

AGREEMENT BETWEEN JAPAN AND THE REPUBLIC OF CHILE  
FOR A STRATEGIC ECONOMIC PARTNERSHIP

Preamble

Japan and the Republic of Chile (hereinafter referred to as "Chile"),

Conscious of their longstanding friendship and strong economic and political ties that have developed through many years of fruitful and mutually beneficial cooperation between the Parties;

Recognizing that creating a clearly established and secured trade and investment framework through mutually advantageous rules to govern trade and investment between the Parties would enhance the competitiveness of their economies, make their markets more efficient, and ensure predictable commercial environment for further expansion of trade and investment between them;

Recognizing that an adequate protection of intellectual property and the effective enforcement of competition laws will encourage trade and investment between the Parties;

Believing that a strategic economic partnership between the Parties will bring economic and social benefits, create new and better opportunities for employment, improve the living standards of peoples, and provide a catalyst for the liberalization of trade and investment in the Asia-Pacific region and broader cooperation at international fora;

Convinced that economic development, social development and environmental protection are interdependent and mutually reinforcing pillars of sustainable development and that the strategic economic partnership can play an important role in promoting sustainable development;

Recognizing the rights of the Parties to regulate in order to meet national policy objectives; and

Determined to establish a legal framework for promoting and developing the strategic economic partnership on the basis of the rights and obligations of the Parties under the Marrakesh Agreement Establishing the World Trade Organization, done at Marrakesh, April 15, 1994 and other international agreements to which both Parties are parties;

HAVE AGREED as follows:

Chapter 1  
General Provisions

Article 1  
Establishment of a Free-Trade Area

The Parties hereby establish a free-trade area.

Article 2  
Objectives

The objectives of this Agreement are to:

- (a) liberalize trade in goods between the Parties, in conformity with Article XXIV of the GATT 1994;
- (b) liberalize trade in services between the Parties, in conformity with Article V of the GATS;
- (c) increase investment opportunities and strengthen protection for investments and investment activities in the Parties;
- (d) enhance opportunities for suppliers of the Parties to participate in government procurement in the Parties;
- (e) provide an adequate protection of intellectual property and promote cooperation in the field thereof;
- (f) promote cooperation and coordination for the effective enforcement of competition laws and regulations in each Party;
- (g) improve business environment in the Parties; and
- (h) create effective procedures to prevent and resolve disputes.

Article 3  
Relation to Other Agreements

The Parties reaffirm their rights and obligations under the WTO Agreement or any other agreements to which both Parties are parties.

Article 4  
Publication

1. Each Party shall ensure that its laws, regulations and administrative rulings of general application with respect to any matter covered by this Agreement are promptly published or otherwise made publicly available in such a manner as to enable interested persons and the other Party to become acquainted with them.

2. Each Party shall, upon the request by the other Party, within a reasonable period of time, respond to specific questions from, and provide information to, the other Party with respect to matters referred to in paragraph 1, through contact points referred to in Article 10.

Article 5  
Notification

Where a Party considers that any measure that it proposes to take might materially affect the implementation and operation of this Agreement or otherwise substantially affect the other Party's interests under this Agreement, the former Party shall notify the other Party, to the extent practicable, of such measure, through contact points referred to in Article 10.

Article 6  
Public Comment

To the extent practicable, each Party shall, in accordance with its laws and regulations:

- (a) make public in advance administrative regulations of general application that it proposes to adopt and that affect any matter covered by this Agreement; and
- (b) provide a reasonable opportunity for comments by the public before adoption of such regulations.

Article 7  
Administrative Procedures

Where administrative decisions which pertain to or affect the implementation and operation of this Agreement are taken by the competent authorities of a Party, the competent authorities shall, in accordance with the laws and regulations of the Party:

- (a) inform the applicant of the decision within a reasonable period of time after the submission of the application considered complete under the laws and regulations of the Party;
- (b) provide, within a reasonable period of time, information concerning the status of the application, at the request of the applicant; and
- (c) afford the applicant a reasonable opportunity to present facts and arguments in support of its positions prior to any final administrative decisions, when time, the nature of the proceeding, and the public interest permit.

Article 8  
Review and Appeal

1. Each Party shall establish or maintain judicial or administrative tribunals or procedures for the purpose of the prompt review and, where warranted, correction of administrative actions regarding matters covered by this Agreement. Such tribunals or procedures shall be impartial and independent of the office or authority entrusted with administrative enforcement of such actions and shall not have any substantial interest in the outcome of the matter.
2. Each Party shall ensure that, in any such tribunals or procedures, the parties to the proceedings are provided with the right to:
  - (a) a reasonable opportunity to support or defend their respective positions; and
  - (b) a decision based on the evidence and submissions of record.
3. Each Party shall ensure, subject to appeal or further review as provided in its laws and regulations, that such decision is implemented by the offices or authorities with respect to the administrative action at issue.

Article 9  
Confidential Information

1. Each Party shall, in accordance with its laws and regulations, maintain the confidentiality of information provided in confidence by the other Party pursuant to this Agreement.

2. Nothing in this Agreement shall require a Party to provide confidential information, the disclosure of which would impede the enforcement of its laws and regulations, or otherwise be contrary to the public interest, or which would prejudice legitimate commercial interests of particular enterprises, public or private.

Article 10  
Contact Points

Each Party shall designate a contact point to facilitate communications between the Parties on any matter covered by this Agreement.

Chapter 2  
General Definitions

Article 11  
General Definitions

For the purposes of this Agreement, unless otherwise specified:

- (a) the term "Agreement on Customs Valuation" means the Agreement on Implementation of Article VII of the General Agreement on Tariffs and Trade 1994 in Annex 1A to the WTO Agreement;
- (b) the term "Area" means:
  - (i) with respect to Japan, the territory of Japan, and all the area beyond its territorial sea, including the sea-bed and subsoil thereof, over which Japan exercises sovereign rights or jurisdiction in accordance with international law and the laws and regulations of Japan; and
  - (ii) with respect to Chile, the land, maritime and air space under its sovereignty, and the exclusive economic zone and the continental shelf within which it exercises sovereign rights and jurisdiction in accordance with international law and its domestic law;

Note: Nothing in subparagraph (b) shall affect the rights and obligations of the Parties under international law, including those under the United Nations Convention on the Law of the Sea.

- (c) the term "Commission" means the Commission established under Article 189;
- (d) the term "customs authority" means the authority that, according to the legislation of each Party or non-Parties, is responsible for the administration and enforcement of customs laws and regulations:
  - (i) with respect to Japan, the Ministry of Finance; and
  - (ii) with respect to Chile, the National Customs Service (*Servicio Nacional de Aduanas*);
- (e) the term "days" means calendar days, including weekends and holidays;
- (f) the term "enterprise" means any corporation, company, association, partnership, trust, joint venture, sole-proprietorship or other entity constituted or organized under applicable law, whether for profit or otherwise, and whether privately-owned or controlled or governmentally-owned or controlled;
- (g) the term "enterprise of a Party" means an enterprise constituted or organized under the law of a Party;
- (h) the term "existing" means in effect on the date of entry into force of this Agreement;
- (i) the term "GATS" means the General Agreement on Trade in Services in Annex 1B to the WTO Agreement;
- (j) the term "GATT 1994" means the General Agreement on Tariffs and Trade 1994 in Annex 1A to the WTO Agreement. For the purposes of this Agreement, references to articles in the GATT 1994 include the interpretative notes;
- (k) the term "Harmonized System" or "HS" means the Harmonized Commodity Description and Coding System set out in the Annex to the International Convention on the Harmonized Commodity Description and Coding System, and adopted and implemented by the Parties in their respective laws;

- (l) the term "measure" means any measure by a Party, whether in the form of a law, regulation, rule, procedure, practice, decision, administrative action or any other form;
- (m) the term "natural person of a Party" means a natural person who, under the laws and regulations of a Party:
  - (i) with respect to Japan, is a national of Japan; and
  - (ii) with respect to Chile, is a national of Chile or a permanent resident in Chile;
- (n) the term "originating good" means a good which qualifies as an originating good under the provisions of Chapter 4;
- (o) the term "Parties" means Japan and Chile and the term "Party" means either Japan or Chile;
- (p) the term "person" means a natural person or an enterprise;
- (q) the term "SPS Agreement" means the Agreement on the Application of Sanitary and Phytosanitary Measures in Annex 1A to the WTO Agreement;
- (r) the term "state enterprise" means an enterprise owned or controlled by a Party;
- (s) the term "TRIPS Agreement" means the Agreement on Trade-Related Aspects of Intellectual Property Rights in Annex 1C to the WTO Agreement; and
- (t) the term "WTO Agreement" means the Marrakesh Agreement Establishing the World Trade Organization, done at Marrakesh, April 15, 1994.

Chapter 3  
Trade in Goods

Section 1  
General Rules

Article 12  
Classification of Goods

The classification of goods in trade between the Parties shall be in conformity with the Harmonized System.

Article 13  
National Treatment

Each Party shall accord national treatment to the goods of the other Party in accordance with Article III of the GATT 1994, and to this end Article III of the GATT 1994 is incorporated into and made part of this Agreement, *mutatis mutandis*.

Article 14  
Elimination of Customs Duties

1. Except as otherwise provided for in this Agreement, each Party shall eliminate or reduce its customs duties on originating goods of the other Party designated for such purposes in its Schedule in Annex 1, in accordance with the terms and conditions set out in such Schedule.

2. Except as otherwise provided for in this Agreement, neither Party shall increase any customs duty on originating goods of the other Party from the rate to be applied in accordance with its Schedule in Annex 1.

3. Upon the request of either Party, the Parties shall negotiate on issues such as improving market access conditions on originating goods designated for negotiation in the Schedule in Annex 1, in accordance with the terms and conditions set out in such Schedule.

Article 15  
Customs Valuation

For the purposes of determining the customs value of goods traded between the Parties, provisions of Part I of the Agreement on Customs Valuation shall apply *mutatis mutandis*.

Article 16  
Export Duties

Neither Party shall introduce or maintain any duties, or fees or other charges of any kind imposed on a good exported from the Party into the other Party, unless such duties, or fees or other charges are not in excess of those imposed on the like good destined for domestic consumption.

Note: The term "fees or other charges of any kind" shall not include any fees or other charges commensurate with the cost of services rendered, which are consistent with the WTO Agreement.



Article 17  
Agricultural Export Subsidies

Taking full account of the objectives of eliminating export subsidies on any agricultural good within the framework of the World Trade Organization, neither Party shall introduce or maintain any export subsidies on any agricultural good which is listed in Annex 1 to the Agreement on Agriculture.

Article 18  
Import and Export Restrictions

Except as otherwise provided for in this Agreement, each Party shall not introduce or maintain any prohibition or restriction other than customs duties on the importation of any good of the other Party or on the exportation or sale for export of any good destined to the other Party, which is inconsistent with its obligations under Article XI of the GATT 1994 and its relevant provisions under the WTO Agreement.

Article 19  
Restrictions to Safeguard the Balance of Payments

1. Nothing in this Section shall be construed to prevent a Party from taking any measure for balance-of-payments purposes. A Party taking such measure shall do so in accordance with the conditions established under Article XII of the GATT 1994 and the Understanding on the Balance-of-Payments Provisions of the General Agreement on Tariffs and Trade 1994 in Annex 1A to the WTO Agreement.
2. Nothing in this Section shall preclude the use by a Party of exchange controls or exchange restrictions in accordance with the Articles of Agreement of the International Monetary Fund.

Section 2  
Bilateral Safeguard Measures

Article 20  
Bilateral Safeguard Measures

1. Subject to the provisions of this Section, a Party may take a bilateral safeguard measure, to the minimum extent necessary to prevent or remedy the serious injury to a domestic industry of that Party and to facilitate adjustment, if an originating good of the other Party, as a result of the elimination or reduction of a customs duty in accordance with Article 14, is being imported into the former Party in such increased quantities, in absolute terms, and under such conditions that the imports of that originating good constitute a substantial cause of serious injury, or threat thereof.

2. A Party may, as a bilateral safeguard measure:

- (a) suspend the further reduction of any rate of customs duty on the originating good provided for in Section 1; or
- (b) increase the rate of customs duty on the originating good to a level not to exceed the lesser of:
  - (i) the most-favored-nation applied rate of customs duty in effect when the bilateral safeguard measure is taken; and
  - (ii) the most-favored-nation applied rate of customs duty in effect on the day immediately preceding the date of entry into force of this Agreement.

Article 21  
Investigation Procedures

1. A Party may take a bilateral safeguard measure only after an investigation has been carried out by the competent authorities of that Party in accordance with the same procedures as those provided for in Article 3 and subparagraph 2(c) of Article 4 of the Agreement on Safeguards.

2. The investigation referred to in paragraph 1 shall in all cases be completed within one year following its date of initiation.

3. In the investigation referred to in paragraph 1 to determine whether increased imports of an originating good have caused or are threatening to cause serious injury to a domestic industry under the terms of this Section, the competent authorities of the Party who carry out the investigation shall evaluate all relevant factors of an objective and quantifiable nature having a bearing on the situation of that domestic industry, in particular, the rate and amount of the increase in imports of the originating good in absolute terms, the share of the domestic market taken by the increased imports of the originating good, and the changes in the level of sales, production, productivity, capacity utilization, profits and losses, and employment.

4. The determination that increased imports of an originating good have caused or are threatening to cause serious injury to a domestic industry shall not be made unless the investigation referred to in paragraph 1 demonstrates, on the basis of objective evidence, the existence of the causal link between increased imports of the originating good and serious injury or threat thereof. When factors other than the increased imports of the originating good are causing injury to the domestic industry at the same time, such injury shall not be attributed to the increased imports of the originating good.

#### Article 22 Conditions and Limitations

The following conditions and limitations shall apply with regard to a bilateral safeguard measure:

- (a) no bilateral safeguard measure shall be maintained except to the extent and for such time as may be necessary to prevent or remedy serious injury and to facilitate adjustment, provided that such time shall not exceed a period of three years. However, in very exceptional circumstances, a bilateral safeguard measure may be extended, provided that the total period of the bilateral safeguard measure, including such extensions, shall not exceed four years;
- (b) in order to facilitate adjustment in a situation where the expected duration of a bilateral safeguard measure is over one year, the Party maintaining the bilateral safeguard measure shall progressively liberalize the bilateral safeguard measure at regular intervals during the period of application;

- (c) no bilateral safeguard measure shall be applied again to the import of a particular originating good which has been subject to such a bilateral safeguard measure, for a period of time equal to the duration of the previous bilateral safeguard measure or one year, whichever is longer;
- (d) nothing in this Section shall prevent a Party from applying safeguard measures to an originating good of the other Party in accordance with:
  - (i) Article XIX of the GATT 1994 and the Agreement on Safeguards; or
  - (ii) Article 5 of the Agreement on Agriculture;
- (e) no bilateral safeguard measure shall be applied to the import of a particular originating good which has been *en route* from a Party to the other Party at the time when the other Party notifies the former Party of the decision to apply such a bilateral safeguard measure pursuant to subparagraph 1(b) of Article 23; and
- (f) upon the termination of a bilateral safeguard measure, the rate of customs duty shall be the rate which would have been in effect if the bilateral safeguard measure had never been applied.

Article 23  
Notification

1. A Party shall immediately deliver a written notice to the other Party upon:
  - (a) taking a decision to initiate an investigation referred to in paragraph 1 of Article 21 relating to serious injury or threat thereof, and the reasons for it; and
  - (b) taking a decision to apply, extend or liberalize a bilateral safeguard measure.
2. The Party making the written notice referred to in paragraph 1 shall provide the other Party with all pertinent information, which shall include:

- (a) in the written notice referred to in subparagraph 1(a), the reason for the initiation of the investigation, a precise description of the originating good subject to the investigation and its subheading of the Harmonized System, the period subject to the investigation and the date of initiation of the investigation; and
- (b) in the written notice referred to in subparagraph 1(b), evidence of serious injury or threat thereof caused by the increased imports of the originating good, a precise description of the originating good subject to the proposed bilateral safeguard measure and its subheading of the Harmonized System, a precise description of the bilateral safeguard measure, and the proposed date of its introduction and its expected duration.

Article 24  
Consultations and Compensation

1. A Party proposing to apply or extend a bilateral safeguard measure shall provide adequate opportunity for prior consultations with the other Party with a view to reviewing the information arising from the investigation referred to in paragraph 1 of Article 21, exchanging views on the bilateral safeguard measure and reaching an agreement on compensation set out in this Article.
2. A Party proposing to apply or extend a bilateral safeguard measure shall provide to the other Party mutually agreed adequate means of trade compensation in the form of concessions of customs duties whose levels are substantially equivalent to the value of the additional customs duties expected to result from the bilateral safeguard measure.
3. If the Parties are unable to agree on the compensation within 30 days after the commencement of the consultation pursuant to paragraph 1, the Party against whose originating good the bilateral safeguard measure is taken shall be free to suspend the application of concessions of customs duties under this Agreement, which are substantially equivalent to the bilateral safeguard measure, after giving written notice of such suspension, together with the information regarding concessions to be suspended, to the other Party. The Party exercising the right of suspension may suspend the application of concessions of customs duties only for the minimum period necessary to achieve the substantially equivalent effects and only while the bilateral safeguard measure is maintained.

Article 25  
Provisional Bilateral Safeguard Measures

1. In critical circumstances, where delay would cause damage which it would be difficult to repair, a Party may take a provisional bilateral safeguard measure, which shall take the form of the measure set out in subparagraph 2(a) or (b) of Article 20 pursuant to a preliminary determination that there is clear evidence that increased imports of an originating good of the other Party have caused or are threatening to cause serious injury to a domestic industry.

2. A Party shall deliver a written notice to the other Party prior to applying a provisional bilateral safeguard measure. Consultations between the Parties on the application of the provisional bilateral safeguard measure shall be initiated immediately after the provisional bilateral safeguard measure is taken.

3. The duration of a provisional bilateral safeguard measure shall not exceed 200 days. During that period, the pertinent requirements of Article 21 shall be met. The duration of the provisional bilateral safeguard measure shall be counted as a part of the period referred to in subparagraph (a) of Article 22.

4. Subparagraph (f) of Article 22 and paragraphs 1 and 2 of Article 26 shall be applied *mutatis mutandis* to a provisional bilateral safeguard measure. The customs duty imposed as a result of a provisional bilateral safeguard measure shall be refunded if the subsequent investigation referred to in paragraph 1 of Article 21 does not determine that increased imports of an originating good of the other Party have caused or threatened to cause serious injury to a domestic industry.

Article 26  
Miscellaneous

1. Each Party shall ensure the consistent, impartial and reasonable administration of its laws and regulations relating to bilateral safeguard measure.

2. Each Party shall adopt or maintain equitable, timely, transparent and effective procedures relating to bilateral safeguard measure.

3. The written notice referred to in paragraph 1 of Article 23, paragraph 3 of Article 24 and paragraph 2 of Article 25 and any other communication between the Parties shall be done in the English language.

4. The Parties shall review the provisions of this Section, if necessary, after 10 years of the date of entry into force of this Agreement.

Section 3  
Other Provisions

Article 27  
Committee on Trade in Goods

1. For the purposes of the effective implementation and operation of this Chapter and Chapter 4, the Parties hereby establish a Committee on Trade in Goods (hereinafter referred to in this Article as "Committee").

2. The functions of the Committee shall be:

(a) reviewing and monitoring:

(i) the implementation and operation of this Chapter and Chapter 4;

(ii) any amendments to Annexes 2 and 4, proposed by either Party; and

(iii) the Operational Procedures referred to in Article 52;

(b) discussing any issues related to this Chapter and Chapter 4;

(c) reporting the findings and the outcome of discussions of the Committee to the Commission; and

(d) carrying out other functions as may be delegated by the Commission in accordance with Article 190.

3. The Committee shall be composed of government officials of the Parties.

4. The Committee shall meet at such venues and times as may be agreed by the Parties.

5. A Working Group on Fish and Fishery Products shall be established under the Committee. Details of the Working Group shall be set forth in a separate agreement to be concluded between the Governments of the Parties for the implementation of this Agreement (hereinafter referred to as "the Implementing Agreement").

Note: In the case of Chile, the Implementing Agreement shall be implemented as an Executive Agreement (*Acuerdo de Ejecución*) in accordance with the Political Constitution of the Republic of Chile (*Constitución Política de la República de Chile*).

Article 28  
Definitions

For the purposes of this Chapter:

- (a) the term "Agreement on Agriculture" means the Agreement on Agriculture in Annex 1A to the WTO Agreement;
- (b) the term "Agreement on Safeguards" means the Agreement on Safeguards in Annex 1A to the WTO Agreement;
- (c) the term "bilateral safeguard measure" means a bilateral safeguard measure provided for in paragraph 2 of Article 20;
- (d) the term "customs duty" means any customs or import duty and a charge of any kind, including any form of surtax or surcharge, imposed in connection with the importation of a good, but does not include any:
  - (i) charge equivalent to an internal tax imposed consistently with the provisions of paragraph 2 of Article III of the GATT 1994, in respect of the like goods or, directly competitive or substitutable goods of the Party or in respect of goods from which the imported goods have been manufactured or produced in whole or in part;
  - (ii) anti-dumping or countervailing duty applied pursuant to a Party's law and applied consistently with the provisions of Article VI of the GATT 1994, the Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994, and the Agreement on Subsidies and Countervailing Measures in Annex 1A to the WTO Agreement;  
or
  - (iii) fees or other charges commensurate with the cost of services rendered;



- (e) the term "customs value of goods" means the value of goods for the purposes of levying ad valorem customs duties on imported goods;
- (f) the term "domestic industry" means the producers as a whole of the like or directly competitive goods operating in a Party, or those whose collective output of the like or directly competitive goods constitutes a major proportion of the total domestic production of those goods;
- (g) the term "export subsidies" means export subsidies described in subparagraph (e) of Article 1 of the Agreement on Agriculture;
- (h) the term "provisional bilateral safeguard measure" means a provisional bilateral safeguard measure provided for in paragraph 1 of Article 25;
- (i) the term "serious injury" means a significant overall impairment in the position of a domestic industry; and
- (j) the term "threat of serious injury" means serious injury that, on the basis of facts and not merely on allegation, conjecture or remote possibility, is clearly imminent.

Chapter 4  
Rules of Origin

Section 1  
Rules of Origin

Article 29  
Originating Goods

1. Except as otherwise provided for in this Chapter, a good shall qualify as an originating good of a Party where:

- (a) the good is wholly obtained or produced entirely in the Party, as defined in paragraph 2;
- (b) the good is produced entirely in the Party exclusively from originating materials of the Party;
- (c) the good is produced entirely in the Party using non-originating materials, provided that the good satisfies the product specific rules set out in Annex 2, as well as all other applicable requirements of this Chapter; or

- (d) except for a good provided for in Chapters 61 through 63 of the Harmonized System, the good is produced entirely in the Party, but one or more of the non-originating materials that are used in the production of the good do not undergo an applicable change in tariff classification because:
  - (i) the good is imported into the Party in an unassembled or disassembled form but is classified as an assembled good pursuant to Rule 2(a) of the General Rules for the Interpretation of the Harmonized System; or
  - (ii) the heading for the good provides for and specifically describes both the good itself and its parts and is not further subdivided into subheadings, or the subheading for the good provides for and specifically describes both the good itself and its parts,

provided that the qualifying value content of the good, determined in accordance with Article 30, is not less than 45 percent when the method referred to in subparagraph 1(a) of Article 30 is used or 30 percent when the method referred to in subparagraph 1(b) of Article 30 is used, unless otherwise provided for in Annex 2, and that the good satisfies all other applicable requirements of this Chapter.

2. For the purposes of subparagraph 1(a), the following goods shall be considered as being wholly obtained or produced entirely in a Party:

- (a) mineral goods extracted in the Party;
- (b) vegetable goods harvested in the Party;
- (c) live animals born and raised in the Party;
- (d) goods obtained from hunting, trapping or fishing in the Party;
- (e) goods obtained from live animals in the Party;
- (f) fish, shellfish and other marine species taken from the sea beyond the territorial seas of the Parties by vessels:
  - (i) which are registered or recorded in the Party;

- (ii) which sail under the flag of the Party;
- (iii) which are owned to an extent of at least 50 percent by nationals of the Party, or by an enterprise with its head office in the Party, of which the representatives, chairman of the board of directors, and the majority of the members of such board are nationals of the Party, and of which at least 50 percent of the equity interest is owned by nationals or enterprises of the Party;
- (iv) of which the master and officers are all nationals of the Party; and
- (v) of which at least 75 percent of the crew are nationals of the Party;

Note 1: Without prejudice to the rights and obligations of the Parties under international law, including those under the United Nations Convention on the Law of the Sea, subparagraph (f) shall not apply to fish, shellfish and other marine species taken from the exclusive economic zone of the other Party by the vessels referred to in that subparagraph.

Note 2: The requirements of subparagraphs (f)(iii) through (v) shall not apply to vessels registered or recorded in Chile prior to June 30, 1991, provided for in Transitional Article 10 of the consolidated text of the Law 18.892, General Law on Fisheries and Aquiculture (*Artículo 10 Transitorio del texto refundido, coordinado y sistematizado de la Ley 18.892, Ley General de Pesca y Acuicultura*), and their successor vessels registered or recorded in accordance with that Law and other relevant provisions of Chilean law.

- (g) goods produced from the goods referred to in subparagraph (f) on board factory ships:
  - (i) which are registered or recorded in the Party;

- (ii) which sail under the flag of the Party;
- (iii) which are owned to an extent of at least 50 percent by nationals of the Party, or by an enterprise with its head office in the Party, of which the representatives, chairman of the board of directors, and the majority of the members of such board are nationals of the Party, and of which at least 50 percent of the equity interest is owned by nationals or enterprises of the Party;
- (iv) of which the master and officers are all nationals of the Party; and
- (v) of which at least 75 percent of the crew are nationals of the Party;

Note: The requirements of subparagraphs (g) (iii) through (v) shall not apply to factory ships registered or recorded in Chile prior to June 30, 1991, provided for in Transitional Article 10 of the consolidated text of the Law 18.892, General Law on Fisheries and Aquiculture (*Artículo 10 Transitorio del texto refundido, coordinado y sistematizado de la Ley 18.892, Ley General de Pesca y Acuicultura*), and their successor vessels registered or recorded in accordance with that Law and other relevant provisions of Chilean law.

- (h) goods taken by the Party or a natural person or enterprise of the Party from the seabed or subsoil beneath the seabed outside the territorial sea of the Party, provided that the Party has rights to exploit such seabed or subsoil;
- (i) waste and scrap derived from:
  - (i) production in the Party; or
  - (ii) used goods collected in the Party, provided that such goods are fit only for the recovery of raw materials; and

- (j) goods produced in the Party exclusively from the goods referred to in subparagraphs (a) through (i), or from their derivatives, at any stage of production.

3. For the purposes of subparagraph 1(c), the product specific rules set out in Annex 2 requiring that the materials used undergo a change in tariff classification or a specific manufacturing or processing operation shall apply only to non-originating materials.

### Article 30 Qualifying Value Content

1. For the purposes of subparagraph 1(c) of Article 29, the qualifying value content of a good shall be calculated on the basis of one or the other of the following methods:

- (a) Method based on value of non-originating materials ("Build-down method")

$$QVC = \frac{TV - VNM}{TV} \times 100$$

- (b) Method based on value of originating materials ("Build-up method")

$$QVC = \frac{VOM}{TV} \times 100$$

Where:

QVC is the qualifying value content of the good, expressed as a percentage;

TV is the transaction value of the good adjusted to F.O.B. basis, except as provided for in paragraph 2;

VNM is the value of non-originating materials used by the producer in the production of the good determined pursuant to Article 31; and

VOM is the value of originating materials used by the producer in the production of the good determined pursuant to Article 31.

2. In the event that there is no transaction value or the transaction value of the good is unacceptable under Article 1 of the Agreement on Customs Valuation, the value of the good shall be determined in accordance with Articles 2 through 7 of the Agreement on Customs Valuation.

Article 31  
Value of Materials

1. The value of a material:
  - (a) shall be the transaction value of the material;  
or
  - (b) in the event that there is no transaction value or the transaction value of the material is unacceptable under Article 1 of the Agreement on Customs Valuation, shall be determined in accordance with Articles 2 through 7 of the Agreement on Customs Valuation.
2. The value of a material referred to in paragraph 1:
  - (a) shall include freight, insurance, packing and all other costs incurred in transporting the material to the importation port in the Party where the producer of the good is located; and
  - (b) may include the cost of waste and spoilage resulting from the use of the material in the production of the good, less the value of reusable scrap or by-product.
3. The value of a non-originating material shall not include, where the producer acquires the material in the Party where the producer is located, freight, insurance, packing and all other costs incurred in transporting the material from the warehouse of the supplier of the material to the place where the producer is located; as well as any other known and ascertainable cost incurred in the Party.

Article 32  
*De Minimis*

Non-originating materials used in the production of a good that do not undergo an applicable change in tariff classification shall be disregarded in determining whether the good qualifies as an originating good of a Party, provided that the totality of such materials does not exceed specific percentages in value, weight or volume of the good as set out in Annex 2.

Article 33  
Accumulation

For the purposes of determining whether a good qualifies as an originating good of a Party, an originating good of the other Party which is used as a material in the production of the good in the former Party may be considered as an originating material of the former Party.

Article 34  
Fungible Goods and Materials

1. For the purposes of determining whether a good qualifies as an originating good of a Party, where fungible materials consisting of originating materials of the Party and non-originating materials that are commingled in an inventory are used in the production of the good, the origin of the materials may be determined pursuant to an inventory management method recognized in the Generally Accepted Accounting Principles in the Party.

2. Where fungible goods consisting of originating goods of a Party and non-originating goods are commingled in an inventory and, prior to exportation do not undergo any production process or any operation in the Party where they were commingled other than unloading, reloading and any other operation to preserve them in good condition, the origin of the good may be determined pursuant to an inventory management method recognized in the Generally Accepted Accounting Principles in the Party.

Article 35  
Sets, Kits or Composite Goods

1. Sets, kits and composite goods classified pursuant to Rule 3 of the General Rules for the Interpretation of the Harmonized System shall qualify as originating goods of the exporting Party, where every good contained in the sets, kits or composite goods satisfies the applicable rule of origin for each of them under this Chapter.

2. Paragraph 1 shall prevail over the product specific rules set out in Annex 2.

Article 36  
Indirect Materials

Indirect materials shall be, without regard to where they are produced, considered to be originating materials of the Party where the good is produced.

Article 37  
Accessories, Spare Parts and Tools

Accessories, spare parts or tools delivered with a good that form part of the good's standard accessories, spare parts or tools, shall be disregarded in determining whether the good qualifies as an originating good of a Party, provided that:

- (a) the accessories, spare parts or tools are not invoiced separately from the good, without regard of whether they are separately described in the invoice; and
- (b) the quantities and value of the accessories, spare parts or tools are customary for the good.

Article 38  
Packaging Materials and Containers for Retail Sale

Packaging materials and containers in which a good is packaged for retail sale shall, if classified with the good pursuant to Rule 5 of the General Rules for the Interpretation of the Harmonized System, be disregarded in determining whether the good qualifies as an originating good of a Party.

Article 39  
Packing Materials and Containers for Shipment

Packing materials and containers for shipment shall be disregarded in determining whether the good qualifies as an originating good of a Party.

Article 40  
Non-Qualifying Operations

1. A good shall not be considered to be an originating good of the exporting Party merely by reason of:
  - (a) operations to ensure the preservation of products in good condition during transport and storage;
  - (b) changes of packaging and breaking up and assembly of packages;
  - (c) disassembly;
  - (d) placing in bottles, cases, boxes and other simple packaging operations;



- (e) collection of parts and components classified as a good pursuant to Rule 2(a) of the General Rules for the Interpretation of the Harmonized System;
- (f) mere making-up of sets of articles; or
- (g) any combination of operations referred to in subparagraphs (a) through (f).

2. Paragraph 1 shall prevail over the product specific rules set out in Annex 2.

#### Article 41 Consignment Criteria

1. An originating good of a Party shall be deemed to meet the consignment criteria when it is:

- (a) transported directly from the Party to the other Party; or
- (b) transported through one or more non-Parties for the purpose of transit or temporary storage in warehouses in such non-Parties, provided that it does not undergo operations other than unloading, reloading and any other operation to preserve it in good condition.

2. If an originating good of a Party does not meet the consignment criteria referred to in paragraph 1, that good shall not be considered as an originating good of the Party.

#### Article 42 Exhibitions

Notwithstanding Article 41, an originating good of a Party imported into the other Party after an exhibition in a non-Party shall continue to qualify as an originating good of the former Party when it:

- (a) remained under the control of the customs authority of the non-Party while it was in the non-Party; and
- (b) was transported:
  - (i) directly to and from the non-Party; or

- (ii) through other non-Parties for the purpose of transit or temporary storage in warehouses in such other non-Parties, provided that it did not undergo operations other than unloading, reloading and any other operation to preserve it in good condition.

Section 2  
Certificate of Origin and Related Procedures

Article 43  
Claim for Preferential Tariff Treatment

1. The customs authority of the importing Party shall require a certificate of origin for an originating good of the exporting Party from importers who claim the preferential tariff treatment for the good.

2. Notwithstanding paragraph 1, the customs authority of the importing Party shall not require a certificate of origin from importers for:

- (a) an importation of originating goods of the exporting Party whose total customs value does not exceed 1000 United States of America dollars or its equivalent amount in the Party's currency, or such higher amount as it may establish; or
- (b) an importation of originating goods of the exporting Party, for which the customs authority of the importing Party has waived the requirement for a certificate of origin,

provided that the importation does not form part of one or more importations that may reasonably be considered to have been undertaken or arranged for the purpose of avoiding the certification requirements of this Article and Article 46.

3. In the case where an originating good of the exporting Party is imported after an exhibition in a non-Party, the customs authority of the importing Party may require importers, who claim the preferential tariff treatment for the good, to submit:

- (a) a certificate or any other information given by the customs authority of that non-Party or other relevant entities, which evidences that the good meets the requirements of subparagraph (a) of Article 42; and
- (b) (i) a copy of through bill of lading; or

- (ii) if the good was transported through other non-Parties, a certificate or any other information given by the customs authorities of such other non-Parties or other relevant entities, which evidences that the good has not undergone operations other than unloading, reloading and any other operation to preserve it in good condition in those other non-Parties.

4. Where an originating good of the exporting Party is imported through one or more non-Parties except for the case referred to in paragraph 3, the customs authority of the importing Party may require importers, who claim the preferential tariff treatment for the good, to submit:

- (a) a copy of through bill of lading; or
- (b) a certificate or any other information given by the customs authorities of such non-Parties or other relevant entities, which evidences that the good has not undergone operations other than unloading, reloading and any other operation to preserve it in good condition in those non-Parties.

#### Article 44 Certificate of Origin

1. A certificate of origin shall be issued by the competent authority specified in Annex 3 (hereinafter referred to in this Chapter as "competent authority") of the exporting Party on request having been made in writing by the exporter.

2. For the purposes of this Article, the competent authority of the exporting Party may designate public or private entities or bodies to be responsible for the issuance of certificate of origin in accordance with the applicable laws and regulations of the exporting Party.

3. Where the competent authority of the exporting Party designates public or private entities or bodies to carry out the issuance of certificate of origin, the exporting Party shall notify in writing the other Party of its designees.

4. For the purposes of this Chapter, upon the entry into force of this Agreement, a format of certificate of origin shall be established in the English language in the Operational Procedures referred to in Article 52. A certificate of origin shall include minimum data specified in Annex 4.

5. A certificate of origin shall be completed in the English language.

6. An issued certificate of origin shall be applicable to an importation of originating goods of the exporting Party into the importing Party and be valid for one year from the date of issuance.

7. Where the exporter of a good is not the producer of the good in the exporting Party, the exporter may request a certificate of origin on the basis of:

- (a) a declaration provided by the exporter to the competent authority of the exporting Party or its designees based on the information provided by the producer of the good to that exporter; or
- (b) a declaration voluntarily provided by the producer of the good directly to the competent authority of the exporting Party or its designees by the request of the exporter.

8. A certificate of origin shall be issued only after the exporter who requests the certificate of origin, or the producer of a good in the exporting Party referred to in subparagraph 7(b), proves to the competent authority of the exporting Party or its designees that the good to be exported qualifies as an originating good of the exporting Party. The competent authority of the exporting Party or its designees may, in accordance with the applicable laws and regulations of the exporting Party, require such exporter or producer to provide information relating to the origin of the good.

9. The competent authority of the exporting Party shall provide the importing Party with impressions of stamps used by the competent authority of the exporting Party or its designees.

10. Each Party shall ensure that the competent authority of the exporting Party or its designees shall keep a record of issued certificates of origin for a period of five years after the date on which the certificate of origin was issued. Such record will include all antecedents, which were presented to prove the qualification as an originating good of the exporting Party.

Article 45  
Obligations regarding Exportations

Each Party shall, in accordance with its laws and regulations, ensure that the exporter to whom a certificate of origin has been issued, or the producer of a good in the exporting Party referred to in subparagraph 7(b) of Article 44:

- (a) shall notify in writing the competent authority of the exporting Party or its designees without delay when such exporter or producer knows that such good does not qualify as an originating good of the exporting Party; and
- (b) shall keep the records relating to the origin of the good for five years after the date on which the certificate of origin was issued.

Article 46  
Obligations regarding Importations

1. Except as otherwise provided for in this Chapter, the customs authority of the importing Party shall require an importer who claims preferential tariff treatment for a good imported from the other Party to:

- (a) make a written declaration, based on a valid certificate of origin, that the good qualifies as an originating good of the exporting Party;
- (b) have the certificate of origin in its possession at the time the declaration is made;
- (c) provide the certificate of origin on the request of the customs authority of the importing Party; and
- (d) promptly make a corrected declaration and pay any duties owing where the importer has reason to believe that the certificate of origin on which a declaration was based contains information that is not correct.

2. Each Party shall ensure that, in the case in which the importer at the time of importation does not have a certificate of origin in its possession, the importer may, in accordance with the laws and regulations of the importing Party, provide the customs authority of the importing Party with the certificate of origin issued in accordance with paragraph 1 of Article 44 and, if required, such other documentation relating to the importation of the good, within a period not exceeding one year after the time of importation.

Note: In the case of importation into Chile, any excess customs duties shall be refunded to the importer referred to in paragraph 2.

#### Article 47

##### Request for Checking of Certificate of Origin

1. For the purposes of determining whether a good imported from the exporting Party under preferential tariff treatment qualifies as an originating good of the exporting Party, the customs authority of the importing Party may request information relating to the origin of the good from the competent authority of the exporting Party on the basis of a certificate of origin, where it has reasonable doubt as to the authenticity of the certificate of origin or the accuracy of the information included in the certificate of origin.

2. For the purposes of paragraph 1, the competent authority of the exporting Party shall, in accordance with the laws and regulations of the exporting Party, provide the information requested within a period of three months from the date of receipt of the request. If the customs authority of the importing Party considers necessary, it may require additional information relating to the origin of the good. If additional information is requested by the customs authority of the importing Party, the competent authority of the exporting Party shall, in accordance with the laws and regulations of the exporting Party, provide the information requested within a period of two months from the date of receipt of the request.

3. For the purposes of paragraph 2, the competent authority of the exporting Party may request the exporter to whom the certificate of origin has been issued, or the producer of the good in the exporting Party referred to in subparagraph 7(b) of Article 44, to provide the former with the information requested.

4. The request of information in accordance with paragraph 1 shall not preclude the use of the verification method provided for in Article 48.

Article 48  
Verification Visit

1. The customs authority of the importing Party may request the competent authority of the exporting Party to:

- (a) collect and provide information relating to the origin of a good and check, for that purpose, the facilities used in the production of the good, through a visit by the competent authority of the exporting Party along with the customs authority of the importing Party to the premises of the exporter to whom the certificate of origin has been issued, or the producer of the good in the exporting Party referred to in subparagraph 7(b) of Article 44; and
- (b) provide information relating to the origin of the good in the possession of the competent authority of the exporting Party or its designees during the visit pursuant to subparagraph (a).

2. When requesting the competent authority of the exporting Party to conduct a visit pursuant to paragraph 1, the customs authority of the importing Party shall deliver a written communication with such request to the competent authority of the exporting Party at least 40 days in advance of the proposed date of the visit, the receipt of which is to be confirmed by the competent authority of the exporting Party. The competent authority of the exporting Party shall request the written consent of the exporter, or the producer of the good in the exporting Party whose premises are to be visited.

3. The communication referred to in paragraph 2 shall include:

- (a) the identity of the customs authority issuing the communication;
- (b) the name of the exporter, or the producer of the good in the exporting Party whose premises are requested to be visited;
- (c) the proposed date and place of the visit;

- (d) the objective and scope of the proposed visit, including specific reference to the good subject of the verification referred to in the certificate of origin; and
- (e) the names and titles of the officials of the customs authority of the importing Party to be present during the visit.

4. The competent authority of the exporting Party shall respond in writing to the customs authority of the importing Party, within 30 days of the receipt of the communication referred to in paragraph 2, if it accepts or refuses to conduct the visit requested pursuant to paragraph 1.

5. The competent authority of the exporting Party shall, in accordance with the laws and regulations of the exporting Party, provide within 45 days or any other mutually agreed period from the last day of the visit, to the customs authority of the importing Party the information obtained pursuant to paragraph 1.

Article 49  
Determination of Origin  
and Preferential Tariff Treatment

1. The customs authority of the importing Party may deny preferential tariff treatment to a good for which an importer claims preferential tariff treatment where the good does not qualify as an originating good of the exporting Party or where the importer fails to comply with any of the relevant requirements of this Chapter.

2. The competent authority of the exporting Party shall, when it cancels the decision to issue the certificate of origin, promptly notify the cancellation to the exporter to whom the certificate of origin has been issued, and to the customs authority of the importing Party except where the certificate of origin has been returned to the competent authority of the exporting Party. The customs authority of the importing Party may determine that the good does not qualify as an originating good of the exporting Party and may deny preferential tariff treatment when it receives the notification.

3. The customs authority of the importing Party may determine that a good does not qualify as an originating good of the exporting Party and may deny preferential tariff treatment, and a written determination thereof shall be sent to the competent authority of the exporting Party:



- (a) where the competent authority of the exporting Party fails to respond to the request within the period referred to in paragraph 2 of Article 47 or paragraph 5 of Article 48;
- (b) where the competent authority of the exporting Party refuses to conduct a visit, or fails to respond to the communication referred to in paragraph 2 of Article 48 within the period referred to in paragraph 4 of Article 48; or
- (c) where the information provided to the customs authority of the importing Party pursuant to Article 47 or 48, is not sufficient to prove that the good qualifies as an originating good of the exporting Party.

4. After carrying out the procedures outlined in Article 47 or 48 as the case may be, the customs authority of the importing Party shall provide the competent authority of the exporting Party with a written determination of whether or not the good qualifies as an originating good of the exporting Party, including findings of fact and the legal basis for the determination, within 45 days from the date of receipt of the information provided by the competent authority of the exporting Party pursuant to Article 47 or 48. The competent authority of the exporting Party shall inform such determination by the customs authority of the importing Party to the exporter, or the producer of the good in the exporting Party, whose premises were subject to the visit referred to in Article 48.

#### Article 50

##### Penalties and Measures against False Declaration

1. Each Party shall establish or maintain, in accordance with its laws and regulations, appropriate penalties or other sanctions against its exporters to whom a certificate of origin has been issued and the producers of a good in the exporting Party referred to in subparagraph 7(b) of Article 44, for providing false declaration or documents to the competent authority of the exporting Party or its designees prior to the issuance of certificate of origin.

2. Each Party shall, in accordance with its laws and regulations, take measures which it considers appropriate against its exporters to whom a certificate of origin has been issued and the producers of a good in the exporting Party referred to in subparagraph 7(b) of Article 44, for failing to notify in writing to the competent authority of the exporting Party or its designees without delay after having known, after the issuance of certificate of origin, that such good does not qualify as an originating good of the exporting Party.

#### Article 51

##### Transitional Provision for Goods in Transit or Storage

An importer may not claim preferential tariff treatment for a good which, on the date of entry into force of this Agreement, is in transport from the exporting Party to the importing Party or in temporary storage in warehouses, except that:

- (a) the good otherwise satisfies all applicable requirements of this Chapter; and
- (b) the importer provides, in accordance with the laws and regulations of the importing Party, the customs authority of the importing Party with the certificate of origin issued retrospectively and, if required, such other documentation relating to the importation of the good, within a period not exceeding four months after the entry into force of this Agreement.

#### Section 3

##### Other Provisions

#### Article 52

##### Operational Procedures

Upon the date of entry into force of this Agreement, the Commission shall adopt the Operational Procedures that provide detailed regulations pursuant to which the customs authorities, the competent authorities and other relevant authorities of the Parties shall implement their functions under this Chapter and Chapter 3.

#### Article 53

##### Miscellaneous

1. Communications between the importing Party and the exporting Party shall be conducted in the English language.

2. For the application of the relevant product specific rules set out in Annex 2 and the determination of origin, the Generally Accepted Accounting Principles in the exporting Party shall be applied.

Article 54  
Definitions

For the purposes of this Chapter:

- (a) the term "exporter" means a person located in an exporting Party who exports goods from the exporting Party;
- (b) the term "F.O.B." means free on board, regardless of the mode of transportation, at the point of direct shipment by the seller to the buyer;
- (c) the term "fungible goods" or "fungible materials" respectively means goods or materials that are interchangeable for commercial purposes, whose properties are essentially identical;
- (d) the term "Generally Accepted Accounting Principles" means the recognized consensus or substantial authoritative support within a Party at a particular time as to which economic resources and obligations should be recorded as assets and liabilities, which changes in assets and liabilities should be recorded, how the assets and liabilities and changes in them should be measured, what information should be disclosed and how it should be disclosed, and which financial statements should be prepared. These standards may be broad guidelines of general application as well as detailed practices and procedures;
- (e) the term "importer" means a person who imports goods into the importing Party;
- (f) the term "indirect materials" means goods used in the production, testing or inspection of another good but not physically incorporated into the good, or goods used in the maintenance of buildings or the operation of equipment associated with the production of another good, including:
  - (i) fuel and energy;
  - (ii) tools, dies and moulds;

- (iii) spare parts and goods used in the maintenance of equipment and buildings;
  - (iv) lubricants, greases, compounding materials and other goods used in production or used to operate equipment and buildings;
  - (v) gloves, glasses, footwear, clothing, safety equipment and supplies;
  - (vi) equipment, devices and supplies used for testing or inspection;
  - (vii) catalysts and solvents; and
  - (viii) any other goods that are not incorporated into another good but whose use in the production of the good can reasonably be demonstrated to be a part of that production;
- (g) the term "material" means a good that is used in the production of another good;
  - (h) the term "originating material of a Party" means an originating good of a Party which is used in the production of another good in the Party, including that which is considered as an originating material of the Party pursuant to Article 33;
  - (i) the term "packing materials and containers for shipment" means goods that are used to protect a good during its transportation, other than packaging materials and containers for retail sale referred to in Article 38;
  - (j) the term "preferential tariff treatment" means the rate of customs duties applicable to an originating good of the exporting Party in accordance with paragraph 1 of Article 14;
  - (k) the term "producer" means a person who engages in the production of goods or materials;
  - (l) the term "production" means methods of obtaining goods including manufacturing, assembling, processing, raising, growing, breeding, mining, extracting, harvesting, fishing, trapping, gathering, collecting, hunting and capturing;

- (m) the term "transaction value of a good" means the price actually paid or payable for a good with respect to a transaction of the producer of the good, pursuant to the principles of Article 1 of the Agreement on Customs Valuation, adjusted in accordance with the principles of paragraphs 1, 3 and 4 of Article 8 of the Agreement on Customs Valuation, regardless of whether the good is sold for export. For the purposes of this definition, the seller referred to in the Agreement on Customs Valuation shall be the producer of the good; and
- (n) the term "transaction value of a material" means the price actually paid or payable for a material with respect to a transaction of the producer of the good, pursuant to the principles of Article 1 of the Agreement on Customs Valuation, adjusted in accordance with the principles of paragraphs 1, 3 and 4 of Article 8 of the Agreement on Customs Valuation, regardless of whether the material is sold for export. For the purposes of this definition, the seller referred to in the Agreement on Customs Valuation shall be the supplier of the material, and the buyer referred to in the Agreement on Customs Valuation shall be the producer of the good.

Chapter 5  
Customs Procedures

Article 55  
Scope

1. This Chapter shall apply to customs procedures required for the clearance of goods traded between the Parties.
2. This Chapter shall be implemented by the Parties in accordance with the laws and regulations of each Party and within the available resources of their respective customs authorities.

Article 56  
Transparency

1. Each Party shall ensure that all relevant information of general application pertaining to its customs laws and administrative procedures is readily available to any interested person, with maximum use of information and communications technology.

2. When information that has been made available must be revised due to changes in its customs laws, each Party shall, whenever possible, make the revised information publicly available sufficiently in advance of the entry into force of the changes.

3. Each Party shall endeavor to provide the other Party with advance notice of any significant modification of its policy with regard to customs procedures that is likely to substantially affect the implementation and operation of this Agreement.

4. At the request of any interested person of the Parties, each Party shall endeavor to provide, as quickly and as accurately as possible, information relating to the specific customs matters raised by the interested person and pertaining to its customs laws.

5. Each Party shall designate one or more enquiry points to answer reasonable enquiries from any interested person of the Parties concerning customs matters, and shall make publicly available, including through the Internet, the names and addresses of such enquiry points.

#### Article 57 Customs Clearance

1. Both Parties shall apply their respective customs procedures in a predictable, consistent and transparent manner.

2. To expedite customs clearance, while ensuring effective enforcement against illicit trafficking of goods, each Party shall:

- (a) endeavor to make use of information and communications technology, taking into account international standards;
- (b) adopt or maintain accessible information and communications technology systems, allowing the authorized or registered person to send declarations to its customs authority;
- (c) adopt or maintain simplified customs procedures;
- (d) harmonize its customs procedures, as far as possible, with relevant international standards and recommended practices such as those made under the auspices of the Customs Co-operation Council; and

- (e) promote cooperation, wherever appropriate, between its customs authority and:
  - (i) other national authorities of the Party;
  - (ii) the trading communities of the Party; and
  - (iii) the customs authorities of non-Parties.

Article 58  
Cooperation

1. The Parties shall cooperate with each other in the field of customs procedures.
2. Such cooperation shall be implemented as provided for in the Implementing Agreement.

Article 59  
Penalties

Each Party shall adopt or maintain appropriate sanctions or other measures against violations of its customs laws.

Article 60  
Committee on Customs Procedures

1. For the purposes of the effective implementation and operation of this Chapter, the Parties hereby establish a Committee on Customs Procedures (hereinafter referred to in this Article as "Committee").
2. The functions of the Committee shall be:
  - (a) reviewing the implementation and operation of this Chapter;
  - (b) reporting the findings of the Committee to the Commission;
  - (c) identifying areas, relating to this Chapter, to be improved for facilitating trade in goods between the Parties; and
  - (d) carrying out other functions as may be delegated by the Commission in accordance with Article 190.
3. The Committee shall meet at such venues and times as may be agreed by the Parties.

4. The composition of the Committee shall be specified in the Implementing Agreement.

Article 61  
Definition

For the purposes of this Chapter, the term "customs laws" of a Party means the laws and regulations of a Party relating to the importation, exportation, transit or storage of goods, and any other related matters, falling under the competence of the customs authority of the Party.

Chapter 6  
Sanitary and Phytosanitary Measures

Article 62  
Scope

This Chapter shall apply to all sanitary and phytosanitary (hereinafter referred to in this Chapter as "SPS") measures of the Parties under the SPS Agreement, that may, directly or indirectly, affect trade in goods between the Parties.

Article 63  
Reaffirmation of Rights and Obligations

The Parties reaffirm their rights and obligations relating to SPS measures under the SPS Agreement.

Article 64  
Enquiry Points

Each Party shall designate an enquiry point which is able to answer all reasonable enquiries from the other Party regarding SPS measures and, if appropriate, to provide their relevant information.

Article 65  
Working Group on SPS Measures

1. For the purposes of the effective implementation and operation of this Chapter, the Parties hereby establish a Working Group on SPS measures (hereinafter referred to in this Article as "Working Group").

2. The functions of the Working Group shall be:



- (a) exchange of information on such matters as occurrences of SPS incidents in the Parties and non-Parties, and change or introduction of SPS-related regulations and standards of the Parties, which may, directly or indirectly, affect trade in goods between the Parties;
- (b) science-based consultations to identify and address specific issues that may arise from the application of SPS measures;
- (c) consulting cooperative efforts between the Parties in international fora in relation to SPS measures; and
- (d) discussing technical cooperation between the Parties on SPS measures.

3. The Working Group shall be composed of government officials of the Parties with responsibility for SPS measures.

4. The Working Group shall meet at such venues and times as may be agreed by the Parties.

Article 66  
Non-Application of Chapter 16

The dispute settlement procedures provided for in Chapter 16 shall not apply to this Chapter.

Chapter 7  
Technical Regulations, Standards and  
Conformity Assessment Procedures

Article 67  
Scope

1. This Chapter shall apply to technical regulations, standards and conformity assessment procedures as defined in the Agreement on Technical Barriers to Trade in Annex 1A to the WTO Agreement (hereinafter referred to in this Chapter as "TBT Agreement").

2. This Chapter shall not apply to purchasing specifications prepared by governmental bodies for production or consumption requirements of governmental bodies and sanitary and phytosanitary measures as defined in the SPS Agreement.

Article 68  
Reaffirmation of Rights and Obligations

The Parties reaffirm their rights and obligations relating to technical regulations, standards and conformity assessment procedures under the TBT Agreement.

Article 69  
Cooperation

1. For the purposes of ensuring that technical regulations, standards and conformity assessment procedures do not create unnecessary obstacles to trade in goods between the Parties, the Parties shall, where possible, cooperate in the field of technical regulations, standards and conformity assessment procedures.

2. The forms of cooperation pursuant to paragraph 1 may include the following:

- (a) conducting joint studies and holding seminars, in order to enhance mutual understanding of technical regulations, standards and conformity assessment procedures in the Parties;
- (b) exchanging information on technical regulations, standards and conformity assessment procedures; and
- (c) contributing, where appropriate, jointly to the activities related to technical regulations, standards and conformity assessment procedures in international and regional fora.

3. The implementation of this Article shall be subject to the availability of appropriated funds and the applicable laws and regulations of each Party.

Article 70  
Committee on Technical Regulations, Standards and  
Conformity Assessment Procedures

1. For the purposes of the effective implementation and operation of this Chapter, the Parties hereby establish a Committee on Technical Regulations, Standards and Conformity Assessment Procedures (hereinafter referred to in this Article as "Committee").

2. The functions of the Committee shall be:

- (a) coordinating cooperation pursuant to Article 69;

- (b) reviewing the implementation and operation of this Chapter;
- (c) discussing any issues related to this Chapter with the objective of obtaining mutually acceptable solutions;
- (d) reporting, where appropriate, the findings of the Committee to the Commission; and
- (e) carrying out other functions as may be delegated by the Commission in accordance with Article 190.

3. The Committee shall be composed of government officials of the Parties.

4. The Committee shall meet at such venues and times as may be agreed by the Parties.

Article 71  
Non-Application of Chapter 16

The dispute settlement procedures provided for in Chapter 16 shall not apply to this Chapter.

Chapter 8  
Investment

Section 1  
Investment

Article 72  
Scope

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

- (a) investors of the other Party;
- (b) investments of investors of the other Party in the Area of the former Party; and
- (c) with respect to Articles 77 and 87, all investments in the Area of the former Party.

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

3. This Chapter shall not apply to measures adopted or maintained by a Party to the extent that they are covered by Chapter 10.

4. This Chapter is subject to Annex 5.

Article 73  
National Treatment

Each Party shall accord to investors of the other Party and to their investments made in the Area of the former Party, treatment no less favorable than that it accords, in like circumstances, to its own investors and to their investments with respect to investment activities in its Area.

Article 74  
Most-Favored-Nation Treatment

Each Party shall accord to investors of the other Party and to their investments made in the Area of the former Party, treatment no less favorable than that it accords, in like circumstances, to investors of a non-Party and to their investments with respect to investment activities in its Area.

Article 75  
General Treatment

Each Party shall accord to investments made in its Area by investors of the other Party, treatment in accordance with customary international law, including fair and equitable treatment and full protection and security.

Note 1: Article 75 prescribes the customary international law minimum standard of treatment of aliens as the minimum standard of treatment to be afforded to investments made in the Area of a Party by investors of the other Party. The customary international law minimum standard of treatment of aliens refers to all customary international law principles that protect the economic rights and interests of aliens. The concepts of "fair and equitable treatment" and "full protection and security" do not require treatment in addition to or beyond that which is required by the customary international law minimum standard of treatment of aliens.

Note 2: A determination that there has been a breach of another provision of this Agreement, or of a separate international agreement, does not establish that there has been a breach of Article 75.

Note 3: Each Party shall accord to investors of the other Party, non-discriminatory treatment with regard to access to the courts of justice and administrative tribunals and agencies of the former Party in pursuit and in defense of rights of such investors.

Article 76  
Protection from Strife

1. Each Party shall accord to investors of the other Party that have suffered loss relating to their investments made in the Area of the former Party due to armed conflict, revolution, insurrection, civil disturbance or any other similar event, treatment, as regards restitution, indemnification, compensation or any other settlement, that is no less favorable than that it accords to its own investors or to investors of a non-Party.

2. Any payments as a means of settlement referred to in paragraph 1 shall be fully realizable, freely transferable and freely convertible at the market exchange rate into the currency of the Party of the investors concerned and freely usable currencies.

3. Paragraphs 1 and 2 shall not apply to any subsidies including grants, government supported loans, guarantees and insurance as provided for in subparagraph 5(b) of Article 79.

Article 77  
Performance Requirements

1. Neither Party may impose or enforce any of the following requirements, or enforce any commitment or undertaking, in connection with investment activities of an investor of a Party or of a non-Party in its Area:

- (a) to export a given level or percentage of goods or services;
- (b) to achieve a given level or percentage of domestic content;
- (c) to purchase, use or accord a preference to goods produced or services supplied in its Area, or to purchase goods or services from persons in its Area;

- (d) to relate in any way the volume or value of imports to the volume or value of exports or to the amount of foreign exchange inflows associated with investments of the investor;
- (e) to restrict sales of goods or services in its Area that investments of the investor produce or supply by relating such sales in any way to the volume or value of its exports or foreign exchange earnings;
- (f) to transfer technology, a production process or other proprietary knowledge to a person in its Area except when:
  - (i) the requirement is imposed or the commitment or undertaking is enforced by a court of justice, administrative tribunal or competition authority to remedy a practice determined after judicial or administrative process to be anti-competitive under its competition laws and regulations; or
  - (ii) the requirement concerns the transfer of intellectual property rights which is undertaken in a manner not inconsistent with the TRIPS Agreement; or
- (g) to supply to a specific region or the world market exclusively from its Area, the goods that the investor produces or the services that the investor supplies.

2. Neither Party may condition the receipt or continued receipt of an advantage, in connection with investment activities of an investor of a Party or of a non-Party in its Area, on compliance with any of the following requirements:

- (a) to achieve a given level or percentage of domestic content;
- (b) to purchase, use or accord a preference to goods produced in its Area, or to purchase goods from persons in its Area;
- (c) to relate in any way the volume or value of imports to the volume or value of exports or to the amount of foreign exchange inflows associated with investments of the investor; or

- (d) to restrict sales of goods or services in its Area that investments of the investor produce or supply by relating such sales in any way to the volume or value of its exports or foreign exchange earnings.
- 3.
- (a) Nothing in paragraph 2 shall be construed to prevent a Party from conditioning the receipt or continued receipt of an advantage, in connection with investment activities of an investor of a Party or of a non-Party in its Area, on compliance with a requirement to locate production, supply a service, train or employ workers, construct or expand particular facilities, or carry out research and development, in its Area.
  - (b) Subparagraphs 1(a), 1(b), 1(c), 2(a) and 2(b) shall not apply to qualification requirements for goods or services with respect to export promotion and foreign aid programs.
  - (c) Subparagraphs 1(b), 1(c), 1(f), 1(g), 2(a) and 2(b) shall not apply to government procurement.
  - (d) Subparagraphs 2(a) and 2(b) shall not apply to requirements imposed by an importing Party relating to the content of goods necessary to qualify for preferential tariffs or preferential quotas.
4. Paragraphs 1 and 2 shall not apply to any requirement other than the requirements set out in those paragraphs.

#### Article 78

##### Senior Management and Boards of Directors

1. Neither Party may require that an enterprise of that Party that is an investment made in its Area by an investor of the other Party appoint, to senior management positions, individuals of any particular nationality.
2. A Party may require that a majority of the board of directors, or any committee thereof, of an enterprise of that Party that is an investment made in its Area by an investor of the other Party, be of a particular nationality, or resident in the former Party, provided that the requirement does not materially impair the ability of the investor to exercise control over its investment.

Article 79  
Non-Conforming Measures

1. Articles 73, 74, 77 and 78 shall not apply to:
  - (a) any existing non-conforming measure that is maintained by:
    - (i) with respect to Chile:
      - (A) the national government, as set out in its Schedule in Annex 6; or
      - (B) a local government; and

Note: "The national government" includes regional governments.
    - (ii) with respect to Japan:
      - (A) the central government or a prefecture, as set out in its Schedule in Annex 6; or
      - (B) a local government other than prefectures;
  - (b) the continuation or prompt renewal of any non-conforming measure referred to in subparagraph (a); or
  - (c) an amendment or a modification to any non-conforming measure referred to in subparagraph (a), to the extent that the amendment or modification does not decrease the conformity of the measure, as it existed immediately before the amendment or modification, with Articles 73, 74, 77 and 78.
2. Articles 73, 74, 77 and 78 shall 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 in Annex 7.
3. Neither Party may, under any measure adopted after the date of entry into force of this Agreement and covered by its Schedule in Annex 7, require an investor of the other Party, by reason of its nationality, to sell or otherwise dispose of an investment that exists at the time the measure becomes effective.



4. Articles 73 and 74 shall not apply to any measure that is an exception to, or derogation from, the obligations under the TRIPS Agreement.

5. Articles 73, 74 and 78 shall not apply to:

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

#### Article 80 Notification

1. In the case where a Party makes an amendment or a modification to any existing non-conforming measure as set out in its Schedule in Annex 6, the Party shall notify the other Party, as soon as possible, of such amendment or modification.

2. In the case where a Party adopts any measure after the entry into force of this Agreement, with respect to sectors, sub-sectors or activities as set out in its Schedule in Annex 7, the Party shall, to the extent possible, notify the other Party of such measure.

#### Article 81 Transfers

1. Each Party shall allow all transfers relating to investments made in its Area by an investor of the other Party to be made freely and without delay into and out of its Area. Such transfers shall include:

- (a) the initial capital and additional amounts to maintain or increase such investments;
- (b) profits, dividends, interest, capital gains, royalty payments, management fees, technical assistance fees and other fees;
- (c) proceeds from the sale or liquidation of all or any part of such investments;
- (d) payments made under a contract, including payments made pursuant to a loan agreement;
- (e) payments made pursuant to paragraphs 1 and 2 of Article 76 and Article 82; and
- (f) payments arising under Section 2.

2. Each Party shall allow transfers referred to in paragraph 1 to be made in a freely usable currency at the market rate of exchange prevailing on the date of each transfer.

3. Notwithstanding paragraphs 1 and 2, a Party may delay or prevent a transfer through the equitable, non-discriminatory and good-faith application of its laws relating to:

- (a) bankruptcy, insolvency, or the protection of the rights of creditors;
- (b) issuing, trading or dealing in securities or derivatives;
- (c) criminal or penal offenses;
- (d) reports or record keeping of transfers of currency or other monetary instruments; or
- (e) ensuring compliance with orders or judgments in judicial or administrative proceedings.

4. This Article is subject to Annex 8.

#### Article 82 Expropriation and Compensation

1. Neither Party may expropriate or nationalize investments made in its Area by investors of the other Party either directly or indirectly through measures equivalent to expropriation or nationalization (hereinafter referred to as "expropriation"), except:

- (a) for a public purpose;
- (b) on a non-discriminatory basis;
- (c) on payment of prompt, adequate and effective compensation in accordance with paragraphs 2 through 4; and
- (d) in accordance with due process of law and Article 75.

2. The compensation shall be equivalent to the fair market value of the expropriated investments at the time when the expropriation was officially announced or when the expropriation occurred, whichever is the earlier. The fair market value shall not reflect any change in market value occurring because the expropriation had become publicly known prior to such official announcement or occurrence of the expropriation. The compensation shall be paid without delay and be fully realizable and freely transferable.

3. If payment is made in a freely usable currency, the compensation paid shall include interest, at a commercially reasonable rate for that currency, accrued from the date of expropriation until the date of payment.

4. If a Party elects to pay in a currency other than a freely usable currency, the compensation paid, converted into the currency of payment at the market rate of exchange prevailing on the date of payment, shall be no less than the sum of the following:

- (a) the fair market value on the date of expropriation, converted into a freely usable currency at the market rate of exchange prevailing on that date; and
- (b) interest, at a commercially reasonable rate for that freely usable currency, accrued from the date of expropriation until the date of payment.

5. This Article shall not apply with respect to the grant of compulsory licenses concerning intellectual property rights in accordance with the TRIPS Agreement.

Note: For greater certainty, Article 82 shall be interpreted in accordance with Annex 9.

#### Article 83 Subrogation

1. If a Party or its designated agency makes a payment to any of its investors pursuant to an indemnity, guarantee or insurance contract, pertaining to an investment made by that investor within the Area of the other Party, the other Party shall:

- (a) recognize the assignment, to the former Party or its designated agency, of any right of the investor that formed the basis of such payment; and

- (b) recognize the right of the former Party or its designated agency to exercise by virtue of subrogation such right to the same extent as the original right of the investor.

2. For greater certainty, the investor shall continue to be entitled to exercise its rights that have not been subrogated pursuant to paragraph 1.

#### Article 84

##### Special Formalities and Information Requirements

1. Nothing in Article 73 shall be construed to prevent a Party from adopting or maintaining a measure that prescribes special formalities in connection with investment activities of investors of the other Party and their investments made in the Area of the former Party, such as the compliance with registration requirements, or requirements that investors be residents of the Party or that investments be legally constituted under the laws and regulations of the Party, provided that such formalities do not materially impair the protections afforded by the Party to investors of the other Party and their investments pursuant to this Chapter.

2. Notwithstanding Articles 73 and 74, a Party may require investors of the other Party, or their investments made in its Area, to provide information concerning those investments solely for informational or statistical purposes. The Party shall protect such information that is confidential from any disclosure that would prejudice the competitive position of the investors or their investments. Nothing in this paragraph shall be construed to prevent a Party from otherwise obtaining or disclosing information in connection with the equitable and good-faith application of its law.

#### Article 85

##### Temporary Safeguard Measures

1. A Party may adopt or maintain measures not conforming with its obligations under Articles 73 and 81, regarding payments and transfers related to an investment:

- (a) in the event of serious balance-of-payments and external financial difficulties or threat thereof; or
- (b) in cases where, in exceptional circumstances, movements of capital cause or threaten to cause serious difficulties for macroeconomic management, in particular, monetary and exchange rate policies.

2. Measures referred to in paragraph 1:

- (a) shall be consistent with the Articles of Agreement of the International Monetary Fund;
- (b) shall not exceed those necessary to deal with the circumstances set out in paragraph 1;
- (c) shall be temporary and eliminated as soon as conditions permit;
- (d) shall be promptly notified to the other Party;  
and
- (e) shall avoid unnecessary damages to the commercial, economic and financial interests of the other Party.

3. Nothing in this Article shall be regarded as altering the rights enjoyed and obligations undertaken by a Party as a party to the Articles of Agreement of the International Monetary Fund.

Article 86  
Denial of Benefits

1. A Party may deny the benefits of this Chapter to an investor of the other Party that is an enterprise of the other Party and to its investments if the enterprise is owned or controlled by an investor of a non-Party and the denying Party:

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

2. A Party may deny the benefits of this Chapter to an investor of the other Party that is an enterprise of the other Party and to its investments if the enterprise is owned or controlled by an investor of a non-Party or of the denying Party and the enterprise has no substantial business activities in the Area of the other Party, subject to prior notification to and consultation with the other Party.

Article 87  
Environmental Measures

Each Party recognizes that it is inappropriate to encourage investments by investors of the other Party by relaxing its environmental measures. To this effect each Party should not waive or otherwise derogate from such environmental measures as an encouragement for establishment, acquisition or expansion of investments in its Area.

Section 2  
Settlement of Investment Disputes  
between a Party and an Investor of the Other Party

Article 88  
Consultation and Negotiation

In the event of an investment dispute between a Party and an investor of the other Party, they should initially seek to resolve the dispute through consultation and negotiation, which may include the use of non-binding, third-party procedures.

Article 89  
Submission of a Claim to Arbitration

1. In the event that an investment dispute cannot be settled by consultation and negotiation:
  - (a) the investor of a Party, on its own behalf, may submit to arbitration under this Section a claim:
    - (i) that the other Party has breached an obligation under Section 1; and
    - (ii) that the investor has incurred loss or damage by reason of, or arising out of, that breach; and
  - (b) the investor of a Party, on behalf of an enterprise of the other Party that is a juridical person that such investor owns or controls directly or indirectly, may submit to arbitration under this Section a claim:
    - (i) that the other Party has breached an obligation under Section 1; and
    - (ii) that the enterprise has incurred loss or damage by reason of, or arising out of, that breach.

2. An investment made by an investor of a Party may not submit a claim to arbitration under this Section.

3. For greater certainty:

- (a) no claim may be submitted to arbitration under this Section that alleges a violation of any provision of this Agreement other than an obligation under Section 1; and
- (b) an investor of a Party may not submit a claim to arbitration under this Section in relation to any act or fact that took place or any situation that ceased to exist before the date of entry into force of this Agreement.

4. At least 90 days before submitting any claim to arbitration under this Section, an investor of a Party shall deliver to the other Party a written notice of its intention to submit the claim to arbitration (hereinafter referred to as "notice of intent"). The notice of intent shall specify:

- (a) the name and address of the investor and, in the case of subparagraph 1(b), the name, address, and place of incorporation of the enterprise;
- (b) the provision of Section 1 alleged to have been breached;
- (c) the legal and factual basis for that claim; and
- (d) the relief sought and the approximate amount of damages claimed.

5. Provided that six months have elapsed since the events giving rise to the claim, an investor of a Party may submit a claim referred to in paragraph 1:

- (a) under the ICSID Convention, provided that both Parties are parties to the ICSID Convention;
- (b) under the ICSID Additional Facility Rules, provided that either Party, but not both, is a party to the ICSID Convention;
- (c) under the UNCITRAL Arbitration Rules; or
- (d) if the disputing parties agree, to any other arbitration institution or under any other arbitration rules.

6. A claim shall be deemed submitted to arbitration under this Section when the claimant's notice of or request for arbitration (hereinafter referred to in this Section as "notice of arbitration"):

- (a) referred to in paragraph (1) of Article 36 of the ICSID Convention is received by the Secretary-General;
- (b) referred to in Article 2 of Schedule C of the ICSID Additional Facility Rules is received by the Secretary-General;
- (c) referred to in Article 3 of the UNCITRAL Arbitration Rules, together with the statement of claim referred to in Article 18 of the UNCITRAL Arbitration Rules, is received by the respondent; or
- (d) under any other arbitration institution or arbitration rules selected under subparagraph 5(d) is received by the respondent, unless otherwise specified by such institution or in such rules.

7. The claimant shall provide with the notice of arbitration:

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

8. The arbitration rules applicable under paragraph 5, which are in effect on the date the claim is submitted to arbitration under this Section, shall govern the arbitration except to the extent modified by this Section.

#### Article 90 Consent to Arbitration

1. Each Party consents to the submission of a claim to arbitration in accordance with the procedures set out in this Section.

2. The consent under paragraph 1 and the submission of a claim to arbitration under this Section shall satisfy the requirements of:



- (a) Chapter II of the ICSID Convention and the ICSID Additional Facility Rules for written consent of the parties; and
- (b) Article II of the New York Convention for an agreement in writing.

Article 91  
Conditions and Limitations on Consent

1. No claim may be submitted to arbitration under this Section if more than three years have elapsed from the date on which the investor in the case of subparagraph 1(a) of Article 89 or the enterprise in the case of subparagraph 1(b) of Article 89 first acquired, or should have first acquired, knowledge of the breach alleged under paragraph 1 of Article 89 and knowledge that such investor or enterprise had incurred loss or damage.

2. No claim may be submitted to arbitration under this Section unless:

- (a) in the case of subparagraph 1(a) of Article 89:
  - (i) the claimant consents in writing to arbitration in accordance with the procedures set out in this Section;
  - (ii) the claimant waives in writing any right to initiate before any administrative tribunal or court under the law of either Party, or other dispute settlement procedures, any proceedings with respect to any measure alleged to constitute a breach referred to in paragraph 1 of Article 89; and
  - (iii) the claimant has not initiated any proceedings before any administrative tribunal or court referred to in subparagraph (ii). For greater certainty, if the investor elects to initiate such proceedings, that election shall be definitive and the investor may not thereafter submit the claim to arbitration under this Section; and
- (b) in the case of subparagraph 1(b) of Article 89:
  - (i) both the claimant and the enterprise consent in writing to arbitration in accordance with the procedures set out in this Section;

- (ii) both the claimant and the enterprise waive in writing any right to initiate before any administrative tribunal or court under the law of either Party, or other dispute settlement procedures, any proceedings with respect to any measure alleged to constitute a breach referred to in paragraph 1 of Article 89; and
- (iii) the claimant or the enterprise referred to in subparagraph (ii) has not initiated any proceedings before any administrative tribunal or court referred to in subparagraph (ii). For greater certainty, if the investor or the enterprise elects to initiate such proceedings, that election shall be definitive and neither the investor nor the enterprise may thereafter submit the claim to arbitration under this Section.

3. Notwithstanding subparagraphs 2(a)(ii), 2(a)(iii), 2(b)(ii) and 2(b)(iii), the claimant or the enterprise referred to in subparagraphs 2(b)(ii) and 2(b)(iii) may initiate or continue an action that seeks interim injunctive relief that does not involve the payment of monetary damages before an administrative tribunal or court under the law of the respondent.

## Article 92 Establishment of a Tribunal

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

2. If an arbitrator or arbitrators are not appointed pursuant to paragraph 1 within 75 days from the date on which the claim was submitted to arbitration, the Secretary-General may be requested by either disputing party to appoint the arbitrator or arbitrators not yet appointed from the ICSID Panel of Arbitrators subject to the requirements of paragraph 3.

3. Unless the disputing parties agree otherwise, the presiding arbitrator shall not be a national of either Party, nor have his or her usual place of residence in either Party, nor be employed by either disputing party, nor have dealt with the claim in any capacity.

4. The date of establishment of a Tribunal shall be the date on which all the arbitrators have been appointed and accepted such appointment.

Article 93  
Governing Law

1. Subject to paragraph 2, when a claim is submitted to arbitration under this Section, a Tribunal shall decide the issues in dispute in accordance with this Agreement and applicable rules of international law.

2. An interpretation of a provision of this Agreement adopted by the Commission shall be binding on a Tribunal, and any award must be consistent with that interpretation. Such interpretation shall be made publicly available through the means that each Party considers appropriate.

Article 94  
Interpretation of Annexes

1. Where a respondent asserts as a defense that the measure alleged to be a breach is within the scope of a non-conforming measure set out in Annex 6 or 7, the Tribunal shall, on request of the respondent, request the Commission to adopt an interpretation on the issue. The Commission shall adopt and submit in writing its interpretation to the Tribunal within 60 days of delivery of the request.

2. The interpretation adopted and submitted by the Commission under paragraph 1 shall be binding on the Tribunal, and any award must be consistent with that interpretation. If the Commission fails to submit an interpretation within the aforementioned 60 days period, the Tribunal shall decide the issue.

Article 95  
Participation in Arbitration

1. On written notice to the disputing parties, the Party other than the respondent may make submissions to the Tribunal on a question of interpretation of this Agreement.

2. The Party other than the respondent shall be entitled to receive from the respondent, a copy of:

- (a) the evidence that has been tendered to the Tribunal; and
- (b) the written argument of the disputing parties.

Article 96  
Place of Arbitration

Unless the disputing parties agree otherwise, a Tribunal shall hold an arbitration in a country that is a party to the New York Convention.

Article 97  
Preliminary Questions

1. (a) A Tribunal shall address and decide as a preliminary question any objection by the respondent that, as a matter of law, the Tribunal may not make an award against the respondent in accordance with Article 103, provided that the respondent so requests as soon as possible after the Tribunal is established, and in no event later than the date the Tribunal fixes for the respondent to submit its counter-memorial. In deciding such objection, the Tribunal shall assume to be true the factual allegations of the claimant in support of any claim in the notice of arbitration. The Tribunal may also consider any relevant facts not in dispute.
  - (b) Subparagraph (a) shall not prejudice the authority of the Tribunal to address as a preliminary question any objection other than the objection referred to in subparagraph (a), such as an objection that the dispute is not within the competence of the Tribunal.
  - (c) On receipt of the objection referred to in subparagraph (a), the Tribunal shall suspend any proceedings on the merits, establish a schedule for considering the objection consistent with any schedule it has established for considering any other preliminary question, and issue a decision or award on the objection, stating the grounds therefor.
2. In the event that the respondent so requests within 45 days after the date of establishment of the Tribunal, the Tribunal shall address and decide on an expedited basis the objection referred to in subparagraph 1(a) or any objection that the dispute is not within the competence of the Tribunal. The Tribunal shall suspend any proceedings on the merits and issue a decision or award on the objection, stating the grounds therefor, no later than 150 days, or 180 days if a hearing is held or under extraordinary circumstances, after the date of the request.

3. When it decides a respondent's objection pursuant to paragraph 1 or 2, the Tribunal may, if warranted, award to the prevailing disputing party reasonable costs including attorneys' fees incurred in submitting or opposing the objection. In determining whether such an award is warranted, the Tribunal shall consider whether the claimant's claim was frivolous or whether the respondent's objection was frivolous, and shall provide the disputing parties a reasonable opportunity to comment.

4. The respondent does not waive its right to make any objection or argument on the merits merely because the respondent did or did not make a request pursuant to paragraph 1 or 2.

#### Article 98 Insurance or Guarantee Contracts

In an arbitration under this Section, the respondent may not assert, as a defense, counterclaim, right of set-off or otherwise, that the claimant has received or will receive indemnification or other compensation for all or part of the alleged damages pursuant to an insurance or guarantee contract.

#### Article 99 Interim Measures of Protection

A Tribunal may order an interim measure of protection to preserve the rights of a disputing party, or to facilitate the conduct of arbitral proceedings, including an order to preserve evidence in the possession or control of a disputing party. A Tribunal may not order attachment or enjoin the application of the measure alleged to constitute a breach referred to in paragraph 1 of Article 89.

#### Article 100 Expert Report

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

Article 101  
Consolidation of Multiple Claims

1. When a disputing party considers that two or more claims submitted to arbitration under paragraph 1 of Article 89 have a question of law or fact in common and arise out of the same events or circumstances, the disputing party may seek a consolidation order in accordance with the terms of paragraphs 2 through 10.
2. A disputing party that seeks a consolidation order under this Article shall deliver, in writing, a request to the Secretary-General to establish a Tribunal under this Article. The request shall specify:
  - (a) the names and addresses of all the disputing parties sought to be covered by the order;
  - (b) the nature of the order sought; and
  - (c) the grounds on which the order is sought.
3. Unless the Secretary-General finds within 60 days after receiving a request under paragraph 2 that the claims do not satisfy the requirements set out in paragraph 1, a Tribunal shall be established under this Article.
4. Unless all the disputing parties sought to be covered by the order otherwise agree, a Tribunal established under this Article shall comprise three arbitrators:
  - (a) one arbitrator appointed by agreement of the claimants;
  - (b) one arbitrator appointed by the respondent; and
  - (c) the presiding arbitrator appointed by the Secretary-General, provided, however, that the presiding arbitrator shall not be a national of either Party, nor have his or her usual place of residence in either Party, nor be employed by any disputing party, nor have dealt with the claims in any capacity.

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

6. Where a claimant that has submitted a claim to arbitration under paragraph 1 of Article 89 considers that such a claim raises a question of law or fact in common to, and arises out of the same events or circumstances as, claims upon which the consolidation under paragraph 2 has been requested, but has not been named in such request, the claimant may make a written request to the Tribunal established under this Article that the claimant be covered by any order made under paragraph 7, and shall specify in the request:

- (a) the name and address of the claimant;
- (b) the nature of the order sought; and
- (c) the grounds on which the order is sought.

7. Where a Tribunal established under this Article is satisfied that two or more claims that have been submitted to arbitration under paragraph 1 of Article 89 have a question of law or fact in common, and arise out of the same events or circumstances, the Tribunal may, in the interest of fair and efficient resolution of the claims, and after hearing the disputing parties, by order:

- (a) assume jurisdiction over, and hear and determine together, all or part of the claims; or
- (b) assume jurisdiction over, and hear and determine one or more of the claims, the determination of which it believes would assist in the resolution of the others.

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

9. A Tribunal established under Article 92 shall not have jurisdiction to decide a claim, or a part of a claim, over which a Tribunal established under this Article has assumed jurisdiction.

10. On application of a disputing party, a Tribunal established under this Article, pending its decision as to whether to make an order under paragraph 7, may order the adjourning of the proceedings of a Tribunal established under Article 92.

11. For greater certainty, the provisions of this Section other than this Article shall apply with respect to a Tribunal established under this Article except to the extent modified by this Article.

Article 102  
Proposed Award

A Tribunal shall, at the request of a disputing party, submit to the disputing parties a proposed award, before making an award, except an award issued pursuant to Article 97. The disputing parties may submit to the Tribunal written comments on the proposed award within 60 days after the date of submission of the proposed award. The Tribunal shall consider such comments and make an award within 105 days of the date of submission of the proposed award.

Article 103  
Award

1. Where a Tribunal makes an award against the respondent, the Tribunal may award, separately or in combination, only:

- (a) monetary damages and any applicable interest; and
- (b) restitution of property, in which case the award shall provide that the respondent may pay monetary damages and any applicable interest in lieu of restitution.

A Tribunal may also award costs including attorneys' fees in accordance with this Section and the applicable arbitration rules.

2. Subject to paragraph 1, in the case of subparagraph 1(b) of Article 89:

- (a) an award of monetary damages and any applicable interest shall provide that the sum be paid to the enterprise; and



- (b) an award of restitution of property shall provide that restitution be made to the enterprise.
- 3. A Tribunal may not award punitive damages.
- 4. An award made by a Tribunal shall have no binding force except between the disputing parties and in respect of the particular case.
- 5. Subject to paragraph 7, a disputing party shall abide by and comply with an award without delay.
- 6. If the respondent fails to abide by or comply with an award, the Party other than the respondent may request the establishment of an arbitral tribunal pursuant to Article 178. The requesting Party may seek in such proceedings:
  - (a) a determination that the failure to abide by or comply with the award is inconsistent with the obligations of this Agreement; and
  - (b) a recommendation that the respondent abide by or comply with the award.
- 7. A disputing party may not seek enforcement of an award until such award becomes final. An award becomes final when:
  - (a) in the case of an award under the ICSID Convention:
    - (i) 120 days have elapsed from the date the award was made and no disputing party has requested revision or annulment of the award; or
    - (ii) revision or annulment proceedings have been completed; and
  - (b) in the case of an award under the ICSID Additional Facility Rules, the UNCITRAL Arbitration Rules, or the rules selected pursuant to subparagraph 5(d) of Article 89:
    - (i) 90 days have elapsed from the date the award was made and no disputing party has commenced a proceeding to revise or annul the award; or
    - (ii) an application to revise or annul the award has been dismissed or allowed and there is no further appeal.

8. Each Party shall provide for the enforcement of an award in its Area in accordance with its relevant laws and regulations.

Article 104  
Service of Documents

1. Notices and other documents relating to arbitration under this Section shall be served on a Party by delivery to:

- (a) with respect to Japan, the Ministry of Foreign Affairs; and
- (b) with respect to Chile, the Ministry of Foreign Affairs, Legal Affairs Directorate (*Dirección de Asuntos Jurídicos del Ministerio de Relaciones Exteriores de la República de Chile*).

2. The Commission shall make publicly available the addresses of the authorities referred to in paragraph 1.

Section 3  
Definitions

Article 105  
Definitions

1. For the purposes of this Chapter:

- (a) the term "claimant" means an investor of a Party that submits a claim to arbitration under Section 2;
- (b) the term "disputing parties" means the claimant and the respondent;
- (c) the term "disputing party" means either the claimant or the respondent;
- (d) the term "freely usable currency" means freely usable currency as defined under the Articles of Agreement of the International Monetary Fund;
- (e) the term "ICSID" means the International Centre for Settlement of Investment Disputes;
- (f) the term "ICSID Additional Facility Rules" means the Rules Governing the Additional Facility for the Administration of Proceedings by the Secretariat of the International Centre for Settlement of Investment Disputes;

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

(h) the term "investment" means every kind of asset that an investor owns or controls, directly or indirectly, which has the characteristics of an investment. Forms that an investment may take include:

Note 1: The characteristics of an investment include the commitment of capital or other resources, the expectation of gain or profit, or the assumption of risk.

Note 2: An investment does not include an order or judgment entered in a judicial or administrative action.

(i) an enterprise and a branch of an enterprise;

(ii) shares, stocks, and other forms of equity participation in an enterprise;

(iii) bonds, debentures, loans and other debt instruments, but do not include a debt instrument of a Party or of a state enterprise;

(iv) futures, options and other derivatives;

(v) rights under contracts, including turnkey, construction, management, production or revenue-sharing contracts;

(vi) intellectual property rights;

(vii) rights conferred pursuant to domestic law, such as concessions, licenses, authorizations and permits; and

(viii) other tangible or intangible, movable or immovable property, and any related property rights, such as leases, mortgages, liens and pledges;

(i) the term "investment activities" means establishment, acquisition, expansion, management, conduct, operation, maintenance, use, enjoyment and sale or other disposition of investments;

- (j) the term "investor of a Party" means a natural person or an enterprise of a Party, or the Party or state enterprise thereof, that attempts to make, is making, or has made investments in the Area of the other Party;
  - (k) the term "New York Convention" means the United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards, done at New York, June 10, 1958;
  - (l) the term "respondent" means a Party against which a claim is submitted to arbitration under Section 2;
  - (m) the term "Secretary-General" means the Secretary-General of ICSID;
  - (n) the term "Tribunal" means an arbitration tribunal established under Article 92 or 101; and
  - (o) the term "UNCITRAL Arbitration Rules" means the arbitration rules of the United Nations Commission on International Trade Law, approved by the United Nations General Assembly on December 15, 1976.
2. For the purposes of this Chapter, an enterprise is:
- (a) "owned" by an investor if more than 50 percent of the equity interests in it is beneficially owned by the investor; and
  - (b) "controlled" by an investor if the investor has the power to name a majority of its directors or otherwise to legally direct its actions in accordance with the laws and regulations of a Party.

Chapter 9  
Cross-Border Trade in Services

Article 106  
Scope

1. This Chapter shall apply to measures adopted or maintained by a Party affecting cross-border trade in services by service suppliers of the other Party. Such measures include measures affecting:

- (a) the supply of a service;

Note: The measures affecting the supply of a service include those affecting the provision of any financial security as a condition for the supply of a service.

- (b) the purchase or use of, or payment for, a service;
- (c) the access to and the use of services offered to the public generally, including distribution, transport or telecommunications networks, in connection with the supply of a service; and
- (d) the presence in its Area of a service supplier of the other Party.

2. This Chapter shall not apply to:

- (a) cabotage in maritime transport services;
- (b) financial services, as defined in Article 128;
- (c) in respect of air transport services, measures affecting traffic rights, however granted; or measures affecting services directly related to the exercise of traffic rights, other than measures affecting:
  - (i) aircraft repair and maintenance services;
  - (ii) the selling and marketing of air transport services; and
  - (iii) computer reservation system services;
- (d) government procurement;
- (e) subsidies provided by a Party or a state enterprise, including grants, government-supported loans, guarantees and insurance;
- (f) measures affecting natural persons of a Party seeking access to the employment market of the other Party, or measures regarding nationality or citizenship, or residence or employment on a permanent basis; and
- (g) services supplied in the exercise of governmental authority.

Article 107  
National Treatment

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

Note: For greater certainty, nothing in this Article shall be construed to require either Party to compensate for any inherent competitive disadvantages which result from the foreign character of the relevant services or service suppliers.

Article 108  
Most-Favored-Nation Treatment

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

Article 109  
Local Presence

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

Note: The term "cross-border supply of a service" has the same meaning as the term "cross-border trade in services".

Article 110  
Non-Conforming Measures

1. Articles 107, 108 and 109 shall not apply to:

(a) any existing non-conforming measure that is maintained by:

(i) with respect to Chile:

(A) the national government, as set out in its Schedule in Annex 6; or

(B) a local government; and

Note: "The national government" includes regional governments.

(ii) with respect to Japan:

(A) the central government or a prefecture, as set out in its Schedule in Annex 6; or

(B) a local government other than prefectures;

(b) the continuation or prompt renewal of any non-conforming measure referred to in subparagraph (a); or

(c) an amendment or a modification to any non-conforming measure referred to in subparagraph (a), to the extent that the amendment or modification does not decrease the conformity of the measure, as it existed immediately before the amendment or modification, with Articles 107, 108 and 109.

2. Articles 107, 108 and 109 shall 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 in Annex 7.

#### Article 111 Notification

1. In the case where a Party makes an amendment or a modification to any existing non-conforming measure as set out in its Schedule in Annex 6, the Party shall notify the other Party, as soon as possible, of such amendment or modification.

2. In the case where a Party adopts any measure after the entry into force of this Agreement, with respect to sectors, sub-sectors or activities as set out in its Schedule in Annex 7, the Party shall, to the extent possible, notify the other Party of such measure.

#### Article 112 Authorization, Qualification, Technical Standard and Licensing

With a view to ensuring that any measure adopted or maintained by a Party in any services sector relating to the authorization, qualification requirements and procedures, technical standards and licensing requirements of service suppliers of the other Party does not constitute an unnecessary barrier to cross-border trade in services, each Party shall endeavor to ensure that such measure:

- (a) is based on objective and transparent criteria, such as the competence and ability to supply the service;
- (b) is not more burdensome than necessary to ensure the quality of the service; and
- (c) does not constitute a disguised restriction on the supply of the service.

Article 113  
Mutual Recognition

1. A Party may recognize the education or experience obtained, requirements met, or licenses or certifications granted in the other Party for the purposes of the fulfillment, in whole or in part, of its standards or criteria for the authorization, licensing or certification of service suppliers of the other Party.

2. Recognition referred to in paragraph 1, which may be achieved through harmonization or otherwise, may be based upon an agreement or arrangement between the Parties or may be accorded unilaterally.

3. Where a Party recognizes, by agreement or arrangement between the Party and a non-Party or unilaterally, the education or experience obtained, requirements met, or licenses or certifications granted in the non-Party:

- (a) nothing in Article 108 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 other Party; and
- (b) the Party shall accord the other Party an adequate opportunity to demonstrate that the education or experience obtained, requirements met, or licenses or certifications granted in the other Party should also be recognized.

Article 114  
Restrictions to Safeguard the Balance of Payments

1. In the event of serious balance-of-payments and external financial difficulties or threat thereof, a Party may adopt or maintain restrictions on cross-border trade in services, including on payments or transfers for transactions.



2. The restrictions referred to in paragraph 1:
  - (a) shall be applied on the basis of national treatment and most-favored-nation treatment;
  - (b) shall be consistent with the Articles of Agreement of the International Monetary Fund;
  - (c) shall avoid unnecessary damage to the commercial, economic and financial interests of the other Party;
  - (d) shall not exceed those necessary to deal with the circumstances described in paragraph 1; and
  - (e) shall be temporary and be phased out progressively as the situation specified in paragraph 1 improves.

3. In determining the incidence of such restrictions, a Party may give priority to the cross-border supply of services which are more essential to its economic or development programs. However, such restrictions shall not be adopted or maintained for the purposes of protecting a particular service sector.

4. Any restrictions adopted or maintained under paragraph 1, or any changes therein, shall be promptly notified to the other Party.

#### Article 115 Denial of Benefits

1. A Party may deny the benefits of this Chapter to a service supplier of the other Party that is an enterprise of the other Party, where the former Party establishes that the enterprise is owned or controlled by persons of a non-Party, and the former Party:

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

2. Subject to prior notification and consultation, a Party may deny the benefits of this Chapter to a service supplier of the other Party that is an enterprise of the other Party where the former Party establishes that the enterprise is owned or controlled by persons of a non-Party and has no substantial business activities in the Area of the other Party.

Article 116  
Definitions

1. For the purposes of this Chapter:
  - (a) the term "aircraft repair and maintenance services" means such activities when undertaken on an aircraft or a part thereof while it is withdrawn from services and does not include so-called line maintenance;
  - (b) the term "computer reservation system services" means services provided by computerized systems that contain information about air carriers' schedules, availability, fares and fare rules, through which reservations may be made or tickets may be issued;
  - (c) the term "cross-border trade in services" means the supply of a service:
    - (i) from the Area of a Party into the Area of the other Party;
    - (ii) in the Area of a Party by a natural person or an enterprise of that Party to a natural person or an enterprise of the other Party; and
    - (iii) by a natural person of a Party in the Area of the other Party,  
  
but does not include the supply of services by an investment of an investor of a Party, as defined in Article 105, in the Area of the other Party;
  - (d) the term "measure adopted or maintained by a Party" means any measure adopted or maintained by:
    - (i) any level of government or authority of a Party; and

- (ii) non-governmental bodies in the exercise of powers delegated by any level of government or authority of a Party;
- (e) the term "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;
- (f) the term "service supplier" means a person that seeks to supply or supplies a service;
- (g) the term "supply of a service" includes the production, distribution, marketing, sale and delivery of a service;
- (h) the term "the selling and marketing of air transport services" means opportunities for the air carrier concerned to sell and market freely its air transport services including all aspects of marketing such as market research, advertising and distribution. These activities do not include the pricing of air transport services nor the applicable conditions; and
- (i) the term "traffic rights" means the rights for scheduled and non-scheduled services to operate and/or to carry passengers, cargo and mail for remuneration or hire from, to, within, or over a Party, including points to be served, routes to be operated, types of traffic to be carried, capacity to be provided, tariffs to be charged and their conditions, and criteria for designation of airlines, including such criteria as number, ownership and control.

2. For the purposes of this Chapter, an enterprise is:

- (a) "owned" by a person if more than 50 percent of the equity interests in it is beneficially owned by the person; and
- (b) "controlled" by a person if the person has the power to name a majority of its directors or otherwise to legally direct its actions in accordance with the laws and regulations of a Party.

Chapter 10  
Financial Services

Article 117  
Scope

1. This Chapter shall apply to measures adopted or maintained by a Party relating to:
  - (a) financial institutions of the other Party;
  - (b) investors of the other Party, and investments of such investors, in financial institutions in the Area of the former Party; and
  - (c) cross-border trade in financial services.
2. Articles 81 through 86, 114 and 115 shall apply to measures described in paragraph 1, *mutatis mutandis*. For greater certainty, no other provision of Chapter 8 or 9 shall apply to measures described in paragraph 1.
3. This Chapter is subject to Annex 5.
4. This Chapter shall not apply to:
  - (a) measures adopted or maintained by a Party relating to:
    - (i) activities conducted by the central bank or monetary authority of the Party or by any other public entity in pursuit of monetary or exchange rate policies;
    - (ii) activities or services forming part of a public retirement plan or statutory system of social security, unless the Party allows any of such activities or services to be conducted by its financial institutions in competition with a public entity or a financial institution; or
    - (iii) activities or services conducted for the account or with the guarantee or using the financial resources of the Party, including its public entities, unless the Party allows any of such activities or services to be conducted by its financial institutions in competition with a public entity or a financial institution;
  - (b) government procurement;

- (c) subsidies provided by a Party or a state enterprise thereof, including grants, government-supported loans, guarantees and insurance; and
- (d) measures affecting natural persons of a Party seeking access to the employment market of the other Party, or measures regarding nationality or citizenship, or residence or employment on a permanent basis.

Article 118  
National Treatment

1. In the sectors inscribed in its Schedule in Annex 10, subject to any conditions and qualifications set out therein, each Party shall accord to investors of the other Party treatment no less favorable than that it accords to its own investors, in like circumstances, with respect to the establishment, acquisition, expansion, management, conduct, operation, maintenance, use, enjoyment and sale or other disposition of financial institutions and investments in financial institutions in its Area.

2. In the sectors inscribed in its Schedule in Annex 10, subject to any conditions and qualifications set out therein, each Party shall accord to financial institutions of the other Party and to investments of investors of the other Party in financial institutions treatment no less favorable than that it accords to its own financial institutions, and to investments of its own investors in financial institutions, in like circumstances, with respect to the establishment, acquisition, expansion, management, conduct, operation, maintenance, use, enjoyment and sale or other disposition of financial institutions and investments.

Article 119  
Market Access for Financial Institutions

1. With respect to market access for financial institutions, each Party shall accord to financial institutions of the other Party and investors of the other Party who seek to establish financial institutions in the Area of the former Party treatment no less favorable than that provided for under the terms, limitations and conditions specified in its Schedule in Annex 10.

2. In sectors where market-access commitments are undertaken, the measures which a Party shall not maintain or adopt either on the basis of a regional subdivision or on the basis of its entire Area, unless otherwise specified in its Schedule in Annex 10, are defined as:

- (a) limitations on the number of financial institutions whether in the form of numerical quotas, monopolies, exclusive financial institutions or the requirements of an economic needs test;
- (b) limitations on the total value of financial service transactions or assets in the form of numerical quotas or the requirement of an economic needs test;
- (c) limitations on the total number of financial service operations or on the total quantity of financial service output expressed in terms of designated numerical units in the form of quotas or the requirement of an economic needs test;

Note: Subparagraph (c) does not cover measures of a Party which limit inputs for the supply of financial services.

- (d) limitations on 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 numerical quotas or the requirement of an economic needs test; and
- (e) measures which restrict or require specific types of legal entity or joint venture through which a financial institution may supply a financial service.

Article 120  
Cross-Border Trade

1. Each Party shall permit, under terms and conditions that accord national treatment, cross-border financial service suppliers of the other Party to supply the financial services specified in its Schedule in Annex 11, subject to any terms and conditions set out therein.

2. Each Party shall permit persons located in its Area, and its natural persons in the Area of the other Party, to purchase the financial services specified in its Schedule in Annex 12, subject to any terms and conditions set out therein, from cross-border financial service suppliers of the other Party located in the Area of the other Party. This obligation does not require a Party to permit cross-border financial service suppliers of the other Party to do business or solicit in the Area of the former Party. The former Party may define "doing business" and "solicitation" for the purposes of this Article as long as such definitions are not inconsistent with its obligations under paragraph 1.

3. A Party may require the registration of cross-border financial service suppliers of the other Party and of their financial instruments.

#### Article 121 New Financial Services

1. Each Party shall permit financial institutions of the other Party to offer in its Area any new financial service in sectors or sub-sectors where commitments are undertaken in its Schedule in Annex 10 and subject to the terms, limitations, conditions and qualifications set out in that Schedule and provided that the introduction of this new financial service does not require the former Party to adopt a new law or modify an existing law.

2. Each Party may determine the legal form through which the new financial service may be supplied and may require authorization for the supply of the new financial service.

#### Article 122 Treatment of Certain Information

Nothing in this Chapter shall be construed to require a Party to disclose information relating to the affairs and accounts of individual customers or any confidential or proprietary information in the possession of public entities.

Article 123  
Exceptions

Notwithstanding any other provision of this Chapter and Chapters 8 and 9, 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, they shall not be used as a means of avoiding the Party's commitments or obligations under this Agreement.

Article 124  
Self-Regulatory Organizations

Where a Party requires a financial institution of the other Party to be a member of, participate in, or have access to, a self-regulatory organization to supply a financial service in the Area of the former Party, the former Party shall ensure that such organization accords national treatment to the financial institution of the other Party.

Article 125  
Payment and Clearing Systems

Under terms and conditions that accord national treatment, each Party shall grant to financial institutions of the other Party established in its Area 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 Article is not intended to confer access to the Party's lender of last resort facilities.

Article 126  
Committee on Financial Services

1. For the purposes of the effective implementation and operation of this Chapter, the Parties hereby establish a Committee on Financial Services (hereinafter referred to in this Article as "Committee").
2. The functions of the Committee shall be:
  - (a) reviewing and monitoring the implementation and operation of this Chapter;



- (b) discussing any issues related to this Chapter;
  - (c) reporting the findings of the Committee to the Commission; and
  - (d) carrying out other functions as may be delegated by the Commission in accordance with Article 190.
3. The Committee shall be composed of:
- (a) with respect to Japan, officials from the Ministry of Foreign Affairs and the Financial Services Agency; and
  - (b) with respect to Chile, officials from the Ministry of Finance (*Ministerio de Hacienda*).
4. The Committee shall meet at such venues and times as may be agreed by the Parties.

Article 127  
Dispute Settlement

1. The consultations under Article 177 on prudential issues and other financial matters shall be participated in by:
- (a) with respect to Japan, officials from the Ministry of Foreign Affairs and the Financial Services Agency; and
  - (b) with respect to Chile, officials from the Ministry of Finance (*Ministerio de Hacienda*).
2. A Party shall not be required to disclose information or refrain from taking any action with respect to specific regulatory, supervisory, administrative or enforcement matters, solely by reason of the consultations under Article 177.
3. The arbitral tribunal established under Article 178 for disputes arising under this Chapter shall be composed entirely of arbitrators who have expertise or experience in financial services law or practice, which may include the laws and regulations of financial institutions.

Article 128  
Definitions

For the purposes of this Chapter:

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

Note: The term "cross-border supply of financial services" has the same meaning as the term "cross-border trade in financial services".

- (b) the term "cross-border trade in financial services" means the supply of a financial service:
  - (i) from the Area of a Party into the Area of the other Party;
  - (ii) in the Area of a Party by a person of that Party to a person of the other Party; and
  - (iii) by a natural person of a Party in the Area of the other Party,

but does not include the supply of a financial service by an investment of an investor of a Party, in the Area of the other Party;

- (c) the term "financial institution" means any enterprise that is authorized to do business and regulated or supervised as a financial institution under the law of the Party in which it is located;
- (d) the term "financial institution of the other Party" means a financial institution located in a Party that is owned or controlled by persons of the other Party;
- (e) the term "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). Financial services include the following activities:
  - (i) Insurance and Insurance-Related Services
    - (A) direct insurance (including co-insurance):

- (AA) life; and
  - (BB) non-life;
  - (B) reinsurance and retrocession;
  - (C) insurance intermediation, such as brokerage and agency; and
  - (D) services auxiliary to insurance, such as consultancy, actuarial, risk assessment and claim settlement services; and
- (ii) Banking and Other Financial Services  
(Excluding Insurance)
- (A) acceptance of deposits and other repayable funds from the public;
  - (B) lending of all types, including consumer credit, mortgage credit, factoring and financing of commercial transactions;
  - (C) financial leasing;
  - (D) all payment and money transmission services, including credit, charge and debit cards, travelers checks and bankers drafts;
  - (E) guarantees and commitments;
  - (F) trading for own account or for account of customers, whether on an exchange, in an over-the-counter market or otherwise, the following:
    - (AA) money market instruments (including checks, bills, certificates of deposits);
    - (BB) foreign exchange;
    - (CC) derivative products including, but not limited to, futures and options;
    - (DD) exchange rate and interest rate instruments, including products such as swaps, forward rate agreements;

- (EE) transferable securities; and
  - (FF) other negotiable instruments and financial assets, including bullion;
  - (G) 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;
  - (H) money broking;
  - (I) asset management, such as cash or portfolio management, all forms of collective investment management, pension fund management, custodial, depository and trust services;
  - (J) settlement and clearing services for financial assets, including securities, derivative products, and other negotiable instruments;
  - (K) provision and transfer of financial information, and financial data processing and related software by suppliers of other financial services; and
  - (L) advisory, intermediation, and other auxiliary financial services on all the activities listed in subparagraphs (A) through (K), including credit reference and analysis, investment and portfolio research and advice, advice on acquisitions and on corporate restructuring and strategy;
- (f) the term "investment" means an investment as defined in subparagraph 1(h) of Article 105, except that, with respect to loans and debt instruments referred to in that subparagraph:
- (i) 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 which the financial institution is located; and

(ii) 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 (i), is not an investment;

for greater certainty,

(iii) a loan to, or a debt instrument issued by, a Party or a state enterprise thereof is not an investment; and

(iv) 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 referred to in subparagraph (i), is an investment under Chapter 8 if such loan or debt instrument meets the criteria for investments set out in subparagraph 1(h) of Article 105;

(g) the term "investor of a Party" means an investor of a Party as defined in subparagraph 1(j) of Article 105;

(h) the term "new financial service" means a service of a financial nature, including services related to existing and new products or the manner in which a product is delivered, that is not supplied by any financial service supplier in the Area of a Party but which is supplied in the Area of the other Party;

(i) the term "person of a Party" means a natural person or an enterprise of a Party and, for greater certainty, does not include a branch of an enterprise of a non-Party;

(j) the term "public entity" means the Government, the central bank or monetary authority of a Party, or any entity owned or controlled by a Party, that is principally engaged in carrying out governmental functions or activities for governmental purposes, not including an entity principally engaged in supplying financial services on commercial terms or a private entity, performing functions normally performed by a central bank or monetary authority, when exercising those functions; and

- (k) the term "self-regulatory organization" means any non-governmental body, including any securities or futures exchange or market, clearing agency, or any other organization or association, that exercises its own or delegated regulatory or supervisory authority over financial institutions.

#### Chapter 11

### Entry and Temporary Stay of Nationals for Business Purposes

#### Article 129

##### General Principles

1. This Chapter reflects the preferential trading relationship between the Parties, the mutual desire of the Parties to facilitate entry and temporary stay of nationals for business purposes on a reciprocal basis and to establish transparent criteria and procedures for entry and temporary stay, and the need to ensure border security and to protect the domestic labor force and permanent employment in either Party.

2. Each Party shall apply its measures relating to the provisions of this Chapter in accordance with paragraph 1, and, in particular, shall apply expeditiously those measures so as to avoid unduly impairing or delaying trade in goods or services or conduct of investment activities under this Agreement.

#### Article 130

##### Scope

1. This Chapter shall apply to measures affecting the entry and temporary stay of nationals of a Party who enter the other Party for business purposes.

2. This Chapter shall not apply to measures affecting nationals of a Party seeking access to the employment market of the other Party, nor shall it apply to measures regarding nationality or citizenship, or residence or employment on a permanent basis.

3. This Chapter shall not prevent a Party from applying measures to regulate the entry of nationals of the other Party into, or their temporary stay in, the former Party, including those measures necessary to protect the integrity of, and to ensure the orderly movement of natural persons across, its borders, provided that such measures are not applied in such a manner as to nullify or impair the benefits accruing to the other Party under the terms of the categories set out in Annex 13.

Note: The sole fact of requiring a visa for natural persons of a certain nationality and not for those of others shall not be regarded as nullifying or impairing benefits under the terms of a specific category.

Article 131  
Grant of Entry and Temporary Stay

Each Party shall grant entry and temporary stay to nationals of the other Party in accordance with this Chapter including the provisions of Annex 13.

Article 132  
Provision of Information

Each Party shall:

- (a) provide to the other Party such materials as will enable that other Party to become acquainted with its measures relating to this Chapter;
- (b) make publicly available in the Parties, explanatory material in a consolidated document regarding the requirements for entry and temporary stay under this Chapter, no later than one year after the date of entry into force of this Agreement; and
- (c) to the extent possible, upon request by the other Party, make available to the other Party, in accordance with its laws and regulations, data respecting the granting of entry and temporary stay under this Chapter to nationals of the other Party.

Article 133  
Dispute Settlement

1. The dispute settlement procedures provided for in Chapter 16 shall not apply to this Chapter unless:

- (a) the matter involves a pattern of practice; and
- (b) the nationals of a Party concerned have exhausted the administrative remedies, where available, regarding the particular matter.

2. The remedies referred to in subparagraph 1(b) shall be deemed to be exhausted if a final determination in the matter has not been issued by the competent authority of the other Party within one year after the date of the institution of the administrative remedy, and the failure to issue such determination is not attributable to delay caused by the nationals.

#### Article 134

#### Measures pursuant to Immigration Laws and Regulations

Except for this Chapter and Chapters 1, 2, 16, 17, 18 and 19, nothing in this Agreement shall impose any obligation on either Party regarding measures pursuant to immigration laws and regulations.

#### Article 135

#### Definitions

For the purposes of this Chapter:

- (a) the term "entry and temporary stay" means entry into and stay in a Party by a national of the other Party without the intent to establish permanent residence; and
- (b) the term "immigration laws and regulations" means any laws and regulations affecting the entry and temporary stay of nationals.

#### Chapter 12

#### Government Procurement

#### Article 136

#### Scope

1. This Chapter shall apply to any measures adopted or maintained by a Party relating to government procurement, by any contractual means, including through such methods as purchase or as lease, rental or hire purchase, with or without an option to buy:

- (a) by entities specified in Part 1 of Annex 14;
- (b) of goods specified in Part 2 of Annex 14, services specified in Part 3 of Annex 14, or construction services specified in Part 4 of Annex 14; and



(c) where the value of the contracts to be awarded is estimated to be not less than the thresholds specified in Part 5 of Annex 14 at the time of publication of a notice of procurement.

2. Paragraph 1 is subject to the General Notes set out in Part 6 of Annex 14.

3. Neither Party shall prepare, design or otherwise structure any government procurement contract in order to avoid the obligations under this Chapter.

#### Article 137 National Treatment and Non-Discrimination

1. With respect to any laws, regulations, procedures and practices regarding government procurement covered by this Chapter, each Party shall provide immediately and unconditionally to the goods, services and suppliers of the other Party, treatment no less favorable than that it accords to its own goods, services and suppliers.

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

- (a) that its entities do not treat a locally-established supplier less favorably than another locally-established supplier on the basis of the degree of affiliation to, or ownership by, a natural person or an enterprise of the other Party; and
- (b) that its entities do not discriminate against a locally-established supplier on the basis that the goods or services offered by that supplier for a particular procurement are goods or services of the other Party.

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

#### Article 138 Valuation of Contracts

In determining the value of contracts for the purposes of implementing this Chapter:

- (a) valuation shall take into account all forms of remuneration, including any premiums, fees, commissions and interest receivable;
- (b) the selection of the valuation method by an entity shall not be used, nor shall any procurement requirement be divided, with the intention of avoiding the application of this Chapter; and
- (c) in cases where an intended procurement specifies the need for option clauses, the basis for valuation shall be the total value of the maximum permissible procurement, inclusive of optional purchases.

Article 139  
Prohibition of Offsets

Each Party shall ensure that its entities do not, in the qualification and selection of suppliers, goods or services, or in the evaluation of tenders and award of contracts, impose, seek or consider offsets. For the purposes of this Article, offsets means conditions considered, sought or imposed by an entity prior to or in the course of its procurement process that encourage local development or improve its Party's balance of payments accounts, by means of requirements of local content, licensing of technology, investment, counter-trade or similar requirements.

Article 140  
Technical Specifications

1. Technical specifications laying down the characteristics of the goods or services to be procured, such as quality, performance, safety and dimensions, symbols, terminology, packaging, marking and labeling, or the processes and methods for their production and requirements relating to conformity assessment procedures prescribed by procuring entities, shall not be prepared, adopted or applied with a view to, or with the effect of, creating unnecessary obstacles to trade.
2. Any technical specifications prescribed by procuring entities shall, where appropriate:
  - (a) be specified in terms of performance rather than design or descriptive characteristics; and

- (b) be based on international standards, where such exist; otherwise, on national technical regulations, recognized national standards, or building codes.

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

4. Each Party shall ensure that its entities do not seek or accept, in a manner which would have the effect of precluding fair competition, advice which may be used in the preparation or adoption of any technical specifications for a specific procurement from a person that may have a commercial interest in the procurement.

#### Article 141 Tendering Procedures

1. Each Party shall ensure that the tendering procedures of its entities are applied in a non-discriminatory manner and in compliance with this Chapter.

2. Each Party shall ensure that its entities do not provide to any supplier information with regard to a specific procurement in a manner which would have the effect of precluding competition.

#### Article 142 Qualification of Suppliers

1. In the process of qualifying suppliers, each Party shall ensure that its entities do not discriminate against suppliers of the other Party. Qualification procedures shall be consistent with the following:

- (a) any conditions for participation in tendering procedures shall be published in adequate time to enable interested suppliers to initiate and, to the extent that it is compatible with efficient operation of the procurement process, complete the qualification procedures;
- (b) any conditions for participation in tendering procedures shall be limited to those which are essential to ensure the potential supplier's capability to fulfill the contract in question;

- (c) the process of, and the time required for, qualifying suppliers shall not be used in order to keep suppliers of the other Party off a suppliers' list or from being considered for a particular intended procurement. Entities shall recognize as qualified suppliers such suppliers of the other Party who meet the conditions for participation in a particular intended procurement. Suppliers requesting to participate in a particular intended procurement who may not yet be qualified shall also be considered, provided there is sufficient time to complete the qualification procedure;
- (d) entities may maintain permanent lists of qualified suppliers. The entities shall ensure:
  - (i) that suppliers may apply for qualification at any time; and
  - (ii) that all qualified suppliers so requesting are included in the lists within a reasonably short time;
- (e) if, after publication of the notice of procurement under paragraph 1 of Article 143, a supplier not yet qualified requests to participate in an intended procurement, the entity shall promptly start procedures for qualification; and
- (f) any supplier having requested to become a qualified supplier shall be advised by the entities concerned of the decision in this regard.

2. Nothing in paragraph 1 shall preclude the exclusion of any supplier on grounds such as bankruptcy, liquidation or insolvency, or false declarations relating to a procurement, provided that such an action is consistent with the national treatment and non-discrimination provisions of this Chapter.

#### Article 143 Notice of Procurement

1. For each case of intended procurement, each Party shall ensure that its entities make publicly available in advance in the appropriate publication listed in Part 7 of Annex 14, a notice of procurement inviting interested suppliers to participate in that procurement, except as provided for in Article 147.

2. The information in each notice of procurement shall include a description of the intended procurement, any conditions that suppliers must fulfill to participate in the procurement, the name of the entity, the address where all documents relating to the procurement may be obtained and the time-limits for submission of tenders.

3. Each Party shall endeavor to ensure that its entities make publicly available notices of procurement in a timely manner through means which offer the widest possible and non-discriminatory access to interested suppliers. These means may be accessible free of charge, through a single electronic point of access.

4. If, after making publicly available a notice of procurement in any case of intended procurement, but before the time set for opening or receipt of tenders as specified in the notice or the tender documentation, it becomes necessary to amend or re-issue the notice, the amendment or the re-issued notice shall be made publicly available in the same manner as the original notice. Any significant information given to one supplier with respect to a particular intended procurement shall be given simultaneously to all other suppliers concerned in adequate time to permit the suppliers to consider such information and to respond to it.

Article 144  
Time-Limits for Tendering

Each Party shall ensure that:

- (a) any prescribed time-limit is adequate to allow suppliers of the other Party as well as domestic suppliers to prepare and submit tenders before the closing of the tendering procedures; and
- (b) in determining any such time-limit, its entities, consistent with their own reasonable needs, take into account such factors as the complexity of the intended procurement, the extent of subcontracting anticipated, the normal time for transmitting tenders by mail from foreign as well as domestic points and the delays of making publicly available notices of procurement.

Article 145  
Tender Documentation

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

2. Each Party shall ensure that its entities make tender documentation accessible, or, upon request, forward the tender documentation, to any supplier participating in the tendering procedure, and reply promptly to any reasonable request for explanations relating thereto.

3. Each Party shall endeavor to ensure that its entities reply promptly to any reasonable request for relevant information submitted by a supplier participating in the tendering procedure, on condition that such information does not give that supplier an advantage over its competitors in the procedure for the award of the contract. The information provided to a supplier may be provided to any other suppliers that are invited to tender.

#### Article 146 Awarding of Contracts

1. To be considered for award, a tender must, at the time of opening, conform to the essential requirements of the notice of procurement or tender documentation and be from a supplier which complies with the conditions for participation. If an entity has received a tender abnormally lower or otherwise exceptionally more advantageous than other tenders submitted, it may enquire with the tenderer to ensure that the tenderer can comply with the conditions of participation and be capable of fulfilling the terms of the contract.

2. Unless in the public interest an entity decides not to issue the contract, the entity shall make the award to the tenderer who has been determined to be fully capable of undertaking the contract and whose tender is either the lowest tender or determined to be the most advantageous in terms of the specific evaluation criteria set forth in the notice of procurement or tender documentation.

#### Article 147 Other Tendering Procedures

1. Articles 141 through 146 need not apply in the following conditions, provided that the tendering under this Article is not used by entities of a Party with a view to avoiding maximum possible competition or in a manner which would constitute a means of discrimination against the suppliers of the other Party or protection to domestic producers or suppliers:

- (a) in the absence of tenders in response to the tender pursuant to Articles 141 through 146, or when the tenders submitted have been collusive in accordance with the laws and regulations of the former Party, or not in conformity with the essential requirements in the tender, or from suppliers who do not comply with the conditions for participation provided for in accordance with this Chapter, on condition that the requirements of the initial tender are not substantially modified in the contract as awarded;
- (b) when, for works of art or for reasons connected with the protection of exclusive rights, such as patents or copyrights, or in the absence of competition for technical reasons, the goods or services can be supplied only by a particular supplier and no reasonable alternative or substitute exists;
- (c) in so far as is strictly necessary when, for reasons of extreme urgency brought about by events unforeseeable by the entity, the goods or services could not be obtained in time by means of the tendering procedures pursuant to Articles 141 through 146;
- (d) for additional deliveries by the original supplier that are intended either as parts replacement for existing supplies, or installations, or as the extension of existing supplies, services, or installations, where a change of supplier would compel the entity to procure goods or services not meeting requirements of interchangeability with existing equipment, software, services or installations;
- (e) when an entity procures prototypes or a first good or service which are developed at its request in the course of, and for, a particular contract for research, experiment, study or original development;

Note: Original development of a first good or service may include limited production or supply in order to incorporate the results of field testing and to demonstrate that the good or service is suitable for production or supply in quantity to acceptable quality standards. It does not extend to quantity production or supply to establish commercial viability or to recover research and development costs.

- (f) when additional construction services which were not included in the initial contract but which were within the objectives of the original tender documentation have, due to unforeseeable circumstances, become necessary to complete the construction services described therein, provided that the total value of contracts awarded for additional construction services may not exceed 50 percent of the amount of the initial contract;
- (g) for new construction services consisting of the repetition of similar construction services which conform to a basic project for which an initial contract was awarded in accordance with Articles 141 through 146 and for which the entity has indicated in the notice of procurement concerning the initial construction service, that the tendering procedures under this Article might be used in awarding contracts for such new construction services;
- (h) for goods purchased on a commodity market;
- (i) for purchases made under exceptionally advantageous conditions which only arise in the very short term. This provision is intended to cover unusual disposals by enterprises which are not normally suppliers, or disposal of assets of businesses in liquidation or receivership. It is not intended to cover routine purchases from regular suppliers; and
- (j) in the case of contracts awarded to the winner of design contest provided that the contest has been organized in a manner which is consistent with the principles of this Chapter and that the contest is judged by an independent jury with a view to design contracts being awarded to the winners.



2. Each Party shall ensure that, whenever it is necessary for its entities to resort to the tendering procedures under paragraph 1, the entities maintain a record or prepare a written report providing specific justification for such procedures.

Article 148  
Post-Award Information

1. Each Party shall ensure that its entities make publicly available, in an appropriate publication listed in Part 7 of Annex 14, after the award of each contract, information such as:

- (a) the nature and quantity of goods or services in the contract award;
- (b) the name and address of the entity awarding the contract;
- (c) the date of award;
- (d) the name and address of the winning tenderer;
- (e) the value of the winning award; and
- (f) the type of procedure used.

2. Each Party shall ensure that its entities, on request from a supplier of a Party, promptly provide information including:

- (a) pertinent information concerning the reasons why the supplier's application to qualify was rejected, why its existing qualification was brought to an end and why it was not selected; and
- (b) when the supplier is an unsuccessful tenderer, pertinent information concerning the reasons why its tender was not selected and on the characteristics and relative advantages of the tender selected as well as the name of the winning tenderer.

3. Where a supplier of a Party is an unsuccessful tenderer, the Party may seek, without prejudice to the provisions under Chapter 16, such additional information on the contract award, as may be necessary to ensure that the procurement was made fairly and impartially. The other Party shall provide information on both the characteristics and relative advantages of the winning tender and the contract price. Normally this latter information may be disclosed by the former Party provided it exercises this right with discretion. In cases where release of this information would prejudice competition in future tenders, this information shall be confidential and not be disclosed except after consultation with and agreement of the other Party.

#### Article 149 Challenge Procedures

1. In the event of a complaint by a supplier that there has been a breach of this Chapter in the context of a government procurement, the procuring entity shall accord impartial and timely consideration to any such complaint, in a manner that is not prejudicial to obtaining corrective measures under the challenge system.

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

3. Each Party shall provide its challenge procedures in writing and make them generally available.

4. Each Party shall ensure that documentation relating to all aspects of the process concerning government procurement covered by this Chapter shall be retained at least for three years.

5. The interested supplier may be required to initiate a challenge procedure and notify the procuring entity within specified time-limits from the time when the basis of the complaint is known or reasonably should have been known, but in no case within a period of less than 10 days.

6. Challenges shall be heard by an impartial and independent reviewing authority with no interest in the outcome of the government procurement and the members of which are secure from external influence during the term of appointment. A reviewing authority which is not a court shall either be subject to judicial review or shall have procedures which provide at least the following:

- (a) participants can be heard before an opinion is given or a decision is reached;
- (b) participants can be represented and accompanied;
- (c) participants shall have access to all proceedings;
- (d) proceedings can take place in public;
- (e) opinions or decisions are given in writing with a statement describing the basis for the opinions or decisions;
- (f) witnesses can be presented; and
- (g) documents are disclosed to the reviewing authority.

7. Challenge procedures shall provide for:

- (a) rapid interim measures to correct breaches of this Chapter and to preserve commercial opportunities. Such action may result in suspension of the procurement process. However, procedures may provide that overriding adverse consequences for the interests concerned, including the public interest, may be taken into account in deciding whether such measures should be applied;
- (b) an assessment and, where appropriate, a decision on the justification of the challenge; and
- (c) where appropriate, correction of breaches of this Chapter or compensation for the loss or damages suffered, which may be limited to costs for tender preparation or protest.

8. With a view to the preservation of the commercial and other interests involved, the challenge procedure shall normally be completed within a reasonable time.

#### Article 150

##### Use of Electronic Communications in Procurement

1. The Parties shall seek to provide opportunities for government procurement to be undertaken through the Internet or a comparable computer-based telecommunications network.

2. In order to facilitate commercial opportunities for its suppliers under this Chapter, each Party shall endeavor to adopt or maintain a single electronic portal for access to comprehensive information on government procurement supply opportunities in its Area, and information on measures relating to government procurement shall be available.

3. The Parties shall encourage, to the extent possible, the use of electronic means for the provision of tender documents and the receipt of tenders.

4. The Parties shall endeavor to ensure the adoption of policies and procedures for the use of electronic means in government procurement that:

- (a) protect documentation from unauthorized and undetected alteration; and
- (b) provide appropriate levels of security for data on, and passing through, the procuring entity's network.

#### Article 151 Exceptions

Subject to the requirement that such measures are not applied in a manner that would constitute a means of arbitrary or unjustifiable discrimination between the Parties where the same conditions prevail, or a disguised restriction on trade, nothing in this Chapter shall be construed to prevent a Party from imposing, enforcing or maintaining measures:

- (a) necessary to protect public morals, order or safety;
- (b) necessary to protect human, animal or plant life or health;
- (c) necessary to protect intellectual property; or
- (d) relating to goods or services of handicapped persons, of philanthropic institutions, or of prison labor.

Article 152  
Rectifications or Modifications

1. A Party shall notify the other Party of its rectifications, or in exceptional cases, other modifications relating to Annex 14 along with the information as to the likely consequences of the change for the mutually agreed coverage provided in this Chapter.

2. If the rectifications or other modifications are of a purely formal or minor nature, notwithstanding Article 197, they shall become effective provided that no objection from the other Party has been raised within 30 days. In other cases, both Parties shall consult the proposal and any claim for compensatory adjustments with a view to maintaining a balance of rights and obligations and a comparable level of mutually agreed coverage provided in this Chapter prior to such rectification or other modification.

3. In the event of an agreement between the Parties not being reached, the Party which has received such notification may have recourse to the dispute settlement procedure under Chapter 16.

Note: Notwithstanding any other provision of this Chapter, a Party may undertake reorganizations of its entities, including programs through which the procurement of such entities is decentralized or the corresponding government functions cease to be performed by any government entity, whether or not subject to this Chapter. In cases of reorganizations, compensation need not be proposed. Neither Party shall undertake such reorganizations to avoid the obligations of this Chapter.

Article 153  
Privatization of Entities

When government control at the central or national government level over an entity specified in Part 1 of Annex 14 has been effectively eliminated, notwithstanding that the government may possess holding thereof or appoint member of the board of directors thereto, this Chapter shall no longer apply to that entity and compensation need not be proposed. A Party shall notify the other Party of the name of such entity before elimination of government control or as soon thereafter as possible.

Article 154  
Denial of Benefits

1. A Party may deny the benefits of this Chapter to an enterprise of the other Party if the enterprise is owned or controlled by persons of a non-Party and the former Party:

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

2. Subject to prior notification and consultation, a Party may deny the benefits of this Chapter to a supplier of the other Party that is an enterprise of the other Party where the denying Party establishes that the enterprise is owned or controlled by persons of a non-Party and has no substantial business activities in the Area of the other Party.

Article 155  
Further Negotiations

In the event that after the entry into force of this Agreement a Party offers a non-Party additional advantages of access to its government procurement market beyond what the other Party has been provided with under this Chapter, the former Party shall, upon request of the other Party, enter into negotiations with the other Party with a view to extending those advantages to the other Party on a reciprocal basis.

Article 156  
Committee on Government Procurement

1. For the purposes of the effective implementation and operation of this Chapter, the Parties hereby establish a Committee on Government Procurement (hereinafter referred to in this Article as "Committee").

2. The functions of the Committee shall be:

- (a) reviewing and monitoring the implementation and operation of this Chapter;
- (b) analyzing available information on each Party's government procurement market;

- (c) reporting the findings of the Committee to the Commission; and
- (d) carrying out other functions as may be delegated by the Commission in accordance with Article 190.

3. The Committee shall be composed of government officials of the Parties.

4. The Committee shall meet at such venues and times as may be agreed by the Parties.

#### Article 157 Definition

For the purposes of this Chapter, the term "supplier" means a person that provides or could provide goods or services to an entity.

### Chapter 13 Intellectual Property

#### Article 158 General Provisions

1. The Parties shall ensure adequate, effective and non-discriminatory protection of intellectual property, promote efficiency and transparency in administration of intellectual property protection system, and provide for measures for adequate and effective enforcement of intellectual property rights against infringement, counterfeiting and piracy, in accordance with the provisions of this Chapter and the international agreements to which both Parties are parties.

2. The Parties may take appropriate measures to prevent the abuse of intellectual property rights by right holders or the resort to practices which unreasonably restrain trade or adversely affect the international transfer of technology, provided that such measures are consistent with the provisions of this Agreement and the TRIPS Agreement.

3. The Parties affirm their existing rights and obligations under the TRIPS Agreement and other multilateral agreements relating to intellectual property to which both Parties are parties. Nothing in this Chapter shall derogate from existing rights and obligations that the Parties have under the TRIPS Agreement or other multilateral agreements relating to intellectual property to which both Parties are parties.

4. For the purposes of this Chapter, intellectual property refers to all categories of intellectual property:

- (a) that are subject of Articles 161 through 163; and/or
- (b) that are under the TRIPS Agreement and/or the relevant international agreements referred to in the TRIPS Agreement.

Article 159  
Streamlining of Procedural Matters

1. For the purposes of providing efficient administration of intellectual property system, each Party shall take measures to streamline its administrative procedures concerning intellectual property.

2. Each Party shall use a classification for patents and utility models in accordance with the Strasbourg Agreement Concerning the International Patent Classification, of March 24, 1971, as amended. Each Party shall use a classification of goods and services in accordance with the Nice Agreement Concerning the International Classification of Goods and Services for the Purposes of the Registration of Marks, of June 15, 1957, as amended.

Article 160  
Transparency

For the purposes of further promoting transparency in administration of intellectual property system, each Party shall, in accordance with its laws and regulations, take appropriate measures to make available to the public information on its efforts to provide effective enforcement of intellectual property rights and other information with regard to intellectual property system.

Article 161  
Trademarks

Each Party shall afford an opportunity for interested parties to oppose to an application for registration of or a registration of, and to request the cancellation of the registration of, a trademark, in accordance with its laws and regulations.



Article 162  
New Varieties of Plants

Each Party shall become a party, if it is not a party, to the 1991 Act of International Convention for the Protection of New Varieties of Plants, by January 1, 2009.

Article 163  
Geographical Indications

1. The Parties agree that indications for wines and spirits listed in Annex 15 are geographical indications referred to in paragraph 1 of Article 22 of the TRIPS Agreement, and shall abide by the obligations under the relevant provisions of the TRIPS Agreement with respect to the protection of geographical indications.

2. Notwithstanding paragraph 2 of Article 197, modifications to Annex 15 proposed by both Parties may be adopted by the Commission pursuant to subparagraph 1(d)(i) of Article 190. The adopted modifications shall be confirmed by an exchange of diplomatic notes.

Article 164  
Enforcement

1. Each Party shall provide for procedures concerning the suspension by its customs authority of the release of the goods infringing patents, utility models, industrial designs, trademarks, or copyrights or related rights, which are destined for importation into, or exportation from, the Party.

2. Each Party shall ensure that its judicial authorities have the authority to order the infringer to pay the right holder damages adequate to compensate for the injury the right holder has suffered because of an infringement of that person's intellectual property right by an infringer who knowingly, or with reasonable grounds to know, engaged in infringing activity.

3. Each Party shall provide for criminal procedures and penalties to be applied in cases of trademark counterfeiting or copyright piracy, committed willfully and on a commercial scale. Remedies available shall include imprisonment and/or monetary fines sufficient to provide a deterrent, consistently with the level of penalties applied for crimes of a corresponding gravity.

Article 165  
Committee on Intellectual Property

1. For the purposes of the effective implementation and operation of this Chapter, the Parties hereby establish a Committee on Intellectual Property (hereinafter referred to in this Article as "Committee").

2. The functions of the Committee shall be:

- (a) reviewing and monitoring the implementation and operation of this Chapter;
- (b) discussing any issues related to intellectual property, such as:
  - (i) areas and forms of cooperation in the field of intellectual property;
  - (ii) enforcement of intellectual property rights;
  - (iii) geographical indications; and
  - (iv) public awareness concerning protection of intellectual property;
- (c) reporting the findings of the Committee to the Commission; and
- (d) carrying out other functions as may be delegated by the Commission in accordance with Article 190.

3. The Committee shall be composed of government officials of the Parties.

4. The Committee shall meet at such venues and times as may be agreed by the Parties.

Chapter 14  
Competition

Article 166  
General Provision

Each Party shall, in accordance with its laws and regulations and in a manner consistent with this Chapter, take measures which it considers appropriate against anti-competitive activities so as to avoid that the benefits of the liberalization of trade and investment may be diminished or nullified by such activities.

Article 167  
Cooperation on Controlling Anti-competitive Activities

The Parties shall, in accordance with their respective laws and regulations, cooperate in the field of controlling anti-competitive activities subject to their respective available resources.

Article 168  
Non-Discrimination

Each Party shall apply its competition laws and regulations in a manner which does not discriminate between persons in like circumstances on the basis of their nationality.

Article 169  
Procedural Fairness

Each Party shall implement administrative and judicial procedures in a fair manner to control anti-competitive activities, pursuant to its relevant laws and regulations.

Article 170  
Transparency

Each Party shall promote transparency of the implementation of its competition laws and regulations and its competition policy.

Article 171  
Non-Application of Chapter 16

The dispute settlement procedures provided for in Chapter 16 shall not apply to this Chapter.

Chapter 15  
Improvement of Business Environment

Article 172  
Consultations for the Improvement of Business Environment

The Parties, confirming their interest in creating a more favorable business environment with a view to promoting trade and investment activities by their private enterprises, shall from time to time have consultations in order to address issues concerning the improvement of business environment in the Parties.

Article 173  
Committee on Improvement of Business Environment

1. For the purposes of the effective implementation and operation of this Chapter, the Parties hereby establish a Committee on Improvement of Business Environment (hereinafter referred to in this Article as "Committee").
2. The functions of the Committee shall be:
  - (a) discussing ways and means to improve business environment in the Parties;
  - (b) making, as needed, recommendations to the Parties on appropriate measures to be taken by the Parties;
  - (c) receiving information on the implementation of such recommendations from the relevant authorities of the Governments of the Parties;
  - (d) making public, as needed, such recommendations in an appropriate manner;
  - (e) reporting the findings of the Committee to the Commission; and
  - (f) carrying out other functions as may be delegated by the Commission in accordance with Article 190.
3. The Committee shall be composed of government officials of the Parties.
4. The Committee may, by consensus, invite representatives of relevant entities other than the governmental agencies of the Parties with the necessary expertise related to the issues to be discussed.
5. The Committee shall meet at such venues and times as may be agreed by the Parties.
6. The Committee shall cooperate with other relevant committees or working groups with a view to avoiding unnecessary overlap with the works of such committees or working groups.

Article 174  
Non-Application of Chapter 16

The dispute settlement procedure provided for in Chapter 16 shall not apply to this Chapter.

Chapter 16  
Dispute Settlement

Article 175  
Scope

Unless otherwise provided for in this Agreement, this Chapter shall apply with respect to the avoidance or settlement of disputes between the Parties concerning the implementation, interpretation or operation of this Agreement.

Article 176  
Choice of Dispute Settlement Procedure

1. Where a dispute regarding any matter arises under both this Agreement and the WTO Agreement, the complaining Party may select the dispute settlement procedure in which to settle the dispute.
2. Notwithstanding paragraph 1, once the complaining Party has requested the establishment of an arbitral tribunal under this Chapter or a panel under Article 6 of the Understanding on Rules and Procedures Governing the Settlement of Disputes in Annex 2 to the WTO Agreement with respect to a particular dispute, the arbitral tribunal or panel selected shall be used to the exclusion of the other procedure for that particular dispute.

Article 177  
Consultations

1. Either Party may request in writing consultations with the other Party concerning any matter on the implementation, interpretation or operation of this Agreement, including a matter relating to a measure that the other Party proposes to take (hereinafter referred to in this Chapter as "proposed measure").
2. The requesting Party shall set out the reasons for the request, including identification of the measure at issue and an indication of the legal basis for the complaint, and provide sufficient information to enable a full examination of the matter.
3. The Parties shall make every effort to arrive at a mutually satisfactory resolution of the matter through consultations under this Article.
4. The consultations under this Article shall be confidential and without prejudice to the rights of either Party in any further proceedings.

Article 178  
Establishment of Arbitral Tribunals

1. The complaining Party that requested consultations under Article 177 may request in writing the establishment of an arbitral tribunal, if the Parties fail to resolve the matter within:

- (a) 45 days after the date of receipt of the request for consultations; or
- (b) 30 days after the date of receipt of the request for consultations in cases of urgency, including those which concern perishable goods,

provided that the complaining Party considers that any benefits accruing to it directly or indirectly under this Agreement are being nullified or impaired as a result of the failure of the Party complained against to carry out its obligations under this Agreement, or as a result of the application by the Party complained against of measures which are in conflict with its obligations under this Agreement.

2. The request of the establishment of an arbitral tribunal referred to in paragraph 1 may also be made in case where the complaining Party considers that any benefits accruing to it directly or indirectly under Chapters 3 and 4 are being nullified or impaired as a result of the application by the Party complained against of measures which are not in conflict with its obligations under those Chapters.

3. Notwithstanding paragraphs 1 and 2, the establishment of an arbitral tribunal shall not be requested on any matter relating to a proposed measure.

4. Any request to establish an arbitral tribunal pursuant to this Article shall identify:

- (a) the specific measure at issue;
- (b) the legal basis of the complaint including the provisions of this Agreement alleged to have been breached and any other relevant provisions; and
- (c) the factual basis for the complaint.

5. The date of the establishment of an arbitral tribunal shall be the date on which the chair is appointed.

Article 179  
Terms of Reference of Arbitral Tribunals

Unless the Parties otherwise agree within 20 days from the date of receipt of the request for the establishment of the arbitral tribunal, the terms of reference of the arbitral tribunal shall be:

"To examine, in the light of the relevant provisions of this Agreement, the matter referred to in the request for the establishment of an arbitral tribunal pursuant to Article 178, to make findings of law and fact together with the reasons therefor and to issue an award for the resolution of the dispute."

Article 180  
Composition of Arbitral Tribunals

1. An arbitral tribunal shall comprise three arbitrators.
2. Each Party shall, within 30 days after the date of receipt of the request for the establishment of an arbitral tribunal, appoint one arbitrator who may be its national and propose up to three candidates to serve as the third arbitrator who shall be the chair of the arbitral tribunal. The third arbitrator shall not be a national of either Party, nor have his or her usual place of residence in either Party, nor be employed by either Party, nor have dealt with the dispute in any capacity.
3. The Parties shall agree on and appoint the third arbitrator within 45 days after the date of receipt of the request for the establishment of an arbitral tribunal, taking into account the candidates proposed pursuant to paragraph 2.
4. If a Party has not appointed an arbitrator pursuant to paragraph 2 or if the Parties fail to agree on and appoint the third arbitrator pursuant to paragraph 3, the arbitrator or arbitrators not yet appointed shall be chosen within seven days by lot from the candidates proposed pursuant to paragraph 2.
5. All arbitrators shall:
  - (a) have expertise or experience in law, international trade or other matters covered by this Agreement;
  - (b) be chosen strictly on the basis of objectivity, reliability and sound judgment;

- (c) be independent of, and not be affiliated with or receives instructions from, the Government of either Party; and
- (d) comply with a code of conduct, to be provided in the Rules of Procedures referred to in Article 187.

6. If an arbitrator appointed under this Article dies, becomes unable to act or resigns, a successor shall be appointed within 15 days in accordance with the appointment procedure provided for in paragraphs 2, 3 and 4, which shall be applied, respectively, *mutatis mutandis*. The successor shall have all the powers and duties of the original arbitrator. The work of the arbitral tribunal shall be suspended for a period beginning on the date the original arbitrator dies, becomes unable to act or resigns and ending on the date the successor is appointed.

#### Article 181 Functions of Arbitral Tribunals

1. The function of an arbitral tribunal is to make an objective assessment of the dispute before it, including an examination of the facts of the case and the applicability of and conformity with this Agreement, and make such other findings and rulings necessary for the resolution of the dispute.
2. The arbitral tribunal should consult with the Parties as appropriate and provide adequate opportunities for the development of a mutually satisfactory resolution.

#### Article 182 Proceedings of Arbitral Tribunals

1. The arbitral tribunal shall meet in closed session.
2. The Parties shall be given the opportunity to attend any of the presentations, statements or rebuttals in the proceedings. Any information or written submissions submitted by a Party to the arbitral tribunal, including any comments on the draft award and responses to questions put by the arbitral tribunal, shall be made available to the other Party.
3. The arbitral tribunal shall make its decisions, including its award, by consensus but may also make its decisions, including its award, by majority vote.



4. The arbitral tribunal may seek information from any relevant source and may consult experts to obtain their opinion on certain aspects of the matter.

5. The deliberations of the arbitral tribunal and the documents submitted to it shall be kept confidential.

6. Notwithstanding paragraph 5, either Party may make public statements as to its views regarding the dispute, but shall treat as confidential, information and written submissions submitted by the other Party to the arbitral tribunal which that other Party has designated as confidential. Where a Party has provided information or written submissions designated to be confidential, that Party shall, upon request of the other Party, provide a non-confidential summary of the information or written submissions which may be disclosed publicly.

7. Each Party shall bear the cost of its appointed arbitrator and its own expenses. The cost of the chair of an arbitral tribunal and other expenses associated with the conduct of the proceedings shall be borne by the Parties in equal shares.

#### Article 183

##### Suspension or Termination of Proceedings

1. The Parties may agree that the arbitral tribunal suspends its work at any time for a period not exceeding 12 months from the date of such agreement. In the event of such a suspension, the time-frames set out in paragraphs 2, 5 and 7 of Article 184 and paragraph 7 of Article 186 shall be extended by the amount of time that the work was suspended. If the work of the arbitral tribunal has been suspended for more than 12 months, the authority for establishment of the arbitral tribunal shall lapse unless the Parties agree otherwise.

2. The Parties may agree to terminate the proceedings of the arbitral tribunal by jointly so notifying the chair of the arbitral tribunal at any time before the issuance of the award to the Parties.

#### Article 184

##### Award

1. The award of the arbitral tribunal shall be drafted without the presence of the Parties, and in the light of the information provided and the statements made, and the relevant provisions of this Agreement.

2. The arbitral tribunal shall, within 120 days, or within 60 days in cases of urgency, including those which concern perishable goods, after the date of its establishment, submit to the Parties its draft award.
3. The draft award shall contain both the descriptive part and the findings, conclusions and decisions of the arbitral tribunal, for the purposes of enabling the Parties to review precise aspects of the draft award.
4. When the arbitral tribunal considers that it cannot submit its draft award within the aforementioned 120 days or 60 days period, it may extend that period with the consent of the Parties.
5. A Party may provide written comments to the arbitral tribunal on its draft award within 15 days after the date of submission of the draft award.
6. After considering any written comments on the draft award, the arbitral tribunal may reconsider its draft award and make any further examination it considers appropriate.
7. The arbitral tribunal shall issue its award, within 30 days after the date of submission of the draft award.
8. The award of the arbitral tribunal shall be available to the public within 15 days after the date of issuance, subject to the requirement to protect confidential information.
9. The award of the arbitral tribunal shall be final and binding on the Parties.

Article 185  
Implementation of Award

1. Unless the Parties agree otherwise, the Party complained against shall comply with the award of the arbitral tribunal referred to in Article 184 immediately. If this is not practicable, the Party complained against shall comply with the award within a reasonable period of time.
2. The reasonable period of time referred to in paragraph 1 shall be mutually determined by the Parties. Where the Parties fail to agree on the reasonable period of time within 45 days after the date of issuance of the award of the arbitral tribunal referred to in Article 184, either Party may refer the matter to an arbitral tribunal, which shall determine the reasonable period of time.

3. Where there is disagreement between the Parties as to whether the Party complained against has complied with the award of the arbitral tribunal referred to in Article 184 within the reasonable period of time as determined pursuant to paragraph 2, either Party may refer the matter to an arbitral tribunal.

Article 186  
Non-Implementation -  
Compensation and Suspension of Concessions  
or Other Obligations

1. If the Party complained against notifies the complaining Party that it is impracticable, or the arbitral tribunal to which the matter is referred pursuant to paragraph 3 of Article 185 confirms that the Party complained against has failed, to comply with the award within the reasonable period of time as determined pursuant to paragraph 2 of Article 185, the Party complained against shall, if so requested, enter into negotiations with the complaining Party with a view to reaching a mutually satisfactory compensation.

2. If there is no agreement on satisfactory compensation within 20 days after the date of receipt of the request mentioned in paragraph 1, the complaining Party may suspend the application to the Party complained against of concessions or other obligations under this Agreement, after giving notification of such suspension 30 days in advance.

3. The compensation referred to in paragraph 1 and the suspension referred to in paragraph 2 shall be temporary measures. Neither compensation nor suspension is preferred to full compliance with the award. The suspension shall only be applied until such time as the award is fully complied with, or a mutually satisfactory solution is reached.

4. In considering what concessions or other obligations to suspend pursuant to paragraph 2:

- (a) the complaining Party should first seek to suspend concessions or other obligations with respect to the same sector(s) as that in which the arbitral tribunal referred to in Article 184 has found a failure to comply with the obligations under this Agreement, or nullification or impairment of benefits in the sense of paragraph 2 of Article 178; and

(b) if the complaining Party considers that it is not practicable or effective to suspend concessions or other obligations with respect to the same sector(s), it may suspend concessions or other obligations with respect to other sectors. The notification of such suspension pursuant to paragraph 2 shall indicate the reasons on which it is based.

5. The level of suspension referred to in paragraph 2 shall be equivalent to the level of the nullification or impairment.

6. If the Party complained against considers that the requirements for the suspension of concessions or other obligations by the complaining Party set out in paragraph 2, 3, 4 or 5 have not been met, it may refer the matter to an arbitral tribunal.

7. The arbitral tribunal that is established for the purposes of this Article or Article 185 shall, wherever possible, have, as its arbitrators, the arbitrators of the original arbitral tribunal. If this is not possible, then the arbitrators to the arbitral tribunal that is established for the purposes of this Article or Article 185 shall be appointed pursuant to Article 180. The arbitral tribunal established under this Article or Article 185 shall issue its award within 60 days after the date when the matter is referred to it. When the arbitral tribunal considers that it cannot issue its award within the aforementioned 60 days period, it may extend that period for a maximum of 30 days with the consent of the Parties. The award shall be available to the public within 15 days after the date of issuance, subject to the requirement to protect confidential information. The award shall be final and binding on the Parties.

#### Article 187 Rules of Procedures

The Commission shall adopt the Rules of Procedures which provide for the details of the rules and procedures of arbitral tribunals established under this Chapter, upon the entry into force of this Agreement.

#### Article 188 Modification of Rules and Procedures

Any time period, or other rules and procedures for arbitral tribunals, provided for in this Chapter, including the Rules of Procedures referred to in Article 187, may be modified by mutual consent of the Parties.

Chapter 17  
Commission

Article 189  
Establishment of the Commission

The Parties hereby establish a Commission which shall be co-chaired by Ministers or senior officials of the Parties.

Article 190  
Functions of the Commission

1. The Commission shall:
  - (a) review and monitor, and consider any matters relating to, the implementation, interpretation and operation of this Agreement;
  - (b) consider and recommend to the Parties any amendments to this Agreement;
  - (c) supervise and coordinate the work of all committees and working groups established under this Agreement;
  - (d) adopt:
    - (i) modifications to Annex 15;
    - (ii) the Operational Procedures referred to in Article 52;
    - (iii) an interpretation of a provision of this Agreement referred to in Articles 93 and 94;
    - (iv) the Rules of Procedures referred to in Article 187; and
    - (v) any necessary decisions; and
  - (e) carry out other functions as the Parties may agree.
2. The Commission may establish committees and working groups, refer matters to any committee or working group for advice, delegate its responsibilities to any committee or working group, and consider matters raised by any committee or working group.

Article 191  
Rules and Procedures of the Commission

1. The Commission shall establish its rules and procedures.
2. Decisions of the Commission shall be taken by mutual agreement.
3. The Commission shall meet at such venues and times as may be agreed by the Parties.

Chapter 18  
Exceptions

Article 192  
General Exceptions

1. For the purposes of Chapters 3, 4, 5, 6, 7 and 8 other than Article 76, Article XX of the GATT 1994 is incorporated into and made part of this Agreement, *mutatis mutandis*.
2. For the purposes of Chapters 8 other than Article 76, 9, 10 and 11, Article XIV of the GATS, including its footnotes, is incorporated into and made part of this Agreement, *mutatis mutandis*.

Article 193  
Security Exceptions

Nothing in this Agreement other than Article 76 shall be construed:

- (a) to require a Party to furnish any information the disclosure of which it considers contrary to its essential security interests;
- (b) to prevent a Party from taking any actions which it considers necessary for the protection of its essential security interests:
  - (i) relating to the traffic in arms, ammunition and implements of war and to such traffic in other goods and materials, or such supply of services, as is carried on directly or indirectly for the purpose of supplying or provisioning a military establishment;
  - (ii) taken in time of war or other emergency in international relations; or

- (iii) relating to fissionable and fusible materials or the materials from which they are derived; or
- (c) to prevent a Party from taking any action in pursuance of its obligations under the United Nations Charter for the maintenance of international peace and security.

Article 194  
Taxation

1. Except as otherwise provided for in this Article, nothing in this Agreement shall apply to taxation measures.

Note: The term "taxation measures" shall not include:

- (a) a customs duty as defined in subparagraph (d) of Article 28;
  - (b) an anti-dumping or countervailing duty referred to in subparagraph (d)(ii) of Article 28; and
  - (c) fees or charges referred to in subparagraph (d)(iii) of Article 28.
2. Nothing in this Agreement shall affect the rights and obligations of either Party under the provisions relating to any taxation measures in any other international agreements to which both Parties are parties.
3. Article 13 shall apply to taxation measures to the same extent as Article III of the GATT 1994.
4. Articles 107 and 108 shall apply to taxation measures to the same extent as covered by the GATS.
5. (a) Article 82 shall apply to taxation measures except that no investor may invoke Article 82 as the basis for a claim under Article 89, where it has been determined pursuant to subparagraph (b) that the measure is not an expropriation.

- (b) The investor shall refer the issue, at the time that it delivers the notice of intent under Article 89, to the competent authorities of both Parties, through the contact points referred to in Article 10, to determine whether such measure is not an expropriation. If the competent authorities of both Parties do not consider the issue or, having considered it, fail to determine that the measure is not an expropriation within a period of 180 days of such referral, the investor may submit its claim to arbitration under Article 89.
- (c) For the purposes of subparagraph (b), the term "competent authorities" means:
  - (i) with respect to Japan, the Minister of Finance or his or her authorized representative, who shall consider the issue in consultation with the Minister of Foreign Affairs or his or her authorized representative; and
  - (ii) with respect to Chile, the Director of the Internal Revenue Service, Ministry of Finance (*Director del Servicio de Impuestos Internos, Ministerio de Hacienda*).

Chapter 19  
Final Provisions

Article 195  
Annexes and Notes

The Annexes and Notes to this Agreement shall constitute an integral part of this Agreement.

Article 196  
Headings

The headings of the Chapters, Sections and Articles of this Agreement are inserted for convenience of reference only and shall not affect the interpretation of this Agreement.

Article 197  
Amendments

1. This Agreement may be amended by agreement between the Parties.



2. Any amendment shall be approved by the Parties in accordance with their respective legal procedures. Such amendment shall enter into force on the date to be agreed upon by the Parties.

3. Notwithstanding paragraph 2, amendments relating only to Annex 2 or 4 may be made by exchange of diplomatic notes.

Note: In the case of Chile, the amendments under paragraph 3 shall be made as an Executive Agreement (*Acuerdo de Ejecución*) in accordance with the Political Constitution of the Republic of Chile (*Constitución Política de la República de Chile*).

#### Article 198 Entry into Force

This Agreement shall enter into force on the thirtieth day after the date of exchange of diplomatic notes informing each other that their respective legal procedures necessary for entry into force of this Agreement have been completed. It shall remain in force unless terminated as provided for in Article 199.

#### Article 199 Termination

Either Party may terminate this Agreement by giving one year's advance notice in writing to the other Party.

IN WITNESS WHEREOF, the undersigned, being duly authorized by their respective Governments, have signed this Agreement.

DONE at Tokyo, on this twenty-seventh day of March in the year 2007 in duplicate in the English language.

For Japan:

For the Republic of Chile: