FREE TRADE AGREEMENT

BETWEEN

THE EFTA STATES

AND

THE REPUBLIC OF CHILE

PREAMBLE

The Republic of Iceland, the Principality of Liechtenstein, the Kingdom of Norway and the Swiss Confederation (hereinafter referred to as "the EFTA States"),

and

The Republic of Chile (hereinafter referred to as "Chile"),

hereinafter collectively referred to as "the Parties", resolved to:

STRENGTHEN the special bonds of friendship and co-operation between their nations;

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

ESTABLISH clear and mutually advantageous rules governing their trade;

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

ENSURE a stable and predictable environment for business planning and investment;

FOSTER creativity and innovation by protecting intellectual property rights;

BUILD on their respective rights and obligations under the Marrakech Agreement establishing the World Trade Organization and other multilateral and bilateral instruments of co-operation;

ENSURE that the gains from trade liberalisation are not offset by the erection of private, anti-competitive barriers;

ENHANCE the competitiveness of their firms in global markets;

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

PROMOTE environmental protection and conservation, and sustainable development;

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

CONVINCED that this Agreement will create conditions encouraging economic, trade and investment relations between them;

HAVE AGREED, in pursuit of the above, to conclude the following Agreement (hereinafter referred to as "this Agreement"):

CHAPTER I

INITIAL PROVISIONS

ARTICLE 1

Establishment of a free trade area

The EFTA States and Chile hereby establish a free trade area by means of this Agreement and the complementary agreements on trade in agricultural goods, concurrently concluded between Chile and each individual EFTA State.

ARTICLE 2

Objectives

1. The objectives of this Agreement, as elaborated more specifically through its principles and rules, are to:

(a) achieve the progressive and reciprocal liberalisation of trade in goods, in conformity with Article XXIV of the General Agreement on Tariffs and Trade (hereinafter referred to as "the GATT 1994");

(b) achieve the liberalisation of trade in services, in conformity with Article V of the General Agreement on Trade in Services (hereinafter referred to as "the GATS");

(c) open the government procurement markets of the Parties;

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

(e) substantially increase investment opportunities in the free trade area;

(f) provide adequate and effective protection and enforcement of intellectual property rights; and

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

ARTICLE 3

Territorial application

1. Without prejudice to Annex I, this Agreement shall apply to the territory of each Party, as well as to areas beyond the territory in which each Party may exercise sovereign rights or jurisdiction in accordance with international law.

2. Annex II shall apply with respect to Norway.

ARTICLE 4

Relation to other international agreements

The Parties confirm their rights and obligations under the Marrakech Agreement establishing the World Trade Organization and the other agreements negotiated thereunder (hereinafter referred to as "the WTO Agreement") to which they are party, and under any other international agreement to which they are a party.

ARTICLE 5

Trade and economic relations governed by this Agreement

1. The provisions of this Agreement apply to the trade and economic relations between, on the one side, the individual EFTA States and, on the other side, Chile, but not to the trade relations between individual EFTA States, unless otherwise provided for in this Agreement.

2. As a result of the customs union established by the Treaty of 29 March 1923 between Switzerland and the Principality of Liechtenstein, Switzerland shall represent the Principality of Liechtenstein in matters covered thereby.

ARTICLE 6

Regional and local governments

Each Party is fully responsible for the observance of all obligations and commitments under this Agreement and shall ensure their observance by its respective regional and local governments and authorities and by non-governmental bodies in the exercise of governmental powers delegated by central, regional and local governments or authorities within its territory.

CHAPTER II

TRADE IN GOODS

ARTICLE 7

Coverage

This Chapter applies to trade between the Parties relating to:

(a) products falling within chapters 25 through 97 of the Harmonized Commodity Description and Coding System (hereinafter referred to as "the HS"), excluding the products listed in Annex III;

(b) products specified in Annex IV, with due regard to the arrangements provided for in that Annex; and

(c) fish and other marine products as provided for in Annex V.

ARTICLE 8

Rules of origin and administrative co-operation

1. The provisions on rules of origin and administrative co-operation applicable to Article 9(1) and Article 19 are set out in Annex I

2. For the purpose of Article 9(2), Article 13(1) and Article 18, the term "goods of a Party" shall mean domestic goods as understood within the meaning of GATT 1994 or such goods as the Parties may agree, and shall include originating products of that Party.

ARTICLE 9

Elimination of customs duties

1. The Parties shall, on the date of entry into force of this Agreement, abolish all customs duties on imports of products originating in an EFTA State or in Chile, except as provided for in Annex VI.

2. The Parties shall, on the date of entry into force of this Agreement, abolish all customs duties on exports of goods of a Party in trade between the Parties.

3. No new customs duty shall be introduced nor shall those already applied be increased in trade between the EFTA States and Chile.

ARTICLE 10

Customs duty

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

(a) charge equivalent to an internal tax imposed consistently with Article 15;

(b) anti-dumping or countervailing duty applied consistently with Article 18; or

(c) fee or other charge imposed consistently with Article 11.

ARTICLE 11

Fees and other charges

Fees and other charges referred to in Article 10(c) shall be limited in amount to the approximate cost of services rendered and shall not represent an indirect protection for domestic products or a taxation of imports or exports for fiscal purposes.

ARTICLE 12

Basic duties

1. For each product the basic duty, to which the successive reductions set out in Annex VI are to be applied, shall be the most-favoured nation rate of duty applied on 1 January 2003.

2. If, before, by or after entry into force of this Agreement, any tariff reduction is applied on an *erga omnes* basis, in particular reductions in accordance with commitments resulting from multilateral negotiations under the World Trade Organization (hereinafter referred to as "the WTO"), such reduced duties shall replace the basic duties referred to in paragraph 1 as from the date when such reductions are applied, or from the entry into force of this Agreement if this is later.

3. The reduced duties calculated in accordance with Annex VI shall be applied rounded to the first decimal place or, in case of specific duties, to the second decimal place.

ARTICLE 13

Import and export restrictions

1. On the date of entry into force of this Agreement, all import or export prohibitions or restrictions on trade in goods of a Party between the EFTA States and Chile, other than customs duties and taxes, whether made effective through quotas, import or export licenses or other measures, shall be eliminated, except as provided for in Annex VII.

2. No new measures as referred to in paragraph 1 shall be introduced.

ARTICLE 14

Classification of goods and customs valuation

1. The classification of goods in trade between the EFTA States and Chile shall be determined in accordance with each Party's respective tariff nomenclature in conformity with the HS.

2. The WTO Agreement on Implementation of Article VII of the GATT 1994 shall govern customs valuation rules applied to trade between the EFTA States and Chile.

ARTICLE 15

National treatment

The Parties shall apply national treatment in accordance with Article III of the GATT 1994, including its interpretative notes, which is hereby incorporated into and made part of this Agreement.

ARTICLE 16

Sanitary and phytosanitary measures

1. The rights and obligations of the Parties in respect of sanitary and phytosanitary measures shall be governed by the WTO Agreement on the Application of Sanitary and Phytosanitary Measures (hereinafter referred to as "the SPS Agreement").

2. The Parties shall strengthen their co-operation in the field of sanitary and phytosanitary measures, with a view to increasing the mutual understanding of their respective systems and facilitating access to their respective markets.

3. At the request of a Party, expert consultations shall be convened if any Party considers that another Party has taken measures which are likely to affect, or have affected, access to its market. Such experts, representing the Parties concerned on

specific issues in the field of sanitary and phytosanitary matters, shall aim at finding an appropriate solution in conformity with the SPS Agreement.

4. The Parties shall exchange names and addresses of "contact points" with sanitary and phytosanitary expertise in order to facilitate communication and the exchange of information.

5. In order to permit the efficient use of resources, the Parties shall, to the extent possible, endeavour to use modern technological means of communication, such as electronic communication, video or telephone conference, or arrange for meetings referred to in paragraph 3 to take place back-to-back with Joint Committee meetings or with sanitary and phytosanitary meetings in the framework of the WTO. The results of expert consultations convened in accordance with paragraph 3 shall be reported to the Joint Committee.

6. Chile and any of the EFTA States may, for better implementation of this Article, develop bilateral arrangements including agreements between their respective regulatory agencies.

ARTICLE 17

Technical regulations

1. The rights and obligations of the Parties in respect of technical regulations, standards and conformity assessment shall be governed by the WTO Agreement on Technical Barriers to Trade (hereinafter referred to as "the TBT Agreement").

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

3. Without prejudice to paragraph 1, the Parties agree to hold consultations in the framework of the Joint Committee where a Party considers that another Party has taken measures which are likely to create, or have created, an obstacle to trade, in order to find an appropriate solution in conformity with the TBT Agreement.

ARTICLE 18

Anti-dumping and countervailing measures

1. A Party shall not apply anti-dumping measures as provided for under the WTO Agreement on Implementation of Article VI of the GATT 1994 in relation to goods of a Party.

2. The Parties recognise that the effective implementation of competition rules may address economic causes leading to dumping.

3. The rights and obligations of the Parties related to countervailing measures shall be governed by the WTO Agreement on Subsidies and Countervailing Measures.

ARTICLE 19

Emergency action on imports of particular products

1. Where any product originating in a Party, as a result of the reduction or elimination of a customs duty under this Agreement, is being imported into the territory of another Party in such increased quantities and under such conditions as to constitute a substantial cause of serious injury or threat thereof to the domestic industry of like or directly competitive products in the territory of the importing Party, the importing Party may take emergency measures to the minimum extent necessary to remedy or prevent the injury.

2. Such measures may consist in:

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

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

i) the most-favoured nation rate of duty in effect at the time the action is taken;

ii) the most-favoured nation rate of duty in effect on the day immediately preceding the date of the entry into force of this Agreement.

3. Emergency measures shall be taken for a period not exceeding one year. In very exceptional circumstances, after review by the Joint Committee, measures may be taken up to a total maximum period of three years. In this case, the Party taking such measures shall present a schedule leading to their progressive elimination. No measures shall be applied to the import of a product which has previously been subject to such a measure for a period of, at least, five years since the expiry of the measure.

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

5. The Party intending to take emergency measures under this Article shall promptly make a notification to the other Parties, containing all pertinent information which shall include evidence of serious injury caused by increased imports, precise description of the product involved, the proposed measure, the proposed date of introduction and expected duration of the measures. Any Party that may be affected

shall simultaneously be offered compensation in the form of substantially equivalent trade liberalisation in relation to the imports from any such Party.

6. The Joint Committee shall, within 30 days from the date of notification to the Parties, meet to examine the information provided under paragraph 5 in order to facilitate a mutually acceptable solution of the matter. In the absence of such solution, the importing Party may adopt a measure pursuant to paragraph 2 to remedy the problem, and, in the absence of mutually agreed compensation, the Party against whose product the measure is taken may take retaliatory action. The emergency measure and any compensatory or retaliatory action shall be immediately notified to the Joint Committee. The retaliatory action shall consist of the suspension of concessions having substantially equivalent trade effects or concessions substantially equivalent to the value of the additional duties expected to result from the emergency action. In the selection of the emergency measure and the retaliatory action, priority must be given to the action which least disturbs the functioning of this Agreement.

7. In critical circumstances where delay would cause damage which would be difficult to repair, a Party may take a provisional emergency measure not exceeding 120 days pursuant to a preliminary determination that there is clear evidence that increased imports have caused or are threatening to cause serious injury. The Party intending to take such a measure shall immediately notify the other Parties thereof and, within 30 days of the date of such notification, the pertinent procedures set out in paragraphs 5 and 6, including for compensatory and retaliatory action, shall be initiated. Any compensation shall be based on the total period of application of the provisional measure. The period of application of any such provisional measure shall be counted as part of the duration of the definitive measure and any extension thereof.

ARTICLE 20

Global safeguard

The Parties confirm their rights and obligations under Article XIX of GATT 1994 and the WTO Agreement on Safeguards.

ARTICLE 21

General exceptions

Subject to the requirement that such measures are not applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination between Parties where the same conditions prevail, or a disguised restriction on international trade, nothing in this Agreement shall be construed to prevent the adoption or enforcement by any Party of measures:

(a) necessary to protect public morals;

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

(c) relating to the importations or exportations of gold and silver;

(d) necessary to secure compliance with laws or regulations which are not inconsistent with the provisions of this Agreement, including those relating to customs enforcement, the protection of intellectual property rights, and the prevention of deceptive practices;

(e) relating to the products of prison labour;

(f) imposed for the protections of national treasures of artistic, historic or archaeological value;

(g) relating to the conservation of exhaustible natural resources if such measures are made effective in conjunction with restrictions on domestic production or consumption;

(h) undertaken in pursuance of obligations under any intergovernmental commodity agreement which conforms to criteria submitted to the WTO and not disapproved by it or which is itself so submitted and not so disapproved;

(i) involving restrictions on exports of domestic materials necessary to ensure essential quantities of such materials to a domestic processing industry during periods when the domestic price of such materials is held below the world price as part of a governmental stabilization plan; provided that such restrictions shall not operate to increase the exports of or the protection afforded to such domestic industry, and shall not depart from the provisions of this Agreement relating to non-discrimination;

(j) essential to the acquisition or distribution of products in general or local short supply; provided that any such measures shall be consistent with the principle that all WTO members are entitled to an equitable share of the international supply of such products, and that any such measures, which are inconsistent with the other provisions of this Agreement shall be discontinued as soon as the conditions giving rise to them have ceased to exist.

CHAPTER III

TRADE IN SERVICES AND ESTABLISHMENT

SECTION I – TRADE IN SERVICES

ARTICLE 22

Coverage

1. This Section applies to measures affecting trade in services taken by central, regional or local governments and authorities as well as by non-governmental bodies in the exercise of powers delegated by central, regional or local governments or authorities.

2. This Section applies to measures affecting trade in all services sectors with the exception of air services, including domestic and international air transportation services, whether scheduled or non-scheduled, and related services in support of air services, other than:

(a) aircraft repair and maintenance services;

(b) the selling and marketing of air transport services;

(c) computer reservation system (CRS) services.[1]

3. Nothing in this Section shall be construed to impose any obligation with respect to government procurement, which is subject to the Chapter V.

ARTICLE 23

Definitions

For the purposes of this Section:

(a) "trade in services" is defined as the supply of a service:

(i) from the territory of a Party into the territory of another Party (mode 1);

(ii) in the territory of a Party to the service consumer of another Party (mode 2);

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[1] The terms "aircraft repair and maintenance services", "selling and marketing of air transport services" and "computer reservation system (CRS) services" are as defined in paragraph 6 of the Annex on Air Transport Services to the GATS.

(iii) by a service supplier of a Party, through commercial presence in the territory of another Party (mode 3);

(iv) by a service supplier of a Party, through presence of natural persons in the territory of another Party (mode 4).

(b) "measure" means any measure by a Party, whether in the form of a law, regulation, rule, procedure, decision, administrative action or any other form;

(c) "supply of a service" includes the production, distribution, marketing, sale and delivery of a service;

(d) "measures by a Party affecting trade in services" include measures in respect of:

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

(ii) the access to and use of, in connection with the supply of a service, services which are required by that Party to be offered to the public generally;

(iii) the presence, including commercial presence, of persons of another Party for the supply of a service in the territory of that Party;

(e) "commercial presence" means any type of business or professional establishment, including through:

(i) the constitution, acquisition or maintenance of a juridical person; or

(ii) the creation or maintenance of a branch or a representative office; within the territory of a Party for the purpose of supplying a service;

(f) "service supplier" means any person that seeks to supply or supplies a service;[2]

(g) "natural person of a Party" is, in accordance with its legislation, a national or a permanent resident of that Party if he or she is accorded

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

substantially the same treatment as nationals in respect of measures affecting trade in services;

(h) "juridical person" means any legal entity duly constituted or otherwise organised under applicable law, whether for profit or otherwise, and whether privately-owned or governmentally-owned, including any corporation, trust, partnership, joint venture, sole proprietorship or association;

(i) "services" includes any service in any sector except services supplied in the exercise of governmental authority;

(j) "juridical person of a Party" means a juridical person which is either:

(i) constituted or otherwise organised under the law of Chile or an EFTA State, and that is engaged in substantive business operations in Chile or in the EFTA State concerned, or

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

(A) natural persons of that Party; or

(B) juridical persons identified under paragraph (j)(i); and

(k) "a service supplied in the exercise of governmental authority" means any service which is supplied neither on a commercial basis nor in competition with one or more service suppliers.

ARTICLE 24

Most-favoured nation treatment

1. The rights and obligations of the Parties with respect to most-favoured nation treatment shall be governed by the GATS.

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

ARTICLE 25

Market access

1. With respect to market access through the modes of supply identified in Article 23, each Party shall accord services and service suppliers of another Party treatment no less favourable than that provided for under the terms, limitations and conditions agreed and specified in its Schedule referred to in Article 27.

2. In sectors where market-access commitments are undertaken, the measures which a Party shall not maintain or adopt either on the basis of a regional subdivision or on the basis of its entire territory, unless otherwise specified in its Schedule, are defined as:

(a) limitations on the number of service suppliers whether in the form of numerical quotas, monopolies, exclusive service suppliers or the requirements of an economic needs test;

(b) limitations on the total value of service transactions or assets in the form of numerical quotas or the requirement of an economic needs test;

(c) limitations on the total number of service operations or on the total quantity of service output expressed in the terms of designated numerical units in the form of quotas or the requirement of an economic needs test.[3]

(d) limitations on the total number of natural persons that may be employed in a particular service sector or that a service supplier may employ and who are necessary for, and directly related to, the supply of a specific service in the form of numerical quotas or a requirement of an economic needs test;

(e) measures which restrict or require specific types of legal entities or joint ventures through which a service supplier of another Party may supply a service; and

(f) limitations on the participation of foreign capital in terms of maximum percentage limit on foreign shareholding or the total value of individual or aggregate foreign investment.

ARTICLE 26

National treatment

1. In the sectors inscribed in its Schedule referred to in Article 27 and subject to the conditions and qualifications set out therein, each Party shall grant to services and

[3] Subparagraph (c) does not cover measures of a Party which limit inputs for the supply of services

services suppliers of another Party, in respect of all measures affecting the supply of services, treatment no less favourable than that it accords to its own like services and services suppliers.[4]

2. A Party may meet the requirement of paragraph 1 by according to services and service suppliers of another Party, either formally identical treatment or formally different treatment to that it accords to its own like services and service suppliers.

3. Formally identical or formally different treatment shall be considered to be less favourable if it modifies the conditions of competition in favour of services or service suppliers of the Party compared to like services or service suppliers of another Party.

ARTICLE 27

Trade liberalisation

1. The Schedule of specific commitments that each Party undertakes under Articles 25 and 26 as well as paragraph 3 of this Article is set out at Annex VIII. With respect to sectors where such commitments are undertaken, each Schedule specifies:

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

(b) conditions and qualifications on national treatment;

(c) undertakings relating to additional commitments referred to in paragraph 3; and

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

2. Measures inconsistent with both Articles 25 and 26 are inscribed in the column relating to Article 25. In this case, the inscription is considered to provide a condition or qualification to Article 26 as well.

3. Where a Party undertakes a specific commitment on measures affecting trade in services not subject to scheduling under Articles 25 and 26, including those regarding qualifications, standards or licensing matters, such commitments are inscribed in its Schedule as additional commitments.

4. The Parties undertake to review their Schedules of specific commitments at least every three years, or more frequently, with a view to provide for a reduction or elimination of substantially all remaining discrimination between the Parties with regard to trade in services covered in this Section on a mutually advantageous basis and ensuring an overall balance of rights and obligations.

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[4] Specific commitments assumed under this Article shall not be construed to require the Parties to compensate for any inherent competitive disadvantage which result from the foreign character of the relevant services and service suppliers.

ARTICLE 28

Domestic regulation

1. In sectors where specific commitments are undertaken, each Party shall ensure that all measures of general application affecting trade in services are administered in a reasonable, objective and impartial manner.

2. Each Party shall maintain or institute as soon as practicable judicial, arbitral or administrative tribunals or procedures which provide, at the request of an affected service supplier of another Party, for the prompt review of, and where justified, appropriate remedies for, administrative decisions affecting trade in services. Where such procedures are not independent of the agency entrusted with the administrative decision concerned, the Party shall ensure that the procedures in fact provide for an objective and impartial review.

3. Where authorisation is required for the supply of a service, the competent authorities of a Party shall promptly, after the submission of an application is considered complete under domestic laws and regulations, inform the applicant of the decision concerning the application. At the request of the applicant, the competent authorities of the Party shall provide, without undue delay, information concerning the status of the application.

4. The Parties shall jointly review the results of the negotiations on disciplines for measures relating to qualification requirements and procedures, technical standards and licensing requirements pursuant to Article VI.4 of the GATS aiming to ensure that such measure do not constitute unnecessary barriers to trade in services, with a view to their incorporation into this Agreement. The Parties note that such disciplines aim to ensure that such requirements are, *inter alia*:

(a) based on objective and transparent criteria, such as competence and the ability to supply the service;

(b) not more burdensome than necessary to ensure the quality of the service;

(c) in the case of licensing procedures, not in themselves a restriction on the supply of the service.

5. In sectors in which a Party has undertaken specific commitments, until the incorporation of disciplines developed pursuant to paragraph 4, a Party shall not apply licensing and qualification requirements and technical standards in a manner which:

(a) does not comply with the criteria outlined in paragraphs 4 (a), (b) or (c); and

(b) could not reasonably have been expected of that Party at the time of the conclusion of the negotiation of the present agreement.

6. Whenever a domestic regulation is prepared, adopted and applied in accordance with international standards applied by both Parties, it shall be rebuttably presumed to comply with the provisions of this Article.

7. Each Party shall provide for adequate procedures to verify the competence of professionals of another Party.

ARTICLE 29

Recognition

1. The Parties shall encourage the relevant bodies in their respective territories to provide recommendations on mutual recognition, for the purpose of the fulfilment, in whole or in part, by service suppliers of the criteria applied by each Party for the authorisation, licensing, accreditation, operation and certification of service suppliers and, in particular, professional services.

2. The Joint Committee, within a reasonable period of time and considering the level of correspondence of the respective regulations, shall decide whether a recommendation referred to in paragraph 1 is consistent with this Section. If that is the case, such a recommendation shall be implemented through an agreement on mutual requirements, qualifications, licences and other regulations to be negotiated by the competent authorities.

3. Any such agreement shall be in conformity with the relevant provisions of the WTO Agreement and, in particular, Article VII of the GATS.

4. Where the Parties agree, each Party shall encourage its relevant bodies to develop procedures for the temporary licensing of professional services suppliers of another Party.

5. The Joint Committee shall periodically, and at least once every three years, review the implementation of this Article.

6. Where a Party recognises, by agreement or arrangement, the education or experience obtained, requirements met or licenses or certifications granted in the territory of a non-Party, that Party shall accord another Party, upon request, adequate opportunity to negotiate its accession to such an agreement or arrangement or to negotiate comparable ones with it. Where a Party accords recognition autonomously, it shall afford adequate opportunity for another Party to demonstrate that the education or experience obtained, requirements met or licenses or certifications granted in the territory of that other Party should also be recognised.

ARTICLE 30

Movement of natural persons

1. This Section applies to measures affecting natural persons who are service suppliers of a Party, and natural persons of a Party who are employed by a service supplier of a Party, in respect of the supply of a service. Natural persons covered by a Party's specific commitments shall be allowed to supply the service in accordance with the terms of those commitments.

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

3. This Section shall not prevent a Party from applying measures to regulate the entry of natural persons of another Party into, or their temporary stay in, its territory, including those measures necessary to protect the integrity of, and to ensure the orderly movement of natural persons across its borders, provided that such measures are not applied in a manner so as to nullify or impair the benefits accruing to a Party under the terms of a specific commitment.[5]

ARTICLE 31

Telecommunications services

Specific provisions on telecommunications services are set out in Annex IX.

SECTION II – ESTABLISHMENT

ARTICLE 32

Coverage

This Section shall apply to establishment in all sectors, with the exception of establishment in services sectors.

[5] The sole fact of requiring a visa shall not be regarded as nullifying or impairing benefits under a specific commitment.

ARTICLE 33

Definitions

For the purposes of this Section,

(a) "juridical person" means any legal entity duly constituted or otherwise organised under applicable law, whether for profit or otherwise, and whether privately-owned or governmentally-owned, including any corporation, trust, partnership, joint venture, sole proprietorship or association;

(b) "juridical person of a Party" means a juridical person constituted or otherwise organised under the law of an EFTA State or of Chile and that is engaged in substantive business operations in Chile or in the EFTA State concerned;

(c) "natural person" means a national of an EFTA State or of Chile according to their respective legislation;

(d) "establishment" means:

(i) the constitution, acquisition or maintenance of a juridical person, or

(ii) the creation or maintenance of a branch or a representative office,

within the territory of a Party for the purpose of performing an economic activity.

As regards natural persons, this shall not extend to seeking or taking employment in the labour market or confer a right of access to the labour market of a Party.

ARTICLE 34

National treatment

With respect to establishment, and subject to the reservations set out in Annex X, each Party shall grant to juridical and natural persons of the other Party treatment no less favourable than that it accords to its own juridical and natural persons performing a like economic activity.

ARTICLE 35

Reservations

1. National treatment as provided for under Article 34 shall not apply to:

(a) any reservation that is listed by a Party in Annex X;

(b) an amendment to a reservation covered by paragraph (a) to the extent that the amendment does not decrease the conformity of the reservation with Article 34;

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

to the extent that such reservations are inconsistent with Article 34.

2. As part of the reviews provided for in Article 37 the Parties undertake to review at least every three years the status of the reservations set out in Annex X with a view to reducing or removing such reservations.

3. A Party may, at any time, either upon the request of another Party or unilaterally, remove in whole or in part reservations set out in Annex X by written notification to the other Parties.

4. A Party may, at any time, incorporate a new reservation into Annex X in accordance with paragraph 1(c) of this Article by written notification to the other Parties. On receiving such written notification, the other Parties may request consultations regarding the reservation. On receiving the request for consultations, the Party incorporating the new reservation shall enter into consultations with the other Parties.

ARTICLE 36

Right to regulate

Subject to the provisions of Article 34, each Party may regulate the establishment of juridical and natural persons.

ARTICLE 37

Final provisions

With the objective of progressive liberalisation of investment conditions, the Parties affirm their commitment to review the investment legal framework, the investment environment and the flow of investment between them consistent with their commitments in international investment agreements, no later than three years after the entry into force of this Agreement.

SECTION III – PAYMENTS AND CAPITAL MOVEMENTS

ARTICLE 38

Objective and scope

1. The Parties shall aim at the liberalisation of current payments and capital movements between them, in conformity with the commitments undertaken in the framework of the international financial institutions and with due consideration to each Party's currency stability.

2. This Section applies to all current payments and capital movements between the Parties. Specific provisions on current payments and capital movements are set out in Annex XI.

ARTICLE 39

Current Account

The Parties shall allow, in freely convertible currency and in accordance with the Articles of Agreement of the International Monetary Fund, any payments and transfers of the Current Account between the Parties.

ARTICLE 40

Capital Account

The Parties shall allow the free movements of capital relating to direct investments made in accordance with the laws of the host country and investments made in accordance with the provisions of Sections Trade in Services and Establishment of this Chapter, and the liquidation or repatriation of these capitals and of any profit stemming therefrom.

ARTICLE 41

Exceptions and safeguard measures

1. Where, in exceptional circumstances, payments and capital movements between the Parties cause or threaten to cause serious difficulties for the operation of monetary policy or exchange rate policy in any Party, the Party concerned may take safeguard measures with regard to capital movements that are strictly necessary for a period not exceeding one year. The application of safeguard measures may be extended through their formal reintroduction.

2. The Party adopting the safeguard measures shall inform the other Party forthwith and present, as soon as possible, a time schedule for their removal.

ARTICLE 42

Final provisions

The Parties shall consult each other with a view to facilitating the movement of capital between them in order to promote the objectives of this Agreement.

SECTION IV – COMMON PROVISIONS

ARTICLE 43

Relation to other international agreements

With respect to matters related to this Chapter, the Parties confirm the rights and obligations existing under any bilateral or multilateral agreements to which they are a party.

ARTICLE 44

General exceptions

Article XIV and Article XXVIII paragraph (o) of the GATS are hereby incorporated into and made part of this Chapter.

ARTICLE 45

Financial services

1. The Parties understand that no commitments have been made in financial services. For greater clarity, financial services are defined as in paragraph 5 of the Annex on Financial Services of the GATS.

2. Notwithstanding paragraph 1, two years after the entry into force of this Agreement, the Parties will consider the inclusion of financial services in this Chapter on a mutually advantageous basis and securing an overall balance of rights and obligations.

CHAPTER IV

PROTECTION OF INTELLECTUAL PROPERTY

ARTICLE 46

Intellectual property rights

1. The Parties shall grant and ensure adequate, effective and non-discriminatory protection of intellectual property rights, and provide for measures for the enforcement of such rights against infringement thereof, counterfeiting and piracy, in accordance with the provisions of this Article, Annex XII to this Agreement and the international agreements referred to therein.

2. The Parties shall accord to each other's nationals treatment no less favourable than that they accord to their own nationals. Exemptions from this obligation must be in accordance with the substantive provisions of Articles 3 and 5 of the WTO Agreement on Trade-Related Aspects of Intellectual Property Rights (hereinafter referred to as "the TRIPS Agreement").[6]

3. The Parties shall grant to each other's nationals treatment no less favourable than that accorded to nationals of any other State. Exemptions from this obligation must be in accordance with the substantive provisions of the TRIPS Agreement, in particular Articles 4 and 5 thereof[6]

4. The Parties agree, upon request of any Party to the Joint Committee and subject to its consensus, to review the provisions on the protection of intellectual property rights contained in the present Article and in Annex XII, with a view to further improving the levels of protection and to avoid or remedy trade distortions caused by actual levels of protection of intellectual property rights.

CHAPTER V

GOVERNMENT PROCUREMENT

ARTICLE 47

Objective

In accordance with the provisions of this Chapter, the Parties shall ensure the effective and reciprocal opening of their government procurement markets.

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[6] It is understood that the reference of paragraphs 2 and 3 to Articles 3 to 5 of the TRIPS Agreement is made for the purpose of outlining their applicability to the provisions on Intellectual Property of this Agreement.

ARTICLE 48

Scope and coverage

1. This Chapter applies to any law, regulation, procedure or practice regarding any procurement, by the entities of the Parties, of goods[7] and services including works, subject to the conditions specified by each Party in Annexes XIII and XIV.

2. This Chapter shall not be applicable to:

(a) contracts awarded pursuant to:

(i) an international agreement and intended for the joint implementation or exploitation of a project by the contracting Parties;

(ii) an international agreement relating to the stationing of troops; and

(iii) the particular procedure of an international organisation;

(b) non-contractual agreements or any form of government assistance and procurement made in the framework of assistance or co-operation programmes;

(c) contracts for:

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

(ii) the acquisition, development, production or co-production of programme material by broadcasters and contracts for broadcasting time;

(iii) arbitration and conciliation services;

(iv) employment contracts; and

(v) research and development services other than those where the benefits accrue exclusively to the entity for its use in the conduct of its own affairs, on condition that the service is wholly remunerated by the entity;

(d) financial services.

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7 For the purpose of this Chapter, "goods" shall mean goods classified in chapters 1 to 97 of the HS.

3. Public works concessions, as defined in Article 49, shall also be subject to this Chapter, as specified in Annexes XIII and XIV.

4. No Party may prepare, design or otherwise structure any procurement contract in order to avoid the obligations under this Chapter.

ARTICLE 49

Definitions

For the purpose of this Chapter, the following definitions shall apply:

(a) "entity" means an entity covered in Annex XIII;

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

(c) "liberalisation" means a process as a result of which an entity enjoys no exclusive or special rights and is exclusively engaged in the provision of goods or services on markets that are subject to effective competition;

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

(e) "privatisation" means a process by means of which a public entity is no longer subject to government control, whether by public tender of the shares of that entity or otherwise, as contemplated in the respective Party's legislation in force;

(f) "public works concessions" means a contract of the same type as the public works procurement contracts, except for the fact that the remuneration for the works to be carried out consists either solely in the right to exploit the construction or in this right together with a payment;

(g) "supplier" means a natural or legal person that provides or could provide goods or services to an entity;

(h) "technical specifications" means a specification, which lays down the characteristics of the products or services to be procured, such as quality, performance, safety and dimensions, symbols, terminology, packaging, marking and labelling, or the processes and methods for their production

and requirements relating to conformity assessment procedures prescribed by procuring entities; and

(i) "tenderer" means a supplier who has submitted a tender.

ARTICLE 50

National treatment and non-discrimination

1. With respect to any laws, regulations, procedures and practices regarding government procurement covered by this Chapter, each Party shall grant the goods, services and suppliers of another Party a treatment no less favourable than that accorded by it to domestic goods, services and suppliers.

2. With respect to any laws, regulations, procedures and practices regarding government procurement covered by this Chapter, each Party shall ensure:

(a) that its entities do not treat a locally-established supplier less favourably than another locally-established supplier on the basis of the degree of foreign affiliation to or ownership by, a person of another Party; and

(b) that its entities do not discriminate against a locally-established supplier on the basis that the goods or services offered by that supplier for a particular procurement are goods or services of another Party.

3. This Article shall not apply to measures concerning customs duties or other charges of any kind imposed on, or in connection with importation, the method of levying such duties and charges, other import regulations, including restrictions and formalities, nor to measures affecting trade in services other than measures specifically governing procurement covered by this Chapter.

ARTICLE 51

Prohibition of offsets

Each Party shall ensure that its entities do not, in the qualification and selection of suppliers, goods or services, in the evaluation of bids or in the award of contracts, consider, seek or impose offsets.

ARTICLE 52

Valuation rules

1. Entities shall not split up a procurement, nor use any other method of contract valuation with the intention of evading the application of this Chapter when determining whether a contract is covered by the disciplines thereof, subject to the conditions set out in Annexes XIII and XIV.

2. In calculating the value of a contract, an entity shall take into account all forms of remuneration, such as premiums, fees, commissions and interests, as well as the maximum permitted total amount, including option clauses, provided for by the contract.

3. When, due to the nature of the contract, it is not possible to calculate in advance its precise value, entities shall estimate this value on the basis of objective criteria.

ARTICLE 53

Transparency

1. Each Party shall promptly publish any law, regulation, judicial decision and administrative ruling of general application and procedure, including standard contract clauses, regarding procurement covered by this Chapter in the appropriate publications referred to in Appendix 2 of Annex XIV, including officially designated electronic media.

2. Each Party shall promptly publish in the same manner all modifications to such measures.

ARTICLE 54

Tendering procedures

1. Entities shall award their public contracts by open or selective tendering procedures according to their national procedures, in compliance with this Chapter and in a non-discriminatory manner.

2. For the purposes of this Chapter:

(a) open tendering procedures are those procedures whereby any interested supplier may submit a tender.

(b) selective tendering procedures are those procedures whereby, consistent with Article 55 and other relevant provisions of this Chapter, only suppliers satisfying qualification requirements established by the entities are invited to submit a tender.

3. However, in the specific cases and only under the conditions laid down in Article 56, entities may use a procedure other than the open or selective tendering procedures referred to in paragraph 1, in which case the entities may choose not to publish a notice of intended procurement, and may consult the suppliers of their choice and negotiate the terms of contract with one or more of these.

4. Entities shall treat tenders in confidence. In particular, they shall not provide information intended to assist particular participants to bring their tenders up to the level of other participants.

ARTICLE 55

Selective tendering

1. In selective tendering, entities may limit the number of qualified suppliers they will invite to tender, consistent with the efficient operation of the procurement process, provided that they select the maximum number of domestic suppliers and suppliers of another Party, and that they make the selection in a fair and non-discriminatory manner and on the basis of the criteria indicated in the notice of intended procurement or in tender documents.

2. Entities maintaining permanent lists of qualified suppliers may select suppliers to be invited to tender from among those listed, under the conditions foreseen in Article 57(7). Any selection shall allow for equitable opportunities for suppliers on the lists.

ARTICLE 56

Other procedures

1. Provided that the tendering procedure is not used to avoid maximum possible competition or to protect domestic suppliers, entities shall be allowed to award contracts by means other than an open or selective tendering procedure in the following circumstances and subject to the following conditions, where applicable:

(a) when no suitable tenders or request to participate have been submitted in response to a prior procurement, on condition that the requirements of the initial procurement are not substantially modified;

(b) when, for technical or artistic reasons, or for reasons connected with protection of exclusive rights, the contract may be performed only by a particular supplier and no reasonable alternative or substitute exists;

(c) for reasons of extreme urgency brought about by events unforeseeable by the entity, the products or services could not be obtained in time by means of open or selective tendering procedures;

(d) for additional deliveries of goods or services by the original supplier where a change of supplier would compel the entity to procure equipment or services not meeting requirements of interchangeability with already existing equipment, software or services;

(e) when an entity procures prototypes or a first product or service which are developed at its request in the course of, and for, a particular contract for research, experiment, study or original development;

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

(g) for new services consisting of the repetition of similar services and for which the entity has indicated in the notice concerning the initial service, that tendering procedures other than open or selective might be used in awarding contracts for such new services;

(h) in the case of contracts awarded to the winner of a design contest, provided that the contest has been organised in a manner which is consistent with the principles of this Chapter; in case of several successful candidates, all successful candidates shall be invited to participate in the negotiations; and

(i) for quoted goods purchased on a commodity market and for purchases of goods made under exceptionally advantageous conditions which only arise in the very short term in the case of unusual disposals and not for routine purchases from regular suppliers.

2. The Parties shall ensure that, whenever it is necessary for entities to resort to a procedure other than the open or selective tendering procedures based on the circumstances set forth in paragraph 1, the entities shall maintain a record or prepare a written report providing specific justification for the contract awarded under that paragraph.

ARTICLE 57

Qualification of suppliers

1. Any conditions for participation in procurement shall be limited to those that are essential to ensure that the potential supplier has the capability to fulfil the requirements of the procurement and the ability to execute the contract in question.

2. In the process of qualifying suppliers, entities shall not discriminate between domestic suppliers and suppliers of another Party.

3. A Party shall not impose the condition that, in order for a supplier to participate in a procurement, the supplier has previously been awarded one or more contracts by an entity of that Party or that the supplier has prior work experience in the territory of that Party.

4. Entities shall recognise as qualified suppliers all suppliers who meet the conditions for participation in a particular intended procurement. Entities shall base their qualification decisions solely on the conditions for participation that have been specified in advance in notices or tender documentation.

5. Nothing in this Chapter shall preclude the exclusion of any supplier on grounds such as bankruptcy or false declarations or conviction for a serious crime such as participation in criminal organisations.

6. Entities shall promptly communicate to suppliers that have applied for qualification their decision on whether or not they qualify.

Permanent lists of qualified suppliers

7. Entities may establish permanent lists of qualified suppliers provided that the following rules are respected:

(a) entities establishing permanent lists shall ensure that suppliers may apply for qualification at any time;

(b) any supplier having requested to become a qualified supplier shall be notified by the entities concerned of the decision in this regard;

(c) suppliers requesting to participate in a given intended procurement who are not on the permanent list of qualified suppliers shall be given the possibility to participate in the procurement by presenting the equivalent certifications and other means of proof requested from suppliers who are on the list;

(d) when an entity operating in the utilities sector uses a notice on the existence of a permanent list as a notice of intended procurement, as provided in Annex XIV, Appendix 5, paragraph 6, suppliers requesting to participate who are not on the permanent list of qualified suppliers shall also be considered for the procurement, provided there is sufficient time to complete the qualification procedure; in this event, the procuring entity shall promptly start procedures for qualification and the process of, and the time required for, qualifying suppliers shall not be used in order to keep suppliers of other Parties off the suppliers' list.

ARTICLE 58

Publication of notices

General provisions

1. Each Party shall ensure that its entities provide for effective dissemination of the tendering opportunities generated by the relevant government procurement processes,

providing suppliers of another Party with all the information required to take part in such procurement.

2. For each contract covered by this Chapter, except as set out in Articles 54(3) and 56, entities shall publish in advance a notice inviting interested suppliers to submit tenders, or where appropriate, requests for participation for that contract.

3. The information in each notice of intended procurement shall include at least the following:

(a) name, address, telefax number, electronic address of the entity and, if different, the address where all documents relating to the procurement may be obtained;

(b) the tendering procedure chosen and the form of the contract;

(c) a description of the intended procurement, as well as essential contract requirements to be fulfilled;

(d) any conditions that suppliers must fulfil to participate in the procurement;

(e) time-limits for submission of tenders and, where appropriate, other time limits;

(f) main criteria to be used for award of the contract; and

(g) if possible, terms of payment and any other terms.

Common provisions

4. Each notice referred to in this Article and Appendix 5 of Annex XIV, shall be accessible during the entire time period established for tendering for the relevant procurement.

5. Entities shall publish the notices in a timely manner through means which offer the widest possible and non-discriminatory access to the interested suppliers of the Parties. These means shall be accessible free of charge through a single point of access specified in Appendix 2 to Annex XIV.

ARTICLE 59

Tender documentation

1. Tender documentation provided to suppliers shall contain all information necessary to permit them to submit responsive tenders.

2. Where contracting entities do not offer free direct access to the entire tender documents and any supporting documents by electronic means, entities shall make promptly available the tender documentation at the request of any supplier of the Parties.

3. Entities shall promptly reply to any reasonable request for relevant information relating to the intended procurement, on condition that such information does not give that supplier an advantage over its competitors.

ARTICLE 60

Technical specifications

1. Technical specifications shall be set out in the notices, tender documents or additional documents.

2. Each Party shall ensure that its entities do not prepare, adopt or apply any technical specifications with a view to, or with the effect of, creating unnecessary obstacles to trade between the Parties.

3. Technical specifications prescribed by entities shall be:

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

(b) based on international standards, where these exist or, in their absence, on national technical regulations[8], recognised national standards[9], or building codes.

4. The provisions of paragraph 3 do not apply when the entity can objectively demonstrate that the use of technical specifications referred to in that paragraph would be ineffective or inappropriate for the fulfilment of the legitimate objectives pursued.

5. In all cases, entities shall consider bids which do not comply with the technical specifications but meet the essential requirements thereof and are fit for the purpose intended. The reference to technical specifications in the tender documents must include words such as "or equivalent".

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[8] For the purpose of this Chapter, a technical regulation is a document which lays down characteristics of a product or a service or their related processes and production methods, including the applicable administrative provisions, with which compliance is mandatory. It may also include or deal exclusively with terminology, symbols, packaging, marking or labeling requirements as they apply to a product, service, process or production method.

[9] For the purpose of this Chapter, a standard is a document approved by a recognised body, that provides, for common and repeated use, rules, guidelines or characteristics for products or services or related processes and production methods, with which compliance is not mandatory. It may also include or deal exclusively with terminology, symbols, packaging, marking or labeling requirements as they apply to a product, service, process or production method.

6. There shall be no requirement or reference to a particular trademark or trade name, patent, design or type, specific origin, producer or supplier, unless there is no sufficiently precise or intelligible way of describing the procurement requirements and provided that words, such as "or equivalent", are included in the tender documentation.

7. The tenderer shall have the burden of proof to demonstrate that his bid meets the essential requirements.

ARTICLE 61

Time limits

1. All time limits established by the entities for the receipt of tenders and requests to participate shall be adequate to allow suppliers of another Party, as well as domestic suppliers, to prepare and to submit tenders, and where appropriate, requests for participation or applications for qualifying. In determining any such time limit, entities shall, consistent with their own reasonable needs, take into account such factors as the complexity of the intended procurement and the normal time for transmitting tenders from foreign as well as domestic points.

2. Each Party shall ensure that its entities shall take due account of publication delays when setting the final date for receipt of tenders or of requests for participation or for qualifying for the suppliers' list.

3. The minimum time limits for the receipt of tenders are specified in Appendix 3 to Annex XIV.

ARTICLE 62

Negotiations

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

(a) in the context of procurements in which they have indicated such intent in the notice of intended procurement; or

(b) when it appears from evaluation that no one tender is obviously the most advantageous in terms of the specific evaluation criteria set forth in the notices or tender documentation.

2. Negotiations shall primarily be used to identify the strengths and weaknesses in tenders.

3. Entities shall not, in the course of negotiations, discriminate between tenderers. In particular, they shall ensure that:

(a) any elimination of participants is carried out in accordance with the criteria set forth in the notices and tender documentation;

(b) all modifications to the criteria and to the technical requirements are transmitted in writing to all remaining participants in the negotiations;

(c) on the basis of the revised requirements and/or when negotiations are concluded, all remaining participants are afforded an opportunity to submit new or amended tenders in accordance with a common deadline.

ARTICLE 63

Submission, receipt and opening of tenders

1. Tenders and requests to participate in procedures shall be submitted in writing.

2. Entities shall receive and open bids from tenderers under procedures and conditions guaranteeing the respect of the principles of transparency and non-discrimination.

ARTICLE 64

Awarding of contracts

1. To be considered for award, a tender must, at the time of opening, conform to the essential requirements of the notices or tender documentation and be submitted by a supplier which complies with the conditions for participation.

2. Entities shall make the award to the tenderer whose tender is either the lowest tender or the tender which, in terms of the specific objective evaluation criteria previously set forth in the notices or tender documentation, is determined to be the most advantageous.

ARTICLE 65

Information on contract award

1. Each Party shall ensure that its entities provide for effective dissemination of the results of government procurement processes.

2. Entities shall promptly inform tenderers of decisions regarding the award of the contract and of the characteristics and relative advantages of the selected tender. Upon request, entities shall inform any eliminated tenderer of the reasons for the rejection of its tender.

3. Entities may decide to withhold certain information on the contract award where release of such information would prevent law enforcement or otherwise be contrary to

the public interest, would prejudice the legitimate commercial interests of suppliers, or might prejudice fair competition between them.

ARTICLE 66

Bid challenges

1. Entities shall accord impartial and timely consideration to any complaints from suppliers regarding an alleged breach of this Chapter in the context of a procurement procedure.

2. Each Party shall provide non-discriminatory, timely, transparent and effective procedures enabling suppliers to challenge alleged breaches of this Chapter arising in the context of procurements in which they have, or have had, an interest.

3. Challenges shall be heard by an impartial and independent reviewing authority. A reviewing authority which is not a court shall either be subject to judicial review or shall have procedural guarantees similar to those of a court.

4. Challenge procedures shall provide for:

(a) rapid interim measures to correct breaches of this Chapter and to preserve commercial opportunities. Such action may result in suspension of the procurement process. However, procedures may provide that overriding adverse consequences for the interests concerned, including the public interest, may be taken into account in deciding whether such measures should be applied; and

(b) if appropriate, correction of the breach of this Chapter or, in the absence of such correction, compensation for the loss or damages suffered, which may be limited to costs for tender preparation and protest.

ARTICLE 67

Information technology and co-operation

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

2. The Parties shall endeavour to provide each other with technical co-operation, particularly aimed at small and medium size enterprises, with a view to achieve a better understanding of their respective government procurement systems and statistics, as well as a better access to their respective markets.

ARTICLE 68

Modifications to coverage

1. A Party may modify its coverage under this Chapter, provided that it:

(a) notifies the other Parties of the modification; and

(b) provides the other Parties, within 30 days following the date of such notification, appropriate compensatory adjustments to its coverage in order to maintain a level of coverage comparable to that existing prior to the modification.

2. Notwithstanding paragraph 1(b), no compensatory adjustments shall be provided to the other Parties where the modification by a Party of its coverage under this Chapter concerns:

(a) rectifications of a purely formal nature and minor amendments to Annexes XIII and XIV;

(b) one or more covered entities on which government control or influence has been effectively eliminated as a result of privatisation or liberalisation.

3. Where the Parties agree on the modification, the Joint Committee shall give effect to the agreement by amending the relevant Annex.

ARTICLE 69

Further negotiations

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

ARTICLE 70

Exceptions

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

(a) public morals, order or safety;

(b) human life, health or security;

(c) animal or plant life or health;

(d) intellectual property; or

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

ARTICLE 71

Review and implementation

1. The Joint Committee shall review the implementation of this Chapter every two years, unless otherwise agreed by the Parties; it shall consider any issue arising from it, and take appropriate action in the exercise of its functions.

2. At the request of a Party, the Parties shall convene a bilateral Working Group to address issues related to the implementation of this Chapter. Such issues may include:

(a) bilateral cooperation relating to the development and use of electronic communications in government procurement systems;

(b) the exchange of statistics and other information needed for monitoring procurement conducted by the Parties and the results of the application of this Chapter; and

(c) exploration of potential interest in further negotiations aimed at further broadening of the scope of market access commitments under this Chapter.

CHAPTER VI

COMPETITION POLICY

ARTICLE 72

Objectives

1. The Parties recognise that anti-competitive business conduct may frustrate the benefits arising from this Agreement.

2. The Parties undertake to apply their competition laws in a manner consistent with this Chapter so as to avoid that the benefits of the liberalisation process in goods and services as provided by this Agreement may be diminished or cancelled out by anti-

competitive business conduct.[10] To facilitate this, the Parties agree to co-operate and co-ordinate under the provisions of this Chapter. This co-operation includes notification, consultation, and exchange of information.

3. For the purposes of this Agreement, "anti-competitive business conduct" includes, but is not limited to, anti-competitive agreements, concerted practices or arrangements by competitors, the abuse of single or joint dominant positions in a market and mergers with substantial anti-competitive effects. These practices refer to goods and services and may be carried out by private and public enterprises.

4. The Parties recognise the importance of principles of competition that are accepted in relevant multilateral fora of which the Parties are members or observers, including non-discrimination, due process, and transparency.

ARTICLE 73

Notifications

1. Each Party, through its designated authority, shall notify the other Parties of an enforcement activity regarding anti-competitive business conduct relating to goods and services if it is liable to substantially affect another Party's important interests, or if the anti-competitive business conduct is liable to have a direct and substantial effect in the territory of that other Party or is taking place principally in the territory of that other Party.

2. Provided that this is not contrary to the Parties' competition laws and does not affect any investigation being carried out, notification shall take place at an early stage of the procedure.

3. The notifications provided for in paragraph 1 should be detailed enough to permit an evaluation in the light of the interests of the other Parties.

ARTICLE 74

Co-ordination of enforcement activities

A Party, through its designated authority, may notify another Party of its willingness to co-ordinate enforcement activities with respect to a specific case. This co-ordination shall not prevent the Parties from taking autonomous decisions.

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10 For the purpose of this Chapter, "goods" shall mean goods classified in chapters 1 to 97 of the HS

ARTICLE 75

Consultations

1. Each Party shall, in accordance with its laws, take into consideration the important interests of the other Parties in the course of its enforcement activities on anti-competitive business conduct relating to goods and services. If a Party considers that an investigation or proceeding being conducted by another Party may adversely affect such Party's important interests it may transmit its views on the matter to that other Party through its designated authority. Without prejudice to the continuation of any action under its competition laws and to its full freedom of ultimate decision, the Party so addressed should give full and sympathetic consideration to the views expressed by the requesting Party.

2. If a Party considers that an anti-competitive business conduct carried out within the territory of another Party may have an adverse effect on its interests, the first Party may, through its designated authority, request that that other Party initiates appropriate enforcement activities. The request shall be as specific as possible about the nature of the anti-competitive business conduct and its effect on the interest of the requesting Party, and shall include an offer of such further information and other assistance as the requesting Party is able to provide. The requested Party shall carefully consider whether to initiate enforcement activities, or to expand ongoing enforcement activities, with respect to the anti-competitive business conduct identified in the request.

3. Regarding the issues addressed in paragraphs 1 and 2 each Party undertakes to exchange information regarding sanctions and remedies applied and to provide the grounds on which those actions were taken, when requested by another Party.

4. A Party may request consultations within the Joint Committee regarding the issues addressed in paragraphs 1 and 2 as well as any other matter covered by this Chapter. Such a request shall indicate the reasons for the request and whether any procedural time limit or other constraints require that consultations be expedited.

ARTICLE 76

Exchange of information and confidentiality

1. With a view to facilitating the effective application of their competition laws in order to eliminate the negative effects of anti-competitive business conduct relating to goods and services, the Parties are encouraged to exchange information.

2. All exchange of information shall be subject to the rules and standards of confidentiality applicable in the territory of each Party. No Party shall be required to provide information when this is contrary to its laws regarding disclosure of information. Each Party shall maintain the confidentiality of any information provided to it according to the limitations that the submitting Party requests for the use of such information. Where the laws of a Party so provide, confidential information may be provided to their respective courts of justice.

ARTICLE 77

Public enterprises and enterprises entrusted with special or exclusive rights, including designated monopolies

1. With regard to public enterprises and enterprises to which special or exclusive rights have been granted, the Parties shall ensure that no measure is adopted or maintained that distorts trade in goods or services between the Parties to an extent contrary to the Parties' interests and that such enterprises shall be subject to the rules of competition insofar as the application of such rules does not obstruct the performance, in law or in fact, of the particular tasks assigned to them.

2. The Parties confirm their rights and obligations under Article XVII of the GATT 1994 and Article VIII of the GATS with regard to enterprises referred to in paragraph 1.

ARTICLE 78

Dispute settlement

No Party may have recourse to dispute settlement under this Agreement for any matter arising under this Chapter.

ARTICLE 79

Designated authorities

For the purpose of applying Articles 73, 74 and 75, each Party shall designate its competition authority or any other public entity and communicate its decision to the other Parties at the first meeting of the Joint Committee but in no case later than 60 days after the entry into force of the Agreement.

ARTICLE 80

Definitions

For the purpose of this Chapter:

(a) "competition laws" means:

(i) for Chile, Decreto Ley N° 211 of 1973 and Ley N° 19.610 of 1999 and their implementing regulations or amendments as well as other laws dealing with competition matters;

(ii) for the Republic of Iceland, Competition Law No. 8/1993 as amended by Law No. 24/1994, 83/1997, 82/1998 and 107/2000 as well as other laws dealing with competition matters;

(iii) for the Principality of Liechtenstein, any competition rules that Liechtenstein recognises or undertakes to apply within its territory, including those provided for in other international agreements, such as the Agreement on the European Economic Area;

(iv) for the Kingdom of Norway, Act No. 65 of 11 June 1993 relating to Competition in Commercial Activity as well as other laws dealing with competition matters;

(v) for the Swiss Confederation, the Federal Act on Cartels and Other Restraints of Competition of 6 October 1995 and the Order on the Control of Business Concentration of 17 June 1996, and any regulation provided for by these acts as well as other laws dealing with competition matters,

and any changes that the above mentioned legislation may undergo after the conclusion of this Agreement;

(b) "enforcement activity" includes any application of competition laws by way of investigation or proceeding conducted by a Party, which may result in the imposition of penalties or remedies.

CHAPTER VII

SUBSIDIES

ARTICLE 81

Subsidies/State aid

1. The rights and obligations of the Parties in respect of subsidies related to goods shall be governed by Article XVI of the GATT 1994 and the WTO Agreement on Subsidies and Countervailing Measures.

2. The rights and obligations of the Parties in respect of subsidies related to services shall be governed by the GATS.

3. Each Party may request information on individual cases of state aid believed to affect trade between the Parties. The requested Party will make its best efforts to provide such information.

CHAPTER VIII

TRANSPARENCY

ARTICLE 82

Publication

1. The Parties shall publish, or otherwise make publicly available, their laws, regulations, procedures and administrative rulings of general application as well as the international agreements, that may affect the operation of this Agreement.

2. The Parties shall provide, upon request, information on matters referred to in paragraph 1.

ARTICLE 83

Contact points and exchange of information

1. In order to facilitate communication between the Parties on any trade matter covered by this Agreement, each Party shall designate a contact point. On the request of any Party, the contact point of the other Parties shall indicate the office or official responsible for the matter and provide the required support to facilitate communication with the requesting Party.

2. On the request of a Party, each Party shall provide information and reply to any question from the other Parties relating to an actual measure that may affect the operation of this Agreement. The Parties shall make information on proposed measures available to the extent possible under their domestic laws and regulations.

3. The information referred to under this Article shall be considered to have been provided when the information has been made available by appropriate notification to the WTO or when the information has been made available on the official, publicly and fee-free accessible website of the Party concerned.

ARTICLE 84

Cooperation on increased transparency

The Parties agree to cooperate in bilateral and multilateral fora on ways to increase transparency in trade matters.

CHAPTER IX

ADMINISTRATION OF THE AGREEMENT

ARTICLE 85

The Joint Committee

1. The Parties hereby establish the EFTA-Chile Joint Committee, comprising Ministers of each Party, or senior officials delegated by them for this purpose.

2. The Joint Committee shall:

(a) supervise the implementation of this Agreement and evaluate the results obtained in its application;

(b) oversee the further elaboration of this Agreement;

(c) endeavour to resolve disputes that may arise regarding the interpretation or application of this Agreement;

(d) supervise the work of the sub-committees and working groups established or created under this Agreement; and

(e) carry out any other function assigned to it under this Agreement.

3. The Joint Committee may decide to set up such sub-committees and working groups as it considers necessary to assist it in accomplishing its tasks. The Joint Committee may seek the advice of non-governmental persons and groups.

4. The Joint Committee shall establish its rules of procedure. It may take decisions as provided for in this Agreement. On other matters the Joint Committee may make recommendations. The Joint Committee shall take decisions and make recommendations by consensus.

5. Subject to the provisions set out in Annex XV, the Joint Committee may amend the Annexes and the Appendices to this Agreement.

6. The Joint Committee shall meet whenever necessary but normally every two years. The regular meetings of the Joint Committee shall alternate between Chile and an EFTA State.

7. Each Party may request at any time, through a notice in writing to the other Parties, that a special meeting of the Joint Committee be held. Such a meeting shall take place within 30 days of receipt of the request, unless the Parties agree otherwise.

ARTICLE 86

The Secretariat

1. The Parties hereby establish a Secretariat of this Agreement, comprising the competent organs referred to in Annex XVI.

2. All communications to or by a Party shall be sent through the respective competent organs unless otherwise provided for in this Agreement.

CHAPTER X

DISPUTE SETTLEMENT

ARTICLE 87

Scope

1. This Chapter shall apply with respect to the avoidance or the settlement of all disputes arising from this Agreement between one or several EFTA States and Chile.

2. The Parties shall at all times endeavour to agree on the interpretation and application of this Agreement, and shall make every attempt through co-operation and consultations to arrive at a mutually satisfactory resolution of any matter that might affect its operation.

3. This Chapter shall not apply to Articles 14(2), 16(1), 17(1), 18(3), 20, 24(1) and 81(1) and (2).

ARTICLE 88

Choice of forum

1. Disputes on the same matter arising under both this Agreement and the WTO Agreement, or any agreement negotiated thereunder, to which the Parties are party, may be settled in either forum at the discretion of the complaining Party. The forum thus selected shall be used to the exclusion of the other.

2. Once dispute settlement procedures have been initiated under this Agreement pursuant to Article 91 or dispute settlement proceedings have been initiated under the WTO Agreement, the forum selected shall be used to the exclusion of the other.

3. For the purposes of this Article, dispute settlement proceedings under the WTO Agreement are deemed to be initiated by a Party's request for the establishment of a panel pursuant to Article 6 of the Understanding on Rules and Procedures Governing the Settlement of Disputes.

4. Before a Party initiates dispute settlement proceedings under the WTO Agreement against another Party or Parties, that Party shall notify all other Parties of its intention.

ARTICLE 89

Good offices, conciliation or mediation

1. Good offices, conciliation and mediation are procedures that are undertaken voluntarily if the Parties involved so agree. They may begin at any time and be terminated at any time.

2. Proceedings involving good offices, conciliation and mediation shall be confidential and without prejudice to the rights of the Parties in any other proceedings.

ARTICLE 90

Consultations

1. A Party may request in writing consultations with another Party whenever it considers that a measure applied by that Party is inconsistent with this Agreement or that any benefit accruing to it directly or indirectly under this Agreement is impaired by such measure. The Party requesting consultations shall at the same time notify the other Parties in writing thereof. Consultations shall take place before the Joint Committee unless the Party or Parties making or receiving the request for consultations disagree.

2. Consultations shall be held within 30 days from the date of receipt of the request for consultations. Consultations on urgent matters, including those on perishable agricultural goods, shall commence within 15 days from the receipt of the request for consultations.

3. The Parties involved in the consultations shall provide sufficient information to enable a full examination of how the measure is inconsistent with, or may impair the benefit accruing to them under this Agreement and treat any confidential or proprietary information exchanged in the course of consultations in the same manner as the Party providing the information.

4. The consultations shall be confidential and without prejudice to the rights of the Parties involved in any further proceedings.

5. The Parties involved in the consultations shall inform the other Parties of any mutually agreed resolution of the matter.

ARTICLE 91

Establishment of arbitration panel

1. If the matter has not been resolved within 60 days, or 30 days in relation to a matter of urgency, after the date of receipt of the request for consultations, it may be referred to arbitration by one or more of the Parties involved by means of a written notification addressed to the Party or Parties complained against. A copy of this notification shall also be communicated to all Parties so that each Party may determine whether to participate in the dispute.

2. Where more than one Party requests the establishment of an arbitration panel relating to the same matter, a single arbitration panel should be established to examine these complaints whenever feasible.

3. A request for arbitration shall give the reason for the complaint including the identification of the measure at issue and an indication of the legal basis of the complaint.

4. A Party to this Agreement which is not a Party to the dispute, on delivery of a written notice to the disputing Parties, shall be entitled to make written submissions to the arbitration panel, receive written submissions of the disputing Parties, attend all hearings and make oral submissions.

ARTICLE 92

Arbitration panel

1. The arbitration panel shall comprise three members.

2. In the written notification pursuant to Article 91, the Party or the Parties referring the dispute to arbitration shall designate one member of the arbitration panel.

3. Within 15 days of the receipt of the notification referred to in paragraph 2, the Party or Parties to which it was addressed to shall designate one member of the arbitration panel.

4. The Parties to the dispute shall agree on the appointment of the third arbitrator within 15 days of the appointment of the second arbitrator. The member thus appointed shall chair the arbitration panel.

5. If all 3 members have not been designated or appointed within 30 days from the date of receipt of the notification referred to in paragraph 2, the necessary designations

shall be made at the request of any Party to the dispute by the Director-General of the WTO within a further 30 days.

6. The Chair of the arbitration panel shall not be a national of any of the Parties, nor have his or her usual place of residence in the territory of any of the Parties, nor be employed or previously have been employed by any of the Parties, nor have dealt with the case in any capacity.

7. If an arbitrator dies, withdraws or is removed, a replacement shall be selected within 15 days in accordance with the selection procedure followed to select him or her. In such a case, any time period applicable to the arbitration panel proceedings shall be suspended for a period beginning on the date the arbitrator dies, withdraws or is removed and ending on the date the replacement is selected.

8. The date of establishment of the arbitration panel shall be the date on which the Chair is appointed.

ARTICLE 93

Procedures of the arbitration panel

1. Unless the Parties to the dispute agree otherwise, the arbitration panel proceedings shall be conducted in accordance with the Model Rules of Procedure set out at Annex XVII.

2. Unless the Parties to the dispute otherwise agree within 10 days from the date of delivery of the request for the establishment of the arbitration panel, the terms of reference shall be:

"To examine, in the light of the relevant provisions of the Agreement, the matter referred to in the request for the establishment of an arbitration panel pursuant to Article 91 and to make findings of law and fact together with the reasons therefore for the resolution of the dispute."

3. At the request of a Party to the dispute or on its own initiative, the arbitration panel may seek scientific information and technical advice from experts as it deems appropriate. Any information so obtained shall be submitted to the Parties for comments.

4. The arbitration panel shall make its ruling based on the provisions of this Agreement, in particular in the light of its objectives as set out in Article 2, applied and interpreted in accordance with the rules of interpretation of public international law.

5. Decisions of the arbitration panel shall be taken by a majority of its members. Arbitrators may furnish separate opinions on matters not unanimously agreed. No arbitration panel may disclose which arbitrators are associated with majority or minority opinions.

6. The expenses of the arbitration panel, including the remuneration of its members, shall be borne by the Parties to the dispute in equal shares.

ARTICLE 94

Ruling

1. The arbitration panel shall within 90 days from the date of the establishment of the arbitration panel present to the Parties to the dispute its ruling.

2. The arbitration panel shall base its ruling on the submissions and arguments of the Parties to the dispute and on any scientific information and technical advice pursuant to Article 93(3).

3. Unless the Parties to the dispute decide otherwise, the ruling shall be published 15 days after it is presented to them.

ARTICLE 95

Termination of arbitration panel proceedings

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

ARTICLE 96

Implementation of arbitration panel rulings

1. The ruling shall be final and binding on the Parties to the dispute. Each Party to the dispute shall be bound to take the measures necessary to comply with the ruling referred to in Article 94.

2. The Parties to the dispute shall endeavour to agree on the specific measures that are required for complying with the ruling.

3. The Party complained against shall notify the other Party within 30 days after the ruling has been transmitted to the Parties to the dispute:

(a) the specific measures required for complying with the ruling;

(b) the reasonable period of time to do so; and

(c) a concrete proposal of a temporary compensation until the full implementation of the specific measures required for compliance with the ruling.

4. In case of disagreement between the Parties to the dispute on the content of such notification, the complaining Party may request the original arbitration panel to rule on whether the proposed measures referred to under paragraph 3(a) are in compliance with the ruling, on the duration of the period of time and on whether the compensation proposal is manifestly disproportionate. The ruling shall be given within 45 days after that request.

5. The Party or Parties concerned shall notify to the other Party or Parties to the dispute and the Joint Committee the measures adopted in order to implement the ruling before the expiry of the reasonable period of time determined in accordance with paragraph 4. Upon that notification, any Party to the dispute may request the original arbitration panel to rule on the conformity of those measures with the ruling. The ruling of the arbitration panel shall be given within 45 days from that request.

6. If the Party or Parties concerned fails to notify the implementing measures before the expiry of the reasonable period of time determined in accordance with paragraph 4, or f the arbitration panel rules that the implementing measures notified by the Party or Parties concerned are not in compliance with the ruling, such Party or Parties shall, if so requested by the complaining Party or Parties, enter into consultations with a view to agree on a mutually acceptable compensation. If no such agreement has been reached within 20 days from the request, the complaining Party or Parties shall be entitled to suspend only the application of benefits granted under this Agreement equivalent to those affected by the measure found to be inconsistent with, or to impair benefits under, this Agreement.

7. In considering what benefits to suspend, the complaining Party or Parties should first seek to suspend benefits in the same sector[11] or sectors as that affected by the measure that the arbitration panel has found to be inconsistent with, or to impair benefits under, this Agreement. The complaining Party or Parties that consider it is not practicable or effective to suspend benefits in the same sector or sectors may suspend benefits in other sectors.

8. The complaining Party or Parties shall notify the other Party or Parties of the benefits which it intends to suspend no later than 60 days before the date on which the suspension is due to take effect. Within 15 days from that notification, any of the Parties to the dispute may request the original arbitration panel to rule on whether the benefits which the complaining Party or Parties intend to suspend are equivalent to those affected by the measure found to be inconsistent with, or to impair benefits under, this Agreement, and whether the proposed suspension is in accordance with paragraphs 6 and 7. The ruling of the arbitration panel shall be given within 45 days from that request. Benefits shall not be suspended until the arbitration panel has issued its ruling.

9. The suspension of benefits shall be temporary and shall only be applied by the complaining Party or Parties until the measure found to be inconsistent with, or to impair benefits under, this Agreement has been withdrawn or amended so as to bring it

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[11] For the purpose of this Article, with respect to goods 'sector' shall mean goods classified in Chapters 1 to 97 of the HS.

into conformity with this Agreement, or the Parties to the dispute have reached agreement on a resolution of the dispute.

10. At the request of any of the Parties to the dispute, the original arbitration panel shall decide on the conformity with the ruling of any implementing measures adopted after the suspension of benefits and, in light of such ruling, whether the suspension of benefits should be terminated or modified. The ruling of the arbitration panel shall be given within 30 days from the date of that request.

11. The rulings provided for in this Article shall be binding.

ARTICLE 97

Other provisions

1. Any time period mentioned in this Chapter may be extended by mutual agreement of the Parties involved.

2. Hearings of the arbitration panels shall be closed to the public, unless the Parties decide otherwise.

CHAPTER XI

GENERAL EXCEPTIONS

ARTICLE 98

Balance of payments difficulties

1. Where a Party is in serious balance of payments and external financial difficulties, or under threat thereof, it may adopt or maintain restrictive measures with regard to trade in goods and in services and with regard to payments and capital movements, including those related to direct investment.

2. The Parties shall endeavour to avoid the application of the restrictive measures referred to in paragraph 1.

3. Any restrictive measure adopted or maintained under this Article shall be non-discriminatory and of limited duration and shall not go beyond what is necessary to remedy the balance of payments and external financial situation. Such a measure shall be in accordance with the conditions established in the WTO Agreements and consistent with the Articles of Agreement of the International Monetary Fund, as applicable.

4. The Party maintaining or having adopted restrictive measures, or any changes thereto, shall promptly notify them to the other Parties and present, as soon as possible, a time schedule for their removal.

5. The Party applying restrictive measures shall consult promptly within the Joint Committee. Such consultations shall assess the balance of payments situation of the Party concerned and the restrictions adopted or maintained under this Article, taking into account, inter alia, such factors as:

(a) the nature and extent of the balance of payments and the external financial difficulties;

(b) the external economic and trading environment of the consulting Party;

(c) alternative corrective measures which may be available.

The consultations shall address the compliance of any restrictive measures with paragraphs 3 and 4. All findings of statistical and other facts presented by the International Monetary Fund relating to foreign exchange, monetary reserves and balance of payments shall be accepted and conclusions shall be based on the assessment by the International Monetary Fund of the balance of payments and the external financial situation of the consulting Party.

ARTICLE 99

National security clause

1. Nothing in this Agreement shall be construed:

(a) to require a Party to furnish any information the disclosure of which it considers contrary to its essential security interests;

(b) to prevent a Party from taking any action which it considers necessary for the protection of its essential security interests

(i) relating to fissionable and fusionable materials or the materials from which they are derived;

(ii) relating to the traffic in arms, ammunition and implements of war and to such traffic in other goods and materials or relating to the supply of services, as carried on directly or indirectly for the purpose of supplying or provisioning a military establishment;

(iii) relating to the government procurement of arms, ammunition or war materials or procurement indispensable for national security or for national defense purposes; or

(iv) taken in time of war or other emergency in international relations; or

(c) to prevent a Party from taking any action in pursuance of its obligations under the United Nations Charter for the maintenance of international peace and security.

2. The Joint Committee shall be informed to the fullest extent possible of measures taken under paragraphs 1(b) and (c) and of their termination.

ARTICLE 100

Taxation

1. Nothing in this Agreement shall apply to taxation measures except:

(a) Article 15, and such other provisions of this Agreement as are necessary to give effect to that Article to the same extent as does Article III of the GATT 1994; and

(b) with regard to taxation measures applicable in Section I of Chapter III, where Article XIV of the GATS applies.

2. Nothing in this Agreement shall affect the rights and obligations of any Party under any tax convention. In the event of any inconsistency between this Agreement and any such convention, that convention shall prevail to the extent of the inconsistency.

CHAPTER XII

FINAL PROVISIONS

ARTICLE 101

Definitions

For the purposes of this Agreement, unless otherwise specified:

"days" means calendar days;

"measure" includes *inter alia* any law, regulation, procedure, requirement or practice; and

"Party" means any State regarding which this Agreement has entered into force.

ARTICLE 102

Annexes and Appendices

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

ARTICLE 103

Amendments

1. The Parties may agree on any amendment to this Agreement. Unless the Parties decide otherwise, the amendments shall enter into force on the first day of the third month following the deposit of the last instrument of ratification, acceptance or approval.

2. Notwithstanding paragraph 1, with respect to decisions of the Joint Committee amending the Annexes and Appendices to this Agreement, Article 85(5) shall apply. Such decisions shall enter into force on the date that the last Party notifies that its internal requirements have been fulfilled, unless the decision itself specifies a later date. The Joint Committee may decide that any decision shall enter into force for those Parties that have fulfilled their internal requirements, provided that Chile is one of those Parties. An EFTA State may apply a decision of the Joint Committee provisionally until such decision enters into force, subject to its constitutional requirements.

3. The text of the amendments shall be deposited with the Depositary.

ARTICLE 104

Additional Parties

Any third State may, upon invitation by the Joint Committee, become a Party to this Agreement. The terms and conditions of the accession of the additional Party shall be the subject of an agreement between the Parties and the invited State.

ARTICLE 105

Withdrawal and termination

1. Any Party to this Agreement may withdraw therefrom by means of a written notification to the Depositary. The withdrawal shall take effect on the first day of the sixth month after the date on which the notification was received by the Depositary.

2. If one of the EFTA States withdraws from this Agreement, a meeting of the remaining Parties shall be convened to discuss the issue of the continued existence of this Agreement.

ARTICLE 106

Entry into force

1. This Agreement is subject to ratification, acceptance or approval. The instruments of ratification, acceptance or approval shall be deposited with the Depositary.

2. This Agreement shall enter into force on 1 February 2004 in relation to those Signatory States which by then have ratified the Agreement, provided they have deposited their instruments of ratification, acceptance or approval with the Depositary at least 30 days before the date of entry into force, and provided that Chile is among the States that have deposited their instruments of ratification, acceptance or approval.

3. In case this Agreement does not enter into force on 1 February 2004, it shall enter into force on the first day of the third month following the latter deposit of the instruments of ratification, acceptance or approval by Chile and at least one EFTA State.

4. In relation to an EFTA State depositing its instrument of ratification, acceptance or approval after this Agreement has entered into force, this Agreement shall enter into force on the first day of the third month following the deposit of its instrument.

5. If its constitutional requirements permit, any EFTA State may apply this Agreement provisionally. Provisional application of this Agreement under this paragraph shall be notified to the Depositary.

ARTICLE 107

Relation to the complementary agreements

1. The complementary agreement on trade in agricultural goods between an EFTA State and Chile referred to in Article 1 shall enter into force on the same date for that EFTA State and Chile as this Agreement enters into force. The complementary agreement shall remain in force as long as the Parties to it remain Parties to this Agreement.

2. If an EFTA State or Chile withdraws from the complementary agreement, this Agreement shall terminate between that EFTA State and Chile on the same date as the withdrawal from the complementary agreement becomes effective.

ARTICLE 108

Depositary

The Government of Norway shall act as Depositary.

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

Done at Kristiansand, this 26th day of June 2003, in a single authentic copy in the English language which shall be deposited with the Government of Norway. The Government of Norway shall transmit certified copies to all Signatory States to this Agreement.

For the Republic of Iceland

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For the Republic of Chile

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For the Principality of Liechtenstein

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For the Kingdom of Norway

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For the Swiss Confederation

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