FREE TRADE AGREEMENT BETWEEN PANAMA AND EL SALVADOR

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FREE TRADE AGREEMENT BETWEEN THE GOVERNMENTS OF CENTRAL AMERICA AND THE GOVERNMENT OF THE REPUBLIC OF PANAMA

PREAMBLE

The Governments of the Republics of Costa Rica, El Salvador, Guatemala, Honduras and Nicaragua, on the one hand, and the Government of the Republic of Panama, on the other, resolved to:

Facilitate regional and hemispheric integration;

Strengthen the traditional bonds of friendship and spirit of cooperation among their nations;

Achieve a better balance in their trade relations;

Foster an expanded and secure market for facilitating trade in goods and services and the flow of capital and technology in their territories;

Avoid distortions to their mutual trade;

Establish clear and mutually advantageous rules governing the promotion and protection of investments and their trade in goods and services;

Respect their rights and obligations under the Marrakesh Agreement Establishing the World Trade Organization (WTO) and other bilateral and multilateral instruments of integration and cooperation;

Enhance the competitiveness of their firms in global markets;

Create employment opportunities and improve the living standards of their people in their respective territories;

Promote economic development in a manner consistent with environmental protection and conservation and with sustainable development;

Preserve their capacity to safeguard the public welfare; and

Promote dynamic participation by the different economic agents, particularly the private sector, in the effort to enhance trade relations among the Parties and to develop and cultivate, to the fullest extent possible, the opportunities for their joint presence on international markets;

Enter into the following Free Trade Agreement:

PART ONE: GENERAL ASPECTS

CHAPTER 1: INITIAL PROVISIONS

Article 1.01

Establishment of the Free-Trade Area

1. Through this Agreement, the Parties lay the groundwork for establishing and implementing a free trade zone, consistent with Article XXIV of the GATT 1994 and Article V of the GATS.

2. Unless otherwise provided, the Republics of Costa Rica, El Salvador, Guatemala, Honduras and Nicaragua, considered individually, shall apply the rules and procedures under this Agreement bilaterally with the Republic of Panama.

Article 1.02

Objectives

1. The objectives of this Agreement are to:

(a) Further develop the free trade zone;

(a) encourage the expansion and diversification of trade in goods and services among the Parties;

(b) promote conditions of fair competition in the free-trade Area;

(c) eliminate barriers to trade and facilitate the circulation of goods and services in the free-trade Area;

(d) promote, protect and substantially increase investments in each Party; and

(e) establish effective procedures for the application and observance of this Agreement, for its joint administration and for dispute settlement.

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

Article 1.03

Observance

Each Party shall ensure, in accordance with its constitutional requirements, that all necessary measures are adopted for observance of the provisions of this Agreement in its territory by all levels of government.

Article 1.04

Relation to Other International Agreements

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

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

3. In the event of any inconsistency between this Agreement and the specific trade obligations set out in:

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

(b) the Montreal Protocol on Substances that Deplete the Ozone Layer, done on 16 September 1987, as amended 29 June 1990; or

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

such obligations shall prevail to the extent of the inconsistency, provided that where a Party has a choice among equally effective and reasonably available means of complying with such obligations, the Party chooses the alternative that is the least inconsistent with the other provisions of this Agreement.

Article 1.05

Successor Agreements

All references to any other international agreement shall be understood to be made in the same terms to a successor agreement to which the Parties are party.

CHAPTER 2: GENERAL DEFINITIONS

Article 2.01

Definitions of General Application

For the purposes of this Agreement, unless otherwise specified:

Substantial business activities mean the activity conducted by an enterprise in the territory of a Party if the enterprise engages in a determinable and stable economic activity which may be confirmed by any of the following criteria:

(a) registration as an income tax payer in the territory of that Party;

(b) a payroll duly registered with the corresponding authority in the territory of that Party; or

(c) permanent premises, facilities or offices in the territory of that Party which are not restricted to receiving notifications;

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

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

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

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

customs duty means any customs or import duty or 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, paragraph 2, of the GATT 1994;

(b) anti-dumping or countervailing duty that is applied pursuant to a Party's domestic law and is not applied in a manner that is inconsistent with Chapter 7 (Unfair Trading Practices);

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

(d) 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;

chapter means the first two digits in the Harmonized System;

Central America means the Republics of Costa Rica, El Salvador, Guatemala, Honduras and Nicaragua;

Commission means the Administrative Commission of the Agreement established under Article 19.01 (The Administrative Commission of the Agreement);

days means calendar days;

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

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

Understanding means the Understanding on Rules and Procedures Governing the Settlement of Disputes, which is part of the WTO Agreement;

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

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

measure means any law, regulation, procedure, requirement, provision or practice, *inter alia*;

goods means any material, matter, product or part;

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. Goods of a Party may incorporate materials from other countries;

originating goods means goods qualifying as such under Chapter 4 (Rules of Origin);

national means a natural person of a Party, as established in Annex 2.01;

Central American country means a country of Central America;

Party means each Central American country considered individually and Panama, in which this Agreement has entered into force;

heading means the first four digits in the Harmonized System;

person means a natural person or an enterprise;

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

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

Tariff Elimination Programme means the programme established pursuant to Annex 3.04 (Tariff Elimination Programme);

Uniform Regulations means the regulations established pursuant to Article 5.12 (Uniform Regulations);

Secretariat means the Secretariat established under Article 19.03 (The Secretariat);

Harmonized system means the Harmonized Commodity Description and Coding System, including its General Rules of Interpretation and legal Section, Chapter, Heading and Subheading Notes, as adopted and implemented by the Parties in their respective laws;

subheading means the first six digits in the Harmonized System; and

territory means the land, maritime, and air space of each Party and the exclusive economic zone and the continental shelf over which it exercises sovereign rights and jurisdiction in accordance with international law;

ANNEX 2.01

Country-Specific Definitions

For the purposes of this Agreement, unless otherwise specified:

National means:

For Costa Rica:

(a) A Costa Rican by birth, in accordance with Article 13 of the Political Constitution of the Republic of Costa Rica;

(b) a Costa Rican by naturalization, in accordance with Article 14 of the Political Constitution of the Republic of Costa Rica; and

(c) a person who is a permanent resident under Costa Rican law;

for El Salvador:

(a) A Salvadoran by birth, as defined in Article 90 of the Constitution of the Republic of El Salvador; and

(b) a Salvadoran by naturalization, as defined in Article 92 of the Constitution of the Republic of El Salvador; and

(c) a person who is a permanent resident under Salvadoran law;

for Guatemala:

(a) A person born in the territory of the Republic of Guatemala, on Guatemalan vessels or aircraft, and children born abroad to a Guatemalan father or mother. The children of diplomats and others holding legally comparable positions are excepted;

(b) nationals by birth of the Republics that constituted the Central American Federation if they acquire residence in Guatemala and state to a competent authority their desire to become a Guatemalan citizen. In that event, they may retain their nationality of origin, without detriment to the provisions of Central American treaties or conventions; and

(c) a person who obtains naturalization under the law;

for Honduras:

(a) A Honduran by birth, as defined in Article 23 of the Constitution of the Republic of Honduras; and

(b) a Honduran by naturalization, as defined in Article 24 of the Constitution of the Republic of Honduras;

for Nicaragua:

(a) Nicaraguan, as determined in Article 15 of the Political Constitution of the Republic of Nicaragua;

(b) notwithstanding, foreigners with the status of permanent residents, as defined in Article 9 of the Immigration Law, Law 153, published in *La Gaceta* (Official Journal) 80 of 30 April 1993 ("Ley de Migración, Ley No. 153, La Gaceta, Diario Oficial, No. 80, 30 de abril de 1993"), shall enjoy the benefits, rights and obligations that this Agreement confers on nationals, solely with respect to the application of this Agreement; and

for Panama:

(a) A Panamanian by birth, in accordance with Article 9 of the Political Constitution of the Republic of Panama;

(b) a Panamanian by naturalization, in accordance with Article 10 of the Political Constitution of the Republic of Panama; and

(c) a Panamanian by adoption, in accordance with Article 11 of the Political Constitution of the Republic of Panama;

(d) a person who is a permanent resident under Panamanian law.

PART TWO: TRADE IN GOODS

CHAPTER 3: NATIONAL TREATMENT AND MARKET ACCESS FOR GOODS

Section A – Definitions, Scope and Coverage

Article 3.01

Definitions

For the purposes of this Chapter:

temporary admission of goods means temporary admission of goods or temporary importation of goods;

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;

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 and are supplied free of charge;

goods imported for sports purposes means sports equipment for use in sports contests, events or training in the territory of the Party into the territory of which such goods are imported;

agricultural good means a good classified under one of the following chapters, headings or subheadings of the Harmonized System, as amended in 1996:

(Note: The descriptions are provided for purposes of reference)

Tariff Classification		**Description**
Chapters	01 through 24	(Other than fish or fish products)
Subheading	2905.43	Mannitol
Subheading	2905.44	Sorbitol
Heading	33.01	Essential oils
Headings	35.01 through 35.05	Albuminoidal substances, modified starches
Subheading	3809.10	Finishing agents
Subheading	3824.60	Sorbitol, other than that of subheading 2905.44
Headings	41.01 through 41.03	Raw hides and skins and leather
Heading	43.01	Raw furskins
Headings	50.01 through 50.03	Raw silk and silk waste

Headings	51.01 through 51.03	Wool and animal hair
Headings	52.01 through 52.03	Raw cotton, cotton waste and cotton carded or combed
Heading	53.01	Raw flax
Heading	53.02	True hemp, raw

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

commercial samples of negligible or no commercial 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 the currency of any of the Parties, or so marked, torn, perforated or otherwise treated that they are unsuitable for sale or for use except as commercial samples;

Advertising films means recorded visual media, with or without sound-tracks, consisting essentially of images 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 the films 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 and that do not form part of a larger consignment;

fish and fish products means fish, crustaceans, molluscs and all other aquatic invertebrates, marine mammals and by-products thereof, classified in one of the following chapters, headings or subheadings of the Harmonized System, as amended in 1996:

(Note: The descriptions are provided for purposes of reference)

Tariff Classification		**Description**
Chapter	03	Fish and crustaceans, molluscs and other aquatic invertebrates
Heading	05.07	Ivory, tortoise-shell, whalebone, horns, antlers, hooves, nails, claws and beaks and products thereof
Heading	05.08	Coral and similar materials
Heading	05.09	Natural sponges of animal origin
Subheading	0511.91	Products of fish or crustaceans, molluscs or other aquatic invertebrates; dead animals of Chapter 3
Heading	15.04	Fats and oils and their fractions, of fish or marine mammals
Heading	16.03	Extracts and juices other than of meat
Heading	16.04	Prepared or preserved fish
Heading	16.05	Crustaceans, molluscs and other aquatic invertebrates, prepared or preserved
Subheading	2301.20	Flours, meals and pellets, of fish

repair or alteration does not include an operation or process that either destroys the essential characteristics of a good or creates a new or commercially different good. An operation or process that is part of the production or assembly of an unfinished good in order to convert it into a finished good is not a repair or alteration of the unfinished good; a component of a good is a good that may be subject to repair or alteration; and

agricultural export subsidies refer to:

(a) The provision by governments or their agencies of direct subsidies, including payments in kind, to a firm, to an industry, to producers of an agricultural product, to a cooperative or other association of such producers, or to a marketing board;

(b) the sale or disposal for export by governments or their agencies of non-commercial stocks of agricultural products at a price lower than the comparable price charged for the like product to buyers in the domestic market;

(c) payments on the export of an agricultural product that are financed by virtue of governmental action, whether or not a charge on the public account is involved, including payments that are financed from the proceeds of a levy imposed on the agricultural product concerned or on an agricultural product from which the exported product is derived;

(d) the provision of subsidies to reduce the costs of marketing exports of agricultural products (other than widely available export promotion and advisory services) including handling, upgrading and other processing costs, and the costs of international transport and freight;

(e) internal transport and freight charges on export shipments, provided or mandated by governments, on terms more favourable than for domestic shipments; and

(f) subsidies on agricultural products contingent on their incorporation in exported products.

Article 3.02

Scope and Coverage

This Chapter applies to trade in goods among the Parties.

Section B – National Treatment

Article 3.03

National Treatment

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

2. For the purposes of paragraph 1, each Party shall accord the goods of the other Party treatment no less favourable than the most favourable treatment accorded by that Party to any like, directly competitive or substitutable goods of national origin.

Section C – Tariffs

Article 3.04

Tariff Elimination Programme

1. Upon the entry into force of this Agreement, the Parties undertake to guarantee access to their respective markets through the total and definitive elimination of customs import tariffs and any other fees or charges on trade in originating goods, other than those set out in Annex 3.04.

2. Except as otherwise provided in this Agreement, this Article is not intended to prevent a Party from maintaining or raising a customs duty that may be permitted under the provisions of the WTO Agreement or any other agreement that is part of the WTO Agreement.

3. Paragraph 1 does not prevent a Party from raising a customs duty to a level not greater than the level established in the Tariff Elimination Programme, where that customs duty has previously been unilaterally reduced to a level below the level established in the Tariff Elimination Programme. During the tariff elimination process, the Parties agree to apply to originating goods traded among them the lesser of either the customs duties established under the Tariff Elimination Programme or the applicable rate determined in accordance with Article I of the GATT 1994.
4. At the request of a Party, the Parties shall consult to consider accelerating the elimination of customs duties set out in the Tariff Elimination Programme.

5. Notwithstanding paragraphs 1 to 4, a Party may maintain, adopt or modify a customs duty on the goods excluded from the Tariff Elimination Programme, as set out in Annex 3.04.

Article 3.05

Temporary Admission of Goods

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

(a) Professional equipment necessary for carrying out the business activity, trade or profession of a business person who qualifies for temporary entry pursuant to Chapter 14 (Temporary Entry for Business Persons);

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

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

(d) commercial samples and advertising films;

imported from the territory of the other Party, regardless of their origin and regardless of whether like, directly competitive or substitutable goods are available in the territory of the Party.

2. Except as otherwise provided in this Agreement, no Party may condition the duty-free temporary admission of a good referred to in paragraph 1(a), (b) or (c), other than to require that such good:

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

(b) be used solely by or under the personal supervision of such person in the exercise of that person's business activity, trade or profession;

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

(d) be accompanied by a bond in an amount no greater than 110 per cent of the charges that would otherwise be owed on final importation, or by another form of security, releasable on exportation of the good, except that a bond for customs duties shall not be required for an originating good;

(e) be capable of identification when exported;

(f) be exported on the departure of that person or within such other period of time as is reasonably related to the purpose of the temporary admission; and

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

3. Except as otherwise provided in this Agreement, no Party may condition the duty-free temporary admission of a good referred to in paragraph 1(d), other than to require that such good:

(a) Be imported solely for the solicitation of orders for goods from the other Party, regardless of their origin or of whether the services are provided from the territory of the other Party;

(b) not be sold, leased or put to any use other than exhibition or demonstration while in its territory;

(c) be capable of identification when exported;

(d) be exported within such period as is reasonably related to the purpose of the temporary admission; and

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

4. Where a good is temporarily admitted duty free under paragraph 1 and any condition a Party imposes under paragraphs 2 and 3 has not been fulfilled, that Party may impose:

(a) The customs duty and any other charge that would be owed on final importation of the good; and

(b) any applicable criminal, civil or administrative penalties that the circumstances may warrant.

5. Subject to Chapters 10 (Investment) and 11 (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) no 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) no 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) no Party may require that the vehicle or carrier bringing a container from the territory of the other Party into its territory be the same one that takes it to the territory of the other Party.

6. For the purposes of paragraph 5, "vehicle" means a truck, a truck tractor, tractor, trailer unit or trailer, a locomotive, or a railway car or other railroad equipment.

Article 3.06

Duty-Free Entry of Commercial Samples of Negligible or No Commercial Value and Printed Advertising Materials

Each Party shall grant duty-free entry to commercial samples of negligible or no commercial 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 from the other Party, regardless of their origin or of whether the services are provided from the territory of the other Party or that of 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.

Article 3.07

Goods Re-entered after Repair or Alteration

1. No Party may apply a customs duty to a good, regardless of its origin, that re-enters its territory after that good has been exported or temporarily removed 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. No Party may apply a customs duty to a good, regardless of its origin, imported temporarily from the territory of the other Party for repair or alteration.

3. Re-entry under paragraph 1 and temporary admission under paragraph 2 shall take place within the time limit established in the law of the Parties.

Article 3.08

Customs Valuation

1. The Customs Valuation Agreement shall govern the customs valuation rules applied by the Parties to their reciprocal trade, in the form in which it has been adopted by the Parties.

2. Notwithstanding paragraph 1, two (2) years after the entry into force of this Agreement, the Central American countries which have negotiated reservations before the WTO under Annex III of the Agreement on Implementation of Article VII of the GATT 1994 shall fully implement the Customs Valuation Agreement, including the annexes and explanatory notes thereto, between the Parties and may not determine the value of goods on the basis of minimum values.

Article 3.09

Restrictions on Domestic Support and Export Subsidy Programmes

The Parties shall establish the treatment of domestic support for agricultural goods and export subsidy programmes in Annex 3.09.

Section D – Non-Tariff Measures

Article 3.10

Import and Export Restrictions

1. The Parties undertake to completely and immediately eliminate non-tariff barriers, with the exception of the rights of the Parties under Articles XX and XXI of the GATT 1994 and those regulated in Chapter 8 (Sanitary and Phytosanitary Measures) and Chapter 9 (Standards-Related Measures, Metrology and Approval Procedures).

2. Except as otherwise provided in this Agreement, no 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 the GATT 1994, including its interpretative notes. To this end, Article XI of the GATT 1994 and its interpretative notes are incorporated into and made a part of this Agreement.

3. The Parties understand that the GATT 1994 rights and obligations incorporated by paragraph 2 prohibit, in any circumstances in which any other form of restriction is prohibited, export price requirements and, except as permitted in enforcement of countervailing and antidumping orders and undertakings, import price requirements.

4. 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:

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

(b) allow the Party to require as a condition of export of such good 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.

5. 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, at the request of the other Party, shall consult with a view to avoiding undue interference with or distortion of pricing, marketing and distribution arrangements in that other Party.

6. Paragraphs 1 through 4 shall not apply to the measures set out in Annex 3.10(6).

Article 3.11

Customs Processing Fees and Consular Fees

1. Except as provided for in Annex 3.11(1), when this Agreement comes into force the Parties shall not apply any existing customs processing fees or adopt any new customs user fee on originating goods.

2. Except as provided for in Annex 3.11(2), no Party shall collect consular fees or charges or require consular formalities on originating goods after this Agreement comes into force.

Article 3.12

Geographical Indications and Appellations of Origin

1. Each Party shall recognize and protect the geographical indications and appellations of origin of the other Party, as established in this Article.

2. No Party shall permit the importation, manufacture or sale of a good that uses a geographical indication or appellation of origin protected in the other Party, unless it has been manufactured and certified therein, pursuant to its legislation applicable to that good.

3. Paragraphs 1 and 2 shall only have effect with respect to those geographical indications and appellations of origin protected by the domestic legislation of the Party that is claiming protection and the definition of which is consistent with Article 22 (1) of the Agreement on Trade-Related Aspects of Intellectual Property Rights. Further, to gain protection, each Party shall notify the other Party of the geographical indications or appellations of origin which, fulfilling the above-mentioned requirements, shall be considered within the scope of the protection.

4. All of the above shall be understood without prejudice to the recognition that the Parties may grant to homonymous geographical indications and appellations of origin that legitimately could belong to a non-Party.

Article 3.13

Country of Origin Marking

1. Each Party shall apply to the goods of the other Party, where relevant, its legislation on country of origin markings, in accordance with Article IX of the GATT 1994. To that end, Article IX of the GATT 1994 is incorporated into and made an integral part of this Agreement.

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

3. Each Party shall ensure that the establishment and application of the respective legislation on country of origin markings is not intended to create, and does not have the effect of creating, unnecessary obstacles to trade among the Parties.

Article 3.14

Export Taxes

Except as provided in Annex 3.14, no 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 3.15

International Obligations

A Party, prior to adopting a measure under an inter-governmental agreement on goods pursuant to Article XX(h) of the GATT 1994, which may affect the trade in commodities among the Parties, shall consult the other Party to prevent the nullification or impairment of a concession granted by that Party under Article 3.04.

Article 3.16

Committee on Trade in Goods

1. The Parties establish a Committee on Trade in Goods, the composition of which is established in Annex 3.16.

2. The Committee shall examine matters related to this Chapter, Chapter 4 (Rules of Origin), Chapter 5 (Customs Procedures) and the Uniform Regulations.

3. Without detriment to Article 19.05(2) (Committees), the Committee shall:

(a) Refer to the Commission matters that impede access to markets in the territory of the Parties, particularly relating to the application of non-tariff measures; and

(b) promote trade in goods among the Parties, through consultations and studies to accelerate the elimination of tariffs by modifying the time limits established in Annex 3.04.

ANNEX 3.16

Committee on Trade in Goods

The Committee on Trade in Goods established in Article 3.16 shall be composed of:

(a) For Costa Rica, a representative of the Ministry of Foreign Trade ("Ministerio de Comercio Exterior") or its successor;

(b) for El Salvador, a representative of the Ministry of Economic Affairs ("Ministerio de Economía") or its successor;

(c) for Guatemala, a representative of the Ministry of Economic Affairs ("Ministerio de Economía") or its successor;

(d) for Honduras, a representative of the Secretariat of State for Industry and Trade ("Secretaría de Estado en los Despachos de Industria y Comercio") or its successor;

(e) for Nicaragua, a representative of the Ministry of Development, Industry and Trade ("Ministerio de Fomento, Industria y Comercio") or its successor; and

(f) for Panama, the Ministry of Trade and Industry ("Ministerio de Comercio e Industria") through the Vice-Ministry of Foreign Trade ("Viceministerio de Comercio Exterior") or its successor.

CHAPTER 4: RULES OF ORIGIN

Article 4.01

Definitions

For the purposes of this Chapter:

c.i.f. means the value of imported goods, including the cost of insurance and freight, at the port or point of introduction into the importing country;

f.o.b. means free on board, regardless of the mode of transportation, at the port or point of final shipment abroad;

material means a good that is used in the production or processing of another good and includes components, inputs, raw materials, parts and pieces;

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

(a) Fuel, energy, catalysts and solvents;

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

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

(d) tools, dies and moulds;

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

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

(g) any other materials or products that are not incorporated into the good but the use of which in the production of the good can reasonably be demonstrated to be a part of that production;

fungible goods means goods that are interchangeable for commercial purposes and the properties of which are essentially identical and cannot be differentiated by a simple visual examination;

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

(a) Mineral goods extracted in the territory of one or more Parties;

(b) vegetable goods harvested in the territory of one or more Parties;

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

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

(e) fish, shellfish and other marine life taken from the sea outside the territorial waters and maritime zones where the Parties exercise jurisdiction by vessels registered or recorded with a Party and flying its flag or vessels leased by companies established in the territory of a Party;

(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 or on factory ships leased by companies established in the territory of a Party;

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

(h) waste and scrap derived from:

(i) Production in the territory of one or more Parties; or

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

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

generally accepted accounting principles means the principles used in the territory of each Party that confer substantial authoritative support with respect to the recording of revenues, costs, expenses, assets and liabilities, relating to information and the preparation of financial statements. These standards may be broad guidelines of general application as well as detailed standards, practices and procedures;

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

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

transaction value of a good means the price actually paid or payable for a good with respect to a transaction by the producer of the good, adjusted in accordance with the principles of Article 1 and paragraphs 1, 3 and 4 of Article 8 of the Customs Valuation Agreement, regardless of whether the good is sold for export. For the purposes of this definition, the vendor referred to in the Customs Valuation Agreement shall be the producer of the good; and

transaction value of a material means the price actually paid or payable for a material with respect to a transaction by the producer of the good, adjusted in accordance with the principles of Article 1 and paragraphs 1, 3 and 4 of Article 8 of the Customs Valuation Agreement, regardless of whether the material is sold for export. For the purposes of this definition, the vendor referred to in the Customs Valuation Agreement shall be the supplier of the material and the buyer referred to in the Customs Valuation Agreement shall be the producer of the good.

Article 4.02

Instruments of Application and Interpretation

1. For the purposes of this Chapter:

(a) The basis for the tariff classification of goods is the Harmonized System; and

(b) the value of a good or material shall be determined on the basis of the principles and rules of the Customs Valuation Agreement.

2. In applying the Customs Valuation Agreement under this Chapter to determine the origin of a good:

(a) The principles and rules of the Customs Valuation Agreement shall apply to domestic transactions, with such modifications as may be required by the circumstances, as would apply to international transactions; and

(b) the provisions of this Chapter shall take precedence over the Customs Valuation Agreement to the extent of any difference.

Article 4.03

Originating Goods

1. Except as otherwise provided in this Chapter, a good shall be considered originating where:

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

   (b) the good is produced in the territory of one or more of the Parties exclusively from originating materials as defined in this Chapter;

   (c) the good is produced in the territory of one or more of the Parties from non-originating materials that undergo a change in tariff classification, comply with a regional value content or other requirements, as set out in Annex 4.03, and the good satisfies all other applicable provisions of this Chapter; or

   (d) the good is produced in the territory of one or more of the Parties but one or more of the non-originating materials that are used in the production of the good do not undergo a change in tariff classification because:

      (i) The good was imported into the territory of a Party in an unassembled or a disassembled form but was classified as an assembled good pursuant to Rule 2(a) of the General Rules of Interpretation of the Harmonized System;

      (ii) the heading for the good provides for and specifically describes both the good itself and its parts, provided the heading is not divided into subheadings; or

      (iii) the subheading provides for and specifically describes the good and its parts;

   provided that the regional value content of the good, determined in accordance with Article 4.07, is not less than thirty (30) per cent and the good satisfies all other applicable requirements of this Chapter, unless the specific applicable rule of origin of Annex 4.03 under which it is classified specifies a different regional value content requirement, in which case that requirement is to be applied.

   The provisions of this subparagraph do not apply to the goods included in Chapters 61 to 63 of the Harmonized System.

2. If a Party complies with the specific rule of origin established in Annex 4.03, it shall not be required to comply as well with the regional value content requirement established in paragraph 1(d).

3. For the purposes of this Chapter, a good produced from non-originating materials that undergo a change in tariff classification and satisfy the other requirements set out in Article 4.03 shall have been produced entirely in the territory of one or more of the Parties and the entire regional value content requirement for the good shall be met in the territory of one or more of the Parties.

4. Notwithstanding this Article, goods shall not be considered originating despite complying with the requirement of a change in tariff classification of their materials, where the goods are exclusively the result of the operations established in Article 4.04 performed in the territory of the Parties through which they acquire the final form in which they will be sold, where such operations have used non-originating materials, unless the specific rule of origin of Annex 4.03 states otherwise.

Article 4.04

Minimum Operations or Processes

The minimum operations or processes which in themselves or in combination do not confer origin on a good are:

(a) Airing, ventilating, drying, refrigeration, freezing;

(b) cleaning, washing, sifting, screening, selection, classification or grading, thinning;

(c) peeling, husking, shelling, boning, squeezing, macerating;

(d) dusting, removal of damaged parts, oiling, painting to prevent rust or provide protective covering;

(e) testing or calibrating, division of bulk shipments, grouping into packets, application of marks, labels or distinguishing signs on products or their packages;

(f) packing, unpacking or repacking;

(g) dilution with water or another aqueous solution, ionization and salting;

(h) the simple collection or assembly of parts to form a complete good, make a set or assortment; and

(i) slaughtering animals.

Article 4.05

Indirect Materials

An indirect material shall be considered to be an originating material without regard to where it is prepared or produced and the value of such material shall be the cost reported in the accounting records of the producer of the good.

Article 4.06

Accumulation

1. A Party may only accumulate origin with originating goods from countries in which this Agreement has come into force.

2. Materials or goods originating in the territory of a Party incorporated into a good in the territory of the other Party shall be considered originating in the territory of the latter Party.

3. For the purposes of determining whether a good is an originating good, the producer of a good may choose to accumulate its own production with that of one or more producers in the territory of one or more Parties of materials that are incorporated into that good, so that the production of the materials is considered to have been performed by that producer, provided the good complies with the requirements of Article 4.03.

4. Accumulation shall apply as follows:

(a) Where a specific rule of origin is common to all the Parties to this Agreement for a good; or

(b) where a specific rule of origin and the tariff elimination period for a good are common to a group of no less than three (3) Parties to this Agreement.

5. Two (2) years after this Agreement comes into force for all the Parties, they shall establish a programme of work to examine the possibility that materials of Panamanian origin can be accumulated for the purpose of complying with the rules of origin in effect among the Central American countries. This shall apply provided the end good into which the materials are incorporated is subject to free trade between Panama and each Central American country and among the latter countries.

6. Notwithstanding paragraph 5, if the Central American countries accord the treatment referred to in the said paragraph to a non-Party country before they accord it to Panama, they shall accord treatment no less favourable to goods of Panamanian origin.

Article 4.07

Regional Value Content

1. The regional value content of goods shall be calculated on the basis of the following formula:

RVC = **[(TV - VNM) / TV] * 100**

where:

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

TV: is the transaction value of the good adjusted to a f.o.b. basis, except as provided in paragraph 2. In the event that there is no transaction value or one cannot be determined under Article 1 of the Customs Valuation Agreement, the value shall be determined in accordance with Articles 2 through 7 of that Agreement; and

VNM: is the transaction value of non-originating materials adjusted to a c.i.f. basis, except as provided in paragraph 5. In the event that there is no transaction value or one cannot be determined under Article 1 of the Customs Valuation Agreement, the value shall be determined in accordance with Articles 2 through 7 of that Agreement.

2. Where the producer of a good does not export it directly, the transaction value shall be adjusted to the point at which the purchaser receives the good within the territory where the producer is located.

3. Where origin is determined on the basis of the regional value content method, the required percentage shall be specified in Annex 4.03.

4. All the costs considered in calculating the regional value content shall be recorded and maintained in accordance with the Generally Accepted Accounting Principles applicable in the territory of the Party in which the good is produced.

5. Where the producer of a good buys a non-originating material in the territory of the Party where the producer is located, the value of the non-originating material shall not include freight,

insurance, packing or any other cost incurred in transporting the material from the warehouse of the supplier to the location of the producer.

6. To calculate the regional value content, the value of the non-originating materials used in the production of a good shall not include the value of the non-originating materials used in the production of an originating material bought and used in the production of that good.

Article 4.08

De Minimis

1. A good that does not undergo a change in tariff classification as established in Annex 4.03 shall be considered to be an originating good if the value of all non-originating materials used in the production of the good that do not undergo a change in tariff classification is not more than ten (10) per cent of the value of the good calculated on the basis of Article 4.07.

2. For goods classified in Chapters 50 to 63 of the Harmonized System, the percentage established in paragraph 1 refers to the weight of the fibres and yarns compared to the weight of the good produced.

3. Paragraph 1 does not apply to a non-originating material used in the production of a good provided for in Chapters 1 to 27 of the Harmonized System unless the non-originating material is provided for in a subheading other than that of the good the origin of which is being determined under this Article.

Article 4.09

Fungible Goods

1. Where originating and non-originating fungible goods are used in the preparation or production of a good, the origin of that good may be determined by applying one of the following inventory-management methods, at the choice of the producer:

(a) First-in-first-out (FIFO);

(b) last-in-first-out (LIFO); or

(c) method of averages.

2. Where originating and non-originating fungible goods are physically commingled in the inventory and do not, prior to export, undergo any productive process or any other operation in the territory of the Party in which they were physically commingled, other than unloading, reloading or any other movement necessary to maintain the goods in good condition or ship them to the territory of another Party, the origin of the good may be determined on the basis of one of the inventory management methods.

3. Once one of the inventory management methods has been selected, it shall be used during the entire fiscal year or period.

Article 4.10

Sets and Assortments of Goods

1. Sets and assortments of goods classified as provided in Rule 3 of the General Rules of Interpretation of the Harmonized System and goods the description of which under the nomenclature

of the Harmonized System is specifically that of a set or assortment shall qualify as originating, provided that each of the goods in the set or assortment complies with the rules of origin established in this Chapter and in Annex 4.03.

2. Notwithstanding paragraph 1, a set or assortment of goods shall be considered originating if the value of all the non-originating goods used to form the set or assortment does not exceed the percentage established in Article 4.08(1) of the value of the set or assortment, adjusted on the basis of Article 4.07(1) or (2), as applicable.

3. The provisions of this Article shall take precedence over the specific rules established in Annex 4.03.

Article 4.11

Accessories, Spare Parts and Tools

1. Accessories, spare parts or tools delivered with the good and which form a standard part of the good shall be disregarded in determining whether all the non-originating materials used in the production of the good undergo the applicable change in tariff classification set out in Annex 4.03, provided that:

(a) The accessories, spare parts or tools are not invoiced separately from the good, regardless of whether they are listed separately in the invoice; and

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

2. If the good is subject to a regional value content requirement, the value of the accessories, spare parts or tools 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.

3. Accessories, spare parts and tools that do not comply with the foregoing conditions shall have the rule of origin corresponding to each of them applied separately.

Article 4.12

Packaging Materials and Containers in which a Good is Packaged for Retail Sale

1. Packaging materials and containers in which a good is packaged for retail sale shall, if classified with the good in the Harmonized System, be disregarded in determining whether all the non-originating materials used in the production of the good undergo the applicable change in tariff classification set out in Annex 4.03.

2. 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 4.13

Packing Materials and Containers for Shipment

Packing materials and containers in which a good is packed for shipment shall be disregarded in determining whether:

(a) The non-originating materials used in the production of the good undergo the applicable change in tariff classification set out in Annex 4.03; and

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

Article 4.14

Direct Transhipment and Shipment and International Transit

A good shall not lose its originating status when exported from one Party to the other Party and in transit through the territory of any other Party or non-Party, provided that:

(a) The transit is justified for geographical reasons or considerations related to international transport requirements;

(b) the good has not been nationalized and is not destined for use in the country or countries of transit;

(c) it does not undergo, during its transport or storage, processing or any operation other than packaging, packing, repacking, loading, unloading or handling to ensure its conservation; and

(d) it remains under the control or supervision of the customs authority in the territory of the Party or non-Party.

Otherwise, the good shall lose its originating status.

ANNEX 4.03

Specific Rules of Origin

Section A – General Interpretative Note

1. A requirement of a change in tariff classification is applicable only to non-originating materials.

2. Where a specific rule of origin is defined on the basis of a change in tariff classification and in its wording exceptions are made for classifications at chapter, heading or subheading level in the Harmonized System, it shall be interpreted that the materials in those tariff classifications must be originating for the good to qualify as originating.

3. The excepted materials, separated by commas and with the disjunction "or", must be originating for the good to qualify as originating, even in the event that one or more of the materials covered by the exception is used in its production.

4. Where a tariff heading or subheading is subject to optional specific rules of origin, compliance with one such rule shall suffice.

5. Where a specific rule of origin provides for a group of headings or subheadings a change from another heading or subheading, such a change may be within or outside the group of headings or subheadings specified in the rule, as applicable, unless otherwise specified.

Section B – Specific Rules of Origin Applicable Between the Republics of Costa Rica, El Salvador, Guatemala, Honduras and Nicaragua, and the Republic of Panama

Section I: Live Animals and Animal Products

Chapter 01	**Live animals**
01.01 - 01.05	A change to heading 01.01 through 01.05 from any other chapter; or the animals under this heading shall originate in the country of birth and rearing.
01.06	A change to heading 01.06 from any other chapter; or the animals under this heading shall originate in the country of birth and/or rearing or capture.

Chapter 03	**Fish and crustaceans, molluscs and other aquatic invertebrates**
Note to Chapter 03:	**Fish and crustaceans, molluscs and other aquatic invertebrates shall be originating even if obtained from imported fry or larvae.**
03.01 - 03.04	A change to heading 03.01 through 03.04 from any other chapter.
03.06 - 03.07	A change to heading 03.06 through 03.07 from any other chapter.

Chapter 04	**Milk and dairy produce; birds' eggs; natural honey; edible products of animal origin, not elsewhere specified or included**
04.07 - 04.10	A change to heading 04.07 through 04.10 from any other chapter; or the products under this heading shall originate in the country where the eggs, natural or unprocessed honey and other products of animal origin not elsewhere specified or included were obtained.

Chapter 05	**Products of animal origin, not elsewhere specified or included**
05.01 - 05.11	A change to heading 05.01 through 05.11 from any other chapter.

Section II: Vegetable Products

Note to Section II:

Plant products (vegetables, fruit, forest products, *inter alia*) grown in the territory of a Party shall be treated as originating in that Party even if they have been grown from seeds, bulbs, cuttings, grafts, buds or other living parts of plants imported from a Party or non-Party.

Chapter 06	**Live trees and other plants; bulbs, roots and the like; cut flowers and ornamental foliage**
06.01 - 06.04	A change to heading 06.01 through 06.04 from any other chapter; or products under this heading shall originate in the country where they were grown or reproduced.

Chapter 07	**Edible vegetables and certain roots and tubers**
07.01 - 07.14	A change to heading 07.01 through 07.14 from any other chapter; or the products under this heading shall originate in the country where they were grown in their natural or unprocessed state.

Chapter 08	Edible fruit and nuts; peel of citrus fruits or melons
08.01 - 08.12	A change to heading 08.01 through 08.12 from any other chapter; or the products under this heading shall originate in the country where they were grown.
0813.10 - 0813.40	A change to subheading 0813.10 through 0813.40 from any other chapter; or the products under this heading shall originate in the country where they were grown.

Chapter 08	Edible fruit and nuts; peel of citrus fruits or melons
08.14	A change to heading 08.14 from any other chapter; or the products under this heading shall originate in the country where they were grown.

Chapter 09	Coffee, tea, maté and spices
09.01	A change to heading 09.01 from any other chapter; or the products under this heading shall originate in the country where the plant was grown and where the product was obtained.
09.03	A change to heading 09.03 from any other chapter; or the products under this heading shall originate in the country where the plant was grown and where the product was obtained.
09.05	A change to heading 09.05 from any other chapter; or the products under this heading shall originate in the country where the plant was grown and where the product was obtained.
0908.20 - 0908.30	A change to subheading 0908.20 through 0908.30 from any other chapter; or the products under this subheading shall originate in the country where the plant was grown and where the product was obtained.
09.09	A change to heading 09.09 from any other chapter; or the products under this heading shall originate in the country where the plant was grown and where the product was obtained.

Chapter 10	Cereals
10.01 - 10.08	A change to heading 10.01 through 10.08 from any other chapter; or the products under this heading shall originate in the country where they were grown.

Chapter 11	Products of the milling industry; malt; starches; inulin; wheat gluten
1108.11	A change to subheading 1108.11 from any other heading.
1108.19 - 1108.20	A change to subheading 1108.19 through 1108.20 from any other heading.

Chapter 12	Oil seeds and oleaginous fruits; miscellaneous grains, seeds and fruit; industrial or medicinal plants; straw and fodder
12.01 - 12.07	A change to heading 12.01 through 12.07 from any other chapter; or the products under this heading shall originate in the country where they were grown.
12.09 - 12.14	A change to heading 12.09 through 12.14 from any other chapter; or the products under this heading shall originate in the country where they were grown.

Chapter 13	Lac; gums, resins and other vegetable saps and extracts
13.01 - 13.02	A change to heading 13.01 through 13.02 from any other chapter; or the products under this heading shall originate in the country where they were obtained by extraction, exudation or incision.

Chapter 14	Vegetable plaiting materials; vegetable products not elsewhere specified or included
14.01 - 14.04	A change to heading 14.01 through 14.04 from any other chapter; or the products under this heading shall originate in the country where they were grown.

Section IV: Prepared Foodstuffs; Beverages, Spirits and Vinegar; Tobacco and Manufactured Tobacco Substitutes

Chapter 16	Preparations of meat, of fish or of crustaceans, molluscs or other aquatic invertebrates
16.03 - 16.04	A change to heading 16.03 through 16.04 from any other chapter.
1605.10	A change to subheading 1605.10 from any other chapter.
1605.40 - 1605.90	A change to subheading 1605.40 through 1605.90 from any other chapter.

Chapter 17	Sugars and sugar confectionery
17.01 - 17.03	A change to heading 17.01 through 17.03 from any other chapter.

Chapter 18	Cocoa and cocoa preparations
18.01 - 18.02	A change to heading 18.01 through 18.02 from any other chapter; or the products under this heading shall originate in the country where they were grown.

Chapter 21	Miscellaneous edible preparations
2102.20 - 2102.30	A change to subheading 2102.20 through 2102.30 from any other heading.
2103.10	A change to subheading 2103.10 from any other heading.
21.04	A change to heading 21.04 from any other heading.

Chapter 22	Beverages, spirits and vinegar
22.01	A change to heading 22.01 from any other chapter; or the products under this heading shall originate in the country where water, ice and snow are obtained in a natural state.
22.03 - 22.06	A change to heading 22.03 through 22.06 from any other chapter.

Chapter 23	Residues and waste from the food industries; prepared animal fodder
23.01 - 23.03	A change to heading 23.01 through 23.03 from any other chapter.
23.05	A change to heading 23.05 from any other chapter.
23.07 - 23.08	A change to heading 23.07 through 23.08 from any other chapter.

Chapter 24	Tobacco and manufactured tobacco substitutes
24.01	A change to heading 24.01 from any other chapter.

Section V: Mineral Products

Chapter 25	Salt; sulphur; earths and stone; plastering materials, lime and cement
25.01 - 25.22	A change to heading 25.01 through 25.22 from any other chapter.
25.24 - 25.30	A change to heading 25.24 through 25.30 from any other chapter.

Chapter 26	Ores, slag and ash
26.01 - 26.17	A change to heading 26.01 through 26.17 from any other chapter.
26.18 - 26.21	A change to heading 26.18 through 26.21 from any other heading.

Chapter 27	**Mineral fuels, mineral oils and products of their distillation; bituminous substances; mineral waxes**
Note to heading 27.15	**For heading 27.15, the deliberate and proportionately controlled mixture of materials (other than simple dilution with water) following pre-determined specifications that result in a product that possesses physical or chemical characteristics that are relevant for a different purpose or use than the initial materials, is considered to have undergone a substantial transformation.**

Chapter 27	**Mineral fuels, mineral oils and products of their distillation; bituminous substances; mineral waxes**
27.01 - 27.05	A change to heading 27.01 through 27.05 from any other chapter.
27.06 - 27.08	A change to heading 27.06 through 27.08 from any other heading.
27.09	A change to heading 27.09 from any other chapter.
27.11 - 27.15	A change to heading 27.11 through 27.15 from any other heading.
27.16	A change to heading 27.16 from any other heading or this product shall originate in the country in which the electrical energy is generated.

Section VI: Products of the Chemical or Allied Industries

Notes to Section VI:

1. A "chemical reaction" is a process (including biochemical processes) that produces a molecule with a new structure through the breakdown of intra-molecular links and the formation of new ones or through the alteration of the spatial distribution of the atoms of a molecule. The following operations are not considered to be chemical reactions for the purposes of the present definition:

   (a) Dilution in water or other solvents;

   (b) the removal of solvents, including dissolved water; and

   (c) the addition or removal of crystallization water.

2. Purification: the purification brought about by removing 80 per cent of the impurity content or the reduction or elimination that produces a chemical with a minimum degree of purity to make the product suitable for uses such as:

   (a) Pharmaceutical substances or food products that comply with national standards or the international pharmacopoeia;

   (b) reagents for chemical analysis or for laboratory use;

   (c) elements and components for use in microelectronics;

   (d) different optical applications; and

   (e) human or veterinary use.

Chapter 28	**Inorganic chemicals; organic or inorganic compounds of precious metals, of rare-earth metals, of radioactive elements or of isotopes**
Notes to Chapter 28:	**1. Standard solution: "standard solutions" are preparations suitable for analytical use, testing or reference, with degrees of purity or proportions guaranteed by the manufacturer. The preparation of**

	standard solutions confers origin. **2. Separation of isomers: the isolation or separation of isomers from a mixture of isomers confers origin.**
28.01 - 28.03	A change to heading 28.01 through 28.03 from any other heading.
2804.10 - 2806.20	A change to subheading 2804.10 through 2806.20 from any other subheading.
28.08	A change to heading 28.08 from any other heading.
Chapter 28	**Inorganic chemicals; organic or inorganic compounds of precious metals, of rare-earth metals, of radioactive elements or of isotopes**
2809.10 - 2809.20	A change to subheading 2809.10 through 2809.20 from any other subheading.
28.10	A change to heading 28.10 from any other heading.
2811.11 - 2816.30	A change to subheading 2811.11 through 2816.30 from any other subheading.
28.17	A change to heading 28.17 from any other heading.
2818.10 - 2821.20	A change to subheading 2818.10 through 2821.20 from any other subheading.
28.22 - 28.23	A change to heading 28.22 through 28.23 from any other heading.
2824.10 - 2837.20	A change to subheading 2824.10 through 2837.20 from any other subheading.
28.38	A change to heading 28.38 from any other heading.
2839.11 - 2846.90	A change to subheading 2839.11 through 2846.90 from any other subheading.
28.47	A change to heading 28.47 from any other heading.
2848.00 - 2851.00	A change to subheading 2848.00 through 2851.00 from any other subheading.

Chapter 29	**Organic chemicals**
Notes to Chapter 29:	**1. Standard solution: "standard solutions" are preparations suitable for analytical use, testing or reference, with degrees of purity or proportions guaranteed by the manufacturer. The preparation of standard solutions confers origin.** **2. Separation of isomers: the isolation or separation of isomers from a mixture of isomers confers origin.**
2901.10 - 2910.90	A change to subheading 2.901.10 through 2910.90 from any other subheading.
29.11	A change to heading 29.11 from any other heading.
2912.11 - 2912.60	A change to subheading 2912.11 through 2912.60 from any other subheading.
29.13	A change to heading 29.13 from any other heading.
2914.11 - 2915.90	A change to subheading 2914.11 through 2915.90 from any other subheading.
2917.11 - 2918.90	A change to subheading 2917.11 through 2918.90 from any other subheading.
29.19	A change to heading 29.19 from any other heading.
2920.10 - 2927.00	A change to subheading 2920.10 through 2927.00 from any other subheading.
29.28	A change to heading 29.28 from any other heading.
2929.10 - 2934.90	A change to subheading 2929.10 through 2934.90 from any other subheading.
29.35	A change to heading 29.35 from any other heading.
2936.10 - 2939.90	A change to subheading 2936.10 through 2939.90 from any other subheading.

29.40	A change to heading 29.40 from any other heading.
2941.10 - 2941.90	A change to subheading 2941.10 through 2941.90 from any other subheading
29.42	A change to heading 29.42 from any other heading.

Chapter 31	**Fertilisers**
31.01	A change to heading 31.01 from any other heading.

Chapter 32	**Tanning or dyeing extracts; tannins and their derivatives; pigments and other colouring matter; paints and varnishes; putty; inks**
Notes to Chapter 32:	**1. Standard solution: "standard solutions" are preparations suitable for analytical use, testing or reference, with degrees of purity or proportions guaranteed by the manufacturer. The preparation of standard solutions confers origin.** **2. Separation of isomers: the isolation or separation of isomers from a mixture of isomers confers origin.**
32.03	A change to heading 32.03 from any other heading.
32.05	A change to heading 32.05 from any other heading.
32.11	A change to heading 32.11 from any other heading.
32.13	A change to heading 32.13 from any other heading.
32.15	A change to heading 32.15 from any other heading.

Chapter 33	**Essential oils and resinoids; perfumery, cosmetic or toilet preparations**
Notes to Chapter 33:	**Separation of isomers: the isolation or separation of isomers from a mixture of isomers confers origin.**
33.03 - 33.07	A change to heading 33.03 through 33.07 from any other heading.

Chapter 34	**Soap, organic surface-active agents, washing preparations, lubricating preparations, artificial waxes, prepared waxes, polishing or scouring preparations, candles and similar articles, modelling pastes, "dental waxes" and dental preparations with a basis of plaster**
34.01	A change to heading 34.01 from any other heading.
34.03 - 34.07	A change to heading 34.03 through 34.07 from any other heading.

Chapter 35	**Albuminoidal substances; modified starches; glues; enzymes**
35.01 - 35.07	A change to heading 35.01 through 35.07 from any other heading.

Chapter 36	**Explosives; pyrotechnic products; matches; pyrophoric alloys; certain combustible preparations**
36.01 - 36.06	A change to heading 36.01 through 36.06 from any other heading.

Chapter 37	**Photographic or cinematographic goods**
37.01 - 37.07	A change to heading 37.01 through 37.07 from any other heading.

Chapter 38	**Miscellaneous chemical products**
38.01 - 38.07	A change to heading 38.01 through 38.07 from any other heading.
38.09 - 38.23	A change to heading 38.09 through 38.23 from any other heading.
3824.10 - 3824.90	A change to subheading 3824.10 through 3824.90 from any other subheading.

Section VII: Plastics and Articles Thereof; Rubber and Articles Thereof

Chapter 40	**Rubber and articles thereof**

40.01	A change to heading 40.01 from any other chapter.
40.02 - 40.06	A change to heading 40.02 through 40.06 from any other heading.

Section VIII: Raw Hides and Skins, Leather, Furskins and Articles Thereof; Saddlery and Harness; Travel Goods, Handbags and Similar Containers; Articles of Animal Gut (Other than Silkworm Gut)

Chapter 41	**Raw hides and skins (other than furskins) and leather**
41.01 - 41.03	A change to heading 41.01 through 41.03 from any other chapter.
41.04 - 41.07	A change to heading 41.04 through 41.07 from any other heading, enabling a change from wet blue hides and skins to tanned hides and skins.

Section IX: Wood and Articles of Wood; Wood Charcoal; Cork and Articles of Cork; Manufactures of Straw, of Esparto or of Other Plaiting Materials; Basketware and Wickerwork

Chapter 45	**Cork and articles of cork**
45.01 - 45.04	A change to heading 45.01 through 45.04 from any other heading.

Chapter 46	**Manufactures of straw, of esparto or of other plaiting materials; basketware and wickerwork**
46.01 - 46.02	A change to heading 46.01 through 46.02 from any other heading.

Section X: Pulp of Wood or of other Fibrous Cellulosic Material; Recovered (Waste and Scrap) Paper or Paperboard; Paper and Paperboard and Articles Thereof

Chapter 47	**Pulp of wood or of other fibrous cellulosic material; recovered (waste and scrap) paper or paperboard**
47.01 - 47.07	A change to heading 47.01 through 47.07 from any other heading.

Chapter 48	**Paper and paperboard; articles of paper pulp, of paper or of paperboard**
48.01 - 48.09	A change to heading 48.01 through 48.09 from any other heading.
48.10 - 48.11	A change to heading 48.10 through 48.11 from any other heading. The process of rolling or laminating, including with other materials of this heading, confers origin.
48.12 - 48.15	A change to heading 48.12 through 48.15 from any other heading.
48.16	A change to heading 48.16 from any other heading, except from heading 48.09.
48.17	A change to heading 48.17 from any other heading.
4818.10 - 4818.30	A change to subheading 4818.10 through 4818.30 from any other heading, except from heading 48.03.
4818.40 - 4818.90	A change to subheading 4818.40 through 4818.90 from any other heading.
48.19	A change to heading 48.19 from any other heading.
4820.10 - 4820.30	A change to subheading 4820.10 through 4820.30 from any other heading.
4820.40	A change to subheading 4820.40 from any other heading, except from subheading 4811.90.
4820.50 - 4823.40	A change to subheading 4820.50 through 4823.40 from any other heading.
4823.59 - 4823.90	A change to subheading 4823.59 through 4823.90 from any other heading.

Chapter 49	**Printed books, newspapers, pictures and other products of the printing industry; manuscripts, typescripts and plans**
49.01 - 49.11	A change to heading 49.01 through 49.11 from any other chapter.

Section XI: Textiles and Textile Articles

Chapter 50	Silk
50.01 - 50.03	A change to heading 50.01 through 50.03 from any other heading.
50.07	A change to heading 50.07 from any other heading.

Chapter 51	Wool, Fine or Coarse Animal Hair; Horsehair Yarn and Woven Fabric
51.01 - 51.05	A change to heading 51.01 through 51.05 from any other heading.

Chapter 52	Cotton
52.01 - 52.03	A change to heading 52.01 through 52.03 from any other heading.

Chapter 53	Other vegetable textile fibres; paper yarn and woven fabrics of paper yarn
53.01 - 53.08	A change to heading 53.01 through 53.08 from any other heading.

Chapter 55	Man-made staple fibres
55.01 - 55.07	A change to heading 55.01 through 55.07 from any other heading.
55.09 - 55.10	A change to heading 55.09 through 55.10 from any other heading.

Section XII: Footwear, Headgear, Umbrellas, Sun Umbrellas, Walking-Sticks, Seat-Sticks, Whips, Riding-Crops and Parts Thereof; Prepared Feathers and Articles Made Therewith; Artificial Flowers; Articles of Human Hair

Chapter 65	Headgear and parts thereof
65.01 - 65.07	A change to heading 65.01 through 65.07 from any other heading.

Chapter 66	Umbrellas, sun umbrellas, walking-sticks, seat-sticks, whips, riding-crops and parts thereof
66.01 - 66.03	A change to heading 66.01 through 66.03 from any other heading.

Chapter 67	Prepared feathers and down and articles made of feathers or of down; artificial flowers; articles of human hair
67.01 - 67.04	A change to heading 67.01 through 67.04 from any other heading.

Section XIII: Articles of Stone, Plaster, Cement, Asbestos, Mica or Similar Materials; Ceramic Products; Glass and Glassware

Chapter 68	Articles of stone, plaster, cement, asbestos, mica or similar materials
68.01 - 68.10	A change to heading 68.01 through 68.10 from any other chapter.
68.11	A change to heading 68.11 from any other heading.
6812.10 - 6812.90	A change to subheading 6812.10 through 6812.90 from any other subheading.
68.13 - 68.15	A change to heading 68.13 through 68.15 from any other heading.

Chapter 69	Ceramic products
69.01 - 69.06	A change to heading 69.01 through 69.06 from any other heading.
69.09	A change to heading 69.09 from any other heading.
69.11 - 69.14	A change to heading 69.11 through 69.14 from any other heading.

Chapter 70	Glass and glassware
70.01 - 70.18	A change to heading 70.01 through 70.18 from any other heading.
7019.11 - 7019.90	A change to subheading 7019.11 through 7019.90 from any other subheading.

70.20	A change to heading 70.20 from any other heading.

Section XIV: Natural or Cultured Pearls, Precious or Semi-precious Stones, Precious Metals, Metals Clad with Precious Metal and Articles Thereof; Imitation Jewellery; Coins

Chapter 71	**Natural or cultured pearls, precious or semi-precious stones, precious metals, metals clad with precious metal and articles thereof; imitation jewellery; coins**
71.01 - 71.18	A change to heading 71.01 through 71.18 from any other heading.

Section XV: Base Metals and Articles of Base Metal

Chapter 72	**Iron and steel**
72.01 - 72.07	A change to heading 72.01 through 72.07 from any other heading.
72.11	A change to heading 72.11 from any other heading.
72.13 - 72.16	A change to heading 72.13 through 72.16 from any other heading.
7217.10	A change to subheading 7217.10 from any other heading.
72.18 - 72.29	A change to heading 72.18 through 72.29 from any other heading.

Chapter 73	**Articles of iron and steel**
73.01 - 73.06	A change to heading 73.01 through 73.06 from any other chapter.
73.07	A change to heading 73.07 from any other heading.
73.12 - 73.20	A change to heading 73.12 through 73.20 from any other heading.
7321.90	A change to subheading 7321.90 from any other heading.
73.22 - 73.23	A change to heading 73.22 through 73.23 from any other heading.
73.25 - 73.26	A change to heading 73.25 through 73.26 from any other heading.

Chapter 74	**Copper and articles thereof**
74.01 - 74.19	A change to heading 74.01 through 74.19 from any other heading.

Chapter 75	**Nickel and articles thereof**
75.01 - 75.08	A change to heading 75.01 through 75.08 from any other heading.

Chapter 76	**Aluminium and articles thereof**
76.01 - 76.05	A change to heading 76.01 through 76.05 from any other heading.
7607.11	A change to subheading 7607.11 from any other heading.
76.08 - 76.09	A change to heading 76.08 through 76.09 from any other heading.
76.11 - 76.14	A change to heading 76.11 through 76.14 from any other heading.
76.16	A change to heading 76.16 from any other heading.

Chapter 78	**Lead and articles thereof**
78.01 - 78.06	A change to heading 78.01 through 78.06 from any other heading.

Chapter 79	**Zinc and articles thereof**
79.01 - 79.07	A change to heading 79.01 through 79.07 from any other heading.

Chapter 80	**Tin and articles thereof**
80.01 - 80.07	A change to heading 80.01 through 80.07 from any other heading.

Chapter 81	**Other base metals; cermets; articles thereof**
8101.10 - 8113.00	A change to subheading 8101.10 through 8113.00 from any other subheading.

Chapter 82	Tools, implements, cutlery, spoons and forks, of base metal; parts thereof of base metal
82.01 - 82.10	A change to heading 82.01 through 82.10 from any other heading.
82.11 - 82.12	A change to heading 82.11 through 82.12 from any other heading, even blanks.
82.13 - 82.15	A change to heading 82.13 through 82.15 from any other heading.

Chapter 83	Miscellaneous articles of base metal
83.02	A change to heading 83.02 from any other heading.
83.05 - 83.11	A change to heading 83.05 through 83.11 from any other heading.

Section XVI: Machinery and Mechanical Appliances, Electrical Equipment and Parts Thereof; Sound Recorders and Reproducers, Television Image and Sound Recorders and Reproducers, and Parts and Accessories of Such Articles

Chapter 84	Nuclear reactors, boilers, machinery and mechanical appliances; parts thereof
8401.40	A change to subheading 8401.40 from any other heading.
8402.90	A change to subheading 8402.90 from any other heading.
8403.90	A change to subheading 8403.90 from any other heading.
8404.90	A change to subheading 8404.90 from any other heading.
8405.90	A change to subheading 8405.90 from any other heading.
8406.90	A change to subheading 8406.90 from any other heading.
84.09	A change to heading 84.09 from any other heading.
8410.11 - 8411.99	A change to subheading 8410.11 through 8411.99 from any other subheading.
8412.90	A change to subheading 8412.90 from any other heading.
8413.91 - 8413.92	A change to subheading 8413.91 through 8413.92 from any other heading.
8415.90	A change to subheading 8415.90 from any other heading.
8416.90	A change to subheading 8416.90 from any other heading.
8419.90	A change to subheading 8419.90 from any other heading.
8420.91 - 8420.99	A change to subheading 8420.91 through 8420.99 from any other heading.
8422.90	A change to subheading 8422.90 from any other heading.
8423.10 - 8423.90	A change to subheading 8423.10 through 8423.90 from any other subheading.
84.31	A change to heading 84.31 from any other heading.
8433.11 - 8433.90	A change to subheading 8433.11 through 8433.90 from any other subheading.
8434.90	A change to subheading 8434.90 from any other heading.
8435.90	A change to subheading 8435.90 from any other heading.
8436.91 - 8436.99	A change to subheading 8436.91 through 8436.99 from any other heading.
8438.90	A change to subheading 8438.90 from any other heading.
8439.91 - 8439.99	A change to subheading 8439.91 through 8439.99 from any other heading.
8440.90	A change to subheading 8440.90 from any other heading.
8441.90	A change to subheading 8441.90 from any other heading.
8442.40 - 8442.50	A change to subheading 8442.40 through 8442.50 from any other heading.
8443.90	A change to subheading 8443.90 from any other heading.
84.48-84.49	A change to heading 84.48 through 84.49 from any other heading.
8450.90	A change to subheading 8450.90 from any other heading.
8451.90	A change to subheading 8451.90 from any other heading.
8452.90	A change to subheading 8452.90 from any other heading.
8453.90	A change to subheading 8453.90 from any other heading.
8454.90	A change to subheading 8454.90 from any other heading.
8455.90	A change to subheading 8455.90 from any other heading.
84.66	A change to heading 84.66 from any other heading.

Chapter 84	**Nuclear reactors, boilers, machinery and mechanical appliances; parts thereof**
8467.91 - 8467.99	A change to subheading 8467.91 through 8467.99 from any other heading.
8468.90	A change to subheading 8468.90 from any other heading.
84.71	A change to heading 84.71 from any other heading
8473.10 - 8473.29	A change to subheading 8473.10 through 8473.29 from any other heading.
8473.40 - 8473.50	A change to subheading 8473.40 through 8473.50 from any other heading.
8474.90	A change to subheading 8474.90 from any other heading.
8475.90	A change to subheading 8475.90 from any other heading.
8476.90	A change to subheading 8476.90 from any other heading.
8477.90	A change to subheading 8477.90 from any other heading.
8478.90	A change to subheading 8478.90 from any other heading.
8479.90	A change to subheading 8479.90 from any other heading.
84.80	A change to heading 84.80 from any other heading; or a change in tariff classification is not required, when the regional content value is not less than 30%.
8482.91 - 8482.99	A change to subheading 8482.91 through 8482.99 from any other heading.
8483.90	A change to subheading 8483.90 from any other heading.
84.84 - 84.85	A change to heading 84.84 through 84.85 from any other heading; or a change in tariff classification is not required, when the regional content value is not less than 30%.

Chapter 85	**Electrical machinery and equipment and parts thereof; sound recorders and reproducers, television image and sound recorders and reproducers, and parts and accessories of such articles**
85.03	A change to heading 85.03 from any other heading.
8504.90	A change to subheading 8504.90 from any other heading.
8505.90	A change to subheading 8505.90 from any other heading.
8508.10 - 8508.90	A change to subheading 8508.10 through 8508.90 from any other subheading.
8509.90	A change to subheading 8509.90 from any other heading.
8510.90	A change to subheading 8510.90 from any other heading.
8511.90	A change to subheading 8511.90 from any other heading.
8512.90	A change to subheading 8512.90 from any other heading.
8513.90	A change to subheading 8513.90 from any other heading.
8515.90	A change to subheading 8515.90 from any other heading.
8516.80 - 8516.90	A change to subheading 8516.80 through 8516.90 from any other heading.
8517.90	A change to subheading 8517.90 from any other heading.
8518.90	A change to subheading 8518.90 from any other heading.
85.22	A change to heading 85.22 from any other heading.
85.29	A change to heading 85.29 from any other heading.
8530.90	A change to subheading 8530.90 from any other heading.
8531.90	A change to subheading 8531.90 from any other heading.
8532.10 - 8533.90	A change to subheading 8532.10 through 8533.90 from any other subheading.
85.34	A change to heading 85.34 from any other heading.
85.36	A change to heading 85.36 from any other heading.
85.38	A change to heading 85.38 from any other heading.
8539.10 - 8539.90	A change to subheading 8539.10 through 8539.90 from any other subheading.
8543.90	A change to subheading 8543.90 from any other heading.
85.44 - 85.48	A change to heading 85.44 through 85.48 from any other heading.

Section XVII: Vehicles, Aircraft, Vessels and Associated Transport Equipment

Chapter 86	**Railway or tramway locomotives, rolling-stock and parts thereof; railway or tramway track fixtures and fittings and parts thereof; mechanical (including electro-mechanical) traffic signalling equipment of all kinds**
86.01 - 86.09	A change to heading 86.01 through 86.09 from any other heading.

Chapter 87	**Vehicles other than railway or tramway rolling-stock and parts and accessories thereof**
87.06	A change to heading 87.06 from any other heading.

Chapter 88	**Aircraft, spacecraft, and parts thereof**
88.01 - 88.05	A change to heading 88.01 through 88.05 from any other heading.

Chapter 89	**Ships, boats and floating structures**
89.01 - 89.08	A change to heading 89.01 through 89.08 from any other heading.

Section XVIII: Optical, Photographic, Cinematographic, Measuring, Checking, Precision, Medical or Surgical Instruments and Apparatus; Clocks and Watches; Musical Instruments; Parts and Accessories Thereof

Chapter 90	**Optical, photographic, cinematographic, measuring, checking, precision, medical or surgical instruments and apparatus; parts and accessories thereof**
90.01 - 90.02	A change to heading 90.01 through 90.02 from any other heading.
9003.90	A change to subheading 9003.90 from any other heading.
9005.90	A change to subheading 9005.90 from any other heading.
9006.91 - 9006.99	A change to subheading 9006.91 through 9006.99 from any other heading.
9007.91 - 9007.92	A change to subheading 9007.91 through 9007.92 from any other heading.
9008.90	A change to subheading 9008.90 from any other heading.
9009.90	A change to subheading 9009.90 from any other heading.
9010.90	A change to subheading 9010.90 from any other heading.
9011.90	A change to subheading 9011.90 from any other heading.
9012.90	A change to subheading 9012.90 from any other heading.
9013.90	A change to subheading 9013.90 from any other heading.
9014.90	A change to subheading 9014.90 from any other heading.
9015.90	A change to subheading 9015.90 from any other heading.
90.16	A change to heading 90.16 from any other heading; or a change in tariff classification is not required when the regional content value is not less than 30%.
9017.90	A change to subheading 9017.90 from any other heading.
90.19 - 90.21	A change to heading 90.19 through 90.21 from any other heading; or a change in tariff classification is not required, when the regional content value is not less than 30%.
9022.90	A change to subheading 9022.90 from any other heading.
90.23	A change to heading 90.23 from any other heading.
9024.90	A change to subheading 9024.90 from any other heading.
9025.90	A change to subheading 9025.90 from any other heading.
9026.90	A change to subheading 9026.90 from any other heading.
9027.90	A change to subheading 9027.90 from any other heading.
9028.90	A change to subheading 9028.90 from any other heading.
9029.90	A change to subheading 9029.90 from any other heading.

9030.90	A change to subheading 9030.90 from any other heading.
9031.90	A change to subheading 9031.90 from any other heading.
9032.90	A change to subheading 9032.90 from any other heading.
90.33	A change to heading 90.33 from any other heading.

Chapter 91	**Clocks and watches and parts thereof**
91.01 - 91.14	A change to heading 91.01 through 91.14 from any other heading.

Chapter 92	**Musical instruments; parts and accessories thereof**
92.01 - 92.09	A change to heading 92.01 through 92.09 from any other heading.

Section XIX: Arms and Ammunition; Parts and Accessories Thereof

Chapter 93	**Arms and ammunition; parts and accessories thereof**
93.01 - 93.07	A change to heading 93.01 through 93.07 from any other heading.

Section XX: Miscellaneous Manufactured Articles

Chapter 94	**Furniture; medical furniture; bedding and similar furnishings; lamps and lighting fittings, not elsewhere specified or included; illuminated signs, illuminated name-plates and the like; prefabricated buildings**
94.02	A change to heading 94.02 from any other heading.
94.06	A change to heading 94.06 from any other heading.

Chapter 95	**Toys, games and sports equipment; parts and accessories thereof**
95.01	A change to heading 95.01 from any other heading.
95.03 - 95.08	A change to heading 95.03 through 95.08 from any other heading.

Chapter 96	**Miscellaneous manufactured articles**
96.01 - 96.02	A change to heading 96.01 through 96.02 from any other heading.
96.04 - 96.05	A change to heading 96.04 through 96.05 from any other heading.
9606.10 - 9606.30	A change to subheading 9606.10 through 9606.30 from any other subheading.
9607.11 - 9607.19	A change to subheading 9607.11 through 9607.19 from any other subheading.
9607.20	A change to subheading 9607.20 from any other heading.
9608.10 - 9608.40	A change to subheading 9608.10 through 9608.40 from any other subheading, except from subheading 9608.60, or a change to subheading 9608.10 through 9608.40 from any other subheading, complying with a regional value content of not less than 30%.
9608.50 - 9609.90	A change to subheading 9608.50 through 9609.90 from any other subheading.
96.10 - 96.12	A change to heading 96.10 through 96.12 from any other heading.
9613.10 - 9613.80	A change to subheading 9613.10 through 9613.80 from any other subheading.
9613.90	A change to subheading 9613.90 from any other heading.
96.14 - 96.18	A change to heading 96.14 through 96.18 from any other heading.

Section XXI: Works of Art, Collectors' Pieces and Antiques

Chapter 97	**Works of art, collectors' pieces and antiques**
97.01 - 97.05	A change to heading 97.01 through 97.05 from any other heading.

CHAPTER 5: CUSTOMS PROCEDURES

Article 5.01

Definitions

1. For the purposes of this Chapter:

competent authority means the authority which, under the law of each Party, is responsible for the administration and application of its customs laws and regulations and/or the administration and/or application of this Chapter and Chapters 3 (National Treatment and Market Access for Goods) and 4 (Rules of Origin) and the Uniform Regulations, as appropriate. The Uniform Regulations shall specify the competent authorities of each Party;

exporter means an exporter located in the territory of a Party from which the good is exported and required under this Chapter to maintain in the territory of that Party the records referred to in Article 5.04(5);

commercial importation means the importation of a good into the territory of a Party for the purpose of sale, or any commercial, industrial or other like use;

importer means an importer located in the territory of a Party to which the good is imported, required under this Chapter to maintain in the territory of that Party the records referred to in Article 5.03(4);

confidential information means information which, by its very nature, is confidential, has not already been published and is not generally available to third parties or otherwise in the public domain;

identical goods means "identical goods" as defined in the Customs Valuation Agreement;

origin verification means the administrative process that begins with notification of the initiation of a verification by the competent authority of a Party and concludes with the final determination of origin;

producer means a "producer" as defined in Article 2.01 (Definitions of General Application), located in the territory of a Party and required under this Chapter to keep the records referred to in Article 5.04(5) in the territory of that Party;

determination of origin means a determination issued as the result of a verification of origin, establishing whether a good qualifies as an originating good, in accordance with Chapter 4 (Rules of Origin); and

preferential tariff treatment means the duty rate applicable to an originating good in accordance with the Tariff Elimination Programme.

2. Except as otherwise defined in this Article, this Chapter includes the definitions established in Chapter 4 (Rules of Origin).

Article 5.02

Declaration and Certification of Origin

1. For the purposes of this Chapter, on the date on which this Agreement comes into force, the Parties shall have prepared a single form for the certificate of origin and a single form for the declaration of origin, which may be modified by mutual agreement.

2. The certificate of origin referred to in paragraph 1 shall serve to certify that a good exported from the territory of one Party to the territory of the other Party qualifies as an originating good. The certificate shall remain valid for up to one (1) year after it is signed.

3. Each Party shall require its exporters to complete and sign a certificate of origin for any exportation of a good for which an importer may claim preferential tariff treatment.

4. Each Party shall require that:

(a) Where an exporter is not the producer of the good, the exporter may complete and sign a certificate of origin on the basis of:

(i) Its knowledge of whether the good qualifies as an originating good;

(ii) its reasonable reliance on the producer's written representation that the good qualifies as an originating good; or

(iii) the declaration of origin referred to in paragraph 1; and

(b) the declaration of origin applicable to the good to be exported shall be completed and signed by the producer of the good and given voluntarily to the exporter. The declaration shall remain valid for up to one (1) year after it is signed.

5. Each Party shall provide that a certificate of origin that has been completed and signed by an exporter in the territory of the other Party is applicable to:

(a) A single importation of one or more goods; or

(b) multiple importations of identical goods by the same importer within a specified period, not exceeding one (1) year, set out in the certificate by the exporter.

Article 5.03

Obligations Regarding Importations

1. Each Party shall require an importer in its territory that claims preferential tariff treatment for a good imported into its territory from the territory of the other Party to:

(a) Make a written declaration, using the import document established in its law, based on a valid certificate of origin, that the good qualifies as an originating good;

(b) have the certificate of origin in its possession at the time the declaration referred to in (a) is made;

(c) provide, at the request of that Party's competent authority, a copy of the certificate of origin; and

(d) promptly make a corrected declaration and pay any duties owing where the importer has reason to believe that a certificate on which a declaration was based contains information that is not correct. If the importer complies with the above obligation, it shall not be subject to penalties.

2. Each Party shall provide that, where an importer in its territory fails to comply with any of the requirements established in this Chapter, it shall be denied the preferential tariff treatment claimed for the good imported into the territory of the other Party.

3. Each Party shall provide that, where a good would have qualified as an originating good when it was imported into the territory of that Party but no claim for preferential tariff treatment was made at that time, the importer of the good may, no later than one (1) 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 the certificate of origin; and

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

4. Each Party shall provide that an importer that claims preferential tariff treatment for a good imported into its territory from the territory of the other Party shall retain the certificate of origin and all other documentation relating to the importation required by the importing Party for a minimum period of five (5) years after the date of the import.

Article 5.04

Obligations Regarding Exportations

1. Each Party shall provide that an exporter or a producer in its territory that has completed and signed a certificate or declaration of origin shall provide a copy of the certificate or declaration to its competent authority on request.

2. Each Party shall provide that an exporter or a producer in its territory that has completed and signed a certificate or declaration of origin, and that has reason to believe that the certificate contains information that is not correct, shall promptly notify in writing all persons to whom the certificate or declaration was given of any change that could affect the accuracy or validity of the certificate or declaration and its competent authority. In such cases, the exporter or producer shall not be subject to penalties for having presented an incorrect certificate or declaration.

3. Each Party shall provide that the competent authority of the exporting Party shall inform the competent authority of the importing Party in writing of the notification referred to in paragraph 2.

4. Each Party shall provide that a false certification or declaration by an exporter or a producer in its territory that a good to be exported to the territory of the other Party qualifies as an originating good shall have similar legal consequences, with appropriate modifications, as would apply to an importer in its territory for a contravention of its customs or other applicable laws and regulations regarding the making of a false declaration or representation.

5. Each Party shall provide that an exporter or a producer in its territory that completes and signs a certificate or declaration of origin shall retain for a minimum period of five (5) years after the date

on which the certificate or statement was signed, all the records and documents relating to the origin of the good, including those referring to:

(a) The purchase, costs, value and payment of the good exported from its territory;

(b) the purchase, costs, value and payment of all the materials, including indirect materials, used in the production of the good exported from its territory; and

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

Article 5.05

Exceptions

Provided that an importation does not form part of two (2) or more importations that may be considered to have been undertaken or arranged for the purpose of avoiding the certification requirements of Articles 5.02 and 5.03, a Party shall not require a certificate of origin in the following cases:

(a) A commercial importation of a good the customs value of which does not exceed US$1,000 or the equivalent amount in the Party's currency, or such higher amount as it may establish, except that it may require that the invoice accompanying the importation include a declaration by the importer or exporter certifying that the good qualifies as an originating good;

(b) a non-commercial importation of a good the value of which does not exceed US$1,000 or the equivalent amount in the Party's currency, or such higher amount as it may establish; or

(c) an importation of a good for which the Party into whose territory the good is imported has waived the requirement for a certificate of origin.

Article 5.06

Invoicing by a Third-Country Operator

Where the traded good is invoiced by a third-country operator, regardless of whether it is a Party or a non-Party, the producer or exporter of the country of origin is required to state in the respective certificate of origin, in the section headed 'Comments', that the goods covered by the declaration will be invoiced from that third country and give the name and address of the operator that will invoice the operation at destination.

Article 5.07

Confidentiality

1. Each Party shall maintain, in accordance with its law, the confidentiality of the confidential information collected pursuant to this Chapter and shall protect that information from any disclosure.

2. The confidential information collected pursuant to this Chapter may only be disclosed to the authorities responsible for the administration and enforcement of determinations of origin, and of customs and revenue matters, in accordance with the law of each Party.

Article 5.08

Origin Verifications

1. The importing Party may request information from the exporting Party for the purpose of determining the origin of a good.

2. For purposes of determining whether a good imported into its territory from the territory of the other Party under preferential tariff treatment qualifies as an originating good, the importing Party may, through its competent authority, conduct a verification by means of:

(a) Written questionnaires and requests for information to exporters or producers in the territory of the exporting Party;

(b) visits to the premises of an exporter or a producer in the territory of the exporting Party to review the accounting records and documents referred to in Article 5.04(5) and observe the facilities and materials or products used in the production of the good; or

(c) such other procedure as the Parties may agree.

3. An exporter or producer that receives a questionnaire and requests for information pursuant to paragraph 2(a) is required to complete and return them within thirty (30) days from the date of receipt. During the period, the exporter or producer may, on one occasion only, apply in writing to the importing Party for an extension of the period, which may not be for more than 30 days.

4. In the event that the exporter or producer fails to return the duly completed questionnaire within the period or extension, the importing Party may deny preferential tariff treatment.

5. Prior to conducting a verification visit pursuant to paragraph 2(b), the importing Party shall, through its competent authority, deliver a written notification of its intention to conduct the visit. The notification shall be sent to the exporter or producer whose premises are to be visited, to the competent authority of the Party in whose territory the visit is to be conducted and, if requested by the latter, to the embassy of that Party in the territory of the importing Party. The competent authority of the importing Party shall obtain the written consent of the exporter or producer whose premises are to be visited.

6. The notification referred to in paragraph 5 shall include:

(a) The identity of the competent authority issuing the notification;
(b) the name of the exporter or producer whose premises are to be visited;

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

(d) the object and scope of the proposed verification visit, including specific reference to the good or goods subject to the verification;

(e) the identification and titles of the officials performing the verification visit; and

(f) the legal authority for the verification visit.

7. Where an exporter or a producer has not given its written consent to a proposed verification visit within 30 days of receipt of notification pursuant to paragraph 5, the importing Party may deny preferential tariff treatment to the good or goods that would have been the subject of the visit.

8. Each Party shall provide that, where its exporter or producer receives notification pursuant to paragraph 5, it may, within 15 days of receipt of the notification, apply on one occasion to postpone the proposed verification visit for a period not exceeding 60 days from the date of such receipt, or for such longer period as the Parties may agree. Notification of the postponement of the visit shall be made to the competent authorities of the importing Party and the exporting Party.

9. A Party shall not deny preferential tariff treatment to a good based solely on the postponement of a verification visit pursuant to paragraph 8.

10. Each Party shall permit an exporter or a producer whose good or goods are the subject of a verification visit to designate two (2) observers to be present during the visit, provided that the observers do not participate in a manner other than as observers. The failure of the exporter or producer to designate observers shall not result in the postponement of the visit.

11. Each Party shall, through its competent authority, conduct a verification of the regional value content requirement, *de minimis* calculation, or any other provision in Chapter 4 (Rules of Origin) in accordance with the Generally Accepted Accounting Principles applied in the territory of the Party from which the good was exported.

12. Origin verification, as provided for in this Article, shall be conducted within one (1) year. Notwithstanding the above, in duly substantiated cases, this period may be extended once only in each case, as set out in the Uniform Regulations.

13. Within the time-frame mentioned in paragraph 12 or the extension provided for in the Uniform Regulations for conducting the origin verification, the competent authority shall provide the exporter or producer of the good or goods subject to the origin verification with a written determination of whether or not the good or goods qualify as originating, including findings of fact and the legal basis for the determination.

Each Party shall provide that, if its competent authority fails to issue a written determination of origin within the time-frame mentioned in paragraph 12 or the extension provided for in the Uniform Regulations, the good or goods subject to the origin verification shall be eligible for preferential tariff treatment.

14. Where verifications by a Party indicate a pattern of conduct by an exporter or a producer of false or unsupported representations that a good imported into its territory qualifies as an originating good, the importing Party may withhold preferential tariff treatment to identical goods exported or produced by such person until that person establishes compliance with Chapter 4 (Rules of Origin).

15. Each Party shall provide that where its competent authority determines that a good imported into its territory does not qualify as an originating good based on a tariff classification or a value applied by the Party to one or more materials used in the production of the good, which differs from the tariff classification or value applied to the materials by the Party from whose territory the good was exported, the importing Party's determination shall not become effective until it notifies in writing both the importer of the good and the person that completed and signed the certificate of origin for the good of its determination.

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

(a) The competent authority of the Party from the territory of which the good was exported has issued an advance ruling under Article 5.09 or any other ruling on the tariff classification or on the value of such materials, on which a person is entitled to rely; and

(b) such rulings were given prior to notification of the verification of origin.

Article 5.09

Advance Rulings

1. Each Party shall, through its competent authority, provide for the expeditious issuance of written advance rulings, prior to the importation of a good into its territory. Advance rulings shall be issued by the competent authority of the territory of the importing Party, at the request of an importer in its territory or an exporter or a producer in the territory of the other Party, on the basis of the facts and circumstances presented by them, concerning:

(a) Whether a good qualifies as an originating good under Chapter 4 (Rules of Origin);

(b) whether non-originating materials used in the production of a good undergo a change in tariff classification, as set out in Annex 4.03 (Specific Rules of Origin);

(c) whether a good satisfies a regional value content requirement established in Chapter 4 (Rules of Origin);

(d) whether the method applied by an exporter or a producer in the territory of the other Party, in accordance with the principles of the Customs Valuation Agreement, for calculating the value of the good or of the materials used in the production of the good for which an advance ruling is requested is suitable for determining whether the good complies with the regional value content under Chapter 4 (Rules of Origin);

(e) whether a good that re-enters its territory after having been exported from its territory to the territory of the other Party for repair or alteration qualifies for preferential tariff treatment in accordance with Article 3.07 (Goods Re-Entered after Repair or Alteration); and

(f) such other matters as the Parties may agree.

2. Each Party shall adopt or maintain procedures for the issuance of advance rulings, including:

(a) The information reasonably required to process an application;

(b) the ability of its competent authority, at any time during the course of an evaluation of an application, to request supplemental information from the person requesting the ruling;

(d) the obligation of its competent authority to issue an advance ruling after it has obtained all necessary information from the person requesting such a ruling; and

(e) the obligation of its competent authority to issue the advance ruling with a full explanation of the reasons therefor.

3. Each Party shall apply an advance ruling to importations into its territory beginning on the date of its issuance or such later date as may be specified in the ruling, unless the advance ruling is modified or revoked under paragraph 5.

4. Each Party shall provide to any person requesting an advance ruling the same treatment, including the same interpretation and application of provisions of Article 3.07 (Goods Re-Entered after Repair or Alteration) and Chapter 4 (Rules of Origin) regarding a determination of origin, as it

provided to any other person to whom it issued an advance ruling, provided that the facts and circumstances are identical in all material respects.

5. An advanced ruling may be modified or revoked in the following cases:

(a) If the ruling is based on an error:

(i) Of fact;

(ii) in the tariff classification of a good or a material that is the subject of the ruling;

(iii) in the application of a regional value content requirement established in Chapter 4 (Rules of Origin); or

(iv) in the application of the rules for determining whether a good that re-enters its territory after having been exported from its territory to the territory of the other Party for repair or alteration qualifies for duty-free treatment under Article 3.07 (Goods Re-Entered after Repair or Alteration);

(b) if the ruling is not in accordance with an interpretation agreed upon by the Parties regarding Chapter 3 (National Treatment and Market Access for Goods) or Chapter 4 (Rules of Origin);

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

(d) to conform with a modification of this Chapter, Chapter 3 (National Treatment and Market Access for Goods), Chapter 4 (Rules of Origin) or the Uniform Regulations; or

(e) to conform with an administrative or judicial decision or a change in the domestic law of the Party that issued the advance ruling.

6. Each Party shall provide that any modification or revocation of an advance ruling shall be effective on the date on which it is issued, or on such later date as may be specified therein, and shall not be applied to importations of a good that have occurred prior to that date, unless the person to whom the advance ruling was issued has not acted in accordance with its terms and conditions.

7. Notwithstanding paragraph 6, the Party issuing the advance ruling shall postpone the entry into force of the modification or revocation for a period not exceeding 90 days, when the person to whom the advance ruling was issued acted in good faith to that person's detriment.

8. Each Party shall provide that where its competent authority examines the regional value content of a good for which it has issued an advance ruling, it shall evaluate whether:

(a) The exporter or producer has complied with the terms and conditions of the advance ruling;

(b) the exporter's or producer's operations are consistent with the material facts and circumstances on which the advance ruling is based; and

(c) the data and computations used in applying the basis or method for calculating value were correct in all material respects.

9. Each Party shall provide that where its competent authority determines that any requirement in paragraph 8 has not been satisfied, the competent authority may modify or revoke the advance ruling as the circumstances may warrant.

10. Each Party shall provide that where its competent authority determines that an advance ruling was based on incorrect information, the person to whom it was issued shall not be subject to penalties provided the person demonstrates that it used reasonable care and acted in good faith in presenting the facts and circumstances on which the ruling was based.

11. Each Party shall provide that where an advance ruling is issued to a person that has misrepresented or omitted material facts or circumstances on which the ruling is based or has failed to act in accordance with the terms and conditions of the ruling, the competent authority that issued the ruling may apply such measures as the circumstances may warrant, under its domestic law.

12. The Parties shall provide that the person to whom an advance ruling has been issued shall only use it for as long as the facts or circumstances on which the ruling is based continue. Should they no longer apply, the person to whom the advance ruling was issued may present information to enable the administration that issued the ruling to proceed under paragraph 5.

13. No good subject to a verification of origin or to a review or appeal body in the territory of any of the Parties shall be the subject of an advance ruling.

Article 5.10

Review and Appeal

1. Each Party shall grant to the exporters or producers of the other Party the same rights of review and appeal of determinations of origin and advance rulings as it provides to its importers, provided that:

(a) They complete and sign a certificate or declaration of origin for a good that has been the subject of a determination of origin pursuant to Article 5.08(13); or

(b) they have received an advance ruling pursuant to Article 5.09.

2. The rights referred to in paragraph 1 shall include access to at least one level of administrative review independent of the official or office responsible for the determination or advance ruling under review; and access to a judicial review of the determination or decision taken at the final level of administrative review, in accordance with the law of each Party.

Article 5.11

Penalties

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

2. Nothing in Article 5.03(1)(d), 5.03(2), 5.04(2) 5.08(4), 5.08(7) or 5.08(9) shall be construed to prevent a Party from applying such measures as the circumstances may warrant, under its law.

Article 5.12

Uniform Regulations

1. The Parties shall establish and implement, under their respective laws and regulations, on the date on which this Agreement enters into force and at any subsequent time, Uniform Regulations regarding the interpretation, application and administration of this Chapter, Chapter 3 (National Treatment and Market Access for Goods), Chapter 4 (Rules of Origin) and other matters as may be agreed by the Parties.

2. The Parties undertake to complete the negotiation of the Uniform Regulations within 60 days of the signing of this Agreement.

3. Once the Uniform Regulations come into effect, each Party shall implement any modification thereof or addition thereto within 180 days of the Parties agreeing on such modification or addition or such other period as the Parties may agree.

Article 5.13

Cooperation

1. Insofar as is possible, each Party shall notify the other Party of the following measures, rulings and determinations, including those that are prospective in application:

(a) A determination of origin issued as the result of an origin verification conducted pursuant to Article 5.08, after the avenues for review and appeal referred to in Article 5.10 have been exhausted;

(b) a determination of origin that the Party considers to be contrary to a ruling issued by the competent authority of the other Party with respect to the tariff classification or value of a good or of materials used in the production of a good;

(c) a measure establishing or significantly modifying an administrative policy that could affect future determinations of origin; and

(d) an advance ruling or a modification thereof, pursuant to Article 5.09.

2. The Parties shall cooperate:

(a) In the enforcement of their respective customs-related laws or regulations implementing this Agreement, and under any customs mutual assistance agreement or other customs-related agreement to which they are party;

(b) for purposes of facilitating the flow of trade among them, in such customs-related matters as the collection and exchange of statistics on the importation and exportation of goods, the harmonization of documentation used in trade, the standardization of data elements, the acceptance of an international data syntax and the exchange of information;

(c) in the exchange of customs regulations;

(d) in the verification of origin of a good, to which end the competent authority of the importing Party may request the competent authority of the other Party to carry out

given investigations for that purpose in its territory and to issue the respective report to the competent authority of the importing Party;

(e) in seeking mechanisms for the detection and prevention of unlawful transhipments of goods from a Party or a non-Party; and

(f) in jointly organizing training programmes on customs matters, which include training for officials and users who participate directly in customs procedures related to the origin of the good.

Article 5.14

Recognition and Acceptance of Certificates of Provenance

1. Notwithstanding paragraph 4, the Parties establish the certificate of provenance for the purpose of identifying goods that are re-exported from a duty-free area of a Party to the territory of the other Party as goods from a third country, provided that the following is observed:

(a) The goods have remained under Customs supervision by the re-exporting Party;

(b) the goods have not undergone subsequent transformation or any other operation, except commercialization, unloading, reloading or whatever other operation is deemed necessary for the adequate maintenance of those goods; and

(c) there is documentary evidence to that effect.

2. Pursuant to paragraph 1, each Party shall require that a re-exporter of goods located in the free zone shall complete and sign a certificate of provenance, which shall be authenticated by the customs authority and by the administrative authorities of the re-exporting free zone and shall cover a single importation of one or more goods to its territory.

3. Each Party, through its customs authority, may require that importers within its territory, when importing from duty-free zones goods for which they are requesting tariff preferences present at the time of importation the corresponding certificate of provenance and provide a copy thereof when requested by the customs authority for goods that qualify as originating under trade agreements or arrangements signed by the importing Party with third countries.

4. Subject to compliance with paragraphs 5 and 6, each Party shall provide that imports of goods accompanied by a certificate of provenance and qualifying as originating under other trade agreements or arrangements signed by the importing Party with third countries do not lose the tariff preference or benefit accorded by the importing Party simply because they come from a duty-free zone.

5. For the purposes of the application of paragraph 4, the Parties shall:

(a) Jointly establish a mechanism for the administration and control of these goods; and

(b) require the presentation of a certificate of origin issued by third countries benefiting from the preferential tariff treatment indicated in the above paragraph.

6. For the purposes of this Article, to ensure that goods originating in third countries with which the Parties have existing trade agreements are entitled to the tariff preferences set out therein, the Party and the third country, under their own legislation, will have to agree to provide that a good for which preferential tariff treatment is requested does not lose its originating status when re-exported or marketed through a free zone.

CHAPTER 6: SAFEGUARD MEASURES

Article 6.01

Definitions

For the purposes of this Chapter:

Agreement on Safeguards means the Agreement on Safeguards that is part of the WTO Agreement;

threat of serious injury means "threat of serious injury" as defined in the Agreement on Safeguards;

investigating authority means "investigating authority" as defined in Annex 6.01;

critical circumstances means circumstances where delay in taking a safeguard measure would cause injury that would be difficult to repair;

serious injury means "serious injury" as defined in the Agreement on Safeguards;

safeguard measure means any tariff measure applied pursuant to this Chapter. It does not include any safeguard measure pursuant to a procedure initiated before this Agreement enters into force;

transition period means the Tariff Elimination Programme, plus two (2) years, with the exception of products which enjoy free trade between the Parties pursuant to the bilateral agreements to which they are party, in which case the transition period shall be one (1) year;

domestic industry means the producers as a whole of the like or directly competitive good operating in the territory of a Party or those whose joint production of the like or directly competitive good constitutes a significant percentage of total domestic production of that good; and

causal relationship means "causal relationship" as defined in the Agreement on Safeguards.

Article 6.02

Bilateral Safeguard Measures

1. For the application of bilateral safeguard measures, the investigating authority shall conform to the provisions of this Chapter and, supplementarily, to the provisions of Article XIX of the GATT 1994, the Agreement on Safeguards and its domestic law.

2. Subject to paragraphs 4 through 6, and during the transition period, safeguard measures may be taken if, as a result of the reduction or elimination of a duty provided for in this Agreement, a good originating in the territory of a Party is being imported into the territory of the other Party in such increased quantities, in relation to domestic production, and under such conditions that the imports of the good from that Party alone constitute a substantial cause of serious injury, or threat thereof, to a domestic industry producing a like or directly competitive good, the Party into whose territory the good is being imported may, to the minimum extent necessary to remedy or prevent the serious injury or threat thereof:

(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-favoured-nation applied rate of duty in effect at the time the measure is taken; and

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

3. The following conditions and limitations shall apply to a proceeding that may result in safeguard measures under paragraph 2:

(a) A Party shall, without delay, deliver to the other Party written notice of the institution of a proceeding that could result in a safeguard measure against a good originating in the territory of this other Party;

(b) any such measure shall be initiated no later than one year after the date of institution of the proceeding;

(c) no measure may be maintained:

(i) For a period exceeding two (2) years, extendable for one (1) additional consecutive year in accordance with the procedure established in Article 6.04(21); or

(ii) beyond the expiration of the transition period, except with the consent of the Party against whose good the measure is taken;

(d) the Parties may apply and extend the application of a safeguard measure to the same good no more than twice during the transition period;

(e) a safeguard measure may be applied a second time provided a minimum period equivalent to one half of the period during which the safeguard measure was applied for the first time has elapsed;

(f) the period during which a provisional safeguard measure has been applied shall be computed for the purpose of determining the duration of the final safeguard measure established in subparagraph (c);

(g) provisional safeguard measures that do not become final are excluded from the limitation established in (d);

(h) during an extension of a safeguard measure, the duty shall be gradually reduced to the level that applies under the Tariff Elimination Programme; and

(i) upon termination of the safeguard measure, the duty shall be the duty that applies under the Tariff Elimination Programme.

4. In critical circumstances where delay would cause damage which it would be difficult to repair, the Parties may apply bilateral provisional safeguard measures pursuant to a preliminary determination that there is clear evidence that imports from the other Party have increased as the result of the reduction or elimination of a customs duty under this Agreement at a rate and in conditions which cause serious injury or threat of serious injury. The duration of the provisional safeguard measures may not exceed 120 days.

5. A Party may apply a safeguard measure after the expiration of the transition period to deal with cases of serious injury, or threat thereof, to a domestic industry arising from the operation of this Agreement only with the consent of the other Party.

6. The Party taking a measure under this Article shall provide the other Party with mutually agreed 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. If the Parties are unable to agree on compensation, the Party against whose good the measure is taken may take tariff action having trade effects substantially equivalent to the measure taken under this Article. The Party shall apply the tariff measure only for the minimum period necessary to achieve the substantially equivalent effects.

Article 6.03

Global Safeguard Measures

1. Each Party shall retain its rights and obligations under Article XIX of the GATT 1994 and the Agreement on Safeguards except those regarding compensation or retaliation and exclusion from a safeguard measure to the extent that such rights or obligations are inconsistent with this Article.

2. A Party taking a safeguard measure under paragraph 1 shall exclude imports of a good from the other Party from the measure unless:

(a) Imports from the other Party account for a substantial share of total imports; and

(b) imports from the other Party contribute importantly to the serious injury, or threat thereof, caused by total imports.

3. In determining whether:

(a) Imports from the other Party account for a substantial share of total imports, those imports normally shall not be considered substantial if that Party is not among the top five suppliers of the good subject to the proceeding, measured in terms of import share during the most recent three-year period; and

(b) imports from the other Party contribute importantly to the serious injury, or threat thereof, the competent investigating authority shall consider such factors as the change in the import share of the other Party, and the level and change in the level of imports of the other Party. In this regard, imports from a Party normally shall not be deemed to contribute importantly to serious injury, or the threat thereof, if the growth rate of imports from a Party during the period in which the injurious surge in imports occurred is appreciably lower than the growth rate of total imports from all sources over the same period.

4. A Party shall, without delay, deliver written notice to the other Party of the institution of a proceeding that may result in safeguard measures under paragraph 1.

5. No Party may impose restrictions on a good in a measure under paragraph 1 without delivery of prior written notice to the Commission, and without adequate opportunity for consultation with the other Party, as far in advance of taking the measure as practicable.

6. Where a Party determines to take a measure pursuant to this Article to originating goods of the other Party, the measure it applies to the originating goods of the other Party shall consist, solely and exclusively, of tariff measures.

7. The Party taking a measure pursuant to this Article shall 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.

8. If the Parties are unable to agree on compensation, the Party against whose good the measure is taken may take measures having trade effects substantially equivalent to the measure taken under paragraph 1.

Article 6.04

Administration of Safeguard Measure Proceedings

1. Each Party shall ensure the consistent and impartial administration of its laws, regulations, rulings and determinations governing all safeguard measure proceedings.

2. Each Party shall entrust determinations of serious injury, or threat thereof, in safeguard measure proceedings to an investigating authority, subject to review in judicial or administrative proceedings, to the extent provided by domestic law. Negative injury determinations shall not be subject to modification, on its own motion, by the investigating authority. The investigating authority empowered under domestic law to conduct such proceedings shall be provided with all the resources necessary to enable it to fulfil its mandate.

3. Each Party shall adopt or maintain equitable, timely, transparent and effective procedures for safeguard measure proceedings, in accordance with the requirements set out in this Article.

Institution of a proceeding

4. The investigating authority may institute a proceeding on its own motion or under a petition presented by entities empowered to take action under its domestic law. The entity filing the petition shall demonstrate that it is representative of the domestic industry producing a good like or directly competitive with the imported good. For that purpose, a substantial share may not be less than 25 per cent.

5. Except as otherwise provided in this Article, the time periods governing such procedures shall be those established in the domestic law of each Party.

Contents of a petition

6. An entity representative of a domestic industry that files a petition to initiate an investigation shall provide the following information to the extent that such information is publicly available from governmental or other sources, or best estimates and the basis therefor if such information is not available:

(a) Product description - the name and description of the imported good concerned, the tariff subheading under which that good is classified, its current tariff treatment and the name and description of the like or directly competitive domestic good concerned;

(b) representativeness:

(i) The names and addresses of the entities filing the petition and the locations of the establishments in which they produce the domestic good;

(ii) the percentage of domestic production of the like or directly competitive good that such entities account for and the basis for claiming that they are representative of an industry; and

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

(c) import data - import data for each of the three (3) most recent full years immediately prior to the initiation of a procedure to apply a safeguard measure that form the basis of the claim that the good concerned is being imported in increased quantities, either in absolute terms or relative to domestic production as appropriate;

(d) domestic production data - data on total domestic production of the like or directly competitive good for each of the three (3) most recent full years immediately prior to the initiation of a procedure to apply a safeguard measure;

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

(f) cause of injury - an enumeration and description of the alleged causes of the injury, or threat thereof, and a summary of the basis for the assertion that increased imports of the good are causing or threatening to cause serious injury to the domestic industry, supported by pertinent data; and

(g) criteria for inclusion - quantitative and objective data indicating the share of imports accounted for by imports from the territory of the other Party and the petitioner's views on the extent to which such imports are significantly contributing to the serious injury, or threat thereof.

7. Petitions, with the exception of confidential information therein, shall promptly be made available for public inspection after filing.

Consultations

8. As soon as possible after a petition meeting the requirements of paragraph 6 is presented and, in any event, prior to the initiation of an investigation, the Party that intends to initiate it shall notify the other Party and invite it to hold consultations on the situation.

9. During the entire investigation period, the Party whose goods are under investigation shall be given adequate opportunity to continue the consultations.

10. At the consultations, the Parties may discuss, among other matters, the investigation proceeding, elimination of the measure, the matters referred to in Article 6.02(5) and, in general, exchange opinions on the measure.

11. Notwithstanding the obligation to provide adequate opportunity for consultations, the provisions on consultations in paragraphs 8, 9 and 10 are not intended to impede the authorities of a Party from promptly initiating an investigation or formulating positive or negative preliminary or final determinations or taking measures in accordance with the provisions of this Agreement.

12. The Party that is performing an investigation shall give, when requested, the Party whose goods are under investigation access to the public file, including the non-confidential summary of the confidential information used to initiate the investigation or during its course.

Notice requirement

13. On instituting a safeguard measure proceeding, the investigating authority shall, in accordance with the national legislation of each Party, publish notice of the institution of the proceeding in the official journal or a national newspaper within 30 days after presentation of the petition. The other Party shall be notified of that publication without delay, in writing. The notice shall identify the petitioner, the imported good that is the subject of the proceeding and its tariff subheading, the nature and timing of the determination to be made, the place at which the petition and any other documents filed in the course of the proceeding may be inspected, and the name, address and telephone number of the office to be contacted for more information. The deadlines for submitting evidence and filing briefs, statements and other documents shall be established pursuant to the domestic law of each Party.

14. With respect to a safeguard measure proceeding instituted on the basis of a petition filed by an entity asserting that it is representative of the domestic industry, the investigating authority shall not publish the notice required by paragraph 13 without first assessing carefully that the petition meets the requirements of paragraph 6.

Public hearing

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

(a) Notwithstanding the Party's law, after providing reasonable notice, notify the interested parties fifteen (15) days beforehand of the time and place of the public hearing to allow importers, exporters, consumer associations and other interested parties to appear in person or by counsel to present evidence and arguments and to be heard on the questions of serious injury, or threat thereof, and the appropriate remedy; and

(b) provide an opportunity for all interested parties to appear at the hearing to cross-question interested parties making presentations at that hearing.

Confidential information

16. For the purposes of Article 6.02, the investigating authority shall adopt or maintain procedures for the treatment of confidential information, protected under domestic law, that is provided in the course of a proceeding, including a requirement that interested parties providing such information furnish non-confidential written summaries thereof. Where the interested parties indicate that the information cannot be summarized, the reasons why a summary cannot be provided shall be stated. The authorities may disregard that information, unless it is convincingly demonstrated by appropriate sources that the information is correct.

17. The investigating authority shall not disclose any confidential information provided pursuant to any commitment regarding confidentiality it has made during the proceeding.

Evidence of injury or threat thereof

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

Deliberation and report

19. Except in critical circumstances and in global measures involving perishable agricultural goods, the investigating authority, before making an affirmative determination in a safeguard measure proceeding, shall allow sufficient time to gather and consider the relevant information, hold a public hearing and provide an opportunity for all interested parties to prepare and submit their views.

20. The final determination shall be promptly published in the official journal or a national newspaper, setting out the findings and reasoned conclusions on all pertinent issues of law and fact. The determination shall describe the imported good and its tariff item number, the standard applied and the finding made. The statement of reasons shall set out the basis for the determination, including a description of:

(a) The domestic industry seriously injured or threatened with serious injury;

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

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

Extension

21. Where the importing Party determines that the grounds that gave rise to the bilateral safeguard measure persist, it shall notify the competent authority of the other Party of its intention to extend the measure, at least 90 days in advance of its expiry, and shall provide evidence that the reasons for its adoption persist, in order to initiate the respective consultations, which shall be held as provided in this Article.

22. Furthermore, the entity representative of the domestic industry which files the request for an extension shall submit an adjustment plan, including variables which the domestic industry or production concerned is able to control, to overcome the serious injury or threat thereof.

23. Notifications of extensions and compensation shall be made in the terms established in this Article, prior to the expiry of the measures applied.

Article 6.05

Dispute Settlement in Safeguard Measure Matters

No Party may request the establishment of an arbitral panel under Article 20.08 (Request for an Arbitral Panel) regarding any safeguard measure that has simply been proposed.

ANNEX 6.01

Investigating Authority

For the purposes of this Chapter, the investigating authority shall be:

(a) For Costa Rica, the authority determined in its domestic law;

(b) for El Salvador, the technical unit responsible for investigating situations that may warrant safeguard measures, reporting to the Ministry of Economic Affairs ("Ministerio de Economía") or its successor;

(c) for Guatemala, the technical unit responsible for investigating situations that may warrant safeguard measures, reporting to the Ministry of Economic Affairs ("Ministerio de Economía") or its successor;

(d) for Honduras, the technical unit responsible for investigating situations that may warrant safeguard measures, reporting to the Secretariat of State for Industry and Trade ("Secretaría de Estado en los Despachos de Industria y Comercio") or its successor;

(e) for Nicaragua, the technical unit responsible for investigating situations that may warrant safeguard measures, reporting to the Ministry of Development Industry and Trade ("Ministerio de Fomento, Industria y Comercio") or its successor; and

(f) for Panama, the Commission for Free Competition and Consumer Affairs ("Comisión de Libre Competencia y Asuntos del Consumidor") or its successor.

CHAPTER 7: UNFAIR TRADING PRACTICES

Article 7.01

Scope and Coverage

1. The Parties confirm their rights and obligations as established in Articles VI and XVI of the GATT 1994, the Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994 and the Agreement on Subsidies and Countervailing Measures, which are part of the WTO Agreement. In this respect, the Parties shall ensure that their legislation is in accordance with the commitments assumed under these Agreements.

2. Each Party may initiate an investigation and apply countervailing or anti-dumping duties, in accordance with this Chapter, the Agreements and Articles referred to in paragraph 1 and its domestic law.

Article 7.02

Duration of Investigations into Unfair Trading Practices

The authority shall immediately terminate the investigation, without the imposition of definitive anti-dumping duties, in cases where it has extended beyond a period of eighteen (18) months as of the date of declaration of initiation of the investigation.

Article 7.03

Initiation of Back-to-Back Investigations

Within a period of twelve (12) months of the date of a final ruling finding the imposition of an anti-dumping duty inappropriate, no new investigation into the same product from the same Party shall be initiated, unless the domestic industry requesting the initiation of a new investigation is made up of producers whose collective output accounts for at least fifty (50) per cent of the total production of the like product produced by the domestic industry.

Article 7.04

Duration of Anti-Dumping Duties

Any definitive anti-dumping duty shall be terminated within a period of not more than sixty (60) months from the date of imposition and may not be extended.

Article 7.05

Establishment of Anti-Dumping Duties

The authority shall establish an anti-dumping duty, whether provisional or definitive, which is less than the dumping margin where such lesser duty is adequate to remove the injury to the domestic industry.

Article 7.06

Future Work Programme

1. The Parties share the objective of promoting significant reforms in this field to prevent measures of this kind from becoming concealed barriers to trade. The Parties shall cooperate in the effort to achieve such reforms within the framework of the World Trade Organization (WTO) and the Free-Trade Area of the Americas (FTAA).

2. At least two (2) years after the entry into force of this Agreement for all Parties, they shall establish a work programme to analyze criteria for further developing the application of the following concepts, *inter alia*:

(a) Determination of the reasonable profit margin; and

(b) determination of a threat of material injury.

PART THREE: TECHNICAL BARRIERS TO TRADE

CHAPTER 8: SANITARY AND PHYTOSANITARY MEASURES

Article 8.01

Definitions

For the purposes of this Chapter, the Parties shall use the definitions and terms established:

(a) In the Agreement on the Application of Sanitary and Phytosanitary Measures, which is part of the WTO Agreement (hereinafter the SPS Agreement);

(b) by the International Office of Epizootics (hereinafter the OIE);

(c) in the International Plant Protection Convention (hereinafter the IPPC);

(d) by the Codex Alimentarius Commission, hereinafter the "Codex"; and

(e) by other international organizations of which the Parties are members and the use of which is agreed by the Parties.

Article 8.02

General Provisions

1. The competent authorities are the authorities with legal responsibility for ensuring compliance with the sanitary and phytosanitary requirements established in this Chapter.

2. Based on the SPS Agreement, the Parties establish a framework of rules and disciplines that guide the adoption of and compliance with sanitary and phytosanitary measures, and therefore the provisions of this Chapter refer to the principles, rules and procedures relating to the sanitary and phytosanitary measures which regulate or which may, directly or indirectly, affect trade among the Parties.

3. Through mutual cooperation, the Parties shall facilitate trade that presents no sanitary or phytosanitary risks and undertake to prevent the introduction or spread of pests and diseases and to improve plant and animal health and food safety.

Article 8.03

Rights of the Parties

In accordance with the SPS Agreement, the Parties may:

(a) Establish, adopt, maintain or apply any sanitary or phytosanitary measure in their territory only to the extent necessary to protect human (food safety) and animal life and health, or to preserve plant health, even measures that are stricter than an international measure, standard, guideline or recommendation, providing there is scientific justification for doing so;

(b) apply their sanitary and phytosanitary measures only to the extent necessary to achieve an appropriate level of protection, taking into account technical and economic feasibility; and

(c) verify that plants, animals and their products and by-products for export are subject to strict sanitary and phytosanitary monitoring that ensures compliance with the sanitary and phytosanitary requirements of the importing Party.

Article 8.04

Obligations of the Parties

1. Sanitary and phytosanitary measures shall not constitute a disguised restriction on trade or create unnecessary obstacles to trade among the Parties.

2. Sanitary and phytosanitary measures shall be based on scientific principles, be maintained only where there are sufficient grounds and be based on an appropriate risk assessment, taking technical and economic feasibility into consideration.

3. Sanitary and phytosanitary measures shall be based on international measures, standards, guidelines or recommendations, except where it is scientifically demonstrated that such measures, standards, guidelines or recommendations are not an effective or adequate means of protecting human (food safety) and animal life and health, or of preserving plant health in the territory of a Party.

4. Where identical or similar conditions exist, a sanitary or phytosanitary measure shall not discriminate arbitrarily or unjustifiably between the goods of a Party and like goods of the other Party or between the goods of the other Party and like goods of a non-Party.

5. Where one Party considers that a sanitary or phytosanitary measure of the other Party is interpreted or applied in a manner that is inconsistent with the provisions of this Chapter, it shall be required to demonstrate that inconsistency.

Article 8.05

International Standards and Harmonization

To expeditiously apply sanitary and phytosanitary measures in the territory of the Parties, thereby facilitating trade flows, procedures for control, inspection and approval of sanitary and phytosanitary measures shall be based on the following principles:

(a) Each Party shall use international standards, guidelines or recommendations as the basis for its sanitary and phytosanitary measures, in order to harmonize them or make them compatible with those of the other Party;

(b) notwithstanding subparagraph (a), the Parties may adopt, apply, establish or maintain a sanitary or phytosanitary measure that offers a level of protection different from that which would be achieved by measures based on an international standard, guideline or recommendation, or which is stricter, if there is scientific justification;

(c) to achieve closer harmonization, the Parties shall follow the guidelines of the competent international organizations - the IPPC for plant health, the OIE for animal health, and the standards of the Codex with respect to food safety and tolerance limits;

(d) the Parties shall also take into consideration the standards, guidelines and recommendations of other international organizations of which they are members; and

(e) the Parties undertake to establish harmonized sanitary and phytosanitary systems for sampling, diagnosis, inspection and certification of animals, plants, their products and by-products and food safety.

Article 8.06

Equivalence

To more expeditiously apply sanitary and phytosanitary measures in the territory of the Parties, thereby facilitating trade flows, control, inspection and approval procedures shall be applied in accordance with the following principles:

(a) Without reducing the appropriate level of protection of human (food safety) and animal life and health or of preservation of plant health in their territory, the Parties shall accept to the fullest extent possible, their sanitary and phytosanitary measures as equivalent;

(b) each Party shall accept the sanitary and phytosanitary measures of the other Party as equivalent, even if they differ from its own, providing the other Party objectively demonstrates through scientific information and risk assessment methods agreed to by them, that the measures achieve an adequate level of protection; and

(c) to establish equivalencies between their sanitary and phytosanitary measures, the Parties shall facilitate access to their territory for the purposes of inspection, testing and other pertinent measures.

Article 8.07

Risk Assessment and Determination of the Appropriate Level of Sanitary and Phytosanitary Protection

On the basis of the guidelines issued by the competent international organizations:

(a) The Parties shall ensure that their sanitary and phytosanitary measures are based on an adequate assessment, as appropriate to the circumstances, of the risks to human (food safety) and animal life and health or to the preservation of plant health, taking into account the guidelines and risk assessment techniques established by the competent international organizations;

(b) the Parties shall provide the necessary facilities for assessing sanitary and phytosanitary services through existing procedures for verifying controls, inspections, approval procedures and the application of sanitary and phytosanitary measures and programmes on the basis of the guidelines and recommendations of the international organizations recognized by the WTO;

(c) in assessing the risk posed by a good and establishing the appropriate level of protection, the Parties shall take account of factors such as the following:

(i) The scientific and technical information available;

(ii) the existence of pests or diseases and the recognition of pest- and disease-free areas and areas of low pest and disease prevalence;

(iii) the epidemiology of quarantine pests and diseases;

(iv) an analysis of critical control points for sanitary (food safety) and phytosanitary aspects;

(v) food additives and physical, chemical and biological contaminants;

(vi) pertinent ecological and environmental conditions;

(vii) production processes and methods, and inspection, sampling and testing methods;

(viii) the structure and organization of sanitary and phytosanitary services;

(ix) protection, epidemiological surveillance, diagnosis and treatment procedures to ensure food safety;

(x) production or sales losses in the event of the entry, establishment, propagation or spread of a pest or disease;

(xi) quarantine measures and applicable treatments to satisfy the importing Party with respect to risk mitigation; and

(xii) pest or disease control or eradication costs in the territory of the importing Party and the cost-effectiveness ratio of other possible risk reduction methods;

(d) in establishing their appropriate level of protection, the Parties shall take into account the objective of minimizing the negative effects on trade and, with the purpose of achieving consistency in protection levels, shall avoid arbitrary or unjustifiable distinctions that could lead to discrimination or which constitute a disguised restriction on trade among the Parties;

(e) where the importing Party performs a risk assessment and concludes that the scientific information is insufficient, it may adopt a provisional sanitary or phytosanitary measure on the basis of the available scientific information, including information from the competent international organizations recognized by the WTO and the sanitary measures applied by the other Party, for which the following procedure shall be applied:

(i) the importing Party which takes the provisional measure shall, within 30 days of taking the measure, ask the other Party for all the technical information necessary for completing the risk assessment; if the importing Party fails to request the information within this period, the provisional measure shall be withdrawn;

(ii) if the importing Party requests the information, it shall have a maximum of 60 days as of the presentation of such information to immediately modify the provisional measure and either withdraw it or impose it as a definitive measure. If this deadline is not met, the importing Party shall withdraw the provisional measure immediately;

(iii) the importing Party may seek clarification with regard to the information submitted for a period of 30 days as the date of its receipt;

(iv) the importing Party shall allow the exporting Party to submit its comments and shall take these into consideration in the conclusion of the risk assessment; and

(v) the adoption or modification of the provisional sanitary or phytosanitary measure shall be immediately notified to the other Party through the enquiry points established under the SPS Agreement;

(f) a risk analysis conducted by a Party shall be performed within the period of time previously agreed to by the Parties. If the results of the analysis indicate refusal of the importation, the scientific basis for the decision shall be notified in writing; and

(g) where a Party has reason to believe that a specific sanitary or phytosanitary measure established or maintained by the other Party restricts or may restrict its exports and that measure is not based on pertinent international standards, guidelines or recommendations, or such international standards, guidelines or recommendations do not exist, it may ask for an explanation of the reasons for those sanitary and phytosanitary measures and the Party that maintains the measures shall provide an explanation within 30 days after the date on which the competent authority receives the request.

Article 8.08

Recognition of Pest- or Disease-Free Areas and Areas of Low Pest or Disease Prevalence

1. On the basis of international guidelines and recommendations, the Parties shall recognize pest- or disease-free areas and areas of low pest or disease prevalence, giving consideration to geographic location, ecosystems, epidemiological surveillance and the effectiveness of sanitary or phytosanitary controls in such areas, among the main factors.

2. A Party that declares an area in its territory to be free from a given pest or disease shall demonstrate that condition objectively to the importing Party and give it assurances that the area shall be maintained as such, based on the protection measures adopted by the heads of the sanitary or phytosanitary services.

3. A Party interested in obtaining recognition of an area as free from a given pest or disease shall submit an application to the other Party and provide it with the corresponding scientific and technical information.

4. A Party receiving the application for recognition shall take a decision within a period agreed upon in advance with the other Party and may conduct verifications involving inspections, testing and other procedures. In the event it refuses the application, it shall give the technical reasons for its decision in writing.

5. The Parties shall agree on specific requirements compliance with which shall permit a good produced in an area of low pest or disease prevalence to be imported if the appropriate level of protection is provided, in accordance with Annex A, paragraph 7, of the SPS Agreement.

Article 8.09

Control, Inspection and Approval Procedures

1. Pursuant to this Chapter, the Parties shall apply the provisions of Annex C to the SPS Agreement, relating to control, inspection and approval procedures, including systems for approving the use of additives and for establishing tolerances for contaminants in foods, beverages or feedstuffs.

2. When the competent authority of the exporting Party first requests that the competent authority of the importing Party conduct an inspection of a productive unit or productive processes in its territory, the competent authority of the importing Party shall conduct such inspection within a maximum of 90 days of the date on which the request was made, except for the first year following the entry into force of the Agreement when the competent authorities of Panama shall have a deadline of 105 days. Upon completion of the inspection, the competent authority of the importing Party shall issue a reasoned decision on the outcome of the inspection and shall notify it to the exporting Party within a maximum of 30 days of the date on which the inspection was competed.

If the competent authority of the importing Party fails to meet the aforementioned deadlines, the competent authority of the exporting Party may apply in writing to the competent authority of the importing Party for consultations to be held pursuant to Chapter 20 (Dispute Settlement).

3. Productive units or productive processes certified in the importing Party shall apply for renewal at least 120 days before their current certification expires. Productive units or productive processes which respect the deadline specified in this paragraph will be permitted by the competent authorities of the importing Party to continue to export until such time as the corresponding inspection procedures are completed. Productive units or productive processes which do not apply for renewal before the 120-day deadline shall be governed by the procedure set out in paragraph 2.

4. Certification of productive units or productive processes issued by the competent authorities of the importing Party shall be valid for a minimum of one (1) year.

Transitory paragraph

Upon the entry into force of this Agreement, productive units or productive processes the certification of which expires prior to the 120-day deadline may apply for renewal within a period of not more than 120 days from the date of entry into force of this Agreement. Productive units or productive processes which respect the deadline specified in this paragraph will be permitted by the competent authorities of the importing Party to continue to export until such time as the corresponding inspection procedures are completed. Productive units or productive processes which do not apply for renewal by the deadline laid down in this paragraph shall be governed by the procedure set out in paragraph 2.

Article 8.10

Transparency

1. Each Party, when proposing the adoption or modification of a sanitary or phytosanitary measure of general application on the central level, shall notify through its competent authorities:

(a) The adoption and modification of such measures. It shall also facilitate information on the measures, in accordance with Annex B of the SPS Agreement, making the appropriate adaptations;

(b) changes or modifications in sanitary or phytosanitary measures with a significant effect on trade among the Parties, no less than 60 days prior to the entry into force of the new provision, to permit the other Party to comment. In emergency situations the term shall be waived, in accordance with Annex B of the SPS Agreement;

(c) changes in the field of animal health and the appearance of exotic diseases and diseases of List A of the OIE, within 24 hours of detection of the problem;

(d) changes in the field of plant health, such as the appearance of quarantine pests and diseases or the spread of pests and diseases under official control, within 72 hours of verification;

(e) findings of epidemiological importance and significant changes in relation to diseases and pests not included in (c) or (d) that could affect trade among the Parties, within a maximum of 10 days;

(f) outbreaks of diseases which it is scientifically proven are caused by the consumption of raw or processed imported food products; and

(g) the reasons for which a good of an exporting Party is rejected.

2. Parties shall use the notification authorities and enquiry points established in the SPS Agreement as channels of communication. In the event of safeguard measures, the Parties agree to notify each other in writing immediately, briefly indicating the objective of and justification for the measure, and the nature of the problem.

3. As provided in Article 18.02 (Contact Points), each Party shall respond to reasonable requests for information from the other Party and provide the pertinent documentation, in accordance with the principles established in Annex B, paragraph 3, of the SPS Agreement.

Article 8.11

Committee on Sanitary and Phytosanitary Measures

1. The Parties establish a Committee on Sanitary and Phytosanitary Measures, the composition of which is established in Annex 8.11.

2. The Committee shall examine matters relating to this Chapter and, without detriment to Article 19.05(2) (Committees), it shall:

(a) Promote the facilities needed for the training and specialization of technical staff;

(b) promote active participation by the Parties in international organizations; and

(c) establish and update a roster of qualified specialists in the fields of food safety, plant health and animal health for the purposes of Article 19.07 (Groups of Experts).

Article 8.12

Technical Cooperation

The Parties may provide the other Party with advisory assistance, information and technical cooperation, on mutually agreed terms and conditions, to strengthen its sanitary and phytosanitary measures, as well as related activities, processes and systems.

ANNEX 8.11

Committee on Sanitary and Phytosanitary Measures

The Committee on Sanitary and Phytosanitary Measures established in Article 8.11(1) shall be composed of:

(a) For Costa Rica, the Ministry of Foreign Trade ("Ministerio de Comercio Exterior") and the agencies responsible for applying sanitary and phytosanitary measures, as designated by the Ministry or their successors;

(b) for El Salvador, the Ministry of Economic Affairs ("Ministerio de Economía"), the Ministry of Agriculture and Livestock ("Ministerio de Agricultura y Ganadería") and the Ministry of Public Health and Social Welfare ("Ministerio de Salud Pública y Asistencia Social") or their successors;

(c) for Guatemala, the Ministry of Economic Affairs ("Ministerio de Economía"), the Ministry of Agriculture, Livestock and Food ("Ministerio de Agricultura, Ganadería y Alimentación") and the Ministry of Public Health and Social Welfare ("Ministerio de Salud Pública y Asistencia Social") or their successors;

(d) for Honduras, the Secretariat of State for Industry and Trade ("Secretaría de Estado en los Despachos de Industria y Comercio"), the Secretariat of State for Public Health ("Secretaría de Estado en el Despacho de Salud Pública") and the Secretariat of State for Agriculture and Livestock ("Secretaría de Estado en los Despachos de Agricultura y Ganadería"), or their successors;

(e) for Nicaragua, the Ministry of Development, Industry and Trade ("Ministerio de Fomento, Industria y Comercio"), the Ministry of Agriculture and Forests

("Ministerio Agropecuario y Forestal") and the Ministry of Health ("Ministerio de Salud") or their successors; and

(f) for Panama, the Ministry of Trade and Industry ("Ministerio de Comercio e Industria"), through the Vice-Ministry of Foreign Trade ("Viceministerio de Comercio Exterior"), the Ministry of Agricultural Development ("Ministerio de Desarrollo Agropecuario") and the Ministry of Health ("Ministerio de Salud") or their successors.

CHAPTER 9: STANDARDS-RELATED MEASURES, METROLOGY AND APPROVAL PROCEDURES

Article 9.01

Definitions

1. For the purposes of this Chapter:

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

assessment of risk means evaluation of the potential injury to legitimate objectives that could be caused by a good or service sold;

make compatible means bring different standards-related measures of the same scope approved by different standardizing bodies to a level such that they are either identical, equivalent or have the effect of permitting goods or services to be used in place of one another or fulfil the same purpose;

standards-related measure means a standard, technical regulation or conformity assessment procedure;

standard means a document, approved by a recognized body, that provides, for common and repeated use, rules, guidelines or characteristics for goods or related processes and production methods, or for services or related operating methods, with which compliance is not mandatory. It may also include or deal exclusively with terminology, symbols, packaging, marking or labelling requirements as they apply to a good, service, process or production method or a related operating method;

international standard means a standard or other guide or recommendation, adopted by an international standardizing body and made available to the public;

legitimate objective includes the imperatives of national security, the prevention of practices which may mislead consumers, the protection of human health and safety, of animal and plant life and health and of the environment;

international standardizing and metrology body means a standardizing body membership of which is open to the relevant bodies of at least all the Parties to the TBT Agreement, including the International Organization for Standardization (ISO), the International Electrotechnical Commission (IEC), the Codex Alimentarius Commission, the International Organization of Legal Metrology (OIML), the International Commission on Radiation Units and Measurements (ICRUM), or any other body that the Parties designate;

approval procedure means any mandatory administrative procedure to obtain a registration, permit, licence or any other authorization for a good or service to be produced, marketed or used for a stated purpose or under stated conditions;

conformity assessment procedure means any procedure used, directly or indirectly, to determine that a technical regulation or standard is fulfilled, including sampling, testing, inspection, evaluation, verification, assurance of conformity, registration, accreditation and approval, either separately or in different combinations;

administrative rejection means action taken by a public administration agency of the importing Party, in the exercise of its powers, to prevent the entry into its territory of a shipment or the provision of a service for non-compliance with technical regulations, conformity assessment procedures or metrology-related measures;

technical regulation means a document which lays down the characteristics of goods or their related processes and production methods, or the characteristics of services or their related operating methods, including the applicable administrative provisions, with which compliance is mandatory. It may also include or deal exclusively with terminology, symbols, packaging, marking or labelling requirements as they apply to a good, service, related process or production or operating method;

services means any service subject to standards-related measures, metrology-related measures or approval procedures pursuant to Article 9.12(g); and

comparable situation means a situation that ensures the same level of safety or protection to achieve a legitimate objective.

2. Except as otherwise defined in paragraph 1, the Parties shall use the terms contained in ISO/IEC Guide 2, "General Terms and Their Definitions Concerning Standardization and Related Activities".

Article 9.02

General Provisions

Apart from the provisions of the TBT Agreement, the Parties shall apply the provisions of this Chapter.

Article 9.03

Scope and Coverage

1. This Chapter applies to the standards-related measures, approval procedures and metrology-related measures of the Parties and related measures that may, directly or indirectly, affect trade in goods or services among them.

2. This Chapter does not apply to sanitary and phytosanitary measures.

Article 9.04

General Rights and Obligations

Right to adopt standards-related measures

1. Each Party may prepare, adopt, apply and maintain:

(a) Standards-related measures, approval procedures and metrology-related measures as established in this Chapter; and

(b) technical regulations and applicable conformity assessment procedures, to ensure the fulfilment of their legitimate objectives.

Unnecessary obstacles

2. No Party may prepare, adopt, maintain or apply any standards-related measure, approval procedure or metrology-related measure with the purpose or effect of creating an unnecessary obstacle to trade with the other Party.

Non-discriminatory treatment

3. Each Party shall, in respect of its standards-related measures, approval procedures and metrology-related measures, accord to goods and service providers of the other Party national treatment and treatment no less favourable than that it accords to like goods and the suppliers of like services of any other country.

Use of international standards

4. Each Party shall use, as a basis for preparing or applying its standards-related measures, approval procedures and metrology-related measures, relevant international standards or international standards the adoption of which is imminent, except where such standards would be an ineffective or inappropriate means to fulfil its legitimate objectives, because of fundamental climatic, geographical, technological or infrastructural factors or for scientifically proven reasons.

Article 9.05

Assessment of Risk

1. A Party may, in pursuing its legitimate objectives, conduct an assessment of risk, taking into account:

(a) Assessments of risk performed by international standardization organizations;

(b) available scientific evidence or technical information;

(c) related technology; or

(d) end uses of the goods or services.

2. Where a Party establishes a level of protection that it considers appropriate to achieve its legitimate objectives and conducts an assessment of risk, it shall avoid arbitrary or unjustifiable distinctions between similar goods or similar services, where the distinctions:

(a) Result in arbitrary or unjustifiable discrimination against goods or service providers of the other Party;

(b) constitute a disguised restriction on trade among the Parties; or

(c) discriminate between similar goods or similar services for the same use under the same conditions that pose the same level of risk and provide similar benefits.

3. A Party shall provide the other Party upon request with documentation on its risk-assessment processes and the factors it takes into account in conducting the assessment and in establishing the levels of protection, in accordance with Article 9.04.

Article 9.06

Compatibility and Equivalence

1. Without prejudice to the rights conferred under this Chapter, and taking into account international standardization and metrology activities, the Parties shall, to the greatest extent practicable, make compatible their respective standards-related and metrology-related measures without reducing the level of safety or of protection of human, animal or plant life or health, the environment or consumers.

2. Each Party shall treat a technical regulation adopted by the other Party as equivalent to its own where in cooperation with that other Party, the importing Party determines that the technical regulations of the exporting Party adequately fulfil the importing Party's legitimate objectives.

3. The importing Party shall provide to the exporting Party, on request, its reasons in writing for not treating a technical regulation as equivalent under paragraph 2.

Article 9.07

Conformity Assessment

1. Each Party shall prepare, adopt and apply conformity assessment procedures so as to grant access for similar goods and similar services originating in the territory of the other Party under conditions no less favourable than those accorded to suppliers of similar goods or similar services of the Party or of a non-Party in a comparable situation.

2. With respect to its conformity assessment procedures, each Party shall ensure that:

(a) Procedures are initiated and completed as expeditiously as possible, in a non-discriminatory order;

(b) the normal processing period for each such procedure is published or communicated to an applicant on request;

(c) upon receipt of an application, the competent body or authority promptly examines the completeness of the documentation and informs the applicant in a precise and complete manner of all deficiencies; the competent body transmits as soon as possible the results of the assessment in a precise and complete manner to the applicant so that corrective action may be taken if necessary; even when the application has deficiencies, the competent body proceeds as far as practicable with the conformity assessment if the applicant so requests; and upon request, the applicant is informed of the stage of the procedure, with any delay being explained;

(d) information requirements are limited to what is necessary to assess conformity and determine fees;

(e) the confidentiality of information about a good or service originating in the territory of the other Party arising from or supplied in connection with such conformity assessment procedures is respected in the same way as for a domestic good or service and in such a manner that legitimate commercial interests are protected;

(f) any fees imposed for assessing the conformity of a good or service originating in the territory of the other Party are equitable in relation to any fees chargeable for assessing the conformity of like goods or services of national origin, taking into account communication, transportation and other costs arising from differences between the location of facilities of the applicant and the conformity assessment body;

(g) the siting of facilities used in conformity assessment procedures and the selection of samples are not such as to cause unnecessary inconvenience to applicants or their agents;

(h) whenever specifications of a good or service are changed subsequent to the determination of its conformity to the applicable technical regulations or standards, the conformity assessment procedure for the modified good or service is limited to what is necessary to determine whether adequate confidence exists that the good or service still meets the technical regulations or standards concerned; and

(i) a procedure exists to review complaints concerning the operation of a conformity assessment procedure and to take corrective action when a complaint is justified.

3. To facilitate trade, a Party shall give sympathetic consideration to a request by the other Party to negotiate agreements for the mutual recognition of the results of their respective conformity assessment procedures.

4. Each Party shall, as far as practicable, accept the results of conformity assessment procedures conducted in the territory of the other Party, provided they offer satisfactory guarantees, equivalent to those provided by the procedures carried out by the accepting Party in its territory or which are carried out in its territory and the results of which it accepts, that the pertinent good or service conforms to the applicable technical regulation or standard adopted or maintained in the territory of that Party.

5. Before accepting the results of a conformity assessment procedure, as provided in paragraph 4, and with the aim of enhancing the sustained reliability of the results of the conformity assessment of each Party, the Parties may consult on aspects such as the technical capacity of conformity assessment bodies, including verified conformity with relevant international standards through methods such as accreditation.

6. Recognizing that this should be to the mutual advantage of the Parties, each Party shall accredit, approve or otherwise recognize the conformity assessment bodies in the territory of the other Party under conditions no less favourable than it accords to such bodies in its territory.

7. For conformity assessment procedures, the Parties may use the capacity and technical infrastructure of accredited bodies established in the territory of the Parties.

Article 9.08

Approval Procedures

1. Each Party shall prepare, adopt and apply approval procedures so as to grant access for similar goods and similar services from the territory of the other Party under conditions no less favourable than those accorded to suppliers of similar goods or similar services of the Party or of a non-Party in a comparable situation.

2. With respect to its approval procedures, each Party shall ensure that:

(a) Such procedures are initiated and completed as expeditiously as possible, in a non-discriminatory order;

(b) the normal processing period for each such procedure is published or communicated to an applicant on request;

(c) upon receipt of an application, the competent body or authority promptly examines the completeness of the documentation and informs the applicant in a precise and complete manner of all deficiencies; the competent body transmits as soon as possible the results of the approval in a precise and complete manner to the applicant so that corrective action may be taken if necessary; even when the application has deficiencies, the competent body proceeds as far as practicable with the approval if the applicant so requests; and upon request, the applicant is informed of the stage of the procedure, with any delay being explained;

(d) information requirements are limited to what is necessary to approve and determine fees;

(e) the confidentiality of information about a good or service originating in the territory of the other Party arising from or supplied in connection with such approval procedures is respected in the same way as for a domestic good or service and in such a manner that legitimate commercial interests are protected;

(f) any fees imposed for the approval procedure for a good or service originating in the territory of the other Party are equitable in relation to any fees chargeable for the approval procedure for like goods or services of national origin, taking into account communication, transportation and other costs arising from differences between the location of facilities of the applicant and the body conducting the approval procedure; and

(g) a procedure exists to review complaints concerning the operation of an approval procedure and to take corrective action when a complaint is justified.

Article 9.09

Metrology

Each Party shall, as far as practicable, ensure the documented traceability of its metrological standards and the calibration of its measuring instruments in accordance with the recommendations of the International Bureau of Weights and Measures (BIPM) and the International Organization of Legal Metrology (OIML), complying with the principles established in this Chapter.

Article 9.10

Notification

1. Where there is no pertinent international standard or the technical content of a technical regulation or conformity assessment procedure applicable to a planned technical regulation is not consistent with the technical content of the pertinent international standards and provided that the technical regulation could have a significant effect on trade among the Parties, each Party shall notify the other Party in writing of the proposed measure at least 60 days in advance of its adoption, to enable interested parties to submit comments and consultations during that period and permit the notifying Party to take them into account.

2. Where a Party experiences or is threatened by an urgent problem relating to safety, health, environmental protection or national security, it may omit the advance notification, provided that on adoption of a measure it shall notify the other Party.

3. The Parties shall make notifications under paragraphs 1 and 2 in accordance with the formats established in the TBT Agreement.

4. Within 30 days of the entry into force of this Agreement, each Party shall inform the other Party of the body it has designated to make notifications under this Article.

5. Each Party shall notify the other Party in writing of its standardization plans and programmes on an annual basis.

6. Where a Party administratively rejects a shipment or the provision of services, it shall promptly notify, in writing, the owner of the shipment or the service provider of the technical justification for the rejection.

7. Once the information referred to in paragraph 5 has been generated, the Party shall immediately forward it to the enquiry point of the other Party.

Article 9.11

Enquiry Points

1. Each Party shall ensure that an enquiry point exists in its territory capable of responding to all questions and reasonable enquiries from the other Party and interested persons and of providing relevant, up-to-date documents regarding any standards-related measure, metrology-related measure, conformity assessment procedure or approval procedure adopted or proposed in its territory by governmental or non-governmental bodies.

2. Each Party designates as an enquiry point that indicated in Annex 9.11(2).

3. Enquiry points requesting copies of the documents referred to in paragraph 1 shall receive them free of charge. Copies of documents shall be furnished to interested parties of the other Party at the same price as to the nationals of the Party, plus real shipping costs.

Article 9.12

Committee on Standardization, Metrology and Approval Procedures

1. The Parties establish a Committee on Standardization, Metrology and Approval Procedures, the composition of which is established in Annex 9.12.

2. The Committee shall examine matters relating to this Chapter and, without detriment to Article 19.05(2) (Committees), it shall:

(a) Study and propose solutions to standards-related measures, approval procedures or metrology-related measures that a Party considers to be a technical barrier to trade;

(b) facilitate the process by which the Parties make their standards-related and metrology-related measures compatible, giving priority to labelling, packaging and packing;

(c) promote technical cooperation among the Parties;

(d) assist in the risk assessments performed by the Parties;

(e) cooperate in developing and strengthening standards-related and metrology-related measures in the Parties;

(f) facilitate the process by which the Parties establish mutual-recognition agreements; and

(g) at the request of a Party, evaluate and recommend to the Commission for approval the inclusion of services sectors or subsectors subject to standards-related and metrology-related measures and approval procedures. They shall be included through a decision of the Commission.

Article 9.13

Technical Cooperation

1. Each Party shall promote technical cooperation by its standardization and metrology bodies, providing information or technical assistance, to the extent possible, and on mutually-agreed terms, to assist compliance with this Chapter and strengthen standards-related and metrology-related activities, processes, systems and measures.

2. The Parties may make joint efforts to arrange for technical cooperation from non-Party countries.

ANNEX 9.11(2)

Enquiry Points

The Enquiry Point referred to in Article 9.11(2) shall be composed of:

(a) For Costa Rica, the National Office of Standards and Units of Measurement ("Oficina Nacional de Normas y Unidades de Medidas, ONNUM") of the Ministry of Economic Affairs and Trade ("Ministerio de Economía y Comercio") or its successor;

(b) for El Salvador, the Ministry of Economic Affairs ("Ministerio de Economía") or its successor;

(c) for Guatemala, the Ministry of Economic Affairs ("Ministerio de Economía") or its successor;

(d) for Honduras, the Secretariat of State for Industry and Trade ("Secretaría de Estado en los Despachos de Industria y Comercio"), Directorate-General of Consumer Protection ("Dirección General de Protección al Consumidor"), Department of Standardization and Metrology ("Departamento de Normalización y Metrología"), or its successor;

(e) for Nicaragua, the Ministry of Development, Industry and Trade ("Ministerio de Fomento, Industria y Comercio") through the Directorate of Technology, Standardization and Metrology ("Dirección de Tecnología, Normalización y Metrología") or its successor; and

(f) for Panama, the Ministry of Trade and Industry ("Ministerio de Comercio e Industria"), through the Directorate-General for Standards and Industrial Technology ("Dirección General de Normas y Tecnología Industrial"), or its successor.

ANNEX 9.12

Committee on Standardization, Metrology and Approval Procedures

The Committee on Standardization, Metrology and Approval Procedures established in Article 9.12(1) shall be composed of:

(a) For Costa Rica, the Ministry of Foreign Trade ("Ministerio de Comercio Exterior") or its successor and the National Office of Standards and Units of Measurement ("Oficina Nacional de Normas y Unidades de Medidas, ONNUM") of the Ministry of Economic Affairs and Trade ("Ministerio de Economía y Comercio") or its successor;

(b) for El Salvador, the Trade Policy Directorate of the Ministry of Economic Affairs ("Dirección de Política Comercial del Ministerio de Economía") or its successor;

(c) for Guatemala, the body designated by the Ministry of Economic Affairs ("Ministerio de Economía") or its successor;

(d) for Honduras, the Secretariat of State for Industry and Trade ("Secretaría de Estado en los Despachos de Industria y Comercio") through the Directorate-General of Consumer Protection ("Dirección General de Protección al Consumidor"), the Department of Standardization and Metrology ("Departamento de Normalización y Metrología") or its successor;

(e) for Nicaragua, the Ministry of Development, Industry and Trade ("Ministerio de Fomento, Industria y Comercio") through the Directorate of Technology, Standardization and Metrology ("Dirección de Tecnología, Normalización y Metrología") or its successor; and

(f) for Panama, the Ministry of Trade and Industry ("Ministerio de Comercio e Industria") through the Vice-Ministry of Foreign Trade ("Viceministerio de Comercio Exterior") or its successor.

PART FOUR: INVESTMENT, SERVICES AND RELATED MATTERS

CHAPTER 10: INVESTMENT

Section A – Investment

Article 10.01

Scope and Coverage

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

(a) The investors of the other Party in all matters relating to their investment;

(b) investments of investors of the other Party in the territory of the Party; and

(c) all investments of the investors of a Party in the territory of the other Party with respect to Article 10.07.

2. This Chapter does not apply to measures adopted or maintained by a Party relating to:

(a) Financial services;

(b) the measures adopted by a Party to restrict the participation of investments of investors of the other Party in its territory for reasons of public policy or national security;

(c) economic activities reserved for each Party, pursuant to its current legislation on the date of entry into force of this Agreement, which shall be listed in Annex III on the economic activities reserved for each Party;

(d) government services or functions, such as law enforcement, correctional services, income security or insurance, social security, social welfare, public education, public training, health and child care; or

(e) disputes or claims arising prior to the entry into force of this Agreement or relating to facts that occurred before it entered into force, even if their effects persist thereafter.

3. This Chapter applies to the entire territory of the Parties and to any level of government regardless of any inconsistent measures that may exist in the law of these levels of government.

4. Notwithstanding paragraph 2(d), if a duly authorized investor of a Party provides services or carries out functions, such as correctional services, income security or insurance, social security, social welfare, public education, public training, health, and child care, the investments of that investor shall be protected under this Chapter.

5. This Chapter applies to investments existing on the date this Agreement enters into force and to investments made or acquired after that date.

Article 10.02

National Treatment

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

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

Article 10.03

Most-Favoured Nation Treatment

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

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

Article 10.04

Standard of Treatment

Each Party shall accord to investors of the other Party and the investments of investors of the other Party the better of the treatments required by Articles 10.02 and 10.03.

Article 10.05

Compensation for Losses

Each Party shall accord the investors of the other Party whose investments have been adversely affected in its territory as a result of armed conflict or civil strife, non-discriminatory treatment with regard to any measure adopted or maintained in relation to such losses.

Article 10.06

Minimum Standard of Treatment

A Party shall accord to investments of investors of the other Party treatment in accordance with international law, including fair and equitable treatment and full protection and security.

Article 10.07

Performance Requirements

1. No 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 or operation of an investment of an investor of a 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 or services provided in its territory, or to purchase goods or services 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;

this paragraph does not apply to any requirement other than those set out herein.

2. No Party may condition the receipt or continued receipt of an advantage, in connection with an investment in its territory of an investor of a 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 producers in its territory; or

(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;

this paragraph does not apply to any requirement other than those set out herein.

3. The provisions of:

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

(b) paragraphs 1(b) and (c) and paragraphs 2(a) and (b) do not apply to procurement by a Party or a State enterprise; and

(c) paragraphs 2(a) and (b) do not apply to the requirements imposed by an importing Party with regard to the contents of a good required to qualify it for preferential tariffs or quotas.

4. 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, on compliance with a requirement to locate production, provide a service, train or employ workers, construct or expand particular facilities, or carry out research and development, in its territory.

5. Provided that such measures are not applied in an arbitrary or unjustifiable manner, and do not constitute a disguised restriction on international trade or investment, nothing in paragraphs 1(b) or (c) or 2(a) or (b) shall be construed to prevent a Party from adopting or maintaining measures, including environmental measures:

(a) Necessary to secure compliance with laws and regulations that are not inconsistent with the provisions of this Agreement;

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

(c) necessary for the conservation of living or non-living exhaustible natural resources.

6. In cases where, in the opinion of a Party, the imposition by the other Party of any of the following requirements adversely affects trade flows or constitutes a significant barrier to investment by an investor of the Party, the matter shall be considered by the Commission:

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

(b) to transfer technology, a production process or other proprietary knowledge to a person in its territory, except when the requirement is imposed by a court, administrative tribunal or authority competent to remedy an alleged violation of competition laws or to act in a manner not inconsistent with other provisions of this Agreement; or

(c) to act as the exclusive supplier of the goods it produces to a specific regional or world market.

7. A measure that requires an investment to use a technology to meet generally applicable health, safety or environmental requirements shall not be construed to be inconsistent with paragraph 6(b). For greater certainty, Articles 10.02 and 10.03 apply to the measure.

8. If the Commission finds that the requirement in question does in fact negatively affect trade flows or constitutes a significant barrier to the investment of an investor of the other Party, it shall recommend those provisions necessary to abolish the practice concerned. The Parties shall consider these provisions as included in this Agreement.

Article 10.08

Senior Management, Governing Bodies and Boards of Directors

1. No Party may require that an enterprise of that Party that is an investment of an investor of the other Party appoint to senior management positions in that enterprise individuals of any particular nationality.

2. A Party may require that a majority of the members of the governing body or board of directors of an enterprise of that Party that is an investment of an investor of the other Party be of a particular nationality, provided that the requirement does not materially impair the ability of the investor to exercise control over its investment.

Article 10.09

Reservations and Exceptions

1. Articles 10.02, 10.03, 10.07 and 10.08 do not apply to:

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

      (i) a Party at the national level, as set out in its Schedule to Annex I or III; or

      (ii) a local or municipal 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 10.02, 10.03, 10.07 and 10.08.

2. Articles 10.02, 10.03, 10.07 and 10.08 shall 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. No 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. Article 10.03 does not apply to treatment accorded by one of the Parties pursuant to agreements or, with respect to sectors, set out in its Schedule to Annex IV.

5. Articles 10.02, 10.03 and 10.08 do not apply to:

(a) Procurement by a Party or a State enterprise; or

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

Article 10.10

Transfers

1. Each Party shall permit all transfers relating to an investment of an investor of the other Party in the territory of the Party to be made freely and without delay. Such transfers include:

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

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

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

(d) payments made pursuant to Article 10.11; and

(e) payments arising from the application of provisions relating to the dispute settlement mechanism under Section B of this Chapter.

2. Each Party shall permit transfers to be made in a freely convertible currency at the market rate of exchange prevailing on the date of transfer.

3. No 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.

4. Notwithstanding paragraphs 1 and 2, a Party may establish mechanisms for preventing a transfer through the equitable, non-discriminatory application of its laws relating to:

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

(b) criminal or penal offences or final administrative rulings;

(c) failure to comply with the requirement to submit reports of transfers of currency or other monetary instruments;

(d) enforcement of judgments and arbitral awards in adjudicatory proceedings; or

(e) enforcement of laws and regulations on issuing, trading or dealing in securities.

5. Paragraph 3 shall not be construed to prevent a Party from imposing any measure through the equitable and non-discriminatory application of its laws relating to the matters set out in subparagraphs (a) through (e) of paragraph 4.

Article 10.11

Expropriation and Compensation

1. No Party may directly or indirectly nationalize or expropriate an investment of an investor of the other Party in its territory or take a measure tantamount to nationalization or expropriation of such an investment ("expropriation"), except:

(a) For a public purpose or public order and social interest, pursuant to Annex 10.11(1);

(b) on a non-discriminatory basis;

(c) in accordance with the principles of legality and due process and with Article 10.06; and

(d) upon payment of compensation in accordance with this Article.

2. Compensation shall be equivalent to the fair market value of the expropriated investment immediately before the expropriation took place ("date of expropriation"), and shall not reflect any change in value occurring because the intended expropriation had become known earlier. Valuation criteria may include going concern value, asset value including declared tax value of tangible property, and other criteria, as appropriate, to determine fair market value.

3. Compensation shall be paid without delay and be fully realizable.

4. Notwithstanding paragraph 5, the amount paid as compensation shall be no less than the equivalent amount that would have been paid on such date to the investor subject to the expropriation in a freely convertible currency on the international financial market in accordance with the exchange rate in force on the date on which the fair market price was determined. Compensation shall include payment of interest from the date on which the investor has been dispossessed of the expropriated investment until the date of payment, which shall be based on an average deposit rate of interest for this currency in the national banking system of the Party where the expropriation is carried out.

5. Compensation paid in a freely convertible currency shall include payment of interest from the date on which the investor has been dispossessed of the expropriated investment until the date of payment, which shall be based on an average deposit rate of interest for this currency in the national banking system of the Party where the expropriation is carried out.

6. On payment, compensation shall be freely transferable as provided in Article 10.10.

7. This Article does not apply to the issuance of compulsory licences granted in relation to intellectual property rights, or to the revocation, limitation or creation of intellectual property rights, to the extent that such issuance, revocation, limitation or creation is consistent with the TRIPS Agreement.

8. For purposes of this Article and for greater certainty, a non-discriminatory measure of general application shall not be considered a measure tantamount to an expropriation of a debt security or loan covered by this Chapter solely on the grounds that the measure imposes costs on the debtor that cause it to default on the debt.

Article 10.12

Special Formalities and Information Requirements

1. Nothing in Article 10.02 shall be construed to prevent a Party from adopting or maintaining a measure that prescribes special formalities in connection with the establishment of investments by investors of the other Party, such as a requirement that investments be legally constituted under the laws or regulations of the Party, provided that such formalities do not materially impair the protection afforded by a Party pursuant to this Chapter.

2. Notwithstanding Articles 10.02 or 10.03, a Party may require an investor of the other Party, or its investment in its territory, to provide routine information concerning that investment solely for informational or statistical purposes. The Party shall protect such business information that is confidential from any disclosure that would prejudice the competitive position of the investor or the investment.

Article 10.13

Relation to Other Chapters

1. In the event of any inconsistency between this Chapter and another Chapter, the other Chapter shall prevail to the extent of the inconsistency.

2. A requirement by a Party that a service provider of the other Party post a bond or other form of financial security as a condition 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.

Article 10.14

Denial of Benefits

Subject to prior notification and consultation in accordance with Articles 18.04 (Provision of Information) and 20.06 (Consultations), a Party may deny the benefits of this Chapter to an investor of the other Party that is an enterprise of such Party and to investments of such investors if investors of a non-Party own or control the enterprise in accordance with the definition of "investment of an investor of a Party" in Article 10.40 and the enterprise has no substantial business activities in the territory of the Party under whose law it is constituted or organized.

Article 10.15

Environmental Measures

1. Nothing in this Chapter shall be construed to prevent a Party from adopting, maintaining or enforcing any measure consistent with this Chapter that it considers appropriate to ensure that investment activity in its territory complies with the ecological and environmental legislation of that Party.

2. The Parties recognize that it is inappropriate to encourage investment by relaxing domestic health, safety, ecological or environmental measures. Accordingly, no Party shall exempt or undertake to exempt the investment of an investor from the application of such measures as an encouragement for the establishment, acquisition, expansion or retention in its territory of an investment of an investor. If a Party considers that the other Party has offered such an encouragement, it may request consultations with the other Party.

Section B - Settlement of Disputes between a Party and an Investor of the Other Party

Article 10.16

Purpose

Without prejudice to the rights and obligations of the Parties under Chapter 20 (Dispute Settlement), this Section establishes a mechanism for the settlement of investment disputes arising from the violation of an obligation established under Section A of this Chapter and assures both equal treatment among investors of the Parties in accordance with the principle of reciprocity and proper observance of the safeguards of public hearing and defence as part of a due process of law before an impartial tribunal.

Article 10.17

Claim by an Investor of a Party on Its Own Behalf

1. An investor of a Party may submit to arbitration under this Section a claim on the grounds that the other Party, or an enterprise controlled directly or indirectly by the other Party, has breached an obligation under this Chapter, whenever the investor has suffered losses or damages by reason of or arising from that violation.

2. An investor may not make a claim if more than three (3) years have elapsed from the date on which the investor first acquired, or should have first acquired, knowledge of the alleged breach and knowledge that the investor incurred loss or damage.

Article 10.18

Claim by an Investor of a Party on Behalf of an Enterprise

1. An investor of a Party, on behalf of an enterprise of the other Party that is a juridical person that the investor owns or controls directly or indirectly, may submit to arbitration under this Section a claim that the other Party or an enterprise controlled directly or indirectly by that Party has breached an obligation under this Chapter, whenever the enterprise has suffered losses or damages by reason of or arising from that violation.

2. An investor may not make a claim on behalf of an enterprise described in paragraph 1 if more than three (3) years have elapsed from the date on which the enterprise first acquired, or should have first acquired, knowledge of the alleged breach and knowledge that the enterprise incurred loss or damage.

3. Where an investor makes a claim under this Article and a non-controlling investor in the enterprise makes a claim under Article 10.17 arising out of the same events that gave rise to the claim under this Article, or two or more of the claims are submitted to arbitration under Article 10.21, the claims should be heard together by a Tribunal established under Article 10.27, unless the Consolidation Tribunal finds that the interests of a disputing party would be prejudiced thereby.

4. An investment may not submit a claim to arbitration under this Section.

Article 10.19

Settlement of a Claim through Consultation and Negotiation

The disputing parties shall first attempt to settle a claim through consultation or negotiation.

Article 10.20

Notice of Intent to Submit a Claim to Arbitration

The disputing investor shall deliver to the disputing Party written notice of its intention to submit a claim to arbitration at least 90 days before the claim is submitted, which notice shall specify:

(a) The name and address of the disputing investor and, where a claim is made under Article 10.18, the name and address of the enterprise;

(b) the provisions of this Chapter alleged to have been breached and any other relevant provisions;

(c) the issues and the factual basis for the claim; and

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

Article 10.21

Submission of a Claim to Arbitration

1. Except as provided in Annex 10.21, and provided that six (6) months have elapsed since the events giving rise to a claim, a disputing investor may submit the claim to arbitration under:

(a) The ICSID Convention, provided that both the disputing Party and the Party of the investor are parties to the Convention;

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

(c) the UNCITRAL Arbitration Rules.

2. The rules applicable to each of the arbitration proceedings set out in this Chapter shall govern the arbitration except to the extent modified by this Section.

Article 10.22

Conditions Precedent to Submission of a Claim to Arbitration

1. The consent of the disputing parties to the arbitration proceedings under this Chapter shall be considered to be consent to this arbitration to the exclusion of any other procedure.

2. Each Party may demand exhaustion of its local administrative remedies as a condition for consenting to arbitration under this Chapter. Nevertheless, if the administrative authorities have not issued a final ruling six (6) months as from the date on which the corresponding administrative remedies were lodged, the investor may appeal directly to arbitration, in accordance with the provisions of this Section.

3. A disputing investor may submit a claim under Article 10.17 to arbitration only if:

(a) The investor consents to arbitration in accordance with the procedures set out in this Section; and

(b) the investor and, where the claim is for loss or damage to an interest in an enterprise of the other Party that is a juridical person that the investor owns or controls directly

or indirectly, the enterprise waive their right to initiate or continue before any court under the law of any of the Parties, or other dispute settlement procedures, any proceedings with respect to the measure of the disputing Party that is alleged to be a breach referred to in Article 10.17, except for proceedings for injunctive, declaratory or other extraordinary relief, not involving the payment of damages, before an administrative tribunal or court under the law of the disputing Party.

Accordingly, once the investor or the enterprise has submitted its claim to an arbitration procedure under this Section, the choice of such a procedure shall be final, precluding the possibility of submitting the claim to the competent national court of the disputing Party or to other dispute settlement procedures, without prejudice to the exceptions set out above with respect to preventive measures.

4. A disputing investor may submit a claim under Article 10.18 to arbitration only if both the investor and the enterprise:

(a) Consent to arbitration in accordance with the procedures set out in this Section; and

(b) waive their right to initiate or continue before any court under the law of a Party, or other dispute settlement procedures, any proceedings with respect to the measure of the disputing Party that is alleged to be a breach referred to in Article 10.18, except for proceedings for injunctive, declaratory or other extraordinary relief, not involving the payment of damages, before an administrative tribunal or court under the law of the disputing Party.

Accordingly, once the investor or the enterprise has submitted its claim to an arbitration procedure under this Section, the choice of such a procedure shall be final, precluding the possibility of submitting the claim to the competent national court of the disputing Party or to other dispute settlement procedures, without prejudice to the exceptions set out above with respect to preventive measures.

5. The consent and waiver required by this Article shall be in writing, shall be delivered to the disputing Party and shall be included in the submission of a claim to arbitration.

6. Only where the disputing Party has deprived the disputing investor of control of an enterprise shall a waiver from the enterprise under paragraph 3(b) or 4(b) not be required.

Article 10.23

Consent to Arbitration

1. Each Party consents to the submission of a claim to arbitration in accordance with the procedures and requirements set out in this Section.

2. The consent given by paragraph 1 and the submission by a disputing investor of a claim to arbitration implies compliance with the requirements of:

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

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

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

Article 10.24

Number of Arbitrators and Method of Appointment

Except in respect of a Tribunal established under Article 10.27, and unless the disputing parties otherwise agree, the Tribunal shall comprise three (3) 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.

Article 10.25

Constitution of a Tribunal When a Party Fails to Appoint an Arbitrator or the Disputing Parties Are Unable to Agree on a Presiding Arbitrator

1. In the event of a disputing party not appointing an arbitrator or no agreement being reached on the appointment of the presiding arbitrator, the Secretary-General shall designate the arbitrators in the arbitration proceeding, pursuant to this Section.

2. If a Tribunal, other than a Tribunal established under Article 10.27, has not been constituted within 90 days from the date that a claim is submitted to arbitration, the Secretary-General, at the request of either disputing party and, insofar as is possible, after consultation with the disputing parties, shall appoint the arbitrator or arbitrators not yet appointed, except that the presiding arbitrator shall be appointed in accordance with paragraph 3. In any case, the majority of the arbitrators may not be nationals of the disputing Party or nationals of the Party of the disputing investor.

3. The Secretary-General shall appoint the presiding arbitrator from the roster of presiding arbitrators referred to in paragraph 4, provided that the presiding arbitrator is not a national of the disputing Party or a national of the Party of the disputing investor. In the event that no such presiding arbitrator is available to serve, the Secretary-General shall appoint, from the ICSID Panel of Arbitrators, a presiding arbitrator who is not a national of either the disputing Party or the Party of the disputing investor.

4. On the date of entry into force of this Agreement, the Parties shall establish, and thereafter maintain, a roster of 18 presiding arbitrators, none of whom may be a national of either Party, satisfying the requirements in the ICSID Convention and in the rules referred to in Article 10.21 and experienced in international law and investment matters. The members of the roster shall be appointed by mutual agreement, regardless of nationality, for a period of two (2) years that may be extended if the Parties so decide. In the event of the death or resignation of a member of the roster, the Parties shall, by mutual agreement, appoint another person to substitute this member in his or her functions for the remainder of the period for which the former person was appointed.

Article 10.26

Agreement to Appointment of Arbitrators

For the purposes of Article 39 of the ICSID Convention and Article 7 of Schedule C to the ICSID Additional Facility Rules, and without prejudice to an objection to an arbitrator based on Article 10.25(3) or on a ground other than nationality:

(a) The disputing Party agrees to the appointment of each individual member of a Tribunal established under the ICSID Convention or the ICSID Additional Facility Rules;

(b) a disputing investor referred to in Article 10.17 may submit a claim to arbitration, or continue a claim, under the ICSID Convention or the ICSID Additional Facility Rules, only on condition that the disputing investor agrees in writing to the appointment of each individual member of the Tribunal;

(c) a disputing investor referred to in Article 10.18(1) may submit a claim to arbitration, or continue a claim, under the ICSID Convention or the ICSID Additional Facility Rules, only on condition that the disputing investor and the enterprise it represents agree in writing to the appointment of each individual member of the Tribunal.

Article 10.27

Consolidation

1. A Consolidation Tribunal established under this Article shall be established pursuant to the UNCITRAL Arbitration Rules and shall conduct its proceedings in accordance with those Rules, except as modified by this Section.

2. Where a Consolidation Tribunal established under this Article is satisfied that claims submitted to arbitration under Article 10.21 have a question of law or fact in common, the Consolidation Tribunal may, in the interests of fair and efficient resolution of the claims, and after hearing the disputing parties, by order:

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

(b) assume jurisdiction over, hear and determine one or more of the claims, the determination of which it believes would assist in the resolution of the others.

3. A disputing party that seeks a consolidation order under paragraph 2 shall request the Secretary-General to establish a Consolidation Tribunal and shall specify in the request:

(a) The name of the disputing Party or disputing investors against which the consolidation order is sought;

(b) the nature of the order sought; and

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

4. The disputing party shall deliver a copy of the request to the disputing Party or disputing investors against which the consolidation order is sought.

5. Within sixty (60) days of receipt of the request, the Secretary-General shall establish a Consolidation Tribunal comprising three (3) arbitrators. The Secretary-General shall appoint the presiding arbitrator for the Consolidation Tribunal from the roster referred to in Article 10.25(4). In the event that no such presiding arbitrator is available to serve, the Secretary-General shall appoint, from the ICSID Panel of Arbitrators, a presiding arbitrator for the Consolidation Tribunal who is not a national of either Party. The Secretary-General shall appoint the two (2) other members of the Consolidation Tribunal from the roster referred to in Article 10.25(4), and to the extent not available from that roster, from the ICSID Panel of Arbitrators, and to the extent not available from that Panel, at the discretion of the Secretary-General. One (1) member of the Consolidation Tribunal shall be a national of the disputing Party and one (1) member shall be a national of the Party of the disputing investors.

6. Where a Consolidation Tribunal has been established under this Article, a disputing investor that has submitted a claim to arbitration under Article 10.17 or 10.18 and that has not been named in a

consolidation request made under paragraph 3 may make a written request to the Consolidation Tribunal that it be included in such request made under paragraph 2, and shall specify in the request:

(a) The name and address of the disputing investor and, where applicable, the name and address of the enterprise;

(b) the nature of the consolidation order sought; and

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

7. A disputing investor referred to in paragraph 6 shall deliver a copy of its request to the disputing parties named in a request made under paragraph 3.

8. A Tribunal established under Article 10.21 shall not have jurisdiction to decide a claim, or a part of a claim, over which a Consolidation Tribunal established under this Article has assumed jurisdiction.

9. On application of a disputing party, a Consolidation Tribunal established under this Article, pending its decision under paragraph 2, may order that the proceedings of a Tribunal established under Article 10.21 be stayed, unless the latter Tribunal has already adjourned its proceedings until there is a decision about the propriety of consolidation.

10. A disputing Party shall deliver to the Secretariat, within fifteen (15) days of receipt by the disputing Party, a copy of:

(a) A request for arbitration made under paragraph (1) of Article 36 of the ICSID Convention;

(b) a notice of arbitration made under Article 2 of Schedule C of the ICSID Additional Facility Rules; or

(c) a notice of arbitration given under the UNCITRAL Arbitration Rules.

11. A disputing Party shall deliver to the Secretariat a copy of a request made under paragraph 3:

(a) Within fifteen (15) days of receipt of the request, in the case of a request made by a disputing investor;

(b) within fifteen (15) days of the date on which the request was made, in the case of a request by the disputing Party.

12. A disputing Party shall deliver to the Secretariat a copy of a request made under paragraph 6 within fifteen (15) days of receipt of the request.

13. The Secretariat shall maintain a public register of the documents referred to in paragraphs 10, 11, and 12.

Article 10.28

Notification

A disputing Party shall deliver to the other Party:

(a) Written notice of a claim that has been submitted to arbitration no later than thirty (30) days after the date on which the claim is submitted; and

(b) copies of all pleadings filed in the arbitration.

Article 10.29

Participation by a Party

On written notice to the disputing parties, a Party may submit to a Tribunal established under this Section its points of view on questions of interpretation of this Agreement.

Article 10.30

Documents

1. A Party shall be entitled to receive from the disputing Party, at the cost of the requesting Party, a copy of:

(a) The evidence tendered to any Tribunal established under this Section; and

(b) the written arguments of the disputing parties.

2. A Party receiving information pursuant to paragraph 1 shall accord confidential treatment to information as though it were a disputing Party.

Article 10.31

Venue of Arbitration

Unless the disputing parties agree otherwise, a Tribunal established under this Section shall hold arbitration proceedings in the territory of a Party that is a party to the New York Convention, selected in accordance with:

(a) The ICSID Additional Facility Rules if the arbitration is under those Rules or the ICSID Convention; or

(b) the UNCITRAL Arbitration Rules if the arbitration is under those Rules.

Article 10.32

Governing Law

1. A Tribunal established under this Section shall decide the issues in dispute in accordance with this Agreement and the applicable rules of international law.

2. An interpretation by the Commission of a provision of this Agreement shall be binding on a Tribunal established under this Section.

Article 10.33

Interpretation of Annexes

1. Where a disputing Party asserts as a defence that a measure alleged to be a breach is within the scope of a reservation or exception set out in any of the Annexes, at the request of the disputing Party, any Tribunal established under this Section shall request the interpretation of the Commission

on the issue. The Commission, within sixty (60) days of delivery of the request, shall submit its interpretation to the Tribunal in writing.

2. Further to Article 10-32(2), a Commission interpretation submitted under paragraph 1 shall be binding on any Tribunal established under this Section. If the Commission fails to submit an interpretation within sixty (60) days, the Tribunal shall decide the issue.

Article 10.34

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 on its own initiative, may appoint one or more experts to report to it in writing on any issue concerning the dispute.

Article 10.35

Interim Measures of Protection

A Tribunal established under this Section may ask the national courts or order the disputing parties to impose interim measures of protection to preserve the rights of a disputing party, or to ensure that the Tribunal's competence or jurisdiction is made fully effective. A Tribunal may not order attachment or seizure, or compliance with or enjoin the application of the measure alleged to constitute a breach referred to in Article 10.17 or 10.18.

Article 10.36

Final Award

1. Where a Tribunal established under this Section makes a final award against a Party, the Tribunal may award only:

(a) Monetary damages and any applicable interest; or

(b) restitution of property, in which case the award shall provide that the disputing Party may pay monetary damages and any applicable interest in lieu of restitution.

A Tribunal may also award costs in accordance with the applicable arbitration rules.

2. Subject to paragraph 1, where a claim is made under Article 10.18(1):

(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.

3. For the purposes of paragraphs 1 and 2, the damages shall be determined in the currency in which the investment was made.

4. The award shall be made without prejudice to the rights that a third party with legal interest may have in the relief for the damages incurred, under the applicable law.

Article 10.37

Finality and Enforcement of an Award

1. An award made by a Tribunal established under this Section shall have no binding force except between the disputing parties and in respect of the particular case.

2. Subject to paragraph 3 and the applicable review, clarification or annulment procedure for an award provided for by the relevant mechanism which is appropriate in the opinion of the Secretary-General, a disputing party shall abide by and comply with an award without delay.

3. A disputing party may seek enforcement of a final award until:

(a) In the case of a final award made under the ICSID Convention:

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

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

(b) in the case of a final award under the ICSID Additional Facility Rules or the UNCITRAL Arbitration Rules:

(i) Three (3) months 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 tribunal of the disputing Party has dismissed or allowed an application submitted by one of the disputing Parties to revise, set aside or annul the award and there is no further appeal.

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

5. If a disputing Party fails to abide by or comply with a final award, the Commission, on delivery of a request by a Party whose investor was a party to the arbitration proceeding, shall establish a panel under Article 20.08 (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) a recommendation that the Party abide by or comply with the final award.

6. A disputing investor 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 5.

7. A claim that is submitted to arbitration under this Section shall be considered to arise out of a commercial relationship or transaction for the purposes of Article 1 of the New York Convention and Article 1 of the Inter-American Convention.

Article 10.38

General Provisions

Time when a claim is submitted to arbitration proceedings

1. A claim is submitted to arbitration under this Section when:

(a) The request for arbitration under paragraph 1 of Article 36 of the ICSID Convention has been received by the Secretary-General;

(b) the notice of arbitration under Article 2 of Schedule C of the ICSID Additional Facility Rules has been received by the Secretary-General; or

(c) the notice of arbitration given under the UNCITRAL Arbitration Rules has been received by the disputing Party.

Delivery of notices and other documents

2. Delivery of the notice and other documents to a Party shall be made to the place named for that Party in Annex 10.38(2).

Receipts under insurance or guarantee contracts

3. In an arbitration proceeding under this Section, a Party shall not assert, as a defence, counterclaim, right of setoff or otherwise, that the disputing investor has received or will receive, pursuant to an insurance or guarantee contract, indemnification or other compensation for all or part of its alleged damages.

Publication of an award

4. Awards shall be published only if an agreement to this effect between the disputing Parties exists in writing.

Article 10.39

Exclusions

The dispute settlement provisions of this Section or of Chapter 20 (Dispute Settlement) shall not apply to the matters referred to in Annex 10.39.

Section C – Definitions

Article 10.40

Definitions

For the purposes of this Chapter:

ICSID means the International Centre for Settlement of Investment Disputes;

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

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

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

enterprise means "enterprise" as defined in Chapter 2 (General Definitions);

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;

investment: any kind of goods or rights of any nature acquired or used with the purpose of obtaining an economic profit or for other business purposes, acquired with resources transferred or reinvested by an investor, and including:

(a) An enterprise, shares in an enterprise, shares in the capital of an enterprise that allow the owner to participate in its income or profits; debt securities of an enterprise and loans to an enterprise where:

(i) Where the enterprise is an affiliate of the investor; or

(ii) where the original maturity of the debt security or loan is at least three (3) years;

(b) an interest in an enterprise that entitles the owner to share in the assets of that enterprise on dissolution, other than a debt security or a loan excluded from subparagraph (a);

(c) real estate or other property, tangible or intangible, including rights in the intellectual property field, as well as any other proprietary right (such as mortgages, liens, usufruct and similar rights) acquired with the expectation or used for the purpose of economic benefit or other business purposes;

(d) interests or benefits arising from the commitment of capital or other resources in the territory of a Party to economic activity, such as under:

(i) contracts involving the presence of an investor's property in the territory of the Party, including concessions or construction or turnkey contracts; or

(ii) contracts where remuneration depends substantially on the production, revenues or profits of an enterprise;

but investment does not mean:

- a payment obligation of or a credit granted to the State or a state enterprise;

- claims to money that arise solely from:

(i) commercial contracts for the sale of goods or services by a national or enterprise in the territory of a Party to an enterprise in the territory of the other Party; or

(ii) the extension of credit in connection with a commercial transaction, the expiry date of which is in less than three (3) years, such as trade financing,

other than a loan covered by the provisions on a loan to an enterprise pursuant to subparagraph (a); or

- any other monetary claim that does not involve the kinds of interest set out in subparagraphs (a) to (d);

disputing investor means an investor that makes a claim under Section B of this Chapter;

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

In the case of an enterprise, an investment is the property of an investor of a Party if this investor holds more than fifty (50) per cent of its equity interest.

An investment is controlled by an investor of a Party if the investor has the power to:

(i) Appoint a majority of the directors; or

(ii) legally manage its operations in any other way;

investor of a Party means a Party or State enterprise thereof, or a national or an enterprise of such Party, that seeks to make, is making or has made, as applicable, an investment in the territory of the other Party. The intention of making an investment may be demonstrated, *inter alia*, by means of legal acts aimed at realizing an investment or by the process of committing the necessary resources in order to realize an investment.

disputing Party means the Party against which a claim is made under Section B of this Chapter;

disputing party means the disputing investor or the disputing Party;

disputing parties means the disputing investor and the disputing Party;

claim means the claim made by the disputing investor against a Party under Section B of this Chapter;

UNCITRAL Arbitration Rules means the arbitration rules of the United Nations Commission on International Trade Law, approved by the United Nations General Assembly on 15 December 1976;

Secretary-General means the Secretary-General of ICSID;

transfers means transfers and international payments;

Tribunal means an arbitration tribunal established under Article 10.21; and

Consolidation Tribunal means an arbitration tribunal established under Article 10.27.

ANNEX 10.38(2)

Delivery of Notices and Other Documents

1. For the purposes of Article 10.38(2), the place for delivery of notices and other documents is:

(a) For Costa Rica:

Directorate-General of Foreign Trade ("Dirección General de Comercio Exterior") or its successor
Foreign Trade Centre ("Centro de Comercio Exterior")
Paseo Colón, San José, Costa Rica

(b) for El Salvador:
Trade Policy Directorate of the Ministry of Economic Affairs ("Dirección de Política Comercial, Ministerio de Economía") or its successor
Alameda Juan Pablo II, Calle Guadalupe, Edificio C-2, Planta 3
Centro de Gobierno
San Salvador, El Salvador

(c) for Guatemala:
Ministry of Economic Affairs ("Ministerio de Economía") or its successor
8ª. Avenida 10-43, Zona 1
Guatemala, Guatemala

(d) for Honduras:
Secretariat of State for Industry and Trade ("Secretaría de Estado en los Despachos de Industria y Comercio")
Directorate-General of Treaty Administration ("Dirección General de Administración de Tratados") or its successor
Calle Peatonal, Antiguo local de Lloyds Bank, Segundo Piso
Tegucigalpa, Honduras

(e) For Nicaragua:
Directorate-General of Foreign Trade ("Dirección General de Comercio Exterior") or its successor
Ministry of Development, Industry and Trade ("Ministerio de Fomento, Industria y Comercio")
Km. 6 Carretera a Masaya
Managua, Nicaragua

(f) For Panama:
Ministry of Trade and Industry ("Ministerio de Comercio e Industrias")
Vice-Ministry of Foreign Trade ("Viceministerio de Comercio Exterior") or its successor
National Directorate of International Trade Negotiations ("Dirección Nacional de Negociaciones Comerciales Internacionales")
Vía Ricardo J. Alfaro, Plaza Edison, Piso #3
Panama, Republic of Panama

2. The Parties shall report any change in the place for delivery of notices and other documents.

CHAPTER 11: CROSS-BORDER TRADE IN SERVICES

Article 11.01

Definitions

For the purposes of this Chapter:

cross-border trade in services or cross-border service means the provision of a service:

(a) From the territory of a Party into the territory of the other Party;

(b) in the territory of a Party to a services consumer of the other Party; or

(c) by a service provider of a Party, through the presence of physical persons, in the territory of the other Party;

but does not include the provision of a service in the territory of a Party by an investment in that territory, as defined in Article 10.40 (Definitions);

enterprise means "enterprise" as defined in Chapter 2 (General Definitions);

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;

service provider of a Party means a person of the Party that seeks to provide or provides a cross-border service;

quantitative restriction means a non-discriminatory measure that imposes limitations on:

(a) The number of service providers, whether in the form of a quota, a monopoly or an economic needs test, or by any other quantitative means; or

(b) the operations of any service provider, whether in the form of a quota or an economic needs test, or by any other quantitative means;

specialty air services means cross-border aerial mapping, aerial surveying, aerial photography, forest fire management, fire fighting, aerial advertising, glider towing, parachute jumping, aerial construction, heli-logging, aerial sightseeing, flight training, aerial inspection and surveillance, and aerial spraying services; and

services provided in the performance of government functions means all cross-border services provided by a public institution that are provided in non-commercial conditions and do not compete with one or more service providers.

Article 11.02

Scope and Coverage

1. This Chapter applies to measures adopted or maintained by a Party relating to cross-border services provided by service providers of the other Party, including measures regarding:

(a) The production, distribution, marketing, sale and delivery of a cross-border service;

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

(c) the access to and use of distribution and transportation systems in connection with the provision of a cross-border service;

(d) the presence in its territory of a cross-border service provider of the other Party; and

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

2. For the purposes of this Chapter, measures adopted or maintained by a Party include measures adopted or maintained by a non-governmental body in the exercise of a regulatory, administrative or other governmental authority delegated to it by that Party.

3. This Chapter does not apply to:

(a) Subsidies or donations accorded by a Party or a State enterprise, including loans, guarantees and insurance supported by a Party;

(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;

(ii) specialty air services; and

(iii) computerized reservation systems;

(c) government services or functions, such as law enforcement, correctional services, income security or insurance, social security, social welfare, public education, public training, health and child care;

(d) cross-border trade in financial services; or

(e) procurement by a Party or a State enterprise.

4. Nothing in this Chapter shall be construed to 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, or to confer any right on that national with respect to such access or employment.

Article 11.03

National Treatment

Each Party shall accord to cross-border services and service providers of the other Party treatment no less favourable than that it accords to its own like services and like service providers.

Article 11.04

Most-Favoured Nation Treatment

Each Party shall immediately and unconditionally accord to cross-border services and service providers of the other Party treatment no less favourable than it accords to like services and like service providers of any other country.

Article 11.05

Standard of Treatment

Each Party shall accord to cross-border services and service providers of the other Party the better of the treatment required by Articles 11.03 and 11.04.

Article 11.06

Local Presence

No Party may require a service provider 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 provision of a service.

Article 11.07

Granting of Permits, Authorizations, Licenses and Certificates

For the purpose of ensuring that any measure that a Party adopts or maintains in relation to the requirements and procedures for granting permits, authorizations, licenses and certificates to nationals of the other Party does not constitute an unnecessary barrier to cross-border services, each Party shall endeavour to ensure that such measures:

(a) Are based on objective and transparent criteria, such as the capacity and ability to provide a cross-border service;

(b) are not more burdensome than necessary to ensure the quality of a cross-border service; and

(c) do not constitute a disguised restriction on the provision of a cross-border service.

Article 11.08

Reservations

1. Articles 11.03, 11.04 and 11.06 do not apply to:

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

(i) A Party at the national level, as set out in its Schedule to Annex I; or

(ii) a local or municipal 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 11.03, 11.04 and 11.06.

2. Articles 11.03, 11.04 and 11.06 shall 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.

Article 11.09

Non-Discriminatory Quantitative Restrictions

1. Each Party shall set out in its Schedule to Annex V any non-discriminatory quantitative restrictions that it maintains.

2. Each Party shall notify the other Party of any non-discriminatory quantitative restriction, other than those at local or municipal government level, that it adopts after the date of entry into force of this Agreement and shall set out the restriction in the Schedule referred to in paragraph 1.

3. The Parties shall periodically, but in any event at least every two (2) years, endeavour to negotiate the liberalization or removal of:

(a) The quantitative restrictions maintained by a Party set out in the schedule referred to in paragraph 1; and

(b) quantitative restrictions adopted by a Party after this Agreement comes into force.

Article 11.10

Denial of Benefits

Subject to prior notification and consultation in accordance with Articles 18.04 (Provision of Information) and 20.06 (Consultations), a Party may deny the benefits of this Chapter to a service provider of the other Party where the Party establishes that the service is being provided by an enterprise that has no substantial business activities in the territory of the other Party and, in accordance with the law of that other Party, is owned or controlled by persons of a non-Party.

Article 11.11

Future Liberalization

Through future negotiations to be arranged by the Commission, the Parties shall seek further liberalization in the different services sectors, with a view to eliminating the remaining restrictions in the Schedules referred to in Article 11.08(1) and (2).

Article 11.12

Procedures

The Parties shall establish procedures for:

(a) A Party to notify the other Party and include in its relevant Schedule:

(i) Amendments to measures referred to in Article 11.08(1) and (2); and

(ii) quantitative restrictions in accordance with Article 11.09;

(b) commitments to liberalize quantitative restrictions, licensing requirements and other non-discriminatory measures; and

(c) consultations on reservations, quantitative restrictions or commitments with a view to further liberalization.

Article 11.13

Recognition of Higher Education Qualifications

Annex 11.13 sets out the rules to be followed by the Parties with regard to the recognition of qualifications issued by a Party.

Article 11.14

Disclosure of Confidential Information

No provision in this Chapter may be construed as imposing on the Parties the obligation to provide confidential information the disclosure of which may constitute an obstacle to the observance of laws or be otherwise damaging to the public interest, or that may injure legitimate trade interests of State and private enterprises.

Article 11.15

Committee on Investment and Cross-Border Trade in Services

1. The Parties establish a Committee on Investment and Cross-Border Trade in Services, the composition of which is established in Annex 11.15.

2. The Committee shall examine matters relating to this Chapter and to Chapter 10 (Investment) and, without detriment to Article 19.05(2) (Committees), shall have the following functions:

(a) Supervising the implementation and administration of Chapters 10 (Investment) and 11 (Cross-Border Trade in Services);

(b) discussing matters relating to investment and cross-border trade in services presented by a Party;

(c) examining issues related to these matters discussed in other international fora;

(d) facilitating the exchange of information between the Parties and cooperating in giving advice on investment and cross-border trade in services; and

(e) establishing working groups or convening panels of experts on matters of interest to the Parties.

3. The Committee shall meet when necessary or at any other time at the request of a Party. Representatives of other institutions may also take part in its meetings if the relevant authorities deem it appropriate.

Article 11.16

International Freight Transportation by Road

Annex 11.16 sets out the rules to be followed by the Parties with regard to the application of measures governing services of international freight transportation by road.

ANNEX 11.13

Recognition of Higher Education Qualifications

Recognition of higher education qualifications

1. Where a Party recognizes, either unilaterally or by agreement with another country, a higher education qualification obtained in the territory of the other Party or of a non-Party:

   (a) Nothing in Article 11.04 shall be construed to require the Party to accord such recognition to higher education qualifications obtained in the territory of the other Party; and

   (b) a Party shall afford the other Party an adequate opportunity to demonstrate that the higher education qualifications obtained in the territory of the other Party should also be recognized or to negotiate or conclude an agreement or arrangement of comparable effect.

Basis for recognition of higher education qualifications

2. The Parties agree that the processes of mutual recognition of higher education qualifications shall be through the establishment of standards and criteria for such processes, while simultaneously protecting consumers and safeguarding the public interest.

3. The Parties shall encourage the relevant bodies, including competent government authorities and professional associations and colleges, where pertinent, to develop standards and criteria on the mutual recognition of qualifications.

4. The standards and criteria referred to in paragraph 3 may consider the law of each Party and, by way of example, the following elements: education, examinations, academic curricula, *inter alia*.

5. The Parties shall provide the detailed information necessary for the recognition of higher education qualifications, including information on academic courses, study guides and materials, payment of fees, examination dates, timetables and locations. The information includes legislation, administrative guidelines and centrally-applied general measures and those prepared by governmental and non-governmental institutions.

ANNEX 11.15

Committee on Investment and Cross-Border Trade in Services

The Committee on Investment and Cross-Border Trade in Services established in Article 11.15 shall be composed of:

   (a) For Costa Rica, the Ministry of Foreign Trade ("Ministerio de Comercio Exterior") or its successor;

(b) for El Salvador, the Ministry of Economic Affairs ("Ministerio de Economía") or its successor;

(c) for Guatemala, the Ministry of Economic Affairs ("Ministerio de Economía") or its successor;

(d) for Honduras, the Secretariat of State for Industry and Trade ("Secretaría de Estado en los Despachos de Industria y Comercio") or its successor; and

(e) for Nicaragua, the Ministry of Development, Industry and Trade ("Ministerio de Fomento, Industria y Comercio") or its successor; and

(f) for Panama, the Ministry of Trade and Industry ("Ministerio de Comercio e Industrias") through the Vice-Ministry of Foreign Trade ("Viceministerio de Comercio Exterior") or its successor.

ANNEX 11.16

International Freight Transportation by Road

1. This Annex applies to the measures adopted or maintained by a Party in relation to services of international freight transportation by road, and establishes a mechanism of non-discriminatory treatment among the Parties concerning services of international freight transportation by road.

2. There shall be full freedom of transit through the territories of the Parties for freight carriers transporting goods by road from the territory of one Party to the territory of any other Party.

3. Freedom of transit implies that in international road transport, in the territory of any of the Parties all the Parties shall enjoy free competition in the contracting of transportation (irrespective of the country of origin or destination) and free access to the entire national territory in question, including free-trade areas and any other portion of that territory that by its nature may be regarded as extraterritorial, such as export processing zones or free zones.

4. This Annex does not apply to:

(a) Local freight transport by vehicle or cabotage;

(b) local or international freight and passenger transport by rail; and

(c) local and international passenger transport.

5. The Regulations on the International Inland Customs Transit Regime, Declaration Form and Instructions, adopted by the Parties by means of Resolution No. 65-2001 (COMRIEDRE), adopted by the Council of Ministers Responsible for Economic Integration and Regional Development on 16 March 2001 and amendments thereto, as well as any other equivalent successor provisions, are incorporated in this Agreement and form an integral part thereof.

6. With respect to international freight transportation by road, the Parties undertake not to collect any duties, taxes or payment for services other than those specified in Annex 11.16(6), and to abolish all documentation other than that required under the Regulations incorporated under paragraph 5.

7. Articles 11.03, 11.04 and 11.06 apply to this Annex, irrespective of the provisions of Article 11.08.

8. Any dispute that may arise in connection with the application or interpretation of this Annex, including the Regulations on the International Inland Customs Transit Regime, Declaration Form and Instructions, shall be governed by Chapter 20 (Dispute Settlement).

9. Two years after this Agreement has come into force for all the Parties, the Parties shall establish a work programme to examine the possibility of introducing amendments to paragraph 4 with a view to providing broader coverage of the road transport sector.

CHAPTER 12: FINANCIAL SERVICES

Article 12.01

Definitions

For the purposes of this Chapter, the following shall be understood to mean:

Regulatory authorities: any government body that exercises supervisory authority over financial services providers or financial institutions;

public entity: a central bank or monetary authority of a Party, or any financial institution owned or controlled by a Party, not performing commercial functions;

enterprise: as defined in Chapter 2 (General Definitions);

financial institution: any financial intermediary or other enterprise that is authorized to do financial service business and that is 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: a financial institution, including a branch, constituted under the law in force that is located in the territory of a Party and that is owned or controlled by persons of the other Party;

investment: every kind of asset or rights of any nature acquired or used for the purpose of economic benefit or other business purposes, acquired with resources transferred or reinvested by an investor, and including:

(a) An enterprise, shares of an enterprise; equity participation in an enterprise that entitles the owner to share in income or profits of the enterprise; debt instruments of an enterprise and loans of an enterprise where:

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

    (ii) the original maturity of the debt instrument or the loan is at least three (3) years;

(b) an interest in an enterprise that entitles the owner to share in the assets of that enterprise on dissolution, other than a debt instrument or a loan excluded under subparagraph (a);

(c) real estate or other property, tangible or intangible, including intellectual property rights, and any other property rights (such as mortgages, liens, usufruct, and similar

rights) acquired in the expectation or used for the purpose of economic benefit or other business purposes;

(d) interests or benefits arising from the commitment of capital or other resources in the territory of a Party to economic activity, such as under:

(i) contracts involving the presence of an investor's property in the territory of the Party, including concessions or construction or turnkey contracts, or

(ii) contracts where remuneration depends substantially on the production, revenues or profits of an enterprise; and

(e) a loan granted by a provider of cross-border financial services or a debt instrument owned by the provider, except a loan to a financial institution or a debt instrument issued by it;

but investment does not include:

- a payment obligation of the State or a State enterprise or the extension of credit to the State or a State enterprise;

- monetary claims that arise solely from:

(ii) commercial contracts for the sale of goods or services by a national or enterprise in the territory of a Party to an enterprise in the territory of the other Party, or

(iii) the extension of credit in relation to a commercial transaction, with a maturity period of less than three (3) years, such as trade financing, other than a loan covered by subparagraph (a);

- any other monetary claim that does not involve the kinds of interests set out in subparagraphs (a) through (e);

- a loan to a financial institution or a debt instrument issued by a financial institution, except in the case of a loan to a financial institution that is treated as regulatory capital by the Party in whose territory the institution is located;

investment of an investor of a Party: an investment owned or controlled directly or indirectly by an investor of such Party.

In the case of an enterprise, an investment is owned by an investor of a Party if such investor holds more than fifty per cent (50%) of the equity interest.

An investment is controlled by the investor of a Party if the investor has power to:

(i) Appoint a majority of directors; or

(ii) legally manage operations in any other way;

investor of a Party: a Party or State enterprise thereof, or a national or an enterprise of such Party, that seeks to make, is making or has made an investment in the territory of the other Party. Intention to invest may take the form of legal acts aimed at realizing the investment or committing the resources necessary to realize such investment;

disputing investor: an investor that submits to arbitration a claim under Article 12.19 and Section B of Chapter 10 (Investment);

new financial service: a financial service not provided in the territory of a Party that is provided in the territory of the other Party and includes any new form of delivery of a financial service or sale of a financial product that is not sold in the territory of the first Party;

self-regulatory organization: any non-governmental entity, including any securities or futures exchange or market, securities central depository, clearing agency, or other association or organization that exercises its own or delegated regulatory or supervisory authority;

cross-border provision of financial services or cross-border trade in financial services: the provision of a financial service:

(a) From the territory of a Party to the territory of the other Party;

(b) in the territory of a Party to a consumer of the services of the other Party; or

(c) by a service provider of a Party through the presence of physical persons of a Party in the territory of the other Party;

provider of financial services of a Party: a person of a Party whose business is the provision of some financial service in the territory of the Party;

provider of cross-border financial services of a Party: an authorized person of a Party whose business is the provision of financial services in the territory of the Party and who seeks to carry out or carries out cross-border provision of financial services; and

financial service: a service of a financial nature, including banking, insurance, reinsurance and any service related or auxiliary to a service of a financial nature.

Article 12.02

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 a Party and the investments of such investors in financial institutions in the territory of the other Party; and

(c) cross-border trade in financial services.

2. Nothing in this Chapter shall be construed to prevent a Party, or its public entities, from carrying out or providing on an exclusive basis in its territory:

(a) Activities carried out by the monetary authorities or any other public institution for the purpose of implementing monetary or foreign exchange policies;

(b) activities and services that form part of public retirement plans or statutory social security systems; or

(c) other activities or services on behalf of the Party that have the Party's guarantee, or use financial resources of the Party or of its public entities.

3. The provisions of this Chapter shall take precedence over those of other Chapters, except where express reference is made to those Chapters.

4. Article 10.11 (Expropriation and compensation) is an integral part of this Chapter.

Article 12.03

Self-regulatory Organizations

When a Party requires that a financial institution or a provider of cross-border financial services of the other Party be a member, participate in, or have access to a self-regulatory organization in order to offer a financial service in or to its territory, the Party shall do everything within its power to ensure that the organization in question fulfils the obligations of this Chapter.

Article 12.04

Right of Establishment

1. The Parties recognize the principle that the investors of a Party must be allowed to establish a financial institution in the territory of the other Party, through any of the procedures for establishment and operation permitted by that Party's law.

2. Each Party may, at the time of establishment of a financial institution, impose such terms and conditions as are compatible with Article 12.06.

Article 12.05

Cross-border Trade

1. No Party shall increase the degree of non-conformity with the provisions of this Agreement of its measures relating to cross-border trade in financial services conducted by the other Party's providers of cross-border financial services, following the entry into force of this Agreement, except as provided in Section B of the Party's Schedule in Annex VI.

2. Each Party shall allow persons located in its territory and its own nationals, wherever located, to purchase financial services from cross-border financial service providers of the other Party who are located in the territory of that other Party. This obligation does not require a Party to permit such cross-border financial service providers to do business or advertise in its territory. Each Party may define the terms "advertise" and "do business" for the purpose of this obligation.

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

Article 12.06

National Treatment

1. Each Party shall grant the investors of the other Party treatment no less favourable than that granted to its own investors in respect of the establishment, purchase, expansion, administration, conduct, operation, sale and other forms of disposal of like financial institutions and investments in like financial institutions in its territory.

2. Each Party shall grant financial institutions of the other Party and investments of investors of the other Party in financial institutions, treatment no less favourable than that granted to its own like financial institutions and investments of its own investors in like financial institutions in respect of the establishment, purchase, expansion, administration, conduct, operation, sale and other forms of disposal of financial institutions and investments.

3. Pursuant to Article 12.05, when a Party allows cross-border provision of a financial service, it shall grant the other Party's providers of cross-border financial services treatment no less favourable than that granted to its own providers of like financial services in respect of the provision of that service.

4. The treatment granted by a Party to like financial institutions and providers of like cross-border financial services of the other Party, whether the same or different from that granted to its own institutions or providers of like services, is consistent with paragraphs 1 to 3, if it affords equality of opportunity in respect of competition.

5. Treatment by a Party does not afford equality of opportunity in respect of competition if it places the other Party's like financial institutions and providers of like cross-border financial services at a disadvantage in terms of their capacity to provide financial services, as compared to the capacity of the Party's own like financial institutions and providers of like services to provide such services.

Article 12.07

Most-Favoured Nation Treatment

Each Party shall grant investors of the other Party, financial institutions of the other Party, investments of investors in financial institutions and providers of cross-border financial services of the other Party, treatment no less favourable than that granted to investors, like financial institutions, investments of investors in like financial institutions and providers of like cross-border financial services of the other Party or of a non-Party.

Article 12.08

Recognition and Harmonization

1. In applying the measures set forth in this Chapter, a Party may recognize the prudential measures of the other Party or of a non-Party. Such recognition may be:

(a) Accorded unilaterally;

(b) achieved through harmonization or other means;

(c) based on an agreement or arrangement with the other Party or a non-Party.

2. A Party that accords recognition of prudential measures under paragraph 1, shall afford the other Party adequate opportunity to demonstrate the existence of circumstances in which there are or will be equivalent regulations, supervision and implementation of regulations and, where appropriate, procedures for the sharing of information between the Parties.

3. When a Party accords recognition of prudential measures under paragraph 1(c) and the circumstances referred to in paragraph 2 exist, that Party shall afford the other Party adequate opportunity to negotiate accession to the agreement or arrangement, or to negotiate a like agreement or arrangement.

4. Nothing in this Article shall be taken to mean implementation of a compulsory mechanism for review by one Party of the financial system or prudential measures of the other Party.

Article 12.09

Exceptions

1. Nothing in this Chapter shall be construed to prevent a Party from adopting or maintaining prudential measures such as:

(a) Protection of fund managers, investors, depositors, financial market participants, policy holders or claimants, or persons to whom a fiduciary duty is owed by a financial institution or provider of cross-border financial services;

(b) maintenance of the safety, soundness, integrity or financial liability of financial institutions or providers of cross-border financial services; and

(c) ensuring the integrity and stability of a Party's financial system.

2. No provision of this Chapter applies to non-discriminatory measures of general application taken by a public entity in the implementation of monetary policies or related credit policies, or foreign exchange policies. This paragraph shall not effect any Party's obligations under investment performance requirements in respect of the measures covered by Chapter 10 (Investment) or Article 12.17.

3. Article 12.06 shall not apply to any exclusive rights that a Party may grant to a financial institution to provide one of the financial services referred to in paragraph 2(b) of Article 12.02.

4. Notwithstanding the provisions of paragraphs 1 to 3 of Article 12.17, a Party may prevent or limit transfers by a financial institution or provider of cross-border financial services, or for the benefit of an affiliate or person related to such institution or service provider, through proper and non-discriminatory application of measures relating to maintenance of the safety, soundness, integrity or financial liability of financial institutions or providers of cross-border financial services. This paragraph shall apply without prejudice to any other provision in this Agreement that allows a Party to limit transfers.

Article 12.10

Transparency

1. In addition to the provisions of Article 18.03 (Publication), each Party shall ensure that any measure it adopts on matters relating to this Chapter shall be published officially or made known in a timely manner in some other written form to the persons targeted by the measure.

2. The regulatory authorities of each Party shall make available to those interested all information pertaining to requirements for completing and submitting an application to provide financial services.

3. At the request of an applicant, the regulatory authority shall inform the latter as to the status of its application. If the said authority requires further information from the applicant, it shall so inform the applicant without undue delay.

4. Each regulatory authority shall issue an administrative decision within one hundred and twenty (120) days at the latest following receipt of a complete application for provision of a financial service from an investor in a financial institution, a financial institution or a provider of cross-border

financial services of the other Party. The authority shall notify its decision to the applicant without delay. An application shall not be deemed complete until all the relevant hearings have been held and all the necessary information received. When it is not feasible to issue the decision within one hundred and twenty (120) days, the regulatory authority shall so inform the applicant without undue delay and shall endeavour to issue the decision within the next sixty (60) days.

5. Nothing in this chapter requires a Party to disclose or allow access to:

(a) Information about the financial affairs and accounts of individual customers of financial institutions or providers of cross-border financial services; or

(b) any confidential information the disclosure of which may hinder application of the law or in any way conflict with the public interest or harm legitimate business interests of specific enterprises.

Article 12.11

Committee on Financial Services

1. The Parties establish a Committee on Financial Services, the composition of which is indicated in Annex 12.11.

2. The Committee shall address matters arising under this Chapter and, without prejudice to Article 19.05(2) (Committees) shall have the following functions:

(a) Oversee application of this Chapter and its subsequent development;

(b) consider issues regarding financial services referred to it by a Party;

(c) take part in dispute settlement procedures pursuant to Article 12.18 and 12.19; and

(d) facilitate the exchange of information between supervisory authorities and cooperate in the provision of advice on prudential regulation, seeking harmonization of regulatory instruments and other policy instruments, where deemed appropriate.

3. The Committee shall meet when necessary or at the request of a Party in order to assess application of this Chapter.

Article 12.12

Consultations

1. Without prejudice to Article 20.06 (Consultations), either Party may request consultations with the other Party on any matter arising under this Agreement. The other Party shall give sympathetic consideration to the request. The consulting Party shall report the results of the consultations to the Committee at its meetings.

2. Officials of the competent authorities listed in Annex 12.11 shall participate in consultations under this Article.

3. A Party may request the regulatory authorities of the other Party to take part in consultations under this Article for the purpose of discussing measures of general application of that other Party which may affect operations of financial institutions or providers of cross-border financial services in the territory of the Party seeking consultation.

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

5. Where, for supervisory purposes, a Party needs information concerning a financial institution in the other Party's territory, or providers of cross-border financial services in the other Party's territory, the Party may approach the competent regulatory authority in that other Party's territory in order to seek the information.

Article 12.13

New Financial Services and Data Processing

1. Each Party shall permit a financial institution of the other Party to provide any new financial service that is similar in kind to the services the Party permits its own financial institutions to provide under its law. The Party may determine the institutional and juridical form in which the service may be provided and may require authorization for the provision of the service. Where such authorization is required, the relevant decision shall be made within a reasonable time and authorization may be refused only for prudential reasons, provided that such reasons are not inconsistent with the Party's law and with Article 12.06 and 12.07.

2. Each Party shall permit the financial institutions of the other Party to transfer information into or out of its territory for data processing, by any means authorized in the Party, when such processing is required in the ordinary course of business of such institutions.

3. Each Party undertakes to respect the confidentiality of information processed in its territory that comes from a financial institution located in the other Party.

Article 12.14

Senior Management and Governing Bodies or Boards of Directors

1. Neither Party may require that a financial institution of the other Party hire staff of a particular nationality to fill senior corporate management positions or other essential offices.

2. Neither Party may require that a governing body or board of directors of a financial institution of the other Party be comprised of nationals of the Party, residents in its territory or a combination of the two.

Article 12.15

Reservations and Specific Commitments

1. Article 12.04 to 12.07, 12.13 and 12.14 does not apply to:

(a) Any existing non-conforming measure that is maintained by a Party at the national level, as set out in Section A of its Schedule to Annex VI;

(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 Article 12.04 through 12.07, 12.13 and 12.14.

2. Article 12.04 through 12.07, 12.13 and 12.14 does not apply to any measure that a Party adopts or maintains under Section B of its Schedule to Annex VI.

3. Section C of the Schedule of each Party in Annex VI may establish certain specific commitments of that Party.

4. A reservation entered in Chapters 10 (Investment) and 11 (Cross-Border Trade in Services) in respect of local presence, national treatment, most-favoured-nation treatment, senior management and governing bodies or boards of directors, shall be deemed a reservation on Article 12.04 through 12.07, 12.13 and 12.14, as the case may be, to the extent that the measure, sector, subsector or activity specified in the reservation, is covered by this Chapter.

Article 12.16

Denial of Benefits

A Party may deny wholly or in part benefits arising from this Chapter to a provider of financial services of the other Party or to a provider of cross-border financial services of the other Party, after notification and consultation, in accordance with Article 12.10 and 12.12, where the Party determines that the service is being provided by an enterprise that does not conduct substantial trade activities in the territory of that other Party and is owned or controlled by persons of a non-Party.

Article 12.17

Transfers

1. Each Party shall permit all transfers that relate to an investment in its territory of an investor of the other Party to be made freely and without delay. Such transfers include:

(a) Profits, dividends, interests, capital gains, royalty payments, administrative costs, technical assistance and other charges, earnings in kind and other amounts derived from the investment;

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

(c) payments made under a contract covering the investor or its investment, including payments made pursuant to a loan agreement;

(d) payments made pursuant to Article 10.11 (Expropriation and compensation); and

(e) proceeds from a dispute settlement procedure between a Party and an investor of the other Party pursuant to this Chapter and Section B of Chapter 10 (Investment).

2. Each Party shall permit transfers to be made in a freely convertible currency, at the market rate of exchange prevailing on the date of transfer.

3. No 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.

4. Notwithstanding paragraphs 1 and 2, a Party may establish mechanisms to prevent transfers, through the fair and non-discriminatory application of its laws, in cases of:

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

(b) criminal offences or binding administrative decisions;

(c) non-compliance with the requirement to report on currency transfers or other monetary instruments;

(d) ensuring the execution of judgements and awards handed down in dispute proceedings; or

(e) ensuring the enforcement of laws and regulations on the issuing of securities and securities trading and operations.

5. Paragraph 3 shall not be construed to prevent a Party from imposing, through equitable and non-discriminatory application of its laws, any measure relating to the subparagraphs of paragraph 4.

Article 12.18

Dispute Settlement Between the Parties

1. Chapter 20 (Dispute Settlement) applies as modified by this Article to the settlement of disputes between the Parties arising under this Chapter.

2. The Committee on Financial Services shall maintain by consensus a roster of up to eighteen (18) individuals including three (3) individuals of each Party, who are willing and able to serve as arbitrators in disputes related to this Chapter. In addition to meeting the requirements set in Chapter 20 (Dispute Settlement), the roster members shall have specialized knowledge in the area of finance, and broad experience gained from holding responsibilities in the finance sector or finance sector regulation.

3. In constituting an arbitral panel, the roster referred to in paragraph 2 shall be used unless the Parties to the dispute agree that the panel may include individuals who are not included in the roster provided they meet the requirements set in paragraph 2. The president shall be selected from the roster.

4. In any dispute in which the arbitral panel finds a measure to be inconsistent with the obligations of this Chapter where suspension of benefits under Chapter 20 (Dispute Settlement) applies and the measure affects:

(a) Only the financial services sector, the complaining Party may suspend benefits only in this 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 financial services sector; or

(c) any sector other than the financial services sector, the complaining Party may not suspend benefits in the financial services sector.

Article 12.19

Settlement of Disputes Concerning Investment in Financial Services between an Investor of a Party and the Other Party

1. Section B of Chapter 10 (Investment) shall be incorporated into this Chapter and shall be a part thereof.

2. Where an investor of the other Party submits a claim against a Party under Article 10.17 (Claim by an Investor of a Party on its Own Behalf) or 10.18 (Claim by an Investor of a Party on Behalf of an Enterprise), to arbitration under Section B of Chapter 10 (Investment) and the disputing Party invokes Article 12.09, upon application of the disputing Party the Tribunal shall refer the matter in writing to the Committee for a decision. The Tribunal may not proceed until it has received a decision under this Article.

3. In a referral pursuant to paragraph 1, the Committee shall decide whether and to want extent Article 12.09 is a proper basis on which to counter the investors' claim. The Committee shall forward a copy of its decision to the Tribunal and the Commission. The decision shall be binding on the Tribunal.

4. Where the Committee fails to take a decision within sixty (60) days of receiving the referral under paragraph 1, the disputing Party or the Party of the disputing investor may request the establishment of an arbitral panel under Article 20.08 (Request for an Arbitral Panel). The arbitral panel shall be constituted in accordance with Article 12.8 and shall send its final report to the Committee and the Tribunal. The report shall be binding on the Tribunal.

5. Where no request for the establishment of an arbitral panel pursuant to paragraph 4 has been made within ten (10) days of the expiration of the sixty-day period referred to in that paragraph, the Tribunal may proceed to settle the matter.

ANNEX 12.11

Committee on Financial Services

1. The Committee on Financial Services established in Article 12.11 shall be composed of:

(a) For Costa Rica, the Ministry of Foreign Trade ("Ministerio de Comercio Exterior") or its successor, in consultation with the competent authority (Central Bank of Costa Rica, General Superintendency of Financial Entities ("Superintendencia General de Entidades Financieras"), Superintendency of Pensions ("Superintendencia de Pensiones") and Superintendency of Securities ("Superintendecia de Valores"));

(b) for El Salvador, Ministry of the Economy ("Ministerio de Economía"), Superintendency of the Financial System ("Superintendencia del Sistema Financiero"), Superintendency of Securities ("Superintendencia de Valores"), Superintendency of the Pensions System ("Superintendencia del Sistema de Pensiones") and Central Reserve Bank ("Banco Central de Reserva");

(c) for Guatemala, Ministry of the Economy ("Ministerio de Economía"), Bank of Guatemala ("Banco de Guatemala") and Superintendency of Banks ("Superintendencia de Bancos");

(d) for Honduras, Secretary of State for Industry and Trade ("Secretaría de Estado en los Despachos de Industria y Comercio"), Central Bank of Honduras ("Banco Central de

Honduras") and National Banking and Insurance Commission ("Comisión Nacional de Bancos y Seguros");

(e) for Nicaragua, Ministry of Development, Industry and Trade (Ministerio de Fomento, Industria y Comercio"); Central Bank of Nicaragua ("Banco Central de Nicaragua"), Superintendency of Banks and other Financial Institutions ("Superintendencia de Bancos y de Otras Instituciones Financieras");

(f) for Panama, Ministry of Trade and Industry ("Ministerio de Comercio e Industrias") through the Vice-Ministry of Foreign Trade ("Viceministerio de Comercio Exterior"), or its successor, in consultation with the competent authority (Superintendency of Banks ("Superintendencia de Bancos"), Superintendency of Insurance and Re-insurance ("Superintendencia de Seguros y Reaseguros") and National Securities Commission ("Comisión Nacional de Valores")).

2. Each Party's principle representative shall be the person so appointed by each Party.

CHAPTER 13: TELECOMMUNICATIONS

Article 13.01

Exclusion

This Chapter does not apply between Panama and Costa Rica.

Article 13.02

Definitions

For the purposes of this Chapter, the following shall be understood to mean:

intra-corporate communications: subject to Annex 13.02(1), telecommunications through which an enterprise communicates:

(a) Internally or with or among its subsidiaries, branches or affiliates, as defined by each Party; or

(b) on a non-commercial basis with other parties that are key to the economic activity of the enterprise and that have a continuing contractual relationship with it;

but does not include telecommunications services provided to persons other than those described herein;

authorized equipment: terminal or other equipment that has been approved for attachment to the public telecommunications transport network in accordance with a Party's conformity assessment procedures;

terminal equipment: any analogue or digital device capable of processing, receiving, switching, signalling or transmitting signals by electromagnetic means and that is connected by radio or wire to a public telecommunications transport network at a termination point.

standards-related measure: a "standards-related measure" as defined in Article 9.01 (Definitions);

monopoly: an entity, including a consortium or a governmental agency, that maintains or is designated under its legislation, if so allowed, as the sole provider of public telecommunications transport networks or services in any relevant market in the territory of a Party;

conformity assessment procedure: "conformity assessment procedure" as defined in Article 9.01 (Definitions) and includes the procedures referred to in Annex 13.02(2);

protocol: a set of rules and formats that govern the exchange of information between two (2) peer entities for purposes of transferring signalling or data information;

principal provider or dominant operator: a provider with the capacity to significantly affect the conditions of participation (from the standpoint of prices and supply) in a given telecommunications services market, as a result of controlling essential installations or the use of its market position;

network termination point: the final demarcation of the public telecommunications transport network at the customer's premises;

private telecommunications network: subject to Annex 13.02(1), a telecommunications transport network that is used exclusively for intra-corporate communications or between predetermined individuals;

public telecommunications transport network: the telecommunications transport network used to commercially operate telecommunications services to meet the needs of the public generally, not including the terminal equipment of customers or telecommunications transport networks beyond the network termination point;

telecommunications service: a service supplied by signal transmission and reception by wire, radio, optical means or other electromagnetic systems, but not including distribution by cable, broadcasting or other kind of electromagnetic distribution of radio and television programmes;

public telecommunications transport service: any telecommunications transport service required by a Party, explicitly or in effect, to be offered to the public generally, including telegraph, telephone, telex and data transmission, that typically involves the real-time transmission of customer-supplied information between two (2) or more points without any point-to-point change in the form or content of the customer information;

enhanced or value-added services: those telecommunications services employing computer processing applications that:

(a) Act on the format, content, code, protocol or similar aspects of a customer's transmitted information;

(b) provide a customer with additional, different or restructured information; or

(c) involve customer interaction with stored information;

telecommunications: the transmission, emission or reception of signs, signals, written words, images, sounds and information of any type by wire, radio, optical means or other electromagnetic systems.

Article 13.03

Scope and Coverage

1. This Chapter applies to:

(a) Subject to Annex 13.02(1), measures adopted or maintained by a Party in relation to access to and use of public telecommunications transport networks or services by persons of the other Party, including price fixing and access and use by such persons operating private networks for intra-corporate communications;

(b) measures adopted or maintained by a Party in relation to the provision of enhanced or value-added services by persons of the other Party in the territory, or across the borders, of the first Party; and

(c) standards-related measures relating to attachment of terminal or other equipment to public telecommunications transport networks.

2. Except to ensure that persons operating broadcast stations and cable systems have access to and use of public telecommunications transport networks and services, this Chapter does not apply to measures adopted or maintained by a Party in relation to broadcast or cable distribution of radio or television programming.

3. Nothing in this Chapter shall be construed to:

(a) Require a Party to authorize a person of the other Party to establish, construct, acquire, lease, operate or provide telecommunications transport networks or services;

(b) require a Party, or require a Party to compel any person, to establish, construct, acquire, lease, operate or provide telecommunications transport networks or services where such networks or services are not offered to the public generally;

(c) prevent a Party from prohibiting persons operating private telecommunications transport networks from using their networks to provide public telecommunications transport networks or services to third persons; or

(d) require a Party to compel any person engaged in the broadcast or cable distribution of radio or television programming to make available its cable or broadcast facilities as a public telecommunications transport network.

Article 13.04

Access to and Use of Public Telecommunications Transport Networks and Services

1. For the purposes of this Article, "non-discriminatory" shall be understood to mean on terms and conditions no less favourable than those accorded to any other customer or user of like public telecommunications transport networks or services in like circumstances.

2. Each Party shall ensure that persons of the other Party have access to and use of any public telecommunications transport network or service, including private leased circuits, provided in its territory or across its borders for the conduct of their business, on reasonable and non-discriminatory terms and conditions, including as set out in the other paragraphs of this Article.

3. Subject to paragraphs 7, 8 and Annex 13.02(1), each Party shall ensure that such persons are permitted to:

(a) Purchase or lease, and attach terminal or other equipment that interfaces with the public telecommunications transport network;

(b) interconnect private leased or owned circuits with public telecommunications transport networks in the territory, or across the borders, of that Party, including for use in providing dial-up access to and from their customers or users, or with circuits leased or owned by another person on terms and conditions mutually agreed by those persons, as established in Annex 13.04;

(c) perform switching, signalling and processing functions; and

(d) use operating protocols of their choice, in accordance with the technical plans of each Party.

4. Without prejudice to the applicable legislation, each Party shall ensure that the pricing of public telecommunications transport services reflects economic costs directly related to providing the services. Nothing in this paragraph shall be construed to prevent cross-subsidization between public telecommunications transport services.

5. Subject to Annex 13.02(1), each Party shall ensure that persons of the other Party may use public telecommunications transport networks or services for the movement of information in its territory or across its borders, including for intra-corporate communications, and for access to information contained in databases or otherwise stored in machine-readable form in the territory of the other Party.

6. In addition to Article 21.02 (General Exceptions), nothing in this Chapter shall be construed to prevent a Party from adopting or enforcing any measure necessary to:

(a) Ensure the security and confidentiality of messages; or

(b) protect the privacy of subscribers to public telecommunications transport networks or services.

7. In addition to Article 13.06, each Party shall ensure that no condition is imposed on access to and use of public telecommunications transport networks or services, other than that necessary to:

(a) Safeguard the public service responsibilities of providers of public telecommunications transport 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 transport networks or services.

8. Provided that conditions for access to and use of public telecommunications transport networks or services satisfy the criteria set out in paragraph 7, such conditions may include:

(a) A restriction on resale or shared use of such services;

(b) a requirement to use specified technical interfaces, including interface protocols, for interconnection with such networks or services;

(c) a restriction on interconnection of private leased or owned circuits with such networks or services or with circuits leased or owned by another person, and when the circuits are used in the provision of public telecommunications transport networks or services;

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

Article 13.05

Conditions for the Provision of Enhanced or Value-Added Services

1. Each Party shall ensure that:

(a) Any licensing, permit, concession, registration or notification procedure that it adopts or maintains relating to the provision of enhanced or value-added services is transparent and non-discriminatory, and that applications filed thereunder are processed expeditiously; and

(b) the information required under such procedures conforms to the current legal requirements of each Party for initiating the provision of services, which may include compliance of the applicant's services or terminal or other equipment with the respective Party's standards or technical regulations.

2. Without prejudice to the law of each Party, no Party may require a provider of enhanced or value-added services to:

(a) Provide those services to the public generally;

(b) cost-justify its rates or prices;

(c) file a tariff or a price;

(d) interconnect its networks with any particular customer or network; or

(e) conform with any particular standard or technical regulation for interconnection other than for interconnection to a public telecommunications transport network.

3. Notwithstanding paragraph 2(c), a Party may require the filing of a tariff by:

(a) A services provider in order to remedy a practice of that provider that the Party has found in a particular case to be anticompetitive under its law; or

(b) a monopoly, principal provider or dominant operator to which Article 13.07 applies.

Article 13.06

Standards-Related Measures

1. Each Party shall ensure that its standards-related measures relating to the attachment of terminal or other equipment to the public telecommunications transport networks, including those measures relating to the use of testing and measuring equipment for conformity assessment procedures, are adopted or maintained only to the extent necessary to:

(a) Prevent technical damage to public telecommunications transport networks;

(b) prevent technical interference with, or degradation of, public telecommunications transport services;

(c) prevent electromagnetic interference, and ensure compatibility, with other uses of the electromagnetic spectrum;

(d) prevent billing equipment malfunction;

(e) ensure user safety and access to public telecommunications transport networks or services; or

(f) ensure efficient use of the electromagnetic spectrum.

2. A Party may require approval for the attachment to the public telecommunications transport network of terminal or other equipment that is not authorized, provided that the criteria for approval are consistent with paragraph 1.

3. Each Party shall ensure that the network termination points for its public telecommunications transport networks are defined on a reasonable and transparent basis.

4. No Party may require separate authorization for equipment that is connected on the customer's side to authorized equipment that serves as a protective device fulfilling the criteria of paragraph 1.

5. Each Party shall:

(a) Ensure that its conformity assessment procedures are transparent and non-discriminatory and that applications filed thereunder are processed expeditiously;

(b) permit any technically qualified entity to perform the testing required under the Party's conformity assessment procedures for terminal or other equipment to be attached to the public telecommunications transport network, subject to the Party's right to review the accuracy and completeness of the test results; and

(c) ensure that any measure that it adopts or maintains requiring persons to be authorized to act as agents for suppliers of telecommunications equipment before the Party's relevant conformity assessment bodies is non-discriminatory.

6. Where conditions permit, each Party shall adopt, as part of its conformity assessment procedures, the provisions necessary to accept the test results from laboratories or testing facilities in the territory of the other Party for tests performed in accordance with the accepting Party's standards-related measures and procedures.

Article 13.07

Monopolies or Anti-Competitive Practices

1. Where a Party maintains or designates a monopoly or where there is a principal provider or a dominant operator to provide public telecommunications transport networks or services, and it, directly or through an affiliate, competes in the provision of enhanced or value-added services or other telecommunications-related services or telecommunications-related goods, the Party shall ensure that the monopoly, principal provider or dominant operator does not use its position to engage in anti-competitive practices in those markets, either directly or through its dealings with its affiliates, in such a manner as to affect adversely a person of the other Party. Such practices may include cross-

subsidization, predatory conduct and the discriminatory provision of access to public telecommunications transport networks or services.

2. To prevent anticompetitive practices of the kind set forth in paragraph 1, each Party shall adopt or maintain effective measures, such as:

(a) Accounting requirements;

(b) requirements for structural separation;

(c) rules to ensure that the monopoly, principal provider or dominant operator accords its competitors access to and use of its public telecommunications transport networks or services on terms and conditions no less favourable than those it accords to itself or its affiliates; or

(d) rules to ensure the timely disclosure of technical changes to public telecommunications transport networks and their interfaces.

Article 13.08

Transparency

In addition to Article 18.03 (Publication), each Party shall make publicly available its measures relating to access to and use of public telecommunications transport networks or services, including measures relating to:

(a) Tariffs or prices and other terms and conditions of service;

(b) specifications of technical interfaces with the networks or services;

(c) information on bodies responsible for the preparation and adoption of standards-related measures affecting such access and use;

(d) conditions applying to attachment of terminal or other equipment to the networks; and

(e) notification, permit, registration, certification, licensing or concession requirements.

Article 13.09

Relation to Other Chapters

In the event of any inconsistency between this Chapter and another Chapter, this Chapter shall prevail to the extent of the inconsistency.

Article 13.10

Relation to International Organizations and Agreements

The Parties recognize the importance of international standards for global compatibility and interoperability of telecommunication networks or services and undertake to promote those standards through the work of relevant international bodies, including the International Telecommunication Union, the International Organization for Standardization and the Inter-American Telecommunications Commission.

Article 13.11

Technical Cooperation and Other Consultations

1. To encourage the development of interoperable telecommunications transport services infrastructure, the Parties shall cooperate in the exchange of technical information, the development of government-to-government training programmes and other related activities. In implementing this obligation, the Parties shall give special emphasis to existing exchange programmes.

2. The Parties shall consult with a view to determining the feasibility of further liberalizing trade in all telecommunications services, including public telecommunications transport networks and services.

ANNEX 13.02(1)

Interconnection of Private Networks (Private Circuits)

1. In the case of the Republic of Panama, the private networks used for an enterprise's private communications may not connect to the public telecommunications transport networks, nor may they be used to provide telecommunications services, even free of charge, to third parties that are not subsidiaries, branch offices or affiliates of the enterprise or are not owned or controlled by it.

2. Paragraph 1 shall cease to have effect for the Republic of Panama once Panama's legal conditions have changed to permit private telecommunications networks used for intra-corporate communications to interconnect to the public telecommunications transport networks and to provide services to third parties that are key to the economic activity of an entreprise and have a continued contractual relationship with it.

ANNEX 13.02(2)

Conformity Assessment Procedures

For the purposes of this Chapter, conformity assessment procedures include:

For El Salvador:

(a) Legislative Decree 142 of 6 November 1997, the Telecommunications Law ("Decreto Legislativo Nº 142 del 6 de noviembre de 1997, Ley de Telecomunicaciones"); and

(b) Executive Decree 64 of 15 May 1998, Regulations of the Telecommunications Law ("Decreto Ejecutivo Nº 64 del 15 de mayo de 1998, Reglamento de la Ley de Telecomunicaciones");

for Guatemala:

(a) Congressional Decree 94-96, General Telecommunications Law ("Decreto Nº 94-96 del Congreso de la República, Ley General de Telecomunicaciones");

(b) Congressional Decree 115-97, Amendments to the General Telecommunications Law ("Decreto Nº 115-97 del Congreso de la República, Reformas a la Ley General de Telecomunicaciones");

(c) Government Resolution 574-98, Regulations for the Operation of Satellite Systems in Guatemala ("Acuerdo Gubernativo Nº 574-98, Reglamento para la Explotación de Sistemas Satelitales en Guatemala"); and

(d) Government Resolution 408-99, Regulations for the Provision of International Telephone Service ("Acuerdo Gubernativo Nº 408-99, Reglamento para la Prestación del Servicio Telefónico Internacional");

for Honduras:

(a) Decree 185-95 of 31 October 1995, Telecommunications Framework Law ("Decreto Nº 185-95 del 31 de octubre de 1995, Ley Marco del Sector de Telecomunicaciones");

(b) Resolution 89-97 of 27 May 1997, General Regulations of the Telecommunications Framework Law ("Acuerdo Nº 89-97 del 27 de mayo de 1997, Reglamento General de la Ley Marco del Sector de Telecomunicaciones");

(c) Decree 244-98 of 19 September 1998 ("Decreto Nº 244-98 del 19 de septiembre de 1998");

(d) Decree 89-99 of 25 May 1999 ("Decreto Nº 89-99 del 25 de mayo de 1999");

(e) Resolution OD 003/99, Gazette of 26 February 1999 ("Resolución OD 003/99, Gaceta del 26 de febrero de 1999"); and

(f) Resolution 105/98, Gazette of 11 July 1998 ("Resolución 105/98, Gaceta del 11 de julio de 1998"); and

for Nicaragua:

(a) Law 200 of 8 August 1995, General Telecommunications and Postal Services Law published in Official Gazette 154 of 18 August 1995 ("Ley Nº 200 del 8 de agosto de 1995, Ley General de Telecomunicaciones y Servicios Postales, publicada en La Gaceta, Diario Oficial Nº 154, del 18 de agosto de 1995");

(b) Law 210 of 30 November 1995, Law Incorporating Private Parties in the Operation and Expansion of Public Telecommunications Services published in Official Gazette 231 of 7 December 1995 ("Ley Nº 210 del 30 de noviembre de 1995, Ley de Incorporación de Particulares en la Operación y Ampliación de los Servicios Públicos de las Telecomunicaciones, publicada en La Gaceta, Diario Oficial Nº 231, del 7 de diciembre de 1995");

(c) Decree 19-96 of 12 September 1996, Regulations of the General Telecommunications and Postal Services Law, published in Gazette 177 of 19 September 1996 ("Decreto Nº 19-96 del 12 de septiembre de 1996, Reglamento de la Ley General de Telecomunicaciones y Servicios Postales, publicado en La Gaceta Nº 177, del 19 de septiembre de 1996");

(d) Law 293 of 1 July 1998, Law Amending Law 210, published in Gazette 123 of 2 July 1998 ("Ley Nº 293 de 1 de julio de 1998, Ley de reforma a la Ley N° 210, publicada en La Gaceta N° 123, del 2 de julio 1998"); and

(e) Nicaraguan Commercial Code of 1916 ("Código de Comercio de Nicaragua de 1916").

for Panama:

(a) Law 31 of 8 February 1996, on the rules governing telecommunications in the Republic of Panama ("Ley 31 de 8 de febrero de 1996, por la cual se dictan normas para la regulación de las telecomunicaciones en la República de Panamá");

(b) Executive Decree 73 of 9 April 1997, Telecommunications Regulations ("Decreto Ejecutivo 73 de 9 de abril de 1997, Reglamento de las telecomunicaciones");

(c) Resolution JD-119 of 28 October 1997, whereby the Regulatory Body prohibits the importation into the Republic of Panama of wireless telephones and intercommunication equipment that do not comply with the National Frequency Allocation Plan ("Resolución JD-119 de 28 de octubre de 1997, mediante la cual el Ente Regulador prohibe la importación a la República de Panamá de teléfonos y equipos de intercomunicación inalámbricos que no cumplan con el Plan Nacional de Atribución de Frecuencias");

(d) Resolution JD-481 of 20 April 1998, prohibiting, until 1 January 2003, the importation, marketing, distribution, sale, lease, installation and/or operation, in the Republic of Panama, of public and semi-public terminals, with the exception of Cable & Wireless Panama, S.A. ("Resolución JD-481 de 20 de abril de 1998, mediante la cual se prohibe hasta el 1 de enero de 2003, la importación, mercadeo, distribución, venta, arrendamiento instalación y/u operación, en la República de Panamá, de terminales públicos y semi-públicos, con excepción de la empresa Cable & Wireless Panama, S.A.");

(e) Resolution JD-952 of 11 August 1998, whereby the Regulatory Body adopted procedures for the testing of new technology equipment requiring the use of radioelectric frequencies ("Resolución JD-952 de 11 de agosto de 1998, en virtud de la cual el Ente Regulador adoptó procedimientos para pruebas de equipos de nuevas tecnologías que requieran el uso de frecuencias del Espectro Radioeléctrico"); and

(f) Resolution JD-1785 of 3 January 2000 establishing the procedure for registering and authorizing the introduction in Panamanian territory of wireless telephones or intercommunication equipment ("Resolución JD-1785 de 3 de enero de 2000, en virtud de la cual se estableció el procedimiento para el registro y autorización de introducción al territorio panameño de teléfonos o equipos de intercomunicación inalámbricos").

ANNEX 13.04

Interconnection Of Private Circuits

1. For the purposes of Article 13.04, for El Salvador, Guatemala, Honduras and Nicaragua, the interconnection of private circuits to public telecommunications transport networks shall not provide access to traffic originating or terminating on public telecommunications transport networks, irrespective of whether the private circuits are leased or owned.

2. Paragraph 1 shall apply for the Republic of Panama once Annex 13.02(1) ceases to have effect.

CHAPTER 14: TEMPORARY ENTRY OF BUSINESS PERSONS

Article 14.01

Definitions

1. For the purposes of this Chapter:

business activity means legitimate activities of a commercial nature, established and carried out for the purpose of obtaining profits on the market. It does not include the possibility of obtaining employment, wages or remuneration from a source of employment in the territory of a Party;

labour certification means the procedure carried out by the competent administrative authority to determine whether a national of a Party who wishes to obtain temporary entry into the territory of the other Party would displace national labour in the same industry or have a significant adverse effect on labour conditions in that industry;

temporary entry means entry into the territory of a Party by a business person of the other Party without intention to establish permanent residence;

national means "national" as defined in Chapter 2 (Definitions of General Application) but does not include permanent residents;

business person means a national who is engaged in trade in goods, the provision of services or the conduct of investment activities;

recurrent practice means a practice carried out repeatedly by the immigration authorities of a Party over a representative period immediately prior to its most recent occurrence; and

2. For the purposes of Annex 14.04:

executive functions means functions assigned by an organization which confer on the person concerned the following essential responsibilities:

(a) To direct the administration of the organization or of a relevant component or function thereof;

(b) to establish the policies and objectives of the organization, component or function; or

(c) to be supervised or given general direction only by more senior executives of the organization, or its governing body or board of directors, or the shareholders;

management functions means functions assigned by an organization which confer on the person concerned the following essential responsibilities:

(a) To direct the organization or an essential function of the organization;

(b) to supervise and control the work of other professional employees, supervisors or administrators;

(c) to have the authority to hire and dismiss or recommend hiring and dismissal and to undertake other aspects of personnel management that are under his/her direct supervision and to carry out high level functions within the organization or as part of the duties of his/her office; or

(d) to use his/her discretionary authority regarding the performance of duties falling under his/her responsibility; and

functions that require specialized knowledge means functions that involve special knowledge of goods, services, research, equipment, techniques, management of the organization or its interests and their application on international markets, or an advanced level of knowledge or experience of the organization's processes and procedures.

Article 14.02

General Principles

In addition to the provisions of Article 1.02 (Objectives), this Chapter reflects the preferential trade relations that exist between the Parties, the appropriateness of facilitating temporary entry in keeping with the reciprocity principle and of establishing clear criteria and procedures to this end. It also reflects the need to ensure the security of borders and protect the national workforce and permanent employment in the Parties' respective territories.

Article 14.03

General Obligations

1. Each Party shall apply its measures relating to the provisions of this Chapter in accordance with Article 14.02 and, in particular, shall apply those measures expeditiously so as to avoid unduly impairing or delaying trade in goods or services or the conduct of investment activities under this Agreement.

2. The Parties shall endeavour to develop and adopt common criteria, definitions and interpretations for the implementation of this Chapter.

Article 14.04

Grant of Temporary Entry

1. Each Party shall grant temporary entry to business persons who are otherwise qualified for entry under applicable measures relating to public health and safety and national security, in accordance with this Chapter, including the provisions of Annexes 14.04 and 14.04(1).

2. A Party may deny temporary entry to a business person where that person's temporary entry would adversely affect:

(a) The settlement of any labour dispute that is in progress at the place or intended place of employment; or

(b) the employment of any person who is involved in such dispute.

3. When a Party refuses temporary entry under paragraph 2, it shall:

(a) Inform the business person in writing of the reasons for the refusal; and

(b) promptly notify the other Party in writing of the reasons for the refusal.

4. Each Party shall limit any fees for processing applications for temporary entry of business persons to the approximate cost of services rendered.

5. A grant of temporary entry under this Chapter does not replace the requirements for the exercise of a profession or activity under the specific rules in effect in the territory of the Party granting temporary entry.

Article 14.05

Provision of Information

1. Further to Article 18.03 (Publication), each Party shall:

(a) Provide to the other Party such information as will enable it to become acquainted with any measures it adopts under this Chapter; and

(b) no later than one (1) year after the date of entry into force of this Agreement, prepare, publish and make available to those concerned, in its own territory and in the territory of the other Party, explanatory material in a consolidated document regarding the requirements for temporary entry under this Chapter in such a manner as will enable business persons of the other Party to become acquainted with them.

2. Each Party shall collect and maintain, and make available to the other Party information respecting the granting of temporary entry under this Chapter to business persons of the other Party who have been issued immigration documentation, including information specific to each authorized category.

Article 14.06

Dispute Settlement

1. A Party may not initiate proceedings under Article 20.06 (Consultations) regarding a refusal to grant temporary entry under this Chapter or a case arising specifically under Article 14.03 unless:

(a) The matter involves a recurrent practice; and

(b) the business person has exhausted the relevant available administrative remedies.

2. The remedies referred to in paragraph (1)(b) shall be deemed to be exhausted if a final determination has not been issued by the competent authority within six months of the start of the administrative proceedings, and the failure to issue a determination is not attributable to delay caused by the business person.

Article 14.07

Relation to Other Chapters

Except for the provisions of this Chapter, of Chapters 1 (Initial Provisions), 2 (General Definitions), 19 (Administration of the Agreement) and 22 (Final Provisions) and of Articles 18.02 (Contact Points), 18.03 (Publication), 18.04 (Provision of Information) and 18.06 (Administrative Proceedings for the General Measures), no provision of this Agreement shall impose any obligation on a Party regarding its immigration measures.

ANNEX 14.04

Temporary Entry of Business Persons

Section A – Business Visitors

1. Each Party shall grant temporary entry and sent documentary confirmation to a business person seeking to engage in any of the business activities set out in Appendix 14.04(A)(1), with no requisites other than those established in the immigration measures applicable to temporary entry, on presentation of:

   (a) Proof of citizenship of a Party;

   (b) documentation demonstrating that the business person will be so engaged and describing the purpose of entry; and

   (c) evidence demonstrating that the proposed business activity is international in scope and that the business person is not seeking to enter the local labour market.

2. Each Party shall provide that a business person satisfies the requirements of paragraph 1(c) by demonstrating that:

   (a) The primary source of remuneration for the business activity is outside the territory of the Party granting temporary entry; and

   (b) the business person's principal place of business and the actual place of accrual of profits, at least predominantly, remain outside the territory of the Party granting temporary entry.

For the purposes of this paragraph, the Party granting temporary entry shall ordinarily accept a declaration as to the principal place of business and the actual place of accrual of profits. Where the Party requires further proof, it shall act in accordance with its law.

3. Each Party shall grant temporary entry to a business person seeking to engage in a business activity other than those set out in Appendix 14.04(A)(1) on a basis no less favourable than that provided under the measures set out in Appendix 14.04(A)(3).

4. No Party may:

   (a) As a condition for granting temporary entry under paragraph 1 or 3, require prior approval procedures, petitions, labour certification tests or other procedures of similar effect; or

   (b) impose or maintain any numerical restriction relating to temporary entry under paragraph 1 or 3.

5. Notwithstanding paragraph 4, a Party may require a business person seeking temporary entry under this Section to obtain a visa or its equivalent prior to entry. The Parties shall consider the possibility of avoiding the imposition of the visa requirement or its elimination.

Section B – Traders and Investors

1. Each Party shall grant temporary entry and send documentary confirmation to a business person acting in a capacity that is supervisory or executive or involves specialized knowledge, provided that the business person otherwise complies with existing immigration measures applicable to temporary entry, and is seeking to:

(a) Carry on substantial trade in goods or services principally between the territory of the Party of which the business person is a national and the territory of the other Party into which entry is sought; or

(b) establish, develop, administer or provide advice or key technical services to the operation of an investment to which the business person or the business person's enterprise has committed, or is in the process of committing, a substantial amount of capital.

2. No Party may:

(a) As a condition for granting temporary entry under paragraph 1, require labour certification tests or other procedures of similar effect; or

(b) impose or maintain any numerical restriction relating to temporary entry under paragraph 1.

3. Notwithstanding paragraph 2, a Party may require a business person seeking temporary entry under this Section to obtain a visa or its equivalent prior to entry. The Parties shall consider the possibility of avoiding the imposition of the visa requirement or its elimination.

Section C – Intra-Company Transferees

1. Each Party shall grant temporary entry and send documentary confirmation to a business person employed by an enterprise who seeks to carry out management or executive functions in that enterprise or a subsidiary or affiliate thereof, provided that the business person otherwise complies with existing immigration measures applicable to temporary entry. Each Party may require the business person to have been employed continuously by the enterprise for one (1) year within the three (3) years immediately preceding the date of the application for admission.

2. No Party may:

(a) As a condition for granting temporary entry under paragraph 1, require labour certification tests or other procedures of similar effect; or

(b) impose or maintain any numerical restriction relating to temporary entry under paragraph 1.

3. Notwithstanding paragraph 2, a Party may require a business person seeking temporary entry under this Section to obtain a visa or its equivalent prior to entry. The Parties shall consider the possibility of avoiding the imposition of the visa requirement or its elimination.

ANNEX 14.04(1)

Special Provisions Regarding Temporary Entry of Business Persons

For Costa Rica:

1. Business persons who enter Costa Rica in any of the categories set out in Annex 14.04 shall be deemed to engage in activities that are useful or beneficial for the country.

2. Business persons who enter Costa Rica in any of the categories set out in Annex 14.04 shall be in possession of a temporary residence visa, which may be renewed for consecutive periods, provided the conditions under which it was granted are maintained. Such persons may not apply for permanent residence or change their immigration status, unless they comply with the general immigration requirements established in the General Immigration Law, Law 7033 of 4 August 1986 ("Ley General de Migración y Extranjería, Ley número 7033 del 4 de agosto de 1986") and the Enabling Regulations ("Decreto Ejecutivo 19010 del 31 de mayo de 1989").

For El Salvador:

1. Business persons who enter El Salvador in any of the categories set out in Annex 14.04 shall be deemed to engage in activities that are useful or beneficial for the country.

2. Business persons who enter El Salvador in any of the categories set out in Annex 14.04 shall be in possession of a 90-day temporary business visa, which may be renewed for an equal period, to be issued by the Directorate General of Immigration ("Dirección General de Migración") indicating the kind of business to be carried on in the country, and the holder may engage only in that activity. Where the nature of the activity requires remaining in the country for a longer period, a temporary residency permit shall be granted for a period of one year, which may be renewed for consecutive periods, provided the conditions under which it was granted are maintained. Such persons may not apply for permanent residence, unless they comply with the general immigration requirements established in the Immigration Law, Legislative Decree 2722 of 19 December 1958 and amendments ("Ley de Migración, Decreto Legislativo N° 2772, del 19 de diciembre de 1958") and the Enabling Regulations ("Decreto Ejecutivo N° 33 del 9 de mayo de 1959").

For Guatemala:

1. Business persons who enter Guatemala in any of the categories set out in Annex 14.04 shall be in possession of a business visa and subject to the country's immigration laws.

2. Business visas shall be granted by the Directorate General of Immigration ("Dirección General de Migración") or by Guatemalan consulates duly accredited abroad.

3. Visas granted to foreigners do not imply their unconditional admission into the territory of the Republic and shall be affixed only to valid passports or travel documents issued by the competent authority.

For Honduras:

1. Business persons who enter Honduras in any of the categories set out in Annex 14.04 shall be considered to engage in activities that are useful or beneficial for the country.

2. Business persons who enter Honduras in any of the categories set out in Annex 14.04 shall be in possession of a 90-day temporary business visa, which may be renewed for an equal period or consecutive periods at the discretion of the Directorate General of Population and Immigration Policy ("Dirección General de Población y Política Migratoria"), subject to certification that the conditions

under which it was granted are maintained. Such persons may not apply for permanent residence or change their immigration status, unless they comply with the general provisions on alien residents established in the Population and Immigration Policy Law, Decree 34 of 25 September 1970 ("Ley de Población y Política Migratoria, Decreto N° 34 del 25 de septiembre de 1970") and Resolution 8 on Procedures in respect of Immigration Facilities for Foreign Investors and Business Persons of 19 August 1988 ("Acuerdo N° 8 Procedimientos Sobre Facilidades Migratorias a Inversionistas y Comerciantes Extranjeros del 19 de agosto de 1988").

For Nicaragua:

1. Business persons who enter Nicaragua in any of the categories set out in Annex 14.04 shall be considered to engage in activities that are useful or beneficial for the country.

2. Business persons who enter Nicaragua in any of the categories set out in Annex 14.04 shall be in possession of a temporary residence visa, which may be renewed for consecutive periods of up to three years, provided the conditions under which it was granted are maintained. Such persons may not apply for permanent residence or change their immigration status, unless they comply with the general requirements established in the Immigration Law, Law 153 published in Gazette 80 of 30 April 1993 ("Ley de Migración, Ley Nº 153, La Gaceta Nº 80, 30 abril 1993") and the Law in respect of Alien Residents published in Gazette 81 of 3 May 1993 ("Ley de Extranjería, Ley Nº 154, La Gaceta Nº 81, 3 mayo 1993").

For Panama:

1. Business persons who enter Panama in any of the categories set out in Annex 14.04 shall be considered to engage in activities that are useful or beneficial for the country.

2. Business persons who enter Panama in any of the categories set out in Annex 14.04 shall be in possession of a temporary residence visa, which may be renewed for consecutive periods, provided the conditions under which it was granted are maintained. Such persons may not apply for permanent residence or change their immigration status, unless they comply with the general provisions of the Immigration Law, Decree Law No.16 of 30 June 1960 and amendments ("Ley General de Migración, Decreto Ley No. 16 de 30 de junio de 1960 y sus reformas), and Cabinet Decree No.363 of 17 December 1970 ("Decreto de Gabinete No. 363 de 17 de diciembre de 1970").

APPENDIX 14.04(A)(1)

Business Visitors

Research and design

- Technical, scientific and statistical researchers conducting independent research or research for an enterprise located in the territory of the other Party.

Growth, manufacture and production

- Purchasing and production management personnel conducting commercial transactions for an enterprise located in the territory of the other Party.

Marketing

- Market researchers and analysts conducting research independently or for an enterprise located in the territory of the other Party.

- Trade fair and promotional personnel attending a trade convention.

Sales

- Sales representatives and agents taking orders or negotiating contracts for goods or services for an enterprise located in the territory of the other Party but not delivering goods or providing services.

- Buyers purchasing for an enterprise located in the territory of the other Party.

After-sales service

- Installers, repair and maintenance personnel, and supervisors, possessing specialized technical knowledge essential to a seller's contractual obligation, performing services or training workers to perform services, pursuant to a warranty or other service contract incidental to the sale of commercial or industrial equipment or machinery, including computer software, purchased from an enterprise located outside the territory of the Party into which temporary entry is sought, during the life of the warranty or service agreement.

General service

- Consultants engaging in a business activity involving the cross-border provision of services.

- Management and supervisory personnel engaging in a commercial transaction for an enterprise located in the territory of the other Party.

- Financial services personnel engaging in commercial transactions for an enterprise located in the territory of the other Party. In the case of Panama and Honduras, this category shall be defined as: specialized professional personnel providing advice in the area of financial services for an enterprise established in the territory of the other Party.

- Public relations and advertising personnel consulting with business associates, or attending or participating in conventions.

- Tourism personnel (tour and travel agents, tour guides or tour operators) attending or participating in conventions or conducting a tour that has begun in the territory of the other Party.

APPENDIX 14.04(A)(3)

Existing Immigration Measures

For Costa Rica:

Sections II, III, IV, V, VII, VIII and X of the General Immigration Law, Law 7033 of 4 August 1986 ("Ley General de Migración and Extranjería, Ley número 7033 del 4 de agosto de 1986") and the Regulations of the General Immigration Law, Executive Decree 19010 of 31 May 1989 ("Reglamento a la Ley General de Migración y Extranjería, Decreto Ejecutivo número 19010 del 31 de mayo de 1989").

For El Salvador:

(a) The Immigration Law, Legislative Decree 2772 of 19 December 1958, published in Official Gazette 240, Volume 171 of 23 December 1958 ("Ley de Migración, Decreto Legislativo N° 2772 de 19 de diciembre de 1958, Diario Oficial Nº 240, tomo 181, 23 diciembre 1958");

(b) the Regulations of the Immigration Law, Executive Decree 33 of 9 March 1959, published in Official Gazette 56, Volume 182 of 31 March 1959 ("Reglamento de la Ley de Migración, Decreto Ejecutivo N° 33 de 9 de marzo de 1959, Diario Oficial Nº 56, tomo 182, 31 marzo 1959"); and

(c) the Law in respect of Alien Residents, Legislative Decree 299 of 18 February 1986, published in Official Gazette 34, Volume 290 of 20 February 1986 ("Ley de Extranjería, Decreto Legislativo N° 299 de 18 de febrero de 1986, Diario Oficial N° 34, tomo 290, 20 febrero 1986").

For Guatemala:

(a) Article 85 of Decree No.95-08, the Immigration Law, published in the Official Gazette of Central America on 23 December 1998 ("Decreto Nº 95-98, Diario Oficial de Centroamérica, 23 de diciembre de 1998"); and

(b) Article 77 of Resolution 529-99, the Immigration Regulations, published in the Official Gazette of Central America on 29 July 1999 ("Acuerdo Nº 529-99, Reglamento de Migración, Diario Oficial de Centroamérica, 29 de Julio de 1999").

For Honduras:

(a) Law on Population and Immigration Policy, Decree No. Nº 34 of 25 September 1979 ("Ley de Población y Política Migratoria del 25 de septiembre de 1970") and

(b) Resolution 8 on Procedures in respect of Immigration Facilities for Foreign Investors and Business Persons of 19 August 1988 ("Acuerdo N° 8 Procedimientos Sobre Facilidades Migratorias a Inversionistas y Comerciantes Extranjeros del 19 de agosto de 1998").

For Nicaragua:

(a) Chapter II, Articles 7 through 40 of Law 153 of 24 February 1993, published in Gazette 80 of 30 April 1993 ("Ley N° 153 del 24 de febrero de 1993, La Gaceta Nº 80 del 30 de abril de 1993");

(b) Article 13 of Law 154 of 10 March 1993, published in Gazette 81 of 3 May 1993 ("Ley N° 154 del 10 de marzo de 1993, La Gaceta Nº 81 del 3 mayo de 1993"); and

(c) Decree 628, Nicaraguan Law on Resident Pensioners or Persons of Independent Means, published in Gazette 264 of 19 November 1974 ("Decreto Nº 628, Ley de Residentes Pensionados o Rentistas de Nicaragua, La Gaceta Nº 264 del 19 de noviembre de 1974").

For Panama:

Immigration Law, Decree Law No.16 of 30 June 1960 and amendments ("Ley General de Migración, Decreto Ley No. 16 de 30 de junio de 1960 y sus reformas), and Cabinet Decree No.363 of 17 December 1970 ("Decreto de Gabinete No. 363 de 17 de diciembre de 1970").

PART FIVE: COMPETITION POLICY

CHAPTER 15: COMPETITION POLICY, MONOPOLIES AND STATE ENTERPRISES

Section A – Competition Policy

Article 15.01

Cooperation

1. The Parties shall ensure that the benefits of this Agreement are not undermined by anti-competitive business practices. They shall also endeavour to work toward the adoption of common rules to avoid such practices.

2. The Parties shall endeavour to establish mechanisms to facilitate and promote the development of competition policy and ensure the application of rules on free competition among and within the Parties to avoid the adverse effects of anti-competitive business practices in the free-trade area.

Article 15.02

Future Work Programme

Within two (2) years of the entry into force of this Agreement, the Parties shall examine, in the light of their relevant legislation, the possibility of developing and expanding the content of this Chapter within the limits established in the said legislation. In any development or expansion of the content of this Chapter, special reference shall be made to practices the purpose or effect of which is an act of any kind that unduly harms or obstructs free economic competition and free competition in the production, processing, distribution, supply or marketing of goods or services.

Section B – Monopolies and State Enterprises

Article 15.03

Monopolies and State Enterprises

1. Nothing in this Agreement shall be construed to prevent a Party from designating or maintaining a monopoly or State enterprises, provided its law so permits.

2. If its law so permits, where a Party intends to designate a monopoly and the designation may affect the interests of persons of the other Party, the Party shall:

(a) Wherever possible, provide prior written notification of the designation to the other Party; and

(b) at the time of designation, endeavour to introduce in the operation of the monopoly such conditions as will minimize or eliminate any nullification or impairment of benefits.

3. If its law so permits, each Party shall ensure that any monopoly it designates or maintains or any State enterprise:

(a) Acts in a manner consistent with the Party's obligations under this Agreement wherever such a monopoly exercises regulatory, administrative or other governmental authority that the Party has delegated to it in connection with the monopolized goods

or services such as the power to grant import or export licenses, approve commercial transactions or impose quotas, fees or other charges;

(b) accords non-discriminatory treatment to investments of investors, to goods and to service providers of the other Party in its purchase or sale of the monopolized goods or services in the relevant market; and

(c) does not use its monopoly position to engage, either directly or indirectly, in anticompetitive practices that adversely affect an investment of an investor of the other Party.

4. Paragraph 3 does not apply to procurement by government agencies of goods or services for official purposes and not with a view to commercial resale or use in the production of goods or the provision of services for commercial sale.

PART SIX: GOVERNMENT PROCUREMENT

CHAPTER 16: GOVERNMENT PROCUREMENT

Article 16.01

Definitions

For the purposes of this Chapter:

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 its Party's balance of payments accounts, by means of requirements of local content, licensing of technology, investment, counter-trade or similar requirements;

government procurement means any type of procurement of goods, services or public works or of a combination of goods, services or public works envisaged in the legislation of each Party and carried out by the public entities of the Parties.

entities means all public entities of the Parties except those listed in Annex 16.01;

technical specification means a specification which sets out the characteristics of goods or their related processes and production methods, or the characteristics of services or their related operating methods, and the characteristics of the works to be carried out. It may also include or deal exclusively with issues relating to terminology, symbols, packaging, marking, labelling applicable to goods, processes, or production and operating methods; and

privatization means a process by means of which a public entity is released from State control, be it through public tendering of shares in that entity or otherwise, as provided for in the Parties' applicable legislation; and

supplier means a person of a Party who provides goods or services under this Chapter.

Article 16.02

Objective and Scope

1. The objective of this Chapter is to establish and maintain a single market for government procurement in order to maximize business opportunities for suppliers and reduce the transaction costs of the public and private sectors in the Parties.

2. To attain this goal, each Party shall:

(a) Ensure that suppliers of the other Party participate in government procurement processes under equal conditions;

(b) ensure the principles of non-discrimination and transparency in government procurement processes, as established in this Chapter; and

(c) develop mechanisms for cooperation and technical assistance.

3. Except as provided in Annexes 16.01 and 16.02, this Chapter shall apply to the government procurement processes provided for in the laws of the Parties and procurement by their entities relating to:

(a) Goods;

(b) services, subject to the Annexes to Chapters 11 (Cross-border Trade in Services) and 12 (Financial Services); and

(c) public works.

4. This Chapter does not apply to government procurement by the Panama Canal Authority, or its successor.

5. Notwithstanding paragraph 3(b), this Chapter does not apply to:

(a) Subsidies or donations accorded by a Party or a State enterprise, including loans, guarantees and insurance supported by a Party; and

(b) government services or functions, such as law enforcement, correctional services, income security or insurance, social security, social welfare, public education, public training, health and child care.

Article 16.03

General Rights and Obligations

1. The Parties agree upon the following rights and obligations, as provided in this Chapter:

(a) To apply measures relating to government procurement in a manner consistent with the principles of transparency and non-discrimination, and with the other provisions of this Chapter;

(b) to ensure maximum simplicity and publicity in the application of government procurement measures;

(c) to maintain and promote business opportunities in government procurement for suppliers of the other Party;

(d) to refrain from applying measures that:

(i) Are discriminatory;

(ii) are arbitrary; or

(iii) have the effect of denying equal access or opportunity to a supplier of the other Party.

2. No provision of this Chapter shall prevent a Party from developing a new procurement policy, provided it is not inconsistent with this Chapter.

Article 16.04

National Treatment and Non-Discrimination

1. With respect to procurement carried out by entities using any government contracting procedure other than direct contracting, each Party shall accord to goods, services and suppliers of the other Party treatment no less favourable than that it accords to its own like goods and services and suppliers of like goods and services.

2. Without prejudice to the above, in government procurement that uses procedures other than from those referred to in paragraph 1, the Parties shall adopt such measures as are reasonably available to ensure compliance with the obligations established in Article 16.03(1)(d).

3. Each Party shall ensure that its entities do not demand offsets from suppliers of the other Party that are participating in the government procurement process.

4. This Article does 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 or charges or other import regulations, including restrictions and formalities.

Article 16.05

Technical Specifications

Each Party shall ensure that its entities do not prepare, adopt, or apply any technical specification with the purpose or effect of creating unnecessary barriers to trade.

Article 16.06

Denial of Benefits

Subject to prior notification and consultation in accordance with Articles 18.04 (Provision of Information) and 20.06 (Consultations), a Party may deny the benefits accruing under this Chapter to a service provider of the other Party where the Party establishes that the service is being provided by an enterprise that that has no substantial business activity in the territory of the other Party and, in accordance with the law of that other Party, is owned or controlled by persons of a non-Party.

Article 16.07

Appeal Procedure

1. Each Party shall maintain or, where none exist, establish administrative or judicial procedures that permit, at the request of an affected supplier of the other Party, prompt review of administrative decisions affecting government procurement under this Chapter.

2. Each Party shall ensure that:

(a) Such procedures are timely, transparent and effective and that they comply with the principle of non-discrimination, conferring on suppliers the right to be heard and allowing them to be represented and assisted, to submit any evidence recognized by the legislation of the Party, and access to proceedings, which must be public unless public access is limited on legal grounds; and

(b) decisions are given in writing and have a basis in law, and are notified to the suppliers by the means established in the legislation of the Party.

Article 16.08

Modifications to Coverage

1. Except as provided in paragraph 4 of Article 16.02, the Parties shall hold consultations at the request of any of them to examine the possibility of incorporating the entities listed in Annex 16.01 into this Chapter.

2. The Parties shall approve such agreements in accordance with Article 19.01(3)(b) (Administrative Commission of the Agreement).

Article 16.09

Privatization

1. No provision of this Chapter shall be construed to prevent a Party from privatizing an entity covered in this Chapter. In such cases, another Party may not demand compensation.

2. Privatized entities shall not be subject to the application of this Chapter.

Article 16.10

Information Technology

1. The Parties shall endeavour, to the extent possible, to use electronic means of communication that permit the efficient publication of information on government procurement, particularly on business opportunities offered by the entities.

2. To obtain a wider market for government procurement, the Parties shall endeavour to implement an electronic information and intermediation system for their entities. The main objective of the system shall be timely publication of the business opportunities offered by the entities.

3. Notwithstanding paragraphs 1 and 2, the Parties shall apply the publication procedures set in their own legislation in respect of business opportunities for procurement offered by the entities.

Article 16.11

Committee on Government Procurement

1. The Parties shall establish a Committee on government procurement, the composition of which is established in Annex 16.11.

2. Without prejudice to Article 19.05(2) (Committees), the Committee shall:

(a) Unless otherwise agreed by the Parties, review the results of the application of this Chapter every two years;

(b) except as provided in Article 16.02 (4), conduct consultations and studies with a view to incorporating the entities listed in Annex 16.01 into this Chapter;

(c) coordinate exchanges of statistical information on government procurement; and

(d) coordinate and promote the design of training programmes for the competent authorities of the Parties.

Article 16.12

Cooperation and Technical Assistance

The Parties shall endeavour to provide each other with cooperation and technical assistance through the development of training programmes, in order to afford a better understanding of their respective government procurement and statistical systems and greater access to their respective markets.

Article 16.13

Relation to Other Chapters

In the event of any inconsistency between this Chapter and another Chapter, this Chapter shall prevail to the extent of the inconsistency.

Article 16.14

Dispute Settlement

Chapter 20 (Dispute settlement) on no account applies to any administrative/judicial decisions or measures taken at any stage of Parties' government procurement processes.

Article 16.15

Entry into Force

This Chapter shall take effect eighteen (18) months after this Agreement enters into force for the Parties.

ANNEX 16.02

Types of Procurement

The types of government procurement that are excluded from this Chapter are:

(a) Government defence contracts of a strategic nature and other procurement related to national security;

(b) government contracts to hire personnel assigned to perform duties inherent to the entities;

(c) government procurement funded by States, regional or multilateral organizations or individuals that impose conditions inconsistent with the provisions of this Chapter; and

(d) concessions.

ANNEX 16.11

Committee on Government Procurement

The Committee on Government Procurement established in Article 16.11 shall be composed of:

(a) For Costa Rica, a representative of the Ministry of Foreign Trade or his successor;

(b) for El Salvador, the Ministry of Economic Affairs ("Ministerio de Economía") or its successor;

(c) for Guatemala, the Ministry of the Economy ("Ministerio de Economía") or its successor, and the Ministry of Public Finance ("Ministerio de Finanzas Públicas") or its successor;

(d) for Honduras, the Secretariat of State for Industry and Trade ("Secretaría de Estado en los Despachos de Industria y Comercio"), the Office of the Comptroller-General of the Republic ("Contraloría General de la Republica"), the Directorate General of Administrative Probity ("Dirección General de Probidad Administrativa") and the Executive Unit of the Programme for Transparency in Government Procurement of the Presidential Commission for Modernization of the State ("Unidad Ejecutora del Programa de Transparencia de las Compras de Gobierno dependiente de la Comisión Presidencial de Modernización del Estado"), or its successor;

(e) for Nicaragua, the Directorate for Integration and Administration of Treaties of the Ministry of Development, Industry and Trade ("Dirección de Integración y Administración de Tratados del Ministerio de Fomento, Industria y Comercio") or its successor, and the Directorate General for Government Procurement of the Ministry of Finance and Public Credit ("Dirección General de Contrataciones del Estado del Ministerio deHacienda y Crédito Público"), or its successor; and

(f) for Panama, the Ministry of Trade and Industry ("Ministerio de Comercio y Industria"), through the Vice-Ministry of Foreign Trade("Vice ministerio de Comercio Exterior"), or its successor, in consultation with the Ministry of the Economy and Finance ("Ministerio de Economía y Finanzas") through the Directorate for Government Procurement ("Dirección de Contrataciones Públicas"), or its successor.

PART SEVEN: INTELLECTUAL PROPERTY

CHAPTER 17: INTELLECTUAL PROPERTY

Article 17.01

Application

The Parties confirm the rights and obligations in force between them under the Agreement on TRIPS.

Article 17.02

Enforcement of Intellectual Property Rights

Each Party shall establish in its legislation effective administrative, civil and criminal procedures, for the purpose of securing adequate protection of intellectual property rights. All such procedures shall have regard for due process in respect of both complaining and defending parties.

Article 17.03

Border Measures

Each Party shall adopt legislation on border measures in accordance with the Agreement on TRIPS.

Article 17.04

Transparency

The Parties shall notify to the Committee on Intellectual Property laws, regulations and other provisions on intellectual property. Final judicial decisions and administrative rulings of general application shall be published or, failing that, made publicly available to enable governments and rights holders to become acquainted with them.

Article 17.05

Committee on Intellectual Property

1. The Parties establish a Committee on Intellectual Property, composition of which is established in Annex 17.05.

2. The Committee shall address matters arising under this Chapter and, without prejudice to Article 19.05(2) (Committees), shall as its main function seek the most suitable means to apply Article 17.01, and shall carry out any other tasks assigned to it by the Commission.

Article 17.06

Dispute Settlement

When a Party requests consultations and so informs the Committee, the latter shall facilitate such consultations. Where Parties have held consultations under this Article without satisfactory results, such consultations shall constitute the consultations referred to in Article 20.06 (Consultations), if the Parties so agree.

ANNEX 17.05

Committee on Intellectual Property

The Committee on Intellectual Property established in Article 17.05, shall be composed of:

(a) For Costa Rica, a representative of the Ministry of Foreign Trade or his successor;

(b) for El Salvador, the Ministry of Economic Affairs ("Ministerio de Economía") or its successor;

(c) for Guatemala, the Ministry of Economic Affairs ("Ministerio de Economía") or its successor;

(d) for Honduras, the Secretary of State for Industry and Trade or his successor;

(e) for Nicaragua, the Ministry of Development, Industry and Trade ("Ministerio de Fomento, Industria y Comercio") or its successor; and

(f) for Panama, the Ministry of Trade and Industry through the Vice-Ministry of Foreign Trade, or its successor.

PART EIGHT: ADMINISTRATIVE AND INSTITUTIONAL PROVISIONS

CHAPTER 18: TRANSPARENCY

Article 18.01

Definitions

For the purposes of this Chapter, an "administrative ruling of general application" means an administrative ruling or interpretation which applies to all persons and situations of fact that ordinarily fall within its ambit and which establishes a rule of conduct, but does not include:

(a) A determination or ruling in an administrative proceeding that applies to a particular person, good or service of the other Party in a specific case; or

(b) a ruling that adjudicates with respect to a particular act or practice.

Article 18.02

Contact points

Each Party shall designate a contact point to facilitate communications among the Parties on any matter covered by this Agreement.

On the request of a Party, the contact point shall identify the office or official responsible for the matter and assist as necessary in facilitating communication with the requesting Party.

Article 18.03

Publication

Each Party shall ensure that its laws, regulations, procedures and administrative rulings of general application respecting any matter covered by this Agreement are promptly published or otherwise made available in such a manner as to enable the other Parties and interested persons to become acquainted with them.

Article 18.04

Provision of Information

1. To the extent possible, each Party shall notify to the other Party any proposed or actual measure that the Party considers might affect or that substantially affects the other Party's interests under this Agreement.

2. On request of another Party, a Party shall promptly provide information and respond promptly to questions pertaining to any actual or proposed measure.

3. Any notification or information provided under this Article shall be without prejudice as to whether the measure is consistent with this Agreement.

Article 18.05

Safeguards of Hearings, Legality and Due Process

Each Party shall ensure that judicial and administrative procedures relating to the application of any of the measures referred to in Article 18.03 observe the safeguards that their respective laws enshrine in respect of hearings, legality and due process, within the meaning of Articles 18.06 and 18.07.

Article 18.06

Administrative Proceedings for the Adoption of Measures of General Application

With a view to administering in a consistent, impartial and reasonable manner all measures of general application that affect matters covered by this Agreement, each Party shall ensure that, in its administrative proceedings in which the measures referred to in Article 18.03(1) are applied to particular persons, goods or services of the other Party in specific cases:

(a) Wherever possible, persons of that other Party that are directly affected by a proceeding are given reasonable notice, in accordance with domestic procedures, of the initiation of the proceeding as well as a description of the nature of the proceeding, a statement of the legal authority under which the proceeding is initiated and a general description of all the issues in dispute;

(b) such persons are afforded a reasonable opportunity to present facts and arguments in support of their claims prior to any final administrative action, when time, the nature of the proceeding and the public interest permit; and

(c) its procedures are consistent with domestic law.

Article 18.07

Review and Appeal

1. Each Party shall maintain judicial or administrative tribunals or procedures in accordance with its legislation, for the purpose of the prompt review and, where warranted, correction of final administrative decisions on matters covered by this Agreement. Such tribunals shall be impartial and independent of the office or authority entrusted with administrative enforcement of the law and shall not have any substantial interest in the outcome of the matter.

2. Each Party shall ensure that, in any such tribunals or proceedings, the parties have the right to:

(a) A reasonable opportunity to support or defend their respective positions; and

(b) a decision based on the evidence and submissions.

3. Each Party shall ensure, subject to appeal or further review as provided in its domestic law, that such decisions shall be implemented by the offices or authorities.

Article 18.08

Communications and Notifications

1. For the purposes of this Agreement, all communications or notifications addressed to a Party or sent by a Party shall be made through its national Section of the Secretariat, briefly informing the national Sections of the other Parties of that event.

2. Except as otherwise provided, a communication or notification shall be considered delivered upon its receipt by the national Section of the Party's Secretariat.

CHAPTER 19: ADMINISTRATION OF THE AGREEMENT

Section A – Commission, Subcommission and Secretariat

Article 19.01

Administrative Commission of the Agreement

1. The Parties hereby establish the Administrative Commission of the Agreement, comprising the officials mentioned in Annex 19.01(1) or their designees.

2. The Commission shall:

(a) Supervise compliance with and proper implementation of this Agreement;

(b) evaluate the results of the implementation of this Agreement;

(c) monitor developments and recommend to the Parties any amendments it deems appropriate;

(d) resolve disputes that may arise regarding the interpretation or implementation of this Agreement, as established in Chapter 20 (Dispute Settlement);

(e) supervise the work of all committees established under this Agreement, in accordance with Annex 19.05(3); and

(f) consider any other matter that may affect the operation of this Agreement and any other matter referred to it by the Parties.

3. The Commission may:

(a) Create any ad hoc or standing committees and groups of experts needed to implement this Agreement, and establish their terms of reference;

(b) modify in fulfilment of the objectives of this Agreement:

(i) The schedule of products of a Party set out in Annex 3.04(2) (Tariff Elimination Programme) to include one or more goods that are excluded under that programme;

(ii) the dates set out in Annex 3.04(2) (Tariff Elimination Programme) to accelerate tariff elimination;

(iii) the rules of origin established in Annex 4.03 (Specific Rules of Origin);

(iv) the Uniform Regulations;

(v) incorporate sectors or subsectors of services subject to standards-related measures, metrology or approval procedures pursuant to Article 9.12(g);

(vi) Annexes I, II, III and IV of Chapter 10 (Investment);

(vii) Annexes I, II and III of Chapter 11 (Cross-Border Trade in Services);

(viii) Annex VI of Chapter 12 (Financial Services); and

(ix) the list of entities of a Party established in Annex 16.01(Entities) to include one or more entities in Chapter 16 (Government Procurement);

(c) seek the advice of non-governmental persons or groups;

(d) prepare and approve the regulations needed for implementation of this Agreement; and

(e) take such other action in the exercise of its functions as the Parties may agree.

4. The modifications referred to in paragraph 3(b) shall be implemented by the Parties in accordance with Annex 19.01(4).

5. Notwithstanding paragraph 1, the Commission may meet and take decisions when representatives of Panama and one or more Central American countries are present, in order to consider matters of bilateral interest to those Parties, provided the other Party or Parties are given sufficient notice to enable them to take part in the meeting.

6. The decisions adopted by the Commission pursuant to paragraph 5 shall not apply to a Party that did not attend the meeting.

7. The Commission shall establish its rules and procedures.

8. The Commission shall convene at least once a year in regular session, and shall convene by request of a Party in special session. The location of the meeting shall rotate between the Parties. In the case of Central America, rotation between the Parties shall take place in alphabetical order.

Article 19.02

Administrative Subcommission of the Agreement

1. The Parties hereby establish the Administrative Subcommission, comprising the officials mentioned in Annex 19.02 or their designees.

2. The Administrative Subcommission shall:

(a) Prepare and review the technical files necessary for taking decisions under the Agreement;

(b) follow up on the decisions of the Commission;

(c) without prejudice to Article 19.01(2), it may also oversee the work of all the committees, subcommittees and groups of experts established under this Agreement pursuant to Article 19.05(3); and

(d) examine any other matter that could affect the operation of this Agreement referred by the Commission.

3. The Commission may establish rules and procedures to ensure proper operation of the Administrative Subcommission.

Article 19.03

Secretariat

The Commission shall establish and oversee a Secretariat comprising national Sections.

1. Each Party shall:

(a) establish a permanent office to serve as the national Section of its Secretariat, and shall notify to the Commission the address of its national Section;

(b) be responsible for:

(i) The operation and costs of its Section; and

(ii) the remuneration and payment of expenses of panellists, their assistants, and experts appointed under this Agreement, as set out in Annex 19.03; and

(c) designate an individual to serve as Secretary for its Section, who shall be responsible for its administration.

2. The Secretariat shall:

(a) Provide assistance to the Commission and the Subcommission;

(b) provide administrative assistance to arbitral panels established under Chapter 20 (Dispute Settlement), in accordance with procedures established pursuant to Article 20.12 (Model Rules of Procedure);

(c) as the Commission may direct, support the work of other committees, subcommittees and groups of experts established under this Agreement;

(d) make communications and notifications as provided in Article 18.08 (Communications and Notifications); and

(e) carry out other functions referred by the Commission.

Section B – Committees, Subcommittees and Groups of Experts

Article 19.04

General Provisions

1. The provisions of this section shall apply, on a complementary basis, to all the committees, subcommittees and groups of experts established under this Agreement.

2. Each committee, subcommittee and group of experts shall be comprised of representatives of each of the Parties and all decisions shall be taken by consensus.

3. Notwithstanding paragraph 2, a committee, subcommittee or group of experts may meet and take decisions without all of their members being present when discussing matters exclusively of interest to Chile and one or more Central American countries, provided that the representatives of those Parties are present and that the other Parties are notified of the agenda of the meeting sufficiently in advance.

4. For Chapters 8 (Sanitary and Phytosanitary Measures), 9 (Standards-related Measures, Metrology and Approval Procedures) and 17 (Intellectual Property), a Party may request in writing that the Commission convene pursuant to Article 20.07 (Intervention of the Commission, good offices, conciliation and mediation) when a committee or subcommittee established under the aforementioned Chapters has met for consultation under Article 20.06 (Consultations) and has failed to reach a mutually satisfactory solution to the dispute.

5. For the other Chapters of this Agreement, the Parties must, by consensus, request that the other committees or subcommittees convene for consultation under Article 20.06 (Consultations) before a Party may submit a written request for the Commission to convene pursuant to Article 20.07 (Intervention of the Commission, good offices, conciliation and mediation).

6. For the purposes of paragraphs 4 and 5 of this Article and notwithstanding Article 19.06(2), it shall not be necessary for a subcommittee to have reported to the respective committee before a Party requests a meeting of the Commission under Article 20.07 (Commission, Good Offices, Conciliation and Mediation).

Article 19.05

Committees

1. The Commission may establish committees other than those established in Annex 19.05.

2. Each committee shall:

(a) Monitor implementation of the Chapters of this Agreement in its sphere of competence;

(b) consider matters submitted to it by a Party which considers that an actual or proposed measure of the other Party affects the effective implementation of a commitment included in the Chapters of this Agreement that fall within its competence;

(c) request technical reports from the competent authorities and take actions that are necessary to help resolve the matter;

(d) assess and recommend to the Commission proposals for modifications, corrections or additions to the provisions of the Chapters of this Agreement, in its sphere of competence;

(e) propose to the Commission the review of actual or proposed measures of a Party which in its view may be incompatible with the obligations of this Agreement or cause nullification or impairment within the meaning of Annex 20.03 (Nullification and Impairment); and

(f) perform other tasks referred by the Commission under this Agreement and other instruments that derive from it.

3. The Commission shall supervise the work of all the committees established pursuant to this Agreement.

4. Each committee may establish its own rules and procedures and shall meet at the request of any of the Parties or the Commission.

Article 19.06

Subcommittees

1. To permanently delegate its functions but only for the purposes of specific matters in its sphere of competence, a committee may establish one or more subcommittees, whose work it shall supervise. Each subcommittee shall have the same functions as the committee with respect to the matters referred to it.

2. Each subcommittee shall report to the committee that established it on the performance of its functions.

3. The rules and procedures of a subcommittee may be established by the same committee that created it. Subcommittees shall meet at the request of any of the Parties or the corresponding committee.

Article 19.07

Groups of Experts

1. A committee or subcommittee may establish ad hoc groups of experts to conduct the technical studies necessary for its functions, whose work it shall supervise. Groups of experts shall strictly perform the tasks referred to them, in the established terms and time limits. Groups of experts shall report to the committee or subcommittee that established them.

2. The rules and procedures of a group of experts may be established by the same committee or subcommittee that created it.

ANNEX 19.01(1)

Membership of the Administrative Commission of the Agreement

The Administrative Commission of the Agreement established in Article 19.01(1) shall be comprised of:

(a) For Costa Rica, the Minister of Foreign Trade or his successor;

(b) for El Salvador, the Minister of the Economy or his successor;

(c) for Guatemala, the Minister of the Economy or his successor;

(d) for Honduras, the Secretary of State for Industry and Trade or his successor;

(e) for Nicaragua, the Minister of Development, Industry and Trade or his successor; and

(f) for Panama, the Minister of Foreign Affairs or his successor;

ANNEX 19.01(4)

Implementation of Modifications Approved by the Commission

The Parties shall implement the decisions of the Commission referred to in Article 19.01(3)(b) through the following procedure:

(a) For Costa Rica, the agreements reached by the Parties shall be equivalent to the instrument referred to in Article 121.4, paragraph three, of the Political Constitution of Republic of Costa Rica;

(b) for El Salvador, as provided in its legislation;

(c) for Guatemala, as provided in its legislation;

(d) for Honduras, as provided in its legislation;

(e) for Nicaragua, as provided in its legislation; and

(f) for Panama, as provided in its legislation.

ANNEX 19.02

Membership of the Administrative Subcommission of the Agreement

The Administrative Subcommission of the Agreement established in Article 19.02 shall be comprised of:

(a) For Costa Rica, a representative of the Ministry of Foreign Trade or his successor;

(b) for El Salvador, the Director of Administration of Treaties of the Ministry of the Economy or his successor;

(c) for Guatemala, a representative of the Ministry of the Economy or his successor;

(d) for Honduras, the Director General of Administration of Treaties of the Secretariat of State for Industry and Trade, or her successor;

(e) for Nicaragua, the Director of Integration and Administration of Treaties of the Ministry of Development, Industry and Trade, or his successor; and

(f) for Panama, the National Director of International Trade Negotiations of the Ministry of Trade and Industry, or his successor.

ANNEX 19.03

Remuneration And Payment Of Expenses

1. The Commission shall establish the amounts of remuneration and expenses that will be paid to the panellists, their assistants and experts.

2. The remuneration of panellists, their assistants and experts, their travel and lodging expenses, and all general expenses of panels shall be borne equally by the Parties to the dispute.

3. Each panellist, assistant and expert shall keep a record and render a final account of the person's time and expenses, and the panel shall keep a similar record and render a final account of all general expenses.

ANNEX 19.05

Committees

Committee on Trade in Goods (Article 3.16)

Committee on Sanitary and Phytosanitary Measures (Article 8.11)

Committee on Standardization, Metrology and Approval Procedures (Article 9.12)

Committee on Investment and Cross-Border Trade in Services

Committee on Financial Services (Article 12.11)

Committee on Government Procurement (Article 16.13)

Committee on Intellectual Property (Article 17.05)

CHAPTER 20: DISPUTE SETTLEMENT

Section A – Dispute Settlement

Article 20.01

Definitions

For the purposes of this Chapter:

consulting Party means any Party that conducts consultations pursuant to Article 20.06;

disputing Party means the complaining Party or the Party complained against;

disputing Parties means the complaining Party and the Party complained against;

Party complained against means the Party against which a claim is made, which could be comprised of one or more Parties; and

complaining Party means the Party making a claim, which could be comprised of one or more Parties.

Article 20.02

General Provisions

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

2. Any settlement of matters raised under this Chapter shall be consistent with this Agreement and shall not nullify or impair the benefits for the Parties deriving therefrom, nor impede the attainment of any objective of this Agreement.

3. The mutually satisfactory solutions reached by the disputing Parties with regard to any matters raised under this Chapter shall be notified to the Commission within a period of fifteen (15) days of agreement.

Article 20.03

Scope and Coverage

Except as otherwise provided in this Agreement, the procedures in this Chapter shall apply:

(a) to the avoidance or settlement of all disputes among the Parties regarding the application or interpretation of this Agreement; and

(b) wherever a Party considers that an actual or proposed measure of the other Party is or would be inconsistent with the obligations of this Agreement or could cause nullification or impairment in the sense of Annex 20.03.

Article 20.04

Choice of Forum

1. Any dispute arising under this Agreement and the WTO Agreement or any agreement negotiated thereunder may be settled in either forum at the discretion of the complaining Party.

2.. Once a Party has requested the establishment of an arbitral panel under Article 20.08 or the establishment of a panel under Article 6 of the Dispute Settlement Understanding, the forum selected pursuant to paragraph 1 shall be used to the exclusion of any other.

Article 20.05

Cases of Urgency

1. In cases of urgency, including those provided for in paragraphs 2 and 3, the disputing Parties and the arbitral panels shall make every effort to accelerate the proceedings to the maximum extent possible.

2. For perishable agricultural goods, fish and fish products:

(a) A consulting Party may request in writing a meeting of the Commission, if the matter is not resolved in accordance with Article 20.06 within 15 days of the date of receipt of the request for consultations; and

(b) the Party that has requested the intervention of the Commission in accordance with Article 20.07 may request in writing the establishment of an arbitral panel if the matter is not resolved within 15 days of the meeting of the Commission or, if no such meeting was held, within 15 days of the date of receipt of the request for a meeting of the Commission.

3. In cases of urgency other than those provided for in paragraph 2, the Parties shall, to the extent possible, endeavour to reduce by half the periods provided for Article 20.07 and 20.08 for requesting a meeting of the Commission and the establishment of an arbitral panel, respectively.

Article 20.06

Consultations

1. Any Party may request in writing consultations with the other Party regarding any actual or proposed measure or any other matter that it considers might affect the operation of this Agreement, within the terms of Article 20.03.

2. The requesting Party shall deliver copies of the request to the other Parties, which may participate as consulting Parties, provided they make known their substantial trade interest in the matter in writing within 10 days of submission of the request.

3. The Parties shall make every attempt to arrive at a mutually satisfactory resolution of any matter through consultations under this Article or Article 19.04(4) (General Provisions). To this end, the consulting Parties:

(a) Shall provide sufficient information to enable an examination of how the actual or proposed measure or any other matter might affect the operation of this Agreement; and

(b) shall treat any confidential information exchanged in the consultations on the same basis as the Party providing the information.

Article 20.07

Intervention of the Commission, Good Offices, Conciliation and Mediation

1. Any Party to the consultations may request in writing a meeting of the Commission provided that:

(a) A matter is not resolved pursuant to Article 20.06 within 30 days after the delivery of the request for consultations unless the Parties by consensus agree on a different period; or

(b) the Party to which the request was made did not reply within 10 days of receipt of the request.

2. A Party may also request in writing a meeting of the Commission pursuant to Article 19.04(4) (General Provisions).

3. The request referred to in paragraph 1 shall state the measure or other matter complained of and indicate the provisions of this Agreement that it considers relevant.

4. Unless it decides otherwise, the Commission shall convene within 10 days of delivery of the request and, for the purpose of reaching a mutually satisfactory settlement of the dispute, may:

(a) Call on such technical advisers or create such expert groups as it deems necessary;

(b) have recourse to the good offices, conciliation or mediation of a person or group of persons or other alternative dispute settlement procedures; or

(c) make recommendations.

5. Unless it decides otherwise, the Commission shall join two (2) or more proceedings before it pursuant to this Article regarding the same measure. The Commission may join two (2) or more proceedings regarding other matters before it pursuant to this Article that it determines are appropriate to be considered jointly.

Article 20.08

Request for an Arbitral Panel

1. The Party that has requested intervention by the Commission under Article 20.07 may request in writing the establishment of an arbitral panel where the matter has not been resolved within:

(a) 30 days after the Commission has convened or, if no meeting took place, 30 days of delivery of the request for a meeting of the Commission;

(b) 30 days after the Commission has convened, where proceedings have been consolidated pursuant to Article 20.07(5); or

(c) such other period as the Parties may agree.

2. The Party that requests the establishment of an arbitral panel shall deliver the request to the Party or Parties complained against and to the other Parties, if any, which are entitled under

paragraph 1 to request the establishment of an arbitral panel. The latter shall have 10 days after receipt of the request to express their interest in participating in the arbitration as a complaining Party.

3. The request for establishment of an arbitral panel shall be made in writing and shall state whether consultations have been held and, in the event that the Commission has met, the actions taken. The specific measures at issue shall be identified and a brief summary provided of the legal basis of the complaint sufficient to present the problem clearly.

4. Within 15 days after delivery of the request or within 15 days after expiry of the term referred to in paragraph 2, the disputing Parties shall meet to establish an arbitral panel in accordance with Article 20.11. The meeting shall be held with the Party or Parties that are present.

5. A Party that is entitled to request the establishment of an arbitral panel under paragraph 1 and decides to abstain from participating as a complaining Party in terms of paragraph 2, may only participate as a third Party before the panel when it has a substantial interest in the matter, as established in Article 20.13, provided it expresses its interest in participating within 10 days after receipt of the request to establish the arbitral panel.

6. Where a Party decides, pursuant to paragraph 5, not to participate as a disputing Party or as a third Party, it shall refrain thereafter, in the absence of a significant change in economic or commercial circumstances, from initiating regarding the same matter:

(a) A dispute settlement procedure under this Chapter; and

(b) a dispute settlement procedure under the Dispute Settlement Understanding.

7. Unless otherwise agreed by the disputing Parties, the arbitral panel shall be established and perform its functions in a manner consistent with the provisions of this Chapter.

Article 20.09

Rosters of Panellists

1. Prior to the entry into force of this Agreement, the Parties, by mutual agreement, shall establish a "Roster of Panellists of the Parties" and a "Roster of Panellists of non-Party Countries". To this end, each Party shall appoint five (5) national panellists to form the "Roster of Panellists of the Parties" and five (5) panellists from non-Party countries to form the "Roster of Panellists of non-Party Countries".

2. The rosters may be modified every three (3) years. Notwithstanding, at the request of a Party, the Commission may review the rosters of panellists before that period has expired.

3. All panellists shall meet the qualifications set out in Article 20.10(1).

Article 20.10

Qualifications of Panellists

1. All the panellists shall:

(a) Have expertise or experience in law, international trade, other matters covered by this Agreement or the settlement of disputes arising under international trade agreements;

(b) be chosen strictly on the basis of their objectivity, probity, reliability and sound judgement;

(c) be independent of, and not be affiliated with or take instructions from any Party; and

(d) comply with a code of conduct to be established by the Commission.

2. Individuals may not serve as panellists for a dispute in which they have participated pursuant to Article 20.07(4).

Article 20.11

Establishment of the Arbitral Panel

1. The following procedure shall be observed at the meeting to establish the arbitral panel:

(a) The arbitral panel shall comprise three (3) members;

(b) the disputing Parties shall endeavour to agree on the chair;

(c) where the disputing Parties fail to appoint the chair of the panel, the chair shall be selected by lot from the "Roster of Panellists of non-Party Countries";

(d) each disputing Party shall select a panellist who is a citizen of the other complaining Party from the "Roster of Panellists of the Parties". Notwithstanding, the disputing Parties may, by mutual agreement, provide that the arbitral panel be comprised of panellists of non-Party countries;

(e) where a disputing Party fails to select a panellist, such panellist shall be selected by lot from among the roster members who are citizens of the other disputing Party.

2. If a disputing Party is comprised of two (2) or more Central American countries, one of them, chosen by lot, shall represent the others in the procedure established in paragraph 1.

3. Panellists shall normally be selected from the rosters. Any disputing Party may exercise a peremptory challenge against any individual not on the rosters who is proposed as a panellist by the other disputing Party.

4. If a disputing Party believes that a panellist is in violation of the code of conduct, the disputing Parties shall consult and, if they agree, the panellist shall be removed and a new panellist shall be selected in accordance with this Article.

Article 20.12

Model Rules of Procedure

1. The Commission shall establish the Model Rules of Procedure in accordance with the following principles:

(a) The procedures shall assure a right to a hearing before the arbitral panel as well as the opportunity to provide initial and rebuttal submissions in writing; and

(b) the arbitral panel's hearings, deliberations and initial report, and all written submissions to and communications with the panel shall be confidential.

2. Unless the Parties agree otherwise, the arbitral panel shall conduct its proceedings in accordance with the Model Rules of Procedure.

3. Unless the disputing Parties agree otherwise, the terms of reference of the arbitral panel shall be:

"To examine, in the light of the provisions of the Agreement, the matter referred to the Commission, as set out in the request for a Commission meeting, and to issue the reports referred to in Articles 20.15 and 20.16".

4. If a complaining Party alleges that a measure has caused nullification or impairment in the sense of Annex 20.03, the terms of reference shall so indicate.

5. If a disputing Party wishes the arbitral panel to make findings as to the degree of adverse trade effects caused by a measure adopted by the other Party that it considers to be inconsistent with this Agreement or to have caused nullification or impairment in the sense of Annex 20.03, the terms of reference shall so indicate.

Article 20.13

Third Parties

Pursuant to Article 1.01(2) (Establishment of the Free-Trade Area), a third Party shall be entitled to be heard by the panel, as provided in the Model Rules of Procedure, and to make written submissions. Such submissions shall also be made available to the disputing Parties.

Article 20.14

Information and Technical Advice

At the request of a disputing Party or on its own motion, the arbitral panel may seek information and technical advice from any person or body it deems appropriate.

Article 20.15

Initial Report

1. Unless the disputing Parties otherwise agree, the arbitral panel shall issue an initial report based on the submissions and arguments of the Parties and on any information before it pursuant to Article 20.14. The initial report shall also reflect third-Party submissions.

2. Unless the disputing Parties otherwise agree, the arbitral panel shall, within 90 days of the meeting to establish the panel, present to the Parties an initial report containing:

(a) Findings of fact, including any findings pursuant to a request under Article 20.12(5);

(b) its determination as to whether the measure at issue is or would be inconsistent with the obligations under this Agreement or cause nullification or impairment in the sense of Annex 20.03, or any other determination requested in the terms of reference; and

(c) its recommendations, if any, for the settlement of the dispute.

3. Panellists may furnish separate opinions on matters not unanimously agreed.

4. A Party may submit written comments to the arbitral panel on its initial report within 14 days of presentation of the report.

5. In such an event, and after considering such written comments, the panel, on its own motion or at the request of a disputing Party, may:

(a) Request the views of the disputing Parties;

(b) reconsider its initial report; and

(c) make any further examination that it considers appropriate.

Article 20.16

Final Report

1. The arbitral panel shall communicate to the disputing Parties its final report, including any separate opinions on matters not unanimously agreed, within 30 days of presentation of the initial report, unless the disputing Parties otherwise agree.

2. No arbitral panel may, either in its initial report or its final report, disclose which panellists are associated with majority or minority opinions.

3. Unless the Parties otherwise agree, the final report shall be published fifteen (15) days after it is communicated to the disputing Parties.

Article 20.17

Implementation of Final Reports

1. The final report shall be binding on the disputing Parties in the terms and time periods that the report orders. The time period for implementing the final report shall not exceed six months, calculated from the date on which the last of the disputing Parties has been notified of the final report, unless they agree on a different period.

2. Where a final report by an arbitral panel finds that the measure is inconsistent with this Agreement, the Party complained against shall not implement the measure or shall revoke it.

3. Where the final report of the arbitral panel determines that the measure is cause of nullification or impairment in the sense of Annex 20.03, it shall determine the level of nullification or impairment and may suggest adjustments it considers mutually satisfactory for the disputing Parties.

Article 20.18

Suspension of Benefits

1. Unless the disputing Parties have notified the Commission within fifteen (15) days after the expiry of the period established the final report that the report has been implemented to their satisfaction, the arbitral panel shall determine whether the Party complained against has implemented said report.

2. The complaining Party may suspend application of benefits under this Agreement of equivalent effect to the Party complained against if the arbitral panel determines:

(a) That a measure is inconsistent with the obligations of this Agreement and the Party complained against fails to comply with the final report within the period that the arbitral panel has established; or

(b) that a measure is the cause of nullification or impairment in the sense of Annex 20.03 and the disputing Parties are unable to reach a mutually satisfactory settlement of the dispute within the period that the panel has established.

3. Benefits shall be suspended until such time as the Party complained against complies with the final report or until the Parties reach a mutually satisfactory settlement of the dispute. However, if the Party complained against is comprised of two (2) or more Parties and one of them complies with the final report or reaches a mutually satisfactory agreement with the complaining Party, it shall lift the suspension of benefits with respect to that Party.

4. In considering what benefits to suspend under this Article:

(a) The complaining Party shall first seek to suspend benefits in the same sector or sectors as that or those affected by the measure or other matter that the arbitral panel has found to be inconsistent with the obligations under this Agreement or to have caused nullification or impairment in the sense of Annex 20.03; and

(b) if the complaining Party considers that it is not practicable or effective to suspend benefits in the same sector or sectors, it may suspend benefits in other sectors.

5. After benefits have been suspended in accordance with this Article, on the written request of a disputing Party an arbitral panel shall be established to determine whether there is compliance with the final report or whether the level of benefits suspended by the complaining Party pursuant to this Article is manifestly excessive. Where possible, the original arbitral panel shall be reconvened for this purpose.

6. The proceedings of the arbitral panel established for the purposes of paragraph 5 shall be conducted in accordance with the Model Rules of Procedure provided for in Article 20.12. The panel shall present its final report within sixty (60) days after the meeting to establish the panel or other such period as the disputing Parties may agree. If the arbitral panel has been established with the same members that heard the dispute, it shall present its final report within thirty (30) days of the presentation of the request referred to in paragraph 5.

Section B – Domestic Proceedings and Private Commercial Dispute Settlement

Article 20.19

Interpretation of the Agreement in Judicial or Administrative Proceedings

1. The Commission shall endeavour to agree on an appropriate non-binding interpretation or response as expeditiously as possible where:

(a) A Party considers that a matter of interpretation or application of this Agreement arising from a judicial or administrative proceeding of the other Party requires the interpretation of the Commission; or

(b) a Party notifies it of the receipt of a request for an opinion on a matter of interpretation or application of this Agreement in a judicial or administrative proceeding of that Party.

2. The Party in whose territory the judicial or administrative body is located shall submit the interpretation or response of the Commission to such judicial or administrative body in accordance with the rules of that body.

3. If the Commission is unable to agree on an interpretation or response, any of the Parties may submit its own views to the judicial or administrative body in accordance with the rules of that body.

Article 20.20

Private Rights

No Party may provide for a right of action under its domestic law against the other Party on the ground that a measure of that other Party is inconsistent with this Agreement.

Article 20.21

Alternative Dispute Settlement Between Private Parties

1. Each Party shall encourage and facilitate the use of arbitration and other alternative means for the settlement of international trade disputes between private parties in the free-trade area.

2. By virtue of paragraph 1, each Party shall provide appropriate procedures to ensure observance of the international arbitration conventions it has ratified and the recognition and enforcement of arbitral awards in such disputes.

3. The Commission shall establish an Advisory Committee on Private Commercial Disputes, comprising persons with expertise or experience in the settlement of private international commercial disputes. The Committee shall report and provide general recommendations to the Commission on the availability, use and effectiveness of arbitration and other procedures for the settlement of such disputes.

ANNEX 20.03

Nullification and Impairment

1. A Party may have recourse to dispute settlement under this Chapter if it considers that, as a result of the application of any measure that is not inconsistent with this Agreement, any benefit it could reasonably have expected to accrue to it under any provision of:

(a) Part Two (Trade in Goods);

(b) Part Three (Technical Barriers to Trade); or

(c) Chapter 11 (Cross-Border Trade in Services)

is being nullified or impaired.

2. With respect to any measure subject to an exception under Article 21.02 (General Exceptions), a Party may not invoke:

(a) Paragraph 1(a) or (b), to the extent that the benefit arises from any cross-border trade in services provision of Part Two (Trade in Goods) or Three (Technical Standards); or

(b) paragraph 1(c).

3. To determine the elements of nullification or impairment, the Parties may take into account the principles deriving from case law on Article XXIII:1(b) of the GATT 1994.

CHAPTER 21: EXCEPTIONS

Article 21.01

Definitions

For the purposes of this Chapter:

tax convention means a convention for the avoidance of double taxation or other international taxation agreement or arrangement;

Fund means the International Monetary Fund;

payments for current international transactions means "payments for current international transactions" as defined under the Articles of Agreement of the International Monetary Fund;

international capital transactions means "international capital transactions" as defined under the Articles of Agreement of the International Monetary Fund; and

transfers mean international transactions and transfers and related payments.

Article 21.02

General Exceptions

1. Article XX of the GATT 1994 and its interpretative notes are incorporated into and made part of this Agreement for the purposes of:

(a) Part Two (Trade in Goods), except to the extent that a provision of that Part applies to services or investment;

(b) Part Three (Technical Barriers to Trade), except to the extent that a provision of that Part applies to services or investment;

(c) Chapter 15 (Competition Policy, Monopolies and State Enterprises), to the extent that a provision of that Chapter applies to goods; and

(d) Chapter 16 (Government Procurement), except to the extent that a provision of that Chapter applies to goods.

2. Article XIV(a), (b) and (c) of the GATS are incorporated into and made part of this Agreement for the purposes of:

(a) Part Two (Trade in Goods), to the extent that a provision of that Part applies to services;

(b) Part Three (Technical Barriers to Trade), except to the extent that a provision of that Part applies to services;

(c) Chapter 10 (Investment);

(d) Chapter 11 (Cross-Border Trade in Services);

(e) Chapter 12 (Financial Services);

(f) Chapter 13 (Telecommunications);

(g) Chapter 14 (Temporary Entry of Business Persons);

(h) Chapter 15 (Competition Policy, Monopolies and State Enterprises), to the extent that a provision of that Chapter applies to services; and

(i) Chapter 16 (Government Procurement), to the extent that a provision of that Chapter applies to services.

Article 21.03

National Security

Nothing in this Agreement shall be construed:

(a) To require a Party to furnish or allow access to any information the disclosure of which it determines to be contrary to its essential security interests;

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

(i) Relating to the traffic in arms, ammunition and implements of war and to such traffic and transactions in other goods, materials, services and technology undertaken directly or indirectly for the purpose of supplying a military or other security establishment;

(ii) taken in time of war or other cases of serious international tension; or

(iii) relating to the implementation of national policies or international agreements respecting the non-proliferation of nuclear weapons or other nuclear explosive devices; or

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

Article 21.04

Balance of Payments

1. Nothing in this Agreement shall be construed to prevent a Party from adopting or maintaining measures that restrict transfers where the Party experiences serious balance-of-payments difficulties, or the threat thereof, and such restrictions are consistent with this Article.

2. As soon as practicable after a Party imposes a measure under this Article, in accordance with its international obligations, the Party shall:

(a) Submit any restrictions on current account operations to the Fund for review under Article VIII of the Articles of Agreement of the International Monetary Fund;

(b) enter into good faith consultations with the Fund on economic adjustment measures to address the fundamental underlying economic problems behind the difficulties; and

(c) adopt or maintain economic policies consistent with such consultations.

3. A measure adopted or maintained under this Article shall:

(a) Avoid unnecessary damage to the commercial, economic or financial interests of the other Party;

(b) not be more burdensome than necessary to deal with the balance-of-payments difficulties or threat thereof;

(c) be temporary and be phased out progressively as the balance-of-payments situation improves;

(d) be consistent with paragraph 2(c) and with the Articles of Agreement of the International Monetary Fund; and

(e) be applied on a national treatment or most-favoured-nation treatment basis, whichever is better.

4. A Party may adopt or maintain a measure under this Article that gives priority to services that are essential to its economic programme, provided that the Party does not impose the measure for the purpose of protecting a specific industry or sector, unless the measure is consistent with paragraph 2(c) and with Article VIII(3) of the Articles of Agreement of the International Monetary Fund.

5. Restrictions imposed on transfers:

(a) Where imposed on payments for current international transactions, shall be consistent with Article VIII(3) of the Articles of Agreement of the International Monetary Fund;

(b) where imposed on international capital transactions, shall be consistent with Article VI of the Articles of Agreement of the International Monetary Fund and be imposed only in conjunction with measures imposed on current international transactions under paragraph 2(a); and

(c) may not take the form of tariff surcharges, quotas, licences or similar measures.

Article 21.05

Exceptions to the Disclosure of Information

Nothing in this Agreement shall be construed to require a Party to furnish or allow access to information the disclosure of which would impede compliance with or be contrary to its Constitution, public interest or laws protecting personal privacy or the financial affairs and bank accounts of individual customers of financial institutions.

Article 21.06

Taxation

1. Except as set out in this Article, nothing in this Agreement shall apply to taxation measures.

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

3. Notwithstanding paragraph 2:

    (a) Article 3.03 (National Treatment) and such other provisions of this Agreement as are necessary to give effect to that Article shall apply to taxation measures to the same extent as does Article III of the GATT 1994; and

    (b) Article 3.14 (Export Taxes) shall apply to taxation measures.

4. For the purposes of this Article, taxation measures do not include:

    (a) A "customs duty" as defined in Article 2.01 (Definitions of General Application); or

    (b) the measures listed in exceptions (b), (c) and (d) of that definition.

5. Subject to paragraph 2:

    (a) Articles 11.03 (National Treatment) and 12.06 (National Treatment) shall apply to taxation measures on income, capital gains or the taxable capital of corporations that relate to the purchase or consumption of particular services;

    (b) Articles 10.02 (National Treatment) and 10.03 (Most-Favoured-Nation Treatment); 11.03 (National Treatment) and 11.04 (Most-Favoured-Nation Treatment); and 12.06 (National Treatment) and 12.07 (Most-Favoured-Nation Treatment) shall apply to all taxation measures, other than those on income, capital gains or the taxable capital of corporations, as well as to taxes on estates, inheritances and gifts.

    Nothing in those Articles shall apply to:

    (i) Any most-favoured-nation obligation with respect to an advantage accorded by a Party pursuant to a tax convention;

    (ii) any non-conforming provision of any existing taxation measure;

    (iii) the continuation or renewal of a non-conforming provision of any existing taxation measure;

    (iv) amendments to a non-conforming provision of any existing taxation measure to the extent that the amendment does not decrease its conformity, at the time of the amendment, with any of those Articles; or

    (v) any new taxation measure which aims at ensuring the equitable and effective imposition or collection of taxes, and that does not arbitrarily discriminate between persons, goods or services of the Parties or arbitrarily nullify or impair benefits accorded pursuant to those Articles, within the meaning of Annex 20.03 (Nullification and Impairment).

CHAPTER 22: FINAL PROVISIONS

Article 22.01

Amendments

1. Notwithstanding Articles 19.01(5) (Administrative Commission of the Agreement) and 22.03(2), the Parties may agree on any amendment to this Agreement.

2. When so agreed and approved in accordance with the applicable legal procedures of each Party, an amendment shall enter into force and constitute an integral part of this Agreement.

Article 22.02

Reservations

This Agreement shall not be subject to reservations or interpretative statements on the occasion of its ratification.

Article 22.03

Duration and Entry into Force

1. This Agreement shall have an indefinite duration and shall enter into force in Panama and each Central American country on the thirtieth day after the date on which they have exchanged their instruments of ratification certifying the completion of the necessary legal procedures and formalities.

2. For this Agreement to become operative between Panama and each Central American country, the instruments of ratification shall state that the legal procedures and formalities have concluded with respect to a bilateral protocol that contains:

(a) Annex 3.04 (Tariff Elimination Programme), relating to the Tariff Elimination Programme between Panama and that Central American country;

(b) Section C of Annex 4.03 (Specific Rules of Origin), applicable between Panama and that Central American country;

(c) Annexes I, II, III and IV of Chapter 10 (Investment), relating to the reservations and restrictions on investment applicable between Panama and that Central American country;

(d) Annexes I, II and V of Chapter 11 (Cross-Border Trade in Services), relating to the reservations and restrictions on cross-border services applicable between Panama and that Central American country;

(e) Annex VI of Chapter 12 (Financial Services), relating to the reservations and restrictions on financial services applicable between Panama and that Central American country;

(f) Annexes 3.10(6) (Import and Export Restrictions) and 16.01 (Entities), where pertinent; and

(g) such other matters as the Parties may agree.

3. The protocols signed under paragraph 2 shall constitute an integral part of this Agreement.

Article 22.04

Annexes

The Annexes to this Agreement constitute an integral part thereof.

Article 22.05

Withdrawal

1. Any Party may withdraw from this Agreement. Provided that Panama is not the Party that withdraws, the Agreement shall remain in force for the remaining Parties.

2. Withdrawal shall become effective 180 days after the other Parties are notified, unless the Parties agree to a different period.

Done at Panama City, Republic of Panama, on the sixth day of March of the year two thousand and two in six equally authentic originals.

Miguel Ángel Rodríguez Echeverría
President of the Republic of Costa Rica

Francisco Flores Pérez
President of the Republic of El Salvador

Alfonso Portillo Cabrera
President of the Republic of Guatemala

Enrique Bolaños Geyer
President of the Republic of Nicaragua

Mireya Moscoso Rodríguez
President of the Republic of Panama

Vicente Williams
First Vice-President of Honduras

Done at Panama City, Republic of Panama, on the sixth day of March of the year two thousand and two in six equally authentic originals.

Miguel Ángel Rodríguez Echeverría
President of the Republic of Costa Rica

Francisco Flores Pérez
President of the Republic of El Salvador

Alfonso Portillo Cabrera
President of the Republic of Guatemala

Enrique Bolaños Geyer
President of the Republic of Nicaragua

Mireya Moscoso Rodríguez
President of the Republic of Panama

Vicente Williams
First Vice-President of Honduras

Fernando Henrique Cardoso
President of the Republic of Brazil

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