtained or produced on board of factory ships, including leased or chartered ones, provided they are registered in a Party and flying the flag of such Party, exclusively on the basis of the goods referred to in sub-paragraph (g);

(i) Waste and scrap derived from:
   (i) Manufacturing operations conducted in the territory of one or more Parties, or
   (ii) Used goods collected in the territory of one or more Parties, provided that such waste or scrap is fit only for the recovery of raw materials, and

(j) Goods obtained or produced in the territory of one or more Parties exclusively from the goods referred to in sub-paragraphs (a) to (i).

**ARTICLE 4.4: Regional Value Content**

1. The regional value content of a good shall be calculated on the basis of the FOB value or on the net cost, at the choice of the producer or exporter of the good, in the following way:

$$RVC = \frac{FOB - VNM}{\text{---------- x 100}}$$

Where:

RVC: is the regional value content of a good expressed as a percentage;

FOB: is the free on board value of the goods, and

VNM: is the value of non-originating materials.

Or

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

Where:

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

NC: is the net cost of the goods, and

VNM: is the value of non-originating materials used by the producer in the production of the good, determined in accordance with paragraph 2.

2. For purposes of calculating the RVC in paragraph 1:
   (a) The value of non-originating materials shall be:
      (i) The CIF value of the material at the time of importation, or
      (ii) In the case of a material acquired in the territory where the good is produced, the price paid or payable, regardless freight, insurance, packing costs and all other costs incurred in transporting the material from the store of the supplier to the place where the producer is located, and

   (b) The values referred to in sub-paragraph (a) shall be determined in accordance with the Agreement on Customs Valuation.

**ARTICLE 4.5: Intermediate Materials**

When an intermediate material, referred to as such, is used in the production of a good, the non-originating materials contained in said intermediate material shall not be taken into account for the purpose of the qualification and determination of the origin of the good.

**ARTICLE 4.6: Indirect Materials**

Indirect materials shall be considered originating, regardless of the place where they are produced.

**ARTICLE 4.7: Minimal Operations or processes that do not confer Origin**

1. The following minimal processes or operations do not confer origin:
   (a) Operations to ensure that the goods are preserved in good condition during transport and storage, such as drying, freezing, ventilation, refrigeration;

   (b) Selection, classification, screening, washing, cutting, folding, rolling, unrolling, sharpening, grinding, slicing;

   (c) Cleaning, including the removal of rust, grease, paint or other coatings;

   (d) Painting and polishing operations;

   (e) Placing in bottles, cans, jars, bags, cases, boxes, fixing on cardboard or boards and all other packaging operations;

   (f) Packing, changes in packing, unpacking, crating and uncrating operations, and the breaking up and assembly of consignments;

   (g) Dilution in water or other substances that do not materially alter the characteristics of the goods, and

   (h) The combination of two or more operations of those listed in sub- paragraphs (a) through (g).

2. The provisions of this Article shall prevail over the specific requirements of origin described in Annex 4.2.

**ARTICLE 4.8: Accumulation**

1. Originating materials from the territory of one or more Parties, incorporated in a good in the territory of other Party, shall be considered as originating in the territory of such other Party, provided they comply with the applicable provisions of this Chapter.

2. A good shall be considered originating, where it is produced in the territory of one or more Parties by one or more producers, provided they meet the applicable provisions of this Chapter.

3. Paragraphs 1 and 2 shall be applied only when the customs tariff of such good, that results from tariff elimination, is 0% in all Parties.

**ARTICLE 4.9: De Minimis**

1. A good that does not undergo a change in tariff classification is considered as originating if:
   (a) The value of all non-originating materials used in its production that do not undergo the required change in the tariff classification does not exceed 10% of the FOB value of the goods. The goods shall comply with all other applicable criteria provided in this Chapter.

   (b) When the good referred to in paragraph 1 is subject to a requirement of regional value content, the value of the materials non- originating will be included in the

calculation of regional value content of the good.

2. For a good classified in Chapters 1 to 24 of the Harmonized System (HA), the percentage of the De Minimis provided in paragraph 1 may only apply when the non-originating materials used in its production are different from the final good.

3. For a good classified in Chapters 50 through 63 of the Harmonized System (HS) the provisions of paragraph 1 (a) will not apply. In this case, the good will be considered originating if the weight of all the fibers or yarns of the non-originating component that determines the tariff classification of the good, that do not meet the requirement of change of applicable tariff classification, does not exceed the 10% of the total weight of the goods.

**ARTICLE 4.10: Fungible Materials and Goods**

1. For purposes of determining whether a good is originating where in its production originating and non- originating fungible materials are used and they physically mixed or combined, the origin of the materials may be determined by:

(a) The physical separation of each of the materials, or

(b) The use of a method for managing stocks recognized in the Generally Accepted Accounting Principles of the Party in which the production is performed

2. When originating and non-originating fungible goods are physically mixed or combined and, prior to their exportation do not undergo any production process or any other operation in the territory of the Party in which they were physically mixed or combined, other than the unloading, reloading or any other necessary operation to keep the goods in good condition or to transport them to the territory of other Party, the origin of the goods may be determined by:

(a) The physical separation of each of the materials, or

(b) The use of a method for managing stocks recognized in the Generally Accepted Accounting Principles of the Party in which such production is performed.

3. Once one of the methods of inventory control has been selected, it must be used during the fiscal year of the Party in which the production is performed.

**ARTICLE 4.11: Accessories, Spare Parts, Tools, and Instructional Materials or Information**

1. Where a good complies with the appropriate change in tariff classification, the accessories, spare parts, tools and instructional or information materials supplied with such goods shall be considered an as part thereof, and shall not be taken into account for the qualification and determination of origin.

2. Where a good is subject to the requirement of regional value content, the value of the accessories, spare parts, tools and instructional or information materials shall be considered as originating or non-originating materials, as the case may be, in calculating the regional value content of the good.

3. For the cases referred to in paragraphs 1 and 2:

(a) The accessories, spare parts, tools and instructional or information materials shall be classified with the good and not be invoiced separately, and

(b) The quantities and value of the accessories, spare parts, tools and instructional or information materials shall be the customary for the good.

**ARTICLE 4.12: Treatment of Containers and Packaging Materials for Retail**

1. When a good is subject to the criterion of change of its tariff classification, under the provisions of Appendix 4.2, the containers and packaging materials classified together with the packaged goods, shall not be considered in the qualification and determination of origin.

2. When a good is subject to the requirement of regional value content, the value of the containers and packaging materials for retail, classified together with the good, shall be considered for the qualification and determination of the origin of the good as originating or non-originating, as applicable.

3. When a good is wholly obtained or entirely produced in the territory of one or more Parties in accordance with Article 4.2 (a), or is produced exclusively from originating materials in accordance with Article 4.2 (b), the containers and packaging materials classified together with the packaged good shall not be considered in the qualification and determination of origin.

**ARTICLE 4.13: Packaging and Containers Materials for Shipment**

Packaging materials and containers materials used for the transport of goods shall not be considered in the qualification and determination of the origin of the goods.

**ARTICLE 4.14: Sets or Assortments**

1. A set or assortment which is classified according to Rules 1 or 3 of the General Rules for Interpretation of the Harmonized System (HS) shall be considered originating when each one of the components of the set or assortment is originating.

2. Notwithstanding paragraph 1, where a set or assortment is composed of originating and non-originating goods, the set or assortment as a whole shall be considered originating provided that the value of non-originating goods does not exceed 12% of the total value of the set or assortment.

3. The provisions of this Article shall prevail over the specific rules of origin set forth in Exhibit 4.2.

**Section B: Procedures Related to Origin**

**ARTICLE 4.15: Transit and Transshipment**

1. For the goods to maintain their status of originating and benefit from preferential tariff treatment, they must have been shipped directly from the exporting Party to the importing Party. For this purpose, the goods that shall be deemed shipped directly are:

(a) The goods transported only through the territory of one or more Parties;

(b) The goods in transit through one or more countries that are not Party of this Additional Protocol, with or without temporary transhipment or storage, provided that:
   (i) They do not undergo any operation outside the territory of the Parties other than unloading, reloading, breaking of bulk or any other operation necessary to preserve them in good conditions, and
   (ii) Remain under the control of the customs authorities in the territory of a non-Party.

2. The importer may demonstrate compliance with paragraph 1 (b):

(a) In case of transit or transhipment, with transport documents, such as the air waybill, the bill of lading, the consignment note, or the multi- modal or combined

transport document, as appropriate;

(b) In case of storage, with transport documents, such as the air waybill, the bill of lading, the consignment note, or the multi- modal or combined transport document, as appropriate, and the documents issued by the customs authority or other competent entity, in accordance with the laws of the country that is not Party, accrediting the storage or

(c) In the absence of the above, any other supporting documentation, issued by the customs authority or other competent authority, in accordance with the law of the country that is not Party.

**ARTICLE 4.16: Exhibitions**

1. Originating goods imported by another Party after its display in a non-Party country shall maintain its status of originating, and may be granted preferential tariff treatment, provided that they have remained under customs control in the territory of that non-Party country.

2. For purposes of applying paragraph 1, a certificate of origin shall be issued in accordance with Article 4.17. However, if the importing Party considers it necessary, it may request additional documentary evidence in connection with the exhibition**,** such as transport, customs or other documents.

**ARTICLE 4.17: Certification of Origin**

1. The importer may claim preferential tariff treatment based on a certificate of origin written or electronic[4] issued by the competent authority for issuing certificates of origin of the exporting party at the request of the exporter. The certificate of origin shall be issued not later than the date of shipment of the goods.

2. Notwithstanding paragraph 1, a certificate of origin may be issued after the date of shipment of the goods, provided that:

(a) It has not been issued on the date of shipment due to errors, involuntary omissions or any other circumstances that may be considered justified in accordance with the laws of the exporting Party, or

(b) It is established to the satisfaction of the authority competent to issue certificate of origin that the certificate of origin issued was not accepted at the time of importation. The period of validity should be maintained as indicated on the certificate of origin issued in the first place.

3. For purposes of the issuance of the certificate of origin, the competent authority for issuing certificates of origin will consider the originating status of the goods in the territory of such authority. To that end, it may request any supporting evidence, pay visits to inspect the premises of the exporter or producer or perform any other control considered appropriate.

4. The certificate of origin shall have a single format as set out in Annex 4.17. Such format may be modified by agreement between the Parties. The certificate of origin must be properly completed in accordance with its instructions.

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4 If two or more Parties are ready, they may issue and receive certificates of origin electronically at the time of entry into force of this Additional Protocol, by previous agreement between them.

5. The certificate of origin shall be valid for one year from the date that it was issued. Such certificate of origin may cover the export of one or various goods to the territory of a Party and shall be issued on the date of issuance of the commercial invoice or after it.

6. The names and seals of the competent authorities to issue certificates of origin as well as the record of the names and signatures of the officials accredited for that purpose, shall be notified by each Party.

**ARTICLE 4.18: Duplicate of Certificate of Origin**

1. In case of theft, loss or destruction of a certificate of origin, the exporter may request in writing to the competent authority for issuing certificates of origin, a duplicate of the original, which will be issued on the basis of the documents in possession of the competent authority for issuing certificates of origin.

2. The phrase “Duplicate of the certificate of origin N°..... date of issue ….....” shall be placed in the "comments" field. The validity of that certificate shall be reckoned from the date of issuance of the original certificate of origin.

**ARTICLE 4.19: Billing by an Operator in a country non- Party**

1. Goods complying with the provisions of this Chapter retain their originating status, even when they are billed by commercial operators of a non-Party country.

2. The certificate of origin shall indicate in the "comments" field when a good is invoiced by an operator of a non-Party country. In addition, the full name and legal address of the operator of the non-Party country shall be indicated.

**ARTICLE 4.20: Errors of Form**

Formal errors on a certificate of origin, such as typos, shall not cause the rejection of the certificate provided the errors do not create doubts on the accuracy f the information contained in that certificate.

**ARTICLE 4.21: Exceptions**

The certificate of origin shall not be required when:

(a) The customs value of the imported goods does not exceed U$1,000 (United States dollars) or its equivalent in the currency of the Importing Party, or a higher amount established by the importing Party, unless the importing Party considers that the importation is part of a series of imports carried out or planned with the purpose of evading compliance with the certification requirements set out in Section 4.17, or

(b) Is a good for which the importing Party in accordance with its legislation does not require that the importer submit a certification or information proving the origin.

**ARTICLE 4.22: Obligations in Connection with Imports**

1. Except for the provisions in Article 4.23, each Party shall require that the importer claiming preferential tariff treatment in its territory:

(a) Declare on the customs import document required by its legislation, and based on a certificate of origin, that the good qualifies as an originating good;

(b) Have the certificate of origin in its possession at the time of making the declaration referred to in sub-paragraph (a);

(c) Is in possession of the documents proving compliance with requirements of Article 4.15.2, when applicable;

(d) Provide the certificate of origin, as well as the documents referred to in sub-paragraph (c), when the customs authority request them and

(e) Present a rectified declaration and pay the applicable customs duty when it has reason to believe that the certificate of origin on which the declaration is based contains inaccurate information. The importer shall not be penalized if it voluntarily presents a rectified declaration, before the importing Party begins to exercise its powers of verification and control, in accordance with its laws and the provisions of this Chapter.

2. If an importer in its territory does not meet some of the applicable requirements in this Chapter, the customs authority of the importing Party may deny the preferential tariff treatment requested.

**ARTICLE 4.23: Tariffs Return**

When the importer had not applied for the preferential tariff treatment for the goods imported into its territory, it may, not later than one year after the date of importation, request to the customs authority of the importing Party the refund of customs duties paid in excess, provided the application is accompanied by:

(a) A written declaration stating that the good qualified as originating;

(b) The certificate of origin, and

(c) Any other documentation in connection with the importation of the good that the customs authority requests.

**ARTICLE 4.24: Obligations in Connection with Exports**

1. Each Party shall provide that:

(a) When an exporter has reason to believe that the certificate of origin contains inaccurate information, it shall communicate in writing to the competent authority for issuing certificates of origin and to the importer about any changes that may affect the accuracy or validity of such certificate, and

(b) If an exporter submitted a false certificate of origin or information, and based on these, the goods exported to the territory of another Party qualified as originating goods, the exporter shall be subject to sanctions in its territory for contravening legislation.

2. No Party shall impose penalties on an exporter for providing inaccurate information if it voluntarily notifies this in writing to the competent authority for issuing certificates of origin, before the importing Party begins to exercise its powers of verification and control, in accordance with its laws and the provisions of this Chapter.

**ARTICLE 4.25: Record Keeping Requirements**

1. The competent authority for issuing certificates of origin shall keep a copy of the certificate of origin for a minimum of five years, from the date of issuance. Such file shall include all the records that provided the basis for the issuance of the certificate of origin.

2. An exporter requesting a certificate of origin in accordance with Section 4.17, shall

keep, for a minimum of five years from the date of issuance, all records and documents necessary to prove that the goods was originating.

3. An importer requesting preferential tariff treatment for a good, shall keep for a minimum of five years from the date of importation of the goods, the documents in connection with the importation, including the certificate of origin.

4. The records and documents referred to in paragraphs 1 to 3 may be kept in paper or in electronic form, in accordance with the laws of each Party.

**ARTICLE 4.26: Inquiries and Procedures for the Verification of Origin**

1. The competent authority for verification of origin of the importing Party, may request information about the origin of the goods to the competent authority for issuing certificates of origin of the exporting Party.

2. The competent authority for verification of origin of the importing Party, may require that the importer provide information in connection with the import of the good for which preferential tariff treatment was requested.

3. For the purposes of determining whether an imported good qualifies as originating, the competent authority for verification of origin of the importing Party may verify the origin of the goods by the following procedures:

(a) Requests for information or written questionnaires to the exporter or producer of the good in the territory of the other Party, through the competent authority for issuing certificates of origin

(b) Of the Exporting Party, on which the certificates of origin that protect the goods subject to verification must be specifically indicated;

(c) Verification visits to the premises of the exporter or producer of the good in the territory of the other Party, for the purposes of examining the records and documents referred to in Article 4.25 and of inspecting the facilities and production processes, including the materials used in production, or

(d) Any other procedure agreed upon by the Parties.

4. For the purposes of this Article, the competent authority for verification of origin of the importing Party shall inform the importer the beginning of the corresponding verification process.

5. For the purposes of this Article, any written communication submitted by the competent authority for verification of origin of the importing Party to the exporter or producer, through the competent authority for issuing certificates of origin of the exporting Party, shall be made by:

(a) Registered mail or other postal service which provides confirmation of reception of the documents or communications, or

(b) Any other means agreed upon by the Parties.

6. In accordance with paragraph 3, requests for information or written questionnaires must contain:

(a) The name, title and address of the competent authority for verification of origin who is requesting the information;

(b) The name and address of the exporter or producer to whom the information and documentation is requested;

(c) The description of the information and documents requested, and

(d) The legal basis for the requests for information or written questionnaires.

7. The exporter or producer who receives a questionnaire or request for information in accordance with paragraph 3 (a), shall duly complete and return the questionnaire or respond to the request for information within 30 days from the date of reception. During that period, the exporter or producer may request an extension in writing to the competent authority for verification of origin of the importing Party, which shall not exceed 30 days.

8. The competent authority for verification of origin of the importing Party may request, through the competent authority for issuing certificates of origin of the exporting Party, additional information to the exporter or producer, even if it had received the questionnaire or the information requested, referred to in paragraph 3 (a). In this case, the exporter or producer has a period of 30 days to respond to this request, reckoned from the day following the date of notification to the exporter or producer.

9. If the exporter or producer fails to properly complete a questionnaire, to return it, or to provide the requested information within the time limits set in paragraphs 7 and 8, the importing Party may deny preferential tariff treatment to the goods subject to verification by sending the exporter or producer, the importer and the competent authority for issuing certificates of origin of the exporting Party, a determination of origin in which the facts and the legal grounds for the decision are included.

10. Prior to conducting a verification visit and in accordance with the provisions of paragraph 3 (b), the competent authority for verification of origin of the importing Party shall provide written notice of its intention to conduct the visit of verification in accordance with paragraph 5. The competent authority for the verification of origin of the importing Party shall require, in order to conduct the verification visit, the written consent of the exporter or producer to be visited.

11. In accordance with the provisions of paragraph 3 (b), the notice of intent of performing the visit for the verification of origin referred to on paragraph 10, shall contain:

(a) The name, title and address of the competent authority for verification of origin of the importing Party issuing the notification;

(b) The name of the exporter or producer to be visited;

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

(d) The purpose and scope of the proposed verification visit, including specific reference to the certificates of origin subject to verification;

(e) The names and titles of the officials performing the verification visit, and

(f) The legal grounds for the verification visit.

12. If the exporter or producer of a good does not grant its consent in writing for the verification visit within 30 days reckoned from the date of reception of the notification referred to in paragraph 10, the competent authority for verification of origin of the importing Party shall notify in writing to the exporter or producer and the competent authority for issuing certificates of origin its negative decision, including the facts and legal grounds.

13. In accordance with paragraph 12, the customs authority of the importing Party may deny preferential tariff treatment to such good by giving written notice of its decision to the importer, including the facts and the legal grounds for such decision.

14. The competent authority for verification of origin of the importing Party shall not issue a negative determination of origin for a good if within 15 days following the date of reception of the notice, and for only once, the producer or the exporter requests the deferment of the proposed verification visit with due justification, for a period not exceeding 30 days reckoned from the date given under paragraph 11 (c), or for a longer period agreed to by the competent authority for verification of the importing Party and the competent authority for issuing certificates of origin of the exporting Party.

15. In accordance with the provisions of paragraph 3 (b), the competent authority for verification of origin of the importing Party shall permit an exporter or producer who is subject to a verification visit to designate two observers to be present during the visit and to only act as such. The fact that there is no designation of observers shall not be reason for the visit to be postponed.

16. The customs authority of the importing Party may deny preferential tariff treatment to a good subject to a verification of origin when, during a verification visit, the exporter or producer of the good does not make available to the competent authority for verification of origin of the importing Party the records and documents referred to in Article 4.25.

17. When the verification visit has been completed, the competent authority for verification of origin of the importing Party shall draw up a record of the visit. The exporter or producer subject to the visit may sign the minutes. If the exporter or the producer refuses to sign, the fact shall be stated on record, without affecting the validity of the procedure.

18. The competent authority for verification of origin of the importing Party shall notify in writing to the competent authority for issuing certificates origin of the exporting Party, within a period not longer than 365 days from the initiation of the verification process of the results of the determination of origin of the goods as well as the factual and legal grounds on which such determination was based; it may include a decision as to the validity or otherwise of the certificate of origin. If such notice is not given, preferential tariff treatment on goods subject to verification cannot be denied.

19. When through a verification of origin process, the competent authority for verification of origin of the importing Party determines that an exporter or a producer has provided more than one false or inconsistent statement or information, in the sense that a good qualifies as originating, the customs administration of the importing Party may suspend the preferential tariff treatment to identical goods exported by that exporter or producer. The customs authority of the importing Party shall grant preferential tariff treatment to the goods once they comply with the provisions of this Chapter.

**ARTICLE 4.27: Sanctions**

Each Party shall impose penal, civil or administrative sanctions for violation of its laws and regulations in connection with the provisions of this Chapter.[5]

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5 For greater certainty, in the case of Chile, where an exporter provides false information or documentation, the competent authority for issuing certificates of origin may temporarily suspend the issuance of a new certificate of origin.

**ARTICLE 4.28: Confidentiality**

1. Where a Party furnishes information to another Party in accordance with this Chapter, and designates it, clearly and specifically, as confidential, the other Party shall maintain the confidentiality of such information in accordance with the provisions of its legislation.

2. The Party providing the information may require from the other Party a written statement to the effect that the information will be kept confidential and will be used only for the purposes specified in the request for information of the other Party.

3. A Party may decline to provide information requested by other party when that party has not acted in accordance with paragraph 1.

2. Each Party shall, in accordance with its law, adopt or maintain procedures by which the confidential information submitted by another Party, including information that if disclosed could harm the competitive position of the person who provides it, be protected from a disclosure that violates the terms of this Article.

**ARTICLE 4.29: Review and Appeal**

Each Party shall ensure in respect of its administrative acts on matters covered by this Chapter, that producers, exporters or importers in its territory have access to:

(a) An independent administrative review of the instance or the official who issued such administrative act, in accordance with its laws and

(b) A judicial review of the administrative acts.

**ARTICLE 4.30: Committee on Rules of Origin and Procedures in Connection with Origin, Trade Facilitation and Customs Cooperation**

1. The Parties establish a Committee on Rules of Origin and Procedures in Connection with Origin, Trade Facilitation and Customs Cooperation (hereinafter referred to as the "Committee"), composed of representatives of each Party, and with jurisdiction over the provisions of this Chapter and Chapter 5 (Trade Facilitation and Customs Cooperation).

2. The Committee shall have the following functions:

(a) Monitor the implementation and administration of the Chapters cited in paragraph 1;

(b) Propose to the Free Trade Commission:
   (i) Adjustments and modifications to Annex 4.2 as a result of amendments to the Harmonized System (HS) or the evaluation of an application by a party;
   (ii) Any amendment or interpretation of the provisions of the Chapters listed in paragraph 1, and
   (iii) Modifications to the format and instructions of the certificate of origin referred to in Article 4.17;

(c) Resolve any dispute in connection with the tariff classification. If the Committee does not reach a decision, it may make appropriate consultations to the World Customs Organization whose recommendation will be considered by the Parties.

(d) Address any other matter in connection with the Chapters cited in paragraph 1.

3. Unless the Parties agree otherwise, the Committee shall meet once a year, on the date and an agenda previously agreed by the Parties. The Parties shall determine those cases in which extraordinary meetings may be conducted.

4. Meetings may be conducted through any means agreed upon by the Parties. When they are face-to-face, they shall be held alternately in the territory of each Party and the host Party shall organize the meeting.

**ARTICLE 4.31: Short Supply Committee**

The Parties shall establish a Committee on Short Supply (CEA in Spanish, hereinafter referred to as "CSS"), which shall operate in accordance with the provisions in Annex 4.31.

**ARTICLE 4.32: CSS Criteria**

1. Any party may request a waiver for the use of materials non- originating under chapters 50 through 60 of the Harmonized System (HS) used in the production of goods falling within Chapter 50 through 63 of the Harmonized System (HS), whose use is required by the rule of origin set out in Annex 4.2 for such good, and which are not available in normal commercial terms because one of the following shortage cases arises: absolute, for volume and conditions for timely delivery in the territory of the Parties.

2. For the purposes of paragraph 1, the CSS shall execute the procedure in Annex 4.31. In the case there is supply of the material requested in the territory of the Parties, representatives of the CSS shall ensure the requesting Party that the shortage of supply cases are not configured: absolute, for volume and conditions for timely delivery for such material, in accordance with the information provided in the investigation and the procedure provided in Annex 4.31.

3. If the requesting party does not receive a response within the time-frame under Annex 4.31 or there is no supply of the material requested, it shall be understood that there is a shortage of supply in the territory of the Parties. The supply of the material shall start from the date of the entry into force of the decision rendered by the CSS in accordance with the procedure provided in Annex 4.31.

## CHAPTER 5: TRADE FACILITATION AND CUSTOMS COOPERATION

### ARTICLE 5.1: Definitions

For the purposes of this Chapter:
**Customs administration** means:

(a) In the case of Chile, the Servicio Nacional de Aduanas (National Customs Service), or its successor;

(b) In the case of Colombia, the Dirección de Impuestos y Aduanas Nacionales DIAN (National Directorate of Customs and Taxes) or its successor;

(c) In the case of Mexico, the Secretaría de Hacienda y Crédito Público (Department of Finance and Public Credit), or its successor, and

(d) In the case of Peru, the Superintendencia Nacional de Aduanas y de Administración Tributaria- SUNAT (the National Superintendence of Customs and Tax Administration) or its successor;

**Information** means data information, documents, reports or other communications in any format, including electronic, as well as certified or authenticated copies of such information;

**Customs legislation** means legal and administrative provisions, for which the implementation is responsibility of customs administrations in the territory of each Party, regulating the procedure for imports, exports, transit of goods or any other customs procedure, including prohibition, restriction and control measures;

**Operations in breach of customs legislation** means any violation or attempted violation of the customs legislation of each Party;

**Requested party** means the customs administration from which cooperation or assistance in customs matters is requested, and

**Requesting party** means the customs administration seeking cooperation or assistance in customs matters.

### ARTICLE 5.2: Confidentiality

1. Where a Party furnishes information to another Party in accordance with this Chapter and indicates, clearly and specifically, that it is to be treated as confidential, such other Party shall maintain the confidentiality of that information in accordance with the provisions of their legislation.

2. The Party providing the information may require from the other Party a written declaration to the effect that the information provided shall be kept confidential and shall be used only for the purposes specified in the information request of the other Party.

3. A Party may decline to provide information requested by another Party when such a

Party has not acted in accordance with paragraph 1.

4. Each Party shall, in accordance with its legislation, adopt or maintain procedures through which the confidential information submitted by other Party, including information whose disclosure could harm the competitive position of the person who provides such information, is protected from a disclosure that violates the terms of this Article.

**Section A: Trade Facilitation**

**ARTICLE 5.3: Publication**

1. Each Party shall publish, including on the Internet, its customs laws.

2. Each Party shall designate or maintain one or more inquiry points to address inquiries from people interested in customs matters, and shall make available on Internet information easily accessible for making such inquiries.

3. To the extent possible, each Party shall publish in advance any regulations of general application governing customs matters that the Party intends to adopt, and shall provide the interested persons an opportunity to provide comments prior to its adoption.

**ARTICLE 5.4: Clearance of Goods**

1. Each Party shall adopt or maintain simplified customs procedures for the efficient clearance of goods, in order to facilitate trade between Parties.

2. In accordance with paragraph 1, each Party shall adopt or maintain procedures that:
   (a) Provide that the clearance of goods be made within a period not greater than the time required to ensure compliance with customs legislation, and, to the extent possible, that the goods are released within 48 hours of arrival;

   (b) Permit, to the extent possible, that the goods be released at the point of entry, without temporary transfer to warehouses or other facilities, and

   (c) Allow importers, in accordance with its legislation, to withdraw the goods from customs prior to and without prejudice of the final determination by its customs authority of the tariffs, taxes and charges that are applicable.[11]

3. Each Party shall ensure, insofar as possible, that its competent authorities involved in border control or goods export and import, cooperate to facilitate trade by coordinating the requirements of information and documents, establishing a single location and time for physical and documentary verification, among other tasks.

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1 A Party may require an importer to provide sufficient guarantee in the form of a surety, a deposit, or some other appropriate instrument, covering the ultimate payment of the customs duties, taxes, and charges in connection with the importation of goods.

4. The Parties shall establish mechanisms for consultation with the commercial and business community to promote greater cooperation between them.

**ARTICLE 5.5: Automation**

Each Party shall endeavor to use information technology that expedites the procedures for the clearance of goods. When deciding on the information technology to be used for this purpose, each Party:

(a) Shall endeavor to use international standards;

(b) Shall make electronic systems accessible to customs users;

(c) Shall provide for the electronic submission and processing of information and data before the arrival of shipment, in order to enable the clearance of goods upon arrival;

(d) Shall employ electronic or automated systems for risk analysis and management;

(e) Shall work on the interoperability of electronic systems in order to facilitate the exchange of international trade data, and

(f) Shall work towards developing a set of common data elements and processes in accordance with the Customs Data Model of the World Customs Organization (hereinafter referred to as "WCO") and related WCO recommendations and guidelines.

**ARTICLE 5.6: Risk Administration or Management**

1. Each Party shall adopt or maintain risk administration or management systems in order to enable its customs authority to focus its inspection activities on high risk goods and to simplify the clearance and movement of low risk goods, respecting the confidential nature of the information obtained through such activities.

2. When applying risk administration or management, each Party shall inspect the imported goods on the basis of appropriate selectivity criteria with the help of non-intrusive inspection instruments, in order to reduce the physical inspection of all goods entering its territory.

3. The Parties shall adopt cooperation programs in order to strengthen the risk administration or management system that are based on best practices established between them.

**ARTICLE 5.7: Express Shipments**

Each Party shall adopt or maintain expedited customs procedures for express shipments, while, at the same time, allowing for an appropriate control and selection of goods. Such procedures shall:

(a) Provide a separate and expedited customs procedure;

(b) Provide for the submission and processing of the necessary information, under its law, for goods clearance before its arrival;

(c) Allow the submission of a single manifest covering all goods contained in a shipment transported by express service, as far as possible, through electronic means;

(d) Provide, to the extent possible, for clearance of certain goods with a minimum of documentation;

(e) Provide, under normal circumstances, for clearance of express shipments within six hours after submission of the necessary customs documents, provided that the shipment has arrived; and

(f) Provide that, under normal circumstances, there shall not be customs duties imposed on express shipments, up to the amount determined under the law of each of the Parties.[2]

**ARTICLE 5.8: Authorized Economic Operator**

1. The customs administrations of the Parties shall promote the implementation and strengthening of the Authorized Economic Operator programs (hereinafter referred to as “AEO”) in accordance with the WTO Framework of Standards to Secure and Facilitate Global Trade (hereinafter referred to as "Regulatory Framework SAFE”).

2. The customs administrations of the Parties shall promote and work in the signing of mutual recognition agreements (hereinafter referred to as “MRA”) on AEO programs of the Parties.

3. For the purposes of this Article, the Parties establish Annex 5.8.

**ARTICLE 5.9: Single Window for Foreign Trade**

The Parties shall implement and promote its Single Windows for Foreign Trade (hereinafter referred to as "Single Windows") to expedite and improve trade, and shall ensure the interoperability between them in order to exchange information to expedite trade and allow the Parties, inter alia, to verify the information on the foreign trade operations carried out. For this purpose, the Parties establish Annex 5.9.

**ARTICLE 5.10: Review and Appeal**

Each Party shall ensure in respect of administrative acts in customs matters that any person subject to such acts on its territory have access to:

(a) An independent administrative review of the instance or official who has issued the administrative act in accordance with its legislation, and

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2 Notwithstanding sub-paragraph (f), a Party may impose duties and require formal documents for the entry of restricted goods.

(b) A judicial review of such administrative acts.

**ARTICLE 5.11: Sanctions**

Each Party shall adopt or maintain measures that allow the imposition of civil or administrative sanctions and, where appropriate, criminal sanctions for the violation of its laws and regulations relating to entry, exit or transit of goods, including, among others, those governing tariff classification, customs valuation, rules of origin and preferential tariff treatment applications under this Additional Protocol.

**ARTICLE 5.12: Advance Rulings**

1. Each Party shall issue in writing, prior to the importation of goods into its territory, an advance ruling at the written request of an importer in its territory, or an exporter or producer[3] in the territory of another Party in respect of:

(a) Tariff classification;

(b) Whether a good qualifies as originating in accordance with Chapter 4 (Rules of Origin and Procedures in Connection with Origin);

(c) Application of customs valuation criteria, under the Agreement on Customs Valuation, and[44]

(d) Other matters as the Parties may agree.

2. Each Party shall adopt or maintain procedures for issuing advance rulings that include:

(a) Information reasonably required in order to process the application;

(b) The power of the authority to request additional information from the applicant during assessment of the application, and

(c) The duty of the authority to issue a complete, founded and justified advance ruling;

3. Each Party shall issue an advance ruling within the term provided by its law, which may not exceed 150 days from the date that the applicant has submitted all the information required by the Party, including, if the party so requests, a sample of the goods for which the applicant is requesting an advance ruling. In issuing an advance ruling, the Party will consider the facts and circumstances that the applicant has submitted.

4. Advance rulings shall come into effect from the date of issuance, or such later date specified in the decision and shall remain valid for at least three years, provided that the facts or circumstances on which the decision is based have not changed.

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3 An importer, exporter or producer may request an advance ruling through a duly authorized representative in accordance with the law of the Party to whom such resolution is requested.

4 The customs authority shall render a decision only on the valuation method to be applied for determining the customs value under the provisions of the Agreement on Customs Valuation; this means that the decision will not determine the amount to be declared for customs valuation concept.

5. The advance ruling may be modified or revoked, automatically or at request of the holder, as appropriate, in the following cases:

(a) When the advance ruling is based on an error;

(b) When the circumstances or facts supporting the advance ruling change;

(c) To comply with an administrative or judicial decision, or adjust to a change in the law of the Party that issued the advance ruling.

6. The party issuing the advance ruling may modify or revoke it and shall notify the applicant of the measure adopted.

7. The modification or revocation of an advance ruling shall not be applied with retroactive effect, except in the case that the person to whom it has been issued had submitted incorrect or false information.

8. A Party may refuse to issue an advance ruling if the facts and circumstances which form the basis of the advance ruling are under review in administrative or judicial proceedings. In such cases, the Party shall notify the applicant in writing, stating the reasons in fact and in law on which the decision is based.

9. Subject to confidentiality requirements provided in its legislation, each Party shall make its advance rulings available to the public, including on Internet.

10. If an applicant provides false information or omit relevant facts or circumstances, in connection with the advance ruling, or fails to act in accordance with the terms and conditions of such ruling, the Party issuing the ruling may apply appropriate measures, including civil, criminal, and administrative actions, monetary penalties, or other sanctions.

**Section B: Cooperation and Mutual Assistance in Customs Matters**

**ARTICLE 5.13: Scope**

1. The provisions of this Section shall apply only to the cooperation and mutual assistance in customs matters between the Parties.

2. The Parties, through their customs administrations should provide cooperation and mutual assistance to each other in order to ensure proper implementation of customs legislation, facilitation of customs procedures, and prevention, investigation and punishment of operations in breach of customs legislation.

3. Technical cooperation includes the exchange of information, legislation, best practices in customs matters, as well as the exchange of experiences, training and any kind of technical support or material suitable for strengthening the customs management of the Parties.

4. Mutual assistance includes the exchange of information and other provisions under this Section, aimed at the prevention, investigation and punishment of operations in breach of

customs legislation.

5. The information provided shall be used solely for the purposes set out in this Section, including the cases where it is required under administrative, judicial or investigative processes. The information may also be used for other purposes or by other authorities, only if the requested party expressly authorizes it in writing

6. The assistance for the recovery of duties, taxes or fines is not covered by this Section.

7. The Parties shall cooperate to strengthen the capacity of each customs administration to enforce its regulations governing importations. In addition, the customs administrations shall establish and maintain other channels of communication in order to facilitate the secure and rapid exchange of information and improve the coordination in connection with matters in this Section

**ARTICLE 5.14: Customs Cooperation**

1. Customs administrations recognize that customs cooperation between them is essential to facilitate trade. To this end, they will cooperate to achieve the enforcement of their respective customs laws, as well as the provisions related to compliance in this Chapter.

2. A customs administration shall provide to the other customs administrations technical assistance and advice in order to improve the implementation of customs valuation and risk management standards, facilitate the implementation of standards of international supply chains, simplify and expedite customs procedures for the timely and efficient clearance of goods, increase the technical skills of staff and improve the use of technologies that may lead to better compliance with the laws or regulations of a Party governing the entry of goods into its territory.

3. The Parties, in accordance with its laws and subject to the available resources will promote and facilitate cooperation and assistance between their respective customs administrations in order to ensure the application of customs legislation, and in particular to:

(a) Organize joint training programs on issues related to the trade facilitation and customs matters specific of this Chapter;

(b) Contribute to the collection and exchange of statistics related to import and export of goods, the harmonization of documentation used in trade and the standardization of data;

(c) Prevent operations in breach of customs legislation, and

(d) Promote mutual understanding of the laws, procedures, and best practices of each of the Parties.

4. The customs authorities shall cooperate in:

(a) The training, among others, for the development of specialized skills in their customs officials;

(b) The exchange of technical information related to customs legislation procedures and new technologies applied by the Parties;

(c) The harmonization of laboratory methods in customs and the exchange of information and personnel between customs laboratories;

(d) The fields of research, development and testing of new customs procedures;

(e) The development of effective mechanisms for communication with foreign trade operators and the academia;

(f) Any difference related to the tariff classification of goods, and

(g) The development of initiatives in mutually agreed areas.

**ARTICLE 5.15: Mutual Assistance**

1. The customs authorities shall assist each other in their areas of competence, in the manner and under the conditions provided for in this Section, in order to ensure the correct application of customs legislation, particularly for the prevention of, investigation of and combat against operations in breach of that legislation.

2. Where the customs administration of a Party has reasonable suspicions of an operation in breach of customs legislation related to any regime or customs destination in its territory, it may request the customs administration of other Party to provide information on that operation. In addition, it may require that the requested Party adopt, within the framework of its legislation and regulations, the necessary measures to ensure special monitoring over:

(a) The determination of the customs duties of goods, and in particular, information on the determination of the customs value;

(b) Means of transport and destination of the transported goods, with indication of references to identify the goods;

(c) The controls performed on goods in transit to the territory of one of the Parties from a third country, or

(d) The operations carried out by importers and/ or exporters.

**ARTICLE 5.16: Form and Contents of the Requests for Mutual Assistance**

1. Requests for mutual assistance provided for in this Section shall be submitted directly to the requested Party by the requesting party in writing or by electronic means, including the necessary documentation. The requested party may request written confirmation of the requests received by electronic means.

2. In urgent cases, requests may also be made verbally, and shall be confirmed in writing within a period not exceeding three working days following the request. Otherwise, the

implementation of such requests may be suspended.

3. Requests made pursuant to this Article shall include, at least, the following:

(a) The identification of the requesting party, the name, signature and title of the officer making the request;

(b) The identification of the requested party, the name and title of the officer to whom the request is addressed;

(c) The purpose and reason for the request;

(d) A brief description of the facts that are the subject to investigation and of the inquiries already carried out, should it be appropriate;

(e) The legal elements and the nature of the customs procedure in question;

(f) The names, addresses, identification document or any other known and relevant information of the persons related to the facts that constitutes the subject matter of the request, and

(g) All the necessary information available to identify the goods, means of transport or the customs declaration in connection with the request.

4. The information referred to in this Section shall be communicated to the officers who were specially appointed for this purpose by each customs administration. To this end, each Party shall provide a list of officers appointed to the customs administrations of the other Parties.

5. The requesting party shall be able to provide the same assistance requested, if it were required.

6. If a request does not meet the requirements of paragraph 3, the requested party may ask for correction or completion. Meanwhile, control or protective measures may be carried out in accordance with the laws and regulations of the Party concerned.

7. Where the requesting party requests assistance which would itself be unable to provide if so required, it shall declare this fact in its request. The requested party will decide how to respond to the request.

**ARTICLE 5.17: Executions of the requests**

1. The requested party shall respond to the petition of the requesting party within a maximum period of 30 days from the date of reception of the request. In case that the requested party needs a longer term, it shall notify the requesting party informing the time-frame within which it may respond to the request. This period shall not exceed an additional 30 days.

2. When responding to a request, the requested party, within their competence, on its

own account or at the request of other authorities of such Party, shall provide the information in their possession and conduct or make conduct the necessary investigations.

3. At the petition of the requesting Party, the requested Party shall conduct an investigation, in accordance with its laws, in order to obtain information related to a possible operation in breach of customs legislation occurred in the territory of any of the Parties, and shall provide to the requesting party, the results of this investigation and all related information considered relevant.

4. At the petition of the requesting Party, the requested Party may provide information, in accordance with its laws, related to:

(a) The individuals that the requesting party know have committed or are involved in the commission of an offence;

(b) The goods that, with destination to the customs territory of the requesting party, are forwarded in transit or destined to storage for subsequent transit to such territory;

(c) The means of transport allegedly used in the commission of customs violations in the territory of the requesting party;

(d) Activities which are or appear to be operations in breach of customs legislation and which may be of interest to the requesting party;

(e) The goods that are or may be shipped and in respect of which there are reasonable grounds for presuming that they will be intended for use or used in operations in breach of customs legislation;

(f) Whether the goods exported from the territory of the requesting party have been properly imported into the territory of the requested party, specifying, where appropriate, the customs procedure applied to such goods;

(g) Whether the goods imported into the territory of the requesting party, have been properly exported from the territory of the requested Party, specifying, where appropriate, the customs procedure applied to such goods, or

(h) Whether the import, export or transit operations have complied with the prohibitions and restrictions to imports, exports and transit of goods or with their payment of customs duties, taxes and other tariffs.

5. Duly authorized officials of the requesting party may, with the agreement of the required Party and subject to the conditions, legislation and regulations provided by the latter, be present at the offices of the requested Party, with the purpose of obtaining relevant information in the context of an investigation aimed at determining if there has been a violation or potential operation in breach of customs legislation.

**ARTICLE 5.18: Spontaneous Assistance**

For the proper implementation of their respective laws and customs, and to the extent of their

possibilities and resources, the Parties shall assist each other, on their own initiative, providing information in accordance with their laws and regulations, related to:

(a) Cases involving damage to the economy, public health, public safety, the environment or other vital interest of one of the Parties;

(b) New means or methods employed in carrying out operations in breach of customs legislation, and

(c) Other cases, in accordance with Article 5.17.4.

**ARTICLE 5.19: Delivery and Communication**

At the petition of the requesting Party, the requested Party shall adopt, in accordance with the applicable provisions of the laws, all necessary measures to deliver any document or communication, or to inform any decision issued by the requesting party, that are within the scope of this Section, to an addressee residing or established in the territory of the requested party.

**ARTICLE 5.20: Exceptions to the Obligation to Provide Mutual Assistance**

1. Mutual assistance under this Section may be denied or subject to the compliance with certain conditions or requirements, in cases where a Party considers that such assistance could:

(a) Be detrimental to the sovereignty of the Party to which it has been requested it;

(b) Be detrimental to public order and national security;

(c) Violate an industrial, commercial or professional secret, duly protected by legislation, or

(d) Be unconstitutional or contrary to its law.

2. The requested Party may postpone the mutual assistance if it considers that it can interfere with an ongoing investigation, a criminal prosecution or an administrative proceeding. In that case, the requested Party shall consult with the requesting party to determine if the mutual assistance may be granted subject to the terms and conditions the requested party is able to grant.

3. In the event of any of the exceptions provided for in this Article, the requested Party shall promptly inform the requesting party of its decision, and the reasons for such decision, within a term not exceeding 15 days following the request.

**ARTICLE 5.21: Files, Documents and Other Materials**

1. At the request of the requesting Party, the requested Party may certify or authenticate copies of the requested documents, in case the latter can not provide the originals because its legislation prevents it.

2. The documents provided under this Section shall not require for its probative value certification, authentication, or any additional formality than the one provided by the customs administration, and shall be considered as authentic and valid.

3. Any information provided under this Section may be accompanied by additional information that is relevant for its interpretation or use.

**ARTICLE 5.22: Experts or Expert Witnesses**

1. For matters covered in this Section, each Party in accordance with its laws, may authorize its officials, upon request from other Party, to appear as experts or expert witnesses in legal or administrative proceedings in the territory of another Party, and produce such relevant records, documents and other materials or certified copies thereof, if copies are considered essential for those procedures.

2. The request must indicate the specific matter and judicial or administrative authority before which the official must appear.

**ARTICLE 5.23: Costs**

1. The customs authorities shall not seek reimbursement of costs and/ or expenses incurred in the performance of the requests under this Section, except for those related to experts or expert witnesses, which shall be borne by the requesting party.

2. If it were necessary to incur in costs and/ or expenses of an exceptional nature to execute a request, the customs authorities shall consult to determine the terms and conditions under which the request shall be executed and the manner such costs and/ or expenses are to be covered.

**ARTICLE 5.24: Lack of Assistance**

1. For the purposes of this Section, lack of mutual assistance between customs administrations means the repeated or undue delay in the execution of a request and/ or in the communication of its results.

2. In such case, the requesting party may communicate the fact to the Committee on Rules of Origin and Procedures in Connection with the Origin, Trade Facilitation and Customs Cooperation in order to promote a solution to the lack of mutual assistance.

## ANNEX 5.8: AUTHORISED ECONOMIC OPERATOR

1. For the purposes of compliance with the provisions of Article 5.8 of this Chapter, the Parties hereby establish the following lines of action:

(a) identifying the current state of their respective programmes and their level of progress;

(b) holding video conference calls, workshops and other support and monitoring actions pertaining to their respective programmes in their different phases;

(c) promoting the development of the steps necessary for the registration of MRA, taking into account compliance with, as a minimum, extant programmes in force which have authorised economic operators;

(d) endeavouring, as much as is possible, to ensure compatibility between programmes with respect to the requirements, benefits and procedures related to authorisation or certification, which allow MRA registration between the Parties; and

(e) managing the support of international bodies in the described activities and others that may be agreed between the Parties.

2. For the purposes of ensuring compliance with the provisions of this Annex:

(a) the Parties hereby establish the Technical Group of Authorised Economic Operator, comprised of the administrative authorities of their respective AEO programmes; and

(b) said group shall determine its mode of operation and draw up its plan of action within the three months following the entry into force of this Additional Protocol.

## ANNEX 5.9: SINGLE WINDOW FOR FOREIGN TRADE (SWFT)

### Framework for Implementation of SWFT Interoperability

1. For the purposes of this Annex:

**dimension** refers to the aspects necessary to achieve interoperability;

**interoperability** refers to the systems' ability to allow the exchange of information electronically, following internationally accepted standards; and

**Single Window for Foreign Trade** refers to a trade facilitation tool, which allows the entry of standardised information into a single entity thereby favouring the exchange of information electronically.

2. In accordance with Article 5.9, the objective of this Annex is to propose a general framework for achieving interoperability between the SWFT of the Parties.

3. The interoperability of the SWFT covers technological aspects, strategic and normative guidelines, the adoption of international standards and best practices for cooperation between the Parties and the facilitation of trade, through the exchange of information between their SWFT.

4. The implementation of interoperability between SWFT includes lines of action illustrated in the following aspects:

(a) process: determines the objectives of businesses, standardises concepts with the aim of increasing understanding of all Parties' processes, analyses the processes in an integrated fashion, identifies information of interest to each of them and opportunities where this is required to achieve an overall interoperability model for inter-SWFT processes;

(b) semantics: building on the processes aspect, this defines a single, unambiguous meaning for the information and data exchanged, understood and agreed upon by all Parties concerned and the applications involved in the transaction;

(c) technology: covers technical questions pertaining to hardware, software and telecommunications, in order to ensure the connection and secure transmission of data between the Parties' IT systems and services; and

(d) governance: includes agreements between the Parties dealing with strategic, normative and organisational aspects relevant to the development, operation and long-term sustainability of the interoperability.

5. The implementation and operation of interoperability is subject to the following conditions:

(a) SWFT shall be the sole vehicles of interoperability for documents or information generated between the Parties;

(b) the interoperability of the SWFT must ensure the availability of information of the documents in accordance with the operating conditions defined by the Parties;

(c) each Party's SWFT must exchange information with the foreign trade systems applicable to its territory, in order to facilitate the entry or exit of goods;

(d) SWFT must provide cyber frameworks which allow the transfer of information electronically between the Parties;

(e) when the exports of one Party are processed via the SWFT, the destination Parties shall not request physical documents supporting the operation of foreign trade; and

(f) interoperability between SWFT shall be implemented gradually.

6. The Parties shall establish a working group responsible for coordinating the development of activities pertaining to every aspect of interoperability and ensuring compliance with the implementation and operation of the initiatives defined therein.

7. The working group shall be comprised of experts from Parties with the ability to make decisions at issue. This group shall define its operating rules and work plan, within the three months following the date of the entry into force of this Additional Protocol.

## CHAPTER 6: SANITARY AND PHYTOSANITARY MEASURES

### ARTICLE 6.1: Definitions

The definitions in Annex A of the SPM Agreement have been included in this Chapter and shall form part of it, *mutatis mutandis*.

### ARTICLE 6.2: Objectives

The objectives of this Chapter are:

(a) To protect human life and health, and animal and plant health in the territories of the Parties;

(b) Facilitate the trade in products and sub-products of animal, plant, marine and aquaculture origin, between the Parties;

(c) Ensure that the sanitary and phytosanitary measures of one Party do not discriminate arbitrarily or unjustifiably between those Parties in which identical or similar conditions are found, nor between its own territory and that of the other Parties. The sanitary and phytosanitary measures shall not be applied in such a way so as to they constitute a disguised restriction on international trade;

(d) Guarantee that the processes for the establishment of sanitary and phytosanitary measures between the Parties shall be transparent, shall be applied without undue delay and in such a way that imported goods are treated less favourably than similar nationally-produced goods; and

(e) Provide the mechanisms and processes for communication and cooperation to quickly and expediently resolve specific commercial issues related to the application of sanitary and phytosanitary measures between the Parties.

### ARTICLE 6.3: Scope of Application

This Chapter applies to all sanitary and phytosanitary measures undertaken by the Parties, in accordance with the SPM Agreement which may, directly or indirectly, affect the trade in goods between the Parties.

### ARTICLE 6.4: Rights and Obligations

The Parties include in this Chapter their rights and obligations under the SPM Agreement, *mutatis mutandis*.

### ARTICLE 6.5: Harmonisation

1. In addition to the provisions of Article 3 of the SPM Agreement, the Parties shall work jointly to promote between themselves and at an international level advances and negotiations in areas of mutual interest.

2. To that end, the Parties shall develop work plans through the Committee on Sanitary and Phytosanitary Measures established in Article 6.14.

**ARTICLE 6.6: Equivalence**

1. In addition to the provisions of Article 4 of the SPM Agreement and supplementary decisions of the Committee, as well as the international standards, guidelines and recommendations of competent international organisations, each Party undertakes to respond in a timely manner to requests in respect of the equivalency of sanitary and phytosanitary measures submitted by any other party. To this end, the Parties shall agree on an applicable methodology.

2. The Committee on Sanitary and Phytosanitary measures described in this Chapter shall monitor the application of this Article.

**ARTICLE 6.7: Risk Assessment**

1. In addition to the provisions of Article 5 of the SPM Agreement, where it is necessary to carry out a risk assessment for pests and diseases, the Parties shall undertake the assessment expediently according to the standards, guidelines and international recommendations of competent international organisations.

2. Where one Party requests that another Party initiate a risk assessment, the importing Party shall inform the exporting Party of the timeframe and steps necessary to carry out the assessment.

3. Once the importing Party has concluded its risk assessment and decided whether trade may begin or resume, the Party shall undertake the necessary regulatory measures to begin or resume trade within a reasonable timeframe.

4. The Parties will offer the opportunity to present commentary on the risk assessments they carry out, in such a way as decided by the importing Party.

5. The Parties undertake to request information strictly necessary for carrying out the risk assessment.

6. An exporting Party may send scientific evidence, including mitigation proposals, to support the importing Party's risk assessment procedure.

7. With due regard to the adoption of emergency measures, no Party shall halt the import of goods from another Party, simply because the importing Party is in the process of carrying out a review of a risk assessment and if it is a case of an existing sanitary and phytosanitary measure, provided that the importing Party has allowed the import of such goods up until the beginning of said review.

**ARTICLE 6.8: Adaptation to Regional Conditions and Recognition of Zones, Areas or Compartments Free of or with Low Prevalence of Pests or Diseases**

1. In addition to the provisions of Article 6 of the SPM Agreement, in order to evaluate a request to recognise zones, areas or compartments free of or with a low prevalence of pests or diseases, the Parties hereby undertake to apply an accelerated process in accordance with the conditions established in the Guidelines for the Practical Application of Article 6 of the SPM Agreement (G/SPS/48).

2. The Parties recognise the self-declarations of zones, areas or compartments free of or with a low prevalence of pests or diseases when they have successfully applied international standards, guidelines or recommendations as a base factor in beginning the application of the acceleration process, in accordance with the conditions established in the Guidelines for the Practical Application of Article 6 of the SPM Agreement (G/SPS/48).

**ARTICLE 6.9: Transparency and Exchange of Information**

1. In addition to the provisions of Article 7 and Annex B of the SPM Agreement, the Parties:

(a) Recognise the exchange of information as a necessary mechanism for strengthening the management of sanitary and phytosanitary matters between them and shall carry out actions which promote this;

(b) Shall take into account the relevant guidelines provided by the WTO's Committee on Sanitary and Phytosanitary Measures;

(c) Reaffirm their commitment to entering and publishing information related to the adoption or modification of sanitary and phytosanitary measures; and

(d) Ratify their commitment to promoting use of the WTO's electronic notification system.

2. As well as the notifications they are obliged to uphold in accordance with the process laid out in Annex B of the SPM Agreement, the Parties shall notify of:

(a) Any changes that occur in the field of animal health and food safety, such as the outbreak of exotic diseases, diseases named on the schedule of the World Organisation for Animal Health (henceforth the "OIE"), and/or health warnings on food products within 24 hours following the detection of the problem;

(b) Any changes that occur in the phytosanitary field, such as the outbreak of quarantine pests or spread of pests under official control within 72 hours following confirmation of the outbreak;

(c) Outbreaks of diseases which have been scientifically confirmed to be caused by the consumption of imported foods;

(d) The causes or reasons for which the exporting Party's good is rejected, within a seven day period; and

(e) Firms authorised to issue certificates and authorisations related to import, export and detail authorised entry points.

3. The importing Party must respond to requests by the exporting Party regarding the requirements and procedures established to allow the access of a specific good or on the status of a procedure related to the access of said good within a reasonable timeframe.

4. The Parties must make public sanitary and phytosanitary regulatory drafts, as well as their own regulations through their respective official journals and/or websites and must circulate them, preferably electronically, to the notification and information services established in accordance with the SMP Agreement. Each Party shall ensure that the sanitary and phytosanitary regulations they intend to adopt are submitted for public consultation for a minimum period of 60 days. In emergency circumstances or where measures proposed to facilitate trade or those whose content in substance is the same as that of an international standard, guideline or recommendation, the Parties may reduce or eliminate the time period for receiving submissions.

5. Insofar as possible and appropriate, the Party must award a period of at least six months between the publication date of the final regulation and that on which it enters into force, except in emergency situations and when the proposed measures facilitate trade or its content is substantially the same as that of an international standard, guideline or recommendation.

6. In terms of what is established by Article 5.8 of the SPM Agreement, when a Party has reasons for believing that a health or phytosanitary method established or maintained by another Party is restricting or may restrict its exports, and the measure is not based on international standards, guidelines or recommendations, it may request an explanation for the reasons for the measure, to which a response must be made in writing, insofar as possible, within a time period of no more than 30 days.

7. If there are yearly or half-yearly work programmes for sanitary and phytosanitary regulations, the Parties shall make their best efforts to promote public awareness of these through print or electronic means.

**ARTICLE 6.10: Control, Inspection and Approval Procedures**

In addition to the provisions of Article 8 of Annex C of the SPM Agreement and related decisions adopted by the WTO Committee for Sanitary and Phytosanitary Measures, as well as international standards, guidelines and recommendations, the Parties must respond to requests for information on established control, inspection and approval processes, insofar as possible, within a time period of no more than 45 days.

**ARTICLE 6.11: Approvals**

1. The importing Party may evaluate the competent authority of the exporting Party and its inspection and control systems. This may include a review of the competent authority's

control programmes, covering, where appropriate, inspection, control and audit programmes, as well as visits to establishments.

2. The terms and conditions of such approval visits shall be agreed upon by the Parties before they begin.

3. Once the approval visits are complete, the importing Party must submit to the exporting Party, the results and conclusions of the visit, in a reasonable period of time following the visit being carried out.

4. The Parties shall not interrupt the trade of a previously authorised good during the renewal period of its authorisation exclusively due to a delay on the part of the importing Party in carrying out an approval.

5. The expenses incurred from the approval visits shall be borne by the exporting Party, unless the Parties agree otherwise.

**ARTICLE 6.12: Cooperation and Technical Assistance**

The Parties hereby agree to support cooperation and technical assistance processes for the strengthening of capabilities in sanitary and phytosanitary measures for the following purposes:

(a) Favouring and promoting the application and implementation of this Chapter and the SPM Agreement;

(b) Strengthening their respective authorities responsible for carrying out and applying sanitary and phytosanitary measures;

(c) Helping to carry out activities that facilitate trade;

(d) Cooperating on the development and implementation of international standards, guidelines or recommendations and, where necessary, request support from competent international organisations;

(e) Sharing non-confidential information which served one Party as the basis for a sanitary or phytosanitary measure;

(f) Cooperating, as much as possible, in bringing attention to sanitary and phytosanitary emergencies; and

(g) Carrying out other cooperation and technical assistance activities agreed upon by the Parties.

**ARTICLE 6.13: Technical Meetings**

1. The Parties may hold technical meetings for specific commercial issues related to the application of sanitary and phytosanitary measures, to seek mutually acceptable solutions through the format they agree upon (such as face to face meetings, video conferences or others).

2. The Party(ies) requested to hold technical meetings must set a date to meet with the Party(ies) making the request, within the 15 days following the request being made, and shall make their best efforts to meet, in the agreed manner, within a time period of no more than 30 days.

3. Where the Parties have held their technical meetings in accordance with this Article, without satisfactory results, such meetings shall replace those established in Article 17.5 (Dispute Resolution), if the Parties so agree.

**ARTICLE 6.14: Committee on Sanitary and Phytosanitary Measures**

1. The Parties shall establish a Committee on Sanitary and Phytosanitary Matters (henceforth referred to as the "Committee").

2. The Committee shall be comprised of representatives from each of the Parties, with responsibilities in sanitary, phytosanitary and food safety matters, as established in Article 6.15.

3. The first session of the Committee shall take place no more than 90 days following the entry into force of this Additional Protocol, a meeting in which the Parties shall accredit their representatives.

4. The Committee shall, in its first session, establish its procedural rules.

5. The Committee shall meet at least once per year, except when the Parties agree otherwise, via face to face, teleconference, videoconference or another medium that ensures an appropriate operating level and at an extraordinary level when the Parties deem it necessary.

6. When the meetings held are face to face, they shall take place alternately in the territory of each Party and it shall fall upon the organising Party to organise the meeting.

7. The functions of the Committee shall be as follows:

(a) To serve as a forum to discuss issues related to the development or application of sanitary and phytosanitary measures which affect or may affect trade between the Parties, to reach mutually acceptable resolutions and evaluate the progress in implementing the aforementioned resolutions;

(b) To promote, follow up and administer the application of the provisions of this Chapter;

(c) To follow up technical meetings;

(d) To agree upon, taking into consideration the relevant international standards, guidelines or recommendations developed by the WTO's Committee for Sanitary and Phytosanitary Measures and competent international organisations, the procedures and time periods for practical and rapid implementation of:

(i) Recognition of equivalencies;

(ii) Risk assessment procedures;
(iii) Recognition of areas zones, areas or compartments free of or with a low prevalence of pests or diseases;
(iv) Control, inspection and approval processes;
(v) Transparency obligations; and
(vi) Other processes agreed to by said Committee;

(e) To establish ad hoc technical working groups and define their mandates, objectives, functions and timeframes to present the results of their work programmes, as well as serving as a forum to monitor the commitments established in said programmes;

(f) To agree on issues, positions and agendas for meeting sessions held by the WTO's Committee on Sanitary and phytosanitary measures, the different Codex Alimentarius Committees; the International Convention on Phytosanitary Protection; the OIE and other international and regional forums in the field of sanitary and phytosanitary measures;

(g) To establish cooperation and technical assistance programmes;

(h) To exchange information in the field of sanitary and phytosanitary measures such as the occurrence of incidents, change or introduction of regulations and standards by the Parties relating to the field, which may, directly or indirectly, affect trade between the Parties;

(i) To create work programmes in the field of regulatory cooperation to facilitate trade between the Parties;

(j) To explore mechanisms in the field of the application of sanitary and phytosanitary measures to promote the joint access of goods originating from the Parties to non-Party states;

(k) To promote, insofar as possible, the creation of yearly and half-yearly work programmes in respect of the sanitary and phytosanitary regulations of each Party;

(l) To inform the Free Trade Commission of the application of this Chapter and formulate relevant recommendations with regards to questions on its competence; and

(m) Other functions agreed upon by the Parties, including those dictated by the Free Trade Commission.

**ARTICLE 6.15: Competent Authorities and Points of Contact**

1. The competent authorities responsible for the implementation of the measures laid out in this Chapter are listed in Annex 6.15.1.

2. The points of contact responsible for communication between the Parties, under this Additional Protocol, are listed in Annex 6.15.2.

3. The Parties shall inform each other of any significant change to the structure, organisation and distribution of the responsibilities held by their competent authorities or points of contact.

## CHAPTER 7: TECHNICAL BARRIERS TO TRADE

### ARTICLE 7.1: Objectives

The objectives of this Chapter are as follows:

(a) To facilitate and create growth in trade and obtain effective market access through improvement of the TBT Agreement ;

(b) To deepen the integration of existing agreements between the Parties in areas concerning technical barriers to trade;

(c) To ensure that the standards, technical regulations and conformity assessment procedures do not create unnecessary technical barriers to trade; and

(d) To facilitate, increase and promote cooperation between the Parties.

### ARTICLE 7.2: Scope of Application

1. The provisions of this Chapter apply to the creation, adoption and application of the standards, technical regulations and conformity assessment procedures of the Parties[1], including those at central government or federal level and local public bodies, which may directly or indirectly affect the trade in goods between the Parties.

2. The provisions of this Chapter are not applicable to sanitary and phytosanitary measures, which shall be governed by Chapter 6 (Sanitary and Phytosanitary Measures).

3. The procurement specifications created by government bodies, for the production or consumption requirements of said bodies, shall not be subject to the provisions of this Chapter, and shall be governed by Chapter 8 (Government Procurement).

### ARTICLE 7.3: Incorporation of the TBT Agreement

The TBT Agreement shall be incorporated in this Chapter as and shall form an integral part of it, *mutatis mutandis*.

### ARTICLE 7.4: International Standards

On determining that an international standard, guideline or recommendation exists in the meaning of Articles 2 and 5 of Annex 3 of the TBT Agreement, the Parties shall apply the principles established in *Decisions and Recommendations adopted by the Committee since 1 January 1995*,[2] Annex of Part I B (*Decision of the Committee relating to Principles for the Creation of International Standards, Guidelines and Recommendations in accordance with Articles 2, 5 and Annex 3 of the Agreement*), issued by the WTO's Committee for Technical Barriers to Trade.

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[1] Any reference made in this Chapter to standards, technical regulations and conformity assessment processes, includes those relative to metrology.

[2] G/TBT/I/Rev.10, 9 June 2011.

**ARTICLE 7.5: Cooperation and Facilitation of Trade**

1. The Parties shall seek to identify, develop and promote initiatives which facilitate trade, are appropriate for the issues and sectors concerned, with regards to standards, technical regulations and conformity assessment procedures, taking into consideration the Parties' respective experience in other bilateral, regional or multilateral agreements as and when appropriate. Such initiatives may take, among others, the following forms:

(a) Intensifying joint cooperation to increase knowledge and understanding of their respective systems with the aim of facilitating market access;

(b) Promoting the compatibility or equivalence of technical regulations or conformity assessment procedures;

(c) Using accreditation as a tool to recognise conformity assessment bodies established in the other Parties' territories in accordance with international practices and standards, as well as cooperation through mutual recognition agreements;

(d) Favouring the convergence or harmonisation with international standards; and

(e) Recognising and accepting the results of conformity assessment procedures.

2. The Parties recognise the existence of a wide range of mechanisms to support greater regulatory coherence and eliminate unnecessary technical barriers to trade in the region, including:

(a) Encouraging regulatory dialogue and cooperation with the goal of:
  (i) Exchanging information on regulatory practices and focuses;
  (ii) Promoting the use of best regulatory practices to improve the efficiency and effectiveness of standards, technical regulations and conformity assessment procedures;
  (iii) Providing guidance and technical assistance, on mutually agreed terms and conditions, to improve practices related to the development, implementation and review of technical regulations, standards and conformity assessment procedures;
  (iv) Providing, among others, technical assistance and cooperation, on mutually agreed terms and conditions, to improve competition and support the implementation of this Chapter;

(b) Promoting, promulgating and exchanging experience and information with regards to the possibility of accepting the technical regulations of other Parties as equivalent;

(c) Furthering, as much as possible, the harmonisation of national standards with international standards; and

(d) Encouraging greater use of international standards, guidelines and recommendations as a basis for technical regulations and conformity assessment procedures.

3. In respect of the provisions of paragraphs 1 and 2, the Parties recognise that the selection of appropriate mechanisms in a defined regulatory context shall depend upon a

variety of factors, such as: the product and sector involved, the volume and direction of trade, the relationship between the Parties' respective regulators, the legitimate aims pursued and the risks incurred in failing to achieve those objectives.

4. The Parties shall intensify the exchange and cooperation with mechanisms to facilitate the acceptance of conformity assessment results so as to support greater regulatory coherence and eliminate unnecessary technical barriers to trade.

5. The Parties shall encourage cooperation between their respective organisations responsible for technical regulation, normalisation, conformity assessment, accreditation and metrology, whether these be governmental or non-governmental, with a view to addressing various questions covered by this Chapter.

6. When a Party prevents, at the point of entry, a good entering from the territory of another Party due to non-fulfilment of a technical regulation, it must notify the importer or respective customs agent as soon as possible of the reasons for preventing entry.

7. The Parties shall exchange information on the use of standards in connection with technical regulation and shall ensure, as far as possible, that the aforementioned standards indicated in the regulation drafts are provided on request by the other Parties.

8. The Parties shall attempt, insofar as possible, to present a common position based on mutual interests in international standardisation forums.

**ARTICLE 7.6: Technical Regulations**

A Party, on the request of any other Party, shall explain the reasons for which that Party's technical regulation was not accepted as equivalent, without prejudice to the provisions of Article 2.7 of the TBT Agreement.

**ARTICLE 7.7: Conformity Assessment**

1. Recognising that there are differences in the conformity assessment procedures of their respective territories, the Parties shall, to the greatest extent possible and in accordance with international standards and with the provisions of this Chapter, make their conformity assessment procedures compatible.

2. Each Party recognises that there is a wide range of mechanisms facilitating the acceptance of conformity assessment results carried out in other Parties, including:

(a) Voluntary agreements between the Parties' conformity assessment bodies;

(b) Agreements on the mutual acceptance of the results of the conformity assessment processes with regards to specific technical regulations, carried out by local bodies in the other Parties' territories;

(c) Accreditation processes to certify conformity assessment bodies;

(d) Government approval or appointment of conformity assessment bodies;

(e) Recognition of the results of conformity assessment bodies in the other Parties' territories; and

(f) Acceptance by the importing Party of the supplier's declaration of conformity.

3. The Parties shall intensify their exchange of information in relation to these and similar mechanisms in order to facilitate acceptance of the results of the conformity assessment.

4. If one Party does not accept the results of the conformity assessment procedures carried out in the other Party's territory, it must, on the request of this other Party, explain the reasons for its decision so that the actions necessary to correct it may be taken.

5. Each Party shall accredit, approve, authorise or recognise the conformity assessment bodies in the other Parties' territories, with terms no less favourable than those granted to the same in its own territory. When, despite proceeding in this manner, a Party refuses to accredit, approve, authorise or recognise a body charged with carrying out the assessment of a specific technical regulation in the territory of the other Parties, it must, upon request, explain the reasons for its refusal so that such corrective steps as may be required may be taken.

6. The Parties shall consider favourably negotiation or Mutual Recognition Agreements for the results of their respective conformity assessment procedures carried out by bodies in the territories of the other Parties. If any of the Parties refuses to begin these negotiations it must, upon request, explain the reasons for its decision.

7. With the aim of building mutual trust in the results of the conformity assessment, the Parties may request information on aspects such as the technical competence of the conformity assessment bodies involved.

**ARTICLE 7.8: Transparency**

1. The Parties shall notify one another by email, through the point of contact established by each Party, in accordance with Article 10 of the TBT Agreement, of the drafts and amendments to the technical regulations and conformity assessment procedures, and those adopted to handle urgent problems as per the terms agreed upon in the TBT Agreement, at the same time that they send notification to the WTO's Central Registry of Notifications. Said notification must include an electronic link to the document in question, or a copy of the same.

2. The Parties must notify those technical regulations and conformity assessment procedures which correspond with the technical content of relevant international standards.

3. Each Party must respond formally to submissions received from the other Parties during the consultation time period stipulated in the notification, no later than the date of publication of the technical regulation and conformity assessment procedure. In turn, each Party shall publish or make available to the public or other Parties, be it in print or electronic form, their responses to the main submissions it has received from the other Parties, no later than the date of publication of the final version of the technical regulation or conformity assessment procedure.

4. The Parties shall ensure that the information pertaining to final drafts, as well as final technical regulations and conformity assessment procedures, is available to the public on a central website.

5. Each Party shall, in accordance with its own internal processes, allow interested persons from other Parties to participate in the development of its standards, technical regulations and conformity assessment procedures, in terms no less favourable than those granted its own nationals.

7. Each Party shall allow a time period of at least 60 days, beginning from the notification indicated in paragraph 1 of this Article, so that other Parties may make written submissions on the proposals for technical regulation and conformity assessment procedures, except when urgent problems threaten or occur. Each Party shall positively consider reasonable requests from the other Parties to extend said submission period.

8. Subject to the conditions specified in Article 2.12 of the TBT Agreement, regarding the reasonable period between the publication of the technical regulations and their entry into force, the Parties shall interpret the expression "reasonable period" as meaning, normally, a period of no fewer than six months, except when it is not practicable to accomplish the desired legitimate objectives within this time.

9. If there are yearly and half-yearly work programmes dedicated to standards and technical regulations, the Parties shall make their best effort to promote public awareness thereof through print or electronic publications.

**ARTICLE 7.9: Committee on Technical Barriers to Trade**

1. The Parties hereby establish a Committee on Technical Barriers to Trade (hereinafter the "Committee"), comprised of representatives appointed by each Party in accordance with Annex 7.9.

2. The committee's functions shall include, among others:

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

(b) Dealing promptly with such matters as another Party may raise with regards to the creation, adoption, application or execution of standards, technical regulations or conformity assessment procedures;

(c) Increasing cooperation on the creation and improvement of standards, technical regulation and conformity assessment procedures;

(d) Facilitating, as and when appropriate, sector cooperation between governmental and non-governmental bodies in the field of standards, technical regulations and conformity assessment procedures in the Parties' territories, as well as facilitating the process of Mutual Recognition Agreements and equivalence of technical regulations;

(e) Exchanging information on work carried out in non-governmental, regional and multilateral forums and cooperation programmes involved in activities related to standards, technical regulations and conformity assessment procedures;

(f) Reviewing this Chapter in light of what takes place within the WTO's Committee on Technical Barriers to Trade and creating recommendations to modify this Chapter if necessary;

(g) Reporting to the Free Trade Commission on the implementation of this Chapter;

(h) Establishing, as and when necessary, for specific issues or sectors, working groups to handle specific matters relating to this Chapter and the TBT Agreement;

(i) Holding, on request by a Party, technical meetings on any matter pertaining to this Chapter;

(j) Establishing roundtables with the aim of covering topics of interest in the field of regulatory cooperation;

(k) Carrying out any other action that the Parties consider necessary to help in the implementation of this Chapter and the TBT Agreement, as well as the facilitation of trade in goods between the Parties;

(l) Analysing the most appropriate means with a view to, depending on agreement between the Parties, allowing the importing Party to accept, expediently, the results of the conformity assessment, in accordance with its technical regulations issued by conformity assessment bodies located in the territory of the exporting Party, so long as these bodies are accredited in the corresponding subject and sector by the national accreditation body(ies) which have themselves been recognised by international accreditation body(ies) of reference agreed upon by the Parties; and

(m) Promoting, as much as possible, the creation of yearly or half-yearly work programmes for standards and technical regulations.

3. Upon request, the Committee shall give favourable consideration to any request by a specific sector that a Party identifies to deepen cooperation in accordance with this Chapter.

4. The Committee shall meet according to the locations, agendas and times deemed necessary by the request of the Parties. The meetings shall be held face to face, via teleconference, videoconference or any other method, agreed upon by the Parties.

5. The Committee shall agree, during its first session, on a critical route to regulatory cooperation which shall serve as the basis for future work in this area.

**ARTICLE 7.10: Exchange of Information**

Any information or explanation requested by a Party, by virtue of the provisions established in this Chapter, must be supplied by the other Parties in print or electronic form within the 60 day

period following the request's being made. The Party shall ensure it responds to every request within the 30 day period following the submission of the same.

**ARTICLE 7.11: Implementation Annexes**

The Parties may negotiate to include annexes aimed at deepening the areas covered in this Chapter, which shall form an integral part of the same.

**ARTICLE 7.12: Technical Meetings**

1. Each Party shall give prompt and positive consideration to any request made by another Party to hold meetings on specific trade issues related to the application of this Chapter.

2. When the Parties have concluded the meetings in Article 7.9.2 (i) such meetings may, by joint agreement, constitute the meetings referred to in Article 17.5 (Meetings).

## CHAPTER 8: GOVERNMENT PROCUREMENT

### ARTICLE 8.1: Definitions

For the purposes of this Chapter:
**Concession contracts for public works** refers to any contractual agreement whose main purpose is to provide for the construction or renovation of physical infrastructure, factories, buildings, installations or other public works, pursuant to which and in consideration of the execution of a contract by a supplier, an entity grants to the supplier, for a specified period, temporary ownership or a right to control, operate, and demand payment for the use of such works for the duration of the contract;

**Entity** refers to an entity listed in Annex 8.2;

**Procurement notice** refers to a notice published by the entity in which interested suppliers are invited to submit an application for participation, a tender, or both;

**Offsets** refers to any condition or commitment which fosters local development or improves the balance of payments accounts of one Party, such as local content requirements, technology licensing, investment requirements, counter-trade or similar requirements or measures;

**Services** includes construction services, unless otherwise specified.

**Supplier** refers to a person who provides or could provide goods or services to an entity, and

**Technical specification** refers to a contractual requirement that:

(a) sets down the characteristics of:
    (i) The goods to be procured, such as quality, performance, safety and dimensions, or the processes and methods of production, or
    (ii) The services to be procured, or their processes and methods of delivery, or

(b) establishes the terminology, symbols, packaging, marking or labelling requirements applicable to a good or service;

**Written** or **in writing** means any expression in words, numbers or other symbols that can be read, reproduced and subsequently communicated. It may include electronically transmitted and stored information;

### ARTICLE 8.2: Scope of Application

1. This Chapter applies to measures adopted or maintained by a Party relating to government procurement covered by this Chapter, understood as that which is performed:

(a) By an entity;

(b) By any contractual means, including purchase and rental or lease, with or without option to purchase and concession contracts for public works;

(c) With goods and services in accordance with Annex 8.2;

(d) Whose estimated contract value is equal to or greater than the value of the relevant threshold specified in Annex 8.2, and

(e) Subject to the other terms and conditions set forth in Annex 8.2.

2. This Chapter does not apply to:

(a) Non-contractual agreements or any other form of assistance provided by a Party, including grants, loans, capital contributions, tax incentives, subsidies, guarantees and cooperative agreements;

(b) Public provision of goods and services to persons or regional- or local-level governments;

(c) Procurement for the direct purpose of providing foreign assistance;

(d) Procurement funded by international grants, loans or other forms of international assistance, where the provision of such assistance is subject to conditions incompatible with the provisions of this Chapter;

(e) The recruitment of public servants and measures related to their employment;

(f) The procurement or acquisition of tax agency or deposit services, liquidation or management services for regulated financial institutions, or services related to the sale, redemption and distribution of public debt, including loans, government bonds and other securities. For greater certainty, this Chapter does not apply to the government procurement of banking, fiduciary, financial or specialised or other services related to the following activities:
   (i) Public debt, or
   (ii) Management of public debt;

(g) Procurement by an entity to another entity of that State Party whether or not covered by this Chapter, and

(h) The acquisition or rental of land, existing buildings or other immovable property or rights thereon.

3. No entity may prepare, design or otherwise structure or divide any procurement at any stage of the procurement process in order to avoid the obligations of this Chapter.

4. When an entity awards a contract that is not covered by this Chapter, no provision in this Chapter shall be construed to cover any good or service component of that contract.

**ARTICLE 8.3: General Principles**

*National Treatment and Non-Discrimination*

1. With respect to any measure covered by this Chapter, each Party, including its entities, shall immediately and unconditionally accord treatment no less favourable to the goods and services of any other Party and to the suppliers of the Parties than the most favourable treatment said Party accords to its own goods, services and suppliers, as well as the goods, services and suppliers of the other Parties. For greater certainty, this obligation applies only to the treatment accorded to any goods, services and suppliers of the other Parties under this Additional Protocol.

2. With respect to any measure regulating government procurement covered by this Chapter, no Party may:

(a) Treat a locally established supplier less favourably than another supplier established locally 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 government procurement are the goods or services of another Party.

3. Paragraphs 1 and 2 shall not apply to:

(a) Customs duties, including fees or other charges of any kind imposed on imports or in connection therewith; the method of levying such duties and charges; or other import regulations, or

(b) Measures affecting trade in services other than measures specifically regulating government procurement covered by this Chapter.

*Rules of Origin*

4. For the purposes of paragraphs 1 and 2, the determination of origin of goods shall be made on the basis of the rules applicable in the normal course of trade of such goods.

**ARTICLE 8.4: Offsets**

Regarding government procurement covered [by this Chapter], an entity may not consider, request or impose offsets at any stage of a government procurement process.

**ARTICLE 8.5: Valuation**

1. In calculating the value of a government procurement for the purpose of determining whether it is covered [by this Chapter], an entity:

(a) Shall not divide it into separate procurements nor use a particular method to estimate its value for the purpose of avoiding the application of this Chapter;

(b) Shall include the calculation of the maximum total value over its lifetime, taking into account all forms of remuneration, such as premiums, dues, fees, commissions and interest such as may be stipulated in the procurement; and

(c) Shall, where the procurement results in the award of contracts at the same time or in a given period to one or more suppliers, base the calculation on the maximum total value of the procurement throughout the period of its validity.

2. When the total maximum value of a procurement over the entire period of its duration is unknown, the procurement shall be covered by this Chapter.

**ARTICLE 8.6: Technical Specifications**

1. An entity shall not prepare, adopt or apply any technical specification or prescribe any procedure for assessing conformity with the purpose or effect of creating unnecessary obstacles to trade between the Parties.

2. In establishing the technical specifications for the goods or services to be procured, the entity shall, as appropriate:

(a) Establish them in terms of performance and functional requirements, rather than design or descriptive characteristics; and

(b) Base them on international standards, where applicable, or on national technical regulations, recognised national standards or building codes.

3. An entity shall not prescribe technical specifications that require or refer to a brand or trade name, patent, copyright, design or type, specific origin or producer or supplier, unless there is no other sufficiently precise or intelligible way of describing the requirements of the procurement, provided that, in such cases, phrases such as “or equivalent” are used in the procurement documents.

4. An entity shall not seek or accept, in a manner that would have the effect of impeding competition, advice that could be used in the preparation or adoption of any technical specification for a specific procurement on behalf of a person who may have a commercial interest in the government procurement.

5. For greater certainty, this Article is not intended to prevent an entity from preparing, adopting or applying technical specifications to help in the conservation or protection of natural resources or the environment.

**ARTICLE 8.7: Publication of Government Procurement Measures**

Each Party shall promptly publish its general measures specifically regulating government procurement covered by this Chapter, as well as any changes to said measures in the same manner as the original publication in an electronic medium listed in Appendix 8.2.

**ARTICLE 8.8: Government Procurement Notice**

1. For each government procurement process covered by this Chapter, an entity shall publish, in advance, a notice inviting interested suppliers to submit tenders, or when appropriate, requests to participate in the procurement, except as provided in Article 8.9.4.

2. Each procurement notice shall include at least the following information:

(a) A description of the procurement;

(b) The procurement method to be used;

(c) Any conditions that suppliers must fulfil to participate in the procurement;

(d) The name of the entity issuing the notice;

(e) Address and/or point of contact where providers may obtain all the relevant documents relating to the government procurement;

(f) Where applicable, the address and deadline for submission of applications for participation in the government procurement;

(g) The address and deadline for submission of tenders;

(h) The dates for delivery of the goods or services to be procured or the duration of the contract, unless this information is included in the tender documentation; and

(i) An indication that the government procurement is covered by this Chapter.

3. The entities shall publish the procurement notices in media which offer the widest possible non-discriminatory access to the Parties' interested suppliers. Access to said notices shall be available by means of an electronic location specified in Annex 8.2 throughout the period established for tendering for the relevant procurement.

*Planned Procurement Notices*

4. Each Party shall encourage its entities to publish a notice regarding their future procurement plans in one of the electronic media listed in Appendix 8.2 as early as possible in each fiscal year. These notices shall include the object to be procured and the estimated period in which the procurement shall be conducted.

**ARTICLE 8.9: Procurement Procedures**

*Open Tender*

1. Entities shall award contracts through open tendering procedures, through which any of the Parties' interested suppliers may submit a tender.

*Selective Tender*

2. Where the legislation of one of the Parties provides for selective tendering, an entity shall, for each procurement:

(a) Publish a notice inviting suppliers to apply for participation in a procurement early enough for interested suppliers to prepare and submit applications and for the entity to evaluate and make its determination based on such applications, and

(b) Allow all domestic suppliers and all the suppliers of the other Parties that the entity has determined satisfy the conditions for participation to submit a tender, unless the

entity has imposed a limit on the number of suppliers that will be permitted to tender and the criteria for such limitation in the notice or in the publicly available tender documentation.

3. Entities maintaining publicly available permanent lists of qualified suppliers may select suppliers included in said lists and invite them to tender. Any selection must allow for equitable opportunities for the suppliers in such lists.

*Other Procurement Procedures*

4. Provided that an entity does not use this provision to avoid competition so as to protect its domestic suppliers or to discriminate against the other Parties' suppliers, an entity may award contracts by means other than open or selective tendering in any of the following circumstances:

(a) Provided that the requirements of the tender documentation are not substantially modified, when:
   (i) No tender has been submitted or no suppliers have applied to participate;
   (ii) No tender that meets the essential requirements set out in the tender documents has been submitted;
   (iii) No provider has complied with the participation conditions; or
   (iv) Collusion has been declared by competent authority in the submission of tenders;

(b) Where the goods or services can be supplied by one supplier only and there is no reasonable substitute or alternative goods or services due to any of the following reasons:
   (i) The requirement is for the production of a work of art;
   (ii) The protection of patents, copyrights or other exclusive rights; or
   (iii) Due to the absence of competition for technical reasons;

(c) In the event of the original supplier making additional deliveries of goods or services intended as replacements, extensions or continuations to the service of existing equipment, software, services or installations, where a change of supplier would compel the entity to procure goods or services not meeting the requirements of compatibility with existing equipment, software, services or installations;

(d) For acquisitions carried out in a commodity market;

(e) When an entity acquires a prototype or a first good or service that has been developed at its request in the course of, and for, a particular contract for research, experimentation, study or original development. When said contracts have been fulfilled, subsequent procurement of such goods or services will be awarded through open tendering procedures;

(f) When, in the case of public works, construction services additional to those originally contracted are required in response to unforeseen circumstances that are strictly necessary for the fulfilment of the objectives of the contract that brought them into being. However, the total value of contracts awarded for additional construction services may not exceed 50% of the value of the main contract;

(g) Insofar as is strictly necessary where, for reasons of extreme urgency brought about by events which the entity could not have foreseen, the goods or services could not be obtained in time by means of open or selective tendering and the use of such procedures could result in serious prejudice to the entity or the performance of its duties. For the purposes of this subparagraph, an entity's failure to manage funds available within a specified period shall not constitute an unforeseen event;

(h) When a contract is awarded to the winner of a design contest, provided that:
    (i) The contest was organised in a manner consistent with the principles of this Chapter, in particular with regard to the publication of a government procurement notice; and
    (ii) The participants are judged or evaluated by a jury or independent body;

(i) In the case of purchases made under exceptionally advantageous conditions that only arise in the very short term in the case of unusual disposals such as those derived from situations of liquidation, receivership or bankruptcy, but not in the case of ordinary purchases made from regular suppliers and

(j) When an entity needs to procure consulting services involving matters of a confidential nature, the disclosure of which could reasonably be expected to compromise confidential government information, cause economic instability or otherwise be contrary to the public interest.

5. An entity shall prepare a written report or maintain a record for each contract awarded under paragraph 4. Said report or record shall include the name of the entity, the value and nature of the goods or services procured and an indication of the circumstances and conditions justifying the use of a procedure other than open tender.

**ARTICLE 8.10: Deadlines for Submission of Bids**

1. An entity shall provide suppliers sufficient time to submit applications to participate in a government procurement process and to prepare and submit appropriate tenders, taking into account the nature and complexity of the procurement. An entity shall provide a term of no fewer than 30 days from publication of the procurement notice for submission of tenders.

2. Notwithstanding the provisions of paragraph 1, an entity may establish a period of fewer than 30 days, but in no case fewer than 10 days, in the following circumstances:

(a) When the entity has published a separate notice containing a description of the procurement, approximate deadlines for the submission of tenders or, where appropriate, conditions for participation in a procurement and an address where documents concerning the procurement have been made available, at least 30 days and not more than 12 months in advance;

(b) In the case of a new, second or subsequent publication of government procurement notices of a recurring nature;

(c) Where a state of urgency duly substantiated by an entity makes meeting the

deadline stipulated in paragraph 1 impracticable; or

(d) When the entity acquires goods or services that are generally sold or offered for sale in the commercial market to non-governmental buyers, and are usually purchased by said buyers for non-governmental purposes.

3. A Party may provide that a company can reduce the bidding deadline set down in paragraph 1 by five days for each of the following circumstances, where:

(a) The notice of intended procurement is published by electronic means;

(b) All procurement documents that are made available to the public by electronic means are published from the date of publication of the procurement notice; or

(c) Tenders can be received by the procuring entity through electronic means.

4. The application of paragraphs 2 and 3 may not result in a reduction of the periods specified in paragraph 1 to fewer than 10 days from the date of publication of the procurement notice.

**ARTICLE 8.11: Procurement Documents**

1. An entity shall provide suppliers all information necessary to enable them to prepare and submit appropriate tenders.

2. The tender documentation should include, as a minimum, a full description of the following:

(a) The nature and quantity of goods or services to be procured or, if the amount is not known, the estimated quantity and any requirement that must be met, including technical specifications, certificates of conformity assessment, plans, drawings or instruction manuals;

(b) The conditions for participation of suppliers, including information and documents that suppliers are required to submit in relation to those conditions;

(c) The evaluation criteria to be considered in the awarding of a contract and, unless price is the sole criterion, the relative importance of those criteria;

(d) When an entity holds an electronic auction, the rules applicable to the auction, including identification of the elements of the tender related to the evaluation criteria;

(e) The date, time and place of opening of bids;

(f) The date or period for delivery of the goods or the supply of services or the duration of the contract; and

(g) Any other term or condition, such as payment terms and the format in which bids will be submitted.

3. When an entity does not publish all tender documentation electronically, it must ensure that it is available to any provider who requests it.

4. When, during the course of a procurement, an entity modifies the criteria referred to in paragraph 2, it shall communicate such modifications in writing:

(a) To all suppliers participating in the procurement at the time of the modification of the criteria, if the identities of such suppliers are known, and in other cases, in the same way the original information was communicated, and

(b) With sufficient time to allow said suppliers to modify and resubmit their tenders, as appropriate.

**ARTICLE 8.12: Conditions for Participation**

1. Where a Party, including its entities, requires suppliers to comply with registration or eligibility requirements or any other condition to participate in a government procurement process, the entity shall publish a notice inviting the suppliers to submit tenders for such participation. The entity shall publish the notice sufficiently in advance to provide interested suppliers sufficient time to prepare and submit tenders, and for the entity to evaluate and make determinations on the basis of said tenders.

2. Each entity must:

(a) Limit the conditions for participation in a government procurement process to those that are essential so as to ensure that a potential supplier has the legal, commercial, technical and financial capabilities to meet the requirements and the technical requirements of government procurement on the basis of the provider's business both within and outside the territory of the Party of the entity;

(b) Base its decision on eligibility solely on the conditions to participate that were specified in advance in notices or the tender documents, and

(c) Allow all suppliers of other Parties who have satisfied the conditions for participation to be recognised as eligible and able to participate in the government procurement.

3. Entities may establish permanent, publicly available lists of suppliers eligible to participate in government procurements. Where an entity requires suppliers to appear as eligible in said list as a condition for participation in a government procurement and a supplier that has not yet been deemed eligible requests to be included in the list, the Parties shall ensure that the procedure for inclusion in the list starts promptly and they shall allow the supplier to participate in the government procurement, provided that there is sufficient time to complete the procedures for eligibility within the timeframe set down for submission of tenders.

4. No entity may impose previously having been awarded one or more contracts by an entity of that Party or having prior work experience in the territory of that Party as a condition for a supplier to participate in a government procurement process.

5. An entity shall promptly notify any suppliers that have submitted bids for eligibility of

that entity's decision on the bid. When an entity rejects a bid for eligibility or ceases to recognise a supplier as meeting the conditions for participation, the entity shall promptly provide the supplier, at its request, a written explanation of the reasons for the entity's decision.

6. Nothing in this Article shall preclude an entity from excluding a supplier of a procurement on grounds established by a Party, such as bankruptcy, liquidation or insolvency, false declarations during a government procurement process or significant or persistent deficiencies in the performance of any substantive requirement or obligation arising from one or more previous contracts.

**ARTICLE 8.13: Treatment of Tenders and Awarding of Contracts**

1. An entity shall receive, open, and treat all tenders using procedures that ensure equality and impartiality in the government procurement process and shall treat tenders as confidential, at least until they are opened.

2. For a bid to be considered for award, an entity shall require that it be presented in writing and at the time of the opening of tenders:

(a) That it conform to the essential requirements set out in the procurement documents; and

(b) That it come from a supplier that has satisfied the conditions for participation.

3. Unless an entity determines that the award of a contract is against the public interest, the entity shall award the contract to the supplier that the entity has determined meets the conditions for participation, is fully capable of undertaking the contract and whose bid is considered the most advantageous based solely on the requirements and evaluation criteria specified in the procurement documents.

4. An entity may not cancel a government procurement or terminate or modify an awarded contract in order to avoid the obligations of this Chapter.

**ARTICLE 8.14: Information on Awards**

1. An entity shall promptly publish its decision on the award of a contract. If so requested, an entity shall provide a supplier whose tender was not selected for award with the reasons for not selecting its tender and the relative advantages of the bid that the entity selected.

2. After an award under this Chapter, an entity shall promptly publish, in an electronic medium listed in Annex 8.2, a notice that includes as a minimum the following information on the award of the contract:

(a) The name of the entity;

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

(c) The award date;

(d) The name of the provider to whom the contract was awarded;

(e) The value of the contract; and

(f) The government procurement method used.

3. An entity shall maintain records and reports related to government procurement processes covered by this Chapter, including the records and reports stipulated in Article 8.9.5, for a period of at least three years.

4. Subject to the provisions of Article 8.19, at the request of a Party, the other Party shall promptly provide the information necessary to determine whether a government procurement was conducted fairly, impartially and in accordance with this Chapter, including information on the characteristics and relative advantages of the winning bid.

**ARTICLE 8.15: Integrity in Government Procurement Practices**

Each Party shall ensure the existence of administrative or penal sanctions to tackle corruption in its government procurement processes, and that its entities establish policies and procedures to eliminate any potential conflict of interest on the part of those involved in government procurement or having an influence over it.

**ARTICLE 8.16: Appeal Procedure**

1. Each Party shall establish a procedure for administrative or judicial review that is timely, effective, transparent and non-discriminatory, in accordance with the principle of due process, by means of which a supplier can make appeals related to a government procurement covered by this Chapter in which the provider has an interest, alleging a violation of this Chapter.

2. Each Party shall establish or designate at least one impartial administrative or judicial authority independent of its entities to receive and review the appeals referred to in paragraph 1 and to formulate relevant conclusions and recommendations.

3. When an appeal by a supplier is initially reviewed by an authority other than those referred to in paragraph 2, the Party shall ensure that the supplier may appeal the initial decision before an independent impartial administrative or judicial authority of the entity that is the subject of the appeal.

4. Each Party shall make provisions for the authority established or designated pursuant to paragraph 2 to have the authority to take prompt interim measures to preserve the supplier's opportunity to participate in government procurement processes and to ensure that the Party complies with this Chapter. Such measures may result in the suspension of the procurement process.

5. Notwithstanding any other appeal procedures provided or developed by each of the Parties, each Party shall ensure that the authority established or designated pursuant to paragraph 2, provides at least the following:

(a) Sufficient time for the supplier to prepare and submit written appeals, which in no case may be fewer than 10 days from the time the act or omission which gave rise to the appeal became known to the supplier or reasonably should have become known to it; and

(b) Prompt delivery in writing of the decisions relating to the appeal, with an explanation of the rationale for each decision.

**ARTICLE 8.17: Use of Electronic Media**

1. The Parties shall provide information regarding future government procurement opportunities through electronic means.

2. The Parties shall encourage, to the extent possible, the use of electronic media for the delivery of procurement documents and the receipt of tenders.

3. When government procurements covered by this Chapter are conducted through electronic means, each Party:

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

(b) Shall maintain mechanisms that ensure the security and integrity of requests to participate and bids, and which determine the time of receipt thereof.

**ARTICLE 8.18: Amendments and Corrections**

1. Any Party may change its lists contained in Annex 8.2, provided that:

(a) It notifies the other Parties in writing;

(b) It includes intended compensatory adjustments in said notification which permit the other Parties to maintain a level of coverage comparable to that existing prior to the amendment, except as provided in paragraphs 2 and 3; and

(c) The other Parties do not object in writing within 30 days of notification.

2. Any Party may make corrections of a purely formal nature to its lists contained in Annex 8.2, such as:

(a) A change to the name of an entity listed in Annex 8.2;

(b) Merger of two or more entities listed in Annex 8.2; and

(c) Separation of an entity listed in Annex 8.2 into two or more entities that are added to Annex 8.2;

Provided that it notifies the other Parties in writing and they do not object in writing within 30 days of such notification. The Party making such amendment shall not be obliged to provide

compensatory adjustments.

3. A party need not provide compensatory adjustments in circumstances in which the proposed amendment to its lists in Annex 8.2 covers an entity over which the Party has effectively eliminated its control or influence. Where the Parties do not agree that said government control or influence has been effectively eliminated, the objecting Party may request additional information or consultations in order to clarify the nature of any government control or influence and to reach agreement on the retention or removal of the entity's coverage under this Chapter.

4. Where the Parties have agreed to an amendment or correction of a purely formal nature to their Schedules in Annex 8.2, including where no party has objected within 30 days in accordance with paragraphs 1 and 2, the Free Trade Commission shall adopt a decision to that effect.

**ARTICLE 8.19: Undisclosed Information**

1. The parties, their entities and their review authorities shall not disclose confidential information without the written consent of the supplier that has provided such information, where said disclosure could prejudice the legitimate commercial interests of a particular person or could prejudice fair competition between suppliers.

2. No provision in this Chapter shall be construed to require a Party or its entities to disclose confidential information which could impede compliance with the law or otherwise be contrary to the public interest.

**ARTICLE 8.20: Exceptions**

1. Nothing in this Chapter shall be construed to prevent a Party from taking any action or abstaining from disclosing any information deemed necessary for the protection of its essential security interests relating to the procurement of arms, munitions or war materials, or government procurement indispensable for national security or for national defence purposes.

2. Provided that such measures are not applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination between the Parties, or imply 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 morale, order or safety;

(b) Necessary to protect human, animal or plant health or life, including environmental measures;

(c) Necessary to protect intellectual property; or

(d) Relating to goods or services provided by disabled persons, philanthropic institutions or prison labour.

**ARTICLE 8.21: Facilitating the Participation of Micro, Small and Medium Enterprises**

1. The Parties recognise the important contribution that micro, small and medium enterprises (hereinafter "MSMEs") can make to economic growth and employment, and the importance of facilitating their participation in government procurement.

2. The Parties also recognise the importance of business alliances between the Parties' suppliers and in particular MSMEs, including joint participation in procurement procedures.

3. Where a Party maintains measures that give preferential treatment to its MSMEs as opposed to those of other Parties, that Party shall endeavour to reduce these measures.

4. Where a Party maintains measures providing preferential treatment to its MSMEs, it shall ensure that such measures, including eligibility criteria, be objective and transparent.

5. The Parties may:

(a) Provide information on the measures used to assist, promote, encourage or facilitate participation of MSMEs in government procurement; and

(b) Cooperate in the development of mechanisms to provide information to MSMEs on ways to participate in government procurement covered by this Chapter.

6. To facilitate the participation of MSMEs in government procurement covered [by this Chapter], each Party shall, insofar as practicable:

(a) Provide information related to government procurement, including a definition of MSMEs in an electronic portal;

(b) Ensure that the procurement documents are available free of charge;

(c) Identify MSMEs interested in becoming commercial partners of other companies in the territory of the other Parties;

(d) Develop databases on MSMEs in its territory to be used by entities of the other Parties; and

(e) Perform other activities to facilitate the participation of MSMEs in procurement covered by this Chapter.

**ARTICLE 8.22: Cooperation**

1. The Parties shall use their best efforts to develop cooperative activities to achieve a better understanding of their respective government procurement systems, as well as better access to their respective markets, in areas such as:

(a) Exchanging experiences and information, including regulatory frameworks, best practices and statistics;

(b) Facilitating the participation of the Parties' suppliers in government procurement covered [by this Chapter], particularly MSMEs;

(c) Development and use of electronic media in the government procurement systems;

(d) Training and technical assistance for providers on market access in government procurement; and

(e) Institutional strengthening for compliance with this Chapter, including the training of public servants.

2. The Parties shall notify the Committee on Government Procurement established in Article 8.23 of the performance of any cooperative activity.

**ARTICLE 8.23: Government Procurement Committee**

1. The Parties hereby establish a Committee on Government Procurement (hereinafter referred to as the "Committee"), comprising representatives of each Party.

2. The functions of the Committee shall include:

(a) Monitoring and evaluating the implementation and administration of this Chapter, including its use, and recommending relevant activities to the Free Trade Commission;

(b) Reporting to the Free Trade Commission on the implementation and administration of this Chapter, where applicable;

(c) Monitoring cooperation activities;

(d) Considering the pursuit of further negotiations with the aim of expanding the coverage of this Chapter; and

(e) Handling any other matter relating to this Chapter.

3. Unless the Parties agree otherwise, the Committee shall meet at least once a year on the date, at the place and according to the agenda previously agreed by the Parties.

**ARTICLE 8.24: Future Negotiations**

At the request of any Party, the other Parties shall consider holding future negotiations in order to expand the coverage of this Chapter on a reciprocal basis, when any Party grants greater access to its government procurement market to suppliers from a non-Party state than to the other Parties' suppliers pursuant to this Additional Protocol, by means of an international treaty to enter into force after this Additional Protocol.

## CHAPTER 9: CROSS-BORDER TRADE IN SERVICES

### ARTICLE 9.1: Definitions

For the purposes of this Chapter:
**Computer reservation system (CRS) services** means the services provided through computer systems that contain information regarding timetables of air carriers, available seats, prices and pricing rules and booking and ticket-issuing services;

**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 another Party;

(b) In the territory of one Party by a person of that Party to a person of another Party, or

(c) By a national of a Party in the territory of another Party;

But it does not include the supply of a service in the territory of a Party through covered investment, as defined in Article 10.1 (Definitions);

**Professional services** means services, the provision of which requires specialised higher education[1] or equivalent training or experience, and for which the right to practise is granted or restricted by a Party, but does not include services provided by tradespersons or vessel and aircraft crew members;

**Sale and trading of air transport services** means the opportunities the air transport supplier in question has to freely sell and market its air transport services, including all aspects of marketing, for example, market research, advertising and distribution. These activities do not include price-setting for air transport services nor applicable conditions;

**Service supplier of a Party** means a person of a Party that seeks to supply or who supplies a service;

**Specialty air services** means any non-transportation air services, such as aerial fire-fighting, spraying, sightseeing, surveying, mapping, photography, parachute jumping, glider towing, helicopter-lift for logging and construction, and other airborne agricultural, industrial, and inspection services.

### ARTICLE 9.2: Scope of Application

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

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

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[1] For greater certainty, “specialised higher education” includes post-secondary education related to a specific area of knowledge.

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

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

(d) The presence in its territory of a service supplier from another Party; and

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

2. For the purposes of this Chapter, **measures adopted or maintained by a Party** means the 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 and authorities.

3. This Chapter does not apply to:

(a) Financial services, as defined in Article 11.1 (Definitions);

(b) Air services,[2] 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 while an aircraft is withdrawn from service;
   (ii) Specialty air services;
   (iii) The sale and marketing of air transport services, and
   (iv) Computer reservation system (CRS) services;

(c) Government procurement, as defined in Article 2.1 (General Definitions);

(d) Subsidies or grants provided by a Party or a state-owned enterprise including government-backed loans, guarantees and insurance, and

(e) The services supplied in the exercise of governmental authority in the territory of each of the Parties. A **service supplied in the exercise of governmental authority** means any service that is supplied neither on a commercial basis, nor in competition with one or more service suppliers.

4. Articles 9.6, 9.8 and 9.9 apply to the measures adopted or maintained by a Party that affect the supply of a service in their territory through a covered investment.[3]

5. This Chapter does not impose any obligation on a Party with respect to a national of another Party seeking access to its labour market or employed on a permanent basis in its

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[2] For greater certainty, the term “air services” includes traffic rights.

[3] For greater certainty, nothing contained in this Chapter, including this paragraph, is subject to Dispute Resolution between one Party and an investor of another Party, pursuant to Section B of Chapter 10 (Investment).

territory, and does not confer any right upon that national with respect to that access or employment.

6. For greater certainty, nothing in this Chapter may be construed as imposing any obligation on a Party with respect to its immigration policies.

**ARTICLE 9.3: National Treatment**

1. Each Party shall accord to service suppliers of another Party treatment no less favourable than that it accords, under similar circumstances, to its own service suppliers.

2. The treatment to be accorded by a Party under paragraph 1 means, with respect to a regional or state government, treatment no less favourable than the most favourable treatment accorded, under similar circumstances, by that regional or state government to the services and service suppliers of the Party of which it forms an integral part.

**ARTICLE 9.4: Most-Favoured-Nation Treatment**

Each Party shall accord to services and service suppliers of another Party treatment no less favourable than it accords, under similar circumstances, to services and service suppliers of any Party or non-Party state.

**ARTICLE 9.5: Local Presence**

No Party may require a service supplier of another Party to establish or maintain a representative office or any other form of company, or be a resident in the Party's territory as a condition for the cross-border supply of a service.

**ARTICLE 9.6: Market Access**

No Party may adopt or maintain, either on the basis of a regional subdivision or on the basis of its entire territory, measures that:

(a) Impose limitations on:
   (i) The number of service suppliers, 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 the total quantity of services output, expressed in designated numerical units, in the form of quotas or the requirement of an economic needs test[4], or
   (iv) The total number of natural persons that may be employed in a certain 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 numerical quotas or the requirement of an economic needs test, or

[4] This subparagraph does not cover the measures of a Party that restrict inputs for the supply of services.

(b) Restrict or require specific types of legal entity or joint venture through which a service supplier may supply a service.

**ARTICLE 9.7: Non-Conforming Measures**

1. Articles 9.3, 9.4, 9.5 and 9.6 do not apply to:
   (a) Any existing non-conforming measure that is maintained by:
      (i) Central or federal government or authorities of one Party, as set out in its Schedule to Annex I;
      (ii) Regional or state government or authorities of one Party, as set out in its Schedule to Annex I
      (iii) A local level government of one Party;

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

   (c) The modification of any non-conforming measure referred to in subparagraph (a), provided that said modification does not decrease the conformity of the measure as it existed immediately before the modification, with Articles 9.3, 9.4, 9.5 and 9.6.

2. Articles 9.3, 9.4, 9.5 and 9.6 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.

**ARTICLE 9.8: Transparency**

1. Each Party shall establish or maintain appropriate mechanisms for responding to enquiries from interested persons regarding its regulations relating to the subject matter of this Chapter, pursuant to each Party's laws and regulations concerning transparency.[5]

2. When adopting final regulations relating to the subject matter of this Chapter, each Party shall, to the extent possible, including upon request, address in writing the substantive comments received from interested persons with respect to the proposed regulations.

3. To the extent possible, each Party shall allow a reasonable time between the publication of final regulations and their effective date.

4. In the event that a Party makes any modification to any existing non-conforming measure, as stipulated in its Schedule to Annex I pursuant to Article 9.7.1 (c), the Party shall notify the Parties of said modification as soon as practicable.

5. In the event that after the implementation of this Additional Protocol, a Party adopts any measure with respect to sectors, subsectors or activities as stipulated in its Schedule to Annex II, the Party shall, to the extent possible, notify the Parties of said measure.

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[5] The implementation of the obligation of establishing appropriate mechanisms shall take into account the budgetary and resource limitations of small administrative bodies.

**ARTICLE 9.9: Domestic Regulation**

1. Each Party shall ensure that all measures of general application affecting trade in services be administered in a reasonable, objective and impartial manner.

2. Where a Party requires authorisation for the supply of a service, the Party's competent authorities:

(a) In the event of an incomplete application, shall identify, where feasible and at the request of the applicant, the additional information required to complete the application and the competent authorities shall provide the opportunity to rectify minor errors and omissions within the application.

(b) Shall inform the applicant of the decision concerning the application within a reasonable time after the submission of an application considered complete under its laws and regulations;

(c) Shall establish, where feasible, approximate timeframes for the processing of the application;

(d) Shall provide information concerning the status of the application at the request of the applicant, and without undue delay;

(e) If an application is denied, shall inform the applicant where feasible, of the reasons for the denial, whether directly or at the request of the applicant, and

(f) Shall accept certified true copies in lieu of original documents where feasible and pursuant to their laws.

3. With a view to ensuring that the measures related to qualification requirements and procedures, technical standards and licensing requirements do not constitute unnecessary barriers to the trade in services, each Party shall endeavour to ensure that such measures:

(a) Are based on objective and transparent criteria, such as competence and ability to provide the service;

(b) Are not more burdensome than is necessary to ensure the quality of the service, and

(c) In the case of licensing procedures, do not in themselves constitute a restriction on the supply of the service.

4. Each Party shall ensure that whatever fee charged by the competent authority to authorise the supply of a service is reasonable, transparent, and does not in itself restrict the supply of said service.

5. If the licensing requirements or qualifications include an assessment, each Party must ensure that:

(a) The assessment is scheduled in a reasonable timeframe, and

(b) A reasonable timeframe is allowed so that interested persons may submit an application to participate in the assessment.

6. Each Party shall ensure that there are procedures to verify the professional competences of another Party.

7. Each Party, where feasible, shall ensure that the information concerning the requirements and procedures for issuing licences and qualifications includes the following:

(a) Whether it is necessary to renew the licence or the qualifications for the supply of a service;

(b) The contact details of the competent authority;

(c) The requirements, procedures and costs applying to the issuing of licences and qualifications, and

(d) The procedures concerning appeals or reviews of applications, where applicable.

8. The Parties recognise their mutual obligations to domestic regulation under Article VI: 4 of the GATS and reaffirm their commitment to the development of any discipline necessary for compliance with that Article. Insofar as any of the said disciplines may be adopted by the members of the WTO or developed in another multilateral forum in which the Parties are engaged, the Parties shall jointly review them, where appropriate, with a view to determining whether said results should be incorporated into this Additional Protocol.

9. This Article shall not apply to the non-conforming aspects of the measures that may be adopted or maintained by a Party pursuant to Annexes I and II.

**ARTICLE 9.10: Recognition**

1. For the purposes of the fulfilment, in whole or in part, of its standards or criteria for the authorisation or certification or licensing of service suppliers, and subject to paragraph 4, a Party may recognise the education or experience obtained, the requirements met or the licences or certifications granted in a certain country. This recognition may be achieved through harmonisation or otherwise, it may be based upon an agreement or arrangement with the country concerned or it may be accorded autonomously.

2. When a Party recognises, autonomously or by agreement or arrangement, the education or experience obtained, requirements met or licences or certifications granted in the territory of a non-Party state, nothing in Article 9.4 shall be construed as a requirement for the Party to accord such recognition to the education or experience obtained, requirements met or the licences or certification granted in the territory of any other Party.

3. A Party that is party to an agreement or arrangement of the type referred to in paragraph 1, whether existing or future, shall provide adequate opportunity for another Party, if that other Party is interested, to negotiate its accession to such an agreement or arrangement, or to negotiate a comparable one with it. When a Party autonomously grants recognition, it shall provide adequate opportunity for another Party to demonstrate that

education, experience, licences or certifications obtained or requirements met in that other Party's territory should be recognised.

4. No Party may grant recognition in a manner that would constitute a means of discrimination between countries in the application of its standards or criteria for the authorisation, certification or licensing of service suppliers, or a disguised restriction on trade in services.

5. Annex 9.10 applies to measures adopted or maintained by a Party in relation to the licensing or certification of professional service suppliers, as set out in that Annex.

**ARTICLE 9.11: Subsidies**

Notwithstanding that established in Article 9.2:

(a) The Parties shall periodically exchange information on existing or future subsidies, including grants, tax exemptions or deductions and government-backed loans, guarantees and insurance, related to the trade in services. The first exchange shall take place within no more than two years from the effective date of this Additional Protocol.

(b) The Parties recognise their mutual obligations under Article XV of the GATS and reaffirm their commitment to the exercise of any discipline required for compliance with said article. Insofar as any of the said disciplines are adopted by members of the WTO or exercised in another multilateral forum in which the Parties are engaged, the Parties shall jointly review them, where appropriate, with a view to determining whether said results should be incorporated into this Additional Protocol.

**ARTICLE 9.12: Complementary Services**

The Parties shall make every effort to publish, update and exchange information on their service suppliers that they consider relevant, in particular services provided to companies, with the objective of promoting the development of value chains within the corporate sector.

**ARTICLE 9.13: Transfers and Payments**[6]

1. Each Party shall permit all transfers and payments for the cross-border supply of services to be made freely and without delay into and out of its territory.

2. Each Party shall permit all transfers and payments for the cross-border supply of services to be made in a freely usable currency at the market exchange rate prevailing on the date of transfer.

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[6] The Parties agree that this Article shall not apply to Chile, its service suppliers or the services supplied to or from Chile. If Chile accords equivalent treatment to the provisions of this Article through an international commercial agreement after this Additional Protocol enters into force, such treatment shall be applicable to the Parties of this Additional Protocol, as per the conditions hereby agreed. For greater certainty, once the treatment described in this footnote is accorded, Chile, its service suppliers and the services supplied to or from Chile shall receive the treatment derived from this Article.

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

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

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

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

(d) Criminal offences; or

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

**ARTICLE 9.14: Statistics of Trade in Services**

The Parties shall make every effort to encourage their competent authorities to work together to exchange information, share methodologies and publish international trade statistics of the Parties, based on international standards.

**ARTICLE 9.15: Services Subcommittee**

1. The Services Subcommittee of the Joint Committee on Investment and Services established in Article 10.33 (Joint Committee on Investment and Services) shall consult annually, or as agreed by the Parties, and it may conduct meetings jointly with private sector representatives.

2. The Services Subcommittee shall have the following functions:

(a) Determining its own procedural rules;

(b) Sharing information and promoting cooperation in matters concerning the trade in services;

(c) Assessing and making recommendations to the Joint Committee on Investment and Services, related to mechanisms, instruments or agreements, in order to facilitate and increase the trade in services between the Parties;

(d) Identifying and analysing the barriers that affect the trade in services with a view to reducing or eliminating them;

(e) Making proposals to the Joint Committee on Investment and Services so that the Services Subcommittee may operate more effectively or achieve its objectives;

(f) considering the issues related to the trade in services proposed by any Party;

(g) Reviewing the implementation of this Chapter, and facilitating enquiries between the Parties on the feasibility of removing any requirement for holding citizenship or permanent residence for the issuing of licences or certification to the service suppliers of each Party; and

(h) Coordinating the tasks established in Articles 9.8, 9.11, 9.12 and 9.14, and carrying out other functions entrusted to them by the Joint Committee on Investment and Services or those established by this Additional Protocol.

**ARTICLE 9.16: Denial of Benefits**

Subject to prior notification, a Party may deny the benefits of this Chapter to a service supplier of another Party if the service supplier is a company that is owned or controlled by persons of a non-Party state or the denying Party, and the company has no substantial business activities in the territory of any Party other than the denying Party.

**ANNEX 9.10: PROFESSIONAL SERVICES**

*Development of Standards and Criteria for the Supply of Professional Services*

1. Each Party shall encourage the relevant bodies in their respective territory to develop mutually acceptable standards and criteria for licensing and certification of professional service suppliers, and to provide recommendations to the Subcommittee on Services regarding mutual recognition.

2. The standards and criteria referred to in paragraph 1 may be developed with regard to the following aspects:

(a) Education: accreditation of educational institutions or academic programmes;

(b) Examinations: qualifying examinations for licensing, including alternative methods of assessment, such as oral examinations and interviews;

(c) Experience: length and nature of the experience required for licensing;

(d) Conduct and ethics: standards of professional conduct and the nature of disciplinary action in the event that professional service suppliers contravene them;

(e) Professional development and re-certification: continuing education and the requirements for maintaining professional certification;

(f) Scope of practice: extent of or limitations on authorised activities;

(g) Local knowledge: requirements for knowledge of such matters as local laws, regulations, language, geography or climate; and

(h) Consumer protection: requirements other than residence, such as bonds, professional liability insurance and client restitution funds to ensure consumer protection.

3. Upon receipt of a recommendation under paragraph 1, the Services Subcommittee shall review the recommendation within a reasonable time to determine whether it is consistent with this Additional Protocol and it shall inform the Free Trade Commission of its conclusions. Based on the review by the Services Subcommittee, each Party shall encourage its respective competent authorities, where appropriate, to implement that recommendation within a mutually agreed time.

*Issuing of Temporary Licences*

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 suppliers of another Party.

*Issuing of Temporary Licences for Engineers*

5. The Services Subcommittee must establish a work programme together with the relevant professional bodies in the territories of the Parties to develop the procedures related

to the issuing of temporary licences by the competent authorities of one Party to engineers of another Party.

6. With this objective, each Party shall consult with relevant professional bodies in its territory to gather their recommendations on:

(a) The development of procedures for temporary licensing of engineers from another Party to exercise their engineering specialties in the territory of the consulting Party;

(b) The development of standardised procedures for the competent authorities to adopt throughout their territory in order to facilitate the temporary licensing of engineers from another Party; and

(c) Other matters that the consulting Party has identified in said consultations to be of mutual interest to the Parties in terms of the temporary licensing of engineers.

7. The Services Subcommittee shall review without delay any recommendation made under paragraph 6 to ensure its consistency with this Additional Protocol and it shall inform the Free Trade Commission of its conclusions. Based on the review by the Services Subcommittee, each Party shall encourage its respective competent authorities, as appropriate, to implement the recommendation within a mutually agreed time.

*Review*

8. The Services Subcommittee shall periodically review the implementation of this Annex at least once every three years.

## CHAPTER 10: INVESTMENT

### Section A

### ARTICLE 10.1: Definitions

For the purposes of this Chapter:
**Arbitration Rules of the UNCITRAL** means the Arbitration Rules of the United Nations Commission on International Trade Law, revised in 2010;

**Claimant** means an investor of a Party that is party to an investment dispute with another Party;

**Covered investment** means an investment in the territory of one Party by an investor of another Party that entered into force before this Additional Protocol, or the investments made, acquired or expanded at a later date;

**Disputing Parties** means both the claimant and the respondent;

**Disputing Party** means either the claimant or the respondent;

**Freely usable currency** means a “freely usable currency” as defined by the International Monetary Fund under its Articles of Agreement;

**ICSID** means the International Centre for Settlement of Investment Disputes, established by the ICSID Convention;

**ICSID Additional Facility Rules** means the Additional Facility Rules for the Administration of Proceedings by the Secretariat of the International Centre for Settlement of Investment Disputes;

**ICSID Convention** means the Convention on the Settlement of Investment Disputes between States and Nationals of Other States, signed in Washington on 18 March 1965;

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

**Investment** means any asset owned or controlled by an investor, 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 revenue-sharing in an enterprise;

(c) Bonds, debentures or other debt instruments issued by an enterprise [1]

(d) But it does not include debt instruments issued by a Party or a state-owned enterprise, or loans to a Party or a state-owned enterprise, regardless of the original expiry date;

(e) Futures, options and other derivatives;

(f) Turnkey,[2] construction, management, production, concession, revenue-sharing and other similar contracts, including those that involve the presence of an investor's property in the territory of the Parties;

(g) Intellectual property rights;

(h) Licences, authorisations, permits and similar rights granted under domestic law,[3] and

(i) Other rights of tangible or intangible, moveable or immoveable property and related property rights, such as leases, mortgages, encumbrances and pledges;

Investment does not include an order or ruling granted in judicial or administrative proceedings;

**Investor from a non-Party** means, with respect to a Party, an investor who intends[4] to make, is making or has already made an investment in the territory of that Party, and that the investor is not from any of the Parties;

**Investor from one Party** means a Party or state-owned enterprise from that country, or a national or enterprise of said Party that intends[5] to make, is making or has already made an investment in the territory of another Party; considering, however, a natural person with double nationality to be exclusively a national of the State of its dominant and effective nationality;

**Monopoly** means an entity, including a consortium or governmental agency, that in the relevant market of the territory of a Party, has been designated as the sole supplier or buyer of a good or service, however the term does not include entities that have been granted an intellectual property right by sole virtue of said designation;

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1 It is more likely for some forms of debt, such as bonds, debentures and long-term promissory notes to have the characteristics of an investment, while it is less likely for other forms of debt, such as claims for payment that are due immediately and that result from the sale of products and services, to have those characteristics.

2 For greater certainty, the term "contract" includes the applicable contractual rights.

3 The consideration that a type of licence, authorisation, permit or similar instrument (including a concession, insofar as it has the nature of this type of instrument) has the characteristics of an investment depends on factors such as the nature and scope of the holder's rights under that Party's law. Licences, authorisations, permits or similar instruments without the characteristics of an investment include those that do not generate rights protected under domestic law. For greater certainty, the foregoing is notwithstanding an asset associated with said licence, authorisation, permit or similar instrument having the characteristics of an investment.

4 For greater certainty, an investor has the intention of making an investment when that investor has carried out the fundamental steps necessary to formalise said investment, such as channelling resources for the raising of an enterprise's capital, the acquisition of permits or licences, among others.

5 For greater certainty, an investor has the intention of making an investment when that investor has carried out the fundamental steps necessary to formalise said investment, such as channelling resources for the raising of an enterprise's capital, the acquisition of permits or licences, among others.

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

**Non-disputing Party** means a Party that is not part of a dispute related to an investment pursuant to Section B of this Chapter;

**Protected information** means confidential commercial information, confidential business information or privileged information or information that is protected in any another way from disclosure pursuant to a Party's laws;

**Respondent** means the Party that is a party to an investment dispute;

**Secretary-General** means the Secretary-General of the ICSID;

**Tribunal** means an arbitration tribunal established under Articles 10.19 or 10.25;

**TRIPS Agreement** means the Agreement on Trade Related Aspects of Intellectual Property Rights, that is part of the Agreement on the WTO.

**ARTICLE 10.2: Scope of Application**

1. This Chapter applies to the measures adopted or maintained by a Party with respect to:

   (a) Investors from another Party;

   (b) Covered investments; and

   (c) All investments in the territory of the Party with regard to Articles 10.8 and 10.31.

2. The requirement by a Party for a service provider from another Party to provide a bond or other form of financial guarantee as a condition for providing a cross-border service in its territory does not cause this Chapter to apply to the cross-border supply of that service. This Chapter applies to the measures adopted or maintained by the Party in relation to the bond or financial guarantee, where said bond or financial guarantee constitutes a covered investment.

3. This Chapter does not apply to:

   (a) The measures adopted or maintained by a Party in relation to the financial institutions of another Party, the investors of the other Party and the investments of said investors, in financial institutions in the territory of the Party, as defined in Article 11.1 (Definitions);

   (b) Any act or deed that took place or any situation that ceased to exist before the effective date of this Additional Protocol, regardless of the consequences of such deeds, acts or situations.

4. The obligations of a Party under this section shall apply to a state-owned enterprise or another person when the said enterprise or person exercises any regulatory or administrative authority or other governmental authority delegated to them by that Party, such as the authority

to expropriate, issue licences, approve commercial transactions or impose quotas, fees or other charges.

5. For greater certainty, nothing in this Chapter shall be construed as imposing an obligation on a Party to privatise any investment owned or controlled by that Party or as forbidding a Party from designating or establishing a monopoly. If a Party adopts or maintains a measure to privatise such investment or a measure to designate or establish a monopoly, this Chapter shall apply to said measure.

**ARTICLE 10.3: Relation to other Chapters**

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

**ARTICLE 10.4: National Treatment**

1. Each Party shall accord to investors of another Party treatment no less favourable than that it accords to its own investors, under similar circumstances, in terms of the establishment, acquisition, expansion, administration, management, operation and sale or other disposition of investments in its territory.

2. Each Party shall accord to covered investments treatment no less favourable than that it accords the investments of their own investors in its territory, under similar circumstances, in terms of the establishment, acquisition, expansion, administration, management, operation and sale or other disposition of investments in their territory.

3. Treatment accorded by a Party under paragraphs 1 and 2 means, with respect to a regional or state government, treatment no less favourable that the most favourable treatment which that regional or state government accords, in like circumstances, to the investors and investments of investors of the Party of which it forms a part.

**ARTICLE 10.5: Most-Favoured-Nation Treatment[6]**

1. Each Party shall accord to investors of another Party treatment no less favourable than they accord to the investors of any non-Party, under similar circumstances, in terms of the establishment, acquisition, expansion, administration, management, operation and sale or other disposition of investments in their territory.

2. Each Party shall accord to covered investments treatment no less favourable than they accord to the investments of the investors of any non-Party in their territory, under similar circumstances, in terms of the establishment, acquisition, expansion, administration, management, operation and sale or other disposition of investments in their territory.

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[6] For greater certainty, this Article does not cover the mechanisms and procedures of dispute resolution, such as those specified in Section B of this Chapter, which are stipulated in international trade and investment agreements.

**ARTICLE 10.6: Minimum Standard of Treatment[7]**

1. Each Party shall accord to covered investments treatment pursuant to customary international law, including fair and equitable treatment and full protection and security.

2. For greater certainty, paragraph 1 prescribes that the minimum standard of treatment of foreigners pursuant to customary international law is the minimum standard of treatment that shall be accorded 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 they 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, pursuant to the principle of due process incorporated into the principal legal systems of the world, and

(b) "Full protection and security" requires each Party to accord the level of police protection required under customary international law.

3. The determination that another provision of this Additional Protocol or another international agreement has been breached, does not establish that there has been a breach of this Article.

**ARTICLE 10.7: Treatment in Case of Strife**

1. Notwithstanding Article 10.10.7 (b), each Party shall accord to the investors of another Party whose investments have incurred losses in the territory of said Party due to armed conflict or civil disputes, treatment no less favourable than they accord to their own investors or investors of another non-Party, with respect to measures such as restitution, indemnification, compensation and other settlements.

2. Paragraph 1 does not apply to existing measures related to subsidies or grants that may be inconsistent with Article 10.4, except for Article 10.10.7 (b).

**ARTICLE 10.8: Performance Requirements**

1. No Party may impose or enforce any of the following requirements, nor may they enforce any obligation or commitment[8] in terms of the establishment, acquisition, expansion, administration, management, operation, sale or any other disposition of investments in their territory by an investor of a Party or a non-Party:

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

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

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[7] For greater certainty, this Article shall be interpreted pursuant to Annex 10.6.

[8] For greater certainty, a condition for the receipt or continued receipt of an advantage under paragraph 2 does not constitute an "obligation or commitment" for the purposes of paragraph 1.

(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 provides by relating such sales in any way to the volume or value of its exports or foreign exchange earnings;

(f) To transfer technology,[9] a production process or other proprietary knowledge to a person in its territory, or

(g) To exclusively supply from the territory of the Party the goods it produces or the services it provides to a particular regional market or to the world market.

2. No Party may condition the receipt or continued receipt of an advantage in terms of the establishment, acquisition, expansion, administration, management, operation, sale or any other disposition of investments in their territory by an investor of a Party or a non-Party, on compliance with any of the following requirements:

(a) Achieving a given level or percentage of domestic content;

(b) Purchasing, using or according a preference to goods produced in its territory, or purchasing goods from persons in its territory;

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

3. Nothing in paragraph 2 shall be construed as an impediment to a Party conditioning the receipt or continued receipt of an advantage, in terms of an investment in its territory by an investor of another Party or a non-Party, on compliance with a requirement to locate the production site, provide services, train or employ workers, construct or extend private facilities or carry out research and development in its territory.

4. Paragraph 1 (f) does not apply:

(a) Where a Party authorises the use of an intellectual property right under Article 31[10] of the TRIPS Agreement or to measures that require the disclosure of private information that is within the scope of application of, and consistent with, Article 39 of the said Agreement, or

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[9] The Parties may require an investment to employ a certain technology to fulfil health, safety or environmental requirements. For greater certainty, Articles 10.4 and 10.5 apply to the aforementioned measure.

[10] The reference to "Article 31" includes the footnote on page 7 of Article 31. Additionally, the reference to "Article 31" includes any amendment to the TRIPS Agreement for the Application of paragraph 6 of the *Doha Declaration on the TRIPS Agreement and Public Health* (WT/MIN(01)/DEC/2).

(b) Where a requirement is imposed or a commitment or obligation is ordered by a judicial or administrative tribunal or a competent authority, to remedy a practice deemed anti-competitive following judicial or administrative proceedings under the Party's competition law.[11]

5. Provided that said measures are not applied arbitrarily or unjustifiably and on the condition that they do not constitute a disguised restriction on international trade or investment, nothing in paragraphs 1 (b), 1 (c), 1 (f), 2 (a) and 2 (b) shall be construed as preventing a Party from adopting or maintaining measures, including those of an environmental nature that are:

(a) Necessary to ensure compliance with laws and regulations that may be inconsistent with this Additional Protocol;

(b) Necessary for protecting human, animal or plant life or health, or

(c) Related to the conservation of non-renewable natural resources, living or non-living.

6. Paragraphs 1 (a), 1 (b), 1 (c), 2 (a) and 2 (b) do not apply to requirements for qualification of products and services in connection to export promotion and foreign aid programmes.

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

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

9. For greater certainty, paragraphs 1 and 2 do not apply to any other commitment, obligation or requirement other than those specified in those paragraphs.

10. This Article does not preclude enforcement of any commitment, obligation or requirement between private parties, where a Party did not impose or require the commitment, obligation or requirement.

**ARTICLE 10.9: Senior Management and Boards of Directors**

1. No Party may require an enterprise of that Party that is a covered investment to appoint to senior management positions natural persons of a particular nationality.

2. A Party may require the majority of members of the board of directors, or any committee thereof, of an enterprise of that Party that is a covered investment, to be of a particular nationality, or to be 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.

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[11] The Parties recognise that a patent does not necessarily confer market power.

**ARTICLE 10.10: Non-Conforming Measures**

1. Articles 10.4, 10.5, 10.8 and 10.9 shall not apply to:
   (a) Any existing non-conforming measure that may be maintained by the central, federal, regional or state government of a Party, under the provisions of its Schedule to Annex I;

   (b) Any existing non-conforming measure that is maintained by a Party's local government;

   (c) The maintenance or prompt renewal of any non-conforming measure referred to in subparagraphs (a) and (b), or

   (d) The amendment or modification of any non-conforming measure referred to in subparagraphs (a) and (b), provided that said amendment or modification does not decrease the conformity of the measure as it existed immediately before the amendment or modification, with Articles 10.4, 10.5, 10.8 and 10.9.

2. Articles 10.4, 10.5, 10.8 and 10.9 shall not apply to any measure that a Party may adopt or maintain, in relation to sectors, subsectors or activities as described in its Schedule to Annex II.

3. No Party may, pursuant to any measure adopted after this Additional Protocol enters into force and including any measure in its Schedule to Annex II, require an investor of another Party, by reason of their nationality, to sell or otherwise dispose of an investment existing when the measure comes into effect.

4. In the event that a Party modifies any existing non-conforming measure pursuant to its Schedule to Annex I under paragraph I (c) after this Additional Protocol enters into force, the Party shall inform the other Parties of said modification, as soon as practicable.

5. In the event that a Party adopts any measure related to sectors, subsectors or activities as described in its Schedule to Annex II after this Additional Protocol enters into force, the Party must, insofar as possible, inform the Parties of said measure.

6. Articles 10.4 and 10.5 shall not apply to any measure that constitutes an exemption or derogation from the obligations set out in the TRIPS Agreement, pursuant to the specific provisions of said Agreement.

7. The provisions of Articles 10.4, 10.5 and 10.9 shall not apply to:
   (a) Government procurement, or

   (b) Subsidies or grants accorded by a Party, including government-backed loans, guarantees and insurances.

**ARTICLE 10.11: Transfers**[12]

1. Each Party shall allow all transfers and payments into and out of its territory for covered investments to be made freely and without delay. Said transfers include:

(a) Capital contributions;

(b) Profits, dividends, interests, capital gains, royalty payments, administration expenses, technical assistance and other fees;

(c) The product of the total or partial sale or liquidation of the covered investment;

(d) Payments made pursuant to a contract to which an investor or covered investment is party to, including payments made under a loan agreement;

(e) Payments made pursuant to Article 10.7 and Article 10.12; and

(f) Payments which arise from the application of Section B of this Chapter.

2. Each Party shall allow the transfer of returns in kind from a covered investment to be made as authorised or specified in a written agreement13 between the Party and a covered investment or an investor from another Party.

3. Each Party shall allow transfers from a covered investment to be made in a freely usable currency at the market exchange rate prevailing on the date of transfer.

4. No Party may require its investors to make transfers of their income, gains, profits or other values derived from, or attributable to, investments made in the territory of another Party, nor may the Party penalise investors in the event that they do not make such transfers.

5. Notwithstanding paragraph 2, a Party may restrict the transfers of returns in kind, under circumstances where it could otherwise restrict said transfers pursuant to the provisions of this Additional Protocol, including the specifications of paragraph 6.

6. Notwithstanding the provisions of paragraphs 1, 2 and 3 of this Article, a Party may prevent a transfer through the equitable, non-discriminatory and good faith application of its laws relating to:

(a) Bankruptcy, insolvency or protection of the rights of creditors;[14]

(b) Compliance with settlements, sentences and awards issued in judicial, administrative or arbitral proceedings;[15]

(c) Issuing, trading, or dealing in securities, futures or derivatives;

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12 For greater certainty, this Article is subject to Annex 10.11.

13 Notwithstanding any other provision in this Chapter, this paragraph is valid from the date that this Additional Protocol enters into force.

14 For greater certainty, insolvency proceedings are understood to be included in subparagraph (a).

15 For greater certainty, this subparagraph includes compliance with settlements, sentences and awards issued in taxation-related judicial, administrative or arbitral proceedings.

(d) Criminal offences; or

(e) Financial reporting or record-keeping of transfers when necessary to assist law enforcement or financial regulatory authorities.

**ARTICLE 10.12: Expropriation and Compensation[16]**

1. No Party may expropriate or nationalise a covered investment, whether directly or indirectly through measures equivalent to expropriation or nationalisation (hereinafter referred to as "expropriation") unless such expropriation is carried out:

(a) For a public purpose;[17]

(b) On a non-discriminatory basis;

(c) Through payment of compensation pursuant to paragraphs 2 to 4; and

(d) Pursuant to the due process principle and Article 10.6.

2. The compensation referred to in paragraph 1 (c) must:

(a) Be paid without delay;

(b) be equivalent to the fair market value of the expropriated investment immediately prior to the expropriation taking place (hereinafter referred to as "date of expropriation");

(c) not reflect any change in value due to the intention of expropriation being known prior to the date of expropriation; and

(d) be fully realisable and freely transferable.

3. If the fair market value is set in a freely useable currency, the compensation referred to in paragraph 1 (c) shall not be less than the fair market value as at the date of expropriation, plus interest calculated at a commercially reasonable rate for that currency, from the date of expropriation until the payment date.

4. If the fair market value is set in a currency that is not freely useable, the compensation referred to in paragraph 1 (c), converted into the payment currency at the market exchange rate prevailing on the date of payment shall not be less than:

(a) The fair market value as at the date of expropriation, converted into a freely useable currency at the market exchange rate prevailing on the payment date, plus

(b) Interest, calculated at a commercially reasonable rate for that currency, from the date of expropriation until the payment date.

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16 For greater certainty, Article 10.12 shall be interpreted pursuant to the provisions of Annex 10.12.

17 For greater certainty, for the purposes of this Article, the term "public purpose" refers to a customary international law concept. The laws of a Party may express this concept or a similar concept with different terms, such as "public need," "public interest," "public utility" or "social interest."

5. This Article does not apply to the compulsory licensing in connection to intellectual property rights, or to the revocation, limitation or creation of said rights insofar as said revocation, limitation or creation is consistent with the TRIPS Agreement.[18]

**ARTICLE 10.13: Denial of Benefits**

A Party may deny the benefits of this Chapter to:

(a) An investor from another Party that is an enterprise from that other Party and to the investments of said investor, if an investor of a non-Party owns or controls the enterprise and this enterprise does not conduct substantial commercial activities in the territory of the other Party;

(b) An investor of another Party that is an enterprise of that other Party and to the investments of said investor, if an investor of the Denying Party owns or controls the enterprise and this enterprise does not conduct substantial commercial activities in the territory of the other Party.

**ARTICLE 10.14: Special Formalities and Information Requirements**

1. Nothing in Article 10.4 shall be construed as preventing a Party from adopting or maintaining any measure that requires special formalities in relation to a covered investment, such as the requirement for investors to be residents of the Party or for covered investments to be constituted under the laws or regulations of the Party, provided that such formalities do not materially impair the protection granted by a Party to investors of another Party and to covered investments under this Chapter.

2. Notwithstanding Articles 10.4 and 10.5, a Party may require an investor of another Party or a covered investment to provide information concerning that investment, solely for informational or statistical purposes. The Party shall prevent any disclosure of confidential information that may negatively affect the competitive position of the investor or of the covered investment. Nothing in this paragraph shall be construed as an impediment to a Party obtaining or disclosing information related to the equitable and good faith application of its law.

**Section B: Dispute Resolution between a Party and an Investor from another Party**

**ARTICLE 10.15: Consultation and Negotiation**

1. In the event of an investment-related dispute, the Disputing Parties must first attempt to resolve the dispute through consultation and negotiation, with a view to resolving the dispute in an amicable way, which may include the use of a non-binding procedure with the involvement of third parties such as good offices, conciliation and mediation.

[18] For greater certainty, the term “revocation” of intellectual property rights referred to in this paragraph includes the cancellation or annulment of said rights, and the term “limitation” of intellectual property rights also includes exceptions to said rights.

2. The consultation and negotiation procedure shall begin with a written request sent to the respondent which must include the information specified in Article 10.16.2 (a) and 2 (b) and a brief description of the events that gave rise to the initiation of consultation.

3. The consultations shall take place for a minimum of six months.

4. For greater certainty, the initiation of consultation and negotiation must not be construed as the recognition of the tribunal's jurisdiction.

**ARTICLE 10.16: Submission of a Claim to Arbitration**

1. If a dispute related to an investment has not been resolved within six months of the respondent's receipt of the written request for consultation pursuant to Article 10.15:

(a) The claimant may submit a claim for arbitration in their own name, pursuant to this Section, thereby alleging:
   (i) That the respondent has breached an obligation pursuant to Section A, and
   (ii) That the claimant has incurred losses or damages by virtue of said breach or as a result of such breach;

(b) The claimant, representing an enterprise of the respondent that may be a legal entity that the claimant owns or directly or indirectly controls, may submit a claim to arbitration pursuant to this Section, thereby alleging:
   (i) That the respondent has breached an obligation pursuant to Section A, and
   (ii) That the enterprise has incurred losses or damages by virtue of said breach or as a result of such breach.

For greater certainty, no claim may be submitted to arbitration under this Section alleging a breach of any provision of this Additional Protocol that is not an obligation of Section A.

2. Once the period established in Article 10.15.2 ends, the claimant shall deliver the respondent written Notice of Intent to submit the claim for arbitration (hereinafter referred to as "Notice of Intent") at least 90 days before submitting the claim for arbitration pursuant to this Section. In the notice, the following shall be specified:

(a) The name and address of the claimant, and in the event that the claim is submitted on behalf of an enterprise, the name and address of the enterprise and its place of incorporation;

(b) For each claim, the provisions of Section A of this Chapter that are alleged to have been breached and any other applicable provision;

(c) The factual and legal issues that each claim is based on; and

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

3. The claimant may submit a claim for arbitration as referred to in paragraph 1:

(a) Pursuant to the ICSID convention and the ICSID Rules of Procedure for Arbitration Proceedings (hereinafter referred to as "Arbitration Rules"), provided that both the respondent and the Party's claimant are party to the ICSID Convention;

(b) Pursuant to the ICSID Additional Facility Rules, provided that either the respondent or the Party's claimant, but not both, is party to the ICSID Convention;

(c) Pursuant to the UNCITRAL Arbitration Rules, or

(d) If the disputing parties agree, to any other arbitration institution or pursuant to any other arbitration rule.

4. A claim shall be deemed submitted to arbitration pursuant to this Section, when the claimant's notice or request for arbitration (hereinafter referred to as "Notice of Arbitration"):

(a) Referred to in the ICSID Convention, is received by the Secretary-General;

(b) Referred to in the ICSID Additional Facility Rules, is received by the Secretary-General;

(c) Referred to in the UNCITRAL Arbitration Rules, is received by the respondent, together with the statement of claim pursuant to said regulations; or

(d) Referred to by any other arbitration institution or under any arbitration rules selected pursuant to paragraph 3 (d), is received by the respondent.

5. A claim asserted by the claimant for the first time after the Notice of Arbitration has been submitted shall be deemed submitted to arbitration under this Section, on the date of its receipt pursuant to the applicable arbitration rules.

6. The arbitration rules applicable under paragraph 3 and in force on the date the claim or claims were submitted to arbitration pursuant to this Section, shall govern arbitration except to the extent modified or complemented by this Additional Protocol.

7. The claimant shall provide with the Notice of Arbitration referred to in paragraph 4:

(a) The name of the arbitrator that the claimant appoints, or

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

**ARTICLE 10.17: Consent of each Party to Arbitration**

1. Each Party consents to the submission of a claim to arbitration pursuant to this Section in accordance with this Additional Protocol.

2. The consent referred to in paragraph 1 and the submission of a claim to arbitration pursuant to this Section must comply with the requirements specified in:

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

(b) Article II of the New York Convention, which requires a "written agreement"; and

(c) Article I of the Inter-American Convention, which requires an "agreement."

**ARTICLE 10.18: Conditions and Limitations on Consent of each Party**

1. No claim may be submitted to arbitration pursuant to this Section if more than three years have elapsed from the date on which the claimant knew, or ought to have known of the breach alleged under Article 10.16.1, and that the claimant, based on the claims initiated by virtue of Article 10.16.1 (a), or the enterprise, based on the claims initiated by virtue of Article 10.16.1 (b), incurred loss or damage.

2. No claim may be submitted to arbitration pursuant to this Section unless:

(a) The claimant provides written consent to arbitration, pursuant to the procedures described in this Additional Protocol, and

(b) The Notice of Arbitration referred to in Article 10.16.4 is accompanied:

(i) For claims submitted to arbitration under Article 10.16.1 (a), by the claimant's written waiver;

(ii) For claims submitted to arbitration under Article 10.16.1 (b), by the written waivers of the claimant and the enterprise,

Of any right to initiate before any judicial or administrative tribunal pursuant to the law of any of the Parties, or other dispute resolution procedures, any action concerning deeds or measures alleged to be a breach of the measures referred to in Article 10.16.

3. Notwithstanding paragraph 2 (b), the claimant, based on claims initiated under 10.16.1 (a), and the claimant or the enterprise, based on claims initiated under 10.16.1 (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 upholding the rights and interests of the claimant or the enterprise while the arbitration is pending.[19]

4. No claim may be submitted to arbitration pursuant to this Section if the claimant, in the case of claims submitted under Article 10.16.1 (a), or the claimant or the enterprise, in the case of claims submitted under Article 10.16.1 (b), have previously submitted a claim of the same alleged breach before an administrative or judicial court of the respondent, or any other binding dispute resolution procedure. For greater certainty, if an investor chooses to submit a claim of the aforementioned type before a judicial or administrative tribunal of the respondent, that decision shall be final and the investor may not later submit the claim to arbitration pursuant to this Section.

[19] For greater certainty, in a proceeding in which the application of an interim injunctive relief is requested, including measures that aim to preserve evidence and property while the claim submitted to arbitration is pending, a judicial or administrative tribunal of the respondent in a dispute submitted to arbitration pursuant to Section B of this Chapter, shall apply the laws of said Party.

**ARTICLE 10.19: Selection of Arbitrators**

1. Unless the Disputing Parties agree otherwise, the tribunal shall be made up of three arbitrators, one arbitrator appointed by each of the disputing parties and the third, the president, shall be appointed by agreement of the disputing parties.

2. The arbitrators must have experience in public international law, international investment rules, or dispute resolution for international investment agreements; they must not depend on either of the Parties or the claimant, nor receive instructions from either of them.

3. The Secretary-General shall serve as appointing authority for the arbitrators in arbitration under this Section.

4. When a tribunal is not formed within 90 days from the date on which the claim is submitted to arbitration pursuant to this Section, the Secretary-General, at the request of either of the Disputing Parties, shall appoint, at its discretion, the arbitrator or arbitrators that have not yet been appointed. Unless the disputing parties agree otherwise, the president of the tribunal should not be a national of either of the Disputing Parties.

5. For the purposes of Article 39 of the ICSID Convention and Article 7 of Part C of the ICSID Additional Facility Rules, and notwithstanding the objection to an arbitrator on grounds other than nationality:

(a) The respondent accepts the appointment of each of the tribunal members established pursuant to the ICSID Convention or to the ICSID Additional Facility Rules;

(b) The respondent referred to in Article 10.16.1 (a) may submit a claim to arbitration pursuant to this Section, or continue a claim pursuant to the ICSID Convention or the ICSID Additional Facility Rules, on the sole condition that the claimant expresses written consent to the appointment of each of the tribunal members, and

(c) The claimant referred to in 10.16.1 (b) may submit a claim to arbitration pursuant to this Section, or continue a claim pursuant to the ICSID Convention and the ICSID Additional Facility Rules, on the sole condition that the claimant and the enterprise express written consent to the appointment of each of the tribunal members.

**ARTICLE 10.20: Conduct of the Arbitration**

1. The Disputing Parties may agree on the legal place where any arbitration should take place pursuant to the applicable arbitral rules pursuant to Article 10.16.3. If the Disputing Parties fail to reach agreement, the tribunal shall determine the place pursuant to the applicable arbitral rules, provided that the place shall be located in the territory of a State that is party to the New York Convention.

2. A non-Disputing Party may make oral or written submissions to the tribunal in relation to the interpretation of this Additional Protocol.

3. Following consultation with the Disputing Parties, the tribunal shall be authorised to accept and consider *amicus curiae* submissions that may assist the tribunal in the determination of factual and legal issues related to the scope of the dispute.

4. The communications must be made in writing and in Spanish, unless the Disputing Parties agree otherwise, and they must identify the author of the submission and any Party or other government, person or organisation, other than the author of the submission, that has provided or that shall provide any assistance of a financial nature or otherwise in the preparation of the submission. Additionally, the author of the submission must make it known if he or she has any direct or indirect affiliation with either of the Disputing Parties; and the nature of the interest that he or she has in the dispute must be specified.

5. When said communications are admitted by the tribunal, it must accord the Disputing Parties an opportunity to respond to such submissions.

6. Notwithstanding the tribunal's power to hear other objections as preliminary issues, such as an objection that the dispute is not within the jurisdiction of the tribunal, the tribunal shall hear and consider as a preliminary issue any objection of the respondent that, as a matter of law, indicates that the claim filed is not a claim for which an award can be made to the claimant pursuant to Article 10.26.[20]

(a) Said objection shall be presented to the tribunal as soon as practicable after its constitution, and under no circumstances any later than the date the tribunal has set for the respondent to enter a plea to the claim, or in the event of a modification to the Notice of Arbitration, referred to in Article 10.16.4, the date the tribunal sets for the respondent to enter a response to the modification.

(b) On receipt of an objection pursuant to this paragraph, the tribunal shall adjourn any proceedings on the substance of the dispute, and establish a schedule for the consideration of the objection that shall be consistent with any schedule which has been established for the consideration of any other preliminary issue and it shall issue a decision or award on the objection stating the legal grounds therefor.

(c) Upon making a decision on an objection pursuant to this paragraph, the tribunal shall assume the factual allegations presented by the claimant to be true in support of any claim in the Notice of Arbitration, or any modification thereof, and in disputes brought under the UNCITRAL Arbitration Rules, the statement of claim referred to in the relevant article of the UNCITRAL Arbitration Rules. The tribunal may also consider any other relevant facts that are not in dispute.

(d) The respondent does not waive any objection as to jurisdiction or to any substantive argument merely because the respondent did or did not raise an objection under this paragraph or make use of the expedited procedure described in paragraph 7.

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[20] For greater certainty, in terms of the claims submitted under Article 10.16, a procedural objection raised as a preliminary issue may include, as appropriate, a non-judicial administrative appeal that is covered by the respondent's law, such as the presentation of an appeal against administrative acts or other non-judicial administrative appeals. For instances of international arbitration, the presentation of such objections can only entail the adjournment of the arbitration proceedings.

7. In the event that the respondent so requests, within 45 days of the date of the tribunal's constitution, the tribunal shall make a decision in a timely manner on an objection pursuant to paragraph 6 and any other objection that the dispute is not within the tribunal's jurisdiction. The tribunal shall adjourn any action on the substance of the dispute and issue a decision or award based on said objection, stating the legal grounds therefor, no later than 150 days after the request date. However, if a Disputing Party requests a hearing, the tribunal may take 30 additional days to issue the decision or award. Regardless of whether a hearing has been requested, under extraordinary circumstances, the tribunal may delay the issue of a decision or award for a brief additional period which may not exceed 30 days.

8. When the tribunal makes a decision on the objection of a respondent pursuant to paragraphs 6 or 7, it may, if justified, grant the prevailing party of the dispute reasonable costs and fees that it may have incurred by raising an objection or opposing one. Upon determining if such an award is justified, the tribunal shall consider if the claimant's claim or the respondent's objection were frivolous, and it shall grant the Disputing Parties a reasonable opportunity to comment.

9. The respondent shall not assert as a defence, counterclaim, countervailing duty, or for any other reason, that the claimant has received or shall receive indemnification or other compensation for all or part of the alleged damages, pursuant to an insurance or guarantee contract.

10. The tribunal may recommend an interim measure to protect the rights of a Disputing Party, or with the objective of guaranteeing the full exercise of the tribunal's jurisdiction, including an order to preserve the evidence that is in the possession or control of a Disputing Party and to protect the tribunal's jurisdiction. The tribunal may not order the attachment or prevent the application of a measure that is alleged to constitute a breach as mentioned in Article 10.16. For the purposes of this paragraph, an order includes a recommendation.

11. At the request of any of the Disputing Parties, before issuing a decision or award on liability, the tribunal shall communicate its proposed decision or award to the Disputing Parties and the non-Disputing Party. Within 60 days of communicating such proposed decision or award, the Disputing Parties may submit written comments to the tribunal concerning any aspect of its proposed award. The tribunal shall consider said comments and shall issue its decision or award no later than 45 days after the expiration of the 60-day comment period. This paragraph shall not apply to any arbitration in which an appeal is available by virtue of paragraph 12.

12. If a separate, multilateral agreement enters into force between the Parties that establishes an appellate body with the objective of reviewing awards issued by tribunals constituted pursuant to international trade or investment agreements to hear investment disputes, the Parties shall analyse the possibility of reaching an agreement that considers such appellate body for the review of awards issued pursuant to Article 10.26 in arbitrations initiated after the multilateral treaty between the Parties enters into force.

**ARTICLE 10.21: Transparency of Arbitral Proceedings**

1. Subject to paragraphs 2 and 4, the respondent shall, after receiving the following documents, deliver them without delay to the Non-Disputing Parties and make them publicly available:

(a) The Notice of Intent referred to in Article 10.16.2;

(b) The Notice of Arbitration referred to in Article 10.16.4;

(c) The allegations, statements of claim and briefs presented to the tribunal by a Disputing Party and any written submission made pursuant to Article 10.20.2 and 10.20.3 and Article 10.25;

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

(e) The tribunal orders, awards and decisions.

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 classified as protected information in a hearing shall so advise the tribunal. The tribunal shall make the appropriate arrangements to protect information from disclosure, including closing the hearing during any discussion of confidential information.

3. Nothing in this Section requires the respondent to make protected information available or provide or allow access to information that it may withhold pursuant to Article 18.3 (Essential Security) or Article 18.5 (Information Disclosure).

4. Any protected information that is submitted to the tribunal shall be protected from disclosure pursuant to the following procedures:

(a) In accordance with subparagraph (d), neither the Disputing Parties nor the tribunal shall disclose to the Non-Disputing Party or the public any protected information, where the Disputing Party providing the information clearly designates it as such pursuant to subparagraph (b);

(b) Any Disputing Party claiming that certain information constitutes protected information, shall clearly designate it as such when it is submitted to the tribunal;

(c) A Disputing Party shall, when submitting a document that contains information claimed to be protected information, at the same time submit an edited version of the document that does not contain that information. Only the edited version shall be provided to the non-Disputing Parties and made public pursuant to paragraph 1, and

(d) The tribunal shall make a decision on any objection regarding the designation of information claimed to be protected information. If the tribunal determines that said information was not appropriately designated, the Disputing Party that submitted the information may:

(i) Withdraw all or part of the submission that contains such information, or

(ii) Agree to re-submit the full documents edited with corrected designations pursuant to the tribunal's determination and subparagraph (c).

In either case, the other Disputing Party must, as appropriate, resubmit full and edited documents, which either remove the information withdrawn by the Disputing Party that first submitted the information pursuant to subparagraph (d)(i) or redesignate the information consistently with the designation made pursuant to subparagraph (d)(ii) by the Disputing Party that first submitted the information.

5. Nothing in this Section requires the respondent to withhold from the public information required to be disclosed by its law.

**ARTICLE 10.22: Governing Law**

1. Subject to paragraph 2, when a claim is presented under Article 10.16.1 (a) or 10.16.1 (b), the tribunal shall decide the issues in dispute pursuant to this Additional Protocol and the applicable rules of international law.

2. A decision by the Free Trade Commission declaring its interpretation of a provision of this Additional Protocol, pursuant to Article 16.2 (Functions of the Free Trade Commission), shall be binding on a tribunal established under this Section and any decision or award issued by a tribunal must be consistent with that decision.

**ARTICLE 10.23: Interpretation of the Annexes of Non-Conforming Measures**

1. When a respondent asserts as a defence that the measure alleged to be a breach is within the scope of application set out in Annex I or Annex II, the tribunal shall, at the request of the respondent, request the Free Trade Commission's interpretation on the issue. The Free Trade Commission shall submit in writing any decision declaring its interpretation under Article 16.2.2 (c) to the tribunal within 60 days of delivery of the request.

2. A decision issued by the Free Trade Commission under paragraph 1 shall be binding on the tribunal and any decision or award issued by the tribunal must be consistent with that decision. If the Free Trade Commission fails to issue such a decision within 60 days, the tribunal shall decide on the issue.

**ARTICLE 10.24: Expert Reports**

Notwithstanding the appointment of other kinds of experts where authorised 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 related to environmental, health, safety or other scientific matters that a Disputing Party has raised in proceedings, pursuant to the terms and conditions agreed by the Disputing Parties.

**ARTICLE 10.25: Consolidation of Proceedings**

1. Where two or more separate claims have been submitted to arbitration under Article 10.16.1, and the claims have a question of law or fact in common and arise from the same events or circumstances, any Disputing Party may seek a consolidation order, subject to agreement of all Disputing Parties sought to be covered by the consolidation order or the terms of paragraphs 2 to 10.

2. The Disputing Party that seeks a consolidation order under this Article shall deliver a written request to the Secretary-General and to all the Disputing Parties sought to be covered by the consolidation order and in the request it shall specify:

(a) The names and addresses of all Disputing Parties sought to be covered by the consolidation order;

(b) The nature of the consolidation order sought; and

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

3. Unless the Secretary-General determines, within 30 days of the receipt of 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 consolidation order agree otherwise, the 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, who shall not be a national of any of the Disputing Parties.

5. If within 60 days of the Secretary-General's receipt of the request made under paragraph 2, the respondent or claimants have not appointed an arbitrator pursuant to paragraph 4, the Secretary-General, at the request of any Disputing Party sought to be covered by the consolidation order, shall appoint the arbitrator or arbitrators not yet appointed. If the respondent does not appoint an arbitrator, the Secretary-General shall appoint a national of the respondent, and if the claimants do not appoint an arbitrator, the Secretary-General shall appoint a national of a party other than that of the respondent.

6. Where a tribunal established under this Article has found that two or more claims submitted to arbitration under Article 10.16.1 have a question of law or fact in common and arise from 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 jointly determine all or part of the claims;

(b) Assume jurisdiction over, and hear and determine one or more claims, the determination of which is considered to contribute to the resolution of the others; or

(c) Instruct a tribunal established under Article 10.19 to assume jurisdiction over, and to hear or jointly determine, all or part of the claims, provided that:
    (i) That tribunal, at the request of any claimant that has not previously been 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 subparagraph 4 (a) and paragraph 5, and
    (ii) That tribunal shall decide whether any prior hearing should be repeated.

7. Where the tribunal has been established under this Article, a claimant that has submitted a claim to arbitration under Article 10.16.1, and that has not been named in a request made under paragraph 2, may make a written request to the tribunal that it may 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 consolidation 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 the proceedings pursuant to the provisions of the UNCITRAL Arbitration Regulations, except as modified by this Section.

9. A tribunal established under Article 10.19 shall not have jurisdiction over the resolution of a claim, or part of a claim, over which a tribunal or established 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 10.19 be deferred, unless the latter tribunal has already adjourned its proceedings.

**ARTICLE 10.26: Awards**

1. When a tribunal issues a final award against a respondent, the tribunal may only award, separately or jointly:

(a) Monetary damages and applicable interest, and

(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 legal fees pursuant to this Section and the applicable Arbitration Rules.

2. The liability between the Disputing Parties for the assumption of costs, including, where appropriate, the court costs under Article 10.20, resulting from participation in arbitration, must be established:

(a) By the arbitral institution before which the claim was submitted for arbitration, pursuant to its procedural rules, or

(b) Pursuant to the procedural rules agreed by the Disputing Parties, where appropriate.

3. For greater certainty, when a claim is submitted to arbitration under Article 10.16.1 (a), by virtue of said provision, the claimant may only claim losses or damages incurred by the claimant as an investor in respect of an investment that the investor intends to make, is making or has made in the territory of the respondent.

4. Subject to paragraph 1, where a claim is submitted to arbitration under Article 10.16.1 (b):

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

(b) The 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 to the compensation under applicable domestic law.

5. A tribunal may not award punitive damages.

6. The award issued by a tribunal shall not be binding except between the Disputing Parties and solely in terms of the specific case.

7. Subject to paragraph 8 and the applicable review procedure for an interim award, the Disputing Party shall abide by and comply with the award without delay.

8. The Disputing Party may not seek the enforcement of the final award until:

(a) In the case of a final award being issued under the ICSID Convention:
  (i) 120 days have elapsed from the issuing of the award and no Disputing Party has sought the revision or annulment of the award, or
  (ii) The revision or annulment proceedings have been completed, and

(b) In the case of a final award issued pursuant to the ICSID Additional Facility Rules, the UNCITRAL Arbitration Rules or the rules selected pursuant to Article 10.16.4 (d):
  (i) 90 days have elapsed from the issuing of the award and no Disputing Party has initiated revision, revocation or annulment proceedings, or
  (ii) A tribunal has dismissed or admitted a request for revision, revocation or annulment of the award and there is no further appeal.

9. Each Party shall provide for the due enforcement of an award within their territory.

10. If the respondent fails to comply with or abide by a final award, on delivery of a request by the Party of the claimant, a Panel of Arbitrators shall be established under Article 17.7 (Establishment of a Panel of Arbitrators). In said proceedings, the requesting Party may seek:

(a) A determination that the failure to abide by or comply with the final award is inconsistent with the obligations of this Additional Protocol, and

(b) Pursuant to Article 17.15 (Draft Award of Panel of Arbitrators), a recommendation that the respondent abide by or comply with the final award.

11. A Disputing Party may seek enforcement of an arbitral award pursuant to the ICSID Convention, the New York Convention if both Parties are party to said agreements, or the Inter-American Convention, regardless of whether the proceedings covered by paragraph 10 have been initiated.

12. For the purposes of Article I of the New York Convention and Article I of the Inter-American Convention, a claim submitted to arbitration pursuant to this Section shall be considered to arise out of a commercial relationship or transaction.

**ARTICLE 10.27: Service of Documents**

Delivery of notice and other documents shall be made to each Party at the location designated in Annex 10.27.

**Section C: Complementary Provisions**

**ARTICLE 10.28: Relation to other Sections**

This Section is not subject to the dispute resolution mechanism of Section B of this Chapter, nor is it subject to the dispute resolution mechanism of Chapter 17 (Dispute Resolution). For greater certainty, nothing in this Section may be used by an investor as a substance of the dispute nor may it be used by a Panel of Arbitrators as part of its considerations for any decision or award that it may issue.

**ARTICLE 10.29: Promotion of Investments**

The Parties reaffirm the importance of supporting the investment promotion activities carried out through each Party's investment promotion organisations.

**ARTICLE 10.30: Social Responsibility Policies**

1. The Parties recognise the importance of encouraging enterprises that operate in their territories and that are subject to their jurisdiction to apply policies concerning sustainability and social responsibility and policies that promote the development of the host country's investment.

2. Each Party shall encourage the enterprises that operate within their territory or that are subject to their jurisdiction to voluntarily incorporate internationally-recognised standards of corporate social responsibility into their policies, such as declarations of principles that have been approved or that are supported by the Parties. The Parties shall remind those enterprises of the importance of incorporating said standards of corporate social responsibility into their domestic policies, including among others, human rights, labour rights, environmental considerations, anti-corruption practices, consumer rights, science and technology, competition and taxation.

3. Taking into account the *OECD Guidelines for Multinational Enterprises* from the Organisation of Economic Cooperation and Development, the Parties undertake to identify and share best practices implemented by the Parties to implement the commitments of the Guidelines and in doing so, maximise the contribution of multinational enterprises to sustainable development.

**ARTICLE 10.31: Investment and Measures related to Health, the Environment and other Regulatory Objectives**

1. Nothing in this Chapter shall be construed as an impediment to a Party adopting, maintaining or enforcing any measure, otherwise consistent with this Chapter that it considers appropriate for ensuring that investments made in its territory are made with regard to health, environmental and other regulatory objectives.

2. The Parties recognise that it is not sufficient to encourage investment by relaxing domestic policies on health, the environment and other regulatory objectives. Accordingly, a Party should not waive or otherwise derogate from, or offer to waive or otherwise derogate from such measures as a means of incentivising the establishment, purchase, expansion or maintenance of the investment by an investor in the Party's territory.

**ARTICLE 10.32: Implementation**

The Parties shall consult with each other annually or otherwise agreed to review the implementation of this Chapter and consider investment items of mutual interest, including amongst others, the extent to which the private sector takes advantage of the commitments established in this Chapter.

**ARTICLE 10.33: Joint Committee on Investment and Services**

1. The Parties establish a Joint Committee that shall be made up of the Investment Subcommittee and the Services Subcommittee.

2. This Joint Committee has the objective of monitoring the implementation and administration of Chapter 9 (Cross-Border Service Trade) and of this Chapter, and to discuss related matters that are of interest to the Parties through the exchange of information and cooperation on these matters.

3. The Joint Committee shall be comprised of:
   (a) In the case of Chile, the General Directorate of International Economic Relations of the Ministry of Foreign Affairs, or its successor;

   (b) In the case of Colombia, the Vice-Ministry of Foreign Trade of the Ministry of Trade, Industry and Tourism, or its successor;

   (c) In the case of Mexico, the Bureau of Foreign Trade of the Ministry of Economy, or its successor; and

(d) In the case of Peru, the Vice-Ministry of Foreign Trade of the Ministry of Foreign Trade and Tourism, or its successor.

4. The Joint Committee shall meet at the request of any Party or of the Free Trade Commission, and shall issue recommendations on the matters falling within its jurisdiction.

5. The Investment and Services Subcommittees shall be comprised by expert representatives from the competent authority or authorities of each Party and they shall determine their own procedural rules to carry out their functions.

*Investment Subcommittee*

6. The Investment Subcommittee shall have the following functions:

(a) Sharing information and promoting cooperation on matters related to investment and the improvement of the investment climate between the Parties;

(b) Discussing any other matter related to the investment climate between the Parties, including the involvement of the private sector where appropriate;

(c) Making proposals to the Joint Committee so that this subcommittee may operate more effectively or achieve its objectives; and

(d) Discussing any other investment-related matter.

*Services Subcommittee*

7. The functions of the Services Subcommittee are established in Article 9.15 (Services Subcommittee).

## ANNEX 10.6: CUSTOMARY INTERNATIONAL LAW

The Parties confirm their shared understanding that “customary international law,” as referred to in Article 10.6, results from a general and consistent practice of States, which they follow from a sense of legal obligation. In terms of Article 10.6, the minimum standard of treatment of foreigners pursuant to customary international law refers to all customary international law principles that protect the economic rights of foreigners.

**ANNEX 10.11: TRANSFERS**

With respect to Article 10.11, the Parties agree to the following:

1. In the case of the Republic of Chile and the Republic of Colombia, in relation to transfers related to investments made or that may be made by investors of one Party in the territory of another Party, the application and interpretation of Article 10.11 shall be subject to Annex 9-B (Payments and Transfers) of the Chapter on Investment of the Free Trade Agreement signed between both Parties, in Santiago, Chile, on 27 November 2006, as an Additional Protocol to the Economic Complementation Agreement (ECA) Nº 24 entered into by those Parties.

2. In the case of the Republic of Chile and the United Mexican States, in relation to transfers related to investments made or that may be made by investors of one Party in the territory of another Party, the application and interpretation of Article 10.11 shall be subject to Annex 9-10 (Transfers) of the Chapter on Investment of the Free Trade Treaty signed between both Parties, in Santiago, Chile, on 17 April 1998.

3. In the case of the Republic of Chile and the Republic of Peru, in relation to transfers related to investments made or that may be made by investors of one Party in the territory of another Party, the application and interpretation of Article 10.11 (Transfers) shall be subject to Annex 11-C (Payments and Transfers) of the Chapter on Investment of the Free Trade Agreement signed between both Parties in Lima, Peru on 22 August 2006, which modifies and substitutes the ECA Nº 38 entered into by those two parties.

## ANNEX 10.12: EXPROPRIATION

The Parties confirm their shared understanding that:

1. An action or series of actions by a Party cannot constitute an expropriation unless it substantially interferes with a tangible or intangible property right, or property interest in an investment.

2. Article 10.12 addresses two situations. The first is the direct expropriation, where an investment is nationalised or otherwise directly expropriated through formal transfer of title or outright seizure.

3. The second situation addressed by Article 10.12 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 indirect expropriation requires a case-by-case, fact-based enquiry 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, does not in and of itself establish that an indirect expropriation has occurred;

(ii) The extent to which the government action or series of actions interferes with the unequivocal and reasonable expectations of the investment; and

(iii) The character of the government action.

(b) Except in rare circumstances, non-discriminatory regulatory actions by a Party that are designed and applied to protect legitimate public welfare objectives do not constitute indirect expropriations.[1]

[1] For greater certainty, examples of legitimate public welfare objectives include, among others, public health, safety and the environment.

**ANNEX 10.27: SERVICE OF DOCUMENTS TO A PARTY UNDER SECTION B**

1. Documents must be submitted to the location specified for each Party. A Party must notify and make public any change in the address specified in this Annex.

2. The location for submission of the Notice of Intent and other documents referred to in the dispute resolution related to Section B shall be as follows:

(a) For Chile:
Dirección de Asuntos Jurídicos
Ministerio de Relaciones Exteriores de la República de Chile
Teatinos No. 180
Santiago, Chile
Or its successor

(b) For Colombia:
Dirección de Inversión Extranjera y Servicios
Ministerio de Comercio, Industria y Turismo
Calle 28 No. 13 A – 15, piso 3
Bogotá D.C. – Colombia
Or its successor

(c) For Mexico:
Dirección General de Consultoría Jurídica de Comercio Internacional
Secretaría de Economía
Alfonso Reyes No. 30, piso 17
Delegación Cuauhtémoc
México D.F.
C.P.06140
Or its successor

(d) For Peru:
Dirección General de Asuntos de Economía Internacional, Competencia y Productividad
Ministerio de Economía y Finanzas
Jirón Lampa No. 277, piso 5
Lima 1, Perú
Or its successor

**ANNEX ON DECREE LAW 600 - CHILE**

1. The Decree Law 600 (1974), Foreign Investment Statute, is a voluntary and special investment scheme for Chile.

2. Instead of investing in Chile through a standard foreign direct investment to, potential investors may ask the Committee of Foreign Investments to apply the scheme established by Decree Law 600.

3. The obligations and commitments established in this Chapter do not apply to Decree Law 600, Foreign Investment Statue, to Law 18,657 on Foreign Capital Investment Funds, to the continuation or prompt renewal of such laws and to their modification, or to any special and/or voluntary investment scheme that may be adopted in Chile in the future.

4. For greater certainty, the Committee of Foreign Investments of Chile has the right to reject applications for investment through Decree Law 600 and Law 18,657. Additionally, the Committee of Foreign Investments of Chile has the right to regulate the terms and conditions which foreign investment made under Decree Law 600 and Law 18,657 shall be subject to.

5. For greater certainty, once an application for foreign investment is submitted by an investor under Decree Law 600, its modifications, continuation or prompt renewal, or under any special and/or voluntary investment scheme that may be adopted in Chile in the future, is accepted by the Committee of Foreign Investments of Chile through the signing of a foreign investment contract, the disciplines established in this Chapter shall be applicable to the investment made under the respective contract.

6. For greater certainty, nothing in paragraphs 1 to 4 of this Annex may be appealed under the provisions of Section B.

**ANNEX ON EXEMPTIONS TO DISPUTE RESOLUTION - MEXICO**

The resolutions of the National Commission on Foreign Investments, established in existing measures 2 and 3 of Mexico's Schedule to Annex 1, shall not be subject to the provisions established in the dispute resolution mechanism between a Party and an investor of another Party established in Section B of this Chapter and the dispute resolution mechanism of Chapter 17 (Dispute Resolution).

## CHAPTER 11: FINANCIAL SERVICES

### ARTICLE 11.1: Definitions

For the purposes of this Chapter:
**Cross-border financial services provider** refers to a person from one Party whose business it is to provide a financial service in the territory of the Party and is seeking to provide or is providing a financial service through cross-border supply of said services;

**Cross-border trade in financial services** or **cross-border supply of financial services** refers to the supply of a financial service:

(a) From the territory of one Party to the territory of another Party;

(b) In the territory of one Party by a person from that Party to a person from another Party; or

(c) By the national of one Party in the territory of another Party;

This does not include, however, a financial service in the territory of one Party supplied through investment in that territory;

**Financial institution** refers to any financial intermediary or other company authorised to conduct business and which is regulated or supervised as a financial institution in accordance with the laws of the Party in whose territory it is located;

**Financial institution of another Party** refers to a financial institution, including a branch thereof, located in the territory of one Party and which is controlled by persons from another Party;

**Financial service** refers to any service of a financial nature. Financial services comprise all insurance services and services related to insurance, and all banking services and other financial services (with the exception of insurance). Financial services include the following activities:

*Insurance services and services related to insurance*

(a) Direct insurance (including coinsurance):
    (i) Life insurance;
    (ii) Insurance other than life insurance;

(b) Reinsurance and retrocession;

(c) Insurance intermediary activities, for example those carried out by insurance brokers and agents;

(d) Auxiliary insurance services, for example consultants, actuaries, risk assessments and claims settlement;

*Banking services and other financial services (excluding insurance)*

(a) Accepting deposits and other reimbursable funds from the public;

(b) Loans of any kind, including personal and mortgage loans, factoring and the financing of commercial transactions;

(c) Financial leasing services;

(d) All payment and money transfer services, including credit, charge, debit and similar cards, travellers' cheques and bank giros;

(e) Guarantees and commitments;

(f) Trade exchange by personal accord or on behalf of clients, whether on a stock exchange, an over-the-counter market or another method, of the following:
  (i) Money market instruments (including cheques, letters and deposit certificates);
  (ii) Currencies;
  (iii) Derivative products, including but not limited to, futures and options;
  (iv) Exchange and money market instruments, for example, swaps and term agreements on interest rates;
  (v) Transferrable securities;
  (vi) Other financial trading instruments and assets, including metal;

(g) Participation in issuing securities of any type, including underwriting and placement as agents (either publicly or privately), and supply of services related to those issuances;

(h) Money broking;

(i) Asset administration, for example cash or portfolio management, all forms of collective investment management, pension fund administration, custodial, depository and trust services;

(j) Settlement and clearing services relating to financial assets, including securities, derivative products and other negotiable instruments;

(k) Provision and transfer of financial information and processing of financial data and related software, by providers of other financial services; and

(l) Mediation and advisory services and other auxiliary financial services related to any of the activities listed in subparagraphs (e) to (o), including credit reports an analyses, studies and advice on investments and portfolios, and advice on acquisitions, restructuring and company strategy;

**Financial services provider from a Party** refers to a person from one Party whose business it is to provide a financial service in the territory of that Party;

**Investment** refers to an "investment" as defined in Article 10.1 (Definitions), unless, with regards to "loans" or "debt instruments" mentioned in this Chapter:

(a) A loan awarded to a financial institution or a debt instrument issued by a financial institution is an investment only when treated as capital used for regulatory purposes by the Party in whose territory the financial institution is located; and

(b) A loan awarded to a financial institution or a debt instrument issued by a financial institution owned by a financial institution, which is different from a loan or debt instrument of a financial institution mentioned in subparagraph (a), is not an investment;

For greater certainty:

(a) A loan awarded to a Party, or a debt instrument issued by a Party or state enterprise, is not an investment; and

(b) A loan awarded by a cross-border financial services provider, or a debt instrument owned by the same, which is not a loan to a financial institution, or a debt instrument issued by the former, is an investment if said loan or debt instrument meets the criteria for investments established in Article 10.1 (Definitions);

**Investor from a Party** refers to an "investor from a Party" as defined in Article 10.1 (Definitions);

**New financial service** refers to a financial service not available in the territory of one Party but which is available in the territory of another Party, including any new form of distribution for a financial service or the sale of a new financial product;

**Person from a Party** refers to a "person from a Party" as defined in Article 2.1 (General Definitions) and, for greater certainty, does not include branches of companies from non-Party states;

**Public entity** refers to a central bank or monetary authority of a Party, or any financial institution or entity, either owned or controlled by a Party;

**Self-regulated entity** refers to any non-governmental entity, including any market, stock exchange or financial derivatives, clearing house or other body or association that itself or on behalf of another entity exercises regulatory or supervisory authority over suppliers of cross-border financial services or financial institutions.

**ARTICLE 11.2: Scope of Application**

1. This Chapter applies to the measures adopted and maintained by the Parties with regards to:

(a) Financial institutions of another Party;

(b) Investors of another Party and the investments of these investors in financial institutions in the territory of the Party; and

(c) Cross-border trade in financial services.

2. In the event of incompatibility between the provisions of this Chapter and any other provision of this Additional Protocol, the provisions made in this Chapter shall prevail to the extent of the incompatibility.

3. Chapters 9 (Cross-border Trade in Services) and 10 (Investment) shall apply to the measures described in paragraph 1, solely in the extent that said Chapters or Articles of said Chapters are included in this Chapter.

4. Articles 9.16 (Benefits Denial), 10.11 [1] (Transfers), 10.12 (Expropriation and Compensation), 10.13 (Benefits Denial), 10.14 (Special Formalities and Requests for Information) and 10.31 (Investment and Measures on Health, the Environment and other Regulatory Objectives) are included in this Chapter and are an integral part of the same, mutatis mutandis.

5. Section B (Dispute Resolution between one Party and an investor from another Party) of Chapter 10 (Investment) is included in this Chapter and is an integral part of the same solely in claiming that a Party has violated Articles 10.11 (Transfers), 10.12 (Expropriation and Compensation), 10.13 (Benefits Denial) or 10.14 (Special Formalities and Requests for Information) in the terms in which they are included in this Chapter.

6. Article 9.13 (Transfers and Payments), including its footnote, is included in this Chapter and is an integral part of the same insofar as such cross-border trade in financial services may be subject to obligations pursuant to Article 11.6.

7. This Chapter does not apply to the measures adopted and maintained by the Parties with regards to:

(a) Activities or services that form part of public retirement plans, or legally established social security systems; or

(b) Activities or services carried out on behalf of or with the guarantee of the Party or using its financial resources, including its public entities;

Notwithstanding, this Chapter shall apply to the activities or services mentioned in subparagraphs (a) or (b) which the Party shall allow to be carried out by its financial institutions in accordance with a public entity or financial institution.

**ARTICLE 11.3: National Treatment**

1. Each Party shall award investors from another Party treatment no less favourable than it would award, under similar circumstances, to its own investors, with regards to the establishment, acquisition, expansion, administration, conduct, operation, and sale or other disposition of financial institutions and investments in financial institutions in its territory.

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[1] For the purposes of this Chapter, the Parties will interpret the term "transfers" as not including transfers in kind.

2. Each Party shall award the financial institutions of another Party and the investments of investors from another Party in the Party's financial institutions, treatment no less favourable than it would award, under similar circumstances, to its own financial institutions and the investments of its own investors in financial institutions with regards to the establishment, acquisition, expansion, management, conduct, operation and sale or other disposition of financial institutions and investments.

3. For the purposes of the national treatment obligations laid out in Article 11.6.1, a Party shall award cross-border financial services providers from another Party, treatment no less favourable than it would award, under similar circumstances, its own financial services providers, with regards to the supply of the relevant service.

4. The treatment a Party must award in accordance with paragraphs 1, 2 and 3 means, with regards to the measures adopted or maintained by a regional or state government, treatment no less favourable than the most favourable treatment awarded, under similar circumstances, by that regional or state government to the financial institutions, investors in financial institutions, the investments of investors in financial institutions and cross-border financial services providers from the Party of which they form part.

**ARTICLE 11.4: Most Favoured Nation Treatment**

Each Party shall award the investors of another Party, the financial institutions of another Party the investments of investors from another Party in financial institutions of the Party and cross-border financial services providers from another Party, treatment no less favourable than it would award, under similar circumstances, the investors of another Party, the financial institutions of another Party the investments of investors from another Party in financial institutions of the Party and cross-border financial services providers from a non-Party state.

**ARTICLE 11.5: Right of Establishment**

1. A Party shall allow an investor from another Party, to establish in its territory a financial institution through any method of establishment and operation permitted by its legislation at the time it is established, without imposing numerical restrictions or specific types of legal requirements. This obligation against the imposition of requirements to adopt a specific legal code does not prevent a Party from imposing conditions or requirements relating to the establishment of a particular kind of entity chosen by an investor from another Party.

2. For greater certainty, a Party shall allow an investor from another Party which controls or is the owner of a financial institution in the territory of the Party, to establish additional financial institutions necessary for the supply of the full range of financial services in accordance with the legislation of the Party at the moment the additional financial institutions are established. Subject to the provisions of Article 11.3, a Party may impose, at the time a financial institution is established, terms and conditions pertaining to the establishment of additional financial institutions and determining the institutional and legal form that shall be used for the supply of specific financial services or to carry out specific activities.

3. The right to establishment, in accordance with paragraphs 1 and 2 shall include the acquisition of existing entities.

4. Subject to the provisions of Article 11.3, a Party may prohibit the use of a specific financial service or particular activity. Said prohibition shall not apply to all the financial services of an entire subsector of financial services, such as banking activities.

5. For the purposes of this Article, "numerical restrictions" refers to limits imposed, whether on the basis of a regional subdivision or over the whole territory of a Party, in a number of financial institutions, whether it be in the form of numerical quotes, monopolies, exclusive service providers or through demanding a test of economic necessities.

**ARTICLE 11.6: Cross-border Trade**

1. Each Party shall allow, in accordance with the terms and conditions used to award national treatment, the cross-border financial services providers from another Party to provide the services described in Annex 11.6.

2. Each Party shall allow persons located in its territory and its nationals, wherever they are, to acquire financial services from cross-border financial services providers of another Party located in the territory of another Party. This does not mean that a Party is obliged to allow said cross-border financial services providers to conduct business or advertise themselves in its territory. Each Party may define "conduct business" and "advertise themselves" for the purposes of this obligation, on the condition that said definitions are not incompatible with paragraph 1.

3. Notwithstanding other methods of prudential regulation of cross-border trade in financial services, a Party may demand the registry or authorisation of the cross-border financial services providers from another Party and financial instruments.

**ARTICLE 11.7: New Financial Services**

1. Each Party shall allow a financial institution from another Party, to provide whatever new financial service whose provision the Party would allow, under similar circumstances, its own financial institutions, in accordance with its legislation, on the condition that the introduction of that financial service does not require new legislation or the modification of an existing law.[2]

2. Each Party may determine the legal and institutional form through which the new financial service shall be supplied and may subject the supply of the same to authorisation and notification. When authorisation is required, the decision shall be made within a reasonable period of time and may only be denied for prudential reasons.

3. None of what is established in this Article prevents a financial institution from one Party from requesting that another Party authorise the supply of a financial service that is not provided in the territory of any of the Parties. Said request shall be subject to the legislation of the Party of whom the request is made and, for greater certainty, shall not be subject to the obligations of this Article.

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[2] For greater certainty, a Party may issue a regulation by the Executive Power, regulatory agencies or the central bank, to allow the supply of new financial services.

**ARTICLE 11.8: Treatment of Certain Information**

No provision in this Chapter obliges a Party to divulge or allow access to:

(a) Information pertaining to financial deals and the accounts of individual clients in financial institutions or cross-border financial services providers; or

(b) Any confidential information whose disclosure could impede compliance with its legislation or in some other way be against the public interest or harm the legitimate commercial interests of a specific person.

**ARTICLE 11.9: Senior Managers and Boards of Directors[3]**

1. No Party may demand that the financial institutions of another Party employ people of a certain nationality for executive positions or essential roles.

2. No Party may demand that more than a minority of the members of the Board of another Party's financial institution be composed of the Party's nationals, nationals whose residence is the territory of the Party or a combination of both.

**ARTICLE 11.10: Noncompliant Measures**

1. Articles 11.3, 11.4, 11.5, 11.6 and 11.9 shall not apply to:

(a) Any existing noncompliant measure maintained by a Party:

(i) At central or federal government level, such as that Party establishes in Section A of its list in Annex III;

(ii) At regional or state government level, such as that Party establishes in Section A of its list in Annex III; or

(iii) At local government level;

(b) The continuation or immanent renewal of any noncompliant measure referred to in subparagraph (a); or

(c) An amendment of any noncompliant measure referred to in subparagraph (a) as long as said modification does not diminish compliance, to the extent that it was already in force:

(i) Immediately prior to the amendment, with articles 11.3, 11.4, 11.5 and 11.9; or

(ii) On the date that this Additional Protocol enters into force, with Article 11.6.

2. Articles 11.3, 11.4, 11.5, 11.6 and 11.9 do not apply to any measure adopted by a Party in relation to the sectors, subsectors or activities indicated in Section B of its Schedule in Annex III.

3. Any measure set out by a Party in its Schedule in Annexes I or II which does not comply with Articles 10.4 (National Treatment), 10.5 (Most Favoured Nation Treatment), 9.3 (National Treatment) or 9.4 (Most Favoured Nation Treatment), shall be treated as a noncompliant

[3] In the case of Mexico, Board of directors refers to Governing Boards.

measure not subject to Article 11.3 or 11.4, as applicable, while that measure, sector, subsector or activity established in the noncompliant measure is covered in this Chapter.

**ARTICLE 11.11: Exceptions**

1. None of the provisions of this Additional Protocol may be construed to prevent a Party from adopting or maintaining measures for prudential reasons for such purposes as:

(a) Protecting investors, depositors or other creditors, policy holders or policy beneficiaries or persons with whom a financial institution or cross-border financial services provider has a fiduciary duty;

(b) Maintaining the financial security, solvency, integrity or responsibility of individual financial institutions or cross-border financial services providers; or

(c) Guaranteeing the integrity or stability of the financial system.

Where such measures do not comply with the provisions of this Additional Protocol, they may not be used to evade the commitments or obligations entered into by the Parties in accordance with said provisions.

2. No provision of this Additional Protocol shall apply to the generally applicable non-discrimination measures adopted by any public entity in accordance with monetary and related credit and exchange policies. This paragraph shall not affect one Party's obligations in accordance with Article 10.8 (Performance Requirements) with respect to the measures covered in Chapter 10 (Investment) or in accordance with Article 10.11 (Transfers) or 9.13 (Transfers and Payments).

3. Notwithstanding the provisions of Article 10.11 (Transfers) and Article 9.13 (Transfers and Payments), in the terms included in this Chapter, a Party may prevent or limit transfers from a financial institution or cross-border financial services provider to, or for the benefit of, any person linked or related to said institution or provider, through the fair, non-discriminatory and good faith application of measures related to the maintenance of financial security, solvency, solidity, integrity or responsibility of the financial institutions or cross-border providers of financial services. This paragraph shall be applied without prejudice to any other provision of this Additional Protocol which allows a Party to restrict transfers.

4. For greater certainty, no provision of this Chapter may be construed to prevent a Party from adopting or applying those measures necessary to ensure the observance of laws or regulations which are not incompatible with this Chapter, including those related to the prevention of practices which lead to error and fraudulent practices or to address the effects of non-compliance of financial services contracts, subject to the demands of said measures, are not applied in such a way that they may constitute a means of arbitrary or unjustified discrimination between countries in which similar conditions prevail or a disguised restriction on investment in financial institutions or cross-border trade in financial services, such as are covered by this Chapter.

**ARTICLE 11.12: Recognition and Harmonisation**

1. In applying the measures laid out in this Chapter, a Party may recognise the prudential measures of another Party or a non-Party state. Such recognition may be:

(a) Unilaterally awarded;

(b) Achieved through harmonisation or other methods; or

(c) Awarded on the basis of an agreement or accord between another Party and a non-Party state.

2. Any Party awarding recognition to prudential measures in accordance with paragraph 1 shall offer the other Parties suitable opportunities to demonstrate that there are circumstances in which there are or will be regulation, supervision and application of the equivalent regulation and, where appropriate, that there are or will be processes put in place to share information between the relevant Parties.

3. Where a Party grants recognition to prudential measures in accordance with paragraph 1 (c) and the circumstances established in paragraph 2, the Party shall offer the other Parties suitable opportunities to negotiate accession to the agreement or accord, or to negotiate a similar agreement or accord.

**ARTICLE 11.13: Transparency and Administration of Certain Measures**

1. The Parties recognise that transparent regulations and policies governing the activities of financial institutions and financial services providers are important in facilitating such activities, both in respect of access to their respective markets and operations within them. Each party undertakes to promote regulatory transparency in financial services.

2. In place of Article 15.3 (Transparency), each Party shall, as much as is practicable and in accordance with its legislation:

(a) Publish in advance any generally applicable regulation relating to the subjects in this Chapter it proposes to adopt;

(b) Supply interested persons and other Parties a reasonable opportunity to make comments on the proposed regulations; and

(c) Supply a reasonable period of time between publishing the final regulations and their entry into force.

3. The regulatory authorities of each Party shall make all information pertaining to the requirements, including any necessary documentation, for the completion and submission of requests related to the supply of financial services available to the public.

4. Within a period of 120 days, the relevant authority of a Party shall take an administrative decision on any complete request from an investor in a financial institution, a financial institution or a cross-border financial services provider from another Party related to the supply of a financial service and shall notify the applicant promptly of its decision. A request shall not be considered complete until all relevant hearings have been held and all necessary information has been received. When it is not practicable to take a decision within a period of

120 days, the relevant authority shall notify the applicant without unreasonable delay and shall seek to make its decision following this within a reasonable period of time.

5. Upon petition by an interested party, the relevant authority of a Party shall inform it of the status of its request. When the authority requires additional information of the applicant, the latter shall be notified of this fact without unreasonable delay.

6. Each Party shall maintain or establish appropriate mechanisms to respond to the questions of interested parties, as soon as practicable, with respect to generally applicable measures covered in this Chapter.

7. On adopting final regulations, the Party must, insofar as is practicable and in accordance with its legislation, give consideration in writing to substantive comments received from interested Parties with regards to the proposed regulations.[4]

8. Each Party shall ensure that the generally applicable norms adopted or maintained by self-regulated authorities of the Party are published promptly or are available through another means, so that interested persons may become acquainted with them.

9. Each Party shall ensure that all generally applicable measures to which this Chapter applies are administered reasonably, objectively and impartially.

**ARTICLE 11.14: Self-regulated Entities**

Where a Party requires that a financial institution or cross-border financial services provider another Party become a member of a self-regulated entity, participate in one or have access to it with the aim of providing a financial service in or to its territory, the Party shall ensure that said self-regulated entity fulfils the obligations laid out in Article 11.3 and 11.4.

**ARTICLE 11.15: Payment and Compensation Systems**

Each Party shall, in the terms and conditions used to award national treatment, grant the financial institutions of any other Party established in its territory, access to publicly-administered payment and compensation systems as well as access to official methods of financing and refinancing available in the course of normal commercial operations. The objective of this Article is not to grant access to the Party's lender of last resort facilities.

**ARTICLE 11.16: Specific Commitments**

Annex 11.16 establishes certain specific commitments for each Party.

**ARTICLE 11.17: Data Processing**

[4] For greater certainty, a Party may consolidate its responses to the comments received from interested persons and to publish them in a document separate from the final regulation.

1. Subject to prior authorisation of the relevant regulator or authority, any Party, where required, shall allow financial institutions from any other Party to transfer information into and out of the Party's territory, using any of the authorised methods for processing thereof, where such a transfer may be necessary to carry out those institutions' normal business activities.

2. For greater certainty, when the information referred to in paragraph 1 is composed of or contains personal data, the transfer of such information shall be carried out in accordance with legislation concerning the protection of people with regards to the transfer and processing of personal data from the Party in or from whose territory the information is being transferred.

**ARTICLE 11.18: Financial Services Committee**

1. The Parties hereby establish the Financial Services Committee (hereinafter the "Committee"). The main representative from each Party shall be an official from the authority of each Party responsible for financial services as established in Annex 11.8. In addition, representatives of other institutions shall be able to participate when the competent authorities consider it appropriate.

2. The Committee:

(a) Will supervise the implementation of this Chapter and its subsequent development;

(b) Will consider affairs relating to financial services referred to it by a Party, including requests to review Section A of Annex III, with a view to greater liberalisation;

(c) Will participate in dispute resolution procedures in accordance with the provisions of Article 11.20; and

(d) Will facilitate the exchange of information between national supervisory authorities and will cooperate in the area of advice on prudential regulation.

3. The Committee shall meet once a year, or at a frequency agreed upon by the Committee, to review the function of this Additional Protocol in matters pertaining to financial services. The Committee shall inform the Free Trade Commission of the results of each meeting.

**ARTICLE 11.19: Consultations**

1. A Party may request consultations with another Party in regards to any matter related to this Additional Protocol which may affect financial services. The other Party shall give due consideration to the request. The Parties shall promptly inform the Committee of the results of such consultations.

2. The consultations described in this Article shall include the participation of the authorities established in Annex 11.18.

3. A Party may request that a competent authority from another Party participate in the consultations being held in accordance with this Article. The other Party shall give all due consideration to said request.

4. None of the provisions of this Article may be construed to oblige the regulatory authorities participating in the consultations described in paragraph 1 to divulge information or act in such a way as to interfere in specific matters pertaining to the regulation, supervision, administration or application of measures.

5. None of the provisions of this Article may be construed to require a Party repeal its legislation in matters related to the exchange of information between financial regulators or to the requirements of an agreement or accord between the financial authorities of two or more Parties.

6. Where a Party requests information for the purpose of supervision related to a financial institution or a cross-border financial services provider in the territory of another Party, none of the provisions of this Article may be construed to prevent that Party from going to the competent authority in the territory of the other Party to request the information.

**ARTICLE 11.20: Dispute Resolution between Parties**

1. Chapter 17 (Dispute Resolution) applies, in modified terms in the context of this Article, to the resolution of such disputes as may arise by the application of this Chapter.

2. For the purposes of Article 17.13 (Choosing an Arbitral Tribunal), the arbiters, in addition to what is described in Article 17.12.1 (Arbiter Requirements) must have specialist knowledge or experience in financial law or the practice of financial services, which may include the regulation of financial institutions, unless the Parties agree otherwise.

3. For the effects of Article 17.13.2 (Choosing an Arbitral Tribunal), the period for the appointment of an arbiter and the nomination of candidates for the presidency of the arbitral tribunal shall be 30 days.

4. In any dispute in which the arbitral tribunal has determined that a measure is incompatible with the obligations of this Additional Protocol, when, as appropriate, the benefits referred to in Article 17.20 (Compensation or Suspension of Benefits) 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 which have an equivalent effect to the measure on 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 11.21: Dispute Resolution between a Party and an Investor from another Party**

1. Where an investor from one Party submits a request for arbitration in accordance with Section B (Dispute Resolution between a Party and an Investor from another Party) of Chapter 10 (Investment) and the defendant invokes Article 11.11 in its defence, the tribunal must refer

the matter in writing to the Committee to be decided.[5] The tribunal may not go ahead until it receives a decision in accordance with this Article.

2. Where making a referral in accordance with paragraph 1, the Party of the complainant and the Party of the defendant shall decide whether and to what extent Article 11.11 is a valid defence against the investor's claim. These Parties shall send a copy of their decision to the Committee, the tribunal and the Free Trade Commission. The decision shall be binding on the tribunal.

3. Where the Party of the complainant and the Party of the claimant have not reached a decision within the period of 60 days following receipt of the referral in accordance with paragraph 1, the claimant Party or the defendant Party may request, within the following 10 day period, the establishment of an arbitrary tribunal in accordance with Article 17.7 (Establishing an Arbitrary Tribunal) with the aim of reaching a decision on the matter. The arbitrary tribunal shall be assembled in accordance with Article 17.13 (Choosing an Arbitrary Tribunal). In addition to the provisions of Article 17.16 (Final Decision of the Arbitral Tribunal), the arbitral tribunal shall send its final report to the Committee and the tribunal. The report shall be binding on the court.

4. When the establishment of an arbitrary tribunal, in accordance with paragraph 3, in the 10 day period following the 60 day period laid out in said paragraph, the tribunal can go ahead and reach a decision on the matter.

5. Each disputing Party shall carry out the steps necessary to ensure that the members of the arbitrary tribunal have the knowledge or experience described in Article 11.20.2. The knowledge or experience of these candidates with regards to financial services shall be taken into account, insofar as possible, when appointing the arbiter presiding over the arbitrary tribunal.

[5] For the purposes of this Chapter "decision" refers to a joint determination made by the authorities responsible for financial services of the defendant Party and complainant Party, as indicated in Annex 11.18. If within the 15 day period following the date a request for a decision is received, any of the other parties will refer a written request to the defendant Party and complainant Party indicating its interest in the matter the request pertains to, the authorities responsible for financial service from this third Party may participate in discussions pertaining to the matter, if the authorities responsible for financial services of the defendant Party and complainant Party so agree.

## ANNEX 11.6: CROSS-BORDER TRADE

*Insurance services and services related to insurance*

1. Article 11.6 applies to the cross-border supply of or trade in financial services, as defined in subparagraph (a) in the cross-border supply of financial services in Article 11.1, with regards to:

(a) Insurance of risk relating to:

(i) International maritime shipping, international commercial aviation space launching and freight (including satellites), which may cover any or all of the following: the goods being transported, the vehicle transporting those goods and the civil responsibility that may evolve from the same; and

(ii) Goods in international transit;

(b) Reinsurance and retrocession;

(c) Consulting, actuarial services, risk assessment and loss adjustment of insurance included in subparagraph (a);

(d) Brokerage of insurance included in subparagraphs (a) and (b).

2. Article 11.6 applies to the cross-border supply of or trade in financial services, as defined in subparagraph (c) defining the supply of cross-border financial services in Article 11.1 with respect to the services listed in subparagraphs (c) and (d) of paragraph 1.[1]

*Banking services and other financial services (excluding insurance)*

3. Article 11.6 applies only with regards to:

(a) The supply and transfer of financial information and processing of financial data and software related thereto referred to in subparagraph (o) in the definition of financial services in Article 111, subject to prior authorisation of the relevant regulator, where required;

(b) Advisory services and other auxiliary financial services, with the exclusion of intermediation, reports and credit analyses, with respect to banking services and other financial services referred to in subparagraph (p) in the definition of financial services in Article 11.7.[2]

4. Despite what is established in paragraph 3 (b), when a Party allows reports and credit analyses to be provided by cross-border financial services providers, it shall award national treatment, as specified in Article 11.3.3, to the cross-border financial services providers of another Party. None of the provisions may be construed to they prevent a Party from restricting or prohibiting the supply of services, reports and credit analyses by cross-border financial services providers.

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[1] This applies only to Chile, Colombia and Peru.

[2] For greater certainty, it is understood that the commitments of the Parties in cross-border advisory services will not be interpreted in the sense that it demands that a Party allow the public offer of securities, as may be defined by its respective law, in the territory of that Party by cross-border services of another Party which supply or intend to supply said advisory services. The Parties may hold cross-border providers of advisory services to regulatory and registration requirements.

## ANNEX 11.16: SPECIFIC COMMITMENTS

*Investment Advice*[3]

1. The Parties shall allow a financial institution, formed outside its territory, to provide investment advisory services[4] in a mutual investment fund located in the territory of the Party. This commitment is subject to Article 11.2 and the provisions of Article 11.6.3 relating to the right to demand registration or authorisation, without prejudice to other means of prudential regulation.

2. For greater certainty, a Party may require that the mutual investment fund located in its territory not delegate its responsibility over administration functions of the mutual investment fund or funds it administers.

3. For the purposes of paragraphs 1 and 2, a **mutual investment fund** refers to:
   (a) in the case of Chile, the following fund administration companies under the supervision of the Securities and Insurance Commission:
      (i) Mutual Fund Management Firms (Decree Law 1,328 of 1976);
      (ii) Investment Fund Management Firms (Law 18,815 of 1989);
      (iii) Foreign Capital Investment Management Firms (Law 18,657 of 1987);
      (iv) Housing Fund Management Firms (Law 18,281 of 1993); and
      (v) General Fund Management Firms (Law 18,045 of 1981);

   (b) in the case of Colombia:
      (i) A mutual investment fund such as is defined in Article 3.1.1.2.1 of Decree 2555 of 2010 or any regulations modifying or substituting it;
      (ii) A voluntary pension or disability fund, in accordance with what is established in the norms of article 168 and subsequent norms of the Organic Statute of the Financial System;
      (iii) An obligatory pension fund in accordance with what is established in accordance with provision d) of Law 100 of 1993, and
      (iv) A solidarity fund in accordance with what is established in article 99 of Law 50 of 1990;

   (c) In the case of Mexico:
      (i) Companies managing investment firms laid out in the Investment Firms Law, and
      (ii) Retirement fund investors, as laid out in the Act on Retirement Savings Systems;

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[3] The Parties agree that the rights and obligations relating to the commitments pertaining to advice on investment in this Annex will not apply to Chile, its service lenders or those service borrowers from or to Chile with respect to obligatory pension funds. If, following the entry into force of this Additional Protocol, Chile allows a financial institution formed outside its territory, to allow investment advisory services to an obligatory pension fund located in its territory, it will be understood that the rights and obligations relating to the commitments pertaining to investment advice, with respect to obligatory pension funds, will be applicable to cross-border providers from all Parties. For these purposes, it will be understood that obligatory pension funds will be automatically included in the definition of a mutual investment fund in Chile.

[4] For greater certainty, investment advisory services do not include the management or administration of portfolios or related activities, such as custodial or trustee services

(d) In the case of Peru:
    (i) Mutual securities investment firms, in accordance with the Unique Ordered Text approved by Supreme Decree Number 093-2002-EF;
    (ii) Investment funds, in accordance with Legislative Decree Number 862; and
    (iii) Pension funds, in accordance with the Unique Ordered Text approved by Supreme Decree Number 054-97-EF.

*Non-discriminatory treatment of investors from other Parties*

1. Notwithstanding the inclusion of any noncompliant measure in Annex III, Section B, referring to social services, the Parties shall ensure compliance with the obligations laid out in Articles 11.3 and 11.4 with respect to investors from another Party:

(a) In the case of Chile, Pension Fund Management Firms established in accordance with Decree Law 3.500;

(b) In the case of Colombia, Pension Fund Management Firms, Severance Fund Management Firms and Pension and Severance Fund Management Firms established in accordance with Law 11 of 1993;

(c) In the case of Mexico, Retirement Fund Management Firms, established in accordance with the Act on Retirement Savings Systems; and

(d) In the case of Peru, Pension Fund Management Firms established in accordance with the Unique Ordered Text approved by Supreme Decree Number 054-97-EF.

## ANNEX 11.18: AUTHORITIES RESPONSIBLE FOR FINANCIAL SERVICES

The authority each Party gives responsibility for financial services shall be:

(a) In the case of Chile, the Ministry of Finance, or its successor;

(b) In the case of Colombia, the Ministry of Finance and Public Credit, or its successor;

(c) In the case of Mexico, the Secretariat of Finance and Public Credit, or its successor; and

(d) In the case of Peru, The Ministry of Economy and Finance, in cooperation with regulatory bodies, or its successor.

## CHAPTER 12: MARITIME SERVICES

### ARTICLE 12.1: Definitions:

For the purposes of this Chapter:
**Crew of a Party's ship** means any person employed and who features on the crew list;

**Recognised organisation** means an organisation that is duly authorised by the competent authority of a Party that fulfils regulatory tasks required by the agreements of the International Maritime Organisation (hereinafter referred to as "IMO";

**Services related to maritime transport** [1] means the supply of services to fulfil the requirements of the ship, its crew, passengers and/or cargo, pursuant to each Party's laws;

**Ship of a Party** means any vessel flying the flag of one of the Parties and that is registered by that Party pursuant to its internal provisions. Additionally, the treatment of "ship of a Party" shall be extended to international transport, to ships flying the flags of non-Parties that are leased or operated by ship owners or enterprises of a Party, on the condition that said Party notifies this in due form, without prejudice to the responsibilities and obligations that apply to the State of the ship's flag.

However, this term does not include:

(a) Warship;

(b) Ships used for scientific, oceanographic or hydrographic research

(c) Ships dedicated to fishing, related research and fish processing, or

(d) Ships dedicated to the provision of port support services, harbour traffic and port areas including pilotage, towing, assistance and salvage operations at sea;

**Supplier of maritime transport services of a Party** means a person who is duly authorised or recognised by the competent authority of the Party to provide maritime transport services;

### ARTICLE 12.2: Scope of Application

1. This Chapter applies to the measures adopted or maintained by any of the Parties that affect international maritime transport services and services related to maritime transport supplied by a service provider of another Party.

2. The measures that affect the supply of maritime transport services are within the scope of application of the obligations contained in the relevant provisions of Chapters 9 (Cross-Border Trade in Services) and Chapter 10 (Investment), and subject to any exception or non-conforming measures stipulated in this Additional Protocol that may apply to such obligations.

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[1] For greater certainty these services include port services.

3. Except for the provisions of paragraph 2, in the event of inconsistency between this Chapter and another Chapter of this Additional Protocol, this Chapter shall prevail to the extent of the inconsistency.

4. Notwithstanding the provisions of this Chapter, the Parties recognise their rights and obligations under international instruments issued by different entities of the United Nations, signed and ratified by each of the Parties, that regulate international maritime transport, and activities related to maritime transport.[2]

**ARTICLE 12.3: Participation in Transport**

1. The Parties shall agree to cooperation mechanisms to adopt the best practices in order to provide a framework which facilitates continual improvement in maritime transport.

2. Paragraph 1 does not affect any provision or obligation already assumed or soon to be assumed under prevailing international agreements, laws and standards.

**ARTICLE 12.4: National Treatment**

A Party shall accord to ships of another Party in its ports treatment no less favourable than it accords to its own ships in terms of free access, the right of stay and the right to exit the ports, the use of port facilities and all facilities guaranteed by this treatment in relation to commercial and sailing operations, for ships, crew and cargo. This provision shall also apply to the allocation of berths and loading and unloading facilities.

**ARTICLE 12.5: Agents and Representatives**

A supplier of maritime transport services of a Party that operates in the territory of another Party shall have the right to establish representations in that other Party's territory, pursuant to its laws.

**ARTICLE 12.6: Recognition of Ship Documentation**

1. A Party shall recognise the nationality of another Party's ship by verifying the on-board documents, which have been issued by the competent authority of that Party or by an organisation recognised by said other Party pursuant to its laws. For such purposes, the competent authority for issuing on-board documents shall be interpreted as:

(a) In the case of Chile, the Directorate General of Maritime Territory and the Merchant Machine, or its successor;

(b) In the case of Colombia, the Directorate General of Maritime Affairs of the Ministry of Defence or an organisation recognised by Colombia, or its successor;

(c) In the case of Mexico, the Ministry of Communication and Transport, through the Directorate General of the Merchant Machine, or its successor;

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[2] For greater certainty, the obligations of the Parties under the international instruments mentioned in this paragraph are not subject to the dispute resolution mechanism established by this Additional Protocol.

(d) In the case of Peru, the Directorate General of Harbourmasters and Coastguards or an organisation recognised by Peru, or its successor.

2. The ship documents issued or recognised by a Party shall be recognised by the other Parties.

**ARTICLE 12.7: Recognition of Crew Travel Documents of a Party's Ship**

The Parties shall recognise as crew travel documents of a Party's ship, a valid passport and/or seaman book, the latter which is issued by the IMO under the *International Convention on Standards of Training, Certification and Watchkeeping for Seafarers* (STCW)*, 1978*, in its amended form, and the Parties will accord to the holders of such documents a treatment no less favourable than they accord to nationals of their own Party.

**ARTICLE 12.8: Jurisdiction**

Any dispute arising from a private contract between a ship owner of one Party and a crew member of another Party shall be settled by the respective judicial and administrative authorities of the Party of the ship's flag pursuant to the provisions of said contract.

**ARTICLE 12.9: Electronic Exchange of Information**

The Parties shall work to maintain cross-border flows of information as an essential element in promoting a dynamic environment for port and maritime transport services.

**ARTICLE 12.10: Competitiveness in the Maritime Industry**

1. The Parties shall assess joint strategies such as facilitation of regional maritime transport, the development of logistics chains, and facilitation of multi-mode transport, *inter alia*, to enhance competitiveness and encourage greater regional integration.

2. Based on such assessment, priority will be given to strategies and a work programme will be established for their implementation.

**ARTICLE 12.11: Cooperation**

Considering the global nature of maritime transport, the Parties reaffirm the importance of:

(a) Working together to overcome obstacles that may arise in the provision of maritime transport services and services related to maritime transport, as well as sharing knowledge of best practices;

(b) Sharing information and experiences of laws, regulations and programmes that contribute to greater efficiency in the provision of maritime transport services and services related to maritime transport, as well as promoting education and training opportunities for staff engaged in these services;

(c) Promoting the execution of joint events that contribute to the strengthening of maritime transport services and services related to maritime transport; such as

conferences, symposia, business roundtables, trade fairs, hemispheric and multilateral forums;

(d) Promoting the exchange of students between academic merchant marine training centres of the Parties subject to availability and the selection processes determined by each Party;

(e) Working in the pursuit of mechanisms to facilitate and encourage students to undertake training in academic merchant marine training centres, on the ships of the Parties;

(f) Encouraging the exchange of experiences in facilitation projects, based on the concept of a “single point of contact from ship to port,” using recognition procedures for electronic documents related to ships, crew and cargo, and

(g) Promoting the exchange of experiences in maritime and port management and operation.

**ARTICLE 12.12: Points of Contact**

1. The Parties establish the following points of contact:

(a) In the case of Chile, the Department of River, Lake and Maritime Transport of the Ministry of Transport and Telecommunications, or its successor;

(b) In the case of Colombia, the Directorate General of Maritime Affairs through the Ministry of Trade, Industry and Tourism, or its successor;

(c) In the case of Mexico, the Directorate General of the Merchant Marine of the Ministry of Communication and Transport, or its successor, and

(d) In the case of Peru, the Directorate General of Water Transport of the Ministry of Transport and Communication through the Ministry of Foreign Trade and Tourism, or its successor.

2. The points of contact shall meet within the framework of the Services Subcommittee of the Joint Committee on Investment and Services set out in Article 9.15 (Services Subcommittee), to implement, administrate and assess this Chapter, and to adopt shared criteria, definitions and interpretations for the implementation of this Chapter.

## CHAPTER 13: ELECTRONIC COMMERCE

### ARTICLE 13.1: Definitions

For the purposes of this Chapter:

**trade conducted by electronic means** means means trade conducted through telecommunications alone, or in conjunction with other information and communications technologies;

**trade administration documents** means forms that a Party issues or controls that are required to be completed by or for an importer or exporter in connection with the importation or exportation of goods;

**personal information** means any information about an identified or identifiable natural person; computer facilities means computer servers and devices for the processing or storage of information for commercial purposes, but does not include facilities used to provide public telecommunications services;

**interoperability** means the ability of two or more systems or components to exchange information and to use the information that has been exchanged;

**unsolicited commercial electronic messages** means an electronic message that is sent for commercial or advertising purposes without the consent of the recipients, or against the explicit will of the recipient, using an Internet service or, in accordance with the laws of the Party, by other telecommunications services;

**covered person** means:

(a) a covered investment, as defined in Article 10.1 (Definitions);

(b) an investor of a Party, as defined in Article 10.1 (Definitions), but excluding an investor in a financial institution; or

(c) a service supplier of a Party, as defined in Article 9.1 (Definitions),

but not a financial institution or a cross-border financial services supplier of a Party, as defined in Article 11.1 (Definitions), and (b) a financial institution or a cross-border financial services supplier of a Party, as defined in Article 11.1 (Definitions).

**digital products** means computer software, text, video, images, sound recordings, and other products that are digitally encoded, that are produced for commercial sale or distribution, and that may be transmitted electronically. [1]

[1] For greater certainty, digital products do not include digital representations of financial instruments, including money. The definition of digital products is without prejudice to the discussions being held in the WTO concerning whether the trade of electronically transmitted digital products constitutes a good or a service.

**ARTICLE 13.2: Scope and Coverage**

1. This Chapter applies to measures affecting electronic transactions in goods and services, including digital products, without prejudice to the provisions on services and investment that are applicable under this Additional Protocol.

2. This Chapter does not apply to:

(a) information held by or on behalf of a Party, or measures relating to such information, nor to.

(b) lawful procurement.

**ARTICLE 13.3: General Provisions**

1. The Parties recognise the economic growth and opportunities which result from electronic commerce.

2. Considering the potential that electronic commerce has as an instrument for socio-economic development, the Parties recognise the importance of:

(a) The clarity, transparency and predictability of their national policy frameworks to facilitate, insofar as possible, the development of electronic commerce;

(b) Encouraging self-regulation in the private sector to promote trust in electronic commerce, taking into consideration the interests of users, through initiatives such as industry guidelines, standardised contracts, codes of conduct and seals of approval;

(c) Interoperability, innovation and competence to facilitate electronic commerce;

(d) Ensuring that international and national policies concerning electronic commerce take into account the interests of all users, including enterprises, consumers, non-governmental organisations and relevant public institutions;

(e) Facilitating the use of electronic commerce by micro, small and medium-sized enterprises, and

(f) Guaranteeing the security of electronic commerce users, taking into consideration international data protection standards.

3. Each Party shall seek to adopt measures to facilitate electronic commerce, dealing with the issues relevant to the electronic environment.

4. The Parties recognise the importance of avoiding unnecessary barriers to electronic commerce. Taking into account their national policy objectives, each Party shall seek to avoid measures that:

(a) Hinder electronic commerce, or

(b) Result in commercial exchanges made through electronic means being more restricted than trade carried out through other means.

**ARTICLE 13.4: Customs Duties**

1. No Party may apply customs duties, fees or charges for the import or export of digital products through electronic means.

2. For greater certainty, this Chapter does not preclude a Party from levying domestic taxes or other domestic charges on digital products traded electronically, provided that said taxes or charges are not levied in a manner that is inconsistent with this Additional Protocol.

**Article 13.4 bis: Non-Discrimination of Digital Products**

1. No Party shall accord less favorable treatment to digital products created, produced, published, licensed, commissioned, or otherwise made available for the first time on commercial terms in the territory of another Party or a non-Party, or to digital products authored, performed, produced, managed, or owned by a person of another Party or a non-Party, than it accords to other similar digital products.

2. For greater certainty, this Article does not apply to subsidies or grants provided by a Party, including government-supported loans, guarantees and insurance.

**ARTICLE 13.5: Transparency**

Each Party, pursuant to its laws, shall promptly publish or otherwise make public its laws, regulations, procedures, and generally applicable administrative decisions related to electronic commerce.

**ARTICLE 13.6: Consumer Protection**

1. The Parties recognise the importance of maintaining and adopting transparent and effective measures to protect consumers from fraudulent and deceptive commercial practices in electronic commerce.
2. For the purposes of paragraph 1, the Parties shall exchange information and experiences on national systems relating to the protection of consumers engaged in electronic commerce.
3. The Parties shall evaluate alternative mechanisms for the resolution of cross-border disputes conducted through electronic means and relating to consumer protection in cross-border electronic transactions.
4. The Parties further undertake to
(a) promote the conclusion of cooperative arrangements between them for the cross-border protection of consumer rights in electronic commerce;

(b) exchange information on suppliers that have been sanctioned for infringements of consumer rights in electronic commerce, such as fraudulent and deceptive commercial practices; [2]
(c) promote capacity building initiatives related to the protection of consumer rights in electronic commerce and the prevention of practices that infringe such rights;
(d) seek to standardise the information to be provided to consumers in electronic commerce, which should include at least: terms, conditions of use, prices, additional charges, if any, and methods of payment; and
(e) consider, in conjunction, other forms of cooperation aimed at protecting the rights of consumers in electronic commerce.

**ARTICLE 13.7: Paperless Administration of Trade**

1. Each Party shall seek to make available to the public in electronic form all documents related to the administration of trade.

2. Each Party shall seek to accept documents in electronic form related to administration of trade, as a legal equivalent to the paper version of said documents, pursuant to its laws.

**ARTICLE 13.8: Protection of Personal Information**

1. The Parties must adopt or maintain laws, regulations or administrative measures for the protection of personal information of the users that participate in electronic commerce. The Parties shall take prevailing international standards on the subject into consideration.

2. The Parties must exchange information and experiences related to their personal information protection laws.

**ARTICLE 13.9: Unsolicited Commercial Electronic Messages**

The Parties shall adopt or maintain measures to protect users from unsolicited commercial electronic messages.

**ARTICLE 13:10: Authentication and Digital Certificates**

1. No Party may adopt or maintain laws on electronic authentication that prevent the parties to a transaction carried out by electronic means from having the opportunity to prove before corresponding judicial or administrative tribunals that the said electronic transaction complies with the authentication requirements established by its laws.

2. The Parties shall establish validation mechanisms and criteria to encourage interoperability of electronic authentication between them pursuant to international standards. To this end, they may consider recognising certificates bearing advanced electronic or digital signatures, as appropriate, issued by certification service providers that operate within the territory of any Party pursuant to the procedure determined by their laws, with the objective of protecting security and integrity standards.

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[2] The Parties may agree on guidelines for the exchange of information.

**ARTICLE 13.11: Cross-Border Transfer of Information by Electronic Means**

1. The Parties recognise that they may have their own regulatory requirements for the transfer of information by electronic means.

2. Each Party shall permit the cross-border transfer of information by electronic means, including the transfer of personal information, in the conduct of a covered person's business.

3. Nothing in this Article shall prevent a Party from adopting or maintaining measures inconsistent with paragraph 2 to pursue a legitimate public policy objective, provided that such measures are not applied in a manner that would constitute a means of arbitrary or unjustifiable discrimination or a disguised restriction on trade.

**ARTICLE 13.11 bis: Use and Location of Computer Facilities**

1. No Party may require a covered person to use or locate computer facilities in the territory of that Party as a condition for the conduct of its business. [3]

2. Nothing in this Article shall prevent a Party from adopting or maintaining measures inconsistent with paragraph 1 to achieve a legitimate public policy objective, provided that such measures are not applied in a manner that would constitute a means of arbitrary or unjustifiable discrimination or a disguised restriction on trade.

**ARTICLE 13.12: Cooperation**

Considering the global nature of electronic commerce, the Parties reaffirm the importance of:

(a) Working together to facilitate the employment of electronic commerce in micro, small and medium-sized enterprises;

(b) Sharing information and experiences of laws, regulations and programmes in the field of electronic commerce, including those related to personal information protection, consumer protection, security of electronic communication, authentication, intellectual property rights, and e-government;

(c) Working together to maintain cross-border information flows as an essential element in the promotion of a dynamic environment for electronic commerce;

(d) Encouraging electronic commerce by promoting the adoption of codes of conduct, standardised contracts, seals of approval, guidelines and mechanisms which are used in the private sector, and

(e) Actively participating in regional and multilateral forums, to promote the development of electronic commerce.

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[3] For greater certainty, nothing in this paragraph shall prevent a Party from conditioning the receipt of an advantage, or the continued receipt of an advantage, in accordance with Article 10.8.3 (Performance Requirements).

**ARTICLE 13.13: Administration of this Chapter**

The Parties shall work together to achieve the objectives of this Chapter through various means, including information and communication technology, face-to-face meetings and working groups with specialists.

**ARTICLE 13.14: Relation to other Chapters**

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

## CHAPTER 14: TELECOMMUNICATIONS

### ARTICLE 14.1: Definitions

For the purposes of this Chapter:
**Authorisation** means the licences, concessions, permits, registrations or other types of authorisation that a Party may establish as a requirement for the supply of public telecommunications services;

**Co-location** means access to and use of a physical space in order to install, maintain or repair equipment at premises owned or controlled and used by a major provider to supply public telecommunications services;

**Cost-oriented** means based on costs, and may include a reasonable profit and involve different cost methodologies for different facilities or services;

**End user** means a final consumer of, or a subscriber to, a public telecommunications service, including a service provider, but excluding a provider of public telecommunications services;

**Essential facilities** means facilities of a public telecommunications network or service that:

(a) Are exclusively and 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;

**Interconnection** means linking with providers of public services in order to allow the users of one provider to communicate with users of another provider and to access services supplied by another provider;

**Leased circuits** means telecommunications facilities between two or more designated points that are set aside for the dedicated use of, or availability to, a particular client or other users chosen by that client;

**Major provider** means a provider of public telecommunications services that has the ability to significantly affect the conditions of participation (with regard to rates and supply) in the relevant market of public telecommunications services, by means of:

(a) Control of essential facilities, or

(b) The use of its market position;

**Network element** means a facility or equipment used in the supply of public telecommunications services, including the features, functions and capabilities provided with such facilities and equipment;

**Non-discriminatory** means treatment no less favourable than that accorded, in like circumstances, to any other user of like public telecommunications services;

**Number portability** means the ability of end users of public telecommunications services to maintain the same telephone numbers in the same geographic area,[1] without a reduction in quality or reliability when switching to a like provider of public telecommunications services;

**Public telecommunications network** means the telecommunications infrastructure used to provide public telecommunications services;

**Public telecommunications service** means any telecommunications service that a Party provides to the general public whether explicitly or in effect. Said services may include, *inter alia*, telephone and data transmission typically involving the transmission of customer-supplied information between two or more points without any end-to-end change in the form or content of that information;

**Reference interconnection offer** means an interconnection offer from a major provider that is registered and approved by the telecommunications regulatory agency, and sufficiently detailed so as to allow public telecommunications service providers that wish to accept such rates, terms and conditions, to obtain interconnection without the need to negotiate with the provider in question;

**Standard interconnection offer** means an interconnection offer from a major provider that is sufficiently detailed so as to allow public telecommunications service providers that wish to accept such rates, terms and conditions, to obtain interconnection without the need to negotiate with the provider in question;

**Telecommunications** means the transmission and reception of signals by any electromagnetic means;

**Telecommunications regulatory agency** means the agency or agencies of a Party that are responsible for the regulation of telecommunications;

**User** means end users and providers of public telecommunications services.

**ARTICLE 14.2: Scope of Application**

1. This Chapter applies to:
   (a) The measures related to the access and use of networks and public telecommunications services;

   (b) The measures related to the obligations of providers of public telecommunications services, and

   (c) Other measures related to public telecommunications networks and services.

2. This Chapter does not apply to measures related to radio broadcasting and cable transmission of radio or television programming, except to ensure that the enterprises that

[1] For greater certainty, the “geographic area” shall be determined by the law or regulations of each Party.

provide such services have access to and continual use of public telecommunications networks and services pursuant to Article 14.3.

3. No provision in this Chapter shall be construed as:

(a) Compelling a Party, or compelling a Party to require any enterprise to establish, construct, purchase, lease, operate or supply telecommunications networks or services, where such networks or services are not offered to the general public.

(b) Compelling a Party to require any enterprise, dedicated exclusively to radio broadcasting or cable transmission of radio or television programming, to make their cable transmission or radio broadcasting facilities available as a public telecommunications network, or

(c) Preventing a Party from prohibiting persons that operate private networks from using their networks to provide public telecommunications networks or services to third parties.

**ARTICLE 14.3: Access to and Use of Public Telecommunications Networks and Services[2]**

1. Each Party shall ensure that enterprises of other Parties have access to, and can make use of, any public telecommunications service offered in its territory or across its borders, on reasonable and non-discriminatory terms and conditions. This obligation must be applied together with the specifications of paragraphs 2 to 6, among others.

2. Each Party shall ensure that such enterprises are permitted:

(a) To purchase or lease and connect terminals or equipment that interface with public telecommunications networks;

(b) To supply single or multiple services to end users through the circuits that they own or lease;

(c) To connect the circuits they own or lease to public telecommunications networks and services or to the circuits owned or leased by another enterprise;

(d) To perform switching, signalling, processing and conversion operations, and

(e) To use the operation protocols of their choice.

3. Each Party shall ensure that the enterprises of other Parties are able to use public telecommunications networks and services to transmit information in its territory or across its borders and to access the information contained in databases or stored in a machine-readable form in the territory of any Party.

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[2] For greater certainty, this Article does not preclude any Party from setting the requirement of a licence, concession or other type of authorisation for an enterprise to provide public telecommunications services in its territory.

4. Notwithstanding the provisions of paragraph 3, a Party may take necessary steps to ensure the security and confidentiality of messages, or to protect the privacy of end users' personal data, provided that such measures are not applied in such a way that it may constitute a form of arbitrary or unjustifiable discrimination, or a disguised restriction on the trade in services.

5. Each Party shall ensure that no conditions are placed on the access to and use of public telecommunications networks and services other than those necessary for:

(a) Safeguarding the responsibilities of providers of public telecommunications networks and services, and in particular their ability to make their networks or services available to the general public, or

(b) Protecting the technical integrity of public telecommunications networks or services

6. Provided that the criteria established in paragraph 5 are satisfied, the conditions for access to and use of public telecommunications networks and services may include:

(a) Requirements to use specific technical interfaces including interface protocols, for the interconnection with said networks and services;

(b) Requirements, where necessary, for the interoperability of said networks and services;

(c) Validation or approval of the terminal equipment or other equipment that is in interface with the network and technical requirements related to the connection of said equipment to those networks, and

(d) Notification, registration and authorisations.

**ARTICLE 14.3 bis: Use of Telecommunications Networks in Emergency Situations**

1. Each Party shall endeavour to take the necessary measures to ensure that telecommunications undertakings transmit, at no cost to users, alert messages as defined by its competent authority in emergency situations. [3]

2. Each Party shall encourage telecommunications service providers to protect their networks from serious failures caused by emergency situations, with a view to ensuring public access to telecommunications services in such situations.

3. The Parties shall endeavour to manage, in a joint and coordinated manner, telecommunications actions in emergency situations.

4. Each Party shall evaluate the measures necessary for mobile telephone service providers to provide the possibility for international roaming users of the other Parties to make calls to that Party's toll-free emergency numbers, in accordance with their national coverage.

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[3] In the case of Colombia, Article 14.5 shall only apply to mobile services, and it shall apply to fixed telephone services insofar as it is determined to be technically and economically feasible.

**ARTICLE 14.4: Interconnection**

1. Each Party shall ensure that providers of public telecommunications services in its territory directly or indirectly supply interconnection to the providers of public telecommunications services of other Parties.

2. Each Party shall grant their telecommunications regulatory agency the authority to require interconnection at cost-based rates.

3. Upon carrying out the provisions of paragraph 1, each Party shall ensure that the providers of public telecommunications services in its territory take reasonable steps to protect the confidentiality of commercially sensitive information belonging to, or concerning, providers and end users of public telecommunications services where such information is only used to provide those services.

**ARTICLE 14.5: Number Portability**

Each Party shall ensure that providers of public telecommunications services in its territory offer number portability[4,5] in a timely manner, and on reasonable and non-discriminatory terms and conditions.

**ARTICLE 14.6: Access to Telephone Numbers**

Each Party shall ensure that providers of public telecommunications services from other Parties receive non-discriminatory access to telephone numbers.

**ARTICLE 14.6 bis: Hurt, Stolen, or Lost Mobile Terminal Equipment**

1. Each Party shall establish procedures to allow providers of public telecommunications services, established in its territory, to exchange and block on their networks the IMEI (International Mobile Equipment Identity) codes of mobile terminal equipment reported in the territory of another Party as stolen, misplaced, or lost.

2. The procedures set out in paragraph I shall include the use of such databases as the Parties may agree for this purpose.

**ARTICLE 14.6 ter: Broadband**

The Parties shall endeavour to:

(a) promote the interconnection of Internet traffic within each Party's territory among all Internet Service Providers (ISPs) through new Internet Exchange Points (IXPs), and promote interconnection among the Parties' IXPs;

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[4] In the case of Colombia, Article 14.5 shall only apply to mobile services, and it shall apply to fixed telephone services insofar as it is determined to be technically and economically feasible.

[5] In the case of Peru, Article 14.5 shall only apply to mobile services. In the case of fixed telephone services, Article 14.5 shall be applied three years after this Additional Protocol enters into force.

(b) adopt or maintain measures to ensure that public works projects[6] provide mechanisms to facilitate the deployment of fibre optic or other telecommunications networks;

(c) encourage the deployment of telecommunications networks that connect users to the major centres of global Internet content generation; and

(d) adopt policies that encourage the deployment of Internet content generation centres and distribution networks in their respective territories.

**ARTICLE 14.6 quater: Net Neutrality**

Each Party shall adopt or maintain measures to ensure compliance with net neutrality. [7]

**ARTICLE 14.7: Competitive Safeguards**

1. Each Party shall maintain adequate measures to prevent providers, whether individually or jointly, and including major providers in their own territory, from engaging in or continuing to use anti-competitive practices.

2. The anti-competitive practices referred to in paragraph 1 specifically include:
   (a) Engaging in anti-competitive cross-subsidisation;

   (b) Using information obtained from competitors with anti-competitive results, and

   (c) Not making available to other providers of telecommunications services, in a timely manner, technical information about essential facilities and commercially relevant information, which is necessary for such providers to supply public telecommunications services.

**ARTICLE 14.8: Interconnection with Major Providers**

*General Terms and Conditions*

1. Each Party shall ensure that major providers in its territory provide interconnection to providers of public telecommunications services from other Parties:
   (a) At any technically feasible point in its network;

   (b) On terms and conditions which include non-discriminatory technical standards and specifications;

   (c) Of a quality no less favourable than that provided to such major providers' own like services, to like services of unaffiliated service providers or to like services of its subsidiaries or other affiliates;

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[6] The term "public works" shall be understood in accordance with the laws of each Party. In the case of Peru, "public works" means infrastructure projects for electricity transmission networks, hydrocarbon transportation networks, roads of the national road network and railways.

[7] The term "net neutrality" shall be understood in accordance with the laws of each Party.

(d) In a timely manner, on terms, conditions (including technical standards and specifications) and at cost-based rates that are transparent, reasonable, take into consideration economic feasibility, and sufficiently unbundled such that providers need not pay for network components or facilities that it does not require for the service to be provided, and

(e) Upon 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.

*Interconnection Options*

2. Each Party shall ensure that providers of public telecommunications services of other Parties can interconnect their facilities and equipment with those of major providers in its territory, pursuant to at least one of the following options:

(a) A reference interconnection offer or other standard interconnection offer that contains the rates, terms and conditions that major providers offer to the providers of public telecommunications services;

(b) The terms and conditions of an existing interconnection agreement, or

(c) By means of the negotiation of a new interconnection agreement.

*Public Availability of Procedures for Negotiation of Interconnection*

3. Each Party shall make publicly available the procedures applicable to the negotiation of interconnection with the major providers of its territory.

*Public Availability of rates, terms and conditions necessary for Interconnection*

4. Each Party shall provide the means for providers of public telecommunications services from other Parties to obtain the rates, terms and conditions necessary for interconnection supplied by a major provider. At the least, these means include ensuring:

(a) The public availability of existing interconnection agreements between a major provider in its territory and other providers of public telecommunications services;

(b) The public availability of rates, terms and conditions for interconnection with a major provider, established by the telecommunications regulatory agency or another competent agency, or

(c) The public availability of the reference interconnection offer.

**ARTICLE 14.9: Treatment of Major Providers**

Each Party shall ensure that major providers in its territory accord providers of public telecommunications services of other Parties treatment no less favourable than that accorded by said major providers, in like circumstances, to its subsidiaries, affiliates or to unaffiliated service providers, with respect to:

(a) The availability, supply, rates or quality of like public telecommunications services, and

(b) The availability of technical interfaces necessary for interconnection.

**ARTICLE 14.10: Resale**

Each Party shall ensure that major providers in its territory:

(a) Offer for resale, at reasonable rates,[8] to providers of public telecommunications services, public telecommunications services that such major providers supply at retail rates to end users, and

(b) Do not impose discriminatory or unjustified conditions or limitations on the resale of such services.[9]

**ARTICLE 14.11: Unbundling of Network Elements**

1. Each Party shall grant its telecommunications regulatory agency the authority to require that major providers in its territory supply access to unbundled network elements to providers of public telecommunications services, on terms, conditions and at cost-based rates that are reasonable, non-discriminatory and transparent.

2. Each Party may determine if the network elements that are required are available in its territory and the providers that may obtain such elements, pursuant to its laws and regulations.

**ARTICLE 14.12: Leased Circuit Supply and Pricing**

1. Each Party shall ensure that major providers in its territory provide enterprises from other Parties with leased circuits that are public telecommunications services offered on terms, conditions and at rates that are reasonable and non-discriminatory.

2. In order to comply with paragraph 1, each Party shall grant its telecommunications regulatory agency the authority to require major providers in its territory to offer enterprises of other Parties leased circuits at cost-based rates based on capacity.

**ARTICLE 14.13: Co-location**

1. Each Party shall ensure that major providers in its territory offer to providers of public telecommunications services of other Parties, the physical co-location of equipment necessary for interconnecting or accessing unbundled network elements, on terms, conditions and at cost-based rates that are reasonable, non-discriminatory and based on a generally available offer.

2. When physical co-location is not practical for technical reasons or due to space restrictions, each Party shall ensure that the major providers in its territory offer an alternative

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8 A Party may determine reasonable rates through any methodology that it considers appropriate.

9 A Party may prohibit a reseller from obtaining public telecommunications services at wholesale rates when those services are only available at retail level to a limited category of users and this category offers said service to a differentiated user category.

solution, such as facilitating virtual co-location, on terms and conditions and at cost-based rates that are reasonable, non-discriminatory and based on a generally available offer.

3. Each Party may determine, pursuant to its laws and regulations, the facilities subject to paragraphs 1 and 2.

**ARTICLE 14.14: Access to Poles, Ducts, Conduits and Rights of Way[10] [11]**

Each Party shall ensure that major providers in its territory provide access to poles, ducts, conduits and rights of way that are owned or controlled by such major providers to providers of public telecommunications services of other Parties on terms and conditions and at rates which are reasonable and non-discriminatory.

**ARTICLE 14.15: Independent Regulatory Agencies**

1. Each Party shall ensure that its telecommunications regulatory agency is independent and distinct from any public telecommunications service provider and not answerable to any of them. To this end, each Party shall ensure that its telecommunications regulatory agency does not hold financial interests or operational functions in any public telecommunications services provider.

2. Each Party shall ensure that the decisions and procedures made by its telecommunications regulatory agency are impartial with respect to all market participants. To this end, each Party shall ensure that any financial interest held by this agency in a public telecommunications service provider does not influence the decisions and procedures of the telecommunications regulatory agency.

3. No Party shall accord a provider of public telecommunications services a more favourable treatment than that accorded to a like provider of the other Parties, based on the justification that the provider that receives the most favourable treatment is totally or partially owned by the national government of any of the Parties.

**ARTICLE 14.15 bis: Mutual and Technical Cooperation**

The Parties shall cooperate in:

(a) the exchange of experience and information on telecommunications policy, regulation and standards;

(b) the promotion of training facilities by the competent telecommunications authorities for the development of specialised skills; and

(c) the exchange of information on strategies to enable access to telecommunications services in rural areas and priority service areas established by each Party.

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[10] For greater certainty, Chile may comply with this obligation by maintaining appropriate measures in place to prevent major providers in its territory from denying access to poles, ducts, conduits and rights of way which are owned or controlled by said major providers, in a manner that may constitute an anti-competitive practice.

[11] For Mexico, rights of way is equivalent to rights of way.

**ARTICLE 14.16: Authorisations**

1. Where a Party requires a provider of public telecommunications services to obtain authorisation, the Party shall make publicly available:

(a) The criteria and procedures which apply to the granting of said authorisation;

(b) The normal timeframe required for making a decision on said application for authorisation, and

(c) The terms and conditions attached to any authorisation granted.

2. Each Party shall ensure, on request, that an applicant is informed of the reasons for an authorisation being denied.

**ARTICLE 14.17: Allocation, Assignment and Use of Scarce Resources**

1. Each Party shall administrate its own procedures for the allocation, assignment and use of scarce telecommunications resources including frequencies, numbers and rights of way in an objective, timely, transparent and non-discriminatory manner, except for scarce resources related to governmental use.

2. Each Party shall make the current status of frequency bands assigned publicly available but it shall not be compelled to provide detailed identification of the frequencies allocated specifically for governmental use.

3. The measures of a Party concerning the allocation and assignment of the spectrum and the management of frequencies, do not in themselves constitute measures that are inconsistent with Article 9.6 (Access to Markets), which concerns cross-border trade in services and Chapter 10 pursuant to the provisions of Article 9.2 (Scope of Application). Accordingly, each Party retains the right to establish and apply its own policies on spectrum and frequency management, which may entail limiting the number of providers of public telecommunications services, provided that this is carried out in a way that is consistent with this Additional Protocol. Each Party also retains the right to allocate and assign frequency bands taking into consideration their present and future needs and the availability of the spectrum.

4. Where the spectrum for non-governmental telecommunications services is allocated, each Party shall seek to promote an open and transparent public comment process, which it considers in the public interest. Each Party shall seek, in general, to take a market-based approach to the assignment of the spectrum for non-governmental land-based telecommunications services.

**ARTICLE 14.18: Universal Service**

Each Party has the right to define the type of universal service obligations it wishes to adopt or maintain and it shall administrate said obligations in a transparent, non-discriminatory and

competitively neutral manner, ensuring that universal service obligations are not more burdensome than is necessary for the type of universal service that has been defined.

**ARTICLE 14.19: Transparency**

In addition to Chapter 15 (Transparency), each Party shall ensure that:

(a) The regulations of the telecommunications regulatory agency are promptly published or made public, including the basis for such regulations;

(b) Interested persons are granted the opportunity, insofar as possible, through public announcement, with advance notice, to comment on any regulations proposed by the telecommunications regulatory agency;

(c) The prices for end users are made public, and

(d) The measures related to public telecommunications networks and services are made public, including those related to:
   (i) Rates and other terms and conditions of the service;
   (ii) Specifications of the technical interfaces;
   (iii) Conditions for the connection of the terminal equipment or any other equipment to the public telecommunications network;
   (iv) Requirements for notification or authorisations, where applicable;
   (v) The standardisation or standards that affect access and use, and
   (vi) Procedures related to the resolution of telecommunications disputes, as described in Article 14.22.

**ARTICLE 14.19 bis: Quality of Service**

1. Each Party shall establish measures to regulate, monitor, and oversee the quality of public telecommunications services using the indicators, parameters, and procedures established for this purpose by its telecommunications regulatory body.
2. Each Party shall ensure that
(a) suppliers of public telecommunications services, in its territory, or
(b) its telecommunications regulatory body,
publish indicators of the quality of service provided to end-users of public telecommunications services.
3. Each Party shall provide, on request of another Party, the methodology used for the calculation or measurement of the quality of service indicators, as well as the targets set for their achievement, in accordance with its law.

**ARTICLE 14.20: International Roaming**

1. The Parties shall seek to cooperate in promoting transparent and reasonable rates for international mobile roaming services.

2. Each Party shall adopt or maintain measures to:

(a) ensure that information on retail rates for international mobile roaming services is readily available to the public;".

(b) remove impediments or barriers to the use of technological alternatives to roaming that allow consumers of other Parties visiting their territory to access telecommunications services using the devices of their choice; and

(c) implement mechanisms by which providers of public telecommunications services allow users of international roaming to control their data, voice and Short Message Service (SMS) consumption.

3. In furtherance of paragraph 2(a), each Party shall ensure that:

(a) suppliers of public telecommunications services in its territory, or
(b) its regulatory body,

make available to the public the retail rates for international mobile international roaming services, in respect of voice, data and text messaging.

4. The Parties shall evaluate the adoption of joint actions aimed at reducing international roaming charges between the Parties.

5. The Parties shall jointly assess the possibility of establishing mechanisms to regulate the international wholesale roaming services offered between the Parties for voice, data and messaging services.

**ARTICLE 14.21: Flexibility in Technology Choice**

No Party may prevent public telecommunications service providers from freely choosing the technologies they wish to employ for their supply of services, subject to the requirements necessary to satisfy the legitimate interests of public policy.

**ARTICLE 14.21 bis: Protection of End-Users of Telecommunications Services**

The Parties shall ensure the following rights to end-users of telecommunications services:

(a) to obtain the supply of telecommunications services in accordance with the quality standards contracted for or established by the competent authority; and

(b) in the case of persons with disabilities, to obtain information on the rights to which they are entitled. The Parties shall use the means available to them for this purpose.

**ARTICLE 14.22: Resolution of Telecommunications Disputes**

Each Party shall ensure that:
*Resources*

(a) the enterprises of the other Parties may have recourse to the telecommunications regulatory body or other competent body to resolve disputes regarding the Party's

measures relating to the matters set forth in Articles 14.3, 14.4, 14.5, 14.6, and 14.7 through 14.14;

(b) The providers of public telecommunications services of another Party that have requested interconnection from a major provider in the territory of the other Party, may appeal to the telecommunications regulatory agency, within a reasonable and specific timeframe of public knowledge following the supplier's request for interconnection, in order that it may resolve the disputes related to the terms, conditions and rates for interconnection with said major provider;

*Reconsideration*

(c) Any enterprise that is disadvantaged or whose interests are adversely affected by a resolution or decision issued by the telecommunications regulatory agency of a Party may request said agency to reconsider[12,13] said resolution or decision. No Party shall permit such request to be the grounds for non-compliance of the resolution or decision issued by the telecommunications regulatory agency, unless a competent authority suspends such resolution or decision.[14] A Party may limit the circumstances in which reconsideration is available, pursuant to its laws and regulations;

*Judicial Review*

(d) Any company which is disadvantaged or whose interests have been adversely affected by a resolution or decision issued by the telecommunications regulatory agency of a Party, may be granted a judicial review of said resolution or decision from an independent judicial authority. The request for judicial review shall not constitute the grounds for non-compliance of said resolution or decision, unless it is suspended by the competent judicial body.

**ARTICLE 14.23: Relation to other Chapters**

In the event of inconsistency between this Chapter and another Chapter of this Additional Protocol, this Chapter shall prevail to the extent of the inconsistency.

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[12] In the case of Colombia and Peru, enterprises may not request reconsideration of generally applied administrative resolutions, as defined in Article 15.1 (Definitions), unless their respective legislation so allows.

[13] In the case of Mexico, the general norms, acts or omissions of the telecommunications regulatory agency may only be challenged by way of an indirect appeal hearing and they may not constitute grounds for suspension.

[14] In Colombia, the decision or resolution of the regulatory agency is final when said agency issues a resolution on the request.

## CHAPTER 15 bis: REGULATORY IMPROVEMENT

### ARTICLE 15 bis.1: Definitions

For the purposes of this Chapter:

**regulatory measures** means those measures of general application, related to any subject matter covered by this Additional Protocol, adopted by regulatory authorities and with which compliance is mandatory, and

**covered regulatory measures** means those regulatory measures determined by each Party to be covered by this Chapter in accordance with Article 15 bis.3.

### ARTICLE 15 bis.2: General Provisions

1. For purposes of this Chapter, regulatory reform refers to the use of international good regulatory practices in the process of planning, drafting, promulgating, implementing, and reviewing regulatory measures in order to facilitate the achievement of national public policy objectives, and to efforts by governments to enhance regulatory cooperation for the purpose of achieving such objectives, as well as to promote international trade, investment, economic growth, and employment.

2. The Parties affirm the importance of:

(a) maintaining and enhancing the benefits of the integration promoted through this Additional Protocol through regulatory improvements, facilitating increased trade in goods and services, as well as investment between the Parties;

(b) the sovereign right of each Party to identify its regulatory priorities and to establish and implement regulatory improvement measures that take into account such priorities, in such areas and at such levels of government as that Party considers appropriate;

(c) the sovereign right of each Party to establish such regulations as it considers appropriate;

(d) the role of regulation in achieving public policy objectives;

(e) consider the input of interested persons in the development of proposed regulatory measures;

(f) the development of international regulatory cooperation; and

(g) cooperation between the Parties for the development of regulatory reform policy, as well as for capacity building and strengthening in this field.

### ARTICLE 15 bis.3: Scope of Application

Each Party shall, no later than three years after the entry into force of the First Amending Protocol to the Additional Protocol to the Framework Agreement of the Pacific Alliance

(hereinafter referred to as the "First Amending Protocol"), determine and make publicly available the covered regulatory measures to which the provisions of this Chapter shall apply, in accordance with its law. In making such determination, each Party shall consider achieving meaningful coverage.

**ARTICLE 15 bis.4: Establishment of Coordination and Review Mechanisms or Processes Review**

1. The Parties recognise that regulatory reform can be fostered through the establishment of internal mechanisms to facilitate interagency coordination associated with the processes for the development and review of covered regulatory measures. Accordingly, each Party shall endeavour to ensure that mechanisms or processes are in place to facilitate effective interagency coordination and review of draft or proposed covered regulatory measures. To this end, each Party shall endeavour to consider establishing and maintaining a coordinating body or mechanism at the national or central level.

2. The Parties recognise that while the mechanisms or processes referred to in paragraph 1 may vary according to their respective circumstances, including differences in levels of development and in political and institutional structures, they should generally be set out in documents that include a description of these and that can be made publicly available. These mechanisms or processes should have features such as the ability to:

(a) review draft or proposed covered regulatory measures to determine whether international good regulatory practices, which may include but are not limited to those set out in Article 15 bis.5, were taken into consideration in their preparation, and make recommendations based on such review;

(b) strengthen coordination and consultation among national governmental institutions to identify possible duplication, and avoid creating inconsistent requirements among them;

(c) make recommendations in order to promote regulatory improvements in a systematic manner; and

(d) ensure that the review is carried out in a timely manner.

(d) report publicly on the regulatory measures covered that have been reviewed and any proposals for systematic regulatory improvements, as well as updates on changes to processes and mechanisms.

**ARTICLE 15 bis.5: Promotion of Good Regulatory Practices**

1. Each Party should encourage its competent regulatory authorities, in accordance with its legislation, to conduct regulatory impact assessments when developing draft or proposed covered regulatory measures that exceed the economic impact threshold or, where appropriate, other criteria established by that Party, to assist them in designing regulatory measures that best meet that Party's objective. Regulatory impact assessments may include a variety of procedures to determine potential impacts.

2. Recognising that differences in the institutional, social, cultural, legal and developmental circumstances of the Parties may result in specific regulatory approaches, regulatory impact assessments should, inter alia:

(a) assess the need for a draft or proposed covered regulatory measure, including a description of the nature and importance of the problem;

(b) outline possible alternatives, including, to the extent feasible and in accordance with their respective legislation, the costs and benefits involved, recognising that some of these may be difficult to quantify;

(c) explain the reasons for concluding that the selected alternative meets the public policy objectives in an efficient manner, including, where appropriate, reference to the costs and benefits, as well as the ability to manage the risks; and

(d) be based on the best available scientific, technical, economic or other relevant information available to the respective regulatory authorities within their competence, mandate, capabilities and resources.

3. When conducting regulatory impact assessments, regulatory authorities may take into account the potential impact of the regulatory proposal on micro, small and medium-sized enterprises.

4. Each Party should encourage its competent regulatory authorities, when developing covered regulatory measures, to consider the regulatory measures of other Parties, as well as relevant developments in regional, international and other fora, to the extent appropriate and consistent with its law.

5. Each Party shall endeavour to ensure that the new regulatory measures covered are clearly written, concise, organised and easy to understand, recognising that some measures involve technical issues, which may require specialised knowledge to understand and apply.

6. Each Party shall endeavour to ensure that its competent regulatory authorities, in accordance with its law, facilitate public access to information on new regulatory measures covered and, where possible, make such information available on a website.

7. Each Party shall endeavour to review its covered regulatory measures, at such intervals as it considers appropriate, to determine whether they should be amended, expanded, simplified or repealed, with the objective of making that Party's regulatory regime more effective in achieving its public policy objectives.

8. Each Party should publish annually a notice, in a manner it considers appropriate and consistent with its law, of any covered regulatory measures that it expects its regulatory authorities may issue or amend during the following 12 months.

**ARTICLE 15 bis.6: Regulatory Improvement Committee**

1. The Parties hereby establish a Regulatory Improvement Committee (hereinafter referred to as the "Committee"), which shall be composed of representatives of the Parties.

2. The Committee shall meet within one year of the entry into force of the First Modifying Protocol and thereafter as deemed necessary by the Parties. Meetings of the Committee may be held in person or by any technological means agreed by the Parties. The Committee may conduct its work through any means agreed by the Parties, including meetings in the margins of other regional or international fora.

3. The Committee shall take its decisions by consensus.

4. The Committee shall consider issues relating to the implementation of this Chapter. It shall also consider the identification of future priorities, including possible sectoral initiatives and cooperative activities, involving issues relating to this Chapter and to better regulation issues covered by other Chapters of this Additional Protocol.

5. The Committee shall evaluate the relevance of incorporating future work on additional practices and tools on regulatory reform, such as training in regulatory reform skills; transparency and access to regulations; formal public consultation processes; electronic systems to facilitate the interaction of regulatory authorities with entrepreneurs, business people and the public in general; rationalisation of the regulatory inventory and the measurement of administrative burdens, among others that it considers relevant.

6. In the process of identifying future priorities, the Committee shall take into account the activities of other committees and other bodies established under the Additional Protocol and shall coordinate with them in order to avoid duplication of activities.

7. The Committee shall ensure that its work on regulatory cooperation provides additional value to ongoing initiatives in other relevant fora, in order to avoid impinging on or duplicating such efforts.

8. At least once every three years after the date of entry into force of the First Amending Protocol, the Committee shall consider developments in the areas of international good regulatory practice, as well as the experiences of the Parties in implementing this Chapter, with a view to considering whether to make recommendations to the Free Trade Commission for the improvement of the provisions of this Chapter, and to enhance the benefits of this Additional Protocol.

9. Each Party shall, upon entry into force of the First Amending Protocol, notify to the other Parties a contact point. Such contact point shall provide information relating to the implementation of this Chapter upon request of another Party.

**ARTICLE 15 bis.7: Cooperation**

1. The Parties shall cooperate in order to properly implement this Chapter and to maximise the benefits derived from this Chapter. Cooperative activities shall take into account the needs of each Party, and may include:

(a) exchange of information, dialogues or meetings between the Parties, with interested persons, including micro, small and medium-sized enterprises;

(b) exchange of information, dialogue or meetings with non-Parties, international organisations and interested persons, including micro, small and medium-sized enterprises of non-Parties;

(c) training programmes, seminars and other assistance initiatives;

(d) the strengthening of cooperation and other relevant activities between regulatory authorities; and

(e) other activities as the Parties may agree.

2. The Parties recognise that regulatory cooperation between them may be enhanced, inter alia, by ensuring that each Party's regulatory measures are made available centrally.

**ARTICLE 15 bis.8: Participation of Interested Persons**

The Committee shall establish appropriate mechanisms for interested persons of the Parties to have the opportunity to provide views on issues related to regulatory reform and strengthening.

**ARTICLE 15 bis.9: Notification of Implementation Report**

1. For transparency purposes, and to serve as a basis for cooperation and capacity building activities, each Party shall notify an implementation report of this Chapter to the Committee within two years of the date of entry into force of the First Amending Protocol and at least once every three years thereafter. For this purpose, each Party shall circulate such report to the other Parties through the contact points designated pursuant to Article 15 bis.6.9. Such report may be reviewed by the Committee at its next meeting.

2. In its first report, each Party shall describe the actions it has taken since the date of entry into force of the First Amending Protocol and those it plans to take to implement this Chapter, including those to:

(a) establish a body or mechanism to facilitate effective interagency coordination and review of draft or proposed regulatory measures covered, in accordance with Article 15 bis.4;

(b) encourage its competent regulatory authorities to conduct regulatory impact assessments, in accordance with Articles 15 bis.5.1 and 15 bis.5.2;

(c) ensure that draft or proposed regulatory measures covered are accessible, in accordance with Articles 15 bis.5.5.5 and 15 bis.5.6;

(d) review existing covered regulatory measures, in accordance with Article 15 bis.5.7; and

(e) make public the annual notice of covered regulatory measures intended to be issued or amended during the following 12 months, in accordance with Article 15 bis.5.8.

3. In its successive reports, each Party shall describe the actions it has taken since the previous report and the actions it plans to take to implement this Chapter.

4. In considering matters relating to the implementation of this Chapter pursuant to Article 15bis.6.4, the Committee may conduct a review of the implementation reports. During this review, the Parties may discuss or ask questions on specific aspects of any Party's report. The Committee may also, on the basis of such review, identify opportunities for assistance or cooperative activities. assistance or cooperative activities.

**ARTICLE 15 bis.10: Relationship to other Chapters**

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

**ARTICLE 15 bis.11: Settlement of Disputes**

This Chapter is not subject to the provisions set out in Chapter 17 (Settlement of Disputes) of the Additional Protocol.

## CHAPTER 15: TRANSPARENCY

### ARTICLE 15.1: Definitions

For the purposes of this Chapter:
**Administrative ruling of general application** means an administrative ruling or interpretation that applies to all persons and factual situations that generally fall within its scope and that establishes a standard of conduct, but does not include:

(a) A determination or ruling made in administrative proceedings that applies to a particular person, good or service of any of the Parties in a specific case; or

(b) A ruling on a particular act or practice.

### ARTICLE 15.2: Points of Contact

1. The contact points referred to in Annex 15.2 shall facilitate communication between the Parties on any matter covered by this Additional Protocol.

2. At the request of any of the Parties, the contact point of a Party shall indicate the office and the official responsible for the matter and it shall provide the necessary support for facilitating communication with the requesting Party.

### ARTICLE 15.3: Publication

1. Each Party shall ensure, pursuant to its domestic law, that its laws, regulations, procedures and administrative rulings of general application regarding any matter covered by this Additional Protocol, are promptly published or made available to interested persons and to other Parties.

2. Each Party must, insofar as possible:

(a) Publish in advance any measure mentioned in paragraph 1 that it proposes to adopt; and

(b) Provide a reasonable opportunity for interested persons and other Parties to comment on the proposed measures.

### ARTICLE 15.4: Notice and Provision of Information

1. Each Party, wherever possible, must inform the other Parties of any proposed or existing measure that the Party considers may materially affect the operation of this Additional Protocol, or that may substantially affect the interests of another Party pursuant to this Additional Protocol.

2. At the request of any of the Parties, a Party shall promptly provide information and answer questions related to any proposed or existing measure that the requesting Party considers may materially affect the operation of this Additional Protocol or substantially affect

its interests under this Additional Protocol, regardless of whether the requesting Party was previously informed of that measure.

3. Any notice, request or information related to this Article shall be provided by the relevant contact points.

4. Any notice, answer or information provided pursuant to this Article shall be without prejudice to the measure's consistency with this Additional Protocol.

5. Where a Party provides confidential information to another Party, in accordance with this Additional Protocol, the other Party shall keep that information confidential.

**ARTICLE 15.5: Administrative Proceedings**

In order to administer the measures described in Article 15.3 in a consistent, impartial and reasonable manner, each Party shall ensure that in its administrative procedures in which these measures are applied to particular persons, goods or services of another Party in specific cases:

(a) Wherever possible, persons of another Party that are directly affected by a proceeding are provided reasonable notice of the initiation of proceedings pursuant to the Party's domestic procedures, 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 all the issues in dispute;

(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 consistent with its domestic law.

**ARTICLE 15.6: Review and Appeal**

1. Each Party shall establish and maintain judicial, quasi-judicial or administrative tribunals or procedures for the purpose of the prompt review, and where appropriate, correction of final administrative actions concerning matters covered by this Additional Protocol. Such tribunals shall be impartial and independent of the office or authority responsible for applying administrative measures and they 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 proceedings have the right to:

(a) a reasonable opportunity to support or defend their respective positions; and

(b) A decision based on the evidence and arguments put forth or, where required by that Party's 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 are implemented by, and govern the practice of, the office or authority concerned by the administrative action at issue.

## ANNEX 15.2: POINTS OF CONTACT

For the purposes of Article 15.2 the contact points shall be:

(a) In the case of Chile, the Department of South America and Regional Integration Agencies of the Directorate General of International Economic Relations of the Ministry of Foreign Affairs, or its successor;

(b) In the case of Colombia, the Directorate of Economic Integration of the Ministry of Trade, Industry and Tourism, or its successor;

(c) In the case of Mexico, the International Negotiations Unit of the Undersecretariat of Foreign Trade of the Ministry of Economy, or its successor;

(d) In the case of Peru, the Department of Foreign Trade of the Ministry of Foreign Trade and Tourism, or its successor.

## CHAPTER 16: ADMINISTRATION OF THE ADDITIONAL PROTOCOL

### ARTICLE 16.1: Free Trade Commission

1. The Parties hereby establish the Free Trade Commission. This Commission shall comprise officials from the ministerial level of each Party, as set out in Annex 16.1, or their designees, and it shall be chaired by the Party holding the *pro tempore* presidency of the Pacific Alliance.

2. The Free Trade Commission shall establish its own rules and procedures, and it shall adopt decisions and recommendations by consensus.

3. The ordinary meetings of the Free Trade Commission shall be held annually, unless the Parties agree otherwise. Any Party may request the convening of an extraordinary meeting. Free Trade Commission meetings may be held in person or through any technological means.

4. The Free Trade Commission must hold its first ordinary meeting within the first year of this Additional Protocol entering into force.

5. The Free Trade Commission shall hold meetings with all Parties present.

### ARTICLE 16.2: Functions of the Free Trade Commission

1. The Free Trade Commission must:
   (a) Ensure that the provisions of this Additional Protocol are complied with and properly implemented;

   (b) Assess the results achieved through the implementation of this Additional Protocol;

   (c) Contribute to the dispute resolution process pursuant to Chapter 17 (Dispute Resolution);

   (d) Supervise the work of all committees, subcommittees and working groups established under this Additional Protocol under Annex 16.2, as well as those established pursuant to paragraph 2 (b); and

   (e) Consider any other matter that may affect the operation of this Additional Protocol, or that is requested by the Parties.

2. The Free Trade Commission may:
   (a) Adopt decisions in order to:
      (i) Improve the tariff conditions for market access of originating goods established in the Parties' respective tariff elimination schedules under Annex 3.4;
      (ii) Approve recommendations proposed by the Committee on Rules of Origin and Procedures Related to Origin, Trade Facilitation and Customs Cooperation, pursuant to Article 4.30.2 (b) (i) (Committee on Rules of Origin and Procedures Related to Origin, Trade Facilitation and Customs Cooperation);
      (iii) Modify the format and instructions of the certificate of origin established in Annex 4.17 (Certificate of Origin and Instructions for its completion); and

(iv) Update the entities listed in Annex 8.2, pursuant to the provisions of Article 8.18 (Modifications and Rectifications).
(v) approve the implementation annexes referred to in Article 7.11 (Implementation Annexes).

Each Party shall implement any decision referred to in subparagraph (a) within the timeframe agreed by the Parties[1] and pursuant to its domestic legal procedures.

(b) Establish the committees and working groups that it deems relevant within the framework of this Additional Protocol;

(c) Issue interpretations on the provisions of this Additional Protocol;

(d) Seek the advice of persons or entities that it considers appropriate;

(e) Recommend amendments to be made to this Additional Protocol by the Parties; and

(f) Adopt other actions and measures, within the scope of its functions, which ensure that the objectives set out under this Additional Protocol are achieved.

[1] Chile shall implement the decisions of the Free Trade Commission referred to in Article 16.2.2 through implementation agreements pursuant to Article 54 section 1 paragraph 4 of the Political Constitution of the Republic of Chile.

## ANNEX 16.1: MEMBERS OF THE FREE TRADE COMMISSION

The Free Trade Commission shall comprise:

(a) In the case of Chile, the General Director of International Economic Relations, or his or her successor;

(b) In the case of Colombia, the Minister of Trade, Industry and Tourism, or his or her successor;

(c) In the case of Mexico, the Minister of Economy, or his or her successor; and

(d) In the case of Peru, the Minister of Foreign Trade and Tourism, or his or her successor.

## ANNEX 16.2: COMMITTEES, SUBCOMMITTEES AND WORKING GROUPS

1. Committees
   (a) Committee on Market Access (Article 3.17);

   (b) Committee on Rules of Origin and Procedures Related to Origin, Trade Facilitation and Customs Cooperation (Article 4.30);

   (c) Committee on Scarce Supply (Article 4.31);

   (d) Committee on Sanitary and Phytosanitary Measures (Article 6.14);

   (e) Committee on Technical Barriers to Trade (Article 7.9);

   (f) Committee on Government Procurement (Article 8.23);

   (g) Joint Committee on Investment and Services (Article 10.33); and

   (h) Committee on Financial Services (Article 11.18).

   (i) Regulatory Improvement Committee (Article 15 bis.6).

2. Subcommittees
   (a) Subcommittee on Services (Article 9.15); and

   (b) Subcommittee on Investment (Article 10.33.6).

3. Working Groups
   (a) Technical Working Group of the Authorised Economic Operator (Annex 5.8); and

   (b) Working Group of Annex 5.9 (Annex 5.9, paragraph 6).

## CHAPTER 17: DISPUTE RESOLUTION

### ARTICLE 17.1: Definitions

For the purposes of this Chapter:
**Complaining Party** means the Party that seeks the establishment of a Panel of Arbitrators pursuant to Article 17.7 and makes a complaint, that may comprise one or more Parties in accordance with Article 17.9;

**Consultee** means the Party that receives a request for consultation pursuant to Article 17.5;

**Consulting Party** means the Party that seeks consultation pursuant to Article 17.5;

**Consulting Parties** means the Consultee and the Consulting Party;

**Disputing Parties** means the complaining Party and the Party complained against;

**Party complained against** means the Party against whom the establishment of a Panel of Arbitrators is sought pursuant to Article 17.7 and against whom a complaint is made;

**Third party** means a Party that is not party to the dispute and that participates in the consultations in accordance with Article 17.5.10 or in the proceedings before the Panel of Arbitrators pursuant to Article 17.7.

### ARTICLE 17.2: General Provisions

1. The disputing Parties shall endeavour to reach an agreement on the interpretation and implementation of this Additional Protocol and they shall make every effort to reach a mutually satisfactory solution to any matter that may affect its operation.

2. This Chapter shall seek to offer the Parties an effective, efficient and transparent dispute resolution process with regard to their rights and obligations as set out in this Additional Protocol.

### ARTICLE 17.3: Scope of Application

Unless otherwise provided for in this Additional Protocol, the provisions of this Chapter shall apply to the prevention and resolution of any dispute that arises between the Parties[1] with regard to the interpretation or implementation of the provisions of this Additional Protocol or where a Party considers that:

(a) An existing or proposed measure of another Party is or may be inconsistent with the obligations set out in this Additional Protocol;

(b) Another Party has otherwise breached the obligations set out in this Additional Protocol, or

[1] For greater certainty, this Chapter shall not apply to disputes that arise between the Republic of Colombia and the Republic of Peru with regard to the standards which define the legal system of the Andean Community.

(c) An existing or proposed measure of another Party has caused or may cause the nullification or impairment of the benefits that the Party may have reasonably expected to receive from the implementation of any of the provisions of this Additional Protocol, pursuant to Annex 17.3.

**ARTICLE 17.4: Choice of Forum**

1. The disputes concerning single issues that arise in relation to the provisions of this Additional Protocol, the Agreement on the WTO or any other trade agreement to which the Parties are party, may be resolved in any of the said forums, as selected by the complaining Party.

2. Once the complaining Party has sought the establishment of a Panel of Arbitrators under this Chapter or under one of the agreements referred to in paragraph 1, or once the complaining Party has sought the establishment of a panel pursuant to the *Understanding on Rules and Procedures governing the Settlement of Disputes* that is part of the Agreement on the WTO, the forum selected shall be to the exclusion of the others.

**ARTICLE 17.5: Consultations**

1. Any Party may request in writing consultations with any other Party with regard to any matter referred to in Article 17.3. The consulting Party shall deliver the request to the other Party, explaining the reasons for the request, including identification of the applicable measure and indication of the legal grounds for the complaint. The consulting Party shall promptly send a copy of the request to the other Parties.

2. The Consultee shall promptly reply in writing to the request for consultations, within 10 days of receipt of such request.

3. The consultations shall be entered into in good faith.

4. Notwithstanding the provisions of paragraph 5, the consultations shall take place within 30 days of the date the request is received, unless the consulting Parties agree to a different timeframe.

5. In urgent circumstances, such as those related to perishable goods, the consultations shall be carried out within 15 days of the date the request is received, unless the consulting Parties agree to a different timeframe.

6. The consulting Parties shall ensure that consultations are organised in an expedited and timely manner, including the involvement of their competent authorities or other regulatory bodies with technical knowledge of the subject matter of the consultations.

7. The consulting Parties shall make every effort to reach a mutually satisfactory resolution of the matter undergoing consultation pursuant to the provisions of this Article. To this end, each consulting Party:

(a) Shall provide sufficient information to enable a full examination of the measure or subject matter of the consultations; and

(b) Shall treat confidential or proprietary information received during consultations on the same basis as the Party providing the information.

8. The consultations shall be confidential, notwithstanding the rights of the Parties in any other proceedings.

9. The consultations may be carried out in person or by any other technological means agreed by the consulting Parties. If in person, consultations must be carried out in the territory of the consultee, unless the consulting Parties agree otherwise.

10. Any of the Parties that considers itself to have an interest in the subject matter of the consultations, may participate in the consultations in the capacity of a third party, if it informs the other Parties in writing within five days of receiving a copy of the request for consultations.

11. Parties participating in consultations in the capacity of a third party may express their opinions on the matter at issue, during consultations.

12. The involvement of third parties shall not affect the consultations, in order that the consulting Parties may achieve a mutually satisfactory solution to the matter at issue.

**ARTICLE 17.6: Intervention of the Free Trade Commission**

1. Any of the consulting Parties may make a written request for the intervention of the Free Trade Commission, in any of the following cases:

(a) where the consultee does not reply to the request for consultations pursuant to Article 17.5.2; or

(b) where the subject matter of the consultations is not resolved within the timeframe established in Article 17.5.4 or Article 17.5.5, as appropriate.

2. The consulting Party or the consultee shall deliver the request referred to in paragraph 1 to the other Party, as appropriate, setting out the reasons for the request, including identification of the measure at issue and an indication of the legal grounds for the complaint. A copy of the request must be promptly sent to the other Parties.

3. Unless the consulting Parties agree to a different timeframe, the Free Trade Commission must meet within 10 days of receipt of the request and it shall endeavour for the consulting Parties to reach a mutually satisfactory resolution on the subject matter of the consultations within 30 days of their meeting. To this end, the Free Trade Commission may:

(a) Call on technical advisers or create working groups on the subject as it deems necessary;

(b) Have recourse to good offices, conciliation, mediation, or other alternative dispute resolution mechanisms; or

(c) Make recommendations.

4. The Free Trade Commission may consolidate two or more proceedings regarding the same measure or matter before it pursuant to this Article. The Free Trade Commission may consolidate two or more proceedings regarding other matters before it pursuant to this Article where it determines them appropriate to be examined jointly.

**ARTICLE 17.7: Establishment of a Panel of Arbitrators**

1. The complaining Party may make a written request to the Party complained against for the establishment of a Panel of Arbitrators, when:

(a) The Free Trade Commission has not convened within 10 days of the delivery of the request for intervention, or within the timeframe agreed by the consulting Parties, pursuant to Article 17.6.3;

(b) The matter has not been resolved within 30 days of the meeting of the Free Trade Commission, pursuant to Article 17.6.3;

(c) Several proceedings have been consolidated pursuant to Article 17.6.4 and the matter has not been resolved within 30 days of the meeting of the Free Trade Commission in the most recent consolidated proceedings; or

(d) The matter has not been resolved within any other timeframe agreed by the consulting Parties.

2. The complaining Party shall deliver the written request for establishment of the Panel of Arbitrators to the Party complained against. The complaining Party shall indicate the reasons for its request, including identification of the measure or other matter at issue and indication of the legal grounds for the complaint. A copy of the request must be promptly sent to the other Parties.

3. No Party may request the establishment of a Panel of Arbitrators to examine a proposed measure.

**ARTICLE 17.8: Participation of a Third Party**

1. A Party may participate in the arbitral proceedings in the capacity of a third party, upon delivery of a written notice to the disputing Parties within 10 days of delivery of the request for establishment of a Panel of Arbitrators. In the event that a Party makes such submission after this timeframe has elapsed, the Panel of Arbitrators may authorise that Party's involvement in the capacity of a third party, based on consultation with the disputing Parties, on the condition that such involvement does not hinder the proper execution of the proceedings or undermine the interests of the disputing Parties.

2. A third party has the right to:

(a) Make written submissions to the Panel of Arbitrators;

(b) Attend and submit oral arguments in all non-confidential hearings of the Panel of Arbitrators; and

(c) Receive a copy of the documents submitted by the disputing Parties.

**ARTICLE 17.9: Multi-party Proceedings**

Parties that comply with the requirements established in Article 17.7 may act jointly as a complaining Party in arbitral proceedings. In such cases, the Parties must agree to appoint the same arbitrator and the same candidates to chair the Panel of Arbitrators, pursuant to Article 17.13.

**ARTICLE 17.10: Consolidation of Proceedings**

Wherever possible, when more than one Party requests the establishment of a Panel of Arbitrators for the same measure and on the same legal basis, a single Panel of Arbitrators shall be established to examine such requests.

**ARTICLE 17.11: Terms of Reference of the Panel of Arbitrators**

1. Unless the Parties agree otherwise, for 15 days from the delivery of the request for the establishment of a Panel of Arbitrators, the terms of reference for the Panel of Arbitrators shall be:

*"To examine, objectively and in the light of the relevant provisions of this Additional Protocol, the matter referred to in the request for the establishment of the Panel of Arbitrators, and to make conclusions, rulings and recommendations pursuant to the provisions of Articles 17.15 and 17.16."*

2. If the complaining Party claims in the request for establishment of the Panel of Arbitrators that a matter has nullified or impaired benefits pursuant to Article 17.3 (c), the terms of reference shall so indicate.

3. Where the complaining Party includes in its request the requirement for the Panel of Arbitrators to make conclusions on the level of adverse trade affects caused by failure to comply with the obligations of this Additional Protocol, the terms of reference shall so indicate.

**ARTICLE 17.12: Requirements of the Arbitrators**

1. All arbitrators must:

(a) Have expertise or experience in law, international trade, other matters covered by this Additional Protocol, or the resolution of disputes arising under international trade agreements;

(b) Be chosen strictly on the basis of objectivity, impartiality, reliability and sound judgement;

(c) Be independent of, and not be affiliated with or take instructions from any Party; and

(d) Comply with the Code of Conduct adopted by the Free Trade Commission.

2. Persons that have participated in any of the alternative dispute resolution mechanisms referred to in Articles 17.6.3 (b) or 17.23 may not serve as arbitrators in the same dispute.

**ARTICLE 17.13: Selection of the Panel of Arbitrators**

1. The Panel of Arbitrators shall comprise three members.

2. Within 20 days of the delivery of request for the establishment of the Panel of Arbitrators, each disputing Party shall appoint an arbitrator, who may be a national and propose up to four candidates to serve as chair of the Panel of Arbitrators. The chair of the Panel of Arbitrators may not be a national nor permanent resident in the country of any of the disputing Parties. This information shall be informed in writing to the other disputing Party.

3. If a disputing Party does not appoint an arbitrator within the timeframe stipulated in paragraph 2, it shall be chosen by the other Party from the indicative list of experts that may be members of WTO panels of the disputing Party that did not appoint an arbitrator. In the event that the candidates on that list are unavailable, an arbitrator shall be selected from the candidates of the indicative list of experts that may be members of WTO panels of any of the Parties other than the disputing Parties.

4. Within 20 days of the deadline established in paragraph 2, the disputing Parties shall appoint by common accord the chair of the Panel of Arbitrators from among the proposed candidates. If the disputing Parties have not reached an agreement by the end of this 20-day period, the chair shall be selected by the representative of the *pro tempore* presidency drawing lots from among the proposed candidates within a timeframe of seven additional days.

5. If an arbitrator cannot fulfil his or her role, resigns or is removed, a successor shall be selected in accordance with this Article. Any procedural timeframe shall be suspended from the date on which the arbitrator cannot fulfil his or her position, resigns or is removed, and end on the date the successor is selected. The successor shall assume the role and responsibilities of the original arbitrator.

6. Any disputing Party may refuse an arbitrator or candidate in accordance with the procedural rules of the Panel of Arbitrators.

**ARTICLE 17.14: Procedural Rules of the Panel of Arbitrators**

1. Within six months of the date that this Additional Protocol enters into force, the Free Trade Commission shall approve the procedural rules.

2. Unless the disputing Parties agree otherwise, a Panel of Arbitrators established in accordance with this Chapter shall comply with the procedural rules. A Panel of Arbitrators may establish supplementary procedural rules that do not conflict with the provisions of this Protocol, based on consultation with the Parties.

3. The procedural rules shall ensure:
   (a) That each disputing Party has the opportunity to provide at least initial and rebuttal written submissions;

(b) That each disputing Party has the right to at least one hearing before the Panel of Arbitrators;

(c) That each disputing Party has the right to make oral submissions;

(d) That the hearings of the Panel of Arbitrators are open to the public,[2] except when information designated as confidential by one of the disputing Parties is being discussed. Notwithstanding the foregoing, where a disputing Party presents valid reasons for their request, and with the agreement of the other disputing Party, said hearings may be closed to the public;

(e) That deliberations by the Panel of Arbitrators and documents designated as confidential by one of the disputing Parties remain confidential;

(f) That all information and documents submitted to the Panel of Arbitrators by a disputing Party are made available to the other disputing Parties; and

(g) That information designated as confidential by any of the disputing Parties is protected.

4. Notwithstanding the provisions of paragraph 3, any disputing Party may make public statements on their opinions regarding the dispute, but it shall treat the information, documents and papers submitted by the other disputing Party to the Panel of Arbitrators as confidential when that other Party has designated the information as such.

5. Where a disputing Party submits information, documents or papers qualified as confidential, that Party must also submit a non-confidential summary of the information or papers that may be made available to the public, within 30 days of a request by the other disputing Party.

6. After notifying the disputing Parties, the Panel of Arbitrators may, at the request of a Party, or on its own initiative, compile information and seek technical advice from any person or entity it deems appropriate pursuant to the procedural rules and as agreed by the disputing Parties within 10 days of the notification. In the absence of agreement between the disputing Parties, the Panel of Arbitrators shall establish such terms. The Panel of Arbitrators shall provide the disputing Parties with a copy of any opinion or advice received and an opportunity to comment on such.

7. The Panel of Arbitrators shall seek to adopt decisions, including its award, by consensus. If this is not possible, the Panel of Arbitrators may adopt decisions by majority vote.

8. Each disputing Party shall assume the cost of the arbitrator it appoints, as well as the

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[2] Unless the Disputing Parties agree otherwise, public attendance of the hearings of the Panel of Arbitrators shall be through simultaneous transmission by means of closed-circuit television (CCTV) or any other technological means.

arbitrator's expenses. The cost of the chair of the Panel of Arbitrators and other expenses associated with proceedings shall be assumed by the disputing Parties in equal parts, in accordance with the procedural rules.

**ARTICLE 17.15: Draft Award of the Panel of Arbitrators**

1. The Panel of Arbitrators shall notify their draft award to the disputing Parties within 90 days of the date of appointment of the last arbitrator, unless the disputing Parties agree on a different timeframe.

2. In urgent circumstances, the Panel of Arbitrators shall notify the disputing Parties of the draft award within 60 days of the date of appointment of the last arbitrator, unless the disputing Parties agree on a different timeframe.

3. In extraordinary cases, should the Panel of Arbitrators find that it cannot issue the draft award within 90 days or 60 days in urgent circumstances, it must inform the disputing Parties in writing of the reasons for the delay together with an estimate of when the draft award shall be issued. Any delay shall not exceed 30 days, unless the disputing Parties agree on a different timeframe.

4. The Panel of Arbitrators shall base its draft award on the relevant provisions of this Additional Protocol, in accordance with the customary interpretation norms of public international law, the papers and oral submissions of the disputing Parties, and any information and technical advice that it has received in accordance with this Additional Protocol.

5. The draft award shall include:
   (a) A summary of the written and oral submissions;

   (b) The conclusions based on factual and legal grounds;

   (c) A decision on whether a disputing Party has complied or failed to comply with its obligations under this Additional Protocol, or if the measure at issue has caused nullification or impairment in terms of Article 17.3 (c), or any other decision requested in the terms of reference;

   (d) Recommendations, where appropriate, for the Party complained against to bring its measures into line with this Additional Protocol. Furthermore, it may suggest the manner in which the Party complained against may implement the arbitral award.

6. The conclusions and decisions of the Panel of Arbitrators and, where appropriate, any recommendations, may not enhance or reduce the rights and obligations of the Parties as established under this Additional Protocol.

7. Any of the disputing Parties may submit written observations on the draft award to the Panel of Arbitrators within 15 days of being notified, or within any other timeframe established by the Panel of Arbitrators.

8. After hearing said observations, the Panel of Arbitrators may reconsider its draft award and carry out any further review that it considers appropriate.

**ARTICLE 17.16: Final Award of the Panel of Arbitrators**

1. The Panel of Arbitrators shall inform the disputing Parties of the final award and, where appropriate, of divergent opinions on matters on which the decision was not unanimous, within 30 days of notification of the draft award, unless the disputing Parties agree on a different timeframe.

2. The final award shall be definitive, without appeal and binding for the disputing Parties.

3. Unless the disputing Parties agree otherwise, any of them may publish the final award of the Panel of Arbitrators 15 days after being notified, subject to the protection of confidential information.

4. The Panel of Arbitrators may not reveal the identity of the arbitrators that voted with the majority or the minority.

**ARTICLE 17.17: Request for Clarification by the Panel of Arbitrators**

1. Within 10 days of notification of the final award, a disputing Party may make a written request for the Panel of Arbitrators to clarify any conclusion, decision or recommendation of the final award that it considers ambiguous. The Panel of Arbitrators shall reply to such request within 10 days of its submission.

2. Clarification by the Panel of Arbitrators may not substantially alter its conclusions, decisions or recommendations.

3. The submission of a request as described in paragraph 1 of this Article shall not affect the timeframes referred to in Article 17.20.

**ARTICLE 17.18: Suspension and Termination of Proceedings**

1. The disputing Parties may agree for the proceedings of the Panel of Arbitrators to be suspended at any time for a period of no more than 12 months from the date that such agreement is made. If the proceedings of the Panel of Arbitrators have been suspended for more than 12 months, the terms of reference of the Panel of Arbitrators shall cease to have effect, unless the disputing Parties agree otherwise. If the terms of reference of the Panel of Arbitrators cease to have effect and the disputing Parties have not resolved the dispute, none of this Article shall prevent a disputing Party from initiating a new proceeding concerning the same matter.

2. The disputing Parties may terminate the proceedings before a Panel of Arbitrators at any time after the issue of the final award by means of a joint submission to the presidency of the Panel of Arbitrators.

**ARTICLE 17.19: Compliance with the Final Award of the Panel of Arbitrators**

1. Once the disputing Parties have been informed of the final award of the Panel of Arbitrators, they shall agree to comply with the final award on the terms of the decisions, conclusions and recommendations of the Panel of Arbitrators.

2. When the Panel of Arbitrators determines in the final award that the measure is inconsistent with the provisions of this Additional Protocol or that a measure of that Party is cause for nullification or impairment under Article 17.3 (c), the Party complained against must, wherever possible, eliminate the breach, nullification or impairment.

**ARTICLE 17.20: Compensation or Suspension of Benefits**

1. If the disputing Parties fail to reach an agreement on compliance with the final award or if they do not reach a mutually satisfactory resolution of the dispute within 30 days of the notice of the final award, the Party complained about, at the request of the complaining Party, shall initiate negotiations with a view to establishing a mutually agreeable compensation. Such compensation shall be of a temporary nature and it shall be granted until the dispute is resolved.

2. If compensation has not been requested or if the disputing Parties:
   (a) Have not reached an agreement on compliance with the final award or a mutually satisfactory resolution of the dispute within 30 days of notice of the final award;

   (b) Fail to reach an agreement on compensation pursuant to paragraph 1 within 30 days of submission of a request for compensation by the complaining Party; or

   (c) Have reached an agreement on compliance with the final award or a mutually satisfactory resolution of the dispute or on compensation in accordance with this Article and the complaining Party deems that the Party complained against has not complied with the terms of the agreement reached, then the complaining Party may at any time begin to suspend benefits and other obligations to the Party complained about as established in this Additional Protocol, once the complaining Party has informed the Party complained about. The level of suspension shall be equivalent to the level of the nullification or impairment.

3. In the notice of initiation of suspension, the complaining Party shall specify the date on which the suspension shall take effect, the level of concessions and other obligations that it plans to suspend and the boundaries within which the suspension of benefits shall apply. The suspension of benefits shall take effect no earlier than five days after such notice.

4. When considering benefits and other obligations to suspend in accordance with this Article:
   (a) The complaining Party shall firstly seek to suspend benefits and other obligations in the same sector or sectors which are affected by the measure that the Panel of Arbitrators has determined to be inconsistent with this Additional Protocol or that has caused nullification or impairment under the terms of Article 17.3 (c); and

(b) The complaining Party that deems that it is not feasible or effective to suspend benefits or other obligations within the same sector or sectors, may suspend benefits or other obligations in another sector or other sectors. The complaining Party must indicate the reasons which form the basis for such decision in the notice to initiate suspension.

5. The suspension of benefits or other obligations shall be temporary and the complaining Party shall only apply suspension until:

(a) The measure considered to be inconsistent is brought into line with this Additional Protocol or the nullification or impairment is eliminated pursuant to Article 17.3 (c);

(b) The Panel of Arbitrators provided for in Article 17.22 determines in its final award that the Party complained about has complied; or

(c) The disputing Parties reach an agreement on the dispute resolution.

**ARTICLE 17.21: Urgent Circumstances**

1. In urgent circumstances,[3] the timeframes established in this Chapter shall be halved, unless the Chapter establishes otherwise.

2. Notwithstanding the provisions of Article 17.15.2, the Panel of Arbitrators shall apply the timeframe established in Article 17.15.1, where the complaining Party indicates this in the request for establishment of the Panel of Arbitrators.

**ARTICLE 17.22: Review of Compliance and Suspension of Benefits**

1. Any disputing Party may request in writing to the other Party that the original Panel of Arbitrators established in accordance with Article 17.7 be reconstituted so that it may individually or jointly make a decision:

(a) As to whether the level of benefit suspension applied by the complaining Party in accordance with Article 17.20 is manifestly excessive; or

(b) On any disagreement between the disputing Parties in terms of the existence of measures adopted to comply with the final award of the Panel of Arbitrators, or with regard to consistency of any measure adopted for the purpose of compliance.

2. The requesting Party shall indicate in the request the specific measures or matters in dispute and it shall provide a brief summary of the legal grounds for the complaint in order to clearly present the issue.

3. The Panel of Arbitrators shall be reconstituted following delivery of the request and it shall present its draft award to the disputing Parties within:

(a) 45 days of its reconstitution when reviewing the request pursuant to paragraph 1 (a) or (b); or

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[3] For the purposes of this Chapter, it is understood that disputes related to agricultural goods are urgent circumstances.

(b) 60 days of its reconstitution when reviewing the request pursuant to paragraph 1 (a) and (b).

4. The Panel of Arbitrators shall submit its final award to the disputing Parties within:

(a) 15 days of submission of the draft award, when reviewing the request pursuant to paragraph 1 (a) or 1 (b); or

(b) 20 days of submission of the draft award, when reviewing the request pursuant to paragraph 1 (a) and 1 (b).

5. If any of the original arbitrators cannot be part of the Panel of Arbitrators, the provisions of Article 17.7 shall be applied.

6. If the Panel of Arbitrators has before it a matter pursuant to paragraph 1 (a) and decides that the level of suspended benefits is manifestly excessive, it shall establish the level of benefits that it deems to have an equivalent effect. In this case, the complaining Party shall adjust the suspension applied to such level.

7. If the Panel of Arbitrators has before it a matter pursuant to paragraph 1 (b) and decides that the Party complained against has complied, the complaining Party shall immediately terminate the suspension of benefits. If the complaining Party comprises two or more Parties and the Panel of Arbitrators decides that the Party complained against has brought its measure in line or complied with the final award of the Panel of Arbitrators, the complaining Party shall immediately terminate the suspension of benefits.

**ARTICLE 17.23: Good Offices, Conciliation and Mediation**

1. The disputing Parties may agree at any time to the use of an alternative dispute resolution mechanism such as good offices, conciliation or mediation.

2. Such alternative dispute resolution mechanisms shall be implemented pursuant to the proceedings agreed upon by the disputing Parties.

3. Any of the disputing Parties may at any time initiate, suspend or terminate the proceedings established under this Article.

4. The good offices, conciliation and mediation procedures are confidential and without prejudice to the rights of the disputing Parties in any other proceedings.

**ARTICLE 17.24: Administration of Dispute Resolution Proceedings**

1. Each Party must:
   (a) Designate a permanent office to provide administrative support to the Panels of Arbitrators covered by this Chapter and to perform other functions as instructed by the Free Trade Commission; and

   (b) Communicate the registered address of its designated office and the official responsible for the office's administration to the Free Trade Commission.

2. Each Party shall be responsible for the operation of its designated office.

## ANNEX 17.3: NULLIFICATION AND IMPAIRMENT

A Party may resort to the dispute resolution mechanism described in this Chapter when, on the basis of the application of a measure that does not contravene this Additional Protocol, it considers that the benefits that it could have reasonably expected to receive from the application of the Chapters below have been nullified or impaired:

1. Market Access.
2. Rules of Origin and Procedures Related to Origin.
3. Sanitary and Phytosanitary Measures.
4. Technical Barriers to Trade.
5. Government Procurement.
6. Cross-Border Trade in Services.

## CHAPTER 18: EXCEPTIONS

### ARTICLE 18.1: General Exceptions

1. For the purposes of Chapters 3 (Market Access), 4 (Rules of Origin and Procedures Related to Origin), 5 (Trade Facilitation and Customs Cooperation), 6 (Sanitary and Phytosanitary Measures), 7 (Technical Barriers to Trade) and 13 (Electronic Trade), Article XX of the GATT of 1994 and its interpretive notes are incorporated into this Additional Protocol and are made part thereof, *mutatis mutandis.* The Parties understand that the measures referred to in Article XX (b) of the GATT of 1994 include environmental measures necessary for protecting human, animal or plant life or health, and that Article XX (g) of the GATT of 1994 applies to measures related to the conservation of non-renewable natural resources, living or non-living.

2. For the purposes of Chapters 9 (Cross-Border Trade in Services), 12 (Maritime Services), 13 (Electronic Trade) and 14 (Telecommunications), Article XIV of the GATS (including its footnotes) is incorporated into this Additional Protocol and is made part thereof, *mutatis mutandis.* The Parties understand that the measures referred to in Article XIV (b) of the GATS include environmental measures necessary for protecting human, animal or plant life or health.

### ARTICLE 18.2: Public Order

The Parties understand that nothing in Chapter 10 (Investment) shall be construed as preventing a Party from adopting or maintaining measures concerning natural persons of another Party that are necessary for public order,[1] provided that the measure specified is not applied in a way that constitutes a form of arbitrary or unjustified discrimination.

### ARTICLE 18.3: Essential Security

Nothing in this Additional Protocol shall be construed as:

(a) Requiring a Party to provide any information the disclosure of which it determines to be contrary to its essential security interests;

(b) Preventing a Party from adopting measures that it deems necessary for the protection of its essential security interests with regard to:
   (i) Fissionable and fusionable materials or the materials from which they are derived;
   (ii) The traffic of arms, ammunition and war supplies, and other goods and materials of this type or related to the provision of services which are directly or indirectly intended for the sourcing or procurement of military establishments; or
   (iii) Measures adopted in war times or during other international relations emergencies; or

[1] Notwithstanding the provisions of this Article, the Parties understand that the rights and obligations arising from Chapter 10 (Investment) shall apply.

(c) Preventing a Party from adopting measures in order to comply with obligations assumed under the United Nations Charter for peacekeeping and international security.

**ARTICLE 18.4: Taxation Measures**

For the purposes of this Article:

1. **Taxation agreement** means an agreement to avoid double taxation or another international agreement or arrangement concerning taxation, and

2. **Taxes** and **taxation measures** do not include:
   (a) Customs duties, as defined in Article 2.1 (General Definitions); or

   (b) The measures listed in subparagraphs (b), (c) and (d) of the definition of customs duties of Article 2.1 (General Definitions).

3. Except for the provisions of this Article, no other provisions in this Additional Protocol shall apply to taxation measures.

4. Nothing in this Additional Protocol shall affect the rights and obligations of any of the Parties that arise from any taxation agreement. In the event of inconsistency between this Additional Protocol and any of these agreements, the agreement shall prevail to the extent of the inconsistency.

5. If a matter arises within a dispute as to whether there is inconsistency between a taxation agreement and this Additional Protocol, the matter must be referred to the designated authorities of the Parties involved in the dispute. The designated authorities shall review the matter and decide whether such inconsistency exists. If within six months of submitting the matter to the designated authorities, they make a decision on the measure which is the origin of the dispute, no proceedings related to this measure may be initiated under Article 17.7 (Establishment of a Panel of Arbitrators) and no complaint may be submitted on the measure under Article 10.16 (Submission of a Claim to Arbitration).

6. Furthermore, no proceedings or claims related to the measure may be initiated while the matter is under consideration by the designated authorities. Where the matter has been referred to the designated authorities and they have not resolved it within six months of said referral, the tribunal with jurisdiction over the complaint shall decide on the matter only with regard to the existence of the inconsistency.

7. Notwithstanding paragraph 3:
   (a) Article 3.3 (National Treatment) and other provisions of this Additional Protocol that are necessary to give effect to that Article shall apply to the taxation measures to the same extent as Article III of the GATT of 1994; and

   (b) Article 3.10 (Taxes, Levies or Export Charges) applies to taxation measures.

8. Subject to paragraph 3:
   (a) Articles 9.3 (National Treatment), 11.3 (National Treatment) and 11.6 (Cross-Border

Trade) apply to the taxation measures on income, capital gains or taxable capital of enterprises related to the purchase or consumption of specific services, except if no provision in this subparagraph prevents a Party from conditioning the receipt or continued receipt of an advantage related to the purchase or consumption of specific services to the requirement of supplying a service in its territory; and

(b) Articles 9.3 (National Treatment), 9.4 (Most Favoured Nation Treatment), 10.4 (National Treatment) and 10.5 (Most Favoured Nation Treatment), 11.3 (National Treatment) and 11.4 (Most Favoured Nation Treatment) apply to all taxation measures except for taxation on income, capital gains or taxable capital of enterprises, wealth tax, successions and generation-skipping transfers;

However no provision in the Articles referred to in subparagraphs (a) and (b) shall apply:

(a) To a most favoured nation treatment with regard to an advantage granted by a Party under any taxation agreement;

(b) To a non-conforming provision of any existing taxation measure;

(c) To the continuation or prompt renewal of a non-conforming provision of any existing taxation measure;

(d) To a reform of a non-conforming measure of any existing taxation measure, insofar as it does not reduce its level of conformity, at the time of implementation, with any of those Articles;

(e) To a new taxation measure intended to ensure the fair and effective application or collection of taxes (including, for greater certainty, any measure adopted by a Party to ensure compliance with their taxation system or to prevent tax evasion or tax avoidance) that does not arbitrarily discriminate between individuals, goods or services of the Parties;[2]

(f) To a provision that conditions the receipt, or continued receipt of an advantage related to fiduciary pension fund or pension plan contributions, or to income generated by said funds or plans, provided that the Party maintains continued jurisdiction over the fiduciary pension fund or pension plan or other like arrangement; or

(g) To any specific tax on insurance premiums introduced by a Party to the extent that the tax is covered, for another Party, by one of subparagraphs (d), (e) or (f).

9. Subject to the provisions of paragraph 3, and notwithstanding the rights and obligations of the Parties as set out in paragraph 4, Articles 10.8.2, 10.8.3 and 10.8.4 (Performance Requirements), shall apply to taxation measures.

[2] Arbitrary discrimination shall not be considered to exist between persons who do not have like circumstances, specifically, in terms of their place of residence or registered address, or the place where their capital is invested.

10. Article 10.12 (Expropriation and Compensation) shall apply to taxation measures. However, no investor may invoke Article 10.12 (Expropriation and Compensation) as the grounds for a complaint when in accordance with this paragraph it has been determined that the measure does not constitute expropriation. An investor that intends to invoke Article 10.12 (Expropriation and Compensation) in relation to a taxation measure must first submit the issue of whether the measure constitutes an expropriation, at the same time as that investor submits notice of intention to submit a claim to arbitration to the designated authorities pursuant to Article 10.16 (Submission of a Claim to Arbitration). If within six months of the matter being submitted the designated authorities fail to reach agreement on whether the measure constitutes an expropriation, the investor may submit a claim to arbitration in accordance with Article 10.16 (Submission of a Claim to Arbitration).

11. For the purposes of this Article, designated authorities means:

(a) In the case of Chile, the Undersecretariat of Finance, or its successor;

(b) In the case of Colombia, the Technical Department of the Ministry of Finance and Public Credit, or its successor;

(c) In the case of Mexico, the Ministry of Finance and Public Credit, or its successor; and

(d) In the case of Peru, the Ministry of Economy and Finance, or its successor.

**ARTICLE 18.5: Disclosure of Information**

No provision in this Additional Protocol shall be construed as compelling a Party to provide or give access to confidential information the disclosure of which may prevent compliance with its legislation, be contrary to the public interest, or hinder the legitimate commercial interests of particular public or private enterprises.

**ARTICLE 18.6: Temporary Safeguard Measures**

1. Nothing in this Additional Protocol shall be construed as preventing a Party from adopting or maintaining measures that restrict the transfers or payments from the current account in the event of serious balance of payment and external financial difficulties or a threat thereof.

2. Nothing in this Additional Protocol shall be construed as preventing a Party from adopting or maintaining measures that restrict the transfers or payments related to capital movements:

(a) In the event of serious balance of payment and external financial difficulties or a threat thereof; or

(b) When, in extraordinary circumstances, capital payments or transfers cause or threaten to cause serious difficulties in macro-economic management, in particular in monetary or foreign exchange policy.

3. Any measure that is adopted or maintained in accordance with paragraphs 1 and 2

must:

(a) Be applied in a non-discriminatory manner so that no Party receives a less favourable treatment than any other Party or non-Party;

(b) Be consistent with the Articles of Agreement of the International Monetary Fund;

(c) Prevent unnecessary damage to commercial, economic and financial interests of another Party;

(d) Not go beyond that which is necessary to overcome the circumstances set out in paragraphs 1 or 2; and

(e) Be temporary and progressively withdrawn as soon as the circumstances set out in paragraphs 1 and 2 improve.

4. With regard to trade of goods, no provision of this Additional Protocol shall be construed as preventing a Party from adopting measures to restrict importations in order to safeguard its external financial position or balance of payments. These measures which restrict importations must be consistent with the GATT of 1994 and the Understanding on Balance of Payments Provisions of the GATT of 1994.

5. With regard to trade in services, no provision in this Additional Protocol shall be construed as preventing a Party from restricting trade in order to safeguard its external financial position or balance of payments. These restrictive measures must be consistent with the GATS.

6. A Party that adopts or maintains measures in accordance with paragraphs 1, 2, 4 or 5 must:

(a) Provide prior notice of the measures adopted or maintained to the other Parties, including any modification thereof; and

(b) Promptly commence consultations with the other Parties to review the measures that it has previously maintained or adopted:

(i) In the case of capital movements, respond to any other Party that makes an enquiry on the measures adopted by the former Party, provided that said enquiry is not made outside the framework of this Additional Protocol.

(ii) In the case of current account transactions, provided that consultations related to the measures adopted are not carried out before the WTO, a Party must, if required to, promptly commence consultations with any interested Party.

**ANNEX 18-A: SECURITY**

1. Notwithstanding the provisions of Article 18.3 (Essential Security), and in the case of Peru and the respective contracting Party as mentioned below, and with regard to Chapters 10 (Investment) and 11 (Financial Services), with the exception of Article 11.6 (Cross-Border Trade), the following is applied, *mutatis mutandis*:

(a) In the case of Peru and Chile, Article 17.2 (Essential Security) of the Chapter on Exceptions to the Free Trade Agreement between both Parties, in force since 1 January 2009, which modifies and substitutes ECA No. 38 signed between both Parties;

(b) In the case of Peru and Colombia, Article 8.4 (b) (General Exceptions) of the Agreement on Promotion and Reciprocal Protection of Investments between both Parties, in force since 30 December 2010; and

(c) In the case of Peru and Mexico, Article 18.2 (National Security) of the Chapter on Exceptions to the Trade Integration Agreement between both Parties, in force since 1 February 2012.

2. In the event of the accession of a new State to this Additional Protocol, this Annex shall be updated in the respective Accession Protocol to incorporate the exceptions on security applicable between Peru and the acceding State with regard to the obligations contained in Chapters 10 (Investment) and 11 (Financial Services) with the exception of Article 11.6 (Cross-Border Trade).

## CHAPTER 19: FINAL PROVISIONS

### ARTICLE 19.1: Annexes, Appendices and Footnotes

The annexes, appendices and footnotes of this Additional Protocol constitute an integral part thereof.

### ARTICLE 19.2: Depository

The Republic of Colombia shall be the Depository of this Additional Protocol.

### ARTICLE 19.3: Entry into force

1. The entry into force of this Additional Protocol shall be subject to compliance with the internal legal procedures of each Party.

2. This Additional Protocol shall enter into force on the first day of the third month following the date on which the Depository receives final notification from each Party to the effect that the procedures cited in paragraph 1 have been completed, or on any other date that the Parties may agree to.

3. Without prejudice to the provisions of paragraph 2, Colombia may enact provisional application of this Additional Protocol prior to its entry into force, pursuant to its internal legislation and international law.

### ARTICLE 19.4: Amendments

1. The Parties may enact any amendment in writing to this Additional Protocol.

2. Any such amendment to this Additional Protocol shall enter into force and form part thereof, pursuant to the procedure set down in Article 19.3.

### ARTICLE 19.5: Amendments to the WTO Agreement

Should any provision of the WTO Agreement which the Parties have incorporated into this Additional Protocol be amended, the Parties shall hold consultations with a view to assessing the appropriateness of amending the relevant provision of this Additional Protocol.

### ARTICLE 19.6: Termination

1. None of the Parties may terminate this Additional Protocol with having terminated the Framework Agreement of the Pacific Alliance.

2. Termination of the Framework Agreement of the Pacific Alliance shall bring about termination of this Additional Protocol pursuant to the provisions of Article 16 of said Agreement.

3. Without prejudice to the provisions of paragraphs 1 and 2, Chapter 10 (Investment)

shall remain in force for a period of five years counted from termination of this Additional Protocol, with respect to investments made at least one year prior to the date of said termination.

**ARTICLE 19.7: Accession**

The accession of other States to this Additional Protocol shall take effect 60 days after receipt of the instrument of accession, pursuant to the provisions of Article 11 of the Framework Agreement of the Pacific Alliance.

**ARTICLE 19.8: Reservations**

No reservations may be made against this Additional Protocol.

Signed in the Cultural and Tourist District of Cartagena de Indias, Republic of Colombia on 10 February 2014, in one original copy, in the Spanish language, to be held in the custody of the Depository, which shall provide each Party with duly authenticated copies of this Additional Protocol

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|---|---|
| FOR THE REPUBLIC OF COLOMBIA | FOR THE GOVERNMENT OF THE REPUBLIC OF CHILE |
| [signed] | [signed] |
| JUAN MANUEL SANTOS CALDERÓN | SEBASTIAN PIÑERA ECHENIQUE |
| FOR THE UNITED MEXICAN STATES | FOR THE REPUBLIC OF PERU |
| [signed] | [signed] |
| ENRIQUE PEÑA NIETO | OLLANTA HUMALA TASSO |