

FTAA – Free Trade Area of the Americas

Draft Agreement

Chapter on Services

• **CHAPTER ON SERVICES**

Article 1: SCOPE AND SECTORAL COVERAGE^{1, 2, 3}

1.1. 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] [telecommunications networks and services] in connection with the supply of a service;]
- [d] [the] presence[, including commercial presence,] [in its territory of a service supplier of any other Party] [of persons of a Party in the territory of any other Party for the supply of a service]; and,]
- [e] the provision of a bond or other form of financial security as a condition for the provision of a service.]
- [f] 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.]

[1.2. [This Chapter shall have universal coverage of all service sectors, with the exception of:] [This Chapter does not apply to:]

- [a] cross-border trade in financial services;]
- b) [measures related to certain air transport services] [air services, including domestic and international air transportation services, whether scheduled or nonscheduled, 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 - i) aircraft repair and maintenance services during which an aircraft is withdrawn from service;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.]]
- c) [government procurement by a Party [or a state enterprise]⁴[;]]
- [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)...].]

1.3. 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;]

¹ Some countries recognize that the NGSV will establish where appropriate supplementary disciplines for specific sectors; or special disciplines for specific sectors such as movement of natural persons, telecommunications, international transportation and tourism; or specialized provisions for financial services.

² Some countries consider that aspects related to “mode 3” of the GATS “commercial presence” should be considered by the Negotiating Group on Investment. Channels of communication should be opened between the NGSV and the NGIN to ensure consistency and avoid duplication with respect to investment-related aspects of the Services and Investment Chapters.

³ One country recognizes that the NGSV will continue discussion of the possibility of establishing specific provisions for sub-national measures.

⁴ The final drafting of this text, including the definition of “state enterprise” will need to be conformed to that used in the Government Procurement Chapter.

- 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 [through] [by] an investment in that territory, as defined in Article () of the Investment Chapter.]

[1.4. For the purposes of this Chapter:

- a) measure means any measure by a Party whether in the form of a law, regulation, rule, procedure, decision, administrative action, or any other form.
- b) “measures [adopted [or maintained]] [by a party]” means [measures] [adopted [or maintained]] by:
 - i) central, regional or local governments and authorities; and
 - ii) non-governmental bodies in the exercise of powers delegated by central, regional or local governments or authorities.]

[1.5. 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 1.4.b.i and 1.4.b.ii.]

[1.6. [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 or more service suppliers.]

- [1.6. a) 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.
- b) Notwithstanding Article 1.6a, if a service supplier of a Party, duly authorized, supplies services or performs a governmental function such as correctional services, pension or unemployment insurance or social security services, social welfare, public education, public training, health and child protection, in the territory of any other Party, the provision of those services shall be protected by the provisions of this Chapter.]

[1.7. 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.]

[1.8. 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.]

[1.9. 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.]

[1.10. [Only to the extent and within the time limits of what is established in the proposal on the Temporary Entry of Business Persons,] [Consistent with the terms set out in the proposal on the Temporary Entry of Business Persons,] 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 its territory, or to confer any right on that national with respect to that access or employment.]

Article 2: MOST-FAVORED-NATION TREATMENT (MFN)

2.1. [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.

[2.2. The provisions of this Chapter shall not be construed as to prevent any Party from conferring or according advantages to adjacent countries in order to facilitate exchanges limited to contiguous frontier zones of services that are both locally produced and consumed.]

[2.2. Without prejudice to the provisions of the preceding paragraph, any Party may confer or accord advantages to adjacent countries and smaller economies, regardless of whether they are Parties, in order to facilitate the exchange of services.]

[2.3. [The developing countries] [Smaller economies and developing countries] [A Party] may [maintain][identify] [exemptions from the principle embodied in paragraph 2.1] [exceptions to the MFN principle for specific sectors] [a measure inconsistent with paragraph 2.1] [, provided that the measure is simultaneously listed in the Annex on Article II Exemptions of GATS and in the Annex on Exemptions to this paragraph.]

[2.4. The FTAA can coexist with bilateral and sub-regional agreements, to the extent that the rights and obligations under these agreements are not covered by or go beyond the rights and obligations of the FTAA.]

[2.5 This Chapter shall not prevent any of its Parties from being a party to or entering into of an agreement in pursuit of liberalizing trade in services between the parties to such an agreement [or wider economic integration at the sub-hemispheric level], provided that such agreement:

- a) has substantial sectoral coverage⁵, and
- b) provides for the absence or elimination of substantially all discrimination between the parties, in the sense of Article (), in the sectors covered under sub-paragraph (a), through:
 - i) the elimination of existing discriminatory measures, and/or
 - ii) prohibition of new or more discriminatory measures,

either at the entry into force of that agreement or on the basis of a reasonable time-frame, except for measures permitted pursuant to Articles ().]

[2.6. In evaluating whether the conditions in paragraph 2.5(b) are met, consideration may be given to the relationship of the agreement to a wider process of economic integration or trade liberalization between the countries concerned.]

[2.7. (a) When [a smaller economy is a party][developing countries are parties] to an agreement of the type [mentioned][referred to] in paragraph 2.5, flexibility shall be provided for regarding [the requirement of substantial liberalization][the conditions set out in said paragraph, particularly with reference to sub-paragraph (b) thereof], in accordance with [their][the] level of development [and national economic objectives] [of the countries concerned, both overall and in individual sectors and subsectors];

Notwithstanding paragraph 2.10, in the case of an agreement of the type referred to in paragraph 2.5 involving only developing countries, more favorable treatment may be granted to juridical persons owned or controlled by natural persons of the Parties to such an agreement.]

[2.8. Any agreement referred to in paragraph 2.5 shall be designed to facilitate trade between the parties to the agreement, and shall not in respect of any Party outside the agreement raise the overall level of barriers to trade in services within the respective sectors or subsectors, compared to the level applicable prior to such an agreement.]

⁵ Some countries understand this condition in terms of the number of sectors, volume of trade affected, and modes of supply. To meet this condition, the agreements shall not provide for the *a priori* exclusion of any mode of supply.

[2.9.⁶ If, in the conclusion, enlargement, or any significant modification of any agreement under paragraph 2.5, a Party intends to withdraw or modify any of its commitments in a manner inconsistent with this Agreement, it shall provide at least 90 days advance notice of such modification or withdrawal, and the procedure for modifying commitments shall be applied.]

[2.10. Service suppliers of any other Party that are juridical persons constituted under the laws a party to an agreement referred to in paragraph 2.5 shall be entitled to the treatment granted under such agreement, provided that it engages in substantive business operations in the territory of the parties to such agreement.]

[2.11. a) Parties that are parties to an agreement referred to in paragraph 2.5 shall promptly notify to the () any such agreement and any enlargement or significant modification of said agreement. They shall also make available to ()⁷ such relevant information as it may request. () may establish a working party to examine such an agreement or enlargement or modification of such agreement and report to () on its consistency with this Article.
b) Parties that are parties to an agreement referred to in paragraph 2.5 that is implemented on the basis of a time-frame shall periodically report to () on its implementation. () may establish a working party if it deems such a working party necessary, to examine such reports.
c) Based on the reports of the working parties referred to in sub-paragraphs (a) and (b), () may make recommendations to the parties as it deems appropriate.]

[2.12. A Party that is party to an agreement referred to in paragraph 2.5 may not seek compensation for trade benefits that may accrue to any other Party from such agreement.]

⁶ Some countries will consider a text on the modification of lists that they will submit in due course.

⁷ Some countries believe that once the corresponding institutional aspects have been defined, the parentheses shall be replaced by the name of the respective authority.

Article 3: TRANSPARENCY

3.1. 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.

3.2. When publication of the information referred to in paragraph 3.1 is not feasible it shall be made otherwise publicly available.

[3.3. Each Party shall inform promptly [the appropriate FTAA entity⁸/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.]

[3.4. 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] 3.1 [and 3.3] through the Services Enquiry and Contact Points⁹ 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.]]

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

[3.6. Any Party may notify [the appropriate FTAA entity¹⁰] of any measure adopted by any other Party which, in its judgment, affects the operation of this Chapter.]

[3.7. 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.]

⁸ This wording was included because there is no clear understanding yet of what this entity will be.

⁹ The name that is used for this entity will conform to the final decision that is taken by the Technical Committee on Institutional issues.

¹⁰ This wording was included because there is no clear understanding yet of what this entity will be.

Article 4: DENIAL OF BENEFITS

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

- a) to a service supplier of any other Party, when it determines the service is being supplied from or in the territory of a non-Party country;
- b) when the service is being supplied by an enterprise that is not duly constituted, authorized, or domiciled, pursuant to national legislation, in any other Party.
- c) when an enterprise constituted, authorized, or domiciled in any Party does not conduct substantial operations in the territory of that other Party and is owned or controlled by a non-Party country.]

[to a service supplier of any other Party [when the Party determines that] [where] the service is being supplied/provided by an enterprise that has no [substantial] [substantive] business activities in the territory of any other Party and that is owned or controlled by persons of a non-Party.]

- a) 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;
- b) 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.]]

[4.2. 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.]

[4.3. A Party may deny the benefits of this Chapter to service suppliers of any other Party where:

- a) the service is being supplied by a enterprise owned or controlled by nationals of a non-Party, and:
 - (i) the denying Party does not maintain diplomatic relations with the non-Party, or
 - (ii) the denying Party adopts or maintains measures with respect to the non-Party that prohibit transactions with the enterprise or that would be violated or circumvented if the benefits of this Chapter were accorded to the enterprise.]

Article 5: NATIONAL TREATMENT

5.1. [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, [in respect of all measures affecting the supply of services,] treatment no less favorable than that it accords [, in like circumstances,] to its [own like] [services and] service suppliers.

[5.2. 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.]

[5.3. The Parties may meet the requirement of paragraph 5.1 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.]

[5.4. 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 like services or service suppliers of any other Party.]

[5.5. The treatment granted by a Party under paragraph 5.1 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.]

[5.6. [[The Parties] [Developing countries and smaller economies, in particular,] [shall][may] [maintain exemptions][establish exceptions] to the principle [enshrined][set out] in paragraph 5.1.] [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 6: STANDARD OF TREATMENT

Each Party shall accord service suppliers from other Parties the better of the treatments required by the Articles on Most Favored Nation Treatment and National Treatment.]

Article 7: MARKET ACCESS¹¹

Market Access

[7.1. [With respect to market access through the four modes of supply identified in Article (),] 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 () on Domestic Regulation.]

[7.2. 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.]

Market Access

[Nondiscriminatory Quantitative Restrictions

7.1. No Party shall apply limitations on:

- a) the number of service suppliers whether in the form of numerical quotas, monopolies, exclusive service suppliers or the requirements of an economic needs test.
- b) the total value of service transactions or assets in the form of numerical quotas or the requirement of an economic needs test.
- c) the total number of service operations or on the total quantity of services output expressed in terms of designated numerical units in the form of quotas or the requirement of an economic needs test.
- d) the total number of natural persons that may be employed in a particular service sector or that a service supplier may employ and who are necessary for, and directly related to, the supply of a specific service in the form of a numerical quota or the requirement of an economic needs test.]

[Access and Use¹²

7.2. Each Party shall ensure that the service supplier of any other Party is accorded access to and use of public telecommunications transport networks and services on reasonable and non-discriminatory terms and conditions, for the supply of a service to which a Party's obligations under this Chapter apply.]

¹¹ Some countries 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.

¹² Some countries believe that this issue should be addressed in the section on Other Issues Related to the Above.

[No Local Presence¹³

7.3. 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.]

Market Access

[Non-Discriminatory Quantitative Restrictions

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

7.2. 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 on Non-discriminatory Quantitative Restrictions.

7.3. The Parties [may] [shall endeavor periodically, but in any event at least every two years, to negotiate the liberalization of the non-discriminatory quantitative restrictions set out in the non-discriminatory “Quantitative Restrictions” annex pursuant to paragraphs 7.1 and 7.2.

Market Access

[7.2. Developed countries shall facilitate the development and strengthening of services trade in smaller economies and developing countries, through, inter alia:

- a) providing increased access to technology to enhance efficiency and competitiveness (specifically in the area of services which has been revolutionized by the advent of the internet, e-commerce etc.)
- b) improving access to distribution channels and information networks
- c) liberalizing market access in sectors and modes of supply of interest to them (e.g. movement of natural persons).]

[7.3. 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.]

[7.4. Special priority shall be given to the smaller economies of the hemisphere in the implementation of paragraphs 7.2 and 7.3. 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 development, trade and national economic needs.]

¹³ One country recognizes that specialized provisions need to be developed for financial services.

Article 8: DEFINITIONS

SERVICES:

[“Services” includes any service of any sector, except services supplied in the exercise of governmental authority.]
(*Similar text is found in Article 1.6.a*)

[SUPPLY OF A SERVICE:

[The] production, distribution, marketing, sale, and supply of a service.] (*Similar text is found in Article 1.1.a*)

[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 or more service suppliers.] (*Similar Text is found in Article 1.6.b*)

[Any service which is supplied neither on a commercial basis, nor in competition with one or more economic enterprises, 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.]]

[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.]

[SERVICE CONSUMER:

Any person that receives or uses a service.]

[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.] (*Similar text is found in Article 1.4a*)

[MEASURE ADOPTED OR MAINTAINED BY A PARTY:

[Measures mean measures [adopted] [taken] by:

- i) [central, regional, or local governments and authorities][[the] [governments and][[central], [regional]] [national or federal, [or] state [or] [provincial,]] [departmental, municipal or local authorities]], [or] [and]
- ii) [the] [non-governmental] [bodies] [entities] [or] [the] [organizations] [that perform] [in the exercise of] [regulatory, administrative or other [functions] [powers] of a governmental nature [that have been] delegated to them] [powers delegated [to them]] by [such] [central, regional, or local] governments [or][and] [central, regional, or local] [authorities]] [mentioned in sub paragraph (i) above].] (*Similar Text is found in Article 1.4b*)

[Means measures adopted by:

- a) [central], [national or] federal, state, [provincial, departmental, municipal or local] and local [government authorities][governments and authorities]; and
- b) non-governmental institutions [that perform functions][exercising powers] delegated to them by the governments or authorities referred to in sub-paragraph (a).]

[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] [telecommunications networks and services] in connection with the supply of a service;]
- d) [the] presence[, including commercial presence,] [in its territory of a service supplier of any other Party] [of persons of a Party in the territory of any other Party for the supply of a service]; and,]
- e) the provision of a bond or other form of financial security as a condition for the provision of a service.]
- f) 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.]]
(Similar text is found in Article 1.1)

[[This deals with measures related to:]

- a) Purchase, payment, or use of a service;
- b) access to and use of services required by those Parties to be offered to the general public in order to deliver a service;
- c) Presence, including commercial presence, of persons of a Party in the territory of any other Party for the delivery of a service.]]

[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.]]

[CROSS-BORDER TRADE IN SERVICES or CROSS-BORDER SUPPLY OF SERVICES:

(Similar portions of this text is included in Article 1.3. See definition under SUPPLY OF SERVICES.)

[The supply of a service:] [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[s] of that Party, to [a] person[s] of any other Party; or
- c) by a national of a Party in the territory of any other Party;
but [excluding] [does not include] the provision of a service in the territory of a Party [by][by means of] an investment [in that territory], as defined in Article () of the Investment Chapter.]

[SUPPLY OF SERVICES

[[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.
(Similar text is found in Article 1.3.)

[The supply of services:

- a) from the territory of one Party into the territory of any other Party;
- b) in the territory of a Party to a consumer of services of any other Party;
- c) by a service supplier of a Party through a commercial presence in the territory of any other Party; and
- d) by a service supplier of a Party through the presence of natural persons of a Party in the territory of any other Party.]]

[SERVICE OF ANY OTHER PARTY:

(Similar portions of this text is included in Article 1.3. See definition under SUPPLY OF SERVICES)

[The service supplied:

- a) from the territory of or in the territory of the other Party; or
- b) by a service supplier of the other Party, through commercial presence or through presence of natural persons.]

[The service supplied:

- a) from or in the territory of that other Party, by a service supplier of that Party;
- b) in the case of the delivery of a service through commercial presence, or through the presence of natural persons, by a service supplier of any other Party.]]

[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.]

[SECTOR:

Service sector means:

- a) with reference to a specific commitment, one 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.]

[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]. [Notwithstanding the above, corporations with bearer shares are not included.]]

[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:

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 OR OTHER LEGAL ENTITY:

- a) substantially owned if more than 50% of the equity interest therein is beneficially owned by nationals

- mentioned in subparagraphs 5(a) and (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 ().]

[PERSON:
A natural or juridical person.]

[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.]]

[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 5(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 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.]]

[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.]

(Related text is found in the third version of Article 7)

[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.]

[SPECIALTY AIR SERVICES:

[Services include] Aerial mapping, aerial surveying, aerial photography, forest fire management, fire fighting, aerial advertising, glider towing, parachute jumping, aerial construction services, heli-logging [of wooden tree trunks], aerial sightseeing, flight training, aerial inspection and surveillance, and aerial spraying services.]

[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.]

SECTION ON OTHER ISSUES RELATED TO THE ABOVE

Domestic Regulation

[1. [In establishing its domestic regulations,] in those sectors in which commitments are undertaken, each Party shall ensure that all measures of general application affecting trade in services are administered in a reasonable, objective, and impartial manner.]

[2. 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 after the submission of an application considered to be complete under domestic laws and regulations, inform the applicant of the decision regarding the application. At the request of the applicant, the competent authorities of the Party shall provide without undue delay information regarding the status of the application.]

[3. In sectors where specific commitments regarding professional services are undertaken, each Party shall establish adequate procedures to verify the competence of the professionals of other Parties. Such procedures may be covered in an annex for professional services.]

[3. a) In sectors in which a Party has undertaken commitments, pending the entry into force of the disciplines developed pursuant to the above paragraph, the Party shall not apply licensing and qualification requirements and technical standards that nullify or impair such commitments in a manner which:

- does not comply with the criteria outlined in subparagraphs (a) through (f) of the above paragraph; and
- it could not reasonably have been expected of that Party at the time the commitments in those sectors were made.

b) In determining whether a Party is in conformity with the obligation under (a) of this paragraph, account shall be taken of the international standards of relevant international organizations applied by that Party.]

[4. The liberalization process shall be pursued while observing the right of each Party to regulate and introduce new regulations within its territory in pursuit of its national policy objectives for the services sector. The regulations may regulate, *inter alia*, national treatment and market access, provided that they do not nullify or impair the obligations under this Chapter or the commitments in Parties' Schedules.]

[5. a) 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. Where such procedures are not independent of the agency entrusted with the administrative decision concerned, the Party shall ensure that the procedures in fact provide for an objective and impartial review.

b) The provisions of subparagraph (a) shall not be construed to require a Party to institute such tribunals or procedures where this would be inconsistent with its constitutional structure or the nature of its legal system.]

[6.¹⁴ With a view to ensuring that measures relating to qualification requirements and procedures, technical standards and licensing requirements do not constitute unnecessary barriers to trade in services, the necessary disciplines shall be developed. Such disciplines shall aim to ensure that the requirements, *inter alia*:

¹⁴ One country considers that the content of such a paragraph would depend on the nature of other disciplines to be developed under this Chapter.

- a) are based on objective and transparent criteria such as competence and the ability to supply the service;
- b) avoid unnecessary regulations and are not more burdensome than necessary to ensure the quality of the service;
- c) are not in themselves, in the case of licensing procedures, restrictions on the supply of the service;
- d) limit the regulation in scope to what is necessary for the attainment of their objectives;
- e) avoid abusive monopoly or dominant positions in the market;
- f) are aimed at stimulating the use of market mechanisms to achieve regulatory objectives.]]

[National Regulations

[Procedures

1. 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 10;
 - ii) amendments of measures referred to in Article 08(1), (2), and (3); and,
 - iii) quantitative restrictions in accordance with Article 07, and
- b) consultations on reservations, quantitative restrictions, or commitments, with a view to further liberalization.]

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

[1. 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 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.]

[1. 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.]

2. 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 03 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.

3. 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 "Nonconforming and Future Measures" annex. 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.

4. 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.
5. The Annex on Professional Services sets out procedures for recognizing education, experience, and other rules and requirements governing professional service suppliers.]

[Annex on Professional Services

Purpose

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.

Processing Licensing and Certification Applications

2. 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.

Development of Professional Standards

3. 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.
4. The standards and criteria referred to in paragraph 3 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,
 - h) consumer protection: alternatives to residency requirements, including bonding, professional liability insurance, and client restitution funds, to provide for the protection of consumers.
5. On receipt of a recommendation referred to in paragraph 3, 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.

Temporary Licensing

6. 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.

Review

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

[Temporary Entry of Business Persons]¹⁵

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.

General Obligations

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

Authorization of Temporary Entry

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.

2.- Whenever a Party refuses to issue an immigration document authorizing activity or employment, in accordance with paragraph 2, that Party:

- a) shall inform the business person affected, in writing, of the reasons for the refusal; and
- b) shall notify without delay, and in writing, the reasons for the refusal to the Party whose national is being denied entry.

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

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.

¹⁵ Some delegations do not agree on the placement of this text. Several delegations require further time for reflection on this proposal.

Availability of information

1.- Each Party:

- a) will provide its immigration 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 consolidated document that explains the requirements for temporary entry in accordance with this proposal¹⁶, such that business persons of the other Party may be apprised of such requirements.

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 proposal, to persons of any other Party who were issued with immigration documents. The compilation shall include information for each authorized category.

Dispute settlement

1.- The Parties may not initiate procedures to establish a dispute settlement panel¹⁷ because of a refusal of authorization for temporary entry under this section, 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.

2.- The remedies mentioned in paragraph 1 b) shall be deemed exhausted when the relevant authority has not issued a final ruling within a period of six months from the initiation of the administrative procedure and the ruling has not been delayed for reasons attributable to the business person affected.

Definitions

For the purposes of this proposal:

Temporary entry means the entry of a business person from a Party into the territory of any other 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;

Categories for the Temporary Entry of Business Persons

Participating countries shall agree on the categories of business persons to whom this section shall apply. Such categories may include personnel transfers within a company, business visitors, merchants and investors and professionals and experts.

[Specific mechanisms for temporary entry and definitions of each category will be furnished at a later date].]

¹⁶ The word "proposal" will be substituted once agreement is reached as to how this text is to be incorporated into the FTAA agreement.

¹⁷ 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.

[General Exceptions

[1. [Notwithstanding the provisions of this and other chapters of this Agreement] [Without prejudice to the foregoing provisions], [the Parties] [each Party] may adopt [or apply] measures [necessary to ensure the observance of laws and regulations for]:

- a) [to protect][the protection of] public morals or [to maintain][the maintenance of] public order [and safety];
- b) [to protect][the protection of] human[, plant] and animal life and health [and preserve][or the conservation of] the environment;
- c) [to protect][the protection of] the national security;
- d) to secure the compliance with laws and regulations related to:
 - i) the prevention of deceptive and fraudulent practices or to deal with the effects of a default on services contracts [for the purpose of supplying services to natural or juridical persons of the Parties];
 - ii) the protection of the privacy of individuals in relation to the processing and dissemination of personal data and the protection of the confidentiality of individual records and accounts; or
 - iii) guaranteeing public security;
- [e) protecting national, artistic, historical or archeological treasures;]
- [f) inconsistent with the objectives envisaged in the Articles on national treatment, provided that the difference in national treatment is aimed at ensuring the equitable or effective imposition or collection of direct taxes in respect of services or service suppliers of the other Party.]]

[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 *vis a vis* the treatment accorded other countries whether or not they are Parties.]

[2. The provisions of this chapter do not apply to the social security systems of any Party, nor to activities in the territory of any Party related, even occasionally, to the exercise of official authority.]

[3. Nothing in this chapter shall prevent any Party from enforcing its laws, regulations and requirements with respect to entry, stay, work, labor conditions and establishment of natural persons, with the understanding that such enforcement, if any, shall not be carried out in a manner that nullifies or limits the benefits obtained by any of the Parties under any specific provision of this chapter.]]

[General Exceptions

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 countries 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;
- 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 (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 (MFN), 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.]]

[Security Exceptions

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.

[2. Measures adopted pursuant to subparagraphs b) and c) of paragraph 1 and their elimination shall be reported to (), to the extent possible.]]

[Article xxx: Mutual Recognition

- 1. For the purposes of the fulfillment, in whole or in part, of its standards or criteria for the authorization, licensing or certification of services suppliers, and subject to the requirements of paragraph 4, a Party may recognize the education or experience obtained, requirements met, or licenses or certifications granted in a particular country. Such recognition, which may be achieved through harmonization or otherwise, may be based upon an agreement or arrangement with the country concerned or may be accorded autonomously.
- 2. Where a Party recognizes autonomously or by agreement or arrangement, the education or experience obtained, requirements met or licenses or certifications granted of another Party or a non-Party, nothing in Article xxx (MFN) 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.
- 3. A Party that is a party to an agreement or arrangement of the type referred to in paragraph 1, whether existing or future, shall afford adequate opportunity for 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.
- 4. A Party shall not accord recognition in a manner which would constitute a means of discrimination between countries in the application of its standards or criteria for the authorization, licensing or certification of services suppliers, or a disguised restriction on trade in services.

Note: Specialized provisions will be needed for financial services.]

[Recognition]

Each Party shall recognize the licenses, certificates, professional titles and accreditations, granted by any other Party in any service area requiring such documents, in accordance with the criteria agreed upon or the decisions on the issue adopted by the Committee on Services.]

[Regulatory Exclusions]

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.]

[Additional Commitments]

The Parties may negotiate additional commitments in the field of regulations.]

[List of Specific Commitments]

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 modes of supply established in Article (), 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.

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.]

[Reservations [or Commitments]

1. The Articles on Most-Favored-Nation Treatment, National Treatment and Non-obligatory local presence do not apply to:

- a) any existing non-conforming measure that is maintained by:
 - i) a Party at the national or federal level, and at the provincial or state level, as set out in its [Section A][Schedule] of the Annex on “[Existing][and Future] Non-conforming Measures”; or
 - ii) a local or municipal government.
- b) the continuation or prompt renewal of any non-conforming measure referred to in subparagraph (a); or
- c) an amendment to any non-conforming measure referred to in subparagraph (a) to the extent that the amendment does not decrease the conformity of the measure, as it existed immediately before the amendment, with Articles () (Most-favored Nation Treatment), () (National Treatment) and () (Non-obligatory local presence).

2. The Articles () (Most-Favored Nation Treatment), () (National Treatment) and () (Non-obligatory local presence) 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 [Section B][Schedule] to the Annex on “[Nonconforming and]Future Measures.”

3. (Sections A and B) shall be completed no later than two years after the date on which the Agreement comes into force. The Smaller Economies shall be granted a period of up to five years to complete their (Sections A and B).]

Article xxx: Non-conforming Measures

1. Articles xxx (national treatment, most-favored-nation treatment, market access - no local presence, market access - non-discriminatory quantitative restrictions do not apply to:

- (a) any existing non-conforming measure that is maintained by a Party at:
 - (i) the central level*, and is set out by that Party in its Schedule to Annex I,
 - (ii) a regional level**, and is set out by that Party in its Schedule to Annex I, or
 - (iii) a local government level;
- (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 xxx (national treatment, most-favored-nation treatment, market access - no local presence, market access - non-discriminatory quantitative restrictions).

2. Articles xxx (national treatment, most-favored-nation treatment, market access - no local presence, market access - non-discriminatory quantitative restrictions) 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.

* For the US, “central level” means the federal level. For [country x], “central level” means [to be defined].

** For the US, “regional level” means the 50 states, the District of Columbia and Puerto Rico. For [country x], “regional level” means [to be defined].

Note: Specialized provisions will be needed for financial services.]

[Liberalization of Nondiscriminatory Measures

Each Party shall set out, in its non-discriminatory “Quantitative Restrictions” annex, its commitments to liberalize quantitative restrictions, licenses requirements, and other nondiscriminatory measures.]

[Future Liberalization

1. Through future negotiations called by the Commission [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 on Reservations [or Commitments]].

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.]

[Future Work

1. The Committee for Trade in Services shall delegate to working groups the task of considering issues related to the harmonization of regulations in specific service sectors. This shall be done in a specific manner and for given periods of time.

2. For the purposes of this Paragraph, the work of the relevant international organizations shall be taken into

account.]

[Committee on Cross-Border Trade in Services]

The Committee on Cross-Border Trade in Services shall carry out the functions indicated in Article ().]

[Consultations]

1. Each Party shall examine closely the issues raised by any other Party related to a matter affecting the operation of this Agreement and shall create the appropriate conditions for holding consultations on such issues.
2. At the request of a Party, the Council for 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 provided for in paragraph 1.]

[Council for Trade in Services]

1. The Committee on Trade in Services is created. It is made up of representatives of each of the Parties, one regular and one alternate.
2. The functions of the Committee shall be:
 - 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.
 - 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 Council for Services shall have a Chair, a Vice-Chair and a Secretary.
 - f) Draft its own regulations.]

[Dispute Settlement]

Any dispute arising by virtue of the operation of this Agreement shall be settled based on the provisions of Chapter () on Dispute Settlement of this Agreement.]

[Technical Cooperation]

1. The provisions of GATS Article IV shall be incorporated into this Chapter with special emphasis made on the establishment of “enquiry points” and the availability of services technology.
2. Technical assistance in the area of Services within the FTAA shall be channeled through the Council on Trade in Services.
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.
4. The Parties shall foster and support cooperation in the area of services among relatively developed and relatively less developed countries.
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.

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.]

[Relations with Other International Organizations

The Council for 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.]

[Restrictions to Protect the Balance of Payments]¹⁸

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 the Articles on most favored nation treatment, local presence, national treatment 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.

2. The restrictions referred to in paragraph 1 *supra*:

- 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 1 *supra*; and
- e) shall be temporary or shall be phased out progressively as the situation indicated in paragraph 1 *supra* improves.

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.

4. Restrictions adopted or maintained under paragraph 1 *supra* or any changes therein shall be notified promptly to the Parties.

- 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 2 of this Article, in particular the progressive phaseout of restrictions, in accordance with sub-paragraph (e) of said paragraph.
 - 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.]

[Special Safeguards]¹⁹

¹⁸ Some countries believe that the FTAA Chapter on Services should include an article or articles on payments and transfers, as well as safeguards, in the field of balance of payments and will submit a draft proposal for said article(s) at the appropriate time.

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 for Trade in Services and offer evidentiary proof justifying the adoption of such measures.
2. The Committee on Services shall determine, *inter alia*, the procedures for the implementation of necessary measures in relation to:
 - a) urgent safeguard measures
 - b) trade-distortive subsidies.]

[Subsidies²⁰

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

[Competition

1. Each Party shall adopt the measures necessary to prevent, avoid and sanction practices that distort competition in the trade in services within its domestic market, including those necessary to ensure that service suppliers established on their territories that enjoy a position of dominance in the market do not abuse their position.

¹⁹ Some countries consider it advisable for the Negotiating Group on Services to examine the issue of safeguards in services.

²⁰ Some countries 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 Parties 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. Some countries indicated that the main elements of these disciplines are envisaged in document FTAA.ngsv/w/44.

2. The provisions of Article () shall also apply to the cases of exclusive service suppliers, where one of the Parties, whether formally or *de facto*:

- i) authorizes or stipulates a small number of service suppliers, or
- ii) substantially hinders competition among suppliers on its territory.

3. The Committee for Trade in Services shall, at the request of one of the Parties that has reason to believe that a service supplier from the other Party is abusing its dominant position, require the said Party to provide specific information on the relevant operations of the supplier.

4. The Parties shall study all aspects involved in existing international transport services within the hemisphere with a view to adopting the domestic laws to ensure that such services operate in a competitive environment and do not constitute an obstacle to expansion in regional trade.]

[Special and Differential Treatment

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.

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.

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.

4. The increasing participation of smaller and/or less developed economies in trade in services within the Hemisphere shall be encouraged through the adoption of the provisions under Article IV of GATS relating to:

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

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.

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.]