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## FREE TRADE AGREEMENT BETWEEN CHILE AND EL SALVADOR

The following communication, dated 29 January 2004, is being circulated at the request of the delegations of Chile and El Salvador.

The following text reproduces the Free Trade Agreement between the Governments of Central America and the Government of the Republic of Chile.

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

PREAMBLE

The Governments of the Republics of El Salvador, Guatemala, Honduras, Nicaragua, Chile and Costa Rica, resolved to:

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

Contribute to hemispheric integration;

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

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

Create an expanded and secure market for the goods and services produced in their territories, which is important for facilitating trade in goods and services and the flow of capital and technology;

Achieve a better balance in their trade relations;

Avoid distortions to their mutual trade;

Enhance the competitiveness of their firms in global markets;

Increase new employment opportunities and improve the living standards of their people;

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

Preserve their capacity to safeguard the public welfare; and

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

Enter into the following Free Trade Agreement:

## PART ONE. GENERAL PART

### CHAPTER 1. INITIAL PROVISIONS

#### Article 1.01 Establishment of the free trade area

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

2. Unless otherwise provided, this Agreement shall apply bilaterally between Chile and each of the Central American countries considered individually.

3. As established in Article 18.01(4) (Free Trade Commission), the Parties may reduce the periods established in their Tariff Elimination Programme through implementation agreements, protocols of a lower rank or under their domestic law, with the intention of fulfilling the objectives of this Agreement.

#### Article 1.02 Objectives

1. The objectives of this Agreement are to:

- (a) Further develop the free trade zone;
- (b) encourage the expansion and diversification of trade in goods and services among the Parties;
- (c) promote conditions of fair competition in the free trade area;
- (d) eliminate barriers to trade and facilitate the circulation of goods and services in the free trade area;
- (e) promote, protect and substantially increase investments in each Party; and
- (f) establish effective procedures for the application and observance of this Agreement, for its joint administration and for dispute settlement.

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

#### Article 1.03 Observance

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

#### Article 1.04 Relation to other international agreements

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

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

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

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

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

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

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

#### Article 1.05 Successor agreements

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

### CHAPTER 2. GENERAL DEFINITIONS

#### Article 2.01 Definitions of general application

For purposes of this Agreement, unless otherwise specified:

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

Central American country means a country of Central America;

chapter means the first two digits in Harmonized System;

customs duty means any customs or import duty and a charge of any kind imposed in connection with the importation of a good, including any form of surtax or surcharge in connection with such importation, but does not include any:

(a) Charge equivalent to an internal tax imposed consistently with Article III, paragraph 2, of the GATT 1994;

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

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

(d) premium offered or collected on an imported good arising out of any tendering system in respect of the administration of quantitative import restrictions, tariff rate quotas or tariff preference levels;

Commission means the Free Trade Commission established under Article 18.01 (The Free Trade Commission);

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

days means calendar days;

enterprise means any entity constituted or organized under the applicable law of a Party, whether or not for profit, and whether privately-owned or governmentally-owned, including other economic organizations or units constituted or organized under the applicable law of a Party, such as a trust, partnership, sole proprietorship, joint venture or other association, but does not include corporations with bearer stock;

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

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

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

goods means any material, matter, product or part;

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

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

heading means the first four digits in the Harmonized System;

measure includes any law, regulation, provision or practice;

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

originating goods means qualifying under the rules of origin set out in Chapter 4 (Rules of Origin);

Party means a State in which this Agreement has entered into force;

person means a natural person or an enterprise;

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

Secretariat means the Secretariat established under Article 18.03 (The Secretariat);

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

subheading means the first six digits in the Harmonized System;

Tariff Elimination Programme means the programme established in Annex 3.04(2) (Tariff Elimination Programme);

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

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

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

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

## ANNEX 2.01

### COUNTRY-SPECIFIC DEFINITIONS

For purposes of this Agreement, unless otherwise specified:

National means:

(a) With respect to Chile:

(i) A Chilean as defined in Article 10 of the Political Constitution of the Republic of Chile; and

(ii) a person who is a permanent resident under Chilean law;

(b) with respect to Costa Rica:

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

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

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

(c) with respect to El Salvador:

(i) A Salvadoran by birth as defined in Article 90 of the Constitution;

(ii) a Salvadoran by naturalization as defined in Article 92 of the Constitution; and

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

(d) with respect to Guatemala:

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

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

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

(e) with respect to Honduras:

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

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

(f) with respect to Nicaragua, a Nicaraguan as determined in Article 15 of the Political Constitution of the Republic of Nicaragua. Notwithstanding, foreigners with the status of permanent residents as defined in Article 9 of the Immigration Law, Law 153, published in Gazette 80 of 30 April 1993 ("Ley de Migración, Ley No 153, La Gaceta No 80, 30 de abril de 1993"), shall enjoy the benefits, rights and obligations that this Agreement confers on nationals, solely with respect to the application of this Agreement.

## PART TWO. TRADE IN GOODS

### CHAPTER 3. NATIONAL TREATMENT AND MARKET ACCESS FOR GOODS

#### Section A - Definitions, Scope and Coverage

##### Article 3.01 Definitions



For the purposes of this Chapter:

Advertising films means recorded visual media, with or without sound-tracks, consisting essentially of images showing the nature or operation of goods or services offered for sale or lease by a person established or resident in the territory of a Party, provided that the films are of a kind suitable for exhibition to prospective customers but not for broadcast to the general public, and provided that they are imported in packets that each contain no more than one copy of each film and that do not form part of a larger consignment;

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

The descriptions are provided for purposes of reference)

Tariff Classification

Description

Chapters 1 through 24

(Other than a fish or fish product)

Subheading 2905.43

Manitol

Subheading 2905.44

Sorbitol

Heading 33.01

Essential oils

Headings 35.01 to 35.05

Albuminoidal substances, modified starches

Subheading 3809.10

Finishing agents

Subheading 3824.60

Sorbitol, except in subheading 2905.44

Headings 41.01 to 41.03

Hides and skins

Heading 43.01

Raw furskins

Headings 50.01 to 50.03

Raw silk and silk waste

Headings 51.01 to 51.03

Wool and animal hair

Headings 52.01 to 52.03

Raw cotton, cotton waste and cotton carded or combed

Heading 53.01

Raw flax

Heading 53.02

Raw hemp

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

consumed means:

(a) Actually consumed; or

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

export subsidies refer to:

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

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

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

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

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

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

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

(The descriptions are provided for purposes of reference)

Tariff Classification

Description

Chapter 03

Fish and crustaceans, molluscs and other aquatic invertebrates

Heading 05.07

Ivory, tortoise-shell, marine mammals, horns, antlers, shells, hooves, nails, claws and beaks, and products thereof

Heading 05.08

Coral and similar materials

Heading 05.09

Natural sponges of animal origin

Subheading 0511.91

Products of fish or crustaceans, molluscs or other aquatic invertebrates; dead animals of Chapter 3

Heading 15.04

Fats and oils and their fractions, of fish or marine mammals

Heading 16.03

Extracts and juices other than of meat

Heading 16.04

Prepared or preserved fish

Heading 16.05

Prepared or preserved crustaceans, molluscs and other aquatic invertebrates

Subheading 2301.20

Flours, meals, pellets, of fish

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

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

printed advertising materials means those goods classified in Chapter 49 of the Harmonized System, including brochures, pamphlets, leaflets, trade catalogues, yearbooks published by trade associations, tourist promotional materials and posters that are used to promote, publicize or advertise a good or service and are supplied free of charge;

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

temporary admission of goods means temporary admission of goods or temporary importation of goods.

## Article 3.02 Scope and Coverage

This Chapter applies to trade in goods among the Parties.

## Section B - National Treatment

### Article 3.03 National treatment

1. Each Party shall accord national treatment to the goods of another Party in accordance with Article III of the GATT 1994, including its interpretative notes, which are incorporated into and made part of this Agreement.
2. For the purposes of paragraph 1, each Party shall accord the goods of another Party treatment no less favourable than the most favourable treatment accorded by that Party to any like, directly competitive or substitutable goods of national origin.

## Section C - Tariffs

### Article 3.04 Tariff elimination

1. Except as otherwise provided in this Agreement, no Party may increase any existing customs duty, or adopt any new duty, on an originating good.
2. Except as otherwise provided herein, when this Agreement comes into force, each Party shall progressively eliminate its customs duties on all originating goods in accordance with the terms of Annex 3.04 (Tariff Elimination Programme).
3. Paragraph 1 does not prevent a Party from raising a customs duty to a level not greater than the level established in the Tariff Elimination Programme, where that customs duty has previously been unilaterally reduced to a level below the level established in the Tariff Elimination Programme. During the tariff elimination process, the Parties agree to apply to originating goods traded among them the lesser of either the customs duties established under the Tariff Elimination Programme or the applicable rate determined in accordance with Article I of the GATT 1994.
4. On the request of any Party, the Parties shall consult to consider accelerating the elimination of customs duties set out in their Tariff Elimination Programme.
5. An agreement reached on the basis of paragraph 4 to accelerate the elimination of a customs duty on an originating good shall be done in terms of Article 18.01(4) and (5) (Free Trade Commission) and shall prevail over any duty rate or staging category determined pursuant to the Tariff Elimination Programme for that good.
6. Except as provided in Annex 3.04(6), the customs duties on the goods in the Tariff Elimination Programme are established in ad-valorem terms.

7. Paragraphs 1 and 2 are not intended to prevent a Party from maintaining or raising a customs duty that may be permitted under the Understanding or any other agreement that forms part of the WTO Agreement.

#### Article 3.05 Temporary admission of goods

1. Each Party shall grant duty-free temporary admission, including exemption from the fee charged by Chile for the use of this regime specified in Annex 3.05, for:

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

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

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

(d) commercial samples and advertising films;

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

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

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

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

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

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

(e) be capable of identification when exported;

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

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

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

(a) Be imported solely for the solicitation of orders for goods from another Party, regardless of whether they are originating goods, or services provided from the territory of another Party;

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

(c) be capable of identification when exported;

(d) be exported within such periods

beef

bread

brown sugar

cacao

cheese

chicken

coffee

cookies

corn

corn dough

corn flour

corn tortillas

eggs

fish

liquid milk

oat flakes

powered milk

rice

salt

vegetable fat

vegetable oil

wheat flour

white sugar

3. Notwithstanding Article 3.10, Nicaragua may adopt or maintain prohibitions or restrictions on imports of the goods in headings 63.09 and 63.10 (clothing) of the Central American Tariff System.

4. Notwithstanding Article 3.10, Nicaragua may adopt or maintain restrictions on the import of used goods in the following Central American Tariff System classifications.

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

Tariff classification

Description

Heading 40.04

Waste, parings and scrap of unvulcanized rubber, including powders and granules

Subheading 4012.10

Retreaded pneumatic tires

Subheading 4012.20

Used pneumatic tires

Chapters 61 and 62

Used clothing

Chapter 64

Used footwear

Subheading 8414.5



Fans

Heading 84.15

Air conditioning machines, comprising a motor-driven fan and elements for changing the temperature and humidity

Heading 84.18

Refrigerators, freezers and other materials, machines and apparatus for the production of cold, electric or other

Heading 84.50

Laundry-type washing machines, including machines which both wash and dry

Heading 84.70

Calculating machines; accounting machines, postage-franking machines, ticket-issuing machines and similar machines, incorporating a calculating device; cash registers

Heading 84.71

Automatic data processing machines and units thereof; magnetic or optical readers, machines for transcribing data onto data media in coded form

Heading 85.09

Electromechanical domestic appliances with self-contained electric motor

Heading 85.16

Electric water heaters and immersion heaters; electric space heating apparatus and floor heating apparatus; electrothermic hairdressing apparatus; electric flatirons; other electronic domestic appliances; electric heating resistors

Heading 85.19

Turntables, record players, cassette players and other sound reproducing apparatus

Heading 85.21

Video recording or reproducing apparatus

Heading 85.27

Reception apparatus for radiotelephony, radiotelegraphy or radiobroadcasting

#### Heading 85.28

Reception apparatus for television

#### Heading 87.02

Motor vehicles for the transport of ten or more persons, including the driver

#### Heading 87.03

Motor cars and other motor vehicles principally designed for the transport of persons (other than those of heading 87.02), including station wagons and racing cars

#### Heading 87.04

Motor vehicles for the transport of goods

#### Heading 87.05

Special purpose motor vehicles, other than those principally designed for the transport of persons or goods (for example, wagons, service trucks, mobile cranes, fire fighting vehicles, concrete mixers, road sweepers, spraying vehicles, mobile workshops, mobile radiological units)

#### Heading 87.06

Chassis fitted with engines, for the motor vehicles of headings 87.01 to 87.05

#### Heading 87.07

Bodies (including cabs) for the motor vehicles of headings 87.01 to 87.05

#### Heading 87.11

Motorcycles (including mopeds) and cycles fitted with an auxiliary motor, with or without side-cars

#### Heading 90.09

Photocopying apparatus incorporating an optical system or of the contact type and thermocopying apparatus

5. Notwithstanding Article 3.10, Nicaragua may maintain the prohibition on exports of cedar and caoba from the natural forest, as established in Decree No. 30/97 of the Office of the President of the Republic of 5 June 1997 published in Gazette No. 108 of 10 June 1997 ("Decreto N° 30/97 de la Presidencia de la República, 5 de junio de 1997, La Gaceta N° 108, 10 junio 1997") or any equivalent successor legislation.

## ANNEX 3.11(1)

### CUSTOMS PROCESSING FEES

1. The prohibition set out in Article 3.11(1) includes, in the case of Chile, the fees established in:

(a) Article 190 of Law 16.424 ("Ley N° 16.424"); and

(b) Article 62 of Supreme Decree 172 of the Under-Secretariat of Aviation, Official Gazette of 10 April 1974, Regulations on Aeronautic Fees and Taxes ("Decreto Supremo 172 de la Subsecretaría de Aviación, Diario Oficial, 10 abril 1974, Reglamento de Tasas Aeronáuticas e Impuestos").

2. Notwithstanding Article 3.11(1), Honduras may continue applying until 1 January 2003, the fee of 0.5 per cent for customs services established in Decree 85-84 of 31 May 1984 ("Decreto N° 85-84 del 31 de mayo de 1984") and amendments thereto.

3. Notwithstanding Article 3.11(1), Nicaragua may continue applying until 1 January 2006, the fee of 50 centavos of a Central American peso (1 Central American peso is equivalent to US\$1) per gross tonne or part thereof on permanent imports of goods, except non-commercial goods entering by post, in accordance with Article 38, Chapter XX, of Law 257 of 4 June 1997, Law on Tax and Commercial Justice published in Gazette 106 of 6 June 1997 ("Ley N° 257 del 4 de junio de 1997, Ley de Justicia Tributaria y Comercial, La Gaceta N° 106, 6 junio 1997").

## ANNEX 3.11(2)

### CONSULAR FEES

Notwithstanding Article 3.11(2), Nicaragua may continue applying consular fees until 1 July 2006, in accordance with the Law on Consular Fees, Decree 351, published in Gazette 75 of 28 March 1980 ("Ley para Aranceles Consulares, Decreto N° 351. La Gaceta N° 75, 28 marzo 1980"), as described below:

1. Shipments, legalizations, manifests, etc.

Description Consular fee charged

(a) Maritime and air shipments and airmail postal packets, CIF value:

- US\$ 50 to 500 US\$ 20
- US\$ 501 to 1000 US\$ 25
- US\$ 1001 to 10000 US\$ 35
- US\$ 10001 to 100000 US\$ 50

- over US\$ 10,000, for each US\$ 10,000 or part thereof US\$ 50

The foregoing fee includes forwarder's bills of lading, commercial invoices and extra copies if required.

- Regular postal packets valued at over US\$ 10,000 US\$ 35

(b) Legalization of sets of documents US\$ 10

(c) Authentication of the signature of the authority on

any kind of document issued in a country US\$ 25

(d) Letter of correction US\$ 15

(e) Certificates of analysis US\$ 25

(f) Certificates of origin US\$ 25

(g) Cargo manifest US\$ 100

(h) Additional cargo manifest US\$ 25

(i) Ballast declaration US\$ 50

(j) Passenger list US\$ 25

(k) Crew list US\$ 25

(l) List of stores US\$ 25

(ll) Letter of correction of manifests US\$ 25

(m) Certificate covering imports of firearms, explosives, etc. US\$ 50

(n) Health certificate US\$ 25

(o) Certificate that a good is freely sold US\$ 25

(p) Animal health certificate US\$ 25

(q) Health certificate for animal products US\$ 25

2. The following consular fees will be charged by the Nicaraguan customs authorities for approving a set of ballast declarations:

Description Consular fee applied

- (a) Up to 50 tonnes registered US\$ 15
- (b) From 51 tonnes to 100 tonnes registered US\$ 10
- (c) Over 100 tonnes US\$ 20
- (d) Lack of a consular visa on any manifest, including a vessel that is laden or in ballast not exceeding 50 tonnes US\$ 20 (fine)
- (e) lack of a consular visa on any manifest, including a vessel that is laden or in ballast exceeding 50 tonnes US\$ 100 (fine)

#### ANNEX 3.14

#### EXPORT DUTIES

##### For Costa Rica

Article 3.14 shall not apply to Costa Rica for the following goods:

- (a) Bananas, as provided in Law 5515 of 19 April 1974 ("Ley N° 5515 del 19 de abril de 1974") and amendments thereto, Law 5519 of 24 April 1974 ("Ley N° 5519 del 24 de abril de 1974") and amendments thereto and Law 4895 of 16 November 1971 ("Ley N° 4895 del 16 de noviembre de 1971") and amendments thereto or under any equivalent successor legislation;
- (b) coffee, as provided in Law 2762 of 21 June 1961 ("Ley N° 2762 del 21 de junio de 1961") and amendments thereto and Law 5519 of 24 May 1978 ("Ley N° 5519 del 24 de mayo de 1978") and amendments thereto or under any equivalent successor legislation; and
- (c) beef and live cattle, as provided in Law 6247 of 24 May 1978 ("Ley N° 6247 del 24 de mayo de 1978") and amendments thereto and Law 5519 ("Ley N° 5519") and amendments thereto or under any equivalent successor legislation.

##### For Honduras

Article 3.14 shall not apply to Honduras for bananas, with the duty being gradually reduced to US\$0.04 per 40-pound box, in accordance with Decree 131-98 of 20 May 1998 ("Decreto 131-98 del 20 de mayo de 1998").

#### ANNEX 3.16

#### MEMBERS OF THE COMMITTEE ON TRADE IN GOODS

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

(a) For Chile, the Directorate General of International Economic Relations of the Ministry of Foreign Affairs ("Dirección General de Relaciones Económicas Internacionales, Ministerio de Relaciones Exteriores") or its successor;

(b) for Costa Rica, the Ministry of Foreign Trade ("Ministerio de Comercio Exterior") or its successor;

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

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

(e) for Honduras, the Directorate General of Economic Integration and Trade Policy of the Department of Industry and Trade ("Dirección General de Integración Económica y Política Comercial, Secretaría de Industria y Comercio") or its successor; and

(f) for Nicaragua, the Ministry of Development, Industry and Trade ("Ministerio de Fomento, Industria y Comercio") or its successor.

#### CHAPTER 4. RULES OF ORIGIN

##### Article 4.01 Definitions

For the purposes of this Chapter:

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

F.O.B. means free on board, regardless of the mode of transportation, at the port or point of shipment abroad;

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

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

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

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

- (b) vegetable goods harvested in the territory of one or more Parties;
- (c) live animals born and raised in the territory of one or more Parties;
- (d) goods obtained from hunting or fishing in the territory of one or more Parties;
- (e) fish, shellfish and other marine life taken from the sea outside the territorial waters and maritime zones where the Parties exercise jurisdiction by vessels registered or recorded with a Party and flying its flag or vessels leased by companies established in the territory of a Party;
- (f) goods produced on board factory ships from the goods referred to in subparagraph (e), provided such factory ships are registered or recorded with that Party and fly its flag or on factory ships leased by companies established in the territory of a Party;
- (g) goods taken by a Party or a person of a Party from the seabed or marine subsoil outside territorial waters, provided that a Party has rights to exploit such seabed or marine subsoil;
- (h) waste and scrap derived from:
  - (i) Production in the territory of one or more Parties; or
  - (ii) used goods collected in the territory of one or more Parties, provided such goods are fit only for the recovery of raw materials; or
  - (iii) goods produced in the territory of one or more Parties exclusively from goods referred to in subparagraphs (a) through (h), or from their derivatives, at any stage of production;

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

- (a) Fuel, energy, catalysts and solvents;
- (b) equipment, devices, and supplies used for testing or inspecting the goods;
- (c) gloves, glasses, footwear, clothing, safety equipment and supplies;
- (d) tools, dies and moulds;
- (e) spare parts and materials used in the maintenance of equipment and buildings;
- (f) lubricants, greases, compounding materials and other materials used in production or to operate equipment and buildings; and

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

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

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

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

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, adjusted in accordance with the principles of Article 1 and paragraphs 1, 3 and 4 of Article 8 of the Customs Valuation Agreement, regardless of whether the good is sold for export. For the purposes of this definition, the vendor referred to in the Customs Valuation Agreement shall be the producer of the good;

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, adjusted in accordance with the principles of Article 1 and paragraphs 1, 3 and 4 of Article 8 of the Customs Valuation Agreement, regardless of whether the material is sold for export. For the purposes of this definition, the vendor referred to in the Customs Valuation Agreement shall be the supplier of the material and the buyer referred to in the Customs Valuation Agreement shall be the producer of the good; and

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

#### Article 4.02 Instruments of application and interpretation

##### 1. For the purposes of this Chapter:

- (a) The basis for tariff classification of goods is the Harmonized System; and
- (b) the value of a good or material shall be determined on the basis of the principles of the Customs Valuation Agreement.

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

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



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

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

4. In cases where there is no specific rule of origin common to all the Parties for a good, the rules of origin of this Chapter shall apply only between the exporting Party and the importing Party, considering the other Parties that do not have that specific common rule of origin as non-Party countries.

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

6. Notwithstanding paragraph 5, if the Central American countries accord the treatment referred to in Article 4.02(5) to a non-Party country before they accord it to Chile, they shall accord treatment no less favourable to goods of Chilean origin.

#### Article 4.03 Originating goods

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

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

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

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

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

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

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

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

provided that the regional value content of the good, determined in accordance with Article 4.07, is not less than 30 per cent and the good satisfies all other applicable requirements of this Chapter, unless the applicable rule of Annex 4.03 under which it is classified specifies a different regional value content requirement, in which case that requirement is to be applied. The provisions of this subparagraph do not apply to the goods included in Chapters 61 to 63 of the Harmonized System.

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

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

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

#### Article 4.04 Minimum operations or processes

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

- (a) Airing, ventilating, drying, refrigeration, freezing;
- (b) cleaning, washing, sifting, screening, selection, classification or grading, thinning;
- (c) peeling, husking, shelling, boning, squeezing, macerating;
- (d) dusting, removal of damaged parts, oiling, painting to prevent rust or provide protective covering;
- (e) testing or calibrating, division of bulk shipments, grouping into packets, application of marks, labels or distinguishing signs on products or their packages;
- (f) packing, unpacking or repacking;
- (g) dilution with water or another aqueous solution, ionization and salting;

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

(i) slaughtering animals.

#### Article 4.05 Indirect materials

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

#### Article 4.06 Accumulation

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

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

#### Article 4.07 Regional value content

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

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

where:

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

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

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

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

3. Where origin is determined on the basis of the regional value content method, the required percentage shall be specified in Annex 4.03.
4. All the costs considered in calculating the regional value content shall be recorded and maintained in accordance with the Generally Accepted Accounting Principles applicable in the territory of the Party in which the good is produced.
5. Where the producer of a good buys a non-originating material in the territory of the Party where the producer is located, the value of the non-originating material shall not include freight, insurance, packing or any other cost incurred in transporting the material from the warehouse of the supplier to the location of the producer.
6. To calculate the regional value content, the value of the non-originating materials used in the production of a good shall not include the value of the non-originating materials used in the production of an originating material bought and used in the production of that good.

#### Article 4.08 De minimis

1. A good that does not undergo a change in tariff classification as established in Annex 4.03 shall be considered to be an originating good if the value of all non-originating materials used in the production of the good that do not undergo a change in tariff classification is not more than eight per cent of the value of the good calculated on the basis of Article 4.07.
2. For goods classified in Chapters 50 to 63 of the Harmonized System, the percentage established in paragraph 1 refers to the weight of the fibres and yarns compared to the weight of the good produced.
3. Paragraph 1 does not apply to a non-originating material used in the production of a good provided for in Chapters 1 to 27 of the Harmonized System unless the non-originating material is provided for in a different subheading than the good for which origin is being determined under this Article.

#### Article 4.09 Fungible goods

1. Where originating and non-originating fungible goods are used in the preparation or production of a good, the origin of that good may be determined by applying one of the following inventory-management methods, at the choice of the producer:
  - (a) First-in-first-out (FIFO);
  - (b) last-in-first-out (LIFO); or
  - (c) method of averages.
2. Where originating and non-originating fungible goods are physically commingled in the inventory and do not undergo any productive process or any other operation in the

territory of the Party in which they were physically commingled, other than unloading, reloading or any other movement necessary to maintain the goods in good condition or ship them to the territory of another Party, the origin of the good may be determined on the basis of one of the inventory management methods.

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

#### Article 4.10 Sets and assortments of goods

1. Sets and assortments of goods classified as provided in Rule 3 of the General Rules of Interpretation of the Harmonized System and goods whose description under the nomenclature of the Harmonized System is specifically that of a set or assortment shall qualify as originating, provided that each of the goods in the set or assortment complies with the rules of origin established in this Chapter and in Annex 4.03.

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

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

#### Article 4.11 Accessories, spare parts and tools

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

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

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

2. If the good is subject to a regional value content requirement, the value of the accessories, spare parts or tools shall be taken into account as originating or non-originating materials, as the case may be, in calculating the regional value content of the good.

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

#### Article 4.12 Packaging materials and containers in which a good is packaged for retail sale

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

2. If the good is subject to a regional value content requirement, the value of such packaging materials and containers shall be taken into account as originating or non-originating materials, as the case may be, in calculating the regional value content of the good.

#### Article 4.13 Packing materials and containers for shipment

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

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

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

#### Article 4.14 Direct transshipment and shipment and international transit

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

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

(b) it is not destined for trade or use in the country or countries of transit;

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

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

2. Otherwise, the good shall lose its originating status.

#### ANNEX 4.03

#### SPECIFIC RULES OF ORIGIN

##### Section A - General Interpretative Note

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

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

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

Section B - Specific Rules of Origin Applicable Between Chile and Costa Rica,

El Salvador, Guatemala, Honduras and Nicaragua

Section I. Live Animals and Animal Products

Chapter 01 Live animals

01.01 - 01.05 The animals in this heading shall originate in the country of birth and rearing;

or a change to heading 01.01 through 01.05 from any other chapter.

01.06 The animals in this heading shall originate in the country of birth and/or

Rearing or capture; or a change to heading 01.06 from any other chapter.

Chapter 02 Meat and edible offal

02.01 - 02.10 The products in this heading shall originate in the country of birth and rearing of the animal.

Chapter 03 Fish and crustaceans, molluscs and other aquatic invertebrates

03.01 - 03.04 A change to heading 03.01 through 03.04 from any other chapter, with the import of fry permitted.

03.06 - 03.07 The products in this heading shall originate in the country where the crustacean, mollusc or other aquatic invertebrate was caught or from the raising of larvae; or a change to heading 03.06 through 03.07 from any other chapter, with the import of larvae and fry permitted.

Chapter 04 Milk and dairy produce; birds' eggs; natural honey; edible products of animal origin, not elsewhere specified or included

04.01 - 04.02 The products in this heading shall originate in the country where the milk was obtained in natural or unprocessed state; or a change to heading 04.01 through 04.02, from any other chapter except subheading 1901.90.

04.07 - 04.10 The products in this heading shall originate in the country where the eggs, natural or unprocessed honey and other products of animal origin not elsewhere specified or included were obtained; or a change to heading 04.07 through 04.10 from any other chapter.

Chapter 05 Products of animal origin, not elsewhere specified or included

05.01 - 05.11 A change to heading 05.01 through 05.11 from any other chapter.

## Section II. Vegetable Products

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

Chapter 06 Live plants and floriculture products

06.01 - 06.04 The products in this heading shall originate in the country where they were

grown or reproduced; or a change to heading 06.01 through 06.04 from any other chapter.

Chapter 07 Edible vegetables, plants, roots and tubers

07.01 - 07.14 The products in this heading shall originate in the country where they were

grown in their natural or unprocessed state; or a change to heading 07.01

from any other chapter.

Chapter 08 Edible fruit and nuts; peel of citrus fruit or melons

08.01 - 08.14 The products in this heading shall originate in the country where they were

grown; or a change to heading 08.01 through 08.14 from any other chapter.



## Chapter 09 Coffee, tea, maté and spices

09.01 The products in this heading shall originate in the country where the plant was grown and where the product was obtained; or a change to heading 09.01 from any other chapter.

09.02 No change in tariff classification is required provided the regional value content is not less than 30%.

09.03 The products in this heading shall originate in the country where the plant was grown and where the product was obtained; or a change to heading 09.03 from any other chapter.

0904.20 The products in this subheading shall originate in the country where the plant was grown and where the product was obtained; or a change to subheading 0904.20 from any other chapter, except subheading 0709.60.

09.05 The products in this heading shall originate in the country where the plant was grown and where the product was obtained; or a change to heading 09.05 from any other chapter.

09.07 - 09.09 The products in this heading shall originate in the country where the plant was grown and where the product was obtained; or a change to heading 09.07 through 09.09 from any other chapter.

## Chapter 10 Cereals

10.01 - 10.08 The products in this heading shall originate in the country where they were grown; or a change to heading 10.01 through 10.08 from any other chapter.

## Chapter 11 Products of the milling industry; malt; starches; inulin; wheat gluten

11.01 - 11.03 A change to heading 11.01 through 11.03 from any other chapter.

1108.11 A change to subheading 1108.11 from any other heading.

1108.19 - 1108.20 A change to subheading 1108.19 through 1108.20 from any other heading.

Chapter 12 Oil seeds and oleaginous fruits; miscellaneous seeds and fruit;  
industrial or medicinal plants; straw and fodder

12.01 - 12.07 The products in this heading shall originate in the country where they were

grown; or a change to heading 12.01 through 12.07 from any other chapter.

12.09 - 12.14 The products in this heading shall originate in the country where they were

grown; or a change to heading 12.09 through 12.14 from any other chapter.

Chapter 13 Gums, resins and other vegetable saps and extracts

13.01 - 13.02 The products in this heading shall originate in the country where they were obtained by extraction, exudation or incision; or a change to heading

13.01 through 13.02 from any other chapter.

Chapter 14 Vegetable plaiting materials; vegetable products not elsewhere specified or included

14.01 - 14.04 The products in this heading shall originate in the country where they were

grown; or a change to heading 14.01 through 14.04 from any other chapter.

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

Chapter 16 Preparations of meat, of fish or of crustaceans, molluscs or other aquatic invertebrates

16.03 - 16.05 A change to heading 16.03 through 16.05 from any other chapter.

Chapter 17 Sugars and sugar confectionery

17.01 - 17.03 A change to heading 17.01 through 17.03 from any other chapter.

## Chapter 18 Cocoa and cocoa preparations

18.01 - 18.02 The products in this heading shall originate in the country where they were

grown; or a change to heading 18.01 a 18.02 from any other chapter.

## Chapter 21 Miscellaneous edible preparations

2101.20 - 2101.30 A change to subheading 2101.20 through 2101.30 from any other heading.

2102.20 - 2103.20 A change to subheading 2102.20 through 2103.20 from any other heading.

2103.90 A change to subheading 2103.90 from any other heading.

21.04 A change to heading 21.04 from any other heading.

## Chapter 22 Beverages, spirits and vinegar

22.01 The products in this heading shall originate in the country where water, ice and snow are obtained in a natural state; or a change to heading 22.01 from any other chapter.

22.03 - 22.06 A change to heading 22.03 through 22.06 from any other chapter.

## Chapter 24 Tobacco and manufactured tobacco substitutes

24.01 A change to heading 24.01 from any other chapter.

## Section V. Mineral Products

Chapter 25 Salt; sulphur; earths and stone; plastering materials, lime and cement

25.01 - 25.30 A change to heading 25.01 through 25.30 from any other chapter.

## Chapter 26 Ores, slag and ash

26.01 - 26.21 A change to heading 26.01 through 26.21 from any other heading.

## Chapter 27 Mineral fuels, mineral oils and products of their distillation;

bituminous substances; mineral waxes

Note to heading 27.15 For heading 27.15, the deliberate and proportionately controlled mixture of materials (other than simple dilution with water) following pre-determined specifications that result in a product that possesses physical or chemical characteristics that are relevant for a different purpose or use than the initial materials, is considered to have undergone a substantial transformation.

27.01 - 27.09 A change to heading 27.01 through 27.09 from any other chapter.

27.10 - 27.15 A change to heading 27.10 through 27.15 from any other heading.

27.16 This product originates in the country where the electric power is generated; or a change to heading 27.16 from any other heading.

## Section VI. Products of the chemical or allied industries

### Notes to Section VI:

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

- (a) Dilution in water or other solvents;
- (b) the removal of solvents, including dissolved water; and
- (c) the addition or removal of crystallization water.

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

- (a) Pharmaceutical substances or food products that comply with national standards or the international pharmacopoeia;
- (b) reagents for chemical analysis or for laboratory use;
- (c) elements and components for use in microelectronics;
- (d) different optical applications; and
- (e) human or veterinary use.

Chapter 28 Inorganic chemicals; organic or inorganic compounds of precious metals, of radioactive elements, of rare-earth metals or of isotopes

### Notes to Chapter 28:

1. Standard solution: "standard solutions" are preparations apt for analytical use, testing or reference, with degrees of purity or proportions guaranteed by the manufacturer.

The preparation of standard solutions confers origin.

2. Separation of isomers: the isolation or separation of isomers from a mixture of isomers confers origin.

2801.10 - 2851.00 A change to subheading 2801.10 through 2851.00 from any other subheading.

## Chapter 29 Organic chemicals

### Notes to Chapter 29:

1. Standard solution: "standard solutions" are preparations apt for analytical use, testing or reference, with degrees of purity or proportions guaranteed by the manufacturer.

The preparation of standard solutions confers origin.

2. Separation of isomers: the isolation or separation of isomers from a mixture of isomers confers origin.

2901.10 - 2942.00 A change to subheading 2901.10 through 2942.00 from any other subheading.

## Chapter 31 Fertilizers

31.01 A change to heading 31.01 from any other heading.

## Chapter 32 Tanning or dyeing extracts; tannins and their derivatives;

pigments and other colouring matter; paints and varnishes; putty; inks

### Notes to Chapter 32:

1. Standard solution: "standard solutions" are preparations apt for analytical use, testing or reference, with degrees of purity or proportions guaranteed by the manufacturer.

The preparation of standard solutions confers origin.

2. Separation of isomers: the isolation or separation of isomers from a mixture of isomers confers origin.

32.03 A change to heading 32.03 from any other heading.

32.05 A change to heading 32.05 from any other heading.

32.11 A change to heading 32.11 from any other heading.

3213.90 A change to subheading 3213.90 from any other heading.

32.15 A change to heading 32.15 from any other heading.

Chapter 33 Essential oils and resinoids; perfumery, cosmetic or toilet preparations

Notes to Chapter 33: Separation of isomers: the isolation or separation of isomers from a mixture of isomers confers origin.

33.03 - 33.07 A change to heading 33.03 through 33.07 from any other heading.

Chapter 34

Soap, organic surface-active agents, washing preparations, lubricating preparations, artificial waxes, prepared waxes, polishing or scouring preparations, candles and similar articles, modelling pastes, "dental waxes" and dental preparations with a basis of plaster

34.01

A change to heading 34.01 from any other heading.

34.03-34.07

A change to heading 34.03 through 34.07 from any other heading.

Chapter 35 Albuminoidal substances; modified starches; glues; enzymes

35.01 - 35.07 A change to heading 35.01 through 35.07 from any other heading.

Chapter 36 Explosives; pyrotechnic products; matches; pyrophoric alloys; combustible materials

36.01 - 36.06 A change to heading 36.01 through 36.06 from any other heading.

Chapter 37 Photographic or cinematographic goods

37.01 - 37.07 A change to heading 37.01 through 37.07 from any other heading.

Chapter 38 Miscellaneous chemical products

38.01 - 38.23 A change to heading 38.01 through 38.23 from any other heading.

3824.10 - 3824.90 A change to subheading 3824.10 through 3824.90 from any other subheading.

## Section VII. Plastics and Articles Thereof; Rubber and Articles Thereof

### Chapter 40 Rubber and articles thereof

40.01 The products in this heading shall originate in the country where they are obtained in their natural state.

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

## Section VIII. Raw Hides and Skins, Leather, Furskins and Articles Thereof; Saddlery and Harness; Travel Goods, Handbags and Similar Containers; Articles of Animal Gut

### Chapter 41 Raw hides and skins (other than furskins) and leather

41.01 - 41.03 A change to heading 41.01 through 41.03 from any other chapter.

41.04 - 41.07 A change to heading 41.04 through 41.07 from any other heading, including

a change from wet blue hides and skins to tanned hides and skins.

### Chapter 42 Articles of leather; saddlery and harness; travel goods, handbags and similar containers; articles of animal gut

42.01 - 42.06 A change to heading 42.01 through 42.06 from any other heading, provided

the products are cut to shape or fully assembled in one of the Parties

### Chapter 43 Furskins and artificial fur; manufactures thereof

43.01 - 43.04 A change to heading 43.01 through 43.04 from any other heading.

## Section IX. Wood and Articles of Wood; Wood Charcoal; Cork and Articles of Cork; Manufactures of Esparto or Basketware

### Chapter 45 Cork and articles of cork

45.01 - 45.04 A change to heading 45.01 through 45.04 from any other heading.

### Chapter 46 Manufactures of esparto or basketware

46.01 - 46.02 A change to heading 46.01 through 46.02 from any other heading.

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

Chapter 47 Pulp of wood or of other fibrous cellulosic material; paper or paperboard for recycling (waste and scrap)

47.01 - 47.07 A change to heading 47.01 through 47.07 from any other heading.

Chapter 48 Paper and paperboard; articles of paper pulp, of paper or of paperboard

48.01 - 48.09 A change to heading 48.01 through 48.09 from any other heading.

48.12 - 48.15 A change to heading 48.12 through 48.15 from any other heading.

48.16 A change to heading 48.16 from any other heading, except from  
heading 48.09.

48.17 A change to heading 48.17 from any other heading.

4818.10 - 4818.30 A change to subheading 4818.10 through 4818.30 from any other heading,

except from heading 48.03.

4818.40 - 4818.90 A change to subheading 4818.40 through 4818.90 from any other heading.

48.19 A change to heading 48.19 from any other heading.

4820.10 - 4820.30 A change to subheading 4820.10 through 4820.30 from any other heading.

4820.40 A change to subheading 4820.40 from any other heading, except from  
subheading 4811.90.

4820.50 - 4823.40 A change to subheading 4820.50 through 4823.40 from any other heading.

4823.51 A change to subheading 4823.51 from any other heading, except from  
subheading 4811.90.



4823.59 - 4823.90 A change to subheading 4823.59 through 4823.90 from any other heading.

Chapter 49 Printed books, newspapers, pictures and other products of the printing industry; manuscripts, typescripts and plans

49.01 - 49.11 A change to heading 49.01 through 49.11 from any other chapter.

Section XI. Textiles and Textile Articles

Chapter 50 Silk

50.01 - 50.03 A change to heading 50.01 through 50.03 from any other heading.

50.07 A change to heading 50.07 from any other heading.

Chapter 51 Wool, Fine or Coarse Animal Hair; Horsehair Yarn and Woven Fabric

51.01 - 51.05 A change to heading 51.01 through 51.05 from any other heading.

Chapter 52 Cotton

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

Chapter 53 Other vegetable textile fibres; paper yarn and woven fabrics of paper yarn

53.01 - 53.08 A change to heading 53.01 through 53.08 from any other heading.

Chapter 55 Man-made staple fibres

55.01 - 55.07 A change to heading 55.01 through 55.07 from any other heading.

55.09 - 55.10 A change to heading 55.09 through 55.10 from any other heading.

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

Chapter 65 Hats and other headgear and parts thereof

65.01 - 65.07 A change to heading 65.01 through 65.07 from any other heading.

Chapter 66 Umbrellas, sun umbrellas, walking-sticks, seat-sticks, whips, riding-crops and parts thereof

66.01 - 66.03 A change to heading 66.01 through 66.03 from any other heading.

Chapter 67 Prepared feathers and down and articles made of feathers or of down; artificial flowers; articles of human hair

67.01 - 67.04 A change to heading 67.01 through 67.04 from any other heading.

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

Chapter 68 Articles of stone, plaster, cement, asbestos, mica or similar materials

68.01 - 68.11 A change to heading 68.01 through 68.11 from any other chapter.

6812.10 A change to subheading 6812.10 from any other heading.

6812.20 - 6812.90 A change to subheading 6812.20 through 6812.90 from any other subheading.

68.13 - 68.15 A change to heading 68.13 through 68.15 from any other heading.

Chapter 69 Ceramic products

69.01 - 69.14 A change to heading 69.01 through 69.14 from any other heading.

Chapter 70 Glass and glassware

70.01 - 70.18 A change to heading 70.01 through 70.18 from any other heading.

70.19 A change to heading 70.19 from any other subheading.

70.20 A change to heading 70.20 from any other heading.

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

Chapter 71 Natural or cultured pearls, precious or semi-precious stones, precious metals, metals clad with precious metal, and articles thereof;  
imitation jewellery; coin

71.01 - 71.18 A change to heading 71.01 through 71.18 from any other heading.

Section XV. Base Metals and Articles of Base Metal

Chapter 72 Iron and steel

72.01 - 72.07 A change to heading 72.01 through 72.07 from any other heading.

72.10 - 72.11 A change to heading 72.10 through 72.11 from any other heading.

72.16 A change to heading 72.16 from any other heading.

7217.10 A change to subheading 7217.10 from any other heading.

72.18 - 72.29 A change to heading 72.18 through 72.29 from any other heading.

#### Chapter 73 Articles of iron and steel

73.01 - 73.06 A change to heading 73.01 through 73.06 from any other chapter.

73.07 A change to heading 73.07 from any other heading.

73.09 - 73.14 A change to heading 73.09 through 73.14 from any other heading.

73.16 - 73.20 A change to heading 73.16 through 73.20 from any other heading.

73.22 - 73.23 A change to heading 73.22 through 73.23 from any other heading.

73.25 - 73.26 A change to heading 73.25 through 73.26 from any other heading.

#### Chapter 74 Copper and articles thereof

74.01 - 74.19 A change to heading 74.01 through 74.19 from any other heading.

#### Chapter 75 Nickel and articles thereof

75.01 - 75.08 A change to heading 75.01 through 75.08 from any other heading.

#### Chapter 76 Aluminium and articles thereof

76.01 - 76.06 A change to heading 76.01 through 76.06 from any other heading.

76.08 - 76.09 A change to heading 76.08 through 76.09 from any other heading.

76.11 - 76.16 A change to heading 76.11 through 76.16 from any other heading.

#### Chapter 78 Lead and articles thereof

78.01 - 78.05 A change to heading 78.01 through 78.05 from any other heading.

#### Chapter 79 Zinc and articles thereof

79.01 - 79.03 A change to heading 79.01 through 79.03 from any other heading.

79.05 - 79.06 A change to heading 79.05 through 79.06 from any other heading.

## Chapter 80 Tin and articles thereof

80.01 - 80.02 A change to heading 80.01 through 80.02 from any other heading.

80.04 - 80.07 A change to heading 80.04 through 80.07 from any other heading.

## Chapter 81 Other base metals; cermets; articles thereof

8101.10 - 8113.00 A change to subheading 8101.10 through 8113.00 from any other subheading.

## Chapter 82 Tools, implements, cutlery, spoons and forks, of base metal; parts thereof of base metal

82.01 - 82.10 A change to heading 82.01 through 82.10 from any other heading.

82.11 - 82.12 A change to heading 82.11 through 82.12 from any other heading, even blanks.

82.13 - 82.15 A change to heading 82.13 through 82.15 from any other heading.

## Chapter 83 Miscellaneous articles of base metal

83.02 - 83.04 A change to heading 83.02 through 83.04 from any other heading.

83.06 - 83.07 A change to heading 83.06 through 83.07 from any other heading.

83.09 - 83.10 A change to heading 83.09 through 83.10 from any other heading.

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

### Chapter 84 Nuclear reactors, boilers, machinery and mechanical appliances; parts thereof

8401.10 - 8401.30 A change to subheading 8401.10 through 8401.30 from any other heading; or

a change to subheading 8401.10 through 8401.30 from any other subheading

complying with a regional value content of not less than 30%.

8401.40 A change to subheading 8401.40 from any other heading.

8402.11 - 8402.20 A change to subheading 8402.11 through 8402.20 from any other heading; or

a change to subheading 8402.11 through 8402.20 from any other subheading complying with a regional value content of not less than 30%.

8402.90 A change to subheading 8402.90 from any other heading.

8403.10 A change to subheading 8403.10 from any other heading; or a change to subheading 8403.10 from any other subheading complying with a regional value content of not less than 30%.

8403.90 A change to subheading 8403.90 from any other heading.

8404.10 - 8404.20 A change to subheading 8404.10 through 8404.20 from any other heading; or

a change to subheading 8404.10 through 8404.20 from any other subheading complying with a regional value content of not less than 30%.

8404.90 A change to subheading 8404.90 from any other heading.

8405.10 A change to subheading 8405.10 from any other heading; or a change to subheading 8405.10 from any other subheading complying with a regional value content of not less than 30%.

8405.90 A change to subheading 8405.90 from any other heading.

8406.10 - 8406.82 A change to subheading 8406.10 through 8406.82 from any other heading; or

a change to subheading 8406.10 through 8406.82 from any other subheading complying with a regional value content of not less than 30%.

8406.90 A change to subheading 8406.90 from any other heading.

84.07 - 84.08 A change to heading 84.07 through 84.08 from any other chapter; or a change to heading 84.07 through 84.08 from any other heading complying with a regional value content of not less than 30%.

84.09 A change to heading 84.09 from any other heading.

84.10 - 84.11 A change to heading 84.10 through 84.11 from any other subheading.

8412.10 - 8412.80 A change to subheading 8412.10 through 8412.80 from any other heading; or

a change to subheading 8412.10 through 8412.80 from any other subheading

complying with a regional value content of not less than 30%.

8412.90 A change to subheading 8412.90 from any other heading.

8413.11 - 8413.82 A change to subheading 8413.11 through 8413.82 from any other heading; or

a change to subheading 8413.11 through 8413.82 from any other subheading

complying with a regional value content of not less than 30%.

8413.91 - 8413.92 A change to subheading 8413.91 through 8413.92 from any other heading.

84.14 A change to heading 84.14 from any other heading; or a change to

heading 84.14 from any other subheading complying with a regional

content value of not less than 30%.

8415.10 - 8415.83 A change to subheading 8415.10 through 8415.83 from any other heading; or

a change to subheading 8415.10 through 8415.83 from any other subheading

complying with a regional value content of not less than 30%.

8415.90 A change to subheading 8415.90 from any other heading.

8416.10 - 8416.30 A change to subheading 8416.10 through 8416.30 from any other heading; or

a change to subheading 8416.10 through 8416.30 from any other subheading

complying with a regional value content of not less than 30%.

8416.90 A change to subheading 8416.90 from any other heading.

84.17 A change to heading 84.17 from any other subheading.

8418.10 - 8418.40 A change to subheading 8418.10 through 8418.40 from any other subheading

outside the group, except from subheading 8418.91.

8418.50 A change to subheading 8418.50 from any other subheading

complying with a regional value content of not less than 30%.

8418.61 - 8418.69 A change to subheading 8418.61 through 8418.69 from any other subheading

outside the group, except subheading 8418.91.

8418.91 - 8418.99 A change to subheading 8418.91 through 8418.99 from any other heading.

8419.11 - 8419.89 A change to subheading 8419.11 through 8419.89 from any other heading; or

a change to subheading 8419.11 through 8419.89 from any other

subheading complying with a regional value content of not less than 30%.

8419.90 A change to subheading 8419.90 from any other heading.

8420.10 A change to subheading 8420.10 from any other heading; or a change

to subheading 8420.10 from any other subheading complying with a

regional value content of not less than 30%.

8420.91 - 8420.99 A change to subheading 8420.91 through 8420.99 from any other heading.

8422.11 - 8422.40 A change to subheading 8422.11 through 8422.40 from any other heading; or

a change to subheading 8422.11 through 8422.40 from any other subheading

complying with a regional value content of not less than 30%.

8422.90 A change to subheading 8422.90 from any other heading.

84.23 A change to heading 84.23 from any other heading.

84.25 - 84.30 A change to heading 84.25 through 84.30 from any other chapter; or  
a change to heading 84.25 through 84.30 from any other heading complying  
with a regional value content of not less than 30%.

84.31 A change to heading 84.31 from any other heading.

8433.11 - 8433.90 A change to subheading 8433.11 through 8433.90 from any other  
subheading.

8434.10 - 8434.20 A change to subheading 8434.10 through 8434.20 from any other  
heading; or

a change to subheading 8434.10 through 8434.20 from any other subheading  
complying with a regional value content of not less than 30%.

8434.90 A change to subheading 8434.90 from any other heading.

8435.10 A change to subheading 8435.10 from any other heading; or a change  
to subheading 8435.10 from any other subheading complying with a  
regional value content of not less than 30 %.

8435.90 A change to subheading 8435.90 from any other heading.

8436.10 - 8436.80 A change to subheading 8436.10 through 8436.80 from any other  
heading; or

a change to subheading 8436.10 through 8436.80 from any other subheading  
complying with a regional value content of not less than 30%.

8436.91 - 8436.99 A change to subheading 8436.91 through 8436.99 from any other  
heading.

84.37 A change to heading 84.37 from any other subheading.

8438.10 - 8438.80 A change to subheading 8438.10 through 8438.80 from any other  
heading; or

a change to subheading 8438.10 through 8438.80 from any other subheading  
complying with a regional value content of not less than 30%.



8438.90 A change to subheading 8438.90 from any other heading.

8439.10 - 8439.30 A change to subheading 8439.10 through 8439.30 from any other heading; or

a change to subheading 8439.10 through 8439.30 from any other

subheading complying with a regional value content of not less than 30%.

8439.91 - 8439.99 A change to subheading 8439.91 through 8439.99 from any other heading.

8440.10 A change to subheading 8440.10 from any other heading; or a change

to subheading 8440.10 from any other subheading complying with a

regional value content of not less than 30%.

8440.90 A change to subheading 8440.90 from any other heading.

8441.10 - 8441.80 A change to subheading 8441.10 through 8441.80 from any other heading; or

a change to subheading 8441.10 through 8441.80 from any other

subheading complying with a regional value content of not less than 30%.

8441.90 A change to subheading 8441.90 from any other heading.

8442.10 - 8442.30 A change to subheading 8442.10 through 8442.30 from any other heading; or

a change to subheading 8442.10 through 8442.30 from any other

subheading complying with a regional value content of not less than 30%.

8442.40 - 8442.50 A change to subheading 8442.40 through 8442.50 from any other heading.

8443.11 - 8443.60 A change to subheading 8443.11 through 8443.60 from any other heading; or

a change to subheading 8443.11 through 8443.60 from any other subheading

complying with a regional value content of not less than 30%.

8443.90 A change to subheading 8443.90 from any other heading.

84.44 - 84.47 A change to heading 84.44 through 84.47 from any other chapter; or  
a change to heading 84.44 through 84.47 from any other heading complying  
with a regional value content of not less than 30%.

84.48 - 84.49 A change to heading 84.48 through 84.49 from any other heading.

8450.11 - 8450.20 A change to subheading 8450.11 through 8450.20 from any other  
heading; or

a change to subheading 8450.11 through 8450.20 from any other subheading  
complying with a regional value content of not less than 30%.

8450.90 A change to subheading 8450.90 from any other heading.

8451.10 - 8451.80 A change to subheading 8451.10 through 8451.80 from any other  
heading; or

a change to subheading 8451.10 through 8451.80 from any other subheading  
complying with a regional value content of not less than 30%.

8451.90 A change to subheading 8451.90 from any other heading.

8452.10 - 8452.40 A change to subheading 8452.10 through 8452.40 from any other  
heading; or

a change to subheading 8452.10 through 8452.40 from any other subheading  
complying with a regional value content of not less than 30%.

8452.90 A change to subheading 8452.90 from any other heading.

8453.10 - 8453.80 A change to subheading 8453.10 through 8453.80 from any other  
heading; or

a change to subheading 8453.10 through 8453.80 from any other subheading  
complying with a regional value content of not less than 30%.

8453.90 A change to subheading 8453.90 from any other heading.

8454.10 - 8454.30 A change to subheading 8454.10 through 8454.30 from any other  
heading; or

a change to subheading 8454.10 through 8454.30 from any other subheading

complying with a regional value content of not less than 30%.

8454.90 A change to subheading 8454.90 from any other heading.

8455.10 - 8455.30 A change to subheading 8455.10 through 8455.30 from any other heading; or

a change to subheading 8455.10 through 8455.30 from any other subheading

complying with a regional value content of not less than 30%.

8455.90 A change to subheading 8455.90 from any other heading.

84.56 - 84.65 A change to heading 84.56 through 84.65 from any other chapter; or

a change to heading 84.56 through 84.65 from any other heading complying

with a regional value content of not less than 30%.

84.66 A change to heading 84.66 from any other heading.

8467.11 - 8467.89 A change to subheading 8467.11 through 8467.89 from any other heading; or

a change to subheading 8467.11 through 8467.89 from any other subheading

complying with a regional value content of not less than 30%.

8467.91 - 8467.99 A change to subheading 8467.91 through 8467.99 from any other heading.

8468.10 - 8468.80 A change to subheading 8468.10 through 8468.80 from any other heading; or

a change to subheading 8468.10 through 8468.80 from any other subheading

complying with a regional value content of not less than 30%.

8468.90 A change to subheading 8468.90 from any other heading.

84.69 - 84.70 A change to heading 84.69 through 84.70 from any other chapter; or

a change to heading 84.69 through 84.70 from any other heading complying

with a regional value content of not less than 30%.

84.71 A change to heading 84.71 from any other heading.

84.72 A change to heading 84.72 from any other chapter; or a change to heading 84.72 from any other heading complying with a regional content value of not less than 30%.

8473.10 - 8473.29 A change to subheading 8473.10 through 8473.29 from any other heading.

8473.40 - 8473.50 A change to subheading 8473.40 through 8473.50 from any other heading.

8474.10 - 8474.80 A change to subheading 8474.10 through 8474.80 from any other heading; or

a change to subheading 8474.10 through 8474.80 from any other subheading complying with a regional value content of not less than 30%.

8474.90 A change to subheading 8474.90 from any other heading.

8475.10 - 8475.29 A change to subheading 8475.10 through 8475.29 from any other heading; or

a change to subheading 8475.10 through 8475.29 from any other subheading complying with a regional value content of not less than 30%.

8475.90 A change to subheading 8475.90 from any other heading.

8476.21 - 8476.89 A change to subheading 8476.21 through 8476.89 from any other subheading, except the furniture in subheading 8476.90.

8476.90 A change to subheading 8476.90 from any other heading.

8477.10 - 8477.80 A change to subheading 8477.10 through 8477.80 from any other heading; or

a change to subheading 8477.10 through 8477.80 from any other subheading complying with a regional value content of not less than 30%.

8477.90 A change to subheading 8477.90 from any other heading.

8478.10 A change to subheading 8478.10 from any other heading; or a change

to subheading 8478.10 from any other subheading complying with a regional value content of not less than 30%.

8478.90 A change to subheading 8478.90 from any other heading.

8479.10 - 8479.89 A change to subheading 8479.10 through 8479.89 from any other heading; or

a change to subheading 8479.10 through 8479.89 from any other subheading complying with a regional value content of not less than 30%.

8479.90 A change to subheading 8479.90 from any other heading.

84.80 A change to heading 84.80 from any other heading; or a change in tariff classification is not required where the regional value content is not less than 30%.

8482.10 - 8482.80 A change to subheading 8482.10 through 8482.80 from any other heading; or

a change to subheading 8482.10 through 8482.80 from any other subheading complying with a regional value content of not less than 30%.

8482.91 - 8482.99 A change to subheading 8482.91 through 8482.99 from any other heading.

8483.10 - 8483.60 A change to subheading 8483.10 through 8483.60 from any other heading; or

a change to subheading 8483.10 through 8483.60 from any other subheading complying with a regional value content of not less than 30%.

8483.90 A change to subheading 8483.90 from any other heading.

84.84 - 84.85 A change to heading 84.84 through 84.85 from any other heading; or a change in tariff classification is not required, when the regional content value is not less than 30%.

Chapter 85 Electrical machinery and equipment and parts thereof; sound recorders and reproducers, television image and sound recorders and reproducers, and parts and accessories of such articles

85.01 - 85.02 A change to heading 85.01 through 85.02 from any other chapter; or  
a change to heading 85.01 through 85.02 from any other heading complying  
with a regional value content of not less than 30%.

85.03 A change to heading 85.03 from any other heading.

8504.10 - 8504.50 A change to subheading 8504.10 through 8504.50 from any other  
heading; or

a change to subheading 8504.10 through 8504.50 from any other subheading  
complying with a regional value content of not less than 30%.

8504.90 A change to subheading 8504.90 from any other heading.

8505.11 - 8505.30 A change to subheading 8505.11 through 8505.30 from any other  
heading; or

a change to subheading 8505.11 through 8505.30 from any other subheading  
complying with a regional value content of not less than 30%.

8505.90 A change to subheading 8505.90 from any other heading.

85.06 A change to heading 85.06 from any other subheading.

85.08 A change to heading 85.08 from any other subheading.

8509.10 - 8509.80 A change to subheading 8509.10 through 8509.80 from any other  
heading; or

a change to subheading 8509.10 through 8509.80 from any other subheading  
complying with a regional value content of not less than 30%.

8509.90 A change to subheading 8509.90 from any other heading.

8510.10 - 8510.30 A change to subheading 8510.10 through 8510.30 from any other  
heading; or

a change to subheading 8510.10 through 8510.30 from any other subheading

complying with a regional value content of not less than 30%.

8510.90 A change to subheading 8510.90 from any other heading.

8511.10 - 8511.80 A change to subheading 8511.10 through 8511.80 from any other heading; or

a change to subheading 8511.10 through 8511.80 from any other subheading

complying with a regional value content of not less than 30%.

8511.90 A change to subheading 8511.90 from any other heading.

8512.10 - 8512.40 A change to subheading 8512.10 through 8512.40 from any other heading; or

a change to subheading 8512.10 through 8512.40 from any other subheading

complying with a regional value content of not less than 30%.

8512.90 A change to subheading 8512.90 from any other heading.

8513.10 A change to subheading 8513.10 from any other heading; or a change

to subheading 8513.10 from any other subheading complying with a

regional value content of not less than 30%.

8513.90 A change to subheading 8513.90 from any other heading.

85.14 A change to heading 85.14 from any other subheading.

8515.11 - 8515.80 A change to subheading 8515.11 through 8515.80 from any other heading; or

a change to subheading 8515.11 through 8515.80 from any other subheading

complying with a regional value content of not less than 30%.

8515.90 A change to subheading 8515.90 from any other heading.

8516.10 - 8516.50 A change to subheading 8516.10 through 8516.50 from any other subheading.

8516.60 A change to subheading 8516.60 from any other subheading, except furniture whether or not assembled, cooking stoves whether or not assembled and the top

surface panel with or without heating elements or controls, classified in subheading 8516.90.

8516.71 - 8516.79 A change to subheading 8516.71 through 8516.79 from any other heading; or

a change to subheading 8516.71 through 8516.79 from any other subheading complying with a regional value content of not less than 30%.

8516.80 - 8516.90 A change to subheading 8516.80 through 8516.90 from any other heading.

8517.11 - 8517.80 A change to subheading 8517.11 through 8517.80 from any other heading; or

a change to subheading 8517.11 through 8517.80 from any other subheading. complying with a regional value content of not less than 30%.

8517.90 A change to subheading 8517.90 from any other heading.

8518.10 - 8518.50 A change to subheading 8518.10 through 8518.50 from any other heading; or

a change to subheading 8518.10 through 8518.50 from any other subheading complying with a regional value content of not less than 30%.

8518.90 A change to subheading 8518.90 from any other heading.

85.19 - 85.21 A change to heading 85.19 through 85.21 from any other chapter; or

a change to heading 85.19 through 85.21 from any other heading complying with a regional value content of not less than 30%.

85.22 A change to heading 85.22 from any other heading.

85.23 - 85.24 A change to heading 85.23 h a regional value content of not less than 30%.

9022.90 A change to subheading 9022.90 from any other heading.

90.23 A change to heading 90.23 from any other heading; or no change in tariff classification is required where the regional content value is not less



than 30%.

9024.10 - 9024.80 A change to subheading 9024.10 through 9024.80 from any other heading; or

a change to subheading 9024.10 through 9024.80 from any other subheading  
complying with a regional value content of not less than 30%.

9024.90 A change to subheading 9024.90 from any other heading.

9025.11 - 9025.80 A change to subheading 9025.11 through 9025.80 from any other heading; or

a change to subheading 9025.11 through 9025.80 from any other subheading  
complying with a regional value content of not less than 30%.

9025.90 A change to subheading 9025.90 from any other heading.

9026.10 - 9026.80 A change to subheading 9026.10 through 9026.80 from any other heading; or

a change to subheading 9026.10 through 9026.80 from any other subheading  
complying with a regional value content of not less than 30%.

9026.90 A change to subheading 9026.90 from any other heading.

9027.10 - 9027.80 A change to subheading 9027.10 through 9027.80 from any other heading; or

a change to subheading 9027.10 through 9027.80 from any other subheading  
complying with a regional value content of not less than 30%.

9027.90 A change to subheading 9027.90 from any other heading.

9028.10 - 9028.30 A change to subheading 9028.10 through 9028.30 from any other heading; or

a change to subheading 9028.10 through 9028.30 from any other subheading  
complying with a regional value content of not less than 30%.

9028.90 A change to subheading 9028.90 from any other heading.

9029.10 - 9029.20 A change to subheading 9029.10 through 9029.20 from any other heading; or

a change to subheading 9029.10 through 9029.20 from any other subheading

complying with a regional value content of not less than 30%.

9029.90 A change to subheading 9029.90 from any other heading.

9030.10 - 9030.89 A change to subheading 9030.10 through 9030.89 from any other heading; or

a change to subheading 9030.10 through 9030.89 from any other subheading

complying with a regional value content of not less than 30%.

9030.90 A change to subheading 9030.90 from any other heading.

9031.10 - 9031.80 A change to subheading 9031.10 through 9031.80 from any other heading; or

a change to subheading 9031.10 through 9031.80 from any other subheading

complying with a regional value content of not less than 30%.

9031.90 A change to subheading 9031.90 from any other heading.

9032.10 - 9032.89 A change to subheading 9032.10 through 9032.89 from any other heading; or

a change to subheading 9032.10 through 9032.89 from any other subheading

complying with a regional value content of not less than 30%.

9032.90 A change to subheading 9032.90 from any other heading.

90.33 A change to heading 90.33 from any other heading.

Chapter 91 Clocks and watches and parts thereof

91.01 - 91.14 A change to heading 91.01 through 91.14 from any other heading.

Chapter 92 Musical instruments; parts and accessories thereof

92.01 - 92.09 A change to heading 92.01 through 92.09 from any other heading.

Section XIX. Arms and Ammunition; Parts and Accessories Thereof

Chapter 93 Arms and ammunition; parts and accessories thereof

93.01 - 93.07 A change to heading 93.01 through 93.07 from any other heading.

Section XX. Miscellaneous Manufactured Articles

Chapter 94 Furniture; medical furniture; bedding and similar furnishings; lamps and lighting fittings, not elsewhere specified or included; illuminated signs, illuminated name-plates and the like; prefabricated buildings

94.02 A change to heading 94.02 from any other heading.

94.04 A change to heading 94.04 from any other heading.

94.06 A change to heading 94.06 from any other heading.

Chapter 95 Toys, games and sports equipment; parts and accessories thereof

95.01 - 95.08 A change to heading 95.01 through 95.08 from any other heading.

Chapter 96 Miscellaneous manufactured articles

96.01 - 96.05 A change to heading 96.01 through 96.05 from any other heading.

9606.10 - 9606.30 A change to subheading 9606.10 through 9606.30 from any other subheading.

9607.11 - 9607.19 A change to subheading 9607.11 through 9607.19 from any other subheading.

9607.20 A change to subheading 9607.20 from any other heading.

9608.10- 9608.40 A change to subheading 9608.10 through 9608.40 from any other subheading, except from subheading 9608.60; or a change to subheading

9608.10 through 9608.40 from any other subheading complying with a regional content value of not less than 30%.

9608.50 - 9609.90 A change to subheading 9608.50 through 9609.90 from any other subheading.

96.10 - 96.12 A change to heading 96.10 through 96.12 from any other heading.

9613.10 - 9613.90 A change to subheading 9613.10 through 9613.90 from any other subheading.

96.14 - 96.16 A change to heading 96.14 through 96.16 from any other heading.

96.17 - 96.18 A change to heading 96.17 through 96.18 from any other heading; or a change in tariff classification is not required, complying with a regional regional content value of not less than 30%.

## Section XXI. Works of Art, Collectors' Pieces and Antiques

### Chapter 97 Works of art, collectors' pieces and antiques

97.01 - 97.05 The goods in this heading shall originate in the country where they were obtained or produced; or a change to heading 97.01 through 97.05 from any other heading.

97.06 The goods in this heading shall be originating when they have remained for more than 100 years in any of the Parties.

## SECTION C

### CHAPTER 5. CUSTOMS PROCEDURES

#### Article 5.01 Definitions

##### 1. For the purposes of this Chapter:

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

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

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

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

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

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

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

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

producer means a person who grows, raises mines, harvests, fishes, hunts, manufactures, processes or assembles a good, located in the territory of a Party, who is required to keep the records referred to in Article 5.04(5) in the territory of that Party.

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

#### Article 5.02 Declaration and certification of origin

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

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

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

4. Each Party shall require that:

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

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

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

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

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

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

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

(b) multiple importations of identical goods within a specified period, not exceeding 12 months, set out in the certificate by the exporter.

#### Article 5.03 Obligations regarding importations

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

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

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

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

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

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

3. Each Party shall provide that, where a good would have qualified as an originating good when it was imported into the territory of that Party but no claim for preferential tariff treatment was made at that time, the importer of the good may, no later than one year after the date on which the good was imported, apply for a refund of any excess duties paid as the result of the good not having been accorded preferential tariff treatment, on presentation of:

(a) A written declaration that the good qualified as originating at the time of importation;

(b) a copy of the certificate of origin; and

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

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

#### Article 5.04 Obligations regarding exportations

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

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

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

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

5. Each Party shall provide that its exporter or producer that completes and signs a certificate or declaration of origin shall retain for a minimum period of five years after the date on which the certificate or statement was signed, all the records and documents relating to the origin of the good, including those referring to:

- (a) The purchase, costs, value and payment of the good exported from its territory;
- (b) the purchase, costs, value and payment of all the materials, including indirect materials, used in the production of the good exported from its territory; and
- (c) production of the good in the form in which it is exported from its territory.

#### Article 5.05 Exceptions

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

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

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

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

#### Article 5.06 Invoicing by a third-country operator

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

#### Article 5.07 Confidentiality

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

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

#### Article 5.08 Origin verifications

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

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

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



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

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

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

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

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

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

(a) The identity of the competent authority issuing the notification;

(b) the name of the exporter or producer whose premises are to be visited;

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

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

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

(f) the legal authority for the verification visit.

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

8. Each Party shall provide that, where its exporter or producer receives notification pursuant to paragraph 5, it may, within 15 days of receipt of the notification, apply on one occasion to postpone the proposed verification visit for a period not exceeding 60

days from the date of such receipt, or for such longer period as the Parties may agree. Notification of the postponement of the visit shall be made to the competent authorities of the importing Party and the exporting Party.

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

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

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

12. The competent authority conducting a verification shall provide the exporter or producer whose good or goods are the subject of the verification with a written determination of whether the good qualifies as an originating good, including findings of fact and the legal basis for the determination.

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

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

15. A Party shall not apply a determination made under paragraph 14 to an importation made before the effective date of the determination where:

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

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

Article 5.09 Advance rulings

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

- (a) Whether a good qualifies as an originating good under Chapter 4 (Rules of Origin);
- (b) whether non-originating materials used in the production of a good undergo a change in tariff classification set out in Annex 4.03 (Specific Rules of Origin);
- (c) whether a good satisfies a regional value content requirement established in Chapter 4 (Rules of Origin);
- (d) whether the method applied by an exporter or a producer in the territory of another Party, in accordance with the principles of the Customs Valuation Agreement, for calculating the value of the good or of the materials used in the production of the good for which an advance ruling is requested is suitable for determining whether the good complies with the regional value content under Chapter 4 (Rules of Origin);
- (e) whether a good that re-enters its territory after the good has been exported from its territory to the territory of another Party for repair or alteration qualifies for duty-free treatment in accordance with Article 3.7 (Goods Re-Entered after Repair or Alteration); and
- (f) such other matters as the Parties may agree.

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

- (a) The information reasonably required to process an application;
- (b) the ability of its competent authority, at any time during the course of an evaluation of an application, to request supplemental information from the person requesting the ruling;
- (c) the obligation of its competent authority to issue an advance ruling, after it has obtained all necessary information from the person requesting an advance ruling; and
- (d) the obligation of its competent authority to provide a full explanation of the reasons for the advance ruling.

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

4. Each Party shall provide to any person requesting an advance ruling the same treatment, including the same interpretation and application of provisions of Article 3.07 (Goods Re-Entered after Repair or Alteration) and Chapter 4 (Rules of Origin) regarding a determination of origin, as it provided to any other person to whom it issued an advance ruling, provided that the facts and circumstances are identical in all material respects.

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

(a) If the ruling is based on an error

(i) Of fact;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

#### Article 5.10 Review and appeal

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

(a) They complete and sign a certificate or declaration of origin for a good that has been the subject of a determination of origin pursuant to Article 5.08(12); or

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

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

#### Article 5.11 Penalties

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

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

#### Article 5.12 Uniform regulations

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

2. The Parties undertake to complete the negotiation of the Uniform Rules no later than 60 days after this Agreement is signed.

3. Once the Uniform Regulations come into effect, each Party shall implement any modification or addition thereto no later than 180 days after the Parties agree on such modification or addition, or such other period as the Parties may agree.

#### Article 5.13 Cooperation

1. To the extent possible, each Party shall notify another Party of the following measures, rulings and determinations, including those that are prospective in application:

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

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

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

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

## 2. The Parties shall cooperate:

- (a) In the enforcement of their respective customs-related laws or regulations implementing this Agreement, and under any customs mutual assistance agreement or other customs-related agreement to which they are party;
- (b) for purposes of facilitating the flow of trade among them, in such customs-related matters as the collection and exchange of statistics on the importation and exportation of goods, the harmonization of documentation used in trade, the standardization of data elements, the acceptance of an international data syntax and the exchange of information;
- (c) in the exchange of customs regulations;
- (d) in the verification of origin of a good, to which end the competent authority of the importing Party may request the competent authority of another Party to carry out determined investigations for that purpose in its territory and to issue the respective report to the competent authority of the importing Party;
- (e) in seeking mechanisms for the detection and prevention of unlawful transshipments of goods from a Party or a non-Party; and
- (f) in jointly organizing training programmes on customs matters, which include training for officials and users who participate directly in customs procedures.

## CHAPTER 6. EMERGENCY ACTION

### Article 6.01 Definitions

For the purposes of this Chapter:

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

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

critical circumstances means circumstances where delay in taking an emergency action would cause injury that would be difficult to repair;

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

emergency action means any measure applied pursuant to this Chapter. It does not include any emergency action pursuant to a procedure begun before this Agreement enters into force;

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

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

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

transition period means the period during which a Party may adopt and maintain emergency actions, which shall include for each good, the Tariff Elimination Programme to which it is subject, plus an additional period of two years after the end of that programme.

#### Article 6.02 Bilateral emergency actions

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

2. Subject to paragraphs 3 through 5, and during the transition period, if a good originating in the territory of a Party, as a result of the reduction or elimination of a duty provided for in this Agreement, is being imported into the territory of another Party in such increased quantities, in relation to domestic production, and under such conditions that the imports of the good from that Party alone constitute a substantial cause of serious injury, or threat thereof, to a domestic industry producing a like or directly competitive good, the Party into whose territory the good is being imported may, to the minimum extent necessary to remedy or prevent the serious injury or threat thereof:

(a) Suspend the further reduction of any rate of duty provided for under this Agreement on the good; or

(b) increase the rate of duty on the good to a level not to exceed the lesser of:

(i) The most-favoured-nation applied rate of duty in effect at the time the action is taken; and

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

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

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



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

(c) no action may be maintained:

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

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

(d) the Parties may apply and extend the application of an emergency action to the same good no more than twice during the transition period;

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

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

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

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

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

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

5. The Party taking an action under this Article shall provide to another Party mutually agreed trade liberalizing compensation in the form of concessions having substantially equivalent trade effects or equivalent to the value of the additional duties expected to result from the action. If the Parties are unable to agree on compensation, the Party against whose good the action is taken may take tariff action having trade effects substantially equivalent to the action taken under this Article. The Party taking the tariff action shall apply the action only for the minimum period necessary to achieve the substantially equivalent effects.

Article 6.03 Global emergency actions

1. Each Party retains its rights and obligations under Article XIX of the GATT 1994 and the Agreement on Safeguards except those regarding compensation or retaliation and exclusion from an emergency action to the extent that such rights or obligations are inconsistent with this Article.

2. Any Party taking an emergency action under paragraph 1 shall exclude imports of a good from another Party from the action unless:

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

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

3. In determining whether:

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

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

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

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

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

7. The Party taking an action pursuant to this Article shall provide to the other Party mutually agreed trade liberalizing compensation in the form of concessions having substantially equivalent trade effects or equivalent to the value of the additional duties expected to result from the action.

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

#### Article 6.04 Administration of emergency action proceedings

1. Each Party shall ensure the consistent and impartial administration of its laws, regulations, rulings and determinations governing all emergency action proceedings.
2. Each Party shall entrust determinations of serious injury, or threat thereof, in emergency action proceedings to an investigating authority, subject to review by judicial or administrative tribunals, to the extent provided by domestic law. Negative injury determinations shall not be subject to modification, on its own motion, by the investigating authority. The investigating authority empowered under domestic law to conduct such proceedings shall be provided with all the resources necessary to enable it to fulfil its mandate.
3. Each Party shall adopt or maintain equitable, timely, transparent and effective procedures for emergency action proceedings, in accordance with the requirements set out in this Article.

#### Institution of a proceeding

- 4 The investigating authority may institute a proceeding on its own motion or under a petition presented by entities empowered to take action under its domestic law. The entity filing the petition shall demonstrate that it is representative of the domestic industry producing a good like or directly competitive with the imported good. For that purpose, a substantial share may not be less than 25 per cent.
5. Except as otherwise provided in this Article, the time periods governing such procedures shall be those established in the domestic law of each Party.

#### Contents of a petition

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

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

(b) representativeness:

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

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

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

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

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

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

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

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

7. Petitions shall promptly be made available for public inspection after filing.

#### Consultations

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

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

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

11. Notwithstanding the obligation to provide adequate opportunity for consultations, the provisions on consultations in paragraphs 8, 9 and 10 are not intended to impede the authorities of any Party from promptly initiating an investigation or formulating

positive or negative preliminary or final determinations or taking action in accordance with the provisions of this Agreement.

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

#### Notice requirement

13. On instituting an emergency action proceeding, the investigating authority shall publish notice of the institution of the proceeding in the official journal or a national newspaper within 30 days after presentation of the petition. The other Party shall be notified of that publication without delay, in writing. The notice shall identify the petitioner, the imported good that is the subject of the proceeding and its tariff subheading, the nature and timing of the determination to be made, the time and place of the public hearing, dates of deadlines for filing briefs, statements and other documents, the place at which the petition and any other documents filed in the course of the proceeding may be inspected, and the name, address and telephone number of the office to be contacted for more information.

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

#### Public hearing

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

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

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

#### Confidential information

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

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

#### Evidence of injury or threat thereof

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

#### Deliberation and report

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

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

- (a) The domestic industry seriously injured or threatened with serious injury;
- (b) information supporting a finding that imports are increasing, the domestic industry is seriously injured or threatened with serious injury, and increasing imports are causing or threatening serious injury; and
- (c) if provided for by domestic law, any finding or recommendation regarding the appropriate remedy and the basis therefor.

#### Extension

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

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

#### Article 6.05 Dispute settlement in emergency action matters

No Party may request the establishment of an arbitral panel under Article 19.08 (Request for an Arbitral Panel) regarding any emergency action that has simply been proposed.

#### ANNEX 6.01

#### INVESTIGATING AUTHORITY

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

- (a) For Chile, the National Investigating Committee on Price Distortions in Imported Goods ("Comisión Nacional Encargada de Investigar la Existencia de Distorsiones en el Precio de las Mercaderías Importadas") or its successor;
- (b) for Costa Rica, the authority determined in its domestic law;
- (c) for El Salvador, the technical unit responsible for investigating situations that may warrant emergency action, reporting to the Ministry of Economic Affairs ("Ministerio de Economía") or its successor;
- (d) for Guatemala, the technical unit responsible for investigating situations that may warrant emergency action, reporting to the Ministry of Economic Affairs ("Ministerio de Economía") or its successor;
- (e) for Honduras, the technical unit responsible for investigating situations that may warrant emergency action, reporting to the Department of Industry and Trade ("Secretaría de Industria y Comercio") or its successor; and
- (f) for Nicaragua, the technical unit responsible for investigating situations that may warrant emergency action, reporting to the Ministry of Development Industry and Trade ("Ministerio de Fomento, Industria y Comercio") or its successor.

#### CHAPTER 7. UNFAIR TRADING PRACTICES

#### Article 7.01 Scope and coverage

1. The Parties confirm their rights and obligations as established in the Agreement on Subsidies and Countervailing Measures and in the Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade of 1994, which are part of the WTO Agreement.

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

#### Article 7.02 Future work programme

1. The Parties share the objective of promoting significant reforms in this field to prevent measures of this kind from becoming concealed barriers to trade. The Parties shall cooperate in the effort to achieve such reforms under the frame of the World Trade Organization and the Free Trade Area of the Americas.

2. Two years after this Agreement has come into force for all the Parties, they shall establish a work programme to examine the possibility of introducing reforms, in the sense of paragraph 1, in their mutual trade.

### PART THREE. TECHNICAL BARRIERS TO TRADE

#### CHAPTER 8. SANITARY AND PHYTOSANITARY MEASURES

##### Article 8.01 Definitions

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

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

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

(c) in the International Convention on Phytosanitary Protection (ICPP); and

(d) by the Codex Alimentarius Commission, hereinafter the "Codex".

2. The competent authorities shall be the authorities with legal responsibility for ensuring compliance with the sanitary and phytosanitary requirements established in this Chapter.

##### Article 8.02 General provisions

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

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



#### Article 8.03 Rights of the parties

In accordance with the SPS Agreement, the Parties may:

- (a) Establish, adopt, maintain or apply any sanitary or phytosanitary measure in their territory only to the extent necessary to protect human (food safety) and animal life and health, or to preserve plant health, even measures that are stricter than an international standard, guideline or recommendation, providing there is scientific justification for doing so;
- (b) apply their sanitary and phytosanitary measures only to the extent necessary to achieve an appropriate level of protection, taking into account technical and economic feasibility; and
- (c) verify that plants, animals and their products and byproducts for export are subject to strict sanitary and phytosanitary monitoring that ensures compliance with the sanitary and phytosanitary requirements of the importing Party.

#### Article 8.04 Obligations of the parties

1. Sanitary and phytosanitary measures shall not constitute a disguised restriction on trade or create unnecessary obstacles to trade among the Parties.
2. Sanitary and phytosanitary measures shall be based on scientific principles, be maintained only where there are sufficient grounds and be based on an appropriate risk assessment, taking technical and economic feasibility into consideration.
3. Sanitary and phytosanitary measures shall be based on international measures, standards, guidelines or recommendations, except where it is scientifically demonstrated that such measures, standards, guidelines or recommendations are not an effective or adequate means of protecting human (food safety) and animal life and health, or to preserve plant health in the territory of a Party.
4. Where identical or similar conditions exist, a sanitary or phytosanitary measure shall not discriminate arbitrarily or unjustifiably between its goods and like goods of another Party or between the goods of another Party and like goods of a non-Party.
5. The Parties shall provide the necessary facilities to verify control, inspection and approval procedures, the application of measures and sanitary and phytosanitary programmes.

#### Article 8.05 International standards and harmonization

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

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

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

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

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

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

#### Article 8.06 Equivalence

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

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

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

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

#### Article 8.07 Assessment of risk and determination of the appropriate level of sanitary and phytosanitary protection

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

(a) The Parties shall ensure that their sanitary and phytosanitary measures are based on an adequate assessment, as appropriate to the circumstances, of the risks to human (food safety) and animal life and health or to the preservation of plant health, taking into

account the guidelines and risk assessment techniques established by the competent international organizations;

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

- (i) The scientific and technical information available;
- (ii) the existence of pests or diseases and the recognition of pest- and disease-free areas and areas of low pest and disease prevalence;
- (iii) the epidemiology of regulated pests and diseases;
- (iv) an analysis of critical control points for sanitary (food safety) and phytosanitary aspects;
- (v) pertinent ecological and environmental conditions;
- (vi) production processes and methods, and inspection, sampling and testing methods;
- (vii) the structure and organization of sanitary and phytosanitary services;
- (viii) protection, surveillance, diagnosis and treatment procedures to ensure product safety;
- (ix) production or sales losses in the event of a pest or disease entering, taking root or propagating;
- (x) quarantine measures and applicable treatments to satisfy the importing Party with respect to risk mitigation; and
- (xi) pest or disease control or eradication costs in the territory of the importing Party and the cost-effectiveness ratio of other possible risk reduction methods;

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

(d) where a Party performs a risk assessment and concludes that the scientific information is insufficient, it may adopt a provisional sanitary or phytosanitary measure on the basis of available information, including information from the competent international organizations and the sanitary or phytosanitary measures applied by another Party. Once the necessary information becomes available, the Party shall conclude the assessment and, when warranted, shall proceed to modify the sanitary or phytosanitary measure;

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

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

#### Article 8.08 Recognition of pest- or disease-free areas and areas of low pest or disease prevalence

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

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

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

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

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

#### Article 8.09 Control, inspection and approval procedures

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

#### Article 8.10 Transparency

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

- (a) The adoption and modification of such measures. It shall also facilitate information on them, in accordance with Annex B of the SPS Agreement, making the appropriate adaptations;
- (b) changes or modifications in sanitary or phytosanitary measures with a significant effect on trade among the Parties, no less than 60 days prior to the entry into force of the new provision, to permit another Party to comment. In emergency situations the term shall be waived, in accordance with Annex B of the SPS Agreement;
- (c) changes in the field of animal health and the appearance of exotic diseases and diseases of List A of the OIE, within 24 hours after detection of the problem;
- (d) changes in the field of plant health, such as the appearance of quarantine pests or the spread of pests under official control, within 72 hours after verification;
- (e) findings of epidemiological importance and significant changes in relation to diseases and pests not included in (c) or (d) that could affect trade among the Parties, within a maximum of 10 days;
- (f) outbreaks of diseases which it is scientifically proven are caused by the consumption of raw or processed imported food products; and
- (g) the reasons for which a good of an exporting Party is rejected.

2. Parties shall use the notification and information centres established in the SPS Agreement as channels of communication. In the event of emergency actions, the Parties agree to notify each other in writing immediately, briefly indicating the objective and justification of the measure, and the nature of the problem.

3. As provided in Article 17.02 (Contact Points), each Party shall respond to reasonable requests for information from another Party and provide the pertinent documentation, in accordance with the principles established in Annex B, paragraph 3, of the SPS Agreement.

#### Article 8.11 Committee on Sanitary and Phytosanitary Measures

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

2. The Committee shall examine matters relating to this Chapter and, without detriment to Article 18.05(2) (Committees), it shall:

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

- (b) promote cooperation and exchanges of technical staff, including cooperation in the development, application and observance of sanitary and phytosanitary measures;
- (c) promote active participation by the Parties in international organizations; and
- (d) establish a roster of qualified specialists in the fields of food safety, plant health and animal health for the purposes of Article 18.07 (Groups of Experts).

#### ANNEX 8.11

##### COMMITTEE ON SANITARY AND PHYTOSANITARY MEASURES

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

- (a) For Chile, the Directorate General of International Economic Relations of the Ministry of Foreign Affairs ("Dirección General de Relaciones Económicas Internacionales del Ministerio de Relaciones Exteriores") or its successor;
- (b) for Costa Rica, the Ministry of Foreign Trade ("Ministerio de Comercio Exterior") and the agencies responsible for applying sanitary and phytosanitary measures designated by the Ministry or their successors;
- (c) for El Salvador, the Ministry of Economic Affairs ("Ministerio de Economía"), the Ministry of Agriculture and Livestock ("Ministerio de Agricultura y Ganadería") and the Ministry of Public Health and Social Welfare ("Ministerio de Salud Pública y Asistencia Social") or their successors;
- (d) for Guatemala, the Ministry of Economic Affairs ("Ministerio de Economía"), the Standards and Regulations Unit of the Ministry of Agriculture, Livestock and Food ("Unidad de Normas y Regulaciones del Ministerio de Agricultura, Ganadería y Alimentación") and the Unified Food and Medications Control Laboratory of the Ministry of Public Health and Social Welfare ("Laboratorio Unificado de Control de Alimentos y Medicamentos del Ministerio de Salud Pública y Asistencia Social") or their successors;
- (e) for Honduras, the Department of Industry and Trade ("Secretaría de Industria y Comercio"), the Department of Health ("Secretaría de Salud") and the Department of Agriculture and Livestock ("Secretaría de Agricultura y Ganadería") or their successors; and
- (f) for Nicaragua, the Ministry of Development, Industry and Trade ("Ministerio de Fomento, Industria y Comercio"), the Ministry of Agriculture and Forests ("Ministerio Agropecuario y Forestal") and the Ministry of Health ("Ministerio de Salud") or their successors.

#### CHAPTER 9. STANDARDS-RELATED MEASURES, METROLOGY

##### AND APPROVAL PROCEDURES

## Article 9.01 Definitions

### 1. For the purposes of this Chapter:

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

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

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

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

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

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

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

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

services means any of services set out in Annex 9.01 and others agreed upon by the Parties in future negotiations;

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

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

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

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

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

#### Article 9.02 General provisions

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

#### Article 9.03 Scope and coverage

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

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

#### Article 9.04 Basic obligations and rights

##### Right to adopt standards-related measures

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

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

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

##### Unnecessary obstacles

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



#### Non-discriminatory treatment

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

#### Use of international standards

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

#### Article 9.05 Assessment of risk

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

- (a) Assessments of risk performed by international standardization organizations;
- (b) available scientific evidence or technical information;
- (c) related technology; or
- (d) end uses of the goods or services.

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

- (a) Result in arbitrary or unjustifiable discrimination against goods or service providers of another Party;
- (b) constitute a disguised restriction on trade among the Parties; or
- (c) discriminate between similar goods or similar services for the same use under the same conditions that pose the same level of risk and provide similar benefits.

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

#### Article 9.06 Compatibility and equivalence

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

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

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

#### Article 9.07 Conformity assessment

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Article 9.08 Approval procedures

Each Party shall apply Article 9.07(1) and (2), except for Article 9.07(2)(g) and (h), to its approval procedures, replacing the references to "conformity assessment procedures" with "approval procedures".

#### Article 9.09 Metrological standards

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

#### Article 9.10 Notification

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

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

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

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

#### Article 9.11 Inquiry points

Within 30 days after this Agreement comes into force, each Party shall notify the other Parties of the entity it has designated as the inquiry point in its territory and its sphere of responsibility, which shall be in charge of responding to all questions and reasonable inquiries from the other Parties and interested persons and providing relevant, up-to-date documents regarding any standards-related measure, approval procedure or metrology-related measure adopted or proposed in its territory by governmental or non-governmental bodies.

#### Article 9.12 Committee on Standardization, Metrology and Approval Procedures

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

2. The Committee shall examine matters related to this Chapter and, without detriment to Article 18.05(2) (Committees), shall:

- (a) Study and propose solutions to standards-related measures, approval procedures or metrology-related measures that a Party considers to be a technical barrier to trade;
- (b) facilitate the process by which the Parties make compatible their standards-related and metrology-related measures, giving priority to labelling, packaging and packing;
- (c) promote technical-cooperation among the Parties;
- (d) assist in the risk assessments performed by the Parties;
- (e) cooperate in developing and strengthening standards-related and metrology-related measures in the Parties;
- (f) facilitate the process by which the Parties establish mutual-recognition agreements; and
- (g) on the request of a Party, evaluate and recommend to the Commission for approval, the inclusion of services sectors or subsectors in Annex 9.01. They shall be included through a decision of the Commission.

#### Article 9.13 Technical cooperation

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

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

#### ANNEX 9.01

##### SERVICES SECTORS OR SUBSECTORS

1. The Parties shall use the Central Product Classification (CPC) as established by the United Nations Statistics Division, Statistical Papers, Series M, No. 77, Provisional Central Product Classification, 1991, and updates to identify the sectors and subsectors of this Annex.

2. The services sectors or subsectors subject to this Chapter are:

- (a) Computer and related services (Division 84); and
- (b) any other established in accordance with Article 9.12(2)(g).

## ANNEX 9.12

### COMMITTEE ON STANDARDIZATION, METROLOGY AND

#### APPROVAL PROCEDURES

The Committee established in Article 9.12(1) shall be composed of:

- (a) For Chile, the Ministry of Economic Affairs through the Foreign Trade Department ("Ministerio de Economía, Departamento de Comercio Exterior") or its successor;
- (b) for Costa Rica, the Ministry of Foreign Trade ("Ministerio de Comercio Exterior") or its successor;
- (c) for El Salvador, the Trade Policy Directorate of the Ministry of Economic Affairs ("Dirección de Política Comercial, Ministerio de Economía") or its successor;
- (d) for Guatemala, the body designated by the Ministry of Economic Affairs ("Ministerio de Economía") or its successor;
- (e) for Honduras, the Department of Industry and Trade ("Secretaría de Industria y Comercio") or its successor; and
- (f) for Nicaragua, the Directorate of Technology, Standardization and Metrology of the Ministry of Development, Industry and Trade ("Dirección de Tecnología, Normalización y Metrología, Ministerio de Fomento, Industria y Comercio") or its successor.

## PART FOUR. INVESTMENT, SERVICES AND RELATED MATTERS

### CHAPTER 10. INVESTMENT

#### Article 10.01 Scope and coverage

1. The agreements referred to in Annex 10.01 are incorporated into this Agreement and form an integral part hereof.
2. In the event of any inconsistency between this Chapter and another Chapter of this Agreement, this Chapter shall prevail to the extent of the inconsistency, except with respect to Chapters 1 (Initial Provisions), 18 (Administration of the Agreement), 19 (Dispute Settlement) and 21 (Final Provisions).

#### Article 10.02 Future work programme

1. Within two years after this Agreement comes into force, all the Parties shall study the possibility of developing and expanding the coverage of the rules and disciplines established in the agreements referred to in Annex 10.01. Development and expansion of those agreements shall form an integral part of this Agreement.

2. Notwithstanding paragraph 1, Chile and a Central American country may agree to develop and expand the coverage of the rules and disciplines established in the agreements referred to in Annex 10.01. Development and expansion of those agreements shall form an integral part of this Agreement.

## ANNEX 10.01

### SCOPE AND COVERAGE

The following agreements are incorporated into this Agreement:

- (a) Agreement between the Republic of Chile and the Republic of Costa Rica on the Promotion and Reciprocal Protection of Investments, signed on 11 July 1996;
- (b) Agreement between the Republic of Chile and the Republic of El Salvador on the Promotion and Reciprocal Protection of Investments, signed on 8 November 1996;
- (c) Agreement between the Republic of Chile and the Republic of Guatemala on the Promotion and Reciprocal Protection of Investments, signed on 8 November 1996;
- (d) Agreement between the Republic of Chile and the Republic of Honduras on the Promotion and Reciprocal Protection of Investments, signed on 11 November 1996; and
- (e) Agreement between the Republic of Chile and the Republic of Nicaragua on the Promotion and Reciprocal Protection of Investments, signed on 8 November 1996.

## CHAPTER 11. CROSS-BORDER TRADE IN SERVICES

### Article 11.01 Definitions

For the purposes of this Chapter:

government services or functions means all cross-border services provided by a public institution that are not provided under commercial conditions and do not compete with one or more service providers;

cross-border service means the provision of a service:

- (a) From the territory of a Party into the territory of another Party;
- (b) in the territory of a Party to a consumer of another Party; or
- (c) by a service provider through the presence of physical persons of a Party in the territory of another Party;

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

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

quantitative restriction means a non-discriminatory measure that imposes limitations on:

(a) The number of service providers, whether in the form of a quota, a monopoly or an economic needs test, or by any other quantitative means; or

(b) the operations of any service provider, whether in the form of a quota or an economic needs test, or by any other quantitative means;

service provider of a Party means a person of another Party that seeks to provide or provides a cross-border service; and

specialty air services means cross-border aerial mapping, aerial surveying, aerial photography, forest fire management, fire fighting, aerial advertising, glider towing, parachute jumping, aerial construction, heli-logging, aerial sightseeing, flight training, aerial inspection and surveillance, and aerial spraying services.

#### Article 11.02 Scope and coverage

1. This Chapter applies to measures adopted or maintained by a Party relating to cross-border services provided by service providers of another Party, including measures respecting:

(a) The production, distribution, marketing, sale and delivery of a cross-border service;

(b) the purchase or use of, or payment for, a cross-border service;

(c) the access to and use of distribution and transportation systems in connection with the provision of a cross-border service;

(d) the presence in its territory of a cross-border service provider of another Party; and

(e) the provision of a bond or other form of financial security as a condition for the provision of a cross-border service.

2. For the purposes of this Chapter, measures adopted or maintained by a Party include measures adopted or maintained by a non-governmental body in the exercise of a regulatory, administrative or other governmental authority delegated to it by that Party.

3. This Chapter does not apply to:

(a) Subsidies or grants provided by a Party or a State enterprise, including government-supported loans, guarantees and insurance;



(b) air services, including domestic and international air transportation services, whether scheduled or non-scheduled, and related services in support of air services, other than:

(i) Aircraft repair and maintenance services during which an aircraft is withdrawn from service,

(ii) specialty air services; and

(iii) computerized reservation systems;

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

(d) cross-border trade in financial services; or

(e) procurement by a Party or a State enterprise.

4. Notwithstanding paragraph 3(c), if a duly authorized service provider of a Party provides services or carries out governmental functions, such as law enforcement, correctional services, income security or insurance, social security, social welfare, public education, public training, health, and child care in the territory of another Party, those services shall be protected under this Chapter.

5. Nothing in this Chapter shall be construed to impose any obligation on a Party with respect to a national of the other Party seeking access to its employment market, or employed on a permanent basis in its territory, or to confer any right on that national with respect to such access or employment.

#### Article 11.03 National treatment

1. Each Party shall accord to cross-border services and service providers of another Party treatment no less favourable than that it accords to its own like services and like service providers.

2. The Parties may meet the requirement of paragraph 1 by according to cross-border services and service providers of another Party, formally identical or formally different treatment to the treatment it accords to its own like services and like service providers.

3. Formally identical or formally different treatment shall be considered to be less favourable if it modifies the conditions of competition in favour of cross-border services or service providers of a Party compared to like services or like service providers of another Party.

#### Article 11.04 Most-favoured-nation treatment

Each Party shall immediately and unconditionally accord to cross-border services and service providers of another Party treatment no less favourable than it accords to like services and like service providers of any other country.

#### Article 11.05 Standard of treatment

Each Party shall accord to cross-border services and service providers of another Party the better of the treatment required by Articles 11.03 and 11.04.

#### Article 11.06 Local presence

No Party may require a service provider of another Party to establish or maintain a representative office or any form of enterprise, or to be resident, in its territory as a condition for the cross-border provision of a service.

#### Article 11.07 Granting of permits, authorizations, licenses and certificates

For the purpose of ensuring that any measure that a Party adopts or maintains in relation to the requirements and procedures for granting permits, authorizations, licenses and certificates to nationals of another Party does not constitute an unnecessary barrier to trade, each Party shall endeavour to ensure that such measures:

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

#### Article 11.08 Reservations

1. Articles 11.03, 11.04 and 11.06 do not apply to:

- (a) Any existing non-conforming measure that is maintained by a Party at any level of government, as set out in its Schedule to Annex I;
- (b) the continuation or prompt renewal of any non-conforming measure referred to in subparagraph (a); or
- (c) an amendment to any non-conforming measure referred to in subparagraph (a) to the extent that the amendment does not decrease the conformity of the measure, as it existed immediately before the amendment, with Articles 11.03, 11.04 and 11.06.

2. Articles 11.03, 11.04 and 11.06 do not apply to any measure that a Party adopts or maintains with respect to sectors, subsectors or activities, as set out in its Schedule to Annex II.

3. For the purposes of this Article and Article 11.09, existing means in effect on 18 August 1998, except between Chile and Honduras, where it means 30 June 1999.

#### Article 11.09 Non-discriminatory quantitative restrictions

1. Each Party shall set out in its Schedule to Annex III any non-discriminatory quantitative restriction that it maintains.

2. Each Party shall notify the other Parties of any non-discriminatory quantitative restriction that it adopts after the date of entry into force of this Agreement and shall set out the restriction in the Schedule referred to in paragraph 1.

3. The Parties shall periodically, but in any event at least every two years, endeavour to negotiate the liberalization or removal of:

(a) The quantitative restrictions maintained by a Party set out in the schedule referred to in paragraph 1; and

(b) quantitative restrictions adopted by a Party after this Agreement comes into force.

#### Article 11.10 Denial of benefits

Subject to prior notification and consultation in accordance with Articles 17.04 (Provision of Information) and 19.06 (Consultations), a Party may deny the benefits of this Chapter to a service provider of another Party where the Party establishes that the service is being provided by an enterprise that has no substantial business activities in the territory of the other Party and, in accordance with the law of that other Party, is owned or controlled by persons of a non-Party.

#### Article 11.11 Future liberalization

Through future negotiations to be arranged by the Commission, the Parties shall seek further liberalization in the different services sectors, with a view to eliminating the remaining restrictions in the Schedules referred to in Article 11.08(1) and (2).

#### Article 11.12 Procedures

The Parties shall establish procedures for:

(a) A Party to notify another Party and include in its relevant Schedule:

(i) Amendments of measures referred to in Article 11.08(1) and (2), and

(ii) quantitative restrictions in accordance with Article 11.09;

(b) commitments to liberalize quantitative restrictions, licensing requirements and other non-discriminatory measures; and

(c) consultations on reservations, quantitative restrictions or commitments with a view to further liberalization.

#### Article 11.13 Professional services

Annex 11.13 on professional services sets out the rules to be followed by the Parties to harmonize the requirements governing professional services through licensing to exercise a profession.

#### Article 11.14 Committee on Investment and Cross-Border Services

1. The Parties establish a Committee on Investment and Cross-Border Services, whose composition is established in Annex 11.14.

2. The Committee shall examine matters relating to this Chapter and to Chapter 10 (Investment).

#### ANNEX 11.13

##### PROFESSIONAL SERVICES

##### Recognition of Post-Secondary Diplomas

1. Where a Party recognizes, either unilaterally or by agreement with another country, a post-secondary diploma obtained in the territory of another Party or of a non-Party:

(a) Nothing in Article 11.04 shall be construed to require that Party to accord such recognition to post-secondary diplomas obtained in the territory of another Party; and

(b) a Party shall afford another Party an adequate opportunity to demonstrate that the post-secondary diplomas obtained in the territory of that Party should also be recognized or to conclude an agreement or arrangement of comparable effect.

##### Basis for Recognition of Post-Secondary Diplomas and Licensing of Professional Service Providers

2. The Parties agree that the processes of mutual recognition of post-secondary diplomas and licensing of professional service providers shall be intended to improve the quality of professional services by establishing standards and criteria for such processes, while simultaneously protecting consumers and safeguarding the public interest.

3. The Parties shall encourage the relevant bodies, including competent government authorities and professional associations and colleges, where pertinent, to:

(a) Prepare such standards and criteria; and

(b) develop and present recommendations on the mutual recognition of professional diplomas and licensing to exercise a profession.

4. The standards and criteria referred to in paragraph 3 may consider the law of each Party and, by way of example, the following elements: education, examinations, experience, conduct and ethics, professional development and re-certification, scope of practice, local knowledge, supervision and consumer protection.

5. The Parties shall provide the detailed information necessary for the recognition of post-secondary diplomas and licensing of professional service providers, including information on academic courses, study guides and materials, payment of fees, dates of examinations timetables, location and membership in professional societies or colleges. The information includes legislation, administrative guidelines and centrally-applied general measures and those prepared by governmental and non-governmental institutions.

#### ANNEX 11.14

#### COMMITTEE ON INVESTMENT AND CROSS-BORDER TRADE IN SERVICES

The Committee on Investment and Cross-Border Trade in Services established in Article 11.14 shall be composed of:

(a) For Chile, the Directorate General of International Economic Relations of the Ministry of Foreign Affairs ("Dirección General de Relaciones Económicas Internacionales, Ministerio de Relaciones Exteriores") or its successor;

(b) for Costa Rica, the Ministry of Foreign Trade ("Ministerio de Comercio Exterior") or its successor;

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

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

(e) for Honduras, the Department of Industry and Trade ("Secretaría de Industria y Comercio") or its successor; and

(f) for Nicaragua, the Ministry of Development, Industry and Trade ("Ministerio de Fomento, Industria y Comercio") or its successor.

#### CHAPTER 12. AIR TRANSPORTATION

##### Article 12.01 Scope and coverage

1. This Chapter applies to the measures that a Party adopts or maintains with respect to air transportation services.

2. The Conventions signed or to be signed between Chile and a Central American country, hereinafter the "Conventions", shall form an integral part of this Agreement, including those referred to in Annex 12.01.

3. In the event of any inconsistency between this Agreement and the Conventions, this Agreement shall prevail to the extent of the inconsistency.

#### Article 12.02 Consolidation

No modification made in accordance with the Conventions shall restrict rights existing prior to such modification.

#### Article 12.03 Dispute settlement

1. Disputes regarding the interpretation or application of this Chapter or the Conventions shall be settled in accordance with Chapter 19 (Dispute Settlement) of this Agreement, with the modifications established in this Article.

2. Where one Party claims that a dispute has arisen under paragraph 1, Article 19.11 (Panel Selection) shall be applicable, except that:

(a) All members of the arbitral panel shall comply with the requisites established in (b) and (c);

(b) the Parties shall establish by consensus, no later than 30 days after this Agreement comes into force, a roster of up to 10 individuals, who are willing and able to serve as panellists in air transportation services disputes; and

(c) the roster members shall:

(i) Have specialized knowledge of or practical experience in air transportation services; and

(ii) comply with the requirements established in Article 19.10 (Qualifications of Panellists).

3. Until such time as the roster referred to in paragraph 2(b) is established, each disputing Party shall designate a panellist and the third shall be designed by the disputing Parties by mutual agreement. Where an arbitral panel has not been established under this paragraph within the term set out in Article 19.11 (Panel Selection), on the request of either of the Parties, the President of the Council of the International Civil Aviation Organization shall appoint the remaining panellists, following that organization's procedures.

#### Article 12.04 Committee on Air Transportation

1. The Parties establish a Committee on Air Transportation, whose composition is established in Annex 12.04.

2. The Committee shall examine matters relating to this Chapter.

#### ANNEX 12.01

##### SCOPE AND COVERAGE

1. The Convention on Air Transportation between the Republic of Chile and the Republic of Costa Rica, signed in San Jose on 6 April 1999 or its successor is incorporated into and made an integral part of this Agreement.

2. Chile and Costa Rica also agree to ratify and be bound by the provisions of the Act signed by their aeronautical authorities on 1 July 1998 to the effect that it is necessary to temporarily maintain limits on fifth freedom operations of Costa Rican airlines on the route Lima - Santiago - Lima, considering that this segment is limited by the Peruvian Authority for Chilean companies. The limitations shall be applied as follows:

(a) Up to a total of 10,000 passengers may be carried between 1 July and 31 December 1998, counting both directions;

(b) in 1999, the quota is an annual base of 18,000 passengers, counting both directions, plus the percentage increase in total traffic on that market in 1998 over the previous year. The final quota may not be less than 21,000, counting both directions;

(c) if at 1 January 2000, the Chilean Party has not requested a review meeting, the limitation on the Lima - Santiago - Lima route shall be void. If the Chilean Party requests a review of the quota by that date, it shall be for the purposes of an increase and not a reduction;

(d) the meeting shall be held and concluded within the 30 calendar days after it is called. If no meeting is held within that period on Costa Rica's account, the 1999 quota shall continue to be applied until the review process is concluded and if it is not held on Chile's account, the limitation shall be void; and

(e) if, the restrictions imposed by Peru on Chile are removed for any reason, the restrictions established herein shall also be removed.

#### ANNEX 12.04

##### COMMITTEE ON AIR TRANSPORTATION

The Committee on Air Transportation established in Article 12.04 shall be composed of:

(a) For Chile, the Civil Aeronautics Board ("Junta de Aeronáutica Civil") or its successor;

(b) for Costa Rica, the Technical Civil Aviation Council of the Ministry of Public Works and Transport ("Consejo Técnico de Aviación Civil del Ministerio de Obras Públicas y

Transportes") and the Directorate General of Civil Aviation ("Dirección General de Aviación Civil") or their successors;

(c) for El Salvador, the Ministry of Foreign Affairs ("Ministerio de Relaciones Exteriores"), the Directorate General of Air Transport ("Dirección General de Transporte Aéreo") and the Vice-Ministry of Transport ("Viceministerio de Transporte") or their successors;

(d) for Guatemala, the Directorate General of Civil Aeronautics ("Dirección General de Aeronáutica Civil") or its successor;

(e) for Honduras, the Directorate General of Civil Aeronautics of the Department of Public Works, Transport and Housing ("Dirección General de Aeronáutica Civil, Secretaría de Obras Públicas, Transporte y Vivienda") or its successor; and

(f) for Nicaragua, the Directorate General of Civil Aeronautics of the Ministry of Transport and Infrastructure ("Dirección General de Aeronáutica Civil, Ministerio de Transporte e Infraestructura") or its successor.

## CHAPTER 13. TELECOMMUNICATIONS

### Article 13.01 Exclusion

This Chapter does not apply between Chile and Costa Rica.

### Article 13.02 Definitions

For the purposes of this Chapter:

authorized equipment means terminal or other equipment that has been approved for attachment to the public telecommunications transport network in accordance with a Party's conformity assessment procedures;

conformity assessment procedure means "conformity assessment procedure" as defined in Article 9.01 (Definitions) and includes the procedures referred to in Annex 13.02;

enhanced or value-added services means those telecommunications services employing computer processing applications that:

(a) Act on the format, content, code, protocol or similar aspects of a customer's transmitted information;

(b) provide a customer with additional, different or restructured information; or

(c) involve customer interaction with stored information;

intracorporate communications means telecommunications through which an enterprise communicates:



(a) Internally or with or among its subsidiaries, branches or affiliates, as defined by each Party; or

(b) on a non-commercial basis with other persons that are fundamental to the economic activity of the enterprise and that have a continuing contractual relationship with it;

but does not include telecommunications services provided to persons other than those described herein;

principal provider or dominant operator means a provider with the capacity to significantly affect the conditions of participation (from the standpoint of prices and supplies) in a given telecommunications services market, as a result of controlling essential installations or the use of its market position;

monopoly means an entity, including a consortium or government agency, that in any relevant market in the territory of a Party maintains or is designated under its legislation as the sole provider of public telecommunications transport networks or services;

network termination point means the final demarcation of the public telecommunications transport network at the customer's premises;

private telecommunications transport network means a telecommunications transport network that is used exclusively for intracorporate communications or between predetermined individuals;

protocol means a set of rules and formats that govern the exchange of information between two peer entities for purposes of transferring signalling or data information;

public telecommunications transport network means the telecommunications transport network used to commercially operate telecommunications services to meet the needs of the public generally, not including the terminal equipment of customers or telecommunications transport networks beyond the network termination point;

public telecommunications transport service means any telecommunications transport service required by a Party, explicitly or in effect, to be offered to the public generally, including telegraph, telephone, telex and data transmission, that typically involves the real-time transmission of customer-supplied information between two or more points without any end-to-end change in the form or content of the customer's information;

standards-related measure means a "standards related measure" as defined in Article 9.01 (Definitions);

telecommunications means the transmission, emission or reception of signs, signals, written words, images, sounds and information of any type by wire, radio, optical means or other electromagnetic systems;

telecommunications service means a service provided by means of the transmission and reception of signals by wire, radio, optical means or other electromagnetic systems, but does not mean the cable, broadcast or other electromagnetic distribution of radio or television programming; and

terminal equipment means any digital or analogue device capable of processing, receiving, switching, signalling or transmitting signals by electromagnetic means and that is connected by radio or wire to a public telecommunications transport network at a termination point.

#### Article 13.03 Scope and coverage

1. This Chapter applies to:

- (a) Measures adopted or maintained by a Party relating to the provision of public telecommunications services;
- (b) measures adopted or maintained by a Party relating to access to and use of public telecommunications transport networks or services by persons of another Party, including access and use by such persons operating private networks for intracorporate communications;
- (c) measures adopted or maintained by a Party relating to the provision of enhanced or value-added services by persons of another Party in the territory, or across the borders, of the first Party; and
- (d) standards-related measures relating to attachment of terminal or other equipment to public telecommunications transport networks.

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

3. Nothing in this Chapter shall be construed to:

- (a) Require a Party to authorize a person of another Party to establish, construct, acquire, lease, operate or provide telecommunications transport networks or telecommunications transport services;
- (b) require a Party, or require a Party to compel any person, to establish, construct, acquire, lease, operate or provide telecommunications transport networks or telecommunications transport services not offered to the public generally;
- (c) prevent a Party from prohibiting persons operating private networks from using their networks to provide public telecommunications transport networks or services to third persons; or

(d) require a Party to compel any person engaged in the broadcast or cable distribution of radio or television programming to make available its cable or broadcast facilities as a public telecommunications transport network.

#### Article 13.04 Access to and use of public telecommunications transport networks and services

1. For purposes of this Article, "non-discriminatory" means on terms and conditions no less favourable than those accorded to any other customer or user of like public telecommunications transport networks or services in like circumstances.

2. Each Party shall ensure that persons of another Party have access to and use of any public telecommunications transport network or service, including private leased circuits, offered in its territory or across its borders for the conduct of their business, on reasonable and non-discriminatory terms and conditions, including as set out in the other paragraphs of this Article.

3. Subject to paragraphs 7 and 8, each Party shall ensure that such persons are permitted to:

(a) Purchase or lease, and attach terminal or other equipment that interfaces with the public telecommunications transport network;

(b) interconnect private leased or owned circuits with public telecommunications transport networks in the territory, or across the borders, of that Party, including for use in providing dial-up access to and from their customers or users, or with circuits leased or owned by another person on terms and conditions mutually agreed by those persons, as established in Annex 13.04;

(c) perform switching, signalling and processing functions; and

(d) use operating protocols of their choice, in accordance with the technical plans of each Party.

4. Each Party shall ensure that the pricing of public telecommunications transport services reflects economic costs directly related to providing the services without detriment to its domestic law. Nothing in this paragraph shall be construed to prevent cross-subsidization between public telecommunications transport services.

5. Each Party shall ensure that persons of another Party may use public telecommunications transport networks or services for the movement of information in its territory or across its borders, including for intracorporate communications, and for access to information contained in data bases or otherwise stored in machine-readable form in the territory of another Party.

6. Further to Article 20.02 (General Exceptions), nothing in this Chapter shall be construed to prevent a Party from adopting or enforcing any measure necessary to:

- (a) Ensure the security and confidentiality of messages; or
- (b) protect the privacy of subscribers to public telecommunications transport networks or services.

7. Further to Article 13.06, each Party shall ensure that no condition is imposed on access to and use of public telecommunications transport networks or services, other than that necessary to:

- (a) Safeguard the public service responsibilities of providers of public telecommunications transport networks or services, in particular their ability to make their networks or services available to the public generally; or
- (b) protect the technical integrity of public telecommunications transport networks or services.

8. Provided that conditions for access to and use of public telecommunications transport networks or services satisfy the criteria set out in paragraph 7, such conditions may include:

- (a) A restriction on resale or shared use of such services;
- (b) a requirement to use specified technical interfaces, including interface protocols, for interconnection with such networks or services;
- (c) a restriction on interconnection of private leased or owned circuits with such networks or services or with circuits leased or owned by another person, when the circuits are used in the provision of public telecommunications transport networks or services; and
- (d) a licensing, permit, concession, registration or notification procedure which, if adopted or maintained, is transparent and applications filed thereunder are processed expeditiously.

#### Article 13.05 Conditions for the provision of enhanced or value-added services

1. Each Party shall ensure that:

- (a) Any licensing, permit, concession, registration or notification procedure that it adopts or maintains relating to the provision of enhanced or value-added services is transparent and non-discriminatory, and that applications filed thereunder are processed expeditiously; and
- (b) information required under such procedures is limited to that necessary to demonstrate that the applicant has the financial solvency to begin providing services or to assess conformity of the applicant's terminal or other equipment with the Party's applicable standards or technical regulations, or requirements related to the legal establishment of the applicant;

2. Without prejudice to the law of each Party, no Party may require a person providing enhanced or value-added services to:

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

3. Notwithstanding paragraph 2(c), a Party may require the filing of a tariff by:

- (a) Such provider to remedy a practice of that provider that the Party has found in a particular case to be anticompetitive under its law; or
- (b) a monopoly, principal provider or dominant operator to which Article 13.07 applies.

#### Article 13.06 Standards-related measures

1. Each Party shall ensure that its standards-related measures relating to the attachment of terminal or other equipment to the public telecommunications transport networks, including those measures relating to the use of testing and measuring equipment for conformity assessment procedures, are adopted or maintained only to the extent necessary to:

- (a) Prevent technical damage to public telecommunications transport networks;
- (b) prevent technical interference with, or degradation of, public telecommunications transport services;
- (c) prevent electromagnetic interference, and ensure compatibility, with other uses of the electromagnetic spectrum;
- (d) prevent billing equipment malfunction;
- (e) ensure users' safety and access to public telecommunications transport networks or services; or
- (f) ensure efficient use of the electromagnetic spectrum.

2. A Party may require approval for the attachment to the public telecommunications transport network of terminal or other equipment that is not authorized, provided that the criteria for that approval are consistent with paragraph 1.

3. Each Party shall ensure that the network termination points for its public telecommunications transport networks are defined on a reasonable and transparent basis.

4. No Party may require separate authorization for equipment that is connected on the customer's side of authorized equipment that serves as a protective device fulfilling the criteria of paragraph 1.

5. Each Party shall:

(a) Ensure that its conformity assessment procedures are transparent and non-discriminatory and that applications filed thereunder are processed expeditiously;

(b) permit any technically qualified entity to perform the testing required under the Party's conformity assessment procedures for terminal or other equipment to be attached to the public telecommunications transport network, subject to the Party's right to review the accuracy and completeness of the test results; and

(c) ensure that any measure that it adopts or maintains requiring persons to be authorized to act as agents for suppliers of telecommunications equipment before the Party's relevant conformity assessment bodies is non-discriminatory.

6. No later than twelve months after the date of entry into force of this Agreement, each Party shall adopt, as part of its conformity assessment procedures, provisions necessary to accept the test results from laboratories or testing facilities in the territory of another Party for tests performed in accordance with the accepting Party's standards-related measures and procedures.

#### Article 13.07 Monopolies or anti-competitive practices

1. Where a Party maintains or designates a monopoly or where there is a principal provider or dominant operator to provide public telecommunications transport networks or services, and it, directly or through an affiliate, competes in the provision of enhanced or value-added services or other telecommunications-related services or telecommunications-related goods, the Party shall ensure that the monopoly, principal provider or dominant operator does not use its position to engage in anticompetitive conduct in those markets, either directly or through its dealings with its affiliates, in such a manner as to affect adversely a person of another Party. Such conduct may include cross-subsidization, predatory conduct and the discriminatory provision of access to public telecommunications transport networks or services.

2. To prevent such anticompetitive conduct, each Party shall adopt or maintain effective measures, such as:

(a) Accounting requirements;

(b) requirements for structural separation;

(c) rules to ensure that the monopoly, principal provider or dominant operator accords its competitors access to and use of its public telecommunications transport networks or services on terms and conditions no less favourable than those it accords to itself or its affiliates; or

(d) rules to ensure the timely disclosure of technical changes to public telecommunications transport networks and their interfaces.

#### Article 13.08 Transparency

Further to Article 17.03 (Publication), each Party shall make publicly available its measures relating to access to and use of public telecommunications transport networks or services, including measures relating to:

(a) Tariffs and other terms and conditions of service;

(b) specifications of technical interfaces with the networks or services;

(c) information on bodies responsible for the preparation and adoption of standards-related measures affecting such access and use;

(d) conditions applying to attachment of terminal or other equipment to the networks; and

(e) notification, permit, registration, certification, licensing or concession requirements.

#### Article 13.09 Relation to other chapters

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

#### Article 13.10 Relation to international organizations and agreements

The Parties recognize the importance of international standards for global compatibility and interoperability of telecommunication networks or services and undertake to promote those standards through the work of relevant international bodies, including the International Telecommunication Union, the International Organization for Standardization and the Inter-American Telecommunications Commission.

#### Article 13.11 Technical cooperation and other consultations

1. To encourage the development of interoperable telecommunications transport services infrastructure, the Parties shall cooperate in the exchange of technical information, the development of government-to-government training programmes and other related activities. In implementing this obligation, the Parties shall give special emphasis to existing exchange programmes.

2. The Parties shall consult with a view to determining the feasibility of further liberalizing trade in all telecommunications services, including public telecommunications transport networks and services.

## ANNEX 13.02

### CONFORMITY ASSESSMENT PROCEDURES

For the purposes of this Chapter, conformity assessment procedures include:

(a) For Chile:

(i) Law 18.168, General Law on Telecommunications ("Ley 18.168, Ley General de Telecomunicaciones");

(ii) Law 18.838, Law on the National Television Council ("Ley 18.838, Consejo Nacional de Televisión") and amendments thereto;

(iii) Law 16.643, Law on Abuse of Publicity ("Ley 16.643, Ley sobre Abusos de Publicidad");

(iv) Supreme Decree 220 of the Ministry of Transport and Telecommunications of 1981 ("Decreto Supremo 220 del Ministerio de Transportes y Telecomunicaciones de 1981"); and

(v) Regulation on the Homologation of Telephone Equipment ("Reglamento de Homologación de Aparatos Telefónicos");

(b) for El Salvador:

(i) Legislative Decree 142 of 6 November 1997, the Telecommunications Law ("Decreto Legislativo N° 142 del 6 de noviembre de 1997, Ley de Telecomunicaciones"); and

(ii) Executive Decree 64 of 15 May 1998, Regulations of the Telecommunications Law ("Decreto Ejecutivo N° 64 del 15 de mayo de 1998, Reglamento de la Ley de Telecomunicaciones");

(c) for Guatemala:

(i) Congressional Decree 94-96, General Telecommunications Law ("Decreto N° 94-96 del Congreso de la República, Ley General de Telecomunicaciones");

(ii) Congressional Decree 115-97, Amendments to the General Telecommunications Law ("Decreto N° 115-97 del Congreso de la República, Reformas a la Ley General de Telecomunicaciones");



(iii) Government Resolution 574-98, Regulations for the Operation of Satellite Systems in Guatemala ("Acuerdo Gubernativo N° 574-98, Reglamento para la Explotación de Sistemas Satelitales en Guatemala"); and

(iv) Government Resolution 408-99, Regulations for the Provision of International Telephone Service ("Acuerdo Gubernativo N° 408-99, Reglamento para la Prestación del Servicio Telefónico Internacional");

(d) for Honduras:

(i) Decree 185-95 of 31 October 1995, Telecommunications Framework Law ("Decreto N° 185-95 del 31 de octubre de 1995, Ley Marco del Sector de Telecomunicaciones");

(ii) Resolution 89-97 of 27 May 1997, General Regulations of the Telecommunications Framework Law ("Acuerdo N° 89-97 del 27 de mayo de 1997, Reglamento General de la Ley Marco del Sector de Telecomunicaciones");

(iii) Decree 244-98 of 19 September 1998 ("Decreto N° 244-98 del 19 de septiembre de 1998");

(iv) Decree 89-99 of 25 May 1999 ("Decreto N° 89-99 del 25 de mayo de 1999");

(v) Resolution OD 003/99, Gazette of 26 February 1999 ("Resolución OD 003/99, La Gaceta, 26 febrero 1999"); and

(vi) Resolution 105/98, Gazette Of 11 July 1998 ("Resolución 105/98, La Gaceta, 11 julio 1998"); and

(e) For Nicaragua:

(i) Law 200 of 8 August 1995, General Telecommunications and Postal Services Law published in Gazette 154 of 18 August 1995 ("Ley N° 200 del 8 de agosto de 1995, Ley General de Telecomunicaciones y Servicios Postales, La Gaceta N° 154, 18 agosto 1995");

(ii) Law 210 of 30 November 1995, Law Incorporating Private Parties in the Operation and Expansion of Public Telecommunications Services published in Gazette 231 of 7 December 1995 ("Ley N° 210 del 30 de noviembre de 1995, Ley de Incorporación de Particulares en la Operación and Ampliación de los Servicios Públicos de las Telecomunicaciones, La Gaceta N° 231, 7 diciembre 1995");

(iii) Decree 19-96 of 12 September 1996, Regulations of the General Telecommunications and Postal Services Law, published in Gazette 177 of 19 September 1996 ("Decreto N° 19-96 del 12 de septiembre de 1996, Reglamento de la Ley General de Telecomunicaciones and Servicios Postales, La Gaceta N° 177, 19 septiembre 1996");

(iv) Law 293 of 1 July 1998, Law Amending Law 210, published in Gazette 123 of 2 July 1998 ("Ley N° 293 de 1 de julio de 1998, Ley de reforma a la Ley N° 210, La Gaceta N° 123, 2 julio 1998"); and

(v) Nicaraguan Commercial Code of 1916 ("Código de Comercio de Nicaragua de 1916").

#### ANNEX 13.04

#### INTERCONNECTION OF PRIVATE CIRCUITS

For the purposes of Article 13.04, for Chile, El Salvador, Guatemala, Honduras and Nicaragua, the interconnection of private circuits to public telecommunications transport networks shall not provide access to traffic from such private circuits to public networks or vice versa, regardless of whether the private circuits are leased or owned.

#### CHAPTER 14. TEMPORARY ENTRY FOR BUSINESS PERSONS

##### Article 14.01 Definitions

##### 1. For the purposes of this Chapter:

business activity means legitimate activities of a commercial nature, established and operated to obtain profits on the market. It does not include the possibility of obtaining employment, wages or remuneration from a source of employment in the territory of a Party;

business person means a national who is engaged in trade in goods, the provision of services or the conduct of investment activities;

labour certification means the procedure carried out by the competent administrative authority to determine whether a national of a Party who wishes to obtain temporary entry into the territory of another Party would displace national labour in the same industry or have a significant adverse effect on labour conditions in that industry;

national means "national" as defined in Article 2-01 (Definitions of General Application) but does not include permanent residents;

pattern of practice means a practise carried out by the immigration authorities of a Party repeatedly over a representative period immediately prior to the most recent occurrence; and

temporary entry means entry into the territory of a Party by a business person of another Party without the intent to establish permanent residence.

##### 2. For the purposes of Annex 14.04:

executive functions means functions assigned in an organization whereby the person to whom they are assigned basically has the following responsibilities:

- (a) To direct the administration of the organization or of a relevant component or function thereof;
- (b) to establish the policies and objectives of the organization, component or function; or
- (c) to receive supervision or general direction only from more senior executives of the organization, its board of directors or shareholders;

management functions means functions assigned in an organization whereby the person to whom they are assigned basically has the following responsibilities:

- (a) To direct the organization or an essential function of the organization;
- (b) to supervise and control the work of other professional employees, supervisors or administrators;
- (c) to have the authority to hire and dismiss or recommend hiring and dismissal and other aspects of personnel management which are being directly supervised by that person and to carry out senior functions in the organizational structure or with respect to the function for which the person is responsible; or
- (d) to act with discretionary authority in the day-to-day operation of the function for which the person is responsible; and

functions that require specialized knowledge means functions that involve special knowledge of a good, service, research, equipment, techniques, administration of the organization or its interests and their application on international markets, or an advanced level of knowledge or experience in the organization's processes and procedures.

#### Article 14.02 General principles

Further to Article 1.02 (Objectives), this Chapter reflects the preferential trading relationship that exists among the Parties, the desirability of facilitating temporary entry on a reciprocal basis and of establishing transparent criteria and procedures for that purpose, and the need to ensure border security and to protect the domestic labour force and permanent employment in their respective territories.

#### Article 14.03 General obligations

1. Each Party shall apply its measures relating to the provisions of this Chapter in accordance with Article 14.02 and, in particular, shall apply those measures expeditiously so as to avoid unduly impairing or delaying trade in goods or services or the conduct of investment activities under this Agreement.

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

#### Article 14.04 Grant of temporary entry

1. Each Party shall grant temporary entry to business persons who are otherwise qualified for entry under applicable measures relating to public health and safety and national security, in accordance with this Chapter, including the provisions of Annexes 14.04 and 14.04(1).

2. A Party may refuse to issue an immigration document authorizing employment to a business person where the temporary entry of that person might affect adversely:

(a) The settlement of any labour dispute that is in progress at the place or intended place of employment; or

(b) the employment of any person who is involved in such dispute.

3. When a Party refuses, pursuant to paragraph 2, to issue an immigration document authorizing employment, it shall:

(a) Inform in writing the business person of the reasons for the refusal; and

(b) promptly notify in writing the other Party of the reasons for the refusal.

4. Each Party shall limit any fees for processing applications for temporary entry of business persons to the approximate cost of services rendered.

5. A grant of temporary entry under this Chapter does not replace the requirements for the exercise of a profession or activity under the specific rules in effect in the territory of the Party granting temporary entry.

#### Article 14.05 Provision of information

1. Further to Article 17.03 (Publication), each Party shall:

(a) Provide to another Party such materials as will enable it to become acquainted with its measures relating to this Chapter; and

(b) no later than one year after the date of entry into force of this Agreement, prepare, publish and make available in its own territory, and in the territory of the other Parties, explanatory material in a consolidated document regarding the requirements for temporary entry under this Chapter in such a manner as will enable business persons of the other Parties to become acquainted with them.

2. Each Party shall collect and maintain, and make available to another Party in accordance with its domestic law, data respecting the granting of temporary entry under

this Chapter to business persons of that other Party who have been issued immigration documentation, including data specific to each authorized category.

#### Article 14.06 Dispute settlement

1. A Party may not initiate proceedings under Article 19.07 (Commission, Good Offices, Conciliation and Mediation) regarding a refusal to grant temporary entry under this Chapter or a particular case arising under Article 14.03 unless:

- (a) The matter involves a pattern of practice; and
- (b) the business person has exhausted the available administrative remedies regarding the particular matter.

2. The remedies referred to in paragraph (1)(b) shall be deemed to be exhausted if a final determination in the matter has not been issued by the competent authority within six months of the institution of an administrative proceeding, and the failure to issue a determination is not attributable to delay caused by the business person.

#### Article 14.07 Relation to other chapters

Except for this Chapter, Chapters 1 (Initial Provisions), 2 (General Definitions), 18 (Administration of the Agreement) and 21 (Final Provisions) and Articles 17.02 (Contact Points), 17.03 (Publication), 17.04 (Provision of Information) and 17.06 (Administrative Proceedings for the Adoption of Measures of General Application), no provision of this Agreement shall impose any obligation on a Party regarding its immigration measures.

#### ANNEX 14.04

#### TEMPORARY ENTRY OF BUSINESS PERSONS

##### Section A - Business Visitors

1. Each Party shall grant temporary entry to a business person seeking to engage in a business activity set out in Appendix 14.04(A)(1), with no requisites other than those established in the immigration measures applicable to temporary entry, on presentation of:

- (a) Proof of citizenship of a Party;
- (b) documentation demonstrating that the business person will be so engaged and describing the purpose of entry; and
- (c) evidence demonstrating that the proposed business activity is international in scope and that the business person is not seeking to enter the local labour market.

2. Each Party shall provide that a business person may satisfy the requirements of paragraph 1(c) by demonstrating that:

(a) The primary source of remuneration for the business activity is outside the territory of the Party granting temporary entry; and

(b) the business person's principal place of business and the actual place of accrual of profits, at least predominantly, remain outside the territory of the Party granting temporary entry.

For the purposes of this paragraph, a Party shall normally accept a declaration as to the principal place of business and the actual place of accrual of profits. Where the Party requires further proof, it shall act in accordance with its law.

3. Each Party shall grant temporary entry to a business person seeking to engage in a business activity other than those set out in Appendix 14.04(A)(1) on a basis no less favourable than that provided under the measures set out in Appendix 14.04(A)(3).

4. No Party may:

(a) As a condition for granting temporary entry under paragraph 1 or 3, require prior approval procedures, petitions, labour certification tests or other procedures of similar effect; or

(b) impose or maintain any numerical restriction relating to temporary entry under paragraph 1 or 3.

5. Notwithstanding paragraph 4, a Party may require a business person seeking temporary entry under this Section to obtain a visa or its equivalent prior to entry. The Parties shall consider the possibility of avoiding the imposition of the visa requirement or its elimination.

## Section B - Traders and Investors

1. Each Party shall grant temporary entry and provide confirming documentation to a business person in a capacity that is supervisory, executive or involves specialized knowledge, provided that the business person otherwise complies with existing immigration measures applicable to temporary entry, seeking to:

(a) Carry on substantial trade in goods or services principally between the territory of the Party of which the business person is a national and the territory of the other Party into which entry is sought; or

(b) establish, develop, administer or provide advice or key technical services to the operation of an investment to which the business person or the business person's enterprise has committed, or is in the process of committing, a substantial amount of capital.

2. No Party may:

(a) As a condition for granting temporary entry under paragraph 1, require labour certification tests or other procedures of similar effect; or

(b) impose or maintain any numerical restriction relating to temporary entry under paragraph 1.

3. Notwithstanding paragraph 2, a Party may require a business person seeking temporary entry under this Section to obtain a visa or its equivalent prior to entry. The Parties shall consider the possibility of avoiding the imposition of the visa requirement or its elimination.

#### Section C - Intra-Company Transferees

1. Each Party shall grant temporary entry and provide confirming documentation to a business person employed by an enterprise who seeks to render services to that enterprise or a subsidiary or affiliate thereof, in the form of management or executive functions or in a capacity that involves specialized knowledge, provided that the business person otherwise complies with existing immigration measures applicable to temporary entry. A Party may require the business person to have been employed continuously by the enterprise for one year within the three-year period immediately preceding the date of the application for admission.

2. No Party may:

(a) As a condition for granting temporary entry under paragraph 1, require labour certification tests or other procedures of similar effect; or

(b) impose or maintain any numerical restriction relating to temporary entry under paragraph 1.

3. Notwithstanding paragraph 2, a Party may require a business person seeking temporary entry under this Section to obtain a visa or its equivalent prior to entry. The Parties shall consider the possibility of avoiding the imposition of the visa requirement or its elimination.

#### ANNEX 14.04(1)

#### COUNTRY-SPECIFIC RULES FOR THE

#### TEMPORARY ENTRY OF BUSINESS PERSONS

##### For Chile

1. Business persons who enter Chile in any of the categories set out in Annex 14.04 shall be considered to engage in activities that are useful or beneficial for the country.

2. Business persons who enter Chile in any of the categories set out in Annex 14.04 shall be in possession of a temporary residence visa, which may be renewed for consecutive

periods, provided the conditions under which it was granted are maintained. Such persons may not apply for permanent residence or change their immigration status, unless they comply with the general immigration requirements established in Decree Law 1.094 of 1975 ("Decreto Ley 1.094 de 1975") and Supreme Decree 597 of 1984 ("Decreto Supremo 597 de 1984") of the Ministry of the Interior ("Ministerio del Interior").

3. Business persons entering Chile may also obtain an identity card for foreigners.

#### For Costa Rica

1. Business persons who enter Costa Rica in any of the categories set out in Annex 14.04 shall be considered to engage in activities that are useful or beneficial for the country.

2. Business persons who enter Costa Rica in any of the categories set out in Annex 14.04 shall be in possession of a temporary residence visa, which may be renewed for consecutive periods, provided the conditions under which it was granted are maintained. Such persons may not apply for permanent residence or change their immigration status, unless they comply with the general immigration requirements established in the General Immigration Law, Law 7033 of 4 August 1986 ("Ley General de Migración y Extranjería, Ley número 7033 del 4 de agosto de 1986") and the Enabling Regulations ("Decreto Ejecutivo 19010 del 31 de mayo de 1989").

#### For El Salvador

1. Business persons who enter El Salvador in any of the categories set out in Annex 14.04 shall be considered to engage in activities that are useful or beneficial for the country.

2. Business persons who enter El Salvador in any of the categories set out in Annex 14.04 shall be in possession of a 90-day temporary business visa, which may be renewed for an equal period, to be issued by the Directorate General of Immigration ("Dirección General de Migración") indicating the kind of business to be carried on in the country, and the holder may only engage in that activity. Where the nature of the activity requires remaining in the country for a longer period, a temporary residency permit shall be granted for a period of one year, which may be renewed for consecutive periods, provided the conditions under which it was granted are maintained. Such persons may not apply for permanent residence, unless they comply with the general immigration requirements established in the Immigration Law, Legislative Decree 2722 of 19 December 1958 and amendments ("Ley de Migración, Decreto Legislativo N° 2772, del 19 de diciembre de 1958") and the Enabling Regulations ("Decreto Ejecutivo N° 33 del 9 de mayo de 1959").

#### For Guatemala



1. Business persons who enter Guatemala in any of the categories set out in Annex 14.04 shall be in possession of a business visa and subject to the country's immigration laws.

2. Business visas shall be granted by the Directorate General of Immigration ("Dirección General de Migración") or by Guatemalan consulates duly-accredited abroad.

3. Visas granted to foreigners do not imply their unconditional admission into the territory of the Republic and shall only be affixed to valid passports or travel documents issued by the competent authority.

#### For Honduras

1. Business persons who enter Honduras in any of the categories set out in Annex 14.04 shall be considered to engage in activities that are useful or beneficial for the country.

2. Business persons who enter Honduras in any of the categories set out in Annex 14.04 shall be in possession of a temporary residence visa, which may be renewed for consecutive periods, provided the conditions under which it was granted are maintained. Such persons may not apply for permanent residence or change their immigration status, unless they comply with the general immigration requirements established in the Population and Immigration Policy Law, Decree 34 of 25 September 1970 ("Ley de Población y Política Migratoria, Decreto N° 34 del 25 de septiembre de 1970") and Resolution 8 on Procedures in respect of Immigration Facilities for Foreign Investors and Business Persons of 19 August 1988 ("Acuerdo N° 8 sobre Procedimientos Sobre Facilidades Migratorias a Inversionistas y Comerciantes Extranjeros del 19 de agosto de 1988").

#### For Nicaragua

1. Business persons who enter Nicaragua in any of the categories set out in Annex 14.04 shall be considered to engage in activities that are useful or beneficial for the country.

2. Business persons who enter Nicaragua in any of the categories set out in Annex 14.04 shall be in possession of a temporary residence visa, which may be renewed for consecutive periods of up to three years, provided the conditions under which it was granted are maintained. Such persons may not apply for permanent residence or change their immigration status, unless they comply with the general immigration requirements established in the Immigration Law, Law 153 published in Gazette 80 of 30 April 1993 ("Ley de Migración, Ley N° 153, La Gaceta N° 80, 30 abril 1993") and the Law in respect of Alien Residents published in Gazette 81 of 3 May 1993 ("Ley de Extranjería, Ley N° 154, La Gaceta N° 81, 3 mayo 1993").

#### APPENDIX 14.04(A)(1)

#### BUSINESS VISITORS

Research and design

- Technical, scientific and statistical researchers conducting independent research or research for an enterprise located in the territory of another Party.

#### Growth, manufacture and production

- Purchasing and production management personnel conducting commercial transactions for an enterprise located in the territory of another Party.

#### Marketing

- Market researchers and analysts conducting research independently or for an enterprise located in the territory of another Party.
- Trade fair and promotional personnel attending a trade convention.

#### Sales

- Sales representatives and agents taking orders or negotiating contracts for goods or services for an enterprise located in the territory of another Party but not delivering goods or providing services.
- Buyers purchasing for an enterprise located in the territory of another Party.

#### Distribution

- Customs brokers providing consulting services regarding the facilitation of the import or export of goods.

#### After-sales service

- Installers, repair and maintenance personnel, and supervisors, possessing specialized technical knowledge essential to a seller's contractual obligation, performing services or training workers to perform services, pursuant to a warranty or other service contract incidental to the sale of commercial or industrial equipment or machinery, including computer software, purchased from an enterprise located outside the territory of the Party into which temporary entry is sought, during the life of the warranty or service agreement.

#### General service

- Consultants engaging in a business activity involving the cross-border provision of services.
- Management and supervisory personnel engaging in a commercial transaction for an enterprise located in the territory of another Party.

- Financial services personnel engaging in commercial transactions for an enterprise located in the territory of another Party.
- Public relations and advertising personnel consulting with business associates, or attending or participating in conventions.
- Tourism personnel (tour and travel agents, tour guides or tour operators) attending or participating in conventions or conducting a tour that has begun in the territory of another Party.
- Translators or interpreters performing services as employees of an enterprise located in the territory of another Party.

#### APPENDIX 14.04(A)(3)

#### EXISTING IMMIGRATION MEASURES

For Chile:

Section I, paragraph 6, of Decree Law 1.094, Official Gazette 19 July 1975, the Immigration Law ("Decreto Ley 1.094, Diario Oficial, 19 julio 1975", Ley de Extranjería") and Section III of Supreme Decree 597 of the Ministry of the Interior, Official Gazette 24 November 1984, the Immigration Regulations ("Decreto Supremo 597 del Ministerio del Interior, Diario Oficial, 24 noviembre 1984, Reglamento de Extranjería").

For Costa Rica:

Sections II, III, IV, V, VII, VIII and X of the General Immigration Law, Law 7033 of 4 August 1986 ("Ley General de Migración and Extranjería, Ley número 7033 del 4 de agosto de 1986") and the Regulations of the General Immigration Law, Executive Decree 19010 of 31 May 1989 ("Reglamento a la Ley General de Migración y Extranjería, Decreto Ejecutivo número 19010 del 31 de mayo de 1989").

For El Salvador:

(a) The Immigration Law, Legislative Decree 2772 of 19 December 1958, published in Official Gazette 240, Volume 171 of 23 December 1958 ("Ley de Migración, Decreto Legislativo N° 2772 de 19 de diciembre de 1958, Diario Oficial N° 240, tomo 181, 23 diciembre 1958");

(b) the Regulations of the Immigration Law, Executive Decree 33 of 9 March 1959, published in Official Gazette 56, Volume 182 of 31 March 1959 ("Reglamento de la Ley de Migración, Decreto Ejecutivo N° 33 de 9 de marzo de 1959, Diario Oficial N° 56, tomo 182, 31 marzo 1959"); and

(c) the Law in respect of Alien Residents, Legislative Decree 299 of 18 February 1986, published in Official Gazette 34, Volume 290 of 20 February 1986 ("Ley de Extranjería,

Decreto Legislativo N° 299 de 18 de febrero de 1986, Diario Oficial N° 34, tomo 290, 20 febrero 1986").

For Honduras:

The Population and Immigration Policies Law, Decree 34 of 25 September 1970 ("Ley de Población y Políticas Migratorias, Decreto N° 34 del 25 de septiembre de 1970") and Resolution 8 on Procedures Regarding Immigration Facilities for Investors and Business People of 19 August 1998 ("Acuerdo N° 8 sobre Procedimientos Sobre Facilidades Migratorias a Inversionistas y Comerciantes Extranjeros del 19 de agosto de 1998").

For Guatemala:

(a) Article 85 of the Immigration Law, published in the Official Gazette of Central America on 23 December 1998 ("Decreto N° 95-98, Diario Oficial de Centroamérica, 23 diciembre 1998"); and

(b) Article 77 of the Immigration Regulations, Resolution 529-99, published in the Official Gazette of Central America on 29 July 1999 ("Acuerdo N° 529-99, Reglamento de Migración, Diario Oficial de Centroamérica, 29 julio 1999").

For Nicaragua:

(a) Chapter II, Articles 7 through 40 of Law 153 of 24 February 1993, published in Gazette 80 of 30 April 1993 ("Ley N° 153 del 24 de febrero de 1993, La Gaceta N° 80, 30 abril 1993");

(b) Article 13 of Law 154 of 10 March 1993, published in Gazette 81 of 3 May 1993 ("Ley N° 154 del 10 de marzo de 1993, La Gaceta N° 81, 3 mayo 1993"); and

(c) Decree 628, Nicaraguan Law on Resident Pensioners or Persons of Independent Means, published in Gazette 264 of 19 November 1974 ("Decreto N° 628, Ley de Residentes Pensionados o Rentistas de Nicaragua, La Gaceta N° 264, 19 noviembre 1974").

## PART FIVE. COMPETITION POLICY

### CHAPTER 15. COMPETITION POLICY

#### Article 15.01 Cooperation

1. The Parties shall ensure that the benefits of this Agreement are not undermined by anti-competitive business practices. They shall also endeavour to work toward the adoption of common rules to avoid such practices.

2. The Parties shall endeavour to establish mechanisms to facilitate and promote the development of competition policy and ensure the application of rules on free

competition among and within the Parties to avoid the adverse effects of anti-competitive business practices in the free trade area.

#### Article 15.02 Monopolies and State enterprises

1. For the purposes of this Article:

monopoly means an entity, including a consortium or government agency, that in any relevant market in the territory of a Party is designated as the sole provider or purchaser of a good or service, but does not include an entity that has been granted an exclusive intellectual property right solely by reason of such grant; and

non-discriminatory treatment means the better of national treatment and most-favoured-nation treatment, as set out in the relevant provisions of this Agreement.

2. Nothing in this Agreement shall be construed to prevent a Party from designating a monopoly, provided its law so permits.

3. Each Party shall adjust to the provisions of this Agreement to ensure that any monopoly and State enterprise it establishes acts in a manner that is not inconsistent with the Party's obligations under this Agreement and provides non-discriminatory treatment to the investments of investors, goods and service providers of another Party.

4. This Article does not apply to procurement by governmental agencies of goods or services for governmental purposes and not with a view to commercial resale or use in the production of goods or the provision of services for commercial sale.

### PART SIX. GOVERNMENT PROCUREMENT

#### CHAPTER 16. GOVERNMENT PROCUREMENT

##### Article 16.01 Definitions

For the purposes of this Chapter:

entities means all public entities of the Parties except those listed in Annex 16.01;

government procurement means any type of government procurement of goods, services, or of a combination of goods and services, envisaged in the respective legislation and carried out by the public entities of the Parties. This concept shall include public works concessions;

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

privatization means a process by means of which a public entity is released from State control, be it through public tendering of shares in that entity or otherwise, as provided for in the Parties' applicable legislation;

supplier means a person of a Party who provides goods or services under this Chapter;

technical specification means a specification which sets out the characteristics of goods or their related processes and production methods, or the characteristics of services or their related operating methods, including any applicable administrative provisions. It may also include or deal exclusively with issues relating to terminology, symbols, packaging, marking, labelling applicable to goods, processes, or production and operating methods; and

tendering procedures means all government procurement procedures other than contracting on own account.

#### Article 16.02 Objective, scope and coverage

1. The objective of this Chapter is to establish and maintain a single market for government procurement in order to maximize business opportunities for suppliers and reduce the transaction costs of the public and private sectors in the Parties.

2. To attain this goal, each Party shall:

(a) Ensure that suppliers of another Party participate in government procurement processes under equal conditions;

(b) ensure the principles of non-discrimination and transparency in government procurement processes, as established in this Chapter; and

(c) develop mechanisms for cooperation and technical assistance.

3. Except as provided in Annexes 16.01 and 16.02, this Chapter shall apply to the government procurement processes provided for in the laws of the Parties and procurements by their entities relating to:

(a) Goods; and

(b) services, subject to Annexes I and II of Chapter 11 (Cross-Border Trade in Services).

4. Notwithstanding paragraph 3(b), this Chapter does not apply to:

(a) Subsidies or donations accorded by a Party or a State enterprise, including loans, guarantees and insurance supported by a Party;

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

(c) cross-border financial services.

#### Article 16.03 General rights and obligations

1. The Parties agree upon the following rights and obligations, as provided in this Chapter:

(a) To apply the measures relating to government procurement in such a way as to allow the greatest possible degree of competition, while respecting the principles of transparency and non-discrimination and the other provisions of this Chapter;

(b) to promote business opportunities to enable suppliers to compete in government procurement, preferably on the basis of the quality-price ratio principle, provided that application of this principle is compatible with the nature of the procurement in question. Application of this principle is intended to obtain the most efficient results with the financial resources allocated to the entities that tender the contracts, taking into account the public needs of such entities;

(c) to ensure maximum simplicity and publicity in the application of government procurement measures;

(d) to maintain and promote business opportunities in government procurement processes for suppliers from other Parties during the implementation periods, to comply with the commitments arising from the international agreements on this matter to which they are party;

(e) to grant equitable opportunities to suppliers from other Parties in government procurement processes; and

(f) to refrain from applying measures that:

(i) Are discriminatory;

(ii) are arbitrary; or

(iii) have the effect of denying equal access or opportunity to a supplier from another Party.

2. No provision of this Chapter shall prevent a Party from developing a new procurement policy, provided it is not inconsistent with this Chapter.

#### Article 16.04 National treatment and non-discrimination

1. With respect to government procurement carried out by entities through tendering, each Party shall accord to goods, services and suppliers of another Party treatment no less favourable than it accords to like goods, services and suppliers of like goods and services.

2. Without prejudice to the above, in government procurements that use procedures different from those referred to in paragraph 1, the Parties shall adopt such measures as are reasonably available to ensure compliance with the obligations established in Article 16.03(1)(f).

3. Each Party shall ensure that its entities do not demand offsets from suppliers of another Party participating in a government procurement process.

4. This Article does not apply to measures respecting customs duties or other charges of any kind imposed on or in connection with importation, the method of levying such duties or charges or other import regulations, including restrictions and formalities.

#### Article 16.05 Transparency and the provision of information

1. Further to Article 17.04 (Provision of Information), each Party shall ensure that its entities effectively publish and afford an understanding of:

##### Article 16.05 Transparency and the provision of information

1. Further to Article 17.04 (Provision of Information), each Party shall ensure that its entities effectively publish and afford an understanding of:

(a) Their respective systems of government procurement;

(b) the business opportunities created by the corresponding government procurement processes, providing the suppliers of another Party with all the information necessary to participate in said procurements; and

(c) the outcomes of government procurement processes.

2. Each Party shall ensure that contract awards are duly based on the criteria established prior to the award by its contracting entities.

3. Each Party undertakes to inform the other Parties within not more than one year after this Agreement comes into force of the legislation governing government procurement in its territory and of the entities covered by this Chapter. This obligation extends to all changes in such information.

#### Article 16.06 Technical specifications

Each Party shall ensure that its entities do not prepare, adopt, or apply any technical specification with the purpose or effect of creating unnecessary obstacles to trade.

#### Article 16.07 Denial of benefits

Subject to prior notification and consultation in accordance with Articles 17.04 (Provision of Information) and 19.06 (Consultations), a Party may deny the benefits of this Chapter to a service provider of another Party where the Party establishes that the



service is being provided by an enterprise that that has no substantial business activities in the territory of the other Party and, in accordance with the law of that other Party, is owned or controlled by persons of a non-Party.

#### Article 16.08 Appeal procedure

Each Party shall adopt or maintain administrative or judicial procedures that permit, at the request of an affected supplier from another Party, the prompt review of administrative decisions affecting government procurement under this Chapter. Each Party shall ensure that such procedures are timely, transparent and effective and that they are based on the principles of non-discrimination and due process.

#### Article 16.09 Modifications to coverage

1. The Parties shall hold consultations at the request of any of them to examine the possibility of incorporating the entities listed in Annex 16.01 into this Chapter.
2. The Parties shall approve such agreements in accordance with Article 18.01(3)(b) (Free Trade Commission).

#### Article 16.10 Privatization

1. No provision of this Chapter shall be construed to prevent a Party from privatizing an entity covered in this Chapter. In such cases, another Party may not demand compensation.
2. Privatized entities shall not be subject to the application of this Chapter.

#### Article 16.11 Information technology

1. The Parties shall endeavour, to the extent possible, to use electronic means of communication that permit the efficient publication of information on government procurement, particularly on business opportunities offered by the entities.
2. To obtain a wider market for government procurement, the Parties shall endeavour to implement an electronic information and intermediation system to be mandatory for their entities. The main objective of the system shall be timely publication of the business opportunities offered by the entities.

#### Article 16.12 Committee on government procurement

1. The Parties establish a Committee on Government Procurement, comprised of representatives of each of them, to be appointed within three months after this Agreement comes into force.
2. The Committee shall examine matters relating to this Chapter and, without detriment to Article 18.05(2) (Committees), shall:

(a) Unless otherwise agreed by the Parties, review the results of the application of this Chapter every two years;

(b) conduct consultations and studies intended to incorporate the entities listed in Annex 16.01 into this Chapter;

(c) promote the development and implementation of the electronic information and intermediation system referred to in Article 16.11(2);

(d) coordinate exchanges of statistical information on government procurement; and

(e) coordinate and promote the design of training programmes for the competent authorities of the Parties.

#### Article 16.13 Cooperation and technical assistance

The Parties shall endeavour to provide each other with cooperation and technical assistance through the development of training programmes, in order to afford a better understanding of their respective government procurement and statistical systems and greater access to their respective markets.

#### Article 16.14 Relation to other chapters

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

#### ANNEX 16.01

##### ENTITIES

For Chile:

(a) Contraloría General de la República (Comptroller General of the Republic);

(b) Banco Central (Central Bank);

(c) the armed forces;

(d) public order and security forces;

(e) municipalities;

(f) Consejo Nacional de Televisión (National Television Council);

(g) State-owned enterprises;

(h) judicial branch - courts of law;

- (i) legislative branch - Congress;
- (j) Tribunal Constitucional (Constitutional Court);
- (k) Tribunal Calificador de Elecciones (Electoral Tribunal) ;
- (l) Tribunales Electorales Regionales (Regional Electoral Tribunals);
- (m) Consejo Superior de Educación (Higher Council on Education); and
- (n) Ministerio Público (Office of the Attorney General).

For Costa Rica:

- (a) Contraloría General de la República (Comptroller General of the Republic);
- (b) Ministerio de Gobernación y Policía (Ministry of the Interior and Police);
- (c) Ministerio de Seguridad Pública (Ministry of Public Security);
- (d) Banco Central de Costa Rica (Central Bank of Costa Rica);
- (e) autonomous and semi-autonomous institutions and all other public entities and companies;
- (f) legislative branch;
- (g) judicial branch;
- (h) Tribunal Supremo de Elecciones (Supreme Electoral Tribunal);
- (i) Defensoría de los Habitantes (Public Ombudsman);
- (j) municipalities;
- (k) non-governmental public entities;
- (l) duty-free shops and similar entities subject to private law in their procurements; and
- (m) Consejo Superior de Educación (Higher Council on Education).

For El Salvador:

- (a) Corte de Cuentas de la República (National Auditor General's Office);
- (b) Banco Central de Reserva de El Salvador (Central Reserve Bank of El Salvador);
- (c) Ministerio de la Defensa Nacional (Ministry of National Defence);

- (d) Academia Nacional de Seguridad Pública (National Public Security Academy);
- (e) Policía Nacional Civil (National Civil Police Force);
- (f) municipalities;
- (g) Dirección General de Espectáculos Públicos, Radio and Televisión (Directorate General of Public Entertainment, Radio and Television);
- (h) judicial branch;
- (i) legislative branch;
- (j) Tribunal Supremo Electoral (Supreme Electoral Tribunal);
- (k) Ministerio Público (Office of the Attorney General);
- (l) Lotería Nacional de Beneficencia (National Charitable Lottery);
- (m) Dirección General de Correos (Directorate General of the Post Office);
- (n) Comisión Ejecutiva Portuaria Autónoma, CEPA (Autonomous Port Executive Committee); and
- (o) Comisión Ejecutiva Hidroeléctrica del Río Lempa, CEL (Río Lempa Hydroelectric Executive Committee).

For Guatemala:

- (a) Ministerio de la Defensa Nacional (Ministry of National Defence);
- (b) Instituto Nacional de Electrificación (National Electrification Administration);
- (c) Contraloría General de Cuentas (Office of the Comptroller General);
- (d) Banco de Guatemala (Bank of Guatemala);
- (e) Ministerio de Gobernación (Ministry of the Interior);
- (f) judicial branch;
- (g) Congress;
- (h) Corte de Constitucionalidad (Constitutional Court);
- (i) Tribunal Supremo Electoral (Supreme Electoral Tribunal);

(j) Ministerio Público (Office of the Attorney General);

(k) Procuraduría General de la Nación (Department of Justice);

(l) state and municipal public companies;

(m) municipalities; and

(n) decentralized and autonomous public entities which, under their charters or bylaws or another legal provision, are excluded from application of the procurement procedures established in the Government Procurement Law and its Regulations, Congressional Decree 57-92 (Ley de Contrataciones del Estado, Decreto N° 57-92 del Congreso de la República y su Reglamento).

For Honduras:

(a) Tribunal Nacional de Elecciones (National Electoral Tribunal);

(b) State-owned public companies;

(c) municipalities;

(d) Presidencia de la República (Office of the President);

(e) Ministerio de Defensa Nacional (Ministry of National Defence);

(f) Ministerio de Seguridad (Ministry of Security);

(g) Programa de Asistencia Familiar, PRAF (Family Welfare Programme);

(h) Suplidora Nacional de Productos Básicos, BANASUPRO, (National Supply Clearinghouse);

(i) Comité Permanente de Contingencias, COPECO (Standing Committee on Contingencies); and

(j) public entities which, under their charters or another legal provision, are excluded from the application of government procurement procedures.

## ANNEX 16.02

### TYPES OF PROCUREMENT

The types of government procurement that are excluded from this Chapter are:

(a) Government defence contracts of a strategic nature and other procurements related to national security;

(b) government contracts to hire personnel assigned to perform duties inherent to the entities; and

(c) government procurements funded by States, regional or multilateral organizations or individuals that impose conditions inconsistent with the provisions of this Chapter.

## PART SEVEN. ADMINISTRATIVE AND INSTITUTIONAL PROVISIONS

### CHAPTER 17. TRANSPARENCY

#### Article 17.01 Definitions

For the purposes of this Chapter, an administrative ruling of general application means an administrative ruling or interpretation that applies to all persons and fact situations that fall generally within its ambit and that establishes a norm of conduct but does not include:

(a) A determination or ruling made in an administrative proceeding that applies to a particular person, good or service of the other Party in a specific case; or

(b) a ruling that adjudicates with respect to a particular act or practice.

#### Article 17.02 Contact points

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

2. On the request of a Party, the contact point shall identify the office or official responsible for the matter and assist, as necessary, in facilitating communication with the requesting Party.

#### Article 17.03 Publication

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

2. To the extent possible, each Party shall:

(a) Publish in advance any such measure that it proposes to adopt; and

(b) provide interested persons and the other Parties a reasonable opportunity to comment on such proposed measures.

#### Article 17.04 Provision of information

1. To the extent possible, each Party shall notify another Party of any proposed or actual measure that the Party considers might affect or substantially affects the other Party's interests under this Agreement.
2. On request of another Party, a Party shall promptly provide information and respond promptly to questions pertaining to any actual or proposed measure.
3. Any notification or information provided under this Article shall be without prejudice as to whether the measure is consistent with this Agreement.

#### Article 17.05 Guarantees of hearings, legality and due process

Each Party shall ensure that judicial and administrative procedures relating to the application of any of the measures referred to in Article 17.03(1) observe the guarantees of hearing, legality and due process enshrined in their respective laws, in the sense of Articles 17.06 and 17.07.

#### Article 17.06 Administrative proceedings for the adoption of measures of general application

With a view to administering in a consistent, impartial and reasonable manner all measures of general application affecting matters covered by this Agreement, each Party shall ensure in its administrative proceedings applying measures referred to in Article 17.03(1) to particular persons, goods or services of another Party in specific cases that:

- (a) Wherever possible, persons of another Party that are directly affected by a proceeding are provided reasonable notice, in accordance with domestic procedures, when a proceeding is initiated, including a description of the nature of the proceeding, a statement of the legal authority under which the proceeding is initiated and a general description of any issues in controversy;
- (b) such persons are afforded a reasonable opportunity to present facts and arguments in support of their positions prior to any final administrative action, when time, the nature of the proceeding and the public interest permit; and
- (c) its procedures are in accordance with domestic law.

#### Article 17.07 Review and appeal

1. Each Party shall maintain judicial or administrative tribunals or procedures for the purpose of the prompt review and, where warranted, correction of final administrative actions regarding matters covered by this Agreement. Such tribunals shall be impartial and independent of the office or authority entrusted with administrative enforcement of the law and shall not have any substantial interest in the outcome of the matter.
2. Each Party shall ensure that, in any such tribunals or proceedings, the parties have the right to:

(a) A reasonable opportunity to support or defend their respective positions; and

(b) a decision based on the evidence and submissions.

3. Each Party shall ensure, subject to appeal or further review as provided in its domestic law, that such decisions shall be implemented by the offices or authorities.

#### Article 17.08 Communications and notifications

1. For the purposes of this Agreement, all communications or notifications addressed to a Party or sent by a Party shall be made through its national Section of the Secretariat, briefly informing the national Sections of the other Parties of that event.

2. Notwithstanding paragraph 1, where a communication or notification is made under Chapter 19 (Dispute Settlement), a copy is to be sent to the Central American Economic Integration Secretariat (Secretaría de Integración Económica Centroamericana) (SIECA) for its files.

3. Except as otherwise provided, a communication or notification shall be considered delivered upon its receipt by the national Section of the Party's Secretariat.

### CHAPTER 18. ADMINISTRATION OF THE AGREEMENT

#### Section A - Commission, Sub-Commission and Secretariat

##### Article 18.01 Free Trade Commission

1. The Parties hereby establish the Free Trade Commission, comprising the officials mentioned in Annex 18.01(1) or their designees.

2. The Commission shall:

(a) Supervise compliance with and the adequate implementation of this Agreement;

(b) evaluate the results of the implementation of this Agreement;

(c) resolve disputes that may arise regarding the interpretation or implementation of this Agreement, as established in Chapter 19 (Dispute Settlement);

(d) supervise the work of all committees established under this Agreement, in accordance with Annex 18.05(3); and

(e) consider any other matter that may affect the operation of this Agreement and any other matter referred to it by the Parties.

3. The Commission may:



- (a) Establish and delegate responsibilities to committees;
- (b) modify in fulfilment of the objectives of this Agreement:
  - (i) The schedule of products of a Party set out in Annex 3.04(2) (Tariff Elimination Programme) to include one or more goods that are excluded under that programme;
  - (ii) the dates set out in Annex 3.04(2) (Tariff Elimination Programme) to accelerate tariff elimination;
  - (iii) the rules of origin established in Annex 4.03 (Specific Rules of Origin);
  - (iv) the Uniform Regulations;
  - (v) Annex 9.01 (Service Sectors or Subsectors) to incorporate new services sectors or subsectors;
  - (vi) Annex I, II and III of Chapter 11 (Cross-Border Trade in Services); and
  - (vii) the list of entities of the Parties established in Annex 16.01 (Entities) to include one or more entities in Chapter 16 (Government Procurement);
- (c) seek the advice of non-governmental persons or groups;
- (d) prepare and approve the regulations needed for implementation of this Agreement;  
and
- (e) take such other action in the exercise of its functions as the Parties may agree.

4. The modifications referred to in paragraph 3(b) shall be implemented by the Parties in accordance with Annex 18.01(4).

5. Notwithstanding paragraph 1, the Commission may meet and take decisions when the representatives of Chile and one or more Central American countries attend, to deal with matters of interest to those Parties, such as the acceleration of tariff reduction, development and expansion of Chapter 10 (Investment) and dispute settlement, provided the other Parties are notified sufficiently in advance to enable them to participate in the meeting.

6. The decisions adopted by the Commission pursuant to paragraph 5 shall not apply to a Party that did not attend the meeting.

7. The Commission shall establish its rules and procedures. All decisions of the Commission shall be taken by consensus.

8. The Commission shall convene at least once a year, successively in each Party, in alphabetical order.

## Article 18.02 Free Trade Sub-Commission

1. The Parties hereby establish the Free Trade Sub-Commission, comprising the officials mentioned in Annex 18.02 or their designees.

2. The Free Trade Sub-Commission shall:

(a) Prepare and review the technical files necessary for taking decisions under the Agreement;

(b) follow up on the decisions of the Commission; and

(c) examine any other matter that could affect the operation of this Agreement referred by the Commission.

3. The Commission may establish rules and procedures for the adequate operation of the Free Trade Sub-Commission.

## Article 18.03 Secretariat

1. The Commission shall establish and oversee a Secretariat comprising national Sections.

2. Each Party shall:

(a) Establish a permanent office of its Section;

(b) be responsible for:

(i) The operation and costs of its Section; and

(ii) the remuneration and payment of expenses of panellists, their assistants, and experts appointed under this Agreement, as set out in Annex 18.03; and

(c) designate an individual to serve as Secretary for its Section, who shall be responsible for its administration.

3. The Secretariat shall:

(a) Provide assistance to the Commission and the Sub-Commission;

(b) provide administrative assistance to arbitral panels established under Chapter 19 (Dispute Settlement), in accordance with procedures established pursuant to Article 19.12 (Model Rules of Procedure);

(c) as the Commission may direct, support the work of other committees, sub-committees and groups of experts established under this Agreement;

(d) make communications and notifications as provided in Article 17.08 (Communications and Notifications); and

(e) carry out other functions referred by the Commission.

## Section B - Committees, Sub-Committees and Groups of Experts

### Article 18.04 General provisions

1. The provisions of this section shall apply, complementarily, to all the committees, sub-committees and groups of experts established under this Agreement.

2. Each committee, sub-committee and group of experts shall be comprised of representatives of each of the Parties and all decisions shall be taken by consensus.

3. Notwithstanding paragraph 2, a committee, sub-committee or group of experts may meet and take decisions without all of their members being present when discussing matters exclusively of interest to Chile and one or more Central American countries, provided that the representatives of those Parties are present and that the other Parties are notified of the agenda of the meeting sufficiently in advance.

4. A Party may request in writing that the Commission meet, in accordance with Article 19.07 (Commission, Good Offices, Conciliation and Mediation), after a committee or sub-committee has met to hold consultations under Article 19.06 (Consultations) but has not reached a mutually satisfactory settlement of the dispute. For the purposes of this paragraph and notwithstanding Article 18.06(2), it shall not be necessary for the sub-committee to have reported to the respective committee before a Party requests a meeting of the Commission under Article 19.07 (Commission, Good Offices, Conciliation and Mediation).

### Article 18.05 Committees

1. The Commission may establish committees other than those established in Annex 18.05.

2. Each committee shall:

(a) Monitor implementation of the Chapters of this Agreement in its sphere of competence;

(b) examine matters submitted to it by a Party which considers that an actual or proposed measure by another Party affects the effective implementation of a commitment included in the Chapters of this Agreement, in its sphere of competence;

(c) request technical reports from the competent authorities and take actions that are necessary to help resolve the matter;

(d) assess and recommend to the Commission proposals for modifications, corrections or additions to the provisions of the Chapters of this Agreement, in its sphere of competence;

(e) propose to the Commission the revision of actual or proposed measures that a Party believes could be incompatible with the obligations of this Agreement or cause nullification or impairment in the sense of Annex 19.03 (Nullification and Impairment); and

(f) perform other tasks referred by the Commission under this Agreement and other instruments that derive from it.

3. The Commission shall supervise the work of all the committees established pursuant to this Agreement.

4. Each committee may establish its own rules and procedures and shall meet at the request of any of the Parties or the Commission.

#### Article 18.06 Sub-committees

1. To permanently delegate its functions but only for the purposes of specific matters in its sphere of competence, a committee may establish one or more sub-committees, whose work it shall supervise. Each sub-committee shall have the same functions as the committee with respect to the matters referred to it.

2. Each sub-committee shall report to the committee that established it on the performance of its functions.

3. The rules and procedures of a sub-committee may be established by the same committee that created it. Sub-committees shall meet at the request of any of the Parties or the corresponding committee.

#### Article 18.07 Groups of experts

1. A committee or sub-committee may establish ad hoc groups of experts to conduct the technical studies necessary for its functions, whose work it shall supervise. Groups of experts shall strictly perform the tasks referred to them, in the established terms and time limits. Groups of experts shall report to the committee or sub-committee that established them.

2. The rules and procedures of a group of experts may be established by the same committee or sub-committee that created it.

#### ANNEX 18.01(1)

#### MEMBERS OF THE FREE TRADE COMMISSION

For the purposes of Article 18.01, the members of the Free Trade Commission are:

- (a) For Chile, the Minister of Foreign Relations or his successor;
- (b) for Costa Rica, the Minister of Foreign Trade or his successor;
- (c) for El Salvador, the Minister of Economic Affairs or his successor;
- (d) for Guatemala, the Minister of Economic Affairs or his successor;
- (e) for Honduras, the Secretary of State for Industry and Trade or his successor; and
- (f) for Nicaragua, the Minister of Development, Industry and Trade or his successor.

#### ANNEX 18.01(4)

#### IMPLEMENTATION OF MODIFICATIONS

#### APPROVED BY THE COMMISSION

The Parties shall implement the decisions of the Commission referred to in Article 18.01(3)(b) through the following procedure:

- (a) For Chile, through Implementation Agreements ("Acuerdos de Ejecución"), in accordance with Article 50 No. 1, paragraph two, of the Political Constitution of the Republic of Chile;
- (b) for Costa Rica, the agreements reached by the Parties shall be equivalent to the instrument referred to in Article 121.4, paragraph three, of the Political Constitution of Republic of Costa Rica;
- (c) for El Salvador, as provided in its legislation;
- (d) for Guatemala, as provided in its legislation;
- (e) for Honduras, as provided in its legislation; and
- (f) for Nicaragua, as provided in its legislation.

#### ANNEX 18.02

#### MEMBERS OF THE FREE TRADE SUB-COMMISSION

For the purposes of Article 18.02, the members of the Free Trade Sub-Commission are:

- (a) For Chile, the Director General of International Economic Relations of the Ministry of Foreign Affairs or his successor;
- (b) for Costa Rica, a representative of the Ministry of Foreign Trade or his successor;

(c) for El Salvador, the Director of Trade Policy of the Ministry of Economic Affairs or his successor;

(d) for Guatemala, a representative of the Ministry of Economic Affairs or his successor;

(e) for Honduras, the Director General of Economic Integration and Trade Policy of the Department of Industry and Trade or his successor; and

(f) for Nicaragua, the Director of Integration and Agreement Administration of the Ministry of Development, Industry and Trade or his successor.

#### ANNEX 18.03

##### REMUNERATION AND PAYMENT OF EXPENSES

1. The Commission shall establish the amounts of remuneration and expenses that will be paid to the panellists, their assistants and experts.

2. The remuneration of panellists, their assistants and experts, their travel and lodging expenses, and all general expenses of panels shall be borne equally by the Parties to the dispute.

3. Each panellist, assistant and expert shall keep a record and render a final account of the person's time and expenses, and the panel shall keep a similar record and render a final account of all general expenses.

#### ANNEX 18.05

##### COMMITTEES

Committee on Trade in Goods (Article 3.16)

Committee on Sanitary and Phytosanitary Measures (Article 8.11)

Committee on Standardization, Metrology and Approval Procedures (Article 9.12)

Committee on Investment and Cross-Border Services (Article 11.14)

Committee on Air Transportation (Article 12.04)

Committee on Government Procurement (Article 16.13)

#### CHAPTER 19. DISPUTE SETTLEMENT

##### Section A - Dispute Settlement

##### Article 19.01 Definitions

For the purposes of this Chapter:

complaining Party means the Party that lays a complaint, which could be comprised of one or more Parties;

consulting Party means any Party that makes consultations pursuant to Article 19.06;

Party complained against means the Party against which a claim is made, which could be comprised of one or more Parties;

disputing Party means the complaining Party or the Party complained against; and

third Party means a Central American country that has a substantial commercial interest in the dispute and that is not a Party to the dispute.

#### Article 19.02 Cooperation

The Parties shall at all times endeavour to agree on the interpretation and application of this Agreement, and shall make every attempt through cooperation and consultations to arrive at a mutually satisfactory resolution of any matter that might affect its operation.

#### Article 19.03 Scope and coverage

Except as otherwise provided in this Agreement, the provisions of this Chapter shall apply:

(a) With respect to the avoidance or settlement of all disputes among the Parties regarding the application or interpretation of this Agreement; and

(b) wherever a Party considers that an actual or proposed measure of another Party is or would be inconsistent with the obligations of this Agreement or cause nullification or impairment in the sense of Annex 19.03.

#### Article 19.04 Dispute settlement under the understanding

1. Any matter arising under both this Agreement, the WTO Agreement and any agreement negotiated thereunder may be settled in either forum at the discretion of the complaining Party.

2. Once a Party has requested the establishment of an arbitral panel under Article 19.08 or the establishment of a special group under Article 6 of the Understanding, the forum selected shall be used to the exclusion of any other.

#### Article 19.05 Cases of urgency

1. In cases of urgency, including those provided for in paragraphs 2 and 3, the disputing Parties and the arbitral panels shall make every effort to accelerate the proceedings to the maximum extent possible.

2. For perishable agricultural goods, fish and fish products:

(a) A consulting Party may request in writing that the Commission meet, provided that the matter is not resolved in accordance with Article 19.06, within 15 days after the delivery of the request for consultations; and

(b) the Party requesting the intervention of the Commission in accordance with Article 19.07 may request in writing that an arbitral panel be established in the event that the matter is not resolved within 15 days after the meeting of the Commission or, if no meeting was held, within 15 days after the request for a meeting of the Commission was delivered.

3. In cases of urgency other than those provided for in paragraph 2, the Parties shall, to the extent possible, endeavour to reduce by half the periods provided for Article 19.07 and 19.08 to request that the Commission meet and that an arbitral panel be established, respectively.

#### Article 19.06 Consultations

1. Any Party may request in writing consultations with another Party regarding any actual or proposed measure or any other matter that it considers might affect the operation of this Agreement, in terms of Article 19.03.

2. The requesting Party shall deliver copies of the request to the other Parties, which may participate as consulting Parties, provided they express their substantial commercial interest in the matter in writing, within 10 days after the request was delivered.

3. The consulting Parties:

(a) Shall provide information to enable an examination of how the actual or proposed measure or any other matter might affect the operation of this Agreement; and

(b) shall treat any confidential information exchanged in the consultations on the same basis as the Party providing the information.

#### Article 19.07 Commission, good offices, conciliation and mediation

1. Any Party to the consultations may request in writing a meeting of the Commission provided that:

(a) A matter is not resolved pursuant to Article 19.06 within 30 days after the delivery of the request for consultations; or



(b) the Party to which the request was made did not reply within 10 days after it was delivered.

2. A Party may also request in writing a meeting of the Commission pursuant to Article 18.04(4) (General Provisions).

3. The request referred to in paragraph 1 shall state the measure or other matter complained of and indicate the provisions of this Agreement that it considers relevant.

4. Unless it decides otherwise, the Commission shall convene within 10 days of delivery of the request and shall endeavour to resolve the dispute promptly. The Commission may

(a) Call on such technical advisers or create such expert groups as it deems necessary;

(b) have recourse to the good offices, conciliation or mediation of a person or group of persons; or

(c) make such recommendations;

as may assist the Parties to reach a mutually satisfactory resolution of the dispute.

5. Unless it decides otherwise, the Commission shall consolidate two or more proceedings before it pursuant to this Article regarding the same measure. The Commission may consolidate two or more proceedings regarding other matters before it pursuant to this Article that it determines are appropriate to be considered jointly.

#### Article 19.08 Request for an arbitral panel

1. The Party that has requested intervention by the Commission under Article 19.07 may request in writing the establishment of an arbitral panel where the matter has not been resolved within:

(a) 30 days after the Commission has convened or, if no meeting took place, 30 days after the delivery of the request for a meeting of the Commission;

(b) 30 days after the Commission has convened, where proceedings have been consolidated pursuant to Article 19.07(5); or

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

2. The Party that requests the establishment of an arbitral panel shall deliver the request to the Party or Parties complained against and to the other Parties, if any, which under paragraph 1 are entitled to request the establishment of an arbitral panel. The latter shall have 10 days after receipt of the request to express their interest in participating in the arbitration as a complaining Party.

3. Within 15 days after delivery of the request or within 15 days after expiry of the term referred to in paragraph 2, the disputing Parties shall meet to establish an arbitral group in accordance with Article 19.11. The meeting shall be held with the Party or Parties that are present.

4. A Party that is entitled to request the establishment of an arbitral panel under paragraph 1 and decides to abstain from participating as a complaining Party in terms of paragraph 2, may only participate as a third Party before the panel, as established in Article 19.13, provided it expresses its interest in participating within 10 days after receipt of the request to establish the arbitral panel.

5. Where a Party decides, pursuant to paragraph 4, not to participate as a third Party, it shall refrain thereafter, in the absence of a significant change in economic or commercial circumstances, from initiating regarding the same matter:

- (a) A dispute settlement procedure under this Chapter; and
- (b) a dispute settlement procedure under the Understanding.

6. Unless otherwise agreed by the disputing Parties, the arbitral panel shall be established and perform its functions in a manner consistent with the provisions of this Chapter.

#### Article 19.09 Roster of panellists

1. By agreement, the Parties shall establish a roster of up to 60 individuals, at least five of whom shall be citizens of each Party and five may not be citizens of any of the Parties, who are willing and able to serve as panellists.

2. The roster may be modified every three years. Notwithstanding, on the request of a Party, the Commission may review the roster of panellists before that period has expired.

3. All panellists shall meet the qualifications set out in Article 19.10(1).

#### Article 19.10 Qualifications of panellists

1. All the panellists shall:

- (a) Have expertise or experience in law, international trade, other matters covered by this Agreement or the resolution of disputes arising under international trade agreements;
- (b) be chosen strictly on the basis of their objectivity, probity, reliability and sound judgement;
- (c) be independent of, and not be affiliated with or take instructions from, any Party; and

(d) comply with a code of conduct to be established by the Commission.

2. Individuals may not serve as panellists for a dispute in which they have participated pursuant to Article 19.07(4).

#### Article 19.11 Establishment of the arbitral panel

1. The following procedure shall be observed at the meeting to establish the arbitral panel:

(a) The arbitral panel shall comprise three members;

(b) the disputing Parties shall endeavour to agree on the chair;

(c) where the disputing Parties fail to appoint a chair of the panel, one of them, chosen by lot, shall appoint the chair. The person designated as chair of the arbitral panel shall be a member of the Roster referred to in Article 19.09 and shall not be a national of any of the Parties;

(d) each disputing Party shall select one panellist who is a citizen of the other disputing Party. Notwithstanding, the disputing Parties, by mutual agreement, may provide that the arbitral panel be comprised of panellists who are not nationals of any of the Parties; and

(e) where a disputing Party fails to select a member of the panel, such member shall be selected by lot from among the roster members who are citizens of the other disputing Party.

2. If a disputing Party is comprised of two or more Central American countries, one of them, chosen by lot, shall represent the others in the procedure established in paragraph 1.

3. Panellists shall normally be selected from the roster. Any disputing Party may exercise a peremptory challenge against any individual not on the roster who is proposed as a panellist by the other disputing Party.

4. If a disputing Party believes that a panellist is in violation of the code of conduct, the disputing Parties shall consult and, if they agree, the panellist shall be removed and a new panellist shall be selected in accordance with this Article.

#### Article 19.12 Model rules of procedure

1. The Commission shall establish Model Rules of Procedure in accordance with the following principles:

(a) The procedures shall assure a right to a hearing before the arbitral panel as well as the opportunity to provide initial and rebuttal submissions in writing; and

(b) the arbitral panel's hearings, deliberations and initial report, and all written submissions to and communications with the panel shall be confidential.

2. Unless the Parties otherwise agree, the arbitral panel shall conduct its proceedings in accordance with the Model Rules of Procedure.

3. Unless the disputing Parties otherwise agree, the terms of reference of the arbitral panel shall be:

"To examine, in the light of the provisions of the Agreement, the matter referred to the Commission, as set out in the request for a Commission meeting, and to issue the reports referred to in Articles 19.15 and 19.16".

4. If a complaining Party alleges that a measure has caused nullification or impairment in the sense of Annex 19.03, the terms of reference shall so indicate.

5. If a disputing Party wishes the arbitral panel to make findings as to the degree of adverse trade effects caused by a measure adopted by another Party that it judges not to conform with the obligations of this Agreement or to have caused nullification or impairment in the sense of Annex 19.03, the terms of reference shall so indicate.

#### Article 19.13 Third parties

Upon making written notification to the disputing Parties, a third Party shall be entitled to attend the hearings as provided in the Model Rules of Procedure, to be heard by the panel and to make written communications to and receive written communications from the panel. Such communications shall be reflected in the final report of the arbitral panel.

#### Article 19.14 Information and technical advice

On the request of a disputing Party or on its own motion, the arbitral panel may seek information and technical advice from any person or body it deems appropriate.

#### Article 19.15 Initial report

1. Unless the disputing Parties otherwise agree, the arbitral panel shall issue an initial report based on the submissions and arguments of the Parties and on any information before it pursuant to Articles 19.13 and 19.14.

2. Unless the disputing Parties otherwise agree, the arbitral panel shall, within 90 days after the meeting to establish the panel, present to the Parties an initial report containing:

(a) Findings of fact, including any findings pursuant to a request under Article 19.12(5);

(b) its determination as to whether the measure at issue is or would be inconsistent with the obligations of this Agreement or cause nullification or impairment in the sense of Annex 19.03, or any other determination requested in the terms of reference; and

(c) its recommendations, if any, for resolution of the dispute.

3. Panellists may furnish separate opinions on matters not unanimously agreed.

4. A Party may submit written comments to the arbitral panel on its initial report within 14 days of presentation of the report.

5. In such an event, and after considering such written comments, the panel, on its own motion or on the request of a disputing Party, may:

(a) Make any further examination that it considers appropriate; and

(b) reconsider its initial report.

#### Article 19.16 Final report

1. The arbitral panel shall communicate to the disputing Parties its final report, including any separate opinions on matters not unanimously agreed, within 30 days of presentation of the initial report, unless the disputing Parties otherwise agree.

2. No arbitral panel may, either in its initial report or its final report, disclose which panellists are associated with majority or minority opinions.

3. Unless the Parties otherwise agree, the final report shall be published 15 days after it is communicated to the disputing Parties.

#### Article 19.17 Implementation of final reports

1. The final report shall be binding on the disputing Parties in the terms and time periods that the report orders. The time period for implementing the final report shall not exceed six months, calculated from the date on which the last of the disputing Parties has been notified of the final report, unless they agree on a different period.

2. Where a final report by an arbitral panel finds that the measure is non-conforming with this Agreement, the Party complained against shall not implement the measure or shall revoke it.

3. Where the final report of the arbitral panel determines that the measure is cause for nullification or impairment in the sense of Annex 19.03, it shall determine the level of nullification or impairment and may suggest adjustments it considers mutually satisfactory for the disputing Parties.

#### Article 19.18 Suspension of benefits

1. Unless the disputing Parties have notified the Commission within ten days after the expiry of the period established in the final report that the report has been implemented to

their satisfaction, the arbitral panel shall determine whether the Party complained against has implemented said report.

2. The complaining Party may suspend application of benefits under this Agreement of equivalent effect to the Party complained against if the arbitral panel determines:

(a) That a measure is inconsistent with the obligations of this Agreement and the Party complained against fails to comply with the final report within the period that the arbitral panel has established; or

(b) that a measure is the cause of nullification or impairment in the sense of Annex 19.03 and the disputing Parties are unable to reach a mutually satisfactory settlement of the dispute within the period that the panel has established.

3. Benefits shall be suspended until such time as the Party complained against complies with the final report or until the Parties reach a mutually satisfactory settlement of the dispute. However, if the Party complained against is comprised of two or more Parties and one of them complies with the final report or reaches a mutually satisfactory agreement with the complaining Party, it shall lift the suspension of benefits with respect to that Party.

4. In considering what benefits to suspend under this Article:

(a) The complaining Party shall first seek to suspend benefits in the same sector or sectors as that affected by the measure or other matter that the arbitral panel has found to be inconsistent with the obligations of this Agreement or to have caused nullification or impairment in the sense of Annex 19.03; and

(b) if the complaining Party considers that it is not practicable or effective to suspend benefits in the same sector or sectors, it may suspend benefits in other sectors.

5. After benefits have been suspended in accordance with this Article, on the written request of a disputing Party an arbitral panel shall be established to determine whether there is compliance with the final report or whether the level of benefits suspended by the complaining Party pursuant to this Article is manifestly excessive. Where possible, the original arbitral panel shall be reconvened for this purpose.

6. The proceedings of the arbitral panel established for the purposes of paragraph 5 shall be conducted in accordance with the Model Rules of Procedure provided for in Article 19.12. The panel shall present its final report within sixty days after the meeting to establish the panel or other such period as the disputing Parties may agree. If the arbitral panel has been established with the same members that heard the dispute, it shall present its final report within 30 days of the presentation of the request referred to in paragraph 5.

## Section B - Domestic Proceedings and Private Commercial Dispute Settlement

### Article 19.19 Interpretation of the agreement in judicial or administrative proceedings

1. The Commission shall endeavour to agree on an appropriate non-binding response as expeditiously as possible where:

(a) A Party requests the Commission's opinion on a matter of interpretation or application of this Agreement arising from a judicial or administrative proceeding of another Party; or

(b) a Party notifies it of the receipt of a request for an opinion on a matter of interpretation or application of this Agreement in a judicial or administrative proceeding of that Party.

2. The Party in whose territory the judicial or administrative body is located shall submit the interpretation or response of the Commission to the judicial or administrative body in accordance with the rules of that body.

3. If the Commission is unable to agree on an interpretation, any of the Parties may submit its own views to the judicial or administrative body in accordance with the rules of that body.

#### Article 19.20 Private rights

No Party may provide for a right of action under its domestic law against another Party on the ground that a measure of the other Party is inconsistent with this Agreement.

#### Article 19.21 Alternative dispute resolution between private parties

1. Each Party shall encourage and facilitate the use of arbitration and other means of alternative dispute resolution for the settlement of international commercial disputes between private parties in the free trade area.

2. To that end, each Party shall provide appropriate procedures to ensure observance of international arbitration conventions it has ratified and the recognition and enforcement of arbitral awards in such disputes.

3. The Commission shall establish an Advisory Committee on Private Commercial Disputes, comprising persons with expertise or experience in the resolution of private international commercial disputes. The Committee shall report and provide general recommendations to the Commission on the availability, use and effectiveness of arbitration and other procedures for the resolution of such disputes.

#### ANNEX 19.03

#### NULLIFICATION AND IMPAIRMENT

1. If a Party considers that any benefit it could reasonably have expected to accrue to it under any provision of:

- (a) Part Two (Trade in Goods);
- (b) Part Three (Technical Barriers to Trade);
- (c) Chapter 11 (Cross-Border Trade in Services); or
- (d) Chapter 12 (Air Transportation);

is being nullified or impaired as a result of the application of any measure that is not inconsistent with this Agreement, the Party may have recourse to dispute settlement under this Chapter.

2. A Party may not invoke:

(a) Paragraph 1(a) or (b), to the extent that the benefit arises from any cross-border trade in services provision of Part Two (Trade in Goods) or Three (Technical Standards); or

(b) paragraph 1(c);

with respect to any measure subject to an exception under Article 20.02 (General Exceptions).

3. To determine the elements of nullification or impairment, the Parties may take into account the principles deriving from case law on Article XXIII, paragraph 1(b), of the GATT 1994.

## CHAPTER 20. EXCEPTIONS

### Article 20.01 Definitions

For the purposes of this Chapter:

international capital transactions means "international capital transactions" as defined under the Articles of Agreement of the International Monetary Fund;

Fund means the International Monetary Fund;

payments for current international transactions means "payments for current international transactions" as defined under the Articles of Agreement of the International Monetary Fund;

tax convention means a convention for the avoidance of double taxation or other international taxation agreement or arrangement; and

transfers mean international transactions and transfers and related payments.

### Article 20.02 General exceptions



1. Article XX of the GATT 1994 and its interpretative notes are incorporated into and made part of this Agreement for the purposes of:

(a) Part Two (Trade in Goods), except to the extent that a provision of that Part applies to services or investment;

(b) Part Three (Technical Barriers to Trade), except to the extent that a provision of that Part applies to services or investment;

(c) Chapter 15 (Competition Policy), except to the extent that a provision of that Chapter applies to goods; and

(d) Chapter 16 (Government Procurement), except to the extent that a provision of that Chapter applies to goods.

2. Article XIV (a), (b) and (c) of GATS is incorporated into and made part of this Agreement for the purposes of:

(a) Part Two (Trade in Goods), to the extent that a provision of that Part applies to services;

(b) Part Three (Technical Barriers to Trade);

(c) Chapter 11 (Cross-Border Trade in Services);

(d) Chapter 12 (Air Transportation);

(e) Chapter 13 (Telecommunications);

(f) Chapter 14 (Temporary Entry of Business Persons);

(g) Chapter 15 (Competition Policy), to the extent that a provision of that Chapter applies to services; and

(h) Chapter 16 (Government Procurement), to the extent that a provision of that Chapter applies to services.

#### Article 20.03 National security

Nothing in this Agreement shall be construed:

(a) To require a Party to furnish or allow access to any information the disclosure of which it determines to be contrary to its essential security interests;

(b) to prevent a Party from taking any actions that it considers necessary for the protection of its essential security interests:

(i) Relating to the traffic in arms, ammunition and implements of war and to such traffic and transactions in other goods, materials, services and technology undertaken directly or indirectly for the purpose of supplying a military or other security establishment;

(ii) taken in time of war or other cases of serious international tension; or

(iii) relating to the implementation of national policies or international agreements respecting the non-proliferation of nuclear weapons or other nuclear explosive devices;  
or

(c) to prevent a Party from taking action in pursuance of its obligations under the United Nations Charter for the maintenance of international peace and security.

#### Article 20.04 Balance of payments

1. Nothing in this Agreement shall be construed to prevent a Party from adopting or maintaining measures that restrict transfers where the Party experiences serious balance of payments difficulties, or the threat thereof, and such restrictions are consistent with this Article.

2. As soon as practicable after a Party imposes a measure under this Article, in accordance with its international obligations, the Party shall:

(a) Submit any restrictions on current account operations to the Fund for review under Article VIII of the Articles of Agreement of the International Monetary Fund;

(b) enter into good faith consultations with the Fund on economic adjustment measures to address the fundamental underlying economic problems causing the difficulties; and

(c) adopt or maintain economic policies consistent with such consultations.

3. A measure adopted or maintained under this Article shall:

(a) Avoid unnecessary damage to the commercial, economic or financial interests of another Party;

(b) not be more burdensome than necessary to deal with the balance of payments difficulties or threat thereof;

(c) be temporary and be phased out progressively as the balance of payments situation improves;

(d) be consistent with paragraph 2(c) and with the Articles of Agreement of the International Monetary Fund; and

(e) be applied on a national treatment or most-favoured-nation treatment basis, whichever is better.

4. A Party may adopt or maintain a measure under this Article that gives priority to services that are essential to its economic programme, provided that the Party does not impose a measure for the purpose of protecting a specific industry or sector, unless the measure is consistent with paragraph 2(c) and with Article VIII(3) of the Articles of Agreement of the International Monetary Fund.

5. Restrictions imposed on transfers:

(a) Where imposed on payments for current international transactions, shall be consistent with Article VIII(3) of the Articles of Agreement of the International Monetary Fund;

(b) where imposed on international capital transactions, shall be consistent with Article VI of the Articles of Agreement of the International Monetary Fund and be imposed only in conjunction with measures imposed on current international transactions under paragraph 2(a); and

(c) may not take the form of tariff surcharges, quotas, licences or similar measures.

Article 20.05 Exceptions to the disclosure of information

Nothing in this Agreement shall be construed to require a Party to furnish or allow access to information the disclosure of which would impede compliance with or be contrary to its Constitution or laws protecting personal privacy or the financial affairs and bank accounts of individual customers of financial institutions.

Article 20.06 Taxation

1. Except as set out in this Article and Article 20.06, nothing in this Agreement shall apply to taxation measures.

2. Nothing in this Agreement shall affect the rights and obligations of any Party under any tax convention. In the event of any inconsistency between this Agreement and any such convention, that convention shall prevail to the extent of the inconsistency.

3. Notwithstanding paragraph 2:

(a) Article 3.03 (National Treatment) and such other provisions of this Agreement as are necessary to give effect to that Article shall apply to taxation measures to the same extent as does Article III of the GATT 1994; and

(b) Article 3.14 (Export Taxes) shall apply to taxation measures.

4. For the purposes of this Article, tax measures do not include:

(a) A "customs duty" as defined in Article 2.01 (Definitions of General Application); or

(b) the measures listed in exceptions (b), (c) and (d) of that definition.

## ANNEX 20.06

### DOUBLE TAXATION

1. The Parties endeavour to conclude bilateral agreements to avoid double taxation within a reasonable time after the date that this Agreement enters into force.
2. The Parties agree that upon conclusion of a bilateral agreement to avoid double taxation, they shall exchange letters setting out the relationship between the bilateral agreement and Article 20.06.

## CHAPTER 21. FINAL PROVISIONS

### Article 21.01 Amendments

1. Notwithstanding Articles 18.01(5) (Free Trade Commission) and 21.03(2), the Parties may agree on any modification of this Agreement.
2. When so agreed and approved in accordance with the applicable legal procedures of each Party, a modification shall enter into force and constitute an integral part of this Agreement.

### Article 21.02 Reservations

This Agreement shall not be subject to reservations or interpretative statements on the occasion of its ratification.

### Article 21.03 Duration and entry into force

1. This Agreement shall have an indefinite duration and shall enter into force in Chile and each Central American Country on the thirtieth day after the date on which they have exchanged their instruments of ratification certifying the completion of the necessary legal procedures and formalities.

2 For this Agreement to become operative between Chile and each Central American country, the instruments of ratification shall state that the legal procedures and formalities have concluded with respect to a bilateral protocol that:

- (a) Contains Annex 3.04(2) (Tariff Elimination Programme), relating to the Tariff Elimination Programme between Chile and that Central American country;
- (b) contains Section C of Annex 4.03 (Specific Rules of Origin), applicable between Chile and that Central American country;
- (c) contains Annexes I, II and III of Chapter 11 (Cross-Border Trade in Services), relating to the reservations and restrictions on cross-border services applicable between Chile and that Central American country;

(d) contains Annexes 3.08 (Customs Valuation), 3.10(6) (Import and Export Restrictions) and 16.01 (Entities), where pertinent; and

(e) refers to other matters agreed upon by the Parties.

3. The protocols signed under paragraph 2 shall constitute an integral part of this Agreement.

#### Article 21.04 Annexes

The Annexes to this Agreement constitute an integral part of this Agreement.

#### Article 21.05 Withdrawal

1. Any Party may withdraw from this Agreement. Provided that Chile is not the Party that withdraws, the Agreement shall remain in force for the remaining Parties.

2. Withdrawal shall become effective 180 days after the other Parties are notified, unless the Parties agree to a different period.

Done at Guatemala City on 19 October 1999 in six equally authentic originals.

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