FREE TRADE AGREEMENT

BETWEEN

THE GOVERNMENT OF THE REPUBLIC OF KOREA

AND

THE GOVERNMENT OF THE REPUBLIC OF CHILE

The Government of the Republic of Korea ("Korea") and the Government of the Republic of Chile ("Chile"), hereinafter referred to as "the Parties";

Committed to strengthening the special bonds of friendship and cooperation between their countries;

Sharing the belief that a free trade agreement shall produce mutual benefits to each Party and contribute to the expansion and development of world trade under the multilateral trading system embodied in the Marrakesh Agreement Establishing the World Trade Organization ("the WTO Agreement");

Building on their respective rights and obligations under the WTO Agreement and other multilateral, regional and bilateral instruments of cooperation, including APEC;

Resolved to promote reciprocal trade and investment through the establishment of clear and mutually advantageous trade rules and the avoidance of trade and investment barriers;

Recognizing that this Agreement should be implemented with a view toward raising the standard of living, creating new work opportunities, and promoting sustainable development in a manner consistent with environmental protection and conservation;

Committed to promoting the public welfare within each of their countries; and

Desiring to strengthen the parallel development of market economy and democracy within their countries;

HAVE AGREED as follows:

PART I
GENERAL ASPECTS

CHAPTER 1
INITIAL PROVISIONS

Article 1.1: Establishment of the Free Trade Area

The Parties to this Agreement, consistent with Article XXIV of the General Agreement on Tariffs and Trade 1994 ("GATT") and Article V of the General Agreement on Trade in Services ("GATS"), which are part of the WTO Agreement, hereby establish a free trade area.

Article 1.2: Objectives

1. The objectives of this Agreement, as elaborated more specifically through its principles and rules, including national treatment, most-favoured-nation treatment and transparency, are to:

(a) encourage expansion and diversification of reciprocal trade between the Parties;
(b) eliminate barriers to trade in, and facilitate the cross-border movement of, goods and services between the territories of the Parties;
(c) promote conditions of fair competition in the free trade area;
(d) substantially increase investment opportunities between the territories of the Parties;
(e) provide adequate and effective protection and enforcement of intellectual property rights in each Party's territory;
(f) create effective procedures for the implementation and application of this Agreement, for its joint administration, and for the resolution of disputes; and
(g) establish a framework for further bilateral and multilateral cooperation in order to expand and enhance the benefits of this Agreement.

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

Article 1.3: Relation to Other International Agreements

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

2. In the event of any inconsistency between this Agreement and such other agreements under paragraph 1, this Agreement shall prevail to the extent of the inconsistency, except as otherwise provided in this Agreement.

Article 1.4: Succession of Treaties or International Agreements

Any reference in this Agreement to any other treaty or international agreement shall be made in the same terms to its successor treaty or international agreement to which the Parties are party.

Article 1.5: Extent of Obligations

The Parties shall ensure that all necessary measures are taken in order to give effect to the provisions of this Agreement in their respective territories.

CHAPTER 2
GENERAL DEFINITIONS

Article 2.1: Definitions of General Application

For purposes of this Agreement, unless otherwise specified:

Agreement means the free trade agreement between the Parties;

APEC means Asia-Pacific Economic Cooperation;

citizen means a citizen as defined in Annex 2.1 for the Party specified in that Annex;

Commission means the Free Trade Commission established under Article 18.1;

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

days means calendar days;

enterprise means any entity constituted or organized under applicable law, whether or not for profit, and whether privately-owned or governmentally-owned, including any corporation, trust, partnership, sole proprietorship, joint venture and other association;

enterprise of a Party means an enterprise constituted or organized under the law of a Party;

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

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

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

Generally Accepted Accounting Principles means the recognized consensus or substantial authoritative support in the territory of a Party with respect to the recording of revenues, expenses, costs, assets and liabilities, disclosure of information and preparation of financial statements. These standards may be broad guidelines of general application as well as detailed standards, practices and procedures;

goods of a Party means domestic products as these are understood in the GATT or such goods as the Parties may agree upon, including originating goods of that Party. The goods of the Parties may incorporate materials of other countries;

Harmonized System (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;

heading means a code of tariff classification of the Harmonized System at the level of four digits;

measure means, *inter alia*, any law, regulation, procedure or administrative action, requirement or practice;

national means a natural person who is a citizen or permanent resident of a Party;

originating good means a good qualifying under the rules of origin set out in Chapter 4;

person means a natural person or an enterprise;

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

Secretariat means the Secretariat established under Article 18.2;

standards-related measures means a standard, technical regulation or conformity assessment procedure;

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

subheading means a code of tariff classification of the Harmonized System at the level of six digits;

Tariff Elimination Schedule means the Tariff Elimination Schedule referred to in Article 3.4;

territory means for a Party, the territory of that Party as set out in Annex 2.1;

TBT Agreement means the Agreement on Technical Barriers to Trade, which is part of the WTO Agreement;

TRIPS Agreement means the Agreement on Trade Related Aspects of Intellectual Property Rights, which is part of the WTO Agreement;

Uniform Regulations means the regulations established under Article 5.12; and

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

Annex 2.1
Country-Specific Definitions

For purposes of this Agreement, unless otherwise specified:

citizen means:

(a) with respect to Chile, a Chilean as defined in Article 13 of the Political Constitution of the Republic of Chile ("Constitución Política de la República de Chile); and

(b) with respect to Korea, a Korean as defined in Article 2 of the Constitution of the Republic of Korea and its relevant law.

territory means:

(a) with respect to Chile, the land, maritime, and air space under its sovereignty, and the exclusive economic zone and the continental shelf over which it exercises sovereign rights and jurisdiction in accordance with international law and its domestic law; and

(b) with respect to Korea, the land, maritime, and air space under its sovereignty, and those maritime areas, including the seabed and subsoil adjacent to the outer limit of the territorial sea over which it exercises sovereign rights or jurisdiction in accordance with international law and its domestic law.

PART II
TRADE IN GOODS

CHAPTER 3
NATIONAL TREATMENT AND MARKET ACCESS FOR GOODS

Section A - Definitions and Scope and Coverage

Article 3.1: Definitions

For purposes of this Chapter:

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

agricultural goods means those goods referred to in Article 2 of the Agreement on Agriculture, which is part of the WTO Agreement;

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

consumed means:

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

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

(a) charge equivalent to an internal tax imposed consistently with Article III:2 of GATT, or any equivalent provision of a successor agreement to which both Parties are party;
(b) anti-dumping or countervailing duty that is applied pursuant to a Party's domestic law and consistently with Chapter 7;
(c) fee or other charge in connection with importation commensurate with the cost of services rendered; and
(d) premium offered or collected on an imported good arising out of any tendering system in respect of the administration of quantitative import restrictions, tariff rate quotas or tariff preference levels;

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

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

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

repair or alteration does not include an operation or process that either destroys the essential characteristics of a good or creates a new or commercially different good.[1]

Article 3.2: Scope and Coverage

This Chapter shall be applied to the trade in goods between the Parties.

Section B - National Treatment

Article 3.3: National Treatment

1. Each Party shall accord national treatment to the goods of the other Party in accordance with Article III of GATT, including its interpretative notes, and to this end, Article III of GATT and its interpretative notes, or any equivalent provision of a successor agreement to which both Parties are party, are incorporated into and made part of this Agreement.

2. For the purpose of paragraph 1, each Party shall grant to the goods of the other Party a treatment no less favourable than the most favourable treatment granted by that Party to its own like or directly competitive or substitutable goods of national origin.

Section C - Tariffs

Article 3.4: Tariff Elimination

1. Except as otherwise provided in this Agreement, neither Party may increase any existing customs duty or adopt any customs duty on a good.

[1] An operation or process that is part of the production or assembly of an unfinished good into a finished good is not a repair or alteration of the unfinished good; a component of a good is a good that may be subject to repair or alteration.

2. Except as otherwise provided in this Agreement, each Party shall progressively eliminate its customs duties on originating goods in accordance with its Tariff Elimination Schedule set out in Annex 3.4.

3. If at any moment a Party reduces its most-favoured-nation customs duties to non-Parties for one or more goods included in the Agreement, the Parties shall consult to consider adjusting the customs duties applicable to reciprocal trade.

4. Upon request of a Party, the Parties shall consult to consider accelerating the elimination of customs duties set out in their Tariff Elimination Schedules.

5. The agreement reached pursuant to paragraph 4 regarding the accelerated elimination of customs duties on an originating good shall be put into effect in accordance with Article 18.1 and each Party's applicable legal procedures, and shall prevail over any other duty rate or staging category, determined pursuant to its Tariff Elimination Schedule for the good.

6. Except as otherwise provided in this Agreement, either Party may adopt or maintain import measures to allocate in-quota imports made pursuant to a tariff rate quota set out in Annex 3.4, provided that such measures do not have trade restrictive effects on imports additional to those caused by the imposition of the tariff rate quota.

Article 3.5: Temporary Admission of Goods

1. Each Party shall grant duty-free temporary admission, including exemption from fees as specified in Annex 3.5 for:

(a) professional equipment necessary for carrying out the business activity, trade or profession of a business person who qualifies for temporary entry pursuant to Chapter 13,

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

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

(d) commercial samples and advertising films,

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

2. Except as otherwise provided in this Agreement, neither Party may impose any condition upon the duty-free temporary admission of a good referred to in subparagraph 1(a), (b) or (c), other than the requirement that such a good:

(a) be admitted by a national or resident of the other Party who seeks temporary entry;

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

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

(d) be accompanied by a bond in an amount no greater than 110 per cent of the charges that would otherwise be owed on entry or final importation, or by another form of

security, releasable on exportation of the good, except that a bond for customs duties shall not be required for an originating good;

(e) be capable of identification when exported;

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

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

3. Except as otherwise provided in this Agreement, neither Party may impose any condition upon the duty-free temporary admission of a good referred to in subparagraph 1(d), other than the requirement that such a good:

(a) be admitted solely for the solicitation of orders for goods or services provided from the territory of the other Party or a non-Party;

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

(c) be capable of identification when exported;

(d) be exported within such a period as is reasonably related to the purpose of the temporary admission; and

(e) be admitted in no greater quantity than is reasonable for its intended use.

4. Where a good is temporarily admitted duty-free under paragraph 1 and any condition the Party imposes under paragraphs 2 and 3 has not been fulfilled, a Party may impose:

(a) the customs duty and any other charge that would be owed on entry or final importation of the good; and

(b) any applicable criminal, civil or administrative responsibilities that the circumstances may warrant.

5. Subject to Chapters 10 and 11:

(a) each Party shall allow a container used in international traffic, which enters its territory from the territory of the other Party, to exit its territory on any route that is reasonably related to the economic and prompt departure of such a container;

(b) neither Party may require any bond or impose any penalty or charge solely by reason of any difference between the port of entry and the port of departure of a container;

(c) neither Party may condition the release of any obligation, including any bond, that it imposes in respect of the entry of a container into its territory on its exit through any particular port of departure; and

(d) neither Party may require that the carrier bringing a container from the territory of the other Party into its territory be the same carrier that takes the container to the territory of the other Party.

Article 3.6: Duty-Free Entry of Certain Commercial Samples of Negligible Value and Printed Advertising Materials

Each Party shall grant duty-free entry to commercial samples of negligible or non-commercial value, and to printed advertising materials, imported from the territory of the other Party, regardless of their origin, but may require that:

(a) such samples be imported solely for the solicitation of orders for goods, or services provided from the territory, of the other Party or a non-Party, regardless of whether they are originating goods, or whether services are provided from the territory of the other Party or a non-Party; or
(b) such advertising materials be imported in packets that each contain no more than one copy of each of such materials and that neither such materials nor packets form part of a larger consignment.

Article 3.7: Goods Re-Entered after Repair or Alteration

1. Neither Party may apply a customs duty to a good, regardless of its origin, that re-enters its territory after that good has been exported or if it was under a temporary exit from its territory to the territory of the other Party for repair or alteration, regardless of whether such repair or alteration could be performed in its territory.

2. Neither Party may apply a customs duty to a good, regardless of its origin, imported temporarily from the territory of the other Party for repair or alteration.

Article 3.8: Customs Valuation

The Customs Valuation Agreement shall govern the customs valuation rules applied by the Parties to their reciprocal trade.

Section D - Non-Tariff Measures

Article 3.9: Import and Export Restrictions

1. Except as otherwise provided in this Agreement, neither Party may adopt or maintain any prohibition or restriction on the importation of any good of the other Party or on the exportation or sale for export of any good destined for the territory of the other Party, except in accordance with Article XI of GATT, including its interpretative notes, and to this end, Article XI of GATT and its interpretative notes, or any equivalent provision of a successor agreement to which both Parties are party, are incorporated into and made part of this Agreement.

2. The Parties understand that the rights and obligations under GATT, incorporated by paragraph 1 prohibit, in any circumstances in which any other form of restriction is prohibited, export price requirements and, except as permitted in enforcement of countervailing and antidumping orders and undertakings, import price requirements.

3. In the event that a Party adopts or maintains a prohibition or restriction on the importation from or exportation to a non-Party of a good, nothing in this Agreement shall be construed to prevent the Party from:
(a) limiting or prohibiting the importation from the territory of the other Party of such a good of that non-Party; or

(b) requiring as a condition of export of such a good of the Party to the territory of the other Party, that the good not be re-exported to the non-Party, directly or indirectly, without being consumed in the territory of the other Party.

4. In the event that a Party adopts or maintains a prohibition or restriction on the importation of a good from a non-Party, the Parties, upon request of the other Party, shall consult with a view to avoiding undue interference with or distortion of pricing, marketing and distribution arrangements in the other Party.

5. Paragraphs 1 through 4 shall not apply to the measures set out in Annex 3.9.

Article 3.10: Customs User Fees

Customs user fees shall be limited in amount to the approximate cost of services rendered and shall not represent an indirect protection for domestic products or a taxation of imports or exports for fiscal purposes. They shall be based on specific rates that correspond to the real value of the service rendered.

Article 3.11: Export Taxes

Neither Party may adopt or maintain any duty, tax or other charge on the export of any good to the territory of the other Party, unless such duty, tax or charge is adopted or maintained on such a good when destined for domestic consumption.

Article 3.12: Emergency Clause for Agricultural Goods

1. Notwithstanding Chapter 6 of this Agreement and Article 5 of the Agreement on Agriculture, if, given the particular sensitivity of the agricultural markets, a product originating in a Party is being imported into the other Party in such increased quantities and under such conditions as to cause or threaten to cause serious injury or disturbance in the markets of like or directly competitive products of the other Party, that Party may take appropriate measures under the conditions and in accordance with the procedures laid down in this Article.

2. If the conditions set out in paragraph 1 are met, the importing Party may:
   (a) suspend the further reduction of any customs duties on the products concerned provided for under this Chapter; or
   (b) increase the customs duty on the product to a level which does not exceed the lesser of:
      (i) the most-favoured-nation customs duty; or
      (ii) the basic customs duty to which the successive reductions are to be applied, pursuant to its Tariff Elimination Schedule.

3. Before applying the measure as defined under paragraph 2, the Party concerned shall refer the matter to the Commission for a thorough examination of the situation, with a view to seeking

a mutually acceptable solution. If the other Party so requests, the Parties shall hold consultations within the Commission. If no solution is found within 30 days of the request for such consultations, safeguard measures may be applied.

4. Where exceptional circumstances require immediate action, the importing Party may take the measures provided for in paragraph 2 on a transitional basis without complying with the requirements of paragraph 3 for a maximum period of 120 days. Such measures shall not exceed what is strictly necessary to limit or redress the injury or disturbance. The importing Party shall inform the other Party immediately.

5. The measures taken under this Article shall not exceed what is necessary to remedy the difficulties that have arisen. The Party imposing the measure shall preserve the overall level of preferences granted for the agricultural sector. To achieve this objective, the Parties may agree on compensation for the adverse effects of the measure on their trade, including the period during which a transitional measure applied in accordance with paragraph 4 is in place. To this effect, the Parties shall hold consultations to reach a mutually agreed solution. If no agreement is reached within 30 days, the affected exporting Party may, after notification to the Commission, suspend the application of substantially equivalent concessions under this Chapter.

6. For purposes of this Article:
   (a) "serious injury" shall be understood to mean a significant overall impairment in the position of the producers as a whole of the like or directly competitive products operating in a Party; and
   (b) "threat of serious injury" shall be understood to mean serious injury that is clearly imminent based on facts and not merely on allegations, conjecture or remote possibility.

Article 3.13: Committee on Trade in Goods

1. The Parties hereby establish the Committee on Trade in Goods, comprising representatives of each Party.

2. The Committee shall ensure the effective implementation and administration of this Chapter, Chapter 4, Chapter 5 and Uniform Regulations.

3. The Committee shall have the following functions:
   (a) to review and recommend to the Commission issues relating to market access, including the application of non-tariff measures; and
   (b) to promote trade in goods between the Parties through consultations and studies on matters relating to market access, including the periods established in Annex 3.4, in order to accelerate the tariff elimination process.

Annex 3.5
Temporary Admission of Goods

The temporary admission of goods from Korea specified in subparagraph 1 of Article 3.5 shall not be subject to the payment of the fees established in Article 106 of the Chilean Customs Ordinance (Ordenanza de Aduanas) contained in Decree with Force of Law 2 of the Ministry of Finance, Official Gazette, July 21, 1998 ("Decreto con Fuerza de Ley 2 del Ministerio de Hacienda, Diario Oficial, 21 de julio de 1998").

Annex 3.9
Import and Export Measures

Chilean Measures

Notwithstanding Article 3.9, Chile may continue or adopt measures related to imports of used vehicles.

CHAPTER 4
RULES OF ORIGIN

Article 4.1: Definitions

For purposes of this Chapter:

adjusted value means the value determined under Articles 1 through 8, Article 15, and the corresponding interpretative notes of the Customs Valuation Agreement, for purposes of the application of the regional value content formula and the De Minimis, adjusted, if necessary, to exclude the following costs, charges, and expenses from the customs value of the goods under consideration when not already excluded in accordance with the national legislation of a Party: any costs, charges, or expenses incurred for transportation, insurance, and related services incident to the international shipment of the merchandise from the country of exportation to the place of importation;

fungible goods or materials means goods or materials that are interchangeable for commercial purposes and whose properties are essentially identical;

good means any merchandise, product, article or material;

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

(a) mineral goods extracted in the territory of one or both of the Parties;
(b) vegetable goods, as defined in the Harmonised System, grown and harvested in the territory of one or both of the Parties;
(c) live animals born and raised in the territory of one or both of the Parties;
(d) goods obtained from hunting, trapping or fishing in the territory of one or both of the Parties;
(e) products of sea-fishing and other products taken from the sea outside the territory of one or both of the Parties by vessels registered or recorded with a Party and flying its flag;
(f) goods produced on board factory ships from the goods referred to in subparagraph (e), provided such factory ships are registered or recorded with one of the Parties and fly its flag;
(g) goods taken by a Party or a person of a Party from the seabed or beneath the seabed outside territorial waters, provided that a Party has rights to exploit such seabed;
(h) goods taken from outer space, provided that they are obtained by a Party or a person of a Party and not processed in a non-Party;
(i) waste and scrap derived from:
    (i) production in the territory of one or both of the Parties; or
    (ii) used goods collected in the territory of one or both of the Parties, provided that such goods are fit only for the recovery of raw materials; and
(j) goods produced in the territory of one or both of the Parties exclusively from goods referred to in subparagraphs (a) through (i), or from their derivatives, at any stage of production;

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

(a) fuel and energy;
(b) tools, dies and moulds;
(c) spare parts and materials used in the maintenance of equipment and buildings;
(d) lubricants, greases, compounding materials and other materials used in production or used to operate equipment and buildings;
(e) gloves, glasses, footwear, clothing, safety equipment and supplies;
(f) equipment, devices, and supplies used for testing or inspecting the goods;
(g) catalysts and solvents; and
(h) any other goods that are not incorporated into the good but whose use in the production of the good can reasonably be demonstrated to be a part of that production;

intermediate material means a material that is self-produced and used in the production of a good, and designated pursuant to Article 4.4;

material means a good that is used in the production of another good, such as a part or an ingredient;

non-originating good or **non-originating material** means a good or material that does not qualify as originating under this Chapter;

packing materials and containers for shipments means goods used to protect a good during its transportation, different from those containers or materials used for its individual sale;

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

production means growing, mining, harvesting, fishing, reproducing and breeding, trapping, hunting, manufacturing, processing or assembling a good;

used means used or consumed in the production of goods; and

value of materials means:

(a) Except in the case of packing materials and containers for shipments, for purposes of calculating the regional value content of a good, and for purposes of applying the De Minimis rule, the value of a material that is used in the production of a good shall:
    (i) for a material that is imported by the producer of the good, be the adjusted value of the material with respect to that importation;
    (ii) for a material purchased in the territory where the good is produced, the producer's actual cost for the material; and

(iii) for a material provided to the producer without charge, or at a price reflecting a discount or similar reduction, the cost or value shall be determined by computing the sum of:
   a. all expenses incurred in the growth, production, or manufacture of the material, including general expenses; and
   b. an amount for profit.

(b) The value of materials may be adjusted as follows:
   (i) for originating materials, if not included under subparagraph (a), the following expenses may be added to the value of the material:
      a. the costs of freight, insurance, packing and all other costs incurred in transporting the material to the location of the producer;
      b. duties, taxes and customs brokerage fees on the materials paid in the territory of one or both of the Parties, other than duties and taxes that are waived, refunded, refundable or otherwise recoverable, including credit against duty or tax paid or payable; and
      c. the costs of waste and spoilage resulting from the use of the material in the production of the good, less the value of renewable scrap or by-product.
   (ii) for non-originating materials, if included under subparagraph (a), the following expenses may be deducted from the value of the material:
      a. the costs of freight, insurance, packing and all other costs incurred in transporting the material to the location of the producer;
      b. duties, taxes and customs brokerage fees on the material paid in the territory of one or both of the Parties, other than duties and taxes that are waived, refunded, refundable or otherwise recoverable, including credit against duty or tax paid or payable;
      c. the costs of waste and spoilage resulting from the use of the material in the production of the good, less the value of renewable scrap or by-products; and
      d. the costs of originating materials used in the production of the non-originating material in the territory of a Party.

Article 4.2: Originating Goods

1. Except as otherwise provided in this Chapter, a good shall originate in the territory of a Party where:

(a) the good is wholly obtained or produced entirely in the territory of one or both of the Parties, as defined in Article 4.1;
(b) each of the non-originating materials used in the production of the good undergoes the applicable change in tariff classification set out in Annex 4 as a result of production occurring entirely in the territory of one or both of the Parties, or the good otherwise satisfies the applicable requirements of that Annex where no change in tariff classification is required, and the good satisfies all other applicable requirements of this Chapter;

(c) the good is produced entirely in the territory of one or both of the Parties exclusively from originating materials pursuant to this Chapter; or

(d) except for a good provided for in Chapters 61 through 63 of the Harmonised System, the good is produced entirely in the territory of one or both of the Parties but one or more of the non-originating materials that are used in the production of the good do not undergo a change in tariff classification because:

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

(ii) the heading for the good provides for and specifically describes both the good itself and its parts and is not further subdivided into subheadings, or the subheading for the good provides for and specifically describes both the good itself and its parts,

provided that the regional value content of the good, determined in accordance with Article 4.3, is not less than 45 per cent, where the build-down method is used, or 30 per cent, where the build-up method is used and that the good satisfies all other applicable requirements of this Chapter**.** However, if the applicable rule of Annex 4, where the good is classified, specifies a different amount of regional value-content requirement, then such a requirement shall be applied.

2. For the purpose of this Chapter, the production of a good from non-originating materials that undergo a change in tariff classification and satisfy other requirements pursuant to Annex 4, shall be made entirely in the territory of one or both of the Parties and the regional value content of the good shall be met entirely in the territory of one or both of the Parties.

3. Notwithstanding the requirements of this Article, goods shall not be considered originating if they result exclusively from operations under Article 4.13 carried out in the territory of the Parties, when in those operations non-originating materials are used.

Article 4.3: Regional Value Content

When a regional value content is required to determine if a good is originating, each Party shall provide that the regional value content of a good may be calculated on the basis of one or the other of the following two methods:

Method 1: Build-down method

$$RVC = \frac{AV - VNM}{AV} \times 100$$

Method 2: Build-up method

$$RVC = \frac{VOM}{AV} \times 100$$

where

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

AV is the adjusted value;

VNM is the value of non-originating materials used by the producer in the production of the good; and

VOM is the value of originating materials used by the producer in the production of the good.

Article 4.4: Intermediate Materials

Any self-produced material that is used in the production of a good may be designated by the producer of the good as an intermediate material for the purpose of calculating the regional value content of the good under Article 4.3, provided that where the intermediate material is subject to a regional value-content requirement, no other self-produced material subject to a regional value-content requirement used in the production of that intermediate material may itself be designated by the producer as an intermediate material.

Article 4.5: Accumulation

1. Originating goods or materials from the territory of a Party incorporated to a good in the territory of the other Party shall be considered originating from the territory of the latter Party.

2. For the purpose of establishing that a good is originating, the producer of a good may accumulate one's production with the production in the territory of one or both of the Parties by one or more producers, of materials incorporated in the good, so that the production of those materials is considered as done by that producer, provided that the good complies with the criteria set out in Article 4.2.

Article 4.6: De Minimis

1. A good that does not undergo a change in tariff classification pursuant to Annex 4, shall be considered originating if the value of all non-originating materials used in its production that do not undergo change in tariff classification does not exceed eight per cent of the adjusted value of the good determined pursuant to Article 4.3.

2. Paragraph 1 shall not apply to a non-originating material used in the production of a good provided for in Chapters 1 through 24 of the Harmonized System, unless the non-originating material is provided for in a different subheading from that of the good for which the origin is being determined under this Article.

3. A good provided for in Chapters 50 through 63 of the Harmonized System that does not originate because certain fibres or yarns used in the production of the component of the good that determines the tariff classification of the good do not undergo the applicable change in tariff classification set out in Annex 4, shall nonetheless be considered to originate if the total weight of all such fibres or yarns in that component is not more than eight per cent of the total weight of that component.

Article 4.7: Fungible Goods and Materials

1. For purposes of determining whether a good is an originating good:
   (a) where originating and non-originating fungible materials are used in the production of a good, the determination of whether the materials are originating need not be made through the identification of any specific fungible material, but shall be determined on the basis of any of the inventory management methods set out in the Uniform Regulations; and
   (b) where originating and non-originating fungible goods are commingled and exported in the same form, the determination shall be made on the basis of any of the inventory management methods set out in the Uniform Regulations.

2. Once a decision has been taken on the inventory management method, this method shall be used throughout the fiscal year.

Article 4.8: Accessories, Spare Parts and Tools

1. Accessories, spare parts or tools delivered with the good that form part of standard accessories, spare parts or tools of the good, shall be considered as originating if the good originates and shall be disregarded in determining whether all the non-originating materials used in the production of the good undergo the applicable change in tariff classification set out in Annex 4, provided that:
   (a) the accessories, spare parts or tools are not invoiced separately from the good; and
   (b) the quantities and value of the accessories, spare parts or tools are customary for the good.

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

Article 4.9: Indirect Materials

1. An indirect material shall be considered to be an originating material without regard to where it is produced. The value of its materials shall be the costs registered in the accounting records of the producer of the good.

2. The value of an indirect material shall be based on the Generally Accepted Accounting Principles applicable in the territory of the Party in which the good is produced.

Article 4.10: Packaging Materials and Containers for Retail Sale

Packaging materials and containers in which a good is packaged for retail sale shall, if classified with the good, be disregarded in determining whether all the non-originating materials used in the production of the good undergo the applicable change in tariff classification set out in Annex 4, and, if the good is subject to a regional value-content requirement, the value of such packaging materials and containers shall be taken into account as originating or non-originating materials, as the case may be, in calculating the regional value content of the good.

Article 4.11: Packing Materials and Containers for Shipment

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

(a) the non-originating materials used in the production of the good undergo the applicable change in tariff classification set out in Annex 4; and
(b) the good satisfies a regional value-content requirement.

Article 4.12: Transhipment

A good shall not be considered to be an originating good by reason of having undergone production that satisfies the requirements of Article 4.2, if, subsequent to that production, the good outside the territories of the Parties:

(a) undergoes further production or any operation, other than unloading, reloading, crating, packing and repacking or any other operation necessary to preserve it in good condition or to transport the good to the territory of a Party; or
(b) does not remain under the control or observation of the customs authority in the territory of the non-Party.

Article 4.13: Non-Qualifying Operations

1. A good shall not be considered to be originating merely by reason of:
   (a) operations or processes that assure the preservation of goods in good conditions for the purpose of transportation or storage;
   (b) operations or processes to facilitate shipment or transportation; or

(c) operations or processes relating to packaging or presentation of the goods for their respective sale.

2. Operations or processes under paragraph 1 shall include, *inter alia*:
   (a) airing, ventilation, drying, refrigeration, freezing;
   (b) cleaning, washing, sieving, shaking, selection, classification or grading, picking out, mixing, cutting;
   (c) peeling, unshelling or unflaking, grain removing, removal of bones, crushing or squeezing, macerating;
   (d) elimination of dust from broken or damaged parts, application of oil, paint for rust treatment or other protecting materials thereof;
   (e) testing or calibrations, division of bulk shipments, assemble into packages, adherent of marks, labels or distinctive signs on the products or packing; packing, unpacking or repackaging;
   (f) dilution with water or with any other aqueous, ionised or salted solution;
   (g) the simple assembly of goods, formation of sets;
   (h) salifying, sweetening;
   (i) slaughter of animals;
   (j) disassembly; and
   (k) the combination of one or more of these operations.

Article 4.14: Interpretation and Application

For purposes of this Chapter:
   (a) the basis for tariff classification in this Chapter is the Harmonised System;
   (b) where applying subparagraph 1(d) of Article 4.2, the determination of whether a heading or subheading under the Harmonised System provides for and specifically describes both a good and its parts shall be made on the basis of the nomenclature of the heading or subheading and the relevant Section or Chapter Notes, in accordance with the General Rules for the Interpretation of the Harmonised System;
   (c) in applying the Customs Valuation Agreement for the determination of the origin of a good under this Chapter:
      (i) the principles of the Customs Valuation Agreement shall apply to domestic transactions, with such modifications as may be required by the circumstances, as would apply to international transactions;
      (ii) the provisions of this Chapter shall take precedence over the Customs Valuation Agreement to the extent of any difference; and
      (iii) the definitions in Article 4.1 shall take precedence over the definitions in the Customs Valuation Agreement to the extent of any difference; and
   (d) all costs referred to in this Chapter shall be recorded and maintained in accordance with the Generally Accepted Accounting Principles applicable in the territory of the Party in which the good is produced.

Article 4.15: Consultations and Modifications

1. The Parties shall consult regularly to ensure that this Chapter is administered effectively, uniformly and consistently with the spirit and objectives of this Agreement, and shall cooperate in the administration of this Chapter in accordance with Chapter 5.

2. A Party that considers that this Chapter requires modification to take into account developments in production processes or other matters may submit to the other Party for consideration a proposed modification along with supporting rationale, any studies and any appropriate action that needs to be taken under Chapter 5.

CHAPTER 5
CUSTOMS PROCEDURES

Article 5.1: Definitions

For purposes of this Chapter:

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

customs administration means the competent authority that is responsible under the law of a Party for the administration of customs laws and regulations;

determination of origin means a ruling issued as a result of origin verification process establishing that a good qualifies as an originating good in accordance with Chapter 4;

exporter means a person located in the territory of a Party from where a good is exported by such a person and required to maintain records in the territory of that Party regarding exportations of the good, pursuant to Article 5.4.5;

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

importer means a person located in the territory of a Party where a good is imported by such a person and required to maintain records in the territory of that Party regarding importation of the good, pursuant to Article 5.3.4;

material means a “material” as defined in Article 4.1;

preferential tariff treatment means the duty rate applicable to an originating good, pursuant to the Parties’ respective Tariff Elimination Schedules;

producer means a “producer” as defined in Article 4.1;

production means "production" as defined in Article 4.1;

adjusted value means "adjusted value" as defined in Article 4.1;

Uniform Regulations means the "Uniform Regulations" established under Article 5.12;

used means "used" as defined in Article 4.1; and

value means value of a good or material for purposes of calculating customs duties or for purposes of applying Chapter 4.

Article 5.2: Certificate and Declaration of Origin

1. The Parties shall establish, by the entry into force of this Agreement, a single form for the Certificate of Origin and a single form for the Declaration of Origin, which may thereafter be revised by agreement between the Parties.

2. The Certificate of Origin, referred to in paragraph 1, shall certify that goods that are exported from the territory of one Party to the territory of the other Party qualify as originating. The Certificate will have a duration of two years from the date on which the Certificate was signed.

3. Each Party shall require that a Certificate of Origin for a good imported into its territory must be completed and signed in the English language, for the purpose of requesting preferential tariff treatment.

4. Each Party shall:
   (a) require an exporter in its territory to complete and sign a Certificate of Origin for any exportation of a good for which an importer may claim preferential tariff treatment on importation of the good into the territory of the other Party;
   (b) provide that where an exporter in its territory is not the producer of the good, the exporter may complete and sign a Certificate of Origin on the basis of:
      (i) its knowledge of whether the good qualifies as an originating good;
      (ii) its reasonable reliance on the producer's written representation that the good qualifies as an originating good; or
      (iii) the Declaration of Origin referred to in paragraph 1.

5. The Declaration of Origin referred to in paragraph 1 should be completed and signed by the producers of the good and provided voluntarily to the exporter. The Declaration will have a duration of two years from the date on which it was signed.

6. Each Party shall provide that a Certificate of Origin that has been completed and signed by an exporter in the territory of the other Party is applicable to a single importation of a good into its own territory.

7. For any originating good that is imported into the territory of a Party on or after the date of entry into force of this Agreement, each Party shall accept a Certificate of Origin that has been completed and signed prior to that date by the exporter of that good.

8. Each Party shall make all efforts to establish, according to its domestic legislation, that the Certificate of Origin completed and signed by the exporter is certified by competent governmental authorities or the body empowered by the government.

Article 5.3: Obligations Regarding Importations

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

(a) make a written declaration, in the importation document established in its legislation, based on a valid Certificate of Origin, that the good qualifies as an originating good;
(b) have the Certificate of Origin in its possession at the time the declaration, referred to in subparagraph (a), is made;
(c) provide, upon request of that Party's customs administration, a copy of the Certificate of Origin; and
(d) promptly make a corrected declaration and pay any duties owing, where the importer has reason to believe that a Certificate of Origin on which a declaration was based contains information that is not correct. When the importer complies with such obligations, the importer shall not be penalised.

2. Each Party shall provide that, when an importer in its territory does not comply with any requirement established in this Chapter, the claimed preferential tariff treatment shall be denied for the imported goods from the territory of the other Party.

3. Each Party shall provide that, where a good would have qualified as an originating good when it was imported into the territory of that Party but no claim for preferential tariff treatment was made at that time, the importer of the good may, no later than one year after the date on which the good was imported, apply for a refund of any excess duties paid as the result of the good not having been accorded with preferential tariff treatment, on presentation of:
(a) a written declaration that the good qualified as an originating good at the time of importation;
(b) a copy of the Certificate of Origin; and
(c) such other documentation relating to the importation of the good as that Party may require.

4. Each Party shall provide that an importer claiming preferential tariff treatment for a good imported into its territory maintain in that territory, for five years after the date of importation of the good or for such longer period as the Party may specify, such documentation, including a copy of the Certificate of Origin, as the Party may require relating to the importation of the good.

Article 5.4: Obligations Regarding Exportations

1. Each Party shall provide that an exporter in its territory, or a producer in its territory that has provided a copy of a Declaration of Origin to that exporter pursuant to Article 5.2, shall provide a copy of the Certificate or Declaration of Origin to its customs administration upon request.

2. Each Party shall provide that an exporter or a producer in its territory who has completed and signed a Certificate or Declaration of Origin, and who has reason to believe that the Certificate or Declaration of Origin contains information that is not correct, notifies promptly, in writing, its customs administration and all persons, to whom the Certificate or Declaration of Origin was given by the exporter or producer, of any change that could affect the accuracy or validity of the Certificate or Declaration, depending on the case. Upon compliance with such an obligation, neither the exporter nor the producer shall be penalised for presenting an incorrect Certification or Declaration of Origin.

3. Each Party shall provide that the customs administration of the exporting Party notify in writing to the customs administration of the importing Party regarding the notification mentioned in paragraph 2.

4. Each Party shall provide that a false certification by an exporter or a producer in its territory that a good to be exported to the territory of the other Party qualifies as an originating good shall have the same legal consequences, with appropriate modifications, as would apply to an importer in its territory for a contravention of its customs laws and regulations regarding the making of a false statement or representation. Furthermore, each Party may apply such measures as the circumstances may warrant where an exporter or a producer in its territory fails to comply with any requirement of this Chapter.

5. Each Party shall provide that an exporter or a producer in its territory that completes and signs a Certificate or Declaration of Origin shall maintain in its territory, for five years after the date on which the Certificate or Declaration of Origin was signed or for such a longer period as the Party may specify, all records relating to the origin of a good for which preferential tariff treatment was claimed in the territory of the other Party, including records associated with:

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

Article 5.5: Exceptions

Each Party shall provide that a Certificate of Origin shall not be required for:

(a) a commercial importation of a good whose value does not exceed US$1,000 or its equivalent amount in the Party's currency, or such higher amount as it may establish, except that it may require that the invoice accompanying the importation include a statement certifying that the good qualifies as an originating good,
(b) a non-commercial importation of a good whose value does not exceed US$1,000 or its equivalent amount in the Party's currency, or such higher amount as it may establish, or
(c) an importation of a good for which the Party into whose territory the good is imported has waived the requirement for a Certificate of Origin,

provided that the importation does not form part of one or more importations that may reasonably be considered to have been undertaken or arranged for the purpose of avoiding the certification requirements of Articles 5.2 and 5.3.

Article 5.6: Invoicing by a Non-Party Operator

When a good to be traded is invoiced by a non-Party operator, the producer or exporter of the originating Party shall notify, in the field titled "observations" of the respective Certificate of Origin, that the goods subject to declaration shall be invoiced from that non-Party, and shall

notify the name, corporate name and address of the operator that will eventually invoice the operation to its destination.

Article 5.7: Confidentiality

1. Each Party shall maintain, in accordance with its law, the confidentiality of confidential business information collected pursuant to this Chapter and shall protect such information from disclosure that could prejudice the competitive position of the persons providing the information.

2. The confidential business information collected pursuant to this Chapter may only be disclosed to those authorities responsible for the administration and enforcement of determinations of origin, and customs and revenue matters.

Article 5.8: Origin Verifications

1. The importing Party may request the exporting Party to provide information regarding the origin of any imported good.

2. For purposes of determining whether a good imported into its territory from the territory of the other Party qualifies as an originating good, the importing Party may, through its customs administration, conduct verification solely by means of:

(a) written questionnaires and requests for required information to an exporter or a producer in the territory of the other Party;
(b) visits to the premises of an exporter or a producer in the territory of the other Party to review the records referred to in Article 5.4.5 and observe the facilities used in the production of the good, or to that effect any facilities used in the production of the materials; or
(c) such other procedure as the Parties may agree.

3. The exporter or producer that receives a questionnaire pursuant to subparagraph 2(a) shall answer and return it within a period of 30 days from the date on which it was received. During this period the exporter or producer may, in only one opportunity, request in writing to the importing Party an extension of the original period, not exceeding 30 days.

4. In the case the exporter or producer does not return the questionnaire correctly answered within the given period or its extension, the importing Party may deny preferential tariff treatment.

5. Prior to conducting a verification visit pursuant to subparagraph 2(b), a Party shall, through its customs administration:

(a) deliver a written notification of its intention to conduct the visit to:
    (i) the exporter or producer whose premises are to be visited;
    (ii) the customs administration of the other Party; and
    (iii) if requested by the other Party, the embassy of the other Party in the territory of the importing Party proposing to conduct the visit; and

(b) obtain the written consent of the exporter or producer whose premises are to be visited.

6. The notification referred to in paragraph 5 shall include:
   (a) the identity of the customs administration issuing the notification;
   (b) the name of the exporter or producer whose premises are to be visited;
   (c) the date and place of the proposed verification visit;
   (d) the object and scope of the proposed verification visit, including specific reference to the good that is the subject of the verification;
   (e) the names and titles of the officials performing the verification visit; and
   (f) the legal authority for the verification visit.

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

8. Each Party shall provide that, upon receipt of notification pursuant to paragraph 5, such an exporter or a producer may, within 15 days of receiving the notification, postpone the proposed verification visit for a period not exceeding 60 days from the date of such receipt, or for such longer period as the Parties may agree. However, this may be done in only one opportunity. For this purpose, this extension shall be notified to the customs administration of the importing and exporting Parties.

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

10. Each Party shall permit an exporter or a producer whose good is the subject of a verification visit by the other Party to designate two observers to be present during the visit, provided that:
   (a) the observers do not participate in a manner other than as observers; and
   (b) the failure of the exporter or producer to designate observers shall not result in the postponement of the visit.

11. Each Party shall, through its customs administration, where conducting the verification of origin involving a regional value content, De Minimis calculation or any other provision in Chapter 4 to which Generally Accepted Accounting Principles may be relevant, apply such principles as are applicable in the territory of the Party from which the good was exported.

12. After the conclusion of a verification, the customs administration conducting the verification shall provide the exporter or producer whose good is the subject of the verification with a written determination of whether the good qualifies as an originating good, including findings of fact and the legal basis for the determination.

13. Where verifications by a Party indicate a pattern of conduct by an exporter or a producer of false or unsupported representations that a good imported into its territory qualifies as an

originating good, the Party may withhold preferential tariff treatment to identical goods exported or produced by such a person until that person establishes compliance with Chapter 4.

14. Each Party shall provide that where its customs administration determines that a certain good imported into its territory does not qualify as an originating good based on a tariff classification or a value applied by the Party to one or more materials used in the production of the good, which differs from the tariff classification or value applied to the materials by the other Party, the Party's determination shall not become effective until it notifies in writing both the importer of the good and the exporter that completed and signed the Certificate of Origin for the good of its determination.

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

(a) the competent authorities of the other Party has issued an advanced ruling under Article 5.9 or any other ruling on the tariff classification or on the value of such materials, or has given consistent treatment to the entry of the materials under the tariff classification or value at issue, on which a person is entitled to rely; and
(b) the advanced ruling, other ruling or consistent treatment was given prior to notification of the determination.

16. If a Party denies preferential tariff treatment to a good pursuant to a determination made under paragraph 14, it shall postpone the effective date of the denial for a period not exceeding 90 days where the importer of the good, or the person who completed and signed the Certificate of Origin for the good, demonstrates that it has relied in good faith to its detriment on the tariff classification or value applied to such materials by the customs administration of the other Party.

Article 5.9: Advanced Rulings on Determinations of Origin

1. Each Party shall, through its competent authorities, provide for the expeditious issuance of written advanced rulings, prior to the importation of a good into its territory, to an importer in its territory or an exporter or a producer in the territory of the other Party, on the basis of the facts and circumstances presented by such an importer, an exporter or a producer of the good, concerning:

(a) whether a good qualifies as an originating good under Chapter 4;
(b) whether materials imported from a non-Party used in the production of a good undergo an applicable change in tariff classification set out in Annex 4 as a result of production occurring entirely in the territory of one or both of the Parties;
(c) whether a good satisfies a regional value-content requirement under either the build-down method or the build-up method set out in Chapter 4;
(d) for the purpose of determining whether a good satisfies a regional value-content requirement under Chapter 4, the appropriate basis or method for value to be applied by an exporter or a producer in the territory of the other Party, in accordance with the principles of the Customs Valuation Agreement, for calculating the adjusted value of the good or of the materials used in the production of the good;
(e) for the purpose of determining whether a good satisfies a regional value-content requirement under Chapter 4, the appropriate basis or method for reasonably

allocating costs, in accordance with the allocation methods set out in the Uniform Regulations, for calculating the value of an intermediate material;

(f) whether a good that re-enters its territory after the good has been exported from its territory to the territory of the other Party for repair or alteration qualifies for duty-free treatment in accordance with Article 3.7; or

(g) such other matters as the Parties may agree.

2. Each Party shall adopt or maintain procedures for the issuance of advanced rulings, including a detailed description of the information reasonably required to process an application for a ruling.

3. Each Party shall provide that its competent authorities:

(a) may, at any time during the course of an evaluation of an application for an advanced ruling, request supplemental information from the person requesting the ruling;

(b) shall, after it has obtained all necessary information from the person requesting an advanced ruling, issue the ruling within the periods specified in the Uniform Regulations; and

(c) shall, where the advanced ruling is unfavourable to the person requesting it, provide to that person with a full explanation of the reasons for the ruling.

4. Subject to paragraph 6, each Party shall apply an advanced ruling to importations into its territory of the good for which the ruling was requested, beginning on the date of its issuance or such a later date as may be specified in the ruling.

5. Each Party shall provide to any person requesting an advanced ruling the same treatment, including the same interpretation and application of the provisions of Chapter 4 regarding a determination of origin, as it provided to any other person to whom it issued an advanced ruling, provided that the facts and circumstances are identical in all material respects.

6. The issuing Party may modify or revoke an advanced ruling:

(a) if the ruling is based on an error:

(i) of fact;

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

(iii) in the application of a regional value-content requirement under Chapter 4; or

(iv) in the application of the rules for determining whether a good that re-enters its territory after the good has been exported from its territory to the territory of the other Party for repair or alteration qualifies for duty-free treatment under Article 3.7;

(b) if the ruling is not in accordance with an interpretation agreed by the Parties regarding Chapter 3 or Chapter 4;

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

(d) to conform with a modification of Chapter 3, Chapter 4, this Chapter or the Uniform Regulations; or

(e) to conform with a judicial or administrative decision or a change in its domestic law.

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

8. Notwithstanding paragraph 7, the issuing Party shall postpone the effective date of such modification or revocation for a period not exceeding 90 days where the person to whom the advanced ruling was issued demonstrates that it has relied in good faith to its detriment on that ruling.

9. Each Party shall provide that where its competent authorities examines the regional value content of a good for which it has issued an advanced ruling pursuant to subparagraphs 1(d), (e) and (f), it shall evaluate whether:

(a) the exporter or producer has complied with the terms and conditions of the advanced ruling;
(b) the exporter's or producer's operations are consistent with the material facts and circumstances on which the advanced ruling is based; and
(c) the supporting data and computations used in applying the basis or method for calculating value or allocating cost were correct in all material respects.

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

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

12. Each Party shall provide that where it issues an advanced ruling to a person that has misrepresented or omitted material facts or circumstances on which such a ruling is based or has failed to act in accordance with the terms and conditions of the ruling, the Party may apply such measures as the circumstances may warrant.

13. The Parties shall provide that the person to whom the advanced ruling was issued may use it only while the material facts or circumstances that were the basis of its issuance are still present. In this case, the person to whom the advanced ruling was issued may present the necessary information for the issuing authority to proceed pursuant to paragraph 6.

14. A good that is subject to an origin verification process or any instance of review or appeal in the territory of one of the Parties may not undergo an advanced ruling.

Article 5.10: Review and Appeal

1. Each Party shall grant substantially the same rights of review and appeal of determinations of origin and advanced rulings by its customs administration, as it provides to importers in its territory, to any person:

(a) who completes and signs a Certificate of Origin for a good that has been the subject of a determination of origin pursuant to Article 5.8.12; or

(b) who has received an advanced ruling pursuant to Article 5.9.

2. Each Party shall provide that the rights of review and appeal referred to in paragraph 1 shall include access to:

(a) at least one level of administrative review independent of the official or office responsible for the determination under review; and

(b) in accordance with its domestic law, judicial or quasi-judicial review of the determination or decision taken at the final level of administrative review.

Article 5.11: Penalties

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

2. Nothing in Articles 5.3.1(d), 5.3.2, 5.4.2, 5.8.4, 5.8.7 or 5.8.9 shall be construed to prevent a Party from applying such measures as the circumstances may warrant.

Article 5.12: Uniform Regulations

1. The Parties shall establish and implement, through their respective laws or regulations, by the date of entry into force of this Agreement, or at any time thereafter upon agreement of the Parties, the Uniform Regulations regarding the interpretation, application and administration of Chapter 3, Chapter 4, this Chapter and other matters as may be agreed by the Parties.

2. As of the entry into force of the Uniform Regulations, each Party shall implement any modification of or addition to the Uniform Regulations no later than 180 days after the Parties agree on such modification or addition, or such other period as the Parties may agree.

Article 5.13: Cooperation

1. Each Party shall notify the other Party of the following determinations, measures and rulings, including to the greatest extent practicable those that are prospective in application:

(a) a determination of origin issued as the result of a verification conducted pursuant to Article 5.8, once the instances of review and appeal pursuant to Article 5.10 have been exhausted;

(b) a determination of origin that the Party is aware is contrary to:

(i) a ruling issued by the customs administration of the other Party with respect to the tariff classification or value of a good, or of materials used in the production of a good, or the reasonable allocation of costs where calculating the value of a good, that is the subject of a determination of origin; or

(ii) consistent treatment given by the customs administration of the other Party with respect to the tariff classification or value of a good, or of materials used in the production of a good, or the reasonable allocation of costs where calculating the value of a good, that is the subject of a determination of origin;

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

(d) an advanced ruling, or a ruling modifying or revoking an advanced ruling, pursuant to Article 5.9.

2. The Parties shall cooperate:

(a) in the enforcement of their respective customs-related laws or regulations implementing this Agreement, and under any customs mutual assistance agreement or other customs-related agreement to which they are party;

(b) to the extent practicable and for purposes of facilitating the flow of trade between them, in such customs-related matters as the collection and exchange of statistics regarding the importation and exportation of goods, the harmonisation of documentation used in trade, the standardisation of data elements, the acceptance of an international data syntax and the exchange of information;

(c) to the extent practicable, in the storage and transmission of customs-related documentation;

(d) in the origin verification process of a good, for which the customs administration of the importing Party may request the other Party's customs administration to cooperate in this process of verification in its own territory;

(e) to search for a certain mechanism with the purpose of detecting and preventing the illicit shipment of goods arriving from one of the Parties or from a non-Party; and

(f) to jointly organise training programmes in customs related issues, which should include training for customs officials as well as users that directly participate in customs procedures.

Article 5.14: Review

In the second year from the date of entry into force of this Agreement, the Parties shall examine and revise, if deemed necessary by the Parties, the system regarding the Certificate or Declaration of Origin under this Chapter.

CHAPTER 6
SAFEGUARD MEASURES

Article 6.1: Safeguard Measures

1. Both Parties maintain their rights and obligations under Article XIX of GATT and the Agreement on Safeguards, which is part of the WTO.

2. Actions taken pursuant to Article XIX of GATT and Agreement on Safeguards shall not be subject to Chapter 19 of this Agreement.

CHAPTER 7
ANTI-DUMPING AND COUNTERVAILING DUTY MATTERS

Article 7.1: Anti-Dumping and Countervailing Duty Matters

1. The Parties maintain their rights and obligations under Article VI of GATT, the Agreement on Implementation of Article VI of GATT ("Agreement on Antidumping") and the Agreement on Subsidies and Countervailing Measures, which are part of the WTO Agreement.

2. Antidumping actions taken pursuant to Article VI of GATT and the Agreement on Antidumping, or countervailing actions taken pursuant to Article VI of GATT and the Agreement on Subsidies and Countervailing Measures shall not be subject to Chapter 19 of this Agreement.

CHAPTER 8
SANITARY AND PHYTOSANITARY MEASURES

Article 8.1: Definitions

For purposes of this Chapter, the definitions and terms established under the following shall be applied:

(a) Agreement on the Application of Sanitary and Phytosanitary Measures, which is part of the WTO Agreement (SPS Agreement);
(b) Office International des Epizooties (OIE);
(c) International Plant Protection Convention (IPPC); and
(d) Codex Alimentarius Commission (CODEX).

Article 8.2: General Provisions

1. This Chapter applies to all sanitary and phytosanitary measures, which may, directly or indirectly, affect trade between the Parties.

2. The Parties shall, through mutual cooperation, facilitate agricultural, fishing and forest trade without such trade posing a sanitary or phytosanitary risk, and agree to prevent the introduction or spread of pests or diseases, and to enhance plant and animal health and food safety.

3. The framework of rules and disciplines that guide the adoption and enforcement of the sanitary and phytosanitary measures included in this Chapter is deemed to be consistent with the SPS Agreement.

4. Any other sanitary or phytosanitary matter which is not described in this Chapter shall be dealt with in accordance with the SPS Agreement.

Article 8.3: Rights of the Parties

The Parties may, in accordance with the SPS Agreement:

(a) adopt, maintain or apply any sanitary or phytosanitary measure whenever it is necessary for the protection of human, animal or plant life or health in their territories in accordance with this Chapter; and
(b) apply their sanitary or phytosanitary measures to the extent necessary to achieve an appropriate level of protection.

Article 8.4: Obligations of the Parties

Each Party shall ensure that any sanitary or phytosanitary measure that it adopts, maintains or applies:

(a) is neither applied in a manner that constitutes a disguised restriction on trade, nor has the purpose or the effect of creating unnecessary obstacles to trade between the Parties;
(b) is based on scientific principles and is not maintained without sufficient scientific evidence, except as provided for in Article 5.7 of the SPS Agreement; and
(c) does not arbitrarily or unjustifiably discriminate between its goods and similar goods of the other Party, or between goods of the other Party and similar goods of any other country, where identical or similar conditions exist.

Article 8.5: International Standards and Harmonization

1. Without reducing the level of protection of human, animal or plant life or health, each Party shall base its sanitary and phytosanitary measures on relevant international standards, guidelines or recommendations, where they exist, with a view to seeking harmonization.

2. Notwithstanding paragraph 1, the Parties may adopt a sanitary or phytosanitary measure offering a level of protection other than the level that would be achieved through a measure based on an international standard, guideline or recommendation, including a more stringent measure than the foregoing, if there is a scientific justification, or as a consequence of the level of sanitary or phytosanitary protection the Party determines to be appropriate in accordance with the relevant provisions of Article 5 of the SPS Agreement.

3. For purposes of achieving a higher degree of harmonization, the Parties shall, to the greatest extent possible, cooperate in the development of international standards, guidelines and recommendations to all aspects of sanitary and phytosanitary measures, and follow the standards, guidelines and recommendations set by the following organizations:
(a) on plant health issues, the IPPC;
(b) on animal health issues, the OIE; and
(c) on food safety issues, the CODEX.

4. For matters not covered by the international organizations listed in paragraph 3, the Parties may consider, as agreed by the Parties, the standards, guidelines and recommendations of other relevant international organizations of which both Parties are members.

Article 8.6: Equivalence

1. Each Party shall accept the sanitary and phytosanitary measures of the other Party as equivalent, even if these measures differ from its own measures, if the exporting Party objectively demonstrates to the other Party that its measures achieve the other Party's appropriate level of sanitary or phytosanitary protection.

2. For purposes of ensuring that sanitary and phytosanitary measures of the exporting Party consistently meet the importing Party's requirements, the exporting Party shall, upon request, provide the importing Party with reasonable access to its territory for the verification of its systems or procedures of inspection, testing and other relevant procedures.

Article 8.7: Risk Assessment and Determination of Appropriate Sanitary and Phytosanitary Level of Protection

1. The Parties shall ensure that their sanitary and phytosanitary measures are, as appropriate to the circumstances, based on an assessment of the risks to human, animal or plant life or health, taking into account relevant risk assessment guidelines and techniques developed by the relevant international organizations.

2. The Parties shall, in assessing risks and determining a sanitary or phytosanitary measure, take into account available scientific evidence and other factors, such as:

(a) the prevalence of pests or diseases;
(b) the existence of pest- or disease-free areas;
(c) the relevant ecological and environmental conditions;
(d) the effectiveness of eradication or control programs;
(e) the structure and organization of sanitary and phytosanitary services; and
(f) the control, monitoring, diagnosis and other procedures ensuring the safety of the product.

3. In assessing risks to animal or plant life or health and determining the measure to be applied for achieving the appropriate level of protection from such risks, the Parties shall take into account the following relevant economic factors:

(a) the potential damage in terms of loss of production or sales in the event of the entry, establishment or spread of a pest or disease;
(b) the cost of control or eradication in the territory of the importing Party; and
(c) the relative cost-effectiveness of alternative approaches to limiting risks.

4. The Parties shall, in establishing their appropriate levels of protection, take into account the objective of minimizing negative trade effects and shall, with the purpose of achieving consistency in the application of such levels of protection, avoid arbitrary or unjustifiable distinctions that may result in discrimination or constitute a disguised restriction on the trade between the Parties.

5. Where a Party determines that available scientific information is insufficient, it may adopt a provisional sanitary or phytosanitary measure on the basis of available relevant information, including information from relevant international organizations and from sanitary or phytosanitary measures of the other Party and any other countries. The Party shall, once it has the information sufficient to complete the assessment, complete its assessment and, where appropriate, review the provisional sanitary or phytosanitary measure within a reasonable period of time.

Article 8.8: Adaptation to Regional Conditions, including Pest- or Disease-Free Areas and Areas of Low Pest or Disease Prevalence

1. The Parties shall adapt its sanitary or phytosanitary measures relating to animal or plant pest or disease to the sanitary or phytosanitary characteristics of the area of origin and destination of the goods. When assessing the characteristics of an area, the Parties shall take into

account, *inter alia*, the level of prevalence of specific diseases or pests, the existence of eradication or control programmes, and appropriate criteria or guidelines, which may be developed by the relevant international organizations.

2. The Parties shall recognize, in particular according to relevant international standards, the concepts of pest- or disease-free areas or areas of low pest or disease prevalence. When determining such areas, the Parties shall consider factors, such as geographical location, ecosystems, epidemiological surveillance, and the effectiveness of sanitary or phytosanitary controls in that area.

3. The Party declaring that an area in its territory is free from or low prevalence of a specific pest or disease shall provide the necessary evidence thereof in order to demonstrate such a condition objectively and to the satisfaction of the other Party, and give assurances that the area shall remain as such based on protection measures adopted by the authorities responsible for sanitary and phytosanitary services.

4. The Party interested in obtaining the recognition of a pest- or disease-free area or areas of low pest or disease prevalence shall make the request, and provide the relevant scientific and technical information to the other Party. For this purpose, the requesting Party shall provide reasonable access to its territory to the other Party for inspection, testing and other relevant procedures.

5. If the request for recognition is rejected, the rejecting Party shall provide the technical reasons for its decision in writing.

Article 8.9: Control, Inspection and Approval Procedures

1. The Parties shall, in accordance with this Chapter, apply the provisions in Annex C of the SPS Agreement in relation to control, inspection or approval procedures, including systems for approving the use of additives or for establishing levels of tolerance for contaminants in food, beverages or feedstuffs.

2. The importing Party may verify whether the imported animals, plants and other related products are consistently in compliance with its sanitary and phytosanitary requirements. The Parties shall facilitate proceedings for such verification.

Article 8.10: Transparency

1. Each Party shall notify through its competent authorities, modification of a sanitary or phytosanitary measure and provide the related information in accordance with the provisions in Annex B of the SPS Agreement.

2. In addition, to ensure the protection of human, animal or plant life or health in the other Party, each Party shall notify:

(a) changes or modifications to sanitary and phytosanitary measures having a significant effect on trade between the Parties, at least 60 days before the effective date of the new provision, to allow for observations from the other Party. The 60-day period shall not apply to emergency situations, as established in Annex B of the SPS Agreement;
(b) changes occurring in the animal health field, such as the appearance of exotic diseases and those in List A of the OIE, within 24 hours following their provisional diagnosis;
(c) changes occurring in the phytosanitary field, such as the appearance of a quarantine pest and spread of a pest under official control, within 24 hours following verification of the pest;
(d) food control emergency situations where there is a clearly identified risk of serious adverse health effects associated with the consumption of certain food, within 24 hours of the identification of the risk; and
(e) discoveries of epidemiological importance and significant changes related to diseases and pests not included in subparagraphs 2(b) and (c) that may affect trade between the Parties, within a maximum period of ten days following the verification of such diseases and pests.

Article 8.11: Committee on Sanitary and Phytosanitary Measures

1. The Parties hereby establish a Committee on Sanitary and Phytosanitary Measures ("Committee"), comprising representatives of each Party, who are responsible for sanitary and phytosanitary issues in the fields of animal and plant health, food safety and trade.

2. The Committee shall be set up not later than 30 days after the entry into force of this Agreement.

3. The Committee shall carry out the functions necessary to implement the provisions of this Chapter, including, but not limited to:
(a) coordinating the application of the provisions of this Chapter;
(b) facilitating consultations on specific matters related to sanitary or phytosanitary measures;
(c) establishing and determining the scope and mandate of the sub-committees;
(d) promoting technical cooperation between the Parties, including cooperation in the development, adoption and enforcement of sanitary and phytosanitary measures; and
(e) monitoring the compliance with the provisions of this Chapter.

4. The Committee shall establish, if the need arises and the Parties so agree, the following sub-committees: Sub-Committees on Animal Health, Plant Protection and Food Safety. The members of these sub-committees shall be designated by the relevant authorities in their respective fields.

5. The sub-committees shall carry out the following functions, including, but not limited to:
(a) preparing terms of reference for their activities within the scope of their competence and informing results thereof to the Committee;

(b) concluding specific agreements on matters of interest, involving higher technical-operating details, to be submitted to the Committee; and
(c) establishing expeditious information exchange mechanisms to deal with consultations between the Parties.

6. The Committee shall meet once every two years, except as otherwise agreed. If an additional meeting is requested by a Party, it will be held in the territory of the other Party. The sub-committees shall meet, upon request of a Party. The meetings may also be held by telephone, video conference or other means, upon the agreement of both Parties.

7. The Committee shall report annually to the Commission on the implementation of this Chapter.

Article 8.12: Technical Consultations

1. A Party may initiate consultations with the other Party if uncertainty arises with regard to the application or interpretation of the content of a sanitary or phytosanitary measure under this Chapter.

2. Where a Party requests consultations and so notifies the Committee, the Committee shall facilitate consultations, and may refer the matter at issue to an *ad hoc* working group or another forum, for providing non-binding technical assistance or recommendations to the Parties.

3. A Party asserting that the interpretation or application of a sanitary or phytosanitary measure of the other Party is inconsistent with the provisions of this Chapter shall bear the burden to prove such inconsistency.

4. Where the Parties, pursuant to this Article, have carried out consultations without reaching satisfactory results, such consultations, if so agreed by the Parties, shall constitute consultations under Article 19.4.

CHAPTER 9
STANDARDS-RELATED MEASURES

Article 9.1: Definitions

For purposes of this Chapter:

authorization procedure means any registration, notification or other mandatory administrative procedure granting authorization for a good to be produced, marketed or used for a stated purpose or under stated conditions;

conformity assessment procedure means any procedure used, directly or indirectly, to determine compliance with the provisions on technical regulations or standards. This includes, *inter alia*, sampling procedures, testing and inspection, evaluation, verification and assurance of conformity, registration, accreditation and approval either separately or in combination;

international standard means a standards-related measure, or any other guideline or recommendation, adopted by an international standardizing body and made available to the public;

international standardizing body means a standardizing body whose membership is open to the relevant bodies of at least all the parties to the WTO Agreement, including the International Organization for Standardization, the International Electrotechnical Commission, the Codex Alimentarius Commission, the World Health Organization, the Food and Agriculture Organization of the United Nations, the International Telecommunication Union, and any other body that the Parties designate;

legitimate objective is to guarantee national security requirements, the prevention of deceptive practices, protection of human health or safety, animal or plant life or health, or the environment and any other objective that shall be determined by the Standards-Related Measures Committee;

make compatible means to bring different standards-related measures of the same scope approved by different standardizing bodies to a level such that they are either identical or modified to fulfill the same purpose, or have the effect of permitting that goods are used in place of one another or fulfill the same purpose;

standard means a document, approved by a recognized body, that provides for common and repeated use, rules, guidelines or characteristics for goods or related processes and production methods, with which compliance is not mandatory. It may also include or deal exclusively with terminology, symbols, packaging, marking and labelling requirements applicable to a good, process or production method;

standardizing body means a body having recognized activities in standardization;

standards-related measures means a standard, technical regulation or conformity assessment procedure; and

technical regulation means a document which lays down the product characteristics or their related processes and production methods, including the applicable administrative provisions, with which compliance is mandatory. It may also include or deal exclusively with terminology, symbols, packaging, marking or labelling requirements applicable to a product, process, or production method.

Article 9.2: General Provision

The Parties shall apply the provisions set forth in this Chapter in addition to the provisions established by the WTO Agreement.

Article 9.3: Scope and Coverage

1. This Chapter applies to standards-related measures of the Parties that may, directly or indirectly, affect the trade of goods between the Parties and to measures of the Parties relating to such measures.

2. Provisions included in this Chapter shall not apply to sanitary and phytosanitary measures governed by Chapter 8. Technical specifications prepared by governmental bodies for production or consumption requirements of governmental bodies are not subject to the provisions of this Chapter but are addressed in Chapter 15.

Article 9.4: Basic Rights and Obligations

Right to Take Standards-Related Measures

1. Each Party may prepare, adopt, apply or maintain any standards-related measure to ensure that each Party is able to pursue its legitimate objectives, as well as measures ensuring enforcement and compliance with these standardizing measures, including approval procedures.

Extent of Obligation

2. Each Party shall comply with the applicable provisions of this Chapter and adopt the appropriate measures to ensure its observance, as well as those measures of non-governmental standardizing bodies duly accredited in its territory.

3. Each Party shall, in respect of its standards-related measures, accord to goods of the other Party:

(a) national treatment; and

(b) treatment no less favorable than the most favorable treatment that the Party accords to similar goods of any other non-Party.

Unnecessary Obstacles

4. No Party may prepare, adopt, maintain or apply any standards-related measure with a view to or with the effect of creating unnecessary obstacles to trade between the Parties. To that end, standards-related measures shall not be more trade restrictive than necessary to achieve a legitimate objective, taking account of the risks that non-fulfillment would create. An unnecessary obstacle to trade shall not be deemed to be created where:

(a) the demonstrable purpose of the measure is to achieve a legitimate objective;
(b) the measure complies with an international standard; and
(c) the measure does not operate to exclude goods of the other Party that meet that legitimate objective.

Use of International Standards

5. Each Party shall use, as a basis for its own standards-related measures, the relevant international standards in force or whose completion is imminent, except where such standards would be an ineffective or inappropriate means to fulfill its legitimate objectives.

Article 9.5: Compatibility

1. Recognizing the crucial role of standards-related measures in achieving legitimate objectives, the Parties shall, in accordance with this Chapter and the WTO Agreement, work jointly to enhance the level of safety and of protection of human, animal and plant life and health, the environment and consumers.

2. The Parties shall, to the greatest extent practicable, work to make compatible their respective standards-related measures, without reducing the level of safety or of protection of human, animal or plant life or health, the environment or consumers, without prejudice to the rights granted to either Party under this Chapter, and taking into account international standardization activities so as to facilitate the trade of a good between the Parties.

3. A Party shall, upon request of the other Party, seek, as far as possible and through appropriate measures, to promote the compatibility of a specific standard-related measure that is maintained in its territory with the standards-related measures maintained in the territory of the other Party.

4. A Party shall, upon request in writing from the other Party explicitly stating its reasons for the request, consider favorably the possibility of accepting standards-related measures of the other Party as equivalent to its own, even if they differ from its own, provided that, in cooperation with that Party, it is convinced that such measures comply adequately with the legitimate objectives of its own measures.

5. A Party shall provide to the other Party, upon request, its reasons in writing for not accepting standards-related measures as equivalent under paragraph 4.

Article 9.6: Conformity Assessment Procedures

1. Conformity assessment procedures of the Parties shall be prepared, adopted and applied in a manner that provides access to similar goods of the territory of the other Party on terms no less favorable than those granted to similar goods of the Party or any other country in a comparable position.

2. Each Party shall, with respect to its conformity assessment procedures, ensure that:
   (a) such procedures are initiated and completed as expeditiously as possible and in a non-discriminatory order;
   (b) the normal processing period for each one of such procedures is published or the estimated processing period is communicated to the applicant upon request;
   (c) the competent body or authority:
      (i) upon receipt of an application, promptly examines the completeness of the documentation and informs the applicant in a precise and complete manner of any deficiency;
      (ii) transmits to the applicant as soon as possible the results of the assessment in a precise and complete manner, so that the applicant may take any necessary corrective action;
      (iii) even if the application is deficient, proceeds as far as practicable with the conformity assessment if so requested by the applicant; and
      (iv) informs the applicant, on request, of the status of the application and the reasons for any delay;
   (d) it limits the information the applicant is required to supply to what is necessary to conduct the conformity assessment procedure and to determine appropriate fees;
   (e) the confidential nature of information arising from, or supplied in connection with such procedures for a good of the other Party is respected in the same manner as the treatment accorded to a good of that Party, so as to protect legitimate commercial interests;
   (f) any fee it imposes for conducting the conformity assessment procedure of a good of the other Party is no higher than is equitable in relation to any such fee imposed for like goods of that Party, taking into account communication, transportation and other related costs derived from the different locations of the facilities of the applicant and those of the conformity assessment body;
   (g) the location of facilities at which conformity assessment procedures and sampling selection procedures are conducted does not cause unnecessary inconvenience to the applicant or its agents;
   (h) whenever the specifications for a good are modified subsequent to a determination that the good conforms to the applicable technical regulation or standard, the conformity assessment procedure of the modified good is limited to what is necessary to determine that the good continues to conform to the technical regulation or standard; and
   (i) there is a procedure in place to review complaints concerning the operation of a conformity assessment procedure and that corrective action is taken when a complaint is justified.

3. Each Party shall give positive consideration to a request by the other Party to negotiate agreements for the mutual recognition of the results of their respective conformity assessment procedures.

4. Each Party shall, wherever possible, accept the results of the conformity assessment procedures conducted in the territory of the other Party, provided that the procedure offers a satisfactory assurance, equivalent to that provided by a procedure it conducts or a procedure conducted in its territory, the results of which it accepts, and that the relevant good complies with the applicable technical regulation or standard adopted or maintained in that Party's territory.

5. Prior to accepting the results of a conformity assessment procedure pursuant to paragraph 4, and in order to enhance confidence in the permanent reliability of each one of the conformity assessment results, the Parties may consult on matters such as the technical competence of the conformity assessment bodies involved, including verified compliance with relevant international standards through means such as accreditation.

6. Recognizing that it should be to the mutual advantage of the Parties, each Party shall accredit, approve, or otherwise recognize conformity assessment bodies in the territory of the other Party, on terms no less favorable than those accorded to conformity assessment bodies in its territory.

Article 9.7: Authorization Procedures

Each Party shall apply, with such modifications as may be necessary, the relevant provisions of Article 9.6.2, to its authorization procedures.

Article 9.8: Transparency

1. Each Party shall keep a list of its standards-related measures and make them available to the other Party, upon request, and ensure that where full copies of documents are requested by the other Party or by interested persons of the other Party, they are supplied at the same price, apart from the actual cost of delivery, as the price for domestic purchase.

2. Where a Party allows non-governmental persons in its territory to participate in the process of preparation of standards-related measures, it shall also allow non-governmental persons from the territory of the other Party to participate. In such participation, non-governmental persons from the territory of the other Party shall be allowed to express their opinions and comments on the preparation of the standards-related measure.

Article 9.9: Limitations on the Provision of Information

Nothing in this Chapter shall be construed to require a Party to furnish any information the disclosure of which they consider is contrary to its essential security interests.

Article 9.10: Committee on Standards-Related Measures

1. The Parties hereby establish the Committee on Standards-Related Measures, comprising representatives of each Party, pursuant to Annex 9.10.

2. The Committee's functions shall include:
   (a) monitoring the implementation, enforcement and administration of this Chapter;
   (b) considering any specific matter relating to the standards-related and metrology-related measures of the other Party or any other related measures, whenever a Party has any doubts on the interpretation or application of this Chapter, including the provision of non-mandatory technical advice and recommendations;
   (c) facilitating the process by which the Parties make compatible their standards-related and metrology-related measures;
   (d) providing a forum for the Parties to consult on issues relating to standards-related and metrology-related measures;
   (e) fostering technical cooperation activities between the Parties;
   (f) enhancing cooperation on the development and strengthening of standardization systems, technical regulations, conformity assessment procedures and metrology systems of the Parties;
   (g) reporting annually to the Commission on the implementation of this Chapter;
   (h) facilitating the process of negotiating agreements for mutual recognition between the Parties; and
   (i) establishing sub-committees as deemed necessary and determining the scope of action and mandate of such sub-committees.

3. The Committee shall meet as mutually agreed but not less than once a year. The meetings may also be held by telephone, video conference or other means, upon the agreement of the Parties.

Article 9.11: Technical Cooperation

1. Each Party shall, upon request of the other Party, provide:
   (a) information and technical assistance on mutually agreed terms and conditions to enhance the standards-related measures of that Party, as well as its activities, processes and systems in this matter; and
   (b) information on its technical cooperation programs linked to standards-related measures in specific areas of interest.

2. Each Party shall encourage standardizing bodies in its territory to cooperate with the standardizing bodies in the territories of the other Party, as appropriate, in standardizing activities, such as through membership in international standardizing bodies.

3. Each Party shall, to the fullest extent practicable, inform the other Party of the international agreements or programs it has executed on standards-related measures.

Annex 9.10
Members of the Standards-Related Measures Committee

1. For purposes of Article 9.10, members of the Committee will be representatives from:
   (a) in the case of Chile, the Ministerio de Economía, through the Departamento de Comercio Exterior, or its successor; and
   (b) in the case of Korea, the Ministry of Commerce, Industry and Energy, through a department responsible for standards-related measures, or its successor.

2. Each member shall invite, as it deems necessary or upon request of the other Party, other relevant government organizations responsible for standards-related measures, to participate in the Committee.

PART III
INVESTMENT, SERVICES AND RELATED MATTERS

CHAPTER 10
INVESTMENT

Section A - Definitions

Article 10.1: Definitions

For purposes of this Chapter:

disputing investor means an investor that makes a claim under Section C;

disputing parties means the disputing investor and the disputing Party;

disputing Party means a Party against which a claim is made under Section C;

disputing party means the disputing investor or the disputing Party;

enterprise means an "enterprise" as defined in Article 2.1, and a branch of an enterprise;

enterprise of a Party means an enterprise constituted or organized under the law of a Party and a branch, located in the territory of a Party and carrying out business activities there;

financial institution means any natural person or enterprise of a Party wishing to supply or supplying financial services under the law of the Party in whose territory it is located;

G7 currency means the currency of Canada, France, Germany, Italy, Japan, the United Kingdom of Great Britain and Northern Ireland or the United States of America;

ICSID means the International Center for Settlement of Investment Disputes;

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

investment means every kind of asset that an investor owns or controls, directly or indirectly, and that has the characteristics of an investment, such as the commitment of capital or other resources, the expectation of gains or profits and the assumption of risk. Forms that an investment may take include, but are not limited to:

(a) an enterprise;
(b) shares, stocks, and other forms of equity participation in an enterprise;
(c) bonds, debentures, loans, and other debt instruments of an enterprise;

(d) rights under contracts, including turnkey, construction, management, production, concession or revenue-sharing contracts;
(e) claims to money established and maintained in connection with the conduct of commercial activities;
(f) intellectual property rights;
(g) rights conferred pursuant to domestic law or contract such as concessions, licenses, authorizations and permits, except for those that do not create any rights protected by domestic law; and
(h) other tangible or intangible, movable or immovable property, and related property rights, such as leases, mortgages, liens and pledges;

but **investment** does not mean,

(i) claims to money that arise solely from:
  (i) commercial contracts for the sale of goods or services by a national or enterprise in the territory of a Party to an enterprise in the territory of the other Party; or
  (ii) the extension of credit in connection with a commercial transaction, such as trade financing; and
(j) an order entered in a judicial or administrative action.

investment of an investor of a Party means an investment owned or controlled, directly or indirectly, by an investor of such a Party;

investor of a Party means a Party or state enterprise thereof, or a national or an enterprise of such a Party, that makes a juridical act in the territory of the other Party, towards materializing an investment within it, that submits capital or, when applicable, is making or has made an investment;

investor of a non-Party means an investor other than an investor of a Party;

New York Convention means the United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards, done in New York on June 10, 1958;

Secretary-General means the Secretary-General of ICSID;

transfers means transfers and international payments;

Tribunal means an arbitration tribunal established under Article 10.24 or 10.30;

TRIMS Agreement means Agreement on Trade-Related Investment Measures, which is part of the WTO Agreement; and

UNCITRAL Arbitration Rules means the arbitration rules of the United Nations Commission on International Trade Law, approved by the United Nations General Assembly on December 15, 1976.

Section B - Investment

Article 10.2: Scope and Coverage

1. This Chapter applies to measures adopted or maintained by a Party relating to:
   (a) investors of the other Party;
   (b) investments of investors of the other Party in the territory of the Party; and
   (c) with respect to Articles 10.7 and 10.18, all investments in the territory of the Party.

2. This Chapter applies to the existing investments at the date of the entry into force of this Agreement, as well as to the investments made or acquired after this date.

3. This Chapter does not apply to:
   (a) measures adopted or maintained by a Party relating to investors of the other Party, and investments of such investors, in financial institutions in the Party's territory; and
   (b) claims arising out of events which occurred, or claims which had been raised, prior to the entry into force of this Agreement.

4. Nothing in this Chapter shall be construed to prevent a Party from providing a service or performing a function such as law enforcement, correctional services, income security or insurance, social security or insurance, social welfare, public education, public training, health and child care.

5. Notwithstanding paragraph 4, if services provided in the exercise of governmental authority are provided in the territory of a Party such as law enforcement, correctional services, income security or insurance, social security or insurance, social welfare, public education**,** public training, health, and child care on a commercial basis or in competition with one or more service providers, those services are covered by the provisions of this Chapter.

Article 10.3: National Treatment

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

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

Article 10.4: Most-Favoured-Nation Treatment

1. Each Party shall accord to investments of investors of the other Party made or materialized in accordance with the laws and regulations of the other Party, and investors of the other Party who have made or materialized such investments, treatment no less favorable than it accords, in like circumstances, to investments made or materialized by investors of any non-Party or investors of such investments.

2. If a Party accords more favorable treatment to investments of investors of a non- Party or investors of a non-Party by an agreement establishing, *inter alia*, a free trade area, a customs union, a common market, an economic union or any other form of regional economic organization to which the Party is a member, it shall not be obliged to accord such treatment to investments of the investors of the other Party or the investors of the other Party.

3. Notwithstanding paragraph 2, if a Party makes any further liberalization, in conformity with Articles 10.9.1 and 10.9.2 by an agreement with a non-Party, it shall afford adequate opportunity to the other Party to negotiate treatment granted therein on a mutually advantageous basis with a view to securing an overall balance of rights and obligations.

Article 10.5: Minimum Standard of Treatment

1. Each Party shall accord to investments of investors of the other Party treatment in accordance with the customary international law minimum standard of treatment of aliens, including fair and equitable treatment and full protection and security.

2. The concepts of "fair and equitable treatment" and "full protection and security" in paragraph 1 do not require treatment in addition to or beyond that which is required by the customary international law minimum standard of treatment of aliens.

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

Article 10.6: Losses and Compensation

Investors of a Party whose investments suffer losses owing to war or other armed conflict, a state of national emergency, revolt, insurrection, riot or other similar situations, and such losses as ones resulting from requisition or destruction of property, which was not caused in combat action or was not required by the necessity of the situation, in the territory of the other Party, shall be accorded by the latter Party treatment, as regards restitution, indemnification, compensation or other forms of settlement, no less favorable than that which the latter Party accords to its own investors or to investors of any non-Party, whichever is more favourable to the investors concerned.

Article 10.7: Performance Requirements

1. Neither Party may impose or enforce any of the following requirements, or enforce any commitment or undertaking, in connection with the establishment, acquisition, expansion, management, conduct or operation of an investment of an investor of a Party or of a non-Party in its territory:

(a) to export a given level or percentage of goods or services;
(b) to achieve a given level or percentage of domestic content;
(c) to purchase, use or accord a preference to goods produced or services provided in its territory, or to purchase goods or services from persons in its territory;
(d) to relate in any way the volume or value of imports to the volume or value of exports or to the amount of foreign exchange inflows associated with such investment;
(e) to restrict sales of goods or services in its territory that such investment produces or provides by relating such sales in any way to the volume or value of its exports or foreign exchange earnings;
(f) to transfer technology, a production process or other proprietary knowledge to a person in its territory, except when the requirement is imposed or the commitment or undertaking is enforced by a court, administrative tribunal or competition authority to remedy an alleged violation of competition law or to act in a manner not inconsistent with other provisions of this Agreement; or
(g) to act as the exclusive supplier of the goods it produces or services it provides to a specific region or world market.

2. A measure that requires an investment to use a technology to meet generally applicable health, safety or environmental requirements shall not be construed to be inconsistent with subparagraph 1(f). For greater certainty, Articles 10.3 and 10.4 apply to the measure.

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

(a) to achieve a given level or percentage of domestic content;
(b) to purchase, use or accord a preference to goods produced in its territory, or to purchase goods from producers in its territory;
(c) to relate in any way the volume or value of imports to the volume or value of exports or to the amount of foreign exchange inflows associated with such investment; or
(d) to restrict sales of goods or services in its territory that such investment produces or provides by relating such sales in any way to the volume or value of its exports or foreign exchange earnings.

4. Nothing in paragraph 3 shall be construed to prevent a Party from conditioning the receipt or continued receipt of an advantage, in connection with an investment in its territory of an investor of a Party or of a non-Party, in compliance with a requirement to locate production, provide a service, train or employ workers, construct or expand particular facilities, or carry out research and development, in its territory. In the event of any inconsistency between this paragraph and the TRIMS Agreement, the latter shall prevail to the extent of the inconsistency.

5. Paragraphs 1 and 3 do not apply to any requirement other than the requirements set out in those paragraphs.

6. Provided that such measures are not applied in an arbitrary or unjustifiable manner, or do not constitute a disguised restriction on international trade or investment, nothing in subparagraphs 1(b) or (c) or 3(a) or (b) shall be construed to prevent a Party from adopting or maintaining measures, including environmental measures:

(a) necessary to secure compliance with laws and regulations that are not inconsistent with the provisions of this Agreement;
(b) necessary to protect human, animal or plant life or health; or
(c) necessary for the conservation of living or non-living exhaustible natural resources.

7. The provisions of:

(a) subparagraphs 1(a), (b) and (c), and 3(a) and (b) shall not apply to qualification requirements for goods or services with respect to export promotion and foreign aid programs;
(b) subparagraphs 1(b), (c), (f) and (g), and 3(a) and (b) shall not apply to procurement by a Party or a state enterprise; and
(c) subparagraphs 3(a) and (b) shall not apply to requirements imposed by the importing Party relating to the content of goods necessary to qualify for preferential tariff or preferential quotas.

8. This Article does not preclude the application of any commitment, obligation or requisite between private parties.

Article 10.8: Senior Management and Boards of Directors

1. Neither Party may require that an enterprise of a Party that is an investment of an investor of the other Party appoint to senior management positions individuals of any particular nationality.

2. A Party may require that a majority of the board of directors, or any committee thereof, of an enterprise of that Party that is an investment of an investor of the other Party, be of a particular nationality, or resident in the territory of the Party, provided that the requirement does not materially impair the ability of the investor to exercise control over its investment.

Article 10.9: Reservations and Exceptions

1. Articles 10.3, 10.7 and 10.8 shall not apply to:

(a) any existing nonconforming measure that is maintained by:
    (i) a Party at the national level, as set out in its Schedule to Annex I; or
    (ii) a local government;
(b) the continuation or prompt renewal of any nonconforming measure referred to in subparagraph (a); or

(c) an amendment to any nonconforming measure referred to in subparagraph (a) to the extent that the amendment does not decrease the conformity of the measure, as it existed immediately before the amendment, with Articles 10.3, 10.7 and 10.8.

2. Articles 10.3, 10.7 and 10.8 shall not apply to any measure that a Party adopts or maintains with respect to sectors, subsectors or activities, as set out in its Schedule to Annex II.

3. Neither Party shall, under any measure adopted after the date of entry into force of this Agreement and covered by its Schedule to Annex II, require an investor of the other Party, by reason of its nationality, to sell or otherwise dispose of an investment existing at the time the measure becomes effective.

4. Nothing in this Chapter shall be construed so as to derogate from rights and obligations under international agreements in respect of protection of intellectual property rights to which both Parties are party, including TRIPS Agreement and other treaties concluded under the auspices of the World Intellectual Property Organization.

5. Articles 10.3 and 10.8 shall not apply to:
(a) procurement by a Party or a state enterprise; or
(b) subsidies or grants provided by a Party or a state enterprise, including government-supported loans, guarantees and insurance.

6. Articles 10.3, 10.7 and 10.8 shall not apply to any voluntary and special investment regime, as is established in Annex 10.9.6.

Article 10.10: Future Liberalization

Through future negotiations, to be scheduled every two years by the Commission after the date of entry into force of this Agreement, the Parties will engage in further liberalisation with a view to reaching the reduction or elimination of the remaining restrictions scheduled in conformity with paragraphs 1 and 2 of Article 10.9 on a mutually advantageous basis and securing an overall balance of rights and obligations.

Article 10.11: Transfers

1. Except as provided in Annex 10.11, each Party shall permit all transfers relating to an investment of an investor of the other Party in the territory of the Party to be made freely and without delay. Such transfers include:
(a) the initial capital and additional amount to maintain or increase an investment;
(b) profits, dividends, interest, capital gains, royalty payments, management fees, technical assistance and other fees, returns in kind and other amounts derived from the investment;
(c) proceeds from the sale of all or any part of the investment or from the partial or complete liquidation of the investment;

(d) payments made under a contract entered into by the investor, or its investment, including payments made pursuant to a loan agreement;
(e) payments made pursuant to Article 10.13; and
(f) payments arising under Section C.

2. Each Party shall permit transfers to be made in a freely usable or convertible currency at the market rate of exchange prevailing on the date of transfer.

3. Neither Party may require its investors to transfer, or penalize its investors that fail to transfer, the income, earnings, profits or other amounts derived from, or attributable to, investments in the territory of the other Party.

4. Notwithstanding paragraphs 1 and 2, a Party may prevent a transfer through the equitable, non-discriminatory and good faith application of its laws relating to:
(a) bankruptcy, insolvency or the protection of the rights of creditors;
(b) issuing, trading or dealing in securities;
(c) criminal or penal offenses;
(d) reports of transfers of currency or other monetary instruments; or
(e) ensuring the satisfaction of judgments in adjudicatory proceedings.

5. Paragraph 3 shall not be construed to prevent a Party from imposing any measure through the equitable, non-discriminatory and good faith application of its laws relating to the matters set out in subparagraphs (a) through (e) of paragraph 4.

6. Notwithstanding paragraph 1, a Party may restrict transfers of returns in kind in circumstances where it could otherwise restrict such transfers under this Agreement, including as set out in paragraph 4.

Article 10.12: Exceptions and Safeguard Measures

1. Where, in exceptional circumstances, payments and capital movements between the Parties cause or threaten to cause serious difficulties for the operation of monetary policy or exchange rate policy in either Party, the Party concerned may take safeguard measures with regard to capital movements that are strictly necessary for a period not exceeding one year. The application of safeguard measures may be extended through their formal reintroduction.

2. The Party adopting the safeguard measures shall inform the other Party forthwith and present, as soon as possible, a time schedule for their removal.

Article 10.13: Expropriation and Compensation

1. Neither Party may, directly or indirectly, nationalize or expropriate an investment of an investor of the other Party in its territory, except:
(a) for a public purpose;
(b) on a non-discriminatory basis;

(c) in accordance with due process of law and Article 10.5(1); and
(d) on payment of compensation in accordance with paragraphs 2 through 6.

2. Compensation shall be equivalent to the fair market value of the expropriated investment immediately before the expropriation took place ("date of expropriation"), and shall not reflect any change in value occurring because the intended expropriation had become known earlier. Valuation criteria shall include going concern value, asset value including declared tax value of tangible property, and other criteria, as appropriate, to determine fair market value.

3. Compensation shall be paid without delay and be fully realizable.

4. If payment is made in a G7 currency, compensation shall include interest at a commercially reasonable rate for that currency from the date of expropriation until the date of actual payment.

5. If a Party elects to pay in a currency other than a G7 currency, the amount paid on the date of payment, if converted into a G7 currency at the market rate of exchange prevailing on that date, shall be no less than that if the amount of compensation owed on the date of expropriation had been converted into that G7 currency at the market rate of exchange prevailing on that date, and interest had accrued at a commercially reasonable rate for that G7 currency from the date of expropriation until the date of payment.

6. On payment, compensation shall be freely transferable as provided in Article 10.11.

7. This Article does not apply to the issuance of compulsory licenses granted in relation to intellectual property rights, or to the revocation, limitation or creation of intellectual property rights, to the extent that such issuance, revocation, limitation or creation is consistent with the TRIPS Agreement.

Article 10.14: Subrogation

1. Where a Party or an agency authorized by that Party has granted a contract of insurance or any form of financial guarantee against non-commercial risks with regard to an investment by one of its investors in the territory of the other Party and when payment has been made under this contract or financial guarantee by the former Party or the agency authorized by it, the latter Party shall recognize the rights of the former Party or the agency authorized by the Party by virtue of the principle of subrogation to the rights of the investor.

2. Where a Party or the agency authorized by the Party has made a payment to its investor and has taken over rights and claims of the investor, that investor shall not, unless authorized to act on behalf of the Party making the payment, pursue those rights and claims against the other Party.

Article 10.15: Special Formalities and Information Requirements

1. Nothing in Article 10.3 shall be construed to prevent a Party from adopting or maintaining a measure that prescribes special formalities in connection with the establishment of investments by investors of the other Party, such as the requirement that investments be legally constituted under the laws or regulations of the Party, provided that such formalities do not materially impair the protections afforded by a Party to investors of the other Party and investments of investors of the other Party pursuant to this Chapter.

2. Notwithstanding Article 10.3 or 10.4, a Party may require an investor of the other Party, or its investment in its territory, to provide routine information concerning that investment solely for informational or statistical purposes. The Party shall protect such business information that is confidential from any disclosure that would prejudice the competitive position of the investor or the investment. Nothing in this paragraph shall be construed to prevent a Party from otherwise obtaining or disclosing information in connection with the equitable and good faith application of its law.

Article 10.16: Relation to Other Chapters

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

2. The requirement by a Party that a service provider of the other Party post a bond or other form of financial security as a condition of providing a service into its territory does not of itself make this Chapter applicable to the provision of that cross-border service. This Chapter applies to that Party's treatment of the posted bond or financial security.

Article 10.17: Denial of Benefits

1. A Party may deny the benefits of this Chapter to an investor of the other Party that is an enterprise of such Party and to investments of such investor, if investors of a non-Party own or control the enterprise and the denying Party:

   (a) does not maintain diplomatic relations with the non-Party; or

   (b) adopts or maintains measures with respect to the non-Party that prohibit transactions with the enterprise or that would be violated or circumvented if the benefits of this Chapter were accorded to the enterprise or to its investments.

2. Subject to prior notification and consultation in accordance with Articles 17.4 and 19.4, a Party may deny the benefits of this Chapter to an investor of the other Party that is an enterprise of such Party and to investments of such investors if investors of a non-Party own or control the enterprise and the enterprise has no substantial business activities in the territory of the Party under whose law it is constituted or organized.

Article 10.18: Environmental Measures

1. Nothing in this Chapter shall be construed to prevent a Party from adopting, maintaining or enforcing any measure otherwise consistent with this Chapter that it considers appropriate to ensure that an investment activity in its territory is undertaken in a manner sensitive to environmental concerns.

2. The Parties recognize that it is inappropriate to encourage investment by relaxing domestic health, safety or environmental measures. Accordingly, a Party should not waive or otherwise derogate from, or offer to waive or otherwise derogate from, such measures as an encouragement for the establishment, acquisition, expansion or retention in its territory of an investment of an investor. If a Party considers that the other Party has offered such an encouragement, it may request consultations with the other Party and the Parties shall consult with a view to avoiding any such encouragement.

Section C - Settlement of Disputes between a Party and an Investor of the Other Party

Article 10.19: Purpose

Without prejudice to the rights and obligations of the Parties under Chapter 19, this Section establishes a mechanism for the settlement of investment disputes that assures both equal treatment among investors of the Parties in accordance with the principle of international reciprocity and due process before an impartial tribunal.

Article 10.20: Claim by an Investor of a Party on Its Own Behalf

1. Subject to Annex 10.20, an investor of a Party may submit to arbitration under this Section a claim that the other Party has breached an obligation under Section B or Article 14.8, and that the investor has incurred loss or damage by reason of, or arising out of, that breach.

2. An investor may not make a claim if more than three years have elapsed from the date on which the investor first acquired, or should have first acquired, knowledge of the alleged breach and knowledge that the investor has incurred loss or damage.

Article 10.21: Claim by an Investor of a Party on Behalf of an Enterprise

1. Subject to Annex 10.20, an investor of a Party, on behalf of an enterprise of the other Party that is a juridical person that the investor owns or controls, directly or indirectly, may submit to arbitration under this Section a claim that the other Party has breached an obligation under Section B or Article 14.8, and that the enterprise has incurred loss or damage by reason of, or arising out of, that breach.

2. An investor may not make a claim on behalf of an enterprise described in paragraph 1 if more than three years have elapsed from the date on which the enterprise first acquired, or should have first acquired, knowledge of the alleged breach and knowledge that the enterprise has incurred loss or damage.

3. Where an investor makes a claim under this Article and the investor or a non-controlling investor in the enterprise makes a claim under Article 10.20 arising out of the same events that gave rise to the claim under this Article, and two or more of the claims are submitted to arbitration under Article 10.24, the claims should be heard together by a Tribunal established under Article 10.30, unless the Tribunal finds that the interests of a disputing party would be prejudiced thereby.

4. An investment may not make a claim under this Section.

Article 10.22: Settlement of a Claim through Consultation and Negotiation

The disputing parties should first attempt to settle a claim through consultation or negotiation.

Article 10.23: Notice of Intent to Submit a Claim to Arbitration

The disputing investor shall deliver to the disputing Party written notice of its intention to submit a claim to arbitration at least 90 days before the claim is submitted, which notice shall specify:

(a) the name and address of the disputing investor and, where a claim is made under Article 10.21, the name and address of the enterprise;
(b) the provisions of this Agreement alleged to have been breached and any other relevant provisions;
(c) the issues and the factual basis for the claim; and
(d) the relief sought and the approximate amount of damages claimed.

Article 10.24: Submission of a Claim to Arbitration

1. Provided that six months have elapsed since the events giving rise to a claim, a disputing investor may submit the claim to arbitration under:

(a) the ICSID Convention, provided that both the disputing Party and the Party of the investor are parties to the Convention;
(b) the Additional Facility Rules of ICSID, provided that either the disputing Party or the Party of the investor, but not both, is a party to the ICSID Convention; or
(c) the UNCITRAL Arbitration Rules.

2. The applicable arbitration rules shall govern the arbitration except to the extent modified by this Section.

Article 10.25: Conditions Precedent to Submission of a Claim to Arbitration

1. A disputing investor may submit a claim under Article 10.20 to arbitration only if:
   (a) the investor and the enterprise, that is a juridical person that the investor owns or controls, directly or indirectly, have not submitted the same claim before any administrative tribunal or court of the disputing Party;
   (b) the investor consents to arbitration in accordance with the procedures set out in this Agreement; and
   (c) the investor and, where the claim is for loss or damage to an interest in an enterprise of the other Party that is a juridical person that the investor owns or controls, directly or indirectly, the enterprise, waive their right to initiate before any administrative tribunal or court under the law of a Party, or other dispute settlement procedures, any proceedings with respect to the measure of the disputing Party that is alleged to be a breach referred to in Article 10.20, except for proceedings for injunctive, declaratory or other extraordinary relief, not involving the payment of damages, before an administrative tribunal or court under the law of the disputing Party.

2. A disputing investor may submit a claim under Article 10.21 to arbitration only if:
   (a) both the investor and the enterprise that is a juridical person that the investor owns or controls, directly or indirectly, have not submitted the same claim before any administrative tribunal or court of the disputing Party;
   (b) both the investor and the enterprise consent to arbitration in accordance with the procedures set out in this Agreement; and
   (c) both the investor and the enterprise waive their rights to initiate before any administrative tribunal or court under the law of a Party, or other dispute settlement procedures, any proceedings with respect to the measure of the disputing Party that is alleged to be a breach referred to in Article 10.21, except for proceedings for injunctive, declaratory or other extraordinary relief, not involving the payment of damages, before an administrative tribunal or court under the law of the disputing Party.

3. Once a disputing investor concerned submits the dispute for resolution before any administrative tribunal or court under the law of a Party, the investor may not thereafter allege the measure to be such a breach referred to in Article 10.20 or 10.21 in an arbitration under this Section.

4. A consent and waiver required by this Article shall be in writing, shall be delivered to the disputing Party and shall be included in the submission of a claim to arbitration.

5. Only where a disputing Party has deprived a disputing investor of control of an enterprise:
   (a) a waiver from the enterprise under subparagraph 1(c) or 2(c) shall not be required; and
   (b) Article 10.24.1(b) shall not be applicable.

Article 10.26: Consent to Arbitration

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

2. The consent given under paragraph 1 and the submission by a disputing investor of a claim to arbitration shall satisfy the requirements of:

(a) Chapter II of the ICSID Convention (Jurisdiction of the Centre) and the Additional Facility Rules for written consent of the parties; and

(b) Article II of the New York Convention for an agreement in writing.

Article 10.27: Number of Arbitrators and Method of Appointment

Except in respect of a Tribunal established under Article 10.30, and unless the disputing parties otherwise agree, the Tribunal shall comprise three arbitrators, one arbitrator appointed by each of the disputing parties and the third, who shall be the presiding arbitrator, appointed by agreement between the disputing parties.

Article 10.28: Constitution of a Tribunal When a Party Fails to Appoint an Arbitrator or the Disputing Parties are Unable to Agree on a Presiding Arbitrator

1. The Secretary-General shall serve as appointing authority for an arbitration under this Section.

2. If a Tribunal, other than a Tribunal established under Article 10.30, has not been constituted within 90 days from the date that a claim is submitted to arbitration, the Secretary-General, on the request of either disputing party, shall appoint, in his or her discretion, the arbitrator or arbitrators not yet appointed, except that the presiding arbitrator shall be appointed in accordance with paragraph 3.

3. The Secretary-General shall appoint the presiding arbitrator from the roster of presiding arbitrators referred to in paragraph 4, provided that the presiding arbitrator shall not be a national of the disputing Party or a national of the Party of the disputing investor. In the event that no such presiding arbitrator is available to serve, the Secretary-General shall appoint, from the ICSID Panel of Arbitrators, a presiding arbitrator who is not a national of either of the Parties.

4. On the date of entry into force of this Agreement, the Parties shall establish, and thereafter maintain, a roster of 30 presiding arbitrators, none of whom may be a national of a Party, meeting the qualifications of the Convention and rules referred to in Article 10.24 and experienced in international law and investment matters. The roster members shall be appointed by mutual agreement.

Article 10.29: Agreement to Appointment of Arbitrators

For purposes of Article 39 of the ICSID Convention and Article 7 of Schedule C to the ICSID Additional Facility Rules, and without prejudice to an objection to an arbitrator based on Article 10.28.3 or on a ground other than nationality:

(a) the disputing Party agrees to the appointment of each individual member of a Tribunal established under the ICSID Convention or the ICSID Additional Facility Rules;

(b) a disputing investor referred to in Article 10.20 may submit a claim to arbitration, or continue a claim, under the ICSID Convention or the ICSID Additional Facility Rules, only on condition that the disputing investor agrees in writing to the appointment of each individual member of the Tribunal; and

(c) a disputing investor referred to in Article 10.21.1 may submit a claim to arbitration, or continue a claim, under the ICSID Convention or the ICSID Additional Facility Rules, only on condition that the disputing investor and the enterprise agree in writing to the appointment of each individual member of the Tribunal.

Article 10.30: Consolidation

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

2. Where a Tribunal established under this Article is satisfied that claims have been submitted to arbitration under Article 10.24 that have a question of law or fact in common, the Tribunal may, in the interests of fair and efficient resolution of the claims, and after hearing the disputing parties, by order:

(a) assume jurisdiction over, and hear and determine together, all or part of the claims; or

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

3. A disputing party that seeks an order under paragraph 2 shall request the Secretary-General to establish a Tribunal and shall specify in the request:

(a) the name of the disputing Party or disputing investors against which the order is sought;

(b) the nature of the order sought; and

(c) the grounds on which the order is sought.

4. The disputing party shall deliver to the disputing Party or disputing investors against which the order is sought a copy of the request.

5. Within 60 days of receipt of the request, the Secretary-General shall establish a Tribunal comprising three arbitrators. The Secretary-General shall appoint the presiding arbitrator from the roster referred to in paragraph 4 of Article 10.28. In the event that no such presiding arbitrator is available to serve, the Secretary-General shall appoint, from the ICSID Panel of

Arbitrators, a presiding arbitrator who is not a national of either Party. The Secretary-General shall appoint the two other members from the roster referred to in paragraph 4 of Article 10.28 and to the extent not available from that roster, from the ICSID Panel of Arbitrators, and to the extent not available from that Panel, in the discretion of the Secretary-General. One member shall be a national of the disputing Party and one member shall be a national of the Party of the disputing investors.

6. Where a Tribunal has been established under this Article, a disputing investor that has submitted a claim to arbitration under Article 10.20 or 10.21 and that has not been named in a request made under paragraph 3 may make a written request to the Tribunal that it be included in an order made under paragraph 2, and shall specify in the request:

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

7. A disputing investor referred to in paragraph 6 shall deliver a copy of its request to the disputing parties named in a request made under paragraph 3.

8. A Tribunal established under Article 10.24 shall not have jurisdiction to decide a claim, or a part of a claim, over which a Tribunal established under this Article has assumed jurisdiction.

9. On application of a disputing party, a Tribunal established under this Article, pending its decision under paragraph 2, may order that the proceedings of a Tribunal established under Article 10.24 be stayed, unless the latter Tribunal has already adjourned its proceedings.

Article 10.31: Notice

1. A disputing Party shall deliver to the Secretariat, within 15 days of receipt by the disputing Party, a copy of:

(a) a request for arbitration made under paragraph (1) of Article 36 of the ICSID Convention;
(b) a notice of arbitration made under Article 2 of Schedule C of the ICSID Additional Facility Rules; or
(c) a notice of arbitration given under the UNCITRAL Arbitration Rules.

2. A disputing Party shall deliver to the Secretariat a copy of a request made under paragraph 3 of Article 10.30:

(a) within 15 days of receipt of the request, in the case of a request made by a disputing investor; or
(b) within 15 days of making the request, in the case of a request made by the disputing Party.

3. A disputing Party shall deliver to the Secretariat a copy of a request made under paragraph 6 of Article 10.30 within 15 days of receipt of the request.

4. The Secretariat shall maintain a public register of the documents referred to in paragraphs 1, 2 and 3.

5. A disputing Party shall deliver to the other Party:
   (a) written notice of a claim that has been submitted to arbitration no later than 30 days after the date that the claim is submitted; and
   (b) copies of all pleadings filed in the arbitration.

Article 10.32: Participation by a Party

Upon written notice to the disputing parties, a Party may make submissions to a Tribunal on a question of interpretation of this Agreement.

Article 10.33: Documents

1. A Party shall be entitled to receive from the disputing Party, at the cost of the requesting Party, a copy of:
   (a) the evidence that has been tendered to the Tribunal; and
   (b) the written argument of the disputing parties.

2. A Party receiving information pursuant to paragraph 1 shall treat the information as if it were a disputing Party.

Article 10.34: Place of Arbitration

Unless the disputing parties agree otherwise, a Tribunal shall hold an arbitration in the territory of a Party that is party to the New York Convention, selected in accordance with:
   (a) the ICSID Additional Facility Rules if the arbitration is under those Rules or the ICSID Convention; or
   (b) the UNCITRAL Arbitration Rules if the arbitration is under those Rules.

Article 10.35: Governing Law

1. A Tribunal established under this Section shall decide the issues in dispute in accordance with this Agreement and applicable rules of international law.

2. An interpretation by the Commission of a provision of this Agreement shall be binding on a Tribunal established under this Section.

Article 10.36: Interpretation of Annexes

1. Where a disputing Party asserts as a defense that the measure alleged to be a breach is within the scope of a reservation or exception set out in Annex I or Annex II, upon request of the disputing Party, the Tribunal shall request the interpretation of the Commission on the issue. The

Commission, within 60 days of delivery of the request, shall submit in writing its interpretation to the Tribunal.

2. Further to paragraph 2 of Article 10.35, a Commission interpretation submitted under paragraph 1 shall be binding on the Tribunal. If the Commission fails to submit an interpretation within 60 days, the Tribunal shall decide the issue.

Article 10.37: Expert Reports

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

Article 10.38: Interim Measures of Protection

A Tribunal may order an interim measure of protection to preserve the rights of a disputing party, or to ensure that the Tribunal's jurisdiction is made fully effective, including an order to preserve evidence in the possession or control of a disputing party or to protect the Tribunal's jurisdiction. A Tribunal may not order attachment or enjoin the application of the measure alleged to constitute a breach referred to in Article 10.20 or 10.21. For purposes of this paragraph, an order includes a recommendation.

Article 10.39: Final Award

1. Where a Tribunal makes a final award against a Party, the Tribunal may award, separately or in combination, only:
   (a) monetary damages and any applicable interest; and
   (b) restitution of property, in which case the award shall provide that the disputing Party may pay monetary damages and any applicable interest in lieu of restitution.

2. A Tribunal may also award costs in accordance with the applicable arbitration rules.

3. Subject to paragraphs 1 and 2, where a claim is made under Article 10.21.1:
   (a) an award of restitution of property shall provide that restitution be made to the enterprise;
   (b) an award of monetary damages and any applicable interest shall provide that the sum be paid to the enterprise; and
   (c) the award shall provide that it is made without prejudice to any right that any person may have in the relief under applicable domestic law.

4. A Tribunal may not order a Party to pay punitive damages.

Article 10.40: Finality and Enforcement of an Award

1. An award made by a Tribunal shall have no binding force except between the disputing parties and in respect of the particular case.

2. Subject to paragraph 3 and the applicable review procedure for an interim award, a disputing party shall abide by and comply with an award without delay.

3. A disputing party may not seek enforcement of a final award until:
   (a) in the case of a final award made under the ICSID Convention:
      (i) 120 days have elapsed from the date the award was rendered and no disputing party has requested revision or annulment of the award; or
      (ii) revision or annulment proceedings have been completed; and
   (b) in the case of a final award under the ICSID Additional Facility Rules or the UNCITRAL Arbitration Rules:
      (i) three months have elapsed from the date the award was rendered and no disputing party has commenced a proceeding to revise, set aside or annul the award; or
      (ii) a court has dismissed or allowed an application to revise, set aside or annul the award and there is no further appeal.

4. Each Party shall provide for the enforcement of an award in its territory.

5. If a disputing Party fails to abide by or comply with a final award, the Commission, on delivery of a request by a Party whose investor was a party to the arbitration, shall establish a panel under Article 19.6. The requesting Party may seek in such proceedings:
   (a) a determination that the failure to abide by or comply with the final award is inconsistent with the obligations of this Agreement; and
   (b) a recommendation that the Party abide by or comply with the final award.

6. A disputing investor may seek enforcement of an arbitration award under the ICSID Convention or the New York Convention regardless of whether proceedings have been taken under paragraph 5.

7. A claim that is submitted to arbitration under this Section shall be considered to arise out of a commercial relationship or transaction for purposes of Article I of the New York Convention.

Article 10.41: General Provision

Time when a Claim is Submitted to Arbitration

1. A claim is submitted to arbitration under this Section when:
   (a) the request for arbitration under paragraph 1 of Article 36 of the ICSID Convention has been received by the Secretary-General;

(b) the notice of arbitration under Article 2 of Schedule C of the ICSID Additional Facility Rules has been received by the Secretary-General; or
(c) the notice of arbitration given under the UNCITRAL Arbitration Rules is received by the disputing Party.

Service of Documents

2. Delivery of notice and other documents on a Party shall be made to the place named for that Party in Annex 10.41.2.

Receipts under Insurance or Guarantee Contracts

3. In an arbitration under this Section, a Party shall not assert, as a defense, counterclaim, right of setoff or otherwise, that the disputing investor has received or will receive, pursuant to an insurance or guarantee contract, indemnification or other compensation for all or part of its alleged damages.

Publication of an Award

4. Annex 10.41.4 applies to the Parties specified in that Annex with respect to publication of an award.

Article 10.42: Exclusions

Without prejudice to the applicability or non-applicability of the dispute settlement provisions of this Section or of Chapter 19 to other actions taken by a Party pursuant to Article 20.2, a decision by a Party to prohibit or restrict the acquisition of an investment in its territory by an investor of the other Party, or investment of such an investor, pursuant to that Article shall not be subject to such provisions.

Section D - Investment and Cross-Border Trade in Services Committee

Article 10.43: Investment and Cross-Border Trade in Services Committee

1. The Parties hereby establish an Investment and Cross-Border Trade in Services Committee, comprising representatives of each Party, in accordance with Annex 10.43.

2. The Committee shall meet at least once a year, or in any time at request of a Party or the Commission.

3. The Committee shall perform, *inter alia,* the following functions:
(a) to overlook the execution and administration of this Chapter and Chapter 11;

(b) to discuss the subjects of bilateral interest regarding investment and cross-border services; and
(c) to examine subjects related to investment and cross-border services, which are being discussed at other international fora.

Annex 10.9.6

1. Decree Law 600 (1974), the Foreign Investment Statute, is a voluntary and special investment regime for Chile.

2. As an alternative to the common regime for the entry of capital into Chile, potential investors may apply to the Foreign Investment Committee to be subject to the regime set out in Decree Law 600.

3. The obligations and commitments contained in this Chapter, do not apply to Decree Law 600, Foreign Investment Statute, to Law 18.657 Foreign Capital Investment Fund Law, to the continuation or prompt renewal of such laws, to amendments to those laws or to any special and/or voluntary investment regime that may be adopted in the future by Chile.

4. For greater certainty, it is understood that the Foreign Investment Committee of Chile has the right to reject applications to invest through Decree Law 600 and Law 18.657. Additionally, the Foreign Investment Committee has the right to regulate the terms and conditions of foreign investment under Decree Law 600 and Law 18.657.

Annex 10.11

With respect to its obligations under Article 10.11, Chile reserves:

1. The right, without prejudice to paragraph 3 of this Annex, to maintain existing requirements that transfers from Chile of proceeds from the sale of all or any part of an investment of an investor of Korea or from the partial or complete liquidation of the investment may not take place until a period not to exceed:
   (a) in the case of an investment made pursuant to Decree Law 600 Foreign Investment Statute (Decreto Ley 600, Estatuto de la Inversion Extranjera), one year has elapsed from the date of transfer to Chile; or
   (b) in the case of an investment made pursuant to Law 18657 Foreign Capital Investment Fund Law (Ley 18.657, Ley Sobre Fondo de Inversiones de Capitales Extranjeros), five years have elapsed from the date of transfer to Chile;

2. The right to adopt measures, consistent with this Annex, establishing future special voluntary investment programs in addition to the general regime for foreign investment in Chile, except that any such measures may restrict transfers from Chile of proceeds from the sale of all or any part of an investment of an investor of Korea or from the partial or complete liquidation of the investment for a period not to exceed five years from the date of transfer to Chile; and

3. The right of the Central Bank of Chile to maintain or adopt measures in conformity with the Constitutional Organic Law of the Central Bank of Chile "Ley Orgánica Constitucional del Banco Central de Chile, Ley 18.840" (hereinafter, Law 18.840) or other legislation, in order to ensure currency stability and the normal operation of domestic and foreign payments. For this purpose, the Central Bank of Chile is empowered to regulate the supply of money and credit in circulation and international credit and foreign exchange operations. The Central Bank of Chile is empowered as well to issue regulations governing monetary, credit, financial, and foreign exchange matters. Such measures include, *inter alia*, the establishment of restrictions or limitations on current payments and transfers (capital movements) to or from Chile, as well as transactions related to them, such as requiring that deposits, investments or credits from or to a foreign country, be subject to a reserve requirement ("encaje").

Notwithstanding the above, the reserve requirement that the Central Bank of Chile can apply pursuant to Article 49 No. 2 of Law 18.840, shall not exceed 30 per cent of the amount transferred and shall not be imposed for a period which exceeds two years.

Annex 10.20

1. An investor of a Party, on its own behalf or on behalf of an enterprise, may only make a claim under Section C of this Chapter, in relation to investments made and materialized in accordance with the laws and regulations of the other Party.

2. Both Parties shall negotiate the coverage of Section C of this Chapter, as well as the modification of any other Articles in Section C they deem appropriate, taking into account the outcome of bilateral, regional or multilateral negotiations that address relevant issues, no later than one year after the entry into force of this Agreement.

Annex 10.41.2
Service of Documents

Chile

The place for the delivery of notice and other documents under Section C for Chile is:

Direccion de Asuntos Jurídicos del Ministerio de Relaciones Exteriores de la República de Chile
Morandé 441
Santiago, Chile

Korea

The place for the delivery of notice and other documents under Section C for Korea is:

Office of International Legal Affairs, Ministry of Justice of the Republic of Korea
Government Complex, Kwacheon
Korea

Annex 10.41.4
Publication of an Award

Chile

Where Chile is the disputing Party, either Chile or a disputing investor that is a party to arbitration may make an award public.

Korea

Where Korea is the disputing Party, either Korea or a disputing investor that is a party to arbitration may make an award public.

Annex 10.43
Composition of the Investment and Cross-Border Trade in Services Committee

For purposes of Article 10.43, the Committee shall comprise:

(a) in the case of Chile, the General Directorate of International Economic Affairs of the Ministry of Foreign Affairs, or its successor; and

(b) in the case of Korea, the Director General of International Economic Cooperation Bureau of the Ministry of Finance and Economy, or its successor.

CHAPTER 11
CROSS-BORDER TRADE IN SERVICES

Article 11.1: Definitions

For purposes of this Chapter:

cross-border provision of a service or **cross-border trade in services** means the provision of a service:

(a) from the territory of a Party into the territory of the other Party,
(b) in the territory of a Party by a person of that Party to a person of the other Party, or
(c) by a national of a Party in the territory of the other Party,

but does not include the provision of a service in the territory of a Party by an investment, as defined in Article 10.1, in that territory;

enterprise means an "enterprise" as defined in Article 2.1, and a branch of an enterprise;

enterprise of a Party means an enterprise constituted or organized under the law of a Party and a branch, located in the territory of a Party and carrying out business activities there;

financial services means any service of a financial nature including those defined in paragraph 5(a) on Annex of Financial Services of GATS;

professional services means services, the provision of which requires specialized post-secondary education, or equivalent training or experience, and for which the right to practice is granted or restricted by a Party, but does not include services provided by trades-persons or vessel and aircraft crew members;

quantitative restriction means a non-discriminatory measure that imposes limitations on:

(a) the number of service providers, whether in the form of a quota, a monopoly or an economic needs test, or by any other quantitative means; or
(b) the operations of any service provider, whether in the form of a quota or an economic needs test, or by any other quantitative means;

service provider of a Party means a person of a Party that seeks to provide or provides a service; and

specialty air services means aerial mapping, aerial surveying, aerial photography, forest fire management, fire fighting, aerial advertising, flight training, aerial inspection and surveillance, and aerial spraying services.

Article 11.2: Scope and Coverage

1. This Chapter applies to measures adopted or maintained by a Party relating to cross-border trade in services by service providers of the other Party, including measures with respect to:

(a) the production, distribution, marketing, sale and delivery of a service;
(b) the purchase or use of, or payment for, a service;
(c) the access to and use of distribution and transportation systems in connection with the provision of a service;
(d) the presence in its territory of a service provider of the other Party; and
(e) the provision of a bond or other form of financial security as a condition for the provision of a service.

2. For purposes of this Chapter, measures adopted or maintained by a Party mean measures adopted or maintained by government or non-governmental bodies in the exercise of any regulatory, administrative or other governmental authority delegated to it by that government**.**

3. This Chapter does not apply to:
(a) cross-border trade in financial services;
(b) air services, including domestic and international air transportation services, whether scheduled or non-scheduled, and related services in support of air services, other than:
(i) aircraft repair and maintenance services during which an aircraft is withdrawn from service;
(ii) specialty air services;
(iii) glider towing, parachute jumping, aerial construction, heli-logging, aerial sightseeing; and
(iv) computerized reservation system;
(c) government procurement by a Party or a state enterprise;
(d) subsidies or grants provided by a Party or a state enterprise, including government-supported loans, guarantees and insurance; and
(e) services provided in the exercise of governmental authority such as law enforcement, correctional services, income security or insurance, social security or insurance, social welfare, public education, public training, health, and child care.

4. Notwithstanding subparagraph 3(e), if services provided in the exercise of governmental authority are provided in the territory of a Party such as law enforcement, correctional services, income security or insurance, social security or insurance, social welfare, public education, public training, health, and child care on a commercial basis or in competition with one or more service providers, such services shall be covered by the provisions of this Chapter.

5. Nothing in this Chapter shall be construed to impose any obligation on a Party with respect to a national of the other Party seeking access to its employment market, or employed on a permanent basis in its territory, or to confer any right on that national with respect to such access or employment.

Article 11.3: National Treatment

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

Article 11.4: Local Presence

Neither Party may require a service provider of the other Party to establish or maintain a representative office or any form of enterprise, or to be resident, in its territory as a condition for the cross-border provision of a service.

Article 11.5: Reservations

1. Articles 11.3 and 11.4 do not apply to:
   (a) any existing non-conforming measure that is maintained by:
      (i) a Party at the national level, as set out in its Schedule to Annex I; or
      (ii) a local government;
   (b) the continuation or prompt renewal of any non-conforming measure referred to in subparagraph (a); or
   (c) an amendment to any non-conforming measure referred to in subparagraph (a) to the extent that the amendment does not decrease the conformity of the measure, as it existed immediately before the amendment, with Articles 11.3 and 11.4.

2. Articles 11.3 and 11.4 do not apply to any measure that a Party adopts or maintains with respect to sectors, subsectors or activities, as set out in its Schedule to Annex II.

Article 11.6: Quantitative Restrictions

1. Each Party shall set out in its Schedule to Annex III any quantitative restriction that it maintains at the national level.

2. Each Party shall notify the other Party of any quantitative restriction that it adopts, other than at the local government level, after the date of entry into force of this Agreement and shall set out the restriction in its Schedule to Annex III.

3. The Parties shall periodically, but in any event at least every two years, endeavor to negotiate the liberalization or removal of the quantitative restrictions set out in Annex III pursuant to paragraphs 1 and 2.

Article 11.7: Future Liberalization

1. Through future negotiations, to be scheduled every two years by the Commission after the date of entry into force of this Agreement, the Parties will further deepen liberalization with a view to reaching the reduction or elimination of the remaining restrictions scheduled in conformity with Article 11.5, on a mutually advantageous basis and ensuring an overall balance of rights and obligations.

2. If a Party makes any further liberalization, in conformity with Article 11.5 by an agreement with a non-Party, it shall afford adequate opportunity to the other Party to negotiate

treatment granted therein on a mutually advantageous basis and with a view to securing an overall balance of rights and obligations.

Article 11.8: Liberalization of Non-Discriminatory Measures

Each Party shall set out in its Schedule to Annex IV its commitments to liberalize quantitative restrictions, licensing requirements, performance requirements or other non-discriminatory measures.

Article 11.9: Procedures

The Commission shall establish procedures for:

(a) a Party to notify and include in its relevant Schedule:
  (i) quantitative restrictions in accordance with Article 11.6.2;
  (ii) commitments pursuant to Article 11.8; and
  (iii) amendments of measures referred to in Article 11.5.1(c); and
(b) consultations on reservations, quantitative restrictions or commitments with a view to further liberalization.

Article 11.10: Licensing and Certification

1. With a view to ensuring that any measure adopted or maintained by a Party related to requirements and procedures to the licensing or certification of nationals of the other Party does not constitute an unnecessary barrier to cross-border trade in services, each Party shall endeavor to ensure that any such measure:

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

2. Where a Party recognizes, unilaterally or by an agreement or arrangement, education, experience, licenses or certifications obtained in the territory of a non-Party, the Party shall afford the other Party an adequate opportunity to demonstrate that education, experience, licenses or certifications obtained in the other Party's territory should also be recognized or to conclude an agreement or arrangement of comparable effect.

3. Annex 11.10 applies to measures adopted or maintained by a Party relating to the licensing or certification of professional service providers.

Article 11.11: Denial of Benefits

Subject to prior notification and consultation in accordance with Articles 17.4 and 19.4, a Party may deny the benefits of this Chapter to a service provider of the other Party where the

Party establishes that the service is being provided by an enterprise that is owned or controlled by persons of a non-Party and that has no substantive business activities in the territory of the other Party.

Annex 11.10
Professional Services

Objectives

1. The objective of this Annex is the establishment of rules to be followed by the Parties in the reduction and gradual elimination, within their territories of the barriers in the rendering of professional services.

Processing of Applications for Licenses and Certifications

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

(a) where the application is complete, make a determination on the application and inform the applicant of that determination; or

(b) where the application is not complete, inform the applicant, without undue delay, of the status of the application and the additional information that is required under the Party's law.

Development of Professional Standards

3. The Parties shall encourage the relevant bodies in their respective territories to develop mutually acceptable standards and criteria for licensing and certification of professional service providers and to provide recommendations on mutual recognition to the Commission.

4. The standards and criteria referred to in paragraph 3 may be developed with regard to the following matters:

(a) education - accreditation of schools or academic programs;

(b) examinations - qualifying examinations for licensing, including alternative methods of assessment such as oral examinations and interviews;

(c) experience - length and nature of experience required for licensing;

(d) conduct and ethics - standards of professional conduct and the nature of disciplinary action for non-conformity with those standards;

(e) professional development and re-certification - continuing education and ongoing requirements to maintain professional certification;

(f) scope of practice - extent of, or limitations on, permissible activities;

(g) local knowledge - requirements for knowledge of such matters as local laws, regulations, language, geography or climate; and

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

5. Upon receipt of a recommendation referred to in paragraph 3, the Commission shall review the recommendation within a reasonable time to determine whether it is consistent with this Agreement. Based on the Commission's review, each Party shall encourage its respective

competent authorities, where appropriate, to implement the recommendation within a mutually agreed time.

Temporary Licensing

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

Review

7. The Commission shall periodically, at least once every three years, review the implementation of this Section.

CHAPTER 12
TELECOMMUNICATIONS

Article 12.1: Definitions

For purposes of this Chapter:

authorized equipment means terminal or other equipment that has been approved for attachment to the public telecommunications transport network in accordance with the conformity assessment procedures of a Party;

conformity assessment procedures means "conformity assessment procedures" as defined in Article 9.1 and includes the procedures established in Annex 12.1;

enhanced or value-added services means telecommunications services employing computer processing applications that:

(a) act on the format, content, code, protocol or similar aspects of a customer's transmitted information;
(b) provide a customer with additional, different or restructured information; or
(c) involve customer interaction with stored information;

intracorporate communications means telecommunications through which an enterprise communicates:

(a) internally or with or among its subsidiaries, branches or affiliates, as defined by each Party, or
(b) on a non-commercial basis with other persons that are fundamental to the economic activity of the enterprise and that have a continuing contractual relationship with it,

but does not include telecommunications services provided to persons other than those described herein;

monopoly means an entity, including a consortium or government agency, that in any relevant market in the territory of a Party is maintained or designated as the sole provider of a public telecommunication transport network or service;

network termination point means the final demarcation of the public telecommunications transport network at the customer's premises;

non-discriminatory means on terms and conditions no less favorable than those accorded to any other customer, user or potential customer or user of like public telecommunications transport networks or services or enhanced or value added services in like circumstances;

private network means a telecommunications transport network that is used exclusively for intracorporate communications or among pre-defined persons;

protocol means a set of rules and formats that govern the exchange of information between two peer entities for purposes of transferring signaling and/or data information;

public telecommunications transport network means public telecommunications infrastructure that permits telecommunications between defined network termination points;

public telecommunications transport networks or services means public telecommunications transport networks or public telecommunications transport services;

public telecommunications transport service means any telecommunications transport service required by a Party, explicitly or in effect, to be offered to the public generally, including telegraph, telephone, telex and data transmission, that typically involves the real-time transmission of customer-supplied information between two or more points without any end-to-end change in the form or content of the customer's information;

standard means a document, approved by a recognized body, that provides, for common and repeated use, rules, guidelines or characteristics for goods or related processes and production methods, or for services or related operating methods, with which compliance is not mandatory. It may also include or deal exclusively with terminology, symbols, packaging, marking or labelling requirements as they apply to a good, process, or production or operating method;

telecommunications means the transmission and reception of signals by any electromagnetic means;

technical regulation means a document which lays down goods' characteristics or their related processes and production methods, or services' characteristics or their related operating methods, including the applicable administrative provisions, with which compliance is mandatory. It may also include or deal exclusively with terminology, symbols, packaging, marking or labelling requirements as they apply to a good, process, or production or operating method;

telecommunications service means a service provided by means of the transmission and reception of signals by any electromagnetic means, but does not mean the cable, broadcast or other electromagnetic distribution of radio or television programming to the public generally; and

terminal equipment means any digital or analog device capable of processing, receiving, switching, signaling or transmitting signals by electromagnetic means and that is connected by radio or wire to a public telecommunications transport network at a termination point.

Article 12.2: Scope and Coverage

1. This Chapter applies to:
   (a) measures adopted or maintained by a Party relating to access to and use of public telecommunications transport networks or services by persons of the other Party, including access and use by such persons operating private networks;

(b) measures adopted or maintained by a Party relating to the provision of enhanced or value-added services by persons of the other Party in the territory, or across the borders, of a Party; and
(c) standards-related measures relating to attachment of terminal or other equipment to public telecommunications transport networks.[2]

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

3. Nothing in this Chapter shall be construed to:
(a) require a Party to authorize a person of the other Party to establish, construct, acquire, lease, operate or provide telecommunications transport networks or telecommunications transport services;
(b) require a Party, or require a Party to compel any person, to establish, construct, acquire, lease, operate or provide telecommunications transport networks or telecommunications transport services not offered to the public generally;
(c) prevent a Party from prohibiting persons operating private networks from using their networks to provide public telecommunications transport networks or services to third persons; or
(d) require a Party to compel any person engaged in the broadcast or cable distribution of radio or television programming to make available its cable or broadcast facilities as a public telecommunications transport network.

Article 12.3: Access to and Use of Public Telecommunications Transport Networks and Services

1. Each Party shall ensure that persons of the other Party have access to and use of any public telecommunications transport network or service, including private leased circuits, offered in its territory or across its borders for the conduct of their business, on reasonable and non-discriminatory terms and conditions, including as those set out in paragraphs 2 through 8.

2. Subject to paragraphs 6 and 7, each Party shall ensure that persons of the other Party are permitted to:
(a) purchase or lease, and attach terminal or other equipment that interfaces with the public telecommunications transport network;
(b) interconnect private leased or owned circuits with public telecommunications transport networks in the territory, or across the borders, of that Party, including those for use in providing dial-up access to and from their customers or users, or with circuits leased or owned by another person on terms and conditions mutually agreed by those persons;
(c) perform switching, signaling and processing functions; and

[2] For equipment that is not connected to the public telecommunications transport network or not referred to in this Agreement, the Parties shall abide by the standard-related provisions of Chapter 9.

(d) use operating protocols of their choice.

3. Each Party shall ensure that the pricing of public telecommunications transport services reflects economic costs directly related to providing the services.

4. Each Party shall ensure that persons of the other Party may use public telecommunications transport networks or services for the movement of information in its territory or across its borders, including for intracorporate communications, and for access to information contained in data bases or otherwise stored in machine-readable form in the territory of the other Party.

5. Further to Article 20.1, nothing in this Chapter shall be construed to prevent a Party from adopting or enforcing any measure necessary to:

(a) ensure the security and confidentiality of messages; or
(b) protect the privacy of subscribers to public telecommunications transport networks or services.

6. Each Party shall ensure that, further to Article 12.5, no condition is imposed on access to and use of public telecommunications transport networks or services, other than that necessary to:

(a) safeguard the public service responsibilities of providers of public telecommunications transport networks or services, in particular their ability to make their networks or services available to the public generally; or
(b) protect the technical integrity of public telecommunications transport networks or services.

7. Provided that conditions for access to and use of public telecommunications transport networks or services satisfy the criteria set out in paragraph 6, such conditions may include:

(a) a restriction on resale or shared use of such services;
(b) a requirement to use specified technical interfaces, including interface protocols, for interconnection with such networks or services;
(c) a restriction on interconnection of private leased or owned circuits with such networks or services or with circuits leased or owned by another person; and
(d) a licensing, permit, registration or notification procedure which, if adopted or maintained, is transparent and applications filed thereunder are processed expeditiously.

Article 12.4: Conditions for the Provision of Enhanced or Value-Added Services

1. Each Party shall ensure that:

(a) any licensing, permit, registration or notification procedure that it adopts or maintains relating to the provision of enhanced or value-added services is transparent and non-discriminatory, and that applications filed thereunder are processed expeditiously; and
(b) information required under such procedures is limited to that necessary to demonstrate that the applicant has the financial solvency to begin providing services

or to assess conformity of the applicant's terminal or other equipment with the applicable standards or technical regulations of the Party.

2. Neither Party may require a person providing enhanced or value-added services to:
   (a) provide those services to the public generally;
   (b) cost-justify its rates;
   (c) file a tariff;
   (d) interconnect its networks with any particular customer or network; or
   (e) conform with any particular standard or technical regulation for interconnection other than for interconnection to a public telecommunications transport network.

3. Notwithstanding paragraph 2(c), a Party may require the filing of a tariff by:
   (a) such a provider to remedy a practice of that provider that the Party has found in a particular case to be anti-competitive under its law; or
   (b) a monopoly to which Article 12.6 applies.

Article 12.5: Standards-Related Measures

1. Further to the TBT Agreement, each Party shall ensure that its standards-related measures relating to the attachment of terminal or other equipment to the public telecommunications transport networks, including those measures relating to the use of testing and measuring equipment for conformity assessment procedures, are adopted or maintained only to the extent necessary to:
   (a) prevent technical damage to public telecommunications transport networks;
   (b) prevent technical interference with, or degradation of, public telecommunications transport services;
   (c) prevent electromagnetic interference, and ensure compatibility, with other uses of the electromagnetic spectrum;
   (d) prevent billing equipment malfunction;
   (e) ensure users' safety and access to public telecommunications transport networks or services;
   (f) ensure the electrical safety of communication equipment; or
   (g) facilitate the efficient utilization of radio spectrum resources.

2. A Party may require, before an unauthorized terminal or other equipment may be marketed, an approval for the attachment to the public telecommunications transport network, provided that the criteria for that approval are consistent with paragraph 1.

3. Each Party shall ensure that the network termination points for its public telecommunications transport networks are defined on a reasonable and transparent basis.

4. Neither Party may require separate authorization for equipment that is connected on the customer's side of authorized equipment that serves as a protective device fulfilling the criteria of paragraph 1.

5. Further to the TBT Agreement, each Party shall:

(a) ensure that its conformity assessment procedures are transparent and non-discriminatory and that applications filed thereunder are processed expeditiously;
(b) permit any technically qualified entity to perform the testing required under the Party's conformity assessment procedures for terminal or other equipment to be attached to the public telecommunications transport network, subject to the Party's right to review the accuracy and completeness of the test results; and
(c) ensure that any measure that it adopts or maintains requiring persons to be authorized to act as agents for suppliers of telecommunications equipment before the Party's relevant conformity assessment bodies is non-discriminatory.

6. No later than one year after the date of entry into force of this Agreement, each Party shall adopt, as part of its conformity assessment procedures, provisions necessary to accept the test results from laboratories or testing facilities in the territory of the other Party for tests performed in accordance with the accepting Party's standards-related measures and procedures. For the detailed procedures and methods for mutual recognition of testing laboratories and mutual acceptance of test reports, follows the procedures and methods as prescribed in the "Asia-Pacific Economic Cooperation (APEC) Mutual Recognition Arrangement for Conformity Assessment of Telecommunications Equipment (adopted on May 8, 1998)" shall be taken into consideration by the Telecommunication Committee.

7. The Parties hereby establish a Committee on Telecommunications Standards, comprising representatives of each Party.

8. The Committee on Telecommunications Standards shall perform the functions set out in Annex 12.5.8.

Article 12.6: Monopolies

1. Where a Party maintains or designates a monopoly to provide public telecommunications transport networks or services, and the monopoly, directly or through an affiliate, competes in the provision of enhanced or value-added services or other telecommunications-related services or telecommunications-related goods, the Party shall ensure that the monopoly does not use its monopoly position to engage in anti-competitive conduct in those markets, either directly or through its dealings with its affiliates, in such a manner as to affect adversely a person of the other Party. Such conduct may include cross-subsidization, predatory conduct and the discriminatory provision of access to public telecommunications transport networks or services.

2. To prevent such anti-competitive conduct, each Party shall adopt or maintain, as stated in paragraph 1, effective measures, such as:
(a) accounting requirements;
(b) requirements for structural separation;
(c) rules to ensure that the monopoly accords its competitors access to and use of its public telecommunications transport networks or services on terms and conditions no less favorable than those it accords to itself or its affiliates; and
(d) rules to ensure the timely disclosure of technical changes to public telecommunications transport networks and their interfaces.

Article 12.7: Transparency

Further to Article 17.3, each Party shall make publicly available its measures relating to access to and use of public telecommunications transport networks or services, including measures relating to:

(a) tariffs and other terms and conditions of service;
(b) specifications of technical interfaces with the networks or services;
(c) information on bodies responsible for the preparation and adoption of standards-related measures affecting such access and use;
(d) conditions applying to attachment of terminal or other equipment to the networks; and
(e) notification, permit, registration, or licensing or concession requirements.

Article 12.8: Relation to Other Chapters

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

Article 12.9: Relation to International Organizations and Agreements

The Parties recognize the importance of international standards for global compatibility and interoperability of telecommunication networks or services and undertake to promote those standards through the work of relevant international bodies, including the International Telecommunication Union and the International Organization for Standardization.

Article 12.10: Technical Cooperation and Other Consultations

1. To encourage the development of interoperable telecommunications transport services infrastructure, the Parties shall cooperate in the exchange of technical information, the development of government-to-government training programs and other related activities. In implementing this obligation, the Parties shall give special emphasis to existing exchange programs.

2. The Parties shall consult with a view to determining the feasibility of further liberalizing trade in all telecommunications services, including public telecommunications transport networks and services.

Annex 12.1
Conformity Assessment Procedures

For Chile:

1. The competent institution responsible for the adoption of conformity assessment procedures is the Undersecretary of Telecommunications, Ministry of Transport and Telecommunications, or its successor.

2. The existing measures are the following:
   (a) Law 18.168, Official Gazette, October 2, 1982, General Law of Telecommunications ("Ley 18.168, Diario Oficial, octubre 2, 1982, Ley General de Telecomunicaciones")
   (b) Supreme Decree 220 of the Ministry of Transport and Telecommunications, Official Gazette, January 8, 1981
   (c) Regulation on the Homologation of Telephone Equipment (Decreto 220 de Ministerio de Transportes y Telecomunicaciones, Diario Oficial, enero 8, 1981, "Reglamento de Homologación de Aparatos Telefónicos")

For Korea:

1. The competent institution responsible for the adoption of conformity assessment procedures is the Ministry of Information and Communication, or its successor.

2. The existing measures are the following:
   (a) Areas of Type Approval
   • Telecommunications Basic Act (Act No. 5454, Dec. 13, 1997)
   - Enforcement Decree of Telecommunications Basic Act (Presidential Decree No. 15282, Feb. 22, 1997)
   - Enforcement Regulations of Telecommunications Basic Act (Ordinance of the Ministry of Information and Communication No. 64, Feb. 26, 1999): definitions of the type approval items, and application and process procedures
   - Regulations on the Technical Standards of Telecommunications Facilities (Ordinance of the Ministry of Information and Communication No. 58, Dec. 1, 1998)
   - Terminal-installment Technical Regulations (Ministry of Information and Communication Announcement No. 1998-18, Feb. 21, 1998): definitions of the technical regulations of terminal-installment equipment

   (b) Areas of Type Verification and Type Registration of Wireless Equipment
   • Radio Waves Act (Act No. 5637, Jan. 18, 1999)
   - Enforcement Decree of the Radio Waves Act (Presidential Decree No.16158, March 3, 1999)
   - Enforcement Regulations of the Radio Waves Act (Ordinance of the

Ministry of Information and Communication No. 53, July 31, 1998)

- Confirmation Regulations on Type Verification, Type Registration and Technical Standard Certification for Wireless Facility (Ordinance of the Ministry of Information and Communication No. 52, July 16, 1998): definitions of the object of verification or registration, and the application and process procedure
- Regulations on Wireless Facilities (Ordinance of the Ministry of Information and Communication No. 45, Jan. 31, 1998): definitions of the technical regulations

(c) Areas of Electromagnetic Compatibility Registration

• Radio Waves Act (Act No. 5637, Jan.18, 1999)

- Regulations on Electromagnetic Compatibility Registration (Act No. 39, May 8, 1997): definitions of the registration items, application and process procedures, and relevant technical regulations

Annex 12.5.8
Committee on Telecommunications Standards

1 The Committee on Telecommunications Standards, established under Article 12.5.7, shall comprise representatives of each Party.

2. The Committee shall, within six months of the date of entry into force of this Agreement, develop a work program, including a timetable, for making compatible to the greatest extent possible, the standards-related measures of the Parties for authorized equipment as defined in this Chapter.

3. The Committee may address other appropriate standards-related matters regarding telecommunications equipment or services and such other matters as it considers appropriate.

4. The Committee shall take into account relevant work carried out by the Parties in other fora, and that of non-governmental standardizing bodies.

CHAPTER 13
TEMPORARY ENTRY FOR BUSINESS PERSONS

Article 13.1: Definitions

For purposes of this Chapter:

business person means a citizen of a Party who is engaged in trade in goods, the provision of services or the conduct of investment activities; and

temporary entry means entry into the territory of a Party by a business person of the other Party without the intent to establish permanent residence.

Article 13.2: General Principles

1. Further to Article 1.2, this Chapter reflects the preferential trading relationship between the Parties, the desirability of facilitating temporary entry on a reciprocal basis and of establishing transparent criteria and procedures for temporary entry, and the need to ensure border security and to protect the domestic labour force and permanent employment in their respective territories.

2. The Parties reconfirm their voluntary commitments established in the APEC Business Travel Card "Operating Framework". This recognition shall be understood to be under the APEC general principles.

Article 13.3: General Obligations

1. Each Party shall apply its measures relating to the provisions of this Chapter in accordance with Article 13.2 and, in particular, shall apply expeditiously those measures so as to avoid unduly impairing or delaying trade in goods or services or conduct of investment activities under this Agreement.

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

Article 13.4: Grant of Temporary Entry

1. In accordance with this Chapter and subject to the provisions of Annex 13.4 and Annex 13.4.1, each Party shall grant temporary entry to business persons who are otherwise qualified for entry under applicable measures relating to public health and safety and national security.

2. A Party may refuse to issue an immigration document authorizing employment to a business person where the temporary entry of that person might affect adversely:

(a) the settlement of any labour dispute that is in progress at the place or intended place of employment; or
(b) the employment of any person who is involved in such dispute.

3. When a Party refuses pursuant to paragraph 2 to issue an immigration document authorizing employment, it shall:
(a) inform in writing the business person of the reasons for the refusal; and
(b) promptly notify the other Party in writing of the reasons for the refusal.

4. Each Party shall limit any fees for processing applications for temporary entry of business persons to the approximate cost of services rendered.

Article 13.5: Provision of Information

1. Further to Article 17.3, each Party shall:
(a) provide to the other Party such materials as will enable the latter Party to become acquainted with its own measures relating to this Chapter; and
(b) no later than six months after the date of entry into force of this Agreement, prepare, publish and make available in its own territory, and in the territory of the other Party, explanatory material in a consolidated document regarding the requirements for temporary entry under this Chapter in such a manner as will enable business persons of the other Party to become acquainted with them.

2. Each Party shall collect and maintain, and make available to the other Party in accordance with its domestic law, data regarding the granting of temporary entry under this Chapter to business persons of the other Party who have been issued immigration documentation, including data specific to each occupation, profession or activity.

Article 13.6: Working Group

The Parties hereby establish a Temporary Entry Working Group, comprising representatives of each Party, including immigration officials, to consider the implementation and administration of this Chapter and any measures of mutual interest.

Article 13.7: Dispute Settlement

1. A Party may not initiate proceedings under Article 19.6 regarding a refusal to grant temporary entry under this Chapter or a particular case arising under Article 13.2 unless:
(a) the matter involves a pattern of practice; and

(b) the business person has exhausted the available administrative remedies regarding the particular matter.

2. The remedies referred to in subparagraph 1(b) shall be deemed to be exhausted if a final determination in the matter has not been issued by the competent authority within six months of the institution of an administrative proceeding, and the failure to issue a determination is not attributable to delay caused by the business person.

Article 13.8: Relation to Other Chapters

Except for this Chapter, Chapters 1, 2, 18, 19 and 21 and Articles 17.2, 17.3, 17.4 and 17.6, no provision of this Agreement shall impose any obligation on a Party regarding its immigration measures.

Annex 13.4
Temporary Entry for Business Persons

Section I - Business Visitors

1. Each Party shall grant temporary entry to a business person seeking to engage in a business activity set out in Appendix 13.4.I.1, without requiring that person to obtain an employment authorization, provided that the business person otherwise complies with existing immigration measures applicable to temporary entry, on presentation of:

(a) proof of citizenship of a Party;

(b) documentation demonstrating that the business person will be so engaged and describing the purpose of entry; and

(c) evidence demonstrating that the proposed business activity is international in scope and the business person is not seeking to enter the local labour market.

2. Each Party shall provide that a business person may satisfy the requirements of subparagraph 1(c) by demonstrating that:

(a) the primary source of remuneration for the proposed business activity is outside the territory of the Party granting temporary entry; and

(b) the business person's principal place of business and the actual place of accrual of profits, at least, predominantly, remain outside such a territory.

3. Each Party shall grant temporary entry to a business person seeking to engage in a business activity other than those set out in Appendix 13.4.I.1, without requiring that person to obtain an employment authorization, on a basis no less favourable than that provided under the existing provisions of the measures set out in Appendix 13.4.I.3, provided that the business person otherwise complies with existing immigration measures applicable to temporary entry.

4. Neither Party may:

(a) as a condition for temporary entry under paragraph 1 or 3, require prior approval procedures, petitions, labour certification tests or other procedures of similar effect; or

(b) impose or maintain any numerical restriction relating to temporary entry under paragraph 1 or 3.

5. Notwithstanding paragraph 4, a Party may require a business person seeking temporary entry under this Section to obtain a visa or its equivalent in accordance with its domestic immigration law prior to entry. Before imposing the visa requirement, the Party shall consult with the other Party with a view to avoiding the imposition of the requirement. With respect to an existing visa requirement, a Party shall consult, upon request, with the other Party with a view to its removal.

Section II - Traders and Investors

1. Each Party shall grant temporary entry and provide confirming documentation to a business person seeking to:

(a) carry on substantial trade in goods or services principally between the territory of the Party of which the business person is a citizen and the territory of the other Party into which entry is sought, or

(b) establish, develop, administer or provide advice or key technical services to the operation of an investment to which the business person or the business person's enterprise has committed, or is in the process of committing, a substantial amount of capital,

in a capacity that is supervisory or executive, or involves essential skills, provided that the business person otherwise complies with existing immigration measures applicable to temporary entry.

2. Neither Party may:

(a) as a condition for temporary entry under paragraph 1, require labour certification tests or other procedures of similar effect; or

(b) impose or maintain any numerical restriction relating to temporary entry under paragraph 1.

3. Notwithstanding paragraph 2, a Party may require a business person seeking temporary entry under this Section to obtain a visa or its equivalent in accordance with its domestic immigration law prior to entry. Before imposing the visa requirement, the Party shall consult with the other Party with a view to avoiding the imposition of the requirement. With respect to an existing visa requirement, a Party shall consult, upon request, with the other Party with a view to its removal.

Section III - Intra-Company Transferees

1. Each Party shall grant temporary entry and provide confirming documentation to a business person employed by an enterprise who seeks to render services to that enterprise of a Party or a subsidiary or affiliate thereof, in a capacity that is managerial, executive or involves specialised knowledge, provided that the business person otherwise complies with existing immigration measures applicable to temporary entry. A Party may require the business person to have been employed continuously by the enterprise for one year within the three-year period immediately preceding the date of the application for admission.

2. Neither Party may:

(a) as a condition for temporary entry under paragraph 1, require labour certification tests or other procedures of similar effect; or

(b) impose or maintain any numerical restriction relating to temporary entry under paragraph 1.

3. Notwithstanding paragraph 2, a Party may require a business person seeking temporary entry under this Section to obtain a visa or its equivalent in accordance with its domestic immigration law prior to entry. Before imposing visa requirement, the Party shall consult with the other Party with a view to avoiding the imposition of the requirement. With respect to an

existing visa requirement, a Party shall consult, upon request, with the other Party with a view to its removal.

Annex 13.4.1

In the case of Chile:

1. Business persons who enter Chile under any of the categories set out in Annex 13.4 shall be deemed to be engaged in activities which are in the country's interest.

2. Business persons who enter Chile under any of the categories set out in Annex 13.4 are issued with a temporary resident visa for a period up to one year. Such a temporary visa may be extended for subsequent periods, provided the conditions on which it is based remain in effect, without requiring that person to apply for permanent residence.

3. Business persons who enter Chile may also obtain an identity card for foreigners.

4. Business persons who enter Chile under any of the categories set out in Annex 13.4 may freely enter and leave Chile without re-entry permission during the validity of their visas on the basis of reciprocity.

In the case of Korea:

1. Business visitors who enter Korea under Section I of Annex 13.4 are issued with a short-term business visa (C-2) for a period of up to six months. A change of visa status to that of an intra-company transferee visa (D-7), investment visa (D-8) or trade management visa (D-9), may be permitted, if the activities of the business visitors satisfy the conditions under Sections II and III of Annex 13.4.

2. Investors and traders who enter Korea under Section II of Annex 13.4 are issued with an investment visa (D-8) or a trade and management visa (D-9), respectively, for a period of up to one year. These visas may be extended for subsequent periods provided the conditions on which they are based remain in effect.

3. Intra-company transferees who enter Korea under Section III of Annex 13.4 are issued with an intra-company transferee visa (D-7) for a period of up to one year. This visa may be extended for subsequent periods provided the conditions on which it is based remain in effect.

4. Business persons who enter Korea under any of the categories set out in Annex 13.4 may freely enter and leave Korea without re-entry permission during the validity of their visa on the basis of the reciprocity.

5. Business persons who intend to stay over 90 days in Korea shall register the aliens registration at the competent immigration office.

Appendix 13.4.I.1
Business Visitors

1. For purposes of this Appendix, "**territory of the other Party**" means the territory of the Party other than the territory of the Party into which temporary entry is sought.

2. Business activities referred to in Section I.1 of Annex 13.4 are:

Research and Design

- Technical, scientific and statistical researchers conducting research for an enterprise located in the territory of the other Party.

Growth, Manufacture and Production

- Purchasing and production management personnel conducting commercial transactions for an enterprise located in the territory of the other Party.

Marketing

- Market researchers and analysts conducting analysis or research for an enterprise located in the territory of the other Party.
- Trade fair and promotional personnel attending a trade convention.

Sales

- Sales representatives and agents taking orders or negotiating contracts for goods or services for an enterprise located in the territory of the other Party but not delivering goods or providing services.
- Buyers purchasing for an enterprise located in the territory of the other Party.

Distribution

- Customs brokers providing consulting services regarding the facilitation of the import or export of goods.

After-Sales Service

- Installers, repair and maintenance personnel, and supervisors, possessing specialised knowledge essential to a seller's contractual obligation, performing services or training workers to perform services, pursuant to a warranty or other service contract incidental to the sale of commercial or industrial equipment or machinery, including computer software, purchased from an enterprise located outside the territory of the Party into which temporary entry is sought, during the life of the warranty or service agreement.

General Service

- Consultants engaging in a business activity at the cross-border services provision level.
- Management and supervisory personnel engaging in a commercial transaction for an enterprise located in the territory of the other Party.

- Financial services personnel (insurers, bankers or investment brokers) engaging in commercial transactions for an enterprise located in the territory of the other Party.
- Public relations and advertising personnel consulting with business associates, or attending or participating in conventions.
- Tourism personnel (tour and travel agents, tour guides or tour operators) attending or participating in conventions or conducting a tour that has begun in the territory of the other Party.
- Translators or interpreters performing services as employees of an enterprise located in the territory of the other Party.

Appendix 13.4.I.3

Existing Immigration Measures

1. In the case of Chile, Title I, paragraph 6 of Decree Law 1094, Official Gazette, July 19, 1975, Immigration Law ("Decreto Ley 1094, Diario Oficial, julio 19, 1975, Ley de Extranjería"), and Title III of Immigration Regulation ("Decreto Supremo 597 del Ministerio del Interior, Diario Oficial noviembre 24, 1984, Reglamento de Extranjería").

2. In the case of Korea, Immigration Law Article 7 and Article 8 (amended February 5, 1999), Immigration Law Enforcement Ordinance Article 7, Article 11 and Article 12 (amended November 27, 1999), Immigration Law Enforcement Regulations Article 8, Article 9, Article 10, Article 13, Article 18, Article 71 and Article 76 (amended December 2, 1999), Visa Issuance Procedure for Short-Term Business (C-2), Short-Term Visitors (C-3).

CHAPTER 14
COMPETITION

Article 14.1: Definitions

For the purpose of this Chapter:

competition laws includes:

(a) for Chile, Decree Law N° 211 of 1973 and Law N° 19.610 of 1999 and their implementing regulations or amendments;
(b) for Korea, the Monopoly Regulation and Fair Trade Act (Law no. 3320, 1980) and its implementing regulations and amendments; and
(c) any changes that the legislations in subparagraphs (a) and (b) may undergo after the conclusion of this Agreement;

competition authority means:

(a) for Chile, the "Fiscalía Nacional Económica"; and
(b) for Korea, the Fair Trade Commission; and

enforcement activity means any application of competition laws by way of investigation or proceeding conducted by the competition authority of a Party, which may result in the imposition of penalties or remedies.

Article 14.2: Objectives

1. The Parties undertake to apply their respective competition laws in a manner consistent with this Chapter so as to avoid that the benefits of the liberalization process in goods and services may be diminished or cancelled out by anti-competitive business conduct. To this end, the Parties agree to cooperate and coordinate between their competition authorities under the provisions of this Chapter.

2. With a view to preventing distortions or restrictions on competition which may affect trade in goods or services between them, the Parties shall give particular attention to anti-competitive agreements, concerted practices and abusive behavior resulting from single or joint dominant positions.

3. The Parties agree to cooperate and coordinate between themselves for the implementation of competition laws. This cooperation includes notification, consultation, exchange of non-confidential information and technical assistance. The Parties acknowledge the importance of embracing principles on competition that would be accepted by both Parties in multilateral fora, including the WTO.

Article 14.3: Notifications

1. Each competition authority shall notify the competition authority of the other Party of an enforcement activity if it:

(a) is liable to substantially affect the other Party's important interests;

(b) relates to restrictions on competition which are liable to have a direct and substantial effect in the territory of the other Party; or

(c) concerns anti-competitive acts taking place principally in the territory of the other Party.

2. Provided that it is not contrary to the Parties' competition laws and does not affect any investigation being carried out, notification shall be given at an early stage of the procedure. The opinions received may be taken into consideration by the other competition authority when taking decisions.

3. The notifications given under paragraph 1 should be detailed enough to permit an evaluation in the light of the interests of the other Party.

4. The Parties undertake to exert their best efforts to ensure that notifications are made in the circumstances set out above, taking into account the administrative resources available to them.

Article 14.4: Coordination of Enforcement Activities

The competition authority of a Party may notify the other Party's competition authority of its intention to coordinate enforcement activities with respect to a specific case. This coordination shall not prevent the Parties from taking autonomous decisions.

Article 14.5: Consultations when the Important Interests of a Party are Adversely Affected in the Territory of the Other Party

1. Each Party shall, in accordance with its laws, take into consideration, as necessary, the important interests of the other Party in the course of its enforcement activities. If the competition authority of a Party considers that an investigation or proceeding being conducted by the competition authority of the other Party may adversely affect such a Party's important interests, it may transmit its views on the matter to, or request consultation with, the other competition authority. Without prejudice to the continuation of any action under its competition laws and to its full freedom of ultimate decision, the competition authority so addressed should give full and sympathetic consideration to the views expressed by the requesting competition authority.

2. The competition authority of a Party that considers that its interests are being substantially and adversely affected by anti-competitive practices of whatever origin that are or have been engaged in by one or more enterprises located in the other Party may request consultations with the competition authority of that Party. Such consultations are without prejudice to the full freedom of ultimate decision of the competition authority concerned. A competition authority so

consulted may take whatever corrective measures under its competition laws, which it deems appropriate, consistent with its own domestic law, and without prejudice to its full enforcement discretion.

Article 14.6: Exchange of Information and Confidentiality

1. With a view to facilitating the effective application of their respective competition laws, the competition authorities may exchange non-confidential information.

2. For the purpose of improving transparency, and without prejudice to the rules and standards of confidentiality applicable in each Party, the Parties hereby undertake to exchange information regarding sanctions and remedies applied in the cases that, according to the competition authority concerned, are significantly affecting important interests of the other Party and to provide the grounds on which those actions were taken, when requested by the competition authority of the other Party.

3. All exchange of information shall be subject to the standards of confidentiality applicable in each Party. Confidential information whose dissemination is expressly prohibited or which, if disseminated, could adversely affect the interest of the Parties, shall not be provided without the express consent of the source of the information.

4. Each competition authority shall maintain the confidentiality of any information provided to it in confidence by the other competition authority, and shall not disclose such information to any entity that is not authorised by the competition authority that supplied the information.

5. Notwithstanding the above provisions of this Article, where the laws of the Parties so provides, confidential information may be provided to their respective courts of justice, provided that confidentiality is maintained by the courts.

Article 14.7: Technical Assistance

The Parties may provide each other with technical assistance in order to take advantage of their respective experiences and to strengthen the implementation of their competition laws and policies.

Article 14.8: Public Enterprises and Enterprises Entrusted with Special or Exclusive Rights, including Designated Monopolies

1. Nothing in this Chapter prevents the Parties from designating or maintaining public or private monopolies according to their respective laws.

2. With regard to public enterprises and enterprises to which special or exclusive rights have been granted, including designated monopolies, the Commission shall ensure that, following the date of entry into force of this Agreement, such enterprises shall be subject to the rules of

competition, insofar as the application of such rules does not obstruct the performance, in law or in fact, of the particular tasks assigned to them.

Article 14.9: Dispute Settlement

Neither Party may have recourse to dispute settlement procedures under Chapter 19 for any matter arising under this Chapter.

PART IV
GOVERNMENT PROCUREMENT

CHAPTER 15
GOVERNMENT PROCUREMENT

Article 15.1: Definitions

For purposes of this Chapter:

entity means an entity of a Party covered in Annex 15.1;

government procurement means the process by which a government, through any contractual means, obtains the use of or acquires goods or services, or any combination thereof, for governmental purposes and not with a view to commercial sale or resale, or use in the production or supply of goods or services for commercial sale or resale;

offsets means those conditions imposed or considered by an entity prior to, or in the course of its procurement process, that encourage local development or improve its Party's balance of payments accounts by means of requirements of local content, licensing of technology, investment, counter-trade or similar requirements;

open tendering procedures means those procedures whereby any interested supplier may submit a tender;

privatisation means a process by means of which a public entity is no longer subject to government control, whether by public tender of the shares of that entity or otherwise, as contemplated in the respective Party’s legislation in force;

public works concession and **build-operate-transfer contract** means a contract of the same type as the public works procurement contract, except for the fact that the remuneration for the works to be carried out consists either solely of the right to exploit the construction or in such a right together with a payment;

supplier means a natural or legal person that provides or could provide goods or services to an entity;

technical specifications means a specification, which lays down the characteristics of the products or services to be procured, such as quality, performance, safety and dimensions, symbols, terminology, packaging, marking and labelling, or the processes and methods for their production and requirements relating to conformity assessment procedures prescribed by procuring entities; and

tenderer means a supplier who has submitted a tender.

Article 15.2: Scope and Coverage

1. This Chapter applies to measures adopted or maintained by a Party relating to procurement by an entity, by any contractual means, including purchase and rental or lease, with or without an option to buy**,** subject to the conditions specified in Annexes 15.1 and 15.2. For purposes of this Chapter, public works concession and build-operate-transfer contracts shall be considered as procurement.

2. This Chapter does not apply to:
   (a) non-contractual agreements or any form of assistance provided by a Party or a state enterprise, including grants, loans, fiscal incentives, subsidies, guarantees, cooperative agreements, government provision of goods and services to persons or to state, regional or local governments, and purchases for the direct purpose of providing foreign assistance;
   (b) purchases funded by international grants, loans or other assistance, where the provision of such assistance is subject to conditions inconsistent with the provisions of this Chapter;
   (c) hiring of government employees and hiring of entities' other long-term staff and personnel, and related employment measures; and
   (d) financial services.

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

Article 15.3: National Treatment and Non-Discrimination

1. Each Party shall ensure that the procurement of its entities covered by this Chapter takes place in a transparent, reasonable and non-discriminatory manner, treating any supplier of either Party equally and ensuring the principle of open and effective competition.

2. With respect to any laws, regulations, procedures and practices regarding government procurement covered by this Chapter, each Party shall grant the goods, services and suppliers of the other Party a treatment no less favourable than that accorded by it to domestic goods, services and suppliers.

3. With respect to any laws, regulations, procedures and practices regarding government procurement covered by this Chapter, each Party shall ensure:
   (a) that its entities do not treat a locally-established supplier less favourably than any other locally-established supplier on the basis of the degree of foreign affiliation to, or ownership by, a person of the other Party; and
   (b) that its entities do not discriminate against a locally-established supplier on the basis that the goods or services offered by that supplier for a particular procurement are goods or services of the other Party.

4. This Article shall not apply to measures concerning customs duties or other charges of any kind imposed on, or in connection with importation, the method of levying such duties and

charges, other import regulations, including restrictions and formalities, nor to measures affecting trade in services other than measures specifically governing procurement covered by this Chapter.

Article 15.4: Prohibition of Offsets

Each Party shall ensure that its entities do not, in the qualification and selection of suppliers, goods or services, in the evaluation of bids or in the award of contracts, consider, seek or impose offsets.

Article 15.5: Transparency

1. Each Party shall promptly publish any law, regulation, judicial decision and administrative ruling of general application and procedure, including standard contract clauses, regarding procurement covered by this Chapter, in the appropriate publications, including officially designated electronic media.

2. Each Party shall promptly publish in the same manner as in paragraph 1 any modification to such measures therein.

Article 15.6: Tendering Procedures

1. Entities shall award their public contracts by open tendering procedures according to their respective domestic procedures, in compliance with this Chapter and in a non-discriminatory manner.

2. Provided that the tendering procedure is not used to avoid competition or to protect domestic suppliers, entities shall be allowed to award contracts by means other than an open tendering procedure in the following circumstances and subject to the following conditions, where applicable:

(a) in the absence of tenders that conform to the essential requirements in the tender documentation provided in a prior tendering procedure, including any conditions for participation, provided that the requirements of the initial procurement are not substantially modified in the contract as awarded;

(b) where, for works of art, or for reasons connected with the protection of exclusive rights, such as patents, copyrights or proprietary information or in the absence of competition for technical reasons, the goods or services can be supplied only by a particular supplier and no reasonable alternative or substitute exists;

(c) for additional deliveries by the original supplier that are intended either as replacement parts, extensions, or continuing services for existing equipment, software, services or installations, where a change of supplier would compel the entity to procure goods or services not meeting requirements of interchangeability with existing equipment, software, services, or installations;

(d) for quoted goods purchased on a commodity market and for purchases of goods made under exceptionally advantageous conditions, which only arise in the very short term in the case of unusual disposals, and not for routine purchases from regular suppliers;

(e) when an entity procures prototypes or a first good or service which are developed at its request in the course of, and for, a particular contract for research, experiment, study or original development;

(f) when additional construction services which were not included in the initial contract but which were within the objectives of the original tender documentation have, due to unforeseeable circumstances, become necessary to complete the construction services described therein, provided that the total value of contracts awarded for additional construction services does not exceed 50 per cent of the amount of the main contract; or

(g) insofar as it is strictly necessary where, for reasons of extreme urgency brought about by events unforeseeable by the entity, the goods or services could not be obtained in time under an open tendering procedure and the use of such procedure would result in serious injury to the entity, the entity's program responsibilities or the responsible Party. This exception may not be used as a result of a lack of advance planning or concerns relating to the amount of funds available to an entity within a particular period of time.

3. The Parties shall ensure that, whenever it is necessary for entities to resort to a procedure other than open tendering procedures based on the circumstances set forth in paragraph 2, the entities shall maintain a record or prepare a written report providing specific justification for the contract.

Article 15.7: Conditions for Suppliers' Participation in Procurement

1. Where an entity requires suppliers to satisfy registration, qualification, or any other requirements or conditions before being permitted to participate in a procurement, each Party shall ensure that a notice inviting suppliers to apply for registration, qualification or demonstration of the suppliers' satisfaction of any other conditions for participation is published sufficiently in advance for interested suppliers to prepare and submit responsive applications and for entities to evaluate and make their determinations based on such applications.

2. Each Party shall ensure that any conditions for participation in a procurement are limited to those that are essential to ensure that the potential supplier has the legal, technical and financial abilities to fulfill the requirements and technical specifications of the procurement and that qualification decisions are based solely on the conditions for participation that have been specified in advance in notices or tender documentation.

3. Entities shall be allowed to establish a publicly available list of suppliers qualified to participate in procurements. Where an entity requires suppliers to qualify for such a list before being permitted to participate in a procurement, and a supplier that has not previously satisfied such requirements or conditions submits an application, the entity shall promptly start the relevant procedures and shall allow such supplier to participate in the procurement, provided

there is sufficient time to complete the procedures within the time period established for tendering.

4. Entities shall not impose the condition that, in order for a supplier to participate in a procurement, the supplier has previously been awarded one or more contracts by an entity of that Party or that the supplier has prior work experience in the territory of that Party.

Article 15.8: Publication of Advance Notices

1. For each contract covered by this Chapter, entities shall publish in advance a notice inviting interested suppliers to submit tenders for that contract, except as provided for in Article 15.6.2.

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

3. Entities shall publish the notices in a timely manner through means which offer the widest possible and non-discriminatory access to the interested suppliers of the Parties. These means shall be accessible free of charge through a single point of access specified in Annex 15.2.

Article 15.9: Tender Documentation

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

2. Where contracting entities do not offer free direct access to the entire tender documents and any supporting documents by electronic means, entities shall make promptly available the tender documentation at the request of any supplier of the Parties.

Article 15.10: Time-Limits

1. Time-limits established by the entities during a procurement process shall be sufficiently long to enable suppliers to prepare and submit responsive tenders, in relation to the nature and complexity of the procurement.

2. Notwithstanding paragraph 1, entities shall establish no less than ten days between the date on which the advance notice of intended procurement is published and the final date for the submission of tenders.

Article 15.11: Technical Specifications

1. Technical specifications shall be set out in the notices, tender documents or additional documents.

2. Each Party shall ensure that its entities do not prepare, adopt or apply any technical specifications with a view to, or with the effect of, creating unnecessary obstacles to trade between the Parties.

3. Technical specifications prescribed by entities shall:
   (a) be in terms of performance and functional requirements, rather than design or descriptive characteristics; and
   (b) be based on international standards, where they exist or, in absence of such standards, on national technical regulations[3], recognised national standards[4] or building codes.

4. Paragraph 3 does not apply when the entity may objectively demonstrate that the use of technical specifications referred to in that paragraph would be ineffective or inappropriate for the fulfillment of the legitimate objectives pursued.

5. In all cases, entities shall consider bids which do not comply with the technical specifications but meet the essential requirements thereof and are fit for the purpose intended. The reference to technical specifications in the tender documents must include words such as "or equivalent".

6. There shall be no requirement or reference to a particular trademark or trade name, patent, design or type, specific origin, producer or supplier, unless there is no sufficiently precise or intelligible way of describing the procurement requirements and provided that words, such as "or equivalent", are included in the tender documentation.

7. The tenderer shall have the burden of proof to demonstrate that its bid meets the essential requirements.

Article 15.12: Awarding of Contracts

1. To be considered for award, a tender must, at the time of opening, conform to the essential requirements of the notices or tender documentation and be submitted by a tenderer who complies with the conditions for participation.

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[3] For the purpose of this Chapter, a technical regulation is a document, which lays down characteristics of a product or a service or their related processes and production methods, including the applicable administrative provisions, with which compliance is mandatory. It may also include or deal exclusively with terminology, symbols, packaging, marking or labelling requirements as they apply to a product, service, process or production method.

[4] For the purpose of this Chapter, a standard is a document approved by a recognised body, that provides, for common and repeated use, rules, guidelines or characteristics for products or services or related processes and production methods, with which compliance is not mandatory. It may also include or deal exclusively with terminology, symbols, packaging, marking or labelling requirements as they apply to a product, service, process or production method.

2. Unless an entity determines that it is not in the public interest to award a contract, entities shall award the contract to the tenderer who has been determined to be fully capable of undertaking the contract and whose tender is determined to be the most advantageous in terms of the requirements and evaluation criteria set forth in the tender documentation.

3. Each Party shall ensure that its entities provide for effective dissemination of the results of government procurement processes.

Article 15.13: Bid Challenges

1. Entities shall accord impartial and timely consideration to any complaints from suppliers regarding an alleged breach of this Chapter in the context of a procurement procedure.

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

3. Challenges shall be heard by an impartial and independent reviewing authority. A reviewing authority which is not a court shall either be subject to judicial review or shall have procedural guarantees similar to those of a court.

4. Challenge procedures shall provide for, if appropriate, correction of the breach of this Chapter or, in the absence of such correction, compensation for the loss or damages suffered, which may be limited to costs for tender preparation and protest.

Article 15.14: Information Technology and Cooperation

1. The Parties shall, to the extent possible, endeavour to use electronic means of communication to permit efficient dissemination of information on government procurement, particularly as regards tender opportunities offered by entities, while respecting the principles of transparency and non-discrimination.

2. The Parties shall endeavour to provide each other with technical cooperation and assistance through the development of training programs with a view to achieving a better understanding of their respective government procurement systems and statistics, as well as a better access to their respective markets.

Article 15.15: Modifications to Coverage

1. A Party may modify its coverage under this Chapter, provided that it:
   (a) notifies the other Party of the modification; and
   (b) provides the other Party, within 30 days following the date of such notification, appropriate compensatory adjustments to its coverage in order to maintain a level of coverage comparable to that existing prior to the modification.

2. Notwithstanding subparagraph 1(b), no compensatory adjustments shall be provided to the other Party where the modification by a Party of its coverage under this Chapter concerns:

(a) rectifications of a purely formal nature and minor amendments to Annex 15.1; or

(b) one or more covered entities on which government control or influence has been effectively eliminated as a result of privatisation.

3. Where appropriate, the Commission shall by decision modify the relevant Annex to reflect the modification notified by the Party concerned.

Article 15.16: Further Negotiations

In the case that either Party offers, in the future, a non-Party additional advantages with regard to the government procurement market access coverage agreed under this Chapter, it shall agree, upon request of the other Party, to enter into negotiations with a view to extending coverage under this Chapter on a reciprocal basis.

Article 15.17: Government Procurement Working Group

Upon request of a Party, the Parties shall convene a Government Procurement Working Group to address issues related to the implementation of this Chapter. Such issues may include:

(a) bilateral cooperation relating to the development and use of electronic communications in government procurement systems;

(b) exchange of statistics and other information needed for monitoring procurement conducted by the Parties and the results of the application of this Chapter; and

(c) exploration of potential interest in further negotiations aimed at further broadening of the scope of market access commitments under this Chapter.

Annex 15.1
Coverage on Government Procurement

Appendix 1
Entities at Central Level

1. Thresholds

Supplies
Specified in Appendix 4
Thresholds SDR 50,000

Services
Specified in Appendix 5
Thresholds SDR 50,000

Construction Services
Specified in Appendix 6
Thresholds SDR 5,000,000

2. Chile's List of Entities

Presidencia de la República
(Office of the President of the Republic)

Ministerio del Interior
(Ministry of the Interior)
Subsecretaría de Interior
(Vice-Ministry of the Interior)
Subsecretaría de Desarrollo Regional
(Office of the Vice-Minister for Regional Development)
Oficina Nacional de Emergencia (ONEMI)
(Bureau for National Emergencies)
Dirección de Seguridad Publica e Información
(Directorate for Public Security and Information)
Comité Nacional Control de Estupefacientes (CONACE)
(National Narcotics Control Committee)
Servicio Electoral
(Electoral Bureau)
Fondo Nacional
(National Fund)

Ministerio de Relaciones Exteriores
(Ministry of Foreign Affairs)
Subsecretaría de Relaciones Exteriores

(Vice-Ministry of Foreign Affairs)
Dirección General de Relaciones Económicas Internacionales
(General Directorate for International Economic Affairs)
Instituto Antártico Chileno (INACH)
(Chilean Institute for the Antarctica)
Dirección de Fronteras y Límites (DIFROL)
(Administration of Borders and Frontiers)

Ministerio de Defensa Nacional
(Ministry of National Defense)
Subsecretaría de Guerra
(Vice-Ministry of Army Affairs)
Subsecretaría de Marina
(Vice-Ministry of Navy Affairs)
Subsecretaría de Aviación
(Vice-Ministry of the Air Force Affairs)
Subsecretaría de Carabineros
(Vice-Ministry of Military Police Affairs)
Subsecretaría de Investigaciones
(Vice-Ministry of Investigative Police)
Dirección Administrativa del Ministerio de Defensa Nacional
(Administrative Directorate of the Ministry of National Defense)
Dirección de Aeronáutica Civil
(Civil Aeronautics Directorate)
Dirección General de Movilización Nacional
(General National Mobilization Directorate)
Academia Nacional de Estudios Políticos y Estratégicos (ANEPE)
(National Academy of Political and Strategic Studies)
Dirección General de Defensa Civil
(General Directorate for Civil Defense)

Ministerio de Hacienda
(Ministry of Finance)
Subsecretaría de Hacienda
(Vice-Ministry of Finance)
Dirección de Presupuestos
(Budget Directorate)
Servicio de Impuestos Internos (SII)
(Internal Revenue Service)
Tesorería General de la República
(General Treasury of the Republic)
Servicio Nacional de Aduanas
(National Customs Service)
Casa de Moneda
(National Mint)
Dirección de Aprovisionamiento del Estado (Chilecompra)

(Government Procurement Directorate)
Superintendencia de Bancos e Instituciones Financieras
(Superintendency of Banks and Financial Institutions)
Superintendencia de Valores y Seguros
(Superintendency of Stock Corporations and Insurance Companies)

Ministerio Secretaría General de la Presidencia
(Ministry of the General Secretariat of the President's Office)
Subsecretaría General de La Presidencia
(General Vice-Ministry of the President's Office)
Comisión Nacional del Medio Ambiente (CONAMA)
(National Environmental Commission)

Ministerio Secretaría General de Gobierno
(Ministry of the General Secretariat of Government)
Subsecretaría General de Gobierno
(Vice-Ministry of the General Secretariat of Government)
Instituto Nacional del Deporte (IND)
(National Sports Institute)
División de Organizaciones Sociales (DOS)
(Social Organizations Department)
Secretaría de Comunicación y Cultura (SECC)
(Secretariat of Communication and Culture)

Ministerio de Economía, Fomento, Reconstrucción y Energía
(Ministry of Economic Affairs, Development, Reconstruction and Energy)
Subsecretaría de Economía
(Vice-Ministry of Economic Affairs)
Subsecretaría de Pesca
(Vice-Ministry of Fishing)
Secretaría Ejecutiva Comisión Nacional de Energía
(Executive Secretariat of the National Energy Commission)
Comité de Inversiones Extranjeras
(Foreign Investments Committee)
Servicio Nacional del Consumidor (SERNAC)
(National Consumers Bureau)
Fiscalía Nacional Económica
(National Competitiveness Enforcement Department)
Instituto Nacional de Estadísticas (INE)
(National Statistics Institute)
Servicio Nacional de Pesca (SERNAPESCA)
(National Fisheries Bureau)
Servicio Nacional de Turismo (SERNATUR)
(National Tourism Bureau)
Superintendencia de Electricidad y Combustible
(Superintendency for Electricity and Fuel)
Centro de Información de Recursos Naturales (CIREN)

(Center for Information on Natural Resources)
Corporación de Investigaciones Tecnológicas (INTEC)
(Corporation on Technological Research)
Instituto de Fomento Pesquero (IFOP)
(Fisheries Development Institute)
Instituto Forestal
(Forestry Institute)
Instituto Nacional de Normalización (INN)
(National Standards Institute)
Servicio de Cooperación Técnica (SERCOTEC)
(Technical Cooperation Bureau)
Fondo Nacional de Desarrollo Tecnológico y Productivo
(National Technology and Production Development Fund)
Corporación de Fomento de la Producción (CORFO)
(Chilean Economic Development Agency)

Ministerio de Minería
(Ministry of Mining)
Subsecretaría de Minería
(Vice-Ministry of Mining)
Comisión Chilena de Energía Nuclear (CCHEN)
(Chilean Nuclear Energy Commission)
Comisión Chilena del Cobre (COCHILCO)
(Chilean Copper Commission)
Comisión Nacional de Energía
(National Energy Commission)
Servicio Nacional de Geología y Minería (SERNAGEOMIN)
(National Geology and Mining Bureau)

Ministerio de Planificación y Cooperación
(Ministry of Planning and Cooperation)
Subsecretaría de Planificación y Cooperación
(Vice-Ministry of Planning and Cooperation)
Corporación Nacional Desarrollo Indígena (CONADI)
(National Corporation for the Development of Indigenous Peoples)
Fondo de Solidaridad e Inversión Social (FOSIS)
(Social Solidarity and Investment Fund)
Fondo Nacional de la Discapacidad (FONADIS)
(National Fund for Disabilities)
Instituto Nacional de la Juventud (INJUV)
(National Institute for Young People)
Agencia de Cooperación Internacional (AGCI)
(International Cooperation Agency)

Ministerio de Educación
(Ministry of Education)
Subsecretaría de Educación

(Vice-Ministry of Education)
Comisión Nacional de Investigación Científica y Tecnológica (CONICYT)
(National Commission for Scientific an Technological Research)
Dirección de Bibliotecas, Archivos Museos (DIBAM)
(Directorate for Libraries, Archives and Museums)
Junta Nacional de Auxilio Escolar y Becas (JUNAEB)
(National Educational Assistance and Scholarships Board)
Junta Nacional de Jardines Infantiles (JUNJI)
(National Board for Nursery Schools)
Consejo Nacional del Libro y la Lectura
(National Council for Books and Reading)
Consejo de Calificación Cinematográfica
(Cinema Films Assessment Council)
Fondo de Desarrollo de las Artes y la Cultura (FONDART)
(Fund for the Development of Arts and Culture)

Ministerio de Justicia
(**Ministry of Justice)**
Subsecretaría de Justicia
(Vice-Ministry of Justice)
Corporaciones de Asistencia Judicial
(Legal Aid Corporations)
Servicio Registro Civil e Identificación
(Civil Registry and Identification Bureau)
Fiscalía Nacional de Quiebras
(National Bankruptcy Bureau)
Servicio Médico Legal
(National Forensic Service)
Servicio Nacional de Menores (SENAME)
(National Bureau for Minors)
Dirección Nacional de Gendarmería
(National Directorate of Prison Wardens)

Ministerio de Trabajo y Previsión Social
(Ministry of Labor and Social Welfare)
Subsecretaría del Trabajo
(Vice-Ministry of Labor)
Subsecretaría de Previsión Social
(Vice-Ministry of Social Welfare)
Dirección del Trabajo
(Directorate of Labor)
Dirección General del Crédito Prendario
(General Directorate of Chattel-Secured Loans)
Instituto de Normalización Previsional (INP)
(National Pension Fund System)
Servicio Nacional de Capacitación y Empleo (SENCE)

(National Training and Employment Bureau)
Superintendencia de Administradoras de Fondos de Pensiones
(Superintendency of Private Pension Fund Administrating Agencies)
Superintendencia de Seguridad Social
(Superintendency of Social Welfare)
Fondo Nacional de Pensiones Asistenciales
(National Fund for Social Aid Pensions)

Ministerio de Obras Públicas
(Ministry of Public Works)
Subsecretaría de Obras Públicas
(Vice-Ministry of Public Works)
Dirección General de Obras Públicas
(General Directorate of Public Works)
Dirección de y Ejecución de Obras Públicas
(Administration and Implementation of Public Works)
Dirección de Servicios de Concesiones
(Administration of Concession Services)
Dirección de Aeropuertos
(Administration of Airports)
Dirección de Arquitectura
(Administration de Architecture)
Dirección Obras Portuarias
(Administration of Port Works)
Dirección de Planeamiento
(Administration of Planning)
Dirección Obras Hidráulicas
(Administration of Hydraulic Works)
Dirección Vialidad
(Highway and Road Administration)
Dirección Contabilidad y Finanzas
(Administration of Accounting and Finances)
Instituto Nacional de Hidráulica
(National Hydraulics Institute)
Superintendencia Servicios Sanitarios
(Superintendence of Sanitation Service)

Ministerio de Transporte y Telecomunicaciones
(Ministry of Transport and Telecommunications)
Subsecretaría de Transportes
(Vice-Ministry of Transport)
Subsecretaría de Telecomunicaciones
(Vice-Ministry of Telecommunications)
Junta Aeronáutica Civil
(Civil Aviation Board)
Centro Control y Certificación Vehicular (3CV)

(Center for Vehicle Control and Certification)
Comisión Nacional de Seguridad de Tránsito (CONASET)
(National Commission for Traffic Security)
Unidad Operativa Control de Tránsito (UOCT)
(Traffic Control Operative Unit)

Ministerio de Salud
(Ministry of Health)
Subsecretaría de Salud
(Vice-Ministry of Health)
Central de Abastecimientos del Sistema Nacional Servicios de Salud (CENABAST)
(Central Procurement for the National Health Services)
Fondo Nacional de Salud (FONASA)
(National Health-Care Fund)
Instituto de Salud Pública (ISP)
(Public Health Institute)
Superintendencia de ISAPRES
(Superintendency of Private Medical Insurance Companies)
Servicio de Salud Arica
(Arica Public Health Care Service)
Servicio de Salud Iquique
(Iquique Public Health Care Service)
Servicio de Salud Antofagasta
(Antofagasta Public Health Care Service)
Servicio de Salud Atacama
(Atacama Public Health Care Service)
Servicio de Salud Coquimbo
(Coquimbo Public Health Care Service)
Servicio de Salud Valparaíso-San Antonio
(Valparaíso-San Antonio Public Health Care Service)
Servicio de Salud Viña del Mar-Quillota
(Viña del Mar-Quillota Public Health Care Service)
Servicio de Salud Aconcagua
(Aconcagua Public Health Care Service)
Servicio de Salud Libertador General Bernardo O'Higgins
(Libertador General Bernardo O'Higgins Public Health Care Service)
Servicio de Salud Maule
(Maule Public Health Care Service)
Servicio de Salud Ñuble
(Ñuble Public Health Care Service)
Servicio de Salud Concepción
(Concepción Public Health Care Service)
Servicio de Salud Talcahuano
(Talcahuano Public Health Care Service)
Servicio de Salud Bío-Bío
(Bío-Bío Public Health Care Service)
Servicio de Salud Arauco

(Arauco Public Health Care Service)
Servicio de Salud Araucanía Norte
(Araucanía Norte Public Health Care Service)
Servicio de Salud Araucanía Sur
(Araucanía Sur Public Health Care Service)
Servicio de Salud Valdivia
(Valdivia Public Health Care Service)
Servicio de Salud Osorno
(Osorno Public Health Care Service)
Servicio de Salud Llanquihue-Chiloé-Palena
(Llanquihue-Chiloé-Palena Public Health Care Service)
Servicio de Salud Aysén
(Aysén Public Health Care Service)
Servicio de Salud Magallanes
(Magallanes Public Health Care Service)
Servicio de Salud Metropolitano Oriente
(East Metropolitan Area Public Health Care Service)
Servicio de Salud Metropolitano Central
(Central Metropolitan Area Public Health Care Service)
Servicio de Salud Metropolitano Sur
(South Metropolitan Area Public Health Care Service)
Servicio de Salud Metropolitano Norte
(North Metropolitan Area Public Health Care Service)
Servicio de Salud Metropolitano Occidente
(West Metropolitan Area Public Health Care Service)
Servicio de Salud Metropolitano Sur-Oriente
(South-East Metropolitan Public Health Care Service)
Servicio de Salud Metropolitano del Ambiente
(Metropolitan Environmental Public Health Care Service)

Ministerio de la Vivienda y Urbanismo
(Ministry of Housing and Urban Planning)
Subsecretaría de Vivienda
(Vice-Ministry of Housing)
Parque Metropolitano de Santiago
(Santiago Metropolitan Park)
Servicios Regionales de Vivienda y Urbanismo
(Regional Housing and Urban Planning Services)

Ministerio de Bienes Nacionales
(Ministry of National Assets)
Subsecretaría de Bienes Nacionales
(Vice-Ministry of National Assets)

Ministerio de Agricultura
(Ministry of Agriculture)
Subsecretaría de Agricultura

(Vice-Ministry of Agriculture)
Comisión Nacional de Riego (CNR)
(National Irrigation Commission)
Corporación Nacional Forestal (CONAF)
(National Forestry Corporation)
Instituto de Desarrollo Agropecuario (INDAP)
(Agriculture and Livestock Development Institute)
Oficina de Estudios y Políticas Agrícolas (ODEPA)
(Bureau of Agrarian Studies and Agricultural Policy)
Servicio Agrícola y Ganadero (SAG)
(Agriculture and Livestock Service)
Instituto Investigaciones Agropecuarias (INIA)
(Agriculture and Livestock Research Institute)

Ministerio Servicio Nacional de la Mujer
(Ministry of the National Bureau for Women)
Subsecretaría Nacional de la Mujer
(Vice-Ministry of the National Bureau for Women)

Gobiernos Regionales
(Regional Governments)
Intendencia I Región
(Intendancy Region I)
Gobernación de Arica
(Governor's Office – Arica)
Gobernación de Parinacota
(Governor's Office - Parinacota)
Gobernación de Iquique
(Governor's Office - Iquique)
Intendencia II Región
(Intendancy Region II)
Gobernación de Antofagasta
(Governor's Office - Antofagasta)
Gobernación de El Loa
(Governor's Office - El Loa)
Gobernación de Tocopilla
(Governor's Office - Tocopilla)
Intendencia III Región
(Intendancy Region III)
Gobernación de Chañaral
(Governor's Office - Chañaral)
Gobernación de Copiapó
(Governor's Office - Copiapó)
Intendencia IV Región
(Intendancy Region IV)
Gobernación de Huasco
(Governor's Office - Huasco)

Gobernación de El Elqui
(Governor’s Office - El Elqui)
Gobernación de Limarí
(Governor’s Office - Limarí)
Gobernación de Choapa
(Governor’s Office - Choapa)
Intendencia V Región
(Intendancy Region V)
Gobernación de Petorca
(Governor’s Office - Petorca)
Gobernación de Valparaíso
(Governor’s Office - Valparaiso)
Gobernación de San Felipe de Aconcagua
(Governor’s Office - San Felipe de Aconcagua)
Gobernación de Los Andes
(Governor’s Office - Los Andes)
Gobernación de Quillota
(Governor’s Office - Quillota)
Gobernación de San Antonio
(Governor’s Office - San Antonio)
Gobernación de Isla de Pascua
(Governor’s Office - Isla de Pascua)
Intendencia VI Región
(Intendancy Region VI)
Gobernación de Cachapoal
(Governor’s Office - Cachapoal)
Gobernación de Colchagua
(Governor’s Office - Colchagua)
Gobernación de Cardenal Caro
(Governor’s Office - Cardenal Caro)
Intendencia VII Región
(Intendancy Region VII)
Gobernación de Curicó
(Governor’s Office - Curicó)
Gobernación de Talca
(Governor’s Office - Talca)
Gobernación de Linares
(Governor’s Office - Linares)
Gobernación de Cauquenes
(Governor’s Office - Cauquenes)
Intendencia VIII Región
(Intendancy Region VIII)
Gobernación de Ñuble
(Governor’s Office - Ñuble)
Gobernación de Bío-Bío
(Governor’s Office - Bío-Bío)
Gobernación de Concepción

(Governor’s Office - Concepción)
Gobernación de Arauco
(Governor’s Office - Arauco)
Intendencia IX Región
(Intendancy Region IX)
Gobernación de Malleco
(Governor’s Office - Malleco)
Gobernación de Cautín
(Governor’s Office - Cautín)
Intendencia X Región
(Intendancy Region X)
Gobernación de Valdivia
(Governor’s Office - Valdivia)
Gobernación de Osorno
(Governor’s Office - Osorno)
Gobernación de Llanquihue
(Governor’s Office - Llanquihue)
Gobernación de Chiloé
(Governor’s Office - Chiloé)
Gobernación de Palena
(Governor’s Office - Palena)
Intendencia XI Región
(Intendancy Region XI)
Gobernación de Coihaique
(Governor’s Office - Coihaique)
Gobernación de Aysén
(Governor’s Office - Aysén)
Gobernación de General Carrera
(Governor’s Office - General Carrera)
Intendencia XII Región
(Intendancy Region XII)
Gobernación de Capitán Prat
(Governor’s Office - Capitán Prat)
Gobernación de Ultima Esperanza
(Governor’s Office - Ultima Esperanza)
Gobernación de Magallanes
(Governor’s Office - Magallanes)
Gobernación de Tierra del Fuego
(Governor’s Office - Tierra del Fuego)
Gobernación de Antártica Chilena
(Governor’s Office - Antártica Chilena)
Intendencia Región Metropolitana
(Intendancy Metropolitan Region)
Gobernación de Chacabuco
(Governor’s Office - Chacabuco)
Gobernación de Cordillera
(Governor’s Office - Cordillera)

Gobernación de Maipo
(Governor's Office - Maipo)
Gobernación de Talagante
(Governor's Office - Talagante)
Gobernación de Melipilla
(Governor's Office - Melipilla)
Gobernación de Santiago
(Governor's Office - Santiago)

3. Korea's List of Entities

Board of Audit and Inspection
Office of the Prime Minister
Ministry of Planning and Budget
Ministry of Legislation
Ministry of Patriots and Veterans Affairs
Ministry of Finance and Economy
Ministry of Education and Human Resources Development
Ministry of Unification
Ministry of Foreign Affairs and Trade
Ministry of Justice
Ministry of National Defense
Ministry of Government Administration and Home Affairs
Ministry of Science and Technology
Ministry of Culture and Tourism
Ministry of Agriculture and Forestry
Ministry of Commerce, Industry and Energy
Ministry of Information and Communications
Ministry of Health and Welfare
Ministry of Environment
Ministry of Labor
Ministry of Gender Equality
Ministry of Construction and Transportation
Ministry of Maritime Affairs and Fisheries
Government Information Agency
Fair Trade Commission
Financial Supervisory Commission
Civil Service Commission
National Tax Service
Korea Customs Service
Public Procurement Service (limited to purchases for entities in this list only. Regarding procurement for entities in Appendix 2 and Appendix 3, the coverages and thresholds for such entities thereunder shall be applied.)
National Statistical Office
Supreme Public Prosecutors' Office
Military Manpower Administration

National Police Agency (except purchases for the purpose of maintaining public order)
Korea Meteorological Administration
Cultural Properties Administration
Rural Development Administration
Korea Forest Service
Small and Medium Business Administration
Korean Intellectual Property Office
Food and Drug Administration
Korea National Railroad Administration
National Maritime Police Agency (except purchases for the purpose of maintaining public order)

4. Notes to Appendix 1

For Chile:

The above central government entities include their subordinate linear organizations, regional and sub-regional subdivisions, provided that they do not have an industrial or commercial character.

For Korea:

1. The above central government entities include their subordinate linear organizations, regional and sub-regional subdivisions, provided that they do not have an industrial or commercial character.

2. This Appendix does not apply to the single tendering procurement including set-asides for small and medium-sized businesses according to the Act Relating to Contracts to which the State is a Party and its Presidential Decree. After the Administrator of the Small and Medium Business Administration designates specific goods to be purchased from small and medium-sized business, Korea will notify Chile of the addition to the existing list of goods annually.

3. The Defense Logistics Agency shall be considered as part of the Ministry of National Defense (MND). Subject to the decision of the Korean government under the provisions of the General Notes, for purchases by the MND, this Agreement will apply to the following FSC categories only, and for services and construction services listed in Appendices 5 and 6, it will apply only to those areas which are not related to national security and defense.

FSC	***Description***
2510	Vehicular cab, body and frame structural components
2520	Vehicular power transmission components
2540	Vehicular furniture and accessories
2590	Miscellaneous vehicular components
2610	Tires and tubes, pneumatic, nonaircraft

2910 Engine fuel system components, nonaircraft
2920 Engine electrical system components, nonaircraft
2930 Engine cooling system components, nonaircraft
2940 Engine air and oil filters, strainers and cleaners, nonaircraft
2990 Miscellaneous engine accessories, nonaircraft
3020 Gears, pulleys, sprockets and transmission chain
3416 Lathes
3417 Milling machines
3510 Laundry and dry cleaning equipment
4110 Refrigeration equipment
4230 Decontaminating and impregnating equipment
4520 Space heating equipment and domestic water heaters
4940 Miscellaneous maintenance and repair shop specialized equipment
5120 Hand tools, nonedged, nonpowered
5410 Prefabricated and portable buildings
5530 Plywood and veneer
5660 Fencing, fences and gates
5945 Relays and solenoids
5965 Headsets, handsets, microphones and speakers
5985 Antennae, waveguide and related equipment
5995 Cable, cord and wire assemblies: communication equipment
6505 Drugs and biologicals
6220 Electric vehicular lights and fixtures
6840 Pest control agents disinfectants
6850 Miscellaneous chemical, specialties
7310 Food cooking, baking and serving equipment
7320 Kitchen equipment and appliances
7330 Kitchen hand tools and utensils
7350 Tableware
7360 Sets, kits, outfits, and modules food preparation and serving
7530 Stationery and record forms
7920 Brooms, brushes, mops and sponges
7930 Cleaning and polishing compounds and preparations
8110 Drums and cans
9150 Oils and greases: cutting, lubricating and hydraulic
9310 Paper and paperboard

Appendix 2
Entities at Subcentral Level

1. Thresholds

Supplies
Specified in Appendix 4
Thresholds SDR 200,000

Services
Specified in Appendix 5
Thresholds SDR 200,000

Construction Services
Specified in Appendix 6
Thresholds SDR 15,000,000

2. Chile has no commitments regarding this Appendix.

3. Korea's List of Entities

Seoul Metropolitan Government
City of Busan
City of Daegu
City of Incheon
City of Gwangju
City of Daejon
Kyonggi-do
Gangwon-do
Chungcheongbuk-do
Chungcheongnam-do
Gyeongsangbuk-do
Gyeongsangnam-do
Jeollabuk-do
Jeollanam-do
Jeju-do

4. Notes to Appendix 2

For Korea:

1. The above sub-central administrative government entities include their subordinate organizations under direct control and offices as prescribed in the Local Autonomy Law of the Korea.

2. This Appendix does not apply to the single tendering procurement including set-asides for small and medium-sized businesses according to the Local Finance Law and its Presidential Decree. After the Administrator of the Small and Medium Business Administration designates specific goods to be purchased from small and medium-sized business, Korea will notify Chile of the addition to the existing list of goods annually.

Appendix 3
All Other Entities

1. Thresholds

Supplies
Specified in Appendix 4
Thresholds SDR 450,000

Construction Services
Specified in Appendix 6
Thresholds SDR 15,000,000

2. Chile's List Of Entities

Empresa Portuaria Arica
Empresa Portuaria Iquique
Empresa Portuaria Antofagasta
Empresa Portuaria Coquimbo
Empresa Portuaria Valparaíso
Empresa Portuaria San Antonio
Empresa Portuaria San Vicente-Talcahuano
Empresa Portuaria Puerto Montt
Empresa Portuaria Chacabuco
Empresa Portuaria Austral
Aeropuertos de Propiedad del Estado, Dependientes de la Dirección de Aeronáutica Civil

3. Korea's List of Entities

Korea Development Bank
Industrial Bank of Korea
Kookmin Bank
Korea Minting and Security Printing Corporation
Korea Electric Power Corporation (except purchases of products in the categories of HS Nos. 8504, 8535, 8537 and 8544)
Korea Coal Corporation
Korea Resources Corporation
Korea National Oil Corporation
Korea Trade-Investment Promotion Agency
Korea Highway Corporation
Korea National Housing Corporation
Korea Water Resources Corporation
Korea Land Corporation
Korea Agricultural and Rural Infrastructure Corporation

Agricultural and Fishery Marketing Corporation
Korea National Tourism Organization
Korea Labor Welfare Corporation
Korea Gas Corporation

4. Notes to Appendix 3

For Chile:

This Appendix covers all other public undertakings, over which the public authorities may exercise directly or indirectly a dominant influence, which have as one of their activities any of those referred to below or any combination thereof:

(a) the provision of airport or other terminal facilities to carriers by air, and
(b) the provision of maritime or inland port or other terminal facilities to carriers by sea or inland waterway,

provided that they do not have an industrial or commercial character.

For Korea:

1. This Appendix dos not apply to the single tendering procurement including set-asides for small and medium-sized businesses according to the Government Invested Enterprise Management Law and Accounting Regulations on Government Invested Enterprise. After the Administrator of the Small and Medium Business Administration designates specific goods to be purchased from small and medium-sized business, Korea will notify Chile of the addition to the existing list of goods annually.

2. This Appendix covers all other public undertakings, over which the public authorities may exercise, directly or indirectly, a dominant influence, which have as one of their activities any of those referred to below or any combination thereof:

(a) the provision of airport or other terminal facilities to carriers by air, and
(b) the provision of maritime or inland port or other terminal facilities to carriers by sea or inland waterway,

provided that they do not have an industrial or commercial character.

Appendix 4
Supplies

Subject to the General Notes, the governments of Korea and Chile shall cover all supplies unless otherwise specified in Appendices 1 to 3.

Neither Party has any Notes to this Appendix.

Appendix 5
Services

For the purpose of this Chapter and without prejudice to Article 15.2, no services of the WTO Universal List of Services (WTO/MTN.GNS/W/120) shall be excluded.

Appendix 6
Construction Services

For the purpose of this Chapter and without prejudice to Article 15.2, no construction services under the division of the CPC concerning construction work are excluded.

Appendix 7
General Notes

1. Nothing in this Agreement shall be construed to prevent a Party from taking any action or not disclosing any information which it considers necessary for the protection of its essential security interests relating to the procurement of arms, ammunition or war materials, or to procurement indispensable for national security or defence purposes.

2. Subject to the requirement that such measures under paragraph 1 are not applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination between the Parties, or a disguised restriction on international trade, nothing in this Agreement shall be construed to prevent a Party from imposing or enforcing measures, which is necessary to protect public morals, order or safety, human, animal or plant life or health or intellectual property, or which relates to the products or services of handicapped persons, of philanthropic institutions or of prison labour.

3. Korea understands that selective tendering procedures are a category of open tendering procedures and that they are procedures whereby only the suppliers satisfying qualifications requirements established by the entities, listed in Appendices 1 to 3, are invited to submit a tender.

Annex 15.2
Government Procurement Implementation

Appendix 1

(Referred to in Article 15.8.3)
Means of Publication

For Chile:

Diario Oficial de la República de Chile
http://www.chilecompra.cl

For Korea:

Official Gazette of Korea
http://www.g2b.go.kr/

Appendix 2
Value of Thresholds

1. In calculating the value of a contract, entities shall include any procurement for which the value of the procurement is estimated to be below the relevant values specified in the Parties' respective Appendices to Annex 15.1 of this Chapter. Entities shall include in such an estimate the maximum total estimated value of the procurement and any resulting contracts over the duration of such contracts, taking into account all options, premiums, fees, commissions, interest and other revenue streams or forms of remuneration, provided for in such contracts.

2. Each Party shall publish the value of the thresholds under this Chapter expressed in the corresponding national currency.

3. For Korea, the calculation of these values shall be based on the average of the daily values of the Special Drawing Rights (SDR) to Korean won exchange rate over the 24 months preceding October 1 or November 1 of the year prior to the thresholds in national currency becomes effective, which will be from January 1.

4. For Chile, the calculation of these values shall be based on the average of the daily values of the SDR to Chilean peso exchange rate over the 24 months terminating on the last day of August preceding the revision with effect from January 1.

5. The value of the thresholds thus revised shall, where necessary, be rounded down to the nearest ten thousand Chilean peso and ten million Korean won.

PART V
INTELLECTUAL PROPERTY RIGHTS

CHAPTER 16
INTELLECTUAL PROPERTY RIGHTS

Article 16.1: Obligations

1. Each Party shall provide, in its territory, to the nationals of the other Party adequate and effective protection and enforcement of intellectual property rights, while ensuring that measures to enforce intellectual property rights do not themselves become unnecessary barriers to legitimate trade.

2. To provide adequate and effective protection and enforcement of intellectual property rights, each Party shall faithfully implement the international conventions it has acceded to, including the TRIPS Agreement.

Article 16.2: More Extensive Protection

A Party may implement in its domestic law more extensive protection of intellectual property rights than is required under this Agreement, provided that such protection is not inconsistent with this Agreement and the TRIPS Agreement.

Article 16.3: Protection of Trademarks

1. Article 6 *bis* of the Paris Convention shall apply, *mutatis mutandis*, to services. In determining whether a trademark is well known, the Parties shall take account of the knowledge of the trademark in the relevant sector of the public, including knowledge in the Party concerned, obtained as a result of the promotion of the trademark.

2. If the use of a trademark is required by the legislation of a Party to maintain registration, the registration may be cancelled only after an uninterrupted period of at least three years of non-use, unless valid reasons based on the existence of obstacles to such use are shown by the trademark owner.

3. When subject to the control of its owner, use of a trademark by another person shall be recognized as use of the trademark for the purpose of maintaining the registration.

Article 16.4: Protection of Geographical Indications

1. For the purpose 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.

2. With the recognition of the importance of the protection of geographical indications, both Parties shall protect, in compliance with their respective domestic legislation, the geographical indications of the other Party registered and/or protected by that other Party, that fall within the scope of protection stated in Articles 22, 23 and 24 of the TRIPS Agreement. Further to the acceptance of this obligation, both Parties shall not permit the importation, manufacture and sale of products, in compliance with their respective domestic legislation, which use such geographical indications of the other Party, unless such products have been produced in that other Party.

3. Chile shall protect the geographical indications listed in Annex 16.4.3 for their exclusive use in products originating in Korea. Chile shall prohibit the importation, manufacture and sale of products with such geographical indications, unless they have been produced in Korea, in accordance with the applicable Korean law.

4. Korea shall protect the geographical indications listed in Annex 16.4.4 for their exclusive use in products originating in Chile. Korea shall prohibit the importation, manufacture and sale of products with such geographical indications, unless they have been produced in Chile, in accordance with the applicable Chilean law. This shall in no way prejudice the rights that Korea may recognize, in addition to Chile, exclusively to Peru with respect to "Pisco".

5. Within two years from the entry into force of this Agreement, both Parties shall enter into consultations to protect additional geographical indications. As a result of these consultations, both Parties shall protect and/or recognize, under the terms stated in this Agreement, the geographical indications listed in Annex 16.4.5 and any additional geographical indications submitted by the Parties that fall within the scope of protection of geographical indications set out in Articles 22, 23 and 24 of the TRIPS Agreement.

Article 16.5: Enforcement

The Parties shall provide in their respective laws for the enforcement of intellectual property rights consistent with the TRIPS Agreement, in particular, Articles 41 to 61 thereof.

Article 16.6: Consultative Mechanism

Any consultations between the Parties with respect to the implementation or interpretation of this Chapter shall be carried out under the dispute settlement procedures referred to in Chapter 19.

Annex 16.4.3

Geographical Indications of Korea

- Korean Ginseng (for Ginseng)
- Korean Kimchi (for Kimchi)
- Boseong (for Tea)

Annex 16.4.4

Geographical Indications of Chile

- Pisco (for wine and spirits)
- Pajarete (for wine and spirits)
- Vino Asoleado (for wine)

Annex 16.4.5
Geographical Indications of Wines Originating in Chile

Wines of the following regions, sub regions and zones:

Viticole Region of Atacama

- Subregion: Valle de Copiapó
- Subregion: Valle del Huasco

Viticole Region of Coquimbo

- Subregion: Valle del Elqui
- Subregion: Valle del Limarí
- Subregion: Valle del Choapa

Viticole Region of Aconcagua

- Subregion. Valle de Aconcagua
- Subregion: Valle de Casablanca

Viticole Region of Valle Central

- Subregion: Valle del Maipo
- Subregion: Valle del Rapel
    - Zone: Valle de Cachapoal
    - Zone: Valle de Colchagua
- Subregion: Valle de Curicó
    - Zone: Valle del Teno
    - Zone: Valle del Lontué
- Subregion: Valle del Maule
    - Zone: Valle del Claro
    - Zone: Valle del Loncomilla
    - Zone: Valle del Tutuvén

Viticole Region of the South/Sur

- Subregion: Valle del Itata
- Subregion: Valle del Bío-Bío

PART VI
ADMINISTRATIVE AND INSTITUTIONAL PROVISIONS

CHAPTER 17
TRANSPARENCY

Article 17.1: Definitions

For purposes of this Chapter:

administrative ruling of general application means an administrative ruling or interpretation that applies to all persons and fact situations that fall generally within its ambit and that establishes a norm of conduct but does not include:

(a) a determination or ruling made in an administrative or quasi-judicial proceeding that applies to a particular person, good or service of the other Party in a specific case; or

(b) a ruling that adjudicates with respect to a particular act or practice.

Article 17.2: Contact Points

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

2. Upon request of a Party, the contact point of the other Party shall indicate the office or official responsible for the matter and assist, as necessary, in facilitating communication with the requesting Party.

Article 17.3: Publication

1. Each Party shall ensure that its laws, regulations, procedures and administrative rulings of general application relating to any matter covered by this Agreement are promptly published or otherwise made publicly available.

2. To the extent possible, each Party shall:

(a) publish in advance any such measure that it proposes to adopt; and

(b) provide interested persons and the other Party a reasonable opportunity to comment on such proposed measures.

Article 17.4: Notification and Provision of Information

1. To the maximum extent possible, each Party shall notify the other Party of any proposed or actual measure that the Party considers might materially affect the operation of this Agreement or otherwise substantially affect the other Party's interests under this Agreement.

2. Upon request of the other Party, a Party shall promptly provide information and respond to questions pertaining to any actual or proposed measure, whether or not the other Party has been previously notified of that measure.

3. Any notification or information provided under this Article shall be without prejudice as to whether the measure is consistent with this Agreement.

4. The information referred to under this Article shall be considered to have been provided when it has been made available by appropriate notification to the WTO or when it has been made available on the official, public and fee-free accessible website of the Party concerned.

Article 17.5: Exchange of Information on State Aid

Each Party may request information on individual cases of state aid that it believes to affect trade between the Parties. The requested Party shall make its best efforts to provide non-confidential information.

Article 17.6: Administrative Proceedings

With a view to administering in a consistent, impartial and reasonable manner all measures of general application affecting matters covered by this Agreement, each Party shall ensure that in its administrative proceedings applying measures referred to in Article 17.3 to particular persons, goods or services of the other Party in specific cases:

(a) wherever possible, persons of the other Party that are directly affected by a proceeding are provided with a reasonable notice, in accordance with domestic procedures, when a proceeding is initiated, including a description of the nature of the proceeding, a statement of the legal authority under which the proceeding is initiated and a general description of any issues in controversy;

(b) such persons are afforded with a reasonable opportunity to present facts and arguments in support of their positions prior to any final administrative action, when time, the nature of the proceeding and the public interest permit; and

(c) its procedures are in accordance with its domestic law.

Article 17.7: Review and Appeal

1. Each Party shall establish or maintain judicial, or administrative tribunals or procedures for the purpose of the prompt review and, where warranted, correction of final administrative actions regarding matters covered by this Agreement. Such tribunals shall be impartial and independent of the office or authority entrusted with administrative enforcement and shall not have any substantial interest in the outcome of the matter.

2. Each Party shall ensure that, in any such tribunals or procedures, the parties to the 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 and, where required by domestic law, the record compiled by the administrative authority.

3. Each Party shall ensure, subject to appeal or further review as provided in its domestic law, that such decisions shall be implemented by, and shall govern the practice of, the offices or authorities with respect to the administrative action at issue.

CHAPTER 18
ADMINISTRATION OF THE AGREEMENT

Article 18.1: The Free Trade Commission

1. The Parties hereby establish the Free Trade Commission, comprising officials referred to in Annex 18.1.1 or their designees.

2. The Parties, through the Commission, shall:
   (a) supervise the implementation and appropriate application of the provisions of this Agreement;
   (b) evaluate the results obtained in the course of the application of this Agreement;
   (c) supervise the work of the committees and working groups established under this Agreement, referred to in Annex 18.1.2(c);
   (d) ensure that, with regard to public enterprises and enterprises to which special or exclusive rights have been granted, in fulfillment of Article 14.8, following the date of entry into force of this Agreement, any measure distorting trade in goods or services between the Parties is neither enacted or maintained to an extent contrary to the Parties interests; and
   (e) consider any other matter that may affect the operation of this Agreement, or that is entrusted to the Commission by the Parties.

3. In the fulfillment of its functions, the Commission may:
   (a) establish and delegate responsibilities to *ad hoc* or standing committees, working groups or expert groups and assign them with tasks on specific matters;
   (b) seek the advice of non-governmental persons or groups;
   (c) modify, in accordance with Annex 18.1.3(c):
      (i) the established rules of origin in Annex 4;
      (ii) the Schedules established in Annex 3.4, in order to accelerate the tariff elimination process;
      (iii) the Uniform Regulations; and
      (iv) the Annexes 15.1 and 15.2 (Government procurement); and
   (d) take such other action in the exercise of its functions, as the Parties may agree.

4. The Commission shall establish its rules and procedures. All decisions of the Commission shall be adopted by mutual agreement between the Parties.

5. The Commission shall convene at least once a year in regular session. Regular sessions of the Commission shall be chaired alternately by each Party.

Article 18.2: The Secretariat

1. Each Party hereby designates the competent national organ referred to in Annex 18.2 to serve as its Secretariat for purposes of this Agreement.

2. For purposes of this Agreement, all communication or notification to or by a Party shall be made through its Secretariat.

Annex 18.1.1
Officials of the Free Trade Commission

For purposes of Article 18.1, officials of the Commission are:

(a) in the case of Chile, the Minister of Foreign Affairs, or her/his designees; and
(b) in the case of Korea, the Minister for Trade, or her/his designees.

Annex 18.1.2(c)
Committees and Working Groups

1. Committees:

(a) Committee on Trade in Goods;
(b) Committee on Sanitary and Phytosanitary Measures;
    (i) Sub-Committee on Animal Health;
    (ii) Sub-Committee on Plant Protection; and
    (iii) Sub-Committee on Food Safety;
(c) Committee on Standards-Related Measures;
(d) Investment and Cross-Border Trade in Services Committee; and
(e) Committee on Telecommunications Standards.

2. Working Groups:

(a) Temporary Entry Working Group; and
(b) Government Procurement Working Group.

Annex 18.1.3(c)
Implementation of Decisions Adopted by the Commission

The Parties shall implement decisions of the Commission, referred to in Article 18.1.3(c), according to their respective domestic legislation and the following procedures:

(a) in the case of Chile, by means of executive agreements, in conformity with Article 50 Nº1, second paragraph of the Political Constitution of the Republic of Chile; and

(b) in the case of Korea, in conformity with Article 60.1 of the Constitution of the Republic of Korea.

Annex 18.2
The Secretariat

For purposes of Article 18.2, the competent national organs of the Parties are:

(a) for Chile, the General Directorate of International Economic Affairs of the Ministry of Foreign Affairs, or its successor; and

(b) for Korea, the Multilateral Trade Bureau of the Ministry of Foreign Affairs and Trade, or its successor.

CHAPTER 19
DISPUTE SETTLEMENT

Section A - Dispute Settlement

Article 19.1: Cooperation

The Parties shall at all times endeavour to agree on the interpretation and application of this Agreement, and shall make every attempt through cooperation and consultations to arrive at a mutually satisfactory resolution of any matter that might affect its operation.

Article 19.2: Scope of Application

Except as otherwise provided in this Agreement, the provisions of this Chapter shall apply:

(a) with respect to the avoidance and settlement of disputes between the Parties regarding the interpretation or application of this Agreement; or

(b) wherever a Party considers that an existing or proposed measure of the other Party is or would be inconsistent with the obligations of this Agreement or causes nullification or impairment in the sense of Annex 19.2.

Article 19.3: Choice of Forum

1. Disputes regarding any matter arising under both this Agreement and the WTO Agreement, any agreement negotiated thereunder, or any successor agreement, may be settled in the forum selected by the complaining Party.

2. Once dispute settlement procedures have been initiated under Article 19.6 or dispute settlement proceedings have been initiated under the WTO Agreement, the forum selected shall be used to the exclusion of the other.

3. For purposes of this Article, dispute settlement proceedings under the WTO Agreement are deemed to be initiated upon a request for a panel by a Party.

Article 19.4: Consultations

1. A Party may request in writing consultations with the other Party regarding any existing or proposed measure or any other matter that it considers might affect the operation and application of this Agreement.

2. The Party that requests consultations according to paragraph 1 shall indicate the provisions of the Agreement that it considers relevant and deliver the request to the other Party.

3. Consultations on matters regarding perishable agricultural goods shall commence within 15 days of the date of delivery of the request.

4. The Parties shall:
   (a) provide information to enable a full examination of how the existing or proposed measure or other matter might affect the operation and application of this Agreement; and
   (b) give confidential treatment to any information exchanged in the course of consultations.

Article 19.5: Good Offices, Conciliation and Mediation

1. Good offices, conciliation and mediation are procedures undertaken voluntarily if the Parties so agree.

2. Proceedings involving good offices, conciliation and mediation, and in particular positions taken by the Parties during these proceedings, shall be confidential, and without prejudice to the rights of either Party in any further proceedings under these procedures.

3. Good offices, conciliation or mediation may be requested at any time by any Party. They may begin at any time and be terminated at any time. Once procedures for good offices, conciliation or mediation are concluded without an agreement between the Parties, the complaining Party may request the establishment of a panel.

Article 19.6: Request for an Arbitral Panel

1. A Party may request in writing the establishment of an arbitral panel if the matter has not been resolved pursuant to Article 19.4, within:
   (a) 45 days of delivery of a request for consultations;
   (b) 30 days of delivery of a request for consultations in matters regarding perishable agricultural goods; or
   (c) such other period as the Parties may agree.

2. A Party may also request in writing the establishment of an arbitral panel where consultations have been held pursuant to Article 8.12.

3. Upon delivery of the request, an arbitral panel shall be established.

4. Unless otherwise agreed by the Parties, the panel shall be established and perform its functions in accordance with the provisions of this Chapter.

Article 19.7: Roster

1. The Parties shall establish, by mutual agreement, no later than six months after the entry into force of this Agreement a roster of up to 15 individuals, one-third of whom shall not be nationals of either Party, who are willing and qualified to serve as panelists. The roster members shall be appointed for a term of three years, and will automatically be reappointed for an additional three-year term, unless either Party objects.

2. Roster members shall:
   (a) have expertise or experience in law, international trade, other matters covered by this Agreement or the resolution of disputes arising under international trade agreements;
   (b) be chosen strictly on the basis of objectivity, reliability and sound judgment;
   (c) be independent of, not be affiliated with or take instructions from, either Party; and
   (d) comply with the Code of Conduct set out in Annex 19.7.

Article 19.8: Qualifications of Panelists

1. All panelists shall meet the qualifications set out in Article 19.7.2.

2. Individuals may not serve as panelists for a dispute in which they have participated pursuant to Article 19.5.

Article 19.9: Panel Selection

1. The panel shall comprise three members.

2. Each Party shall select one panelist within 15 days from the delivery of the request for the establishment of the panel.

3. Within 15 days of the selection of the panelists under paragraph 2, the Parties shall agree on the chair of the panel. If the Parties are unable to agree on the chair within this period, the chairperson of the Commission shall select by lot the chair of the panel within five days, from among the roster members who are not nationals of either Party.

4. If a Party fails to select its panelist within the period indicated in paragraph 2, the chairperson of the Commission shall select by lot the panelist within five days, from among the roster members who are nationals of that Party.

5. Panelists shall normally be selected from the roster.

6. If a Party believes that a panelist is in violation of the Code of Conduct set out in Annex 19.7, the Parties shall consult and if they agree, the panelist shall be removed and a new panelist shall be selected in accordance with this Article.

Article 19.10: Model Rules of Procedure

1. Unless the Parties otherwise agree, the panel shall conduct its proceedings in accordance with the Model Rules of Procedure set out in Annex 19.10.

2. The Commission may amend when it considers necessary the Model Rules of Procedure referred to in paragraph 1.

Article 19.11: Information and Technical Advice

Upon request of a Party, or on its own initiative, the panel may seek information and technical advice from any person or body that it deems appropriate. Any information and technical advice so obtained shall be submitted to the Parties for comments.

Article 19.12: Initial Report

1. Unless the Parties otherwise agree, the panel shall base its report on the relevant provisions of this Agreement, on the submissions and arguments of the Parties, and on any information before it, pursuant to Article 19.11.

2. Unless the Parties otherwise agree, the panel shall, within 90 days after the last panelist is selected, present to the Parties an initial report containing:

(a) findings of fact, including any findings pursuant to a request under Rule 8 of Annex 19.10;
(b) its determination as to whether the measure at issue is or would be inconsistent with the obligations of this Agreement or cause nullification or impairment in the sense of Annex 19.2, or any other determination requested in the terms of reference; and
(c) its recommendations, if any, for resolution of the dispute.

3. Panelists may furnish separate opinions on matters not unanimously agreed.

4. The Parties may submit written comments on the initial report within 14 days of its presentation.

5. In case that such written comments by the Parties are received as provided for in paragraph 4, the panel, on its own initiative or at the request of a Party, may reconsider its report and make any further examination that it considers appropriate after considering such written comments.

Article 19.13: Final Report

1. The panel shall present a final report to the Parties, including any separate opinions on matters not unanimously agreed, within 30 days of presentation of the initial report, unless the Parties otherwise agree.

2. No panel may, either in its initial report or its final report, disclose which panelists are associated with the majority or minority of the opinions.

3. The final report of the panel shall be made publicly available within 15 days of its delivery to the Parties.

Article 19.14: Implementation of Final Report

1. The final report of a panel shall be binding on the Parties and shall not be subject to appeal. Unless the Parties decide otherwise, they shall implement the decision contained in the final report of the panel in the manner and within the time-frame that it orders.

2. Notwithstanding paragraph 1, where the final report of the panel states that a measure is not in compliance with this Agreement, or is causing nullification or impairment in the sense of Annex 19.2, the responding Party, wherever possible, shall abstain from executing the measure or shall abrogate it.

Article 19.15: Non-Implementation - Suspension of Benefits

1. The complaining Party may suspend the application of benefits of equivalent effect to the Party complained against if the panel resolves:
   (a) that a measure is inconsistent with the obligations of this Agreement and the responding Party does not implement the final report within 30 days following the expiration of the time-frame established in such a report; or
   (b) that a measure causes nullification or impairment in the sense of Annex 19.2 and the Parties do not reach a mutually satisfactory agreement on the dispute within 30 days following the expiration of the time-frame established in the final report.

2. The suspension of benefits shall last until the responding Party implements the decision of the panel's final report or until the Parties reach a mutually satisfactory agreement on the dispute, depending on the case.

3. In considering what benefits to suspend pursuant to paragraph 1:
   (a) the complaining Party should first seek to suspend benefits in the same sector(s) as that affected by the measure or other matter that the panel has found to be inconsistent with the obligations derived of this Agreement or to have caused nullification or impairment in the sense of Annex 19.2; and
   (b) if the complaining Party considers that it is not practicable or effective to suspend benefits in the same sector(s), it may suspend benefits in other sectors. The communication in which it announces such a decision shall indicate the reasons on which it is based.

4. Upon written request of the Party concerned, the original panel shall determine whether the level of benefits suspended by the complaining Party is excessive pursuant to paragraph 1. If

the panel cannot be established with its original members, the proceeding set out in Article 19.9 shall be applied.

5. The panel shall present its determination within 60 days from the request made pursuant to paragraph 4, or if a panel cannot be established with its original members, from the date on which the last panelist is selected. The ruling of the panel shall be final and binding. It shall be delivered to the Parties and be made publicly available.

Section B -
Domestic Proceedings and Private Commercial Dispute Settlement

Article 19.16: Interpretation of the Agreement before Judicial and Administrative Proceedings

1. If an issue of interpretation or application of this Agreement arises, in any domestic judicial or administrative proceeding of a Party, which that Party considers would merit its intervention, or if a judicial or administrative body requests the views of a Party in this regard, that Party shall notify the other Party. The Commission shall endeavour to agree on an appropriate response as expeditiously as possible.

2. The Party in whose territory the judicial or administrative body is located shall submit any agreed interpretation of the Commission to such a body, in accordance with the rules of that forum.

3. If the Commission does not reach an agreement, any Party may submit its own views to the judicial or administrative body in accordance with the rules of that forum.

Article 19.17: Private Rights

Neither Party may provide for a right of action for private parties under its domestic law against the other Party on the ground that a measure of the other Party is inconsistent with this Agreement.

Article 19.18: Alternative Dispute Resolution

1. Each Party shall, to the maximum extent possible, encourage and facilitate the use of arbitration proceeding and other means of alternative dispute resolution for the settlement of international commercial disputes between private parties in the free trade area.

2. To this end, each Party shall provide appropriate procedures to ensure observance of agreements to arbitrate and for the recognition and enforcement of arbitral awards in such disputes under paragraph 1.

3. A Party shall be deemed to be in compliance with paragraph 2 if it is a party to and is in compliance with the 1958 United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards.

Annex 19.2
Nullification or Impairment

1. A Party may have recourse to the dispute settlement procedures under this Chapter if the application of any measure that is not inconsistent with this Agreement, results in nullification or impairment of any benefit that is reasonably expected to accrue to it under any of the following provisions contained in:

(a) Part II;
(b) Chapter 11; and
(c) Chapter 15.

2. With respect to any measure subject to an exception under Article 20.1, the Parties may not invoke:

(a) subparagraphs 1(a) and (c), to the extent that the benefit arises from any cross-border trade in services provision of Part II; or
(b) subparagraph 1(b).

Annex 19.7
Code of Conduct for Members of Panels

Definitions

1. For purposes of this Annex:

assistant means a person who, under the terms of appointment of a member, conducts research or provides support for the member;

candidate means an individual whose name is on the roster referred to in Article 19.7 and who is under consideration for appointment as a member of a panel under Article 19.9;

member means a member of a panel effectively established under Article 19.6;

proceeding, unless otherwise specified, means a panel proceeding under Chapter 19; and

staff, in respect of a member, means persons under the direction and control of the member, other than assistants.

Section I
Responsibilities to the Process

2. Every candidate and member shall avoid impropriety and the appearance of impropriety, be independent and impartial, avoid direct and indirect conflicts of interests and observe high standards of conduct so that the integrity and impartiality of the dispute settlement process are preserved. Former members shall comply with the obligations established in Sections V and VI of this Code of Conduct.

Section II
Disclosure Obligations

3. Prior to confirmation of his or her selection as a member of the panel under Article 19.9, a candidate shall disclose any interest, relationship or matter that is likely to affect his or her independence or impartiality or that might reasonably create an appearance of impropriety or bias in the proceeding. To this end, a candidate shall make all reasonable efforts to become aware of any such interests, relationships and matters.

4. Once selected, a member shall continue to make all reasonable efforts to become aware of any interests, relationships and matters referred to in Rule 3 and shall disclose them by communicating them in writing to the Commission for consideration by the Parties. The obligation to disclose is a continuing duty, which requires a member to disclose any such interests, relationships and matters that may arise during any stage of the proceeding.

Section III
Performance of Duties by Candidates and Members

5. A candidate who accepts a selection as a member shall be available to perform, and shall perform, a member's duties thoroughly and expeditiously throughout the course of the proceeding.

6. A member shall carry out all duties fairly and diligently.

7. A member shall comply with this Code of Conduct.

8. A member shall not deny other members the opportunity to participate in all aspects of the proceeding.

9. A member shall consider only those issues raised in the proceeding and necessary to rendering a decision and shall not delegate the duty to decide to any other person.

10. A member shall take all reasonable steps to ensure that the member's assistant and staff comply with Sections I, II and VI of this Code of Conduct.

11. A member shall not engage in *ex parte* contacts concerning the proceeding.

12. A candidate or member shall not communicate matters concerning actual or potential violations of this Code of Conduct unless the communication is to the Commission or is necessary to ascertain whether that candidate or member has violated or may violate this Code.

Section IV
Independence and Impartiality of Members

13. A member shall be independent and impartial. A member shall act in a fair manner and shall avoid creating an appearance of impropriety or bias.

14. A member shall not be influenced by self-interest, outside pressure, political considerations, public clamour, loyalty to a Party or fear of criticism.

15. A member shall not, directly or indirectly, incur any obligation or accept any benefit that would in any way interfere, or appear to interfere, with the proper performance of the member's duties.

16. A member shall not use his or her position on the panel to advance any personal or private interests. A member shall avoid actions that may create the impression that others are in a special position to influence the member. A member shall make every effort to prevent or discourage others from representing themselves as being in such a position.

17. A member shall not allow past or existing financial, business, professional, family or social relationships or responsibilities to influence the member's conduct or judgement.

18. A member shall avoid entering into any relationship, or acquiring any financial interest, that is likely to affect the member's impartiality or that might reasonably create an appearance of impropriety or bias.

Section V
Duties in Certain Situations

19. A member or former member shall avoid actions that may create the appearance that the member was biased in carrying out the member's duties or would benefit from the decision or ruling of the panel.

Section VI
Maintenance of Confidentiality

20. A member or former member shall not at any time disclose or use any non-public information concerning the proceeding or acquired during the proceeding except for the purposes of the proceeding and shall not, in any case, disclose or use any such information to gain personal advantage or advantage for others or to affect adversely the interest of others people.

21. A member shall not disclose a panel ruling prior to its publication.

22. A member or former member shall not at any time disclose the deliberations of a panel, or any member's view.

Section VII
Responsibilities of Assistants and Staff

23. Sections I, II and VI of this Code of Conduct apply also to assistants and staff.

Annex 19.10
Model Rules of Procedure

Application

1. These Rules are established under Article 19.10 and shall apply to dispute settlement proceedings under Chapter 19 unless the Parties otherwise agree.

Definitions

2. For purposes of this Annex:

adviser means a person retained by a Party to advise or assist the Party in connection with the panel proceeding;

complaining Party means a Party that requests the establishment of a panel under Article 19.6;

legal holiday, with respect to a Party's Secretariat, means every Saturday and Sunday and any other day designated by that Party as a holiday for purposes of these Rules and notified by that Party to its Secretariat and by that Secretariat to the other Secretariat and the other Party;

panel means a panel established under Article 19.6;

representative of a Party means an employee of a government department or of any other government entity of a Party;

responsible Secretariat means the Secretariat of the Party complained against; and

Secretariat means the Secretariat established under Article 18.2.1.

3. Any reference made in these Rules to an Article, Annex or Chapter is a reference to the appropriate Article, Annex or Chapter of this Agreement.

Terms of Reference for Panels

4. Unless the Parties otherwise agree within 20 days from the date of the delivery of the request for the establishment of the panel, the terms of reference shall be:

> "To examine, in the light of the relevant provisions of this Agreement, the matter referred to the panel and deliver the written reports referred to in Articles 19.13 and 19.14."

5. The Parties shall promptly deliver the agreed terms of reference to the panel, upon the designation of the last panelist.

6. If the complaining Party argues that a matter has nullified or impaired benefits, the terms of reference shall so indicate.

7. If a Party requests the panel to make findings as to the degree of adverse trade effects on a Party of the measure found not to conform with the obligations of the Agreement or to have caused nullification or impairment in the sense of Annex 19.2, the terms of reference shall so indicate.

Written Submissions and Other Documents

8. The Parties shall deliver the original and as many copies as the Secretariat requires and in any event no less than five copies of their respective written submissions to their respective Secretariats which, in turn, shall retain a copy and forward the original and the remaining copies by the most expeditious means practicable to the responsible Secretariat. The responsible Secretariat shall deliver the submissions by the most expeditious means practicable to the other Party and the panel.

9. A complaining Party shall deliver its initial written submission to its Secretariat no later than 10 days after the date on which the last panelist is designated. The responding Party shall deliver its written counter-submission to the responsible Secretariat no later than 20 days upon receipt of the initial written submission of the complaining Party.

10. A request, notice or other document related to the panel proceeding that is not covered by Rule 8 or 9, the Party shall deliver copies of the document to both Secretariats and to the other Party by facsimile or other means of electronic transmission.

11. A Party may correct minor errors of a clerical nature in any request, notice, written submission or other document related to the panel proceeding by delivering a new document clearly indicating the changes.

12. A Party that delivers any request, notice, written submission or other document to its Secretariat shall, to the extent practicable, also deliver a copy of the document in electronic form to that Secretariat.

13. Any delivery to a Secretariat under these Rules shall be made during the normal business hours of that Secretariat.

14. If the last day for delivery of a document to a Secretariat falls on a legal holiday observed by that Secretariat or on any other day on which the offices of that Secretariat are closed by order of the government or by force majeure, the document may be delivered to that Secretariat on the next business day.

Operation of Panels

15. The chair of the panel shall preside at all of its meetings. A panel may delegate to the chair authority to make administrative and procedural decisions.

16. Except as otherwise provided in these Rules, the panel may conduct its business by any means, including by telephone, facsimile transmission and computer links.

17. Only panelists may take part in the deliberations of the panel, but the panel may permit assistants, interpreters or translators to be present during such deliberations.

18. Where a procedural question arises that is not addressed by these Rules, a panel may adopt an appropriate procedure that is consistent with this Agreement.

19. If a panelist dies, withdraws or is removed from the panel, a replacement shall be selected as expeditiously as possible in accordance with the procedures to designate panelists.

20. The time-period applicable to the panel proceeding shall be suspended for a period that begins on the date on which the panelist dies, withdraws or is removed from the panel and ends on the date on which the replacement is selected.

21. A panel may, in consultation with the Parties, modify any time-period applicable in the panel proceeding and make other procedural or administrative adjustments as may be required in the proceeding, such as in cases where a panelist is replaced or where the Parties are required to reply in writing to the questions of a panel.

Hearings

22. The chair shall fix the date and time of the hearing in consultation with the Parties, the other members of the panel and the responsible Secretariat. The responsible Secretariat shall notify the Parties in writing of the date, time and location of the hearing.

23. The hearing shall be held in the capital of the Party complained against.

24. The panel may convene additional hearings if the Parties so agree.

25. All panelists shall be present at hearings.

26. The following persons may attend a hearing:
    (a) representatives of the Parties;
    (b) advisers of the Parties, provided that they do not address the panel and they or their employers, partners, business associates or family members do not have a financial or personal interest in the proceeding;
    (c) Secretariat personnel, interpreters, translators and court reporters (designated note takers); and
    (d) panelists' assistants.

27. No later than five days before the date of a hearing, each Party shall deliver to the other Party and the responsible Secretariat a list of the names of those persons who will make oral

arguments or presentations at the hearing on behalf of that Party and of other representatives or advisers who will attend the hearing.

28. The hearing shall be conducted by the panel in the following manner, ensuring that the complaining Party and the Party complained against are afforded with equal time:

(a) Argument:
    (i) argument of the complaining Party.
    (ii) argument of the Party complained against.
(b) Reply and Counter-Reply:
    (i) reply of the complaining Party.
    (ii) counter-reply of the Party complained against.

29. The panel may direct questions to any Party at any time during a hearing.

30. The responsible Secretariat shall arrange for a transcript of each hearing to be prepared and shall, as soon as possible after it is prepared, deliver a copy of the transcript to the Parties, the other Secretariat and the panel.

Supplementary Written Submissions

31. The panel may at any time during a proceeding address questions in writing to one or both of the Parties. The panel shall deliver the written questions to the Party or Parties to whom the questions are addressed through the responsible Secretariat, which, in turn, shall provide for the delivery of copies of the questions by the most expeditious means practicable to the other Secretariat and the other Party.

32. The Party to whom the panel addresses written questions shall deliver a copy of any written reply to its Secretariat which, in turn, shall provide for delivery of that submission by the most expeditious means practicable to the other Secretariat and the panel. The other Secretariat shall provide for delivery of that submission by the most expeditious means practicable to the other Party. The other Party shall be given the opportunity to provide written comments on the reply within five days after the date of delivery.

33. Within 10 days after the date of the hearing, each Party may deliver to its Secretariat a supplementary written submission responding to any matter that arose during the hearing.

Burden of Proof Regarding Inconsistent Measures and Exceptions

34. The Party asserting that a measure of the other Party is inconsistent with the provisions of this Agreement shall have the burden of establishing such inconsistency.

35. The Party asserting that a measure is subject to an exception under this Agreement shall have the burden of establishing that the exception applies.

Availability of Information

36. The Parties shall maintain the confidentiality of the panel's hearings, deliberations and initial report, and all written submissions to, and communications with, the panel, in accordance with the following procedures:

(a) A Party or, subject to its instructions, the Party's Secretariat, may make available to the public at any time that Party's written submissions and those of the other Party. Before such documents are made available to the public any information designated for confidential treatment by a Party pursuant to subparagraph (d) shall be removed;

(b) A Party or, subject to its instructions, the Party's Secretariat, may make the hearing transcript available to the public 15 days after the final report of the panel is made public pursuant to Article 19.13.3. Before the transcript is made available to the public, any information designated for confidential treatment by a Party pursuant to subparagraph (d) shall be removed;

(c) Where information has been removed from a document pursuant to subparagraph (a) or (b), the document shall indicate clearly where such information has been removed;

(d) To the extent it considers strictly necessary to protect personal privacy or to address essential confidentiality concerns, a Party may designate specific information included in its written submissions, or that it has presented in the panel hearing, for confidential treatment;

(e) A Party may disclose to other persons such information in connection with the panel proceedings as it considers necessary for the preparation of its case, but it shall ensure that those persons maintain the confidentiality of any such information;

(f) A Party shall treat as confidential the initial report and information submitted by the other Party to the panel that the Party has designated as confidential pursuant to subparagraph (d);

(g) The responsible Secretariat shall take such reasonable steps as are necessary to ensure that experts, interpreters, translators, court reporters (designated note takers) and other individuals retained by the Secretariat maintain the confidentiality of the panel proceedings; and

(h) Except as provided under paragraphs (a) and (b), the Secretariat personnel shall maintain the confidentiality of the panel proceedings.

Ex Parte Contacts

37. The panel shall not meet or contact a Party in the absence of the other Party.

38. No panelist may discuss any aspect of the subject matter of the proceeding with a Party or with the Parties in the absence of the other panelists.

Official Language

39. Written submissions, oral arguments or presentations at the hearing, initial and final panel reports, as well as all other written or oral communications between the Parties and the panel, related to panel proceedings, shall be conducted in English.

Computation of Time

40. Where anything under this Agreement or these Rules is to be done, or the panel requires anything to be done, within a number of days after or before a specified date or event, the specified date or the date on which the specified event occurs shall not be included in calculating that number of days.

41. Where, by reason of the operation of Rule 14, a Party receives a document on a date other than the date on which the same document is received by the other Party, any period of time the calculation of which is dependent on such receipt shall be calculated from the date of receipt of the last such document.

Suspension of Benefits Panels

42. These Rules shall apply to a panel established under Article 19.15 except that:
    (a) the Party that requests the establishment of the panel shall deliver its initial written submission to its Secretariat within 10 days after the date on which the last panelist is designated;
    (b) the responding Party shall deliver its written counter-submission to its Secretariat within 15 days upon receipt of the initial written submission of the complaining Party;
    (c) the panel shall fix the time limit for delivering any further written submissions, including rebuttal written submissions, so as to provide each Party with the opportunity to make an equal number of written submissions subject to the time limits for panel proceedings set out in this Agreement and these Rules; and
    (d) unless the Parties disagree, the panel may decide not to convene a hearing.

Responsible Secretariat

43. The responsible Secretariat shall:
    (a) provide administrative assistance to the panel;
    (b) provide administrative assistance to experts, panelists and their assistants, interpreters, translators, court reporters (designated note takers) or other individuals that it retains in a panel proceeding;
    (c) make available to the panelists, upon confirmation of their appointment, copies of this Agreement and other documents relevant to the proceedings of the panel, such as the Uniform Regulations and these Rules;
    (d) retain indefinitely a copy of the complete record of the panel proceeding; and
    (e) compensate in accordance with Rules 44, 45 and 46.

Remuneration and Payment of Expenses

44. The responsible Secretariat shall establish the amounts of remuneration and expenses that will be paid to the panelists, their assistants, court reporters (designated note takers) or other individuals that it retains in a panel proceeding upon agreement by both Parties.

45. The remuneration of the amounts established under Rule 44 shall be borne equally by the Parties unless otherwise agreed by them.

46. Each panelist or other persons who participate in the panel proceeding shall keep a record and render a final account of the person's time and expenses, and the panel shall keep a record and render a final account of all general expenses.

Maintenance of Rosters

47. The Parties shall inform each Secretariat of the composition of the roster established under Article 19.7. The Parties shall promptly inform their counterpart Secretariat of any changes made to the roster.

PART VII
OTHER PROVISIONS

CHAPTER 20
EXCEPTIONS

Article 20.1: General Exceptions

1. Article XX of GATT and its interpretative notes or any equivalent provision of a successor agreement to which both Parties are party are incorporated into and made part of this Agreement, for purposes of:
   (a) Part II, except to the extent that a provision of that Part applies to services or investment; and
   (b) Chapter 15, except to the extent that any of its provisions applies to services.

2. Subparagraphs (a), (b) and (c) of Article XIV of the GATS are incorporated into and made part of this Agreement, for purposes of:
   (a) Part II, to the extent that a provision of that Part applies to services;
   (b) Chapter 11;
   (c) Chapter 12; and
   (d) Chapter 15, to the extent that any of its provisions applies to services.

Article 20.2: National Security

1. Nothing in this Agreement shall be construed:
   (a) to require a Party to furnish any information the disclosure of which it considers contrary to its essential security interests;
   (b) to prevent a Party from taking any actions which it considers necessary for the protection of its essential security interests:
      (i) relating to the traffic in arms, ammunition and implements of war and to such traffic in other goods and materials or relating to the supply of services as carried on, directly or indirectly, for the purpose of supplying or provisioning a military establishment;
      (ii) taken in time of war or other emergency in international relations; or
      (iii) relating to fissionable and fusionable materials or the materials from which they are derived; or
   (c) to prevent a Party from taking any action in pursuance of its obligations under the United Nations Charter for the maintenance of international peace and security.

2. The Commission shall be informed to the fullest extent possible of measures taken under subparagraphs 1(b) and (c) and of their termination.

Article 20.3: Taxation

1. For purposes of this Chapter:

tax convention means a convention for the avoidance of double taxation or other international taxation agreement or arrangement; and

taxes and taxation measures do not include a "custom duty" as defined in Article 3.1.

2. Except as set out in this Article, nothing in this Agreement shall apply to taxation measures.

3. Nothing in this Agreement shall affect the rights and obligations of either Party under any tax convention. In the event of any inconsistency between this Agreement and any such convention, that convention shall prevail to the extent of the inconsistency.

4. Notwithstanding paragraph 3, Article 3.3 and other provisions of this Agreement necessary to give effect to that Article shall apply to taxation measures to the same extent as does Article III of GATT.

Article 20.4: Balance of Payments

1. Where a Party is in serious balance of payments and external financial difficulties, or under threat thereof, it may adopt or maintain restrictive measures with regard to trade in goods and in services and with regard to payments and capital movements, including those related to direct investment.

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

3. Any restrictive measure adopted or maintained under this Article shall be non-discriminatory and of limited duration 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 conditions established in the WTO Agreement and consistent with the Articles of Agreement of the International Monetary Fund, as applicable.

4. The 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. The Party applying restrictive measures shall consult promptly within the Commission. 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*, such factors as:

(a) the nature and extent of the balance of payments and external financial difficulties;

(b) the external economic and trading environment of the consulting Party; and
(c) alternative corrective measures which may be available.

6. 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, and conclusions shall be based on the assessment by the Fund of the balance of payments and the external financial situation of the consulting Party.

CHAPTER 21
FINAL PROVISIONS

Article 21.1: Annexes, Appendices and Notes

The Annexes, Appendices and Notes to this Agreement shall constitute integral parts of this Agreement.

Article 21.2: Amendments

1. The Parties may agree on any modification of or addition to this Agreement.

2. When so agreed, and approved in accordance with the legal procedures of each Party, such a modification or addition under paragraph 1 shall constitute an integral part of this Agreement.

Article 21.3: Entry into Force

This Agreement shall enter into force 30 days after an exchange of written notifications, certifying the completion of the necessary legal procedures of each Party.

Article 21.4: Termination of the Bilateral Investment Treaty

Both Parties agree that "The Agreement between the Government of the Republic of Chile and the Government of the Republic of Korea on the Reciprocal Promotion and Protection of Investments"(BIT), signed in Santiago, Chile on September 6, 1996, shall no longer be in effect upon the entry into force of this Agreement, as well as all the rights and obligations derived from the BIT.

Article 21.5: Work Program on Financial Services

Unless otherwise agreed by the Parties, the authorities responsible for financial services will meet four years after the entry into force of this Agreement, to discuss the viability and convenience of incorporating financial services into this Agreement.

Article 21.6: Duration and Termination

This Agreement shall have an indefinite duration. A Party may terminate the Agreement on six months' prior written notice to the other Party.

Article 21.7: Authentic Texts

1. The Korean, Spanish and English texts of this Agreement are equally authentic. In the event of divergence, the English text shall prevail.

2. At the latest, upon the entry into force of the Agreement, the Parties agree to add, by exchange of notes, the English version of Appendix 1, Section B of Annex 3.4 as an integral part of this Agreement.

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

DONE in Seoul, on the fifteenth day of February of 2003, in duplicate, in the Korean, Spanish and English languages.

FOR THE GOVERNMENT OF
THE REPUBLIC OF KOREA

FOR THE GOVERNMENT OF
THE REPUBLIC OF CHILE