

## **FTAA – Free Trade Area of the Americas**

### **Draft Agreement**

#### **Chapter XVI Services**

## **CHAPTER XVI Services**

### **Section A General Aspects**

#### **Article 1. Definitions**

For the purposes of this Chapter:

##### **[Commercial presence**

Any type of commercial or professional establishment, through, among other[s] [means]:

- a) the constitution, acquisition, or [maintenance][stay] of a juridical person; [or][as well as]
- b) [the creation or maintenance of] a [local] branch or representative office, [within][in] the territory of a Party, for the purpose of supplying a service.]

##### **[Direct taxes**

Deals with all taxes on total income, on elements of income or of capital, including taxes on gains from alienation of property, taxes on estates, inheritances, and gifts, and taxes on total amounts of wages or salaries paid by enterprises, as well as taxes on capital appreciation.]

##### **[Enterprise**

[Any][An] entity constituted or organized pursuant to [existing][applicable] law, whether or not for profit, and whether privately or government owned, [as well as other organizations or economic entities organized in conformity with the applicable legislation such as] including [companies][firms,] [trusts,] [corporations], holdings, partnerships, sole proprietorships, joint ventures or other forms of associations, [and branches of an enterprise]. [Not withstanding the above, corporations with bearer shares are not included.]]

##### **[Enterprise**

An entity constituted or organized under applicable law, whether or not for profit, and whether privately or governmentally owned or controlled. Forms that an enterprise may take include a corporation, trust, partnership, sole proprietorship, branch, joint venture, association, or similar organization.]

##### **[Enterprise of a Party**

An enterprise constituted or organized pursuant to the legislation of a Party, including local branches in the territory of a Party and carrying out economic activities in that territory.]

##### **[Enterprise or other legal entity**

- a) substantially owned if more than fifty (50) per cent of the equity interest therein is beneficially owned by nationals mentioned in subparagraphs 5.a) and 5.b) above;
- b) effectively controlled if nationals mentioned in subparagraph a) of this paragraph have the power to name a majority of its directors or legally manage its operations.]

##### **[Existing**

means in effect on [...].]

**[Juridical person**

[Shall be defined as a company or other legal entity constituted in a Party in conformity with their respective laws, provided that such company or other legal entity:

- a) has its registered office and central administration and carries out substantial activity within the Parties of the Agreement.
- b) is substantially owned and effectively controlled by persons listed in paragraphs [...] a) and b) above.]

[Any juridical entity duly constituted or organized in any other manner, according to applicable legislation, whether for profit or not for profit, and whether publicly or privately owned, including any corporation, trust, partnership, joint venture, sole proprietorship, or association.]]

**[Juridical person of any other Party**

[Any juridical person constituted or organized in accordance with the legislation of the other Party and that develops or intends to develop substantial commercial operations in the territory of that Party or of any other Party.]

[A juridical person of any other Party:

- a) is “owned” by persons of a Party if those persons have full ownership of more than fifty (50) percent of its capital stock;
- b) is “controlled” by persons of a Part if they have the power to appoint the majority of its directors or legally manage its operations;
- c) is “related” to another person when it controls or is under the control of that person, or when both are under the control of the same person.]]

**[Level of government**

[Refers to the national, state, regional, departmental, federal, municipal, provincial, cantonal, etc. levels at which measures affecting trade in services in the Parties can be adopted.]

[Reference to national[,] [or] federal, [or provincial] [or] [and] state governments includes non-governmental agencies with regulatory, administrative, or other governmental powers conferred on them by those governments.]]

**[Measure**

For the purposes of this Chapter measure means any measure by a Party whether in the form of a law, regulation, rule, procedure, decision, administrative action, or any other form.]

**[Measures adopted or maintained by Parties affecting trade in services**

- a) the production, distribution, marketing, sale, and supply of a service;
- b) the purchase or use of, or payment for, a service;

- [c) the access to and use of [distribution and transport[ation] systems] [or] [[public] telecommunications networks and services] in connection with the supply of a service;]
- [d) the presence in its territory of a service supplier of any other Party;]
- [e) the provision of a bond or other form of financial security as a condition for the provision of a service.]
- [f) the access to and use of, in connection with the supply of a service, service which are required by those Parties to be offered to the public generally.]  
*(Identical text is found in Article 2.1)*

**[Natural Person**

Shall be defined as:

- a) a citizen of the Party;
- b) a permanent resident of that Party in accordance with the National legislation of the respective Party.]

**[Natural person of any other Party**

[A national of any other Party under the law of that Party.]

[A natural person residing in the territory of that other Party or in that of any other Party and who, according to the legislation of that other Party, is a national of that other Party.]

**[Non-discriminatory quantitative restriction**

A nondiscriminatory measure that imposes limitations on:

- a) the number of service suppliers, whether in the form of a quota, a monopoly, an economic needs test, or by any other quantitative means; or
- b) the operations of any service supplier, whether in the form of a quota, an economic needs test, or by any other quantitative means.]

**[Person**

A natural or juridical person.]

**[Professional services**

Services whose provision requires specialized post-secondary education or equivalent training or experience, and for which the right to practice is granted or restricted by a Party, but not include services provided by trades-persons or vessels and aircraft crew members.]

**[Sector**

Service sector means:

- a) with reference to a specific commitment, one (1) or more subsectors of that service, or all of them, as specified in the list of a Party;

- b) otherwise, the entirety of this sector of services, including all of its subsectors.]

**[Service consumer**

Any person that receives or uses a service.]

**[Service supplied in the exercise of governmental authority**

["A service supplied in the exercise of governmental authority" means any service which is supplied neither on a commercial basis, nor in competition with one (1) or more service suppliers and includes:

- a) activities conducted by the central bank or monetary authority or any other public entity, in pursuit of monetary or exchange rate policies;
- b) activities forming part of a statutory system of social security or public retirement plans;
- c) activities forming part of a system of national security or for the establishment or maintenance of public order; and
- d) other activities conducted by a public entity for the account of or with the guarantee or using financial resources of the government.]] (*Similar text is found in Article 2.6.b*)

**[Service supplier**

[All][Any] persons who suppl[y][ies] a service. [When the service is not supplied by a juridical person directly, but rather through other forms of commercial presence, for example, a branch or representative office, the service supplier (i.e., the juridical person), through that presence, shall nevertheless be granted the treatment granted to service suppliers on the basis of the Chapter. Such treatment shall be granted to the presence through which the service is supplied, without having to grant it to any other Party of the supplier located outside the territory in which the service is being supplied.]]

**[Service supplier of a Party**

A person of a Party that seeks to supply or supplies a service.]

**Services**

[ "Services" includes any service in any sector, except services supplied in the exercise of governmental authority.] (*Similar text is found in Article 2.6.a*)

**[Specialty air services**

[Services include] [Specialty air services means any non-transportation such as] [aerial mapping, aerial surveying, aerial photography, forest fire management, fire fighting, aerial advertising, glider towing, parachute jumping, aerial construction services, heli-logging, aerial sightseeing, flight training, aerial inspection and surveillance, and aerial spraying services.] [aerial fire-fighting, sightseeing, spraying, surveying, mapping, photography, parachute jumping, glider towing and helicopter-lift for logging and construction, and other airborne agricultural, industrial and inspection services.]

**[Supply of a service**

The production, distribution, marketing, sale, and supply of a service. ] (*Identical text is found in Article 2.1.a*)

## **Article 2. Scope And Sectoral Coverage**

2.1. This Chapter applies to measures [adopted or maintained] by a Party [directly] affecting [cross-border] trade in services [in all sectors] [and all modes of supply] by service suppliers of any other Party. Such measures include but are not limited to measures affecting:

- a) the production, distribution, marketing, sale, and supply of a service;
- b) the purchase or use of, or payment for, a service;
- [c] the access to and use of [distribution and transport[ation] systems] [or] [[public] telecommunications networks and services] in connection with the supply of a service;]
- [d] the presence in its territory of a service supplier of any other Party;]
- [e] the provision of a bond or other form of financial security as a condition for the provision of a service.]
- [f] the access to and use of, in connection with the supply of a service, service which are required by those Parties to be offered to the public generally.]

[2.2. [This Chapter does not apply to:

- [a] cross-border trade in financial services;]
- 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 reservations systems services.]]
- c) government procurement by a Party [or by a state enterprise]
- [d] [subsidies or grants] [promotional or development measures] granted by one Party or by a State enterprise, including [government-supported] loans, guarantees, insurance[, grants and tax incentives];
- [e)...].]

2.3. For the purposes of this Chapter, [cross-border] trade in services [or cross-border supply of services] means the supply of a service:

- a) from the territory of a Party into the territory of any other Party;
- b) in the territory of a Party [by a person of that Party to a person of any other Party] [to a consumer [of services] of any other Party]; [or]

- [c) by a service supplier of a Party through a commercial presence in the territory of any other Party;]
- d) by [[natural persons] [a national] of a Party] [a service supplier of a Party through the presence of natural persons] in the territory of any other Party.

[But, it does not include the supply of a service in the territory of a Party by an investment in that territory, as defined in Article XX of Chapter XX (Investment).]<sup>1</sup>

[2.4. For the purposes of this Chapter “measures [adopted [or maintained]] [by a Party]” means [measures] [adopted [or maintained]] by:

- a) central, regional or local governments and authorities; and
- b) non-governmental bodies in the exercise of powers delegated by central, regional or local governments or authorities.]

[2.5. In fulfilling its obligations and commitments under this Chapter, [the central government of] each Party shall take [the necessary][such reasonable] measures [as may be available to it] to ensure their observance by those bodies and organizations mentioned in Article 2.4.a) and 2.4.b).]

2.6. [For the purposes of this Chapter:

- a) “services” includes any service in any sector, except] [This Chapter does not apply to] services supplied in the exercise of governmental authority;
- b) “a service supplied in the exercise of governmental authority” means any service which is supplied neither on a commercial basis, nor in competition with one (1) or more service suppliers.
- [c) Nothing in this Chapter shall be construed to prevent a Party from providing a service or performing a function such as law enforcement, correctional services, pension or unemployment insurance or social security services, [income security or insurance, social security or insurance,] social welfare, public education, public training, health and child protection.]

[2.7. For developing countries and, particularly, the smaller economies, there shall be flexibility in meeting the commitments, and special conditions of treatment shall be given to promote the balanced growth of the Parties and facilitate their increasing participation in trade in services in the Hemisphere.]

[2.8. The comprehensiveness of the coverage shall be linked to the extent and rate at which the modes of supply for the provision of services are liberalized. In this regard, special attention shall be given to the particular interests of smaller economies in liberalizing those sectors and modes important to the facilitation of their development needs.]

[2.9. Nothing in this Chapter shall be construed to impose any obligation on a Party with respect to a national of any other Party seeking access to its employment market or employed on a permanent basis in

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<sup>1</sup>[Some delegations feel that this text could be placed in Article 1 (Definitions).]

its territory, or to confer any right on that national with respect to that access or employment.<sup>2]</sup>

## **Section B Substantive Provisions**

### **Article 3. Most-Favored-Nation Treatment**

3.1. [With respect to the measures covered by this Chapter,] each Party shall [immediately and unconditionally] accord to [services and] service suppliers of any other Party treatment no less favorable than that it accords [in like circumstances,] to [like] [services and] [like] service suppliers of any other Party or of a non-Party.

[3.2. The provisions of this Chapter shall not be construed as to prevent any Party from conferring or according advantages:

- a) to neighboring countries in order to facilitate exchanges limited to contiguous frontier zones of services that are both locally produced and consumed; or
- b) neighboring island economies, whether or not they are Parties, in order to facilitate the exchange of services that are both locally produced and consumed.]

[3.3. [Smaller economies and developing countries] [A Party] may maintain exemptions from the principle embodied in paragraph 3.1 [, provided that the measure is simultaneously listed in the Annex on Article II (Exemptions) of GATS and in the Annex XX on Exemptions to this paragraph.]]

[3.4. Without prejudice to the provisions set out in paragraph 3.1, no Party shall be required to automatically extend to the other Parties advantages derived from existing or future [economic integration] Agreements [broader than the FTAA and covered] under Article V (Economic Integration) of the General Agreement on Trade in Services.]

### **Article 4. National Treatment**

4.1. [In the sectors inscribed in its Schedule, and subject to any conditions and qualifications set out therein][Subject to the exceptions listed in the annexes], each Party shall accord to [the] [services and] service suppliers of any other Party, treatment no less favorable than that it accords [, in like circumstances,] to its [own like] [services and] service suppliers.

[4.2. The commitments assumed under this Article shall not be construed to require any Party to compensate for inherent competitive disadvantages which result from the foreign character of the like services or service suppliers.]

[4.3. The Parties may meet the requirement of paragraph 4.1 by according to services and service suppliers of any other Party, either formally identical treatment or formally different treatment to that it accords to its own like services and service suppliers.]

[4.4. Formally identical or formally different treatment shall be considered to be less favorable if it modifies the conditions of competition in favor of services or service suppliers of the Party compared to

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<sup>2</sup> [This text could eventually be moved to the Annex XX (Temporary Entry of Business Persons).]

like services or service suppliers of any other Party.]

[4.5. The treatment granted by a Party under paragraph 4.1 means, with respect to a province or state, treatment no less favorable than the most favorable treatment accorded, in like circumstances, by that province or state to service suppliers of the Party of which it forms a integral part.]

[4.6. [[The Parties] [Developing countries and smaller economies, in particular,] [shall][may] [maintain exemptions][establish exceptions] to the principle [enshrined][set out] in paragraph 4.1.] [Exceptions to this principle shall be allowed, in the case of smaller economies, in pursuit of sustainable national development objectives and to enable their fuller participation in the overall FTAA process.]]

## **Article 5. Market Access**<sup>3</sup>

[[5.1. [With respect to market access through the four (4) modes of supply identified in Article XX,] each Party shall accord services and service suppliers of any other Party treatment no less favorable than that specified in its Schedule of Specific Commitments annexed to this Chapter and in accordance with appropriate regulations consistent with the provisions of Article 8 (Domestic Regulation).]

[5.2. [In sectors where market access commitments are undertaken,] the Parties cannot maintain or adopt either on the basis of a regional subdivision or on the basis of its entire territory, [unless otherwise specified in its Schedule the following measures]:

- a) limitations on the number of service suppliers, whether in the form of numerical quotas, monopolies, exclusive service suppliers or the requirement of an economic needs test;
- b) limitations on the [total] value of service assets or transactions in the form of numerical quotas or the requirement of an economic needs test;
- c) limitations on the [total] number of service operations or on the [total] quantity of service output expressed in terms of designated numerical units in the form of quotas or the requirement of an economic needs test;
- d) limitations on the [total] number of natural persons that may be employed in a particular service sector or that a service supplier may employ and who are necessary for, and directly related to, the supply of a specific service in the form of numerical quotas or the requirement of an economic needs test;
- e) measures which restrict or require specific types of legal entity or joint venture through which a service supplier may supply a service]; and
- f) limitations on the participation of foreign capital in terms of maximum percentage limit on foreign share holding or the total value of individual or aggregate foreign investments].]

[5.3. Special priority shall be given to the smaller economies of the hemisphere in the implementation of paragraphs 5.1 and 5.2. Particular account shall be taken of the serious difficulty of the smaller economies in fulfilling certain negotiated commitments in view of their specific vulnerabilities and their

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<sup>3</sup> Some delegations believe that to ensure full integration and development of small economies, the more developed countries should grant access to their markets in sectors or subsectors of interest to the small economies. In addition, liberalization commitments could be established, taking into account the different levels of development of the economies.

development, trade and national economic needs as provided for in Article 21 (Treatment Of Differences In Size And Levels Of Development).]]

*[No Local Presence*

5.1. No Party shall require a service supplier of any other Party to establish or maintain a representative office or any form of enterprise, or to be resident, in its territory as a condition for the cross-border supply of a service.]

*[[Non-Discriminatory Quantitative Restrictions*

5.1. Each Party shall indicate at the date of entry into force of this Agreement] in its Annex XX (Non-Discriminatory Quantitative Restrictions) any non-discriminatory quantitative restriction that it maintains at the national or federal and state or provincial levels.

5.2. Each Party shall notify the other Parties of any non-discriminatory quantitative restriction that it adopts at the national or federal or state or provincial levels, after the date of entry into force of this Agreement and shall set out the restriction in its Annex XX (Non-discriminatory Quantitative Restrictions).

5.3. The Parties [may] [shall endeavor periodically, but in any event at least every two (2) years,] to negotiate the liberalization of the non-discriminatory quantitative restrictions set out in the Annex XX (Non-Discriminatory Quantitative Restrictions) pursuant to paragraphs 5.1 and 5.2.]

[5.4. Each Party shall set out, in its Annex XX (Non-discriminatory Quantitative Restrictions), its commitments to liberalize quantitative restrictions, licenses requirements, and other nondiscriminatory measures.]]

**Article 6. Transparency**

6.1. Each Party shall publish promptly and, except in emergency situations, no later than the date of its entry into force all relevant measures [of general application] which pertain to or affect the operation of the provisions of this Chapter [enacted by federal, central, and state governments or by non-governmental bodies in the exercise of powers delegated by central, regional or local governments or authorities]. International agreements [including mutual recognition agreements] pertaining to or affecting trade in services to which one of the Parties [in any level of its government] is a signatory shall also be published.

6.2. When publication of the information referred to in paragraph 6.1 is not feasible it shall be made otherwise publicly available.

[6.3. Each Party shall inform promptly [the appropriate FTAA entity/or any other Parties] and at least once a year, of the introduction of new, or [the introduction of] [changes to measures] that significantly affect trade in services covered by its [specific] commitments under this Chapter.]

[6.4. Each Party shall respond promptly to all requests for specific information presented by any other Party regarding any of its measures referred to in paragraph[s] 6.1 [and 6.3] through the Services Enquiry and Contact Points identified by each Party. [Special provision shall be made for the smaller economies, allowing for flexibility in the time-limit to establish such inquiry points as well as for the provision of

technical assistance (particularly in the areas of information technology) in order to enable these states to successfully fulfill their obligations in this area.]]

[6.5. Larger and more developed countries shall seek, through their national contact points, to facilitate the access of the service suppliers of smaller economies to information related to their respective markets, concerning:

- a) commercial and technical aspects of the supply of services (particularly in newer areas)
- b) registration, recognition and obtaining of professional qualifications; and
- c) the availability of services technology.]

[6.6. Each Party shall maintain or establish appropriate mechanisms for responding to inquiries from interested persons regarding their regulations relating to the subject matter of this Chapter.]

[6.7. To the extent possible, each Party shall provide a reasonable opportunity for interested persons and for the Party to make observations on proposed measures.]

[6.8. At the time it adopts final regulations relating to the subject matter of this Chapter, each Party shall to the extent possible, including upon request, address in writing substantive comments received from interested persons with respect to the proposed regulations. To the extent possible, each Party shall allow a reasonable period of time between publication of regulations and their effective date.]

[6.9. Any Party may notify [the appropriate FTAA entity] of any measure adopted by any other Party which, in its judgment, affects the operation of this Chapter.]

[6.10. No provision of this Chapter shall impose on any Party the obligation of providing confidential information the disclosure of which could constitute an impediment to enforcing its domestic laws, would be contrary to the public interest, or that could harm the legitimate commercial interests of public or private enterprises.]

[6.11. The Parties understand that “regulation” includes regulations establishing or applying to licensing authorization or criteria.]

## **Article 7. Denial Of Benefits**

[7.1. A Party may deny the benefits of this Chapter, [subject to prior notification and consultation]:

- [a) to a service supplier of another Party where the service is being supplied by an enterprise that is owned or controlled by persons of a non-Party and the enterprise has no substantial business activities in the territory of any Party other than the denying Party, or
- b) to a service supplier of another Party where the service is being supplied by an enterprise that is owned or controlled by persons of the denying Party and the enterprise has no substantial business activities in the territory of any Party other than the denying Party]
- [c) to the supply of a service, if it is determined that the service is being supplied from or in the territory of a country that is not a Party;

- d) to a service supplier, if it is established that the service is being supplied by a person of a country that is not a Party.]]

[7.2. In order to enjoy the benefits of this Chapter, and to be considered as services originating in the region service suppliers must be:

- a) natural persons, who are citizens of or have permanent residence in a Party, in accordance with the respective national regulations
- b) juridical persons authorized or domiciled, in accordance with the national legislation, in the respective Party and that effectively carry out substantial operations in the territory of that Party.

In the case of a cross border supply of services produced and offered directly from the territory of any other Party, by natural or juridical persons, the appropriate preceding paragraph shall apply.]

[7.3. A Party may deny the benefits of this Chapter to a service supplier of any other Party if the service is being supplied by a enterprise owned or controlled by persons of a non-Party, and the denying Party:

- a) does not maintain diplomatic relations with the non-Party, or
- b) adopts or maintains measures with respect to the non-Party or a person of the non-Party that prohibit transactions with the enterprise or that would be violated or circumvented if the benefits of this Chapter were accorded to the enterprise.]

## **[Article 8. Domestic Regulation**

*[Right to regulate<sup>4</sup>*

8.1. The Parties have a right to regulate through measures for trade in services and to establish new regulations, provided that these do not nullify or undermine existing commitments under the agreements on market access and national treatment.

8.2. Each Party shall ensure that all measures affecting trade in services are administered in a reasonable, objective, and impartial manner in all the services sectors.

8.3. With regard to measures relating to licensing and qualification requirements and procedures and technical standards, and these are not covered by the Articles on market access and national treatment, the Parties shall adopt the following procedures.

*Licensing and qualification requirements and procedures and technical standards*

8.4. Where authorization is required for the supply of a service on which a specific commitment has been made, the competent authorities of the Party involved shall, within a reasonable period of time after

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<sup>4</sup> [One delegation reserves the right to change this proposal on the basis of the provisions set out in the Chapter XX (Services) relating to institutional issues, such as consultations and settlement of disputes.]

the submission of an application considered complete under domestic laws and regulations, inform the applicant of the decision concerning the application. At the request of the applicant, the competent authorities of the Party shall provide, without undue delay, information concerning the status of the application, as well as any additional information required pursuant to the legislation of the State Party in the event of an incomplete application.

8.5. Each Party shall maintain or institute as soon as practicable judicial, arbitral or administrative tribunals or procedures which provide, at the request of an affected service supplier, for the prompt review of, and where justified, appropriate remedies for, administrative decisions affecting trade in services.

8.6. The Parties shall ensure that the procedures in fact provide for an objective and impartial review of the procedures described in paragraph 8.4.

8.7. These provisions shall not be construed to require a Party to institute such tribunals or procedures where this would be inconsistent with its constitutional structure.

8.8. With a view to ensuring that, in sectors in which a specific commitment has been undertaken, measures that a Party adopts or maintains with regard to licensing and qualification requirements and procedures and technical standards do not nullify or undermine specific commitments on market access and national treatment, each Party shall ensure that such measures:

- a) are based on objective and transparent criteria, such as competence and the ability to supply the service;
- b) are not more burdensome than necessary to fulfill a legitimate national policy objective;
- c) in the case of licensing procedures, are not in themselves, hidden restrictions on the supply of the service.

8.9. When a Party applies a measure in order to fulfill a legitimate national policy objective, and another Party shows that said policy undermines commitments undertaken, the Party shall be required to justify that the measure is necessary and that no alternative measure that is less restrictive to trade in services exists for reaching this same objective. If the Party applying the measure cannot justify it, the Party will be required to replace it with a less restrictive one. When assessing the feasibility of adopting alternative measures for fulfilling the legitimate national policy objective, the technical and economic possibilities within the reach of the Party applying the measure shall be taken into account.

8.10. When determining whether a Party meets the obligations set forth in paragraphs 8.8 and 8.9 of this Article, the international rules of competent international organizations among others, that are applied by this Party shall be taken into account.<sup>5</sup>

*Regulatory power at the subfederal level*

8.11. The regulatory power of subfederal bodies must not undermine the commitments undertaken by a Party of this Agreement.

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<sup>5</sup>[Competent international organizations are those international bodies in which the relevant bodies of at least all the FTAA Parties are able to participate.]

*Economic needs tests*

8.12. Economic needs tests shall not be applied to the services providers of the FTAA Parties, in accordance with the provisions of this Article, as well as provisions on market access.]

[[8.1. No provision of this Chapter shall be construed to prevent a Party from having the right to regulate and to introduce new regulations to achieve domestic policy objectives.]

*[Procedures*

8.2. The Parties shall establish procedures for:

- a) a Party to notify any other Party and include in its relevant lists:
  - i) commitments pursuant to Article XX (Liberalization of Non-discriminatory Measures);
  - ii) amendments of measures referred to in Article 13 ([Reservations] / [Non-Confirming Measures]) (1), (2), and (3); and,
  - iii) quantitative restrictions in accordance with Article XX (Quantitative Restrictions) , and
- b) consultations on reservations, quantitative restrictions, or commitments, with a view to further liberalization.]

*[Granting [permits, authorizations] [licenses and certificates]*

[8.3. For the purpose of ensuring that any measure that a Party adopts or maintains regarding the requirements and procedures for granting [permits, authorizations,] licenses [and][[or] certificates] to nationals of any other Party does not constitute an unnecessary barrier to trade, each [Party][one (1) of the Parties] shall endeavor to ensure that [these][such] measures:

- a) are based on objective and transparent criteria, such as the capacity, [and] ability [and competence] to supply a service;
- b) are not more burdensome than necessary to ensure the quality of a service; and
- c) do not constitute a disguised restriction on the [supply] [to the cross-border supply] of a service.]

8.4. Where a Party recognizes, either unilaterally or by agreement with a non-Party State, education, experience, licenses, or certifications obtained in the territory of any other Party or of a non-Party:

- a) nothing in Article 3 (Most-Favored-Nation Treatment) shall be construed to require a Party to accord such recognition to education, experience, licenses, or certifications obtained in the territory of the other Party; and,
- b) a Party shall afford the other Party an adequate opportunity to demonstrate that education,

experience, licenses, or certifications obtained in the territory of any other Party should also be recognized or to conclude an agreement or arrangement of comparable effect.

8.5. Each Party shall, following the entry into force of this Agreement, eliminate all citizenship or permanent residency requirements. Where a Party does not comply with this obligation with respect to a particular sector, it shall list said requirements in its Section A of the Annex XX (Nonconforming and Future Measures). The other Party may adopt or maintain, as its sole remedy, an equivalent requirement in the same sector and for such period as the non-compliant Party maintains its requirement.

8.6. The Parties shall consult periodically with the view to determining the feasibility of removing any remaining citizenship or permanent residency requirement for the licensing or certification of service suppliers from other Parties.

8.7. The Annex XX (Professional Services) sets out procedures for recognizing education, experience, and other rules and requirements governing professional service suppliers.]

[8.1. Each Party may regulate the supply of services in its territory, to the extent that the regulations do not discriminate against services and service suppliers of the other Party, in comparison with its own like services or like service suppliers.]]

#### **[Article 9. General Exceptions**

[9.1. Subject to the requirement that the following measures are not applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination between Parties where like conditions prevail, or a disguised restriction to trade in services, nothing in this Chapter shall be construed to prevent the adoption or enforcement by any Party of measures:

- a) necessary to protect public morals or to maintain public order;
- b) necessary to protect human, animal or plant life or health [or the conservation of the environment];
- c) necessary to secure compliance with laws or regulations which are not inconsistent with the provisions of this Chapter, including those relating to:
  - i) the prevention of deceptive and fraudulent practices or to deal with the effects of a default on services contracts;
  - ii) the protection of the privacy of individuals in relation to the processing and dissemination of personal data and the protection of confidentiality of individual records and accounts;
  - iii) safety;
- d) inconsistent with Article 4 (National Treatment), provided that the difference in treatment is aimed at ensuring the equitable or effective imposition or collection of direct taxes in respect of services or service suppliers of other Parties;
- e) inconsistent with Article 3 (Most-Favored-Nation Treatment), provided that the difference in treatment is the result of an agreement on the avoidance of double taxation in any other

international agreement or arrangement by which the Party is bound.;

[f] public safety;]

[g] protecting national, artistic, historical or archeological treasures].]

[9.2. The measures listed above in this Article shall not be applied in a manner disproportionate to their purpose, shall not have protectionist aims in favor of domestic services or service suppliers, and shall not be applied in such a manner as to constitute an unnecessary obstacle to intraregional trade in services or a means of discrimination against services and/or service suppliers of FTAA *visà-vis* the treatment accorded other countries whether or not they are Parties.]]

**[Article 10. Security Exceptions**

10.1. No provision in this Chapter shall be construed to:

- a) impose upon a Party the obligation to furnish information, the disclosure of which that Party deems contrary to its essential security interests; or
- b) prevent a Party from adopting measures it deems necessary to protect its essential security interests with respect to:
  - i) the supply of services intended directly or indirectly to secure the provisioning of the armed forces;
  - ii) fissile or fusionable material or the materials used to manufacture them;
  - iii) those measures applied in war-time or in case of severe international tension; or
- c) prevent a Party from adopting measures in fulfillment of their obligations assumed under the United Nations Charter for the maintenance of international peace and security.

[10.2. Measures adopted pursuant to Article 10.1.b) and 10.1.c) and their elimination shall be reported to [...], to the extent possible.]]

**[Article 11. Recognition**

11.1. [Each Party shall take the necessary measures to develop procedures that facilitate and promote recognition of:] [For the purposes of the fulfillment, in whole or in part, of its standards or criteria for the authorization, licensing or certification of services suppliers, and subject to the requirements of paragraph 11.5, a Party may recognize] the education or experience obtained, requirements met, or licenses or certifications granted in a particular country. Such recognition, which may be achieved through harmonization or otherwise, may be based upon an agreement or arrangement with the country concerned or may be accorded autonomously [or in accordance with the criteria agreed upon or the decisions on the issue adopted by the Committee on [Cross-border] Trade in Services].

[11.2. The Parties shall agree to establish mutual recognition and licensing requirements and other regulations, in order to ensure that services or service suppliers comply with the criteria applied by each Party for the authorization, licensing, operation and certification of service suppliers, particularly for professional services.]

11.3. Where a Party recognizes autonomously or by agreement or arrangement, the education or experience obtained, requirements met or licenses or certifications granted of another Party or a non-Party, nothing in Article 3 (Most-Favored-Nation Treatment) shall be construed to require the Party to accord such recognition to the education or experience obtained, requirements met or licenses or certifications granted in the territory of another Party.

11.4. A Party that is a party to an agreement or arrangement of the type referred to in paragraph 11.1, whether existing or future, shall afford adequate opportunity for other interested Parties to negotiate their accession to such an agreement or arrangement or to negotiate comparable ones with it. Where a Party accords recognition autonomously, it shall afford adequate opportunity for any other Party to demonstrate that education, experience, licenses, or certifications obtained or requirements met in that other Party's territory should be recognized.

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

[11.6. Each Party shall establish appropriate procedures for verifying the competence of the professionals of other Parties.]]

**[Article 12. List of Specific Commitments**

12.1. Each Party shall indicate on a List of Specific Commitments the service sectors, subsectors and activities in which it will assume commitments. In each sector and for each of the four (4) modes of supply established in Article XX, the Party shall specify:

- a) the terms, limitations and conditions for market access;
- b) the terms, limitations and conditions for national treatment;
- c) the obligations related to additional commitments.

12.2. Any measures that are incompatible with the obligations referring to market access and, at the same time, national treatment shall be included in both columns of the List of Specific Commitments.]

**[Article 13. [Reservations] / [Non-Conforming Measures]**

13.1. Articles 3, 4, XX and 5 (Most-Favored-Nation Treatment, National Treatment, , No Local presence [Market Access]) do not apply to:

- a) any existing non-conforming measure that is maintained by [a Party at]:
  - i) [a Party at] the central level of government as set out by that Party in its Schedule to Annex I (Existing Non-Conforming Measures)],
  - ii) [at the provincial or state level] [a regional level of government] as set out by that Party in its Schedule to Annex I (Existing Non-Conforming Measures),] or
  - (ii) iii) a local level of government;
- b) the continuation or prompt renewal of any non-conforming measure referred to in

subparagraph a); or

- c) an amendment to any non-conforming measure referred to in subparagraph a) to the extent that the amendment does not decrease the conformity of the measure, as it existed immediately before the amendment, with Articles 3, 4, XX and 5 (Most-Favored-Nation Treatment, National Treatment, Most-Favored-Nation Treatment, No Local Presence [, Market Access]).

13.2. Articles 3, 4, XX and 5 (Most-Favored-Nation Treatment, National Treatment, No Local Presence [, Market Access]) do not apply to any measure that a Party adopts or maintains with respect to sectors, sub-sectors or activities, as set out in its Schedule to Annex II (Existing or Future Non-Conforming Measures).

[13.3. Annex I (Existing Non-Conforming Measures) and Annex II (Existing or Future Non-Conforming Measures) shall be completed no later than two (2) years after the date on which the Agreement comes into force. The Smaller Economies shall be granted a period of up to five (5) years to complete their Annex I (Existing Non-Conforming Measures) and Annex II (Existing or Future Non-Conforming Measures).]]

#### **[Article 14. Future Liberalization**

14.1. Through future negotiations called by the Committee [Responsible for the Administration of the Agreement] [to be held periodically], the Parties shall [jointly] broaden the liberalization achieved in the different service sectors, with a view to eventually eliminating the remaining restrictions [set out in the Article 13 ([Reservations] / [Non-Conforming Measures])].

14.2. The removal of the remaining restrictions shall include the progressive reduction and/or dismantling of the nonconforming measures set out in Section A, together with the progressive incorporation into Section A of the sectors, subsectors, and activities set out in Section B.]

#### **[Article 15: Transfers and Payments**

15.1. Each Party shall permit all transfers and payments relating to [the cross-border supply of] [trade in services] services to be made freely and without delay into and out of its territory.

15.2. Each Party shall permit such transfers and payments relating to [the cross-border supply of] [trade in] services to be made in a freely usable currency at the market rate of exchange prevailing at the time of transfer.

15.3. Notwithstanding paragraphs 15.1 and 15.2, a Party may prevent a transfer or payment through the equitable, non-discriminatory and good faith application of its law relating to:

- a) bankruptcy, insolvency or the protection of the rights of creditors;
- b) issuing, trading or dealing in securities, futures, options, or derivatives;
- c) financial reporting or record keeping of transfers when necessary to assist law enforcement or financial regulatory authorities;

- d) criminal or penal offenses;
- e) ensuring compliance with orders or judgments in judicial or administrative proceedings.]

**[Article 16. Restrictions To Protect The Balance Of Payments**

16.1. In the event of serious balance of payments or external financial difficulties or threat thereof, a Party may adopt or maintain restrictions on trade in services with respect to measures covered by Articles 3, 4, XX and 5 (Most-Favored-Nation Treatment, National Treatment, Local Presence, and Market Access), including payments or transfers for transactions relating to the sectors affected by such measures. It is recognized that certain balance of payments pressures may necessitate the use of restrictions in order to achieve, among other things, the maintenance of a level of financial reserves sufficient to implement its economic development program or economic transition.

16.2. The restrictions referred to in paragraph 16.1:

- a) shall not discriminate among Parties;
- b) shall be consistent with the Articles of Agreement of the International Monetary Fund (IMF);
- c) shall avoid unnecessary damage to the commercial, economic and financial interests of the Parties;
- d) shall not exceed those necessary to deal with the circumstances referred to in paragraph 16.1; and
- e) shall be temporary or shall be phased out progressively as the situation indicated in paragraph 16.1 improves.

16.3. In determining the incidence of such restrictions, the Parties may give priority to the supply of services that are more essential to their economic or development programs, but such restrictions shall not be adopted or maintained for the purpose of protecting a given service sector.

16.4. Restrictions adopted or maintained under paragraph 16.1 or any changes therein shall be notified promptly to the Parties.

- 16.5. a) The Parties applying the provisions of this Article shall promptly consult on the restrictions adopted under said provisions.
- b) The Council shall establish procedures for periodic consultations with the objective of enabling such recommendations to be made as it deems appropriate to the concerned Party.
- c) Such consultations shall assess the balance of payments situation of the concerned Party and the restrictions adopted or maintained under this Article, taking into account, inter alia, such factors as:
- i) the nature and extent of the external financial difficulties and of the balance of payments;
  - ii) the external, economic and trading environment of the consulting Party;

- iii) alternative corrective measures which may be available.
- d) The consultations shall address the compliance of the applicable restrictions with paragraph 16.2 of this Article, in particular the progressive phaseout of restrictions, in accordance with sub-paragraph 16.2.e.
- e) In such consultations, all findings of statistical and other facts presented by the IMF relating to foreign exchange, monetary reserves and balance of payments shall be accepted, and conclusions shall be based on the assessment by the IMF of the balance of payments and external financial situation of the consulting Party.]

**[Article 17. Special Safeguards<sup>6</sup>**

17.1. For the purpose of addressing problematic market conditions in particular service sectors, linked to the creation of new sectors, the correction of structural problems within the market or the threat of the disappearance of service sectors, a Party may adopt safeguard measures in a non-discriminatory manner with the proviso that they will be eliminated gradually as the reason for their adoption disappears. For this purpose, the Party shall notify it to the Committee on [Cross-border] Trade in Services and offer evidentiary proof justifying the adoption of such measures.]

**[Article 18. Subsidies<sup>7</sup>**

18.1. The factors to consider in the preparation of disciplines on subsidies are: aspects of MFN and national treatment, specificity by type of delivery, territorial application, transparency, the concept of “necessity”, the importance of the “least trade restrictive” concept, neutralizing measures, exceptions, terms for eliminating subsidies, and flexibility for certain Parties.

18.2. The approach for the establishment of disciplines must include:

- a) general disciplines and
- b) potential development of specific disciplines by sector.

The disciplines on subsidies in services must reflect:

- a) the prohibition on export subsidies, for example an illustrative list of measures,
- b) the prohibition on causing harm to, or shifts in third markets, with compliance subject to a case by case resolution by the FTAA’s Dispute Settlement System, and

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<sup>6</sup> [Some delegations consider it advisable for the Negotiating Group on Services to examine the issue of safeguards in services.]

<sup>7</sup> [Some delegations consider that the FTAA’s future Chapter on Services should contain specific disciplines related to eliminating and prohibiting subsidies that have distorting effects on the market or that cause shifts in normal trade flows. The delegations shall develop disciplines in order to avoid and counteract the effect of subsidies that distort trade in services. Negotiation of these disciplines shall be concluded no later than the date of the entry into force of the FTAA Agreement. Evidence contained in different documents compiled by international organizations indicates that a range in subsidy practices is evident in major service sectors, such as: audiovisual, air and sea transport, tourism, and financial services. The presence of subsidies in insurance, postal services, construction, research and development, and advertising has also been confirmed. The effect of these policies can not be accurately assessed, but there is empirical evidence indicating that these practices with potentially distorting effects are concentrated in certain specific sectors. Some regional integration agreements on goods and services contain specific provisions for establishing certain disciplines on subsidies.]

- c) subsidies that are permitted or non-actionable, among which could be considered, for example, subsidies earmarked for services with social benefits.]

**[Article 19. Trade Practices**

19.1. Decisions taken by pro-competition bodies or authorities in each of the Parties in the performance of their duties and measures adopted to implement such decisions shall not be considered to be measures inconsistent with the market access and national treatment commitments assumed under this Agreement. Likewise, pro-competition regulations shall not be considered to be measures inconsistent with the market access and national treatment commitments assumed under this Agreement.]

**[Article 20. Competition**

[Dealer protection laws

20.1. No Party may maintain or introduce legislation or practice relating to the sale, purchase, transportation, distribution or use of originating goods imported into the territory of that Party which accords greater protection to local distributors of local suppliers than to local distributors of foreign suppliers.]]

**[Article 21. Treatment Of Differences In Size And Levels Of Development**

21.1. The Parties undertake to accord special and differential treatment to smaller economies and less developed countries in the Hemisphere, with respect to: time periods, temporary exceptions in fulfilling their obligations and special assistance to facilitate the adjustment process and improve competitiveness, taking into account the sensitivity of some service sectors, their importance in generating employment and their role in attaining the legitimate development goals of such economies.

21.2. The more developed countries shall accord special market access conditions to the services from smaller and less developed economies of the Hemisphere in those modes of supply in which their greatest competitive advantages lie.

21.3. For the purposes of bolstering development in emerging services sectors of interest to smaller and/or less developed economies in the Hemisphere, the Parties undertake to provide conditions that facilitate market access to service suppliers in such sectors and to foster technical and financial cooperation.

21.4. The increasing participation of smaller and/or less developed economies in trade in services within the Hemisphere shall be encouraged through:

- a) the strengthening of their domestic services capacity and its efficiency and competitiveness, *inter alia* by providing access to technology on a commercial basis.
- b) the improvement of their access to distribution channels and information networks; and
- c) the liberalization of market access in sectors and modes of supply of export interest to them;

21.5. The Parties shall provide the appropriate resources, including financial resources, to the extent permitted by their respective resources and regulations, to further the adjustment to the gradual process of

liberalization of trade in services throughout the Hemisphere.

21.6. In fulfilling the obligations they assume, smaller and/or less developed economies shall be accorded relative flexibility with respect to opening up fewer sectors, liberalizing fewer types of transactions, gradually expanding market access in line with its development process and the adoption of special safeguards.]

### **Section C Procedures And Institutions**

#### **[Article 22. Technical Cooperation**

22.1. The provisions of GATS Article IV (Increasing Participation of Developing Countries) shall be incorporated into this Chapter with special emphasis made on the establishment of “enquiry points” and the availability of services technology.

22.2. Technical assistance in the area of Services within the FTAA shall be channeled through the Committee on [Cross-border] Trade in Services.

22.3. The Parties shall foster, to the greatest extent possible, participation of both relatively developed and relatively less developed countries in the development programs of international and regional organizations.

22.4. The Parties shall foster and support cooperation in the area of services among relatively developed and relatively less developed countries.

22.5. In collaboration with the relevant international organizations, the Parties shall provide less developed countries of the hemisphere with information on services and developments in services for the purpose of strengthening the service sectors in such countries.

22.6. The Parties shall pay special attention to the initiatives of the relatively less developed countries to access technology transfer, training and other activities that foster the infrastructure development and expansion of their trade in services.]

#### **[Article 23. Committee on [Cross-border] Trade In Services**

23.1. The Committee on [Cross-border] Trade in Services shall be made up of representatives of each of the Parties, one (1) regular and one (1) alternate.

23.2. The functions of the Committee shall be<sup>8</sup>:

- a) to supervise the implementation of and compliance with the Agreement on Services.
- b) take cognizance of those matters brought before the Committee by the Parties on which the Committee shall issue recommendations it deems pertinent.

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<sup>8</sup> The Group believes that it will be necessary to revisit this issue taking into account the work of the TCI.

- c) design mechanisms to assess cases on which the Committee does not have sufficient technical expertise, taking into account the provisions of the Dispute Settlement Body.
- d) establish such subsidiary organs as it considers appropriate for the effective discharge of its functions.
- e) the Committee on [Cross-border] Trade Services shall have a Chair, a Vice-Chair and a Secretary.
- f) draft its own regulations.
- [g) the Committee on [Cross-border] Trade in Services shall delegate to working groups the task of considering issues related to regulations in specific service sectors. This shall be done in a specific manner and for given periods of time.]
- [h) at the request of a Party, the Committee on [Cross-border] Trade in Services may hold consultations with one or more Parties on a specific issue on which there was no success in finding a satisfactory solution through the consultations contemplated in the Chapter on Dispute Settlement.]]

**[Article 24. Relations With Other International Organizations**

24.1. The Committee on [Cross-border] Trade in Services shall make the necessary provisions to engage in consultations and cooperation with the United Nations and its specialized agencies, as well as with other services-related intergovernmental organizations.]

**[TEXT ON TEMPORARY ENTRY OF BUSINESS PERSONS<sup>9</sup>**

**Article 1. General Principles**

Provisions on temporary entry are a gauge of the preferential trade between the Parties, the expediency of facilitating temporary entry to business persons in conformity with the principle of reciprocity and the need to establish transparent criteria and procedures for this purpose. These provisions recognize the need to guarantee the security of borders, particularly with respect to entry, through points authorized for migratory transit, as well as the right to protect the work of their nationals and permanent employment in their territories, in accordance with their respective domestic legislation.

**Article 2. General Obligations**

2.1. Each Party shall apply procedures for the facilitation of the temporary entry of business persons in conformity with the abovementioned general principles. In particular, Parties shall apply them swiftly to avoid undue delay or injury to trade in goods and services, or in the investment activities covered in the FTAA.

2.2. The Parties shall develop and adopt common criteria, definitions and interpretations for the implementation of this Chapter.

**Article 3. Authorization of Temporary Entry**

3.1. Each Party shall authorize the temporary entry of business persons who comply with migration requirements and the other applicable public health, safety, and national security procedures.

3.2. Whenever a Party refuses to issue an immigration document authorizing activity or employment, that Party shall inform the business person affected, in writing, of the reasons for the refusal.

3.3. Each Party shall limit the amount of the fees for processing applications for temporary entry to the approximate cost of the services provided.

3.4. The temporary entry of a business person does not confer authorization to practice a profession, unless there is an agreement to this effect between the Party of origin of the business person and the host Party.

**Article 4. Availability of information**

4.1. Each Party:

- a) will provide its migration legislation, particularly that applicable to business persons: and
- b) no later than the date of entry into force of this agreement, shall prepare, publish and make available to interested Parties in its territory and in the territory of the other Party, a

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<sup>9</sup> In paragraph 2 of the derestricted document FTAA.TNC/23 the "TNC instructs the NGSV to continue work on text on specialized services areas where proposals exist or are presented in the future without detriment to the work mandated on general disciplines of the Chapter on Services. Differences exist regarding the location of some specialized provisions; these differences shall be resolved at a later date and should not impede the continuation of this work."

consolidated document that explains the requirements for temporary entry in accordance with this Chapter, such that business persons of the other Party may be apprised of such requirements.

4.2. Each Party shall compile, maintain and make available to other Parties, in conformity with its legislation, information on the granting of authorization for temporary entry pursuant to this Chapter, to persons of another Party who were issued with immigration documents. The compilation shall include information for each authorized category.

#### **Article 5. Dispute settlement**

5.1. The Parties may not initiate procedures to establish a dispute settlement panel<sup>10</sup> because of a refusal of authorization for temporary entry under this Chapter, unless:

- a) the case refers to a recurring practice; and
- b) the business person affected has exhausted the administrative remedies available to him in respect of the specific matter.

5.2. The remedies mentioned in paragraph 5.1.b shall be deemed exhausted when the relevant authority has not issued a final ruling within a period of six (6) months from the initiation of the administrative procedure and the ruling has been delayed for reasons attributable to the business person affected.

#### **Article 6. Definitions**

For the purposes of this proposal:

**Temporary entry** means the entry of a business person from a Party into the territory of another Party, without any intention of establishing permanent residence there;

**Business person** means the citizen of a Party that engages in trade in goods or the provision of services, or in investment activities;

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<sup>10</sup> [This paragraph will be updated in keeping with the progress of the general negotiations of the FTAA should a chapter on Dispute Settlement be accepted.]

**Annex to the Text on Temporary Entry of Business Persons**

**Article 1. Business visitors**

1.1. Each Party shall authorize the temporary entry of business persons intending to engage in one (1) of the business activities mentioned in the appendix to Article 1 of this Annex, provided that, in addition to complying with the migration requirements for temporary entry, such persons provide:

- a) proof of citizenship of a Party;
- b) documentation confirming that they will perform such activities and indicating the purpose of entry; and
- c) proof, of an international nature, substantiating the business activity in which they plan to engage and confirming that they do not intend to enter the local labor market.

1.2. Each Party shall stipulate that business persons are in compliance with the requirements indicated in paragraph 1.1.c) if they demonstrate that:

- a) their main source of remuneration for the business activity originates outside the territory of the Party authorizing temporary entry; and
- b) their principal place of business and the place in which they obtain most of their earnings are outside this Party's territory.

1.3. Each Party shall authorize the temporary entry of business persons intending to engage in business activities other than those mentioned in the appendix to Article 1 of this Annex, under terms no less favorable than those corresponding to the provisions for measures indicated in the appendix to Article 1 of this Annex, provided that such persons comply with the migration requirements for temporary entry.

1.4. No Party may:

- a) require, as a condition for authorizing temporary entry under paragraph 1.1 or 1.3, advance approval procedures, requests, evidence of labor certification, work permits, or other procedures of similar effect.
- b) impose or maintain any numerical restriction to temporary entry in accordance with paragraph 1.1 or 1.3.

1.5. Notwithstanding the provisions established in paragraph 1.4, a Party may require that business persons requesting temporary entry in accordance with this section obtain a visa or equivalent document prior to traveling. Prior to imposing the visa requirement, the Party shall consult with the Party whose business persons would be affected, in order to prevent the requirement from being imposed. At the request of a Party whose business persons are subject to the visa requirement of another Party, the Parties shall consult with each other with a view to eliminating the requirement.

**Article 2. Business people and investors**

2.1. Each Party shall authorize the temporary entry of, and issue supporting documentation to, business person who intend to:

- a) develop an exchange of substantive commercial activities in goods or services, mainly between the territory of the Party of which they are nationals and the territory of the Party to which entry is requested; or
- b) establish, develop, administer, or provide key consulting or technical services for the purposes of managing an investment in which they or their enterprise has committed, or is in the process of committing, a large amount of capital,

and who performs supervisory or executive duties or those that require particular skills, provided that such persons also comply with the migration requirements for temporary entry.

2.2. No Party may:

- a) require evidence of labor certification, work permits, or other procedures of similar effect, as a condition for authorizing temporary entry under paragraph 2.1; or
- b) impose or maintain any numerical restriction on temporary entry in accordance with paragraph 2.1.

2.3. Notwithstanding the provisions established in paragraph 2.2, a Party may require that business persons requesting temporary entry in accordance with this section obtain a visa or equivalent document prior to traveling. Prior to imposing the visa requirement, the Party shall consult with the Party whose business persons would be affected, in order to prevent the requirement from being imposed. At the request of a Party whose business persons are subject to the visa requirement of another Party, the Parties shall consult with each other with a view to eliminating the requirement.

**Article 3. Transfer of personnel within an enterprise**

3.1. Each Party shall authorize the temporary entry of, and issue supporting documentation to, business persons employed by legally established enterprises operating in the Party's territory who intend to perform managerial or executive duties, or who have specialized knowledge, in said enterprise or its subsidiaries or affiliates, provided that the business persons comply with the migration requirements for temporary entry. The Party may require that such persons have been employed by the respective enterprise for one (1) consecutive year during the three (3)-year period immediately preceding the date on which the request is submitted.

3.2. No Party may:

- a) require evidence of labor certification, work permits, or other procedures of similar effect, as a condition for authorizing temporary entry under paragraph 3.1; or
- b) impose or maintain any numerical restriction on temporary entry in accordance with paragraph 3.1.

3.3. Notwithstanding the provisions established in paragraph 3.2, a Party may require that business persons requesting temporary entry in accordance with this section obtain a visa or equivalent document prior to traveling. Prior to imposing the visa requirement, the Party shall consult with the Party whose business persons would be affected, in order to prevent the requirement from being imposed. At the request of a Party whose business persons are subject to the visa requirement of another Party, the Parties shall consult with each other with a view to eliminating the requirement.

**Article 4. Professionals and technicians**

4.1. Each Party shall authorize the temporary entry of, and issue supporting documentation to, business persons intending to engage in professional or technical activities within the scope of a profession indicated in the appendix to Article 4 of this Annex, when such persons, in addition to complying with the migration requirements for temporary entry, provide:

- a) proof of citizenship of a Party; and
- b) documentation confirming that they will perform such activities and indicating the purpose of entry.

4.2. No Party may:

- a) require advance approval procedures, requests, evidence of labor certification, work permits, or other procedures of similar effect, as a condition for authorizing temporary entry under paragraph 4.1; or
- b) impose or maintain any numerical restriction on temporary entry in accordance with paragraph 4.1.

4.3. Notwithstanding the provisions established in paragraph 4.2, a Party may require that business persons requesting temporary entry in accordance with this section obtain a visa or equivalent document prior to traveling. Prior to imposing the visa requirement, the Party shall consult with the Party whose business persons would be affected, in order to prevent the requirement from being imposed. At the request of a Party whose business persons are subject to the visa requirement of another Party, the Parties shall consult with each other with a view to eliminating the requirement.

## **Appendix to Article 1 on Business Visitors of the Annex to the Text on Temporary Entry of Business Persons**

### **Research and scientific activities**

- a) Researchers, technicians, and scientists who work as independent contractors or for a company located in the territory of the other Party.

### **Teaching and academic activities**

- a) Persons with special training who teach on a regular basis, or those who give seminars, courses, or conferences without having a teaching degree.

### **Cultivation, manufacturing, and production**

- a) Owners of harvesting machinery who supervise a group of operators granted entry in accordance with the applicable provisions.
- b) Buyers and producers at the managerial level, who conduct commercial operations for an enterprise located in the territory of another Party.

### **Consulting services**

- a) Experts in a subject on which they provide professional consulting services in technical, scientific, social, or other fields.

### **Marketing**

- a) Researchers and market analysts who conduct research or analysis either independently or for an enterprise located in the territory of the other Party.
- b) Trade show personnel.

### **Sales**

- a) Representatives and sales agents who order, or negotiate contracts for, goods and services for an enterprise located in the territory of another Party, but who do not deliver goods or provide services.
- b) Buyers who conduct procurements for an enterprise located in the territory of another Party.

### **Distribution**

- a) Transport operators who transport goods or passengers to the territory of a Party from the territory of another Party, or who load or transport goods or passengers from the territory of one Party to another Party, without unloading in the territory of the other Party.

- b) Customs agents who provide consulting services to facilitate the importation or exportation of goods.<sup>11</sup>

#### **Post-sale services**

- a) Personnel responsible for installation, repairs, maintenance, and supervision who possess the specialized technical knowledge essential for compliance with the contractual obligations of the seller; and who provide services, or train workers to provide such services, in accordance with a guarantee or other service contract related to the sale of a piece of commercial or industrial equipment or machinery, including software purchased from an enterprise located outside the territory of the Party to which temporary entry is requested, during the term of the guarantee or service contract.

#### **General services**

- a) Professionals who conduct professional business activities within the scope of a profession indicated in the appendix to Article 4 of the Annex.
- b) Managerial and supervisory personnel who engage in commercial operations for an enterprise located in the territory of another Party.
- c) Financial services personnel (insurance agents, banking personnel, or investment brokers) who engage in commercial operations for an enterprise located in the territory of the other Party.
- d) Public relations and advertising personnel who provide consulting services to clients or who attend, or participate in, conventions.
- e) Tourism personnel (tour or travel agents, tour guides, or travel operators) who attend, or participate in, conventions or lead excursions beginning in the territory of another Party.
- f) Tour bus operators that enter the territory of a Party:
  - i) with a group of passengers on a tour bus that has departed from, and will return to, the territory of another Party;
  - ii) to pick up a group of passengers on a tour bus trip that will end, and mostly take place in, the territory of another Party; or
  - iii) with a group of passengers on a tour bus whose destination is in the territory of the Party to which temporary entry is requested, and that will return without passengers or with the group in order to transport them to the territory of another Party.
- g) Translators or interpreters who provide services as employees of an enterprise located in the territory of the other Party.

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<sup>11</sup> [For Mexico, a Customs Agent is the physical person authorized by the Secretariat of Finance and Public Credit, through a patent, to facilitate, on behalf of third parties, the shipment of goods under the different customs regimes set forth in the Customs Law.]

## **Definitions**

For the purposes of this appendix:

**Tour bus operator** means the physical person required for the operation of the vehicle during the tour, including relief personnel accompanying or subsequently joining the tour bus operator.

**Transport operator** means the physical person, other than the tour bus operator, required for the operation of the vehicle during the tour, including relief personnel accompanying or subsequently joining the transport operator.

**Territory of another Party** means the territory of a Party that is not the territory of the Party to which temporary entry is requested.

**Appendix XX on Migration Measures Currently in Force of the Annex to the Text on Temporary  
Entry of Business Persons**

| <b>COUNTRY</b> | <b>MIGRATION MEASURES CURRENTLY IN<br/>FORCE</b> |
|----------------|--|
|                |  |

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**Appendix to Article 4 on Professionals and Technicians<sup>12</sup> of the Annex to the Text on Temporary  
Entry of Business Persons**

| <b>PROFESSIONAL<br/>ACTIVITY<sup>13</sup></b> | <b>OR</b> | <b>TECHNICAL</b> | <b>MINIMUM ACADEMIC REQUIREMENTS AND<br/>ALTERNATIVE DEGREES]</b> |
|---|-----------|------------------|---|
|   |           |                  |   |

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<sup>12</sup> [This list will be agreed upon by the delegations.]

<sup>13</sup> [Business persons requesting temporary entry in accordance with this Appendix may perform training duties related to their profession, including the teaching of seminars.]

**[TEXT ON PROFESSIONAL SERVICES <sup>14</sup>**

**Article 1. Purpose**

1.1. The aim of this annex is to establish the rules to be observed by Parties in reducing and gradually eliminating barriers to the provision of professional services in their territories.

**Article 2. Processing Licensing and Certification Applications**

2.1. Each Party shall ensure that its competent authorities, within a reasonable time after the submission of an application for a license or certification by a national of any other Party:

- a) where the application is complete, make a determination on the application and inform the applicant of that determination; or
- b) where the application is not complete, inform the applicant without undue delay of the status of the application and the additional information that is required under the Party's law.

**Article 3. Development of Professional Standards**

3.1. Parties shall encourage the relevant bodies in their respective territories to develop mutually acceptable standards and criteria for licensing and certification of professional service suppliers and to provide the Committee with recommendations on mutual recognition.

3.2. The standards and criteria referred to in paragraph 3.1 may be developed with regard to the following matters:

- a) education: accreditation of schools or academic programs;
- b) examinations: qualifying examinations for licensing, including alternative methods of assessment such as oral examinations and interviews;
- c) experience: length and nature of experience required for licensing;
- d) conduct and ethics: standards of professional conduct and the nature of disciplinary action for nonconformity with those standards;
- e) professional development and re-certification: continuing education and ongoing requirements to maintain professional certification;
- f) scope of practice: extent of, or limitations on, permissible activities;
- g) local knowledge: requirements for knowledge of such matters as local laws, regulations, language, geography, or climate; and,

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<sup>14</sup> In paragraph 2 of the derestricted document FTAA.TNC/23 the "TNC instructs the NGSV to continue work on text on specialized services areas where proposals exist or are presented in the future without detriment to the work mandated on general disciplines of the Chapter on Services. Differences exist regarding the location of some specialized provisions; these differences shall be resolved at a later date and should not impede the continuation of this work."

- h) consumer protection: alternatives to residency requirements, including bonding, professional liability insurance, and client restitution funds, to provide for the protection of consumers.

3.3. On receipt of a recommendation referred to in paragraph 3.1, the Committee shall, within a reasonable time, review it to determine whether it is consistent with the terms of this Agreement. Based on the Committee's review, each Party shall encourage its respective competent authorities to implement the recommendation, where appropriate, within a mutually agreed time.

**Article 4. Temporary Licensing**

4.1. Where the Parties agree, each Party shall encourage the relevant bodies in its territory to develop procedures for the temporary licensing of professional service suppliers of the other Party.

**Article 5. Review**

5.1. The Committee shall periodically, and at least once every three (3) years, review the implementation of this Annex.]

**[TEXT ON TELECOMMUNICATION SERVICES <sup>15</sup>**

**Article 1. Scope and Coverage**

1.1. This Chapter applies to:

- a) measures adopted or maintained by a Party relating to access to and use of public telecommunications services;
- b) measures adopted or maintained by a Party relating to obligations of major suppliers of public telecommunications services;
- c) measures adopted or maintained by a Party relating to the provision of information services; and
- d) other measures relating to public telecommunications networks and services.

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

1.3. Nothing in this Chapter shall be construed to:

- a) require a Party or require a Party to compel any enterprise to establish, construct, acquire, lease, operate or provide telecommunications networks or services where such networks or services are not offered to the public generally;
- b) require a Party to compel any enterprise exclusively engaged in the broadcast or cable distribution of radio or television programming to make available its broadcast or cable facilities as a public telecommunications network.

**Article 2. Access to and Use of Public Telecommunications Services**

2.1. Each Party shall ensure that enterprises of the other Parties have access to and use of any public telecommunications service, including leased circuits, offered in its territory or across its borders, on reasonable and non-discriminatory terms and conditions, including as set out in paragraphs 2.2 through 2.4.

2.2. Each Party shall ensure that such enterprises are permitted to:

- a) purchase or lease, and attach terminal or other equipment that interfaces with a public telecommunications network;
- b) provide services to individual or multiple end-users over any leased or owned circuit(s);

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<sup>15</sup> In paragraph 2 of the derestricted document FTAA.TNC/23 the "TNC instructs the NGSV to continue work on text on specialized services areas where proposals exist or are presented in the future without detriment to the work mandated on general disciplines of the Chapter on Services. Differences exist regarding the location of some specialized provisions; these differences shall be resolved at a later date and should not impede the continuation of this work."

- c) connect owned or leased circuits with public telecommunications networks and services in the territory, or across the borders, of that Party or with circuits leased or owned by another person;
- d) perform switching, signaling, processing and conversion functions; and
- e) use operating protocols of their choice.

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

2.4. Notwithstanding the preceding paragraph, a Party may take such measures as are necessary:

- a) to ensure the security and confidentiality of messages; or
- b) to protect the privacy of non-public personal data of subscribers to public telecommunications services,

subject to the requirement that such measures are not applied in a manner that would constitute a means of arbitrary or unjustifiable discrimination or disguised restriction on trade in services.

### **Article 3. Obligations Relating to Suppliers of Public Telecommunications Services<sup>16</sup>**

#### **3.1. Interconnection**

- a) Each Party shall ensure that suppliers of public telecommunications services in its territory provide, directly or indirectly, interconnection with the suppliers of public telecommunications services of the other Parties.
- b) In carrying out subparagraph a), each Party shall ensure that suppliers of public telecommunications services in its territory take reasonable steps to protect the confidentiality of commercially sensitive information of, or relating to, suppliers and end-users of public telecommunications services and only use such information for the purpose of providing those services.

#### **3.2. Resale**

Each Party shall ensure that suppliers of public telecommunications services do not impose unreasonable or discriminatory conditions or limitations on the resale of its public telecommunications services.

#### **3.3. Number Portability**

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

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<sup>16</sup> [For the purposes of this Chapter, Articles 3.2, 3.3 and 3.4 do not apply to suppliers of commercial mobile services.]

#### 3.4. Dialing Parity

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

### **Article 4. Additional Obligations Relating to Major Suppliers of Public Telecommunications Services<sup>17</sup>**

#### 4.1. Treatment by Major Suppliers

Each Party shall ensure that major suppliers in its territory accord suppliers of public telecommunications services of the other Party no less favorable treatment than such major supplier accords to its subsidiaries, its affiliates, or any non-affiliated service supplier regarding:

- a) the availability, provisioning, rates or quality of like public telecommunications services; and
- b) the availability of technical interfaces necessary for interconnection.

#### 4.2. Competitive Safeguards

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

#### 4.3. Resale

Each Party shall ensure that major suppliers in its territory:

- a) offer for resale, at reasonable rates,<sup>18</sup> to suppliers of public telecommunications services of the other Party, public telecommunications services that such major supplier provides at retail to end users that are not suppliers of public telecommunications services; and
- b) do not impose unreasonable or discriminatory conditions or limitations on the resale of such services.<sup>19</sup>

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<sup>17</sup> [For the purposes of this Chapter, Article 4 does not apply to rural telephone companies, as defined in section 3(37) of the Communications Act of 1934, as amended, unless a state regulatory authority orders otherwise. Moreover, a state regulatory authority may exempt a rural local exchange carrier, as defined in section 251(f)(2) of the Communications Act of 1934, as amended, from the obligations contained in Article 4. In addition, Articles 4.3, 4.4, 4.6, 4.7 and 4.8 do not apply to suppliers of commercial mobile services.]

<sup>18</sup> [Wholesale rates, set pursuant to domestic law and regulation, shall satisfy the standard of reasonableness in this subparagraph.]

<sup>19</sup> [Resellers that obtain, at wholesale rates, a public telecommunications services available at retail only to a category of subscribers may be prohibited from offering such service to a different category of subscribers, where provided for under national law or regulation.]

#### 4.4. Unbundling of Network Elements

Each Party shall provide its telecommunications regulatory body the authority to require major suppliers in its territory to offer access to network elements on an unbundled basis on terms and conditions and at cost-oriented rates that are reasonable, non-discriminatory and transparent for the supply of public telecommunications services.

#### 4.5. Interconnection

##### a) General Terms and Conditions

Each Party shall ensure that any major supplier in its territory provides interconnection for the facilities and equipment of suppliers of public telecommunications services of the other Party:

- i) at any technically feasible point in the major supplier's network;
- ii) under non-discriminatory terms, conditions (including technical standards and specifications) and rates;
- iii) of a quality no less favorable than that provided by such major supplier for its own like services or for like services of non-affiliated service suppliers or for its subsidiaries or other affiliates;
- iv) in a timely fashion, on terms, conditions, (including technical standards and specifications) and cost-oriented rates that are transparent, reasonable, having regard to economic feasibility, and sufficiently unbundled so that the supplier need not pay for network components or facilities that it does not require for the service to be provided; and
- v) upon request, at points in addition to the network termination points offered to the majority of users, subject to charges that reflect the cost of construction of necessary additional facilities.

##### b) Options for Interconnecting with Major Suppliers

Each Party shall ensure that suppliers of public telecommunications services of the other Party may interconnect their facilities and equipment with those of major suppliers in its territory pursuant to at least one (1) of the following options:

- i) a reference interconnection offer or another standard interconnection offer containing the rates, terms and conditions that the major supplier offers generally to suppliers of public telecommunications services; or
- ii) the terms and conditions of an existing interconnection agreement or through negotiations of a new interconnection agreement.

##### c) Public Availability of Interconnection Offers

Each Party shall require each major supplier in its territory to make publicly available a reference interconnection offer or other standard interconnection offer containing the rates, terms and conditions that such major supplier offers generally to suppliers of public telecommunications services.

##### d) Public Availability of the Procedures for Interconnection Negotiations

Each Party shall make publicly available the applicable procedures for interconnection negotiations with major suppliers in its territory.

- e) Public Availability of Interconnection Agreements Concluded with Major Suppliers
  - i) Each Party shall require major suppliers in its territory to file all interconnection agreements to which they are party with its telecommunications regulatory body.
  - ii) Each Party shall make publicly available interconnection agreements in force between a major supplier in its territory and other suppliers of public telecommunications services in such territory.

#### 4.6. Provisioning and Pricing of Leased Circuits Services

- a) Each Party shall ensure that major suppliers in its territory provide enterprises of the other Party leased circuits services that are public telecommunications services on terms and conditions and at rates that are reasonable and non-discriminatory.
- b) In carrying out subparagraph a), each Party shall provide its telecommunications regulatory body the authority to require major suppliers in its territory to offer leased circuits services that are public telecommunications services to enterprises of the other Party at flat-rate, cost-oriented prices.

#### 4.7. Co-location

- a) Subject to subparagraphs b) and c), each Party shall ensure that major suppliers in its territory provide to suppliers of public telecommunications services of the other Party physical co-location of equipment necessary for interconnection on terms and conditions and at cost-oriented rates that are reasonable, non-discriminatory and transparent.
- b) Where physical co-location is not practical for technical reasons or because of space limitations, each Party shall ensure that major suppliers in its territory:
  - i) provide an alternative solution; or
  - ii) facilitate virtual co-location,on terms and conditions and at cost-oriented rates that are reasonable, non-discriminatory and transparent.
- c) Premises subject to this obligation shall be those determined by each Parties' national law or regulation.

#### 4.8. Access to Rights-of-way

Each Party shall ensure that major suppliers in its territory afford access to poles, ducts, conduits and rights-of-way to suppliers of public telecommunications services of the other Party(s) on reasonable and nondiscriminatory rates, terms and conditions.

**Article 5. Submarine Cable Systems**

5.1. Each Party shall ensure reasonable and non-discriminatory treatment for access to submarine cable systems (including landing facilities) in its territory, where a supplier is authorized to operate such submarine cable system as a public telecommunications service.

**Article 6. Conditions for the Provision of Information Services**

6.1. Neither Party may require an enterprise in its territory that it classifies as a supplier of information services (which supplies such services over facilities that it does not own) to:

- a) supply such services to the public generally;
- b) cost-justify rates for such services;
- c) file a tariff for such services;
- d) interconnect its networks with any particular customer for the supply of such services; or
- e) conform with any particular standard or technical regulation for interconnection other than for interconnection to a public telecommunications network.

6.2. Notwithstanding paragraph 6.1, a Party may take the actions described in subparagraphs a) – e) to remedy a practice of a supplier of information services that the Party has found in a particular case to be anti-competitive under its law or regulation, or to otherwise promote competition or safeguard the interests of consumers.

**Article 7. Independent Regulatory Bodies and Privatization**

7.1. Each Party shall ensure that its telecommunications regulatory body is separate from, and not accountable to, any supplier of public telecommunications services. To this end, each Party shall ensure that its telecommunications regulatory body does not hold a financial interest or maintain an operating role in such a supplier.

7.2. Each Party shall ensure that the decisions and procedures of its telecommunications regulatory body are impartial with respect to all interested persons. To this end, each Party shall ensure that any financial interest that it holds in a supplier of public telecommunications services does not influence the decisions and procedures of its telecommunications regulatory body.

7.3. Each Party shall maintain the absence or eliminate national government ownership in any national supplier of public telecommunications services. Where a Party has an ownership interest in a supplier of public telecommunications service, it shall notify the other Parties of its intention to eliminate such interest as soon as possible.

**Article 8. Universal Service**

8.1. Each Party shall administer any universal service obligation that it maintains in a transparent, non-discriminatory and competitively neutral manner and shall ensure that its universal service obligation is not more burdensome than necessary for the kind of universal service that it has defined.

**Article 9. Licensing Process**

9.1. Where a Party requires a supplier of public telecommunications services to have a license, the Party shall make publicly available:

- a) all the licensing criteria and procedures;
- b) the period of time normally required to reach a decision concerning an application for a license; and
- c) the terms and conditions of all licenses issued.

9.2. Each Party shall ensure that, upon request, an applicant receives the reasons for the denial of a license.

**Article 10. Allocation and Use of Scarce Resources**

10.1. Each Party shall administer procedures for allocating and using scarce telecommunications resources, including frequencies, numbers and rights of way, in an objective, timely, transparent and non-discriminatory fashion.

10.2. Each Party shall make publicly available the current state of allocated frequency bands but shall not be required to provide detailed identification of frequencies allocated for specific government uses.

10.3. The decisions on allocating and assigning spectrum and frequency management are not measures that are *per se* inconsistent with Article XX of Chapter XX (Cross-border Trade in Services) and Article XX of Chapter XX (Investment). Accordingly, each Party retains the right to exercise its spectrum and frequency management policies, which may affect the number of suppliers of public telecommunications services, provided that this is done in a manner that is consistent with the provisions of this Agreement. The Parties also retain the right to allocate frequency bands taking into account existing and future needs.

**Article 11. Enforcement**

11.1. Each Party shall ensure that its competent authority is authorized to enforce domestic measures relating to the obligations set out in Articles 2, 3, 4 and 5 of this Chapter. Such authority shall include the ability to impose effective sanctions, which may include financial penalties, injunctive relief (on an interim or final basis), or modification, suspension and revocation of licenses.

**Article 12. Resolution of Domestic Telecommunications Disputes**

Further to the obligations contained in Article XX of the Chapter XX (Transparency), each Party shall ensure the following:

12.1. Recourse to Telecommunications Regulatory Bodies

- a) Each Party shall ensure that enterprises of the other Party may seek review by a national telecommunications body or other relevant body to resolve disputes arising under domestic measures addressing a matter set out in Articles 2 through 5 of this Chapter.
- b) Each Party shall ensure that suppliers of public telecommunications of the other Party that have requested interconnection with a major supplier in its territory may seek review, within a reasonable and publicly available period of time after the supplier requests interconnection, by a telecommunications regulatory body to resolve disputes regarding the terms, conditions and rates for interconnection with such major supplier.

12.2. Reconsideration

Each Party shall ensure that any enterprises aggrieved or whose interests are adversely affected by a determination or decision of the national telecommunications regulatory body may petition the body to reconsider that determination or decision. Neither Party may permit such a petition to constitute grounds for non-compliance with such determination or decision of the telecommunications regulatory body unless an appropriate authority stays such determination or decision.

12.3. Judicial Review

Each Party shall ensure that any enterprise aggrieved by a determination or decision of the national telecommunications regulatory body may obtain judicial review of such determination or decision to an independent judicial authority.

**Article 13. Transparency**

Further to Article XX (Chapter XX (Transparency)), each Party shall ensure that:

13.1. rulemakings, including the basis for such rulemakings, of its telecommunications regulatory body and end-user tariffs filed with its telecommunications regulatory body are promptly published or otherwise made available to all interested persons;

13.2. interested persons are provided with adequate advance public notice of and the opportunity to comment on any rulemaking proposed by a national telecommunications regulatory body; and

13.3. its measures relating to public telecommunications services are made publicly available, including measures relating to:

- a) tariffs and other terms and conditions of service;
- b) procedures relating to judicial and other adjudicatory proceedings;

- c) specifications of technical interfaces;
- d) bodies responsible for preparing, amending and adopting standards-related measures affecting such access and use;
- e) conditions for attaching terminal or other equipment to the public telecommunications network; ; and
- f) notification, permit, registration or licensing requirements, if any.

**Article 14. Flexibility in the Choice of Technologies**

14.1. No Party shall prevent suppliers of public telecommunications services from having the flexibility to choose the technologies that they use to supply their services, including commercial mobile wireless services, subject to requirements necessary to satisfy legitimate public policy interests.

**Article 15. Forbearance**

15.1. The Parties recognize the importance of relying on market forces to achieve wide choices in the supply of telecommunications services. To this end, each Party may forbear from applying regulation to a service that such Party classifies as a public telecommunications service, upon a determination by its telecommunications regulatory body that:

- a) enforcement of such regulation is not necessary to prevent unreasonable or discriminatory practices;
- b) enforcement of such regulation is not necessary for the protection of consumers, and
- c) forbearance is consistent with the public interest, including promoting and enhancing competition among suppliers of public telecommunications services.

**Article 16. Relationship to other Chapters**

16.1. In the event of any inconsistency between this Chapter and another Chapter, this Chapter shall prevail to the extent of the inconsistency.

**Article 17 Definitions**

For purposes of this Chapter:

**Co-location (physical)** means physical access to and control over space in order to install, maintain or repair equipment, at premises owned or controlled and used by a major supplier to supply public telecommunications services.

**Commercial mobile services** means public telecommunications services supplied through mobile wireless means.

**Cost-oriented** means based on cost, and may include a reasonable profit, and may involve different cost methodologies for different facilities or services.

**Dialing parity** means the ability of an end-user to use an equal number of digits to access a like public telecommunications service, regardless of the public telecommunications service supplier chosen by such end-user.

**End-user** means a final consumer of or subscriber to a public telecommunications service, including a service supplier other than a supplier of public telecommunications services

**Enterprise** means an entity constituted or organized under the applicable law of a Party, whether for profit or not for profit, and whether privately or government owned or controlled. Forms that an enterprise may take include a corporation, trust, partnership, sole proprietorship, branch, joint venture, association, or similar organization.

**Essential facilities** means facilities of a public telecommunications network or service that are (a) exclusively or predominantly provided by a single or limited number of suppliers; and b) cannot feasibly be economically or technically substituted in order to provide a service.

**Information service** means the offering of a capability for generating, acquiring, storing, transforming, processing, retrieving, utilizing, or making available information via telecommunications, and includes electronic publishing, but does not include any use of any such capability for the management, control, or operation of a telecommunications system or the management of a telecommunications service;

**Interconnection** means linking with suppliers providing public telecommunications services in order to allow the users of one (1) supplier to communicate with users of another supplier and to access services provided by another supplier;

**Leased circuit services** means telecommunications facilities between two (2) or more designated points that are set aside for the dedicated use of or availability to a particular customer or other users of the customer's choosing.

**Major supplier** means a supplier of public telecommunications services that has the ability to materially affect the terms of participation (having regard to price and supply) in the relevant market for public telecommunications services as a result of (a) control over essential facilities or (b) use of its position in the market.

**Network element** means a facility or equipment used in supplying a public telecommunications service, including features, functions and capabilities provided by means of such facility or equipment.

**Number portability** means the ability of end-users of public telecommunications services to retain, at the same location, existing telephone numbers without impairment of quality, reliability or convenience when switching between like suppliers of public telecommunications services.

**Non-discriminatory** means treatment no less favorable than that accorded to any other user of like public telecommunications services in like circumstances.

**Person** means either a natural person or an enterprise.

**Public telecommunications service** means any telecommunications service which a Party requires, explicitly or in effect, to be offered to the public generally. Such services may include *inter alia*,

telephone and data transmission typically involving customer-supplied information between two (2) or more points without any end-to-end change in the form or content of the customer's information, and does not include information services.

**Reference interconnection offer** means an interconnection offer extended by a major supplier and filed with or approved by a telecommunications regulatory body that is sufficiently detailed to enable a supplier of public telecommunications services that is willing to accept its rates, terms and conditions to obtain interconnection without having to engage in negotiations with the major supplier.

**Telecommunications** means the transmission and reception of signals by any electromagnetic means, including by photonic means.

**Telecommunications regulatory body** means a national body responsible for the regulation of telecommunications.

**User** means an end-user or a supplier of public telecommunications services. ]

**[TEXT ON FINANCIAL SERVICES<sup>20</sup>**

**Article 1. Scope and Coverage**

1.1. This Chapter applies to measures by a Party relating to:

- a) financial institutions of another Party;
- b) investors of another Party, and investments of such investors, in financial institutions in the Party's territory; and
- c) cross-border trade in financial services.

1.2. Chapters XX (Cross-Border Trade in Services) and XX (Investment) apply to measures described in Paragraph 1 only to the extent that such Chapters or Articles of such Chapters are incorporated into this Chapter.

- a) Articles XX (Expropriation, Denial of Benefits, Transfers, Special Formalities and Environmental Measures from Chapter XX (Investment) and Article 7 (Denial of Benefits) from Chapter XX (Services)) are hereby incorporated into this Chapter.
- b) Articles XX (Investor-State Dispute Settlement) are hereby incorporated into and made a part of this Chapter solely for claims that a Party has breached Articles XX (Expropriation, Denial of Benefits, Transfers, Special Formalities from Chapter XX (Investment)), as incorporated into this Chapter.
- c) Article 15 (Transfers and Payments from Chapter XX (Services)), is incorporated into and made a part of this Chapter to the extent that cross-border trade in financial services is subject to obligations pursuant to Article 5 (Cross-Border Trade in Financial Services).

1.3. This Chapter does not apply to measures by a Party relating to:

- a) activities or services forming part of a public retirement plan or statutory system of social security; or
- b) activities or services conducted for the account or with the guarantee or using the financial resources of the Party, including its public entities,

except that this Chapter shall apply if a Party allows any of the activities or services referred to in subparagraphs a) or b) to be conducted by its financial institutions in competition with a public entity or a financial institution.

**Note:** Without prejudice to this Article, one Party expects countries to be open to negotiating commercially meaningful market access for any sector for which a monopoly exists.

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<sup>20</sup> In paragraph 2 of the derestricted document FTAA.TNC/23 the "TNC instructs the NGSV to continue work on text on specialized services areas where proposals exist or are presented in the future without detriment to the work mandated on general disciplines of the Chapter on Services. Differences exist regarding the location of some specialized provisions; these differences shall be resolved at a later date and should not impede the continuation of this work."

**Article 2. National Treatment**

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

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

2.3. For purposes of the national treatment obligations in paragraph 1 of Article 5 (Cross-Border Trade in Financial Services), a Party shall accord to cross-border financial service suppliers of another Party treatment no less favorable than that it accords to its own financial service suppliers, in like circumstances, with respect to the supply of the relevant service.

**Article 3. Most-Favored-Nation Treatment**

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

3.2. A Party may recognize prudential measures of another Party or of a non-Party in the application of measures covered by this Chapter. Such recognition may be:

- a) accorded unilaterally;
- b) achieved through harmonization or other means; or
- c) based upon an agreement or arrangement with another Party or a non-Party.

3.3. A Party according recognition of prudential measures under paragraph 3.2 shall provide adequate opportunity to another Party to demonstrate that circumstances exist in which there are or would be equivalent regulation, oversight, implementation of regulation, and, if appropriate, procedures concerning the sharing of information between the Parties.

3.4. Where a Party accords recognition of prudential measures under paragraph 3.2.c and the circumstances set out in paragraph 3.3 exist, the Party shall provide adequate opportunity to another Party to negotiate accession to the agreement or arrangement, or to negotiate a comparable agreement or arrangement.

**Article 4. Market Access for Financial Institutions**

4.1. A Party shall not adopt or maintain, with respect to investors in financial institutions of another Party, either on the basis of a regional subdivision or on the basis of its entire territory, measures that:

- a) impose limitations on
  - i) the number of financial institutions whether in the form of numerical quotas, monopolies, exclusive service suppliers or the requirements of an economic needs test;
  - ii) the total value of financial service transactions or assets in the form of numerical quotas or the requirement of an economic needs test;
  - iii) the total number of financial service operations or on the total quantity of financial services output expressed in terms of designated numerical units in the form of quotas or the requirement of an economic needs test;
  - iv) the total number of natural persons that may be employed in a particular financial service sector or that a financial institution may employ and who are necessary for, and directly related to, the supply of a specific financial service in the form of a numerical quota or the requirement of an economic needs test; or
- b) restrict or require specific types of legal entity or joint venture through which a financial institution may supply a service.

**Article 5. Cross-Border Trade**

5.1. Each Party shall permit, under terms and conditions that accord national treatment, cross-border financial service suppliers of another Party to supply the services specified in Annex 5.1 (Cross-Border Trade).

5.2. Each Party shall permit persons located in its territory, and its nationals wherever located, to purchase financial services from cross-border financial service suppliers of another Party located in the territory of the other Party or of another Party. This obligation does not require a Party to permit such suppliers to do business or solicit in its territory. Each Party may define “doing business” and “solicitation” for purposes of this obligation, as long as such definitions are not inconsistent with paragraph 5.1.

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

**Article 6. New Financial Services\***

6.1. Each Party shall permit a financial institution of another Party to supply any new financial service that the Party would permit its own financial institutions, in like circumstances, to supply without additional legislative action by the Party. Notwithstanding Article 4.b, a Party may determine the institutional and juridical form through which the new financial service may be supplied and may require authorization for the supply of the service. Where a Party requires such authorization of the new financial service, a decision shall be made within a reasonable time and the authorization may only be refused for prudential reasons.

\* **Interpretive Footnote:** The Parties understand that nothing in Article 6 prevents a financial institution of a Party from applying to another Party to consider authorizing the supply of a financial service that is not supplied in the territory of any Party. Such application shall be subject to the law of the Party to which the application is made and, for greater certainty, shall not be subject to the obligations of Article 6.

**Article 7. Treatment of Certain Information**

7.1. Nothing in this Chapter requires a Party to furnish or allow access to:

- a) information related to the financial affairs and accounts of individual customers of financial institutions or cross-border financial service suppliers; or
- b) any confidential information, the disclosure of which would impede law enforcement or otherwise be contrary to the public interest or prejudice legitimate commercial interests of particular enterprises.

**Article 8. Senior Management and Boards of Directors**

8.1. A Party may not require financial institutions of another Party to engage individuals of any particular nationality as senior managerial or other essential personnel.

8.2. A Party may not require that more than a minority of the board of directors of a financial institution of another Party be composed of nationals of the Party, persons residing in the territory of the Party, or a combination thereof.

**Article 9. Non-Conforming Measures**

9.1. Articles 2 through 5 and 8 (National Treatment, Most-Favored-Nation Treatment, Market Access, Cross-Border Trade, Senior Management/Boards of Directors) do not apply to:

- a) any existing non-conforming measure that is maintained by a Party at
  - i) the central level of government, as set out by that Party in its Schedule to Annex XX,
  - ii) a regional level of government, as set out by that Party in its Schedule to Annex XX,  
or
  - iii) a local level of government;
- b) the continuation or prompt renewal of any non-conforming measure referred to in subparagraph a); or
- c) an amendment to any non-conforming measure referred to in subparagraph a) to the extent that the amendment does not decrease the conformity of the measure, as it existed immediately before the amendment, with Articles 2, 3, 4 and 8 (National Treatment, Most-Favored-Nation Treatment, Market Access, and Senior Management/Boards of Directors).

9.2. Annex 9.2 (Specific Commitments) sets out certain specific commitments by each Party.

## Article 10. Exceptions

10.1. Notwithstanding any other provision of this Chapter or Chapters XX financial services, investment, competition policy\* a Party shall not be prevented from adopting or maintaining measures for prudential reasons\*, including for the protection of investors, depositors, policy holders or persons to whom a fiduciary duty is owed by a financial institution or cross-border financial service supplier, or to ensure the integrity and stability of the financial system. Where such measures do not conform with the provisions of this Agreement referred to in this paragraph, they shall not be used as a means of avoiding the Party's commitments or obligations under such provisions.

\* **Note:** One delegation contemplates the listing of additional chapters, such as services, telecommunications or other areas, depending on the substance of those chapters.

\* **Interpretive Footnote:** It is understood that the term "prudential reasons" includes the maintenance of the safety, soundness, integrity or financial responsibility of individual financial institutions or cross-border financial service suppliers.

10.2. Nothing in this Chapter or Chapters XX, financial services, investment, competition policy\* applies to non-discriminatory measures of general application taken by any public entity in pursuit of monetary and related credit policies or exchange rate policies. This paragraph shall not affect a Party's obligations under Article XX (Performance Requirements with respect to measures covered by Chapter XX (Investment), Article 15 (Transfers and Payments) of Chapter XX (Services) or Article XX (Transfers) in Chapters XX (Investment)).

\* **Note:** One delegation contemplates the listing of additional chapters, such as services, telecommunications or other areas, depending on the substance of those chapters.

10.3. Notwithstanding Article 15 (Transfers and Payments) in Chapter XX (Services) and Article XX (Transfers) in Chapters XX (Investment), as incorporated into this Chapter, a Party may prevent or limit transfers by a financial institution or cross-border financial service supplier to, or for the benefit of, an affiliate of or person related to such institution or supplier, through the equitable, non-discriminatory and good faith application of measures relating to maintenance of the safety, soundness, integrity or financial responsibility of financial institutions or cross-border financial service suppliers. This paragraph does not prejudice any other provision of this Agreement that permits a Party to restrict transfers.

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

## **Article 11. Transparency**

11.1. The Parties recognize that transparent regulations and policies governing the activities of financial institutions and cross-border financial service suppliers are important in facilitating both access of foreign financial institutions and foreign cross-border financial service suppliers to, and their operations in, another Party's markets. Each Party commits to promote regulatory transparency in financial services.

11.2. In lieu of Article XX [any other FTAA provision on this topic], each Party shall, to the extent practicable,

- a) publish in advance any regulations of general application relating to the subject matter of this Chapter that it proposes to adopt; and
- b) provide interested persons and Parties a reasonable opportunity to comment on such proposed regulations.

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

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

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

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

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

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

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

**Article 12. Self-Regulatory Organizations**

12.1. Where a Party requires a financial institution or a cross-border financial service supplier of another Party to be a member of, participate in, or have access to, a self-regulatory organization to provide a financial service in or into the territory of that Party, the Party shall ensure observance of the obligations of Articles 2 (National Treatment) and 3 (Most-Favored-Nation Treatment) by such self-regulatory organization.

**Article 13. Payment and Clearing Systems**

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

**Article 14. Domestic Regulation**

14.1. Each Party shall ensure that all measures of general application to which this Chapter applies are administered in a reasonable, objective and impartial manner.

**Article 15. Expedited Availability of Insurance Services**

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

*Note:* One delegation will seek appropriate specific commitments related to this obligation.

**Article 16. Financial Services Committee**

16.1. The Parties hereby establish a Financial Services Committee. The principal representative of each Party shall be an official of the Party's authority responsible for financial services set out in Annex 16.1 (Financial Services Committee).

16.2. The Committee shall:

- a) supervise the implementation of this Chapter and its further elaboration;
- b) consider issues regarding financial services that are referred to it by a Party; and
- c) participate in the dispute settlement procedures in accordance with Article 19 (Investment Disputes in Financial Services).

16.3. The Committee shall meet annually, or as otherwise agreed, to assess the functioning of this Agreement as it applies to financial services. The Committee shall inform the [Commission/Joint Committee] established under Article XX (Commission/Joint Committee) of the results of each meeting.

**Article 17. Consultations**

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

17.2. Consultations under this Article shall include officials of the authorities specified in Annex 16.1 (Financial Services Committee).

**Article 18. Dispute Settlement**

18.1. Article XX (Dispute Settlement Procedures for State-to-State Disputes) applies as modified by this Article to the settlement of disputes arising under this Chapter.

18.2. When a Party claims that a dispute arises under this Chapter, Article XX ( Panel Selection) shall apply, except that:

- a) where the disputing Parties so agree, the panel shall be composed entirely of panelists meeting the qualifications in paragraph 18.3; and
- b) in any other case,
  - i) each disputing Party may select panelists meeting the qualifications set out in paragraph 18.3 or Article XX (Qualifications of Panelists), and
  - ii) if the Party complained against invokes Article 10 (Exceptions), the chair of the panel shall meet the qualifications set out in paragraph 18.3, unless the disputing Parties agree otherwise.

18.3. Financial services panelists shall:

- a) have expertise or experience in financial services law or practice, which may include the regulation of financial institutions;
- b) be chosen strictly on the basis of objectivity, reliability and sound judgment; and
- c) meet the qualifications set out in Articles XX (Qualifications of Panelists).

18.4. Notwithstanding Article XX (Non-Implementation), where a panel finds a measure to be inconsistent with this Agreement and the measure under dispute affects:

- a) only the financial services sector, the complaining Party may suspend benefits only in the financial services sector;
- b) the financial services sector and any other sector, the complaining Party may suspend benefits in the financial services sector that have an effect equivalent to the effect of the measure in the Party's financial services sector; or
- c) only a sector other than the financial services sector, the complaining Party may not suspend benefits in the financial services sector.

## **Article 19. Investment Disputes in Financial Services**

19.1. Where an investor of one Party submits a claim under Articles XX through XX (Investor-State Dispute Settlement) against another Party and the respondent invokes Article 10 (Exceptions), on request of the respondent, the tribunal shall refer the matter in writing to the Financial Services Committee for a decision. The tribunal may not proceed pending receipt of a decision or report under this Article.

19.2. In a referral pursuant to paragraph 19.1, the Financial Services Committee shall decide the issue of whether and to what extent Article 10 (Exceptions) is a valid defense to the claim of the investor. The Committee shall transmit a copy of its decision to the tribunal and to the [Commission/Joint Committee]. The decision shall be binding on the tribunal.

19.3. Where the Financial Services Committee has not decided the issue within sixty (60) days of the receipt of the referral under paragraph 19.1, the respondent or the Party of the claimant may request the establishment of a panel under Article XX\_ (State-to-State Dispute Settlement). The panel shall be constituted in accordance with Article 18 (State-to-State Dispute Settlement). The panel shall transmit its final report to the Committee and to the tribunal. The report shall be binding on the tribunal.

19.4. Where no request for the establishment of a panel pursuant to paragraph 19.3 has been made within ten (10) days of the expiration of the sixty (60)-day period referred to in paragraph 19.3, a tribunal may proceed to decide the matter.

19.5. For purposes of this Article, tribunal means a tribunal established pursuant to Article XX (Investor-State Dispute Settlement).

## **Article 20. Definitions**

For purposes of this Chapter:

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

**Cross-border trade in financial services or cross-border supply of financial services** means the supply of a financial service:

- a) from the territory of one Party into the territory of another Party,
- b) in the territory of one Party by a person of that Party to a person of another Party, or
- c) by a national of one Party in the territory of another Party,

but does not include the supply of a service in the territory of a Party by an investment in that territory;

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

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

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

**Insurance and insurance-related services**

- a) Direct insurance (including co-insurance):
  - i) life
  - ii) non-life
- b) Reinsurance and retrocession;
- c) Insurance intermediation, such as brokerage and agency;
- d) Service auxiliary to insurance, such as consultancy, actuarial, risk assessment and claim settlement services.

**Banking and other financial services (excluding insurance)**

- e) Acceptance of deposits and other repayable funds from the public;
- f) Lending of all types, including consumer credit, mortgage credit, factoring and financing of commercial transactions;
- g) Financial leasing;
- h) All payment and money transmission services, including credit, charge and debit cards, travelers checks and bankers drafts;
- i) Guarantees and commitments;
- j) Trading for own account or for account of customers, whether on an exchange, in an over-the-counter market or otherwise, the following:
  - i) money market instruments (including checks, bills, certificates of deposits);
  - ii) foreign exchange;
  - iii) derivative products including, but not limited to, futures and options;
  - iv) exchange rate and interest rate instruments, including products such as swaps, forward rate agreements;
  - v) transferable securities;

- vi) other negotiable instruments and financial assets, including bullion;
- k) Participation in issues of all kinds of securities, including underwriting and placement as agent (whether publicly or privately) and provision of services related to such issues;
- l) Money broking;
- m) Asset management, such as cash or portfolio management, all forms of collective investment management, pension fund management, custodial, depository and trust services;
- n) Settlement and clearing services for financial assets, including securities, derivative products, and other negotiable instruments;
- o) Provision and transfer of financial information, and financial data processing and related software by suppliers of other financial services;
- p) Advisory, intermediation and other auxiliary financial services on all the activities listed in subparagraphs (e) through (o), including credit reference and analysis, investment and portfolio research and advice, advice on acquisitions and on corporate restructuring and strategy.

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

**Investment** means “investment” as defined in Article XX (Investment – Definitions), except that, with respect to “loans” and “debt instruments” referred to in that Article:

- a) a loan to or debt instrument issued by a financial institution is an investment only where it is treated as regulatory capital by the Party in whose territory the financial institution is located; and
- b) a loan granted by or debt instrument owned by a financial institution, other than a loan to or debt instrument of a financial institution referred to in subparagraph a), is not an investment;

For greater certainty, a loan granted by or debt instrument owned by a cross-border financial service supplier, other than a loan to or debt instrument issued by a financial institution, is an investment if such loan or debt instrument meets the criteria for investments set out in Article XX (Investment – Definitions).

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

**levels of government** means

at the **central level**

- a) for the United States, the federal level, and
- b) for [...];
- x) for [...];

at the **regional level**

- a) for the United States, the fifty (50) states, the District of Columbia and Puerto Rico, and
- b) [...];
- x) [...];

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

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

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

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

**Annex 5.1 on Cross-Border Trade to Article 5.1 of the Text on Financial Services**

**Article 1. Insurance and insurance-related services**

*Note:* One delegation wishes to negotiate to obtain the broadest possible coverage of cross-border insurance while taking into account any regulatory sensitivities. Commitments should include areas such as reinsurance; marine, aviation and transport insurance; insurance intermediaries; and services auxiliary to insurance.

**Article 2. Banking and other financial services (excluding insurance)**

2.1. Each Party shall undertake the obligations of Article 5.1 with respect to the provision and transfer of financial information and financial data processing and related software as referred to in subparagraph (o) of the definition of financial service, and advisory and other auxiliary services, excluding intermediation, relating to banking and other financial services as referred to in subparagraph (p) of the definition of financial service.

**Annex 9.2 on Specific Commitments to Article 9.2 of the Text on Financial Services**

**Article 1. Portfolio Management**

1.1. A Party will allow a financial institution (other than a trust company or insurance company), organized outside its territory, to provide investment advice and portfolio management services, excluding (1) custodial services, (2) trustee services, and (3) execution services that are not related to managing a collective investment scheme, to a collective investment scheme located in the Party's territory. This commitment is subject to Paragraph 3 Article 1 (Scope and Coverage) and to the provisions of paragraph 3 of Article 5 (Cross-Border Trade regarding the right to require registration, without prejudice to other means of prudential regulation).

1.2. For purposes of this paragraph, a "collective investment scheme" means:

- a) in the United States, an investment company registered with the Securities and Exchange Commission under the Investment Company Act of 1940;
- b) [...];
- x) [...];

**Annex 16.1 on Financial Services Committee to Article 16.1 of the Text on Financial Services**

**Article 1. Authorities Responsible for Financial Services**

1.1. The authority of each Party responsible for financial services is:

- a) for [country],
- b) for [country],
- x) for the United States, the Department of the Treasury for banking and other financial services and the Office of the United States Trade Representative, in coordination with the Department of Commerce and other agencies, for insurance.