UNITED STATES – CHILE FREE TRADE AGREEMENT

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

Chile, resolved to:

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

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

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

AVOID distortions in their reciprocal trade;

ESTABLISH clear and mutually advantageous rules governing their trade;

ENSURE a predictable commercial framework for business planning and investment;

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

ENHANCE the competitiveness of their firms in global markets;

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

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

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

PROTECT, enhance, and enforce basic workers' rights;

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

PROMOTE sustainable development;

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

PRESERVE their flexibility to safeguard the public welfare; and

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

HAVE AGREED as follows:

Chapter One

Initial Provisions

Article 1.1: Establishment of a Free Trade Area

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

Article 1.2: Objectives

1. The objectives of this Agreement, as elaborated more specifically through its principles and rules, including national treatment, most-favored-nation treatment, and transparency, are to:
(a) encourage expansion and diversification of trade between the Parties;
(b) eliminate barriers to trade in, and facilitate the cross-border movement of, goods and services between the Parties;
(c) promote conditions of fair competition in the free trade area;
(d) substantially increase investment opportunities in the territories of the Parties;
(e) provide adequate and effective protection and enforcement of intellectual property rights in each Party's territory;
(f) create effective procedures for the implementation and application of this Agreement, for its joint administration, and for the resolution of disputes; and
(g) establish a framework for further bilateral, regional, and multilateral cooperation to expand and enhance the benefits of this Agreement.

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

Article 1.3: Relation to Other Agreements

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

Article 1.4: Extent of Obligations

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

Chapter Two

General Definitions

Article 2.1: Definitions of General Application

For purposes of this Agreement, unless otherwise specified:

central level of government means:
(a) for the United States, the federal level of government; and
(b) for Chile, the national level of government;

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

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

(a) charge equivalent to an internal tax imposed consistently with Article III:2 of the GATT 1994; in respect of like, directly competitive, or substitutable goods of the Party, or in respect of goods from which the imported good has been manufactured or produced in whole or in part;
(b) antidumping or countervailing duty; and
(c) fee or other charge in connection with importation commensurate with the cost of services rendered;

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

days means calendar days;

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

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

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

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

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

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

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

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

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

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

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

person means a natural person or an enterprise;

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

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

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

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

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

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

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

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

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

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

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

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

Chapter Three

National Treatment and Market Access for Goods

Article 3.1: Scope and Coverage

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

Section A - National Treatment

Article 3.2: National Treatment

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

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

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

Section B - Tariff Elimination

Article 3.3: Tariff Elimination

1. Except as otherwise provided in this Agreement, neither Party may increase any existing customs duty, or adopt any customs duty, on an originating good.

2. Except as otherwise provided in this Agreement, each Party shall progressively eliminate its customs duties on originating goods in accordance with Annex 3.3.

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

4. On the request of either Party, the Parties shall consult to consider accelerating the elimination of customs duties set out in their Schedules to Annex 3.3. An agreement between the Parties to accelerate the elimination of a customs duty on a good shall supercede any duty

rate or staging category determined pursuant to their Schedules to Annex for such good when approved by each Party in accordance with Article 21.1(3)(b) (The Free Trade Commission) and its applicable legal procedures.

5. For greater certainty, a Party may:
(a) raise a customs duty back to the level established in its Schedule to Annex 3.3 following a unilateral reduction; or
(b) maintain or increase a customs duty as authorized by the Dispute Settlement Body of the WTO.

Article 3.4: Used Goods

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

Article 3.5: Customs Valuation of Carrier Media

1. For purposes of determining the customs value of carrier media bearing content, each Party shall base its determination on the cost or value of the carrier media alone.

2. For purposes of the effective imposition of any internal taxes, direct or indirect, each Party shall determine the tax basis according to its domestic law.

Section C - Special Regimes

Article 3.6: Waiver of Customs Duties

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

2. Neither Party may, explicitly or implicitly, condition on the fulfillment of a performance requirement the continuation of any existing waiver of customs duties.

3. This Article shall not apply to measures subject to Article 3.8.

Article 3.7: Temporary Admission of Goods

1. Each Party shall grant duty-free temporary admission for:
(a) professional equipment, including equipment for the press or television, software and broadcasting and cinematographic equipment, necessary for carrying out the business activity, trade or profession of a business person who qualifies for temporary entry pursuant to the laws of the importing Party;
(b) goods intended for display or demonstration;
(c) commercial samples and advertising films and recordings; and
(d) goods admitted for sports purposes, regardless of their origin.

2. Each Party shall, at the request of the person concerned and for reasons deemed valid by its customs authority, extend the time limit for temporary admission beyond the period initially fixed.

3. Neither Party may condition the duty-free temporary admission of goods referred to in paragraph 1, other than to require that such goods:
(a) be used solely by or under the personal supervision of a national or resident of the other Party in the exercise of the business activity, trade, profession, or sport of that person;
(b) not be sold or leased while in its territory;
(c) be accompanied by a security in an amount no greater than the charges that would otherwise be owed on entry or final importation, releasable on exportation of the good;
(d) be capable of identification when exported;
(e) be exported on the departure of the person referenced in subparagraph (a), or within such other period, related to the purpose of the temporary admission, as the Party may establish, or within one year, unless extended;
(f) be admitted in no greater quantity than is reasonable for their intended use; and
(g) be otherwise admissible into the Party's territory under its laws.

4. If any condition that a Party imposes under paragraph 3 has not been fulfilled, the Party may apply the customs duty and any other charge that would normally be owed on the good plus any other charges or penalities provided for under its domestic law.

5. Each Party, through its customs authority, shall adopt procedures providing for the expeditious release of goods admitted under this Article. To the extent possible, such procedures shall provide that when such a good accompanies a national or resident of the other Party who is seeking temporary entry, the good shall be released simultaneously with the entry of that national or resident.

6. Each Party shall permit a good temporarily admitted under this Article to be exported through a customs port other than that through which it was admitted.

7. Each Party, through its customs authority, consistent with domestic law, shall relieve the importer or other person responsible for a good admitted under this Article from any liability for failure to export the good on presentation of satisfactory proof to customs authorities that the good has been destroyed within the original period fixed for temporary admission or any lawful extension.

8. Subject to Chapters Ten (Investment) and Eleven (Cross-Border Trade in Services):
(a) each Party shall allow a vehicle or container used in international traffic that enters its territory from the territory of the other Party to exit its territory on any route that is reasonably related to the economic and prompt departure of such vehicle or container;
(b) neither Party may require any bond or impose any penalty or charge solely by reason of any difference between the port of entry and the port of departure of a vehicle or container;
(c) neither Party may condition the release of any obligation, including any bond, that it imposes in respect of the entry of a vehicle or container into its territory on its exit through any particular port of departure; and

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

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

Article 3.8: Drawback and Duty Deferral Programs

1. Except as otherwise provided in this Article, neither Party may refund the amount of customs duties paid, or waive or reduce the amount of customs duties owed, on a good imported into its territory, on condition that the good is:
(a) subsequently exported to the territory of the other Party;
(b) used as a material in the production of another good that is subsequently exported to the territory of the other Party; or
(c) substituted by an identical or similar good used as a material in the production of another good that is subsequently exported to the territory of the other Party.

2. Neither Party may, on condition of export, refund, waive, or reduce:
(a) an antidumping or countervailing duty;
(b) a premium offered or collected on an imported good arising out of any tendering system in respect of the administration of quantitative import restrictions, tariff rate quotas, or tariff preference levels; or
(c) customs duties paid or owed on a good imported into its territory and substituted by an identical or similar good that is subsequently exported to the territory of the other Party.

3. Where a good is imported into the territory of a Party pursuant to a duty deferral program and is subsequently exported to the territory of the other Party, or is used as a material in the production of another good that is subsequently exported to the territory of the other Party, or is substituted by an identical or similar good used as a material in the production of another good that is subsequently exported to the territory of the other Party, the Party from whose territory the good is exported shall assess the customs duties as if the exported good had been withdrawn for domestic consumption.

4. This Article does not apply to:
(a) a good entered under bond for transportation and exportation to the territory of the other Party;
(b) a good exported to the territory of the other Party in the same condition as when imported into the territory of the Party from which the good was exported (testing, cleaning, repacking, inspecting, sorting, marking, or preserving a good shall not be considered to change the good's condition). Where such a good has been commingled with fungible goods and exported in the same condition, its origin for purposes of this subparagraph may be determined on the basis of such inventory management methods as first-in, first-out or last-in, first-out. Nothing in this subparagraph shall be construed to permit a Party to waive, refund, or reduce a customs duty contrary to paragraph 2(c);
(c) a good imported into the territory of a Party that is deemed to be exported from its territory, or used as a material in the production of another good that is deemed to be exported to the territory of the other Party, or is substituted by an identical or similar good used as a

material in the production of another good that is deemed to be exported to the territory of the other Party, by reason of
(i) delivery to a duty-free shop,
(ii) delivery for ship's stores or supplies for ships or aircraft, or
(iii) delivery for use in joint undertakings of the Parties and that will subsequently become the property of the Party into whose territory the good was deemed to be exported;
(d) a refund of customs duties by a Party on a particular good imported into its territory and subsequently exported to the territory of the other Party, where that refund is granted by reason of the failure of such good to conform to sample or specification, or by reason of the shipment of such good without the consent of the consignee; or
(e) an originating good that is imported into the territory of a Party and is subsequently exported to the territory of the other Party, or used as a material in the production of another good that is subsequently exported to the territory of the other Party, or is substituted by an identical or similar good used as a material in the production of another good that is subsequently exported to the territory of the other Party.

5. This Article shall take effect beginning eight years after the date of entry into force of this Agreement, and thereafter a Party may refund, waive, or reduce duties paid or owed under the Party's duty drawback or deferral programs according to the following schedule:
(a) no more than 75 percent in year nine;
(b) no more than 50 percent in year 10;
(c) no more than 25 percent in year 11; and
(d) zero in year 12 and thereafter.

6. For purposes of this Article:

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

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

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

used means used or consumed in the production of goods.

Article 3.9: Goods Re-entered after Repair or Alteration

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

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

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

(a) destroys a good's essential characteristics or creates a new or commercially different good; or
(b) transforms an unfinished good into a finished good.

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

Each Party shall grant duty-free entry to commercial samples of negligible value, and to printed advertising materials, imported from the territory of the other Party, regardless of their origin, but may require that:
(a) such samples be imported solely for the solicitation of orders for goods, or services provided from the territory, of the other Party or a non-Party; or
(b) such advertising materials be imported in packets that each contain no more than one copy of each such material and that neither such materials nor packets form part of a larger consignment.

Section D - Non-Tariff Measures

Article 3.11: Import and Export Restrictions

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

2. The Parties understand that the GATT rights and obligations incorporated by paragraph 1 prohibit, in any circumstances in which any other form of restriction is prohibited, a Party from adopting or maintaining:
(a) export and import price requirements, except as permitted in enforcement of countervailing and antidumping orders and undertakings;
(b) import licensing conditioned on the fulfilment of a performance requirement; or
(c) voluntary export restraints not consistent with Article VI of GATT 1994, as implemented under Article 18 of the SCM Agreement and Article 8.1 of the AD Agreement.

3. In the event that a Party adopts or maintains a prohibition or restriction on the importation from or exportation to a non-Party of a good, nothing in this Agreement shall be construed to prevent the Party from:
(a) limiting or prohibiting the importation from the territory of the other Party of such good of that non-Party; or
(b) requiring as a condition of export of such good of the Party to the territory of the other Party, that the good not be re-exported to the non-Party, directly or indirectly, without being consumed in the territory of the other Party.

4. In the event that a Party adopts or maintains a prohibition or restriction on the importation of a good from a non-Party, the Parties, on the request of either Party, shall consult with a view

to avoiding undue interference with or distortion of pricing, marketing, and distribution arrangements in the other Party.

5. Paragraphs 1 through 4 shall not apply to the measures set out in Annex 3.2.

Article 3.12: Administrative Fees and Formalities

1. Each Party shall ensure, in accordance with Article VIII:1 of GATT 1994 and its interpretive notes, that all fees and charges of whatever character (other than customs duties, charges equivalent to an internal tax or other internal charge applied consistently with Article III:2 of GATT 1994, and antidumping and countervailing duties) imposed on or in connection with importation or exportation are limited in amount to the approximate cost of services rendered and do not represent an indirect protection to domestic goods or a taxation of imports or exports for fiscal purposes.

2. Neither Party may require consular transactions, including related fees and charges, in connection with the importation of any good of the other Party.

3. Each Party shall make available through the Internet or a comparable computer based telecommunications network a current list of the fees and charges it imposes in connection with importation or exportation.

4. The United States shall eliminate its merchandise processing fee on originating goods of Chile.

Article 3.13: Export Taxes

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

Article 3.14: Luxury Tax

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

Section E - Other Measures

Article 3.15: Distinctive Products

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

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

Section F - Agriculture

Article 3.16: Agricultural Export Subsidies

1. The Parties share the objective of the multilateral elimination of export subsidies for agricultural goods and shall work together toward an agreement in the World Trade Organization to eliminate those subsidies and prevent their reintroduction in any form.

2. Except as provided in paragraph 3, neither Party shall introduce or maintain any export subsidy on any agricultural good destined for the territory of the other Party.

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

Article 3.17: Agricultural Marketing and Grading Standards

1. Where a Party adopts or maintains a measure respecting the classification, grading, or marketing of a domestic agricultural good, or a measure to expand, maintain, or develop its domestic market for an agricultural good, it shall accord treatment to a like good of the other Party that is no less favorable than it accords under the measure to the domestic agricultural good, regardless of whether the good is intended for direct consumption or for processing.

2. Paragraph 1 shall be without prejudice to the rights of either Party under the WTO Agreement or under this Agreement regarding measures respecting the classification, grading, or marketing of an agricultural good.

3. The Parties hereby establish a Working Group on Agricultural Trade, comprising representatives of the Parties, which shall meet annually or as otherwise agreed. The Working Group shall review, in coordination with the Committee on Technical Barriers to Trade established in Article 7.8 (Committee on Technical Barriers to Trade), the operation of agricultural grade and quality standards and programs of expansion and development that affect trade between the Parties, and shall resolve any issues that may arise regarding the operation of those standards and programs. The Group shall report to the Committee on Trade in Goods established in Article 3.23.

4. Each Party shall recognize the other Party's grading programs for beef, as set out in Annex 3.17.

Article 3.18: Agricultural Safeguard Measures

1. Notwithstanding Article 3.3(2), each Party may impose a safeguard measure in the form of additional import duties, consistent with paragraphs 2 through 7, on an originating agricultural good listed in its section of Annex 3.18. The sum of any such additional duty and any import duties or other charges applied pursuant to Article 3.3(2) shall not exceed the lesser of:
(a) the prevailing most-favored-nation (MFN) applied rate; or
(b) the MFN applied rate of duty in effect on the day immediately preceding the date of entry into force of this Agreement.

2. A Party may impose a safeguard measure only if the unit import price of the good enters the Party's customs territory at a level below a trigger price for that good as set out in that Party's section of Annex 3.18.
(a) The unit import price shall be determined on the basis of the C.I.F. import price of the good in U.S. dollars for goods entering Chile, and on the basis of the F.O.B. import price of the good in U.S. dollars for goods entering the United States.
(b) The trigger prices for the goods eligible for a safeguard measure, which reflect historic unit import values for the products concerned, are listed in Annex 3.18. The Parties may mutually agree to periodically evaluate and update the trigger prices.

3. The additional duties under paragraph 2 shall be set in accordance with the following schedule:
(a) if the difference between the unit import price of the item expressed in terms of domestic currency (the "import price") and the trigger price as defined under paragraph 2(b) is less than or equal to 10 percent of the trigger price, no additional duty shall be imposed;
(b) if the difference between the import price and the trigger price is greater than 10 percent but less than or equal to 40 percent of the trigger price, the additional duty shall equal 30 percent of the difference between the MFN rate applicable under paragraph 1 and the preferential tariff rate;
(c) if the difference between the import price and the trigger price is greater than 40 percent but less than or equal to 60 percent of the trigger price, the additional duty shall equal 50 percent of the difference between the MFN rate applicable under paragraph 1 and the preferential tariff rate;
(d) if the difference between the import price and the trigger price is greater than 60 percent but less than or equal to 75 percent, the additional duty shall equal 70 percent of the difference between the MFN rate applicable under paragraph 1 and the preferential tariff rate; and
(e) if the difference between the import price and the trigger price is greater than 75 percent of the trigger price, the additional duty shall equal 100 percent of the difference between the MFN rate applicable under paragraph 1 and the preferential tariff rate.

4. Neither Party may, with respect to the same good, at the same time:
(a) impose a safeguard measure under this Article; and
(b) take a safeguard action under Section A of Chapter Eight (Trade Remedies).

5. Neither Party may impose a safeguard measure on a good that is subject to a measure that the Party has imposed pursuant to Article XIX of GATT 1994 and the Safeguards Agreement, and neither Party may continue maintaining a safeguard measure on a good that becomes subject to a measure that the Party imposes pursuant to Article XIX of GATT 1994 and the Safeguards Agreement.

6. A Party may impose a safeguard measure only during the 12-year period beginning on the date of entry into force of this Agreement. Neither Party may impose a safeguard measure on a good once the good achieves duty-free status under this Agreement. Neither Party may impose a safeguard measure that increases a zero in-quota duty on a good subject to a tariff-rate quota.

7. Each Party shall implement any safeguard measure in a transparent manner. Within 60 days after imposing a measure, a Party shall notify the other Party, in writing, and shall provide it relevant data concerning the measure. On request, the Party imposing the measure shall consult with the other Party with respect to the conditions of application of the measure.

8. The general operation of the agricultural safeguard provisions and the trigger prices for their implementation may be the subject of discussion and review in the Committee on Trade in Goods.

9. For purposes of this Article, safeguard measure means an agricultural safeguard measure described in paragraph 1.

Section G - Textiles and Apparel

Article 3.19: Bilateral Emergency Actions

1. If, as a result of the elimination of a duty provided for in this Agreement, a textile or apparel good benefiting from preferential tariff treatment under this Agreement is being imported into the territory of a Party in such increased quantities, in absolute terms or relative to the domestic market for that good, and under such conditions as to cause serious damage, or actual threat thereof, to a domestic industry producing a like or directly competitive good, the importing Party may, to the extent and for such time as may be necessary to prevent or remedy such damage and to facilitate adjustment, take emergency action, consisting of an increase in the rate of duty on the good to a level not to exceed the lesser of:
(a) the most-favored-nation (MFN) applied rate of duty in effect at the time the action is taken; and
(b) the MFN applied rate of duty in effect on the date of entry into force of this Agreement.

2. In determining serious damage, or actual threat thereof, the importing Party:
(a) shall examine the effect of increased imports from the other Party on the particular industry, as reflected in changes in such relevant economic variables as output, productivity, utilization of capacity, inventories, market share, exports, wages, employment, domestic prices, profits and investment, none of which is necessarily decisive; and
(b) shall not consider changes in technology or consumer preference as factors supporting a determination of serious damage or actual threat thereof.

3. The importing Party may take an emergency action under this Article only following an investigation by its competent authorities.

4. The importing Party shall deliver to the other Party, without delay, written notice of its intent to take emergency action, and, on request of the other Party, shall enter into consultations with that Party.

5. The following conditions and limitations shall apply to any emergency action taken under this Article:
(a) no emergency action may be maintained for a period exceeding three years;
(b) no emergency action may be taken or maintained beyond the period ending eight years after duties on a good have been eliminated pursuant to this Agreement;
(c) no emergency action may be taken by an importing Party against any particular good of the other Party more than once; and
(d) on termination of the action, the good will return to duty-free status.

6. The Party taking an emergency action under this Article shall provide to the Party against whose good the action is taken mutually agreed trade liberalizing compensation in the form of concessions having substantially equivalent trade effects or equivalent to the value of the additional duties expected to result from the emergency action. Such concessions shall be limited to textile and apparel goods, unless the Parties otherwise agree. If the Parties are unable to agree on compensation, the Party against whose good the emergency action is taken may take tariff action having trade effects substantially equivalent to the trade effects of the emergency action taken under this Article. Such tariff action may be taken against any goods of the Party taking the emergency action. The Party taking the tariff action shall apply such action only for the minimum period necessary to achieve the substantially equivalent trade effects. The importing Party's obligation to provide trade compensation and the exporting Party's right to take tariff action shall terminate when the emergency action terminates.

7. Nothing in this Agreement shall be construed to limit a Party's right to restrain imports of textile and apparel goods in a manner consistent with the Agreement on Textiles and Clothing or the Safeguards Agreement. However, a Party may not take or maintain an emergency action under this Article against a textile or apparel good that is subject, or becomes subject, to a safeguard measure that a Party takes pursuant to either such WTO agreement.

Article 3.20: Rules of Origin and Related Matters

Application of Chapter Four

1. Except as provided in this Section, Chapter Four (Rules of Origin and Origin Procedures) applies to textile and apparel goods.

2. The rules of origin set forth in this Agreement shall not apply in determining the country of origin of a textile or apparel good for non-preferential purposes.

Consultations

3. On the request of either Party, the Parties shall consult to consider whether the rules of origin applicable to particular textile and apparel goods should be revised to address issues of availability of supply of fibers, yarns or fabrics in the territories of the Parties.

4. In the consultations referred to in paragraph 3, each Party shall consider all data presented by the other Party showing substantial production in its territory of the particular good. The Parties shall consider that substantial production has been shown if a Party demonstrates that its domestic producers are capable of supplying commercial quantities of the good in a timely manner.

5. The Parties shall endeavor to conclude consultations within 60 days of a request. An agreement between the Parties resulting from the consultations shall supersede any prior rule of origin for such good when approved by the Parties in accordance with Article 24.2 (Amendments).

De Minimis

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

Treatment of Sets

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

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

8. Subject to paragraph 9, the following goods, if they meet the applicable conditions for preferential tariff treatment under this Agreement other than the condition that they be originating goods, shall be accorded preferential tariff treatment as if they were originating goods:
(a) cotton or man-made fiber fabric goods provided for in Chapters 52, 54, 55, 58, and 60 of the Harmonized System that are wholly formed in the territory of a Party from yarn produced or obtained outside the territory of a Party; and
(b) cotton or man-made fiber fabric goods provided for in Annex 4.1 (Specific Rules of Origin) that are wholly formed in the territory of a Party from yarn spun in the territory of a Party from fiber produced or obtained outside the territory of a Party.

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

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

10. Subject to paragraph 11, cotton or man-made fiber apparel goods provided for in Chapters 61 and 62 of the Harmonized System that are both cut (or knit to shape) and sewn or otherwise assembled in the territory of a Party from fabric or yarn produced or obtained outside the territory of a Party, and that meet the applicable conditions for preferential tariff treatment under this Agreement other than the condition that they be originating goods, shall be accorded preferential tariff treatment as if they were originating goods.

11. The treatment described in paragraph 10 shall be limited as follows:
(a) in each of the first 10 years after the date of entry into force of this Agreement, the treatment shall apply to goods described in that paragraph imported into the territory of a Party up to a quantity of 2,000,000 SME; and
(b) in the eleventh year, and for each year thereafter, the treatment shall apply to goods described in that paragraph imported into the territory of a Party up to a quantity of 1,000,000 SME.

Certification for Tariff Preference Level

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

Article 3.21: Customs Cooperation

1. The Parties shall cooperate for purposes of:
(a) enforcing or assisting in the enforcement of their laws, regulations, and procedures implementing this Agreement affecting trade in textile and apparel goods;
(b) ensuring the accuracy of claims of origin; and
(c) preventing circumvention of laws, regulations, and procedures of either Party or international agreements affecting trade in textile and apparel goods.

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

3. Where the importing Party has a reasonable suspicion that an exporter or producer of the exporting Party is engaging in unlawful activity relating to trade in textile and apparel goods, the

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

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

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

6. While a verification is being conducted, the importing Party may take appropriate action, which may include suspending the application of preferential tariff treatment to:
(a) the textile or apparel good for which a claim of origin has been made, in the case of a verification under paragraph 2; or
(b) the textile and apparel goods exported or produced by the person subject to a verification under paragraph 3, where the reasonable suspicion of unlawful activity relates to those goods.

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

8.
(a) If the importing Party is unable to make the determination described in paragraph 2 within 12 months after its request for a verification, it may take action as permitted under its law with respect to the textile and apparel good subject to the verification, and with respect to similar goods exported or produced by the person that exported or produced the good.
(b) If the importing Party is unable to make the determinations described in paragraph 3 within 12 months after its request for a verification, it may take action as permitted under its law with respect to any textile or apparel goods exported or produced by the person subject to the verification.

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

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

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

Article 3.22: Definitions

For purposes of this Section:

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

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

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

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

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

Section H - Institutional Provisions

Article 3.23: Committee on Trade in Goods

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

2. The Committee shall meet on the request of either Party or the Commission to consider any matter arising under this Chapter, Chapter Four (Rules of Origin and Origin Procedures), or Chapter Five (Customs Administration).

3. The Committee's functions shall include:
(a) promoting trade in goods between the Parties, including through consultations on accelerating tariff elimination under this Agreement and other issues as appropriate; and
(b) addressing barriers to trade in goods between the Parties, especially those related to the application of non-tariff measures, and, if appropriate, referring such matters to the Commission for its consideration.

Section I - Definitions

Article 3.24: Definitions

For purposes of this Chapter:

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

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

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

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

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

carrier media means any good of heading 8523 or 8524;

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

consular transactions means requirements that goods of a Party intended for export to the territory of the other Party must first be submitted to the supervision of the consul of the

importing Party in the territory of the exporting Party for the purpose of obtaining consular invoices or consular visas for commercial invoices, certificates of origin, manifests, shippers' export declarations, or any other customs documentation required on or in connection with importation;

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

duty-free means free of customs duty;

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

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

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

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

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

performance requirement means a requirement that:
(a) a given level or percentage of goods or services be exported;
(b) domestic goods or services of the Party granting a waiver of customs duties or an import license be substituted for imported goods or services;
(c) a person benefitting from a waiver of customs duties or an import license purchase other goods or services in the territory of the Party granting the waiver of customs duties or the import license, or accord a preference to domestically produced goods or services;
(d) a person benefitting from a waiver of customs duties or an import license produce goods or supply services, in the territory of the Party granting the waiver of customs duties or the import license, with a given level or percentage of domestic content; or
(e) relates in any way the volume or value of imports to the volume or value of exports or to the amount of foreign exchange inflows.

printed advertising materials means those goods classified in Chapter 49 of the Harmonized System, including brochures, pamphlets, leaflets, trade catalogues, yearbooks published by trade associations, tourist promotional materials, and posters, that are used to promote,

publicize, or advertise a good or service, are essentially intended to advertise a good or service, and are supplied free of charge; and

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

Chapter Four

Rules of Origin and Origin Procedures

Section A - Rules of Origin

Article 4.1: Originating Goods

1. Except as otherwise provided in this Chapter, a good is originating where:
(a) the good is wholly obtained or produced entirely in the territory of one or both of the Parties;
(b) the good is produced entirely in the territory of one or both of the Parties and
(i) each of the non-originating materials used in the production of the good undergoes an applicable change in tariff classification specified in Annex 4.1, or
(ii) the good otherwise satisfies any applicable regional value content or other requirements specified in Annex 4.1, and the good satisfies all other applicable requirements of this Chapter; or
(c) the good is produced entirely in the territory of one or both of the Parties exclusively from originating materials.

2. A good shall not be considered to be an originating good and a material shall not be considered to be an originating material by virtue of having undergone:
(a) simple combining or packaging operations; or
(b) mere dilution with water or with another substance that does not materially alter the characteristics of the good or material.

Article 4.2: Regional Value Content

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

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

(b) Buildup method

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

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

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

Article 4.3: Vale of Materials

1. Each Party shall provide that for purposes of calculating the regional value content of a good, and for purposes of applying the de minimis rule, the value of a material:
(a) for a material that is imported by the producer of the good, is the adjusted value of the material with respect to that importation;
(b) for a material acquired in the territory where the good is produced, is the producer's price actually paid or payable for the material, except for materials within the meaning of subparagraph (c);
(c) for a material provided to the producer without charge, or at a price reflecting a discount or similar reduction, is determined by computing the sum of:
(i) all expenses incurred in the growth, production, or manufacture of the material, including general expenses; and
(ii) an amount for profit; and
(d) for a material that is self-produced, is determined by computing the sum of:
(i) all expenses incurred in the production of the material, including general expenses; and
(ii) an amount for profit.

2. Each Party shall provide that the person claiming preferential tariff treatment for a good may adjust the value of materials as follows:
(a) for originating materials, the following expenses may be added to the value of the material where not included under paragraph 1:
(i) the costs of freight, insurance, packing, and all other costs incurred in transporting the material to the location of the producer;
(ii) duties, taxes, and customs brokerage fees on the material paid in the territory of one or both of the Parties, other than duties and taxes that are waived, refunded, refundable, or otherwise recoverable, including credit against duty or tax paid or payable; and
(iii) the cost of waste and spoilage resulting from the use of the material in the production of the good, less the value of renewable scrap or byproduct.
(b) for non-originating materials, the following expenses may be deducted from the value of the material where included under paragraph 1:
(i) the costs of freight, insurance, packing, and all other costs incurred in transporting the material to the location of the producer;
(ii) duties, taxes, and customs brokerage fees on the material paid in the territory of one or both of the Parties, other than duties and taxes that are waived, refunded, refundable, or otherwise recoverable, including credit against duty or tax paid or payable;
(iii) the cost of waste and spoilage resulting from the use of the material in the production of the good, less the value of renewable scrap or byproducts; and
(iv) the cost of originating materials used in the production of the nonoriginating material in the territory of a Party.

Article 4.4: Accessories, Spare Parts, and Tools

Each Party shall provide that accessories, spare parts, or tools delivered with a good that form part of the good's standard accessories, spare parts, or tools, shall be regarded as a material used in the production of the good, provided that:
(a) the accessories, spare parts, or tools are classified with and not invoiced separately from the good; and
(b) the quantities and value of the accessories, spare parts, or tools are customary for the good.

Article 4.5: Fungible Goods and Materials

1. Each Party shall provide that the person claiming preferential tariff treatment for a good may claim that a fungible good or material is originating based on either the physical segregation of each fungible good or material, or through the use of any inventory management method, such as averaging, last-in, first-out, or first-in, first-out, recognized in the Generally Accepted Accounting Principles of the Party in which the production is performed or otherwise accepted by the Party in which the production is performed.

2. Each Party shall provide that the inventory management method selected under paragraph 1 for particular fungible goods or materials shall continue to be used for those goods or materials throughout the fiscal year of the person that selected the inventory management method.

Article 4.6: Accumulation

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

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

Article 4.7: De Minimis Rule

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

2. Paragraph 1 does not apply to:
(a) a non-originating material provided for in Chapter 4 of the Harmonized System, or a non-originating dairy preparation containing over 10 percent by weight of milk solids provided for in subheadings 1901.90 or 2106.90 of the Harmonized System, that is used in the production of a good provided for in Chapter 4 of the Harmonized System;
(b) a non-originating material provided for in Chapter 4 of the Harmonized System, or non-originating dairy preparations containing over 10 percent by weight of milk solids provided for in

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

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

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

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

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

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

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

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

Article 4.8: Indirect Materials Used in Production

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

Article 4.9: Packaging Materials and Containers for Retail Sale

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

as originating or non-originating materials, as the case may be, in calculating the regional value content of the good.

Article 4.10: Packing Materials and Containers for Shipment

Each Party shall provide that packing materials and containers for shipment shall be disregarded in determining whether:
(a) the non-originating materials used in the production of the good undergo an applicable change in tariff classification set out in Annex 4.1; and
(b) the good satisfies a regional value content requirement

Article 4.11: Transit and Transshipment

1. Each Party shall provide that a good shall not be considered an originating good if the good undergoes subsequent production or any other operation outside the territories of the Parties, other than unloading, reloading, or any other process necessary to preserve the good in good condition or to transport the good to the territory of a Party.

2. The importing Party may require that a person claiming that a good is originating demonstrate, to the satisfaction of the Party's customs authority, that any subsequent operations on the good performed outside the territories of the Parties comply with the requirements in paragraph 1.

Section B - Origin Procedures

Article 4.12: Claims of Origin

1. Each Party shall require that an importer claiming preferential tariff treatment for a good:
(a) make a written declaration in the importation document that the good qualifies as originating;
(b) be prepared to submit, on the request of the importing Party's customs authority, a certificate of origin or information demonstrating that the good qualifies as originating;
(c) promptly make a corrected declaration and pay any duties owing where the importer has reason to believe that the certificate or other information on which the declaration was based is incorrect.

2. Each Party, where appropriate, may request that an importer claiming preferential tariff treatment for a good demonstrate to the Party's customs authority that the good qualifies as originating under Section A, including that the good satisfies the requirements in Article 4.11.

3. Each Party shall provide that, where an originating good was imported into the territory of that Party but no claim for preferential tariff treatment was made at the time of importation, the importer of the good may, no later than one year after the date on which the good was imported, apply for a refund of any excess duties paid as the result of the good not having been accorded preferential tariff treatment, on presentation of:
(a) a written declaration that the good qualified as originating at the time of importation;
(b) a copy of a certificate of origin or other information demonstrating that the good qualifies as originating; and

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

Article 4.13: Certificates of Origin

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

2. Each Party shall provide that a certificate of origin may be issued by the importer, exporter, or producer of the good. Where an exporter or importer is not the producer of the good, each Party shall provide that the exporter or importer may issue a certificate of origin based on:
(a) a certificate of origin issued by the producer; or
(b) knowledge of the exporter or importer that the good qualifies as an originating good.

3. Each Party shall provide that a certificate of origin may cover the importation of one or more goods or several importations of identical goods within a period specified in the certificate.

4. Each Party shall provide that a certificate of origin is valid for four years from the date on which the certificate was issued.

5. A Party may require that a certificate of origin for a good imported into its territory be completed in either Spanish or English.

6. For an originating good that is imported into the territory of a Party on or after the date of entry into force of this Agreement, each Party shall accept a certificate of origin issued by the importer, exporter, or producer of the good prior to that date, unless the Party possesses information indicating that the certificate is invalid.

7. Neither Party may require a certificate of origin or information demonstrating that the good qualifies as originating for:
(a) the importation of goods with a customs value not exceeding US$2,500, or the equivalent amount in Chilean currency, or such higher amount as may be established by the importing Party; or
(b) the importation of other goods as may be identified in the importing Party's laws governing claims of origin under this Agreement, unless the importation can be considered to have been carried out or planned for the purpose of evading compliance with the Party's laws governing claims of origin under this Agreement.

Article 4.14: Obligations Relating to Importations

1. Each Party shall provide that the importer is responsible for submitting a certificate of origin or other information demonstrating that the good qualifies as originating, for the truthfulness of the information and data contained therein, for submitting any supporting documents requested by the Party's customs authority, and for the truthfulness of the information contained in those documents.

2. Each Party shall provide that the fact that the importer has issued a certificate of origin based on information provided by the exporter or the producer shall not relieve the importer of the responsibility referred to in paragraph 1.

3. Each Party shall provide that an importer claiming preferential tariff treatment for a good imported into the Party's territory shall maintain, for a period of five years after the date of importation of the good, a certificate of origin or other information demonstrating that the good qualifies as originating, and all other documents that the Party may require relating to the importation of the good, including records associated with:
(a) the purchase, cost, value of, and payment for, the good;
(b) where appropriate, the purchase, cost, value of, and payment for, all materials, including recovered goods and indirect materials, used in the production of the good; and
(c) where appropriate, the production of the good in its exported form.

Article 4.15: Obligations Relating to Exportations

1. For purposes of cooperation under Article 5.5 (Cooperation), each Party shall provide that an exporter or producer that issues a certificate of origin for a good exported from the Party's territory shall provide a copy of the certificate to the Party's customs authority upon its request.

2. Each Party shall provide that an exporter or producer that has issued a certificate of origin for a good exported from the Party's territory shall maintain, for a period of at least five years after the date the certificate was issued, all records and supporting documents related to the origin of the good, including:
(a) purchase, cost, value of, and payment for, the good;
(b) where appropriate, the purchase, cost, value of, and payment for, all materials, including recovered goods, used in the production of the good; and
(c) where appropriate, the production of the good in the form in which it was exported.

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

Article 4.16: Procedures for Verification of Origin

1. Each Party shall grant any claim for preferential tariff treatment made in accordance with this Section, unless the Party possesses information indicating that the importer's claim fails to comply with any requirement under Section A or Article 3.20 (Rules of Origin and Related Matters), except as otherwise provided in Article 3.21 (Customs Cooperation).

2. To determine whether a good imported into its territory qualifies as originating, the importing Party may, through its customs authority, verify the origin in accordance with its customs laws and regulations.

3. Where a Party denies a claim for preferential tariff treatment, it shall issue a written determination containing findings of fact and the legal basis for its determination. The Party shall issue the determination within a period established under its law.

4. A Party shall not subject an importer to penalties where the importer that made an incorrect declaration voluntarily makes a corrected declaration.

5. Where a Party determines through verification that an importer has certified more than once, falsely or without substantiation, that a good qualifies as originating, the Party may suspend preferential tariff treatment to identical goods imported by that person until the importer proves that it has complied with the Party's laws and regulations governing claims of origin under this Agreement.

6. Each Party that carries out a verification of origin in which Generally Accepted Accounting Principles are pertinent shall apply those principles in the manner that they are applied in the territory of the Party from which the good was exported.

Article 4.17: Common Guidelines

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

Section C - Definitions

Article 4.18: Definitions

For purposes of this Chapter:

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

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

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

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

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

goods wholly obtained or produced entirely in the territory of one or both of the Parties means:
(a) mineral goods extracted in the territory of one or both of the Parties;
(b) vegetable goods, as such goods are defined in the Harmonized System, harvested in the territory of one or both of the Parties;
(c) live animals born and raised in the territory of one or both of the Parties;
(d) goods obtained from hunting, trapping, or fishing in the territory of one or both of the Parties;
(e) goods (fish, shellfish, and other marine life) taken from the sea by vessels registered or recorded with a Party and flying its flag;
(f) goods produced on board factory ships from the goods referred to in subparagraph (e) provided such factory ships are registered or recorded with that Party and fly its flag;
(g) goods taken by a Party or a person of a Party from the seabed or beneath the seabed outside territorial waters, provided that a Party has rights to exploit such seabed;
(h) goods taken from outer space, provided they are obtained by a Party or a person of a Party and not processed in the territory of a non-Party;
(i) waste and scrap derived from
(i) production in the territory of one or both of the Parties, or
(ii) used goods collected in the territory of one or both of the Parties, provided such goods are fit only for the recovery of raw materials;
(j) recovered goods derived in the territory a Party from used goods, and utilized in the Party's territory in the production of remanufactured goods; and
(k) goods produced in the territory of one or both of the Parties exclusively from goods referred to in subparagraphs (a) through (i), or from their derivatives, at any stage of production;

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

indirect material means a good used in the production, testing, or inspection of a good but not physically incorporated into the good, or a good used in the maintenance of buildings or the operation of equipment associated with the production of a good, including:
(a) fuel and energy;
(b) tools, dies, and molds;
(c) spare parts and materials used in the maintenance of equipment and buildings;
(d) lubricants, greases, compounding materials, and other materials used in production or used to operate equipment and buildings;
(e) gloves, glasses, footwear, clothing, safety equipment, and supplies;
(f) equipment, devices, and supplies used for testing or inspecting the goods;
(g) catalysts and solvents; and
(h) any other goods that are not incorporated into the good but whose use in the production of the good can reasonably be demonstrated to be a part of thatproduction;

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

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

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

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

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

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

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

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

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

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

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

ANNEX 4.18

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

8408.10
8408.20
8408.90
8409.91
8409.99
8412.21
8412.29
8412.39
8412.90
8413.30

8413.50
8413.60
8413.91
8414.30
8414.80
8414.90
8419.89
8431.20
8431.49
8481.20
8481.40
8481.80
8481.90
8483.10
8483.30
8483.40
8483.50
8483.60
8483.90
8503.00
8511.40
8511.50
8526.10
8537.10
8542.21
8708.31
8708.39
8708.40
8708.60
8708.70
8708.93
8708.99
9031.49

Chapter Five

Customs Administration

Article 5.1: Publication

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

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

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

Article 5.2: Release of Goods

Each Party shall:

(a) adopt or maintain procedures providing for the release of goods within a period of time no greater than that required to ensure compliance with its customs laws and, to the extent possible, within 48 hours of arrival;
(b) adopt or maintain procedures allowing, to the extent possible, goods to be released at the point of arrival, without temporary transfer to warehouses or other locations;
(c) adopt or maintain procedures allowing the release of goods prior to, and without prejudice to, the final determination by its customs authority of the applicable customs duties, taxes and fees;1 and
(d) otherwise endeavor to adopt or maintain simplified procedures for the release of goods.

Article 5.3: Automation

Each Party's customs authority shall:
(a) endeavor to use information technology that expedites procedures; and
(b) in deciding on the information technology to be used for this purpose, take into account international standards.

Article 5.4: Risk Assessment

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

Article 5.5: Cooperation

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

2. The Parties shall cooperate in achieving compliance with their laws and regulations pertaining to:
(a) the implementation and operation of the provisions of this Agreement relating to the importation of goods, including Chapter Three (National Treatment and Market Access for Goods), Chapter Four (Rules of Origin and Origin Procedures), and this Chapter;
(b) the implementation and operation of the Customs Valuation Agreement;
(c) restrictions or prohibitions on imports or exports; or
(d) such other customs matters as the Parties may agree.

3. Where a Party has a reasonable suspicion of unlawful activity related to its laws or regulations governing importations, the Party may request that the other Party provide specific confidential

information normally collected by the other Party in association with the importation of goods pertaining to trade transactions relevant to that activity. The Party shall make its request in writing, shall identify the requested information with sufficient specificity for the other Party to locate it, and shall specify the purposes for which the information is sought.

4. The other Party shall respond by providing any information that it has collected that is material to the request.

5. For purposes of paragraph 3, a reasonable suspicion of unlawful activity means a suspicion based on relevant factual information obtained from public or private sources, including:
(a) historical evidence that a specific importer, exporter, producer, or other enterprise involved in the movement of goods from the territory of one Party to the territory of the other Party has not complied with a Party's laws or regulations governing importations;
(b) historical evidence that some or all of the enterprises involved in the movement from the territory of one Party to the territory of the other Party of goods within a specific product sector have not complied with a Party's laws or regulations governing importations; or
(c) other information that the Parties agree is sufficient in the context of a particular request.

6. Each Party shall endeavor to provide the other Party with any other information that would assist in determining whether imports from or exports to the other Party are in compliance with the other Party's laws or regulations governing importations, in particular those related to the prevention of unlawful activities.

7. Each Party shall endeavor to provide the other with technical advice and assistance for the purpose of improving risk assessment techniques, simplifying and expediting customs procedures, advancing technical skills, and enhancing the use of technologies that can lead to improved compliance with laws and regulations governing importations.

8. Building on the procedures established in this Article, the Parties shall use best efforts to explore additional avenues of cooperation to enhance each Party's ability to enforce its laws and regulations governing importations, including by:
(a) concluding a mutual assistance agreement between their respective customs authorities within six months after the date of entry into force of this Agreement; and
(b) considering whether to establish additional channels of communication to facilitate the secure and rapid exchange of information and to improve coordination on customs issues.

Article 5.6: Confidentiality

1. Where a Party providing information to the other Party in accordance with this Chapter designates the information as confidential, the other Party shall maintain the confidentiality of the information. The Party providing the information may, in accordance with its domestic law, require written assurances from the other Party that the information will be held in confidence, will be used only for the purposes specified in the other Party's request for information, and will not be disclosed without the Party's specific permission.

2. A Party may decline to provide information requested by the other Party where the other Party has failed to act in conformity with assurances provided under paragraph 1.

3. Each Party shall adopt or maintain procedures in which confidential information, including information the disclosure of which could prejudice the competitive position of the person providing the information, submitted in connection with the Party's administration of its customs laws shall be protected from unauthorized disclosure.

Article 5.7: Express Shipments

Each Party shall adopt or maintain separate, expedited customs procedures for express shipments, while maintaining appropriate customs control and selection, including procedures:
(a) in which the information necessary for the release of an express shipment may be submitted, and processed by the Party's customs authority, prior to the arrival of the shipment;
(b) allowing a shipper to submit a single manifest covering all goods contained in a shipment transported by the express shipment service, through, if possible, electronic means;
(c) that, to the extent possible, minimize the documentation required for the release of express shipments; and
(d) that, under normal circumstances, allow for an express shipment that has arrived at a point of entry to be released no later than six hours after the submission of the information necessary for release.

Article 5.8: Review and Appeal

Each Party shall ensure that with respect to its determinations on customs matters, importers in its territory have access to:
(a) administrative review independent of the official or office that issued the determination; and
(b) judicial review of the determination or decision taken at the final level of administrative review.

Article 5.9: Penalties

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

Article 5.10: Advance Rulings

1. Each Party, through its customs authority, shall issue written advance rulings prior to the importation of a good into its territory at the written request of an importer in its territory, or an exporter or producer in the territory of the other Party, on the basis of the facts and circumstances provided by the requester, concerning:
(a) tariff classification;
(b) the application of customs valuation criteria for a particular case, in accordance with the application of the provisions set forth in the Customs Valuation Agreement;
(c) duty drawback;
(d) whether a good qualifies as an originating good under Chapter Four (Rules of Origin and Origin Procedures); and
(e) whether a good qualifies for duty-free treatment in accordance with Article 3.9 (Goods Re-entered after Repair or Alteration).

2. Each Party shall provide that its customs authority shall issue advance rulings within 150 days of a request, provided that the requester has submitted all necessary information.

3. Each Party shall provide that advance rulings shall be in force from their date of issuance, or such other date specified by the ruling, for at least three years, provided that the facts or circumstances on which the ruling is based remain unchanged.

4. The issuing Party may modify or revoke an advance ruling where facts or circumstances warrant, such as where the information on which the ruling is based is false or inaccurate.

5. Where an importer claims that the treatment accorded to an imported good should be governed by an advance ruling, the customs authority may evaluate whether the facts and circumstances of the importation are consistent with the facts and circumstances upon which the advance ruling was based.

6. Each Party shall make its advance rulings publicly available, subject to confidentiality requirements in its domestic law, for purposes of promoting the consistent application of advance rulings to other goods.

7. If a requester provides false information or omits relevant circumstances or facts in its request for an advance ruling, or does not act in accordance with the ruling's terms and conditions, the importing Party may apply appropriate measures, including civil, criminal, and administrative actions, penalties, or other sanctions.

Article 5.11: Implementation

1. With respect to the obligations of Chile, Articles 5.1(1) and (2), 5.7(b), and 5.10(1)(b) shall enter into force three years after the date of entry into force of this Agreement.

2. Within 120 days after the date of entry into force of this Agreement, the Parties shall consult on the procedures that Chile needs to adopt to implement Article 5.10(1)(b) and on related technical assistance to be provided by the United States, and shall establish a work program outlining the steps needed for Chile to implement Article 5.10(1)(b).

3. Not later than 18 months after the date of entry into force of this Agreement, the Parties shall consult to discuss the progress made by Chile in implementing Article 5.10(1)(b) and to consider whether to engage in further cooperative efforts.

Chapter Six

Sanitary and Phytosanitary Measures

Objectives

The objectives of this Chapter are to protect human, animal, and plant health conditions in the Parties' territories, enhance the Parties' implementation of the SPS Agreement, provide a forum

for addressing bilateral sanitary and phytosanitary matters, resolve trade issues, and thereby expand trade opportunities.

Article 6.1: Scope and Coverage

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

Article 6.2: General Provisions

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

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

Article 6.3: Committee on Sanitary and Phytosanitary Matters

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

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

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

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

5. The Committee shall provide a forum for:
(a) enhancing mutual understanding of each Party's sanitary and phytosanitary measures and the regulatory processes that relate to those measures;
(b) consulting on matters related to the development or application of sanitary and phytosanitary measures that affect, or may affect, trade between the Parties;
(c) consulting on issues, positions, and agendas for meetings of the WTO SPS Committee, the various Codex committees (including the Codex Alimentarius Commission), the International Plant Protection Convention, the International Office of Epizootics, and other international and regional fora on food safety and human, animal, and plant health;
(d) coordinating technical cooperation programs on sanitary and phytosanitary matters;
(e) improving bilateral understanding related to specific implementation issues concerning the SPS Agreement; and
(f) reviewing progress on addressing sanitary and phytosanitary matters that may arise between the Parties' agencies with responsibility for such matters.

6. The Committee shall meet at least once a year unless the Parties otherwise agree.

7. The Committee shall perform its work in accordance with the terms of reference referenced in paragraph 2. The Committee may revise the terms of reference and may develop procedures to guide its operation.

8. Each Party shall ensure that appropriate representatives with responsibility for the development, implementation, and enforcement of sanitary and phytosanitary measures from its relevant trade and regulatory agencies or ministries participate in meetings of the Committee. The official agencies and ministries of each Party responsible for such measures shall be set out in the Committee's terms of reference.

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

Article 6.4: Definitions

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

Chapter Seven

Technical Barriers to Trade

Objectives

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

Article 7.1: Scope and Coverage

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

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

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

Article 7.2: Affirmation of Agreement on Technical Barriers to Trade

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

Article 7.3: International Standards

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

Article 7.4: Trade Facilitation

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

Article 7.5: Technical Regulations

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

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

Article 7.6: Conformity Assessment

1. The Parties recognize that a broad range of mechanisms exists to facilitate the acceptance of conformity assessment results, including:
(a) the importing Party's reliance on a supplier's declaration of conformity;
(b) voluntary arrangements between conformity assessment bodies from each Party's territory;
(c) agreements on mutual acceptance of the results of conformity assessment procedures with respect to specified regulations conducted by bodies located in the territory of the other Party;
(d) accreditation procedures for qualifying conformity assessment bodies;
(e) government designation of conformity assessment bodies; and
(f) recognition by one Party of the results of conformity assessments performed in the other Party's territory.

The Parties shall intensify their exchange of information on the range of mechanisms to facilitate the acceptance of conformity assessment results.

2. Where a Party does not accept the results of a conformity assessment procedure performed in the territory of the other Party, it shall, on request of the other Party, explain its reasons.

3. Each Party shall accredit, approve, license, or otherwise recognize conformity assessment bodies in the territory of the other Party on terms no less favorable than those it accords to conformity assessment bodies in its territory. If a Party accredits, approves, licenses, or otherwise recognizes a body assessing conformity with a particular technical regulation or standard in its territory and it refuses to accredit, approve, license, or otherwise recognize a body assessing conformity with that technical regulation or standard in the territory of the other Party, it shall, on request, explain the reasons for its refusal.

4. Where a Party declines a request from the other Party to engage in or conclude negotiations to reach agreement on facilitating recognition in its territory of the results of conformity assessment procedures conducted by bodies in the territory of the other Party, it shall, on request, explain its reasons.

Article 7.7: Transparency

1. Further to Article 20.2 (Publication), each Party shall allow persons of the other Party to participate in the development of standards, technical regulations, and conformity assessment procedures. Each Party shall permit persons of the other Party to participate in the development of such measures on terms no less favorable than those accorded to its own persons.

2. Each Party shall recommend that non-governmental standardizing bodies in its territory observe paragraph 1.

3. In order to enhance the opportunity for persons to provide meaningful comments, a Party publishing a notice under Article 2.9 or 5.6 of the TBT Agreement shall:
(a) include in the notice a statement describing the objective of the proposal and the rationale for the approach the Party is proposing; and
(b) transmit the proposal electronically to the other Party through the inquiry point established under Article 10 of the TBT Agreement at the same time as it notifies WTO Members of the proposal pursuant to the TBT Agreement.

Each Party should allow at least 60 days from the transmission under subparagraph (b) for persons and the other Party to make comments in writing on the proposal.

4. Where a Party makes a notification under Article 2.10 or 5.7 of the TBT Agreement, it shall at the same time transmit the notification to the other Party, electronically, through the inquiry point referenced in paragraph 3(b).

5. Each Party shall publish, in print or electronically, or otherwise make available to the public, its responses to significant comments at the same time as the publication of the final technical regulation or conformity assessment procedure.

6. Each Party shall, on request of the other Party, provide information regarding the objective of, and rationale for, a standard, technical regulation, or conformity assessment procedure that the Party has adopted or is proposing to adopt.

7. Each Party shall implement this Article as soon as is practicable and in no event later than five years from the date of entry into force of this Agreement.

Article 7.8: Committee on Technical Barriers to Trade

1. The Parties hereby establish the Committee on Technical Barriers to Trade, comprising representatives of each Party, pursuant to Annex 7.8.

2. The Committee's functions shall include:
(a) monitoring the implementation and administration of this Chapter;
(b) promptly addressing any issue that a Party raises related to the development, adoption, application, or enforcement of standards, technical regulations, or conformity assessment procedures;
(c) enhancing cooperation in the development and improvement of standards, technical regulations, and conformity assessment procedures;
(d) where appropriate, facilitating sectoral cooperation among governmental and non-governmental conformity assessment bodies in the Parties' territories;
(e) exchanging information on developments in non-governmental, regional, and multilateral fora engaged in activities related to standardization, technical regulations, and conformity assessment procedures;
(f) taking any other steps the Parties consider will assist them in implementing the TBT Agreement and in facilitating trade in goods between them;
(g) at a Party's request, consulting on any matter arising under this Chapter;
(h) reviewing this Chapter in light of any developments under the TBT Agreement, and developing recommendations for amendments to this Chapter in light of those developments; and
(i) as it considers appropriate, reporting to the Commission on the implementation of this Chapter.

3. Where the Parties have had recourse to consultations under paragraph 2(g) such consultations shall, on the agreement of the Parties, constitute consultations under Article 22.4 (Consultations).

4. A Party shall, on request, give favorable consideration to any sector-specific proposal the other Party makes for further cooperation under this Chapter.

5. The Committee shall meet at least once a year unless the Parties otherwise agree.

Article 7.9: Information Exchange

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

Article 7.10: Definitions

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

Annex 7.8

Committee on Technical Barriers to Trade

For purposes of Article 7.8, the Committee shall be coordinated by:
(a) in the case of Chile, the Ministerio de Economia through the Departamento de Comercio Exterior, or its successor; and
(b) in the case of the United States, the Office of the United States Trade Representative, or its successor.

Chapter Eight

Trade Remedies

Section A - Safeguards

Article 8.1: Imposition of a Safeguard Measure

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

2. If the conditions in paragraph 1 are met, a Party may to the extent as may be necessary to prevent or remedy serious injury, or threat thereof, and facilitate adjustment:
(a) suspend the further reduction of any rate of duty provided for under this Agreement on the good; or
(b) increase the rate of duty on the good to a level not to exceed the lesser of
(i) the most-favored-nation (MFN) applied rate of duty in effect at the time the action is taken, or
(ii) the MFN applied rate of duty in effect on the day immediately preceding the date of entry into force of this Agreement.2

Article 8.2: Standards for a Safeguard Measure

1. A Party may apply a safeguard measure, including any extension thereof, for no longer than three years. Regardless of its duration, such measure shall terminate at the end of the transition period.

2. In order to facilitate adjustment in a situation where the expected duration of a safeguard measure is over one year, the Party applying the measure shall progressively liberalize it at regular intervals during the period of application.

3. Neither Party may impose a safeguard measure more than once on the same good.

4. Neither Party may impose a safeguard measure on a good that is subject to a measure that the Party has imposed pursuant to Article XIX of GATT 1994 and the Safeguards Agreement, and neither Party may continue maintaining a safeguard measure on a good that becomes subject to a measure that the Party imposes pursuant to Article XIX of GATT 1994 and the Safeguards Agreement.

5. On the termination of a safeguard measure, the rate of duty shall be no higher than the rate that, according to the Party's Schedule to Annex 3.3 (Tariff Elimination), would have been in effect one year after the imposition of the measure. Beginning on January 1 of the year following the termination of the action, the Party that has applied the measure shall:
(a) apply the rate of duty set out in the Party's Schedule to Annex 3.3 (Tariff Elimination) as if the safeguard measure had never been applied; or
(b) eliminate the tariff in equal annual stages ending on the date set out in the Party's Schedule to Annex 3.3 (Tariff Elimination) for the elimination of the tariff.

Article 8.3: Investigation Procedures and Transparency Requirements

1. A Party shall impose a safeguard measure only following an investigation by the Party's competent authorities in accordance with Articles 3 and 4.2(c) of the Safeguards Agreement; and to this end, Articles 3 and 4.2(c) of the Safeguards Agreement are incorporated into and made a part of this Agreement, mutatis mutandis.

2. In the investigation described in paragraph 1, a Party shall comply with the requirements of Article 4.2(a) of the Safeguards Agreement; and to this end, Article 4.2(a) of the Safeguards Agreement is incorporated into and made a part of this Agreement, mutatis mutandis.

Article 8.4: Notification

1. A Party shall promptly notify the other Party, in writing, on:
(a) initiating an investigation under Article 8.3;
(b) making a finding of serious injury or threat thereof caused by increased imports under Article 8.1;
(c) taking a decision to impose or extend a safeguard measure; and
(d) taking a decision to modify a safeguard measure previously undertaken.

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

Article 8.5: Compensation

1. The Party taking a safeguard measure shall, in consultation with the other Party, provide to the other Party mutually agreed trade liberalizing compensation in the form of concessions

having substantially equivalent trade effects or equivalent to the value of the additional duties expected to result from the measure. Such consultations shall begin within 30 days of the imposition of the measure.

2. If the Parties are unable to reach agreement on compensation within 30 days after the consultations commence, the exporting Party shall be free to suspend the application of substantially equivalent concessions to the trade of the Party applying the safeguard measure.

3. A Party shall notify the other Party in writing at least 30 days before suspending concessions under paragraph 2.

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

Article 8.6: Global Actions

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

2. This Agreement does not confer any additional rights or obligations on the Parties with regard to actions taken pursuant to Article XIX of GATT 1994 and the Safeguards Agreement.

Article 8.7: Definitions

For purposes of this Section:

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

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

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

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

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

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

Section B - Antidumping and Countervailing Duties

Article 8.8: Antidumping and Countervailing Duties

1. Each Party retains its rights and obligations under the WTO Agreement with regard to the application of antidumping and countervailing duties.

2. No provisions of this Agreement, including the provisions of Chapter Twenty-Two (Dispute Settlement), shall be construed as imposing any rights or obligations on the Parties with respect to antidumping or countervailing duty measures.

Chapter Nine

Government Procurement

Objectives

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

Article 9.1: Scope and Coverage

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

(a) by any contractual means, including purchase and rental or lease, with or without an option to buy, build-operate-transfer contracts, and public works concession contracts; and
(b) subject to the conditions specified in Annex 9.1.

2. This Chapter does not apply to:
(a) non-contractual agreements or any form of assistance provided by a Party or a state enterprise, including grants, loans, equity infusions, fiscal incentives, subsidies, guarantees, cooperative agreements, government provision of goods and services to persons or to a regional or local level of government, and purchases for the direct purpose of providing foreign assistance;
(b) purchases funded by international grants, loans, or other assistance, where the provision of such assistance is subject to conditions inconsistent with the provisions of this Chapter;
(c) hiring of government employees and related employment measures; and
(d) acquisition of fiscal agency or depository services, liquidation and management services for regulated financial institutions, and sale and distribution services for government debt.

3. Each Party shall ensure that its procuring entities listed in Annex 9.1 comply with this Chapter in conducting procurement covered by this Chapter.

4. Where an entity awards a contract that is not covered by this Chapter, nothing in this Chapter shall be construed to cover any good or service component of that contract.

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

6. Nothing in this Chapter shall prevent either Party from developing new procurement policies, procedures, or contractual means, provided they are not inconsistent with this Chapter.

Article 9.2: General Principles

National Treatment and Non-Discrimination

1. With respect to any measure governing procurement covered by this Chapter, each Party shall accord to the goods and services of the other Party, and to the suppliers of the other Party of such goods and services, treatment no less favorable than the most favorable treatment the Party accords to its own goods, services, and suppliers.

2. With respect to any measure governing procurement covered by this Chapter, neither Party may:
(a) treat a locally established supplier less favorably than another locally established supplier on the basis of degree of foreign affiliation or ownership; or
(b) discriminate against a locally established supplier on the basis that the goods or services offered by that supplier for a particular procurement are goods or services of the other Party.

Determination of Origin

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

Offsets

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

Measures Not Specific to Procurement

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

Article 9.3: Publication of Procurement Measures

Each Party shall promptly publish:
(a) its measures of general application specifically governing procurement covered by this Chapter; and
(b) any changes in such measures in the same manner as the original publication.

Article 9.4: Publication of Notice of Intended Procurement

1. For each procurement covered by this Chapter, an entity shall publish in advance a notice inviting interested suppliers to submit tenders for that procurement ("notice of intended procurement"), except as provided in Article 9.9(2). Each such notice shall be accessible during the entire period established for tendering for the relevant procurement.

2. Each notice of intended procurement shall include a description of the intended procurement, any conditions that suppliers must fulfill to participate in the procurement, the name of the entity issuing the notice, the address where suppliers may obtain all documents relating to the procurement, the time limits for submission of tenders, and the dates for delivery of the goods or services to be procured.

Article 9.5: Time Limits for the Tendering Process

1. An entity shall prescribe time limits for the tendering process that allow sufficient time for suppliers to prepare and submit responsive tenders, taking into account the nature and complexity of the procurement. An entity shall provide no less than 30 days between the date on which it publishes the notice of intended procurement and the deadline for submitting tenders.

2. Notwithstanding paragraph 1, where there are no qualification requirements for suppliers, entities may establish a time limit of less than 30 days, but in no case less than 10 days, in the following circumstances:
(a) where the entity has published a notice containing the information specified in Article 9.4(2) at least 30 days and not more than 12 months in advance;
(b) in the case of the second or subsequent publications of notices for procurement of a recurring nature;
(c) where an entity procures commercial goods or services that are sold or offered for sale to, and customarily purchased and used by, non-governmental buyers for non-governmental purposes; or
(d) where an unforeseen state of urgency duly substantiated by the entity renders impracticable the time limits specified in paragraph 1.

Article 9.6: Information on Intended Procurements

1. An entity shall provide interested suppliers tender documentation that includes all the information necessary to permit suppliers to prepare and submit responsive tenders. The documentation shall include all criteria that the entity will consider in awarding the contract, including all cost factors, and the weights or, where appropriate, the relative values, that the entity will assign to these criteria in evaluating tenders.

2. Where an entity does not publish all the tender documentation by electronic means, the entity shall, on request of any supplier, promptly make the documentation available in written form to the supplier.

3. Where an entity, during the course of a procurement, modifies the criteria referred to in paragraph 1, it shall transmit all such modifications in writing:
(a) to all suppliers that are participating in the procurement at the time the criteria are modified, if the identities of such suppliers are known, and in all other cases, in the same manner as the original information was transmitted; and
(b) in adequate time to allow such suppliers to modify and re-submit their tenders, as appropriate.

Article 9.7: Technical Specifications

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

2. Any technical specification prescribed by an entity shall be, where appropriate:
(a) specified in terms of performance requirements rather than design or descriptive characteristics; and
(b) based on international standards, where applicable, otherwise on national technical regulations, recognized national standards, or building codes.

3. An entity shall not prescribe technical specifications that require or refer to a particular trademark or trade name, patent, design or type, specific origin or producer or supplier unless there is no sufficiently precise or intelligible way of otherwise describing the procurement requirements and provided that, in such cases, words such as “or equivalent” are included in the tender documentation.

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

5. For greater certainty, this Article is not intended to preclude a Party from preparing, adopting, or applying technical specifications to promote the conservation of natural resources.

Article 9.8: Conditions for Participation

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

2. Each entity shall:
(a) limit any conditions for participation in a procurement to those that are essential to ensure that the potential supplier has the legal, technical, and financial capacity to fulfill the requirements and technical specifications of the procurement;
(b) base qualification decisions solely on the conditions for participation that it has specified in advance in notices or tender documentation; and

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

3. Entities may establish publicly available lists of suppliers qualified to participate in procurements. Where an entity requires suppliers to qualify for such a list in order to participate in a procurement, and a supplier that has not yet qualified applies to be included on the list, the entity shall promptly start the qualification procedures for the supplier and shall allow the supplier to participate in the procurement, provided there is sufficient time to complete the procedures within the time period established for tendering.

4. No entity may impose the condition that, in order for a supplier to participate in a procurement, the supplier has previously been awarded one or more contracts by an entity of that Party or that the supplier has prior work experience in the territory of that Party. An entity shall judge a supplier's financial and technical capacities on the basis of its global business activities including both its activity in the territory of the Party of the supplier, and its activity, if any, in the territory of the Party of the entity.

5. An entity shall promptly communicate to any supplier that has applied for qualification its decision on whether that supplier is qualified. Where an entity rejects an application for qualification or ceases to recognize a supplier as qualified, that entity shall, on request of the supplier, promptly provide it a written explanation of the reasons for its decision.

6. Nothing in this Article shall preclude an entity from excluding a supplier from a procurement on grounds such as bankruptcy or false declarations.

Article 9.9: Tendering Procedures

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

2. Provided that the tendering procedure is not used to avoid competition or to protect domestic suppliers, entities may award contracts by means other than open tendering procedures in the following circumstances, where applicable:
(a) in the absence of tenders that conform to the essential requirements in the tender documentation provided in a prior invitation to tender, including any conditions for participation, on condition that the requirements of the initial procurement are not substantially modified in the contract as awarded;
(b) where, for works of art, or for reasons connected with the protection of exclusive rights, such as patents or copyrights, or proprietary information, or where there is an absence of competition for technical reasons, the goods or services can be supplied only by a particular supplier and no reasonable alternative or substitute exists;
(c) for additional deliveries by the original supplier that are intended either as replacement parts, extensions, or continuing services for existing equipment, software, services or installations, where a change of supplier would compel the entity to procure goods or services not meeting requirements of interchangeability with existing equipment, software, services, or installations;
(d) for goods purchased on a commodity market;

(e) where an entity procures a prototype or a first good or service that is developed at its request in the course of, and for, a particular contract for research, experiment, study, or original development. When such contracts have been fulfilled, subsequent procurements of such goods or services shall be subject to Articles 9.2 through 9.8 and Article 9.17;
(f) where additional construction services that were not included in the initial contract but that were within the objectives of the original tender documentation have, due to unforeseeable circumstances, become necessary to complete the construction services described therein. However, the total value of contracts awarded for additional construction services may not exceed 50 percent of the amount of the initial contract; or
(g) in so far as is strictly necessary where, for reasons of extreme urgency brought about by events unforeseeable by the entity, the goods or services could not be obtained in time by means of an open tendering procedure and the use of an open tendering procedure would result in serious injury to the entity, or the entity's program responsibilities, or the Party. For purposes of this subparagraph, lack of advance planning by an entity or its concerns relating to the amount of funds available to it within a particular period do not constitute unforeseeable events.

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

Article 9.10: Awarding of Contracts

1. An entity shall require that in order to be considered for award, a tender must be submitted in writing and must, at the time it is submitted:
(a) conform to the essential requirements of the tender documentation; and
(b) be submitted by a supplier that has satisfied the conditions for participation that the entity has provided to all participating suppliers.

2. Unless an entity determines that it is not in the public interest to award a contract, it shall award the contract to the supplier that the entity has determined to be fully capable of undertaking the contract and whose tender is determined to be the most advantageous in terms of the requirements and evaluation criteria set out in the tender documentation.

3. No entity may cancel a procurement, or terminate or modify awarded contracts, in order to avoid the obligations of this Chapter.

Article 9.11: Information on Awards

Information Provided to Suppliers

1. Subject to Article 9.15, an entity shall promptly inform suppliers participating in a tendering procedure of its contract award decision. On request, an entity shall provide a supplier whose tender was not selected for award the reasons for not selecting its tender and the relative advantages of the tender the entity selected.

Publication of Award Information

2. After awarding a contract covered by this Chapter, an entity shall promptly publish a notice that includes at least the following information about the award:

(a) the name of the entity;
(b) a description of the goods or services procured;
(c) the name of the winning supplier;
(d) the value of the contract award; and
(e) where the entity has not used open tendering procedures, an indication of the circumstances justifying the procedures used.

Maintenance of Records

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

Article 9.12: Ensuring Integrity in Procurement Practices

Each Party shall adopt the necessary legislative or other measures to establish that it is a criminal offense under its law for:
(a) a procurement official of that Party to solicit or accept, directly or indirectly,any article of monetary value or other benefit, for that procurement official or for another person, in exchange for any act or omission in the performance of that procurement official's procurement functions;
(b) any person to offer or grant, directly or indirectly, to a procurement official of that Party, any article of monetary value or other benefit, for that procurement official or for another person, in exchange for any act or omission in the performance of that procurement official's procurement functions; and
(c) any person intentionally to offer, promise or give any undue pecuniary or other advantage, whether directly or through intermediaries, to a foreign procurement official, for that foreign procurement official or for a third party, in order that the foreign procurement official act or refrain from acting in relation to the performance of procurement duties, in order to obtain or retain business or other improper advantage.

Article 9.13: Domestic Review of Supplier Challenges

Independent Review Authorities

1. Each Party shall establish or designate at least one impartial administrative or judicial authority that is independent from its entities to receive and review challenges that suppliers submit relating to the Party's measures implementing this Chapter in connection with a procurement covered by this Chapter and make appropriate findings and recommendations. Where a challenge by a supplier is initially reviewed by a body other than such an impartial authority, the Party shall ensure that the supplier may appeal the initial decision to an impartial administrative or judicial authority that is independent of the entity that is the subject of the challenge.

2. Each Party shall provide that an authority it establishes or designates under paragraph 1 has authority to take prompt interim measures pending the resolution of a challenge to preserve the supplier's opportunity to participate in the procurement and to ensure that the Party complies with its measures implementing this Chapter, including by suspending the contract award or the performance of a contract that has already been awarded.

3. Each Party shall ensure that its review procedures are published and are timely, transparent, effective, and consistent with due process principles.

4. Each Party shall ensure that all documents related to a challenge to a procurement covered by this Chapter are made available to any authority it establishes or designates under paragraph 1.

5. Notwithstanding other review procedures provided for or developed by each of the Parties, each Party shall ensure that any authority it establishes or designates under paragraph 1 provides at least the following:
(a) an opportunity for the supplier to review relevant documents and to be heard by the authority in a timely manner;
(b) sufficient time for the supplier to prepare and submit written challenges, which in no case shall be less than 10 days from the time when the basis of the complaint became known or reasonably should have become known to the supplier;
(c) a requirement that the entity respond in writing to the supplier's challenge;
(d) an opportunity for the supplier to reply to the entity's response to the challenge; and
(e) prompt delivery in writing of the decisions relating to the challenge, with an explanation of the grounds for each decision.

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

Article 9.14: Modifications and Rectifications

1. Either Party may modify its coverage under this Chapter provided that it:
(a) notifies the other Party in writing and the other Party does not object in writing within 30 days of the notification; and
(b) offers within 30 days acceptable compensatory adjustments to the other Party to maintain a level of coverage comparable to that existing prior to the modification, except as provided in paragraphs 2 and 3.

2. Either Party may make rectifications of a purely formal nature to its coverage under this Chapter, or minor amendments to its Schedules to Annex 9.1, Sections (A) through (C), provided that it notifies the other Party in writing and the other Party does not object in writing within 30 days of the notification. A Party that makes such a rectification or minor amendment shall not be required to provide compensatory adjustments.

3. A Party need not provide compensatory adjustments in those circumstances where the Parties agree that the proposed modification covers an entity over which a Party has effectively eliminated its control or influence. Where the Parties do not agree that such government control or influence has been effectively eliminated, the objecting Party may request further

information or consultations with a view to clarifying the nature of any government control or influence and reaching agreement on the entity's continued coverage under this Chapter.

4. Where the Parties are in agreement on the proposed modification, rectification, or minor amendment, including where a Party has not objected within 30 days under paragraph 1 or 2, the Commission shall give effect to the agreement by modifying forthwith the relevant Section of Annex 9.1.

Article 9.15: Non-Disclosure of Information

1. The Parties, their entities, and their review authorities shall not disclose confidential information the disclosure of which would prejudice legitimate commercial interests of a particular person or might prejudice fair competition between suppliers, without the formal authorization of the person that provided the information to the Party.

2. Nothing in this Chapter shall be construed as requiring a Party or its entities to disclose confidential information the disclosure of which would impede law enforcement or otherwise be contrary to the public interest.

Article 9.16: Exceptions

Provided that such measures are not applied in a manner that would constitute a means of arbitrary or unjustifiable discrimination between Parties where the same conditions prevail or a disguised restriction on trade between the Parties, nothing in this Chapter shall be construed to prevent a Party from adopting or maintaining measures:
(a) necessary to protect public morals, order, or safety;
(b) necessary to protect human, animal, or plant life or health;
(c) necessary to protect intellectual property; or
(d) relating to goods or services of handicapped persons, of philanthropic institutions, or of prison labor.

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

Article 9.17: Public Information

1. In order to facilitate access to information on commercial opportunities under this Chapter, each Party shall ensure that electronic databases that provide current information on all procurements covered by this Chapter that are conducted by entities listed in Annex 9.1(A), including information that can be disaggregated by detailed categories of goods and services, are made available to interested suppliers of the other Party, through the Internet or a comparable computer-based telecommunications network. Each Party shall, on request of the other Party, provide information on:
(a) the classification system used to disaggregate information on procurement of different goods and services in such databases; and
(b) the procedures for obtaining access to such databases. 2. Entities listed in Annex 9.1(A) shall publish notices of intended procurement in a government-wide, single point of entry electronic publication that is accessible through the Internet or a comparable computer-based

telecommunications network. For entities listed in Annex 9.1(B), each Party shall facilitate a reasonable means for suppliers of the other Party to easily identify procurement opportunities, which should include a single point of entry.

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

Article 9.18: Committee on Procurement

The Parties hereby establish a Committee on Procurement comprising representatives of each Party. On request, the Committee shall meet to address matters related to the implementation of this Chapter, such as:
(a) bilateral cooperation relating to the development and use of electronic communications in government procurement systems, including developments that may lead to reducing the time limits for tendering set out in Article 9.5;
(b) exchange of statistics and other information to assist the Parties in monitoring the implementation and operation of this Chapter;
(c) consideration of further negotiations aimed at broadening the coverage of this Chapter, including with respect to sub-federal or sub-central entities and state-owned enterprises; and
(d) efforts to increase understanding of their respective government procurement systems, with a view to maximizing access to government procurement opportunities for small business suppliers. To that end, either Party may request the other to provide trade-related technical assistance, including training of government personnel or interested suppliers on specific elements of each Party's government procurement system.

Article 9.19: Further Negotiations

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

Article 9.20: Definitions

For purposes of this Chapter:

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

entity means an entity listed in Annex 9.1;

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

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

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

procurement official means a person who performs procurement functions;

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

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

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

Chapter Ten

Investment

Section A - Investment

Article 10.1: Scope and Coverage1

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

(a) investors of the other Party;
(b) covered investments; and
(c) with respect to Articles 10.5 and 10.12, all investments in the territory of the Party.
2. In the event of any inconsistency between this Chapter and another Chapter, the other Chapter shall prevail to the extent of the inconsistency.

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

4. This Chapter does not apply to measures adopted or maintained by a Party to the extent that they are covered by Chapter Twelve (Financial Services).

Article 10.2: National Treatment

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

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

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

Article 10.3: Most-Favored-Nation Treatment

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

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

Article 10.4: Minimum Standard of Treatment2

1. Each Party shall accord to covered investments treatment in accordance with customary international law, including fair and equitable treatment and full protection and security.

2. For greater certainty, paragraph 1 prescribes the customary international law minimum standard of treatment of aliens as the minimum standard of treatment to be afforded to covered investments. The concepts of "fair and equitable treatment" and "full protection and security" do not require treatment in addition to or beyond that which is required by that standard, and do not create additional substantive rights. The obligation in paragraph 1 to provide:
(a) "fair and equitable treatment" includes the obligation not to deny justice in criminal, civil, or administrative adjudicatory proceedings in accordance with the principle of due process embodied in the principal legal systems of the world; and
(b) "full protection and security" requires each Party to provide the level of police protection required under customary international law.

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

4. Notwithstanding Article 10.7(5)(b), each Party shall accord to investors of the other Party, and to covered investments, non-discriminatory treatment with respect to measures it adopts or maintains relating to losses suffered by investments in its territory owing to armed conflict or civil strife.

5. Notwithstanding paragraph 4, if an investor of a Party, in the situations referred to in that paragraph, suffers a loss in the territory of the other Party resulting from:
(a) requisitioning of its covered investment or part thereof by the latter's forces or authorities; or
(b) destruction of its covered investment or part thereof by the latter's forces or authorities, which was not required by the necessity of the situation,

the latter Party shall provide the investor restitution or compensation, which in either case shall be prompt, adequate, and effective, and, with respect to compensation, shall be in accordance with Article 10.9(2) through (4).

6. Paragraph 4 does not apply to existing measures relating to subsidies or grants that would be inconsistent with Article 10.2 but for Article 10.7(5)(b).

Article 10.5: Performance Requirements

Mandatory Performance Requirements

1. Neither Party may impose or enforce any of the following requirements, or enforce any commitment or undertaking, in connection with the establishment, acquisition, expansion, management, conduct, operation, or sale or other disposition of an investment of an investor of a Party or of a non-Party in its territory:
(a) to export a given level or percentage of goods or services;
(b) to achieve a given level or percentage of domestic content;
(c) to purchase, use, or accord a preference to goods produced in its territory, or to purchase goods from persons in its territory;
(d) to relate in any way the volume or value of imports to the volume or value of exports or to the amount of foreign exchange inflows associated with such investment;
(e) to restrict sales of goods or services in its territory that such investment produces or supplies by relating such sales in any way to the volume or value of its exports or foreign exchange earnings;
(f) to transfer a particular technology, a production process, or other proprietary knowledge to a person in its territory; or
(g) to supply exclusively from the territory of the Party the goods that it produces or the services that it supplies to a specific regional market or to the world market.

Advantages Subject to Performance Requirements

2. Neither Party may condition the receipt or continued receipt of an advantage, in connection with the establishment, acquisition, expansion, management, conduct, operation, or sale or other disposition of an investment in its territory of an investor of a Party or of a non-Party, on compliance with any of the following requirements:
(a) to achieve a given level or percentage of domestic content;
(b) to purchase, use, or accord a preference to goods produced in its territory, or to purchase goods from persons in its territory;
(c) to relate in any way the volume or value of imports to the volume or value of exports or to the amount of foreign exchange inflows associated with such investment; or
(d) to restrict sales of goods or services in its territory that such investment produces or supplies by relating such sales in any way to the volume or value of its exports or foreign exchange earnings.

Exceptions and Exclusions

3. (a) Nothing in paragraph 2 shall be construed to prevent a Party from conditioning the receipt or continued receipt of an advantage, in connection with an investment in its territory of an investor of a Party or of a non-Party, on compliance with a requirement to locate production, supply a service, train or employ workers, construct or expand particular facilities, or carry out research and development, in its territory.
(b) Paragraph 1(f) does not apply:
(i) when a Party authorizes use of an intellectual property right in accordance with Article 313 of the TRIPS Agreement, or to measures requiring the disclosure of proprietary information that fall within the scope of, and are consistent with, Article 39 of the TRIPS Agreement; or
(ii) when the requirement is imposed or the commitment or undertaking is enforced by a court, administrative tribunal, or competition authority to remedy a practice determined after judicial or administrative process to be anticompetitive under the Party's competition laws.4
(c) Provided that such measures are not applied in an arbitrary or unjustifiable manner, or do not constitute a disguised restriction on international trade or investment, paragraphs 1(b), (c), and (f), and 2(a) and (b), shall not be construed to prevent a Party from adopting or maintaining measures, including environmental measures:
(i) necessary to secure compliance with laws and regulations that are not inconsistent with this Agreement;
(ii) necessary to protect human, animal, or plant life or health; or
(iii) related to the conservation of living or non-living exhaustible natural resources.
(d) Paragraphs 1(a), (b), and (c), and 2(a) and (b), do not apply to qualification requirements for goods or services with respect to export promotion and foreign aid programs.
(e) Paragraphs 1(b), (c), (f), and (g), and 2(a) and (b), do not apply to procurement.
(f) Paragraphs 2(a) and (b) do not apply to requirements imposed by an importing Party relating to the content of goods necessary to qualify for preferential tariffs or preferential quotas.

4. For greater certainty, paragraphs 1 and 2 do not apply to any requirement other than the requirements set out in those paragraphs.

5. This Article does not preclude enforcement of any commitment, undertaking, or requirement between private parties, where a Party did not impose or require the commitment, undertaking, or requirement.

Article 10.6: Senior Management and Boards of Directors

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

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

Article 10.7: Non-Conforming Measures5

1. Articles 10.2, 10.3, 10.5, and 10.6 do not apply to:
(a) any existing non-conforming measure that is maintained by a Party at:
(i) the central level of government, as set out by that Party in its Schedule to Annex I,
(ii) a regional level of government, as set out by that Party in its Schedule to Annex I, or
(iii) a local level of government;
(b) the continuation or prompt renewal of any non-conforming measure referred to in subparagraph (a); or
(c) an amendment to any non-conforming measure referred to in subparagraph (a) to the extent that the amendment does not decrease the conformity of the measure, as it existed immediately before the amendment, with Articles 10.2, 10.3, 10.5, and 10.6.

2. Articles 10.2, 10.3, 10.5, and 10.6 do not apply to any measure that a Party adopts or maintains with respect to sectors, subsectors, or activities, as set out in its Schedule to Annex II.

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

4. Articles 10.2 and 10.3 do not apply to any measure that is an exception to, or derogation from, the obligations under Article 17.1(6) (General Provisions) as specifically provided for in that Article.

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

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

Article 10.8: Transfers6

1. Each Party shall permit all transfers relating to a covered investment to be made freely and without delay into and out of its territory. Such transfers include:
(a) contributions to capital;

(b) profits, dividends, interest, capital gains, royalty payments, management fees, and technical assistance and other fees;
(c) proceeds from the sale of all or any part of the covered investment or from the partial or complete liquidation of the covered investment;
(d) payments made under a contract entered into by the investor, or the covered investment, including payments made pursuant to a loan agreement;
(e) payments made pursuant to Article 10.4(4) and (5) and Article 10.9; and
(f) payments arising under Section B.

2. Each Party shall permit returns in kind relating to a covered investment to be made as authorized or specified in an investment authorization or other written agreement7 between the Party and a covered investment or an investor of the other Party.

3. Each Party shall permit transfers relating to a covered investment to be made in a freely usable currency at the market rate of exchange prevailing on the date of transfer.

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

5. Notwithstanding paragraphs 1 through 3, a Party may prevent a transfer through the equitable, nondiscriminatory, and good faith application of its laws relating to:

(a) bankruptcy, insolvency, or the protection of the rights of creditors;
(b) issuing, trading, or dealing in securities, futures, or derivatives;
(c) criminal or penal offenses;
(d) financial reporting or record keeping of transfers when necessary to assist law enforcement or financial regulatory authorities; or
(e) ensuring compliance with orders or judgments in judicial or administrative proceedings.

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

Article 10.9: Expropriation and Compensation8

1. Neither Party may expropriate or nationalize a covered investment either directly or indirectly through measures equivalent to expropriation or nationalization ("expropriation"), except:
(a) for a public purpose;
(b) in a non-discriminatory manner;
(c) on payment of prompt, adequate, and effective compensation in accordance with paragraphs 2 through 4; and
(d) in accordance with due process of law and Article 10.4(1) through (3).

2. Compensation shall:
(a) be paid without delay;
(b) be equivalent to the fair market value of the expropriated investment immediately before the expropriation took place ("the date of expropriation");

(c) not reflect any change in value occurring because the intended expropriation had become known earlier; and
(d) be fully realizable and freely transferable.

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

4. If the fair market value is denominated in a currency that is not freely usable, the compensation paid – converted into the currency of payment at the market rate of exchange prevailing on the date of payment – shall be no less than:
(a) the fair market value on the date of expropriation, converted into a freely usable currency at the market rate of exchange prevailing on that date, plus
(b) interest, at a commercially reasonable rate for that freely usable currency, accrued from the date of expropriation until the date of payment.

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

Article 10.10: Special Formalities and Information Requirements

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

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

Article 10.11: Denial of Benefits

1. A Party may deny the benefits of this Chapter to an investor of the other Party that is an enterprise of such other Party and to investments of that investor if an investor of a non-Party owns or controls the enterprise and the denying Party:
(a) does not maintain diplomatic relations with the non-Party; or
(b) adopts or maintains measures with respect to the non-Party or an investor of the non-Party that prohibit transactions with the enterprise or that would be violated or circumvented if the benefits of this Chapter were accorded to the enterprise or to its investments.

2. Subject to Article 22.4 (Consultations), a Party may deny the benefits of this Chapter to:
(a) an investor of the other Party that is an enterprise of such other Party and to investments of that investor if an investor of a non-Party owns or controls the enterprise and the enterprise has no substantial business activities in the territory of the other Party; or
(b) an investor of the other Party that is an enterprise of such other Party and to investments of that investor if an investor of the denying Party owns or controls the enterprise and the enterprise has no substantial business activities in the territory of the other Party.

Article 10.12: Investment and Environment

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

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

Section B - Investor-State Dispute Settlement Article
10.14: Consultation and Negotiation

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

Article 10.15: Submission of a Claim to Arbitration9

1. In the event that a disputing party considers that an investment dispute cannot be settled by consultation and negotiation:
(a) the claimant, on its own behalf, may submit to arbitration under this Section a claim
(i) that the respondent has breached
(A) an obligation under Section A or Annex 10-F,
(B) an investment authorization, or
(C) an investment agreement; and
(ii) that the claimant has incurred loss or damage by reason of, or arising out of, that breach; and
(b) the claimant, on behalf of an enterprise of the respondent that is a juridical person that the claimant owns or controls directly or indirectly, may submit to arbitration under this Section a claim
(i) that the respondent has breached
(A) an obligation under Section A or Annex 10-F,
(B) an investment authorization, or
(C) an investment agreement; and
(ii) that the enterprise has incurred loss or damage by reason of, or arising out of, that breach.

2. For greater certainty, a claimant may submit to arbitration under this Section a claim that the respondent has breached an obligation under Section A or Annex 10-F through the actions of a designated monopoly or a state enterprise exercising delegated government authority as described in Article 16.3(3)(a) (Designated Monopolies) and Article 16.4(2) (State Enterprises), respectively.

3. Without prejudice to Article 12.1(2) (Scope and Coverage), no claim may be submitted under this Section that alleges a violation of any provision of this Agreement other than an obligation under Section A or Annex 10-F.

4. At least 90 days before submitting any claim to arbitration under this Section, a claimant shall deliver to the respondent a written notice of its intention to submit the claim to arbitration ("notice of intent"). The notice shall specify:
(a) the name and address of the claimant and, where a claim is submitted on behalf of an enterprise, the name, address, and place of incorporation of the enterprise;
(b) for each claim, the provision of this Agreement, investment authorization, or investment agreement alleged to have been breached and any other relevant provisions;
(c) the legal and factual basis for each claim; and
(d) the relief sought and the approximate amount of damages claimed.

5. Provided that six months have elapsed since the events giving rise to the claim, a claimant may submit a claim referred to in paragraph 1:
(a) under the ICSID Convention, provided that both the non-disputing Party and the respondent are parties to the ICSID Convention;
(b) under the ICSID Additional Facility Rules, provided that either the non-disputing Party or the respondent, but not both, is a party to the ICSID Convention;
(c) under the UNCITRAL Arbitration Rules; or
(d) if the disputing parties agree, to any other arbitration institution or under any other arbitration rules.

6. A claim shall be deemed submitted to arbitration under this Section when the claimant's notice of or request for arbitration ("notice of arbitration"):
(a) referred to in paragraph 1 of Article 36 of the ICSID Convention is received by the Secretary-General;
(b) referred to in Article 2 of Schedule C of the ICSID Additional Facility Rules is received by the Secretary-General;
(c) referred to in Article 3 of the UNCITRAL Arbitration Rules, together with the statement of claim referred to in Article 18 of the UNCITRAL Arbitration Rules, are received by the respondent; or
(d) referred to under any other arbitral institution or arbitral rules selected under paragraph 5(d) is received by the respondent.

7. The arbitration rules applicable under paragraph 5, and in effect on the date the claim or claims were submitted to arbitration under this Section, shall govern the arbitration except to the extent modified by this Agreement.

8. The claimant shall provide with the notice of arbitration referred to in paragraph 6:

(a) the name of the arbitrator that the claimant appoints; or
(b) the claimant's written consent for the Secretary-General to appoint the claimant's arbitrator.

Article 10.16: Consent of Each Party to Arbitration

1. Each Party consents to the submission of a claim to arbitration under this Section in accordance with this Agreement.

2. The consent under paragraph 1 and the submission of a claim to arbitration under this Section shall satisfy the requirements of:
(a) Chapter II of the ICSID Convention (Jurisdiction of the Centre) and the ICSID Additional Facility Rules for written consent of the parties to the dispute;
(b) Article II of the New York Convention for an "agreement in writing;" and
(c) Article I of the Inter-American Convention for an "agreement."

Article 10.17: Conditions and Limitations on Consent of Each Party

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

2. No claim may be submitted to arbitration under this Section unless:
(a) the claimant consents in writing to arbitration in accordance with the procedures set out in this Agreement; and
(b) the notice of arbitration referred to in Article 10.15(6) is accompanied,
(i) for claims submitted to arbitration under Article 10.15(1)(a), by the claimant's written waiver, and
(ii) for claims submitted to arbitration under Article 10.15(1)(b), by the claimant's and the enterprise's written waivers

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

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

Article 10.18: Selection of Arbitrators

1. Unless the disputing parties otherwise agree, the tribunal shall comprise three arbitrators, one arbitrator appointed by each of the disputing parties and the third, who shall be the presiding arbitrator, appointed by agreement of the disputing parties.

2. The Secretary-General shall serve as appointing authority for an arbitration under this Section.

3. If a tribunal has not been constituted within 75 days from the date that a claim is submitted to arbitration under this Section, the Secretary-General, on the request of a disputing party, shall appoint, in his or her discretion, the arbitrator or arbitrators not yet appointed.

4. For purposes of Article 39 of the ICSID Convention and Article 7 of Schedule C to the ICSID Additional Facility Rules, and without prejudice to an objection to an arbitrator on a ground other than nationality:
(a) the respondent agrees to the appointment of each individual member of a tribunal established under the ICSID Convention or the ICSID Additional Facility Rules;
(b) a claimant referred to in Article 10.15(1)(a) may submit a claim to arbitration under this Section, or continue a claim, under the ICSID Convention or the ICSID Additional Facility Rules, only on condition that the claimant agrees in writing to the appointment of each individual member of the tribunal; and
(c) a claimant referred to in Article 10.15(1)(b) may submit a claim to arbitration under this Section, or continue a claim, under the ICSID Convention or the ICSID Additional Facility Rules, only on condition that the claimant and the enterprise agree in writing to the appointment of each individual member of the tribunal.

Article 10.19: Conduct of the Arbitration
1. The disputing parties may agree on the legal place of any arbitration under the arbitral rules applicable under Article 10.15(5)(b), (c), or (d). If the disputing parties fail to reach agreement, the tribunal shall determine the place in accordance with the applicable arbitral rules, provided that the place shall be in the territory of a State that is a party to the New York Convention.

2. The non-disputing Party may make oral and written submissions to the tribunal regarding the interpretation of this Agreement.

3. The tribunal shall have the authority to accept and consider amicus curiae submissions from a person or entity that is not a disputing party (the "submitter"). The submissions shall be provided in both Spanish and English, and shall identify the submitter and any Party, other government, person, or organization, other than the submitter, that has provided, or will provide, any financial or other assistance in preparing the submission.

4. Without prejudice to a tribunal's authority to address other objections as a preliminary question, such as an objection that a dispute is not within a tribunal's competence, a tribunal shall address and decide as a preliminary question any objection by the respondent that, as a matter of law, a claim submitted is not a claim for which an award in favor of the claimant may be made under Article 10.25.
(a) Such objection shall be submitted to the tribunal as soon as possible after the tribunal is constituted, and in no event later than the date the tribunal fixes for the respondent to submit its counter-memorial (or, in the case of an amendment to the notice of arbitration referred to in

Article 10.15(6), the date the tribunal fixes for the respondent to submit its response to the amendment).
(b) On receipt of an objection under this paragraph, the tribunal shall suspend any proceedings on the merits, establish a schedule for considering the objection consistent with any schedule it has established for considering any other preliminary question, and issue a decision or award on the objection, stating the grounds therefor.
(c) In deciding an objection under this paragraph, the tribunal shall assume to be true claimant's factual allegations in support of any claim in the notice of arbitration (or any amendment thereof) and, in disputes brought under the UNCITRAL Arbitration Rules, the statement of claim referred to in Article 18 of the UNCITRAL Arbitration Rules. The tribunal may also consider any relevant facts not in dispute.
(d) The respondent does not waive any objection as to competence or any argument on the merits merely because the respondent did or did not raise an objection under this paragraph or make use of the expedited procedure set out in the following paragraph.

5. In the event that the respondent so requests within 45 days after the tribunal is constituted, the tribunal shall decide on an expedited basis an objection under paragraph 4 or any objection that the dispute is not within the tribunal's competence. The tribunal shall suspend any proceedings on the merits and issue a decision or award on the objection(s), stating the grounds therefor, no later than 150 days after the date of the request. However, if a disputing party requests a hearing, the tribunal may take an additional 30 days to issue the decision or award. Regardless of whether a hearing is requested, a tribunal may, on a showing of extraordinary cause, delay issuing its decision or award by an additional brief period of time, which may not exceed 30 days.

6. When it decides a respondent's objection under paragraph 4 or 5, the tribunal may, if warranted, award to the prevailing disputing party reasonable costs and attorneys' fees incurred in submitting or opposing the objection. In determining whether such an award is warranted, the tribunal shall consider whether either the claimant's claim or the respondent's objection was frivolous, and shall provide the disputing parties a reasonable opportunity to comment.

7. A respondent may not assert as a defense, counterclaim, right of set-off, or for any other reason that the claimant has received or will receive indemnification or other compensation for all or part of the alleged damages pursuant to an insurance or guarantee contract.

8. A tribunal may order an interim measure of protection to preserve the rights of a disputing party, or to ensure that the tribunal's jurisdiction is made fully effective, including an order to preserve evidence in the possession or control of a disputing party or to protect the tribunal's jurisdiction. A tribunal may not order attachment or enjoin the application of a measure alleged to constitute a breach referred to in Article 10.15. For purposes of this paragraph, an order includes a recommendation.

9.
(a) At the request of a disputing party, a tribunal shall, before issuing an award on liability, transmit its proposed award to the disputing parties and to the non-disputing Party. Within 60 days after the tribunal transmits its proposed award, only the disputing parties may submit written comments to the tribunal concerning any aspect of its proposed award. The tribunal

shall consider any such comments and issue its award not later than 45 days after the expiration of the 60-day comment period.
(b) Subparagraph (a) shall not apply in any arbitration for which an appeal has been made available pursuant to paragraph 10.

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

Article 10.20: Transparency of Arbitral Proceedings

1. Subject to paragraphs 2 and 4, the respondent shall, after receiving the following documents, promptly transmit them to the non-disputing Party and make them available to the public:
(a) the notice of intent referred to in Article 10.15(4);
(b) the notice of arbitration referred to in Article 10.15(6);
(c) pleadings, memorials, and briefs submitted to the tribunal by a disputing party and any written submissions submitted pursuant to Article 10.19(2) and (3) and Article 10.24;
(d) minutes or transcripts of hearings of the tribunal, where available; and
(e) orders, awards, and decisions of the tribunal.

2. The tribunal shall conduct hearings open to the public and shall determine, in consultation with the disputing parties, the appropriate logistical arrangements. However, any disputing party that intends to use information designated as confidential business information or information that is privileged or otherwise protected from disclosure under a Party's law in a hearing shall so advise the tribunal. The tribunal shall make appropriate arrangements to protect the information from disclosure.

3. Nothing in this Section requires a respondent to disclose confidential business information or information that is privileged or otherwise protected from disclosure under a Party's law or to furnish or allow access to information that it may withhold in accordance with Article 23.2 (Essential Security) or Article 23.5 (Disclosure of Information).

4. Confidential business information or information that is privileged or otherwise protected from disclosure under a Party's law shall, if such information is submitted to the tribunal, be protected from disclosure in accordance with the following procedures:
(a) Subject to subparagraph (d), neither the disputing parties nor the tribunal shall disclose to the non-disputing Party or to the public any confidential business information or information that is privileged or otherwise protected from disclosure under a Party's law where the disputing party that provided the information clearly designates it in accordance with subparagraph (b);
(b) Any disputing party claiming that certain information constitutes confidential business information or information that is privileged or otherwise protected from disclosure under a Party's law shall clearly designate the information at the time it is submitted to the tribunal;
(c) A disputing party shall, at the same time that it submits a document containing information claimed to be confidential business information or information that is privileged or otherwise protected from disclosure under a Party's law, submit a redacted version of the document that

does not contain the information. Only the redacted version shall be provided to the non-disputing Party and made public in accordance with paragraph 1; and
(d) The tribunal shall decide any objection regarding the designation of information claimed to be confidential business information or information that is privileged or otherwise protected from disclosure under a Party's law. If the tribunal determines that such information was not properly designated, the disputing party that submitted the information may:
(i) withdraw all or part of its submission containing such information; or
(ii) agree to resubmit complete and redacted documents with corrected designations in accordance with the tribunal's determination and subparagraph (c).
In either case, the other disputing party shall, whenever necessary, resubmit complete and redacted documents which either remove the information withdrawn under subparagraph (d)(i) by the disputing party that first submitted the information or redesignate the information consistent with the designation under subparagraph (d)(ii) of the disputing party that first submitted the information.

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

Article 10.21: Governing Law

1. Subject to paragraph 3, when a claim is submitted under Article 10.15(1)(a)(i)(A) or Article 10.15(1)(b)(i)(A), the tribunal shall decide the issues in dispute in accordance with this Agreement and applicable rules of international law.

2. Subject to paragraph 3, when a claim is submitted under Article 10.15(1)(a)(i)(B) or (C), or Article 10.15(1)(b)(i)(B) or (C), the tribunal shall decide the issues in dispute in accordance with the rules of law specified in the pertinent investment agreement or investment authorization, or as the disputing parties may otherwise agree. If the rules of law have not been specified or otherwise agreed, the tribunal shall apply the law of the respondent (including its rules on the conflict of laws), the terms of the investment agreement or investment authorization, such rules of international law as may be applicable, and this Agreement.

3. A decision of the Commission declaring its interpretation of a provision of this Agreement under Article 21.1 (Free Trade Commission) shall be binding on a tribunal established under this Section, and any award must be consistent with that decision.

Article 10.22: Interpretation of Annexes

1. Where a respondent asserts as a defense that the measure alleged to be a breach is within the scope of a non-conforming measure set out in Annex I or Annex II, the tribunal shall, on request of the respondent, request the interpretation of the Commission on the issue. The Commission shall submit in writing any decision declaring its interpretation under Article 21.1 (Free Trade Commission) to the tribunal within 60 days of delivery of the request.

2. A decision issued by the Commission under paragraph 1 shall be binding on the tribunal, and any award must be consistent with that decision. If the Commission fails to issue such a decision within 60 days, the tribunal shall decide the issue.

Article 10.23: Expert Reports

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

Article 10.24: Consolidation

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

2. A disputing party that seeks a consolidation order under this Article shall deliver, in writing, a request to the Secretary-General and to all the disputing parties sought to be covered by the order and shall specify in the request:
(a) the names and addresses of all the disputing parties sought to be covered by the order;
(b) the nature of the order sought; and
(c) the grounds on which the order is sought.

3. Unless the Secretary-General finds within 30 days after receiving a request under paragraph 2 that the request is manifestly unfounded, a tribunal shall be established under this Article.

4. Unless all the disputing parties sought to be covered by the order otherwise agree, a tribunal established under this Article shall comprise three arbitrators:
(a) one arbitrator appointed by agreement of the claimants;
(b) one arbitrator appointed by the respondent; and
(c) the presiding arbitrator appointed by the Secretary-General, provided, however, that the presiding arbitrator shall not be a national of either Party.

5. If, within 60 days after the Secretary-General receives a request made under paragraph 2, the respondent fails or the claimants fail to appoint an arbitrator in accordance with paragraph 4, the Secretary-General, on the request of any disputing party sought to be covered by the order, shall appoint the arbitrator or arbitrators not yet appointed. If the respondent fails to appoint an arbitrator, the Secretary-General shall appoint a national of the respondent, and if the claimants fail to appoint an arbitrator, the Secretary-General shall appoint a national of the non-disputing Party.

6. Where a tribunal established under this Article is satisfied that two or more claims that have been submitted to arbitration under Article 10.15(1) have a question of law or fact in common, and arise out of the same events or circumstances, the tribunal may, in the interest of fair and efficient resolution of the claims, and after hearing the disputing parties, by order:
(a) assume jurisdiction over, and hear and determine together, all or part of the claims;

(b) assume jurisdiction over, and hear and determine one or more of the claims, the determination of which it believes would assist in the resolution of the others; or
(c) instruct a tribunal previously established under Article 10.18 to assume jurisdiction over, and hear and determine together, all or part of the claims, provided that
(i) that tribunal, at the request of any claimant not previously a disputing party before that tribunal, shall be reconstituted with its original members, except that the arbitrator for the claimants shall be appointed pursuant to paragraphs 4(a) and 5; and
(ii) that tribunal shall decide whether any prior hearing shall be repeated.

7. Where a tribunal has been established under this Article, a claimant that has submitted a claim to arbitration under Article 10.15(1) and that has not been named in a request made under paragraph 2 may make a written request to the tribunal that it be included in any order made under paragraph 6, and shall specify in the request:
(a) the name and address of the claimant;
(b) the nature of the order sought; and
(c) the grounds on which the order is sought.
The claimant shall deliver a copy of its request to the Secretary-General.

8. A tribunal established under this Article shall conduct its proceedings in accordance with the UNCITRAL Arbitration Rules, except as modified by this Section.

9. A tribunal established under Article 10.18 shall not have jurisdiction to decide a claim, or a part of a claim, over which a tribunal established or instructed under this Article has assumed jurisdiction.

10. On application of a disputing party, a tribunal established under this Article, pending its decision under paragraph 6, may order that the proceedings of a tribunal established under Article 10.18 be stayed, unless the latter tribunal has already adjourned its proceedings.

Article 10.25: Awards

1. Where a tribunal makes a final award against a respondent, the tribunal may award, separately or in combination, only:
(a) monetary damages and any applicable interest;
(b) restitution of property, in which case the award shall provide that the respondent may pay monetary damages and any applicable interest in lieu of restitution. A tribunal may also award costs and attorneys' fees in accordance with this Section and the applicable arbitration rules.

2. Subject to paragraph 1, where a claim is submitted to arbitration under Article 10.15(1)(b):
(a) an award of restitution of property shall provide that restitution be made to the enterprise;
(b) an award of monetary damages and any applicable interest shall provide that the sum be paid to the enterprise; and
(c) the award shall provide that it is made without prejudice to any right that any person may have in the relief under applicable domestic law.

3. A tribunal may not award punitive damages.

4. An award made by a tribunal shall have no binding force except between the disputing parties and in respect of the particular case.

5. Subject to paragraph 6 and the applicable review procedure for an interim award, a disputing party shall abide by and comply with an award without delay.

6. A disputing party may not seek enforcement of a final award until:
(a) in the case of a final award made under the ICSID Convention.10-24
(i) 120 days have elapsed from the date the award was rendered and no disputing party has requested revision or annulment of the award; or
(ii) revision or annulment proceedings have been completed; and
(b) in the case of a final award under the ICSID Additional Facility Rules, the UNCITRAL Arbitration Rules, or the rules selected pursuant to Article 10.15(5)(d)
(i) 90 days have elapsed from the date the award was rendered and no disputing party has commenced a proceeding to revise, set aside, or annul the award, or
(ii) a court has dismissed or allowed an application to revise, set aside, or annul the award and there is no further appeal.

7. Each Party shall provide for the enforcement of an award in its territory.

8. If the respondent fails to abide by or comply with a final award, on delivery of a request by the non-disputing Party, a panel shall be established under Article 22.6 (Request for an Arbitral Panel). The requesting Party may seek in such proceedings:
(a) a determination that the failure to abide by or comply with the final award is inconsistent with the obligations of this Agreement; and
(b) if the Parties agree, a recommendation that the respondent abide by or comply with the final award.

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

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

Article 10.26: Service of Documents

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

Section C - Definitions

Article 10.27: Definitions

For purposes of this Chapter:

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

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

disputing parties means the claimant and the respondent;

disputing party means either the claimant or the respondent;

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

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

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

ICSID Additional Facility Rules means the Rules Governing the Additional Facility for the Administration of Proceedings by the Secretariat of the International Centre for Settlement of Investment Disputes;

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

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

investment means every asset that an investor owns or controls, directly or indirectly, that has the characteristics of an investment, including such characteristics as the commitment of capital or other resources, the expectation of gain or profit, or the assumption of risk. Forms that an investment may take include:
(a) an enterprise;
(b) shares, stock, and other forms of equity participation in an enterprise;
(c) bonds, debentures, loans, and other debt instruments;10
(d) futures, options, and other derivatives;
(e) rights under contract, including turnkey, construction, management, production, concession, or revenue-sharing contracts;
(f) intellectual property rights;
(g) rights conferred pursuant to domestic law, such as concessions, licenses, authorizations, and permits;11 and
(h) other tangible or intangible, movable or immovable property, and related property rights, such as leases, mortgages, liens, and pledges;

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

investment agreement means a written agreement12 that takes effect at least two years after the date of entry into force of this Agreement between a national authority13 of a Party and a covered investment or an investor of the other Party:
(a) that grants rights with respect to natural resources or other assets that a national authority controls; and
(b) that the covered investment or the investor relies on in establishing or acquiring a covered investment;

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

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

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

monopoly means "monopoly" as defined in Article 16.9 (Definitions);

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

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

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

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

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

Chapter Eleven

Cross-Border Trade in Services

Article 11.1: Scope and Coverage

1. This Chapter applies to measures adopted or maintained by a Party affecting cross-border trade in services by service suppliers of the other Party. Such measures include measures affecting:
(a) the production, distribution, marketing, sale, and delivery of a service;
(b) the purchase or use of, or payment for, a service;
(c) the access to and use of distribution, transport, or telecommunications networks and services in connection with the supply of a service;

(d) the presence in its territory of a service supplier of the other Party; and
(e) the provision of a bond or other form of financial security as a condition for the supply of a service.

2. For purposes of this Chapter, "measures adopted or maintained by a Party" means measures adopted or maintained by:
(a) central, regional, or local governments and authorities; and
(b) non-governmental bodies in the exercise of powers delegated by central, regional, or local governments or authorities.

3. Articles 11.4, 11.7, and 11.8 also apply to measures by a Party affecting the supply of a service in its territory by an investor of the other Party as defined in Article 10.27 (Definitions) or a covered investment.1

4. This Chapter does not apply to:
(a) financial services, as defined in Article 12.19 (Definitions), except as provided in paragraph 3;
(b) air services, including domestic and international air transportation services, whether scheduled or non-scheduled, and related services in support of air services, other than:
(i) aircraft repair and maintenance services during which an aircraft is withdrawn from service, and
(ii) specialty air services;
(c) procurement; or
(d) subsidies or grants provided by a Party or a state enterprise, including government-supported loans, guarantees, and insurance.

5. This Chapter does not impose any obligation on a Party with respect to a national of the other Party seeking access to its employment market, or employed on a permanent basis in its territory, and does not confer any right on that national with respect to that access or employment.

6. This Chapter does not apply to services supplied in the exercise of governmental authority. A "service supplied in the exercise of governmental authority" means any service which is supplied neither on a commercial basis, nor in competition with one or more service suppliers.

Article 11.2: National Treatment

1. Each Party shall accord to service suppliers2 of the other Party treatment no less favorable than that it accords, in like circumstances, to its own service suppliers.

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

Article 11.3: Most-Favored-Nation Treatment

Each Party shall accord to service suppliers3 of the other Party treatment no less favorable than that it accords, in like circumstances, to service suppliers of a non-Party.

Article 11.4: Market Access

Neither Party may, either on the basis of a regional subdivision or on the basis of its entire territory, adopt or maintain measures that:
(a) impose limitations on:
(i) the number of service suppliers,4 whether in the form of numerical quotas, monopolies, exclusive service suppliers, or the requirement of an economic needs test,
(ii) the total value of service transactions or assets in the form of numerical quotas or the requirement of an economic needs test,
(iii) the total number of service operations or on the total quantity of services output expressed in terms of designated numerical units in the form of quotas or the requirement of an economic needs test,5 or
(iv) the total number of natural persons that may be employed in a particular service sector or that a service supplier may employ and who are necessary for, and directly related to, the supply of a specific service in the form of a numerical quotas or the requirement of an economic needs test; or
(b) restrict or require specific types of legal entity or joint venture through which a service supplier may supply a service.

Article 11.5: Local Presence

Neither Party may require a service supplier of the other Party to establish or maintain a representative office or any form of enterprise, or to be resident, in its territory as a condition for the cross-border supply of a service.

Article 11.6: Non-conforming Measures

1. Articles 11.2, 11.3, 11.4, and 11.5 do not apply to:
(a) any existing non-conforming measure that is maintained by a Party at:
(i) the central level of government, as set out by that Party in its Schedule to Annex I,
(ii) a regional level of government, as set out by that Party in its Schedule to Annex I, or
(iii) a local level of government;
(b) the continuation or prompt renewal of any non-conforming measure referred to in subparagraph (a); or
(c) an amendment to any non-conforming measure referred to in subparagraph (a) to the extent that the amendment does not decrease the conformity of the measure, as it existed immediately before the amendment, with Articles 11.2, 11.3 , 11.4, or 11.5.

2. Articles 11.2, 11.3, 11.4, and 11.5 do not apply to any measure that a Party adopts or maintains with respect to sectors, sub-sectors, or activities, as set out in its Schedule to Annex II.

3. Annex 11.6 sets out specific commitments by the Parties.

Article 11.7: Transparency in Development and Application of Regulations6

Further to Chapter Twenty (Transparency):
(a) each Party shall maintain or establish appropriate mechanisms for responding to inquiries from interested persons regarding their regulations relating to the subject matter of this Chapter;7
(b) at the time it adopts final regulations relating to the subject matter of this Chapter, each Party shall, to the extent possible, including upon request, address in writing substantive comments received from interested persons with respect to the proposed regulations; and
(c) to the extent possible, each Party shall allow a reasonable period of time between publication of final regulations and their effective date.

Article 11.8: Domestic Regulation

1. Where a Party requires authorization for the supply of a service, the competent authorities of that Party shall, within a reasonable period of time after the submission of an application considered complete under domestic laws and regulations, inform the applicant of the decision concerning the application. At the request of the applicant, the competent authorities of the Party shall provide, without undue delay, information concerning the status of the application. This obligation shall not apply to authorization requirements that are within the scope of Article 11.6(2).

2. With a view to ensuring that measures relating to qualification requirements and procedures, technical standards, and licensing requirements do not constitute unnecessary barriers to trade in services, each Party shall endeavor to ensure, as appropriate for individual sectors, that any such measures that it adopts or maintains are:
(a) based on objective and transparent criteria, such as competence and the ability to supply the service;
(b) not more burdensome than necessary to ensure the quality of the service; and
(c) in the case of licensing procedures, not in themselves a restriction on the supply of the service.

3. If the results of the negotiations related to Article VI:4 of GATS (or the results of any similar negotiations undertaken in other multilateral fora in which both Parties participate) enter into effect, this Article shall be amended, as appropriate, after consultations between the Parties, to bring those results into effect under this Agreement. The Parties agree to coordinate on such negotiations as appropriate.

Article 11.9: Mutual Recognition

1. For the purposes of the fulfillment, in whole or in part, of its standards or criteria for the authorization, licensing, or certification of services suppliers, and subject to the requirements of paragraph 4, a Party may recognize the education or experience obtained, requirements met, or licenses or certifications granted in a particular country. Such recognition, which may be achieved through harmonization or otherwise, may be based upon an agreement or arrangement with the country concerned or may be accorded autonomously.

2. Where a Party recognizes, autonomously or by agreement or arrangement, the education or experience obtained, requirements met, or licenses or certifications granted in the territory of a

non-Party, nothing in Article 11.3 shall be construed to require the Party to accord such recognition to the education or experience obtained, requirements met, or licenses or certifications granted in the territory of the other Party.

3. A Party that is a party to an agreement or arrangement of the type referred to in paragraph 1, whether existing or future, shall afford adequate opportunity for the other Party, if the other Party is interested, to negotiate its accession to such an agreement or arrangement or to negotiate comparable ones with it. Where a Party accords recognition autonomously, it shall afford adequate opportunity for the other Party to demonstrate that education, experience, licenses, or certifications obtained or requirements met in that other Party's territory should be recognized.

4. A Party shall not accord recognition in a manner which would constitute a means of discrimination between countries in the application of its standards or criteria for the authorization, licensing, or certification of services suppliers, or a disguised restriction on trade in services.

5. Annex 11.9 applies to measures adopted or maintained by a Party relating to the licensing or certification of professional service suppliers as set out in the provisions of that Annex.

Article 11.10: Implementation

The Parties shall consult annually, or as otherwise agreed, to review the implementation of this Chapter and consider other trade in services issues of mutual interest. Among other issues, the Parties will consult with a view to determining the feasibility of removing any remaining citizenship or permanent residency requirement for the licensing or certification of each other's services suppliers. Such consultations will also include consideration of the development of procedures that could contribute to greater transparency of measures described in Article 11.6(1)(c).

Article 11.11: Denial of Benefits

1. A Party may deny the benefits of this Chapter to a service supplier of the other Party if the service is being supplied by an enterprise owned or controlled by nationals of a non-Party, and the denying Party:
(a) does not maintain diplomatic relations with the non-Party; or
(b) adopts or maintains measures with respect to the non-Party that prohibit transactions with the enterprise or that would be violated or circumvented if the benefits of this Chapter were accorded to the enterprise.

2. Subject to Article 22.4 (Consultations), a Party may deny the benefits of this Chapter to:
(a) service suppliers of the other Party where the service is being supplied by an enterprise that is owned or controlled by persons of a non-Party and the enterprise has no substantial business activities in the territory of the other Party, or
(b) service suppliers of the other Party where the service is being supplied by an enterprise that is owned or controlled by persons of the denying Party and the enterprise has no substantial business activities in the territory of the other Party.

Article 11.12: Definitions

For purposes of this Chapter:

cross-border trade in services or cross-border supply of services means the supply of a service:
(a) from the territory of one Party into the territory of the other Party;
(b) in the territory of one Party by a person of that Party to a person of the other Party; or
(c) by a national of a Party in the territory of the other Party,

but does not include the supply of a service in the territory of a Party by an investor of the other Party as defined in Article 10.27 (Investment-Definitions) or a covered investment;

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

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

professional services means services, the provision of which requires specialized post-secondary education, or equivalent training or experience, and for which the right to practice is granted or restricted by a Party, but does not include services provided by trades-persons or vessel and aircraft crew members;

service supplier of a Party means a person of a Party that seeks to supply or supplies a service; and

specialty air services means any non-transportation air services, such as aerial fire-fighting, sightseeing, spraying, surveying, mapping, photography, parachute jumping, glider towing, and helicopter-lift for logging and construction, and other airborne agricultural, industrial, and inspection services.

Chapter Twelve

Financial Services

Article 12.1: Scope and Coverage

1. This Chapter applies to measures adopted or maintained by a Party relating to:
(a) financial institutions of the other Party;
(b) investors of the other Party, and investments of such investors, in financial institutions in the Party's territory; and
(c) cross-border trade in financial services.

2. Articles 10.8 through 10.12 and 11.11 are hereby incorporated into and made a part of this Chapter. Section B of Chapter Ten (Investment) is hereby incorporated into and made a part of this Chapter solely for breaches by a Party of Articles 10.8 through 10.11, as incorporated into this Chapter.1 No other provision of Chapter Ten (Investment) or Chapter Eleven (Cross Border Trade in Services) shall apply to a measure described in paragraph 1.

3. This Chapter does not apply to measures adopted or maintained by a Party relating to:
(a) activities or services forming part of a public retirement plan or statutory system of social security; or
(b) activities or services conducted for the account or with the guarantee or using the financial resources of the Party, including its public entities, except that this Chapter shall apply if a Party allows any of the activities or services referred to in subparagraphs (a) or (b) to be conducted by its financial institutions in competition with a public entity or a financial institution.

Article 12.2: National Treatment

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

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

3. For purposes of the national treatment obligations in Article 12.5(1), a Party shall accord to cross-border financial service suppliers of the other Party treatment no less favorable than that it accords to its own financial service suppliers, in like circumstances, with respect to the supply of the relevant service.

Article 12.3: Most-Favored-Nation Treatment

1. Each Party shall accord to investors of the other Party, financial institutions of the other Party, investments of investors in financial institutions, and cross-border financial service suppliers of the other Party treatment no less favorable than that it accords to the investors, financial institutions, investments of investors in financial institutions and crossborder financial service suppliers of a non-Party, in like circumstances.

2. A Party may recognize prudential measures of a non-Party in the application of measures covered by this Chapter. Such recognition may be:
(a) accorded unilaterally;
(b) achieved through harmonization or other means; or
(c) based upon an agreement or arrangement with the non-Party.

3. A Party according recognition of prudential measures under paragraph 2 shall provide adequate opportunity to the other Party to demonstrate that circumstances exist in which there are or will be equivalent regulation, oversight, implementation of regulation, and, if appropriate, procedures concerning the sharing of information between the Parties.

4. Where a Party accords recognition of prudential measures under paragraph 2(c) and the circumstances set out in paragraph 3 exist, the Party shall provide adequate opportunity to the other Party to negotiate accession to the agreement or arrangement, or to negotiate a comparable agreement or arrangement.

Article 12.4: Market Access for Financial Institutions

Neither Party may, with respect to investors of the other Party, either on the basis of a regional subdivision or on the basis of its entire territory adopt or maintain measures that:
(a) impose limitations on:
(i) the number of financial institutions whether in the form of numerical quotas, monopolies, exclusive financial service suppliers, or the requirements of an economic needs test,
(ii) the total value of financial service transactions or assets in the form of numerical quotas or the requirement of an economic needs test,
(iii) the total number of financial service operations or on the total quantity of financial services output expressed in terms of designated numerical units in the form of quotas or the requirement of an economic needs test, or
(iv) the total number of natural persons that may be employed in a particular financial service sector or that a financial institution may employ and who are necessary for, and directly related to, the supply of a specific financial service in the form of a numerical quota or the requirement of an economic needs test; or
(b) restrict or require specific types of legal entity or joint venture through which a financial institution may supply a service.

Article 12.5: Cross-Border Trade

1. Each Party shall permit, under terms and conditions that accord national treatment, cross-border financial service suppliers of the other Party to supply the financial services specified in Annex 12.5.

2. Each Party shall permit persons located in its territory, and its nationals wherever located, to purchase financial services from cross-border financial service suppliers of the other Party located in the territory of the other Party. This obligation does not require a Party to permit such suppliers to do business or solicit in its territory. Each Party may define “doing business” and “solicitation” for purposes of this Article as long as such definitions are not inconsistent with the obligations of paragraph 1.

3. Without prejudice to other means of prudential regulation of cross-border trade in financial services, a Party may require the registration of cross-border financial service suppliers of the other Party and of financial instruments.

Article 12.6: New Financial Services 2

1. Each Party shall permit a financial institution of the other Party, on request or notification to the relevant regulator, where required, to supply any new financial service that the first Party would permit its own financial institutions, in like circumstances, to supply under its domestic law, provided that the introduction of the financial service does not require the Party to adopt a new law or modify an existing law.

2. A Party may determine the institutional and juridical form through which the new financial service may be supplied and may require authorization for the supply of the service. Where a Party would permit the new financial service and authorization is required, the decision shall be made within a reasonable time and authorization may only be refused for prudential reasons.

Article 12.7: Treatment of Certain Information

Nothing in this Chapter requires a Party to furnish or allow access to:
(a) information related to the financial affairs and accounts of individual customers of financial institutions or cross-border financial service suppliers; or
(b) any confidential information, the disclosure of which would impede law enforcement or otherwise be contrary to the public interest or prejudice legitimate commercial interests of particular enterprises.

Article 12.8: Senior Management and Boards of Directors

1. Neither Party may require financial institutions of the other Party to engage individuals of any particular nationality as senior managerial or other essential personnel.

2. Neither Party may require that more than a minority of the board of directors of a financial institution of the other Party be composed of nationals of the Party, persons residing in the territory of the Party, or a combination thereof.

Article 12.9: Non-Conforming Measures

1. Articles 12.2 through 12.5 and 12.8 and Section A of Annex 12.9 do not apply to:
(a) any existing non-conforming measure that is maintained by a Party at:
(i) the central level of government, as set out by that Party in its Schedule to Annex III,
(ii) a regional level of government, as set out by that Party in its Schedule to Annex III, or
(iii) a local level of government;
(b) the continuation or prompt renewal of any non-conforming measure referred to in subparagraph (a); or
(c) an amendment to any non-conforming measure referred to in subparagraph (a) to the extent that the amendment does not decrease the conformity of the measure, as it existed immediately before the amendment, with Articles 12.2, 12.3, 12.4, and 12.8 and Section A of Annex 12.9.

2. Articles 12.2 through 12.5 and 12.8 and Section A of Annex 12.9 do not apply to any measure that a Party adopts or maintains with respect to sectors, subsectors, or activities, as set out in its Schedule to Annex III.

3. Annex 12.9 sets out certain specific commitments by each Party.

4. Where a Party has set out in its Schedule to Annexes I and II a measure that does not conform to Articles 10.2, 10.3, 11.2, 11.3, or 11.4 pursuant to paragraphs 1 and 2 of Articles 10.7 and 11.6, that measure shall be deemed to constitute a non-conforming measure, pursuant to paragraphs 1 and 2 of this Article, with respect to Article 12.2, Article 12.3, or

Article 12.4, or Section A of Annex 12.9, as the case may be, to the extent that the measure, sector, sub-sector, or activity set out in the Schedule of non-conforming measures is covered by this Chapter.

Article 12.10: Exceptions

1. Notwithstanding any other provision of this Chapter or of Chapters Ten (Investment), Eleven (Cross-Border Trade in Services), Thirteen (Telecommunications), Fifteen (Electronic Commerce), and Sixteen (Competition Policy, Designated Monopolies, and State Enterprises), including specifically Article 13.16 (Telecommunications - Relationship to Other Chapters), a Party shall not be prevented from adopting or maintaining measures for prudential reasons,3 including for the protection of investors, depositors, policy holders, or persons to whom a fiduciary duty is owed by a financial institution or crossborder financial service supplier, or to ensure the integrity and stability of the financial system. Where such measures do not conform with the provisions of this Agreement referred to in this paragraph, they shall not be used as a means of avoiding the Party's commitments or obligations under such provisions.4

2. Nothing in this Chapter or Chapters Ten (Investment), Eleven (Cross-Border Trade in Services), Thirteen (Telecommunications), Fifteen (Electronic Commerce), and Sixteen (Competition Policy, Designated Monopolies, and State Enterprises), including specifically Article 13.16 (Telecommunications – Relationship to Other Chapters), applies to nondiscriminatory measures of general application taken by any public entity in pursuit of monetary and related credit policies or exchange rate policies. This paragraph shall not effect a Party's obligations under Article 10.5 (Performance Requirements) with respect to measures covered by Chapter Ten (Investment) or Article 10.8 (Transfers).

3. Notwithstanding Article 10.8 (Transfers), as incorporated into this Chapter, a Party may prevent or limit transfers by a financial institution or cross-border financial service supplier to, or for the benefit of, an affiliate of or person related to such institution or supplier, through the equitable, non-discriminatory and good faith application of measures relating to maintenance of the safety, soundness, integrity, or financial responsibility of financial institutions or cross-border financial service suppliers. This paragraph does not prejudice any other provision of this Agreement that permits a Party to restrict transfers.

4. For greater certainty, nothing in this Chapter shall be construed to prevent the adoption or enforcement by a Party of measures necessary to secure compliance with laws or regulations that are not inconsistent with this Chapter, including those relating to the prevention of deceptive and fraudulent practices or to deal with the effects of a default on financial services contracts, subject to the requirement that such measures are not applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination between countries where like conditions prevail, or a disguised restriction on investment in financial institutions or cross-border trade in financial services as covered by this Chapter.

Article 12.11: Transparency

1. The Parties recognize that transparent regulations and policies and reasonable, objective, and impartial administration governing the activities of financial institutions and financial service

suppliers are important in facilitating both access of financial institutions and financial service suppliers to, and their operations in, each other's markets.

2. In lieu of Article 20.2 (Publication), each Party shall, to the extent practicable:
(a) publish in advance any regulations of general application relating to the subject matter of this Chapter that it proposes to adopt; and
(b) provide interested persons and the other Party a reasonable opportunity to comment on such proposed regulations.

3. Each Party's regulatory authorities shall make available to interested persons their requirements, including any documentation required, for completing applications relating to the supply of financial services.

4. On the request of an applicant, the regulatory authority shall inform the applicant of the status of its application. If such authority requires additional information from the applicant, it shall notify the applicant without undue delay.

5. A regulatory authority shall make an administrative decision on a completed application of an investor in a financial institution, a financial institution, or a cross-border financial service supplier of the other Party relating to the supply of a financial service within 120 days, and shall promptly notify the applicant of the decision. An application shall not be considered complete until all relevant hearings are held and all necessary information is received. Where it is not practicable for a decision to be made within 120 days, the regulatory authority shall notify the applicant without undue delay and shall endeavor to make the decision within a reasonable time thereafter.

6. Each Party shall maintain or establish appropriate mechanisms that will respond to inquiries from interested persons regarding measures of general application covered by this Chapter.

7. Each Party shall ensure that the rules of general application adopted or maintained by self-regulatory organizations of the Party are promptly published or otherwise made available in such a manner as to enable interested persons to become acquainted with them.

8. To the extent practicable, each Party should allow reasonable time between publication of final regulations and their effective date.

9. At the time it adopts final regulations, a Party should, to the extent practicable, address in writing substantive comments received from interested persons with respect to the proposed regulations.

Article 12.12: Self-Regulatory Organizations

Where a Party requires a financial institution or a cross-border financial service supplier of the other Party to be a member of, participate in, or have access to, a self regulatory organization to provide a financial service in or into the territory of that Party, the Party shall ensure observance of the obligations of Articles 12.2 and 12.3 by such self regulatory organization.

Article 12.13: Payment and Clearing Systems

Under terms and conditions that accord national treatment, each Party shall grant to financial institutions of the other Party established in its territory access to payment and clearing systems operated by public entities, and to official funding and refinancing facilities available in the normal course of ordinary business. This paragraph is not intended to confer access to the Party's lender of last resort facilities.

Article 12.14: Expedited Availability of Insurance Services

The Parties recognize the importance of maintaining and developing regulatory procedures to expedite the offering of insurance services by licensed suppliers.

Article 12.15: Financial Services Committee

1. The Parties hereby establish the Financial Services Committee. The principal representative of each Party shall be an official of the Party's authority responsible for financial services set out in Annex 12.15.

2. In accordance with Article 21.1(2)(d) (The Free Trade Commission), the Committee shall:
(a) supervise the implementation of this Chapter and its further elaboration;
(b) consider issues regarding financial services that are referred to it by a Party; and
(c) participate in the dispute settlement procedures in accordance with Articles 12.17 and 12.18.

3. The Committee shall meet annually, or as otherwise agreed, to assess the functioning of this Agreement as it applies to financial services. The Committee shall inform the Commission of the results of each meeting.

Article 12.16: Consultations

1. A Party may request in writing consultations with the other Party regarding any matter arising under this Agreement that affects financial services. The other Party shall give sympathetic consideration to the request. The Parties shall report the results of their consultations to the Committee.

2. Officials from the authorities specified in Annex 12.15 shall participate in the consultations under this Article.

3. Nothing in this Article shall be construed to require regulatory authorities participating in consultations under paragraph 1 to disclose information or take any action that would interfere with specific regulatory, supervisory, administrative, or enforcement matters.

4. Nothing in this Article shall be construed to require a Party to derogate from its relevant law regarding sharing of information among financial regulators or the requirements of an agreement or arrangement between financial authorities of the Parties.

Article 12.17: Dispute Settlement

1. Chapter Twenty-Two (Dispute Settlement) applies as modified by this Article to the settlement of disputes arising under this Chapter.

2. For purposes of Article 22.4 (Consultations), consultations held under Article 12.16 with respect to a measure or matter shall be deemed to constitute consultations under Article 22.4(1), unless the Parties otherwise agree. Upon initiation of consultations, the Parties shall provide information and give confidential treatment under Article 22.4(4)(b) to the information exchanged. If the matter has not been resolved within 45 days after commencing consultations under Article 12.16 or 90 days after the delivery of the request for consultations under Article 12.16, whichever is earlier, the complaining Party may request in writing the establishment of an arbitral panel. The Parties shall report the results of their consultations to the Commission.

3. The Parties shall establish by January 1, 2005, and maintain a roster of up to 10 individuals who are willing and able to serve as financial services panelists, up to four of whom shall be non-Party nationals. The roster members shall be appointed by mutual agreement of the Parties, and may be reappointed. Once established, a roster shall remain in effect for a minimum of three years, and shall remain in effect thereafter until the Parties constitute a new roster.

4. Financial services roster members shall:
(a) have expertise or experience in financial services law or practice, which may include the regulation of financial institutions;
(b) be chosen strictly on the basis of objectivity, reliability, and sound judgment;
(c) be independent of, and not affiliated with or take instructions from, either Party; and
(d) comply with a code of conduct to be established by the Commission.

5. Where a Party claims that a dispute arises under this Chapter, Article 22.9 (Panel Selection) shall apply, except that, unless the Parties otherwise agree, the panel shall be composed entirely of panelists meeting the qualifications in paragraph 4.

6. In any dispute where a panel finds a measure to be inconsistent with the obligations of this Agreement and the measure affects:
(a) only the financial services sector, the complaining Party may suspend benefits only in the financial services sector;
(b) the financial services sector and any other sector, the complaining Party may suspend benefits in the financial services sector that have an effect equivalent to the effect of the measure in the Party's financial services sector; or
(c) only a sector other than the financial services sector, the complaining Party may not suspend benefits in the financial services sector.

Article 12.18: Investment Disputes in Financial Services

1. Where an investor of one Party submits a claim under Article 10.15 (Submission of a Claim to Arbitration) to arbitration under Section B of Chapter Ten (Investment) against the other Party and the respondent invokes Article 12.10, on request of the respondent, the tribunal shall refer the matter in writing to the Committee for a decision. The tribunal may not proceed pending receipt of a decision or report under this Article.

2. In a referral pursuant to paragraph 1, the Committee shall decide the issue of whether and to what extent Article 12.10 is a valid defense to the claim of the investor. The Committee shall transmit a copy of its decision to the tribunal and to the Commission. The decision shall be binding on the tribunal.

3. Where the Committee has not decided the issue within 60 days of the receipt of the referral under paragraph 1, the respondent or the Party of the claimant may request the establishment of an arbitral panel under Article 22.6 (Request for an Arbitral Panel). The panel shall be constituted in accordance with Article 12.17. Further to Article 22.13 (Final Report), the panel shall transmit its final report to the Committee and to the tribunal. The report shall be binding on the tribunal.

4. Where no request for the establishment of a panel pursuant to paragraph 3 has been made within 10 days of the expiration of the 60-day period referred to in paragraph 3, the tribunal may proceed to decide the matter.

Article 12.19: Definitions

For purposes of this Chapter:

cross-border financial service supplier of a Party means a person of a Party that is engaged in the business of supplying a financial service within the territory of the Party and that seeks to supply or supplies a financial service through the cross-border supply of such services;

cross-border trade in financial services or cross-border supply of financial services means the supply of a financial service:
(a) from the territory of one Party into the territory of the other Party
(b) in the territory of a Party by a person of that Party to a person of the other Party, or
(c) by a national of a Party in the territory of the other Party, but does not include the supply of a service in the territory of a Party by an investment in that territory;

financial institution means any financial intermediary or other enterprise that is authorized to do business and regulated or supervised as a financial institution under the law of the Party in whose territory it is located;

financial institution of the other Party means a financial institution, including a branch, located in the territory of a Party that is controlled by persons of the other Party;

financial service means any service of a financial nature. Financial services include all insurance and insurance-related services, and all banking and other financial services (excluding insurance), as well as services incidental or auxiliary to a service of a financial nature. Financial services include the following activities:

Insurance and insurance-related services
(a) Direct insurance (including co-insurance):
(i) life
(ii) non-life
(b) Reinsurance and retrocession;

(c) Insurance intermediation, such as brokerage and agency;
(d) Service auxiliary to insurance, such as consultancy, actuarial, risk assessment, and claim settlement services.

Banking and other financial services (excluding insurance)
(e) Acceptance of deposits and other repayable funds from the public;
(f) Lending of all types, including consumer credit, mortgage credit, factoring and financing of commercial transactions;
(g) Financial leasing;
(h) All payment and money transmission services, including credit, charge and debit cards, travelers checks, and bankers drafts;
(i) Guarantees and commitments;
(j) Trading for own account or for account of customers, whether on an exchange, in an over-the-counter market, or otherwise, the following:
(i) money market instruments (including checks, bills, certificates of deposits);
(ii) foreign exchange;
(iii) derivative products including, futures and options;
(iv) exchange rate and interest rate instruments, including products such as swaps, forward rate agreements;
(v) transferable securities;
(vi) other negotiable instruments and financial assets, including bullion;
(k) Participation in issues of all kinds of securities, including underwriting and placement as agent (whether publicly or privately) and provision of services related to such issues;
(l) Money broking;
(m) Asset management, such as cash or portfolio management, all forms of collective investment management, pension fund management, custodial, depository, and trust services;
(n) Settlement and clearing services for financial assets, including securities, derivative products, and other negotiable instruments;
(o) Provision and transfer of financial information, and financial data processing and related software by suppliers of other financial services;
(p) Advisory, intermediation, and other auxiliary financial services on all the activities listed in subparagraphs (e) through (o), including credit reference and analysis, investment and portfolio research and advice, advice on acquisitions and on corporate restructuring and strategy;

financial service supplier of a Party means a person of a Party that is engaged in the business of supplying a financial service within the territory of that Party;

investment means “investment” as defined in Article 10.27 (Definitions), except that, with respect to “loans” and “debt instruments” referred to in that Article:
(a) a loan to or debt instrument issued by a financial institution is an investment only where it is treated as regulatory capital by the Party in whose territory the financial institution is located; and
(b) a loan granted by or debt instrument owned by a financial institution, other than a loan to or debt instrument of a financial institution referred to in subparagraph (a), is not an investment; for greater certainty, a loan granted by or debt instrument owned by a cross-border financial service supplier, other than a loan to or debt instrument issued by a financial institution, is an investment if such loan or debt instrument meets the criteria for investments set out in Article 10.27 (Definitions);

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

new financial service means a financial service not supplied in the Party's territory that is supplied within the territory of the other Party, and includes any new form of delivery of a financial service or the sale of a financial product that is not sold in the Party's territory;

person of a Party means "person of a Party" as defined in Article 2.1 (General Definitions) and, for greater certainty, does not include a branch of an enterprise of a non-Party;

public entity means a central bank or monetary authority of a Party, or any financial institution owned or controlled by a Party;

self-regulatory organization means any non-governmental body, including any securities or futures exchange or market, clearing agency, other organization or association, that exercises its own or delegated regulatory or supervisory authority over financial service suppliers or financial institutions; and

tribunal means an arbitration tribunal established under Article 10.18 (Selection of Arbitrators).

Chapter Thirteen

Telecommunications

Article 13.1: Scope and Coverage

1. This Chapter applies to:
(a) measures adopted or maintained by a Party relating to access to and use of the public telecommunications network and services;
(b) measures adopted or maintained by a Party relating to obligations of major suppliers of public telecommunications services;
(c) measures adopted or maintained by a Party relating to the provision of information services; and
(d) other measures relating to public telecommunication networks or services.

2. Except to ensure that enterprises operating broadcast stations and cable systems have continued access to and use of public telecommunications networks and services, this Chapter does not apply to any measure adopted or maintained by a Party relating to cable or broadcast distribution of radio or television programming.

3. Nothing in this Chapter shall be construed to:
(a) require a Party or require a Party to compel any enterprise to establish, construct, acquire, lease, operate, or provide telecommunications networks or telecommunications services, where such networks or services are not offered to the public generally;

(b) require a Party to compel any enterprise exclusively engaged in the cable or broadcast distribution of radio or television programming to make available its cable or broadcast facilities as a public telecommunications network; or
(c) prevent a Party from prohibiting persons operating private networks from using their networks to provide public telecommunications networks or services to third persons.

Article 13.2: Access to and Use of Public Telecommunications Networks and Services1

1. Each Party shall ensure that enterprises of the other Party have access to and use of any public telecommunications service, including leased circuits, offered in its territory or across its borders, on reasonable and non-discriminatory terms and conditions, including as set out in paragraphs 2 through 6.

2. Each Party shall ensure that such enterprises are permitted to:
(a) purchase or lease, and attach terminal or other equipment that interfaces with the public telecommunications network;
(b) provide services to individual or multiple end-users over any leased or owned circuit(s);
(c) connect owned or leased circuits with public telecommunications networks and services in the territory, or across the borders, of that Party or with circuits leased or owned by another person;
(d) perform switching, signaling, processing, and conversion functions; and
(e) use operating protocols of their choice.

3. Each Party shall ensure that enterprises of the other Party may use public telecommunications services for the movement of information in its territory or across its borders and for access to information contained in databases or otherwise stored in machine-readable form in the territory of either Party.

4. Further to Article 23.1 (General Exceptions) and notwithstanding paragraph 3, a Party may take such measures as are necessary to:
(a) ensure the security and confidentiality of messages; or
(b) protect the privacy of non-public personal data of subscribers to public telecommunications services, subject to the requirement that such measures are not applied in a manner that would constitute a means of arbitrary or unjustifiable discrimination or disguised restriction on trade in services.

5. Each Party shall ensure that no condition is imposed on access to and use of public telecommunications networks or services, other than that necessary to:
(a) safeguard the public service responsibilities of providers of public telecommunications networks or services, in particular their ability to make their networks or services available to the public generally; or
(b) protect the technical integrity of public telecommunications networks or services.

6. Provided that conditions for access to and use of public telecommunications networks or services satisfy the criteria set out in paragraph 5, such conditions may include:
(a) a requirement to use specified technical interfaces, including interface protocols, for interconnection with such networks or services; and

(b) a licensing, permit, registration, or notification procedure which, if adopted or maintained, is transparent and applications filed thereunder are processed expeditiously.

Article 13.3: Obligations Relating to Interconnection with Suppliers of Public Telecommunications Services

1. Each Party shall ensure that suppliers of public telecommunications services in its territory provide, directly or indirectly, interconnection with the suppliers of public telecommunications services of the other Party.

2. In carrying out paragraph 1, each Party shall ensure, in accordance with its domestic law and regulations, that suppliers of public telecommunications services in its territory take reasonable steps to protect the confidentiality of commercially sensitive information of, or relating to, suppliers and end-users of public telecommunications services and only use such information for the purpose of providing those services.

Article 13.4: Additional Obligations Relating to Conduct of Major Suppliers of Public Telecommunications Services2

Treatment by Major Suppliers

1. Subject to Annex 13.4(1), each Party shall ensure that major suppliers in its territory accord suppliers of public telecommunications services of the other Party non-discriminatory treatment regarding:
(a) the availability, provisioning, rates, or quality of like public telecommunications services; and
(b) the availability of technical interfaces necessary for interconnection.

Competitive Safeguards

2.
(a) Each Party shall maintain appropriate measures for the purpose of preventing suppliers who, alone or together, are a major supplier in its territory from engaging in or continuing anti-competitive practices.
(b) For purposes of subparagraph (a), examples of anti-competitive practices include:
(i) engaging in anti-competitive cross-subsidization;
(ii) using information obtained from competitors with anti-competitive results; and
(iii) not making available, on a timely basis, to suppliers of public telecommunications services, technical information about essential facilities and commercially relevant information which are necessary for them to provide public telecommunications services.

Unbundling of Network Elements

3.
(a) Each Party shall provide its competent body the authority to require that major suppliers in its territory provide suppliers of public telecommunications services of the other Party access to network elements on an unbundled basis for the supply of those services on terms and conditions and at cost-oriented rates that are reasonable and non-discriminatory.

(b) Which network elements will be required to be made available in its territory, and which suppliers may obtain such elements, will be determined in accordance with national law and regulation(s).
(c) In determining the network elements to be made available, each Party's competent body shall consider, at a minimum, in accordance with national law and regulation:
(i) whether access to such network elements as are proprietary in nature is necessary, and whether the failure to provide access to such network elements would impair the ability of suppliers of public telecommunications services of the other Party to provide the services they seek to offer; or
(ii) other factors as established in national law or regulation, as that body construes these factors.

Co-Location

4.
(a) Each Party shall ensure that major suppliers in its territory provide to suppliers of public telecommunications services of the other Party physical co-location of equipment necessary for interconnection or access to unbundled network elements on terms, conditions, and at cost-oriented rates that are reasonable and non-discriminatory.
(b) Where physical co-location is not practical for technical reasons or because of space limitations, each Party shall ensure that major suppliers in its territory provide:
(i) alternative solutions; or
(ii) facilitate virtual co-location, on terms, conditions, and at cost-oriented rates that are reasonable and non-discriminatory.
(c) Each Party may determine which premises shall be subject to subparagraphs (a) and (b).

Resale

5. Each Party shall ensure that major suppliers in its territory:
(a) offer for resale, at reasonable rates,3 to suppliers of public telecommunications services of the other Party, public telecommunications services that such major supplier provides at retail to end users that are not suppliers of public telecommunications services; and
(b) subject to Annex 13.4(5)(b), do not impose unreasonable or discriminatory conditions or limitations on the resale of such services.

Number Portability

6. Each Party shall ensure that major suppliers in its territory provide number portability to the extent technically feasible, on a timely basis, and on reasonable terms and conditions.

Dialing Parity

7. Each Party shall ensure that major suppliers in its territory provide dialing parity to suppliers of public telecommunications services of the other Party and afford suppliers of public telecommunications services of the other Party non-discriminatory access to telephone numbers and related services with no unreasonable dialing delays.

Interconnection