

PART IV TRADE

TITLE I

INITIAL PROVISIONS

ARTICLE 77: ESTABLISHMENT OF A FREE TRADE AREA AND RELATION TO THE WTO AGREEMENT

1. The Parties to this Agreement, consistent with Article XXIV of the General Agreement on Tariffs and Trade 1994 (hereinafter referred to as “GATT 1994”) and Article V of the General Agreement on Trade in Services (hereinafter referred to as “GATS”), hereby establish a free trade area.
2. The Parties reaffirm their existing¹ rights and obligations with respect to each other under the WTO Agreement.

ARTICLE 78: OBJECTIVES

The objectives of Part IV of the Agreement are:

- (a) the expansion and the diversification of trade in goods between the Parties, through the reduction or the elimination of tariff and non tariff barriers to trade;
- (b) the facilitation of trade in goods through, in particular, the agreed provisions regarding customs and trade facilitation, standards, technical regulations and conformity assessment procedures as well as sanitary and phytosanitary measures;
- (c) the liberalisation of trade in services, in conformity with Article V of GATS;
- (d) the promotion of economic regional integration in the area of customs procedures, technical regulations and sanitary and phytosanitary measures to facilitate the circulation of goods between and within the Parties;
- (e) the development of a climate conducive to increased investment flows, the improvement of the conditions of establishment between the Parties on the basis of the principle of non-discrimination and the facilitation of trade and

¹ The term “existing” implies that the paragraph applies exclusively to any existing provision of the WTO Agreement and not to any amendments or provisions agreed later than the finalization of this Agreement.

investment among the Parties through current payments and capital movements related to direct investment;

- (f) the effective, reciprocal and gradual opening of government procurement markets of the Parties;
- (g) the adequate and effective protection of intellectual property rights, in accordance with international obligations in force between the Parties, so as to ensure the balance between the rights of the right-holders and public interest, taking into consideration the differences between the Parties and the promotion of technology transfer between the regions;
- (h) the promotion of free and undistorted competition in the economic and trade relations between the Parties;
- (i) the establishment of an effective, fair and predictable dispute settlement mechanism; and
- (j) the promotion of international trade and investment between the Parties in a way that contributes to the objective of sustainable development through joint collaborative work.

ARTICLE 79: DEFINITIONS OF GENERAL APPLICATION

Unless otherwise specified, for the purposes of Part IV of this Agreement, the below terms shall have the following meaning:

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

“customs duty” includes any duty or charge of any kind imposed on or in connection with the importation of a good, including any form of surtax or surcharge imposed on or in connection with such importation. A “customs duty” does not include any:

- (a) charge equivalent to an internal tax imposed consistently with Article 85 of Chapter 1 (National Treatment and Market Access for Goods) of Title II;
- (b) duty imposed pursuant to a Party’s domestic legislation and consistently with Chapter 2 (Trade Remedies) of Title II;
- (c) fee or other charge imposed pursuant to a Party’s domestic law and consistently with Article 87 of Chapter 1 of Title II;

“days” means calendar days, including weekends and holidays unless otherwise defined in this Agreement;

“Harmonized System” or “HS” means the Harmonized Commodity Description and Coding System, including its General Rules of Interpretation, Section Notes, and Chapter Notes, as adopted and implemented by the Parties in their respective tariff laws;

“juridical person” or “legal person” means any legal entity duly constituted or otherwise organised under applicable law, whether for profit or otherwise, and whether privately-owned or governmentally-owned, including any corporation, trust, partnership, joint venture, sole proprietorship or association;

“measure” means any act or omission, including any law, regulation, procedure, requirement or practice;

“national” means a natural person who has the nationality of one of the Member States of the European Union or of a Republic of the CA Party according to their respective legislation;

“person” means a natural person or a juridical or legal person;

“preferential tariff treatment” means the rate of customs duty applicable under this Agreement to an originating good.

TITLE II

TRADE IN GOODS

CHAPTER 1

NATIONAL TREATMENT AND MARKET ACCESS FOR GOODS

Section A: General Provisions

ARTICLE 80: OBJECTIVE

The Parties shall progressively liberalise trade in goods in accordance with the provisions of this Agreement and in conformity with Article XXIV of GATT 1994.

ARTICLE 81: SCOPE

Except as otherwise provided, the provisions of this Chapter shall apply to trade in goods between the Parties.

Section B: Elimination of Customs Duties

ARTICLE 82: CLASSIFICATION OF GOODS

The classification of goods in trade between the Parties shall be that set out in each Party's respective tariff nomenclature in conformity with the Harmonized System.

ARTICLE 83: ELIMINATION OF CUSTOMS DUTIES

1. Each Party shall eliminate customs duties on goods originating in the other Party in accordance with the Schedules set out in Annex I (Elimination of Customs Duties). For the purposes of this Chapter, "originating" means qualifying under the rules of origin set out in Annex II (Concerning the Definition of the Concept of "Originating Products"² and Methods of Administrative Co-operation).

2. For each good, the base rate of customs duties, to which the successive reductions are to be applied under paragraph 1, shall be that specified in the Schedules.

3. If, at any moment, a Party reduces its applied most favoured nation customs duty rates after the date of entry into force of this Agreement, that duty rate shall apply if and for as long as it is lower than the customs duty rate calculated in accordance with that Party's Schedule.

4. After five years of the entry into force of this Agreement, on the request of either Party, the Parties shall consult to consider accelerating and broadening the scope of the

² For the purposes of this Agreement, unless otherwise specified, the terms "good" and "product" shall be considered equivalent.

elimination of customs duties on imports between the Parties. An agreement by the Parties on the acceleration of the pace of elimination or the elimination of a customs duty on a good shall supersede any duty rate or staging category determined pursuant to their Schedules for that good.

ARTICLE 84: STANDSTILL

Neither Party shall increase any existing customs duty, or adopt any new customs duty, on a good originating in the other Party³. This shall not preclude either Party from:

- (a) raising a customs duty to the level established in its Schedule following a unilateral reduction;
- (b) maintaining or increasing a customs duty as authorised by the Dispute Settlement Body of the WTO; or
- (c) increasing the base rates of excluded goods with a view to reaching a common external tariff.

Section C: Non-Tariff Measures

ARTICLE 85: NATIONAL TREATMENT

Each Party shall accord national treatment to the goods of the other Party in accordance with Article III of GATT 1994, including its interpretative notes. To this end, Article III of GATT 1994 and its interpretative notes are incorporated into and made part of this Agreement.⁴

ARTICLE 86: IMPORT AND EXPORT RESTRICTIONS

Neither Party shall adopt or maintain any prohibition nor restriction on the importation of any good of the other Party or on the exportation or sale for export of any good destined to the territory of the other Party, except as otherwise provided in this Agreement or in accordance with Article XI of GATT 1994 and its interpretative notes. To this end, Article XI of GATT 1994 and its interpretative notes are incorporated into and made part of this Agreement.⁵

³ For goods which do not benefit from preferential treatment, “customs duty” should be understood as the “base rate” indicated in each of the Party’s schedules.

⁴ The Parties recognise that Article 158 of Chapter 6 (Exceptions Related to Goods) of Title II also applies to this Article.

⁵ The Parties recognise that Article 158 of Chapter 6 (Exceptions Related to Goods) of Title II also applies to this Article.

ARTICLE 87: FEES AND OTHER CHARGES ON IMPORTS AND EXPORTS

Each Party shall ensure in accordance with Article VIII.1 of GATT 1994 and its interpretative notes that all fees and charges of whatever character (other than customs duties, charges equivalent to an internal tax or other internal charges applied consistently with Article 85 of this Chapter), and antidumping and countervailing duties applied pursuant to a Party's domestic law and consistently with Chapter 2 (Trade Remedies) of this Title, imposed on or in connection with importation or exportation are limited in amount to the approximate cost of services rendered and do not represent an indirect protection to domestic goods or a taxation of imports or exports for fiscal purposes.

ARTICLE 88: DUTIES OR TAXES ON EXPORTS

Except as otherwise provided for in this Agreement, neither Party shall maintain or adopt any duties or taxes imposed on or in connection with the exportation of goods to the other Party.

Section D: Agriculture

ARTICLE 89: AGRICULTURAL EXPORT SUBSIDIES

1. For the purposes of this Article, "export subsidies" shall have the meaning assigned to that term in Article 1 (e) of the WTO Agreement on Agriculture (hereinafter referred to as "Agriculture Agreement"), including any amendment of that Article.
2. The Parties share the objective of working jointly in the WTO to ensure the parallel elimination of all forms of export subsidies and the establishment of disciplines on all export measures with equivalent effect. For this purpose, export measures with equivalent effect comprise export credits, export credit guarantees or insurance programmes, exporting state trading enterprises and food aid.
3. No Party shall maintain, introduce or reintroduce export subsidies on agricultural goods, which are destined to the territory of the other Party and are either:
 - (a) fully and immediately liberalised in accordance with Annex I (Elimination of Customs Duties); or
 - (b) fully but not immediately liberalised and benefit from a duty free quota at entry into force of this Agreement in accordance with Annex I (Elimination of Customs Duties); or
 - (c) agricultural trade subject to preferential treatment as established under this Agreement of products falling under heading 0402 and 0406 and benefitting from a duty free quota.
4. In the cases described under paragraph 3 (a) through 3 (c), if a Party maintains, introduces or reintroduces export subsidies, the affected/importing Party may apply an

additional tariff that would increase customs duties for imports of such good up to the level of either the Most Favoured Nation (MFN) applied duty or the base rate set out in Annex I (Elimination of Customs Duties), whichever is lower, for the period established for retaining the export subsidy.

5. For products fully liberalised over a transition period in accordance with Annex I (Elimination of Customs Duties) and not benefiting from duty free quota at entry into force, no Party shall maintain, introduce or reintroduce export subsidies at the end of that transition period.

Section E: Fisheries, Aquaculture, Artisanal Goods and Organic Products

ARTICLE 90: TECHNICAL CO-OPERATION

Technical co-operation assistance measures to enhance trade in fisheries, aquaculture, artisanal goods and organic products between the Parties are established in Articles 59, 60 and 61 of Title VI (Economic and Trade Development) of Part III of this Agreement.

Section F: Institutional Provisions

ARTICLE 91: SUB-COMMITTEE ON MARKET ACCESS FOR GOODS

1. The Parties hereby establish a Sub-Committee on Market Access for Goods, in accordance with Article 348 and as set out in Annex XXI (Sub-Committees).

2. The functions of the Sub-Committee shall include:

- (a) monitoring the correct application and administration of this Chapter;
- (b) serving as a forum for consultations concerning the interpretation and application of this Chapter;
- (c) examining the proposals presented by the Parties regarding acceleration of tariff dismantling and inclusion of goods in the Schedules;
- (d) making any relevant recommendations to the Association Committee with regards to matters of their competence; and
- (e) any other issue instructed by the Association Committee.

CHAPTER 2 TRADE REMEDIES

Section A: Anti-Dumping and Countervailing Measures

ARTICLE 92: GENERAL PROVISIONS

1. The Parties retain their rights and obligations under the WTO Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994 (hereinafter referred to as the “Anti-Dumping Agreement”) and from the WTO Agreement on Subsidies and Countervailing Measures (hereinafter referred to as the “SCM Agreement”) and the WTO Agreement on Rules of Origin (hereinafter referred to as the “Agreement on Rules of Origin”).

2. Where anti-dumping or countervailing measures can be imposed on a regional basis and on a national basis, the Parties shall ensure that such anti-dumping or countervailing measures are not applied simultaneously in respect of the same product by regional and national authorities.

ARTICLE 93: TRANSPARENCY AND LEGAL CERTAINTY

1. The Parties agree that trade remedies shall be used in full compliance with WTO requirements and shall be based on a fair and transparent system.

2. Recognising the benefits of legal certainty and predictability for the economic operators, the Parties shall ensure that, where applicable, their respective domestic legislation in the field of anti-dumping and countervailing measures is and will remain harmonised and fully compatible with WTO legislation.

3. Notwithstanding Article 6.9 of the Anti-Dumping Agreement and Article 12.8 of the SCM Agreement, it is desirable that the Parties ensure, immediately after any imposition of provisional measures, complete and meaningful disclosure of all essential facts and considerations which form the basis for the decision to apply measures, without prejudice to Article 6.5 of the Anti-Dumping Agreement and Article 12.4 of the SCM Agreement. Disclosures shall be made in writing and shall be provided to interested parties with sufficient time to defend their interests.

4. Upon request of the interested parties, the Parties shall grant them the possibility to be heard in order to express their views during anti-dumping or countervailing measures investigations. This shall not unnecessarily delay the conduct of the investigations.

ARTICLE 94: CONSIDERATION OF PUBLIC INTEREST

Anti-dumping or countervailing measures may not be applied by a Party where, on the basis of the information made available during the investigation, it can clearly be concluded that it is not in the public interest to apply such measures.

ARTICLE 95: LESSER DUTY RULE

Should a Party decide to impose an anti-dumping or countervailing duty, the amount of such duty shall not exceed the margin of dumping or countervailable subsidies, but it is desirable that the duty be less than this margin if such lesser duty would be adequate to remove the injury to the domestic industry.

ARTICLE 96: CAUSAL LINK

In order to impose anti-dumping or countervailing measures, and in accordance with the provisions established in Article 3.5 of the Anti-Dumping Agreement and Article 15.5 of the SCM Agreement, investigating authorities shall, as part of the demonstration of a causal relationship between the dumped imports and the injury to the domestic industry, separate and distinguish the injurious effects of all known factors from the injurious effects of the dumped or subsidized imports.

ARTICLE 97: CUMULATIVE ASSESSMENT

When imports from more than one country are simultaneously subject to anti-dumping or countervailing duty investigations, the investigating authority of the EU Party shall examine with special care whether the cumulative assessment of the effects of the imports from any Republic of the CA Party, is appropriate in light of the conditions of competition between the imported products and the conditions of competition between the imported products and the like domestic product.

ARTICLE 98: EXCLUSION FROM DISPUTE SETTLEMENT PROCEDURES

The Parties shall not have recourse to dispute settlement procedures under Title X (Dispute Settlement) of Part IV of this Agreement for matters arising under this Section.

Section B: Safeguard Measures

Sub-Section B.1: General Provisions

ARTICLE 99: ADMINISTRATION OF SAFEGUARD PROCEEDINGS

1. Each Party shall ensure the consistent, impartial, and reasonable administration of its laws, regulations, decisions and rulings governing the proceedings for the application of safeguard measures.
2. Each Party shall entrust determinations of serious injury, or threat thereof, in safeguard proceedings under this Section to a competent investigating authority. These determinations shall be subject to review by judicial or administrative tribunals, to the extent provided by domestic legislation.
3. Each Party shall adopt or maintain equitable, timely, transparent and effective procedures for safeguard proceedings under this Section.

ARTICLE 100: NON CUMULATION

Neither Party may apply, with respect to the same product, at the same time:

- (a) a bilateral safeguard measure in accordance with Sub-Section B.3 (Bilateral Safeguard Measures) of this Chapter; and
- (b) a measure under Article XIX of GATT 1994, the WTO Agreement on Safeguards (hereinafter referred to as the “Safeguards Agreement”) or Article 5 of the Agriculture Agreement.

Sub-Section B.2: Multilateral Safeguard Measures

ARTICLE 101: GENERAL PROVISIONS

The Parties retain their rights and obligations under Article XIX of GATT 1994, the Safeguards Agreement, Article 5 of the Agriculture Agreement and the Agreement on Rules of Origin.

ARTICLE 102: TRANSPARENCY

Notwithstanding Article 101, at the request of the other Party, the Party initiating an investigation or intending to take safeguard measures shall provide immediately *ad hoc* written notification of all pertinent information including where relevant, on the initiation of a safeguard investigation, on the provisional findings and on the final findings of the investigation.

ARTICLE 103: EXCLUSION FROM DISPUTE SETTLEMENT PROCEDURES

The Parties shall not have recourse to dispute settlement procedures under Title X (Dispute Settlement) of Part IV of this Agreement for provisions referring to WTO rights and obligations arising under this Sub-Section.

Sub-Section B.3: Bilateral Safeguard Measures

ARTICLE 104: APPLICATION OF A BILATERAL SAFEGUARD MEASURE

1. Notwithstanding Sub-Section B.2 (Multilateral Safeguard Measures), if as a result of the reduction or elimination of a customs duty under this Agreement, a product originating in a Party is being imported into the territory of the other Party in such increased quantities, in absolute terms or relative to domestic production, and under such conditions so as to constitute a substantial cause or threat of serious injury to domestic producers of like or directly competitive products, the importing Party may take appropriate measures under the conditions and in accordance with the procedures laid down in this Sub-Section.

2. If the conditions in paragraph 1 are met, the safeguard measures of the importing Party may only consist of one of the following:

- (a) suspension of the further reduction of the rate of customs duty on the product concerned provided for under this Agreement; or
- (b) increase in the rate of customs duty on the product concerned to a level which does not exceed the lesser of:
 - (i) the most-favoured nation applied rate of customs duty on the product in effect at the time the measure is taken; or
 - (ii) the most-favoured nation applied rate of customs duty on the product in effect on the day immediately preceding the date of entry into force of this Agreement.

3. In case of products which were already fully liberalised before the entry into force of the Agreement following tariff preferences granted before the entry into force of this Agreement, the EU Party shall examine with special care whether increased imports result from the reduction or elimination of customs duties under this Agreement.

4. None of the above measures shall be applied within the limits of the preferential duty free tariff quotas granted by this Agreement.

ARTICLE 105: CONDITIONS AND LIMITATIONS

1. A bilateral safeguard measure may not be applied:

- (a) except to the extent, and for such time, as may be necessary to prevent or remedy the situation described in Article 104 or 109;
- (b) for a period exceeding two years. The period may be extended by another two years if the competent authorities of the importing Party determine, in conformity with the procedures specified in this Sub-Section, that the measure continues to be necessary to prevent or remedy the situations described in Article 104 or 109, provided that the total period of application of a safeguard measure, including the period of initial application and any extension thereof, does not exceed four years; or
- (c) beyond the expiration of the transition period, except with the consent of the other Party. "Transition period" means ten years from the date of entry into force of this Agreement. For any good for which the Schedule in Annex I (Elimination of Customs Duties) of the Party applying the measure provides for tariff elimination of ten or more years, transition period means the tariff elimination period for the goods set out in that Schedule, plus three years.

2. When a Party ceases to apply a bilateral safeguard measure, the rate of customs duty shall be the rate that would have been in effect for the good, according to the Schedule of that Party.

ARTICLE 106: PROVISIONAL MEASURES

In critical circumstances where delay would cause damage that would be difficult to repair, a Party may apply a bilateral safeguard measure on a provisional basis, without complying with the requirements of Article 116, paragraph 1 of this Chapter, pursuant to a preliminary determination that there is clear evidence that imports of a product originating in the other Party have increased as the result of the reduction or elimination of a customs duty under this Agreement, and that such imports cause or threaten to cause the situations described in Article 104 or 109. The duration of any provisional measure shall not exceed two hundred days, during which time the Party shall comply with the relevant procedural rules laid down in Sub-Section B.4 (Procedural Rules Applicable to Bilateral Safeguard Measures). The Party shall promptly refund any tariff increases if the investigation described in Sub-Section B.4 does not result in a finding that the requirements of Article 104 are met. The duration of any provisional measure shall be counted as part of the period described in Article 105, paragraph 1 (b). The importing Party concerned shall inform the other Party concerned upon taking such provisional measures and it shall immediately refer the matter to the Association Committee for examination if the other Party so requests.

ARTICLE 107: COMPENSATION AND SUSPENSION OF CONCESSIONS

1. A Party applying a bilateral safeguard measure shall consult with the Party whose products are subject to the measure in order to mutually agree on appropriate trade liberalising compensation in the form of concessions having substantially equivalent trade effect. The Party shall provide an opportunity for such consultations no later than thirty days after the application of the bilateral safeguard measure.

2. If the consultations under paragraph 1 do not result in an agreement on trade liberalising compensation within thirty days, the Party whose products are subject to the safeguard measure may suspend the application of substantially equivalent concessions to the trade of the Party applying the safeguard measure.

ARTICLE 108: TIME LAPSE IN BETWEEN TWO MEASURES

No safeguard measure referred to in this Sub-Section shall be applied to the import of a product that has previously been subject to such a measure, unless a period of time equal to half of that during which the safeguard measure was applied for the immediately preceding period has elapsed.

ARTICLE 109: OUTERMOST REGIONS

1. Where any product originating in one or several of the Republics of the CA Party is being imported into the territory of one or several outermost regions of the EU Party in such increased quantities and under such conditions as to cause or threaten to cause serious

deterioration in the economic situation of the outermost region(s) concerned of the EU Party, the EU Party, after having examined alternative solutions, may exceptionally take safeguard measures limited to the territory of the region(s) concerned.

2. Without prejudice to the provisions of paragraph 1, other rules laid down in this Sub-Section applicable to bilateral safeguards are also applicable to any safeguard adopted under this Article.

3. The Association Council may discuss whether in cases of threat of, or serious deterioration in the economic situation of extremely underdeveloped regions of the Republics of the CA Party, this Article may also apply to those regions.

Sub-Section B.4: Procedural Rules Applicable to Bilateral Safeguard Measures

ARTICLE 110: APPLICABLE LAW

For the application of bilateral safeguard measures, the competent investigating authority shall comply with the provisions of this Sub-Section and in cases not covered by this Sub-Section, the competent investigating authority shall apply the rules established under its domestic legislation.

ARTICLE 111: INITIATION OF A PROCEEDING

1. Pursuant to each Party's domestic legislation, a safeguard proceeding may be initiated by the competent investigating authority on its own initiative, upon receipt of information from one or more Member States of the European Union, or upon a written application by entities specified in domestic legislation. In the cases when the proceeding is initiated on the basis of a written application, the entity filing the application shall demonstrate that it is representative of the domestic industry producing a good like or directly competitive with the imported good.

2. Once the written applications have been filed, these shall promptly be made available for public inspections, except for the confidential information contained.

3. Upon initiation of a safeguard proceeding, the competent investigating authority shall publish a notice of initiation of the proceeding in the official journal of the Party. The notice shall identify the entity which filed the written application, if applicable, the imported good that is the subject of the proceeding and its subheading and the tariff item number under which it is classified, the nature and timing of the determination to be made, the time and place of the public hearing or the period within which interested parties may apply to be heard orally by the investigating authority, the period within which interested parties may make known their views in writing and submit information, the place at which the written application and any other non-confidential 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.

4. With respect to a safeguard proceeding initiated on the basis of a written application filed by an entity asserting that it is representative of the domestic industry, the competent investigating authority shall not publish the notice required by paragraph 3 without first assessing carefully that the written application meets the requirements of its domestic legislation.

ARTICLE 112: INVESTIGATION

1. A Party may apply a safeguard measure only following an investigation by the competent investigating authority of that Party pursuant to procedures laid down in this Sub-Section. This investigation shall include reasonable public notice to all interested parties and public hearings or other appropriate means in which importers, exporters and other interested parties could present evidence and their views, including the opportunity to respond to the presentations of other parties.

2. Each Party shall ensure that its competent investigating authority completes any such investigation within twelve months of its date of initiation.

ARTICLE 113: EVIDENCE OF INJURY AND CAUSAL LINK

1. In conducting its proceeding, the competent investigating authority shall evaluate all relevant factors of an objective and quantifiable nature having a bearing on the situation of the domestic industry, in particular the rate and amount of the increase in imports of the good concerned in absolute terms or relative to domestic production, the share of the domestic market taken by increased imports, and changes in the level of sales, production, productivity, capacity utilisation, profits and losses, and employment.

2. The determination whether increased imports have caused or are threatening to cause the situations described in Article 104 or 109, shall not be made, unless the investigation demonstrates, on the basis of objective evidence, the existence of a clear causal link between increased imports of the good concerned and the situations described in Article 104 or 109. Where factors other than increased imports are, at the same time, causing the situations described in Article 104 or 109, such injury or serious deterioration in the economic situation shall not be attributed to increased imports.

ARTICLE 114: HEARINGS

In the course of each proceeding, the competent investigating authority shall:

- (a) hold a public hearing, after providing reasonable notice, to allow all interested parties and any representative consumer association, to appear in person or by counsel, to present evidence and to be heard on serious injury or threat of serious injury, and the appropriate remedy; or
- (b) provide an opportunity to all interested parties to be heard where they have made a written application within the period laid down in the notice of initiation showing that they are actually likely to be affected by the outcome

of the investigation and that there are special reasons for them to be heard orally.

ARTICLE 115: CONFIDENTIAL INFORMATION

Any information which is by nature confidential or which is provided on a confidential basis shall, upon cause being shown, be treated as such by the competent investigating authority. Such information shall not be disclosed without permission of the Party submitting it. Parties providing confidential information may be requested to furnish non-confidential summaries thereof or, if such parties indicate that such information cannot be summarised, the reasons why a summary cannot be provided. However, if the competent investigating authority finds that a request for confidentiality is not warranted and if the party concerned is either unwilling to make the information public or to authorise its disclosure in generalised or summary form, the authority may disregard such information unless it can be demonstrated to their satisfaction from appropriate sources that the information is correct.

ARTICLE 116: NOTIFICATIONS AND PUBLICATIONS

1. Where a Party takes the view that one of the circumstances set out in Article 104 or 109 exists, it shall immediately refer the matter to the Association Committee for examination. The Association Committee may make any recommendation needed to remedy the circumstances which have arisen. If no recommendation has been made by the Association Committee aimed at remedying the circumstances, or no other satisfactory solution has been reached within thirty days of the matter being referred to the Association Committee, the importing Party may adopt the appropriate measures to remedy the circumstances in accordance with this Sub-Section.

2. The competent investigating authority shall provide the exporting Party with all pertinent information, which shall include evidence of injury or serious deterioration in the economic situation, caused by increased imports, precise description of the product involved and the proposed measures, proposed date of imposition and expected duration.

3. The competent investigating authority shall also publish its findings and reasoned conclusions reached on all pertinent issues of fact and law in the official journal of the Party, including the description of the imported good and the situation which has given rise to the imposition of measures in accordance with Article 104 or 109, the causal link between such situation and the increased imports, and the form, level and duration of the measures.

4. The competent investigating authority shall not disclose any information provided pursuant to any undertaking concerning confidential information that may have been made in the course of the proceedings.

CHAPTER 3 CUSTOMS AND TRADE FACILITATION

ARTICLE 117: OBJECTIVES

1. The Parties recognise the importance of customs and trade facilitation matters in the evolving global trading environment. The Parties agree to reinforce co-operation in this area with a view to ensuring that the relevant legislation and procedures, as well as the administrative capacity of the relevant administrations, fulfil the objectives of effective control and the promotion of trade facilitation, and help promote the development and regional integration of the Republics of the CA Party.

2. The Parties recognise that legitimate public policy objectives, including in relation to security and the prevention of fraud, shall not be compromised in any way.

ARTICLE 118: CUSTOMS AND TRADE-RELATED PROCEDURES

1. The Parties agree that their respective customs legislation, provisions and procedures shall be based upon:

- (a) the international instruments and standards applicable in the field of customs including the WCO Framework of Standards to Secure and Facilitate Global Trade as well as the International Convention on the Harmonized Commodity Description and Coding System;
- (b) the protection and facilitation of legitimate trade through effective enforcement of and compliance with the requirements set out in the customs legislation;
- (c) legislation that avoids unnecessary or discriminatory burdens, safeguards against customs fraud and provides for further facilitation for high levels of compliance;
- (d) the application of modern customs techniques, including risk management, simplified procedures for entry and release of goods, post release controls, and company audit methods;
- (e) a system of binding rulings on customs matters, notably on tariff classification and rules of origin, in accordance with rules laid down in the legislation of the Parties;
- (f) the progressive development of systems, including those based upon information technology, to facilitate the electronic exchange of data within customs administrations and with other related public institutions;

- (g) rules that ensure that any penalties imposed for minor breaches of customs regulations or procedural requirements are proportionate and non-discriminatory and, in their application, do not result in unwarranted delays;
- (h) fees and charges that are reasonable and limited in amount to the cost of the service provided in relation to any specific transaction, and are not calculated on an *ad valorem* basis. Fees and charges shall not be imposed for consular services; and
- (i) the elimination of any requirements for the mandatory use of pre-shipment inspections as defined in the WTO Agreement on Preshipment Inspection, or any other inspection activity performed at destination, before customs clearance, by private companies.

2. The Parties agree that their respective customs legislation, provisions and procedures shall, to the extent possible, draw upon the substantive elements of the International Convention on the Simplification and Harmonization of Customs Procedures, as amended (Revised Kyoto Convention) and its Annexes.

3. In order to improve working methods, as well as to ensure non-discrimination, transparency, efficiency, integrity and accountability of operations, the Parties shall:

- (a) take steps, to the extent possible, towards the reduction, simplification and standardisation of data and documentation required by customs and other related public institutions;
- (b) simplify requirements and formalities wherever possible, in respect of the rapid release and clearance of goods;
- (c) provide effective, prompt, non-discriminatory and easily accessible procedures enabling the right of appeal, according to the legislation of each Party, against customs administrative actions, rulings and decisions affecting imports, exports or goods in transit. Charges, if any, shall be commensurate with costs of the appeals procedures; and
- (d) take measures in order to ensure that the highest standards of integrity are maintained.

4. The Parties shall ensure that legislation regarding customs brokers is based on transparent and proportionate rules. Where a Party requires compulsory use of customs brokers, legal persons may operate with their own in-house customs brokers licensed by the competent authority for this purpose. This provision is without prejudice to the Parties' position in multilateral negotiations.

ARTICLE 119: TRANSIT MOVEMENTS

1. The Parties shall ensure freedom of transit through their territory in conformity with the principles of Article V of GATT 1994.
2. Any restrictions, controls or requirements must pursue a legitimate public policy objective, be non-discriminatory, proportionate and applied uniformly.
3. Without prejudice to legitimate customs control and supervision of goods in transit, each Party shall grant to traffic in transit to or from the territory of any Party, treatment not less favourable than that granted to traffic in transit through its territory.
4. In conformity with the principles of Article V of GATT 1994, the Parties shall operate regimes that allow the transit of goods without levying any customs duties, any transit duties or other charges imposed in respect of transit, except charges for transportation or those commensurate with administrative expenses entailed by transit or with the cost of services rendered; and subject to the provision of an appropriate guarantee.
5. The Parties shall promote and implement regional transit arrangements with a view to reducing trade barriers.
6. The Parties shall ensure co-operation and co-ordination between all concerned authorities and agencies in their territory to facilitate traffic in transit and promote co-operation across borders.

ARTICLE 120: RELATIONS WITH THE BUSINESS COMMUNITY

The Parties agree:

- (a) to ensure that all legislation, procedures and fees and charges are made publicly available, as far as possible through electronic means, together with necessary additional information.

The Parties shall make publicly available relevant notices of an administrative nature, including requirements and entry procedures, hours of operation and operating procedures for customs offices and points of contact for information enquiries;

- (b) on the need for timely and regular consultations with representatives of interested parties on customs related legislative proposals and procedures. To this end, appropriate and regular consultation mechanisms shall be established by each Party;

- (c) that there shall be a reasonable time period between the publication of new or amended legislation, procedures and fees or charges and their entry into force⁶;
- (d) to foster co-operation with the business community via the use of non-arbitrary and publicly accessible procedures, such as Memoranda of Understanding, based on those promulgated by the WCO; and
- (e) to ensure that their respective customs and related requirements and procedures continue to meet the needs of the trading community, follow best practices, and remain as little trade-restrictive as possible.

ARTICLE 121: CUSTOMS VALUATION

The WTO Agreement on Implementation of Article VII of the General Agreement on Tariffs and Trade 1994 (hereinafter referred to as the “Customs Valuation Agreement”) shall govern customs valuation rules applied to reciprocal trade between the Parties.

ARTICLE 122: RISK MANAGEMENT

Each Party shall use risk management systems that enable its customs authorities to focus inspection activities on high-risk goods and that facilitate the clearance and movement of low-risk goods.

ARTICLE 123: SUB-COMMITTEE ON CUSTOMS, TRADE FACILITATION AND RULES OF ORIGIN

1. The Parties hereby establish a Sub-Committee on Customs, Trade Facilitation and Rules of Origin, in accordance with Article 348 and as set out in Annex XXI (Sub-Committees).
2. The functions of the Sub-Committee shall include:
 - (a) monitoring the implementation and the administration of this Chapter and of Annex II (Concerning the Definition of the Concept of “Originating Products” and Methods of Administrative Co-operation) of this Agreement;
 - (b) providing a forum to consult and discuss all issues concerning customs, including in particular customs procedures, customs valuation, tariff regimes, customs nomenclature, customs co-operation and mutual administrative assistance in customs matters;

⁶ In Parties where their legislation requires entry into force at the same time as publication, the Government shall ensure that operators are informed of any new measures of the kind referred to in this paragraph sufficiently in advance.

- (c) providing a forum to consult and discuss issues relating to rules of origin and administrative co-operation;
- (d) enhancing co-operation on the development, the application and the enforcement of customs procedures, mutual administrative assistance in customs matters, rules of origin and administrative co-operation;
- (e) attending requests of modifications of the rules of origin and submitting to the Association Committee the results of the analyses and the recommendations;
- (f) carrying out the tasks and functions established in Annex II (Concerning the Definition of the Concept of “Originating Products” and Methods of Administrative Co-operation) of this Agreement;
- (g) enhancing co-operation on capacity building and technical assistance; and
- (h) any other issue instructed by the Association Committee.

3. The Parties may agree to hold *ad hoc* meetings for customs co-operation, for rules of origin or mutual administrative assistance.

ARTICLE 124: TECHNICAL ASSISTANCE ON CUSTOMS AND TRADE FACILITATION

The technical assistance measures required for the implementation of this Chapter are established in Articles 53 and 54 of Title VI (Economic and Trade Development) of Part III of this Agreement.

CHAPTER 4 TECHNICAL BARRIERS TO TRADE

ARTICLE 125: OBJECTIVES

1. The objective of this Chapter is to facilitate and increase trade in goods by identifying, preventing and eliminating unnecessary barriers to trade between the Parties, which may arise as a result of the preparation, adoption and application of technical regulations, standards and conformity assessment procedures within the terms of the WTO Agreement on Technical Barriers to Trade (hereinafter referred to as the “TBT Agreement”).

2. The Parties undertake to co-operate in strengthening regional integration within the Parties and on matters concerning technical barriers to trade.

3. The Parties undertake to establish and enhance technical capacity on matters concerning technical barriers to trade with the aim of improving access to their respective markets.

ARTICLE 126: GENERAL PROVISIONS

The Parties reaffirm their existing rights and obligations with respect to each other under the TBT Agreement, which is hereby incorporated into and made part of this Agreement. The Parties take special account of Article 12 of the TBT Agreement on special and differential treatment.

ARTICLE 127: SCOPE AND COVERAGE

1. This Chapter applies to the preparation, adoption and application of technical regulations, standards and conformity assessment procedures as defined in the TBT Agreement, which may affect trade in goods between the Parties.
2. Notwithstanding paragraph 1, this Chapter does not apply to sanitary and phytosanitary measures as defined in Annex A of the WTO Agreement on the Application of Sanitary and Phytosanitary Measures (hereinafter referred to as the “SPS Agreement”), nor to purchasing specifications prepared by governmental bodies for production or consumption requirements of governmental bodies which will be regulated by Title V (Government Procurement) of Part IV of this Agreement.

ARTICLE 128: DEFINITIONS

For the purposes of this Chapter, the definitions of Annex I to the TBT Agreement shall apply.

ARTICLE 129: TECHNICAL REGULATIONS

The Parties agree to make the best use of good regulatory practices, as indicated in the TBT Agreement. In particular, the Parties agree to:

- (a) use relevant international standards as a basis for technical regulations including conformity assessment procedures, except when such international standards would be an ineffective or inappropriate means for the fulfilment of the legitimate objectives pursued; and where international standards have not been used as a basis, to explain, upon request of the other Party, the reasons why such standards have been judged inappropriate or ineffective for the aim being pursued;
- (b) promote the development of regional technical regulations and that these replace any existing national ones, in order to facilitate trade with and between the Parties;
- (c) establish mechanisms for improved information to the other Parties’ industries on technical regulations (for example, through a public website); and

- (d) provide upon request and without undue delay, information, and where appropriate, written guidance on compliance with their technical regulations to the other Party or its economic operators.

ARTICLE 130: STANDARDS

1. The Parties confirm their obligation under Article 4.1 of the TBT Agreement to ensure that their standardising bodies accept and comply with the “Code of Good Practice for the Preparation, Adoption and Application of Standards” in Annex 3 to the TBT Agreement.

2. The Parties undertake to:

- (a) ensure appropriate interaction of regulatory authorities and national, regional or international standardisation bodies;
- (b) ensure the application of the principles set out in the “Decision of the Committee on Principles for the Development of International Standards, Guides and Recommendations with relation to Articles 2, 5 and Annex 3 of the Agreement”, adopted by the WTO TBT Committee on 13 November 2000;
- (c) ensure that their standards bodies co-operate in order that international standardisation work is, where possible, used as a basis for the development of standards at regional level;
- (d) promote the development of regional standards. When a regional standard is adopted, it will fully replace all existing national standards;
- (e) exchange information on the Parties' use of standards in connection with technical regulations and to provide as far as possible, that standards should not be made mandatory; and
- (f) exchange information and expertise on the work done by international, regional and national standardisation bodies, and on the extent to which international standards are used as a basis for their national and regional standards; as well as general information on co-operation agreements used by either Party in standardisation.

ARTICLE 131: CONFORMITY ASSESSMENT AND ACCREDITATION

1. The Parties recognise that a broad range of conformity assessment mechanisms exists to facilitate the acceptance of products in the territory of the Parties, including:

- (a) acceptance of a supplier's declaration of conformity;

- (b) designation of conformity assessment bodies located in the other Party's territory;
- (c) acceptance of the results of conformity assessment procedures by bodies located in the other Party's territory; and
- (d) voluntary arrangements between conformity assessment bodies in each Party's territory.

2. In line with this, the Parties undertake:

- (a) in conformity with Article 5.1.2 of the TBT Agreement, to require conformity assessment procedures that are not stricter than necessary;
- (b) to ensure that, where several conformity assessment bodies have been authorised by a Party in accordance with its applicable domestic legislation, legislative measures adopted by such Party will not restrict the operators' freedom to choose where to carry out the relevant conformity assessment procedures; and
- (c) to exchange information on accreditation policy, and to consider how to make best use of the international standards for accreditation, and international agreements involving the Parties' accreditation bodies, for example, through the mechanisms of International Laboratory Accreditation Cooperation (ILAC) and International Accreditation Forum (IAF).

ARTICLE 132: SPECIAL AND DIFFERENTIAL TREATMENT

In accordance with the provisions of Article 126 of this Chapter, the Parties agree to:

- (a) ensure that legislative measures do not restrict the conclusion of voluntary agreements between conformity assessment bodies located in the Republics of the CA Party and those located in the EU Party and promote the participation of such bodies in these agreements;
- (b) when one of the Parties identifies a particular problem related to an actual or proposed technical regulation, standard or conformity assessment procedure that may affect trade between the Parties, that exporting Party may seek clarification and guidance on how to comply with the measure of the importing Party. The latter will promptly give due attention to this request and take into consideration the concerns expressed by the exporting Party;
- (c) at the request of the exporting Party, the importing Party shall undertake to promptly deliver through its competent authorities information with respect to the technical regulations, standards and conformity assessment procedures

applicable to a group of goods or a particular good for its commercialization in the territory of the importing Party; and

- (d) in accordance with Article 12.3 of the TBT Agreement, the EU Party, in the preparation or application of technical regulations, standards and conformity assessment procedures, shall take into account the special development, financial and trade needs of the Republics of the CA Party, with a view to ensuring that such technical regulations, standards and conformity assessment procedures do not create unnecessary obstacles to their exports.

ARTICLE 133: CO-OPERATION AND TECHNICAL ASSISTANCE

The Parties agree that it is in their common interest to promote mutual co-operation and technical assistance initiatives on issues related to technical barriers to trade. In this respect, the Parties have identified a number of co-operation activities which are set out in Article 57 of Title VI (Economic and Trade Development) of Part III of this Agreement.

ARTICLE 134: COLLABORATION AND REGIONAL INTEGRATION

The Parties agree that collaboration between national and regional authorities dealing with technical barriers to trade matters, within both the public and private sectors, is important to facilitate trade within the regions and between the Parties themselves. To this end, the Parties undertake to carry out joint actions that may include:

- (a) strengthening their co-operation in the field of standards, technical regulations, metrology, accreditation and conformity assessment with a view to increasing mutual understanding of their respective systems and, in areas of common interest, explore trade facilitation initiatives which lead to the convergence of their regulatory requirements. To this end, they may establish regulatory dialogues at both horizontal and sectoral levels;
- (b) seeking to identify, develop and promote trade facilitating initiatives which may include, but are not limited to:
 - (i) reinforcing regulatory co-operation through, for example, the exchange of information, expertise and data, and scientific and technical co-operation with a view to improving the way technical regulations are developed, in terms of transparency and consultation, and making an efficient use of regulatory resources;
 - (ii) simplifying procedures and requirements; and
 - (iii) promoting and encouraging bilateral co-operation between their respective organisations, public or private, responsible for metrology, standardisation, testing, certification and accreditation;

- (c) on request, a Party shall give appropriate consideration to proposals that the other Party makes for co-operation under the terms of this Chapter.

ARTICLE 135: TRANSPARENCY AND NOTIFICATION PROCEDURES

The Parties agree:

- (a) to fulfil the transparency obligations of the Parties as indicated in the TBT Agreement and provide early warning of the introduction of technical regulations and conformity assessment procedures having a significant effect on trade between the Parties, and when such technical regulations and conformity assessment procedures are introduced, to leave sufficient time between their publication and entry into force for economic operators to adapt to them;
- (b) when making notifications in accordance with the TBT Agreement, to allow the other Party at least sixty days following the notification to provide comments in writing on the proposal except where urgent problems of safety, health, environmental protection or national security arise or threaten to arise and, where practicable, to give appropriate consideration to reasonable requests for extending the comment period. This period will be extended should the WTO TBT Committee so recommend; and
- (c) to give appropriate consideration to the other Party's views where part of the process in the development of a technical regulation or conformity assessment procedure is, prior to the WTO notification process, open to public consultation in accordance with the procedures of each region; and on request to provide written responses to the comments made by the other Party.

ARTICLE 136: MARKET SURVEILLANCE

The Parties undertake to:

- (a) exchange views on market surveillance and enforcement activities; and
- (b) ensure that market surveillance is carried out by the competent authorities in an independent manner, with a view to avoid conflicts of interest.

ARTICLE 137: FEES

The Parties undertake to ensure that:

- (a) any fees imposed for assessing the conformity of products originating in the territory of one Party are equitable in relation to any fees chargeable for assessing the conformity of like products of national origin or originating in the territory of the other Party, taking into account communication,

transportation and other costs arising from differences between the location of the facilities of the applicant and the conformity assessment body;

- (b) a Party shall give an opportunity to the other Party to make a representation against the amount charged for assessing the conformity of products when the fee is excessive in relation to the cost of the certification service and where this undermines the competitiveness of its products; and
- (c) the anticipated processing period for any mandatory conformity assessment is reasonable and equitable for imported and domestic goods.

ARTICLE 138: MARKING AND LABELLING

1. The Parties recall, as stated in Article 1 of Annex 1 of the TBT Agreement, that a technical regulation may include or deal exclusively with marking or labelling requirements, and agree that where their technical regulations require any marking or labelling requirements, they will observe the principles of Article 2.2 of the TBT Agreement.

2. In particular, the Parties agree:

- (a) to require only marking or labelling relevant to consumers or users of the product or to indicate the product's conformity with the mandatory technical requirements;⁷
- (b) if it is necessary in view of the risk of the products to human, animal or plant health or life, the environment, or national safety:
 - (i) the Parties may require the approval, registration or certification of labels or markings as a precondition for sale on their respective markets; or
 - (ii) the Parties may establish requirements on the physical characteristics or design of a label, in particular that the information be placed in a specific part of the product or in a given format or size.

The above is understood without prejudice to the measures adopted by the Parties pursuant to their internal rules to check the compliance of labels with the mandatory requirements and measures they take to control practices which may mislead consumers;

- (c) where a Party requires the use of a unique identification number by economic operators, it shall issue such a number to the other Party's economic operators without undue delay and on a non-discriminatory basis;

⁷ Where labelling for fiscal purposes is required, such a requirement shall be formulated in a manner that is not more trade restrictive than necessary to fulfil a legitimate objective.

- (d) provided it is not misleading, contradictory or confusing in relation to the information required in the country of destination of the goods, the Parties shall permit the following:
 - (i) information in other languages in addition to the language required in the country of destination of the goods;
 - (ii) international nomenclatures, pictograms, symbols or graphics; and
 - (iii) additional information to that required in the country of destination of the goods;
- (e) the Party shall, where legitimate objectives under the TBT Agreement are not compromised and the information can properly reach the consumer, endeavour to accept non-permanent or detachable labels, or marking or labelling in the accompanying documentation rather than physically attached to the product; and
- (f) the Parties shall allow that labelling and corrections to labelling take place in the country of destination prior to the commercialisation of the goods.

3. Taking into account paragraph 2, the Parties agree that, when a Party requires marking or labelling of textiles, clothing or footwear, the following information alone may be required to be permanently marked:

- (a) in the case of textiles and clothing: fibre content, country of origin, safety instructions for specific uses and care instructions; and
- (b) in the case of footwear: the predominant materials of the main parts, safety instructions for specific uses and country of origin.

4. The Parties shall apply the provisions of this Article within one year from the entry into force of this Agreement at the latest.

ARTICLE 139: SUB-COMMITTEE ON TECHNICAL BARRIERS TO TRADE

1. The Parties hereby establish a Sub-Committee on Technical Barriers to Trade, in accordance with Article 348 and as set out in Annex XXI (Sub-Committees).

2. The Sub-Committee shall have the following functions:

- (a) discuss any matter relating to the application of this Chapter that could affect trade between the Parties;
- (b) monitor the implementation and administration of this Chapter; promptly addressing any issue that either Party raises related to the development,

adoption, application, or enforcement of standards, technical regulations, and conformity assessment procedures; and at either Party's request, consulting on any matter arising under this Chapter;

- (c) facilitate the exchange of information on technical regulations, standards and conformity assessment procedures;
- (d) provide a forum for discussion in order to solve problems or issues that hinder or limit trade, within the limits of the scope and objective of this Chapter;
- (e) enhance co-operation in the development and improvement of standards, technical regulations, and conformity assessment procedures; including the exchange of information between the relevant public or private bodies working on these matters and encourage direct interaction between non-governmental actors, such as standard bodies, accreditators and certifiers;
- (f) facilitate the exchange of information about the work being done in non-governmental, regional and multilateral *fora* engaged in activities related to technical regulations, standardisation and conformity assessment procedures;
- (g) explore ways to facilitate trade between the Parties;
- (h) report on the co-operation programs established under Article 57 of Title VI (Economic and Trade Development) of Part III of this Agreement, their achievements and the impact of these projects in facilitating trade and in implementing the provisions of this Chapter;
- (i) review this Chapter in the light of any developments under the TBT Agreement;
- (j) report to the Association Committee on the implementation of the provisions of this Chapter, in particular the advances in the fulfilment of the goals established and the provisions related to special and differential treatment;
- (k) take any other steps the Parties consider will assist them in implementing this Chapter;
- (l) establish dialogues between regulators in accordance with Article 134 (a) of this Chapter and, where appropriate, working groups to discuss different topics of interest to the Parties. The working groups may include or consult with non-governmental experts and stakeholders; and
- (m) any other issue instructed by the Association Committee.

CHAPTER 5 SANITARY AND PHYTOSANITARY MEASURES

ARTICLE 140: OBJECTIVES

The objectives of this Chapter are to:

- (a) protect human, animal or plant life or health in the territory of the Parties while facilitating trade between them under the scope of the implementation of this Chapter;
- (b) collaborate for the further implementation of the SPS Agreement;
- (c) ensure that sanitary and phytosanitary measures do not create unjustified barriers to trade between the Parties;
- (d) consider the asymmetries between the regions;
- (e) enhance co-operation in the sanitary and phytosanitary field in line with Part III of this Agreement, with the aim of strengthening the capacities of a Party on sanitary and phytosanitary matters in order to improve access to the market of the other Party whilst safeguarding the level of protection of humans, animals and plants; and
- (f) progressively implement the region to region approach in trade of goods subject to sanitary and phytosanitary measures.

ARTICLE 141: MULTILATERAL RIGHTS AND OBLIGATIONS

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

ARTICLE 142: SCOPE

1. This Chapter applies to all sanitary and phytosanitary measures of a Party that may, directly or indirectly, affect trade between the Parties.
2. This Chapter shall not apply to the standards, technical regulations and conformity assessment procedures as defined in the TBT Agreement.
3. Additionally, this Chapter shall apply to the co-operation on animal welfare matters.

ARTICLE 143: DEFINITIONS

For the purposes of this Chapter, the definitions contained in Annex A of the SPS Agreement shall apply.

ARTICLE 144: COMPETENT AUTHORITIES

The Competent Authorities of the Parties are the authorities competent for the implementation of this Chapter, as provided for in Annex VI (Competent Authorities). The Parties shall, in accordance with Article 151 of this Chapter, inform each other of any change concerning such Competent Authorities.

ARTICLE 145: GENERAL PRINCIPLES

1. The sanitary and phytosanitary measures applied by the Parties shall follow the principles established in Article 3 of the SPS Agreement.
2. The sanitary and phytosanitary measures cannot be used so as to create unjustified barriers to trade.
3. The procedures established under the scope of this Chapter shall be applied in a transparent manner, without undue delays and in conditions and requirements including costs, which should be no higher than the actual cost of the service and be equitable in relation to any fee charged on like domestic products of the Parties.
4. The Parties will neither use the procedures mentioned in paragraph 3 nor the requests of additional information to delay the access to the market without scientific and technical justification.

ARTICLE 146: IMPORT REQUIREMENTS

1. The exporting Party shall ensure that products exported to the importing Party comply with the sanitary and phytosanitary requirements of the importing Party.
2. The importing Party shall ensure that its import conditions are applied in a proportional and non discriminatory manner.

ARTICLE 147: TRADE FACILITATION

1. List of establishments:
 - (a) For the import of animal products, the exporting Party shall inform the importing Party of its list of establishments complying with the importing Party's requirements.
 - (b) Upon request of the exporting Party, accompanied by the appropriate sanitary guarantees, the importing Party shall approve establishments as referred to in Annex VII (Requirements and Provisions for Approval of Establishments for Products of Animal Origin) which are situated on the territory of the exporting Party, without prior inspection of individual establishments. Such approval shall be consistent with the requirements and

provisions set out in Annex VII, and it is limited to those categories of products for which imports are authorised.

- (c) The sanitary guarantees referred in this Article may include relevant and justified information to ensure the sanitary status of the live animals and animal products to be imported.
- (d) Unless additional information is requested, the importing Party shall take the necessary legislative or administrative measures, in accordance with its applicable legal procedures, to allow import on that basis within forty working days after having received the request of the exporting Party accompanied by the appropriate sanitary guarantees.
- (e) The importing Party will regularly submit a record of rejected requests for approval, including information about the non-conformities upon which the rejection to approve an establishment was based.

2. Import checks and inspection fees: Any fees imposed for the procedures on imported products may only cover the cost incurred by the Competent Authority for performing import checks; they shall be no higher than the actual cost of the service and shall be equitable in relation to any fees charged on like domestic products.

ARTICLE 148: VERIFICATIONS

1. In order to maintain confidence in the effective implementation of the provisions of this Chapter and within its scope, each Party has the right to:

- (a) carry out verification of all or part of the other Party's authorities' control system, in accordance with the guidelines described in Annex VIII (Guidelines for Conducting Verifications). The expenses of such verification shall be borne by the Party carrying out the verification; and
- (b) receive information from the other Party about its control system and be informed of the results of the controls carried out under that system.

2. The Parties shall share the results and conclusions of the verifications carried out in the territory of the other Party and make them publicly available.

3. When the importing Party decides to carry out a verification visit to the exporting Party, this visit shall be notified to the other Party at least sixty working days before such verification is carried out, except in emergency cases or if the Parties concerned agree differently. Any modification to this visit shall be agreed by the Parties concerned.

ARTICLE 149: MEASURES LINKED TO ANIMAL AND PLANT HEALTH

1. The Parties shall recognise the concept of pest - or disease-free areas and areas of low pest or disease prevalence, in accordance with the SPS Agreement as well as the

standards, guidelines or recommendations of the World Organisation for Animal Health (hereinafter referred to as the "OIE") and the International Plant Protection Convention (hereinafter referred to as the "IPPC"). The Sub-Committee referred to in Article 156 of this Chapter may define further details for the procedure for the recognition of such areas, taking into account the SPS Agreement, the OIE and the IPPC relevant standards, guidelines or recommendations. This procedure will include situations related to outbreaks and reinfestations.

2. When determining pest - or disease-free areas and areas of low pest or disease prevalence, the Parties shall consider factors such as geographical location, ecosystems, epidemiological surveillance and the effectiveness of sanitary or phytosanitary controls in such areas.

3. The Parties shall establish close co-operation on the determination of pest - or disease-free areas and areas of low pest and disease prevalence with the objective of acquiring confidence in the procedures followed by each Party for the determination of such areas.

4. When determining such areas, whether for the first time or after an outbreak of an animal disease or a re-introduction of a plant pest, the importing Party shall in principle base its own determination of the animal and plant health status of the exporting Party or parts thereof, on the information provided by the exporting Party in accordance with the SPS Agreement, the OIE and the IPPC relevant standards, guidelines or recommendations, and take into consideration the determination made by the exporting Party.

5. If the importing Party does not accept the above mentioned determination made by the exporting Party, it shall explain the reasons and shall be ready to enter into consultations.

6. The exporting Party shall provide the necessary evidence to objectively demonstrate to the importing Party that such areas are, and are likely to remain, pest - or disease-free areas or areas of low pest or disease prevalence, respectively. For this purpose, reasonable access shall be given, upon request, to the importing Party for inspection, testing and other relevant procedures.

7. The Parties recognise the principle of compartmentalisation of the OIE and pest-free production places and sites of the IPPC. They will consider their future recommendations on the matter and the Sub-Committee set up in Article 156 of this Chapter will recommend accordingly.

ARTICLE 150: EQUIVALENCE

Through the Sub-Committee on Sanitary and Phytosanitary Matters established by Article 156, the Parties may develop provisions on equivalence and will make recommendations according to the procedures set up in the institutional provisions of this Agreement.

ARTICLE 151: TRANSPARENCY AND EXCHANGE OF INFORMATION

The Parties shall:

- (a) pursue transparency as regards sanitary and phytosanitary measures applicable to trade;
- (b) enhance mutual understanding of each Party's sanitary and phytosanitary measures and their application;
- (c) exchange information on matters related to the development and the application of sanitary and phytosanitary measures that affect, or may affect, trade between the Parties with a view to minimising their negative trade effects; and
- (d) communicate, upon request of a Party, the requirements that apply to the import of specific products.

ARTICLE 152: NOTIFICATION AND CONSULTATION

1. Each Party shall notify in writing to the other Party, within three working days, any serious or significant risk to human, animal or plant life or health, including any food emergencies.
2. Notifications shall be made to the contact points set up in Annex IX (Contact Points and Web-Sites). Written notification means notification by mail, fax or e-mail.
3. Where a Party has serious concerns regarding a risk to human, animal or plant life or health, involving products for which trade takes place, consultations regarding the situation shall, on request, take place as soon as possible. Each Party shall endeavour, in such conditions, to provide all the information necessary to avoid disruptions to trade.
4. Consultations referred to in paragraph 3 could be held by e-mail, video, audio conference or any other means mutually agreed by the Parties. The requesting Party should ensure the preparation of the minutes of the consultation, which shall be formally approved by the Parties.

ARTICLE 153: EMERGENCY MEASURES

1. In case of serious risk to human, animal or plant life or health, the importing Party may take, without previous notification, measures necessary for the protection of human, animal or plant life or health. For consignments in transit between the Parties, the importing Party shall consider the most suitable and proportional solution in order to avoid unnecessary disruptions to trade.
2. The Party taking the measures shall inform the other Party as soon as possible and in any case not later than one working day after the adoption of the measure. The Parties

may request any information related to the sanitary and phytosanitary situation and measures adopted and the Parties shall answer as soon as the requested information is available.

3. Upon request of either Party and in accordance with the provisions of Article 152 of this Chapter, the Parties shall hold consultations regarding the situation within fifteen working days of the notification. These consultations will be carried out in order to avoid unnecessary disruptions to trade. The Parties may consider options for the facilitation of the implementation or the replacement of the measures.

ARTICLE 154: CO-OPERATION AND TECHNICAL ASSISTANCE

1. The co-operation and technical assistance measures required for the implementation of this Chapter are established in Article 62 of Title VI (Economic and Trade Development) of Part III of this Agreement.

2. The Parties will establish through the Sub-Committee on Sanitary and Phytosanitary Matters set up in Article 156 of this Chapter, a working programme, including the identification of co-operation and technical assistance necessities to build and/or strengthen the capacity of the Parties on human, animal, or plant health and food safety issues of common interest.

ARTICLE 155: SPECIAL AND DIFFERENTIAL TREATMENT

Any Republic of the CA Party may directly consult with the EU Party when it identifies a particular problem related to a proposed measure of the EU Party that may affect their trade. For such consultations, the decisions of the WTO/SPS Committee such as document G/SPS/33 and its modifications may be used as guidance.

ARTICLE 156: SUB-COMMITTEE ON SANITARY AND PHYTOSANITARY MATTERS

1. The Parties hereby establish a Sub-Committee on Sanitary and Phytosanitary Matters, in accordance with Article 348 and as set out in Annex XXI (Sub-Committees).

2. The Sub-Committee may address any matter related to the rights and obligations of this Chapter. In particular, it shall have the following responsibilities and functions:

- (a) recommend the development of the necessary procedures or arrangements for the implementation of this Chapter;
- (b) to monitor the progress of the implementation of this Chapter;
- (c) to provide a forum for discussion of problems arising from the application of certain sanitary or phytosanitary measures with a view to reaching mutually acceptable alternatives. To this end, the Sub-Committee shall be convened as a matter of urgency, at the request of a Party, so as to carry out consultations;

- (d) to conduct, if necessary, the consultations established in Article 155 of this Chapter concerning the special and differential treatment;
- (e) to conduct, if necessary, the consultations established in Article 157 of this Chapter concerning the settlement of disputes arising under this Chapter;
- (f) to promote co-operation on animal welfare between the Parties; and
- (g) any other issue instructed by the Association Committee.

3. The Sub-Committee shall agree, at its first meeting, on its rules of procedure for approval by the Association Committee.

ARTICLE 157: DISPUTE SETTLEMENT

1. When a Party considers that a measure of the other Party is or might be contrary to the obligations under this Chapter, it may request technical consultations in the Sub-Committee established in Article 156. The Competent Authorities identified in Annex VI (Competent Authorities) will facilitate these consultations.

2. Unless otherwise agreed by the Parties to the dispute, when a dispute is the object of consultations in the Sub-Committee according to paragraph 1, those consultations shall replace the consultations foreseen in Article 310 of Title X (Dispute Settlement) of Part IV of this Agreement. Consultations in the Sub-Committee shall be deemed concluded within thirty days following the date of submission of the request, unless the consulting Parties agree to continue with the consultations. These consultations could be made via videophone conference, videoconference, or any other means mutually agreed by the Parties.

CHAPTER 6 EXCEPTIONS RELATED TO GOODS

ARTICLE 158: GENERAL EXCEPTIONS

1. Article XX of GATT 1994, including its interpretative notes, is incorporated into and made integral part of this Agreement.

2. The Parties acknowledge that Article XX (b) of GATT 1994 may also apply to environmental measures necessary to protect human, animal, or plant life or health, and that Article XX (g) of GATT 1994 applies to measures relating to the conservation of living and non-living exhaustible natural resources.

3. The Parties acknowledge that, at the request of a Party and prior to taking any measures provided for in Article XX (i) and Article XX (j) of GATT 1994, the exporting Party seeking to take the measures shall supply the other Party with all relevant information. The Parties may agree on any means required to put an end to the conditions necessitating the measures. If no agreement is reached within thirty days, the exporting

Party may apply measures under this Article to the exportation of the product concerned. Where exceptional and critical circumstances requiring immediate action make prior information or examination impossible, the Party seeking to take the measures may apply forthwith the precautionary measures strictly necessary to address the situation and shall promptly inform the other Party.

TITLE III

ESTABLISHMENT, TRADE IN SERVICES AND ELECTRONIC COMMERCE

CHAPTER 1 GENERAL PROVISIONS

ARTICLE 159: OBJECTIVE, SCOPE AND COVERAGE

1. The Parties, reaffirming their commitments under the WTO Agreement, hereby lay down the necessary provisions for the progressive liberalisation of establishment and trade in services and for co-operation on electronic commerce (hereinafter referred to as “e-commerce”).
2. Nothing in this Title shall be construed to require the privatisation of public undertakings or public utilities services supply in the exercise of governmental authority or to impose any obligation with respect to government procurement.
3. The provisions of this Title shall not apply to subsidies granted by the Parties.
4. Consistent with the provisions of this Title, each Party retains the right to regulate and to introduce new regulations to meet legitimate national policy objectives.
5. This Title shall not apply to measures affecting natural persons seeking access to the employment market of a Party, nor shall it apply to measures regarding citizenship, residence or employment on a permanent basis.

Nothing in this Title shall prevent a Party from applying measures to regulate the entry of natural persons into, or their temporary stay within its territory, including those measures necessary to protect the integrity, and to ensure the orderly movement of natural persons across its borders, provided that such measures are not applied in such a manner as to nullify or impair the benefits accruing to any Party under the terms of a specific commitment.⁸

ARTICLE 160: DEFINITIONS

For the purposes of this Title:

- (a) “**measure**” means any measure by a Party, whether in the form of a law, regulation, rule, procedure, decision, administrative action, or any other form;

⁸ The sole fact of requiring a visa for natural persons of certain country and not for those of others shall not be regarded as nullifying or impairing benefits under a specific commitment.

- (b) **“measures adopted or maintained by a Party”** means measures taken by:
- (i) central, regional or local governments and authorities; and
 - (ii) non-governmental bodies in the exercise of powers delegated by central, regional or local governments or authorities;
- (c) **“natural person of a Party”** means a national of one of the Member States of the European Union or of a Republic of the CA Party according to their respective legislation;
- (d) **“juridical person”** means any legal entity duly constituted or otherwise organised under applicable law, whether for profit or otherwise, and whether privately-owned or governmentally-owned, including any corporation, trust, partnership, joint venture, sole proprietorship or association;
- (e) an **“EU Party juridical person”** or a **“juridical person of a Republic of the CA Party”** means a juridical person established in accordance with the laws of a Member State of the European Union or of a Republic of the CA Party respectively, and having its registered office, central administration, or principal place of business within the territory of the EU Party or the territory of a Republic of the CA Party, respectively.

Should the juridical person have only its registered office or central administration within the territory of the EU Party or within the territory of a Republic of the CA Party, respectively, it shall not be considered as an EU Party juridical person or a juridical person of a Republic of the CA Party respectively, unless it is engaged in substantive business operations within the territory of a Member State of the European Union or within the territory of a Republic of the CA Party, respectively;⁹ and

- (f) Notwithstanding the preceding paragraph, shipping companies established outside the EU Party or the Republics of the CA Party and controlled by nationals of a Member State of the European Union or of a Republic of the CA Party, respectively, shall also be beneficiaries of the provisions of this Agreement, if their vessels are registered in accordance with their respective legislation, in that Member State of the European Union or in a Republic of the CA Party and carry the flag of a Member State of the European Union or of a Republic of the CA Party.

⁹ In line with its notification of the EC Treaty to the WTO (doc. WT/REG39/1), the EU understands that the concept of “effective and continuous link” with the economy of a Member State enshrined in Article 54 of the Treaty on the Functioning of the European Union (TFEU) is equivalent to the concept of “substantive business operations” provided in Article V, paragraph 6, of the GATS.

ARTICLE 161: CO-OPERATION ON ESTABLISHMENT, TRADE IN SERVICES AND E-COMMERCE

The Parties agree that it is in their common interest to promote mutual co-operation and technical assistance initiatives on issues related to Establishment, Trade in Services and E-Commerce. In this sense, the Parties have identified a number of co-operation activities which are set out in Article 56 of Title VI (Economic and Trade Development) of Part III of this Agreement.

CHAPTER 2 ESTABLISHMENT

ARTICLE 162: DEFINITIONS

For the purposes of this Chapter:

- (a) **“branch of a juridical person of a Party”** means a place of business not having legal personality which has the appearance of permanency, such as the extension of a parent body, has a management and is materially equipped to negotiate business with third parties so that the latter, although knowing that there will if necessary be a legal link with the parent body, the head office of which is abroad, does not have to deal directly with such parent body but may transact business at the place of business constituting the extension;
- (b) **“economic activity”** covers the activities committed in Annex X (Lists of Commitments on Establishment). “Economic activity” does not include activities carried out in the exercise of governmental authority, for example, activities carried out neither on a commercial basis nor in competition with one or more economic operators;
- (c) **“establishment”** means:
 - (i) the constitution, acquisition or maintenance of a juridical person¹⁰; or
 - (ii) the creation or maintenance of a branch or representative office, within the territory of a Party for the purpose of performing an economic activity;
- (d) **“investor of a Party”** means any natural or juridical person of a Party that seeks to perform or performs an economic activity through setting up an establishment; and

¹⁰ The terms “constitution” and “acquisition” of a juridical person shall be understood as including capital participation in a juridical person with a view to establishing or maintaining lasting economic links.

- (e) **“subsidiary of a juridical person of a Party”** means a juridical person which is effectively controlled by another juridical person of that Party.¹¹

ARTICLE 163: COVERAGE

This Chapter applies to measures by the Parties affecting establishment¹² in all economic activities as defined in Article 162, with the exception of:

- (a) mining, manufacturing and processing of nuclear materials;
- (b) production of or trade in arms, munitions and war material;
- (c) audio-visual services;
- (d) national and inland waterway cabotage transport¹³; and
- (e) national and international air transport services, whether scheduled or non-scheduled, and services directly related to the exercise of traffic rights, other than:
 - (i) aircraft repair and maintenance services during which an aircraft is withdrawn from service;
 - (ii) the selling and marketing of air transport services;
 - (iii) computer reservation system (CRS) services; and
 - (iv) other ancillary services that facilitate the operation of air carriers, as contained in Annex X (Lists of Commitments on Establishment).

ARTICLE 164: MARKET ACCESS

1. With respect to market access through establishment, each Party shall accord to establishments and investors of the other Party a treatment no less favourable than that provided for under the terms, limitations and conditions agreed and specified in the specific commitments contained in Annex X (Lists of Commitments on Establishment).

¹¹ A juridical person is controlled by another juridical person if the latter has the power to name a majority of its directors or otherwise to legally direct its actions.

¹² Investment protection, other than the treatment deriving from Article 165, including investor-state dispute settlement procedures, is not covered by this Chapter.

¹³ Without prejudice to the scope of activities which may be considered as cabotage under the relevant domestic legislation, national cabotage under this Chapter covers transportation of passengers or goods between a port or point located in a Republic of the CA Party or a Member State of the European Union and another port or point located in the same Republic of the CA Party or Member State of the European Union, including on its continental shelf, and traffic originating and terminating in the same port or point located in a Republic of the CA Party or Member State of the European Union.

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

- (a) limitations on the number of establishments whether in the form of numerical quotas, monopolies, exclusive rights or the requirements of an economic needs test;
- (b) limitations on the total value of transactions or assets in the form of numerical quotas or the requirement of an economic needs test;
- (c) limitations on the total number of operations or on the total quantity of output expressed in the terms of designated numerical units in the form of quotas or the requirement of an economic needs test;¹⁴
- (d) limitations on the participation of foreign capital in terms of maximum percentage limit on foreign shareholding or the total value of individual or aggregate foreign investment; and
- (e) measures which restrict or require specific types of establishment (subsidiary, branch, representative office)¹⁵ or joint ventures through which an investor of the other Party may perform an economic activity.

ARTICLE 165: NATIONAL TREATMENT

1. In the sectors inscribed in Annex X (Lists of Commitments on Establishment), and subject to any conditions and qualifications set out therein, each Party shall grant to establishments and investors of the other Party treatment no less favourable than that it accords to its own like establishments and investors.

2. A Party may meet the requirement of paragraph 1 by according to establishments and investors of the other Party, either formally identical treatment or formally different treatment to that it accords to its own like establishments and investors.

3. Formally identical or formally different treatment shall be considered to be less favourable if it modifies the conditions of competition in favour of establishments or investors of the Party compared to like establishments or investors of the other Party.

¹⁴ Subparagraphs 2 (a), 2 (b) and 2 (c) do not cover measures taken in order to limit the production of an agricultural product.

¹⁵ Each Party may require that in the case of incorporation under its own law, investors must adopt a specific legal form. To the extent that such requirement is applied in a non-discriminatory manner, it does not need to be specified in Annex X (Lists of Commitments on Establishment) in order to be maintained or adopted by the Parties.

4. Specific commitments assumed under this Article shall not be construed to require any Party to compensate for any inherent competitive disadvantages which result from the foreign character of the relevant investors.

ARTICLE 166: LISTS OF COMMITMENTS

The sectors committed by each of the Parties pursuant to this Chapter and, by means of reservations, the market access and national treatment limitations, conditions and qualifications applicable to establishments and investors of the other Party in those sectors are set out in lists of commitments included in Annex X (Lists of Commitments on Establishment).

ARTICLE 167: OTHER AGREEMENTS

Nothing in this Title shall be taken to limit the rights of investors of the Parties to benefit from any more favourable treatment provided for in any existing or future international investment agreement to which a Member State of the European Union and a Republic of the CA Party are Parties. Nothing in this Agreement shall be subject, directly or indirectly, to any investor-to-State dispute settlement procedures established in those agreements.

ARTICLE 168: REVIEW

The Parties commit to review the investment legal framework, the investment environment, and the flow of investment between them consistent with their commitments in international agreements no later than three years after the entry into force of this Agreement and at regular intervals thereafter.

CHAPTER 3 CROSS-BORDER SUPPLY OF SERVICES

ARTICLE 169: COVERAGE AND DEFINITIONS

1. This Chapter applies to measures of the Parties affecting the cross border supply of all services sectors with the exception of:

- (a) audio-visual services;
- (b) national and inland waterway cabotage transport¹⁶; and

¹⁶ Without prejudice to the scope of activities which may be considered as cabotage under the relevant domestic legislation, national cabotage under this Chapter covers transportation of passengers or goods between a port or point located in a Republic of the CA Party or a Member State of the European Union and another port or point located in the same Republic of the CA Party or Member State of the European Union, including on its continental shelf, and traffic originating and terminating in the same port or point located in a Republic of the CA Party or Member State of the European Union.

- (c) national and international air transport services, whether scheduled or non-scheduled, and services directly related to the exercise of traffic rights, other than:
 - (i) aircraft repair and maintenance services during which an aircraft is withdrawn from service;
 - (ii) the selling and marketing of air transport services;
 - (iii) computer reservation system (CRS) services;
 - (iv) other ancillary services that facilitate the operation of air carriers, as contained in Annex XI (Lists of Commitments on Cross-Border Supply of Services).

2. For the purposes of this Chapter:

- (a) **“cross-border supply of services”** means the supply of a service:
 - (i) from the territory of a Party into the territory of the other Party (Mode 1);
 - (ii) in the territory of a Party to the service consumer of the other Party (Mode 2);
- (b) **“services”** includes any service in any sector except services supplied in the exercise of governmental authority;

a **“service supplied in the exercise of governmental authority”** means any service which is supplied neither on a commercial basis, nor in competition with one or more service suppliers;
- (c) **“service supplier of a Party”** means any natural or juridical person of a Party seeking to supply or supplies a service; and
- (d) **“supply of a service”** includes the production, distribution, marketing, sale and delivery of a service.

ARTICLE 170: MARKET ACCESS

1. With respect to market access through the modes of supply identified in Article 169, paragraph 2 (a), each Party shall accord services and service suppliers of the other Party treatment not less favourable than that provided for under the terms, limitations and conditions agreed and specified in the specific commitments contained in Annex XI (Lists of Commitments on Cross-Border Supply of Services).

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

- (a) limitations on the number of services suppliers whether in the form of numerical quotas, monopolies, exclusive service suppliers or the requirements of an economic needs test;
- (b) limitations on the total value of service transactions or assets in the form of numerical quotas or the requirement of an economic needs test; and
- (c) limitations on the total number of service operations or on the total quantity of service output expressed in the terms of designated numerical units in the form of quotas or the requirement of an economic needs test.¹⁷

ARTICLE 171: NATIONAL TREATMENT

1. In the sectors inscribed in Annex XI (Lists of Commitments on Cross-Border Supply of Services) and subject to any conditions and qualifications set out therein, each Party shall grant to services and service suppliers of the other Party, in respect of all measures affecting the cross-border supply of services, treatment no less favourable than that it accords to its own like services and services suppliers.

2. A Party may meet the requirement of paragraph 1 by according to services and service suppliers of the other Party, either formally identical treatment or formally different treatment to that it accords to its own like services and service suppliers.

3. Formally identical or formally different treatment shall be considered to be less favourable if it modifies the conditions of competition in favour of services or service suppliers of the Party compared to like services or service suppliers of the other Party.

4. Specific commitments assumed under this Article shall not be construed to require any Party to compensate for any inherent competitive disadvantages which result from the foreign character of the relevant services or services suppliers.

ARTICLE 172: LISTS OF COMMITMENTS

The sectors committed by each of the Parties pursuant to this Chapter and, by means of reservations, the market access and national treatment limitations, conditions and qualifications applicable to services and services suppliers of the other Party in those sectors are set out in lists of commitments included in Annex XI (Lists of Commitments on Cross-Border Supply of Services).

¹⁷ Subparagraph 2 (c) does not cover measures of a Party which limit inputs for the supply of services.

CHAPTER 4
TEMPORARY PRESENCE OF NATURAL PERSONS
FOR BUSINESS PURPOSES

ARTICLE 173: COVERAGE AND DEFINITIONS

1. This Chapter applies to measures of the Parties concerning the entry into and temporary stay in their territories of key personnel, graduate trainees, business services sellers, contractual services suppliers and independent professionals in accordance with Article 159, paragraph 5 of this Title.

2. For the purposes of this Chapter:

- (a) **“key personnel”** means natural persons employed within a juridical person of one Party other than a non-profit organisation and who are responsible for the setting-up or the proper control, administration and operation of an establishment.

“key personnel” comprises “business visitors” responsible for setting up an establishment and “intra-corporate transfers”:

- (i) **“business visitors”** means natural persons employed in a senior position responsible for setting up an establishment. They do not engage in direct transactions with the general public and do not receive remuneration from a source located within the host Party;
- (ii) **“intra-corporate transfers”** means natural persons who have been employed by a juridical person or have been partners in it for at least one year and who are temporarily transferred to an establishment within the territory of the other Party. The natural person concerned must belong to one of the following categories:

Managers:

Persons employed in a senior position within a juridical person, who primarily direct the management of the establishment, receiving general supervision or direction principally from the board of directors or from stockholders of the business or their equivalent, including:

- directing the establishment or a department or sub-division thereof;
- supervising and controlling the work of other supervisory, professional or managerial employees;

- having the authority to personally recruit and dismiss or recommend recruiting, dismissing or other personnel actions.

Specialists:

Persons employed within a juridical person who possess uncommon knowledge essential to the establishment's production, research equipment, techniques or management. In assessing such knowledge, account will be taken not only of knowledge specific to the establishment, but also of whether the person has a high level of qualification referring to a type of work or trade requiring specific technical knowledge, including membership of an accredited profession;

- (b) **“graduate trainees”** means natural persons who have been employed by a juridical person of one Party for at least one year, possess a university degree and are temporarily transferred to an establishment of the juridical person within the territory of the other Party, for career development purposes or to obtain training in business techniques or methods;¹⁸
- (c) **“business services sellers”** means natural persons who are representatives of a service supplier of one Party seeking temporary entry into the territory of the other Party for the purpose of negotiating the sale of services or entering into agreements to sell services for that service supplier. They do not engage in making direct sales to the general public and do not receive remuneration from a source located within the host Party;
- (d) **“contractual services suppliers”** means natural persons employed by a juridical person of one Party which has no establishment within the territory of the other Party and which has concluded a *bona fide* contract (other than through an agency as defined by CPC 872)¹⁹ to supply services with a final consumer in the latter Party requiring the presence on a temporary basis of its employees in that Party in order to fulfil the contract to provide services;
- (e) **“independent professionals”** means natural persons engaged in the supply of a service and established as self-employed in the territory of a Party, who have no establishment in the territory of the other Party and who have concluded a *bona fide* contract (other than through an agency as defined by CPC 872) to supply services with a final consumer in the latter Party

¹⁸ The recipient establishment may be required to submit a training programme covering the duration of the stay for prior approval, demonstrating that the purpose of the stay is for training.

¹⁹CPC means the Central Products Classification as set out in Statistical Office of the United Nations, Statistical Papers, Series M, N° 77, CPC prov, 1991.

requiring their presence on a temporary basis in that Party in order to fulfil the contract to provide services;²⁰

- (f) **“qualifications”** means diplomas, certificates and other evidence (of formal qualification) issued by an authority designated pursuant to legislative, regulatory or administrative provisions and certifying successful completion of professional training.

ARTICLE 174: KEY PERSONNEL AND GRADUATE TRAINEES

1. For every sector liberalised in accordance with Chapter 2 of this Title and subject to any reservations listed in Annex X (Lists of Commitments on Establishment) or in Annex XII (Reservations on Key Personnel and Graduate Trainees of the EU Party), the EU Party shall allow investors of the Republics of the CA Party to employ in their establishment natural persons of the Republics of the CA Party provided that such employees are key personnel or graduate trainees as defined in Article 173. The temporary entry and stay of key personnel and graduate trainees shall be for a period of up to three years for intra-corporate transfers, ninety days in any twelve month period for business visitors, and one year for graduate trainees.

For every sector liberalised in accordance with Chapter 2 of this Title, the measures which the EU Party shall not maintain or adopt either on the basis of a regional subdivision or on the basis of its entire territory, unless otherwise specified in Annex XII are defined as limitations on the total number of natural persons that an investor may employ as key personnel and graduate trainees in a specific sector in the form of numerical quotas or a requirement of an economic needs test and as discriminatory limitations.

2. For every sector listed in Annex XIII (Lists of Commitments of the Republics of the CA Party on Key Personnel and Graduate Trainees) and subject to any reservations and conditions set out therein, the Republics of the CA Party shall allow investors of the EU Party to employ in their establishment natural persons of the EU Party provided that such employees are key personnel or graduate trainees as defined in Article 173. The temporary entry and stay of key personnel and graduate trainees shall be for a period up to one year, renewable up to the maximum duration possible in accordance with the relevant provisions of the Parties' respective legislation. The temporary entry and stay of business visitors shall be for a period of up to ninety days in any twelve month period.

For every sector listed in Annex XIII and subject to any reservations and conditions set out therein, the measures which a Republic of the CA Party shall not maintain or adopt either on the basis of a regional subdivision or on the basis of its entire territory, are defined as limitations on the total number of natural persons that an investor may employ as key personnel and graduate trainees in a specific sector in the form of numerical quotas or a requirement of an economic needs test and as discriminatory limitations.

²⁰ The service contract referred to under (d) and (e) shall comply with the laws, regulations and requirements of the Party where the contract is executed.

ARTICLE 175: BUSINESS SERVICES SELLERS

1. For every sector liberalised in accordance with Chapters 2 or 3 of this Title and subject to any reservations listed in Annexes X (Lists of Commitments on Establishment) and XI (Lists of Commitments on Cross-Border Supply of Services), the EU Party shall allow the temporary entry and stay of business services sellers of the Republics of the CA Party for a period of up to ninety days in any twelve month period.

2. For every sector listed in Annex XIV (Lists of Commitments of the Republics of the CA Party on Business Service Sellers) and subject to any reservations and conditions set out therein, the Republics of the CA Party shall allow the temporary entry and stay of business services sellers of the EU Party for a period of up to ninety days in any twelve month period.

ARTICLE 176: CONTRACTUAL SERVICES SUPPLIERS AND INDEPENDENT PROFESSIONALS

The Parties reaffirm their respective commitments under GATS as regards the entry and temporary stay of contractual services suppliers and independent professionals.

CHAPTER 5 REGULATORY FRAMEWORK

Section A: Provisions of General Application

ARTICLE 177: MUTUAL RECOGNITION

1. Nothing in this Title shall prevent a Party from requiring that natural persons shall possess the necessary qualifications and/or professional experience specified in the territory where the service is supplied, for the sector of activity concerned.

2. The Parties shall encourage the relevant professional bodies or the competent authorities, as applicable, within their respective territories to jointly develop and provide recommendations on mutual recognition to the Association Committee, for the purpose of the fulfilment, in whole or in part, by investors and service suppliers of the criteria applied by each Party for the authorisation, licensing, operation and certification of investors and service suppliers and, in particular, professional services.

3. Upon receipt of a recommendation referred to in the preceding paragraph, the Association Committee shall, within a reasonable time, review the recommendation with a view to determining whether it is consistent with this Title.

4. When, in conformity with the procedure set out in paragraph 3, a recommendation referred to in paragraph 2 has been found to be consistent with this Title and there is a sufficient level of correspondence between the relevant regulations of the Parties, the Parties shall encourage their competent authorities to negotiate an agreement on mutual recognition of requirements, qualifications, licences and other regulations with a view to implementing that recommendation.

5. Any such agreement shall be in conformity with the relevant provisions of the WTO Agreement and, in particular, Article VII of GATS.

ARTICLE 178: TRANSPARENCY AND DISCLOSURE OF CONFIDENTIAL INFORMATION

1. Each Party shall respond promptly to all requests by the other Party for specific information on any of its measures of general application or international agreements which pertain to or affect this Title. Each Party shall also designate one or more enquiry points to provide specific information to investors and services suppliers of the other Party, upon request, on all such matters, by no later than the entry into force of this Agreement. Enquiry points need not be depositories of laws and regulations.

2. Nothing in Part IV of this Agreement shall be construed to require any Party to provide confidential information, the disclosure of which would impede law enforcement, or otherwise be contrary to the public interest, or which would prejudice legitimate commercial interests of particular enterprises, be it public or private.

ARTICLE 179: PROCEDURES

1. Where authorisation is required for the supply of a service or establishment for which a specific commitment has been made, the competent authorities of a Party shall, within a reasonable period of time after the submission of an application considered complete under domestic laws and regulations, inform the applicant of the decision concerning the application. At the request of the applicant, the competent authorities of the Party shall provide, without undue delay, information concerning the status of the application.

2. Each Party shall maintain or institute judicial, arbitral or administrative tribunals or procedures which provide, at the request of an affected investor or service supplier, for a prompt review of, and where justified, appropriate remedies for, administrative decisions affecting establishment, cross-border supply of services or temporary presence of natural persons for business purposes. Where such procedures are not independent of the agency entrusted with the administrative decision concerned, the Parties shall ensure that the procedure in fact provides for an objective and impartial review.

Section B: Computer Services

ARTICLE 180: UNDERSTANDING ON COMPUTER SERVICES

1. To the extent that trade in computer services is committed in the lists of commitments in accordance with Chapters 2, 3 and 4 of this Title, the Parties subscribe to the understanding defined in the following paragraphs.

2. CPC 84²¹, the United Nations code used for describing computer and related services, covers the basic functions used to provide all computer and related services: computer programs defined as the sets of instructions required to make computers work and communicate (including their development and implementation), data processing and storage, and related services, such as consultancy and training services for staff of clients. Technological developments have led to the increased offering of these services as a bundle or package of related services that can include some or all of these basic functions. For example, services such as web or domain hosting, data mining services and grid computing each consist of a combination of basic computer services functions.

3. Computer and related services, regardless of whether they are delivered via a network, including the Internet, include all services that provide:

- (a) consulting, strategy, analysis, planning, specification, design, development, installation, implementation, integration, testing, debugging, updating, support, technical assistance, or management of or for computers or computer systems; or
- (b) computer programs defined as the sets of instructions required to make computers work and communicate (in and of themselves), plus consulting, strategy, analysis, planning, specification, design, development, installation, implementation, integration, testing, debugging, updating, adaptation, maintenance, support, technical assistance, management or use of or for computer programs; or
- (c) data processing, data storage, data hosting or database services; or
- (d) maintenance and repair services for office machinery and equipment, including computers; and
- (e) training services for staff of clients, related to computer programs, computers or computer systems, and not elsewhere classified.

4. Computer and related services enable the provision of other services (for example financial services) by both electronic and other means. However, there is an important distinction between the enabling service (for example web-hosting, data processing or application hosting) and the content or core service that is being delivered electronically (for example financial services). In such cases, the content or core service is not covered by CPC 84.

²¹ CPC means the Central Product Classification as set out in the Statistical Office of the United Nations, Statistical papers, Series M, No. 77, CPC prov, 1991.

Section C: Courier Services

ARTICLE 181: SCOPE AND DEFINITIONS

1. This Section sets out the principles of the regulatory framework for courier services committed in the lists of commitments in accordance with Chapters 2, 3 and 4 of this Title.
2. For the purpose of this Section and Chapters 2, 3 and 4 of this Title:
 - a “**licence**” means an authorisation, granted to an individual supplier by a competent authority, which may be required before starting of supplying a given service.

ARTICLE 182: PREVENTION OF ANTI-COMPETITIVE PRACTICES IN THE COURIER SECTOR

1. The Parties shall introduce or maintain appropriate measures for the purpose of preventing suppliers who, alone or together, have the ability to affect materially the terms of participation (having regard to price and supply) in the relevant market for courier services as a result of use of their position in the market, from engaging in or continuing anti-competitive practices.
2. Each Party shall ensure that, where a Party's monopoly supplier of a postal service competes, either directly or through an affiliated company, in the supply of express delivery services outside the scope of its monopoly rights, it does not infringe its obligations under this Title.

ARTICLE 183: LICENCES

1. Where a licence is required, the following shall be made publicly available:
 - (a) all the licensing criteria and the period of time normally required to reach a decision concerning an application for a licence; and
 - (b) the terms and conditions of licences.
2. The reasons for the denial of a licence shall be made known to the applicant upon request. A supplier affected by the decision shall have a right to seek recourse against that decision before an independent and competent body in accordance with respective legislation. Such a procedure will be transparent, non-discriminatory, and based on objective criteria.

ARTICLE 184: INDEPENDENCE OF THE REGULATORY BODIES

Where Parties have regulatory bodies, such bodies shall be legally separate from, and not accountable to, any supplier of courier services. The decisions of and the procedures used by the regulatory bodies shall be impartial with respect to all market participants.

Section D: Telecommunications Services

ARTICLE 185: DEFINITIONS AND SCOPE

1. This Section sets out the principles of the regulatory framework for public telecommunications services, other than broadcasting, committed in accordance with Chapters 2, 3 and 4 of this Title, which include voice telephone services, packet-switched data transmission services, circuit-switched data transmission services, telex services, telegraph services, facsimile services, private leased circuit services and mobile and personal communications services and systems.²²

2. For the purpose of this Title:

- (a) **“telecommunications services”** means all services consisting of the transmission and reception of electro-magnetic signals through telecommunications networks and do not cover the economic activity consisting of the provision of content which requires telecommunications networks or services for its transport;
- (b) **“public telecommunications services”** or **“telecommunications services available to the public”** means any telecommunication service that a Party requires to be offered to the public generally in accordance with its respective legislation;
- (c) a **“regulatory authority in the telecommunications sector”** means the body or bodies charged with any of the regulatory tasks assigned in accordance with the domestic legislation of each Party;
- (d) **“essential telecommunications facilities”** means facilities of a public telecommunications network or service that:
 - (i) are exclusively or predominantly provided by a single or limited number of suppliers; and
 - (ii) cannot feasibly be economically or technically substituted in order to provide a service;
- (e) a **“major supplier”** in the telecommunications sector is a supplier of a public telecommunications services which has the ability to materially affect the terms of participation (having regard to price and supply) in the relevant market for public telecommunications services as a result of control over essential facilities or the use of its position in the market; and

²² The Parties understand that these services are covered by this Section to that extent that they are considered public telecommunications services in accordance with the applicable domestic legislation.

- (f) **“interconnection”** means linking between suppliers providing public telecommunications networks or services in order to allow the users of one supplier to communicate with users of another supplier and to access services provided by another supplier.

ARTICLE 186: REGULATORY AUTHORITY

1. A regulatory authority for telecommunications services shall be legally distinct and functionally independent from any supplier of telecommunications services.
2. Each Party shall endeavour to ensure that its regulatory authority has adequate resources to carry out its functions. The tasks of a regulatory authority shall be made public in an easily accessible and clear form, in particular where those tasks are assigned to more than one body.
3. The decisions of and the procedures used by a regulatory authority shall be impartial with respect to all market participants.
4. A supplier affected by the decision of a regulatory authority shall have a right to, in accordance with the respective legislation, seek recourse against that decision before a competent body that is independent of the suppliers involved. Where the competent body is not judicial in character, written reasons for its decision shall always be given and its decisions shall also be subject to review by an impartial and independent judicial authority.

The decisions taken by such competent bodies shall be effectively enforced in accordance with the applicable legal proceedings. Pending the outcome of any such legal proceedings, the decision of the regulatory authority shall stand unless the competent body or the applicable legislation determines otherwise.

ARTICLE 187: AUTHORISATION TO PROVIDE TELECOMMUNICATIONS SERVICES²³

1. Provision of services shall, as much as possible, be authorised through simple procedures, and wherever applicable, through mere notification.
2. A licence or specific authorisation can be required to address issues of attributions of numbers and frequencies. The terms and conditions for such licences or specific authorisations shall be made publicly available.
3. Where a licence or an authorisation is required:
 - (a) all the licensing or authorisation criteria and the reasonable period of time normally required to reach a decision concerning an application for a licence or an authorisation shall be made publicly available;

²³ For the purposes of this Section, the term authorisation shall be understood to include the licenses, concessions, permits, registers and any other authorizations that a Party may require to supply telecommunications services.

- (b) the reasons for the denial of a licence or authorisation application shall be made known in writing to the applicant upon request; and
- (c) the applicant of a licence or an authorisation shall be able to seek recourse before a competent body in accordance with the respective legislation in case that a licence or authorisation application is unduly denied.

ARTICLE 188: COMPETITIVE SAFEGUARDS ON MAJOR SUPPLIERS

The Parties shall introduce or maintain appropriate measures for the purpose of preventing suppliers who, alone or together, are a major supplier, from engaging in or continuing anti-competitive practices. These anti-competitive practices shall include in particular:

- (a) engaging in anti-competitive cross-subsidisation;²⁴
- (b) using information obtained from competitors with anti-competitive results; and
- (c) not making available to other services suppliers on a timely basis technical information about essential facilities and commercially relevant information which are necessary for them to provide services.

ARTICLE 189: INTERCONNECTION²⁵

1. Any supplier authorised to provide public telecommunications services shall have the right to negotiate interconnection with other suppliers of public telecommunications networks and services. Interconnection should in principle be agreed on the basis of a commercial negotiation between the suppliers concerned, without prejudice of the power of the regulatory authority to intervene in accordance with the respective legislation.

2. The suppliers that acquire information from another supplier during the process of negotiating interconnection arrangements shall be obliged to use that information solely for the purpose for which it was supplied and shall respect at all times the confidentiality of information transmitted or stored.

3. Interconnection with a major supplier shall be ensured at any technically feasible point in the network. Such interconnection shall be provided in accordance with the respective domestic legislation:

²⁴ Only for the EU Party, “or margin squeeze”.

²⁵ Paragraphs 3, 4 and 5, do not apply with respect to suppliers of commercial mobile services, nor rural telecommunications services suppliers. For greater certainty, nothing in this Article shall be construed to preclude a Party from imposing the requirements set out in this Article on suppliers of commercial mobile services.

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

4. The procedures applicable for interconnection to a major supplier shall be made publicly available.

5. Major suppliers shall make publicly available either their interconnection agreements in force or their reference interconnection offers, or both, in accordance with the respective legislation.

6. A service supplier requesting interconnection with a major supplier shall have recourse, after a reasonable period of time which has been made publicly known, to an independent domestic body, which may be a regulatory body as referred to in Article 186, to decide disputes regarding appropriate terms, conditions and rates for interconnection.

ARTICLE 190: SCARCE RESOURCES

Any procedure for the allocation and use of scarce resources, including frequencies, numbers and rights of way, shall be carried out in an objective, timely, transparent and non-discriminatory manner. The current state of allocated frequency bands shall be made publicly available, but detailed identification of frequencies allocated for specific government uses is not required.

ARTICLE 191: UNIVERSAL SERVICE

1. Each Party has the right to define the kind of universal service obligations it wishes to establish or maintain.

2. Such obligations shall not be regarded as anti-competitive *per se*, provided they are administered in a transparent, objective and non-discriminatory way. The administration of such obligations shall also be neutral with respect to competition and be not more burdensome than necessary for the kind of universal service defined by the Party.

3. All suppliers should be eligible to ensure universal service. The designation shall be made through an efficient, transparent and non-discriminatory mechanism, in accordance with the respective legislation.

4. The Parties shall ensure that:

- (a) directories of all fixed telephony subscribers are available to users in accordance with the respective legislation; and
- (b) organisations that provide the services referred to in paragraph (a) apply the principle of non-discrimination to the treatment of information that has been provided to them by other organisations.

ARTICLE 192: CONFIDENTIALITY OF INFORMATION

Each Party, in accordance with its respective legislation, shall ensure the confidentiality of telecommunications and related traffic data by means of a public telecommunication network and publicly available telecommunications services, subject to the requirement that such measures are not applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination, or a disguised restriction on trade in services.

ARTICLE 193: DISPUTES BETWEEN SUPPLIERS

In the event of a dispute arising between suppliers of telecommunications networks or services in connection with rights and obligations arising from Article 188 and Article 189, the national regulatory authority concerned or another relevant authority shall, at the request of either supplier and in accordance with the procedures established in their respective legislation, issue a binding decision to resolve the dispute in the shortest possible time frame.

Section E: Financial Services

ARTICLE 194: SCOPE AND DEFINITIONS

1. This Section sets out the principles of the regulatory framework for all financial services committed in the lists of commitments pursuant to Chapters 2, 3 and 4 of this Title.

2. For the purposes of this Chapter and Chapters 2, 3 and 4 of this Title:

- (a) **“financial service”** means any service of a financial nature offered by a financial service supplier of a Party. Financial services comprise the following activities:

A. Insurance and insurance-related services:

- 1. direct insurance (including co-insurance):

- (a) life;
- (b) non-life;
- 2. reinsurance and retrocession;
- 3. insurance inter-mediation, such as brokerage and agency; and
- 4. services auxiliary to insurance, such as consultancy, actuarial, risk assessment and claim settlement services.

B. Banking and other financial services (excluding insurance):

- 1. acceptance of deposits and other repayable funds from the public;
- 2. lending of all types, including consumer credit, mortgage credit, factoring and financing of commercial transaction;
- 3. financial leasing;
- 4. all payment and money transmission services, including credit, charge and debit cards, travellers cheques and bankers drafts;
- 5. guarantees and commitments;
- 6. trading for own account or for account of customers, whether on an exchange, in an over-the-counter market or otherwise, the following:
 - (a) money market instruments (including cheques, bills, certificates of deposits);
 - (b) foreign exchange;
 - (c) derivative products including, but not limited to, futures and options;
 - (d) exchange rate and interest rate instruments, including products such as swaps, forward rate agreements;
 - (e) transferable securities;
 - (f) other negotiable instruments and financial assets, including bullion;
- 7. participation in issues of all kinds of securities, including underwriting and placement as agent (whether publicly or privately) and provision of services related to such issues;

8. money broking;
 9. asset management, such as cash or portfolio management, all forms of collective investment management, pension fund management, custodial, depository and trust services;
 10. settlement and clearing services for financial assets, including securities derivative products, and other negotiable instruments;
 11. provision and transfer of financial information, and financial data processing and related software by suppliers of other financial services; and
 12. advisory, intermediation and other auxiliary financial services on all the activities listed in subparagraphs 1 through 11, including credit reference and analysis, investment and portfolio research and advice, advice on acquisitions and on corporate restructuring and strategy.
- (b) **“financial service supplier”** means any natural or juridical person of a Party that seeks to provide or provides financial services. The term “financial service supplier” does not include a public entity.
- (c) **“public entity”** means:
- (i) a government, a central bank or a monetary authority, of a Party, or an entity owned or controlled by a Party, that is principally engaged in carrying out governmental functions or activities for governmental purposes, not including an entity principally engaged in supplying financial services on commercial terms; or
 - (ii) a private entity, performing functions normally performed by a central bank or monetary authority, when exercising those functions.
- (d) **“new financial service”** means a financial service not supplied in the Party’s territory that is supplied within the territory of the other Party, and includes any new form of delivery of a financial service or the sale of a financial product that is not sold in the Party’s territory.

ARTICLE 195: PRUDENTIAL CARVE-OUT

1. Each Party may adopt or maintain measures for prudential reasons, such as:
 - (a) the protection of investors, depositors, financial market users, policy-holders or persons to whom a fiduciary duty is owed by a financial service supplier;
 - (b) the maintenance of the safety, soundness, integrity or financial responsibility of financial services suppliers; and

(c) ensuring the integrity and stability of a Party's financial system.

2. Where such measures do not conform with the provisions of this Chapter, they shall not be used as a means of avoiding the Party's commitments or obligations under the Chapter.

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

ARTICLE 196: EFFECTIVE AND TRANSPARENT REGULATION

1. Each Party shall make its best endeavours to provide in advance to all interested persons any measure of general application that the Party proposes to adopt in order to allow an opportunity for such persons to comment on the measure. Such measure shall be provided:

(a) by means of an official publication; or

(b) in other written or electronic form.

2. Each Party shall make available to interested persons its requirements for completing applications relating to the supply of financial services.

Upon request of an applicant, the Party concerned shall inform the applicant of the status of its application. If the Party concerned requires additional information from the applicant, it shall notify the applicant without undue delay.

3. Each Party shall make its best endeavours to implement and apply in its territory internationally agreed standards for regulation and supervision in the financial services sector and for the fight against money laundering or other assets and terrorism financing, and the fight against tax evasion and avoidance.

ARTICLE 197: NEW FINANCIAL SERVICES

1. A Party shall permit financial services suppliers of the other Party established within its territory to offer in its territory any new financial service within the scope of the subsectors and financial services committed in its lists of commitments and subject to the terms, limitations, conditions and qualifications established in such lists of commitments and provided that the introduction of this new financial service does not require a new law or the modification of an existing law.

2. In accordance with paragraph 1, a Party may determine the legal form through which the service may be provided and may require authorisation for the provision of the financial service. Where such authorisation is required, a decision shall be taken within a reasonable period of time and the authorisation may only be refused for prudential reasons.

ARTICLE 198: DATA PROCESSING

1. Each Party shall permit a financial service supplier of the other Party to transfer information in electronic or other form, into and out of its territory, for data processing where such processing is required in the ordinary course of business of the financial service supplier.²⁶
2. Each Party shall adopt or maintain adequate safeguards to the protection of privacy and fundamental rights, and freedom of individuals, in particular with regard to the transfer of personal data.

ARTICLE 199: SPECIFIC EXCEPTIONS

1. Nothing in this Title shall prevent a Party, including its public entities, from exclusively conducting or providing within its territory activities or services forming part of a public retirement plan or statutory system of social security, except when those activities may be carried out, as provided by the Party's domestic regulation, by financial service suppliers in competition with public entities or private institutions.
2. Nothing in this Agreement applies to activities conducted by a central bank or monetary authority or by any other public entity in pursuit of monetary or exchange rate policies.
3. Nothing in this Title shall prevent a Party, including its public entities, from exclusively conducting or providing within its territory activities or services for the account or with the guarantee or using the financial resources of the Party, or its public entities.

Section F: International Maritime Transport Services

ARTICLE 200: SCOPE, DEFINITIONS AND PRINCIPLES

1. This Section sets out the principles regarding international maritime transport services committed in the lists of commitments pursuant to Chapters 2, 3 and 4 of this Title.
2. For the purpose of this Section and Chapters 2, 3 and 4 of this Title:
 - (a) **“international maritime transport”** covers door to door and multi-modal transport operations, which is the carriage of goods using more than one mode of transport, involving a sea-leg, under a single transport document,

²⁶ For greater certainty, the obligation contained in this Article shall not be considered a specific commitment pursuant to Article 194, paragraph 2 (a).

and to this effect includes the right for international maritime transport suppliers to contract directly with providers of other modes of transport;²⁷

- (b) **“maritime cargo handling services”** means activities exercised by stevedore companies, including terminal operators, but not including the direct activities of dockers, when this workforce is organised independently of the stevedoring or terminal operator companies. The activities covered include the organisation and supervision of:
 - (i) the loading/discharging of cargo to/from a ship;
 - (ii) the lashing/unlashing of cargo;
 - (iii) the reception/delivery and safekeeping of cargoes before shipment or after discharge;
- (c) **“customs clearance services”** (alternatively **“customs house brokers' services”**) means activities consisting of carrying out on behalf of another party, customs formalities concerning import, export or through transport of cargoes, whether this service is the main activity of the service provider or a usual complement of its main activity;
- (d) **“container station and depot services”** means activities consisting in storing containers, whether in port areas or inland, with a view to their stuffing/stripping, repairing and making them available for shipments;
- (e) **“maritime agency services”** means activities consisting in representing as an agent, within a given geographic area, the business interests of one or more shipping lines or shipping companies, for the following purposes:
 - (i) marketing and sales of maritime transport and related services, from quotation to invoicing, and issuance of bills of lading on behalf of the companies, acquisition and resale of the necessary related services, preparation of documentation, and provision of business information;
 - (ii) acting on behalf of the companies organising the call of the ship or taking over cargoes when required;
- (f) **“freight forwarding services”** means the activity consisting of organising and monitoring shipment operations on behalf of shippers, through the acquisition of transport and related services, preparation of documentation and provision of business information.

²⁷ For greater certainty, the scope of application of this definition shall not imply the supply of a transport service. For the purpose of this definition, single transport document shall refer to a document that permits customers to conclude a single contract with a shipping company for a door to door transport operation.

3. In view of the existing situation between the Parties in international maritime transport, each Party shall:

- (a) effectively apply the principle of unrestricted access to the international maritime markets and trade routes on a commercial and non-discriminatory basis; and
- (b) grant to ships flying the flag of the other Party or operated by service suppliers of the other Party treatment no less favourable than that accorded to its own ships with regard to access to ports, use of infrastructure and auxiliary maritime services of the ports, as well as related fees and charges, customs facilities and the assignment of berths and facilities for loading and unloading.²⁸

4. In applying these principles, each Party shall:

- (a) not introduce cargo-sharing arrangements in future bilateral agreements with third countries concerning maritime transport services, including dry and liquid bulk and liner trade, and terminate, within a reasonable period of time, such cargo-sharing arrangements in case they exist in previous bilateral agreements; and
- (b) subject to the lists of commitments pursuant to Chapters 2, 3 and 4 of this Title, ensure that any existing or future measures adopted regarding international maritime transport services are non-discriminatory and do not constitute a disguised restriction on international maritime transport services.

5. Each Party shall permit international maritime service suppliers of the other Party to have an establishment within its territory in accordance with Article 165.

6. The Parties shall ensure that the services provided at ports are offered on non-discriminatory terms and conditions. The services available may include pilotage, towing and tug assistance, provisioning, fuelling and watering, garbage collecting and ballast waste disposal, port captain's services, navigation aids, shore-based operational services essential to ship operations, including communications, water and electrical supplies, emergency repair facilities, anchorage, berth and berthing services.

²⁸ The provisions of this subparagraph refer only to access to services but shall not allow the supply of services.

CHAPTER 6 ELECTRONIC COMMERCE

ARTICLE 201: OBJECTIVE AND PRINCIPLES

1. The Parties, recognising that e-commerce increases trade opportunities in many sectors, agree to promote the development of e-commerce between them, in particular by co-operating on the issues relating to e-commerce under the provisions of this Title.
2. The Parties recognise that the development of e-commerce shall be compatible with international standards of data protection, in order to ensure the confidence of users of e-commerce.
3. The Parties agree not to impose customs duties on deliveries by electronic means.

ARTICLE 202: REGULATORY ASPECTS OF E-COMMERCE

The Parties shall maintain a dialogue on regulatory issues relating to e-commerce, which will *inter alia* address the following issues:

- (a) the recognition of certificates of electronic signatures issued to the public and the facilitation of cross-border certification services;
- (b) the treatment of unsolicited electronic commercial communications;
- (c) the protection of consumers in the ambit of e-commerce; and
- (d) any other issue relevant for the development of e-commerce.

CHAPTER 7 EXCEPTIONS

ARTICLE 203: GENERAL EXCEPTIONS

1. Subject to the requirement that such measures are not applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination between the Parties where like conditions prevail, or a disguised restriction on establishment or cross-border supply of services, nothing in this Title shall be construed to prevent the adoption or enforcement by any Party of measures which are:
 - (a) necessary to protect public security or public morals or to maintain public order;
 - (b) necessary to protect human, animal or plant life or health;

- (c) relating to the conservation of exhaustible natural resources if such measures are applied in conjunction with restrictions on domestic investors or on the domestic supply or consumption of services;
- (d) necessary for the protection of national treasures of artistic, historic or archaeological value;
- (e) necessary to secure compliance with laws or regulations which are not inconsistent with the provisions of this Title including those relating to:
 - (i) the prevention of deceptive and fraudulent practices or to deal with the effects of a default on contracts;
 - (ii) the protection of the privacy of individuals in relation to the processing and dissemination of personal data and the protection of confidentiality of individual records and accounts;
 - (iii) safety;
- (f) inconsistent with Articles 165 and 171 of this Title, provided that the difference in treatment is aimed at ensuring the effective or equitable imposition or collection of direct taxes in respect of economic activities, investors, services or service suppliers of the other Party.²⁹

2. The provisions of this Title and of the corresponding Annexes on Lists of Commitments shall not apply to the Parties' respective social security systems or to activities in the territory of each Party, which are connected, even occasionally, with the exercise of official authority.

²⁹ Measures that are aimed at ensuring the equitable or effective imposition or collection of direct taxes include measures taken by a Party under its taxation system which:

- (a) apply to non-resident investors and services suppliers in recognition of the fact that the tax obligation of non-residents is determined with respect to taxable items sourced or located in the Party's territory; or
- (b) apply to non-residents in order to ensure the imposition or collection of taxes in the Party's territory; or
- (c) apply to non-residents or residents in order to prevent the avoidance or evasion of taxes, including compliance measures; or
- (d) apply to consumers of services supplied in or from the territory of the other Party in order to ensure the imposition or collection of taxes on such consumers derived from sources in the Party's territory; or
- (e) distinguish investors and service suppliers subject to tax on worldwide taxable items from other investors and service suppliers, in recognition of the difference in the nature of the tax base between them; or
- (f) determine, allocate or apportion income, profit, gain, loss, deduction or credit of resident persons or branches, or between related persons or branches of the same person, in order to safeguard the Party's tax base.

Tax terms or concepts in paragraph (f) of this provision and in this footnote are determined according to tax definitions and concepts, or equivalent or similar definitions and concepts, under the domestic law of the Party taking the measure.

TITLE IV

CURRENT PAYMENTS AND CAPITAL MOVEMENTS

ARTICLE 204: OBJECTIVE AND SCOPE

1. The Parties shall aim at the liberalisation of current payments and capital movements between them, in conformity with the commitments undertaken in the framework of the international financial institutions and with due consideration to each Party's currency stability.

2. This Title applies to all current payments and capital movements between the Parties.

ARTICLE 205: CURRENT ACCOUNT

The Parties shall allow or authorise, as appropriate, in freely convertible currency and in accordance with the Articles of Agreement of the International Monetary Fund, including in particular the provisions of Article VIII, any payments and transfers on the current account between the Parties.

ARTICLE 206: CAPITAL ACCOUNT

With regard to transactions on the capital and financial account of balance of payments, from the entry into force of this Agreement, the Parties shall allow or ensure, where applicable, the free movement of capital relating to direct investments made in juridical persons formed in accordance with the laws of the host country and investments and other transactions made in accordance with the provisions of Title III (Establishment, Trade in Services and Electronic Commerce)³⁰ of Part IV of this Agreement, and the liquidation and repatriation of these investments and of any profit stemming therefrom.

ARTICLE 207: SAFEGUARD MEASURES

Where, in exceptional circumstances, capital movements between the Parties, cause, or threaten to cause, serious difficulties for the operation of exchange rate policy or monetary policy in a Party, the Party concerned may take safeguard measures with regard to capital movements for a period not exceeding one year. The application of safeguard measures may be extended through their formal reintroduction in case of extremely exceptional circumstances and after having coordinated in advance between the Parties regarding the implementation of any proposed formal reintroduction.³¹

³⁰ For greater certainty, the exceptions included in Part V of this Agreement, as well as the exceptions included in Title III (Establishment, Trade in Services and Electronic Commerce) of Part IV of this Agreement, shall also be applicable to this Title.

³¹ The reintroduction of safeguard measures shall not be subject to authorisation of the Parties.

ARTICLE 208: FINAL PROVISIONS

1. With respect to this Title, the Parties confirm the rights and obligations established by the International Monetary Fund or any other agreements between the Members States of the European Union and a Republic of the CA Party.

2. The Parties shall consult each other with a view to facilitating the movement of capital between them in order to promote the objectives of this Agreement.

TITLE V

GOVERNMENT PROCUREMENT

ARTICLE 209: INTRODUCTION

1. The Parties recognise the contribution of transparent, competitive and open tendering to sustainable economic development and set as their objective the effective, reciprocal and gradual opening of their respective procurement markets.

2. For the purposes of this Title:

- (a) **“commercial goods and services”** means goods and services of a type generally sold or offered for sale in the commercial marketplace to, and customarily purchased by, non-governmental buyers for non-governmental purposes;
- (b) **“conformity assessment procedure”** means any procedure used, directly or indirectly, to determine that relevant requirements in technical regulations or standards are fulfilled;
- (c) **“construction service”** means a service that has as its objective the realization by whatever means of civil or building works, based on Division 51 of the United Nations Provisional Central Product qualification;
- (d) **“electronic auction”** means an iterative process that involves the use of electronic means for the presentation by suppliers of either new prices, or new values for quantifiable non-price elements of the tender related to the evaluation criteria, or both, resulting in a ranking or re-ranking of tenders;
- (e) **“in writing”** or **“written”** means any worded or numbered expression that can be read, reproduced or later communicated. It may include electronically transmitted and stored information;
- (f) **“limited tendering”** means a procurement method whereby the procuring entity contacts a supplier or suppliers of its choice;
- (g) **“List of suppliers”** means a list of suppliers that a procuring entity has determined satisfy the conditions for participation in that list and/or formal requirements to be included in such list, and that the procuring entity intends to use more than once;
- (h) **“measure”** means any law, regulation, procedure, administrative guidance or practice, of a procuring entity relating to a covered procurement;

- (i) **“notice of intended procurement”** means a notice published by a procuring entity inviting interested suppliers to submit a request for participation, a tender, or both, according to each Party’s legislation;
- (j) **“offset”** means any condition or undertaking that encourages local development or improves a Party's balance of payments accounts, such as the use of domestic content, the licensing of technology, investment, counter-trade and similar action or requirement;
- (k) **“open tendering”** means a procurement method whereby all interested suppliers may submit a tender;
- (l) **“procuring entity”** means an entity covered under a Party's Section A, B or C to Appendix 1 (Coverage) of Annex XVI (Government Procurement);
- (m) **“qualified supplier”** means a supplier that a procuring entity recognizes as having satisfied the conditions for participation;
- (n) **“selective tendering”** means a procurement method whereby only qualified or registered suppliers are invited by the procuring entity to submit a tender;
- (o) **“services”** includes construction services, unless otherwise specified; and
- (p) **“technical specification”** means a tendering requirement that:
 - (i) lays down the characteristics of goods or services to be procured, including quality, performance, safety and dimensions, or the processes and methods for their production or provision; or
 - (ii) addresses terminology, symbols, packaging, marking or labelling requirements, as they apply to a good or service.

ARTICLE 210: SCOPE AND COVERAGE

1. This Title applies to any measure regarding covered procurement. For the purposes of this Title, covered procurement means procurement for governmental purposes:

- (a) of goods, services, or any combination thereof:
 - (i) as specified by each Party in the relevant sections of Appendix 1 (Coverage) to Annex XVI; and
 - (ii) not procured with a view to commercial sale or resale, or for use in the production or supply of goods or services for commercial sale or resale;

- (b) by any contractual means, including: purchase, lease, and rental or hire purchase, with or without an option to buy;
 - (c) for which the value equals or exceeds the relevant threshold specified by each Party in Appendix 1 (Coverage) to Annex XVI, at the time of publication of a notice in accordance with Article 213;
 - (d) by a procuring entity; and
 - (e) that is not otherwise excluded from coverage.
2. Except where provided, this Title does not apply to:
- (a) the acquisition or rental of land, buildings or other immovable property or the rights thereon;
 - (b) non-contractual agreements or any form of assistance that a Party provides, including co-operative agreements, grants, loans, equity infusions, guarantees and fiscal incentives, government provision of goods and services to state, regional, or local government entities;
 - (c) the procurement or acquisition of fiscal agency or depositary services, liquidation and management services for regulated financial institutions or services related to the sale, redemption and distribution of public debt, including loans and government bonds, notes and other securities;
 - (d) public employment contracts and related employment measures;
 - (e) procurement conducted:
 - (i) for the specific purpose of providing international assistance, including development aid;
 - (ii) under the particular procedure or condition established by an international agreement relating to the stationing of troops or relating to the joint implementation by the signatory countries of a project;
 - (iii) under the particular procedure or condition of an international organisation, or funded by international grants, loans or other assistance where the applicable procedure or condition would be inconsistent with this Title;
 - (f) purchases made under exceptionally advantageous conditions that only arise in the very short term, such as unusual disposals by companies that normally are not suppliers, or disposals of assets of businesses in liquidation or receivership.

3. Each Party shall specify the following information in Appendix 1 (Coverage) to Annex XVI as follows:

- (a) in Section A, the central government entities whose procurement is covered by this Title;
- (b) in Section B, the sub-central government entities whose procurement is covered by this Title;
- (c) in Section C, all other entities whose procurement is covered by this Title;
- (d) in Section D, the services, other than construction services, covered by this Title;
- (e) in Section E, the construction services covered by this Title; and
- (f) in Section F, any general notes.

4. Where domestic legislation of a Party allows a covered procurement to be carried out on behalf of the procuring entity by other entities or persons, the provisions of this Title shall equally apply.

5. (a) No procuring entity may prepare, design, or otherwise structure or divide any procurement in order to avoid the obligations under this Title.
- (b) Where procurement may result in contracts being awarded at the same time in the form of separate lots, account shall be taken of the total estimated value of all such lots. Where the aggregate value of the lots is equal to or exceeds a Party's thresholds as set out in the relevant Section, this Title shall apply to the awarding of such lots, with the exception of those lots the value of which is less than EUR 80,000.

6. Nothing in this Title shall be construed to prevent any Party from adopting or maintaining measures relating to goods or services of handicapped persons, of philanthropic institutions or of prison labour, or measures necessary to protect public morals, order, or safety; human, animal, or plant life or health including environmental measures, and intellectual property.

The Republics of the CA Party shall be able to adopt, develop, maintain or implement measures to promote opportunities or programs for procurement policies for the development of its minorities and its MSMEs including preferential rules, such as:

- (a) identifying MSMEs, registered as suppliers of the State;
- (b) establishing criteria of tiebreak allowing procuring entities to adjudicate a contract to a domestic MSME, which, participating individually or in consortium has submitted an offer of equal ranking as other suppliers.

7. Nothing in this Title shall prevent a Party from developing new procurement policies, procedures, or contractual means, provided they are not inconsistent with this Title.

ARTICLE 211: GENERAL PRINCIPLES

1. With respect to any measure and any covered procurement, each Party, including its procuring entities, shall accord to the goods and services of the other Party and to the suppliers of the other Party offering the goods or services of any Party, treatment no less favourable than the treatment the Party, including its procuring entities, accords to domestic goods, services and suppliers.

2. With respect to any measure regarding covered procurement, a Party, including its procuring entities, shall not:

- (a) treat a locally established supplier less favourably than another locally established supplier on the basis of degree of foreign affiliation or ownership; nor
- (b) discriminate against a locally established supplier on the basis that the goods or services offered by that supplier for a particular procurement are goods or services of the other Party.

3. Any EU Party supplier or service provider established in one Republic of the CA Party shall be accorded in all other Republics of the CA Party treatment no less favourable than the treatment the latter accord to their own suppliers or service providers with respect to any measure regarding a covered procurement.

Any supplier or service provider from a Republic of the CA Party established in one Member State of the European Union shall be accorded in all other Member States of the European Union treatment no less favourable than the treatment the latter accord to their own suppliers or service providers with respect to any measure regarding a covered procurement.

The Parties shall not introduce new requirements on the local establishment or registration of suppliers and service providers wishing to submit a tender in a covered procurement that would set suppliers and service providers of the other Party at a competitive disadvantage. Existing requirements will be subject to a review within ten years from the entry into force of this Agreement³².

³² For greater certainty, nothing in this Article shall affect trade in services covered by Title III (Establishment, Trade in Services and Electronic Commerce), and its Annexes on Lists of Commitments on Establishment, Lists of Commitments on Cross-Border Supply of Services, Reservations on Key Personnel and Graduate Trainees of the EU Party, Lists of Commitments of the Republics of the CA Party on Business Service Sellers and List of Commitments of the Republics of the CA Party on Key Personnel and Graduate Trainees.

Use of electronic means

4. If a procuring entity conducts a covered procurement by electronic means, it shall:
 - (a) ensure that the procurement is conducted using information technology systems and software, including those related to authentication and encryption of information, that are generally available and interoperable with other generally available information technology systems and software; and
 - (b) maintain mechanisms that ensure the integrity of requests for participation and tenders, including establishment of the time and receipt and the prevention of inappropriate access.

Conduct of procurement

5. A procuring entity shall conduct covered procurement in a transparent and impartial manner, that avoids conflicts of interest and prevents corruptive practices and that is consistent with this Title using methods such as open tendering, selective tendering and limited tendering. Additionally, the Parties shall establish or maintain sanctions against such corruptive practices.

Rules of origin

6. For purposes of covered procurement, no Party shall apply rules of origin to goods or services imported from or supplied by another Party that are different from the rules of origin the Party applies, at the same time, in the normal course of trade to imports or supplies of the same goods or services from the same Party.

Offsets

7. Subject to the exceptions contained in this Title or the annexes pertaining thereto, no Party shall seek, take account of, impose or enforce offsets.

ARTICLE 212: PUBLICATION OF PROCUREMENT INFORMATION

1. Each Party shall:
 - (a) promptly publish any law, regulation, judicial decision or administrative ruling of general application, standard contract clauses that are mandated by a law or regulation and incorporated by reference in notices and tender documentation and procedures regarding covered procurement, and any modifications thereof, in officially designated electronic or paper media that are widely disseminated and remain readily accessible to the public;
 - (b) provide, if so requested by any Party, further information concerning the application of such provisions;

- (c) list in Appendix 2 (Media for Publication of Procurement Information) to Annex XVI, the electronic or paper media in which the Party publishes the information described in paragraph (a); and
- (d) list in Appendix 3 (Media for Publication of Notices) to Annex XVI, the media in which the Party publishes the notices required by Articles 213, 215, paragraph 4, and Article 223, paragraph 2.

2. The CA Party shall perform all reasonable efforts in order to develop a single point of access at regional level. The EU Party shall provide technical and financial assistance in order to develop, establish and maintain such a single point of access. This co-operation is addressed in Title VI (Economic and Trade Development) of Part III of this Agreement. The implementation of this provision is subject to the materialisation of the initiative on technical and financial assistance for the development, establishment and maintenance of a single point of access at Central American level.

3. Each Party shall promptly notify the other Party of any modification to the Party's information listed in Appendix 2 (Media for Publication of Procurement Information) or 3 (Media for Publication of Notices) of Annex XVI.

ARTICLE 213: PUBLICATION OF NOTICES

Notice of Intended Procurement

1. For each covered procurement, except in the circumstances described in Article 220, a procuring entity shall publish a notice of intended procurement in the appropriate media listed in Appendix 3 (Media for Publication of Notices) of Annex XVI. Each notice shall include the information set out in Appendix 4 (Notice of Intended Procurement) of Annex XVI. These notices shall be accessible by electronic means free of charge through a single point of access at regional level, if and where they exist.

Notice of Planned Procurement

2. Procuring entities are encouraged to publish, as early as possible, each year, a notice regarding their future procurement plans (hereinafter referred to as “notice of planned procurement”). The notice should include the subject-matter of the procurement and the approximate date of the publication of the notice of intended procurement or in which the procurement may be held.

3. A procuring entity may, if domestic legislation so foresees, use a notice of planned procurement as a notice of intended procurement provided that it includes as much of the information in Appendix 4 (Notice of Intended Procurement) as available and a statement that interested suppliers shall express their interest in the procurement to the procuring entity.

ARTICLE 214: CONDITIONS FOR PARTICIPATION

1. A procuring entity shall limit any conditions for participation in a procurement to those that are essential to ensure that a supplier has the legal and financial capacities and the commercial and technical abilities to undertake the relevant procurement.
2. In assessing whether a supplier satisfies the conditions for participation, a procuring entity shall evaluate the financial, commercial and technical abilities of the supplier on the basis of that supplier's business activities both in and out of the territory of the Party of the procuring entity, and it may not impose the condition that, in order for a supplier to participate in a procurement, that supplier must have previously been awarded one or more contracts by a procuring entity of a given Party or that the supplier must have prior work experience in the territory of a given Party.
3. In making this assessment, the procuring entity shall base its evaluation on the conditions that it has specified in advance in notices or tender documentation.
4. A procuring entity may exclude a supplier on grounds such as bankruptcy, false declarations, significant deficiencies in performance of any substantive requirement or obligation under a prior contract or contracts, judgments regarding crimes or other judgments regarding serious public offences, professional misconduct, failure to pay taxes or similar reasons.

Each Party may adopt or maintain procedures to declare ineligible for participation in the Party's procurements, either indefinitely or for a specified time, suppliers that the Party has found to have engaged in fraudulent or other illegal actions in relation to procurement. Upon request of the other Party, a Party shall identify, to the extent practicable, the suppliers determined to be ineligible under these procedures, and, where appropriate, exchange information regarding those suppliers or the fraudulent or illegal action.

5. The procuring entity may ask the tenderer to indicate in the tender any share of the contract the tenderer may intend to subcontract to third parties and any proposed subcontractors. This indication shall be without prejudice of questioning the principal economic operator's liability.

ARTICLE 215: QUALIFICATION OR REGISTRATION OF SUPPLIERS

Selective tendering

1. Where a procuring entity intends to use selective tendering, the entity shall:
 - (a) include in the notice of intended procurement at least the information specified in paragraph 1 of Appendix 4 (Notice of Intended Procurement), of Annex XVI and invite suppliers to submit a request for participation; and

- (b) provide, by the commencement of the time-period for tendering, at least the information specified in paragraph 2 of Appendix 4 (Notice of Intended Procurement) of Annex XVI to the qualified or registered suppliers.

2. A procuring entity shall recognise as qualified suppliers any domestic suppliers and any suppliers of the other Party that meet the conditions for participation in a particular procurement, unless the procuring entity states in the notice of intended procurement any limitation on the number of suppliers that will be permitted to tender and the criteria for selecting the limited number of suppliers.

3. Where the tender documentation is not made publicly available from the date of publication of the notice referred to in paragraph 1, a procuring entity shall ensure that those documents are made available at the same time to all qualified suppliers selected in accordance with paragraph 2.

List of Suppliers

4. A procuring entity may maintain a list of suppliers, provided that a notice inviting interested suppliers to apply for inclusion in the list is published annually, and where published by electronic means, made available continuously in the appropriate medium listed in Appendix 3 (Media for Publication of Notices) of Annex XVI. Such a notice shall include the information set out in Appendix 5 (Notice Inviting Interested Suppliers to Apply for Inclusion in a List of Suppliers) of Annex XVI.

5. Notwithstanding paragraph 4, where a list of suppliers will be valid for three years or less, a procuring entity may publish the notice referred to in that paragraph only once, at the beginning of the period of validity of the list, provided that the notice states the period of validity and that further notices will not be published.

6. A procuring entity shall allow suppliers to apply at any time for inclusion on a list of suppliers and shall include on the list within a reasonable short time all suppliers that have complied with the corresponding requirements.

7. A procuring entity may, if so foreseen by the Party's legislation, use a notice inviting suppliers to apply for inclusion in a list of suppliers as a notice of intended procurement, provided that:

- (a) the notice is published in accordance with paragraph 4 and includes the information required by Appendix 5 (Notice Inviting Interested Suppliers to Apply for Inclusion in a List of Suppliers) and as much of the information required by Appendix 4 (Notice of Intended Procurement) of Annex XVI as is available, and contains a statement that it constitutes a notice of intended procurement;
- (b) the entity promptly provides to suppliers that have expressed an interest to the entity in a given procurement, sufficient information to permit them to assess their interest in the procurement, including all remaining information

required by Appendix 4 (Notice of Intended Procurement) of Annex XVI, to the extent that such information is available; and

- (c) a supplier having applied for inclusion on a list of suppliers in accordance with paragraph 6, may be allowed to tender in a given procurement, where there is sufficient time for the procuring entity to examine whether it satisfies the conditions for participation.

8. A procuring entity shall promptly inform any supplier that submits a request for participation or application for inclusion on a list of suppliers of the procuring entity's decision with respect to the request.

9. Where a procuring entity rejects a supplier's request to qualify or application for inclusion on a list of suppliers, ceases to recognise a supplier as qualified, or removes a supplier from a list of suppliers, the entity shall promptly inform the supplier and, on request of the supplier, promptly provide the supplier with a written explanation of the reasons for its decision.

10. The Parties shall indicate in Section F (General Notes) to Appendix 1 (Coverage) of Annex XVI, which entities may use lists of suppliers.

ARTICLE 216: TECHNICAL SPECIFICATIONS

1. A procuring entity shall not prepare, adopt or apply any technical specification or prescribe any conformity assessment procedure with the purpose or the effect of creating unnecessary obstacles to international trade.

2. In prescribing the technical specifications for the goods or services being procured, a procuring entity shall, where appropriate:

- (a) set out the technical specifications in terms of performance and functional requirements, rather than design or descriptive characteristics; and
- (b) base the technical specifications on international standards, where these exist; otherwise, on national technical regulations, recognized national standards or building codes.

3. Where design or descriptive characteristics are used in the technical specifications, a procuring entity should indicate, where appropriate, that it will consider tenders of equivalent goods or services that demonstrably fulfil the requirements of the procurement by including such words as "or equivalent" in the tender documentation.

4. A procuring entity shall not prescribe technical specifications that require or refer to a particular trademark or trade name, patent, copyright, design, type, specific origin, producer or supplier, unless there is no other sufficiently precise or intelligible way of describing the procurement requirements and provided that, in such cases, the entity includes words such as "or equivalent" in the tender documentation.

5. A procuring entity shall not seek or accept, in a manner that would have the effect of precluding competition, advice that may be used in the preparation or adoption of any technical specification for a specific procurement, from a person that may have a commercial interest in the procurement.

6. For greater certainty, this Article is not intended to preclude a procuring entity from preparing, adopting, or applying technical specifications to promote the conservation of natural resources or protect the environment.

ARTICLE 217: TENDER DOCUMENTATION

1. A procuring entity shall provide to suppliers, tender documentation that includes all information necessary to permit suppliers to prepare and submit responsive tenders. Unless already provided in the notice of intended procurement, such documentation shall include a complete description of the issues set out in Appendix 8 (Tender Documentation) of Annex XVI.

2. A procuring entity shall promptly provide, upon request, the tender documentation to any supplier participating in the procurement; and reply to any reasonable request for relevant information made by a supplier participating in the procurement, provided that such information does not give that supplier an advantage over its competitors in the procurement and that the request was presented within the corresponding time limits.

3. Where, in the course of a procurement, a procuring entity modifies or amends the criteria or requirements set out in the notice of intended procurement or tender documentation provided to participating suppliers, it shall transmit in writing all such modifications:

- (a) to all suppliers that are participating at the time the information is amended, if known, and in all other cases, in the same manner as the original information; and
- (b) in adequate time to allow such suppliers to modify and re-submit amended tenders, as appropriate.

ARTICLE 218: TIME PERIODS

A procuring entity shall, consistent with its own needs, provide sufficient time for suppliers to prepare and submit requests for participation and responsive tenders, taking into account such factors as the nature and complexity of the procurement, the extent of subcontracting anticipated, and the time for transmitting tenders from foreign as well as domestic points where electronic means are not used. Such time periods, including any extension of the time periods, shall be the same for all interested or participating suppliers. The applicable time periods are set out in Appendix 6 (Time Periods) of Annex XVI.

ARTICLE 219: NEGOTIATIONS

1. Each Party may provide for its procuring entities to conduct procurements through the negotiations procedure, in the following cases:

- (a) in the context of procurements in which they have indicated such intent in the notice of intended procurement; or
- (b) where it appears from the evaluation that no one tender is obviously the most advantageous in terms of the specific evaluation criteria set forth in the notices or tender documentation.

2. A procuring entity shall:

- (a) ensure that any elimination of suppliers participating in negotiations is carried out in accordance with the evaluation criteria set out in the notices or tender documentation; and
- (b) where negotiations are concluded, provide a common deadline for the remaining suppliers to submit any new or revised tenders.

ARTICLE 220: THE USE OF LIMITED TENDERING OR OTHER EQUIVALENT TENDERING PROCEDURES

1. Provided that the tendering procedure is not used to avoid competition or to protect domestic suppliers, a procuring entity may award contracts by limited tendering or other equivalent tendering procedures in the following circumstances:

- (a) where,
 - (i) no tenders were submitted, or no suppliers requested participation;
 - (ii) no tenders that conform to the essential requirements of the tender documentation were submitted;
 - (iii) no suppliers satisfied the conditions for participation; or
 - (iv) the tenders submitted have been collusive; provided that the requirements of the tender documentation are not substantially modified;
- (b) where, for works of art, or for reasons connected with the protection of exclusive intellectual property rights, such as patents or copyrights, or proprietary information, or where there is an absence of competition for technical reasons, the goods or services can be supplied only by a particular supplier and no reasonable alternative or substitute exists;

- (c) for additional deliveries by the original supplier of goods and services that were not included in the initial procurement where a change of supplier for such additional goods or services:
 - (i) cannot be made for economic or technical reasons such as requirements of inter-changeability or inter-operability with existing equipment, software, services or installations procured under the initial procurement; and
 - (ii) would cause significant inconvenience or substantial duplication of costs for the procuring entity;
- (d) for goods purchased on a commodity market;
- (e) where a procuring entity procures a prototype or a first good or service that is developed at its request in the course of, and for, a particular contract for research, experiment, study, or original development. When such contracts have been fulfilled, subsequent procurements of goods or services shall be subject to this Title;
- (f) where additional construction services that were not included in the initial contract but fell under the objectives of the original tender documentation, have, due to unforeseeable circumstances, become necessary to complete the construction services described therein. However, the total value of contracts awarded for additional construction services may not exceed fifty per cent of the amount of the initial contract;
- (g) in so far as is strictly necessary where, for reasons of urgency brought about by events unforeseeable by the procuring entity, the goods or services could not be obtained in time by means of an open tendering procedure and the use of an open tendering procedure would result in serious injury to the procuring entity, the entity's program responsibilities, or the Party;
- (h) where a contract is awarded to a winner of a design contest provided that the contest has been organised in a manner that is consistent with the principles of this Title, and the participants are judged by an independent jury with a view to a design contract being awarded to a winner; or
- (i) in the cases established by each Party in Section F (General Notes) of Appendix 1 (Coverage) of Annex XVI.

2. A procuring entity shall maintain records or prepare written reports providing specific justification for any contract awarded under paragraph 1.

ARTICLE 221: ELECTRONIC AUCTIONS

Where a procuring entity intends to conduct a covered procurement using an electronic auction, the entity shall provide each participant, before commencing the electronic auction, with:

- (a) the automatic evaluation method, including the mathematical formula, that is based on the evaluation criteria set out in the tender documentation and that will be used in the automatic ranking or re-ranking during the auction;
- (b) the results of any initial evaluation of the elements of its tender where the contract is to be awarded on the basis of the most advantageous tender; and
- (c) any other relevant information relating to the conduct of the auction.

ARTICLE 222: TREATMENT OF TENDERS AND AWARD OF CONTRACTS

1. A procuring entity shall receive, open and treat all tenders under procedures that guarantee the fairness and impartiality of the procurement process, and the confidentiality of tenders.

2. To be considered for an award, a tender shall be in writing and shall, at the time of opening, comply with the essential requirements set out in the tender documentation and, where applicable, in the notices, and be from a supplier that satisfies the conditions for participation.

3. Unless a procuring entity determines that it is not in the public interest to award a contract, the entity shall award the contract to the supplier that the entity has determined to be capable of fulfilling the terms of the contract and that, based solely on the evaluation criteria specified in the notices and tender documentation, has submitted the most advantageous tender or where price is the sole criterion, the lowest price.

4. Where a procuring entity receives a tender with a price that is abnormally lower than the prices in other tenders submitted, it may verify with the supplier that it satisfies the conditions for participation and is capable of fulfilling the terms of the contract.

ARTICLE 223: TRANSPARENCY OF PROCUREMENT INFORMATION

1. A procuring entity shall promptly inform participating suppliers of the entity's contract award decisions and, upon request, shall do so in writing. Subject to paragraphs 2 and 3 of Article 224, a procuring entity shall, upon request, provide an unsuccessful supplier with an explanation of the reasons why the entity did not select its tender and the relative advantages of the successful supplier's tender.

2. After the award of each contract covered by this Title, a procuring entity shall, as early as possible, according to the time limits established in each Party's legislation, publish a notice in the appropriate paper or electronic media listed in Appendix 3 (Media for

Publication of Notices) of Annex XVI. Where only an electronic medium is used, the information shall remain readily available for a reasonable period of time. The notice shall include at least the information set out in Appendix 7 (Award Notices) of Annex XVI.

ARTICLE 224: DISCLOSURE OF INFORMATION

1. Upon request of the other Party, each Party shall promptly provide all relevant information about the adjudication of a covered procurement, in order to determine if the procurement was made in accordance with the rules of this Title. In cases where release of this information would prejudice competition in future tenders, the Party that receives that information shall not disclose it to any supplier, except after consultation with, and agreement of, the Party that provided the information.

2. Notwithstanding any other provision of this Title, a Party, including its procuring entities, shall not provide to any supplier information that might prejudice fair competition between suppliers.

3. Nothing in this Title shall be construed to require a Party, including its procuring entities, authorities and review bodies, to disclose confidential information where disclosure would impede law enforcement; might prejudice fair competition between suppliers; would prejudice the legitimate commercial interests of particular persons, including the protection of intellectual property; or would otherwise be contrary to the public interest.

ARTICLE 225: DOMESTIC REVIEW PROCEDURES

1. Each Party shall establish or maintain timely, effective, transparent and non-discriminatory administrative or judicial review procedures through which a supplier may present a challenge with respect to the obligations of a Party and its entities under this Title that may arise in the context of a covered procurement, in which the supplier has, or has had, an interest. The procedural rules for all challenges shall be in writing and made generally available.

2. Each Party may foresee in its domestic legislation, that in the event of a complaint by a supplier arising in the context of a covered procurement, it shall encourage its procuring entity and the supplier to seek resolution of the complaint through consultation. The procuring entity shall accord impartial and timely consideration to any such complaint in a manner that is not prejudicial to the supplier's participation in ongoing or future procurement or his right to seek corrective measures under the administrative or judicial review procedure.

3. Each supplier shall be allowed a sufficient period of time to prepare and submit a challenge, which in no case shall be less than ten days from the time when the basis of the challenge became known or reasonably should have become known to the supplier.

4. Each Party shall establish or designate at least one impartial administrative or judicial authority that is independent of its procuring entities to receive and review a challenge by a supplier arising in the context of a covered procurement.

5. Where a body other than an authority referred to in paragraph 4 initially reviews a challenge, the Party shall ensure that the supplier may appeal the initial decision to an impartial administrative or judicial authority that is independent of the procuring entity whose procurement is the subject of the challenge. A review body that is not a court shall either be subject to judicial review or have procedural guarantees that provide for:

- (a) the procuring entity shall respond in writing to the challenge and disclose all relevant documents to the review body;
- (b) the participants to the proceedings (hereinafter referred to as “the participants”) shall have the right to be heard prior to a decision of the review body being made on the challenge;
- (c) the participants shall have the right to be represented and accompanied;
- (d) the participants shall have access to all proceedings; and
- (e) decisions or recommendations relating to challenges by suppliers shall be provided, within a reasonable time, in writing, with an explanation of the basis for each decision or recommendation.

6. Each Party shall adopt or maintain procedures that provide for:

- (a) prompt interim measures to preserve the supplier's opportunity to participate in the procurement. Such interim measures may result in suspension of the procurement process. The procedures may provide that overriding adverse consequences for the interests concerned, including the public interest, may be taken into account when deciding whether such measures should be applied. Just cause for not acting shall be provided in writing; and
- (b) corrective action or compensation for the loss or damages suffered, in accordance with each Party's legislation, in cases where a review body has determined that there has been a breach or a failure as set out in paragraph 1.

ARTICLE 226: MODIFICATIONS AND RECTIFICATIONS OF COVERAGE

1. The EU Party shall address modifications and rectifications of coverage through bilateral negotiations with each Republic of the CA Party concerned. Inversely, each Republic of the CA Party shall address modifications and rectifications of coverage through bilateral negotiations with the EU Party.

Where a Party has the intention of modifying its coverage of procurement under this Title, the Party shall:

- (a) notify the other Party or Parties concerned in writing; and
- (b) include in the notification a proposal of appropriate compensatory adjustments to the other Party to maintain a level of coverage comparable to that existing prior to the modification.

2. Notwithstanding subparagraph 1 (b), a Party does not need to provide compensatory adjustments where:

- (a) the modification in question is a minor amendment or rectification of a purely formal nature; or
- (b) the proposed modification refers to an entity over which the Party has effectively eliminated its control or influence.

The Parties may make minor amendments or rectifications of a purely formal nature to their coverage under this Title, in accordance with the provisions of Title XIII (Specific Tasks in Trade Matters of the Bodies established under this Agreement) of Part IV of this Agreement.

3. If the EU Party or the Republic of the CA Party concerned does not agree that:

- (a) the adjustment proposed under subparagraph 1 (b) is adequate to maintain a comparable level of mutually agreed coverage;
- (b) the proposed modification is a minor amendment or a rectification under subparagraph 2 (a); or
- (c) the proposed modification refers to an entity over which the Party has effectively eliminated its control or influence under subparagraph 2 (b),

it must object in writing within thirty days of receipt of the notification referred to in paragraph 1 or be deemed to have agreed to the adjustment or proposed modification including for the purposes of Title X (Dispute Settlement) of Part IV of this Agreement.

4. Where the Parties concerned have agreed on the proposed modification, rectification, or minor amendment, including where no objection has been made within thirty days under paragraph 3, the modifications shall be made in conformity with the provisions of paragraph 6.

5. The EU Party and each Republic of the CA Party may at any time engage in bilateral negotiations concerning the broadening of the market access mutually granted under this Title, in conformity with the relevant institutional and procedural arrangements foreseen in this Agreement.

6. The Association Council shall modify the relevant parts of Sections A, B or C of Appendix 1 (Coverage) of Annex XVI in order to reflect any modification agreed by the Parties, technical rectification, or minor amendment.

ARTICLE 227: CO-OPERATION AND TECHNICAL ASSISTANCE ON PUBLIC PROCUREMENT

The Parties agree that it is in their common interest to promote mutual co-operation and technical assistance initiatives on issues related to government procurement. In this sense, the Parties have identified a number of co-operation activities which are set out in Article 58 of Title VI (Economic and Trade Development) of Part III of this Agreement.

TITLE VI

INTELLECTUAL PROPERTY

CHAPTER 1

OBJECTIVES AND PRINCIPLES

ARTICLE 228: OBJECTIVES

The objectives of this Title are to:

- (a) ensure an adequate and effective protection of intellectual property rights in the territories of the Parties, taking into consideration the economical situation and the social or cultural need of each Party;
- (b) promote and encourage technology transfer between both regions in order to enable the creation of a sound and viable technological base in the Republics of the CA Party; and
- (c) promote technical and financial co-operation in the area of intellectual property rights between both regions.

ARTICLE 229: NATURE AND SCOPE OF OBLIGATIONS

1. The Parties shall ensure an adequate and effective implementation of the international treaties dealing with intellectual property to which they are parties, including the WTO Agreement on Trade-Related Aspects of Intellectual Property Rights (hereinafter referred to as the “TRIPS Agreement”). The provisions of this Title shall complement and further specify the rights and obligations between the Parties under the TRIPS Agreement and other international treaties in the field of intellectual property.

2. Intellectual Property and Public Health:

- (a) the Parties recognise the importance of the Doha Declaration on the TRIPS Agreement and Public Health adopted on 14 November, 2001 by the Ministerial Conference of the World Trade Organisation. In interpreting and implementing the rights and obligations under this Title, the Parties shall ensure consistency with this Declaration;
- (b) the Parties shall contribute to the implementation and respect the Decision of the WTO General Council of 30 August, 2003 on Implementation of Paragraph 6 of the Doha Declaration on the TRIPS Agreement and Public Health, as well as the Protocol amending the TRIPS Agreement, done at Geneva on 6 December, 2005.

3. (a) For the purposes of this Agreement, intellectual property rights embody copyright, including copyright in computer programs and in databases, and related rights; rights related to patents; trademarks; trade names; industrial designs; layout-designs (topographies) of integrated circuits; geographical indications, including designations of origin; plant varieties and protection of undisclosed information;
- (b) for the purposes of this Agreement, as regards unfair competition, protection will be granted in accordance with Article 10*bis* of the Paris Convention for the Protection of Industrial Property (Stockholm Act, 1967) (hereinafter referred to as the “Paris Convention”).

4. The Parties recognise the sovereign right of States over their natural resources and the access to their genetic resources in accordance with what is established in the Convention on Biological Diversity (1992). No provision in this Title shall prevent the Parties from adopting or maintaining measures to promote the conservation of biological diversity, the sustainable utilization of its components and the fair and equitable participation in the benefits arising from the utilization of genetic resources, in conformity with what is established in that Convention.

5. The Parties recognise the importance of respecting, preserving and maintaining the indigenous and local communities’ knowledge, innovations and practices that involve traditional practices related to the preservation and the sustainable use of biological diversity.

ARTICLE 230: MOST FAVOURED NATION AND NATIONAL TREATMENT

In accordance with Articles 3 and 4 of the TRIPS Agreement and subject to the exceptions foreseen in those provisions, each Party shall accord to the nationals of the other Party:

- (a) a treatment no less favourable than that it accords to its own nationals with regard to the protection of intellectual property; and
- (b) any advantage, favour, privilege or immunity it grants to the nationals of any other country with regard to the protection of intellectual property.

ARTICLE 231: TRANSFER OF TECHNOLOGY

1. The Parties agree to exchange views and information on their practices and policies affecting transfer of technology, both within their respective regions and with third countries, with a view to creating measures to facilitate information flows, business partnerships, and the award of licenses and subcontracting. Particular attention shall be paid to the conditions necessary to create an adequate enabling environment for technology transfer between the Parties, including, among others, issues such as development of human capital and legal framework.

2. The Parties recognise the importance of education and professional training for the transfer of technology which may be accomplished through academic, professional and/or business exchange programs directed to the transmission of knowledge between the Parties.³³

3. The Parties shall take measures, as appropriate, to prevent or control licensing practices or conditions pertaining to intellectual property rights which may adversely affect the international transfer of technology and that constitute an abuse of intellectual property rights by right holders or an abuse of obvious asymmetries of information in the negotiation of licences.

4. The Parties recognise the importance of creating mechanisms that strengthen and promote investment in the Republics of the CA Party, especially in innovative and high-tech sectors. The EU Party shall make its best efforts to offer to the institutions and enterprises in its territories incentives destined to promote and to favour the transfer of technology to institutions and enterprises of the Republics of the CA Party, in such a way as to allow them to establish a viable technological platform.

5. The actions described to attain the objectives set forth in this Article are set out in Article 55 of Title VI (Economic and Trade Development) of Part III of this Agreement.

ARTICLE 232: EXHAUSTION

The Parties shall be free to establish their own regime for exhaustion of intellectual property rights, subject to the provisions of the TRIPS Agreement.

CHAPTER 2 STANDARDS CONCERNING INTELLECTUAL PROPERTY RIGHTS

Section A: Copyright and Related Rights

ARTICLE 233: PROTECTION GRANTED

The Parties shall comply with:

- (a) the International Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organisations (Rome, 1961) (hereinafter referred to as the “Rome Convention”);
- (b) the Berne Convention for the Protection of Literary and Artistic Works (1886, lastly amended in 1979) (hereinafter referred to as the “Berne Convention”);

³³ The EU Party shall promote that the academic exchanges take the form of grants and that the professional and business exchanges take the form of internships in organisations of the European Union, strengthening of MSMEs, development of innovating industries and creation of professional clinics so that the acquired knowledge may be applied in the Central American region.

- (c) the World Intellectual Property Organisation Copyright Treaty (Geneva, 1996) (hereinafter referred to as the “WCT”); and
- (d) the World Intellectual Property Organisation Performances and Phonograms Treaty (Geneva, 1996) (hereinafter referred to as the “WPPT”).

ARTICLE 234: DURATION OF AUTHORS' RIGHTS

The Parties agree that for the calculation of the term of protection of author’s rights, the rules established in Article 7 and *7bis* of the Berne Convention shall apply for the protection of literary and artistic works, with the proviso that the minimum duration of the terms of protection defined in paragraphs 1, 2, 3 and 4 of Article 7 of the Berne Convention shall be of seventy years.

ARTICLE 235: DURATION OF RELATED RIGHTS

The Parties agree that for the calculation of the term of protection of the rights of performers, producers of phonograms and broadcasting organizations, the provisions established in Article 14 of the Rome Convention shall apply with the proviso that the minimum duration of the terms of protection defined in Article 14 of the Rome Convention shall be of fifty years.

ARTICLE 236: COLLECTIVE MANAGEMENT OF RIGHTS

The Parties recognise the importance of the performance of the collecting societies, and the establishment of arrangements between them, with the purpose of mutually ensuring easier access and delivery of content between the territories of the Parties, and the achievement of a high level of development with regard to the execution of their tasks.

ARTICLE 237: BROADCASTING AND COMMUNICATION TO THE PUBLIC³⁴

1. For the purpose of this provision, communication to the public of a performance or a phonogram means the transmission to the public by any medium, otherwise than by broadcasting, of sounds of a performance or the sounds or the representations of sounds fixed in a phonogram. For purposes of this Article, “communication to the public” includes making the sounds or representations of sounds fixed in a phonogram audible to the public.
2. In accordance with domestic law, the Parties shall provide for performers the exclusive right to authorise or prohibit the broadcasting and the communication to the public of their performances, except where the performance is itself already a broadcast performance or is made from a fixation.
3. Performers and producers of phonograms shall enjoy the right to a single equitable remuneration for the direct or indirect use of phonograms published for commercial

³⁴ A Party may maintain the reservations made under the Rome Convention and the WPPT regarding the rights conferred in this Article and this shall not be construed as a violation of this provision.

purposes, for broadcasting or for any communication to the public. The Parties may, in the absence of agreement between the performers and phonogram producers, lay down the conditions as to the sharing of this remuneration between both categories of right holders.

4. The Parties shall provide broadcasting organizations with the exclusive right to authorise or prohibit the rebroadcasting by wireless means of their broadcasts, as well as the communication to the public of their television broadcasts, if such communication is made in places accessible to the public against payment of an entrance fee.

5. The Parties may provide in their domestic legislation for limitations or exceptions to the rights set out in paragraphs 2, 3 and 4 only in certain specific cases which do not conflict with a normal exploitation of the subject matter, and do not unreasonably prejudice the legitimate interests of the right holders.

Section B: Trademarks

ARTICLE 238: INTERNATIONAL AGREEMENTS

The European Union and the Republics of the CA Party shall make all reasonable efforts to:

- (a) ratify or accede to the Protocol Relating to the Madrid Agreement Concerning the International Registration of Marks (Madrid, 1989); and
- (b) comply with the Trademark Law Treaty (Geneva, 1994).

ARTICLE 239: REGISTRATION PROCEDURE

The EU Party and the Republics of the CA Party shall provide for a system for the registration of trademarks in which each final decision taken by the relevant trademark administration is duly reasoned and in writing. As such, reasons for the refusal to register a trademark shall be communicated in writing to the applicant who will have the opportunity to contest such refusal and to appeal a final refusal before court. The EU Party and the Republics of the CA Party shall also introduce the possibility to oppose trademark applications. Such opposition proceedings shall be contradictory.

ARTICLE 240: WELL-KNOWN TRADEMARKS

Article *6bis* of the Paris Convention shall apply, *mutatis mutandis*, to goods or services that are not identical or similar to those identified by a well-known trademark, provided that the use of that trademark in relation to those goods or services would indicate a connection between those goods or services and the owner of the trademark, and provided that the interests of the owner of the trademark are likely to be damaged by such use. For greater certainty, the Parties may also apply this protection to unregistered well known trademarks.

ARTICLE 241: EXCEPTIONS TO THE RIGHTS CONFERRED BY A TRADEMARK

The Parties may establish limited exceptions to the rights conferred by a trademark, such as the fair use of descriptive terms. Such exceptions shall take into account the legitimate interests of the owner of the registered trademark and of third parties.

Section C: Geographical Indications

ARTICLE 242: GENERAL PROVISIONS

1. The following provisions apply to the recognition and protection of geographical indications which originate in the territories of the Parties.
2. For the purposes of this Agreement, geographical indications are indications which identify a good as originating in the territory of a Party, or a region or locality in that territory, where a given quality, reputation or other characteristic of the good is essentially attributable to its geographical origin.

ARTICLE 243: SCOPE AND COVERAGE

1. The Parties reaffirm the rights and obligations established in Part II, Section 3, of the TRIPS Agreement.
2. Geographical indications of a Party to be protected by the other Party shall only be subject to this Article if they are recognised and declared as such in their country of origin.

ARTICLE 244: SYSTEM OF PROTECTION

1. The Parties shall maintain or have established systems for the protection of geographical indications in their legislation, by the entry into force of this Agreement in accordance with Article 353, paragraph 5 of Part V.
2. The legislation of the Parties shall contain elements such as:
 - (a) a register listing geographical indications protected in their respective territories;
 - (b) an administrative process verifying that geographical indications identify a good as originating in a territory, region or locality of one of the Parties, where a given quality, reputation or other characteristic of the good is essentially attributable to its geographical origin;
 - (c) a requirement that a registered name shall correspond to a specific product or products for which a product specification is laid down, which can only be amended by due administrative process;
 - (d) control provisions applying to the production of the good or goods;

- (e) a right for any operator established in the area and who submits to the system of controls to use the protected name provided that the product conforms to the corresponding specification;
- (f) a procedure involving publication of the application that allows the legitimate interests of prior users of names, whether those names are protected as a form of intellectual property or not, to be taken into account.

ARTICLE 245: ESTABLISHED GEOGRAPHICAL INDICATIONS

1. By the entry into force of this Agreement, in accordance with Article 353, paragraph 5 of Part V, the Parties shall:³⁵

- (a) have finalised the opposition and examination procedures, at least with respect to those geographical indication applications listed in Annex XVII (List of Names to be Applied for Protection as Geographical Indications in the Territory of the Parties) that were not opposed or for which any opposition was rejected due to formal reasons in the course of national registration proceedings;
- (b) have initiated the procedures for protecting the geographical indications listed in Annex XVII (List of Names to be Applied for Protection as Geographical Indications in the Territory of the Parties) and the time periods for submitting oppositions have expired, with respect to those geographical indication applications listed in Annex XVII that were opposed, and the oppositions were found to be *prima facie* meritorious in the course of national registration proceedings;
- (c) protect the geographical indications that have been granted protection as such, according to the level of protection established in this Agreement.

2. The Association Council at its first meeting shall adopt a decision including in Annex XVIII (Protected Geographical Indications) all names from Annex XVII (List of Names to be Applied for Protection as Geographical Indications in the Territory of the Parties) that have been protected as geographical indications following their successful examination by the Parties' competent national or regional authorities.

³⁵ The obligations from paragraph 1 shall be considered as fulfilled when, in the course of the applicable procedures for protection of a name as a geographical indication:

- (a) the administrative decision rejects the registration of the name; or
- (b) the administrative decision is challenged under the instances established under each Party's domestic legislation.

ARTICLE 246: PROTECTION GRANTED

1. Geographical indications listed in Annex XVIII (Protected Geographical Indications), as well as those added pursuant to Article 247, shall as a minimum be protected against:

- (a) the use of any means in the designation or presentation of a good that indicates or suggests that the good in question originates in a geographical area other than the true place of origin in a manner which misleads the public as to the geographical origin of the good;
- (b) the use of a protected geographical indication for the same products that are not originating from the designated place of the geographical indication in question even if the true origin of the product is indicated or if the protected name is translated or accompanied by an expression such as 'style', 'type', 'imitation', 'like' or similar;
- (c) any other practice that misleads the consumer as to the true origin of the product or any other use that constitutes an act of unfair competition in the manner set forth in Article 10*bis* of the Paris Convention.

2. A geographical indication which has been granted protection in one of the Parties, pursuant to the procedure under Article 245 cannot, in that Party, be deemed to have become generic, as long as it is protected as a geographical indication in the Party of origin.

3. Where a geographical indication contains within it a name which is considered generic in a Party, the use of that generic name on the appropriate good in that Party shall not be considered to be contrary to this Article.

4. For geographical indications other than wines and spirit drinks, nothing in this Agreement shall be construed to require a Party to prevent continued and similar use of a particular geographical indication of the other Party in connection with goods or services by any of its nationals or domiciliaries who have used that geographical indication in good faith and in a continuous manner with regard to the same or related goods or services, in the territory of that Party before the date of entry into force of this Agreement.

ARTICLE 247: ADDITION OF NEW GEOGRAPHICAL INDICATIONS

1. The Parties agree on the possibility of adding additional geographical indications for wines, spirits, agricultural products and foodstuffs to be protected on the basis of the rules and procedures established in this Title, as applicable.

Such geographical indications, following their successful examination by the competent national or regional authorities, shall be included in Annex XVIII (Protected Geographical Indications) in accordance with the relevant rules and procedures for the Association Council.

2. The date of application for protection shall be the date of the transmission of a request to the other Party to protect a geographical indication provided that the formal requirements for such applications are fulfilled.

ARTICLE 248: RELATIONSHIP BETWEEN GEOGRAPHICAL INDICATIONS AND TRADEMARKS

1. The legislation of the Parties shall ensure that the application for registration of a trademark which corresponds to any of the situations listed in Article 246 for like products³⁶ is refused where such application for registration is submitted after the date of application for registration of the geographical indication in the territory concerned.³⁷

2. Similarly, the Parties may, in accordance with their domestic or regional legislation, establish the grounds for rejecting the protection of geographical indications, including the option not to grant protection to a geographical indication where, in the light of a reputed or well-known trademark, protection is liable to mislead consumers as to the true identity of the product.

3. The Parties shall maintain the legal means for any natural or legal person having a legitimate interest, to request the cancelation or invalidation of a trademark or a geographical indication giving reasons for such request.

ARTICLE 249: RIGHT OF USE OF GEOGRAPHICAL INDICATIONS

Once a geographical indication is protected under this Agreement in a Party different from the Party of origin, the use of such protected name shall not be subject to any registration of users in such Party.

ARTICLE 250: DISPUTE SETTLEMENT

No Party shall have any recourse to challenge the final decision issued by a national or regional competent authority regarding the registration or protection of a geographical indication, under Title X (Dispute Settlement) of Part IV of this Agreement. Any claim against the protection of a geographical indication shall be conducted under the available judicial instances established under each Party's domestic or regional legislation.

Section D: Industrial Designs

ARTICLE 251: INTERNATIONAL AGREEMENTS

The European Union and the Republics of the CA Party shall make all reasonable efforts to adhere to the Hague Agreement Concerning the International Registration of Industrial Designs (Geneva Act, 1999).

³⁶ For the purpose of this Article, the Republics of the CA Party consider that the term "like product" may be understood as "identical or confusingly similar".

³⁷ For the EU Party, the date of application for protection shall be the date of entry into force of this Agreement for the names listed in Annex XVII.

ARTICLE 252: REQUIREMENTS FOR PROTECTION

1. The Parties shall provide for the protection of independently created designs that are new³⁸ or original.
2. A design shall be considered to be new if it significantly differs from known designs or combinations of known design features.
3. This protection shall be provided by registration, and shall confer exclusive rights upon their holders in accordance with the provisions of this Article. Each Party may foresee that unregistered designs made available to the public confer exclusive rights, but only if the contested use results from copying the protected design.

ARTICLE 253: EXCEPTIONS

1. The Parties may provide limited exceptions to the protection of designs, provided that such exceptions do not unreasonably conflict with the normal exploitation of protected designs and do not unreasonably prejudice the legitimate interests of the owner of the protected design, taking into account the legitimate interests of third parties.
2. Design protection shall not extend to designs dictated essentially by technical or functional considerations.
3. A design shall not confer rights when it is contrary to public order or morality.

ARTICLE 254: RIGHTS CONFERRED

1. The owner of a protected design shall have the right to prevent third parties not having the owner's consent from making, selling or importing, articles bearing or embodying the protected design when such acts are undertaken for commercial purposes.
2. Additionally, the Parties shall ensure an effective protection to industrial designs to prevent acts that unduly prejudice the normal exploitation of the design or are not compatible with fair trade practice, in a manner consistent with the provisions of Article 10*bis* of the Paris Convention.

ARTICLE 255: TERM OF PROTECTION

1. The duration of protection available in the EU Party and in the Republics of the CA Party shall amount to at least ten years. Each Party may foresee that the right holder may have the term of protection renewed for one or more periods of five years each, up to the maximum term of protection established in each Party's legislation.

³⁸ When the legislation of a Party so provides, individual character of such designs may also be required.

2. Where a Party foresees the protection of unregistered designs, the duration of such protection shall amount to at least three years.

ARTICLE 256: INVALIDITY OR REFUSAL OF REGISTRATION

1. A design may only be refused for registration or declared invalid for compelling and important reasons, which, subject to each Party's legislation, may comprise:

- (a) if the design does not correspond to the definition under Article 252, paragraph 1;
- (b) if, by virtue of a court decision, the right holder is not entitled to the design;
- (c) if the design is in conflict with a prior design which has been made available to the public after the date of filing of the application or, if a priority is claimed, the date of priority of the design, and which is protected from a date prior to the said date by a registered design or an application for a design;
- (d) if a distinctive sign is used in a subsequent design, and the law of the Party concerned governing that sign confers to the right holder of the sign, the right to prohibit such use;
- (e) if the design constitutes an unauthorised use of a work protected under the copyright law of the Party concerned;
- (f) if the design constitutes an improper use of any of the items listed in Article 6ter of the Paris Convention or of badges, emblems and escutcheons other than those covered by said Article 6ter and which are of particular public interest in a Party;
- (g) if the disclosure of the industrial design is contrary to public order or morality.

2. A Party may provide, as an alternative to the invalidity, that a design subject to the grounds provided for in paragraph 1 may be limited in its use.

ARTICLE 257: RELATIONSHIP TO COPYRIGHT

A design protected by a design right, registered in a Party in accordance with this Section, may also be eligible for protection under the law of copyright of that Party as from the date on which the design was created or fixed in any form.

Section E: Patents

ARTICLE 258: INTERNATIONAL AGREEMENTS

1. The Parties shall comply with the Budapest Treaty on the International Recognition of the Deposit of Micro-Organisms for the Purposes of Patent Procedure (1977, amended in 1980).
2. The European Union shall make reasonable efforts to comply with the Patent Law Treaty (Geneva, 2000); and the Republics of the CA Party shall make reasonable efforts to ratify or accede the above mentioned Treaty.

Section F: Plant Varieties

ARTICLE 259: PLANT VARIETIES

1. The Parties shall provide for the protection of plant varieties either by patents or by an effective *sui generis* system or by any combination thereof.
2. The Parties understand that no contradiction exists between the protection of plant varieties and the capacity of a Party to protect and conserve its genetic resources.
3. The Parties shall have the right to provide for exceptions to exclusive rights granted to plant breeders to allow farmers to save, use and exchange protected farm-saved seed or propagating material.

CHAPTER 3 ENFORCEMENT OF INTELLECTUAL PROPERTY RIGHTS

ARTICLE 260: GENERAL OBLIGATIONS

1. The Parties reaffirm their rights and commitments under the TRIPS Agreement and in particular of its Part III, and shall provide for the following complementary measures, procedures and remedies necessary to ensure the enforcement of the intellectual property rights.

Those measures, procedures and remedies shall be fair, proportionate and equitable, and shall not be unnecessarily complicated or costly, or entail unreasonable time-limits or unwarranted delays.³⁹

³⁹ For the purposes of Article 260 to 272 the notion of "intellectual property rights" shall at least cover the following rights: copyright, including copyright in computer programs and databases, and related rights; rights related to patents; trademarks; industrial designs; lay-out-designs (topographies) of integrated circuits; geographical indications; plant varieties; trade names in so far as these are protected as exclusive rights in the domestic law concerned.

2. Those measures and remedies shall also be effective and dissuasive and shall be applied in such a manner as to avoid the creation of barriers to legitimate trade and to provide for safeguards against their abuse.

ARTICLE 261: ENTITLED APPLICANTS

The Parties shall recognise as persons entitled to seek application of the measures, procedures and remedies referred to in this Section and in Part III of the TRIPS Agreement:

- (a) the holders of intellectual property rights in accordance with the provisions of the applicable law; and
- (b) federations and associations as well as exclusive licensees and other duly authorised licensees, insofar as permitted by and in accordance with the provision of applicable law. The term “licensee” shall include the licensee of any one or more of the exclusive intellectual property rights encompassed in a given intellectual property.

ARTICLE 262: EVIDENCE

The Parties shall take such measures as are necessary, where a right holder has presented reasonably available evidence to support its claim that his intellectual property right has been infringed on a commercial scale and has specified evidence relevant to the substantiation of its claims which lies in the control of the opposing party, to enable the competent judicial authorities to order, where appropriate and, if so foreseen by the applicable law, following an application, that the opposing party must produce such evidence, subject to the protection of confidential information.

ARTICLE 263: MEASURES FOR PRESERVING EVIDENCE

The judicial authorities shall have the authority, on application by a party who has presented reasonably available evidence to support its claim that its intellectual property right has been or is about to be infringed, to order prompt and effective provisional measures to preserve relevant evidence in regard to the alleged infringement, subject to the protection of confidential information. Such measures may include the detailed description, with or without the taking of samples, or the physical seizure of the infringing goods, and, in appropriate cases, the materials and implements used in the production and/or distribution of these goods and the documents relating thereto. Those measures may be taken, if necessary, without the other party being heard, in particular where any delay is likely to cause irreparable harm to the right holder or where there is a demonstrable risk of evidence being destroyed.

ARTICLE 264: RIGHT OF INFORMATION

The Parties may provide that the judicial authorities shall have the authority, unless this would be out of proportion to the seriousness of the infringement, to order the infringer

to inform the right holder of the identity of third persons involved in the production and distribution of the infringing goods or services and of their channels of distribution.

ARTICLE 265: PROVISIONAL AND PRECAUTIONARY MEASURES

1. Each Party shall foresee that its judicial authorities have the authority to issue provisional and precautionary measures and execute them expeditiously to prevent imminent infringements of intellectual property rights or to forbid the continuation of alleged infringements. Such measures may be ordered at the request of the right-holder, *inaudita altera parte* or after hearing the defendant, in accordance with the judicial procedural rules of each Party.

2. Each Party shall provide that its judicial authorities have the authority to require the plaintiff to provide any reasonably available evidence in order to satisfy themselves with a sufficient degree of certainty that the plaintiff's right is being infringed or that such infringement is imminent, and to order the plaintiff to provide a reasonable security or equivalent assurance set at a level sufficient to protect the defendant and to prevent abuse, and so as not to unreasonably deter recourse to such procedures.

ARTICLE 266: CORRECTIVE MEASURES

1. Each Party shall provide that:

- (a) its judicial authorities have the authority to order, at the request of the applicant and without prejudice to any damages due to the right holder by reason of the infringement, the destruction of the goods that have been found to be pirated or counterfeit, or other appropriate measures to definitively remove those goods from the channels of commerce;
- (b) its judicial authorities have the authority to order in appropriate cases that materials and implements that have been principally used in the manufacture or creation of such pirated or counterfeit goods be, without compensation of any sort, destroyed or, in exceptional circumstances, disposed of outside the channels of commerce, in such a manner as to minimize the risks of further infringements. In considering requests for such corrective measures, the Party's judicial authorities may take into account, *inter alia*, the gravity of the infringement, as well as the interests of third parties holding ownership, possessory, contractual, or secured interests.

2. Each Party may provide that the charitable donation of counterfeit trademark goods and goods that infringe copyright and related rights, if domestic legislation so permits, shall not be ordered by the judicial authorities without the authorisation of the right holder or that such goods may be donated to charity only under certain conditions that may be established according to domestic legislation. In no case shall the simple removal of the trademark unlawfully affixed be sufficient to permit the release of goods into the channels of commerce, except in cases established in domestic legislation and other international obligations.

3. In considering requests for corrective measures, the Parties may grant their judicial authorities the faculty to take into account, *inter alia*, the gravity of the infringement, as well as the interests of third parties holding ownership, possessory, contractual, or secured interests.

4. The judicial authorities shall order that those measures be carried out at the expense of the infringer, except in exceptional circumstances.

5. According to domestic legislation, the Parties may provide for other corrective measures in relation to goods that have been found to be pirated or counterfeit, and with regard to materials and implements principally used in the creation or manufacture of those goods.

ARTICLE 267: DAMAGES

The judicial authorities shall have the authority to order the infringer to pay the right holder damages adequate to compensate for the injury the right holder has suffered because of an infringement of that person's intellectual property right by an infringer who knowingly, or with reasonable grounds to know, engaged in infringing activity. In appropriate cases, the Parties may authorise the judicial authorities to order recovery of profits and/or payment of pre-established damages, even where the infringer did not knowingly, or with reasonable grounds to know, engage in infringing activity.

ARTICLE 268: LEGAL COSTS

The Parties shall ensure that reasonable and proportionate legal costs and other expenses incurred by the successful party shall, as a general rule, be borne by the unsuccessful party unless equity does not allow this, in accordance with domestic legislation.

ARTICLE 269: PUBLICATION OF JUDICIAL DECISIONS

The Parties may provide that, in legal proceedings instituted for infringement of an intellectual property right, the judicial authorities may order, at the request of the applicant and at the expense of the infringer, appropriate measures for the dissemination of the information concerning the decision, including displaying the decision and publishing it in full or in part. The Parties may provide for other additional publicity measures which are appropriate to the particular circumstances, including prominent advertising.

ARTICLE 270: PRESUMPTION OF OWNERSHIP

For the purposes of applying the measures, procedures and remedies provided for under this Title, it shall be sufficient for the right holders of copyrights or related rights with regard to their protected subject matter, in the absence of proof to the contrary, for their name to appear on the work in the usual manner to be regarded as such and consequently to be entitled to institute infringement proceedings.

ARTICLE 271: CRIMINAL SANCTIONS

The Parties shall provide for criminal procedures and penalties to be applied at least in cases of wilful trademark counterfeiting or copyright piracy on a commercial scale. Remedies available shall include imprisonment and/or monetary fines sufficient to provide a deterrent, consistently with the level of penalties applied for crimes of a corresponding gravity. In appropriate cases, remedies available shall also include the seizure, forfeiture and destruction of the infringing goods and of any materials and implements the predominant use of which has been in the commission of the offence. The Parties may provide for criminal procedures and penalties to be applied in other cases of infringement of intellectual property rights, in particular where they are committed wilfully and on a commercial scale.

ARTICLE 272: LIMITATIONS ON LIABILITY FOR SERVICE PROVIDERS

The Parties agree that they will maintain the type of limitations of responsibility of service providers they currently foresee in their respective legislation, namely:

- (a) for the EU Party: those foreseen in Directive 2000/31/EC on electronic commerce;
- (b) for the Republics of the CA Party: those adopted domestically in order to comply with their international obligations.

A Party may delay giving effect to the provisions of this Article for a period of no longer than three years, beginning on the date of entry into force of this Agreement.

ARTICLE 273: BORDER MEASURES

1. The Parties recognise the importance of co-ordination on customs matters, and therefore engage to promote the application of customs enforcement in relation to counterfeit trademark and pirated copyright goods, specifically through the exchange of information and co-ordination between the customs administrations of the Parties.

2. The Parties shall, unless otherwise provided for in this Chapter, adopt procedures to enable a right holder, who has valid grounds for suspecting that the importation, exportation, re-exportation, entry or exit of the customs territory, placement under a suspensive procedure or placement under a free zone or a free warehouse of goods infringing trademarks, or copyrights may take place, to lodge an application in writing before the competent administrative or judicial authorities, for the suspension by the customs authorities of the release into free circulation or the retain of such goods. It is understood that there shall be no obligation to apply such procedures to imports of goods put on the market in another country by or with the consent of the right holder.

3. Any rights or duties established in Section 4 of the TRIPS Agreement concerning the importer shall be also applicable to the exporter or to the holder of the goods.

4. Each Party shall provide that its competent authorities may initiate border measures *ex officio* in the cases of import, export and transit.

CHAPTER 4 INSTITUTIONAL PROVISIONS

ARTICLE 274: SUB-COMMITTEE ON INTELLECTUAL PROPERTY

1. The Parties hereby establish a Sub-Committee on Intellectual Property, in accordance with Article 348 and as set out in Annex XXI (Sub-Committees), in order to follow-up on the implementation of Article 231 and Section C (Geographical Indications) of Chapter 2 of this Title.

2. The functions of the Sub-Committee shall include:

- (a) recommending to the Association Committee for approval by the Association Council, the modification of the list of geographical indications to Annex XVIII (Protected Geographical Indications);
- (b) exchanging information on geographical indications for the purpose of considering their protection in accordance with this Agreement, as well as on geographical indications which cease to be protected in their country of origin;
- (c) promoting technology transfer from the EU Party to the Republics of the CA Party;
- (d) defining the priority areas in which initiatives shall be directed in the areas of technology transfer, research and development and the build-up of human capital;
- (e) keeping an inventory or a registry of the programs, activities or initiatives in progress, in the field of intellectual property, with emphasis on transfer of technology;
- (f) make any relevant recommendations to the Association Committee with regard to matters of their competence; and
- (g) any other issue instructed by the Association Committee.

ARTICLE 275: CO-OPERATION AND TECHNICAL ASSISTANCE ON INTELLECTUAL PROPERTY

The Parties agree that it is in their common interest to promote mutual co-operation and technical assistance initiatives on issues related to this Title. In this sense, the Parties have identified a number of co-operation activities which are set out in Article 55 of Title VI (Economic and Trade Development) of Part III of this Agreement.

ARTICLE 276: FINAL PROVISIONS

1. Panama may delay giving effect to the provisions of Articles 233 (c) and (d); 234; 238 (b); 240; 252, paragraphs 1 and 2; 255, paragraph 2; 256; 258, paragraph 1; 259; 266, paragraph 4 and 271, for a period no longer than two years, beginning on the date of entry into force of this Agreement.
2. Panama shall adhere to the Patent Cooperation Treaty (Washington 1970, last modified in 2001) within a period no longer than two years, beginning on the date of entry into force of this Agreement.

TITLE VII

TRADE AND COMPETITION

ARTICLE 277: DEFINITIONS

For the purpose of this Title:

1. “Competition laws” means:

- (a) for the EU Party, Articles 101, 102, and 106 of the Treaty on the Functioning of the European Union, Council Regulation (EC) No. 139/2004 on the control of concentrations between undertakings, and their Implementing Regulations and Amendments;
- (b) for the CA Party, the Central American Competition Regulation (hereinafter referred to as “the Regulation”) which shall be established according to Article 25 of the *Protocolo al Tratado General de Integración Económica Centroamericana (Protocolo de Guatemala)* and Article 21 of the *Convenio Marco para el Establecimiento de la Unión Aduanera Centroamericana* (Guatemala, 2007);
- (c) until such time as the Regulation is adopted in conformity with Article 279, “competition laws” means the national competition laws of each of the Republics of the CA Party adopted or maintained in compliance with Article 279; and
- (d) any changes that the abovementioned instruments may undergo after the entry into force of this Agreement.

2. “Competition authority” means:

- (a) for the EU Party, the European Commission;
- (b) for the CA Party, a Central American Competition Body to be established and designed by the CA Party in its Competition Regulation; and
- (c) until such time as the Central American Competition Body is established and becomes operational in compliance with Article 279, “competition authority” means the national competition authorities of each of the Republics of the CA Party.

ARTICLE 278: PRINCIPLES

1. The Parties recognise the importance of free and undistorted competition in their trade relations. The Parties acknowledge that anti-competitive practices have the potential to affect the proper functioning of markets and the benefits of trade liberalisation.

2. The Parties therefore agree that the following are incompatible with this Agreement, in so far as they may affect trade between the Parties:

- (a) agreements between undertakings, decisions by associations of undertakings and concerted practices between undertakings, which have as their object or effect the prevention, restriction or distortion of competition⁴⁰ as specified in their respective competition laws;
- (b) any abuse by one or more undertakings of a dominant position or a substantial market power or notable market participation, as specified in their respective competition laws; and
- (c) concentrations between undertakings, which significantly impede effective competition, as specified in their respective competition laws.

ARTICLE 279: IMPLEMENTATION

1. The Parties shall adopt or maintain in force comprehensive competition laws which effectively address the anti-competitive practices referred to in Article 278, paragraph 2 (a) to (c). The Parties shall establish or maintain Competition Authorities designated and appropriately equipped for the transparent and effective implementation of the competition laws.

2. If, at the moment of entry into force of this Agreement, either Party has not yet adopted competition laws as referred to in Article 277, paragraph 1 (a) or (b) nor designated a competition authority as referred to in Article 277, paragraph 2 (a) or (b), it shall do so within a period of seven years. When this transition period has come to an end, the terms competition laws and competition authority referred to in this Title shall only mean those defined in Article 277, paragraph 1 (a) and 277, paragraph 1 (b) and Article 277, paragraph 2 (a) and 277, paragraph 2 (b).

3. If, at the moment of entry into force of this Agreement, a Republic of the CA Party has not yet adopted a competition law as referred to in Article 277, paragraph 1 (c) nor designated a competition authority as referred to in Article 277, paragraph 2 (c), it shall do so within a period of three years.

4. Nothing in this Title shall prejudice the competences assigned by the Parties to their respective regional and national authorities for the effective and coherent implementation of their respective competition laws.

⁴⁰ For greater certainty, this paragraph shall not be construed as limiting the scope of the analysis to be carried out in the cases of application of agreements between undertakings, decision by associations of undertaking and concerted practices between undertakings as established in the national competition laws of the Parties.

ARTICLE 280: PUBLIC ENTERPRISES AND ENTERPRISES ENTRUSTED WITH SPECIAL OR EXCLUSIVE RIGHTS INCLUDING DESIGNATED MONOPOLIES

1. Nothing in this Title prevents a Republic of the CA Party or a Member State of the European Union from designating or maintaining public enterprises, enterprises entrusted with special or exclusive rights or monopolies according to their respective national laws.
2. The entities mentioned in paragraph 1 above shall be subject to competition laws insofar as the application of competition laws does not obstruct the performance, in law or in fact, of the particular tasks assigned to them by a Republic of the CA Party or by a Member State of the EU Party, accordingly.
3. The Parties shall ensure that from the date of entry into force of this Agreement no discrimination⁴¹ is exercised by such entities regarding the conditions under which goods or services are purchased or sold, neither between natural or legal persons of either of the Parties, nor between goods originating from either of the Parties.
4. Nothing in this Title shall affect the rights and obligations of the Parties as set out under Title V (Government Procurement) of Part IV of this Agreement.

ARTICLE 281: EXCHANGE OF NON CONFIDENTIAL INFORMATION AND ENFORCEMENT CO-OPERATION

1. With a view to facilitating the effective application of their respective competition laws, the competition authorities may exchange non-confidential information.
2. The competition authority of one Party may request co-operation to the other Party's competition authority with respect to enforcement activities. This co-operation shall not prevent the Parties from taking autonomous decisions.
3. Neither Party is required to communicate information to the other Party. In case a Party decides to communicate information, such Party may withhold the information if communication of such information is prohibited by the laws and regulations of the Party possessing the information or if it would be incompatible with its interests. A Party may require that information communicated pursuant to this Article be used subject to the terms and conditions it may specify.

ARTICLE 282: TECHNICAL ASSISTANCE

The Parties agree that it is in their common interest to promote technical assistance initiatives related to competition policy and law enforcement activities. This co-operation is addressed in Article 52 of Title VI (Economic and Trade Development) of Part III of this Agreement.

⁴¹ Discrimination means a measure which does not comply with national treatment, as set out in the relevant provisions of this Agreement.

ARTICLE 283: DISPUTE SETTLEMENT

The Parties shall not have recourse to dispute settlement procedures under Title X (Dispute Settlement) of Part IV of this Agreement for matters arising under this Title.

TITLE VIII

TRADE AND SUSTAINABLE DEVELOPMENT

ARTICLE 284: CONTEXT AND OBJECTIVES

1. The Parties recall Agenda 21 on Environment and Development of 1992, the Johannesburg Plan of Implementation on Sustainable Development of 2002 and the 2006 Ministerial Declaration of the UN Economic and Social Council on Full Employment and Decent Work. The Parties reaffirm their commitment to promoting the development of international trade in such a way as to contribute to the objective of sustainable development and to ensuring that this objective is integrated and reflected at every level of their trade relationship. To this end, the Parties recognise the importance of taking into account the economic, social and environmental best interests of not only their respective populations but also of future generations.
2. The Parties reaffirm their commitment to achieving sustainable development, whose pillars – economic development, social development and environmental protection – are interdependent and mutually reinforcing. The Parties underline the benefit of considering trade related social and environmental issues as part of a global approach to trade and sustainable development.
3. The Parties agree that this Title embodies a co-operative approach based on common values and interests, taking into account the differences in their levels of development and the respect of their current and future needs and aspirations.
4. The Parties shall not have recourse to dispute settlement procedures under Title X (Dispute Settlement) of Part IV of this Agreement and to the Mediation Mechanism for Non-Tariff Measures under Title XI of Part IV of this Agreement for matters arising under this Title.

ARTICLE 285: RIGHT TO REGULATE AND LEVELS OF PROTECTION

1. The Parties reaffirm the respect for their respective Constitutions⁴² and for their rights there under to regulate in order to set their own sustainable development priorities, to establish their own levels of domestic environmental and social protection, and to adopt or modify accordingly their relevant laws and policies.
2. Each Party shall strive to ensure that its laws and policies provide for and encourage high levels of environmental and labour protection, appropriate to its social, environmental and economic conditions and consistent with the internationally recognised standards and agreements referred to in Articles 286 and 287 to which it is a party, and shall strive to

⁴² For the EU Party, this refers to the Constitutions of the Member States of the European Union, to the Treaty on the European Union, to the Treaty on the Functioning of the European Union and to the Charter of Fundamental Rights of the European Union.

improve those laws and policies, provided that they are not applied in a manner that would constitute a means of arbitrary or unjustifiable discrimination between the Parties or a disguised restriction on international trade.

ARTICLE 286: MULTILATERAL LABOUR STANDARDS AND AGREEMENTS

1. Recalling the 2006 Ministerial Declaration of the UN Economic and Social Council on Full Employment and Decent Work, the Parties recognise that full and productive employment and decent work for all, which encompass social protection, fundamental principles and rights at work and social dialogue, are key elements of sustainable development for all countries, and therefore a priority objective of international co-operation. In this context, the Parties reaffirm their will to promote the development of macroeconomic policies in a way that is conducive to full and productive employment and decent work for all, including men, women and young people, with full respect for fundamental principles and rights at work under conditions of equity, equality, security and dignity.

The Parties, in accordance with their obligations as members of the ILO, reaffirm their commitments to respect, promote, and realise in good faith and in accordance with the ILO Constitution, the principles concerning the fundamental rights which are the subject of the fundamental ILO Conventions, namely:

- (a) the freedom of association and the effective recognition of the right to collective bargaining;
- (b) the elimination of all forms of forced or compulsory labour;
- (c) the effective abolition of child labour; and
- (d) the elimination of discrimination in respect of employment and occupation.

2. The Parties reaffirm their commitment to effectively implement in their laws and practice the fundamental ILO Conventions contained in the ILO Declaration of Fundamental Principles and Rights at Work of 1998, which are the following:

- (a) Convention 138 concerning Minimum Age for Admission to Employment;
- (b) Convention 182 concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour;
- (c) Convention 105 concerning the Abolition of Forced Labour;
- (d) Convention 29 concerning Forced or Compulsory Labour;
- (e) Convention 100 concerning Equal Remuneration for Men and Women Workers for Work of Equal Value;

- (f) Convention 111 concerning Discrimination in Respect of Employment and Occupation;
 - (g) Convention 87 concerning Freedom of Association and Protection of the Right to Organise; and
 - (h) Convention 98 concerning the Application of the Principles of the Right to Organise and to Bargain Collectively.
3. The Parties will exchange information on their respective situation and advancements as regards the ratification of the other ILO Conventions.
4. The Parties stress that labour standards should never be invoked or otherwise used for protectionist trade purposes and that the comparative advantage of any Party should not be questioned.
5. The Parties commit to consult and co-operate as appropriate, on trade-related labour issues of mutual interest.

ARTICLE 287: MULTILATERAL ENVIRONMENTAL STANDARDS AND AGREEMENTS

1. The Parties recognise that international environmental governance and agreements are important elements to address global or regional environmental problems and stress the need to enhance the mutual supportiveness between trade and environment. The Parties commit to consult and co-operate as appropriate on trade-related environmental issues of mutual interest.
2. The Parties reaffirm their commitment to effectively implement in their laws and practice the multilateral environmental agreements to which they are parties including:
- (a) the Montreal Protocol on Substances that Deplete the Ozone Layer;
 - (b) the Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal;
 - (c) the Stockholm Convention on Persistent Organic Pollutants;
 - (d) the Convention on International Trade in Endangered Species of Wild Fauna and Flora (hereinafter referred to as “CITES”);
 - (e) the Convention on Biological Diversity;
 - (f) the Cartagena Protocol on Biosafety to the Convention on Biological Diversity; and

- (g) the Kyoto Protocol to the United Nations Framework Convention on Climate Change.⁴³

3. The Parties undertake to ensure that they have ratified by the date of entry into force of this Agreement, the Amendment to Article XXI of CITES, adopted at Gaborone (Botswana), on 30 April, 1983.

4. The Parties also undertake, to the extent they have not yet done so, to ratify and effectively implement, at the latest by the date of entry into force of this Agreement, the Rotterdam Convention on the Prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides in International Trade.

5. Nothing in this Agreement shall be construed to prevent the adoption or enforcement by any Party of measures to implement the agreements referred to in this Article, provided that such measures are not applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination between countries where the same conditions prevail, or a disguised restriction on international trade.

ARTICLE 288: TRADE FAVOURING SUSTAINABLE DEVELOPMENT

1. The Parties reconfirm that trade should promote sustainable development in all its dimensions. In this context, they recognise the value of international co-operation in support of efforts to develop trade schemes and trade practices favouring sustainable development, and they agree to work together in the framework of Articles 288, 289 and 290 with the aim of developing collaborative approaches, as appropriate.

2. The Parties shall endeavour to:

- (a) consider those situations in which the elimination or the reduction of obstacles to trade would benefit trade and sustainable development, taking into account, in particular, the interactions between environmental measures and market access;
- (b) facilitate and promote trade and foreign direct investment in environmental technologies and services, renewable-energy and energy-efficient products and services, including through addressing related non-tariff barriers;
- (c) facilitate and promote trade in products that respond to sustainability considerations, including products that are the subject of schemes such as fair and ethical trade schemes, eco-labelling, organic production, and including those schemes involving corporate social responsibility and accountability; and

⁴³ For greater certainty, the reference to the multilateral environmental agreements in Article 287, paragraph 2, shall encompass those protocols, amendments, annexes and adjustments ratified by the Parties.

- (d) facilitate and promote the development of practices and programmes aiming at fostering appropriate economic returns from the conservation and sustainable use of the environment, such as ecotourism.

ARTICLE 289: TRADE IN FOREST PRODUCTS

In order to promote the sustainable management of forest resources, the Parties commit to work together to improve forest law enforcement and governance and to promote trade in legal and sustainable forest products through instruments that may include, *inter alia*: effective use of CITES with regard to endangered timber species; certification schemes for sustainably harvested forest products; regional or bilateral Forest Law Enforcement Governance and Trade (“FLEGT”) Voluntary Partnership Agreements.

ARTICLE 290: TRADE IN FISH PRODUCTS

1. The Parties recognise the need to promote sustainable fisheries so as to contribute to the conservation of fish stocks and to the sustainable trade of fishery resources.

2. To this end, the Parties undertake to:

- (a) adhere to and effectively implement the principles of the Agreement for the Implementation of the Provisions of the United Nations Convention on the Law of the Sea of 10 December, 1982 relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks, in relation to: sustainable use, conservation and management of straddling fish stocks and highly migratory fish species; international co-operation between States; support of scientific advice and research; implementation of effective monitoring, control and inspection measures; and the duties of the flag and port States, including compliance and enforcement;
- (b) co-operate, including with and within the relevant Regional Fisheries Management Organisations, in order to prevent Illegal, Unreported and Unregulated (“IUU”) fishing, including by adopting effective tools to implement control and inspection schemes to ensure full compliance with conservation measures;
- (c) exchange scientific and non-confidential trade data, to exchange experiences and best practices in the field of sustainable fisheries and, more generally, to promote a sustainable approach to fisheries.

3. The Parties, to the extent they have not yet done so, agree to adopt port state measures in line with the United Nations Food and Agriculture Organisation Agreement on Port State Measures to Prevent, Deter And Eliminate Illegal, Unreported And Unregulated Fishing, to implement control and inspection schemes, as well as incentives and obligations for a sound, sustainable management of fisheries and coastal environments in the long term.

ARTICLE 291: UPHOLDING LEVELS OF PROTECTION

1. The Parties recognise that it is inappropriate to encourage trade or investment by lowering the levels of protection afforded in domestic environmental and labour laws.
2. A Party shall not waive or derogate from, or offer to waive or offer to derogate from, its labour or environmental legislation in a manner affecting trade or as an encouragement for the establishment, acquisition, expansion or retention of an investment or an investor in its territory.
3. A Party shall not fail to effectively enforce its labour and environmental legislation in a manner affecting trade or investment between the Parties.
4. Nothing in this Title shall be construed to empower a Party's authorities to undertake law enforcement activities in the territory of the other Party.

ARTICLE 292: SCIENTIFIC INFORMATION

The Parties recognise the importance, when preparing and implementing measures aimed at protecting the environment or health and safety at work, of taking account of scientific and technical information, and relevant international standards, guidelines or recommendations, while acknowledging that when there are threats of serious or irreversible damage, the lack of full scientific certainty should not be used as reason for postponing protective measures.

ARTICLE 293: SUSTAINABILITY REVIEW

The Parties commit to jointly reviewing, monitoring and assessing the contribution of Part IV of this Agreement, including co-operation activities under Article 302, to sustainable development.

ARTICLE 294: INSTITUTIONAL AND MONITORING MECHANISM

1. Each Party shall designate an office within its administration to serve as Contact Point for the purpose of implementing trade-related aspects of sustainable development. At the entry into force of this Agreement, the Parties shall submit to the Association Committee full contact information for their Contact Points.
2. The Parties hereby establish a Board on Trade and Sustainable Development⁴⁴, which shall comprise high level authorities from within the administrations of each Party. Prior to each meeting of the Board the Parties will inform each other of the identity and contact information of their respective representatives.

⁴⁴ The Board on Trade and Sustainable Development shall report on its activities to the Association Committee.

3. The Board on Trade and Sustainable Development shall meet within the first year after the date this Agreement enters into force, and thereafter as necessary, to oversee the implementation of this Title, including cooperative activities undertaken under Title VI (Economic and Trade Development) of Part III of this Agreement. The decisions and recommendations of the Board shall be adopted by mutual agreement between the Parties and shall be provided to the public, unless the Board decides otherwise.

4. Each Party shall convene new or consult existing Advisory Groups on trade and sustainable development.⁴⁵ These groups shall be tasked with expressing views and making recommendations on trade-related aspects of sustainable development and advising the Parties on how to better achieve the objectives of this Title.

5. The Advisory Groups of the Parties shall comprise independent representative organisations, in a balanced representation of economic, social and environmental stakeholders including, among others, employers and workers organisations, business associations, non-governmental organisations and local public authorities.

ARTICLE 295: CIVIL SOCIETY DIALOGUE FORUM

1. The Parties agree to organise and facilitate a bi-regional Civil Society Dialogue Forum for open dialogue, with a balanced representation of environmental, economic and social stakeholders. The Civil Society Dialogue Forum shall conduct dialogue encompassing sustainable development aspects of trade relations between the Parties, as well as how co-operation may contribute to achieve the objectives of this Title. The Civil Society Dialogue Forum will meet once a year, unless otherwise agreed by the Parties.⁴⁶

2. Unless the Parties agree otherwise, each meeting of the Board will include a session in which its members shall report on the implementation of this Title to the Civil Society Dialogue Forum. In turn, the Civil Society Dialogue Forum may express its views and opinions in order to promote dialogue on how to better achieve the objectives of this Title.

ARTICLE 296: GOVERNMENT CONSULTATIONS

1. A Party may request consultations with another Party regarding any matter of mutual interest arising under this Title, by delivering a written request to the Contact Point of the other Party. In order to enable the Party receiving the request to respond, the request shall contain information that is specific enough to present the matter clearly and factually, by identifying the problem at issue and by providing a brief summary of the claims under this Title. Consultations shall commence promptly after a Party delivers a request for consultations.

⁴⁵ In the exercise of the right of the Parties to use existing advisory groups for the implementation of the provisions of this Title, the Parties shall offer existing bodies the opportunity to reinforce and develop their activities with the new perspectives and areas of work provided by this Title. To this end, the Parties may use existing national advisory groups.

⁴⁶ For greater certainty, policy making and other such typical government functions shall not be delegated to the Civil Society Dialogue Forum.

2. The consulting Parties shall make every attempt to arrive at a mutually satisfactory solution of the matter, taking into account the information exchanged by the consulting Parties and opportunities for co-operation on the matter. During consultations, special attention should be given to the particular problems and interests of developing country Parties. The consulting Parties shall take into account the activities of the ILO or relevant multilateral environmental organisations or bodies to which they are parties. Where relevant, the consulting Parties may, by mutual agreement, seek advice or assistance from those organisations and bodies, or from any person or body they deem appropriate in order to fully examine the matter at issue.

3. If ninety days after the request of consultations, a consulting Party deems that the matter needs further discussion, and unless the consulting Parties agree otherwise, the matter shall be referred for consideration to the Board on Trade and Sustainable Development by delivering a written request to the Contact Points of the other Parties. The Board on Trade and Sustainable Development shall convene promptly in order to assist in reaching a mutually satisfactory solution. If it deems necessary, the Board on Trade and Sustainable Development may seek expert assistance in the matter of interest, with the objective of facilitating its analysis.

4. Any solution reached by the consulting Parties on the matter shall be made public unless the Board on Trade and Sustainable Development otherwise decides.

ARTICLE 297: PANEL OF EXPERTS

1. Unless the consulting Parties agree otherwise, a consulting Party may, after sixty days of the referral of a matter to the Board on Trade and Sustainable Development or, if the matter is not referred to the Board, after ninety days of the delivery of a request for consultation under Article 296, paragraphs 1 and 3 respectively, request that a Panel of Experts be convened to examine a matter that has not been satisfactorily addressed through government consultations. The Parties to the procedure can make submissions to the Panel of Experts.

2. At the entry into force of this Agreement, the Parties shall submit to the Association Committee for endorsement by the Council at its first meeting, a list of seventeen persons with at least five individuals who are not nationals of any Party, with expertise in environmental law, international trade or the resolution of disputes arising under international agreements; and a list of seventeen persons, with at least five individuals who are not nationals of any Party, with expertise in labour law, international trade or the resolution of disputes arising under international agreements. The experts who are not nationals of any Party would be available to serve as Chair of the Panel of Experts. The experts shall be (i) independent of, and not affiliated with or take instructions from, either Party or organisations represented in the Advisory Group(s); and (ii) chosen on the basis of objectivity, reliability and sound judgment.

3. The Parties shall agree on replacements of experts who are no longer available to serve in panels, and they may otherwise agree to modify the list as and when they consider it necessary.

ARTICLE 298: COMPOSITION OF THE PANEL OF EXPERTS

1. The Panel of Experts shall comprise three experts.
2. The Chairperson shall not be a national of any Party.
3. Each Party to the procedure shall select one expert from the list of experts within thirty days of the receipt of the request for the establishment of a Panel of Experts. If one Party fails to select its expert within such period, the other Party to the procedure shall select from the list of experts a national of the Party to the procedure that has failed to select an expert. The two selected experts shall select the Chairperson by agreement or by lot, from among the experts who are not nationals of any Party.
4. Individuals may not serve as experts with respect to a matter in which they, or an organisation to which they are affiliated, has a direct or indirect conflict of interests. Upon selection to serve as experts on a given matter, each expert is expected to disclose the existence or development of any interest, relationship or matter that that expert could reasonably be expected to know and that is likely to affect, or give rise to justifiable doubts as to that expert's independence or impartiality.
5. If either Party to the procedure believes that an expert is in violation of the requirements set forth in paragraph 4 of this Article, the Parties to the procedure shall promptly consult and, if they agree, the expert shall be removed and a new expert shall be selected in accordance with the procedures set out in paragraph 3 of this Article that were used to select the expert who was removed.
6. Unless otherwise agreed by the Parties to the procedure in accordance with paragraph 2 of Article 301, the Panel of Experts shall be established no later than sixty days of a Party's request.

ARTICLE 299: RULES OF PROCEDURE

1. The Panel of Experts shall elaborate a time table which shall ensure an opportunity for the Parties to the procedure to provide written submissions and relevant information.
2. The Panel of Experts and the Parties shall ensure the protection of confidential information in accordance with the principles in Title X (Dispute Settlement) of Part IV of this Agreement.
3. The terms of reference of the Panel of Experts shall be:

“to examine whether there is a failure by a Party to comply with the obligations set out under Articles 286, paragraph 2, 287, paragraphs 2, 3 and 4 and 291 of this Title, and to make non-binding recommendations for solution of the matter. In case of matters concerning the enforcement of legislation, the terms of reference of the Panel of Experts shall be to determine if there is a sustained or recurring failure by a Party to effectively implement its obligations.”

ARTICLE 300: INITIAL REPORT

1. The Panel of Experts shall use the submissions and arguments presented by the Parties to the procedure as a basis for its report. In the course of the procedure, the Parties shall have the opportunity to comment on documents or information that the Panel may consider relevant to its work.
2. Within one hundred and twenty days as of the date of establishment of the Panel of Experts, the Panel shall present to the Parties to the procedure an initial report including its recommendations. When the Panel considers that it cannot provide its report within one hundred and twenty days, it shall inform the Parties to the procedure in writing of the reasons for the delay and it shall give an estimate of the period within which it will provide its report.
3. The Panel's recommendations shall take into account the particular socio-economic situation of the Parties.
4. The Parties to the procedure may submit written comments to the Panel on its initial report within thirty days of its presentation.
5. After receiving any written comments, the Panel, on its own initiative or on the request of either Party to the procedure, may:
 - (a) where relevant, request the views of the Parties to the procedure on the written comments;
 - (b) reconsider its report; or
 - (c) make any further consideration that it considers appropriate.

The Panel's final report shall include a discussion of any arguments included in the Parties' written comments.

ARTICLE 301: FINAL REPORT

1. The Panel shall present to the Parties to the procedure and to the Board on Trade and Sustainable Development a final report no later than one hundred and eighty days of the date the Panel was established. The Parties shall release the final report to the public within fifteen days of its presentation.
2. The Parties to the procedure may, by mutual agreement, decide to extend the timeframes established in paragraph 1, as well as those in Articles 298, paragraph 6, and 300, paragraph 4.
3. The Parties to the procedure shall, taking into account the report and recommendations of the Panel of Experts, endeavour to discuss appropriate measures to be

implemented including, where appropriate, possible co-operation to support implementation of such measures. The Party to which the recommendations are addressed shall inform the Board on Trade and Sustainable Development as regards its intentions concerning the report and recommendations of the Panel of Experts including, where appropriate, by presenting an action plan. The Board on Trade and Sustainable Development shall monitor the implementation of the actions that the Party has determined.

ARTICLE 302: CO-OPERATION AND TECHNICAL ASSISTANCE ON TRADE AND SUSTAINABLE DEVELOPMENT

The co-operation and technical assistance measures related to this Title are established in Title VI (Economic and Trade Development) of Part III of this Agreement.

TITLE IX

REGIONAL ECONOMIC INTEGRATION

ARTICLE 303: GENERAL PROVISIONS

1. The Parties underline the importance of the region to region dimension and recognise the significance of regional economic integration in the context of this Agreement. They, accordingly, reaffirm their will to strengthen and deepen their respective regional economic integration processes, within the applicable frameworks.
2. The Parties recognise that regional economic integration in the areas of customs procedures, technical regulations and sanitary and phytosanitary measures are essential for the free circulation of goods within Central America and the EU Party.
3. Accordingly, and taking into account the different level of development of their respective regional economic integration processes, the Parties agree on the following provisions.

ARTICLE 304: CUSTOMS PROCEDURES

1. In the area of customs, no later than two years as from the entry into force of the Agreement, the custom authority of the Republic of the CA Party of first entry shall grant a reimbursement of the duty paid when such goods are exported into another Republic of the CA Party. Such goods shall be subject to the customs duty in the Republic of the CA Party of import.
2. The Parties shall endeavour to put into place a mechanism that will ensure that goods originating in Central America or in the European Union in accordance with Annex II (Concerning the Definition of the Concept of “Originating Products” and Methods of Administrative Co-operation) to this Agreement, entering their respective territory and having been cleared at customs of import, may no longer be subject to customs duties or charges having an equivalent effect or to quantitative restrictions or measures having an equivalent effect.
3. The Parties agree that their respective customs legislation and procedures shall provide for the use of a single administrative document or electronic equivalent in the EU Party and in the CA Party, respectively, for the purposes of establishing customs declarations at import and export. The CA Party commits to achieving this objective three years after the entry into force of the Agreement.
4. The Parties shall also ensure that customs legislation, procedures and customs related requirements at import applicable to goods originating in Central America or in the European Union are harmonised at regional level. The CA Party commits to achieving this objective at the latest five years after the entry into force of the Agreement.

ARTICLE 305: TECHNICAL BARRIERS TO TRADE

1. In the area of technical regulations and conformity assessment procedures:
 - (a) the Parties agree that the Member States of the European Union will ensure that products originating in Central America which have been legally placed on the market of one Member State of the European Union, can also be marketed in the other Member States of the European Union, provided that the product provides an equivalent level of protection of the various legitimate interests involved (principle of mutual recognition);
 - (b) in this respect, the Member States of the European Union will accept, provided that the product provides an equivalent level of protection of the various legitimate interests involved, that a product which has fulfilled the conformity assessment procedures required by one of the Member States of the European Union, can be placed on the market of the other Member States of the European Union, without having to undergo an additional conformity assessment procedure.
2. When harmonised regional import requirements exist, products originating in the European Union should comply with the regional requirements in order to be legally marketed in the Republic of the CA Party of first import. In accordance with this Agreement, where a product is covered by harmonised legislation and a registration has to be carried out, the registration made in one of the Republics of the CA Party should be accepted by all the other Republics of the CA Party, once the internal procedures have been fulfilled.
3. Furthermore, where registration is required, the Republics of the CA Party will accept that products should be registered by group or family of products.
4. The CA Party agrees to adopt, within five years of the entry into force of the Agreement, the regional technical regulations and conformity assessment procedures that are currently in preparation and listed in Annex XX (List of Central American Technical Regulations (RTCA) in the Process of Harmonisation) to this Agreement, and to continue work towards the harmonisation of technical regulations and conformity assessment procedures, and to promote the development of regional standards.
5. For products not yet harmonised in the CA Party and not included in Annex XX, the Association Committee will establish a work program to explore the possibility of including additional products in the future.

ARTICLE 306: SANITARY AND PHYTOSANITARY MEASURES

1. The aim of this Article is to:
 - (a) promote conditions to allow goods subjected to sanitary and phytosanitary measures to freely move within Central America and the EU Party;

- (b) promote the harmonisation and improvement of sanitary and phytosanitary requirements and procedures in the CA Party and the EU Party, including to achieve the use of a single import certificate, a single list of establishments, a single sanitary import check and a single fee for products imported from the EU Party into the CA Party;
- (c) endeavour to ensure the mutual recognition of the verifications carried out by the Republics of the CA Party in any Member State of the European Union.

2. The EU Party shall ensure that from the date of entry into force of this Agreement, animals, animal products, plants and plant products, lawfully put on the market, can freely move within the territory of the EU Party without checks at the internal borders, provided that they comply with the relevant sanitary and phytosanitary requirements.

3. The CA Party shall ensure that from the date of entry into force of this Agreement, animals, animal products, plants and plant products shall benefit from regional transit facilitation in the territories of the CA Party in accordance with Resolution No. 219-2007 (COMIECO-XLVII) and subsequent related instruments. For the purposes of this Title, in case of imports from the EU Party, regional transit facilitation means that EU Party's goods may enter through any CA Party's border inspection post and may transit through the region, from one Republic of the CA Party to another, complying with the sanitary and phytosanitary requirements of the Party of final destination, where a sanitary or phytosanitary inspection may be conducted.

4. Provided that they comply with the relevant sanitary and phytosanitary requirements and in accordance with the existing mechanisms in the Central American regional integration process, the CA Party undertakes to grant animals, animal products, plants and plant products listed in Annex XIX (List of Products referred to in Paragraph 4 of Article 306), the following treatment: when imported into the territory of a Republic of the CA Party, the Competent Authorities will check the certificate issued by the Competent Authority of the EU Party, and may perform a sanitary or phytosanitary inspection; once clearance is provided, a product included in Annex XIX may only be subject to a random sanitary or phytosanitary inspection at the point of entry of the Republic of the CA Party of final destination.

For products included in List 1 of Annex XIX, the above obligation will apply no later than two years after the entry into force of this Agreement.

For products included in List 2 of Annex XIX, the above obligation will apply no later than five years after the entry into force of this Agreement.

5. Without prejudice to the rights and obligations of the Parties (the EU Party or the Republics of the CA Party) under the WTO Agreement and the sanitary and phytosanitary procedures and requirements established by each Party, an importing Party should not be required to grant a more favourable treatment to products imported from the exporting Party than the treatment given by the exporting Party in its intra-regional trade.

6. The Association Council may modify Annex XIX (List of Products referred to in Paragraph 4 of Article 306) following recommendations by the Sub-Committee on Sanitary and Phytosanitary Matters to the Association Committee, in line with the procedure established in Title XIII (Specific Tasks in Trade Matters of the Bodies Established under this Agreement) of Part IV of this Agreement.

7. The Sub-Committee mentioned in paragraph 6 shall closely monitor the implementation of this Article.

ARTICLE 307: IMPLEMENTATION

1. The Parties recognise the importance of increased co-operation to achieve the objectives of this Title and to address this issue through the mechanisms foreseen in Title VI (Economic and Trade Development) of Part III of this Agreement.

2. The Parties undertake to consult on issues related to this Title with the view to ensuring the effective implementation of the region to region dimension of this Agreement and the objectives of regional economic integration.

3. The progress of the CA Party in the implementation of this Title shall be subject to regular progress reports and working programs by the CA Party covering Articles 304, 305 and 306. The progress reports and working programs shall be presented in writing and shall set out all steps taken towards implementation of obligations and objectives defined in paragraphs 1, 3 and 4 of Article 304, paragraphs 2, 3 and 4 of Article 305 and paragraphs 3 and 4 of Article 306, as well as the steps envisaged for the period prior to the next progress report. Progress reports and working programs shall be submitted every year until the commitments specified in this paragraph are effectively complied with.

4. The Parties will consider the inclusion of further areas to this Title five years after the entry into force of the Agreement.

5. The commitments on regional integration assumed by the CA Party under this Title are not subject to dispute settlement procedures under Title X (Dispute Settlement) of Part IV of this Agreement.

TITLE X

DISPUTE SETTLEMENT

CHAPTER 1 OBJECTIVE AND SCOPE

ARTICLE 308: OBJECTIVE

The objective of this Title is to avoid and settle any dispute between the Parties concerning the interpretation or application of Part IV of this Agreement, and that the Parties, where possible, arrive at a mutually satisfactory solution.

ARTICLE 309: SCOPE

1. The provisions of this Title shall apply with respect to any dispute concerning the interpretation or application of Part IV of this Agreement, except as otherwise expressly provided.
2. This Title shall not apply to any dispute between the Republics of the CA Party.

CHAPTER 2 CONSULTATIONS

ARTICLE 310: CONSULTATIONS

1. The Parties shall endeavour to resolve any dispute regarding the interpretation or application of the provisions referred to in Article 309 by entering into consultations in good faith with the aim of reaching a mutually satisfactory solution.
2. Any Party under this Agreement shall seek consultations by means of a written request to the other Party, with copy to the Association Committee, setting out the reasons for the request, the legal basis for the complaint and identifying any actual or proposed measure at issue.
3. Where the complaining Party is the EU Party, and the alleged violation of any provision identified pursuant to paragraph 2 is similar in all relevant legal and factual aspects concerning more than one Republic of the CA Party, the EU Party may request a single consultation involving those Republics of the CA Party.⁴⁷

⁴⁷ For instance, where a provision of Part IV of this Agreement establishes an obligation for all Republics of the CA Party to fulfil a specified requirement by a stipulated date, the failure of more than one Republic of the CA Party to have done so would be a matter falling under this paragraph.

4. Where the complaining Party is a Republic of the CA Party and the alleged violation of any provision identified pursuant to paragraph 2 adversely affects the trade⁴⁸ of more than one Republic of the CA Party, the Republics of the CA Party may either request a single consultation or request to join consultations within five days of the date of delivery of the initial request for consultations. The interested Republic of the CA Party shall include an explanation of its substantial trade interest in the matter in its request.

5. Consultations shall take place within thirty days of the date of the submission of the request and be held, unless the Parties agree otherwise, in the territory of the Party complained against. The consultations shall be deemed concluded within thirty days of the date of the submission of the request, unless both Parties agree to continue consultations. Where, in accordance with paragraphs 3 and 4, more than one Republic of the CA Party is involved in the consultations, these shall be deemed concluded within forty days of the date of the submission of the initial request. All information disclosed during the consultations shall remain confidential.

6. In cases of urgency, in particular regarding perishable or seasonal goods, consultations shall take place within fifteen days of the date of the submission of the request, and shall be deemed concluded within fifteen days of the date of the submission of the request. Where, in accordance with paragraphs 3 and 4, more than one Republic of the CA Party is involved in the consultations, these shall be deemed concluded within twenty days of the date of the submission of the initial request.

7. If the Party complained against does not respond to the request for consultations within ten days of receipt of the request, if consultations are not held within the time periods laid down in paragraphs 5 or 6 respectively, or if consultations have been concluded and the dispute has not been resolved, the complaining Party may request the establishment of a Panel in accordance with Article 311.

8. If more than twelve months of inactivity have passed from the date of the last consultations and if the basis for the dispute persists, the complaining Party shall request new consultations. This paragraph shall not apply where the inactivity is the result of attempts in good faith at reaching a mutually satisfactory solution pursuant to Article 324.

CHAPTER 3 DISPUTE SETTLEMENT PROCEDURES

Section A: Panel Procedure

ARTICLE 311: INITIATION OF THE PANEL PROCEDURE

1. Where the consulting Parties have failed to resolve the dispute in accordance with the provisions referred to in Article 310, any complaining Party may request the establishment of a Panel to consider the matter.

⁴⁸ For instance, where an import ban on a product has been implemented, and said import ban applies to exports of that product from more than one Republic of the CA Party, this would be a matter falling under this paragraph.

2. The request for the establishment of a Panel shall be made in writing to the Party complained against, with copy to the Association Committee. The complaining Party shall identify in its request the specific measure at issue, it shall state the legal basis for the complaint and explain how such measure constitutes a breach of the provisions referred to in Article 309.

3. Any Party entitled under paragraph 1 to request the establishment of a Panel, may join the Panel proceedings as a complaining Party upon submission of a written notice to the other disputing Parties. The notice shall be submitted no later than five days after the date of receipt of the initial request for the establishment of a Panel.

4. The establishment of a Panel may not be requested to review a proposed measure.

ARTICLE 312: ESTABLISHMENT OF THE PANEL

1. The Panel shall be composed of three panelists.

2. Within ten days of the date of the submission of the request for the establishment of a Panel, the disputing Parties shall consult in order to reach an agreement on the composition of the Panel.⁴⁹

3. In the event that the disputing Parties are unable to agree on the composition of the Panel within the time period laid down in paragraph 2, each disputing Party will have the right to select one panelist, who will not act as Chair, among the individuals of the list established in Article 325, within three days following the expiration of the time period established in paragraph 2. The Chair of the Association Committee, or the Chair's delegate, will select the Chair-person and any remaining panelist by lot from the relevant individuals of the list established under Article 325.

4. The Chair of the Association Committee, or the Chair's delegate, shall carry out the lot within five days of receipt of a request to do so from one or both disputing Parties. The lot shall be carried out at a time and place to be promptly communicated to the disputing Parties. The disputing Parties may, if they so choose, be present during the lot.

5. The disputing Parties may select, by mutual agreement and within the time period set out in paragraph 2, individuals that are not part of the List of Panelists, but that comply with the requirements established in Article 325.

6. The date of establishment of the Panel shall be the date on which all panelists have notified the acceptance of their selection.

⁴⁹ Where a disputing Party is composed of two or more Republics of the CA Party, they shall act jointly in the procedure established in Article 312.

ARTICLE 313: PANEL RULING

1. The Panel shall notify its ruling on the subject matter to the disputing Parties, with copy to the Association Committee, within one hundred twenty days from the date of establishment of the Panel.
2. Where the Panel considers that the deadline referred to in paragraph 1 cannot be met, the Chair-person of the Panel must promptly notify the disputing Parties in writing, with copy to the Association Committee, stating the reasons for the delay and the date on which the Panel expects to conclude its work. Unless exceptional circumstances apply, the ruling should be notified no later than one hundred fifty days from the date of the establishment of the Panel.
3. In cases of urgency, in particular regarding perishable or seasonal goods, the Panel shall make every effort to notify its ruling within sixty days from the date of its establishment. Unless exceptional circumstances apply, the ruling should be notified no later than seventy five days from the date of the establishment of the Panel. The Panel, at the request of a disputing Party, may give a preliminary ruling within ten days of its establishment on whether it deems the case to be urgent.

Section B: Compliance

ARTICLE 314: COMPLIANCE WITH THE PANEL RULING

1. Where relevant, the Party complained against shall, without undue delay, take any measure necessary to comply in good faith with the Panel ruling on the subject matter, and the disputing Parties will endeavour to agree on the period of time for compliance.
2. For purposes of compliance, the disputing Parties and, in any event the Panel, shall take into consideration the possible effects of the measure determined to be inconsistent with this Agreement on the level of development of the Party complained against.
3. In the event that full and timely compliance with the Panel's ruling does not occur, compensation or suspension of obligations may be applied as temporary measures. In this event, the disputing Parties shall endeavour to agree on compensation rather than apply suspension of obligations. However, neither compensation nor suspension of obligations is preferred to full and timely implementation of the Panel's ruling.
4. Where a Panel ruling applies to more than one Republic of the CA Party as the complaining Party or the Party complained against, any compensation or suspension of obligations pursuant to this Title shall apply individually for each Republic of the CA Party, to which effect the Panel ruling shall individually determine the level of nullification or impairment caused by the violation for each Republic of the CA Party.

ARTICLE 315: THE REASONABLE PERIOD OF TIME FOR COMPLIANCE

1. The Party complained against shall promptly notify the complaining Party of the reasonable period of time needed for compliance, as well as the specific measures it intends to adopt, where possible.

2. The disputing Parties shall endeavour to agree on the reasonable period of time necessary to comply with the Panel ruling within thirty days after notification to the disputing Parties of said ruling. Where agreement is reached, the disputing Parties shall notify the Association Committee of the agreed reasonable period of time and, where possible, the specific measures that the Party complained against intends to adopt.

3. Failing agreement between the disputing Parties on the reasonable period of time to comply with the Panel ruling within the time period established in paragraph 2, the complaining Party may request the original Panel to determine the reasonable period of time. Such request shall be made in writing and notified to the other disputing Party with copy to the Association Committee. The Panel shall notify its ruling to the disputing Parties with copy to the Association Committee within twenty days from the date of the submission of the request. Where a Panel ruling applies to more than one Republic of the CA Party, the Panel shall determine the reasonable period of time for each Republic of the CA Party.

4. In the event of the original Panel, or some of its members, being unable to reconvene, the relevant procedures set out in Article 312 shall apply. The time limit for notifying the ruling shall be thirty five days from the date of the submission of the request referred to in paragraph 3.

5. The Party complained against shall report to the Association Committee on measures taken and measures to be taken in order to comply with the Panel ruling. This report shall be in writing and shall be made no later than half way through the reasonable period of time.

6. The reasonable period of time may be extended by mutual agreement of the disputing Parties. All time periods contained in this Article constitute part of the reasonable period of time.

ARTICLE 316: REVIEW OF ANY MEASURE TAKEN TO COMPLY WITH THE PANEL RULING

1. The Party complained against shall notify the complaining Party, with copy to the Association Committee, prior to the expiry of the reasonable period of time of any measure that it has taken to comply with the Panel ruling and provide the details such as the effective date, the relevant text of the measure and a factual and juridical explanation of how the measure taken to comply brings the Party complained against into compliance.

2. In the event of disagreement between the disputing Parties concerning the existence or compatibility of any measure notified under paragraph 1 with the provisions referred to in Article 309, the complaining Party may request in writing the original Panel to rule on

the matter. Such request shall identify the specific measure at issue and it shall explain how such measure is inconsistent with the provisions referred to in Article 309. The Panel shall notify its ruling within forty five days of the date of the submission of the request. Where a Panel ruling applies to more than one Republic of the CA Party, the Panel shall, where necessary under the circumstances, issue its ruling pursuant to this Article for each Republic of the CA Party.

3. In the event of the original Panel, or some of its members, being unable to reconvene, the relevant procedures set out in Article 312 shall apply. The time limit for notifying the ruling shall be sixty days from the date of the submission of the request referred to in paragraph 2.

ARTICLE 317: TEMPORARY REMEDIES IN CASE OF NON-COMPLIANCE

1. If any Party complained against fails to notify any measure taken to comply with the Panel ruling prior to the expiry of the reasonable period of time, as established in Article 316, paragraph 1, or if the Panel rules that the measure notified under said Article 316, paragraph 1 is inconsistent with that Party's obligations under the provisions referred to in Article 309, the Party complained against shall, if so requested by the complaining Party, present an offer for compensation. Where a Panel ruling applies to more than one Republic of the CA Party, each of the Republics of the CA Party shall present or be presented with, as the case may be, an offer for compensation, taking account of the level of nullification or impairment determined pursuant to Article 314, paragraph 4, as well as any measure notified under Article 316, paragraph 1. The EU Party will endeavour to exercise due restraint when requesting compensation pursuant to this paragraph.

2. If no agreement on compensation is reached within thirty days of the end of the reasonable period of time or of the notification of the Panel ruling under Article 316 that a measure taken to comply is inconsistent with the provisions referred to in Article 309, any complaining Party shall be entitled, upon notification to the Party complained against with copy to the Association Committee, to suspend obligations arising from any provision referred to in Article 309 at a level equivalent to the nullification or impairment caused by the violation. The notification shall indicate the obligations that the complaining Party intends to suspend. The complaining Party may implement the suspension ten days after the date of the notification, unless the Party complained against has requested a ruling by a Panel under paragraph 3. Where a Panel ruling applies to more than one Republic of the CA Party, suspension of obligations shall be applied individually to each non compliant Republic of the CA Party or by each Republic of the CA Party as the case may be, taking account of the individual level of nullification or impairment determined pursuant to Article 314, paragraph 4, as well as any measure notified under Article 316, paragraph 1.

3. If any Party complained against considers that the level of suspension is not equivalent to the nullification or impairment caused by the violation, it may request in writing the original Panel to rule on the matter. Such request shall be notified to the complaining Party with copy to the Association Committee prior to the expiry of the ten day period referred to in paragraph 2. The Panel shall notify its ruling on the level of the suspension of obligations to the disputing Parties with copy to the Association Committee

within thirty days of the date of the submission of the request. Obligations shall not be suspended until the Panel has notified its ruling, and any suspension shall be consistent with the Panel ruling.

4. In the event of the original Panel, or some of its members, being unable to reconvene, the relevant procedures laid down in Article 312 shall apply. The time period for notifying the ruling shall be forty five days from the date of the submission of the request referred to in paragraph 3.

5. When suspending benefits pursuant to paragraph 1, the EU Party will endeavour to exercise appropriate moderation, taking into consideration, among other factors, the likely impact on the economy and level of development of the Party complained against, and opt for measures conducive to bringing the Party complained against into compliance, and least likely to adversely affect the attainment of the objectives of this Agreement.

6. The suspension of obligations shall be temporary and shall be applied only until any specific measure or measures found to be inconsistent with the provisions referred to in Article 309, has or have been brought into full conformity with those provisions, as established under Article 318, or until any of the disputing Parties have agreed to settle the dispute.

ARTICLE 318: REVIEW OF ANY MEASURE TAKEN TO COMPLY AFTER THE SUSPENSION OF OBLIGATIONS

1. The Party complained against shall notify the complaining Party, with copy to the Association Committee, of any measure it has taken to comply with the ruling of the Panel and of its request for a termination of the suspension of obligations applied by the complaining Party.

2. If the disputing Parties fail to reach an agreement on the compatibility of the notified measure with the provisions referred to in Article 309, within thirty days of the date of the submission of the notification referred to in paragraph 1, the complaining Party shall request in writing the original Panel to rule on the matter. Such request shall be notified to the Party complained against with copy to the Association Committee. Where a Panel ruling applies to more than one Republic of the CA Party, the Panel shall issue a ruling pursuant to this Article for each Republic of the CA Party. The Panel ruling shall be notified to the disputing Parties with copy to the Association Committee within forty five days of the date of the submission of the request. If the Panel rules that any measure taken to comply is in conformity with the provisions referred to in Article 309, the suspension of obligations shall be terminated.

3. In the event of the original Panel, or some of its members, being unable to reconvene, the relevant procedures laid down in Article 312 shall apply. The time period for notifying the ruling shall be sixty days from the date of the submission of the request referred to in paragraph 2.

Section C: Common Provisions

ARTICLE 319: RULES OF PROCEDURE

1. Unless the disputing Parties agree otherwise, dispute settlement procedures under this Title shall be governed by the Rules of Procedure adopted by the Association Council.
2. Subject to the protection of confidential information, any hearing of the Panel shall be open to the public in accordance with the Rules of Procedure.
3. Unless the disputing Parties agree otherwise, within five days from the date of establishment of the Panel, the terms of reference of the Panel shall be:

“to examine, in the light of the relevant provisions of Part IV of the Agreement, the matter referred to in the request for establishment of the Panel, in order to rule in regard to the compatibility of the measure at issue with the provisions referred to in Article 309 of Title X (Dispute Settlement) and to issue a ruling on the subject matter in accordance with Article 313 of Title X (Dispute Settlement).”
4. Where the disputing Parties have agreed on different terms of reference, they must notify these to the Panel within two days of their agreement.
5. If a disputing Party considers that a panelist is in violation of the Code of Conduct or does not fulfil the requirements set out in Article 325, his removal may be requested in accordance with the Rules of Procedure.

ARTICLE 320: INFORMATION AND TECHNICAL ADVICE

1. At the request of a disputing Party, or upon its own initiative, the Panel may obtain information from any Party it deems appropriate for the Panel proceeding.
2. The Panel may also seek information and opinions from experts, bodies or other sources where relevant. Prior to seeking such information and opinions, the Panel shall inform the disputing Parties, who shall also be granted the opportunity to comment. Any information obtained in accordance with this paragraph must be disclosed to each of the disputing Parties in a timely manner and submitted for their comments. Such comments should be transmitted to the Panel as well as to the other Party.

ARTICLE 321: AMICUS CURIAE

Natural or legal persons with an interest in the subject matter residing or established in the disputing Parties' territories are authorised to submit amicus curiae briefs for the Panel's possible consideration in accordance with the Rules of Procedure.

ARTICLE 322: RULES AND PRINCIPLES OF INTERPRETATION

1. Any Panel shall interpret the provisions referred to in Article 309 in accordance with customary rules of interpretation of public international law, due account being taken of the fact that the Parties must perform this Agreement in good faith and avoid circumvention of their obligations.
2. Where a provision of Part IV of this Agreement is identical to a provision in a WTO Agreement, the Panel shall adopt an interpretation which is consistent with any relevant interpretation established in rulings of the WTO Dispute Settlement Body.
3. The rulings of the Panel cannot add to or diminish the rights and obligations provided in the provisions referred to in Article 309.

ARTICLE 323: COMMON PROVISIONS REGARDING THE PANEL RULINGS

1. The Panel shall make every effort to take any decision by consensus. Nonetheless, where a decision cannot be arrived at by consensus, the matter at issue shall be decided by majority vote. However, in no case shall dissenting opinions of panelists be published.
2. Any ruling of the Panel shall be final and binding on the disputing Parties and shall not create any rights or obligations for natural or legal persons.
3. The ruling shall set out the Panel's findings of fact and law, the applicability of the relevant provisions of this Agreement, and the basic rationale behind the Panel's findings and conclusions. The ruling shall also include a reference to any request for determination made by either or both disputing Parties, including as contained in the terms of reference of the Panel. The disputing Parties shall make the Panel ruling publicly available. The provisions of this paragraph do not apply to organisational rulings.
4. The Panel shall not disclose any confidential information in its ruling, but may state conclusions derived from such information.

CHAPTER 4 GENERAL PROVISIONS

ARTICLE 324: MUTUALLY SATISFACTORY SOLUTION

The disputing Parties may reach a mutually satisfactory solution to a dispute under this Title at any time. They shall notify the Association Committee of any such solution. Upon notification of the mutually satisfactory solution, the procedure shall be terminated.

ARTICLE 325: LIST OF PANELISTS

1. The Association Council shall, no later than six months⁵⁰ after the entry into force of this Agreement, establish a list of thirty six individuals who are willing and able to serve as panelists. The EU Party shall propose twelve individuals to serve as panelists, and each Republic of the CA Party shall propose two individuals. The EU Party and the Republics of the CA Party shall also select twelve individuals that are not nationals of either Party and who shall act as Chair-person to the Panel. The Association Council may review and amend the list at any time and shall ensure that the list is always maintained at this level in accordance with the provisions of this paragraph.

2. Panelists shall have specialised knowledge or experience in law, international trade or other matters relating to Part IV of this Agreement or in the resolution of disputes arising from international trade agreements, be independent, serve in their individual capacity and not be affiliated with, nor take instructions from, any Party or organisation, and shall comply with the Code of Conduct adopted by the Association Council.

3. The Association Council may establish additional lists of up to fifteen individuals having sectoral expertise in specific matters covered by Part IV of this Agreement. When recourse is made to the selection procedure of Article 312, the Chair-person of the Association Committee may use a sectoral list upon agreement of the Parties.

ARTICLE 326: RELATION WITH WTO OBLIGATIONS

1. If a disputing Party seeks redress of a violation of an obligation under the WTO Understanding on the Rules and Procedures Governing Dispute Settlement (hereinafter referred to as “WTO DSU”), it shall have recourse to the relevant rules and procedures of the WTO Agreement.

2. If a disputing Party seeks redress of a violation of an obligation under Part IV of this Agreement, it shall have recourse to the relevant rules and procedures of this Title.

3. If a disputing Party seeks redress of a violation of an obligation under Part IV of this Agreement which at the same time implies a violation to the WTO Agreements, the Party shall have recourse to the forum of its selection.

4. The disputing Parties shall avoid bringing identical disputes in different *fora* when based on the same legal claims and measures.

⁵⁰ As of the entry into force of the Agreement:

- (a) the Parties shall send the Association Council their lists of candidates within seventy five days;
- (b) the Association Council shall approve or reject the candidates in the lists within one hundred twenty days;
- (c) the Parties shall send a list of additional candidates to replace the rejected candidates within one hundred fifty days;
- (d) the list of candidates shall be finalised within one hundred eighty days.

5. In the case of non-identical disputes related to the same measure, the Parties shall refrain from initiating concurrent dispute settlement procedures.

6. Where a disputing Party has initiated dispute settlement procedures under the WTO DSU or under this Title and subsequently seeks redress of a violation of an obligation under a second forum, based on a dispute which is identical to a dispute previously brought in the other forum, that Party shall be barred from bringing the second dispute. For the purpose of this Title, the term identical shall mean a dispute based on the same legal claims and measures challenged. A dispute shall not be considered to be identical where the forum initially selected has failed for procedural or jurisdictional reasons to make findings regarding the legal claim brought before it.

7. For the purpose of the previous paragraph, a dispute settlement procedure will be deemed initiated under the WTO DSU, when the Panel is established in accordance to Article 6 of the WTO DSU, and under this Title, when a Party has requested the establishment of a Panel in accordance with Article 311, paragraph 1. Dispute settlement procedures under the WTO DSU are concluded when the Dispute Settlement Body adopts the Panel's report, or the Appellate Body's report, pursuant to Articles 16 and 17 (14) of the WTO DSU. Dispute settlement procedures under this Title are concluded when the Panel notifies its ruling on the subject matter to the Parties and to the Association Committee pursuant to Article 313, paragraph 1.

8. Any question about the jurisdiction of the panels established according to this Title, shall be raised within a period of time of ten days of the establishment of the Panel and shall be resolved through a preliminary ruling within thirty days from the Panel's establishment. Once a challenge to the jurisdiction of a Panel has been made under this Article, all time limits established in this Title and in the Rules of Procedure shall be suspended pending the notification of the Panel's preliminary ruling.

9. Nothing in this Title shall preclude a disputing Party from implementing the suspension of obligations authorised by the Dispute Settlement Body of the WTO. The WTO Agreement shall not be invoked to preclude a disputing Party from suspending obligations under this Title.

ARTICLE 327: TIME PERIODS

1. All time periods laid down in this Title and in the Rules of Procedure, including the time periods for the panels to notify their rulings, shall be counted in calendar days, the first day being the day following the act or fact to which they refer.

2. Any time period referred to in this Title and in the Rules of Procedure may be modified by mutual agreement of the disputing Parties.

3. The Panel may suspend its work at any time for a period not exceeding twelve months, at the request of the complaining Party and with the agreement of the Party complained against. In this case, the time periods shall be extended during the time that the procedure has been suspended. If the Panel procedure has been suspended for more than

twelve months, the terms of reference of the Panel shall elapse, without prejudice of the complaining Party's right to request consultations and subsequently request the establishment of a Panel on the same matter at a later stage. This paragraph shall not apply where the suspension is the result of attempts in good faith at reaching a mutually satisfactory solution pursuant to Article 324.

ARTICLE 328: ADOPTION AND MODIFICATION OF THE RULES OF PROCEDURE AND THE CODE OF CONDUCT

1. The Association Council shall adopt the Rules of Procedure and the Code of Conduct during its first meeting.
2. The Association Council may modify the Rules of Procedure and the Code of Conduct.

TITLE XI

MEDIATION MECHANISM FOR NON-TARIFF MEASURES

CHAPTER 1 SCOPE

ARTICLE 329: SCOPE

1. The Mediation Mechanism shall apply to non – tariff measures which adversely affect trade between the Parties under Part IV of this Agreement.
2. The Mediation Mechanism shall not apply to any measure or other matter arising under:
 - (a) Title VIII on Trade and Sustainable Development;
 - (b) Title IX on Regional Economic Integration;
 - (c) Integration processes of the EU Party and of the Republics of the CA Party;
 - (d) Matters in which dispute settlement procedures have been excluded; and
 - (e) Provisions of an institutional nature in this Agreement.
3. This Title shall apply bilaterally between the EU Party on one hand, and each of the Republics of the CA Party, on the other.
4. The mediation procedure shall be confidential.

CHAPTER 2 PROCEDURE UNDER THE MEDIATION MECHANISM

ARTICLE 330: INITIATION OF THE PROCEDURE

1. A Party may, at any time, request in writing that the other Party partakes in the mediation procedure. The request shall include a description of the matter sufficient to present clearly the measure in question and its trade effects.
2. The Party to which such request is made shall favourably consider the request and provide a written reply within ten days of the date of receipt of the request.
3. Prior to the selection of the mediator pursuant to Article 331, the Parties to the procedure shall endeavour in good faith to reach an agreement through direct negotiations, to which effect they shall have a time period of twenty days.

ARTICLE 331: SELECTION OF THE MEDIATOR

1. The Parties to the procedure are encouraged to agree on a mediator no later than fifteen days after the expiration of the time period referred to in Article 330 paragraph 3, or earlier if one Party notifies the other that an agreement is not feasible without the assistance of a mediator.

2. If the Parties to the procedure cannot agree on the mediator within the established time period, either Party may request appointment of the mediator by lot. Within five days of the submission of such request, each Party shall establish a list of at least three individuals that are not nationals of that Party, who fulfil the conditions of paragraph 4 and may act as mediator. Within five days of the submission of the list, each Party shall select at least one name from the other Party's list. The Chair of the Association Committee or the Chair's delegate shall then select the mediator by lot among the selected names. The selection by lot shall be made within fifteen days of the submission of the request for appointment by lot, at a time and venue to be promptly communicated to the Parties. The Parties may, if they so choose, be present at the time of the selection by lot.

3. If a Party to the procedure fails to establish the list or to select one name from the other Party's list, the Chair or the Chair's delegate shall select the mediator by lot from the list of the Party that complied with the requirements in paragraph 2.

4. The mediator shall be an expert on the subject matter to which the measure in question relates.⁵¹ The mediator shall assist the Parties to the procedure, in an impartial and transparent manner, in bringing clarity to the measure and its possible trade effects, and in reaching a mutually agreed solution.

5. When a Party to the procedure considers that the mediator is in violation of the Code of Conduct, his removal may be requested and a new mediator shall be selected in accordance with paragraphs 1 to 4 of this Article.

ARTICLE 332: RULES OF THE MEDIATION PROCEDURE

1. The Parties shall participate in the mediation procedure in good faith and shall endeavour to reach a mutually satisfactory solution.

2. Within fifteen days of the appointment of the mediator, the Party having initiated the mediation procedure shall present, in writing, a detailed description of the problem to the mediator and to the other Party to the procedure, in particular of the operation of the measure at issue and its trade effects. Within ten days after the date of receipt of this submission, the other Party may provide, in writing, its comments regarding the description of the problem. Either Party may include in its description or comments any information that it deems relevant.

⁵¹ For example, in cases concerning standards and technical requirements, the mediator should have a background in relevant international standard setting bodies.

3. The mediator may decide on the most appropriate way of conducting the procedure, in particular whether, when and how to consult the Parties to the procedure, jointly or individually. The mediator may also determine where certain information has not been made available by the Parties, or where such information is not in the possession of the Parties, whether the circumstances necessitate the assistance of or consultation with relevant experts, government agencies and other legal or natural persons with specialised knowledge relating to the matter. Where the assistance of or consultation with relevant experts, government agencies and other legal or natural persons with specialised knowledge relating to the matter involves confidential information as defined in Article 336 of this Title, such information can only be made available after informing the Parties to the procedure and with the express condition that such information be treated as confidential information at all times.

4. Once the necessary information has been collected, the mediator may provide an assessment of the matter and the measure in question and propose a solution for consideration by the Parties to the procedure. Any such assessment shall not pertain to the consistency of the measure at issue with this Agreement.

5. The procedure shall take place in the territory of the Party to which the request was addressed, or by mutual agreement in any other location or by any other means.

6. For the fulfilment of his duties, the mediator may use any means of communication including, among others, telephone, facsimile transmissions, web links or videoconference.

7. The procedure shall normally be completed within sixty days from the date of the appointment of the mediator. At any stage, the Parties to the procedure may discontinue the procedure by mutual agreement.

CHAPTER 3 IMPLEMENTATION

ARTICLE 333: IMPLEMENTATION OF A MUTUALLY AGREED SOLUTION

1. Where the Parties to the procedure have agreed on a solution to the trade obstacles caused by the measure subject to this procedure, each Party shall take any measure necessary to implement said solution without undue delay.

2. The implementing Party shall regularly inform the other Party in writing, as well as the Association Committee, of any steps or measures taken to implement the mutually agreed solution. This obligation shall cease to exist once the mutually satisfactory solution has been adequately and completely implemented.

CHAPTER 4 GENERAL PROVISIONS

ARTICLE 334: RELATIONSHIP TO TITLE X ON DISPUTE SETTLEMENT

1. The procedure under this Mediation Mechanism is independent of Title X (Dispute Settlement) of Part IV of this Agreement and not intended to serve as a basis for dispute settlement procedures under that Title or any another agreement. A request for mediation, and possible procedures under the Mediation Mechanism, shall not exclude recourse to Title X.
2. The Mediation Mechanism is without prejudice to the Parties' rights and obligations under Title X.

ARTICLE 335: TIME PERIODS

Any time period referred to in this Title may be modified by mutual agreement of the Parties to the procedure.

ARTICLE 336: CONFIDENTIALITY OF INFORMATION

1. A Party to the procedure submitting documentation or submissions as part of the mediation procedure may designate such documentation or submissions, or any part thereof, as confidential.
2. Where documentation or submissions, or any part thereof, have been designated as confidential by one Party, the other Party and the mediator shall either return or destroy such documents no later than fifteen days from the conclusion of the mediation procedure.
3. Similarly, where documentation or submissions, or any part thereof, designated as confidential have been made available to relevant experts, government agencies or other natural or legal persons with specialised knowledge related to the matter, such documentation or submissions shall be returned or destroyed no later than fifteen days from the termination of the assistance or the mediators consultations.

ARTICLE 337: COSTS

1. All costs of the mediation procedure shall be borne by the Parties to the procedure in equal shares. Costs shall be understood as the mediator's remuneration, his transportation, accommodation and alimentation expenses, and all general administrative costs of the mediation procedure, according to the expense claim submitted by the mediator.
2. The mediator shall maintain a complete and detailed record of all relevant expenses incurred and submit an expense claim to the Parties to the procedure, along with the supporting documents.

3. The Association Council shall establish all eligible costs as well as the remuneration and allowances to be paid to the mediator.

TITLE XII

TRANSPARENCY
AND ADMINISTRATIVE PROCEDURES

ARTICLE 338: CO-OPERATION ON INCREASED TRANSPARENCY

The Parties agree to co-operate in relevant bilateral and multilateral *fora* to increase transparency, including through the elimination of bribery and corruption in matters covered by Part IV of this Agreement.

ARTICLE 339: PUBLICATION

1. Each Party shall ensure that its measures of general application, including laws, regulations, judicial decisions, procedures and administrative rulings relating to any trade-related matter covered by Part IV of this Agreement are promptly published or made readily available to interested persons in such a manner as to allow interested persons of a Party, as well as any other Party, to become acquainted with them. Upon request, each Party shall provide an explanation of the objective of and rationale for such measure and allow for adequate time between publication and entry into force of such measure, unless specific legal or practical circumstances dictate otherwise.

2. Each Party shall endeavour to provide opportunities for interested persons of the other Party to comment on any proposed law, regulation, procedure or administrative ruling of general application and to take into account relevant comments received.

3. The measures of general application referred to under paragraph 1 shall be considered to have been made readily available when the measure has been made available by appropriate notification to the WTO or when the measure has been made available on an official, publicly and fee-free accessible website of the Party concerned.

4. Nothing in Part IV of this Agreement shall be construed to require any Party to provide confidential information, the disclosure of which would impede law enforcement, or otherwise be contrary to the public interest, or which would prejudice legitimate commercial interests of particular enterprises, be it public or private.

ARTICLE 340: CONTACT POINTS AND EXCHANGE OF INFORMATION

1. In order to facilitate communication and to ensure the effective implementation of this Agreement, the EU Party, the CA Party⁵² and each Republic of the CA Party shall designate a contact point by the entry into force of this Agreement.⁵³ The designation of

⁵² The contact point designated by the CA Party shall be used for the exchange of information regarding its collective obligations in accordance with Article 352, paragraph 2 of Part V (General and Final Provisions) of this Agreement and shall work under direct instructions agreed by the Republics of the CA Party.

⁵³ For purposes of the obligation to designate a contact point by the CA Party, “date of entry into force” shall mean the date in which all the Republics of the CA Party have in force the Agreement, according to paragraph 4 of Article 353.

contact points is without prejudice to the specific designation of competent authorities under specific provisions of this Agreement.

2. Upon request of a Party, the contact point of the other Party shall indicate the office or official responsible for any matter pertaining to the implementation of Part IV of this Agreement and provide the required support to facilitate communication with the requesting Party.

3. Upon request of a Party, and to the extent legally possible, each relevant Party shall provide information and reply promptly to any question relating to an actual or proposed measure that might substantially affect Part IV of this Agreement.

ARTICLE 341: ADMINISTRATIVE PROCEEDINGS

Each Party shall administer all measures of general application referred to in Article 339 in a consistent, impartial and reasonable manner. More specifically, when applying those measures to specific persons, goods, services or establishments of a Party in specific cases, each Party shall:

- (a) endeavour to provide persons directly affected by a proceeding with reasonable notice 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) afford such interested persons 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) ensure that its procedures are based on law.

ARTICLE 342: REVIEW AND APPEAL

1. Each Party shall establish or maintain judicial, quasi-judicial or administrative tribunals or procedures for the purpose of prompt review and, where warranted, correction of final administrative action affecting trade-related matters covered by Part IV of this Agreement. Such tribunals or procedures shall be independent of the office or authority entrusted with administrative enforcement and those responsible for them shall be impartial and not have any substantial interest in the outcome of the matter.

2. Each Party shall ensure that, in any such tribunals or procedures, the parties to the proceeding are provided with the right to:

- (a) a reasonable opportunity to support or defend their respective positions; and

- (b) a decision based on the evidence and submissions of record or, where required by its law, the record compiled by the administrative authority.

3. Each Party shall ensure, subject to appeal or further review as provided for in its law, that any such decision shall be implemented by, and shall govern the practice of, the office or authority competent for the administrative action at issue.

ARTICLE 343: SPECIFIC RULES

The provisions of this Title are without prejudice to any specific rules established in other provisions of this Agreement.

ARTICLE 344: TRANSPARENCY IN SUBSIDIES

1. For the purposes of this Agreement, a subsidy is a measure related to trade in goods, which fulfils the conditions set out in Article 1.1 of the SCM Agreement and is specific within the meaning of Article 2 of the latter. This provision covers subsidies as defined in the Agriculture Agreement.

2. Each Party shall ensure transparency in the area of subsidies related to trade in goods. Starting from the entry into force of the Agreement, each Party shall report every two years to the other Party on the legal basis, form, amount or budget and where possible, the recipient of the subsidy granted by its government or any public body. Such report is deemed to have been provided if the relevant information is made available by the Parties or on their behalf on a publicly accessible website. When exchanging information the Parties shall take into account the requirements of professional and business secrecy.

3. The Parties may exchange information upon request of a Party on matters related to the topic of subsidies in services.

4. The Association Committee shall periodically review the progress made by the Parties in implementing this Article.

5. The provisions of this Article are without any prejudice to the rights of the Parties to apply trade remedies or to take dispute settlement or other appropriate action against a subsidy granted by the other Party in accordance with the relevant WTO provisions.

6. The Parties shall not have recourse to dispute settlement procedures under Title X (Dispute Settlement) of Part IV of this Agreement for matters arising under this Article.

TITLE XIII

SPECIFIC TASKS IN TRADE MATTERS OF THE BODIES ESTABLISHED UNDER THIS AGREEMENT

ARTICLE 345: SPECIFIC TASKS OF THE ASSOCIATION COUNCIL

1. When the Association Council performs any of the tasks conferred upon it in Part IV of the Agreement, it shall be composed, at ministerial level, of representatives of the EU Party, on the one hand, and of the Ministers of each of the Republics of the CA Party with responsibility for trade-related matters on the other, in accordance with the Parties' respective legal frames, or by their designees.
2. The Association Council may, when it relates to trade-related matters:
 - (a) modify, in fulfilment of the objectives of Part IV of the Agreement:
 - (i) the lists of goods contained in Annex I (Elimination of Customs Duties), with the object of incorporating one or more goods into the tariff reduction schedule;
 - (ii) the Schedules attached to Annex I (Elimination of Customs Duties) in order to accelerate tariff dismantling;
 - (iii) Appendix 1, Appendix 2 and Appendix 3 to Annex I (Elimination of Customs Duties);
 - (iv) Appendixes 1, 2, 2A, 3, 4, 5 and 6 to Annex II (Concerning the Definition of the Concept of "Originating Products" and Methods of Administrative Co-operation);
 - (v) Annex XVI (Government Procurement);
 - (vi) Annex XVIII (Protected Geographical Indications);
 - (vii) Annex XIX (Lists of Products Referred to in paragraph 4 of Article 306);
 - (viii) Annex XXI (Sub-Committees);
 - (b) issue interpretations of the provisions of Part IV of the Agreement; and
 - (c) take such other action in the exercise of its functions as the Parties may agree.
3. Each Party shall implement, in accordance with its applicable legal procedures, any modification referred to in subparagraph 2 (a) of this Article within such period as the Parties may agree.⁵⁴

⁵⁴ Implementation of Modifications Approved by the Association Council:

1. In the case of Costa Rica, decisions of the Association Council under Article 345, paragraph 2 (a) will be equivalent to the instrument referred to in Article 121.4, third paragraph (*Protocolo de Menor Rango*) of the *Constitución Política de la República de Costa Rica*.

ARTICLE 346: SPECIFIC TASKS OF THE ASSOCIATION COMMITTEE

1. When the Association Committee performs any of the tasks conferred upon it in Part IV of the Agreement, it shall be composed of representatives of the European Commission, on the one hand, and of representatives of each of the Republics of the CA Party, on the other, at senior official level and with responsibility for trade-related matters, or their designees.
2. The Association Committee shall have, in particular, the following functions when dealing with trade-related matters:
 - (a) assist the Association Council in the performance of its functions regarding trade-related matters;
 - (b) be responsible for the proper implementation and application of the provisions of Part IV of the Agreement. In this respect, and without prejudice to the rights established in Title X (Dispute Settlement) and Title XI (Mediation Mechanism for Non-Tariff Measures) of Part IV of this Agreement, any Party may refer for discussion within the Association Committee any issue relating to the application or interpretation of Part IV of the Agreement;
 - (c) oversee the further elaboration of the provisions of Part IV of the Agreement as necessary and evaluate the results obtained from its application;
 - (d) seek appropriate ways of preventing and solving problems which might otherwise arise in areas covered by Part IV of the Agreement; and
 - (e) approve the rules and procedures of all Sub-Committees under Part IV of the Agreement and supervise their work.
3. In the performance of its duties under paragraph 2, the Association Committee may:
 - (a) establish additional Sub-Committees from those established in Part IV of the Agreement, composed of representatives of the European Commission and of each of the Republics of the CA Party, and assign them responsibilities within its competence. It may also decide to modify the functions that are assigned to the Sub-Committees it establishes, as well as dissolve them;
 - (b) recommend the adoption of decisions in compliance with the specific objectives of Part IV of the Agreement, to the Association Council; and

2. In the case of Honduras, decisions of the Association Council under Article 345, paragraph 2 (a) will be equivalent to the instrument referred to in Article 21 of the *Constitución de la República de Honduras*.

- (c) take any other action in the exercise of its functions as the Parties may agree or as instructed by the Association Council.

ARTICLE 347: CO-ORDINATORS OF PART IV OF THE AGREEMENT

1. The European Commission and each of the Republics of the CA Party shall appoint a Co-ordinator for Part IV of the Agreement, within sixty days after the entry into force of the Agreement.
2. The co-ordinators shall work jointly to develop agendas and make all other necessary preparations for the meetings of the Association Council and the Association Committee according to the above provisions, and shall follow-up on the decisions of such bodies, as appropriate.

ARTICLE 348: SUB-COMMITTEES

1. Without prejudice to the provisions of Article 8 of Title II (Institutional Framework) of Part I of this Agreement, this Article shall be applied to all Sub-Committees established in Part IV of the Agreement.
2. Sub-Committees shall be composed of representatives of the European Commission, on the one hand, and of representatives of each of the Republics of the CA Party, on the other.
3. The Sub-Committees shall meet once per year or at the request of either Party or of the Association Committee, at an appropriate level. When in person, meetings shall be held alternately in Brussels or Central America. Meetings may also be held by any technological mean available to the Parties.
4. The Sub-Committee shall be chaired alternately by a representative of the EU Party on one hand and by a representative of one Republic of the CA Party on the other, for a period of one year.

TITLE XIV

EXCEPTIONS

ARTICLE 349: BALANCE OF PAYMENTS

1. Where any Party experiences serious balance of payments and external financial difficulties, or is under threat thereof, it may adopt or maintain restrictive measures with regard to trade in goods, services and with regard to current payments.

2. The Parties shall endeavour to avoid the application of the restrictive measures referred to in paragraph 1.

3. Any restrictive measures adopted or maintained under this Article shall be non discriminatory, temporary and shall not go beyond what is necessary to remedy the balance of payments and external financial situation. They shall be in accordance with the relevant conditions established in the WTO Agreements and consistent with the Articles of Agreement of the International Monetary Fund.

4. Any Party maintaining or having adopted restrictive measures, or any changes thereto, shall promptly notify them to the other Party and present, as soon as possible, a time schedule for their removal.

5. If a Party considers that the restrictive measure adopted or maintained affects the bilateral trade relation, it may request consultations to the other Party that shall promptly take place within the Association Committee. Such consultations shall assess the balance of payments situation of the Party concerned and the restrictions adopted or maintained under this Article, taking into account, *inter alia*, factors such as:

- (a) the nature and extent of the balance of payments and the external financial difficulties;
- (b) the external economic and trading environment; or
- (c) alternative corrective measures which may be available.

The consultations shall address the compliance of any restrictive measures with paragraphs 3 and 4. All findings of statistical and other facts presented by the International Monetary Fund relating to foreign exchange, monetary reserves and balance of payments shall be accepted as such and conclusions shall be based on the assessment by the International Monetary Fund of the balance of payments and the external financial situation of the Party concerned.

ARTICLE 350: TAXATION

1. Nothing in Part IV of this Agreement or in any arrangement adopted under this Agreement shall be construed to prevent the Parties from distinguishing, in the application

of the relevant provisions of their respective tax law, between taxpayers who are not in the same situation, in particular with regard to their place of residence or with regard to the place where their capital is invested.

2. Nothing in Part IV of this Agreement or in any arrangement adopted under Part IV shall be construed to prevent the adoption or enforcement of any measure aimed at preventing the avoidance or evasion of taxes pursuant to the tax provisions of agreements to avoid double taxation or other tax arrangements or domestic tax law.

3. Nothing in Part IV of this Agreement shall affect the respective rights and obligations of the Parties under any tax agreement. In the event of any inconsistency between Part IV of this Agreement and any such agreement, that latter agreement shall prevail to the extent of the inconsistency.

ARTICLE 351: REGIONAL PREFERENCE

1. Nothing in Part IV of this Agreement shall oblige a Party to extend to the other Party any more favourable treatment which is applied within each of the Parties as part of its respective regional economic integration process.

2. Nothing in Part IV of this Agreement shall prevent the maintenance, modification or establishment of customs unions, free trade zones or other agreements between the Parties, or between the Parties and third countries or regions.