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LEGISLATIVE ACTS AND OTHER INSTRUMENTS

Subject:	Political, Economic and Cooperation Strategic Partnership Agreement between the European Union and its Member States, of the one part, and the United Mexican States, of the other part

POLITICAL, ECONOMIC AND COOPERATION STRATEGIC PARTNERSHIP AGREEMENT BETWEEN THE EUROPEAN UNION AND ITS MEMBER STATES, OF THE ONE PART, AND THE UNITED MEXICAN STATES, OF THE OTHER PART

EU/MX/MGA/en

PREAMBLE

THE KINGDOM OF BELGIUM,

THE REPUBLIC OF BULGARIA,

THE CZECH REPUBLIC,

THE KINGDOM OF DENMARK,

THE FEDERAL REPUBLIC OF GERMANY,

THE REPUBLIC OF ESTONIA,

IRELAND,

THE HELLENIC REPUBLIC,

THE KINGDOM OF SPAIN,

THE FRENCH REPUBLIC,

THE REPUBLIC OF CROATIA,

THE ITALIAN REPUBLIC,

THE REPUBLIC OF CYPRUS,

THE REPUBLIC OF LATVIA,

THE REPUBLIC OF LITHUANIA,

THE GRAND DUCHY OF LUXEMBOURG,

HUNGARY,

THE REPUBLIC OF MALTA,

THE KINGDOM OF THE NETHERLANDS,

THE REPUBLIC OF AUSTRIA,

THE REPUBLIC OF POLAND,

THE PORTUGUESE REPUBLIC,

ROMANIA,

THE REPUBLIC OF SLOVENIA,

THE SLOVAK REPUBLIC,

THE REPUBLIC OF FINLAND,

THE KINGDOM OF SWEDEN,

Contracting Parties to the Treaty on European Union and the Treaty on the Functioning of the European Union, hereinafter referred to as the "Member States of the European Union",

THE EUROPEAN UNION, hereinafter also referred to as "the Union" or "the EU",

of the one part, and

THE UNITED MEXICAN STATES, hereinafter referred to as "Mexico",

of the other part,

hereinafter jointly referred to as "the Parties",

CONSIDERING the strong cultural, political and economic ties which unite them,

REAFFIRMING their commitment to democratic principles, the rule of law, human rights and fundamental freedoms, and to countering proliferation of weapons of mass destruction, which constitute the basis for their partnership and cooperation,

MINDFUL of the significant contribution to strengthen those ties made by the Economic Partnership, Political Coordination and Cooperation Agreement between the European Community and its Member States, of the one part, and the United Mexican States, of the other part, signed in Brussels on 8 December 1997,

CONSIDERING their joint commitment expressed in the Santiago Declaration of 27 January 2013 to modernise and replace the existing Economic Partnership, Political Coordination and Cooperation Agreement to reflect new political and economic realities and the advancements made in their strategic partnership,

CONSIDERING the signature of the Interim Agreement on Trade between the European Union and the United Mexican States (hereinafter referred to as the "EU-Mexico Interim Agreement on Trade"), establishing a free trade area between the EU and Mexico,

EMPHASISING the comprehensive nature of their relationship and the importance of providing a coherent framework for its further promotion,

AFFIRMING their status as strategic partners and their determination to further enhance and deepen their partnership and their international cooperation and dialogue in order to advance their shared interests and values,

AFFIRMING their commitment to strengthen cooperation on bilateral, regional, bi-regional, and international issues of common concern,

ACKNOWLEDGING the importance of a strong and effective multilateral system, based upon international law, in preserving peace, preventing conflicts and strengthening international security and in tackling common challenges,

REAFFIRMING their commitment to expand and diversify their trade relation in conformity with the Marrakesh Agreement Establishing the World Trade Organization (hereinafter referred to as the "WTO Agreement") and the specific objectives and provisions set out in Part III of this Agreement,

CONVINCED that this Agreement will create a climate conducive to growing sustainable economic relations between them, in particular in terms of trade and investment, which are essential to the realisation of economic and social development and technological innovation and modernisation,

RECOGNISING that the provisions of this Agreement protect investments and investors, and are intended to stimulate mutually beneficial business activity without undermining the right of the Parties to regulate in the public interest within their territories,

WELCOMING Resolution 70/1, adopted by the General Assembly of the United Nations on 25 September 2015, containing the outcome document "Transforming our world: the 2030 Agenda for Sustainable Development" (hereinafter referred to as the "2030 Agenda"), the Paris Agreement, adopted at the 21st session of the Conference of the Parties to the United Nations Framework Convention on Climate Change, done at Paris on 12 December 2015 (hereinafter referred to as the "Paris Agreement"), as well as the Sendai Framework for Disaster Risk Reduction 2015-2030, adopted at the Third UN World Conference in Sendai on 18 March 2015, the Addis Ababa Action Agenda of the Third International Conference on Financing for Development, adopted at Addis Ababa on 13-16 July 2015, the World Humanitarian Summit Commitments, adopted at the World Humanitarian Summit in Istanbul on 23-24 May 2016, and the New Urban Agenda, adopted during the UN Conference on Housing and Sustainable Urban Development (Habitat III) in Quito on 20 October 2016 (hereinafter referred to as the "New Urban Agenda"), and calling for their swift implementation,

REAFFIRMING their commitment to overcome global challenges by promoting sustainable development in its economic, social and environmental dimensions, by contributing to the achievement of the Sustainable Development Goals (hereinafter referred to as the "SDGs") and targets of the 2030 Agenda,

AFFIRMING their commitment to strengthen cooperation in the field of justice, human rights, freedom and security,

RECOGNISING the mutual benefits of enhanced cooperation in the areas of education, culture, research and innovation and other areas of common interest,

REAFFIRMING their commitment to promote international trade in such a way as to contribute to sustainable development in its economic, social and environment dimensions, through partnerships involving all relevant stakeholders, including civil society and the private sector, and to implement this Agreement in a manner consistent with their respective laws and international labour and environmental commitments,

RECOGNISING the importance of strengthening their economic, trade and investment relations, and of promoting the liberalisation of trade and investment between them, to bring economic growth, create new opportunities for workers and the business communities of each Party, in particular small and medium-sized enterprises,

RECOGNISING that this Agreement contributes to enhancing consumer welfare and to ensuring a high level of living standards and consumer protection,

ENCOURAGING enterprises operating within their territory or subject to their jurisdiction to respect internationally recognised guidelines and principles of corporate social responsibility, including the OECD Guidelines for Multinational Enterprises on Responsible Business Conduct, and to pursue best practices of responsible business conduct,

RECOGNISING that the provisions of this Agreement preserve the right of the Parties to regulate within their territories in conformity with their internal legislation, and the Parties' flexibility to achieve legitimate policy objectives, such as public health, safety, environment, public morals and the promotion and protection of cultural diversity,

RECOGNISING the importance of transparency, good governance and the rule of law in international trade and investment to the benefit of all stakeholders,

RESOLVED to contribute to the harmonious development and expansion of international trade and investment by removing obstacles thereto through this Agreement and to avoid creating new barriers to trade or investment between the Parties that could reduce the benefits of this Agreement,

NOTING that in case the Parties decide, within the framework of this Agreement, to enter into specific agreements in the area of freedom, security and justice which may be concluded by the Union pursuant to Title V of Part Three of the Treaty on the Functioning of the European Union ("TFEU"), the provisions of such future specific agreements would not bind Ireland unless the Union, simultaneously with Ireland as regards its previous bilateral relations, notifies Mexico that Ireland has become bound by such future specific agreements as part of the Union in accordance with Protocol No 21 on the position of Ireland in respect of the area of freedom, security and justice, annexed to the Treaty on European Union ("TEU") and to the TFEU. Likewise, any subsequent internal measures of the Union which are adopted pursuant to Title V of Part Three TFEU to implement this Agreement would not bind Ireland, unless Ireland has notified its wish to take part in such measures or accept them in accordance with Protocol No 21; also noting that such future specific agreements or subsequent internal measures of the Union would fall within the scope of Protocol No 22 on the position of Denmark annexed to the TEU and TFEU,

HAVE AGREED AS FOLLOWS:

PART I[1]

GENERAL PROVISIONS

ARTICLE 1

Objectives of this Agreement

The objectives of this Agreement shall be to:

(a) establish a strengthened strategic partnership, reinforce political dialogue, and deepen and enhance cooperation on issues of mutual interest;

(b) foster increased trade and investment between the Parties by expanding and diversifying their economic and trade relations, which should contribute to higher and more sustainable economic growth and an improved quality of life.

[1] Where a provision of this Part contains a reference to another provision of this Agreement, that reference is to another provision of this Part, unless explicitly indicated otherwise.

ARTICLE 2

General Principles

1. Respect for democratic principles and human rights and fundamental freedoms, as laid down in the Universal Declaration of Human Rights and other relevant international human rights instruments to which the Parties are party, and for the principle of the rule of law, underpins the internal and international policies of both Parties and constitutes an essential element of this Agreement.

2. The Parties confirm their strong support for the principles of the Charter of the United Nations (hereinafter referred to as the "UN").

3. The Parties share the view that the proliferation of weapons of mass destruction and their means of delivery to both state and non-state actors poses a major threat to international stability and security.

4. The Parties recognise that the uncontrolled movement of conventional arms is a threat to international and regional peace, security and stability and also recognise the need to cooperate to ensure the responsible transfer of conventional arms.

5. The Parties reaffirm their commitment to the promotion of sustainable development in all its dimensions, contributing to the attainment of internationally agreed sustainable development goals, and to cooperation in order to address global environmental challenges.

6. The Parties confirm their commitment to gender equality and the empowerment of women and girls.

7. The Parties reaffirm their commitment to combatting discrimination on any ground, including gender, racial or ethnic origin, religion or belief, disability, age or sexual orientation.

8. The Parties confirm their commitment to implement this Agreement based on shared values, including the principles of dialogue, mutual respect, equal partnership, multilateralism, cooperation and respect for international law.

PART II[2]

POLITICAL DIALOGUE AND COOPERATION

CHAPTER 1

POLITICAL DIALOGUE, INTERNATIONAL PEACE AND SECURITY

ARTICLE 1.1

Political Dialogue

1. The Parties shall strengthen their political dialogue and cooperation at all levels, through exchanges and consultations on bilateral, regional, bi-regional, international and multilateral issues.

2. The political dialogue shall aim to:

(a) promote the development of bilateral relations and strengthen the strategic partnership;

(b) strengthen cooperation on regional, bi-regional, and international challenges and issues.

[2] Where a provision of this Part contains a reference to another provision of this Agreement, that reference is to another provision of this Part, unless explicitly indicated otherwise.

3. The political dialogue between the Parties may take place in the following forms, as mutually agreed:

(a) consultations, meetings and visits at summit level;

(b) consultations, meetings and visits at ministerial level;

(c) regular senior officials meetings, including a high-level political dialogue;

(d) sectorial dialogues on issues of common interest;

(e) exchanges of delegations and other contacts between the Congress of Mexico and the European Parliament;

(f) any other form agreed to by the Parties.

ARTICLE 1.2

Democratic Principles, Human Rights and the Rule of Law

1. The Parties shall cooperate on the promotion and protection of human rights, including with regard to the ratification and implementation of international human rights instruments, and on the strengthening of democratic principles and the rule of law, promoting gender equality and combatting discrimination in all its forms.

2. Such cooperation may include:

(a) fostering a meaningful, broad-based human rights dialogue;

(b) supporting the development and implementation of action plans on human rights;

(c) promoting human rights, including through education and cooperation;

(d) strengthening national and regional human rights-related institutions;

(e) enhancing cooperation with the UN human rights treaty bodies and the special procedures of the Human Rights Council to implement their recommendations;

(f) enhancing cooperation within the human rights-related institutions of the UN and relevant regional and multilateral fora;

(g) strengthening the capacity of the Parties to apply democratic principles and practices;

(h) reinforcing good, independent and transparent governance at the local, national, regional and global levels, promoting accountability and transparency of institutions and supporting participation of citizens and the involvement of civil society;

(i) collaborating and coordinating, where appropriate, including in third countries, to reinforce democratic principles, human rights and the rule of law;

(j) fostering the universality of international human rights treaties and encouraging other States to implement their obligations in this area;

(k) working to prevent impunity for human rights violations.

ARTICLE 1.3

Gender Equality and Women's Empowerment, Peace, Security and Sustainable Development

1. The Parties shall promote gender equality and the empowerment of women. They acknowledge the necessity of gender equality and the empowerment of women and girls as a precondition to fully achieving sustainable and inclusive development, democracy and security. The Parties shall explore further schemes of cooperation and potential synergies between respective policies and initiatives, in line with international standards and commitments such as the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), adopted by the UN General Assembly on 18 December 1979, the general recommendations made by the UN Committee on the Elimination of Discrimination against Women, the 2030 Agenda and UN Security Council Resolution 1325 (2000) and subsequent UN Security Council Resolutions on women, peace and security.

2. Such cooperation may include:

(a) fostering effective gender mainstreaming;

(b) supporting the development and implementation of a national action plan on UN Security Council Resolution 1325 (2000);

(c) promoting women's political participation and leadership, as well as their access to quality education, their economic empowerment and leadership, and their increased participation in the workforce;

(d) strengthening national and regional institutions through specific measures to address and handle issues related to violence against women and girls, including prevention and protection from sexual and gender-based violence, investigation and accountability mechanisms, support to victims and promotion of conditions of safety and security for women and girls;

(e) actively reinforcing the protection of women's human rights, including from any type of discrimination and violence against them and ensuring their access to justice;

(f) enhancing cooperation with relevant bodies of the UN and other international organisations;

(g) actively promoting gender analysis and the systematic integration of gender perspective in all matters related to peace and security, while ensuring women's leadership and meaningful participation in peace processes, mediation efforts, conflict resolution and peace building, as well as civilian and military missions and operations.

ARTICLE 1.4

Countering Proliferation of Weapons of Mass Destruction

1. The Parties consider that the proliferation of weapons of mass destruction (hereinafter referred to as "WMD") and their means of delivery, both to state and non-state actors, represents one of the most serious threats to international stability and security. The Parties shall therefore cooperate and contribute to countering the proliferation of WMD and their means of delivery through full compliance with and national implementation of their existing obligations under international disarmament and non-proliferation treaties and agreements and other relevant international obligations. The Parties agree that this provision constitutes an essential element of this Agreement.

2. The Parties shall cooperate and contribute to countering the proliferation of WMD and their means of delivery by:

(a) taking steps to sign, ratify, or accede to, as appropriate, and fully implement relevant international instruments;

(b) establishing and maintaining an effective system of national export controls, controlling the export as well as the transit of WMD-related goods, including a WMD end-use control on dual use technologies and effective sanctions for breaches of export controls.

3. The Parties shall establish a regular political dialogue to accompany and consolidate the elements referred to in this Article.

ARTICLE 1.5

Small Arms and Light Weapons and Other Conventional Weapons

1. The Parties recognise that the illicit manufacture, transfer and circulation of small arms and light weapons (SALW), including their ammunition, parts and components, and their illicit accumulation, poor management, inadequately secured stockpiles and uncontrolled spread continue to pose a serious threat to peace and international security.

2. The Parties shall observe and fully implement their respective obligations to deal with the illicit trade in SALW, including their ammunition, parts and components, under existing international agreements and UN Security Council resolutions, as well as their commitments within the framework of other international instruments applicable in this area, such as the UN Programme of Action to Prevent, Combat and Eradicate the Illicit Trade in Small Arms and Light Weapons in All Its Aspects.

3. The Parties recognise the importance of domestic control systems for the transfer of conventional arms in line with existing international standards. The Parties recognise the importance of applying such controls in a responsible manner, as a contribution to international and regional peace, security and stability, and to the reduction of human suffering, as well as to the prevention of diversion of conventional weapons.

4. The Parties shall fully implement the Arms Trade Treaty, adopted in New York on 2 April 2013 (hereinafter referred to as the "ATT"), and cooperate with each other within the framework of the ATT, including in promoting its universalisation and its full implementation by all States Parties to that Treaty.

5. The Parties shall cooperate and ensure coordination, complementarity and synergy in their efforts to regulate or improve the regulation of international trade in conventional arms and to prevent, combat and eradicate the illicit trade in conventional arms, including their ammunition, parts and components.

6. The Parties shall establish a regular political dialogue to accompany and consolidate the matters covered by this Article.

ARTICLE 1.6

International Criminal Court

1. The Parties recognise that the most serious crimes of concern to the international community must not go unpunished, and they shall endeavour to ensure that those crimes are effectively investigated and prosecuted by taking measures at the national level and by enhancing international cooperation, including with the International Criminal Court (hereinafter referred to as the "ICC").

2. The Parties shall promote the universalisation of the Rome Statute of the International Criminal Court (hereinafter referred to as "the Rome Statute"), and shall work towards its effective domestic implementation by States Parties to the Rome Statute. The Parties shall exchange, as appropriate, best practices on the adoption of domestic laws and take measures to safeguard the integrity of the Rome Statute.

ARTICLE 1.7

Counter-Terrorism

The Parties reaffirm the importance of the fight against terrorism and, in accordance with international conventions, the relevant UN resolutions and their respective laws and regulations, shall cooperate, as mutually agreed, in the prevention and suppression of acts of terrorism. They shall do so in particular:

(a) in the framework of full and effective implementation of UN Security Council Resolution 1373 (2001) and other relevant UN resolutions and international instruments;

(b) by promoting cooperation among UN Member States to effectively implement the UN Global Counter-Terrorism Strategy adopted by the UN General Assembly on 8 September 2006;

(c) by exchanging information on terrorist groups and their support networks in accordance with international and domestic law; and

(d) by exchanging experiences on the means and methods used to prevent and counter terrorism, including technical knowledge and training and by exchanging best practices in terrorism prevention.

ARTICLE 1.8

Peacekeeping and Crisis Management

The Parties shall cooperate in promoting peace and international security. They shall explore possibilities to coordinate crisis management activities, including cooperation in crisis management operations.

ARTICLE 1.9

Citizen Security

The Parties shall promote dialogue and cooperation on citizen security. They acknowledge that citizen security has a national, transnational, regional and bi-regional dimension which requires a broader dialogue and cooperation.

CHAPTER 2

COOPERATION IN INTERNATIONAL AND REGIONAL ORGANISATIONS

ARTICLE 2.1

International Organisations

1. The Parties shall promote multilateralism and shall cooperate by exchanging views and, where appropriate, coordinating positions in international organisations and fora, including the UN and its specialised agencies, the World Trade Organization (hereinafter referred to as the "WTO"), the Group of Twenty (hereinafter referred to as "G20"), and the Organisation for Economic Cooperation and Development (hereinafter referred to as the "OECD").

2. The Parties shall maintain effective consultation mechanisms in the margins of multilateral fora. The Parties shall maintain open and continuous dialogue at the UN Human Rights Council, the UN General Assembly and, as appropriate and agreed by the Parties, in other organs and specialised agencies of the UN.

ARTICLE 2.2

Regional Organisations

1. The Parties shall cooperate by exchanging views on issues of mutual interest, and, where appropriate, by sharing information on positions in regional and sub-regional organisations and fora.

2. The Parties shall promote bi-regional dialogue and cooperation, including in the framework of the cooperation between the Union and the Community of Latin American and Caribbean States (hereinafter referred to as "CELAC"). Cooperation may, as appropriate, include support for CELAC integration and community building.

3. The Parties shall promote cooperation in the Pacific Alliance, through its framework for observer states.

4. The Parties shall promote regional and triangular cooperation with third countries, mainly in Central America and the Caribbean.

CHAPTER 3

FREEDOM, SECURITY AND JUSTICE

ARTICLE 3.1

Legal and Judicial Cooperation

1. The Parties shall enhance existing cooperation on mutual legal assistance and extradition based on relevant international agreements. The Parties shall strengthen existing mechanisms and, as appropriate, consider the development of new mechanisms to facilitate international cooperation in this area. Such cooperation shall include taking steps to sign, ratify, or accede to, as appropriate, and fully implement relevant international instruments, as well as closer cooperation with Eurojust.

2. The Parties shall develop judicial cooperation in civil and commercial matters, in particular as regards the negotiation, ratification and implementation of multilateral conventions on civil judicial cooperation, including the Conventions of The Hague Conference on Private International Law in the field of international legal cooperation and litigation as well as the protection of children.

ARTICLE 3.2

Law Enforcement and the Prevention and Fight Against Corruption and Transnational Organised Crime

1. The Parties shall cooperate and exchange views on preventing and combatting transnational organised crime, trafficking in persons, smuggling of migrants, trafficking of firearms, including their ammunition, their parts and components, economic and financial crimes, the world drug problem, corruption, and counterfeiting of means of payment, in accordance with their respective legislation and international obligations, including as regards mutual legal assistance, exchange of information, best practices and training, and the recovery of assets or funds derived from criminal activities.

2. The Parties shall continue their dialogue and cooperation on law enforcement, including through strategic cooperation with Europol, as well as their strategic judicial cooperation, including through Eurojust and, when relevant, with other national and international institutions.

3. The Parties shall endeavour to collaborate in international fora to promote, as appropriate, adherence to and the implementation of the United Nations Convention against Transnational Organized Crime, adopted on 15 November 2000 by the UN Resolution 55/25 (hereinafter referred to as the "Palermo Convention"), and the Protocols thereto.

4. The Parties shall promote the implementation of the United Nations Convention against Corruption, adopted on 31 October 2003 by the UN Resolution 58/4, and support the Mechanism for the Review of Implementation of the United Nations Convention against Corruption, established by the Conference of the States Parties to the UN Convention against Corruption in Doha, 9-13 November 2009 (hereinafter referred to as the "Implementation Review Mechanism"), including by adhering to the principle of transparency and the participation of civil society in the Implementation Review Mechanism.

5. The Parties recognise the importance of fighting corruption in international trade and investment and, to that end, commit to the Protocol to this Agreement on the Prevention and Fight against Corruption.

ARTICLE 3.3

Migration, Asylum and Border Management

1. The Parties shall cooperate and exchange experiences and information on migration issues, within the framework of their respective laws, regulations and competences, including regular and irregular migration, countering migrant smuggling and trafficking in persons, migration and development, asylum, readmission, integration, visas, facilitate regular migration, migratory control, and border management. The Parties shall exchange best practices on the protection of migrant women and children, in particular those unaccompanied, as well as other vulnerable groups.

2. The Parties shall cooperate to prevent irregular migration, to counter migrant smuggling and trafficking in persons, and to foster safe, regular and orderly migration. To that end, within the framework of their respective laws and regulations:

(a) Mexico shall readmit any of its nationals obliged to return from the territory of a Member State of the European Union, on request by the latter and without further formalities, unless otherwise provided for by a specific agreement;

(b) each Member State of the European Union shall readmit any of its nationals obliged to return from the territory of Mexico, on request by the latter and without further formalities, unless otherwise provided for by a specific agreement;

(c) the Member States of the European Union and Mexico shall provide their nationals with appropriate travel documents for the purposes referred to in subparagraphs (a) and (b), or accept the use of the Union travel documents for return purposes;

(d) the Parties shall endeavour to negotiate a specific agreement defining obligations on readmission of nationals, including means of evidence regarding nationality. The conditions for the readmission of third-country nationals shall be established by that agreement.

ARTICLE 3.4

World Drug Problem

1. The Parties shall cooperate to ensure a balanced and integrated approach on drug issues with a view to:

(a) joining efforts towards achieving the effective implementation of the operational recommendations of the 2016 Special Session of the UN General Assembly on the World Drug Problem (UNGASS 2016);

(b) addressing the health and social consequences of the world drug problem, with policies aimed at achieving sustainable development, through comprehensive, evidence-based demand-reduction initiatives at all levels covering in particular prevention, treatment, rehabilitation and social reintegration programmes;

(c) investing in treatment and increasing awareness on public health responses to drug use amongst the national health systems;

(d) strengthening epidemiological research and further improving the systematic availability and quality of statistical information across all drug domains;

(e) ensuring a public health approach that promotes access to and availability of controlled substances for medical and scientific purposes, while preventing their diversion to the illicit market;

(f) reducing the supply, trafficking and demand for illicit drugs and new psychoactive substances, including through the exchange of information and other cooperation activities as appropriate;

(g) mainstreaming a gender and human rights perspective in all drug policies and programmes;

(h) encouraging the application of alternatives to coercive sanctions to persons who have committed drugs-law and drug-related offences;

(i) addressing the diversion of chemical precursors, essential chemicals and products or preparations containing them used for the illicit production of narcotic drugs, psychotropic substances and new psychoactive substances.

2. The Parties shall collaborate to attain the objectives referred to in paragraph 1, including, when possible, by encouraging third countries that have not already done so to ratify and implement existing international drug control conventions and protocols to which they are party. The Parties shall base their actions on their applicable laws and regulations, on commonly accepted principles in line with the relevant UN drug control conventions and on the recommendations set out in the outcome document of the UNGASS 2016, entitled "Our joint commitment to effectively addressing and countering the world drug problem", as the most recent international consensus on the world drug policy, in order to take stock of the implementation of the commitments made to jointly address and counter the world drug problem.

ARTICLE 3.5

Money Laundering and the Financing of Terrorism

The Parties shall cooperate with a view to preventing and effectively combatting the use of their financial institutions and designated non-financial businesses and professions to launder the proceeds of criminal activities and to finance terrorism. To that end, they shall exchange information in accordance with their respective legislation and cooperate to ensure the effective and full implementation of the Financial Action Task Force (hereinafter referred to as the "FATF") recommendations and other standards adopted by relevant international bodies active in that area. Such cooperation may include, among others, the recovery, seizure, confiscation, tracing, identification and return of assets or funds related to proceeds of criminal activity or to terrorist financing.

ARTICLE 3.6

Cybercrime

1. The Parties recognise that cybercrime is a global problem requiring a global response. The Parties shall strengthen their cooperation to prevent and combat cybercrime through the exchange of information and best practices and trends, in accordance with their respective legislation, and relevant international legal instruments on cybercrime. The Parties shall work together, as appropriate, to provide assistance and support to other States in the development of effective laws, policies and practices to prevent and combat cybercrime.

2. The Parties shall, as appropriate, in accordance with their respective legislation, exchange information, experiences and best practices in areas such as the education and training of cybercrime investigators, the conduct of cybercrime investigations and digital forensics with emphasis on combatting child sexual exploitation and protecting critical infrastructure such as the financial, energy and telecommunications sectors, among others.

ARTICLE 3.7

Personal Data Protection

1. The Parties recognise the importance of protecting the fundamental rights to privacy and the protection of personal data. The Parties shall cooperate to ensure the respect of those fundamental rights, including in the area of law enforcement and when preventing and combatting terrorism and other serious transnational crimes.

2. The Parties shall cooperate to promote a high level of protection for personal data. Cooperation at the bilateral and multilateral levels may include capacity building, technical assistance, the exchange of information and expertise, and cooperation through regulatory counterparts in international bodies as mutually agreed by the Parties.

ARTICLE 3.8

Consumer Policy

The Parties recognise the importance of ensuring a high level of consumer protection and shall, to that end, endeavour to cooperate in the field of consumer policy. Such cooperation may involve, to the extent possible:

(a) exchanging information on their respective consumer protection frameworks, including on consumer laws, consumer product safety, consumer redress and the enforcement of consumer legislation;

(b) encouraging the development of independent consumer associations and contacts between consumer representatives.

ARTICLE 3.9

Consular Protection

Mexico agrees that the diplomatic and consular authorities of any represented Member State of the European Union shall provide protection to any national of a Member State of the European Union which does not have a permanent representation in Mexico that is effectively in a position to provide consular protection in a given case, on the same conditions as to nationals of that represented Member State.

ARTICLE 3.10

Disaster Risk Management and Civil Protection

The Parties recognise the need to manage both domestic and global natural and man-made disaster risks. The Parties affirm their common commitment to improving prevention, mitigation, preparedness, early warning, response and recovery measures in order to increase the resilience of their societies and infrastructure, and to cooperate, as appropriate, at a bilateral and multilateral level to improve global disaster risk-management outcomes aligned with the Sendai Framework for Disaster Risk Reduction 2015-2030, in coherence with the SDGs, the Paris Agreement and the New Urban Agenda.

CHAPTER 4

SUSTAINABLE DEVELOPMENT

ARTICLE 4.1

Sustainable Development

1. The Parties reaffirm their commitment to achieve sustainable development, as expressed in the 2030 Agenda. The Parties recognise that sustainable development in the long term requires inclusive economic growth, social well-being and sustainable use of natural resources. Those three dimensions are recognised as deeply interlinked and mutually reinforced.

2. The Parties shall promote sustainable development in its three dimensions, economic, social and environmental, in a balanced manner, including the responsible, efficient use and sustainable management of natural resources, in accordance with their respective priorities and circumstances, as well as raise awareness of the economic and social costs of environmental damage, unsustainable patterns of production and consumption, and its associated impact on human well-being.

3. The Parties shall promote human inclusive sustainable development through dialogue, joint action, sharing of best practices, good governance at all levels, and the mobilisation of financial resources, making the best possible use of existing financial instruments and exploring the viability of establishing new ones.

ARTICLE 4.2

Sustainable Development Cooperation

1. The main objective of development cooperation is to implement the 2030 Agenda, in its multidimensional and human-centred perspective, and to achieve the SDGs. The principles of effective development cooperation as outlined by the Global Partnership for Effective Development Cooperation, building on the Paris Declaration on Aid Effectiveness, adopted at the High-Level Forum on Aid Effectiveness in Paris on 2 March 2005 and the Accra Agenda for Action, endorsed at the High-Level Forum on Aid Effectiveness in Accra on 4 September 2008, are important tools to maximise its development impact.

2. The Parties shall address the challenges linked to achieving the SDGs by giving priority to each Party's needs and national ownership, taking into account regional context, and building synergies and development partnerships with a range of stakeholders on the field, including the civil society, local governments, private sector or non-profit organisations. While recognising the central role of Governments in promoting development, the Parties shall also cooperate to promote the uptake by the private sector, in particular small and medium-sized enterprises (hereinafter referred to as "SMEs"), of sustainable development policies in its practices.

3. The Parties shall cooperate to progressively improve global resource efficiency and sustainability in consumption and production patterns, in accordance with agreed international frameworks, and shall endeavour to take actions aimed at decoupling economic growth from environmental degradation.

4. The Parties shall hold a regular policy dialogue on sustainable development and the achievement of the SDGs, based on common priorities in order to enhance the quality and effectiveness of their development cooperation, in line with internationally accepted principles of aid and development effectiveness.

5. The Parties recognise that mainstreaming the conservation and sustainable use of biological diversity into sectoral and cross-sectoral plans, programmes and policies across relevant sectors, and strengthening of legal, institutional and regulatory domestic frameworks can contribute to generating positive impacts on biological diversity and its ecosystem services as well as to achieving sustainable development. As such, the Parties shall cooperate to integrate biodiversity mainstreaming into relevant sectors, as applicable, to enhance efforts to halt biodiversity loss and improve human well-being.

6. The Parties shall cooperate and carry out joint activities, including through bilateral coordination in relevant multilateral fora, as well as regional and triangular cooperation preferably based on existing mechanisms and initiatives, in light of their sustainable development dialogue and their commitment to the 2030 Agenda. The areas of cooperation may include:

(a) implementation of the goals and targets of the SDGs;

(b) environmental protection, at all levels, including conservation and sustainable use of natural resources;

(c) climate change, resilience, disaster risk management and sustainable energy;

(d) the security-development nexus, including building stability and security, supporting the rule of law, countering the world drug problem and transnational organised crime;

(e) inclusive growth and job creation;

(f) governance, including strengthening fiscal, economic, environmental and social governance;

(g) education, including higher education, technical and vocational training, capacity building, innovation, and exchanges in these areas; and

(h) private sector participation strategies.

7. The Parties shall continue developing triangular cooperation activities in order to support third countries in their implementation of SDGs, including Least Developed Countries (LDCs) and other developing countries in situations of vulnerability, such as Small Island Developing States (SIDS). In that regard, the Parties shall explore innovative engagement modalities, including for more advanced developing countries, as appropriate. Triangular cooperation shall consist of supporting tailor-made strategies and commonly agreed actions based on the needs of third countries. To that end, the Parties shall develop coordinated cooperation activities such as technical assistance, training, capacity building, knowledge sharing, and other forms of cooperation jointly defined between the Parties, and between the Parties and the recipient third country.

8. Such cooperation may be undertaken through, among others:

(a) capacity building and knowledge sharing through training courses, workshops and seminars, the exchange of experts, studies, and joint research;

(b) mobilising financial resources through blending operations in partnership with the European Investment Bank and other eligible European development finance institutions;

(c) considering other forms of development financing as appropriate, with a focus on innovative financing mechanisms, such as triangular cooperation; and

(d) exchanging information on best practices of development effectiveness.

9. The Parties shall work together to strengthen accountability and transparency with a focus on improving development results and cooperate to strengthen national systems to deliver sustainable services and mainstream gender considerations across programmes and instruments.

10. Development cooperation shall be carried out in line with the relevant internationally agreed principles and policies to which both Parties have adhered to.

ARTICLE 4.3

Sustainable Urban Agenda

The Parties shall cooperate in the implementation of policies promoting sustainable urban settlements, including those derived from the New Urban Agenda, aiming to achieve cities and human settlements where all persons are able to enjoy equal rights and opportunities, as well as their fundamental freedoms, in line with the SDGs and targets, in particular Goal 11: "Make cities and human settlements inclusive, safe, resilient and sustainable".

ARTICLE 4.4

Regional and Urban Policy Development

1. The Parties recognise the importance of policies to promote balanced and sustainable territorial and urban development as a means to contribute effectively to the implementation of the objectives of the 2030 Agenda and the New Urban Agenda.

2. The Parties shall promote cooperation and partnership involving all the key actors in the fields of regional and territorial development and sustainable urban development, in particular, on ways to address territorial and urban challenges in an integrated and comprehensive manner.

3. The Parties shall develop, wherever possible, concrete opportunities for region-to-region and city-to-city cooperation on sustainable solutions to regional and urban challenges with a view to improving capacity building through exchanges of experience and practice, and mutual learning.

CHAPTER 5

ENVIRONMENT, CLIMATE CHANGE AND ENERGY

ARTICLE 5.1

Environment

1. The Parties recognise the need to protect, conserve, restore and sustainably manage natural resources and biological diversity, including soil, land, forests, water, oceans, seas and marine resources, as a basis for sustainable development supporting the needs of current and future generations.

2. The Parties recognise the importance of global environmental governance and international rules, including multilateral environmental agreements, to tackle environmental challenges of common concern. Each Party reaffirms its commitment to implement the multilateral environmental agreements to which it is a party.

3. The Parties shall strengthen their cooperation in mutually agreed priority areas on environmental protection, conservation, responsible, efficient use and sustainable management of natural resources, and on mainstreaming environmental considerations in all sectors of cooperation, including in an international and regional context. Those priority areas may include:

(a) promoting good environmental governance, including policy dialogue and cooperation areas such as the implementation of UN Environment Assembly resolutions and multilateral environmental agreements, as well as promoting compliance with environmental law;

(b) identifying bilateral priorities and fostering the exchange of information, technical expertise and technology, knowledge transfer, and the exchange of best practices in areas such as:

(i) implementation and enforcement of environmental legislation;

(ii) green growth, including sustainable consumption and production, resource efficiency, circular economy, and green finance;

(iii) biodiversity mainstreaming into economic and productive sectors;

(iv) protection, conservation and sustainable management of forests;

(v) protection, conservation and sustainable use of biodiversity including the mapping and assessment of ecosystems and their services, their valuation, and other economic instruments for the protection of biodiversity, as well as access to genetic resources and the fair and equitable sharing of benefits arising from their utilization;

(vi) land degradation and desertification;

(vii) prevention and the combat against illegal harvest and trade in wildlife, forest resources, genetic resources, and support for their legal sustainable and traceable trade;

(viii) sound management of chemicals and waste;

(ix) Integrated Water Resource Management (hereinafter referred to as the "IWRM"), and air and soil policy;

(x) coastal and marine environment conservation and management and sustainable blue economy;

(xi) designation, representativeness, effective management and connectivity of protected areas, as well as other effective area-based conservation measures (OECMs), including marine protected areas; and

(xii) collaboration with the private sector in the areas referred to in this subparagraph, where possible.

ARTICLE 5.2

Climate Change

1. The Parties acknowledge that the urgent threat of climate change requires collective action for low-emission and climate-resilient development, as well as adaptation measures.

2. The Parties recognise the importance of international rules and agreements in the area of climate change, in particular the United Nations Framework Convention on Climate Change, done at New York on 9 May 1992 (hereinafter referred to as the "UNFCCC") and the Paris Agreement, and stress that their implementation is irreversible and reaffirm their commitments under these agreements.

3. The Parties shall work together to strengthen their cooperation under the UNFCCC, to implement the Paris Agreement and their nationally determined contributions (hereinafter referred to as the "NDCs"), as well as to invite other countries to do so and to develop their long-term low greenhouse gas emissions development strategies.

4. Such cooperation may include:

(a) facilitating further action, to contribute to national debates and policy work;

(b) supporting low carbon economic development in accordance with the Paris Agreement;

(c) extending the NDCs into national sector policies and measures that cover transport, energy, infrastructure, urban planning, land use and investment sector strategies, including the integration of the adaptation processes in the sectorial development strategies;

(d) supporting the facilitative dialogue and the early definition of measures to review climate action in all countries;

(e) developing the transparency agenda under the Paris Agreement, including policy dialogue and cooperation in mutually agreed priority areas;

(f) enhancing other processes, such as the International Civil Aviation Organization's (hereinafter referred to as the "ICAO") stabilisation of international aviation emissions at 2020 levels, the adoption and formulation of the "Comprehensive strategy on reduction of greenhouse gas emissions from ships" by the International Maritime Organization (hereinafter referred to as the "IMO"), or the ambitious phase-down of hydrofluorocarbons (hereinafter referred to as the "HFCs") under the Amendment to the Montreal Protocol on Substances that Deplete the Ozone Layer, adopted in Kigali on 15 October 2016, including its ratification and ensuring its swift implementation to achieve an ambitious global phase-down of consumption and production of HFCs;

(g) promoting domestic climate policies and programmes in the framework of the Paris Agreement, including the promotion of emissions monitoring and market and non-market mechanisms, sustainable and climate-resilient infrastructure development, renewable energy, energy efficiency and sustainable transport, as well as those which address the adverse effects of deforestation, forest, soil and all ecosystems degradation on climate;

(h) strengthening synergies with entrepreneurs, civil society organisations and local authorities, which complement the efforts made by States;

(i) participation of the private sector towards a low-carbon economy;

(j) promoting market-based measures to introduce carbon pricing and the "polluter pays" principle;

(k) enhancing the development and deployment of commercially viable low-emission and other climate-friendly technologies;

(l) progressively eliminating subsidies for fossil fuels, and promoting the development of a sustainable and low-carbon economy, such as investment in renewable energies and energy efficient solutions;

(m) enhancing bilateral dialogue and measures on adaptation, mitigation and means of implementation, including technology transfer, capacity building and finance;

(n) fostering the consideration of the cross-cutting approaches of gender and youth in the implementation of the 2030 Agenda and the Paris Agreement;

(o) promoting policies on climate impacts on water resources;

(p) implementing the Paris Pact on Water and Adaptation to Climate Change in the Basins of Rivers, Lakes and Aquifers, presented at the UN Climate Change Conference in Paris on 2 December 2015, as well as the Lima-Paris Action Agenda, launched at the Climate Summit in New York on 23 September 2014;

(q) strengthening cooperation schemes to ensure more ambitious future NDCs while taking into account the global stocktake process.

ARTICLE 5.3

Energy

1. The Parties recognise the importance of the energy sector to economic prosperity and international peace and stability and underline that the transformation of the energy sector is key to achieving the goals set out in Agenda 2030 and the Paris Agreement. They recognise the need to improve and diversify energy supplies (including the promotion of renewable energies), promote innovation, research, development and training of human resources, as well as increase energy efficiency in order to strengthen energy productivity, energy security, and safe, sustainable and affordable energy. The Parties shall work towards those objectives.

2. The Parties shall maintain information exchanges on energy and collaborate bilaterally, regionally and multilaterally to foster open and competitive markets, share best practices, promote science-based, transparent regulation, and discuss areas of cooperation on energy issues, such as within the framework of international fora, mechanisms and initiatives.

CHAPTER 6

AGRICULTURE, MARITIME AFFAIRS AND FISHERIES

ARTICLE 6.1

Cooperation in Agriculture and Rural Development

The Parties shall cooperate in, among others:

(a) agricultural and rural development policy;

(b) agricultural market outlook;

(c) sustainable management of natural resources and climate action;

(d) sustainable and resilient agriculture by promoting awareness for the "Principles for Responsible Investment in Agriculture and Food Systems" and the "Voluntary Guidelines on Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security" of the Committee on World Food Security;

(e) fostering rural development through capacity building on trade-related issues, including geographical indications as an intellectual property right;

(f) organic farming;

(g) research and innovation;

(h) organisation and development of sustainable production processes in the agrifood sector (agriculture and livestock);

(i) organisation and productive development of rural communities;

(j) food security;

(k) prevention of postharvest loss and food waste;

(l) applied research for the production and management of agricultural and animal products; and

(m) processing of agricultural and food products.

ARTICLE 6.2

Maritime Affairs and Fisheries

1. The Parties recognise the importance of the conservation and the sustainable and responsible management of fisheries, aquaculture and other maritime activities and their contribution to providing economic, social and environmental opportunities for present and future generations.

2. The Parties shall strengthen dialogue and cooperation on issues of mutual interest in the areas of fisheries and maritime affairs.

3. The Parties shall, in a manner consistent with their international obligations:

(a) contribute to improving the global ocean governance system, including by filling regulatory and implementation gaps and promoting the ratification and implementation of relevant instruments in the maritime and fisheries sectors with third countries;

(b) adopt effective monitoring, control and surveillance measures, such as observer schemes, vessel monitoring schemes, transhipment control, inspections at sea and port state measures and associated sanctions, aimed at the conservation of fish stocks and the prevention of overfishing;

(c) maintain or adopt actions and cooperate to combat illegal, unreported and unregulated (hereinafter referred to as "IUU") fishing, including, where appropriate, the exchange of information on IUU activities in their waters and the implementation of policies and measures to exclude IUU products from trade flows and fish farming operations;

(d) cooperate with, and where appropriate in, regional fisheries management organisations to which both Parties are either members, observers, or cooperating non-contracting parties, with the aim of achieving good governance, including by advocating for science-based decisions and compliance with such decisions in those organisations;

(e) promote the development of sustainable production processes, which are environmentally responsible and economically competitive, in the freshwater and marine aquaculture industry;

(f) strengthen the safety and security of the oceans;

(g) reduce pressures on the oceans including through the fight against marine litter;

(h) promote maritime spatial planning and integrated coastal zone management;

(i) support marine research and biotechnology; and

(j) exchange best practices on the sustainable development of maritime economic activities of mutual interest to the Parties such as ocean energy, coastal and maritime tourism.

CHAPTER 7

ECONOMIC POLICY

ARTICLE 7.1

Macroeconomic Policies

The Parties shall strengthen the dialogue between their authorities on macroeconomic policies and trends and promote the exchange of information and views thereon.

ARTICLE 7.2

Enterprise and Industry, including Small and Medium-Sized Enterprises

1. The Parties shall promote a favourable environment for the development and improved competitiveness of SMEs and promote horizontal industrial policy cooperation as appropriate. Such cooperation shall consist in:

(a) promoting contacts between economic operators, encouraging joint investments and establishing joint ventures and information networks through existing horizontal programmes;

(b) exchanging information and experiences on creating framework conditions for SMEs to improve their competitiveness and on procedures related to the creation of SMEs;

(c) facilitating the activities established by SMEs of both sides;

(d) exchanging information and best practices on Industry 4.0; and

(e) promoting corporate social responsibility and accountability and encouraging responsible business practices, including sustainable consumption and production.

2. The Parties shall facilitate relevant cooperation activities established by the private sector.

ARTICLE 7.3

Business and Human Rights

The Parties shall promote corporate social responsibility, in accordance with relevant international standards, such as the UN Guiding Principles on Business and Human Rights and the OECD Guidelines for Multinational Enterprises for Responsible Business Conduct and the OECD Due Diligence Guidance for Responsible Business Conduct, at the national level, as well as to promote capacity building and the exchange of experiences at the international level.

ARTICLE 7.4

Raw Materials

1. The Parties recognise that a transparent, market-based approach is the best way to create an environment favourable to investment in the production and trade of raw materials.

2. The Parties shall promote cooperation on issues relating to raw materials within relevant regional or multilateral settings or through bilateral dialogue on request of either Party, based on mutual interests. This cooperation shall aim to remove barriers to trade in raw materials within such settings, strengthen a rules-based global framework for trade in raw materials, promote transparency in global markets for raw materials and contribute to sustainable development.

3. Such cooperation may include exchanges of information in relation to:

(a) supply and demand, bilateral trade and investment issues as well as international trade issues;

(b) tariff and non-tariff barriers for raw-material goods, related services and investments;

(c) the Parties' respective regulatory frameworks;

(d) technologies applied to production processes and use of raw materials; and

(e) best practices in relation to sustainable development of the mining industry, including minerals policy, land-use planning, permitting procedures, transparency and governance.

ARTICLE 7.5

Statistics

The Parties shall cooperate in the field of statistics, in particular by actively promoting the sharing of best practices. Such cooperation may include:

(a) increased attendance at high-level international meetings in topics of mutual interest;

(b) the harmonisation of statistics methodologies to improve data comparability; and

(c) the production and dissemination of official statistics and the development of indicators.

ARTICLE 7.6

Transport

1. The Parties shall cooperate and strengthen dialogue in all relevant areas of transport policy, including integrated transport policy, with a view to improving the movement of goods and passengers, promoting maritime and aviation safety and security and environmental protection and increasing the efficiency of their transport systems.

2. Such cooperation and dialogue may include:

(a) exchanging information and best practices with regard to their respective transport policies;

(b) strengthening aviation relations between Mexico and the Union, including exploring the possibility of concluding a dedicated aviation agreement;

(c) promoting the goals of unrestricted access to international maritime markets and trade, based on fair competition and on a commercial basis;

(d) facilitating maritime transport, logistics chains and multi-modal transport to enhance competitiveness and economic relations;

(e) promoting environment-related transport issues;

(f) facilitating expert dialogue and cooperation within international transport fora; and

(g) supporting the cross-border electronic flow of information for the promotion of a dynamic environment for efficient and cost-effective transport services.

CHAPTER 8

EDUCATION, CULTURE AND SOCIAL ISSUES

ARTICLE 8.1

Education

The Parties shall promote cooperation and dialogue in relevant areas of education, including:

(a) strengthening higher education and technical and vocational education and training;

(b) increasing the mobility of students, researchers, academic and administrative staff from higher-education institutions; and

(c) fostering capacity building in higher education institutions, including the improvement of mechanisms for recognition of qualifications and study periods abroad.

ARTICLE 8.2

Culture

1. The Parties shall cooperate in relevant international fora, in particular the UN Educational, Scientific and Cultural Organization (hereinafter referred to as the "UNESCO"), in order to pursue common objectives and to foster cultural diversity, including through the implementation of the Convention on the Protection and Promotion of the Diversity of Cultural Expressions, adopted by the General Conference of the UNESCO in Paris on 20 October 2005.

2. The Parties shall promote closer cooperation in the cultural and creative sectors and industries, including emerging and new technologies and audio-visual media, in order to enhance, inter alia, mutual understanding and knowledge of their respective cultures.

3. The Parties shall promote cultural exchanges and carry out joint initiatives in various cultural areas under available cooperation frameworks.

4. The Parties shall promote cooperation and joint initiatives related to the creation, promotion and dissemination of digital contents in the artistic and cultural field within a legal framework that recognises and values the work of creators, as a way to enhance universal access to culture and its components.

5. The Parties shall encourage intercultural dialogue between their respective civil society organisations as well as individuals.

6. The Parties recognise the role played by culture as both an enabler and driver of the economic, social and environmental dimensions of conflict prevention and sustainable development, bearing in mind that the cultural and creative industries are major drivers of the economies of developed and developing countries.

ARTICLE 8.3

Employment and Social Issues

1. The Parties acknowledge that improving living standards, creating quality jobs and promoting decent work should be at the heart of employment and social policies.

2. The Parties shall respect and promote the fundamental principles and rights at work set out in the International Labour Organization's (hereinafter referred to as the "ILO") Declaration on Fundamental Principles and Rights at Work, adopted by the International Labour Conference in Geneva on 18 June 1998, and in the corresponding ILO Conventions to which they are party.

3. The Parties shall enhance cooperation in the field of employment, social dialogue and social affairs and promote exchanges of information regarding employment, health and safety at work, labour issues and social protection.

ARTICLE 8.4

Exponential Technological Change

The Parties shall share lessons learned and best practices to address, in an effective and comprehensive manner, the impacts of exponential technological change, automation, and their implications for the full implementation of the SDGs.

ARTICLE 8.5

Social Cohesion and Inclusion

The Parties shall cooperate to enhance social cohesion through the reduction of poverty in all its forms, inequality and social exclusion with a view to achieving the SDGs globally and promoting fair globalisation, full employment, and decent work for all men and women, including through:

(a) strengthening social protection systems;

(b) encouraging equal access and non-discrimination in social policies;

(c) fostering innovation to address social challenges through the exchange of information on best practices, and the promotion of dialogue and research in this sector; and

(d) promoting social economy solidarity for inclusion and combatting poverty.

ARTICLE 8.6

Health

1. The Parties shall cooperate in the field of public health, including prevention and health promotion, to raise the level of public health safety and promote universal health coverage.

2. Such cooperation may include:

(a) exchanging information and collaborating on issues of mutual interest;

(b) promoting implementation of international health agreements; and

(c) facilitating exchanges, fellowships and training programmes in the areas referred to in paragraph 1.

ARTICLE 8.7

Tourism

1. The Parties shall cooperate in the area of tourism. Such cooperation shall primarily aim to improve the exchange of information and best practices in order to ensure the balanced and sustainable development of tourism and to support the creation of jobs and economic development.

2. Such cooperation shall focus on:

(a) safeguarding and maximising the potential of natural and cultural heritage;

(b) practices encouraging responsible tourism and respect for local communities;

(c) exchanging information and best practices about actions to improve skills and competences in the tourism sector;

(d) promoting information exchange and cooperation for creative industries and innovation in the tourism sector; and

(e) exchanging best practices with a view to mainstreaming sustainability principles, in particular biodiversity, in tourism.

CHAPTER 9

RESEARCH, INNOVATION AND DIGITAL ECONOMY

ARTICLE 9.1

Research and Innovation

1. The Parties shall cooperate in the area of scientific research, technological development and innovation on the basis of mutual interest and benefit and in accordance with their respective legislation. Such cooperation shall aim to promote sustainable development, tackle global societal challenges, achieve scientific excellence, improve regional competitiveness, as well as strengthen relations between the Parties, leading to long lasting partnerships. The Parties shall foster policy dialogue at bilateral and regional levels and use their different instruments, including agreements for scientific and technological cooperation, in complementary ways.

2. The Parties shall seek to:

(a) improve conditions for mobility of researchers, scientists, experts, students and entrepreneurs and for movement of material and equipment across borders;

(b) facilitate reciprocal access to each other's science, technology and innovation programmes, research infrastructures and facilities, publications and scientific data;

(c) increase cooperation in pre-normative research and standardisation; and

(d) promote common principles to achieve an adequate and effective level of protection and enforcement of intellectual property rights in research and innovation projects.

3. The Parties shall promote the following activities to be undertaken by government organisations, public and private research centres, higher-education institutions, innovation agencies and networks, and other stakeholders, including SMEs:

(a) joint initiatives to raise awareness on science, technology, innovation, and capacity-building programmes and opportunities for participating in each other's programmes;

(b) joint meetings and workshops aiming at exchanging information, best practices and identifying areas for joint research;

(c) joint research actions in areas of mutual interest;

(d) mutually recognised assessment and evaluation of scientific cooperation and dissemination of the corresponding results.

ARTICLE 9.2

Digital Economy

1. The Parties recognise that information and communication technologies (hereinafter referred to as "ICTs") are key elements of modern life and are of vital importance to contribute to the strengthening of information and knowledge in a society in order to enhance economic, educational and social development. The Parties shall exchange views on their respective policies in that field.

2. Such cooperation may include:

(a) exchanging views on the different aspects of the digital single market policy, in particular electronic communications policies and regulation, including access to broadband services, protection of privacy and personal data, e-government, open government, open data, internet security, e-health, and the independence of regulatory authorities;

(b) promoting ICTs as means to promote economic, social and cultural development, social and digital inclusion and cultural diversity, emphasising the entrepreneurial spirit and participatory collaborative work as well as stimulating connectivity in schools and developing research and academic networks;

(c) developing the interconnection and interoperability of research networks, computing and scientific data infrastructures and services, including those within a regional context;

(d) cooperating in the area of e-government and trust services such as electronic signature and electronic identification (eID), with a focus on exchanging policy principles, information and best practices on the use of ICTs to modernise public administration, promote high quality public services, improve organisational efficiency and transparent management of public resources;

(e) exchanging information on standards, conformity assessment and type approval; and

(f) promoting the exchange and training of specialists, in particular young professionals.

PART III[3]

TRADE AND INVESTMENT

CHAPTER 1

GENERAL AND INSTITUTIONAL PROVISIONS

SECTION A

General Provisions

ARTICLE 1.1

Establishment of a Free Trade Area

The Parties establish, by virtue of this Part of this Agreement, a free trade area, consistent with Article XXIV of GATT 1994 and Article V of GATS.

[3] Where a provision of this Part contains a reference to another provision of this Agreement, that reference is to another provision of this Part, unless explicitly indicated otherwise.

ARTICLE 1.2

Objectives

The objectives of this Part of this Agreement are:

(a) the expansion and diversification of trade in goods, in conformity with Article XXIV of GATT 1994, between the Parties through the reduction or the elimination of customs duties and non-tariff barriers to trade;

(b) the facilitation of trade in goods, in particular through the provisions regarding customs and trade facilitation, standards, technical regulations and conformity assessment procedures, as well as sanitary and phytosanitary measures, while preserving the right of each Party to regulate within its territory in order to achieve public policy objectives;

(c) the liberalisation of trade in services, in conformity with Article V of GATS;

(d) the development of a framework conducive to increased investment flows by providing transparent, stable and predictable rules governing the conditions for establishment of enterprises and the related movement of capital, and guaranteeing an appropriate balance between the liberalisation and the protection of investments and the right of each Party to regulate in order to achieve legitimate policy objectives;

(e) the establishment of an investment court system to solve investor-state disputes in an effective, impartial and predictable manner;

(f) the effective and reciprocal opening of government procurement markets of the Parties;

(g) the promotion of innovation and creativity by ensuring an adequate and effective protection of intellectual property rights, in accordance with international obligations in force between the Parties, and the balance between that protection and the public interest;

(h) the conduct of trade and investment relations between the Parties in conformity with the principle of free and undistorted competition;

(i) the promotion of sustainable development and of the development of international trade in a manner that contributes to sustainable development, encompassing economic development, social development and environmental protection;

(j) the establishment of an effective, fair and predictable dispute settlement mechanism to solve disputes between the Parties on the interpretation or application of this Part of this Agreement.

ARTICLE 1.3

Definitions of General Application

For the purposes of this Part of this Agreement, and unless otherwise specified:

(a) "administrative ruling of general application" means an administrative ruling or interpretation that applies to all persons and factual situations that fall generally within the scope of that administrative ruling or interpretation and that establishes a norm of conduct, but does not include:

(i) a determination or ruling made in administrative or quasi-judicial proceedings that applies to a particular person, good or service of the other Party in a specific case; or

(ii) any other ruling that adjudicates with respect to a particular act or practice;

(b) "Agreement on Agriculture" means the Agreement on Agriculture in Annex 1A to the WTO Agreement;

(c) "agricultural good" means a product listed in Annex 1 to the Agreement on Agriculture;

(d) "aircraft repair and maintenance services during which an aircraft is withdrawn from service" means repair and maintenance activities undertaken on an aircraft or a part thereof while it is withdrawn from service, and does not include line maintenance;

(e) "Anti-dumping Agreement" means the Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994 in Annex 1A to the WTO Agreement;

(f) "computer reservation system services" means services provided by computerised systems that contain information about air carriers' schedules, availability, fares and fare rules, and through which reservations can be made or tickets may be issued;

(g) "customs duty" means any duty or charge of any kind imposed on or in connection with the importation of a good; it includes any surtax or surcharge imposed in connection with such importation, but does not include any:

(i) charge equivalent to an internal tax imposed in accordance with Article 2.3 of this Agreement;

(ii) anti-dumping or countervailing[4] duty applied in accordance with GATT 1994, the Anti-dumping Agreement or the SCM Agreement, as appropriate;

(iii) fee or other charge imposed on or in connection with the importation of a good that is limited in amount to the approximate cost of services rendered; and

(iv) premium offered or collected on an imported good arising out of a tendering system authorised for the administration of tariff rate quotas pursuant to Appendix 2-A-4 (Tariff Rate Quotas of Mexico);

[4] For greater certainty, the definition of customs duty does not affect the rights and obligations of the Parties under Chapter 5 (Trade Remedies).

(h) "Customs Valuation Agreement" means the Agreement on Implementation of Article VII of the General Agreement on Tariffs and Trade 1994 in Annex 1A to the WTO Agreement;

(i) "days" means calendar days, including weekends and holidays;

(j) "DSU" means the Understanding on Rules and Procedures Governing the Settlement of Disputes, contained in Annex 2 to the WTO Agreement;

(k) "enterprise" means any legal entity duly constituted or otherwise organised under applicable law, whether for profit or otherwise, and whether privately owned or governmentally owned, including any corporation, trust, partnership, joint venture, sole proprietorship or association;

(l) "existing" means in effect on the date of entry into force of this Agreement;

(m) "freely convertible currency" means a currency which is widely traded in international foreign exchange markets and widely used in international transactions;

(n) "GATS" means the General Agreement on Trade in Services in Annex 1B to the WTO Agreement;

(o) "GATT 1994" means the General Agreement on Tariffs and Trade 1994 in Annex 1A to the WTO Agreement;

(p) "goods" means both materials and products;

(q) "good of a Party" means a domestic good as this is understood in GATT 1994, and includes originating goods of that Party;

(r) "ground handling services" means the supply at an airport, on a fee or contract basis, of airline representation, administration and supervision services, passenger handling, baggage handling, ramp services, catering[5], air cargo and mail handling, fuelling of an aircraft, aircraft servicing and cleaning, surface transport, and flight operation, crew administration and flight planning services; but does not include self-handling, security, line maintenance, aircraft repair and maintenance; and management or operation of essential centralised airport infrastructure such as de-icing facilities, fuel distribution systems, baggage handling systems and fixed intra-airport transport systems;

(s) "Harmonized System" or "HS" means the Harmonized Commodity Description and Coding System, including its General Rules of Interpretation, Section Notes, Chapter Notes and Subheading Notes and amendments thereto;

(t) "measure" includes any law, regulation, rule, procedure, decision, administrative action, requirement or practice[6];

(u) "national" means a natural person who has the nationality of one of the Member States of the European Union or of Mexico according to their respective law or is a permanent resident of a Party;

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[5] Except the preparation of food.

[6] For greater certainty, "measure" includes failures to act.

(v) "natural person" means[7]:

(i) for the European Union, a person having the nationality of one of the Member States of the European Union according to its legislation[8]; and

(ii) for Mexico, a person having the nationality of Mexico according to its legislation;

a natural person who is a national of Mexico and has the nationality of one of the Member States of the European Union is deemed to be exclusively a natural person of the Party of his or her dominant and effective nationality;

(w) "OECD" means the Organization for Economic Co-operation and Development;

(x) "originating good" means a good qualifying as originating under the rules of origin set out in Chapter 3 (Rules of Origin and Origin Procedures);

(y) "person" means a natural person or an enterprise;

(z) "person of a Party" means a national or an enterprise of a Party;

(aa) "preferential tariff treatment" means the rate of customs duty applicable to an originating good pursuant to Article 2.4 (Elimination or Reduction of Customs Duties);

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7 This definition applies for the purposes of Chapters 10 to 19.

8 The definition of natural persons of the European Union also includes natural persons permanently residing in the Republic of Latvia who are not citizens of the Republic of Latvia or any other state but who are entitled, under the laws and regulations of the Republic of Latvia, to receive a non-citizen's passport.

(bb) "Safeguards Agreement" means the Agreement on Safeguards in Annex 1A to the WTO Agreement;

(cc) "SCM Agreement" means the Agreement on Subsidies and Countervailing Measures in Annex 1A to the WTO Agreement;

(dd) "selling and marketing of air transport services" means opportunities for the air carrier concerned to sell and market freely its air transport services, including all aspects of marketing such as market research, advertising and distribution, but does not include the pricing of air transport services or the applicable conditions;

(ee) "service supplier" means a person that supplies or seeks to supply a service;

(ff) "SPS Agreement" means the Agreement on the Application of Sanitary and Phytosanitary Measures in Annex 1A to the WTO Agreement;

(gg) "state enterprise" means an enterprise that is owned or controlled by a Party;

(hh) "TBT Agreement" means the Agreement on Technical Barriers to Trade in Annex 1A to the WTO Agreement;

(ii) "territory" means the territory where this Agreement applies pursuant to Article 2.2 (Territorial Application) of Part IV of this Agreement;

(jj) "third country" means a country or territory outside the territorial scope of application of this Agreement;

(kk) "TRIPS Agreement" means the Agreement on Trade-Related Aspects of Intellectual Property Rights in Annex 1C to the WTO Agreement;

(ll) "Vienna Convention on the Law of Treaties" means the Vienna Convention on the Law of Treaties, done at Vienna on 23 May 1969;

(mm) "WTO" means the World Trade Organization; and

(nn) "WTO Agreement" means the Marrakesh Agreement Establishing the World Trade Organization, done at Marrakesh on 15 April 1994.

ARTICLE 1.4

Relation to the WTO Agreement

The Parties affirm their rights and obligations with respect to each other under the WTO Agreement.

ARTICLE 1.5

References to Laws and other Agreements

1. Unless otherwise indicated, any reference in this Part of this Agreement to laws, either generally or by reference to a specific statute, regulation or directive, shall be construed as a reference to the laws, as they may be amended.

2. Unless otherwise indicated, any reference, or incorporation by means of a reference in this Part of this Agreement to other agreements or legal instruments in whole or in part shall be construed as including:

(a) related annexes, protocols, footnotes, interpretative notes and explanatory notes; and

(b) successor agreements to which the Parties are party or amendments that are binding on the Parties, except where the reference affirms existing rights and obligations.

ARTICLE 1.6

Fulfilment of Obligations

1. Each Party shall adopt any general or specific measures required to fulfil the obligations under this Part of this Agreement, including measures required to ensure compliance with such obligations by central, regional or local governments and authorities, as well as non-governmental bodies in the exercise of powers delegated to them.

2. For greater certainty, a Party may suspend rights and obligations under this Part of this Agreement, except as provided for in paragraph 3 of Article 2.3 (Fulfilment of Obligations) of Part IV of this Agreement, only for violations of this Part of this Agreement by the other Party and in conformity with the requirements set out therein, including Chapter 31 (Dispute Settlement).

SECTION B

Institutional Provisions

ARTICLE 1.7

Specific Functions of the Joint Council

1. When the Joint Council established by Article 1.2 (Joint Council) of Part IV of this Agreement performs any of the functions conferred upon it in this Part of this Agreement, it shall be composed, at ministerial level, of representatives of the EU Party with responsibility for trade and investment matters, of the one part, and of representatives of the Ministry of Economy of Mexico, of the other, or by their designees.

2. The Joint Council may modify, in fulfilment of the objectives of this Part of this Agreement:

(a) Annex 2-A (Tariff Elimination Schedule) and Annex 2-E (Relevant measures on Wine Products and Spirits);

(b) Chapter 3 (Rules of Origin and Origin Procedures), including Annexes 3-A to 3-D;

(c) Annex 10-D (Code of Conduct for Members of the Tribunal, Members of the Appeal Tribunal and Mediators);

(d) the relevant lists and schedules of Mexico pursuant to paragraph 6 of Article 10.12 (Non-Conforming Measures and Exceptions) and paragraph 4 of Article 11.8 (Non-Conforming Measures and Exceptions);

(e) Annex 21-A (Covered Procurement of the European Union) and Annex 21-B (Covered Procurement of Mexico);

(f) Annex 25-B (List of Geographical Indications);

(g) Annex 31-A (Rules of Procedure) and Annex 31-B (Code of Conduct for Panellists and Mediators).

3. The Joint Council may also, in fulfilment of the objectives of this Part of this Agreement:

(a) adopt binding interpretations of the provisions of this Part of this Agreement;

(b) take other decisions as provided for in this Part of this Agreement; and

(c) take any other action in the exercise of its functions as the Parties may agree.

4. Each Party shall implement, in accordance with its applicable legal procedures, any modification referred to in subparagraph 2(a) within such period as the Parties may agree.

ARTICLE 1.8

Specific Functions of the Joint Committee

1. When the Joint Committee established by Article 1.3 (Joint Committee) of Part IV of this Agreement performs any of the functions conferred upon it in this Part of this Agreement, it shall be composed of representatives at senior level of the EU Party with responsibility for trade and investment matters, on the one part, and of representatives of the Ministry of Economy of Mexico, on the other, in accordance with the respective requirements of each Party or by their designees.

2. The Joint Committee shall:

(a) assist the Joint Council in the performance of its functions regarding trade-related matters;

(b) be responsible for the proper implementation and application of the provisions of this Part of this Agreement and for the evaluation of the results obtained from its application;

(c) without prejudice to Chapter 31 (Dispute Settlement), seek to prevent and solve any differences or disputes that might arise regarding the interpretation or application of this Part of this Agreement;

(d) supervise the work of the sub-committees and other bodies established under this Part of this Agreement; and

(e) discuss ways to further enhance trade and investment between the Parties.

3. In the performance of its duties under paragraph 2, the Joint Committee may:

(a) establish additional Sub-Committees and other bodies than those established in this Part of this Agreement, composed of representatives of the Parties, and assign them responsibilities within its competence and decide to modify the functions that are assigned to the Sub-Committees and other bodies it establishes, as well as dissolve them;

(b) recommend the adoption of decisions in compliance with the specific objectives of this Part of this Agreement to the Joint Council, including the modifications referred to in Article 1.7.2(a), or adopt such decisions in the intervals between the meetings of the Joint Council, or when the Joint Council is not able to meet; and

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

ARTICLE 1.9

Coordinators for Part III of this Agreement

1. Each Party shall designate a Coordinator for this Part of this Agreement and notify the other Party thereof within 60 days after the entry into force of this Agreement.

2. The coordinators shall:

(a) facilitate communications between the Parties on any matter covered by this Part of this Agreement, as well as other contact points established thereunder;

(b) jointly prepare agendas and make all other necessary preparations for the meetings of the Joint Council and the Joint Committee in accordance with this Article; and

(c) follow-up on the decisions of the Joint Council and the Joint Committee, as appropriate.

ARTICLE 1.10

Sub-Committees and Other Bodies of Part III of this Agreement

1. The Parties hereby establish the following sub-committees and other bodies, which shall be composed of representatives of the EU Party, of the one part, and of representatives of Mexico, of the other:

(a) Committee on Trade in Goods;

(b) Sub-Committee on Agriculture;

(c) Sub-Committee on Trade in Wine and Spirits;

(d) Sub-Committee on Customs, Trade Facilitation and Rules of Origin;

(e) Sub-Committee on Sanitary and Phytosanitary Measures;

(f) Joint Working Group on Animal Welfare and Anti-Microbial Resistance;

(g) Sub-Committee on Technical Barriers to Trade;

(h) Sub-Committee on Services and Investment;

(i) Sub-Committee on Financial Services;

(j) Sub-Committee on Public Procurement;

(k) Sub-Committee on Intellectual Property;

(l) Sub-Committee on Trade and Sustainable Development.

2. Except as otherwise provided for in this Part of this Agreement, Article 1.4 (Sub-Committees and Other Bodies) of Part IV of this Agreement applies to the sub-committees and other bodies referred to in paragraph 1 of this Article.

3. The sub-committees and other bodies referred to in paragraph 1 may make appropriate recommendations in the cases provided for under this Part of this Agreement.

4. Recommendations shall be made by mutual consent.

ARTICLE 1.11

Relationship with Civil Society

1. Each Party shall meet at least once a year its respective domestic advisory group referred to in Article 1.7 (Domestic Advisory Groups) of Part IV of this Agreement to discuss matters relating to the application of this Part of this Agreement.

2. When the Joint Council or the Joint Committee meets in its trade configuration, it shall convene a meeting of the Civil Society Forum referred to in Article 1.8 (Civil Society Forum) of Part IV of this Agreement in order to conduct a dialogue on the application of this Part of this Agreement.

CHAPTER 2

TRADE IN GOODS

SECTION A

General Provisions

ARTICLE 2.1

Definitions

For the purposes of this Chapter:

(a) "consular transaction" means the procedure of obtaining from a consul of the importing Party in the territory of the exporting Party, or in the territory of a third party, a consular invoice or a consular visa for a commercial invoice, certificate of origin, manifest, shipper's export declaration or any other customs documentation required on or in connection with the importation of a good;

(b) "export licensing procedure" means an administrative procedure requiring the submission of an application or other documentation, other than that generally required for customs clearance purposes, to the relevant administrative body or bodies of the exporting Party as a prior condition for exportation from the territory of the exporting Party;

(c) "Import Licensing Agreement" means the Agreement on Import Licensing Procedures in Annex 1A to the WTO Agreement;

(d) "import licensing procedure" means an administrative procedure requiring the submission of an application or other documentation, other than that generally required for customs clearance purposes, to the relevant administrative body or bodies of the importing Party as a prior condition for importation into the territory of the importing Party.

ARTICLE 2.2

Scope

Unless otherwise provided for in this Agreement, this Chapter applies to trade in goods of a Party.

ARTICLE 2.3

National Treatment

1. Each Party shall accord national treatment to the goods of the other Party in accordance with Article III of GATT 1994, including its Notes and Supplementary Provisions. To that end, Article III of GATT 1994 and its Notes and Supplementary Provisions are incorporated into and made part of this Agreement, *mutatis mutandis*.

2. For greater certainty, national treatment means, with respect to a level of government in Mexico other than the federal level, or a level of government of or in a Member State of the European Union, treatment no less favourable than that accorded by that level of government to like, directly competitive or substitutable goods of Mexico or the Member State, respectively.

ARTICLE 2.4

Elimination or Reduction of Customs Duties

1. Unless otherwise provided for in this Agreement, each Party shall eliminate or reduce its customs duties on originating goods in accordance with Annex 2-A and shall not apply any customs duty upon the entry into force of this Agreement to originating goods classified in tariff lines of Chapters 1 to 97 of the Harmonized System other than those included in Appendix 2-A-1 or 2-A-2, respectively, to Annex 2-A.

2. Unless otherwise provided for in this Agreement, a Party shall not increase any existing customs duty, or adopt any new customs duty, on an originating good of the other Party[9].

3. If a Party reduces its applied most-favoured-nation customs duty rate, that duty rate shall apply to originating goods of the other Party for as long as it is lower than the customs duty rate determined pursuant to Annex 2-A.

4. On request of a Party, the Parties shall consult to consider the possibility of improving the tariff treatment for market access of originating goods set out in Annex 2-A. The Joint Council may take a decision to modify that Annex[10].

5. For greater certainty, a Party may maintain or increase a customs duty on the originating good as authorised by the Dispute Settlement Body of the WTO.

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[9] For greater certainty, following a unilateral reduction of a customs duty, a Party may raise that customs duty to the level determined for the respective year of the tariff elimination schedule in accordance with Annex 2-A.

[10] For greater certainty; that modification shall supersede any customs duty rate or staging category set out in Annex 2-A.

ARTICLE 2.5

Export Duties, Taxes or Other Charges

1. A Party shall not adopt or maintain any tax or charge on the exportation of a good to the territory of the other Party that is in excess of that imposed on that good when destined for domestic consumption.

2. A Party shall not adopt or maintain any duty or charge of any kind imposed on, or in connection with, the exportation of a good to the territory of the other Party that is in excess of that imposed on that good when destined for domestic consumption.

3. Nothing in this Article shall prevent a Party from imposing on the exportation of a good a fee or charge that is permitted under Article 2.6.

ARTICLE 2.6

Fees and Formalities

1. Fees and other charges imposed by a Party on, or in connection with, the importation of a good of the other Party or the exportation of a good to the other Party shall be limited in amount to the approximate cost of services rendered, and shall not represent an indirect protection to domestic goods or a taxation of imports or exports for fiscal purposes.

2. A Party shall not apply a customs-processing fee on originating goods[11].

3. Each Party shall publish all fees and charges it imposes in connection with importation or exportation in such a manner as to enable governments, traders and other interested parties to become acquainted with them.

4. A Party shall not require consular transactions, including related fees and charges, in connection with the importation of a good of the other Party[12].

ARTICLE 2.7

Goods Re-Entered after Repair or Alteration

1. "repair or alteration" means any processing operation undertaken on a good to remedy operating defects or material damage and entailing the re-establishment of the good to its original function or to ensure compliance with technical requirements for its use, without which the good could no longer be used in the normal way for the purposes for which it was intended. Repair of a good includes restoration and maintenance but does not include an operation or process that:

(a) destroys the essential characteristics of a good, or creates a new or commercially different good;

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11 For Mexico, the customs processing fee refers to the "*Derecho de Trámite Aduanero*".

12 For greater certainty, the importing Party may require the consularisation of documents by its consul with jurisdiction in the territory of the exporting Party:
(a) for investigation or audit purposes, or
(b) for the importation of household effects.

(b) transforms an unfinished good into a finished good; or

(c) is used to substantially change the function of a good.

2. A Party shall not apply a customs duty to a good, regardless of its origin, that re-enters its territory after having been temporarily exported 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 the territory of the Party from which the good was exported for repair or alteration.

3. Paragraph 2 does not apply to a good imported in bond, into free trade zones, or in similar status, that is then exported for repair and is not re-imported in bond, into free trade zones, or in similar status.

4. A Party shall not apply a customs duty to a good, regardless of its origin, temporarily imported from the territory of the other Party for repair or alteration.

ARTICLE 2.8

Remanufactured Goods

1. "remanufactured good" means a good classified in Chapters 84 to 90, or in heading 9402, of the Harmonized System, except goods included in Annex 2-B to this Agreement, that:

(a) is entirely or partially produced from materials recovered from goods that have been used;

(b) has similar performance and working conditions as well as life expectancy as a like good in new condition; and

(c) is given the same warranty as a like good in new condition.

2. Unless otherwise provided for in this Agreement, a Party shall not accord to remanufactured goods of the other Party a treatment that is less favourable than that it accords to like goods in new condition.

3. Subject to its obligations under this Agreement and the WTO Agreement, a Party may require that remanufactured goods:

(a) be identified as such for distribution or sale in its territory, including specifically labelled in order to prevent deception of consumers; and

(b) meet all applicable technical requirements and regulations that apply to like goods in new condition.

4. For greater certainty, Article 2.9 applies to remanufactured goods. If a Party adopts or maintains import or export prohibitions or restrictions on used goods, it shall not apply those measures to remanufactured goods.

ARTICLE 2.9

Import and Export Restrictions

Unless otherwise provided for in Annex 2-C to this Agreement, a Party shall not 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 1994, including its Notes and Supplementary Provisions. To that end, Article XI of GATT 1994, including its Notes and Supplementary Provisions, are incorporated into and made part of this Agreement, *mutatis mutandis*.

ARTICLE 2.10

Import Licensing

1. Each Party shall adopt and administer any import licensing procedures in accordance with Articles 1 to 3 of the Import Licensing Agreement.

2. Each Party shall notify to the other Party any new import licensing procedure and any modification of existing import licensing procedures within 60 days after the date of its publication and, if possible, no later than 60 days before the new procedure or modification takes effect. The notification shall include the information specified in paragraph 2 of Article 5 of the Import Licensing Agreement, as well as the electronic addresses of the official websites, referred to in paragraph 4 of this Article. A Party shall be deemed to comply with this provision if it notifies the relevant new import licensing procedure, or any modification thereof, to the Committee on Import Licensing provided for in Article 4 of the Import Licensing Agreement in accordance with paragraphs 1 to 3 of Article 5 of the Import Licensing Agreement.

3. On request of a Party, the other Party shall promptly provide any relevant information, including the information specified in paragraph 2 of Article 5 of the Import Licensing Agreement, regarding any import licensing procedure that it intends to adopt, has adopted or maintains, or regarding any modification of existing licensing procedures.

4. Each Party shall publish on the relevant official websites the information it is required to publish pursuant to subparagraph 4(a) of Article 1 of the Import Licensing Agreement and shall ensure that the information specified in paragraph 2 of Article 5 of the Import Licensing Agreement is publicly available.

ARTICLE 2.11

Export Licensing

1. Each Party shall publish any new export licensing procedure, or any modification of an existing export licensing procedure including, if appropriate, on the relevant official websites. Such publication shall take place, if practicable, no later than 45 days before the procedure or modification takes effect, and in any event, no later than the date when the procedure or modification takes effect.

2. Each Party shall notify to the other Party its existing export licensing procedures within 60 days after the date of entry into force of this Agreement. Each Party shall notify to the other Party any new export licensing procedure and any modification of existing export licensing procedures, within 60 days after the date of its publication. Such notifications shall include the reference to the source where the information required pursuant to paragraph 3 is published and, if appropriate, the address of the relevant official website.

3. The publication of export licensing procedures shall include the following information:

(a) the texts of the export licensing procedures and any modification thereof;

(b) the goods subject to each export licensing procedure;

(c) for each procedure, a description of the process for applying for an export licence and any criteria an applicant has to fulfil to be eligible to apply for an export licence, such as possessing an activity licence, establishing or maintaining an investment, or operating through a particular form of establishment in a Party's territory;

(d) one or more contact points from whom interested persons can obtain further information on the conditions for obtaining an export licence;

(e) the administrative body or bodies to which an application or other relevant documentation is to be submitted;

(f) a description of any measure or measures being implemented through the export licensing procedure;

(g) the period during which each export licensing procedure will be in effect, unless the procedure will remain in effect until it is withdrawn or revised in a new publication;

(h) if the Party intends to use an export licensing procedure to administer an export quota, the overall quantity, the opening and closing dates of the quota and, if applicable, the value of the quota; and

(i) any exemptions from or exceptions to the requirement to obtain an export licence, how to request or use those exemptions or exceptions, and the criteria for granting them.

4. For greater certainty, nothing in this Article requires a Party to grant an export licence, or prevents a Party from implementing its obligations or commitments under the United Nations Security Council Resolutions, as well as multilateral non-proliferation regimes and export control arrangements.

ARTICLE 2.12

Customs Valuation

The Parties affirm their rights and obligations under the Customs Valuation Agreement.

ARTICLE 2.13

Temporary Admission of Goods

1. Each Party shall grant temporary admission with total conditional relief from import duties, as provided for in its laws and regulations, for the following goods, regardless of their origin:

(a) goods intended for display or use at exhibitions, fairs, meetings, demonstrations or similar events;

(b) professional equipment, including equipment for the press or for sound or television broadcasting, software, cinematographic equipment, and any ancillary apparatus or accessories for such equipment, that is necessary for carrying out the business activity, trade or profession of a person visiting the territory of the Party to perform a specified task;

(c) containers, commercial samples, advertising films and recordings and other goods imported in connection with a commercial operation;

(d) goods imported for sports purposes;

(e) goods imported for humanitarian purposes; and

(f) animals imported for specific purposes.

2. Each Party may require that the goods benefiting from temporary admission in accordance with paragraph 1:

(a) are intended for re-exportation without having undergone any change except normal depreciation due to the use made of them;

(b) are used solely by or under the personal supervision of a national of the other Party in the exercise of the business activity, trade, profession or sport of that person of the other Party;

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

(d) are accompanied by a security, if requested by the importing Party, in an amount no greater than the charges that would otherwise be owed on entry or final importation, releasable on exportation of the goods;

(e) can be identified when imported and exported;

(f) are re-exported within a specified period reasonably related to the purpose of the temporary admission; and

(g) are admitted in no greater quantity than is reasonable for their intended use.

3. Each Party shall permit goods temporarily admitted under this Article to be re-exported through any customs port or office other than the one through which they were admitted.

4. Each Party shall provide that the importer or any other person responsible for goods admitted in accordance with this Article shall not be held liable for the failure to export such goods, within the period fixed for temporary admission, including any lawful extension, upon presentation of satisfactory proof to the importing Party, in accordance with its customs legislation, that the goods were totally destroyed or irretrievably lost.

ARTICLE 2.14

Cooperation

1. Special provisions on administrative cooperation between the Parties in relation to preferential tariff treatment are set out in Annex 2-D.

2. The Parties shall annually exchange import statistics starting one year after the entry into force of this Agreement, until the Committee on Trade in Goods decides otherwise. The exchange of import statistics shall cover data pertaining to the most recent year available, including value and volume, at the tariff line level for imports of goods of the other Party benefitting from preferential tariff treatment under this Agreement and of those receiving non-preferential treatment.

ARTICLE 2.15

Committee on Trade in Goods

The Committee on Trade in Goods established by subparagraph 1(a) of Article 1.10 (Sub-Committees and Other Bodies of Part III of this Agreement) shall:

(a) monitor the implementation and administration of this Chapter and Annexes 2-A to 2-G;

(b) promote trade in goods between the Parties, including through consultations on improving market access tariff treatment under this Agreement and other issues, as appropriate;

(c) provide a forum to discuss and resolve any issues related to this Chapter;

(d) promptly address barriers to trade in goods between the Parties, especially those related to the application of non-tariff measures and, if appropriate, referring such matters to the Joint Committee for its consideration;

(e) recommend to the Joint Committee any modification of or addition to this Chapter;

(f) coordinate the data exchange for preference utilisation or any other information exchange on trade in goods between the Parties that it may decide;

(g) review any future amendments of the Harmonized System to ensure that each Party's obligations under this Agreement are not altered, and consult to resolve any related conflict;

(h) perform any other functions that the Joint Committee may assign to it.

SECTION B

Trade in Agricultural Goods

ARTICLE 2.16

Scope

This Section applies to measures adopted or maintained by a Party relating to trade in agricultural goods.

ARTICLE 2.17

Cooperation in Multilateral Fora

1. The Parties shall cooperate under the WTO to promote a universal, rules-based, open, non-discriminatory and equitable multilateral trading system, to advance agriculture negotiations, and to promote the establishment of any new disciplines facilitating trade in agricultural goods.

2. The Parties recognise that some export measures, such as export prohibitions, export restrictions or export taxes may have a detrimental effect on critical supplies of agricultural goods. In this respect, the Parties shall support the establishment of disciplines through an active participation in the relevant international fora.

ARTICLE 2.18

Export Competition

1. For the purposes of this Article:

(a) "export subsidies" means subsidies within the meaning of paragraph (e) of Article 1 of the Agreement on Agriculture; and

(b) "measures with equivalent effect" means export credits, export credit guarantees or insurance programmes, as well as other measures that have an equivalent effect to an export subsidy[13].

2. The Parties affirm their commitments in the Decision on Export Competition, adopted on 19 December 2015 by the Ministerial Conference of the WTO in Nairobi, to exercise utmost restraint with regard to any recourse to all forms of export subsidies and all export measures with equivalent effect and to enhance transparency and to improve monitoring in relation to all forms of export subsidies and all export measures with equivalent effect.

3. A Party shall not adopt or maintain any export subsidy on any agricultural good that is exported or incorporated in a good that is exported to the territory of the other Party.

4. A Party shall not maintain, introduce or reintroduce any other measure with equivalent effect on an agricultural good that is exported or incorporated in a good that is exported to the territory of the other Party, unless that measure with equivalent effect complies with the terms and conditions determined in the relevant WTO Agreement, decision or commitment.

5. With the aim of enhancing transparency and improving monitoring in relation to export subsidies and other measures with equivalent effect, a Party which has a reasonable doubt about an export subsidy or other measure with equivalent effect applied by the other Party on an agricultural good destined for export to the former Party, may require the necessary information on the measures applied from the other Party. The information required shall be provided without delay.

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[13] In interpreting the term "measures with equivalent effect", for a specific case, the Parties may seek guidance in the relevant WTO rules as well as in the practice of the WTO membership.

ARTICLE 2.19

Administration of Tariff Rate Quotas

1. A Party applying tariff rate quotas in accordance with Annex 2-A shall:

(a) administer those tariff rate quotas in a timely manner and in a transparent, objective and non-discriminatory way in accordance with its law; and

(b) make publicly available in a timely and continuous manner all relevant information concerning quota administration, including the volume available, utilisation rates and eligibility criteria.

2. The Parties shall consult regarding any matter related to the administration of the tariff rate quotas. For that purpose, each Party shall designate a contact point to facilitate communication between the Parties and notify the other Party of its contact details. The Parties shall promptly notify each other of any changes to those contact details.

ARTICLE 2.20

Sub-Committee on Agriculture

1. The Sub-Committee on Agriculture established by subparagraph 1(b) of Article 1.10 (Sub-Committees and Other Bodies of Part III of this Agreement) shall:

(a) monitor the implementation and administration of this Section, and promote cooperation in order to facilitate trade in agricultural goods between the Parties;

(b) provide a forum for the Parties to discuss developments in their agricultural programs and trade in agricultural goods between the Parties;

(c) address barriers, including non-tariff barriers, to trade in agricultural goods between the Parties;

(d) evaluate the impact of this Chapter on the agricultural sector of each Party, as well as the operation of the instruments of this Chapter, and recommend any appropriate action to the Committee on Trade in Goods;

(e) provide a forum to consult on matters related to this Section in coordination with other relevant committees, working groups or any other specialised body under this Agreement;

(f) undertake any other functions that the Committee on Trade in Goods may assign to it; and

(g) report the results of its work under this paragraph to the Committee on Trade in Goods for its consideration.

2. The Sub-Committee on Agriculture shall meet at least once a year, unless otherwise agreed.

3. When special circumstances arise, on request of a Party, the Sub-Committee on Agriculture shall meet, by agreement of the Parties, no later than 30 days after the date of such request.

SECTION C

Trade in Wine and Spirits

ARTICLE 2.21

Scope

This Section applies to wine products[14] and spirits classified under headings 2204, 2205 and 2208 of the Harmonized System.

[14] For greater certainty, "wine products" means wine and other wine products classified under headings 2204 and 2205 of the Harmonized System.

ARTICLE 2.22

Oenological Practices

1. The European Union shall authorise the importation and marketing in its territory for human consumption of wine originating in Mexico and produced in compliance with:

(a) product definitions authorised in Mexico by the laws and regulations referred to in Part A of Annex 2-E; and

(b) oenological practices authorised and restrictions applied in Mexico pursuant to the laws and regulations referred to in Part A of Annex 2-E or otherwise approved for use in wines for export by the competent authority of Mexico, in so far as they are recommended and published by the International Organisation of the Vine and Wine (hereafter referred to as "OIV").

The authorisation referred to in this paragraph is subject to the requirement that no alcohol or spirits be added to the wines, with the exception of liquor wines to which alcohol of vine origin or grape spirit may be added. This subparagraph is without prejudice to the possibility of adding alcohol different from alcohol of vine origin in the production of "vino generoso", provided that such an addition is clearly displayed on the label.

2. Mexico shall authorise the importation and marketing in its territory for human consumption of wine originating in the European Union and produced in compliance with:

(a) product definitions authorised in the European Union by the laws and regulations referred to in Part B of Annex 2-E;

(b) oenological practices authorised and restrictions applied in the European Union pursuant to the laws and regulations referred to in Part B of Annex 2-E; and

(c) the fact that the addition of alcohol or spirits is excluded for all wines other than liqueur wines to which only alcohol of vine origin or grape spirit may be added.

3. Vine varieties that may be used in wines imported from a Party and marketed in the territory of the other Party are varieties of plants of the "vitis vinifera" and hybrids thereof, without prejudice to more restrictive laws and regulations which a Party might have in respect of wine produced in its territory.

4. The Joint Council may modify Parts A and B of Annex 2-E in order to add, delete or update the references to product definitions, and oenological practices and restrictions.

ARTICLE 2.23

Labelling of Wine Products and Spirits

1. A Party shall not require any of the following dates or their equivalent to be displayed on the container, label, or packaging of wine products or spirits:

(a) date of packaging;

(b) date of bottling;

(c) date of production or manufacture;

(d) date of expiration, "use by" date, "use or consume by" date, "expire by" date;

(e) date of minimum durability, "best-by" date, "best quality before" date; or

(f) "sell-by" date.

A Party may require the display of a date of minimum durability in the case of the addition of perishable ingredients or in the case of a durability considered by the producer to be less than or equal to 12 months.

2. A Party shall not require translations of trademarks, brand names or geographical indications to be displayed on containers, labels, or packaging of wine products or spirits.

3. A Party shall permit mandatory information, including translations, to be displayed on a supplementary label affixed to a container of wine products or spirits. Supplementary labels may be affixed to imported containers of wine or spirit after importation but prior to offering the product for sale in the Party's territory, provided that the mandatory information of the original label is fully and accurately reflected.

4. A Party shall permit the use of identification lot codes provided that those codes are preserved from deletion.

5. A Party shall not apply a labelling measure to wine products and spirits that were marketed in the territory of that Party prior to the date on which the measure entered into force, except under exceptional circumstances.

6. A Party shall permit the use of drawings, figures, illustrations and claims or legends on bottles provided that they do not replace mandatory labelling information and do not mislead the consumer as to the real characteristics and composition of the wine products and spirits.

7. A Party shall not require that labels of wine products or spirits display allergen labelling with regard to allergens which have been used in the production and preparation of the wine products or spirits and which are not present in the final product.

8. For trade in wine between the Parties, wine originating in the European Union may be labelled in Mexico with an indication of the product type as specified in Part C of Annex 2-E.

9. Each Party shall protect the following names with regard to wine products and spirits, in conformity with the Paris Convention for the Protection of Industrial Property, done at Paris on 20 March 1883 (hereinafter referred to as "the Paris Convention"):

(a) the name of a Member State of the European Union; and

(b) the name of the United Mexican States or Mexico and its States.

10. A Party shall permit labels of wine products or spirits to express the alcoholic content by volume in the following abbreviations:

(a) "% Alc. Vol.";

(b) "% Alc Vol.";

(c) "% alc. vol.";

(d) "% alc vol.";

(e) "% Alc.";

(f) "% Alc./Vol.";

(g) "Alc( )%vol.";

(h) "% alc/vol";

(i) "alc( )%vol".

ARTICLE 2.24

Certification of Wine Products and Spirits

1. A Party may require, for wine products imported from the other Party and placed on its market, only the documentation and certification set out in Part D of Annex 2-E.

2. A Party shall not submit the import of wine products produced in the territory of the other Party to more restrictive import certification requirements than those laid down in this Agreement.

3. Each Party may apply its laws and regulations in order to identify adulterated or contaminated products after their final importation.

4. In the event of a dispute, each Party shall recognise as reference methods, the methods of analysis complying with the standards recommended by international organisations such as the International Organization for Standardization (ISO) or, in case such methods do not exist, the methods of the OIV.

5. Each Party shall authorise the importation into its territory of spirits in accordance with the rules governing import documentation or certification and analysis reports as provided for in its laws and regulations.

6. The European Union shall require, for the importation of Tequila and Mezcal into the European Union, the presentation to its customs authorities of an export authenticity certificate of those products issued by the conformity assessment bodies accredited and approved by the Mexican authorities[15]. Mexico shall provide models of the export authenticity certificate of Tequila and Mezcal and notify any changes related to those certificates to the Sub-Committee on Trade in Wines and Spirits.

7. A Party may introduce temporary additional import certification requirements for wine products and spirits imported from the other Party in response to legitimate public policy concerns, such as health or consumer protection, or in order to act against fraud. In such case, the Party shall provide to the other Party adequate information and sufficient time to permit the fulfilment of the additional requirements.

Such requirements shall not extend beyond the period of time necessary to respond to the particular public policy concern or risk of fraud in response to which they were introduced.

[15] For greater certainty, this is without prejudice to the laws and regulations of each Party for the marketing and commercialisation of those products.

8. The Joint Council may modify Part D of Annex 2-E with regard to the documentation and certification referred to in paragraph 1.

ARTICLE 2.25

Applicable Rules

Unless otherwise provided for in this Agreement, importation and marketing of products covered by this Section, traded between the Parties, shall be conducted in compliance with the laws and regulations applicable in the territory of the Party of importation.

ARTICLE 2.26

Transitional Measures

Products which, at the date of entry into force of this Agreement, have been produced and labelled in accordance with the laws and regulations of a Party and the existing agreements between the Parties, but which do not comply with this Section may be marketed in the importing Party under the following conditions:

(a) by wholesalers or producers, for a period of two years; or

(b) by retailers, until stocks are exhausted.

ARTICLE 2.27

Notifications

Each Party shall ensure timely notification to the other Party of any amendments to laws and regulations on matters covered by this Section that have an impact on products traded between them.

ARTICLE 2.28

Cooperation on Trade in Wines and Spirits

1. The Parties shall cooperate on and address matters related to trade in wines and spirits, in particular:

(a) product definitions, certification and labelling; and

(b) the use of grape varieties in winemaking and labelling thereof.

2. To facilitate mutual assistance between the enforcement authorities of the Parties, each Party shall designate the competent authorities and bodies responsible for the implementation and application of matters covered by this Section. If a Party designates more than one competent authority or body, it shall ensure coordination between those authorities and bodies. In that case, a Party shall also designate a single liaison authority to serve as the single contact point for the authority or body of the other Party.

3. The Parties shall inform each other of the names and addresses of the competent authorities and bodies referred to in paragraph 2, and any changes thereto, no later than six months after the date of entry into force of this Agreement.

4. The authorities and bodies referred to in this Article shall closely cooperate and seek ways of further improving mutual assistance in the application of this Section, in particular in order to combat fraudulent practices.

ARTICLE 2.29

Sub-Committee on Trade in Wines and Spirits

1. The Sub-Committee on Trade in Wines and Spirits established by subparagraph 1(c) of Article 1.10 (Sub-Committees and Other Bodies of Part III of this Agreement) shall:

(a) monitor the implementation and administration of this Section;

(b) provide a forum for cooperation on matters relating to this Section and exchange of information; and

(c) ensure the proper functioning of this Section.

2. The Sub-Committee on Trade in Wines and Spirits may make recommendations and prepare decisions for the Joint Council which may be adopted as provided for in this Section.

SECTION D

Non-Tariff Market Access Commitments for Other Sectors

ARTICLE 2.30

Pharmaceuticals

Specific non-tariff market access commitments of each Party relating to pharmaceutical products and medical devices are set out in Annex 2-F.

ARTICLE 2.31

Motor Vehicles

Specific non-tariff market access commitments of each Party relating to motor vehicles and equipment, and parts thereof, are set out in Annex 2-G.

CHAPTER 3

RULES OF ORIGIN AND ORIGIN PROCEDURES

SECTION A

Rules of Origin

ARTICLE 3.1

Definitions

1. For the purposes of this Chapter:

(a) "Chapters", "headings" and "subheadings" mean the chapters (two-digit codes), the headings (four-digit codes) and the sub-headings (six-digit codes) used in the nomenclature of the Harmonized System;

(b) "competent governmental authority" means, in the case of Mexico, the designated authority within the Ministry of Economy (*Secretaría de Economía*), or its successor;

(c) "consignment" means goods which are either sent simultaneously from one exporter to one consignee or covered by a single transport document covering their shipment from the exporter to the consignee or, in the absence of such a document, by a single invoice;

(d) "customs authorities" means the governmental authority that is responsible under the law of a Party for the administration, application and enforcement of customs laws and regulations;

(e) "exporter" means a person located in the territory of a Party who exports from the territory of that Party and makes out a statement on origin;

(f) "importer" means a person located in the territory of a Party who imports a good and claims preferential tariff treatment;

(g) "material" means any ingredient, raw material, component, part, or the like, used in the production of the product;

(h) "non-originating materials" means materials which do not qualify as originating under this Chapter;

(i) "originating materials" or "originating products" means materials or products, respectively, that qualify as originating under this Chapter;

(j) "product" means the product being manufactured, even if it is intended as a material for later use in the production of another product; and

(k) "production" means any kind of working, processing or specific operations, including assembly.

ARTICLE 3.2

General Requirements

1. For the purpose of applying the preferential tariff treatment by a Party to the originating good of the other Party in accordance with this Agreement, the following products shall be considered as originating in the Party where the last production took place:

(a) products wholly obtained in that Party within the meaning of Article 3.4;

(b) products produced in that Party exclusively from originating materials; or

(c) products produced in that Party incorporating non-originating materials, provided that they fulfil the conditions set out in Annex 3-A.

2. A product considered as originating in a Party in accordance with paragraph 1 of this Article has to meet all other applicable requirements of this Chapter for granting preferential tariff treatment based on a claim pursuant to Article 3.16.

3. If a product has acquired originating status, the non-originating materials used in the production of that product shall not be considered non-originating when that product is incorporated as a material in another product.

4. For the acquisition of the originating status, the product has to be produced as referred to in subparagraphs 1(a) to 1(c) without interruption in a Party.

ARTICLE 3.3

Cumulation of Origin

1. A product originating in a Party shall be considered as an originating product of the other Party if it is used as a material in the production of another product in that other Party[16].

2. Paragraph 1 does not apply if:

(a) the production of a product does not go beyond the operations referred to in Article 3.6; and

(b) the object of the production, as demonstrated on the basis of a preponderance of evidence, is to circumvent financial or tax law of any of the Parties.

[16] When the rules of origin for a material differ between the Parties, the origin of that material shall be determined in accordance with the rules of origin applicable to the exporting Party.

ARTICLE 3.4

Wholly Obtained Products

1. The following products shall be considered as wholly obtained in a Party:

(a) mineral products extracted from its soil or from its seabed;

(b) plants and vegetable products grown or harvested there;

(c) live animals born and raised there;

(d) products from live animals raised there;

(e) products obtained from slaughtered animals born and raised there;

(f) products obtained by hunting or fishing conducted there;

(g) products obtained from aquaculture there, if aquatic organisms, including fish, molluscs, crustaceans, other aquatic invertebrates and aquatic plants are born or raised from seed stock such as eggs, roes, fry, fingerlings or larvae, by intervention in the rearing or growth processes to enhance production such as regular stocking, feeding or protection from predators;

(h) products of sea fishing and other products taken from the sea outside any territorial sea by a vessel of a Party;

(i) products produced on board of a factory ship of a Party exclusively from products referred to in subparagraph (h);

(j) used articles collected there fit only for the recovery of raw materials, including those raw materials;

(k) waste and scrap resulting from production operations conducted there;

(l) products extracted from the seabed or subsoil thereof outside the territorial sea of a Party, provided that they have rights to exploit or work such seabed or subsoil; or

(m) goods produced there exclusively from the products specified in subparagraphs (a) to (l).

2. The terms "vessel of a Party" and "factory ship of a Party" in subparagraphs 1(h) and 1(i) mean a vessel or a factory ship which:

(a) is registered in a Member State of the European Union or in Mexico;

(b) sails under the flag of a Member State of the European Union or Mexico; and

(c) meets one of the following conditions:

(i) it is at least 50 % owned by nationals of a Member State of the European Union or Mexico; or

(ii) it is owned by enterprises which:

(A) have their head office and main place of business in the European Union or Mexico; and

(B) are at least 50 % owned by public entities, nationals or enterprises of a Member State of the European Union or Mexico.

ARTICLE 3.5

Tolerances

1. If a product does not satisfy the requirements set out in Annex 3-A due to the use of a non-originating material in the production, that product shall nevertheless be considered as originating in a Party provided that:

(a) the total value of that non-originating material does not exceed 10 % of the ex-works price of the product; and

(b) none of the percentages set out in Annex 3-A for the maximum value or weight of non-originating materials are exceeded through the application of this paragraph.

2. Paragraph 1 does not apply to products classified under Chapters 50 to 63, for which the tolerances set out in Notes 5 and 6 of Section A of Annex 3-A apply.

3. Paragraph 1 of this Article does not apply to products wholly obtained in a Party within the meaning of Article 3.4. If Annex 3-A requires that the materials used in the production of a product are wholly obtained, the tolerance provided for in paragraph 1 of this Article applies to the sum of those materials.

ARTICLE 3.6

Insufficient Working or Processing Operations

1. Notwithstanding Article 3.2.1(c), a product shall not be considered as originating in a Party if the production of the product in a Party consists only of the following operations performed on non-originating materials:

(a) operations to ensure the preservation of products in good condition during transport and storage such as ventilation, spreading out, drying, freezing, chilling, placing in salt, sulphur dioxide or other aqueous solutions, removal of damaged parts, and like operations;

(b) simple addition of water or dilution that does not materially alter the characteristics of the product or dehydration or denaturation[17] of products;

(c) sifting, screening, sorting, classifying, grading or matching, including the making-up of sets of articles;

(d) sharpening, simple grinding or simple cutting;

(e) peeling, stoning or shelling of fruits, nuts or vegetables;

(f) husking;

(g) removing of grains;

(h) polishing or glazing of cereals and rice, partial or total milling of rice;

(i) operations to colour or flavour sugar or form sugar lumps; partial or total milling of crystal sugar;

(j) changes of packaging, breaking up and assembly of packages;

(k) simple packaging operations;

[17] Denaturation covers making alcohol unfit for human consumption by the addition of toxic or foul-tasting substances.

(l) affixing or printing marks, labels, logos and other like distinguishing signs on products or their packaging;

(m) washing, cleaning, the removal of dust, oxide, oil, paint or other coverings;

(n) simple painting and polishing operations;

(o) simple mixing of products[18], whether or not of different kinds[19];

(p) assembly of parts classified as a complete or finished article in accordance with General Interpretative Rule 2(a) of the General Rules for the Interpretation of the Harmonized System or other simple assembly of parts;

(q) disassembly of a product into parts or components;

(r) ironing or pressing of textiles and textile articles;

(s) slaughter of animals; or

(t) a combination of two or more operations specified in subparagraphs (a) to (s).

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18 Simple mixing of products covers mixing of sugar.

19 These operations do not apply to mixing and blending as referred to in Chapters 27 to 30, 32 to 35 and 38.

2. For the purposes of paragraph 1, operations shall be considered simple if neither special skills nor machines, apparatus or tools especially produced or installed for those operations are required for their performance and the operations resulting from those skills, machines, apparatus or tools do not confer the essential character or properties of the good.

ARTICLE 3.7

Unit of Qualification

1. For the purposes of this Chapter, the unit of qualification shall be the particular product, which is considered as the basic unit when classifying the product under the Harmonized System.

2. For a product composed of a group or assembly of articles, which is classified under the terms of the Harmonized System in a single heading, the whole constitutes the unit of qualification.

3. For a consignment consisting of a number of identical products classified under the same heading, each product shall be considered individually when applying this Chapter.

ARTICLE 3.8

Accounting Segregation

1. If originating and non-originating fungible materials are used in the production of a good, the management of materials may be done by using an accounting segregation method without keeping the materials in separate stocks.

2. If originating and non-originating fungible products of Chapters 10, 15, 27, 28, 29, headings 32.01 to 32.07, or headings 39.01 to 39.14 are physically combined or mixed in stocks in a Party before exportation to the other Party, the management of those products may be done by using an accounting segregation method without keeping those products in separate stocks.

3. For the purposes of paragraphs 1 and 2, fungible materials or fungible products are materials or products that are of the same kind and commercial quality, with the same technical and physical characteristics, and which cannot be distinguished one from another, in the case of materials, once they are incorporated into the finished product.

4. The accounting segregation method used for managing stocks shall be applied pursuant to a stock management system which is in accordance with accounting principles generally accepted in the Party.

5. The stock management system must ensure at any time that the number of products obtained, which could be considered as originating products in a Party, is no more than the number that would have been obtained by using a method of physical segregation of the stocks.

6. A manufacturer using a stock management system must keep records of the operation of the system that are necessary for the customs authorities of the Party concerned to verify compliance with the provisions of this Chapter.

7. A Party may require that the use of accounting segregation pursuant to this Article is subject to prior authorisation by the customs authorities of that Party.

8. The customs authorities of a Party may make the granting of the authorisation referred to in paragraph 7 subject to any conditions they deem appropriate and may withdraw the authorisation if the manufacturer makes improper use thereof or fails to fulfil any of the other conditions set out in this Chapter.

ARTICLE 3.9

Accessories, Spare Parts and Tools

1. Accessories, spare parts and tools dispatched with a piece of equipment, machine, apparatus or vehicle, which are part of the normal equipment and included in the price thereof or which are not separately invoiced, shall be regarded as one with the piece of equipment, machine, apparatus or vehicle in question.

2. The accessories, spare parts and tools referred to in paragraph 1 shall be disregarded in determining the origin of the product except for the purpose of calculating the maximum value of non-originating materials if a product is subject to a maximum value of non-originating materials set out in Annex 3-A.

ARTICLE 3.10

Sets

Sets, as defined in General Rule 3 for the Interpretation of the Harmonized System, shall be considered as originating in a Party if all of their components are originating goods. If a set is composed of originating and non-originating goods, the set as a whole shall be considered as originating in a Party, provided that the value of the non-originating goods does not exceed 15 % of the ex-works price of the set.

ARTICLE 3.11

Neutral Elements

In order to determine whether a product is originating in a Party, it shall not be necessary to determine the origin of the following elements which might be used in its production:

(a) fuel, energy, catalysts and solvents;

(b) equipment, devices and supplies used to test or inspect the product;

(c) gloves, glasses, footwear, clothing, safety equipment and supplies;

(d) machines, tools, dies and moulds;

(e) plant, equipment, spare parts and materials used in the maintenance of equipment and buildings;

(f) lubricants, greases, compounding materials and other materials used in production or used to operate equipment and buildings; and

(g) other materials which are not incorporated nor intended to be incorporated into the final composition of the product.

ARTICLE 3.12

Packing Materials, Packaging Materials and Containers

1. Packaging materials and containers in which the product is packaged for retail sale, if classified with the product pursuant to General Rule 5 for the Interpretation of the Harmonized System, shall be disregarded in determining the origin of the product, except for the purpose of calculating the maximum value of non-originating materials if a product is subject to a maximum value of non-originating materials in accordance with Annex 3-A.

2. Packing materials and containers in which a product is packed for shipment shall be disregarded in determining the origin of the product.

ARTICLE 3.13

Returned Goods

If originating goods of a Party exported from that Party to a third country are returned, they shall be considered as non-originating, unless it can be demonstrated to the satisfaction of the customs authorities that the goods returned:

(a) are the same goods as those exported; and

(b) have not undergone any operation other than that necessary to preserve them in good condition while in that third country or while being exported.

ARTICLE 3.14

Non-Alteration

1. The goods declared for importation in a Party shall be the same goods as exported from the other Party in which they are considered originating. Those goods shall not have been altered, transformed in any way or subjected to operations other than operations to preserve them in good condition, or other than adding or affixing marks, labels, seals or any other distinguishing signs to ensure compliance with specific domestic requirements of the importing Party, prior to being declared for import.

2. Storage of goods or consignments may take place in a third country provided that they remain under customs supervision in that third country.

3. Without prejudice to the provisions of Section B, the splitting of consignments may take place in a third country if the splitting is carried out by the exporter or under the exporter's responsibility and provided that the goods remain under customs supervision in that third country.

4. Compliance with paragraphs 1 to 3 shall be considered as satisfied unless the customs authorities have reasons to believe the contrary. In such a case, the importer shall, in accordance with the provisions of the law of each Party, provide evidence of compliance by appropriate means, including through contractual transport documents such as bills of lading, factual or concrete evidence based on marking, numbering of packages, or any evidence related to the goods themselves.

ARTICLE 3.15

Exhibitions

1. Originating products sent for exhibition in a third country and sold after the exhibition for importation in a Party, shall benefit on importation from the provisions of this Agreement provided that it is shown to the satisfaction of the customs authorities that:

(a) an exporter has consigned the products from a Party to the third country where the exhibition was held and has exhibited them there;

(b) the products have been sold or otherwise disposed of by that exporter to a person in a Party;

(c) the products have been consigned, during the exhibition or immediately thereafter, in the same state in which they were sent for exhibition; and

(d) the products have not, since they were consigned for exhibition, been used for any purpose other than demonstration at the exhibition.

2. A statement on origin must be made out in accordance with the provisions of Section B and submitted to the customs authorities of the importing Party in the normal manner. The name and address of the exhibition must be indicated thereon.

3. Paragraph 1 shall apply to any trade, industrial, agricultural or crafts exhibition, fair or similar public show or display, which is not organised for private purposes in shops or business premises with a view to the sale of those products, and during which the products remain under customs control.

4. The customs authorities of the importing Party may require evidence that the products have remained under customs control in the third country where the exhibition was held, as well as additional documentary evidence of the conditions under which they have been exhibited.

SECTION B

Origin Procedures

ARTICLE 3.16

Claim for Preferential Tariff Treatment and Statement on Origin

1. The importing Party shall, on importation, grant preferential tariff treatment to a product originating in the other Party within the meaning of Article 3.2 based on a claim by the importer for preferential tariff treatment, provided that all other applicable requirements of this Chapter are met.

2. The claim for preferential tariff treatment shall be based on a statement on origin issued in accordance with Article 3.18 provided by the exporter on an invoice or any other commercial document.

3. The claim for preferential tariff treatment and the statement on origin referred to in paragraph 2 shall be included in the customs import declaration, in accordance with the laws and regulations of the importing Party.

4. The importer making a claim based on a statement on origin referred to in paragraph 2 shall be in possession thereof and, when required, provide a copy of the statement on origin to the customs authority of the importing Party.

5. Paragraphs 2, 3 and 4 of this Article do not apply in the cases specified in Article 3.23.

ARTICLE 3.17

Claims for Preferential Tariff Treatment after Importation

1. Each Party shall provide that an importer may claim preferential tariff treatment after the importation and obtain refund of any excess duties paid for the imported good if the importer did not make a claim for preferential tariff treatment at the time of importation and the good concerned would have qualified at the time of importation for such claim as originating in accordance with Article 3.2.

2. The importer shall make a claim for preferential tariff treatment no later than one year after the date of importation. As a condition for granting preferential tariff treatment pursuant to paragraph 1, a Party may require that the importer:

(a) provides a copy of the statement on origin for the good concerned;

(b) submits all other documents necessary for the importation of the good; and

(c) declares that the good was originating at the time of importation.

ARTICLE 3.18

Conditions for Making out a Statement on Origin

1. A statement on origin as referred to in Article 3.16.2 may be made out by an exporter registered:

(a) in Mexico, as an exporter authorised by the competent governmental authority subject to any conditions which are considered appropriate to verify the originating status of the goods as well as the fulfilment of the other requirements of this Chapter; and

(b) in the European Union, as an exporter in accordance with relevant European Union law (Registered Exporter System).

2. The customs authorities or the competent governmental authority shall grant to the registered exporter a number which shall appear on the statement on origin. The customs authorities or the competent governmental authority shall manage the registration process and may withdraw the registration in case of improper use by the exporter.

3. A statement on origin as referred to in Article 3.16.2 may be made out by any exporter for any consignment consisting of one or more packages containing originating products the total value of which does not exceed EUR 6 000.

4. The exporter shall make out a statement on origin using one of the linguistic versions included in Annex 3-B on an invoice or any other commercial document that describes the originating good in sufficient detail to enable its identification.

5. Statements on origin shall bear the original signature of the exporter in manuscript. An exporter registered in accordance with paragraph 1 shall not be required to sign such statements provided that the exporter accepts full responsibility towards the customs authorities or the competent governmental authority of the exporting Party for any statement on origin which identifies the exporter as if the statement on origin was signed in manuscript by that exporter.

6. The exporter making out a statement on origin shall be prepared to submit at any time, at the request of the customs authorities or the competent governmental authority of the exporting Party, all appropriate documents proving the originating status of the products concerned as well the fulfilment of the other requirements of this Chapter.

7. The exporter may make out a statement on origin when the goods to which it relates are exported or after exportation.

ARTICLE 3.19

Validity of the Statement on Origin

1. A statement on origin shall be valid for one year after the date it was made out.

2. A statement on origin may apply to:

(a) a single shipment of a product; or

(b) multiple shipments of identical products within any period specified in the statement on origin not exceeding 12 months.

ARTICLE 3.20

Importation by Instalments

If, at the request of an importer and in accordance with the conditions laid down by the customs authorities of the importing Party, dismantled or non-assembled goods within the meaning of General Rule 2(a) for the Interpretation of the Harmonized System falling within Sections XV to XXI of the Harmonized System are imported by instalments, a single statement on origin for those goods shall be submitted, as required by the customs authorities, on the importation of the first instalment.

ARTICLE 3.21

Minor Discrepancies and Minor Errors

1. Minor discrepancies between the statement on origin and the documents submitted to the customs office for carrying out the formalities for importing the goods shall not, because of that fact, render the statement on origin null and void, if it is duly established that this document corresponds to the products concerned.

2. The customs authorities of the importing Party shall not reject a claim for preferential tariff treatment due to minor errors in the statement on origin, such as typing errors.

ARTICLE 3.22

Record-Keeping Requirements

1. An importer claiming preferential tariff treatment for a good imported into a Party shall possess and keep the statement on origin made out by the exporter for three years after the date of importation of the product or for a longer period as specified by the importing Party.

2. An exporter who made out a statement on origin shall possess and keep a copy of the statement on origin, and of all other records demonstrating that the product satisfies the requirements to obtain originating status, for three years following the making out of that statement on origin, or for a longer period of time as specified by the exporting Party.

3. The records to be kept in accordance with this Article may be held in electronic form.

ARTICLE 3.23

Exemptions from the Statement on Origin

1. Goods sent as low-value packages from private persons to private persons, or forming part of travellers' personal luggage, shall be admitted as originating goods without requiring a statement on origin, provided that those goods are not imported by way of trade and have been declared as meeting the requirements of this Chapter, and that there is no doubt as to the veracity of that declaration.

2. Imports which are occasional and consist solely of products for the personal use of the recipients or travellers or their families shall not be considered as imports by way of trade if, from the nature and quantity of the goods, it is evident that no commercial purpose is intended, provided that the importation does not form part of a series of importations that may reasonably be considered to have been made separately for the purpose of avoiding the requirement for a statement on origin.

3. The total value of the goods referred to in paragraph 1 shall not exceed EUR 500 or its equivalent amount in the currency of the Party in the case of low value packages, or EUR 1 200 or its equivalent amount in the currency of the Party in the case of goods which are part of a travellers' personal luggage.

4. Nothing in this Article shall be construed as preventing a Party from adopting appropriate customs controls to ensure compliance with the provisions set out in paragraphs 1 to 3.

ARTICLE 3.24

Verification of Origin and Administrative Cooperation

1. The Parties shall provide each other with the addresses and contact information of the customs authorities or the competent governmental authority responsible for verifying the statements on origin.

2. In order to ensure the proper application of this Chapter, the Parties shall assist each other, through their customs authorities or the competent governmental authority, to verify whether goods are originating as well as the authenticity of the statements on origin and the accuracy of the information provided in those statements.

3. Verifications of the statements on origin shall be carried out at random or whenever the customs authorities of the importing Party have reasonable doubt as to the authenticity of the statements, the originating status of the goods concerned or the fulfilment of the other requirements of this Chapter.

4. For the purpose of implementing the provisions of paragraph 3, the customs authorities of the importing Party shall request in writing a verification of origin to the customs authority or the competent governmental authority of the exporting Party, by providing:

(a) the identity of the customs authority issuing the request;

(b) the name of the exporter to be verified;

(c) the subject and scope of the verification; and

(d) a copy of the statement on origin and, if applicable, any other relevant documentation.

5. The customs authority or the competent governmental authority of the exporting Party shall carry out the verification. For that purpose, they shall have the right to call for any evidence and to carry out any inspection of the exporter's accounts or any other check that they consider appropriate.

6. The customs authority or the competent governmental authority of the exporting Party shall inform the customs authority requesting the verification of the results of that verification as soon as possible. The results shall be presented in a written report that clearly indicates whether the goods concerned can be considered as originating, the statement on origin is authentic and the other requirements of this Chapter are fulfilled. That written report shall include:

(a) the results of the verification;

(b) the description of the goods subject to verification and the tariff classification relevant for the application of the rules of origin;

(c) a description and explanation of the rationale concerning the originating status of the good; and

(d) if available, supporting documentation.

7. If, in the case of reasonable doubt, there is no reply within 10 months after the date of the verification request, or if the reply does not contain sufficient information to determine the authenticity of the document in question or the origin of the good, the requesting customs authority is entitled, except in exceptional circumstances, to refuse to grant preferential tariff treatment.

8. The importing Party shall notify the exporting Party within 60 days after the receipt of the written report if there are differences in relation to the verification procedures of this Article, or in relation to the interpretation of the rules of origin, in determining whether a good qualifies as originating, and those differences cannot be resolved through consultations between the customs authority requesting the verification and the customs authority or competent governmental authority responsible for performing the verification.

9. At the request of either Party, the Parties shall hold and conclude consultations within 90 days after the date of the notification referred to in paragraph 8 to resolve those differences. The period for concluding consultations may be extended, on a case-by-case basis, by mutual written consent between the Parties. The Parties shall seek to resolve those differences within the Sub-Committee on Customs, Trade Facilitation and Rules of Origin established by subparagraph 1(d) of Article 1.10 (Sub-Committees and Other Bodies of Part III of this Agreement).

10. This Chapter does not prevent a customs authority of a Party from taking any other action that it considers necessary pending a resolution under this Agreement of the differences referred in paragraph 8.

ARTICLE 3.25

Confidentiality

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

2. The customs authorities or the competent governmental authority of the importing Party may use the information obtained from the other Party only for the purposes of this Chapter.

3. The customs authorities or the competent governmental authority of the exporting Party shall not disclose confidential business information obtained from the exporter, unless otherwise provided for in this Chapter.

4. The importing Party shall not use the information obtained by its customs authority pursuant to this Chapter in any criminal proceedings carried out by a court or a judge, unless the exporting Party is formally informed in writing by the importing Party about the information it intends to use and the justification for that use, and provided that no objection is raised by the exporting Party.

5. Nothing in this Agreement shall be construed as precluding a Party from using confidential information for the purposes of administration or enforcement of customs law related to this Chapter, or as otherwise required by law of the Party, including in administrative, quasi-judicial or judicial proceedings.

ARTICLE 3.26

Administrative Measures and Sanctions

A Party shall impose administrative measures and sanctions on any person who made out a document, or causes a document to be made out, which contains incorrect information for the purpose of obtaining a preferential tariff treatment for goods.

SECTION C

Other Provisions

ARTICLE 3.27

Application of this Chapter to Ceuta and Melilla

1. For the purposes of this Chapter, in the case of the European Union, the term "Party" does not include Ceuta and Melilla.

2. Originating goods of Mexico, when imported into Ceuta and Melilla, shall in all respects be subject to the same customs treatment under this Agreement as that which is applied to goods originating in the customs territory of the European Union under Protocol 2 of the Act of Accession of the Kingdom of Spain and the Portuguese Republic to the European Union. Mexico shall grant to imports of goods covered by this Agreement and originating in Ceuta and Melilla the same customs treatment as that which is granted to goods imported from and originating in the European Union.

3. The rules of origin and origin procedures referred to in this Chapter shall apply *mutatis mutandis* to goods exported from Mexico to Ceuta and Melilla and to goods exported from Ceuta and Melilla to Mexico.

4. Ceuta and Melilla shall be considered as a single territory.

5. The exporter shall enter "Mexico" or "Ceuta and Melilla" in field 3 of the text of the statement on origin, depending on the origin of the good.

6. The Spanish customs authorities shall be responsible for the application and implementation of this Chapter in Ceuta and Melilla.

ARTICLE 3.28

The Principality of Andorra and the Republic of San Marino

The preferential tariff treatment of originating goods of Andorra and of San Marino, and the determination of the origin of those goods, are set out in Annex 3-C.

ARTICLE 3.29

Explanatory Notes

Explanatory notes regarding the interpretation, application and administration of this Chapter are set out in Annex 3-D.

ARTICLE 3.30

Transitional Provisions

1. For goods for which a claim for preferential tariff treatment and importation was made before the entry into force of this Agreement, the rules and conditions set out in Annex III to Decision No 2/2000 of the EC-Mexico Joint Council[20] and its Appendices I to V shall be applicable for a maximum period of three years after the entry into force of this Agreement.

[20] Decision No 2/2000 of the EC-Mexico Joint Council of 23 March 2000 (OJ EU L 157, 30.6.2000, p. 10).

2. A proof of origin issued in accordance with the provisions of Annex III to Decision No 2/2000 and its Appendices I to V, for goods for which a claim for preferential tariff treatment has not been made by the date of entry into force of this Agreement, shall not be valid.

3. For goods which, at the entry into force of this Agreement, are either in transit from the exporting Party to the importing Party or under customs control in the importing Party without payment of import duties and taxes, a claim for preferential tariff treatment shall be made in accordance with Article 3.16, provided that those goods fulfil the requirements of this Chapter.

ARTICLE 3.31

Modifications of this Chapter

The Joint Council may modify by decision the provisions of this Chapter and Annexes 3-A to 3-D.

ARTICLE 3.32

The Sub-Committee on Customs, Trade Facilitation and Rules of Origin

For the purposes of the effective implementation and operation of this Chapter, the functions of the Sub-Committee on Customs, Trade Facilitation and Rules of Origin are those listed in Article 4.17 (Sub-Committee on Customs, Trade Facilitation and Rules of Origin).

CHAPTER 4

CUSTOMS AND TRADE FACILITATION

ARTICLE 4.1

General Objectives

1. The Parties recognise the importance of customs and trade facilitation in the evolving global trading environment.

2. The Parties recognise that, for their import, export and transit requirements and procedures, they should take into consideration customs and international trade instruments and standards applicable in the area of customs and trade, such as the substantive elements of the Revised Kyoto Convention on the Simplification and Harmonization of Customs Procedures, done at Kyoto on 18 May 1973 and adopted by the World Customs Organization Council in June 1999, the International Convention on the Harmonized Commodity Description and Coding System, done at Brussels on 14 June 1983, as well as the Framework of Standards to Secure and Facilitate Global Trade of the World Customs Organization, adopted in June 2005 (hereinafter referred to as "SAFE Framework of Standards"), and the Data Model of the World Customs Organization.

3. The Parties recognise that their laws and regulations shall be non-discriminatory, and that customs procedures shall be based upon the use of modern methods and effective controls to achieve the protection and facilitation of legitimate trade.

4. The Parties also recognise that their customs procedures shall be no more administratively burdensome or trade restrictive than necessary to achieve legitimate objectives, and that they should be applied in a manner that is predictable, consistent and transparent.

5. In order to ensure transparency, efficiency, integrity and accountability of operations, each Party shall:

(a) simplify and review requirements and formalities wherever possible with a view to the rapid release and clearance of goods;

(b) work towards the further simplification and standardisation of data and documentation required by customs and other agencies, in order to reduce the time and costs thereof for traders or operators, including small and medium-sized enterprises; and

(c) ensure that the highest standards of integrity be maintained, through the application of measures reflecting the principles of the relevant international conventions and instruments in the field of customs and trade facilitation.

6. The Parties agree to reinforce their cooperation with a view to ensuring that the relevant legislation and procedures, as well as the administrative capacity of the relevant administrations, fulfil the objectives of promoting trade facilitation while ensuring effective customs control.

ARTICLE 4.2

Transparency and Publication

1. Each Party shall provide, as appropriate, for regular consultations between border agencies and traders or other stakeholders within its territory.

2. Each Party shall promptly publish, in a non-discriminatory and easily accessible manner, including online and to the extent possible in the English language, its laws, regulations and general administrative procedures and guidelines, related to customs and trade facilitation matters. Those matters include:

(a) import, export and transit procedures, including port, airport and other entry-point procedures, and required forms and documents;

(b) applied rates of duties and taxes of any kind imposed on or in connection with importation or exportation;

(c) fees and charges imposed by or for governmental agencies on or in connection with importation, exportation or transit;

(d) rules for the classification or valuation of goods for customs purposes;

(e) laws, regulations and administrative rulings of general application relating to rules of origin;

(f) import, export or transit restrictions or prohibitions;

(g) penalty provisions against breaches of import, export or transit formalities;

(h) appeal procedures;

(i) agreements or parts thereof with any country or countries relating to importation, exportation or transit;

(j) procedures relating to the administration of tariff quotas;

(k) hours of operation and operating procedures for customs offices at ports and border crossing points; and

(l) enquiry points for information enquiries.

3. Each Party shall provide, in accordance with its laws and regulations, for opportunities and an appropriate time period to traders and other interested parties to comment on the proposed introduction or amendment of laws and regulations of general application related to customs and trade facilitation matters.

4. Each Party shall ensure, in accordance with its laws and regulations, that new or amended laws and regulations of general application related to customs and trade facilitation or any information thereon are made publicly available, as early as possible before their entry into force, in order to enable traders and other interested persons to become acquainted with them.

5. Each Party may provide that paragraphs 3 and 4 do not apply to changes to duty rates or tariff rates, measures that have a relieving effect, measures the effectiveness of which would be undermined as a result of compliance with paragraphs 3 and 4, measures applied in urgent circumstances or minor changes to its domestic law and legal system.

6. Each Party shall establish or maintain one or more enquiry points to address enquiries of traders and other interested persons concerning customs and other trade facilitation matters and shall make information concerning the procedures for making such enquiries publicly available online.

7. A Party shall not require the payment of a fee for answering enquiries or providing required forms and documents.

8. The enquiry points shall provide an answer to enquiries and provide the forms and documents within a reasonable time period set by each Party, which may vary depending on the nature or complexity of the enquiry.

ARTICLE 4.3

Data and Documentation Requirements

1. With a view to simplifying and minimising the incidence and complexity of import, export and transit formalities, data and documentation requirements, each Party shall ensure, as appropriate, that those formalities, data and documentation requirements:

(a) are adopted and applied with a view to a rapid release of goods, provided that the conditions for the release are fulfilled;

(b) are adopted and applied in a manner that aims at reducing the time and cost of compliance for traders and operators;

(c) are the least trade-restrictive alternative, if two or more alternatives were reasonably available for fulfilling the policy objective or objectives in question; and

(d) are not maintained, including parts thereof, if no longer required.

2. Each Party shall apply common customs procedures and uniform customs data and documentation requirements for the release of goods throughout its territory. Nothing in this paragraph precludes a Party from differentiating its customs procedures and data and documentation requirements based on elements such as risk management, the nature and type of goods, or means of transport.

ARTICLE 4.4

Automation and Use of Information Technology

1. Each Party shall:

(a) use information technologies that expedite procedures for the release of goods in order to facilitate trade between the Parties;

(b) make electronic systems accessible to customs users;

(c) allow a customs declaration to be submitted in electronic format; and

(d) use electronic or automated risk-management systems.

2. Each Party shall adopt or maintain procedures allowing the electronic payment of duties, taxes, fees and charges collected by customs authorities incurred upon importation and exportation.

ARTICLE 4.5

Release of Goods

1. Each Party shall adopt or maintain procedures that:

(a) provide for the prompt release of goods within a period no longer than required to ensure compliance with its customs law and other trade-related laws and regulations;

(b) provide for advance electronic submission and processing of customs data and documentation and any other information prior to the arrival of the goods in order to enable the release of goods from customs control upon arrival;

(c) allow goods to be released at the point of arrival without temporary transfer to warehouses or other facilities; and

(d) allow for the release of goods prior to the final determination of customs duties, taxes, fees and charges, if that determination is not done prior to or promptly upon arrival, provided that all other regulatory requirements have been met; before releasing the goods, a Party may require that an importer provides sufficient guarantee in the form of a surety, a deposit, or other appropriate instrument, which shall not be higher than the amount required to secure payment of customs duties, taxes, fees and charges due for the goods covered by the guarantee and that shall be discharged when that guarantee is no longer required.

2. Each Party may adopt or maintain measures allowing traders or operators to benefit from further simplification of customs procedures, in accordance with its laws and regulations.

ARTICLE 4.6

Risk Management

1. Each Party shall adopt or maintain a risk-management system for customs control that enables its customs authorities to focus their inspection activities on high-risk consignments and expedite the release of low-risk consignments.

2. Each Party shall design and apply risk management in a manner as to avoid arbitrary or unjustifiable discrimination, or disguised restrictions to international trade.

3. Each Party shall base risk management on the assessment of risk through appropriate selectivity criteria.

4. Each Party may also select, on a random basis, consignments for customs controls as part of its risk management.

5. In order to facilitate trade, each Party shall periodically review and update, as appropriate, the risk-management system referred to in paragraph 1.

ARTICLE 4.7

Advance Rulings

1. An advance ruling is a written decision provided by a Party through its customs authorities to an applicant prior to the importation into its territory of a good covered by the application which sets out the treatment that the Party shall provide to the good at the time of importation with regard to:

(a) the tariff classification of the good;

(b) the origin of the good[21]; and

(c) any other matters as the Parties may agree.

2. A Party shall issue the advance ruling in a reasonable, time-bound manner to the applicant that has submitted an application, including in electronic format, provided that it contains all necessary information in accordance with the laws and regulations of that Party. A Party may request a sample of the good for which the applicant is seeking an advance ruling.

3. The advance ruling shall be valid for at least three years after its issuance unless the law, facts or circumstances supporting that ruling have changed.

[21] According to the Agreement on Rules of Origin in Annex 1A to the WTO Agreement or Chapter 3 (Rules of Origin and Origin Procedures) of this Agreement.

4. A Party may decline to issue an advance ruling if the facts and circumstances forming the basis of the advance ruling are subject to administrative or judicial review, or if the application is not based on real and concrete facts, or does not relate to any intended use of the advance ruling. A Party that declines to issue an advance ruling shall promptly notify the applicant in writing, setting out the relevant facts and the basis for its decision.

5. Each Party shall publish, at least:

(a) the requirements for the application for an advance ruling, including the information to be provided and the format;

(b) the time limit by which it will issue an advance ruling; and

(c) the period of time for which the advance ruling will be valid.

6. If a Party revokes, modifies or annuls an advance ruling, it shall notify the applicant in writing, setting out the relevant facts and the basis for its decision. A Party may only revoke, modify or annul an advance ruling with retroactive effect if the ruling was based on incomplete, incorrect, inaccurate, false or misleading information provided by the applicant.

7. An advance ruling issued by a Party shall be binding on the applicant and on that Party in respect of the applicant.

8. A Party shall provide, upon written request of an applicant, a review of the advance ruling or of the decision to revoke, modify or annul it.

9. Subject to any confidentiality requirements in its laws and regulations, a Party shall endeavour to make the substantive elements of its advance rulings publicly available, including online.

ARTICLE 4.8

Authorised Economic Operators

1. Each Party shall, for operators who meet specified criteria (authorised economic operators, hereinafter referred to as "AEO"), establish or maintain a trade facilitation partnership programme (hereinafter referred to as "AEO programme") in accordance with the SAFE Framework of Standards.

2. The specified criteria[22] to qualify as an AEO shall be published and relate to compliance, or the risk of non-compliance, with the requirements specified in each Party's laws, regulations or procedures.

[22] A Party may use the criteria provided for in Article 7.7.2 of the Agreement on Trade Facilitation in Annex 1A to the WTO Agreement.

3. The specified criteria to qualify as an AEO shall not be designed or applied so as to afford or create arbitrary or unjustifiable discrimination between operators where the same conditions prevail and shall allow the participation of small and medium-sized enterprises.

4. The AEO programme shall include specific benefits for AEOs, taking into account the commitments of the Parties in accordance with Article 7.7.3 of the Agreement on Trade Facilitation in Annex 1A to the WTO Agreement.

5. The Parties shall cooperate in establishing, if relevant and appropriate, the mutual recognition of their AEO programmes, provided that the programmes are compatible and based on equivalent criteria and benefits.

ARTICLE 4.9

Review or Appeal

1. Each Party shall provide effective, prompt, non-discriminatory and easily accessible procedures to guarantee the right of appeal against a decision on a customs matter.

2. Each Party shall ensure that a person to whom it issues a decision on a customs matter has access within its territory to:

(a) an administrative review by or appeal to an administrative authority higher than or independent from the official or office that issued the decision; or

(b) a judicial review or appeal of the decision.

3. Each Party shall provide that a person who has applied to the customs authorities for a decision and has not obtained a decision on that application within the relevant time limits has the right of appeal.

4. Each Party shall provide that the person referred to in paragraph 2 receives an administrative decision with the reasons for that decision, so as to enable that person to have recourse to review or appeal procedures if necessary.

ARTICLE 4.10

Penalties

1. Each Party shall provide for penalties for failure to comply with its laws, regulations or procedural requirements related to customs or other legislation on the importation, exportation and transit of goods.

2. Each Party shall ensure that its customs laws and regulations provide that any penalties imposed for breaches of its customs laws, regulations or procedural requirements be proportionate and non-discriminatory.

3. Each Party shall ensure that a penalty imposed by its customs authorities for a breach of its customs laws, regulations or procedural requirements is imposed only on the person legally responsible for the breach.

4. Each Party shall ensure that the penalty imposed depends on the facts and circumstances of the case and is commensurate with the degree and severity of the breach.

5. Each Party shall avoid incentives or conflicts of interest in the assessment and collection of penalties and duties.

6. Each Party is encouraged to consider voluntary disclosure prior to the discovery by the customs authorities of a breach of its customs laws, regulations or procedural requirements, as a potential mitigating factor when establishing a penalty.

7. Each Party shall ensure that if a penalty is imposed for a breach of its customs laws, regulations or procedural requirements, an explanation in writing is provided to the person upon whom the penalty is imposed, specifying the nature of the breach and the applicable law, regulation or procedure pursuant to which the amount or range of the penalty for the breach has been imposed.

8. Each Party shall provide in its laws, regulations or procedures a fixed period within which its customs authorities may initiate proceedings to impose a penalty relating to a breach of its customs laws, regulations or procedures.

ARTICLE 4.11

Customs Cooperation and Mutual Administrative Assistance

1. The Parties shall ensure that their respective authorities cooperate on customs matters in order to ensure that the objectives set out in Article 4.1 are attained.

2. The Parties shall cooperate, among others, through:

(a) exchanging information concerning their customs laws and regulations and their implementation, and customs procedures, particularly in the following areas:

(i) simplification and modernisation of customs procedures;

(ii) border enforcement measures applied by their customs authorities;

(iii) facilitation of transit movements and transhipment;

(iv) dialogue with the business community; and

(v) supply chain security and risk management;

(b) working together on the customs-related aspects of securing and facilitating the international trade supply chain in accordance with the SAFE Framework of Standards, including with respect to their AEO programmes and their mutual recognition referred to in Article 4.8;

(c) considering developing joint initiatives relating to import, export, other customs procedures and trade facilitation including technical assistance;

(d) strengthening their cooperation in the field of customs in international organisations such as the WTO and the World Customs Organization (hereinafter referred to as "WCO");

(e) establishing minimum standards, to the extent practicable, for risk-management techniques and related requirements and programmes; if relevant and appropriate, the Parties shall also consider mutual recognition of risk-management techniques, risk standards and security controls;

(f) endeavouring to harmonise their data requirements for import, export and other customs procedures by implementing common standards and data elements in accordance with the WCO Data Model; and

(g) maintaining a dialogue between their respective policy experts to promote the utility, efficiency and applicability of advance rulings.

3. The Parties shall provide each other with mutual administrative assistance in customs matters in accordance with the provisions of the Annex on Mutual Administrative Assistance in Customs Matters to Decision No 2/2000 of the EC-Mexico Joint Council[23], adopted by Decision No 5/2004 of the EU-Mexico Joint Council[24], which is hereby incorporated and made part of this Agreement. Any exchange of information between the Parties in accordance with this Chapter shall be subject to the confidentiality of information and personal data protection requirements provided for in Article 10 of that Annex, *mutatis mutandis*, and to any confidentiality and privacy requirements provided for in the respective laws and regulations of the Parties.

ARTICLE 4.12

Single Window

1. Each Party shall endeavour to develop or maintain single window systems to facilitate a single electronic submission of all information required by customs and other legislation on the import, export and transit of goods.

2. The Parties shall endeavour to work together towards the interoperability and streamlining of their single window systems, including by sharing their respective experiences in developing and deploying their single window systems.

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23 Decision No 2/2000 of the EC-Mexico Joint Council of 23 March 2000 (OJ EU L 157, 30.6.2000, p. 10).

24 Decision No 5/2004 of the EU-Mexico Joint Council of 15 December 2004 adopting, pursuant to Article 17(3) of Decision No 2/2000, an Annex to the said Decision on mutual administrative assistance in customs matters (OJ EU L 66, 12.3.2005, p. 15).

ARTICLE 4.13

Transit and Transhipment

1. Each Party shall ensure the facilitation and effective control of transit movements and transhipment operations through its territory.

2. Each Party shall endeavour to promote and implement regional transit arrangements with a view to facilitating trade between the Parties.

3. Each Party shall ensure that all concerned authorities and agencies in its territory cooperate and coordinate to facilitate traffic in transit.

4. Each Party shall allow goods intended for import to be moved under customs control from a customs office of entry to another customs office in its territory, from where the goods would be released or cleared.

ARTICLE 4.14

Post-Clearance Audit

1. With a view to expediting the release of goods, each Party shall adopt or maintain post-clearance audit to ensure compliance with its customs laws and regulations.

2. Each Party shall conduct post-clearance audits in a risk-based manner.

3. Each Party shall conduct post-clearance audits in a transparent manner. If an audit is conducted and conclusive results have been achieved, the Party shall notify, without delay, the person whose record is audited of the results, the reasons for the results and the rights and obligations of the audited person.

4. The Parties acknowledge that the information obtained in a post-clearance audit may be used in further administrative or judicial proceedings.

5. The Parties shall, to the extent practicable, use the result of a post-clearance audit in applying risk management.

ARTICLE 4.15

Customs Brokers

1. A Party shall not require in its customs laws and regulations the mandatory use of customs brokers.

2. Each Party shall publish its measures on the use of customs brokers.

3. Each Party shall apply transparent and objective rules if and when licensing customs brokers.

ARTICLE 4.16

Preshipment Inspections

A Party shall not require the mandatory use of pre-shipment inspections as defined in the Agreement on Preshipment Inspection in Annex 1A to the WTO Agreement, in relation to tariff classification and customs valuation[25].

ARTICLE 4.17

Sub-Committee on Customs, Trade Facilitation and Rules of Origin

1. The Sub-Committee on Customs, Trade Facilitation and Rules of Origin shall report to the Joint Committee.

2. The Sub-Committee on Customs, Trade Facilitation and Rules of Origin established pursuant to subparagraph 1(d) of Article 1.10 (Sub-Committees and Other Bodies of Part III of this Agreement) shall ensure the proper functioning of this Chapter, Chapter 3 (Rules of Origin and Origin Procedures), the Annex on Mutual Administrative Assistance in Customs Matters referred to in Article 4.11.3 and any additional customs-related provisions agreed between the Parties, and examine all matters arising from their application.

[25] For greater certainty, this Article does not preclude preshipment inspections for sanitary and phytosanitary purposes.

3. The Sub-Committee shall:

(a) prepare appropriate recommendations, as necessary, to the Joint Committee on:

(i) the implementation and administration of Chapter 3 (Rules of Origin and Origin Procedures); and

(ii) any modifications to Chapter 3 (Rules of Origin and Origin Procedures);

(b) adopt explanatory notes to facilitate the implementation of Chapter 3 (Rules of Origin and Origin Procedures);

(c) monitor the implementation and administration of this Chapter;

(d) provide a forum to consult on and discuss all matters concerning customs, including in particular customs procedures, customs valuation, tariff regimes, customs nomenclature, customs cooperation and mutual administrative assistance in customs matters;

(e) provide a forum to consult on and discuss matters relating to rules of origin, origin procedures and administrative cooperation;

(f) enhance cooperation on the development, application and enforcement of customs procedures, mutual administrative assistance in customs matters, rules of origin, origin procedures and administrative cooperation; and

(g) consider any other matter related to this Chapter or Chapter 3 (Rules of Origin and Origin Procedures) as the Parties may agree.

4. The Sub-Committee on Customs, Trade Facilitation and Rules of Origin may examine the need for, and prepare for the Joint Council, decisions or recommendations on all matters arising from the implementation of this Chapter. The Joint Council shall have the power to adopt decisions on the implementation of this Chapter as appropriate, including as regards AEO programmes and their mutual recognition, joint initiatives relating to customs procedures and trade facilitation, and technical assistance.

5. The Parties may agree to hold ad hoc meetings for matters concerning customs cooperation, rules of origin or mutual administrative assistance.

CHAPTER 5

TRADE REMEDIES

SECTION A

Anti-Dumping and Countervailing Measures

ARTICLE 5.1

General Provisions

1. The Parties affirm their rights and obligations under Article VI of GATT 1994, the Anti-Dumping Agreement and the SCM Agreement.

2. For the purposes of the application of provisional and definitive measures, the origin of the goods concerned shall be determined in accordance with the non-preferential rules of origin of each Party.

ARTICLE 5.2

Transparency and Due Process

1. Each Party shall conduct its procedures and apply anti-dumping and countervailing measures in a fair and transparent manner, in accordance with the relevant provisions of the Anti-Dumping Agreement and the SCM Agreement.

2. Each Party shall inform all interested parties, at a preliminary stage of the proceedings, and in any event before a final determination is made, of the essential facts under consideration, which form the basis for the decision on whether to apply final measures. This is without prejudice to Article 6.5 of the Anti-Dumping Agreement and Article 12.4 of the SCM Agreement.

3. Each Party shall grant each interested party in an anti-dumping or countervailing duty investigation full opportunity to defend its interests, provided that it does not unduly delay the conduct of the investigation.

4. The definition of interested parties provided for in Article 6.11 of the Anti-Dumping Agreement and Article 12.9 of the SCM Agreement applies.

ARTICLE 5.3

Imposition of Anti-Dumping and Countervailing Duties

The decision on whether the amount of the anti-dumping or countervailing duty to be imposed shall be the full margin of dumping or amount of subsidy, or a lesser amount, is to be made by the authorities of the importing Party in accordance with the law of that Party.

ARTICLE 5.4

Final Determination

A Party shall, when making a final determination, take into account the information duly provided by all interested parties considered as such in accordance with its law.

ARTICLE 5.5

Non-Application of Dispute Settlement

A Party shall not have recourse to dispute settlement under Chapter 31 (Dispute Settlement) concerning the interpretation or application of the provisions of this Section.

SECTION B

Global Safeguard Measures

ARTICLE 5.6

General Provisions

Each Party retains its rights and obligations pursuant to Article XIX of GATT 1994 and Article 5 of the Agreement on Agriculture as well as under the Safeguards Agreement.

ARTICLE 5.7

Transparency

1. Notwithstanding Article 5.6, the Party initiating a global safeguard investigation or intending to impose global safeguard measures shall immediately provide, at the request of the other Party and provided that the latter has a substantial interest, ad hoc written notification of all relevant information leading to the initiation of the global safeguard investigation or the imposition of global safeguard measures, including on the provisional findings, where relevant. This is without prejudice to Article 3.2 of the Safeguards Agreement.

2. A Party imposing global safeguard measures shall endeavour to impose them in a way that least affects bilateral trade.

3. For the purposes of paragraph 2, if a Party considers that the legal requirements for the imposition of definitive safeguard measures are met, and intends to impose such measures, it shall notify the other Party and give the possibility to hold bilateral consultations. If no satisfactory solution has been reached within 30 days after the notification, the importing Party may adopt the definitive safeguard measure appropriate to remedy the problem.

4. For the purposes of this Article, a Party is deemed to have a substantial interest if it is among the five largest suppliers of the imported good during the most recent three-year period, measured in terms of either absolute volume or value.

ARTICLE 5.8

Non-Application of Dispute Settlement

A Party shall not have recourse to dispute settlement under Chapter 31 (Dispute Settlement) concerning the interpretation or application of the provisions of this Section referring to rights and obligations under the WTO Agreement.

SECTION C

Bilateral Safeguard Measures

SUB-SECTION C.1

General Provisions

ARTICLE 5.9

Definitions

For the purposes of Section C:

(a) "competent investigating authority" means:

(i) for the European Union, the European Commission; and

(ii) for Mexico, the "Unidad de Prácticas Comerciales Internacionales de la Secretaría de Economía" (International Trade Practices Unit of the Ministry of Economy), or its successor;

(b) "domestic industry" means, with respect to an imported product, the producers as a whole of the like or directly competitive products operating within the territory of a Party, or those producers whose collective output of the like or directly competitive products constitutes a major proportion of the total domestic production of those products;

(c) "like product" means a product which is identical, that is alike in all respects, to the product under consideration, or in the absence of such product, another product which, although not alike in all respects, has characteristics closely resembling those of the product under consideration;

(d) "directly competitive product" means a product which might not be alike in all respects, but has a high degree of substitutability with the product under consideration as it fulfils the same functions[26];

(e) "serious injury" means a significant overall impairment of the position of a domestic industry;

(f) "threat of serious injury" means serious injury that, based on facts and not merely on allegation, conjecture or remote possibility, is clearly imminent; and

[26] In that regard, the authorities may analyse aspects such as the physical characteristics of those products, their technical specifications, final uses and channels of distribution. That list of aspects is not exhaustive, nor can one or several of those factors necessarily give decisive guidance.

(g) "transition period" means:

(i) a period of 10 years from the date of entry into force of this Agreement; or

(ii) the tariff elimination period for the goods set out in the tariff elimination schedule of a Party in Annex 2-A (Tariff Elimination Schedule), provided that the tariff elimination period for the good concerned is 10 or more years, plus 3 years.

ARTICLE 5.10

Application of a Bilateral Safeguard Measure

1. Notwithstanding Section B, if as a result of the reduction or elimination of a customs duty under this Agreement, an originating good of a Party is being imported into the territory of the other Party in such increased quantities, in absolute terms or relative to domestic production, and under such conditions as to cause or threaten to cause serious injury to the domestic industry that produces like or directly competitive products, the importing Party may impose the measures provided for in paragraph 2 under the conditions and in accordance with the procedures established in this Section.

2. If the conditions in paragraph 1 are met, the importing Party may only impose bilateral safeguard measures which:

(a) suspend the further reduction of the rate of customs duty on the product concerned as provided for under this Agreement; or

(b) increase the rate of customs duty on the product concerned to a level which does not exceed the lesser of:

(i) the most-favoured-nation applied rate of customs duty on the product in effect at the time the measure is imposed; or

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

3. The Parties share the understanding that neither tariff rate quotas nor quantitative restrictions would be a permissible form of bilateral safeguard measure.

ARTICLE 5.11

Conditions and Limitations

1. A Party shall not apply a bilateral safeguard measure:

(a) except to the extent, and for such time, as necessary to prevent or remedy the situations described in Article 5.10 or 5.15;

(b) for a period exceeding two years; or

(c) beyond the expiration of the transition period.

The period referred to in subparagraph (b) may be extended by another year if the competent authorities of the importing Party determine, in conformity with the procedures specified in Section C, that the measure continues to be necessary to prevent or remedy the situations described in Article 5.10 or 5.15 and to facilitate adjustment, provided that the total period of application of a safeguard measure, including the period of initial application and any extension thereof, does not exceed three years.

2. A Party shall only apply a bilateral safeguard measure to originating goods set out in Annex 2-A (Tariff Elimination Schedule) that are subject to preferential treatment under this Agreement.

3. In order to facilitate any adjustment in a situation where the expected duration of a bilateral safeguard measure exceeds one year, the Party that applies that measure shall, during the period of application, progressively liberalise the measure at regular intervals.

4. When a Party ceases to apply a bilateral safeguard measure, the rate of customs duty shall be the rate that would have been in effect for the product in accordance with Article 2.4 (Elimination or Reduction of Customs Duties).

ARTICLE 5.12

Provisional Measures

1. In critical circumstances where delay would cause damage that would be difficult to repair, a Party may apply a bilateral safeguard measure on a provisional basis, without complying with the requirements of Article 5.22.1, pursuant to a preliminary determination that there is clear evidence that imports of an originating good of the other Party have increased as a result of the reduction or elimination of a customs duty under this Agreement, and that such imports cause or threaten to cause the situations described in Article 5.10 or 5.15.

2. The duration of any provisional measure shall not exceed 200 days, during which time the Party shall comply with the relevant procedural rules established in Sub-Section C.2. The Party shall promptly refund any tariff increases if the subsequent investigation described in Sub-Section C.2 does not result in the imposition of a definitive measure in compliance with the requirements of Article 5.10 or 5.15. The duration of any provisional measure shall be counted as part of the period referred to in Article 5.11.1(b). The importing Party shall inform the other Party upon imposing such provisional measures and it shall immediately refer the matter to the Joint Committee for examination if the other Party so requests.

ARTICLE 5.13

Compensation and Suspension of Concessions

1. A Party applying a bilateral safeguard measure shall consult with the other Party in order to mutually agree on appropriate trade-liberalising compensation in the form of concessions having substantially equivalent trade effects. The Party applying a bilateral safeguard measure shall provide an opportunity for such consultations no later than 30 days after the application of the bilateral safeguard measure.

2. If the consultations referred to in paragraph 1 do not result in an agreement on trade-liberalising compensation within 30 days after the start of those consultations, the Party affected by the bilateral safeguard measure may suspend the application of concessions which have trade effects substantially equivalent to the bilateral safeguard measure of the other Party no later than 90 days after the application of that measure.

3. The Party affected by the bilateral safeguard measure shall notify the other Party in writing at least 30 days prior to the suspension of the application of concessions in accordance with paragraph 2.

4. The obligation to provide compensation pursuant to paragraph 1 and the right to suspend the application of concessions pursuant to paragraph 2 expire on the date of termination of the bilateral safeguard measure.

ARTICLE 5.14

Use of Safeguard Measures and Time Lapse between Measures

1. A Party shall not apply a safeguard measure referred to in this Section to the import of a product that has previously been subject to such a measure, unless a period of time has elapsed that is equal to half of the immediately preceding period of time during which the safeguard measure had been applied.

2. A Party shall not apply, with respect to the same product and during the same period:

(a) a bilateral safeguard measure or a provisional safeguard measure under this Agreement; and

(b) a safeguard measure pursuant to Article XIX of GATT 1994 and under the Safeguards Agreement.

ARTICLE 5.15

Outermost Regions

1. If an originating good of Mexico is being imported directly into the territory of one or several outermost regions of the European Union in such increased quantities and under such conditions as to cause or threaten to cause serious deterioration in the economic situation of the outermost region concerned, the European Union, after having examined alternative solutions, may exceptionally impose safeguard measures limited to the territory of the outermost region concerned.

2. Without prejudice to paragraph 1, all the provisions of Section C applicable to bilateral safeguard measures are also applicable to any safeguard measure adopted in relation to the outermost regions of the European Union.

3. A bilateral safeguard measure limited to the outermost regions of the European Union shall apply only to goods subject to preferential treatment under this Agreement.

4. For the purposes of paragraph 1, "serious deterioration" means major difficulties in a sector of the economy producing like or directly competitive products. The determination of serious deterioration shall be based on objective factors, including the following elements:

(a) the increase in the volume of imports in absolute terms or relative to domestic production and to imports from other sources; and

(b) the effect of such imports on the situation of the relevant industry or the economic sector concerned, including the levels of sales, production, financial situation and employment.

SUB-SECTION C.2

Procedural Rules Applicable to Bilateral Safeguard Measures

ARTICLE 5.16

Applicable Law

For the application of bilateral safeguard measures, the competent investigating authority shall comply with the provisions of this Sub-Section and, in cases not covered by this Sub-Section, apply the rules established under the law of the Party concerned, as long as those rules are in conformity with the provisions of Section C.

ARTICLE 5.17

Initiation of a Safeguard Procedure

1. A competent investigating authority may initiate a procedure regarding bilateral safeguard measures (hereinafter referred to as a "safeguard procedure") upon a written application made by or on behalf of the domestic industry, or in exceptional circumstances, on its own initiative. In the case of the European Union, that application can be filed by one or more Member States of the European Union on behalf of the domestic industry. The application shall be deemed to have been made by or on behalf of the domestic industry if it is supported by domestic producers whose collective output constitutes more than 50 % of the total production of the like or directly competitive products produced by the portion of the domestic industry expressing either support for or opposition to the application. However, no investigation shall be initiated if domestic producers expressly supporting the application account for less than 25 % of the total national production of the like or directly competitive products produced by the domestic industry.

2. Once the investigation has been initiated, the application referred to in paragraph 1 shall promptly be made available to whom it may concern, except for the confidential information contained therein.

3. Upon initiation of a safeguard procedure, the competent investigating authority shall publish a notice of initiation of the procedure in the official journal of the Party. The notice shall identify the entity which filed the written application, if applicable, the imported good concerned, its heading, subheading or the tariff item number under which it is classified under the Harmonized System, the nature and timing of the determination to be made, the period within which interested parties may make their views known in writing and submit information, the place at which the written application and any other non-confidential documents filed in the course of the procedure may be inspected and the name, address and telephone number of the office to be contacted for more information. In case the competent investigating authority decides to hold a public hearing, the time and place of that public hearing may be either included in the notice of initiation or notified at any subsequent stage of the procedure, provided that such notice is given well in advance. In case no public hearing is scheduled at the beginning of the investigation, the notice of initiation shall include the period within which interested parties may apply to be heard orally by the competent investigating authority.

4. With respect to a safeguard procedure initiated on the basis of a written application filed by an entity asserting that it is representative of the domestic industry, the competent investigating authority shall not publish the notice of initiation pursuant to paragraph 3 without first assessing carefully that the application meets the requirements of its law and the requirements of paragraph 1, and includes reasonable evidence that imports of an originating good of the other Party have increased as the result of the reduction or elimination of a customs duty under this Agreement, and that such imports cause or threaten to cause the alleged serious injury or the alleged serious deterioration in the economic situation.

ARTICLE 5.18

Investigation

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

2. Each Party shall ensure that its competent investigating authority completes the investigation referred to in paragraph 1 within one year following its date of initiation.

ARTICLE 5.19

Determination of Serious Injury or Threat Thereof and Causal Link

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

2. The determination that increased imports cause or threaten to cause the situations described in Article 5.10 or 5.15 shall not be made unless the investigation demonstrates, based on objective evidence, the existence of a clear causal link between the increased imports of the product concerned and the situations described in Article 5.10 or 5.15. If factors other than the increased imports are, at the same time, causing the situations described in Article 5.10 or 5.15, the injury or threat thereof, or the serious deterioration in the economic situation or threat thereof, shall not be attributed to the increased imports.

ARTICLE 5.20

Hearings

In the course of each safeguard procedure, the competent investigating authority shall:

(a) after providing reasonable notice, hold a public hearing to allow all interested parties considered as such under the law of the Party concerned to appear, in person or through counsel, to present evidence and to be heard on the serious injury or threat thereof, or on the serious deterioration in the economic situation or threat thereof, and the appropriate remedy; or

(b) alternatively, in the case of the European Union, provide an opportunity to all interested parties to be heard provided that they have made a written application within the period set out in the notice of initiation showing that they are likely to be affected by the outcome of the investigation and that there are special reasons for them to be heard orally.

ARTICLE 5.21

Confidential Information

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

ARTICLE 5.22

Adoption, Notification, Consultation and Publication

1. If a Party considers that one of the situations set out in Article 5.10 or 5.15 exists, it shall immediately refer the matter to the Joint Committee for examination. The Joint Committee may make any recommendation required to remedy the situation that has arisen. If no recommendation has been made by the Joint Committee aimed at remedying the situation, or no other satisfactory solution has been reached within 30 days of the matter being referred to the Joint Committee, the importing Party may adopt the bilateral safeguard measure appropriate to remedy the situation in accordance with Section C.

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

3. A Party shall promptly notify the other Party, in writing, when it:

(a) initiates a bilateral safeguard procedure under Section C;

(b) decides to apply a provisional bilateral safeguard measure;

(c) determines the existence of serious injury or threat thereof, or of serious deterioration in the economic situation or threat thereof, caused by increased imports, pursuant to Article 5.19;

(d) decides to apply or extend a bilateral safeguard measure; and

(e) decides to modify a bilateral safeguard measure previously adopted.

4. If a Party makes a notification pursuant to subparagraph 3(a), such notification shall include:

(a) a copy of the public version of the application and its annexes or, in the case of investigations initiated on the initiative of the competent investigating authority, of the relevant documents showing that the requirements of Article 5.17 are met, as well as a questionnaire detailing the points on which the interested parties must provide information; and

(b) a precise description of the imported good concerned.

5. If a Party makes a notification pursuant to subparagraph 3(b) or (c), it shall include a copy of the public version of its determination and, if applicable, of the document providing the technical reasoning on which the determination is based.

6. If a Party makes a notification pursuant to subparagraph 3(d) concerning the application or extension of a bilateral safeguard measure, it shall include in that notification:

(a) a copy of the public version of its determination and, if applicable, of the document providing the technical reasoning on which the determination is based;

(b) evidence of serious injury or threat thereof, or of a serious deterioration in the economic situation or threat thereof, caused by increased imports of an originating good of the other Party, as a result of the reduction or elimination of a customs duty under this Agreement;

(c) a precise description of the originating good subject to the bilateral safeguard measure, including its heading, subheading or the tariff line under which it is classified under the Harmonized System;

(d) a precise description of the bilateral safeguard measure applied or extended;

(e) the initial date of application of the bilateral safeguard measure, its expected duration and, if applicable, a timetable for progressive liberalisation of the measure; and

(f) in the case of an extension of the bilateral safeguard measure, evidence that the domestic industry concerned is adjusting.

7. At the request of the Party affected by the bilateral safeguard procedure under Section C, the other Party shall hold consultations with the requesting Party to review a notification made pursuant to subparagraph 3(a) or (b).

8. The Party intending to apply or extend a bilateral safeguard measure shall notify the other Party and give the possibility to hold prior consultations to discuss the eventual application or extension. If no satisfactory solution has been reached within 30 days after the date of the notification, the former Party may apply or extend such measure.

9. The competent investigating authority shall publish its findings and reasoned conclusions reached on all relevant matters of fact and law in the official journal of the Party concerned, including the description of the imported good and the situation which has given rise to the imposition of measures in accordance with Article 5.10 or 5.15, the causal link between such situation and the increased imports, and the form, level and duration of the measures.

10. The competent investigating authorities shall treat any confidential information in full compliance with Article 5.21.

CHAPTER 6

SANITARY AND PHYTOSANITARY MEASURES

ARTICLE 6.1

Definitions

1. For the purposes of this Chapter:

(a) "competent authorities" means the competent authorities of each Party referred to in Annex 6-A;

(b) "emergency measure" means a sanitary or phytosanitary measure that is applied by the importing Party to goods of the other Party to address an urgent problem of human, animal or plant life or health protection that arises or threatens to arise in the importing Party; and

(c) "WTO SPS Committee" means the Committee on Sanitary and Phytosanitary Measures established pursuant to Article 12 of the SPS Agreement.

2. The definitions in Annex A to the SPS Agreement, as well as those of the Codex Alimentarius (hereinafter referred to as the "Codex"), the World Organisation for Animal Health (hereinafter referred to as "WOAH") and the International Plant Protection Convention, signed in Rome on 6 December 1951 (hereinafter referred to as "IPPC"), apply to this Chapter.

ARTICLE 6.2

Objectives

The objectives of this Chapter are to:

(a) protect human, animal or plant life or health in the territories of the Parties while facilitating trade between them;

(b) reinforce and further the implementation of the SPS Agreement;

(c) strengthen communication, consultation and cooperation between the Parties, in particular between their competent authorities;

(d) ensure that sanitary and phytosanitary measures implemented by the Parties do not create unnecessary barriers to trade;

(e) improve consistency, certainty and transparency of the sanitary and phytosanitary measures of each Party and their implementation; and

(f) encourage the development and adoption of international standards, guidelines and recommendations by the relevant international organisations and enhance the implementation thereof by the Parties.

ARTICLE 6.3

Scope

This Chapter applies to all sanitary and phytosanitary measures of a Party that may, directly or indirectly, affect trade between the Parties.

ARTICLE 6.4

Relation to the SPS Agreement

The Parties affirm their rights and obligations with respect to each other under the SPS Agreement.

ARTICLE 6.5

Resources for Implementation

Each Party shall use the necessary resources to implement effectively this Chapter.

ARTICLE 6.6

Equivalence

1. The Parties acknowledge that the recognition of the equivalence of sanitary and phytosanitary measures of the other Party is an important means to facilitate trade.

2. The importing Party shall recognise sanitary and phytosanitary measures of the exporting Party as equivalent to its own measures if the exporting Party objectively demonstrates to the importing Party that its measures achieve the appropriate level of sanitary and phytosanitary protection of the importing Party.

3. The importing Party has the right to make the final determination as to whether a sanitary or phytosanitary measure applied by the exporting Party achieves its appropriate level of sanitary and phytosanitary protection.

4. A Party shall, when assessing or determining the equivalence of a measure of the other Party, take into account among other things and if relevant:

(a) decisions of the WTO SPS Committee;

(b) the work of the relevant international organisations;

(c) any knowledge and past experience in trading with the other Party; and

(d) information provided by the other Party.

5. Each Party shall base its assessment, determination and maintenance of equivalence on standards, guidelines and recommendations of the relevant international standardisation bodies or, as appropriate, on a risk assessment.

6. The importing Party shall promptly initiate the assessment to determine the equivalence if it receives a request for an equivalence assessment from the other Party that is supported by the required information.

7. When the importing Party concludes the equivalence assessment, it shall promptly notify its determination to the other Party.

8. When the importing Party has determined that it recognises the measure of the exporting Party as equivalent, the importing Party shall promptly initiate the necessary legislative or administrative measures to implement the recognition.

9. Without prejudice to Article 6.16, if a Party intends to adopt, modify or repeal a measure which is subject to an equivalence determination affecting trade between the Parties, that Party shall:

(a) notify the other Party of its intention at an appropriate early stage where any comments submitted from the other Party can be taken into account;

(b) provide, on request of the other Party, information and the rationale concerning its planned changes.

10. The importing Party shall maintain its recognition of equivalence for the time that the measure, which is subject to the intended change, remains in effect.

11. The Parties shall discuss the intended modifications notified pursuant to subparagraph 9(a) on the request of either Party. The importing Party shall review any information submitted pursuant to subparagraph 9(b) without undue delay.

12. If a Party adopts, modifies or repeals a sanitary or phytosanitary measure that is subject to an equivalence determination by the other Party, the importing Party shall maintain its recognition of equivalence provided that the measures of the exporting Party with regard to the product concerned continue to achieve the appropriate level of sanitary or phytosanitary protection of the importing Party. On request of a Party, the Parties shall promptly discuss the determination made by the importing Party.

ARTICLE 6.7

Risk Assessment

1. The Parties recognise the importance of ensuring that their respective sanitary and phytosanitary measures are based on scientific principles and conform to the relevant international standards, guidelines and recommendations.

2. If a Party considers that a specific sanitary or phytosanitary measure adopted or maintained by the other Party is constraining, or has the potential to constrain, its exports and that measure is not based on a relevant international standard, guideline or recommendation, or a relevant standard, guideline or recommendation does not exist, that Party may request information from the other Party. The requested Party shall provide to the requesting Party an explanation of the reasons and relevant information regarding that measure.

3. If the relevant scientific evidence is insufficient, a Party may provisionally adopt a sanitary or phytosanitary measure on the basis of available pertinent information, including from the relevant international organisations. In such circumstances, that Party shall seek to obtain the additional information necessary for a more objective risk assessment and review the sanitary or phytosanitary measure accordingly within a reasonable period of time.

4. Recognising the rights and obligations of the Parties pursuant to the relevant provisions of the SPS Agreement, nothing in this Chapter shall be construed as preventing a Party from:

(a) establishing the level of sanitary or phytosanitary protection it determines to be appropriate in accordance with Article 5 of the SPS Agreement;

(b) establishing or maintaining an approval procedure that requires a risk assessment to be conducted before that Party grants a product access to its market; or

(c) adopting or maintaining sanitary or phytosanitary precautionary measures in accordance with paragraph 7 of Article 5 of the SPS Agreement.

5. Each Party shall ensure that its sanitary and phytosanitary measures do not arbitrarily or unjustifiably discriminate between the Parties where identical or similar conditions prevail. A Party shall not apply sanitary and phytosanitary measures in a manner that would constitute a disguised restriction on trade between the Parties.

6. A Party conducting a risk assessment shall:

(a) take into account the relevant guidance of the WTO SPS Committee and international standards, guidelines and recommendations;

(b) consider risk-management options that are no more trade restrictive than required to achieve the level of sanitary or phytosanitary protection it has determined to be appropriate, in accordance with paragraph 3 of Article 5 of the SPS Agreement, taking into account technical and economic feasibility; and

(c) take into account the objective of minimising negative effects on trade when determining the appropriate level of sanitary or phytosanitary protection, in accordance with paragraph 4 of Article 5 of the SPS Agreement, and select a risk-management option that is no more trade restrictive than required to achieve the sanitary or phytosanitary objective, taking into account technical and economic feasibility.

7. On request of the exporting Party, the importing Party shall inform the exporting Party of the progress made with regard to a specific risk assessment concerning a market access request of the exporting Party, and of any delay that might occur during the process.

8. Without prejudice to Article 6.16, a Party shall not stop the importation of a product of the other Party solely for the reason that the Party is undertaking a review of its sanitary or phytosanitary measures, if the importing Party permitted the importation of that product of the other Party at the time the review was initiated.

ARTICLE 6.8

Adaptation to Regional Conditions, Including Pest- or Disease-Free Areas and Areas of Low Pest or Disease Prevalence

General

1. The Parties recognise that the adaptation of sanitary and phytosanitary measures to regional pest or disease conditions is an important means to protect animal and plant life or health, and to facilitate trade.

2. The Parties shall recognise the concepts of pest- or disease-free areas and areas of low pest or disease prevalence. The determination of such areas shall be based on factors such as geography, ecosystems, epidemiological surveillance, and the effectiveness of sanitary or phytosanitary controls.

3. An exporting Party claiming that areas within its territory are pest- or disease-free areas or areas of low pest or disease prevalence shall provide the necessary evidence thereof in order to objectively demonstrate to the importing Party that such areas are, and are likely to remain, pest- or disease-free areas or areas of low pest or disease prevalence, respectively. For that purpose, the exporting Party shall, on request of the importing Party, provide reasonable access for inspection, testing and other relevant procedures.

4. When determining the areas referred to in paragraph 2 by regionalisation decisions, the Parties shall take into account the relevant guidance of the WTO SPS Committee and base their measures on international standards, guidelines and recommendations, or, in case those do not achieve the appropriate level of sanitary or phytosanitary protection of the Party, on a risk assessment appropriate to the circumstances.

5. For the determination of areas referred to in paragraph 2, the importing Party shall take into account any relevant information from and prior experience with the authorities of the exporting Party.

6. The importing Party may determine that an expedited process can be used to evaluate a request from the exporting Party for recognition of pest- or disease-free areas or areas of low pest or disease prevalence.

7. If the exporting Party does not agree with the determination of the importing Party, the importing Party shall provide a justification to the exporting Party.

8. On request of the importing Party, the exporting Party shall provide a full explanation and supporting data for the determinations and decisions covered by this Article. During those processes, the Parties shall endeavour to avoid unnecessary disruption to trade.

Animals, Animal Products and Animal By-Products

9. The Parties recognise the principle of zoning, which they agree to apply in their trade. The Parties also recognise the official animal health status as determined by the WOAH.

10. The importing Party shall, in principle, base its own determination of the animal health status of the exporting Party on the evidence provided by the exporting Party in accordance with the SPS Agreement, the WOAH Terrestrial Animal Health Code and the WOAH Aquatic Animal Health Code.

11. The importing Party shall assess any additional information received from the exporting Party without undue delay and normally within 90 days after receipt. The importing Party may make a request to the exporting Party for an on-site inspection, and shall carry out any inspection in accordance with the principles set out in Article 6.11 and within 90 days following the receipt by the exporting Party of the request for inspection, unless otherwise agreed between the Parties.

12. The Parties recognise the concept of compartmentalisation and shall cooperate on this matter.

13. The Parties recognise the concepts of pest free areas, pest free places of production and pest free production sites, as well as areas of low pest prevalence as means to protect plant life or health, and to facilitate trade as specified in relevant IPPC International Standards for Phytosanitary Measures (hereinafter referred to as "ISPM"), which they agree to apply to goods traded between them.

14. On request of the exporting Party, the importing Party shall, when adopting or maintaining phytosanitary measures, take into account pest free areas, pest free places of production, pest free production sites, as well as areas of low pest prevalence established by the exporting Party in accordance with the relevant international standards, guidelines and recommendations.

15. The exporting Party shall identify pest free areas, pest free places of production, pest free production sites or areas of low pest prevalence and provide that information to the other Party. On request, the exporting Party shall provide a full explanation and supporting data in accordance with the relevant ISPM, or otherwise as appropriate.

16. Without prejudice to Article 6.16, the importing Party shall, in principle, base its own determination of the plant health status of the exporting Party or parts thereof on the information provided by the exporting Party in accordance with the SPS Agreement and the relevant ISPM.

17. The importing Party shall assess any additional information received from the exporting Party without undue delay and normally within 90 days after receipt. The importing Party may request the exporting Party for an on-site inspection and shall carry out any inspection in accordance with the principles set out in Article 6.11 and within 6 months following receipt by the exporting Party of the request for inspection, unless otherwise agreed between the Parties. When agreeing on a different period, the Parties shall take into account the biology of the pest and the crop concerned.

ARTICLE 6.9

Transparency

1. The Parties recognise the value of sharing information about their sanitary and phytosanitary measures on an ongoing basis, and of providing the other Party with the opportunity to comment on their proposed sanitary and phytosanitary measures.

2. In implementing this Article, each Party shall take into account the relevant guidance of the WTO SPS Committee, as well as international standards, guidelines and recommendations.

3. Unless urgent problems of human, animal or plant life or health protection arise or threaten to arise, or the measure is of a trade-facilitating nature, a Party shall notify the other Party of any proposed sanitary or phytosanitary measure which may affect trade between the Parties and normally allow at least 60 days after the notification for the other Party to provide written comments. If feasible and appropriate, the notifying Party should allow more than 60 days for comments and shall consider any reasonable request from the other Party to extend the time period for comments. On request, the Party shall respond to the written comments of the other Party in an appropriate manner.

4. The Parties shall:

(a) pursue transparency as regards sanitary and phytosanitary measures applicable to trade;

(b) enhance mutual understanding of the sanitary or phytosanitary measures of each Party and their application; and

(c) exchange information on matters related to the development and application of sanitary or phytosanitary measures with a view to minimising their negative effects on trade between the Parties.

5. Each Party shall, on request of the other Party and normally within 15 days after the receipt of the request, provide information on:

(a) import requirements that apply for the import of specific products; and

(b) progress on the application for the approval of specific products.

6. The information referred to in subparagraph 4(c) and paragraph 5 is deemed to have been provided if it has been made available by notification to the WTO in accordance with the relevant rules and procedures or if the information has been made available free of fees on a publicly accessible official website of the Party.

7. On request, a Party shall provide to the other Party the relevant information that the Party considered in the development of the proposed measure, as appropriate and to the extent permitted by the confidentiality and privacy requirements of the Party providing the information.

8. A Party may request, if appropriate and feasible, discussions with the other Party on any trade concern in relation to a proposed sanitary or phytosanitary measure, and on the availability of alternative, significantly less trade-restrictive approaches which could achieve the objective of that measure.

9. Each Party shall publish, preferably by electronic means, notices of sanitary or phytosanitary measures in an official journal or on a website.

10. Each Party shall ensure that the text or the notice of a sanitary or phytosanitary measure specifies the date on which the measure takes effect and the legal basis for the measure.

11. The exporting Party shall notify the importing Party in a timely and appropriate manner:

(a) of a significant sanitary or phytosanitary risk related to the current trade;

(b) of urgent situations where a change in animal or plant health status in the territory of the exporting Party may affect current trade;

(c) of significant changes in the pest or disease status, such as the presence and evolution of pests or diseases, including the application of regionalisation decisions; and

(d) of significant changes in food safety, pest or disease management, control or eradication policies or practices that may affect current trade.

12. If feasible and appropriate, a Party should provide a period of more than six months between the date of publication of a sanitary or phytosanitary measure that may affect trade between the Parties and the date on which the measure takes effect, unless the measure is intended to address an urgent problem of human, animal or plant life or health protection or the measure is of a trade-facilitating nature.

13. On request of a Party, the other Party shall provide it with information on all sanitary or phytosanitary measures related to the importation of a product into its territory.

ARTICLE 6.10

Trade Facilitation

Approval Procedures

1. The Parties recognise that each Party has the right to develop and apply approval procedures to ensure the achievement of the appropriate level of sanitary and phytosanitary protection of the importing Party while minimising negative effects on trade.

2. Each Party shall ensure that all sanitary and phytosanitary approval procedures affecting trade between the Parties:

(a) are undertaken and completed without undue delay; and

(b) are not conducted in a manner which would constitute an arbitrary or unjustifiable discrimination against the other Party.

3. Each Party shall endeavour to ensure that products exported to the other Party meet the appropriate level of sanitary or phytosanitary protection of the importing Party. To that end, the exporting Party shall establish and carry out appropriate control measures, including risk-based on-site inspections where appropriate. The importing Party may require that the relevant competent authority of the exporting Party objectively demonstrates, to the satisfaction of the importing Party, that its import requirements are fulfilled.

4. If the importing Party requires a product to be approved prior to importation, that Party shall, on request of the exporting Party, promptly make available information about sanitary and phytosanitary import procedures. The importing Party shall, in particular, ensure that:

(a) the standard processing period of each procedure is published or that the anticipated processing period is communicated on request to the exporting Party;

(b) the competent authority of the importing Party, when receiving an application, promptly examines the completeness of the documentation and informs the exporting Party in a precise and complete manner of all missing elements;

(c) the competent authority of the importing Party transmits as soon as possible the results of the procedure in a precise and complete manner to the exporting Party so that corrective action, if necessary, can be taken;

(d) the competent authority of the importing Party proceeds, even if the application is missing elements, as far as practicable with the procedure if the exporting Party so requests; and

(e) the competent authority of the importing Party informs the exporting Party, on request, of the stage of the procedure including an explanation of any delay.

5. If a Party requires for the approval process a risk assessment, that Party shall under normal circumstances promptly, and normally within one year after the date of receipt of the required information for the exportation of the product, make that risk assessment available.

6. Each Party shall endeavour to apply reasonable timelines for all steps of its approval processes and shall promptly start those processes on receipt of an application from the other Party.

7. Each Party shall avoid unnecessary duplication and administrative burdens with respect to:

(a) any documentation, information or action that it requires of the applicant as part of its approval processes; and

(b) any information that the Party evaluates as part of the approval processes.

8. Each Party shall promptly publish any changes to its required approval processes or related requirements. Except in duly justified circumstances related to its level of protection, each Party shall provide a transition period between the publication of any changes to its approval processes or related requirements and their entry into force to allow the other Party to become familiar with and adapt to such changes. Each Party shall endeavour to accommodate and avoid lengthening the approval process for applications submitted prior to the publication of the changes. If the change of the approval processes reduces burdens, the entry into force shall not be unnecessarily delayed.

9. On request of a Party, the other Party shall, in a timely manner, provide it with information on the stage of the approval procedure.

Specific Plant Health-Related Conditions

10. In accordance with applicable standards agreed under the IPPC, each Party shall maintain adequate information on its pest status, which may include surveillance, eradication and containment programmes and their results, in order to support the categorisation of pests and to justify phytosanitary import measures.

11. Each Party shall endeavour to establish and update a list of regulated pests for products for which a phytosanitary concern exists. The list shall contain:

(a) the quarantine pests not present within any part of its territory;

(b) the quarantine pests present, but not widely distributed, and under official control; and

(c) the regulated non-quarantine pests.

12. Each Party shall limit its import requirements for plants or plant products for which a phytosanitary concern exists to measures ensuring the absence of regulated pests. Such import requirements shall be applicable to the entire territory of the exporting Party taking into account the regional conditions.

13. Consignments of products for which phytosanitary measures exist shall be accepted on the basis of adequate guarantees provided by the exporting Party without pre-clearance programs. The importing Party may, based on a system approach, confer the related activities for the trade of products to the competent authority of the exporting Party.

14. The Parties shall only adopt phytosanitary measures that are technically justified, consistent with the pest risk involved and represent the least restrictive measures available.

15. For the purpose of implementing paragraphs 10 to 14, the Parties shall take into account the relevant ISPM.

Specific Sanitary and Phytosanitary Import Requirements

16. If several sanitary or phytosanitary measures are available to achieve the appropriate level of protection of the importing Party, the Parties shall, on request of the exporting Party, establish a technical dialogue with a view to avoid unnecessary trade disruption and to select the most practicable solution.

ARTICLE 6.11

Audits

1. In order to determine the ability of the exporting Party to provide the required assurances and to comply with the sanitary and phytosanitary measures of the importing Party, the importing Party shall have the right to audit, subject to the provisions of this Article, the competent authorities and associated or designated inspection systems of the exporting Party.

2. The importing Party may determine that it is necessary to carry out an audit as one of the tools to assess the official inspection and certification systems of the exporting Party. Such audit shall follow a systems-based approach which relies on the examination of a sample of system procedures, documents or records and, where required, on-site inspections of facilities within the scope of the audit.

3. Audits shall focus primarily on evaluating the effectiveness of the official inspection and certification systems, as well as the capacity of the exporting Party to comply with the sanitary and phytosanitary import requirements and related control measures, rather than on evaluating specific establishments or facilities, in order to determine the ability of the exporting Party's competent authorities to have and maintain control and deliver the required assurances to the importing Party.

4. In conducting an audit, the importing Party shall take into account the relevant guidance of the WTO SPS Committee and act in conformity with relevant international standards, guidelines, and recommendations.

5. The importing Party shall determine the nature and frequency of audits, taking into account the inherent risks of the product, the track record of past import checks and other available information, such as audits and inspections carried out by the competent authority of the exporting Party.

6. Each Party shall endeavour to reduce the frequency and number of audits. If the importing Party considers it necessary to carry out an audit as one of the tools to assess the official inspection and certification systems of the exporting Party, as well as the capacity of the exporting Party to comply with the sanitary and phytosanitary import requirements and related control measures, the following shall apply:

(a) for the first export request for a specific product, the importing Party shall carry out an audit on a representative sample of the exporting Party; and

(b) for any subsequent export request for the same product, with the aim of shortening the time of the approval procedure, the importing Party shall carry out such an audit only in duly justified circumstances. If the importing Party carries out an audit, it shall provide an explanation to the exporting Party.

7. Prior to the audit, the competent authorities of the importing Party and of the exporting Party shall discuss and lay down in an audit plan:

(a) the rationale for, and the objectives and scope of the audit;

(b) the criteria or requirements against which the exporting Party will be audited; and

(c) the itinerary and procedures for conducting the audit.

Unless otherwise agreed by the Parties, the importing Party shall provide the exporting Party with an audit plan at least 30 days prior to the audit.

8. The importing Party shall provide information about the results of the audit in writing to the exporting Party by means of an audit report that sets out findings, conclusions and recommendations.

9. The importing Party shall provide the draft audit report to the exporting Party, normally within 30 days of the conclusion of the audit.

10. The importing Party shall provide the exporting Party with the opportunity to comment on the findings of the audit. The importing Party may take any such comments into account before drawing conclusions and taking any action. The importing Party shall provide a final report in writing to the exporting Party normally within two months after the date of receipt of those comments.

11. The exporting Party shall inform the importing Party of any corrective actions taken on the basis of the importing Party's findings and conclusions.

12. Each Party shall ensure that procedures are in place to prevent the disclosure of confidential information obtained during an audit of the competent authorities of the exporting Party, including procedures to remove any confidential information from a final audit report before that report is made publicly available.

13. Any measures taken as a result of audits shall be proportionate to the risks identified and shall not be more trade restrictive than required to achieve the appropriate level of sanitary or phytosanitary protection of the importing Party. If a Party so requests, consultations regarding the situation shall be held in accordance with Article 6.19. The Parties shall consider any information provided through such consultations.

14. Each Party shall bear its own costs associated with the audit.

ARTICLE 6.12

Import Checks

1. Each Party shall ensure that its import checks are risk-based, carried out without undue delay and applied in a proportionate and non-discriminatory manner.

2. Each Party shall ensure that products exported to the other Party meet the sanitary and phytosanitary requirements of the importing Party.

3. Each Party shall make available to the other Party, on request, information on its import procedures, including the frequency of import checks regarding sanitary and phytosanitary measures, and the factors that it considers as determining with regard to the risks associated with importations.

4. If an import check reveals that a product does not comply with the relevant import requirements, the importing Party shall:

(a) base its action on an assessment of the risk involved and ensure that the action is not more trade-restrictive than necessary to achieve its appropriate level of sanitary or phytosanitary protection;

(b) inform the importer or its representative of the reasons for the non-compliance, the legal basis for the action and, as appropriate, on the place of disposal of that consignment; and

(c) provide to the importer or its representative the opportunity to provide additional information for assisting that Party in taking a decision.

5. If a Party prohibits or restricts the importation of a good of the other Party on the basis of a negative result of an import check, the importing Party shall, in accordance with its law, if requested by the competent authority of the exporting Party or the operator responsible for the consignment, provide in writing through normal channels the reason for the prohibition or restriction, the legal basis or authorisation for the action and, as appropriate, information on the place of disposal of that consignment[27].

6. If the rejected consignment is accompanied by a sanitary or phytosanitary certificate, the importing Party shall inform the competent authority of the exporting Party and provide all appropriate information, including the legal basis for the action, detailed laboratory results and methods. The importing Party shall maintain physical and electronic documentation regarding the identification, collection, sampling, transportation and storage of the test sample and the analytical methods used on the test sample. The importing Party shall also inform the importer or its representative on the disposal of that consignment. In the case of pest interceptions, the notification shall indicate the pest at species level whenever feasible.

7. If the importing Party determines that there is a significant, sustained or recurring pattern of non-conformity with a sanitary or phytosanitary measure, the importing Party shall notify the exporting Party of the non-conformity.

[27] For greater certainty, nothing in this Article prevents an importing Party from disposing of a consignment which is found to have an infectious pathogen or pest that can, if urgent action is not taken, spread and cause damage to human, animal or plant life or health in the territory of that Party.

8. Notwithstanding paragraph 6, the importing Party shall provide to the exporting Party, on request, available information on goods from the exporting Party that were found not to be in conformity to a sanitary or phytosanitary measure of the importing Party.

9. Any fees imposed with respect to any procedure to check and ensure the fulfilment of sanitary or phytosanitary measures shall not be higher than the actual cost of the service.

ARTICLE 6.13

Certification

1. If a Party requires a sanitary or phytosanitary certificate for the importation of a good such certificate shall be based on the international standards of the Codex, the IPPC and the WOAH.

2. Each Party shall ensure that its certificates, including any attestations, are prepared in a manner that avoids imposing unnecessary burdens for the trade between the Parties.

3. The importing Party shall promptly provide to the other Party, on request, information on the certificates required for a specific product.

4. The Parties shall strengthen their cooperation in developing model certificates with a view to reducing administrative burdens and facilitating access to their respective markets.

5. The Parties shall promote the implementation of electronic certification and other technologies to facilitate trade between them.

6. Each Party shall accept the exchange of original certificates either by a paper-based system or by a secure method of electronic data transmission that offers an equivalent certification guarantee. The exporting Party may provide electronic official certification if the importing Party has determined that equivalent security guarantees are provided, including the use of a digital signature and the guarantee of the authenticity of the document.

ARTICLE 6.14

Application of SPS Measures

1. Without prejudice to Article 6.8, each Party shall apply its sanitary or phytosanitary measures to the territory of the other Party.

2. In order to avoid an arbitrary or unjustifiable discrimination, the same import requirements shall apply to the territory of the exporting Party where identical or similar sanitary or phytosanitary conditions exist.

3. For the first export request for a specific product, the importing Party shall promptly start the approval procedure for an application of the other Party or, as the case may be, of one or a group of Member States of the European Union. The approval procedure shall follow the procedure set out in Article 6.10 and, in the case of an application of a group of Member States of the European Union where identical or similar sanitary or phytosanitary conditions exist, shall not take longer than for an application of one Member State of the European Union.

4. For a subsequent export request related to the same product, the importing Party shall approve the application no later than six months after the reception of the request, except in duly justified cases. Information requests shall be limited to what is necessary and shall take into account information already available to the importing Party, such as information on the legislative framework and previous audit reports.

ARTICLE 6.15

Elimination of Redundant Control Measures

1. The Parties recognise that the exporting Party is responsible for ensuring that establishments, facilities and products eligible for exports meet the applicable sanitary requirements of the importing Party.

2. If the importing Party maintains a list of approved establishments or facilities for the import of a specific good, it shall, on request of the exporting Party accompanied by the appropriate guarantees, approve an establishment or facility situated in the territory of the exporting Party without prior inspection thereof, subject to the following conditions and procedures:

(a) the importing Party has authorised the import of the good on the basis of an evaluation of the control system on animal health and food safety conditions applied by the competent authorities of the exporting Party;

(b) the establishment or facility concerned has been approved by the competent authority of the exporting Party;

(c) the competent authority of the exporting Party has the authority to suspend or withdraw the approval of the establishment or facility concerned; and

(d) the exporting Party has provided the relevant information requested by the importing Party.

3. The importing Party shall include the establishments or facilities on the list of approved establishments or facilities normally within 45 days after the date of receipt of the request of the exporting Party. The list shall be made publicly available.

4. The importing Party shall have the right to audit the control system of the exporting Party after the export approval. Those audits may include on-site inspection of a representative number of establishments or facilities included in the list of approved establishments or facilities, or of those requested for approval by the exporting Party. If the importing Party identifies as a result of the audit serious recurrent cases of non-compliance, the importing Party may suspend the recognition of the control system of the competent authority of the exporting Party.

5. In duly justified circumstances, the importing Party may refuse the approval of establishments or facilities that are considered as non-compliant with its requirements. In such a case, the importing Party shall notify the exporting Party of the refusal to approve establishments or facilities and provide a justification for that refusal.

6. The importing Party may carry out audits in accordance with Article 6.11 as part of the approval procedure. Such audits shall be limited to the structure, organisation and responsibilities of the competent authority responsible for the approval of the establishment or facility and the sanitary guarantees regarding the compliance with the requirements of the importing Party. Those audits may include on-site inspection of a representative number of establishments or facilities listed as approved establishments or facilities or for which a request for approval was made by the exporting Party.

7. Based on the results of such audits, the importing Party may modify the list of establishments or facilities.

8. This Article does not apply to measures relating to plants and plant products.

ARTICLE 6.16

Emergency Measures

1. The importing Party may, on serious grounds, provisionally adopt the emergency measures necessary for the protection of human, animal or plant life or health.

2. A Party that adopts an emergency measure shall promptly notify that measure in writing to the other Party. The Party that has adopted an emergency measure shall take into consideration any information provided by the other Party.

3. After adopting an emergency measure, the Party shall review the rationale thereof normally within six months, provided that the relevant information is available, and inform on request the other Party of the results of the review. A Party shall not maintain the emergency measure unless the urgent problem or the threat persists. If the Party maintains the emergency measure, that measure should be periodically reviewed.

4. A Party that adopts an emergency measure shall, in order to avoid unnecessary disruptions to trade, provide the most suitable and proportionate solution for consignments in transport between the Parties, taking into account the identified risk.

ARTICLE 6.17

Cooperation

1. The Parties shall explore, in accordance with this Chapter, options for further cooperation and information exchange between the Parties on sanitary and phytosanitary matters of mutual interest. Those options may include trade facilitation initiatives.

2. The Parties shall cooperate to facilitate the implementation of this Chapter and may jointly identify initiatives on sanitary and phytosanitary matters with the aim of eliminating unnecessary barriers to trade between the Parties.

3. The Parties may promote cooperation in all multilateral fora, in particular with the relevant international standardisation bodies.

ARTICLE 6.18

Exchange of Information

Without prejudice to other provisions of this Chapter, a Party may request information from the other Party on matters arising under this Chapter. The requested Party shall endeavour to provide, in conformity with its own confidentiality and privacy requirements, available information to the requesting Party within a reasonable period of time, and if possible, by electronic means.

ARTICLE 6.19

Consultations

1. Each Party may request consultations on specific trade concerns relating to sanitary and phytosanitary measures.

2. The Parties shall hold those consultations within 30 days after the receipt of the request, unless the Parties agree otherwise.

3. The Parties shall endeavour to provide all relevant information necessary to reach a mutually agreed solution that avoids unnecessary disruption to trade.

ARTICLE 6.20

Contact Points

1. Each Party shall designate a contact point for the implementation of this Chapter and notify the other Party of the contact details, including the indication of the official in charge.

2. The Parties shall promptly notify each other of any change of those contact details.

ARTICLE 6.21

Sub-Committee on Sanitary and Phytosanitary Measures

1. The Sub-Committee on Sanitary and Phytosanitary Measures established pursuant to subparagraph 1(e) of Article 1.10 (Sub-Committees and Other Bodies of Part III of this Agreement) shall:

(a) provide a forum to improve the Parties' understanding of sanitary and phytosanitary matters that relate to the implementation of this Chapter, including the regulatory processes related to SPS measures;

(b) monitor the implementation of this Chapter and consider any matter relating to this Chapter, including all matters which may arise in relation to its implementation;

(c) provide a forum for discussion of concerns from the application of sanitary or phytosanitary measures with a view to reaching mutually acceptable solutions and promptly addressing any matters that may create unnecessary obstacles to trade between the Parties;

(d) exchange information, expertise and experiences on sanitary and phytosanitary matters.

2. The Sub-Committee on Sanitary and Phytosanitary Measures may:

(a) identify areas for cooperation on sanitary and phytosanitary measures, which may include technical assistance;

(b) promote cooperation on sanitary and phytosanitary matters under discussion in multilateral fora, including the WTO SPS Committee and international standardisation bodies; and

(c) establish working groups consisting of expert-level representatives of the Parties, to address specific sanitary or phytosanitary matters, which may invite, with the procedures to be decided, other experts to participate, including from non-governmental organisations.

CHAPTER 7

COOPERATION ON ANIMAL WELFARE AND ANTI-MICROBIAL RESISTANCE

ARTICLE 7.1

Objectives

The objectives of this Chapter are to provide a framework for dialogue and cooperation with a view to enhancing the protection and welfare of animals and reaching a common understanding concerning animal welfare standards, and to strengthen the fight against the development of anti-microbial resistance.

ARTICLE 7.2

Animal Welfare

1. The Parties recognise that animals are sentient beings.

2. The Parties recognise the value of the World Organisation for Animal Health (WOAH) animal welfare standards, and shall endeavour to improve their implementation while respecting their right to determine the level of their science-based measures based on the WOAH animal welfare standards.

3. The Parties shall endeavour to cooperate in international fora with the aim of promoting further development of good animal welfare practices and their implementation. The Parties recognise the value of increased research collaboration in the area of animal welfare.

ARTICLE 7.3

Anti-Microbial Resistance

1. The Parties recognise that anti-microbial resistance is a serious threat to human and animal health. Misuse of anti-microbials in animal production, including non-therapeutic use, can contribute to anti-microbial resistance that may represent a risk to human and animal health. The Parties recognise that the nature of the threat requires a transnational "One Health"[28] approach.

2. The Parties shall cooperate to reduce the use of anti-microbials in animal production and to ban their use as growth promotors with the aim of combatting anti-microbial resistance in line with the "One Health" approach.

3. The Parties shall cooperate in and follow existing and future guidelines, standards, recommendations and actions developed in relevant international organisations, initiatives and national plans aiming to promote the prudent and responsible use of anti-microbials in animal husbandry and veterinary practices.

4. The Parties shall promote cooperation in all multilateral fora, in particular in the international standard setting bodies.

[28] "One Health" as defined by the World Health Organisation (WHO) is an approach combining policies in multiple sectors to achieve better public health outcomes.

ARTICLE 7.4

Working Group on Animal Welfare and Anti-Microbial Resistance

1. The Parties shall endeavour to exchange information, expertise and experiences in the fields of animal welfare and the combatting of anti-microbial resistance with the aim of implementing Articles 7.2 and 7.3.

2. To that end, the Parties shall establish a working group on animal welfare and anti-microbial resistance which shall share information with the Sub-Committee on Sanitary and Phytosanitary Measures, as appropriate. The representatives of the Parties in that working group may jointly decide to invite experts for specific activities.

ARTICLE 7.5

Non-Application of Dispute Settlement

A Party shall not have recourse to dispute settlement under Chapter 31 (Dispute Settlement) concerning the interpretation or application of the provisions of this Chapter.

CHAPTER 8

RECOGNITION OF THE PARTIES' RIGHT TO REGULATE THE ENERGY SECTOR

ARTICLE 8.1

Recognition of the Parties' Right to Regulate the Energy Sector

1. The Parties confirm their full respect for their respective sovereignty, which includes the ownership and management of all hydrocarbons in the subsoil of their respective territories by the state or by the relevant public authorities, and their respective sovereign right to regulate with respect to matters addressed in this Chapter in accordance with their respective law, in the full exercise of their democratic processes.

2. In the case of Mexico, the European Union, without prejudice to its rights and remedies available under this Agreement[29], recognises that:

(a) Mexico reserves its sovereign right to reform its Constitution (Constitución Política de los Estados Unidos Mexicanos) and its domestic legislation regarding the energy sector, including hydrocarbons and electricity;

[29] For greater certainty, those rights and remedies include those arising from Mexico's obligations pursuant to the provisions in Chapter 10 (Investment) and Annexes 10-A to 10-E.

(b) Mexico has the direct, inalienable, and imprescriptible ownership of all hydrocarbons in the subsoil of the national territory, including the continental shelf and the exclusive economic zone located outside the territorial sea and adjacent thereto, in strata or deposits, regardless of their physical conditions pursuant to Mexico's Constitution; and

(c) Mexico reserves its sovereign right to adopt or maintain measures regarding the energy sector, including hydrocarbons and electricity.

CHAPTER 9

TECHNICAL BARRIERS TO TRADE

ARTICLE 9.1

Objective

The objective of this Chapter is to facilitate trade in goods between the Parties by preventing, identifying and eliminating unnecessary technical barriers to trade, enhancing transparency and promoting greater regulatory cooperation.

ARTICLE 9.2

Scope

1. This Chapter applies to the preparation, adoption and application of standards, technical regulations and conformity assessment procedures, as defined in Annex 1 to the TBT Agreement, that may affect trade in goods between the Parties.

2. Notwithstanding paragraph 1, this Chapter does not apply to:

(a) technical specifications prepared by procuring entities for their own production or consumption requirements; or

(b) sanitary and phytosanitary measures covered by Chapter 6 (Sanitary and Phytosanitary Measures).

3. All references in this Chapter to standards, technical regulations and conformity assessment procedures include amendments thereto and additions to the rules or the product coverage thereof, except amendments and additions of an insignificant nature.

ARTICLE 9.3

Relation with the TBT Agreement

Articles 2 to 9 of, and Annexes 1 and 3 to, the TBT Agreement are hereby incorporated into and made part of this Agreement, *mutatis mutandis*.

ARTICLE 9.4

International Standards

1. The Parties recognise the important role that international standards, guides and recommendations can play in supporting greater regulatory alignment, good regulatory practice and reducing unnecessary technical barriers to trade. To that end, the Parties shall use relevant international standards as a basis for their technical regulations, except when the Party developing the technical regulation can demonstrate that such international standards would be ineffective or inappropriate for the fulfilment of the legitimate objectives pursued.

2. In addition to the obligations set out in Articles 2 and 5 of, and Annex 3 to, the TBT Agreement, each Party shall consider, among other things, the decisions and recommendations adopted by the WTO Committee on Technical Barriers to Trade since 1 January 1995[30].

3. Standards developed by international organisations, including those listed in Annex 9-A, shall be considered to be relevant international standards, provided that in their development those organisations have complied with the principles and procedures set out in the Decision of the WTO Committee on Technical Barriers to Trade on Principles for the Development of International Standards, Guides and Recommendations[31].

[30] WTO Document G/TBT/1/Rev. 13, dated 8 March 2017, including any subsequent amendments thereto.

[31] Contained in WTO Document G/TBT/1/Rev. 13, dated 8 March 2017, including any subsequent amendments thereto.

4. At the request of either Party the Joint Committee may, by decision, update the list in Annex 9-A.

5. With a view to harmonising standards on as wide a basis as possible, each Party shall encourage the standardisation bodies within its territory, as well as the regional standardisation bodies of which the Party or the standardisation bodies within its territory are members, to:

(a) participate, within the limits of their resources, in the preparation of international standards by relevant international standardisation bodies;

(b) use relevant international standards as a basis for the standards they develop, except where such international standards would be ineffective or inappropriate, for instance because of an insufficient level of protection or fundamental climatic or geographical factors or fundamental technological problems;

(c) avoid duplication of, or overlap with, the work of international standardisation bodies;

(d) review national and regional standards not based on relevant international standards at regular intervals, with a view to increasing their convergence with relevant international standards;

(e) cooperate with the relevant standardisation bodies of the other Party in international standardisation activities to ensure that international standards, guides and recommendations that are likely to become a basis for technical regulations and conformity assessment procedures do not create unnecessary obstacles to international trade; that cooperation may be undertaken in international standardisation bodies or at regional level;

(f) foster bilateral cooperation with the standardisation bodies within the territory of the other Party, as well as the regional standardisation bodies of which the other Party or the standardisation bodies within its territory are members;

(g) make publicly available through a website their work programs containing a list of the standards they are currently preparing and of the standards they have adopted.

6. Article 9.6 of this Chapter and Article 2 or 5 of the TBT Agreement apply to a draft technical regulation or a draft conformity assessment procedure, which makes a standard mandatory through incorporation or referencing.

ARTICLE 9.5

Conformity Assessment Procedures

1. The Parties recognise that different mechanisms exist to facilitate the acceptance of the results of conformity assessment, including:

(a) voluntary agreements between the conformity assessment bodies within the territories of the Parties;

(b) agreements on the mutual acceptance of the results of conformity assessment procedures with regard to specific technical regulations, carried out by bodies located within the territory of the other Party;

(c) use of accreditation procedures to qualify conformity assessment bodies;

(d) government designation or, if applicable, approval of conformity assessment bodies;

(e) recognition by a Party of the results of conformity assessment bodies within the territory of the other Party; and

(f) acceptance of the supplier's declaration of conformity by the importing Party.

2. Recognising the differences in the conformity assessment procedures in their respective territories:

(a) the European Union shall, as provided for in its laws and regulations, apply the regime of supplier's declaration of conformity; and

(b) Mexico shall, as provided for in its laws and regulations, accept as an assurance that a product conforms to the requirements of Mexico's technical regulations, including technical regulations enacted after the entry into force of this Agreement, and without additional requirements, certificates issued by conformity assessment bodies within the territory of the European Union that have been accredited by a Mexican accreditation entity and approved by the competent authority; in this regard, Mexico shall accord to conformity assessment bodies within the territory of the European Union treatment no less favourable than that it accords to conformity assessment bodies within its own territory.

Nothing in this paragraph shall preclude Mexico from verifying the results of individual conformity assessment procedures, as long as it does not require that a product is subject to conformity assessment procedures in the territory of Mexico which duplicate the conformity assessment procedures already conducted in the territory of the European Union, except on a random or infrequent basis for the purpose of surveillance, audit or in response to information indicating non-conformity.

3. Notwithstanding paragraph 2, a Party may introduce requirements for mandatory third-party testing or certification for products if compelling reasons related to the protection of human health and safety justify the introduction of such requirements or certification.

4. Nothing in this Article shall preclude a Party from requesting that a conformity assessment in relation to specific products is performed by specified governmental bodies of that Party. In such cases, the Party shall:

(a) limit the conformity assessment fees to the approximate cost of the services rendered and, on request of an applicant for conformity assessment, explain how the amount of the fees imposed is limited to the approximate cost of the services rendered;

(b) make the conformity assessment fees publicly available; and

(c) on request of the other Party, and in addition to the obligations set out in Articles 5.2.3, 5.2.4 and 5.2.8 of the TBT Agreement, explain:

(i) how the information required under the conformity assessment procedure is necessary to assess conformity and determine fees;

(ii) how the Party ensures that the confidentiality of the information required is respected in a manner that ensures the protection of legitimate commercial interests; and

(iii) the procedure to review complaints concerning the operation of the conformity assessment procedure.

5. Each Party shall publish online, preferably on a single website:

(a) any procedures, criteria and other conditions that it might use as a basis for determining whether conformity assessment bodies are competent to receive accreditation, approval, designation or other recognition, if applicable, including recognition granted pursuant to a mutual recognition agreement; and

(b) a list of the bodies that it has approved, designated or otherwise recognised to perform such conformity assessment and relevant information on the scope of the approval, designation or other recognition of each body.

6. A Party may submit a substantiated request to the other Party to enter into negotiations to conclude a mutual recognition agreement on the mutual acceptance of the results of conformity assessment procedures for a particular sector. If the other Party refuses to enter into such negotiations, it shall explain the reasons for its decision.

7. Article 9.7 applies, *mutatis mutandis*, to conformity assessment procedures.

8. If a Party requires a conformity assessment procedure, it shall:

(a) select conformity assessment procedures proportionate to the risks involved as determined on the basis of a risk assessment; and

(b) on request by the other Party, provide information to that other Party on the criteria used for the conformity assessment procedures for specific products.

9. If a Party requires a third-party conformity assessment procedure and it has not reserved that task to a specified governmental body as referred to in paragraph 4, it shall:

(a) preferably use accreditation to qualify conformity assessment bodies;

(b) make best use of international standards for accreditation and conformity assessment, as well as international agreements involving the Parties' accreditation bodies, for example, through the mechanisms of the International Laboratory Accreditation Cooperation (ILAC) and the International Accreditation Forum (IAF);

(c) join or, as applicable, encourage its conformity assessment bodies to join any functioning international agreements or arrangements for harmonisation or facilitation of acceptance of conformity assessment results;

(d) ensure that, if more than one conformity assessment body has been designated for a particular product or set of products, economic operators can choose which of those bodies will carry out the conformity assessment procedure;

(e) ensure that there are no conflicts of interest between accreditation bodies and conformity assessment bodies; and

(f) allow its conformity assessment bodies to rely on testing or inspections in relation to the conformity assessment which have been carried out by conformity assessment bodies located within the territory of the other Party; nothing in this subparagraph shall be construed as prohibiting a Party from requiring the conformity assessment bodies located within the territory of the other Party to meet the same requirements that its own conformity assessment bodies are required to meet.

ARTICLE 9.6

Transparency

1. In accordance with its respective rules and procedures and without prejudice to Chapter 28 (Good Regulatory Practices), when developing technical regulations and conformity assessment procedures which may have a significant effect on trade, each Party shall, except where urgent problems of safety, health, environmental protection or national security arise or threaten to arise:

(a) allow persons of the other Party to participate in its public consultation process on terms no less favourable than those accorded to its own persons; and

(b) make the results of the consultation process public on an official website.

2. Each Party shall endeavour to consider methods to provide additional transparency in the development of technical regulations and conformity assessment procedures, including the use of electronic tools and public outreach or public consultations.

3. If appropriate, each Party shall encourage non-governmental bodies, including standardisation bodies, within its territory to comply with paragraphs 1 and 2.

4. Each Party shall ensure that any document laying down a technical regulation or conformity assessment procedure contains sufficient detail to adequately inform interested persons and the other Party about whether and how their trade interests might be affected.

5. Each Party shall publish online, preferably on a single website or in an official journal, all proposals for new or amended technical regulations and conformity assessment procedures of central and sub-central levels of government, and their final versions, which a Party is required to notify or publish in accordance with the TBT Agreement[32].

6. Each Party shall ensure that its adopted technical regulations and conformity assessment procedures are published on a website free of charge.

[32] For greater certainty, a Party may comply with this obligation by ensuring that the proposals for such regulations and procedures and their final versions are published on, or otherwise accessible through, the WTO's official website.

7. Each Party shall publish proposals for new technical regulations and conformity assessment procedures that are in accordance with the technical content of relevant international standards, guides or recommendations, if any, and that may have a significant effect on trade, except in the cases provided for in Articles 2.10 and 5.7 of the TBT Agreement.

8. Each Party shall endeavour to publish proposals for new technical regulations and conformity assessment procedures of sub-central or local governments, as the case may be, that are in accordance with the technical content of relevant international standards, guides and recommendations, if any, and that may have a significant effect on trade, in accordance with the procedures set out in Article 2.9 or 5.6 of the TBT Agreement.

9. For the purpose of determining whether a proposed technical regulation or conformity assessment procedure may have a significant effect on trade and thus is to be notified in accordance with the relevant provisions of the TBT Agreement which are incorporated in this Agreement pursuant to Article 9.3 of this Agreement, a Party shall consider, among other things, the relevant decisions and recommendations adopted by the WTO Committee on Technical Barriers to Trade since 1 January 1995, as referred to in Article 9.4.2 of this Agreement.

10. Each Party shall, on request of the other Party, provide information regarding the objectives of, legal basis and rationale for, a technical regulation or conformity assessment procedure that the Party has adopted or is proposing to adopt.

11. Each Party shall allow a period of at least 60 days following its transmission to the WTO Central Registry of Notifications of proposed technical regulations and conformity assessment procedures for the other Party to provide written comments, except where urgent problems of safety, health, environmental protection or national security arise or threaten to arise. A Party shall consider any reasonable request from the other Party to extend the comment period. A Party that is able to extend the comment period beyond 60 days, for example to 90 days, is encouraged to do so.

12. Each Party shall endeavour to provide sufficient time between the end of the comment period and the adoption of the notified technical regulation or conformity assessment procedure, for its consideration of, and preparation of responses to, the comments received.

13. If a Party receives written comments on its proposed technical regulation or conformity assessment procedure from the other Party, it shall:

(a) on request of the other Party, discuss the written comments with the participation of its competent regulatory authority at a time when those comments can be taken into account; and

(b) reply in writing to the comments no later than the date of publication of the adopted technical regulation or conformity assessment procedure.

14. Each Party shall publish on a website its responses to comments that it receives, if possible no later than the date of publication of the adopted technical regulation or conformity assessment procedure.

15. Each Party shall notify the final text of a technical regulation or conformity assessment procedure when the text is adopted or published, as an addendum to the original notification of the proposed measure notified under Article 2.9, 3.2, 5.6 or 7.2 of the TBT Agreement.

16. No later than the date of publication of a final technical regulation or conformity assessment procedure that may have a significant effect on trade, each Party shall make publicly available online:

(a) an explanation of the objectives and of how the final technical regulation or conformity assessment procedure achieves them; and

(b) the results of the impact assessment provided for in Article 9.7, if carried out.

17. For the purposes of Articles 2.12 and 5.9 of the TBT Agreement, a "reasonable interval" means normally a period of not less than six months, except when this would be ineffective for the fulfilment of the legitimate objectives pursued.

18. Each Party shall endeavour to provide an interval of more than six months between the publication of final technical regulations and conformity assessment procedures and their entry into force, except when this would be ineffective for the fulfilment of the legitimate objectives pursued.

ARTICLE 9.7

Technical Regulations

1. Each Party shall carry out, in accordance with its respective rules and procedures, a regulatory impact assessment of planned technical regulations.

2. Each Party shall assess the available regulatory and non-regulatory alternatives to a proposed technical regulation that can fulfil the Party's legitimate objectives, in accordance with Article 2.2 of the TBT Agreement.

3. If a Party has not used international standards as a basis for its technical regulations, that Party shall, on request of the other Party, identify any substantial deviation from the relevant international standards and explain the reasons why those standards have been judged inappropriate or ineffective for the objective pursued, and provide the scientific or technical evidence on which that assessment is based.

4. In addition to Article 2.3 of the TBT Agreement, each Party shall review its technical regulations with a view to increasing their convergence with relevant international standards. Each Party shall take into account, among other things, any new development in the relevant international standards and whether the circumstances that have given rise to divergences from any relevant international standard continue to exist.

ARTICLE 9.8

Regulatory Cooperation

1. The Parties recognise that a broad range of regulatory cooperation mechanisms exist that can help to eliminate or avoid the creation of technical barriers to trade.

2. A Party may propose to the other Party sector-specific regulatory cooperation activities in areas covered by this Chapter. Those proposals shall be transmitted to the contact point designated pursuant to Article 9.11 and shall consist of:

(a) information exchanges on regulatory approaches and practices;

(b) initiatives to further align technical regulations and conformity assessment procedures with relevant international standards; or

(c) technical advice and assistance on mutually agreed terms and conditions to improve practices related to the development, implementation and review of technical regulations, standards and conformity assessment procedures and metrology.

The other Party shall give due consideration to the proposal and shall reply within a reasonable period of time.

3. The Parties shall encourage cooperation between their respective organisations responsible for standardisation, conformity assessment, accreditation and metrology, whether they are public or private, on issues covered by this Chapter.

4. Nothing in this Article shall be construed as requiring a Party to:

(a) deviate from domestic procedures for preparing and adopting regulatory measures;

(b) take actions that would undermine or impede the timely adoption of regulatory measures to achieve its public policy objectives; or

(c) achieve any particular regulatory outcome.

ARTICLE 9.9

Marking and Labelling

1. For the purposes of this Article and in accordance with paragraph 1 of Annex 1 to the TBT Agreement, a technical regulation may include or deal exclusively with the requirements of marking and labelling applied to a product, process or production method.

2. The Parties affirm that their technical regulations that include or deal exclusively with marking or labelling comply with Article 2 of the TBT Agreement.

3. If a Party requires mandatory marking or labelling of products, that Party shall:

(a) endeavour to only require information which is relevant for consumers or users of the product or for indicating the product's conformity with the mandatory technical requirements;

(b) not require any prior approval, registration or certification of the labels or markings of products, or the payment of any fee, as a precondition for placing on its market products that otherwise comply with its mandatory technical requirements, unless it is necessary in view of the risk of the products to human, animal or plant life or health, the environment or national security;

(c) if the Party requires the use of a unique identification number by economic operators, issue that number to the economic operators of the other Party without undue delay and on a non-discriminatory basis;

(d) provided that it is not misleading, contradictory or confusing in relation to the information required in the importing Party of the goods, permit the following:

(i) information in other languages in addition to the language required in the importing Party;

(ii) internationally accepted nomenclatures, pictograms, symbols or graphics; and

(iii) additional information to that required in the importing Party;

(e) accept that labelling, including supplementary labelling and corrections to labelling, takes place after importation but prior to offering the product for sale, as an alternative to labelling at the place of origin, unless such labelling must be carried out at the place of origin for reasons of public health or safety or due to a requirement related to a geographical indication of the exporting Party; and

(f) endeavour to accept non-permanent or detachable labels, or the inclusion of relevant information for marking or labelling in the accompanying documentation, rather than in labels physically attached to the product, unless such labelling is required for reasons of public health or safety.

ARTICLE 9.10

Information Exchange and Discussions

1. A Party may request the other Party to provide information on any matter covered by this Chapter. The other Party shall provide that information within a reasonable period of time.

2. A Party may request the other Party to discuss any concern that arises under this Chapter, including any draft or proposed technical regulation or conformity assessment procedure of the other Party, if it considers that the technical regulation or conformity assessment procedure might have a significant adverse effect on trade between the Parties. The request shall be in writing and identify:

(a) the concern;

(b) the provisions of this Chapter to which the concern relates; and

(c) the reasons for the request, including a description of the requesting Party's concern.

3. For greater certainty, a Party may also request the other Party to discuss any concern that arises under this Chapter with respect to technical regulations or conformity assessment procedures of regional or local governments, as the case may be, on the level directly below that of the central government, and that may have a significant effect on trade.

4. The Parties shall discuss the concern raised within 60 days after the date of the request in person or by video or teleconference and shall endeavour to resolve the concern as expeditiously as possible. If the requesting Party considers that the concern is urgent, it may request that any discussions take place within a shorter timeframe. The responding Party shall give positive consideration to that request. The Parties shall make every attempt to arrive at a mutually satisfactory resolution of the matter.

5. Unless the Parties agree otherwise, the discussions and any information exchanged in the course of the discussions shall be without prejudice to the rights and obligations of the Parties under this Agreement, the WTO Agreement or any other agreement to which both Parties are party.

6. Requests for information or discussions shall be submitted through the respective contact point designated pursuant to Article 9.11.

ARTICLE 9.11

Contact Points

1. Each Party shall designate a contact point to facilitate cooperation and coordination under this Chapter, and notify the other Party of its contact details. The Parties shall promptly notify each other of any changes to those contact details.

2. The contact points shall work jointly to facilitate the implementation of this Chapter and cooperation between the Parties on all TBT matters. The contact points shall in particular be responsible for:

(a) organising information exchange and discussions referred to in Article 9.10.6;

(b) promptly addressing any issue that the other Party raises related to the development, adoption, application or enforcement of standards, technical regulations or conformity assessment procedures;

(c) on request of a Party, arranging discussions on any matter arising under this Chapter;

(d) exchanging information on developments in non-governmental, regional and multilateral fora related to standards, technical regulations and conformity assessment procedures; and

(e) facilitating the identification of possible needs for technical assistance.

ARTICLE 9.12

Sub-Committee on Technical Barriers to Trade

The Sub-Committee on Technical Barriers to Trade established pursuant to subparagraph 1(g) of Article 1.10 (Sub-Committees and Other Bodies of Part III of this Agreement) shall:

(a) monitor the implementation and administration of this Chapter;

(b) enhance cooperation in the development and improvement of standards, technical regulations and conformity assessment procedures;

(c) establish priority areas of mutual interest for future work under this Chapter and consider proposals for new initiatives;

(d) monitor and discuss developments under the TBT Agreement; and

(e) take any other steps that the Parties consider will assist them in implementing this Chapter and the TBT Agreement.

CHAPTER 10

INVESTMENT

SECTION A

General Provisions

ARTICLE 10.1

Definitions

1. For the purposes of this Chapter:

(a) "covered investment" means an investment which is owned or controlled, directly or indirectly, by an investor of a Party in the territory of the other Party, made in accordance with applicable law, and which is in existence at the date of entry into force of this Agreement or is established thereafter;

(b) "economic activity" means an activity of an industrial, commercial or professional character, and an activity of craftsmen, including the supply of services, except an activity performed in the exercise of governmental authority;

(c) "enterprise" means an enterprise as defined in Article 1.3 (Definitions of General Application), or a branch or a representative office thereof[33];

(d) "enterprise of the European Union" or "enterprise of Mexico" means an enterprise set up in accordance with the law of the European Union or its Member States, or of Mexico and engaged in substantive business operations[34] in the territory of the European Union or of Mexico, respectively[35];

shipping companies established outside the European Union or Mexico and controlled by nationals of a Member State of the European Union or of Mexico, respectively, shall also be beneficiaries of the provisions of this Chapter, with the exception of Sections C (Investment Protection) and D (Resolution of Investment Disputes), if their vessels are registered in accordance with the law of a Member State of the European Union or of Mexico, as appropriate, and fly the flag of that Member State of the European Union or of Mexico;

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33 For Mexico, a representative office shall not be considered as an enterprise, unless it is established as a branch.

34 In line with its notification of the Treaty establishing the European Community to the WTO (WT/REG39/1), the European Union understands that the concept of an "effective and continuous link" with the economy of a Member State of the European Union enshrined in Article 54 of the TFEU is equivalent to the concept of "substantive business operations".

35 For greater certainty, a branch or a representative office of an enterprise of a third country shall not be considered to be an enterprise of the European Union or an enterprise of Mexico.

(e) "establishment" means the setting up, including the acquisition[36], of an enterprise in the European Union or in Mexico;

(f) "investor of a Party" means a Party or a natural person or an enterprise of a Party, other than a branch or representative office, that seeks to make, is making, or has made an investment in the territory of the other Party;

(g) "investor of a third country" means an investor that seeks to make, is making, or has made an investment in the territory of a Party, and that is not an investor of a Party;

(h) "operation" means the conduct, management, maintenance, use, enjoyment, sale or other disposal of an investment;

(i) "returns" means the amounts yielded by an investment and includes in particular, though not exclusively, profits, interest, dividends, capital gains, royalties, payments in connection with intellectual property rights, payments in kind, management fees and other fees derived from that investment[37].

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36 The term "acquisition" includes capital participation in an enterprise with a view to establishing or maintaining lasting economic links.

37 For greater certainty, returns that are reinvested shall be treated as investments as long as they comply with the definition of investment under this Article.

2. For the purposes of this Chapter, "investment" means every kind of asset which is owned or controlled, directly or indirectly, by an investor and acquired in the expectation of, or used for the purposes of, economic benefit or other business purposes and that has the characteristics of an investment, including a certain duration, the commitment of capital or other resources, the expectation of gain or profit, or the assumption of risk. Forms that an investment may take include:

(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[38];

(d) interests arising from:

(i) concessions, licences, authorisations, permits and similar rights conferred pursuant to domestic law;

[38] Some forms of debt, such as bonds, loans, debentures and long-term notes, are more likely to have characteristics of an investment, while other forms of debt are less likely to have such characteristics.

(ii) turnkey, construction, management, production, concession, or revenue-sharing contracts, and other similar contracts;

(e) intellectual property rights;

(f) other tangible or intangible, movable or immovable, property and related property rights, such as leases, liens and pledges[39]; or

(g) claims to money involving the kind of interests set out in subparagraphs (a) to (f), excluding claims to money that arise solely from:

(i) commercial contracts for the sale of goods or services by a natural person or an enterprise in the territory of a Party to a natural person or an enterprise in the territory of the other Party; or

[39] For greater certainty, market share, market access, expected gains, and opportunities for profit-making are not, in themselves, investments.

(ii) the extension of credit in connection with a commercial transaction, such as trade financing, other than a loan under subparagraph (c).

"Investment" does not include an order or judgment entered in a judicial or administrative action.

Any alteration of the form in which assets are invested or reinvested shall not affect their character as investments provided that the form taken by any investment or reinvestment maintains its compliance with the definition of investment.

ARTICLE 10.2

Scope

1. This Chapter applies to measures adopted or maintained by[40]:

(a) the central, regional or local governments or authorities of a Party; and

(b) any person of a Party, including a state enterprise or any other non-governmental body in the exercise of powers delegated by central, regional or local governments or authorities.

[40] For greater certainty, this Chapter covers measures by entities listed under subparagraphs (a) and (b), which are adopted or maintained either directly or indirectly by instructing, directing or controlling other entities with regard to those measures.

2. This Chapter does not apply to measures of a Party insofar as they are covered by Chapter 18 (Financial Services).

ARTICLE 10.3

Right to Regulate

The Parties affirm the right to regulate within their territories to achieve legitimate policy objectives, such as public health, social services, public education, safety, environment, public morals, social or consumer protection, privacy and data protection, the promotion and protection of cultural diversity, or competition.

ARTICLE 10.4

Relation to Other Chapters

1. If an inconsistency arises between this Chapter and Chapter 18 (Financial Services), the latter shall prevail to the extent of the inconsistency.

2. A requirement by a Party that a service supplier of the other Party post a bond or other form of financial security as a condition for the cross-border supply of a service does not in itself make this Chapter applicable to measures adopted or maintained by the former Party relating to that supply of a service. This Chapter applies to measures adopted or maintained by that former Party relating to the posted bond or financial security, to the extent that such bond or financial security is a covered investment.

SECTION B

Liberalisation of Investments

ARTICLE 10.5

Scope

1. This Section applies to measures adopted or maintained by a Party affecting the establishment of an enterprise of the other Party or the operation of an investment of an investor of the other Party in its territory.

2. This Section does not apply to:

(a) activities performed in the exercise of governmental authority within the territory of the respective Party;

(b) government procurement of a good or service purchased for governmental purposes, and not with a view to commercial resale or use in the production of a good or supply of a service for commercial sale, irrespective of whether that procurement constitutes a covered procurement within the meaning of Article 21.1 (Definitions);

(c) audio-visual services;

(d) national maritime cabotage[41]; or

(e) air services, or related services in support of air services[42], other than the following:

(i) aircraft repair and maintenance services during which an aircraft is withdrawn from service;

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41 For the European Union, without prejudice to the scope of activities which may be considered as cabotage under the relevant national legislation, national maritime cabotage under this Chapter covers transportation of passengers or goods between a port or point located in a Member State of the European Union and another port or point located in that same Member State of the European Union, including on its continental shelf, as provided in the United Nations Convention on the Law of the Sea, and traffic originating and terminating in the same port or point located in a Member State of the European Union.
For Mexico, national maritime cabotage under this Chapter covers the navigation that any vessel performs by sea, between ports or places located within the Mexican marine zones and Mexican shores.

42 For greater certainty, "air services, or related services in support of air services" also include the following services: rental of aircraft with crew, airport operation services and services provided by using an aircraft whose primary purpose is not the transportation of goods or passengers, such as aerial fire-fighting, flight training, sightseeing, spraying, surveying, mapping, photography, parachute jumping, glider towing, helicopter-lift for logging and construction, and other airborne agricultural, industrial and inspection services.

(ii) selling and marketing of air transport services;

(iii) computer reservation system services; or

(iv) ground handling services.

3. Articles 10.6 to 10.8 do not apply to subsidies[43] or grants provided by a Party, including government-supported loans, guarantees and insurance.

4. Articles 10.6 to 10.10 do not apply to new services, as set out in Annex VII.

5. Without prejudice to Article 10.54, this Chapter does not bind a Party in relation to any act or fact that took place or any situation that ceased to exist before the date of entry into force of this Agreement.

[43] For greater certainty, subsidies are covered under Chapter 24 (Subsidies).

ARTICLE 10.6

Market Access

In the sectors or subsectors where market access commitments are undertaken, a Party shall not adopt or maintain, with respect to market access through establishment or operation by investors of the other Party or by enterprises constituting covered investments, either on the basis of its entire territory or on the basis of a territorial subdivision, a measure[44] that:

(a) limits the number of enterprises that may carry out a specific economic activity, whether in the form of numerical quotas, monopolies, exclusive rights or the requirement of an economic needs test;

(b) limits the total value of transactions or assets in the form of numerical quotas or the requirement of an economic needs test;

(c) limits the total number of operations or the total quantity of output expressed in terms of designated numerical units in the form of quotas or the requirement of an economic needs test;

[44] Subparagraphs (a), (b) and (c) do not cover measures adopted or maintained in order to limit the production of an agricultural or a fishery product.

(d) restricts or requires specific types of legal entity or joint venture through which an investor of the other Party may carry out an economic activity; or

(e) limits the total number of natural persons that may be employed in a particular sector or that an enterprise may employ and who are necessary for, and directly related to, the performance of an economic activity in the form of numerical quotas or the requirement of an economic needs test.

ARTICLE 10.7

National Treatment

1. Each Party shall accord to investors of the other Party and to their enterprises constituting covered investments treatment no less favourable than the treatment it accords, in like situations, to its own investors and to their enterprises, respectively, with respect to their establishment in its territory.

2. Each Party shall accord to investors of the other Party and to their covered investments, treatment no less favourable than the treatment it accords, in like situations, to its own investors and to their investments, respectively, with respect to their operation in its territory.

3. The treatment to be accorded by a Party pursuant to paragraphs 1 and 2 means, with respect to a regional level of government of Mexico, treatment no less favourable than the most favourable treatment accorded, in like situations, by that regional level of government to investors of Mexico, and to their investments in the territory of that regional government.

4. The treatment to be accorded by a Party pursuant to paragraphs 1 and 2 means, with respect to a government of or in a Member State of the European Union, treatment no less favourable than the most favourable treatment accorded, in like situations, by that government to its own investors, and to their investments in its territory.

ARTICLE 10.8

Most-Favoured-Nation Treatment

1. Each Party shall accord to investors of the other Party, and to their enterprises constituting covered investments, treatment no less favourable than the treatment it accords, in like situations, to investors and enterprises, respectively, of any third country with respect to their establishment in its territory.

2. Each Party shall accord to investors of the other Party, and to their covered investments, treatment no less favourable than the treatment it accords, in like situations, to investors and investments, respectively, of any third country with respect to the operation of investments in its territory.

3. Paragraphs 1 and 2 shall not be construed as obliging a Party to extend to the investors of the other Party the benefit of any treatment resulting from measures providing for recognition, including of the standards or criteria for the authorisation, licensing or certification of a natural person or enterprise to carry out an economic activity, or of prudential measures.

4. For greater certainty, the treatment referred to in this Article does not include treatment accorded to investors of a third country and their investments by provisions concerning the settlement of investment disputes provided for in this Agreement or other international agreements concluded between a Party and a third country. The substantive provisions in other international agreements do not in themselves constitute treatment as referred to in paragraphs 1 and 2, and thus cannot give rise to a breach of this Article. Measures applied pursuant to such provisions may constitute treatment under this Article.

ARTICLE 10.9

Performance Requirements

1. A Party shall not, in connection with the establishment of an enterprise of a Party or the operation of an investment of an investor of a Party, or of a third country, in the territory of that Party, impose or enforce any requirement or enforce any commitment or undertaking to[45]:

(a) export a given level or percentage of goods or services;

[45] For greater certainty, a condition for the receipt or continued receipt of an advantage referred to in paragraph 2 does not constitute a "commitment or undertaking" for the purposes of paragraph 1.

(b) achieve a given level or percentage of domestic content;

(c) purchase, use or accord a preference to goods produced or services provided in its territory, or to purchase goods or services from natural persons or enterprises in its territory;

(d) 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) restrict sales of goods or services in its territory that such investment produces or supplies, by relating those sales in any way to the volume or value of its exports or foreign exchange earnings;

(f) provide access to or transfer a particular technology, a production process or other proprietary knowledge to a natural person or enterprise in its territory;

(g) supply exclusively from the territory of that Party to a specific regional market or the world market, goods or services that such investment produces or supplies;

(h) locate the headquarters of that investor for a specific regional market or the world market in its territory; or

(i) restrict the exportation or sale for export.

2. A Party shall not condition the receipt or continued receipt of an advantage, in connection with the establishment of an enterprise of a Party or the operation of an investment of an investor of a Party, or of a third country, in its territory on compliance with any requirement to:

(a) achieve a given level or percentage of domestic content;

(b) purchase, use or accord a preference to goods produced or services provided in its territory, or to purchase goods from natural persons or enterprises in its territory;

(c) 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;

(d) restrict sales of goods or services in its territory that such investment produces or supplies by relating those sales in any way to the volume or value of its exports or foreign exchange earnings; or

(e) restrict the exportation or sale for export.

3. Nothing in paragraph 2 shall be construed as preventing a Party from conditioning the receipt or continued receipt of an advantage, in connection with an investment of an investor of a Party or of a third country, on compliance with a requirement to locate production, supply a service, train or employ workers, construct or expand particular facilities, or carry out research and development, in its territory.

4. Subparagraph 1(f) does not apply if:

(a) the requirement is imposed or enforced or the commitment or undertaking is enforced by a court, administrative tribunal or competition authority to remedy a practice determined after a judicial or administrative process to be a violation of the Party's competition law; or

(b) a Party authorises the use of an intellectual property right in accordance with Articles 31 and 31bis of the TRIPS Agreement, or measures requiring the disclosure of proprietary information that fall within the scope of, and are consistent with, Article 39 of the TRIPS Agreement.

5. Subparagraphs 1(a), (b) and (c) and 2(a) and (b) do not apply to qualification requirements for goods or services with respect to participation in export promotion and foreign aid programmes.

6. Subparagraphs 2(a) and (b) do not apply to requirements imposed by an importing Party relating to the content of goods which are necessary to qualify for preferential tariffs or preferential quotas.

7. For greater certainty, paragraphs 1 and 2 do not apply to any requirement, commitment or undertaking other than those set out in those paragraphs.

8. This Article does not preclude the enforcement of any requirement, commitment or undertaking between private parties other than a Party, where the requirement, commitment or undertaking was not imposed or required by a Party.

9. This Article is without prejudice to commitments of a Party made under the WTO Agreement.

ARTICLE 10.10

Senior Management and Board of Directors

1. A Party shall not require that an enterprise of the other Party that is a covered investment appoint natural persons of any particular nationality to senior management positions.

2. A Party shall not require that the board of directors of an enterprise of the other Party that is a covered investment be composed of natural persons having a particular nationality, or having residency in its territory, or a combination thereof.

ARTICLE 10.11

Formal Requirements

Notwithstanding Articles 10.7 and 10.8, a Party may require an investor of the other Party or its covered investment to provide routine information concerning that investment solely for informational or statistical purposes. If a Party requires such information, it shall protect that information which is confidential from any disclosure that would prejudice the competitive position of the investor or the covered investment. Nothing in this Article shall be construed as preventing a Party from otherwise obtaining or disclosing information in connection with the equitable and good faith application of its law.

ARTICLE 10.12

Non-Conforming Measures and Exceptions

1. Articles 10.7 to 10.10 do not apply to:

(a) an existing non-conforming measure that is maintained by a Party at the level of:

(i) the European Union, as set out in its list in Appendix I-A to Annex I;

(ii) a central government, as set out by that Party in its list in Appendix I-A or I-B-1 to Annex I;

(iii) a regional government, as set out by that Party in its list in Appendix I-A or I-B-2 to Annex I; or

(iv) a local government;

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

(c) any amendment to a 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 10.7 to 10.10.

2. Articles 10.7 to 10.10 do not apply to a measure that a Party adopts or maintains with respect to sectors, subsectors or activities as set out in its list in Appendix II-A or II-B to Annex II.

3. A Party shall not, under a measure adopted after the date of entry into force of this Agreement and covered by its list in Appendix II-A or II-B to Annex II, require, directly or indirectly, 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. Article 10.6 does not apply to a measure that a Party adopts or maintains with respect to committed sectors or subsectors as set out in its schedule in Appendix III-A, III-B-1 or III-B-2 to Annex III.

5. Articles 10.7 and 10.8 do not apply to any measure that constitutes an exception, exemption or waiver from Articles 3 or 4 of the TRIPS Agreement, as provided in Articles 3 to 5 of that Agreement.

6. Without prejudice to paragraphs 1 to 5, within five years after the date of entry into force of this Agreement, Mexico may notify to the European Union a draft Joint Council decision to modify Annexes I, II and III as follows:

(a) in Appendices I-B-2 and III-B-2, any existing non-conforming measures maintained at the sub-federal level of government; and

(b) in Appendices I-B-1 and II-B, its performance requirements.

The European Union shall review that draft within a period of three months and consult with Mexico on any related issues. After that consultation, the Joint Council shall adopt the modifications to the annexes referred to in this paragraph. The modified annexes shall apply as of the date of adoption of the modifications.

SECTION C

Investment Protection

ARTICLE 10.13

Scope

This Section applies to any measure adopted or maintained by a Party affecting:

(a) covered investments; or

(b) investors of a Party in respect of a covered investment.

ARTICLE 10.14

Investment and Regulatory Objectives and Measures

1. The provisions of this Section shall not be interpreted as a commitment of a Party not to change the legal and regulatory framework applicable in its territory, including in a manner that may negatively affect the operation of covered investments or the investor's expectations of profits.

2. For greater certainty, nothing in this Section shall be construed as preventing a Party from discontinuing the granting of a subsidy[46] or requesting its reimbursement, where such action has been ordered by a competent court, administrative tribunal or other competent authority, or as requiring that Party to compensate the investor therefor.

3. For greater certainty, a Party's decision not to issue, renew or maintain a subsidy or grant does not constitute a breach of this Section if that decision is made:

(a) in the absence of any specific commitment under law or contract to issue, renew or maintain that subsidy or grant;

(b) in accordance with any terms or conditions attached to the issuance, renewal or maintenance of that subsidy or grant; or

(c) in accordance with paragraph 2.

[46] For the European Union, "subsidy" includes any aid granted by a Member State of the European Union or through state resources of such Member State, which distorts or threatens to distort competition by favouring certain undertakings or the production of certain goods and affects trade between the Member States of the European Union.

ARTICLE 10.15

Treatment of Investors and of Covered Investments

1. Each Party shall accord in its territory to covered investments of the other Party, and to investors of the other Party with respect to their covered investments, fair and equitable treatment and full protection and security in accordance with the following paragraphs.

2. A Party breaches the obligation of fair and equitable treatment referred to in paragraph 1 if a measure or series of measures constitutes[47]:

(a) denial of justice in criminal, civil or administrative proceedings;

[47] For greater certainty, in determining whether a measure or series of measures amount to a breach of the obligation of fair and equitable treatment, the Tribunal established by Article 10.30 shall take into account, among other things, the following:
(a) with regard to subparagraphs 2(a) and (b), whether the measure or series of measures involve gross misconduct that offends judicial propriety; the mere fact that an investor's challenge of the impugned measure in domestic proceeding has been rejected or dismissed or has otherwise failed does not in itself constitute a denial of justice as referred to in subparagraph 2(a);
(b) with regard to subparagraph 2(c), whether the measure or series of measures were patently not founded on reason or fact, or were patently founded on illegitimate grounds such as prejudice or bias; the mere illegality, or a merely inconsistent or questionable application of a policy or procedure, does not in itself constitute manifest arbitrariness as referred to in subparagraph 2(c), while a total and unjustified repudiation of a law or regulation, or a measure without reason, or a conduct that is specifically targeted to the investor or its covered investment with the purpose of causing damage are likely to constitute manifest arbitrariness as referred to in subparagraph 2(c); and
(c) with regard to subparagraph 2(d), whether a Party acted *ultra vires* and whether the episodes of alleged harassment or coercion were repeated and sustained.

(b) a fundamental breach of due process;

(c) manifest arbitrariness, including targeted discrimination on manifestly wrongful grounds, such as gender, race or religious belief;

(d) harassment, coercion or abuse of power; or

(e) a breach of any additional elements of the obligation of fair and equitable treatment which have been adopted by the Parties in accordance with paragraph 7.

3. A Party shall be considered to be in breach of the obligation of full protection and security referred to in paragraph 1 if a measure or series of measures constitutes a failure to provide physical security to investors and their covered investments.

4. When assessing an alleged breach under this Article, the Tribunal established by Article 10.30 (hereinafter referred to as the "Tribunal") may take into account whether a Party made a specific representation to an investor to induce a covered investment, that created a legitimate expectation, and upon which the investor relied in deciding to make or maintain the covered investment, but that that Party subsequently frustrated. The mere fact that a Party takes or fails to take an action that may be inconsistent with the legitimate expectations of an investor of a Party does not constitute a breach of this Article, even if there is loss or damage to the covered investment as a result.

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

6. The fact that a measure breaches the law of a Party does not, in and of itself, establish a breach of this Article. In order to ascertain whether the measure breaches this Article, the Tribunal shall consider whether a Party has acted inconsistently with paragraphs 1 to 4.

7. The Parties shall, at the request of a Party, review the content of the obligation of fair and equitable treatment. The Sub-Committee on Services and Investment established pursuant to subparagraph 1(h) of Article 1.10 (Sub-Committees and Other Bodies of Part III of this Agreement) may develop analyses in this respect and submit them to the Joint Committee. The Joint Committee shall consider whether to recommend that this Agreement be amended, in accordance with Article 2.4 (Amendments) of Part IV of this Agreement.

ARTICLE 10.16

Transfers

1. Each Party shall permit all transfers relating to a covered investment to be made freely without restriction or delay into and out of its territory. Those transfers include:

(a) contributions to capital, such as the principal and additional amounts to maintain, develop or increase the covered investment;

(b) profits, dividends, capital gains, interest, royalty payments, management fees and other returns;

(c) proceeds from the sale of all or part of the covered investment or from the partial or complete liquidation of the covered investment;

(d) payments made under a contract entered into by the investor of a Party, or a covered investment, including payments made pursuant to a loan agreement;

(e) earnings and other remuneration of personnel engaged from abroad and working in connection with a covered investment;

(f) payments made pursuant to Articles 10.17 and 10.18; and

(g) payments of damages pursuant to an award issued by the Tribunal under Section D.

2. Each Party shall permit returns in kind relating to a covered investment to be made as authorised or specified in a written agreement between the Party and a covered investment or an investor of the other Party.

3. Each Party shall permit transfers relating to a covered investment to be made in a freely convertible currency at the market rate of exchange prevailing for that currency on the date of transfer.

4. Notwithstanding paragraph 2, a Party may restrict transfers of returns in kind relating to a covered investment in circumstances where it could otherwise restrict such transfers under this Agreement.

ARTICLE 10.17

Compensation for Losses

1. Each Party shall accord to investors of the other Party, whose covered investments suffer losses owing to war or other armed conflict, revolution, a state of national emergency, insurrection, riot or any other similar event, with respect to restitution, indemnification, compensation or other form of settlements, treatment no less favourable than the treatment it accords to its own investors or investors of any third country, whichever is the most favourable.

2. Without prejudice to paragraph 1, investors of a Party shall be accorded adequate and effective restitution or compensation if, in any of the situations referred to in that paragraph, they suffer losses in the territory of the other Party resulting from:

(a) requisitioning of their covered investment or a part thereof by the forces or authorities of the other Party; or

(b) destruction of their covered investment or a part thereof by the forces or authorities of the other Party, which was not required by the necessity of the situation.

3. Payments resulting from compensation in accordance with paragraph 2 shall be freely convertible and transferable.

ARTICLE 10.18

Expropriation and Compensation

1. A Party shall not expropriate or nationalise a covered investment, either directly or indirectly, through measures having an effect equivalent to expropriation or nationalisation (hereinafter referred to as "expropriation"), except:

(a) for a public purpose;

(b) in a non-discriminatory manner;

(c) on payment of prompt, adequate and effective compensation in accordance with paragraphs 2 to 4; and

(d) in accordance with due process of law.

2. Paragraph 1 shall be interpreted in accordance with Annex 10-A.

3. The compensation referred to in paragraph 1 shall:

(a) be paid without delay;

(b) be equivalent to the fair market value of the expropriated investment at the time immediately before the expropriation took place;

(c) not reflect any change in value occurring because the intended expropriation had become known earlier;

(d) be fully realisable and freely transferable without delay to the country designated by the investor; and

(e) include interest at a commercially reasonable rate from the date of expropriation until the date of payment.

4. Valuation criteria shall include going concern value, asset value including the declared tax value of tangible property, and other criteria, as appropriate, to determine the fair market value.

5. The compensation shall be paid in the currency of the country of which the investor is a national or in a freely convertible currency.

6. This Article does not apply to the issuance of compulsory licences granted in relation to intellectual property rights in accordance with the TRIPS Agreement, or to the revocation, limitation or creation of intellectual property rights, to the extent that such issuance, revocation, limitation or creation is consistent with Chapter 25 (Intellectual Property) and the TRIPS Agreement[48].

[48] For greater certainty, the term "revocation" with respect to intellectual property rights includes the cancellation or nullification of those rights, and the term "limitation" with respect to intellectual property rights includes exceptions to those rights.

ARTICLE 10.19

Subrogation

1. If a Party or its designated agency makes a payment under a guarantee, contract of insurance or other form of indemnity that it has entered into in respect of a covered investment, the other Party shall recognise the subrogation or transfer of any right or claim of the investor under this Chapter in respect of that covered investment. The Party or its designated agency shall be entitled by virtue of subrogation to exercise the rights and enforce the claims of that investor. The subrogated or transferred right or claim shall not be greater than the original right or claim of that investor.

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

SECTION D

Resolution of Investment Disputes

ARTICLE 10.20

Definitions

For the purposes of this Section:

(a) "claimant" means a natural person or an enterprise of a Party, other than a branch or representative office, that has made a covered investment and seeks to submit or has submitted a claim pursuant to this Section, acting either:

(i) on its own behalf; or

(ii) on behalf of a locally established enterprise which it owns or controls[49].

(b) "disputing parties" means the claimant and the respondent;

[49] For greater certainty, a claim submitted pursuant to subparagraph (ii) shall be deemed to relate to a dispute between a Contracting State and a national of another Contracting State for the purposes of paragraph 1 of Article 25 of the ICSID Convention.

(c) "disputing party" means either the claimant or the respondent;

(d) "ICSID" means the International Centre for Settlement of Investment Disputes established by the ICSID Convention;

(e) "ICSID Additional Facility Rules" means the Rules Governing the Additional Facility for the Administration of Proceedings by the Secretariat of the International Centre for Settlement of Investment Disputes;

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

(g) "locally established enterprise" means a juridical person established in the territory of a Party, and owned or controlled by an investor of the other Party;

(h) "New York Convention" means the United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards, done at New York on 10 June 1958;

(i) "non-disputing Party" means either Mexico, if the respondent is the European Union or a Member State of the European Union; or the European Union, if Mexico is the respondent;

(j) "respondent" means either Mexico, or in the case of the European Union, either the European Union or the Member State of the European Union concerned as determined pursuant to Article 10.24;

(k) "third-party funding" means any funding provided by a natural or legal person who is not a disputing party but who enters into an agreement with a disputing party in order to finance part or all of the cost of the proceedings in return for a remuneration dependent on the outcome of the dispute, or in the form of a donation or grant;

(l) "UNCITRAL Arbitration Rules" means the Arbitration Rules of the United Nations Commission on International Trade Law, approved by the United Nations General Assembly on 15 December 1976.

ARTICLE 10.21

Scope

1. This Section applies to disputes between a Party and a claimant of the other Party arising from an alleged breach of Article 10.7.2 or 10.8.2[50] or Section C which allegedly causes loss or damage to the claimant or its locally established enterprise.

2. Annex 10-B applies to claims with respect to the restructuring of debt of a Party.

3. The Tribunal and the Appeal Tribunal established under this Section shall not decide claims that fall outside the scope of this Section.

[50] For greater certainty, for the purposes of this Section, the Parties understand that Articles 10.7.2 and 10.8.2 do not cover the acquisition of an enterprise in the European Union or in Mexico made with a view to establishing or maintaining lasting economic links, including where such an acquisition is made through a capital participation or an increase in such capital participation in an enterprise.

ARTICLE 10.22

Consultations

1. A dispute should, as far as possible, be settled amicably. Such a settlement may be agreed at any time, including after a claim has been submitted pursuant to Article 10.26.

2. Unless the disputing parties agree to a longer period, consultations shall be held within 60 days after the submission of the request for consultations pursuant to paragraph 5.

3. Unless the disputing parties agree otherwise, the place of consultations shall be:

(a) Mexico City, if the measures challenged are measures of Mexico;

(b) Brussels, if the measures challenged include a measure of the European Union; or

(c) if the measures challenged are exclusively measures of a Member State of the European Union, the capital of that Member State.

4. If the disputing parties agree, consultations may be held through videoconference or other means if appropriate.

5. The claimant shall submit to the other Party a request for consultations setting out:

(a) the name and address of the claimant and, if such request is submitted on behalf of a locally established enterprise, the name, address and place of establishment or incorporation, if applicable, of that locally established enterprise;

(b) the provisions referred to in Article 10.21.1 alleged to have been breached;

(c) the legal and the factual basis for each claim, including the measure or measures alleged to be in breach of the provisions referred to in Article 10.21.1;

(d) the relief sought and the estimated amount of damages claimed; and

(e) evidence establishing that the claimant is an investor of the other Party and that it owns or controls the covered investment and, if it acts on behalf of a locally established enterprise, that it owns or controls the locally established enterprise.

If a request for consultations is submitted by more than one claimant or on behalf of more than one locally established enterprise, the information in subparagraphs (a) and (e) shall be submitted for each claimant or each locally established enterprise, as the case may be.

6. The requirements for the request for consultations set out in paragraph 5 shall be met with sufficient specificity to allow the respondent to effectively engage in consultations and to prepare its defence.

7. A request for consultations shall be submitted within three years after the date on which the claimant or, as applicable, the locally established enterprise, first acquired or should have first acquired, knowledge of the alleged breach and knowledge that the claimant or, as applicable, the locally established enterprise, incurred loss or damage thereby.

8. Notwithstanding paragraph 7, in the event that the request for consultations concerns a measure or measures of the European Union or a Member State of the European Union and the time period referred to in paragraph 7 has elapsed while the claimant or, as applicable, the locally established enterprise pursued proceedings relating to the same measure or measures before a tribunal or court under the law of a Party, the request for consultations shall be submitted:

(a) within two years after the date on which the claimant or, as applicable, the locally established enterprise ceases to pursue such proceedings before a tribunal or court under the law of a Party; and

(b) in any case, no later than 10 years after the date on which the claimant or, as applicable, its locally established enterprise, first acquired or should have first acquired, knowledge of the measure or measures alleged to be in breach of the provisions referred to in Article 10.21.1 and of the loss or damage alleged to have been incurred thereby.

9. A request for consultations concerning an alleged breach by the European Union or a Member State of the European Union shall be sent to the European Union. If the claimant identifies in its request for consultations a measure or measures of a Member State of the European Union, it shall also be sent to the Member State concerned.

10. If the investor has not submitted a claim pursuant to Article 10.26 within 18 months after submitting the request for consultations, the investor is deemed to have withdrawn its request for consultations and, if applicable, its notice requesting a determination of the respondent pursuant to Article 10.24 and shall not submit a claim under this Section with respect to the same measure or measures. That period may be extended by agreement of the parties involved in the consultations.

ARTICLE 10.23

Mediation

1. The disputing parties may at any time agree to have recourse to mediation.

2. Recourse to mediation is without prejudice to the legal position or rights of either disputing party under this Chapter and is governed by the rules agreed to by the disputing parties including, if available, any rules for mediation that may be adopted by the Joint Council.

3. The mediator shall be appointed by agreement of the disputing parties. The disputing parties may also jointly request that the President of the Tribunal appoint the mediator.

4. The disputing parties shall endeavour to reach a resolution of the dispute within 60 days after the appointment of the mediator.

5. If the disputing parties agree to have recourse to mediation, the time limits set out in Articles 10.22.7, 10.22.8, 10.48.7 and 10.49.3 shall be suspended from the date on which the disputing parties agreed to have recourse to mediation to the date on which either disputing party decides to terminate the mediation. A decision by a disputing party to terminate the mediation shall be transmitted by way of a letter to the mediator and the other disputing party.

ARTICLE 10.24

Determination of the Respondent for Disputes with the European Union or a Member State of the European Union

1. If the dispute cannot be settled within 90 days after the submission of a request for consultations pursuant to Article 10.22, the request concerns an alleged breach of any of the provisions referred to in Article 10.21.1 by the European Union or a Member State of the European Union and the claimant intends to submit a claim pursuant to Article 10.26, the claimant shall deliver to the European Union a notice requesting a determination of the respondent.

2. The notice referred to in paragraph 1 shall identify the measure or measures in respect of which the claimant intends to submit a claim. If a measure of a Member State of the European Union is identified, the notice shall also be sent to the Member State concerned.

3. The European Union shall, after having made a determination, inform the claimant within 60 days after the receipt of the notice referred to in paragraph 1 as to whether the European Union or a Member State of the European Union shall be the respondent.

4. If the claimant has not been informed of the determination within 60 days after delivering the notice referred to in paragraph 1, the respondent shall be:

(a) if the measure or measures identified in the notice are exclusively measures of a Member State of the European Union, that Member State; or

(b) the European Union, if the measure or measures identified in the notice include measures of the European Union.

5. The claimant may submit a claim pursuant to Article 10.26 on the basis of the determination made pursuant to paragraph 3 and, if no such determination has been communicated to the claimant within 60 days, in accordance with paragraph 4.

6. If the European Union or a Member State of the European Union is the respondent, pursuant to paragraphs 3 or 4, neither the European Union, nor the Member State of the European Union concerned may assert the inadmissibility of the claim or the lack of jurisdiction of the Tribunal, or otherwise object to the claim or award on the ground that the respondent was not properly determined pursuant to paragraph 3 or identified in accordance with paragraph 4.

7. The Tribunal and the Appeal Tribunal shall be bound by the determination made pursuant to paragraph 3 or, if no such determination has been communicated to the claimant within 60 days, by the identification in accordance with paragraph 4, as applicable.

8. Nothing in this Agreement or the applicable dispute settlement rules referred to in Article 10.26.2 shall prevent the exchange of all information relating to a dispute between the European Union and the Member State concerned.

ARTICLE 10.25

Procedural and Other Requirements for the Submission of a Claim to the Tribunal

1. A claimant may only submit a claim pursuant to Article 10.26 if the claimant:

(a) delivers to the respondent, with the submission of a claim, its written consent to the settlement of the dispute by the Tribunal in accordance with the procedures set out in this Section;

(b) allows at least 180 days to elapse after the submission of the request for consultations and, if applicable, at least 90 days to elapse after the submission of the notice requesting a determination of the respondent;

(c) has delivered a notice requesting a determination of the respondent in accordance with Article 10.24, if applicable;

(d) has fulfilled the requirements related to the request for consultations;

(e) identifies in its claim the measure or measures alleged to constitute a breach of the provisions referred to in Article 10.21.1 that were identified in its request for consultations;

(f) withdraws or discontinues any existing proceedings before a tribunal or court under domestic or international law with respect to a measure or measures alleged to constitute a breach as referred to in its claim;

(g) waives in writing its right to initiate any proceedings before a tribunal or court under domestic or international law with respect to a measure or measures alleged to constitute a breach as referred to in its claim; and

(h) declares that it will not enforce any award issued pursuant to this Section before such award has become final pursuant to Article 10.48.8, 10.48.9 or 10.49.2, and will not seek to appeal, review, set aside, annul, revise or initiate any other similar proceedings before an international or domestic court or tribunal, as regards an award pursuant to this Section.

2. If the claim submitted pursuant to Article 10.26 is for loss or damage to a locally established enterprise or to an interest in a locally established enterprise that the claimant owns or controls directly or indirectly, the requirements in subparagraphs 1(f) and (g) of this Article apply both to the claimant and to the locally established enterprise. The requirement to withdraw or discontinue existing proceedings pursuant to subparagraph 1(f) of this Article also applies as follows:

(a) if the claim is submitted by a claimant acting on its own behalf, to all persons who, directly or indirectly, have an ownership interest in or are controlled by the claimant and claim to have suffered the same loss or damage[51] as the claimant; or

(b) if the claim is submitted by a claimant acting on behalf of a locally established enterprise, to all persons who, directly or indirectly, have an ownership interest in or are controlled by the locally established enterprise and claim to have suffered the same loss or damage as the locally established enterprise.

[51] For greater certainty, "the same loss or damage" referred to in this subparagraph and subparagraph (b) means loss or damage flowing from the same measure or measures which the person seeks to recover in the same capacity as the claimant. For example, if the claimant sues as a shareholder, this provision would cover a person who, directly or indirectly, has an ownership interest in or is controlled by the claimant and who is also pursuing recovery as a shareholder.

3. The requirements of subparagraphs 1(f) and (g) and paragraph 2 do not apply in respect of a locally established enterprise if the respondent or the claimant's host state has deprived the claimant of control of the locally established enterprise, or has otherwise prevented the locally established enterprise from fulfilling those requirements.

4. On request of the respondent, the Tribunal shall decline jurisdiction if the claimant or, as applicable, the locally established enterprise fails to fulfil any of the requirements of paragraphs 1 and 2.

5. The waiver provided pursuant to subparagraph 1(g) shall cease to apply if the claim is rejected on the basis of the failure to meet the nationality requirements to bring a claim under this Section.

6. If the European Union or a Member State of the European Union is the respondent, subparagraphs 1(f) and (g) shall not prevent the claimant from seeking interim measures of protection before the courts or tribunals of the respondent. If Mexico is the respondent, subparagraphs 1(f) and (g) shall not prevent the claimant from seeking interim measures of protection, or from initiating or continuing 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 respondent.

7. For greater certainty, an investor shall not submit a claim under this Section if the investment has been made through fraudulent misrepresentation, concealment, corruption or conduct amounting to an abuse of process.

8. A Party shall not submit a claim under this Section.

ARTICLE 10.26

Submission of a Claim to the Tribunal

1. If a dispute has not been resolved through consultations, a claim may be submitted by:

(a) a claimant on its own behalf; or

(b) a claimant, on behalf of a locally established enterprise which it owns or controls directly or indirectly.

For greater certainty, a locally established enterprise may not submit a claim against the Party in which it is established.

2. The claimant shall submit the claim under any of the following dispute settlement rules:

(a) the ICSID Convention and ICSID Rules of Procedure for Arbitration Proceedings;

(b) the ICSID Additional Facility Rules if the conditions for submitting a claim pursuant to subparagraph (a) do not apply;

(c) the UNCITRAL Arbitration Rules; or

(d) any other rules by agreement of the disputing parties.

3. If the claimant proposes rules pursuant to subparagraph 2(d), the respondent shall reply to the claimant's proposal within 20 days after its receipt. If the disputing parties have not agreed on such rules within 30 days after receipt of the proposal, the claimant may submit a claim under the rules provided for in subparagraphs 2(a), (b) or (c).

4. If a claim is submitted pursuant to subparagraphs 2(b), (c) or (d), the disputing parties may agree on the place of the proceedings. If the disputing parties fail to reach an agreement, the division of the Tribunal hearing the claim shall determine the place in accordance with the applicable dispute settlement rules, provided that the place shall be in the territory of a State that is a contracting state to the New York Convention.

5. The dispute settlement rules applicable in accordance with paragraph 2 are those that are in effect on the date that the claim is submitted to the Tribunal under this Section, subject to the specific rules set out in this Section. The Joint Council may adopt rules supplementing the applicable dispute settlement rules, and any such rules shall be binding on the Tribunal and the Appeal Tribunal.

6. A claim shall be deemed submitted for dispute settlement under this Section when the request or notice initiating proceedings is received in accordance with the applicable dispute settlement rules.

7. Each Party shall notify the other Party of the place where the notices and other documents shall be delivered by a claimant pursuant to this Section. Each Party shall ensure that such information is made publicly available.

ARTICLE 10.27

Concurrent Proceedings

If a claim is brought pursuant to this Section and pursuant to Chapter 31 (Dispute Settlement) or another international agreement, and where there is a potential for overlapping compensation or where the claim pursuant to the other international agreement could have a significant impact on the resolution of the claim brought pursuant to this Section, the Tribunal shall, as soon as possible after hearing the disputing parties, stay its proceedings or otherwise ensure that the proceedings brought pursuant to Chapter 31 (Dispute Settlement) or another international agreement are taken into account in its decision, order or award.

ARTICLE 10.28

Consent to the Resolution of the Dispute by the Tribunal

1. The respondent consents to the resolution of the dispute by the Tribunal in accordance with the procedures set out in this Section.

2. The consent referred to in paragraph 1 and the submission of a claim to the Tribunal pursuant to this Section shall be deemed to satisfy the requirements of:

(a) Article 25 of the ICSID Convention and Chapter II of Schedule C of the ICSID Additional Facility Rules regarding written consent of the disputing parties; and

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

ARTICLE 10.29

Third-Party Funding

1. A disputing party benefiting from third-party funding shall notify to the other disputing party and to the division of the Tribunal hearing the claim or, if that division has not been constituted, to the President of the Tribunal, the name and address of the third-party funder.

2. The notification referred to in paragraph 1 shall be made at the time of submission of a claim, or, if the funding agreement is concluded or the donation or grant is made after the submission of a claim, without delay as soon as the funding agreement is concluded or the donation or grant is made.

ARTICLE 10.30

Tribunal

1. A Tribunal is hereby established to hear claims submitted pursuant to Article 10.26.

2. The Joint Council shall, upon the entry into force of this Agreement, appoint nine Members to the Tribunal. Three of the Members shall be nationals of a Member State of the European Union, three shall be nationals of Mexico and three shall be nationals of third countries[52].

3. The Joint Council may decide to increase or to decrease the number of the Members by multiples of three. Additional appointments shall be made on the same basis as provided for in paragraph 2.

4. The Members shall possess the qualifications required for appointment as a judge to the International Court of Justice, or be jurists of recognised competence. They shall have demonstrated expertise in public international law. It is desirable that they have expertise, in particular, in international investment law, international trade law and the resolution of disputes arising under international investment or international trade agreements, or trade negotiations.

[52] The Parties shall endeavour to appoint Members representative of diverse socioeconomic conditions and legal traditions.

5. The Members of the Tribunal shall be appointed for a five-year term. However, the terms of four of the nine persons appointed immediately after the entry into force of this Agreement, to be determined by lot, shall extend to seven years. Vacancies shall be filled as they arise. A person appointed to replace a person whose term of office has not expired shall hold office for the remainder of the predecessor's term. A person who is serving on a division of the Tribunal when his or her term expires may, with the authorisation of the President of the Tribunal after consulting the other Members of the division, continue to serve on the division until the closure of the proceedings of that division and shall, for that purpose only, be deemed to continue to be a Member of the Tribunal.

6. The Tribunal shall hear cases in divisions consisting of three Members, of whom one shall be a national of a Member State of the European Union, one a national of Mexico and one a national of a third country. The division shall be chaired by the Member who is a national of a third country.

7. Notwithstanding paragraph 6 and if the disputing parties so agree, a case shall be heard by a division consisting of a sole member who is a national of a third country selected by the President of the Tribunal.

8. Within 90 days after the submission of a claim pursuant to Article 10.26, the President of the Tribunal shall, in accordance with the working procedures adopted pursuant to paragraph 10, appoint the Members or Member composing the division of the Tribunal hearing the case on a rotating basis, ensuring that the composition of the division is random and unpredictable, while giving equal opportunity to all Members to be selected.

9. The President of the Tribunal shall be responsible for organisational issues, shall be appointed for a two-year term and shall be drawn by lot from among the Members who are nationals of third countries. The Presidents shall serve on a rotating basis, drawn by lot by the Chair of the Joint Council. The working procedures adopted pursuant to paragraph 10 shall foresee the necessary rules for addressing a temporary unavailability of the President.

10. The Tribunal shall adopt its own working procedures, after consulting the Parties.

11. The Members shall be available at all times and at short notice, and shall stay abreast of dispute settlement activities under this Agreement.

12. In order to ensure their availability, the Members shall be paid a monthly retainer fee to be determined by decision of the Joint Council. For each day worked in fulfilling the functions of President of the Tribunal, the President shall receive a fee equivalent to the fee determined pursuant to Article 10.31.11 for the President of the Appeal Tribunal.

13. The retainer fee and the daily fee referred to in paragraph 12 shall be paid by both Parties, taking into account their respective levels of development, into an account managed by the Secretariat of ICSID. In the event that one Party fails to pay those fees, the other Party may elect to pay those fees itself. Any such arrears shall remain payable, with appropriate interest. The Sub-Committee on Services and Investment shall regularly review the amount and repartition of the fees referred to above and may recommend relevant adjustments for decision by the Joint Council.

14. Unless the Joint Council adopts a decision pursuant to paragraph 15 of this Article, the amount of the other fees and expenses of the Members of a division of the Tribunal shall be those determined pursuant to Regulation 14(1) of the Administrative and Financial Regulations of the ICSID Convention in force on the date of the submission of the claim and allocated by the Tribunal among the disputing parties in accordance with Article 10.48.5.

15. The Joint Council may decide that the retainer fee and other fees and expenses may be permanently transformed into a regular salary. In that case, the Members shall serve on a full-time basis and the Joint Council shall determine their salary and related organisational matters. In that case, the Members shall not be permitted to engage in any other occupation, whether gainful or not, unless exemption is exceptionally granted by the President of the Tribunal.

16. The Secretariat of ICSID shall act as Secretariat for the Tribunal and provide it with appropriate support. The expenses for such support shall be allocated by the Tribunal among the disputing parties in accordance with Article 10.48.5.

ARTICLE 10.31

Appeal Tribunal

1. A permanent Appeal Tribunal is hereby established to hear appeals of the awards issued by the Tribunal.

2. The Joint Council shall, upon the entry into force of this Agreement, appoint six Members to the Appeal Tribunal. Two of the Members shall be nationals of a Member State of the European Union, two shall be nationals of Mexico and two shall be nationals of third countries. For that purpose, each Party shall propose three candidates, two of whom shall be nationals of that Party and one shall be a national of a third country.

3. The Joint Council may decide to increase the number of Members by multiples of three. Additional appointments shall be made on the same basis as provided for in paragraph 2.

4. The Members shall possess the qualifications required for appointment as a judge to the International Court of Justice, or be jurists of recognised competence. They shall have demonstrated expertise in public international law and in the subject matter covered by this Chapter. It is desirable that they have expertise in international trade law and the resolution of disputes arising under international investment or international trade agreements.

5. The Members shall be appointed for a five-year term. However, the terms of three of the six persons appointed immediately after the entry into force of this Agreement, to be determined by lot, shall extend to seven years. Vacancies shall be filled as they arise. A person appointed to replace a person whose term of office has not expired shall hold office for the remainder of the predecessor's term. A person who is serving on a division of the Appeal Tribunal when his or her term expires may, with the authorisation of the President of the Appeal Tribunal after consulting with the other Members of the division, continue to serve on the division until the closure of the proceedings of that division and shall, for that purpose only, be deemed to continue to be a Member of the Appeal Tribunal.

6. The Appeal Tribunal shall hear appeals in divisions consisting of three Members, of whom one shall be a national of a Member State of the European Union, one a national of Mexico and one a national of a third country. The division shall be chaired by the Member who is a national of a third country.

7. The President of the Appeal Tribunal shall, in accordance with the working procedures adopted pursuant to paragraph 9, appoint the Members composing the division of the Appeal Tribunal hearing each case on a rotating basis, ensuring that the composition of each division is random and unpredictable, while giving equal opportunity to all Members to be selected.

8. The President of the Appeal Tribunal shall be responsible for organisational issues, shall be appointed for a two-year term and shall be drawn by lot from among the Members who are nationals of third countries. The Presidents shall serve on a rotating basis, drawn by lot by the Chair of the Joint Council. The working procedures adopted pursuant to paragraph 9 shall foresee the necessary rules for addressing a temporary unavailability of the President.

9. The Appeal Tribunal shall adopt its own working procedures, after consulting the Parties.

10. The Members shall be available at all times and at short notice, and shall stay abreast of other dispute settlement activities under this Agreement.

11. The Members of the Appeal Tribunal shall be paid a monthly retainer fee, in order to ensure their availability, and receive a fee for each day worked as a Member, to be determined by decision of the Joint Council. The President of the Appeal Tribunal shall receive a fee for each day worked in fulfilling the functions of President of the Appeal Tribunal.

12. The retainer fee and the daily fees referred to in paragraph 11 shall be paid by both Parties, taking into account their respective levels of development, into an account managed by the Secretariat of ICSID. In the event that one Party fails to pay those fees the other Party may elect to pay those fees itself. Any such arrears shall remain payable, with appropriate interest. The Sub-Committee on Services and Investment shall regularly review the amount and repartition of the abovementioned fees and may recommend relevant adjustments for decision by the Joint Council.

13. The Joint Council may decide that the retainer fee and the daily fees may be permanently transformed into a regular salary. In that case, the Members of the Appeal Tribunal shall serve on a full-time basis and the Joint Council shall determine their salary and related organisational matters. In that case, the Members shall not be permitted to engage in any other occupation, whether gainful or not, unless exemption is exceptionally granted by the President of the Appeal Tribunal.

14. The Secretariat of ICSID shall act as Secretariat for the Appeal Tribunal and provide it with appropriate support. The expenses for such support shall be allocated by the Appeal Tribunal among the disputing parties in accordance with Article 10.48.5.

ARTICLE 10.32

Ethics

1. The Members of the Tribunal and the Members of the Appeal Tribunal shall be chosen from persons whose independence is beyond doubt. They shall not be affiliated with any government[53]. They shall not take instructions from any government or organisation with regard to matters related to any dispute under this Section. They shall not participate in the consideration of any disputes that would create a direct or indirect conflict of interest. In so doing they shall comply with the Code of Conduct set out in Annex 10-D. In addition, upon appointment, they shall refrain from acting as counsel or as party-appointed expert or witness in any pending or new investment protection dispute under this Agreement or any other agreement or domestic law.

2. If a disputing party considers that a Member appointed to a division does not meet the requirements of paragraph 1, it shall send a notice of challenge of that Member's appointment to the President of the Tribunal or to the President of the Appeal Tribunal, as appropriate. The notice of challenge shall be sent within 15 days after the date on which the composition of the division of the Tribunal or of the Appeal Tribunal was communicated to the disputing party, or within 15 days after the date on which the relevant facts came to its knowledge, if they could not have reasonably been known at the time of composition of the division. The notice of challenge shall state the grounds for the challenge.

[53] For greater certainty, the mere fact that a person is employed by a public university, or that a former government employee is receiving a pension from the government, or has a family relationship with a government official is not in itself a reason to be considered as affiliated with a government.

3. If, within 15 days after the date of the notice of challenge, the challenged Member has elected not to resign from that division, the President of the Tribunal or the President of the Appeal Tribunal, as appropriate, shall, after hearing the disputing parties and after providing the Member with an opportunity to submit any observations, issue a decision within 45 days after receipt of the notice of challenge and forthwith notify the disputing parties and the other Members of the division.

4. Challenges of the appointment of the President of the Tribunal to a division shall be decided by the President of the Appeal Tribunal and vice-versa.

5. Upon a reasoned recommendation from the President of the Appeal Tribunal or, on their joint initiative, the Parties, by decision of the Joint Council, may decide to remove a Member from the Tribunal or from the Appeal Tribunal if his or her behaviour is inconsistent with the obligations set out in paragraph 1 and incompatible with his or her continued membership of the Tribunal or Appeal Tribunal. If the behaviour in question is alleged to be that of the President of the Appeal Tribunal, the President of the Tribunal shall submit the reasoned recommendation. Articles 10.30.2 and 10.31.2 shall apply, *mutatis mutandis*, for filling vacancies that may arise pursuant to this paragraph.

ARTICLE 10.33

Multilateral Dispute Settlement Mechanism

1. The Parties should cooperate for the establishment of a multilateral mechanism for the resolution of investment disputes.

2. Upon the entry into force between the Parties of an international agreement providing for such a multilateral mechanism applicable to disputes under this Agreement, the application of the relevant parts of this Section shall be suspended and the Joint Council may adopt a decision specifying any transitional arrangements.

ARTICLE 10.34

Applicable Law

1. The Tribunal shall determine whether the measure or measures subject to the claim are in breach of any of the provisions referred to in Article 10.21.1 as alleged by the claimant.

2. In making its determination, the Tribunal shall apply the provisions of this Agreement, and, where relevant, other rules and principles of international law applicable between the Parties. It shall interpret this Agreement in accordance with customary rules of interpretation of public international law, as codified in the Vienna Convention on the Law of Treaties.

3. For greater certainty, in determining the consistency of a measure with the provisions referred to in Article 10.21.1, the Tribunal shall consider, where relevant, the domestic law of a Party as a matter of fact. In doing so, the Tribunal shall follow the prevailing interpretation given to the domestic law by the courts or authorities of that Party and any meaning given to domestic law by the Tribunal shall not be binding upon the courts or authorities of that Party.

4. For greater certainty, the Tribunal shall not have jurisdiction to determine the legality of a measure alleged to constitute a breach of the provisions referred to in Article 10.21.1 under the domestic law of the disputing Party.

5. If a Party has concerns as regards matters of interpretation relating to this Chapter, it may request that the Joint Council consider the issue. The Joint Council may adopt decisions interpreting any provision concerned. Any such interpretation shall be binding on the Tribunal and the Appeal Tribunal. The Joint Council may decide that an interpretation shall have binding effect from a specific date.

6. If a respondent asserts as a defence that the measure alleged to be a breach of any of the provisions referred to in Article 10.21.1 is within the scope of a non-conforming measure set out in Annex I or II, the Tribunal shall, on request of the respondent, request the interpretation of the Joint Council on the issue. The Joint Council shall submit any decision on its interpretation pursuant to Article 1.7 (Specific Functions of the Joint Council) to the Tribunal within 90 days after receipt of the request.

7. A decision submitted by the Joint Council pursuant to paragraph 6 shall be binding on the Tribunal, and any decision or award issued by the Tribunal shall be consistent with that decision. If the Joint Council fails to issue a decision within 90 days, the Tribunal shall decide the issue.

ARTICLE 10.35

Anti-Circumvention

For greater certainty, the Tribunal shall decline jurisdiction where the dispute had arisen, or was foreseeable on the basis of a high degree of probability, at the time when the claimant acquired ownership or control of the investment subject to the dispute and the Tribunal determines, on the basis of the facts of the case, that the claimant has acquired ownership or control of the investment for the main purpose of submitting a claim under this Section. The possibility to decline jurisdiction in such circumstances is without prejudice to other jurisdictional objections which could be entertained by the Tribunal.

ARTICLE 10.36

Claims Manifestly Without Legal Merit

1. A respondent may, no later than 30 days after the constitution of the division of the Tribunal hearing the claim, and in any case before its first session, or no later than 30 days after the respondent became aware of the facts on which the objection is based, file an objection that a claim is manifestly without legal merit.

2. An objection shall not be submitted pursuant to paragraph 1 if the respondent has filed an objection pursuant to Article 10.37.

3. The respondent shall specify as precisely as possible the basis for the objection.

4. On receipt of an objection pursuant to this Article, the Tribunal shall suspend the proceedings on the merits and establish a schedule for considering such an objection, consistent with its schedule for considering any other preliminary question.

5. The Tribunal, after giving the disputing parties an opportunity to present their observations, shall at its first session or as soon as possible thereafter, issue a decision or award stating the grounds therefor. In doing so, the Tribunal shall assume the alleged facts to be true.

6. This Article shall be without prejudice to the Tribunal's authority to address other objections as a preliminary question or to the right of the respondent to object, in the course of the proceedings, that a claim lacks legal merit.

ARTICLE 10.37

Claims Unfounded as a Matter of Law

1. Without prejudice to the Tribunal's authority to address other objections as a preliminary question or to a respondent's right to raise any such objections at an appropriate time, the Tribunal shall address and decide as a preliminary question any objection by the respondent that, as a matter of law, a claim, or any part thereof, submitted pursuant to Article 10.26 is not a claim for which an award in favour of the claimant may be made under this Section, even if the facts alleged were assumed to be true.

2. An objection pursuant to paragraph 1 shall be submitted to the Tribunal no later than the date that the Tribunal determines for the respondent to submit its counter-memorial or statement of defence.

3. If an objection has been submitted pursuant to Article 10.36, the Tribunal may, taking into account the circumstances of that objection, issue a decision on whether to decline, under the procedures set out in this Article, an objection submitted pursuant to paragraph 1.

4. On receipt of an objection pursuant to paragraph 1 and, if appropriate, after issuing a decision not to decline an objection pursuant to paragraph 3, and unless it considers the objection manifestly unfounded, the Tribunal shall suspend any proceedings on the merits, establish a schedule for considering the objection, consistent with any schedule it has established for considering any other preliminary question, and issue a decision or award on the objection, stating the grounds therefor.

ARTICLE 10.38

Transparency of the Proceedings

1. The Tribunal shall promptly make available to the public all written submissions submitted by the disputing parties to the Tribunal as well as all orders, decisions and awards issued by the Tribunal or, where applicable, by the President of the Tribunal, with the exception of protected information consisting of:

(a) confidential business information[54];

(b) privileged information that is protected by law from being made available to the public; and

(c) information the disclosure of which would impede law enforcement.

[54] For greater certainty, confidential business information includes information that is not in the public domain and which describes, contains or otherwise reveals trade secrets or financial, commercial, scientific or technical information that has been consistently treated as confidential information by the disputing party to whom it relates, including but not limited to information on prices, costs, strategic and marketing plans, market share data, and accounting or financial records.

2. The Tribunal shall conduct hearings open to the public and shall determine, in consultation with the disputing parties, the appropriate logistical arrangements. If a disputing party intends to use information in a hearing that constitutes protected information, it shall so advise the Tribunal. The Tribunal shall make appropriate arrangements to protect such information from disclosure, which may include closing the hearing for the duration of the discussion of that information.

3. The written submissions referred to in paragraph 1 include the memorial, the counter-memorial, the reply, the rejoinder and any other submission made by a disputing party during the proceedings, such as a notice of challenge pursuant to Article 10.32.2 or the consolidation request pursuant to Article 10.47.

4. Minutes or transcripts of the hearings, if available, shall be made available to the public subject to the redaction of protected information referred to in paragraph 1.

5. Each Party shall make publicly available in a timely manner, and prior to the constitution of a division of the Tribunal, the request for consultations referred to in Article 10.22, the notice requesting a determination of the respondent, and the determination of the respondent, referred to in Article 10.24, subject to the redaction of protected information. To that effect the claimant shall submit a public version of its request for consultations and notice requesting a determination of the respondent that does not contain the protected information, preferably at the same time but no later than 15 days after submitting the non-public version. If the claimant does not provide such public version, it shall be deemed to have consented to making the submitted documents available to the public.

6. The Tribunal may, upon request, make available to the public all the exhibits, after consulting the relevant disputing party in order to prevent protected information from being made available to the public and after allowing that party a reasonable period of time to redact, if needed, the pertinent portions of the exhibits.

7. For the purposes of paragraph 1, each disputing party shall be responsible for providing the Tribunal with redacted versions of its written submissions within 30 days after their submission or within any other time limit set by the Tribunal. The Tribunal may review the redacted versions of the disputing parties and may assess whether the redacted information has to be protected. The Tribunal shall, after consulting the disputing parties, decide on any objection regarding the qualification or redaction of information claimed to be protected information. If the Tribunal determines that information shall not be redacted from a submission, or that a submission shall not be prevented from being made available to the public, any disputing party that voluntarily made the submission shall be permitted to withdraw all or parts of the submission from the record of the proceedings.

8. The Tribunal shall consult with the disputing parties on whether an order, decision or award issued by the Tribunal contains protected information pursuant to subparagraph 1(a), (b) or (c) before its publication.

9. If a disputing party does not request that the Tribunal preserve the confidentiality of protected information in a particular submission, order, decision or award within 30 days after the submission or after the consultation of the disputing party pursuant to paragraphs 6 and 8, or within any other time limit set by the Tribunal, that party shall be deemed to have consented to making available to the public such submission, order, decision or award.

10. The Tribunal may make publicly available the submissions referred to in this Article by communication to the repository referred to in the UNCITRAL Rules on Transparency in Treaty-based Investor-State Arbitration.

11. Nothing in this Section shall require a respondent to withhold from the public any information required to be disclosed by its law.

ARTICLE 10.39

Interim Measures of Protection

1. The 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.

2. The Tribunal shall not order the seizure of assets nor prevent the application of a measure alleged to constitute a breach referred to in Article 10.21. For the purposes of this paragraph, an order includes a recommendation.

ARTICLE 10.40

Discontinuance

If, following the submission of a claim under this Section, the claimant fails to take any steps in the proceedings during 180 consecutive days or any other period as agreed by the disputing parties, the claimant shall be deemed to have withdrawn its claim and to have discontinued the proceedings. The Tribunal shall, at the request of the respondent, and after notice to the disputing parties, take note of the discontinuance in an order and issue an award on costs. After such an order has been issued, the authority of the Tribunal shall lapse. The claimant may not subsequently submit a claim on the same matter arising from the same measure or measures.

ARTICLE 10.41

Security for Costs

1. For greater certainty, upon request, the Tribunal may order the claimant to provide security for all or a part of the costs if there are reasonable grounds to believe that the claimant might be unable to comply with an award on costs issued against it.

2. If the security for costs is not provided in full within 30 days after the issuance of an order pursuant to paragraph 1 or within any other time period set by the Tribunal, the Tribunal shall so inform the disputing parties. The Tribunal may order the suspension or termination of the proceedings.

ARTICLE 10.42

The Non-Disputing Party

1. The respondent shall, within 30 days after receipt of or promptly after any dispute concerning protected information has been resolved[55], deliver to the non-disputing Party:

(a) the request for consultations referred to in Article 10.22, the notice requesting a determination of the respondent referred to in Article 10.24 and the claim referred to in Article 10.26;

[55] For greater certainty, the term protected information shall be understood as defined in and determined pursuant to Article 10.38.

(b) on request of the non-disputing Party:

(i) pleadings, memorials, briefs, requests and other submissions made to the Tribunal by a disputing party;

(ii) written submissions made to the Tribunal by third persons pursuant to Article 10.43;

(iii) minutes or transcripts of hearings of the Tribunal, if available; and

(iv) orders, awards and decisions of the Tribunal; and

(c) on request and at the cost of the non-disputing Party, all or part of the evidence that has been tendered to the Tribunal, including exhibits appended to the documents referred to in subparagraphs (a) and (b).

2. The non-disputing Party has the right to attend a hearing held under this Section, and to make oral and written submissions to the Tribunal regarding the interpretation of this Agreement. The Tribunal shall ensure that the disputing parties are given a reasonable opportunity to present their observations on any submission by the non-disputing Party.

ARTICLE 10.43

Interventions by Third Persons

1. After consulting the disputing parties, the Tribunal may accept and consider written *amicus curiae* submissions regarding a matter of fact or law within the scope of the dispute.

2. Each *amicus curiae* submission shall be in writing and in the language of the proceedings, unless the disputing parties agree otherwise. Each submission shall identify the author, disclose any affiliation, direct or indirect, with any disputing party, and identify any person, government or other entity that has provided, or that will provide, any financial or other assistance in preparing the submission. In addition, the author of the submission shall provide evidence of any affiliation, direct or indirect, with any of the disputing parties, and specify the nature of the interest in the dispute.

3. If the Tribunal accepts submissions pursuant to paragraphs 1 and 2, it shall provide the disputing parties with an opportunity to respond to such submissions.

ARTICLE 10.44

Expert Reports

Without prejudice to the appointment of other kinds of experts where authorised by the applicable rules referred to in Article 10.26.2, the Tribunal, at the request of a disputing party, or on its own initiative after consulting the disputing parties, may appoint one or more experts to report to it in writing on any factual scientific issue, such as environmental, health or safety matters, or other matters raised by a disputing party in the proceedings, subject to the terms and conditions that the disputing parties may agree.

ARTICLE 10.45

Indemnification or Other Compensation

A respondent shall not assert, and the Tribunal shall not accept as a defence, counterclaim, right of set-off, or for any other reason, that the claimant, or the locally established enterprise on behalf of which the claim is submitted, has received or will receive indemnification or other compensation for all or part of the alleged damages pursuant to an insurance or guarantee contract.

ARTICLE 10.46

Role of the Parties

1. A Party shall not bring an international claim in respect of a claim submitted pursuant to Article 10.26 unless the other Party has failed to abide by and comply with the award issued in that dispute.

2. Paragraph 1 shall not exclude the possibility of dispute settlement under Chapter 31 (Dispute Settlement) in respect of a measure of general application even if that measure is alleged to have breached this Agreement as regards a specific investment in respect of which a claim has been submitted pursuant to Article 10.26. This Article is without prejudice to Article 10.42.

3. Paragraph 1 does not preclude informal exchanges for the sole purpose of facilitating a settlement of the dispute.

ARTICLE 10.47

Consolidation

1. If two or more claims that have been submitted separately pursuant to Article 10.26 have a question of law or fact in common and arise out of the same events or circumstances, a disputing party, or the disputing parties jointly, may seek the constitution of a separate division of the Tribunal pursuant to this Article and request that such division issue an order to consolidate such claims (hereinafter referred to as "consolidation request").

2. The disputing party seeking an order to consolidate claims as referred to in paragraph 1 (hereinafter referred to as a "consolidation order") shall first deliver a notice to the disputing parties of the claims it seeks to be covered by that order.

3. If the disputing parties referred to in paragraph 2 have reached an agreement on the consolidation order to be sought, they may make a joint consolidation request. If those disputing parties have not reached agreement on the consolidation request within 30 days after the notice referred to in paragraph 2, a disputing party may make its own consolidation request.

4. The consolidation request shall be delivered, in writing, to the President of the Tribunal and to all the disputing parties of the claims sought to be covered by the consolidation order, and shall specify:

(a) the names and addresses of the disputing parties of the claims sought to be covered by the consolidation order;

(b) the scope of the consolidation sought; and

(c) the grounds for the consolidation order sought.

5. A consolidation request involving more than one respondent requires the agreement of all such respondents.

6. The rules applicable to the proceedings under this Article are determined as follows:

(a) if all of the claims for which a consolidation order is sought have been submitted to dispute settlement under the same rules referred to in Article 10.26.2, those rules shall apply;

(b) if the claims for which a consolidation order is sought have not been submitted to dispute settlement under the same rules referred to in Article 10.26.2:

(i) the claimants may agree on the applicable rules referred to in Article 10.26.2; or

(ii) if the claimants cannot agree on the applicable rules within 30 days after the receipt of the consolidation request by the President of the Tribunal, the UNCITRAL Arbitration Rules shall apply subject to the specific rules set out in this Section.

7. The President of the Tribunal shall, after receipt of a consolidation request and in accordance with Article 10.30.8 constitute a new division of the Tribunal (hereinafter referred to as "consolidating division") which shall have jurisdiction over some or all of the claims, in whole or in part, which are subject to the consolidation request.

8. If, after hearing the disputing parties, a consolidating division is satisfied that claims submitted pursuant to Article 10.26 have a question of law or fact in common and arise out of the same events or circumstances, and that consolidation would best serve the interests of fair and efficient resolution of the claims, including the interest of consistency of awards, the consolidating division may, by order, assume jurisdiction over some or all of the claims, in whole or in part.

9. If a consolidating division has assumed jurisdiction pursuant to paragraph 8, a claimant that has submitted a claim pursuant to Article 10.26 and whose claim has not been consolidated may make a written request to the Tribunal that the claim concerned be included in the consolidation order, provided that the request complies with the requirements set out in paragraph 4. The consolidating division shall grant that order if it is satisfied that the conditions of paragraph 8 are met and that granting that order would not unduly burden or unfairly prejudice the disputing parties or unduly disrupt the proceedings.

10. On application of a disputing party, the consolidating division, pending its decision pursuant to paragraph 8, may order that the proceedings of the division of the Tribunal appointed pursuant to Article 10.30 be stayed unless the latter division has already adjourned its proceedings.

11. A division of the Tribunal appointed pursuant to Article 10.30 shall cede jurisdiction in relation to any claims, or parts thereof, over which a consolidating division has assumed jurisdiction.

12. The award of a consolidating division in relation to the claims, or parts thereof, over which it has assumed jurisdiction is binding on the division of the Tribunal appointed pursuant to Article 10.30 as regards those claims, or parts thereof.

13. A claimant may withdraw a claim submitted pursuant to Article 10.26 that is subject to consolidation. Such claim shall not be resubmitted pursuant to that Article.

14. At the request of a claimant, a consolidating division may take measures in order to preserve the confidentiality of any protected information as referred to in Article 10.38.1 of that claimant in relation to other claimants. Those measures may include the submission of redacted versions of documents containing protected information to the other claimants, or arrangements to hold parts of the hearing in private.

ARTICLE 10.48

Award

1. If the Tribunal concludes that the respondent has breached any of the provisions referred to in Article 10.21.1 alleged by the claimant, the Tribunal may, on request of the claimant and after hearing the disputing parties, award separately or in combination, only:

(a) monetary damages and any applicable interest; or

(b) restitution of property, in which case the award shall provide that the respondent may pay monetary damages and any applicable interest, determined in a manner consistent with Article 10.18, in lieu of restitution.

2. Subject to paragraph 1, if a claim is submitted on behalf of a locally established enterprise, and an award is made in favour of the locally established enterprise, the award shall provide that:

(a) any restitution of property shall be made to the locally established enterprise;

(b) any monetary damages and applicable interest shall be paid to the locally established enterprise; and

(c) the award is made without prejudice to any right that any person may have under the law of a Party in the relief provided in the award.

3. For greater certainty, the Tribunal shall not award other remedies than those referred to in paragraph 1, nor shall it order the repeal, cessation or modification of the measure or measures concerned.

4. Monetary damages shall not be greater than the loss suffered by the claimant or, as applicable, the locally established enterprise, as a result of the breach of the provisions referred to in Article 10.21.1, reduced by any prior damages or compensation already provided by the Party concerned. The Tribunal shall not award punitive damages. For greater certainty, if an investor submits a claim pursuant to Article 10.26.1(a), only loss or damage that it has incurred in its capacity as an investor of a Party may be recovered.

5. The Tribunal shall order that the costs of the proceedings be borne by the unsuccessful disputing party. In exceptional circumstances, the Tribunal may apportion such costs between the disputing parties if it determines that apportionment is appropriate in the circumstances of the case. Other reasonable costs, including the reasonable costs of legal representation and assistance, shall be borne by the unsuccessful disputing party, unless the Tribunal determines that such apportionment is unreasonable in the circumstances of the case. When considering the reasonableness of the costs or of their apportionment, the Tribunal may also take into account whether the costs to be reimbursed to the prevailing disputing party would excessively exceed the costs incurred by the unsuccessful disputing party. If only some parts of the claims have been successful, the costs of the proceedings and other reasonable costs shall be adjusted, proportionately, to the number or extent of the successful parts of the claims. The Appeal Tribunal shall deal with costs in accordance with this Article.

6. No later than one year after the entry into force of this Agreement, the Joint Council shall adopt supplemental rules on fees for the purpose of determining the maximum amount of costs of legal representation and assistance that may be borne by specific categories of unsuccessful disputing parties, taking into account their financial resources.

7. The Tribunal and the disputing parties shall make every effort to ensure that the dispute settlement process is carried out in a timely manner. The Tribunal should issue its award within 30 months after the date of the submission of the claim pursuant to Article 10.26. If the Tribunal requires additional time to issue its award, it shall provide the disputing parties with the reasons for the delay.

8. An award shall become final if 90 days have elapsed after it has been issued and neither disputing party has appealed the award to the Appeal Tribunal.

9. Either disputing party may appeal the award pursuant to Article 10.49. In that case, if the Appeal Tribunal modifies or reverses the award of the Tribunal and refers the matter back to the Tribunal, the Tribunal shall be bound by the findings of the Appeal Tribunal and shall, after hearing the disputing parties if appropriate, revise its award to reflect the findings and conclusions of the Appeal Tribunal. The Tribunal shall seek to issue its revised award within 90 days after receiving the referral by the Appeal Tribunal. The revised award shall become final 90 days after it has been issued.

ARTICLE 10.49

Appeal Procedure

1. A disputing party may appeal before the Appeal Tribunal an award within 90 days after it has been issued. The grounds for appeal are:

(a) that the Tribunal has erred in the interpretation or application of the applicable law;

(b) that the Tribunal has manifestly erred in the appreciation of the facts, including the appreciation of relevant domestic law; or

(c) the grounds provided for in Article 52 of the ICSID Convention, in so far as they are not covered by subparagraphs (a) and (b) of this paragraph.

2. If the Appeal Tribunal dismisses the appeal, the award shall become final. The Appeal Tribunal may also dismiss the appeal on an expedited basis where it is clear that the appeal is manifestly unfounded, in which case the award shall become final. If the appeal is well founded, the Appeal Tribunal shall modify or reverse the legal findings and conclusions in the award in whole or part. Its decision shall specify precisely how it has modified or reversed the relevant findings and conclusions of the Tribunal.

3. As a general rule, the appeal proceedings shall not exceed 180 days from the date a disputing party submits its appeal to the date the Appeal Tribunal issues its decision. If the Appeal Tribunal considers that it cannot issue its decision within 180 days, it shall inform the disputing parties in writing of the reasons for the delay together with an estimate of the period within which it will issue its decision. In no case should the proceedings exceed 270 days.

4. The Appeal Tribunal may order the disputing party lodging an appeal to provide security for all or a part of the costs of the appeal proceedings.

5. The provisions of Articles 10.23, 10.27, 10.29, 10.34, 10.38, 10.39, 10.40, 10.42 and 10.43 shall apply *mutatis mutandis* in respect of the appeal procedure.

6. The Joint Council may adopt rules providing guidance to the Appeal Tribunal on how to conduct the appeal proceedings in the event of bifurcation of the proceedings before the Tribunal.

ARTICLE 10.50

Enforcement of Awards

1. An award issued pursuant to this Section shall not be enforceable until it has become final pursuant to Article 10.48.8, 10.48.9 or 10.49. A final award issued pursuant to this Section by the Tribunal or the Appeal Tribunal shall be binding on the disputing parties and shall not be subject to appeal, review, setting aside, annulment or any other remedy[56].

2. A Party shall recognise an award issued pursuant to this Section as binding and enforce the pecuniary obligation within its territory as if it were a final judgement of a court in that Party.

3. Execution of the award shall be governed by the laws and international commitments concerning the execution of judgments or awards in force where such execution is sought.

4. For greater certainty, Article 2.11 (Private Rights) of Part IV of this Agreement shall not prevent the recognition, execution and enforcement of awards issued pursuant to this Section.

[56] For greater certainty, this does not prevent a disputing party from requesting the Tribunal to revise or interpret an award in accordance with the applicable dispute settlement rules where that possibility is available under those rules.

5. For the purposes of Article I of the New York Convention, final awards issued pursuant to this Section are arbitral awards relating to claims that are considered to arise out of a commercial relationship or transaction.

6. For greater certainty and subject to paragraph 1, if a claim has been submitted to dispute settlement pursuant to Article 10.26.2(a), a final award issued pursuant to this Section shall qualify as an award under Section 6 of Chapter IV of the ICSID Convention.

ARTICLE 10.51

Service of Documents

Requests for consultations, notices and other documents to a Party shall be delivered to the place referred to for that Party in Annex 10-E or its respective successors. A Party shall promptly make publicly available and notify the other Party of any change to the place referred in that Annex.

SECTION E

FINAL PROVISIONS

ARTICLE 10.52

Denial of Benefits

A Party may deny the benefits of this Chapter to an investor of the other Party that is an enterprise of that Party, and to investments of that investor, if:

(a) an investor of a third country owns or controls the enterprise; and

(b) the denying Party adopts or maintains a measure with respect to that third country, or with respect to natural persons or enterprises of that third country, that prohibits transactions with the enterprise or that would be violated or circumvented if the benefits of this Chapter were accorded to that investor or to its investments.

ARTICLE 10.53

Termination

1. If this Agreement is terminated pursuant to Article 2.13 (Duration and Termination) of Part IV of this Agreement, Articles 10.7.2, 10.8.2 and 10.12 and Sections C, D and E of this Chapter, as well as any other relevant provisions of this Agreement, shall continue to apply for a further period of five years from the date of termination with respect to covered investments made before the date of termination of this Agreement.

2. The period referred to in paragraph 1 shall be extended for a single additional period of five years provided that no other investment protection agreement between the Parties is in force.

3. This Article shall not apply if the provisional application of this Agreement is terminated and this Agreement does not enter into force.

ARTICLE 10.54

Relation to Other Agreements

1. On the date of entry into force of this Agreement, the agreements between Member States of the European Union and Mexico listed in Annex 10-C, including the rights and obligations derived therefrom[57], shall cease to have effect and shall be replaced and superseded by this Agreement.

2. In case the provisional application of this Agreement in accordance with paragraph 4 of Article 2.5 (Entry into Force and Provisional Application) of Part IV of this Agreement covers this Section and Sections C and D of this Chapter, the application of the agreements listed in Annex 10-C, as well as the rights and obligations derived therefrom, shall be suspended as of the date of provisional application. If the provisional application of this Agreement is terminated and this Agreement does not enter into force, the suspension shall cease and the agreements listed in Annex 10-C shall have effect as of the date of termination of the provisional application.

[57] For greater certainty, the provisions for termination under Article 10.53 shall supersede the corresponding provisions on termination of the agreements listed in Annex 10-C on the date of entry into force of this Agreement.

3. Notwithstanding paragraphs 1 and 2, a claim may be submitted pursuant to an agreement listed in Annex 10-C in accordance with the rules and procedures established in that agreement, provided that:

(a) the claim arises from an alleged breach of that agreement that took place prior to the date of suspension of that agreement pursuant to paragraph 2 or, if that agreement ceases to have effect pursuant to paragraph 1, prior to the date of entry into force of this Agreement; and

(b) no more than three years have elapsed from the date of suspension of that agreement pursuant to paragraph 2 or, if that agreement ceases to have effect pursuant to paragraph 1, from the date of entry into force of this Agreement until the date of submission of the claim.

4. Notwithstanding paragraph 2, if the provisional application of this Agreement, including the provisions of this Chapter as specified in paragraph 2, is terminated and this Agreement does not enter into force, a claim may be submitted pursuant to this Chapter, in accordance with the rules and procedures established in this Chapter, provided that:

(a) the claim arises from an alleged breach of this Chapter that took place during the period of provisional application of this Agreement; and

(b) no more than three years have elapsed from the date of termination of the provisional application of this Agreement until the date of submission of the claim.

5. For the purposes of this Article, the definition of "date of entry into force of this Agreement" provided for in paragraph 7 of Article 2.5 (Entry into Force and Provisional Application) of Part IV does not apply.

ARTICLE 10.55

Sub-Committee on Services and Investment

The Sub-Committee on Services and Investment established pursuant to subparagraph 1(h) of Article 1.10 (Sub-Committees and Other Bodies of Part III of this Agreement) shall:

(a) provide a forum for the Parties to consult on issues related to this Chapter, including:

(i) difficulties which may arise in the implementation of this Chapter;

(ii) possible improvements of this Chapter, in particular in light of experience and developments in other international fora and under other agreements of the Parties; and

(iii) on request of a Party, the implementation of any mutually agreed solution as regards a dispute under Section D; and

(b) prepare decisions to be adopted or actions to be taken by the Joint Council pursuant to this Chapter.

CHAPTER 11

CROSS-BORDER TRADE IN SERVICES

ARTICLE 11.1

Definitions

1. For the purposes of this Chapter:

(a) "cross-border trade in services" or "cross-border supply of services" means the supply of a service:

(i) from the territory of a Party into the territory of the other Party; or

(ii) in the territory of a Party to a service consumer of the other Party;

(b) "enterprise" means an enterprise as defined in Article 1.3 (Definitions of General Application), or a branch or a representative office thereof;

(c) "enterprise of the European Union" or "enterprise of Mexico" means an enterprise set up in accordance with the law of the European Union or its Member States, or of Mexico and engaged in substantive business operations[58] in the territory of the European Union or of Mexico, respectively[59];

shipping companies established outside the European Union or Mexico and controlled by nationals of a Member State of the European Union or of Mexico, respectively, shall also be beneficiaries of the provisions of this Chapter if their vessels are registered in accordance with the law of a Member State of the European Union or of Mexico, as appropriate, and fly the flag of that Member State of the European Union or of Mexico;

(d) "service supplied in the exercise of governmental authority" means, for each Party, any service that is supplied neither on a commercial basis nor in competition with one or more service suppliers; and

(e) "service supplier of a Party" means a natural person or an enterprise of a Party other than a branch or a representative office that seeks to supply or supplies a service.

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58 In line with its notification of the Treaty establishing the European Community to the WTO (WT/REG39/1), the European Union understands that the concept of an "effective and continuous link" with the economy of a Member State of the European Union enshrined in Article 54 of the TFEU is equivalent to the concept of "substantive business operations".

59 For greater certainty, a branch or a representative office of an enterprise of a third country shall not be considered to be an enterprise of the European Union or an enterprise of Mexico.

ARTICLE 11.2

Scope

1. This Chapter applies to measures of a Party affecting cross-border trade in services by service suppliers of the other Party. Those measures include measures affecting:

(a) the production, distribution, marketing, sale or delivery of a service;

(b) the purchase or use of, or payment for, a service;

(c) the access to and use of, in connection with the supply of a service, services which are required by a Party to be offered to the public generally, including distribution, transport or telecommunications networks; and

(d) the provision of any form of financial security, including a bond, as a condition for the supply of a service.

2. This Chapter does not apply to:

(a) audio-visual services;

(b) national maritime cabotage[60];

(c) measures of a Party insofar as they are covered by Chapter 18;

(d) services supplied in the exercise of governmental authority;

(e) government procurement of a good or service purchased for governmental purposes, and not with a view to commercial resale, or use in the production of a good or supply service for commercial sale, irrespective of whether that procurement constitutes a covered procurement within the meaning of Article 21.1 (Definitions);

(f) subsidies[61] or grants provided by a Party, including government-supported loans, guarantees and insurance; and

[60] For the European Union, without prejudice to the scope of activities which may be considered as cabotage under the relevant national legislation, national maritime cabotage under this Chapter covers transportation of passengers or goods between a port or point located in a Member State of the European Union and another port or point located in that same Member State of the European Union, including on its continental shelf, as provided in the United Nations Convention on the Law of the Sea; and traffic originating and terminating in the same port or point located in a Member State of the European Union.
For Mexico, national maritime cabotage under this Chapter covers the navigation that any vessel performs by sea, between ports or places located within the Mexican marine zones and Mexican shores.

[61] For greater certainty, subsidies are covered under Chapter 24 (Subsidies).

(g) air services or related services in support of air services[62], other than:

(i) aircraft repair and maintenance services during which an aircraft is withdrawn from service;

(ii) selling and marketing of air transport services;

(iii) computer reservation system services; and

(iv) ground handling services.

3. Articles 11.4 to 11.7 do not apply to new services as set out in Annex VII.

ARTICLE 11.3

Right to Regulate

The Parties affirm the right to regulate within their territories to achieve legitimate policy objectives, such as public health, social services, public education, safety, environment, public morals, social or consumer protection, privacy and data protection, the promotion and protection of cultural diversity, or competition.

[62] For greater certainty, air services or related services in support of air services also include: rental of aircraft with crew, airport operation services and services provided by using an aircraft the primary purpose of which is not the transportation of goods or passengers, such as aerial fire-fighting, flight training, sightseeing, spraying, surveying, mapping, photography, parachute jumping, glider towing, helicopter-lift for logging and construction, and other airborne agricultural, industrial and inspection services.

ARTICLE 11.4

Market Access

In the sectors or subsectors where market access commitments are undertaken, a Party shall not adopt or maintain, either on the basis of its entire territory or on the basis of a territorial subdivision, measures imposing limitations on:

(a) the number of service suppliers, whether in the form of numerical quotas, monopolies, exclusive service suppliers or the requirement of an economic needs test;

(b) the total value of service transactions or assets in the form of numerical quotas or the requirement of an economic needs test; or

(c) the total number of service operations or the total quantity of service output expressed in terms of designated numerical units in the form of quotas or the requirement of an economic needs test.

ARTICLE 11.5

Local Presence

A Party shall not require a service supplier of the other Party to establish or maintain a representative office or any form of enterprise, or to be resident, in its territory as a condition for the cross-border supply of a service.

ARTICLE 11.6

National Treatment

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

2. The treatment to be accorded by Mexico pursuant to paragraph 1 is, with respect to a regional level of government of Mexico, treatment no less favourable than the most favourable treatment accorded, in like situations, by that regional level of government to its own services and service suppliers.

3. The treatment to be accorded by the European Union pursuant to paragraph 1 is, with respect to a government of or in a Member State of the European Union, treatment no less favourable than the most favourable treatment accorded, in like situations, by that government to its own services and service suppliers.

ARTICLE 11.7

Most-Favoured-Nation Treatment

1. Each Party shall accord to services and service suppliers of the other Party treatment no less favourable than the treatment it accords, in like situations, to services and service suppliers of a third country.

2. Paragraph 1 shall not be construed as obliging a Party to extend to services and service suppliers of the other Party the benefit of any treatment resulting from measures providing for recognition, including of the standards or criteria for the authorisation, licensing or certification of a natural person or enterprise to carry out an economic activity, or of prudential measures.

ARTICLE 11.8

Non-Conforming Measures and Exceptions

1. Articles 11.5 to 11.7 do not apply to:

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

(i) the European Union, as set out in its list in Appendix I-A to Annex I;

(ii) a national government, as set out by that Party in its list in Appendix I-A or I-B-1 to Annex I;

(iii) a regional government, as set out by that Party in its list in Appendix I-A or I-B-2 to Annex I; or

(iv) a local government;

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

(c) any amendment to a 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 11.5 to 11.7.

2. Articles 11.5 to 11.7 do not apply to a measure that a Party adopts or maintains with respect to sectors, subsectors or activities, as set out in its list in Appendix II-A or II-B to Annex II.

3. Article 11.4 does not apply to any measure of a Party with respect to committed sectors or subsectors as set out in its schedule in Appendix III-A, III-B-1 or III-B-2 to Annex III.

4. Within five years after the date of entry into force of this Agreement, Mexico may notify to the European Union a draft Joint Council decision to modify Appendix I-B-2 to Annex I and Appendix III-B-2 to Annex III with any existing non-conforming measures maintained at the sub-federal level of government.

The European Union shall review that draft within a period of three months and consult with Mexico on any related issues. After consultation, the Joint Council shall adopt the modifications to the annexes referred to in this paragraph. The modified annexes shall apply as of the date of adoption of the modifications.

ARTICLE 11.9

Denial of Benefits

A Party may deny the benefits of this Chapter to a service supplier of the other Party that is an enterprise of that Party, and to services of that service supplier, if:

(a) a person of a third country owns or controls the enterprise; and

(b) the denying Party adopts or maintains a measure with respect to that third country, or with respect to natural persons or enterprises of that third country, that prohibits transactions with the enterprise or that would be violated or circumvented if the benefits of this Chapter were accorded to that enterprise.

CHAPTER 12

TEMPORARY PRESENCE OF NATURAL PERSONS FOR BUSINESS PURPOSES

ARTICLE 12.1

Definitions

For the purposes of this Chapter:

(a) "business person" means, for Mexico, a national of a Member State of the European Union who enters the territory of Mexico, without the purpose of establishing temporary or permanent residence, to:

(i) commercially trade goods or provide services;

(ii) establish, develop or manage an investment of foreign capital;

(iii) conduct business contacts and negotiations for the sale of goods and services, or similar activities;

(iv) provide specialised services for installation, repair, maintenance, supervision or training of workers, previously agreed or considered in a contract of technology transfer, patents and trademarks, for the sale of commercial or industrial equipment or machinery, or any other production process of an enterprise established in the territory of a Party, during the term of the guarantee contract, sale or service;

(v) attend assemblies or sessions of the board of directors of a legally established enterprise in Mexico; or

(vi) promote goods or services, advise clients, receive orders, negotiate contracts and exhibit, participate or attend congresses, fairs, conventions or similar;

(b) "business visitors for investment purposes" means natural persons working in a senior position who are responsible for setting up an enterprise in the other Party, who do not offer or provide services or engage in any economic activity other than required for investment purposes and do not receive remuneration from a source located within that other Party;

(c) "contractual service suppliers" means natural persons employed by an enterprise of a Party which itself is not an agency for placement and supply of services of personnel and is not acting through such an agency, which is not established in the territory of the other Party and which has concluded a *bona fide* contract to supply services with a final consumer in the other Party, requiring the presence on a temporary basis of its employees in that Party, in order to fulfil the contract to supply services[63];

[63] The contract to supply services referred to in subparagraph (c) shall comply with the requirements of the laws and regulations of the Party where the contract is executed.

(d) "independent professionals" means, for the European Union, natural persons engaged in the supply of a service and established as self-employed in the territory of a Party who are not established in the territory of the other Party and who have concluded a *bona fide* contract, other than through an agency for placement and supply services of personnel, to supply services with a final consumer in the other Party, requiring their presence on a temporary basis in that Party in order to fulfil the contract to supply services[64];

(e) "intra-corporate transferees" means natural persons who have been employed by an enterprise of a Party or have been partners in an enterprise of a Party, who are temporarily transferred to an enterprise of a Party, including a subsidiary, branch or parent company of that enterprise, in the territory of the other Party[65], and who are:

(i) "managers" or "executives", meaning persons working in a senior position within an enterprise, who primarily direct the management of the enterprise[66] in the other Party and receive general supervision or direction principally from the board of directors or from stockholders of the business or their equivalent, and who at least:

(A) direct the enterprise or a department or subdivision thereof;

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64 The contract to supply services referred to in subparagraph (d) shall comply with the requirements of the laws and regulations of the Party where the contract is executed.

65 For greater certainty, managers or executives and specialists may be required to demonstrate that they possess the professional qualifications and experience needed in the enterprise to which they are transferred.

66 For greater certainty, while managers or executives do not directly perform tasks concerning the actual supply of the services, they may, in the course of executing their duties to primarily direct the management of the enterprise, perform tasks that may be necessary for the provision of the services.

(B) supervise and control the work of other supervisory, professional or managerial employees; and

(C) have the personal authority to recruit and dismiss or to recommend recruitment, dismissal or other personnel-related actions;

(ii) "specialists", meaning persons working in an enterprise who possess specialised knowledge essential to the enterprise's areas of activity, techniques or management, assessed taking into account the knowledge specific to the enterprise and whether the person has a high level of qualification; or

(iii) "trainee employees", meaning, for the European Union, persons who have been employed by an enterprise which is not a representative office for at least one year, possess a university degree and are temporarily transferred for career development purposes or to obtain training in business techniques or methods[67];

(f) "investors" means, for Mexico, natural persons of the European Union who are seeking to enter Mexico for a temporary stay or who are already in Mexico, intending to:

(i) explore different investment alternatives;

(ii) perform or supervise a direct investment;

[67] The recipient enterprise may be required to submit a training programme covering the duration of the stay for prior approval, demonstrating that the purpose of the stay is for training. For Czechia, Germany, Spain, France, Hungary, Lithuania and Austria, training must be linked to the university degree which has been obtained.

(iii) represent a foreign enterprise or perform business transactions; or

(iv) develop, administer or provide advice or key technical services to the operation of an investment to which a business person or a business person's enterprise has committed, or is in the process of committing, a substantial amount of capital, in a capacity that is supervisory, executive or involves essential skills; and

(g) "short-term business visitors" means natural persons who are seeking entry and temporary stay in the territory of the other Party, who are not engaged in making direct sales to the general public, who do not receive remuneration from a source located within that other Party and who are:

(i) "business sellers", meaning short-term business visitors who are representatives of a supplier of services or goods of a Party for the purposes of negotiating the sale of services or goods, or entering into agreements to sell services or goods for that supplier, are not engaged in the supply of a service in the framework of a contract concluded between an enterprise that has no commercial presence in the territory of the other Party and a consumer in that territory, and are not commission agents;

(ii) "installers and maintainers", meaning, in respect of the entry and temporary stay in the European Union, short-term business visitors possessing specialised knowledge essential to a seller's or lessor's contractual obligations, performing services or training personnel to perform services, pursuant to a warranty or other service contract incidental to the sale or lease of commercial or industrial equipment or machinery, including computer and related services, purchased or leased from an enterprise located outside the territory of the European Union, throughout the duration of the warranty or service contract and, in respect of the entry and temporary stay in Mexico, short-term business visitors that provide specialised services, including after-sale or after-lease services, previously agreed or as referred to in a contract of transfer of technology, patent and trademark, for the sale of machinery and equipment, technical training of personnel or any other production process for an established enterprise in Mexico; or

(iii) "other short-term business visitors", meaning, for Mexico, short-term visitors that attend business administration meetings, conferences or trade fairs and perform management or executive duties in an enterprise or its subsidiaries or affiliates that are established in Mexico.

ARTICLE 12.2

Objectives, Scope and General Provisions

1. This Chapter reflects the Parties' desire to facilitate the entry and temporary stay of natural persons of a Party into the territory of the other Party for business purposes and the need to establish transparent criteria for this purpose.

2. This Chapter applies to measures directly relating to the entry and temporary stay of natural persons of a Party into the territory of the other Party for business purposes who are business visitors for investment purposes, intra-corporate transferees, investors, business sellers, contractual service suppliers and independent professionals.

3. This Chapter does not apply to measures affecting natural persons seeking access to the employment market of a Party, nor to measures regarding citizenship or nationality, residence or employment on a permanent basis.

4. Nothing in this Agreement shall prevent a Party from applying measures to regulate the entry of natural persons into, or their temporary stay in, its territory, including those measures necessary to protect the integrity of, and to ensure the orderly movement of, natural persons across its borders, provided that such measures are not applied in such a manner as to nullify or impair the benefits accruing to the other Party under this Chapter. The sole fact of requiring a visa for natural persons of a certain country and not for those of others shall not be regarded as nullifying or impairing benefits under this Chapter.

5. Each Party shall apply the measures covered by this Chapter expeditiously in order to avoid delays or undue damages in trade in goods or services, or in investment activities under this Agreement.

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

7. Each Party shall allow the entry and temporary stay for business purposes of natural persons of the other Party who comply with the immigration laws and regulations of the former Party applicable to the entry and temporary stay, in accordance with this Chapter, including the provisions of Annexes I to VI.

8. A Party may, in accordance with its laws and regulations and on a non-discriminatory basis, derogate from its commitments on entry and temporary stay set out in its list in Appendix IV-A or IV-B to Annex IV and Appendix V-A or V-B to Annex V in cases where the entry and temporary stay of a natural person of another Party might adversely affect:

(a) the settlement of a collective 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 that dispute.

ARTICLE 12.3

Obligations in Other Chapters

1. This Chapter does not impose any obligation on a Party regarding its immigration measures, except as specifically provided herein.

2. Without prejudice to any decision to allow entry and temporary stay to a natural person of the other Party in accordance with this Chapter, including the length of stay permissible pursuant to any such decision:

(a) the obligations of Articles 10.6 (Market Access), 10.7 (National Treatment), 10.9 (Performance Requirements) and 10.10 (Senior Management and Board of Directors), subject to Articles 10.5 (Scope), 10.12 (Non-Conforming Measures and Exceptions), 18.2 (Scope) and 18.12 (Reservations and Non-Conforming Measures), to the extent that the measure affects the treatment of natural persons for business purposes present in the territory of the other Party, are hereby incorporated into and made part of this Chapter and apply to measures affecting treatment of natural persons for business purposes present in the territory of the other Party under the categories of business visitors for investment purposes, intra-corporate transferees and, for Mexico, investors, as defined in Article 12.1; and

(b) the obligations of Articles 11.4 (Market Access), 11.5 (Local Presence) and 11.6 (National Treatment), subject to paragraph 2 of Article 11.2 (Scope) and Articles 11.8 (Non-Conforming Measures and Exceptions), 18.2 (Scope) and 18.12 (Reservations and Non-Conforming Measures), to the extent that the measure affects the treatment of natural persons for business purposes present in the territory of the other Party, are hereby incorporated into and made part of this Chapter and apply to the measures affecting treatment of natural persons for business purposes present in the territory of the other Party under the categories of contractual service suppliers and, for the European Union, independent professionals, for all sectors listed in Annex V and short-term business visitors, in accordance with Annex IV.

3. For greater certainty, paragraph 2 applies to the measures affecting the treatment of natural persons present in the territory of the other Party for business purposes and falling within the relevant categories and who are supplying financial services, as defined in Article 18.1 (Definitions). Paragraph 2 does not apply to measures relating to the granting of entry and temporary stay to natural persons of a Party or of a third country.

ARTICLE 12.4

Business Visitors for Investment Purposes, Intra-corporate Transferees and Investors

1. Subject to Article 10.5 (Scope), each Party shall allow the entry and temporary stay in its territory of business visitors for investment purposes and intra-corporate transferees of the other Party in accordance with Annex IV.

2. Subject to Article 10.5 (Scope), Mexico shall allow the entry and temporary stay in its territory of investors in accordance with Annex IV.

3. A Party shall not adopt or maintain limitations on the total number of natural persons that are allowed entry and temporary stay in accordance with paragraphs 1 and 2, in a specific sector or sub-sector in the form of numerical quotas or the requirement of an economic needs test either on the basis of a regional subdivision or on the basis of its entire territory.

4. The permissible length of stay shall be[68]:

(a) for the European Union, up to three years for managers or executives and specialists, up to one year for trainee employees, and up to 90 days within any six-month period for business visitors for investment purposes; and

(b) for Mexico, one year which may be extended three times, for one year each time, for intra-corporate transferees and investors, and up to 180 days for business visitors for investment purposes.

5. The Parties shall grant family members of intra-corporate transferees treatment in accordance with Annex 12-A.

[68] The length of stay for business visitors for investment purposes is without prejudice to the rights granted by a Party to nationals or citizens of the other Party under bilateral visa waivers.

ARTICLE 12.5

Short-Term Business Visitors

Subject to Article 11.2 (Scope) and Annex IV, a Party shall:

(a) allow the entry and temporary stay of short-term business visitors;

(b) not adopt or maintain limitations on the total number of short-term business visitors in a specific sector in the form of numerical quotas either on the basis of a regional subdivision or on the basis of its entire territory; and

(c) not adopt or maintain economic needs tests for short-term business visitors.

ARTICLE 12.6

Contractual Service Suppliers

1. Each Party shall allow the entry and temporary stay in its territory of contractual service suppliers of the other Party in accordance with Annex V.

2. Unless otherwise specified in Annex V, a Party shall not adopt or maintain limitations on the total number of contractual service suppliers of the other Party allowed entry and temporary stay in the form of numerical quotas or the requirement of an economic needs test.

ARTICLE 12.7

Independent Professionals

1. The European Union shall allow the entry and temporary stay in its territory of independent professionals of Mexico in accordance with Annex V.

2. Unless otherwise specified in Annex V, the European Union shall not adopt or maintain limitations on the total number of independent professionals of Mexico allowed entry and temporary stay in the form of numerical quotas or the requirement of an economic needs test.

ARTICLE 12.8

Transparency

1. Each Party shall make publicly available information on the requirements and procedures for entry and temporary stay, including relevant forms and documents, and explanatory materials that will enable interested persons of the other Party to become acquainted with applicable requirements and procedures.

2. The information referred to in paragraph 1 shall include, if applicable, information on the following:

(a) categories of visa, permits or any similar type of authorisation regarding entry and temporary stay;

(b) documentation required and conditions to be met;

(c) method of filing an application and options on where to file, such as consular offices or online;

(d) application fees and indicative processing time;

(e) maximum period of stay under each type of authorisation described in subparagraph (a);

(f) conditions for any available extensions or renewal;

(g) rules regarding accompanying dependents;

(h) available review or appeal procedures; and

(i) relevant laws of general application pertaining to the entry and temporary stay of natural persons.

ARTICLE 12.9

Dispute Settlement

A Party shall not have recourse to dispute settlement under Chapter 31 regarding a refusal to grant entry and temporary stay under this Chapter unless the matter involves a pattern of practice.

CHAPTER 13

DOMESTIC REGULATION

ARTICLE 13.1

Scope

1. This Chapter applies to measures adopted or maintained by a Party relating to licensing and qualification requirements and procedures, as well as technical standards[69], affecting trade in services or the pursuit of any other economic activity with respect to which a Party has undertaken a commitment pursuant to Article 10.6 (Market Access), 10.7 (National Treatment), 11.4 (Market Access) or 11.6 (National Treatment), subject to any terms, limitations, conditions or qualifications as set out in its schedule pursuant to Articles 10.12 (Non-Conforming Measures and Exceptions) and 11.8 (Non-Conforming Measures and Exceptions).

2. Notwithstanding paragraph 1 of this Article, Article 13.6 applies to measures adopted or maintained by a Party relating to licensing and qualification requirements and procedures, as well as technical standards, affecting trade in services or the pursuit of any other economic activity.

[69] For greater certainty, as far as measures relating to technical standards are concerned, this Chapter only applies to such measures affecting trade in services.

3. This Chapter does not apply to measures adopted or maintained by a Party covered under Chapter 18.

ARTICLE 13.2

Development of Measures

A Party that adopts or maintains measures relating to licensing requirements and procedures, qualification requirements and procedures, shall:

(a) ensure that those measures are based on objective and transparent criteria[70];

(b) ensure that the competent authority reaches and administers its decisions in an independent manner;

(c) ensure that the procedures do not in themselves unduly prevent the fulfilment of any requirements;

[70] For greater certainty, competent authorities may assess the weight to be given to those criteria which may include competence, ability to supply a service or any other economic activity, and potential health or environmental impacts of an authorisation decision.

(d) ensure that the procedures are impartial and adequate for applicants to demonstrate whether they meet the requirements, if any; and

(e) not require an applicant, to the extent practicable, to approach more than one competent authority for each application for authorisation[71].

ARTICLE 13.3

Administration of Measures

If authorisation is required for the supply of a service or the pursuit of any other economic activity, the competent authorities of a Party shall:

(a) permit an applicant, to the extent practicable, to submit an application at any time;

(b) allow a reasonable period of time for the submission of an application if specific time periods for applications exist;

(c) schedule examinations at reasonably frequent intervals, if examinations are required, and provide a reasonable period of time for an applicant to request to take the examination;

(d) endeavour to accept applications in electronic format, taking into account their competing priorities and resource constraints;

[71] For greater certainty, a Party may require multiple applications for authorisation if a service or other economic activity is within the jurisdiction of multiple competent authorities.

(e) accept copies of documents which are authenticated in accordance with the law of the Party, in place of original documents, unless the presentation of original documents is required for protecting the integrity of the authorisation process;

(f) ensure that the authorisation fees[72] charged by the competent authorities are reasonable and transparent and do not in themselves restrict the supply of the relevant service or the pursuit of any other economic activity;

(g) provide, to the extent practicable, an indicative timeframe for the processing of an application;

(h) ascertain without undue delay, to the extent practicable, the completeness of an application for processing under the law of the Party;

(i) if an application is considered complete for processing under the law of the Party, ensure that the processing of the application is finalised and that the applicant is informed of the decision within a reasonable period of time after the submission of the application, to the extent possible in writing[73];

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[72] Authorisation fees include licensing fees and fees relating to qualification procedures; they do not include fees for the use of natural resources, payments for auction, tendering or other non-discriminatory means of awarding concessions, or mandated contributions to universal service provision.

[73] The competent authorities can meet this requirement by informing an applicant in advance in writing, including through a published measure, that lack of response after a specified period of time from the date of submission of the application indicates either acceptance or rejection of the application. For greater certainty, informing in writing may include information provided in electronic form.

(j) provide, at the request of the applicant and without undue delay, information concerning the status of the application;

(k) if an application is considered incomplete for processing under the law of the Party, within a reasonable period of time and to the extent practicable:

(i) inform the applicant that the application is incomplete;

(ii) provide, at the request of the applicant, guidance on why the application is considered incomplete;

(iii) provide the applicant with the opportunity[74] to submit the additional information that is required to complete the application; and

(iv) where none of the above is practicable, and the application is rejected due to incompleteness, ensure that the applicant is informed within a reasonable period of time;

(l) if an application is rejected, inform the applicant, to the extent practicable, either on their own initiative or on request of the applicant, of the reasons for rejection and, where applicable, the procedures for resubmission of an application; and

(m) ensure that the authorisation, once granted, enters into effect without undue delay subject to the applicable terms and conditions.

[74] For greater certainty, such opportunity does not require a competent authority to provide extensions of deadlines.

ARTICLE 13.4

Limited Numbers of Licences

1. If the number of licences available for a given activity is limited because of the scarcity of available natural resources or technical capacity, a Party shall apply a selection procedure to potential candidates which provides full guarantees of impartiality and transparency, including, in particular, adequate publicity about the launch, conduct and completion of the procedure.

2. In establishing the rules for the selection procedure, a Party may take into account legitimate policy objectives, including considerations of health, safety, consumer protection, competition, the protection of the environment and the preservation of cultural heritage.

ARTICLE 13.5

Technical Standards

Each Party shall encourage its competent authorities, when adopting technical standards, to adopt technical standards developed through open and transparent processes, and shall encourage any body designated to develop technical standards to do so through open and transparent processes.

ARTICLE 13.6

Transparency

A Party that requires authorisation for the supply of a service or for the pursuit of any other economic activity shall provide the information necessary for service suppliers or persons seeking to supply a service and persons pursuing or seeking to pursue any other economic activity to comply with the requirements and procedures for obtaining, maintaining, amending and renewing that authorisation. That information shall include, where it exists:

(a) authorisation fees;

(b) contact information of relevant competent authorities;

(c) procedures for appeal or review of decisions concerning applications;

(d) procedures for monitoring or enforcing compliance with the terms and conditions of licences;

(e) opportunities for public involvement, such as through hearings or comments;

(f) indicative timeframes for the processing of an application;

(g) requirements and procedures; and

(h) applicable technical standards.

ARTICLE 13.7

Review

Following the entry into force of additional disciplines developed in accordance with paragraph 4 of Article VI of GATS, the Parties shall review those disciplines. If the review concludes that those disciplines would improve this Agreement, the Parties shall determine whether they should be incorporated into this Agreement.

CHAPTER 14

MUTUAL RECOGNITION OF PROFESSIONAL QUALIFICATIONS

ARTICLE 14.1

General Provisions

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

2. Each Party shall encourage the relevant professional bodies or authorities, as appropriate, in its respective territories to develop and provide joint recommendations on mutual recognition of professional qualifications to the Sub-Committee on Services and Investment established pursuant to subparagraph 1(h) of Article 1.10 (Sub-Committees and Other Bodies of Part III of this Agreement).

3. The joint recommendations referred to in paragraph 2 shall be supported by evidence of:

(a) the economic value of an envisaged agreement on mutual recognition of professional qualifications (hereinafter referred to as "Mutual Recognition Agreement"); and

(b) the compatibility of the respective regimes, that is, the extent to which the criteria applied by each Party for the authorisation and licensing are compatible.

4. The Sub-Committee shall review any joint recommendation within a reasonable period of time after its receipt.

5. If the joint recommendation is consistent with this Agreement, the Parties shall take the necessary steps to negotiate a Mutual Recognition Agreement, if appropriate through their competent authorities or designees authorised by a Party. If appropriate, the Joint Council may adopt the arrangements for the mutual recognition of professional qualification by decision.

6. When negotiating Mutual Recognition Agreements or when developing joint recommendations, the Parties or the relevant professional bodies or authorities, respectively, are encouraged to follow the Guidelines for the negotiation of a Mutual Recognition Agreement set out in Annex 14-A.

CHAPTER 15

DELIVERY SERVICES

ARTICLE 15.1

Definitions

For the purposes of this Chapter:

(a) "delivery services" means postal and courier or express services, which include the collection, sorting, transport and delivery of postal items;

(b) "express delivery services" means the collection, sorting, transport and delivery of postal items at accelerated speed and enhanced reliability that may include value added elements such as collection from point of origin, personal delivery to the addressee, tracing, possibility of changing the destination and addressee in transit or confirmation of receipt;

(c) "express mail services" means international express delivery services supplied through a voluntary association of designated postal operators under Universal Postal Union (UPU) such as the EMS Cooperative;

(d) "licence" means an authorisation granted to an individual supplier by a regulatory authority setting out procedures, obligations and requirements specific to the delivery services sector;

(e) "postal item" means an item weighing up to 31,5 kg addressed in the final form in which it is to be carried by any type of supplier of delivery service, whether public or private, and that may include items such as a letter, parcel, newspaper or catalogue;

(f) "postal monopoly" means the exclusive right to supply specified delivery services within the territory of a Party, pursuant to the law of that Party; and

(g) "universal service" means the permanent provision of a delivery service of a specified quality pursuant to the law of a Party at all points in the territory of that Party at affordable prices for all users.

ARTICLE 15.2

Objective

This Chapter sets out the principles of the regulatory framework specific for all delivery services.

ARTICLE 15.3

Universal Service

1. Each Party has the right to define the kind of universal service obligation it wishes to adopt or maintain and shall administer that obligation in a transparent, non-discriminatory and neutral manner with regard to all suppliers which are subject to the obligation.

2. If a Party requires inbound express mail services to be supplied on a universal service basis, it shall not accord preferential treatment to that service over other international express delivery services.

ARTICLE 15.4

Universal Service Funding

1. A Party shall not impose fees or other charges on the supply of a non-universal delivery service for the purpose of funding the supply of a universal service.

2. Paragraph 1 does not apply to generally applicable taxation measures or administrative fees.

ARTICLE 15.5

Prevention of Market Distortive Practices

Each Party shall ensure that a supplier of delivery services subject to a universal service obligation or a postal monopoly does not engage in distortive practices for the market such as:

(a) using revenues derived from the supply of such service to cross-subsidise the supply of an express delivery service or any non-universal delivery service; and

(b) unjustifiably differentiating among customers such as businesses, large volume mailers or consolidators with respect to tariffs or other terms and conditions for the supply of a delivery service which is subject to a universal service obligation or a postal monopoly.

ARTICLE 15.6

Licences

1. A Party requiring a licence for the provision of delivery services shall make publicly available:

(a) all licensing requirements and the period of time required to reach a decision concerning an application for a licence; and

(b) the terms and conditions of licences.

2. The procedures, obligations and requirements of a licence shall be transparent, non-discriminatory and based on objective criteria.

3. A Party shall ensure that the applicant is informed of the reasons for denial of a licence in writing.

ARTICLE 15.7

Independence of the Regulatory Body

1. Each Party shall establish or maintain regulatory bodies which shall be legally distinct and functionally independent from any supplier of delivery services. A Party retaining ownership or control of enterprises providing delivery services shall ensure effective structural separation of the regulatory function from activities associated with ownership or control.

2. Each Party shall ensure that the regulatory bodies referred to in paragraph 1 perform their tasks in a transparent and timely manner, and that they have adequate financial and human resources to carry out the tasks assigned to them.

3. The decisions of and the procedures used by the regulatory body shall be impartial with respect to all market participants.

CHAPTER 16

TELECOMMUNICATIONS SERVICES

ARTICLE 16.1

Definitions

For the purposes of this Chapter:

(a) "associated facilities" means services, physical infrastructures and other facilities associated with a telecommunications network or service which enable or support the provision of services via that network or service or have the potential to do so;

(b) "end user" means a final consumer of, or subscriber to, a public telecommunications service, including a service supplier other than a supplier of public telecommunications services;

(c) "essential facilities" means facilities of a public telecommunications network or service that:

(i) are exclusively or predominantly provided by a single or limited number of suppliers; and

(ii) cannot feasibly be economically or technically substituted in order to provide a service;

(d) "interconnection" means linking the public telecommunications networks of suppliers providing public telecommunications services in order to allow the users of one supplier to communicate with users of another supplier and to access services provided by any supplier that is either involved or has access to the network;

(e) "intra-corporate communications" means telecommunications through which an enterprise communicates within the enterprise or with or among its subsidiaries, branches and, subject to the law of the Party concerned, affiliates, but does not include commercial or non-commercial services that are supplied to enterprises that are not related subsidiaries, branches or affiliates, or that are offered to customers or potential customers[75];

(f) "leased circuits" means telecommunications services or facilities, including those of a virtual or non-physical nature, between two or more designated points that are set aside for the dedicated use of, or availability to, a user;

(g) "licence" means any authorisation that a Party may require of a natural person or an enterprise, in accordance with its law, in order to offer a telecommunications service, including but not limited to concessions, permits, registrations or notifications;

[75] For the purposes of this definition, the terms "subsidiaries", "branches" and, where applicable, "affiliates" have the meaning for a Party as defined by its law.

(h) "major supplier" means a supplier of telecommunications networks or services which has the ability to materially affect the terms of participation, having regard to price and supply, in a relevant market for public telecommunications networks or services as a result of control over essential facilities or the use of its position in that market;

(i) "network element" means a facility or equipment used in supplying a telecommunications service, including features, functions and capabilities provided by means of that facility or equipment;

(j) "non-discriminatory" means complying with most-favoured-nation treatment as defined in Articles 10.8 (Most-Favoured-Nation Treatment) and 11.7 (Most-Favoured-Nation Treatment) and national treatment as defined in Articles10.7 (National Treatment) and 11.6 (National Treatment), as well as according treatment no less favourable than that accorded to any other user of like public telecommunications services in like situations, including with respect to timeliness;

(k) "number portability" means the ability of end users of public telecommunications services who so request to retain the same telephone number, at the same location in the case of a fixed line, when switching between the same category of suppliers of public telecommunications services;

(l) "public telecommunications network" means a telecommunications network used for the provision of public telecommunications services between network termination points;

(m) "public telecommunications service" means a telecommunications service that is offered to the public generally;

(n) "reference interconnection offer" means an interconnection offer by a major supplier that is made publicly available, so that any supplier of public telecommunications services willing to accept the offer may obtain interconnection with the major supplier on that basis;

(o) "telecommunications" means the transmission and reception of signals by wire, radio, optical or any other electromagnetic means;

(p) "telecommunications network" means transmission systems and, where applicable, switching or routing equipment and other resources, including inactive network elements, which permit telecommunications;

(q) "telecommunications regulatory authority" means the body or bodies responsible for the regulation of telecommunications networks and services covered by this Chapter;

(r) "telecommunications service" means a service which consists wholly or mainly in the transmission and reception of signals over telecommunications networks, including over networks used for broadcasting, but does not include services providing, or exercising editorial control over, content transmitted using telecommunications networks and services;

(s) "universal service" means the minimum set of services that must be made available to all users in the territory of a Party, the scope of which is defined by that Party; and

(t) "user" means a consumer or a service supplier using a public telecommunications network or service.

ARTICLE 16.2

Scope and Principles of the Regulatory Framework

1. This Chapter sets out principles of the regulatory framework for the provision of telecommunications networks and services, liberalised pursuant to Chapters 10 (Investment) and 11 (Cross-Border Trade in Services), and applies to measures adopted or maintained by a Party affecting trade in public telecommunications services.

2. For greater certainty, this Chapter does not apply to measures adopted or maintained by a Party affecting services providing, or exercising editorial control over, content transmitted using telecommunications networks or services.

ARTICLE 16.3

Telecommunications Regulatory Authority

1. Each Party shall ensure that its telecommunications regulatory authority is legally distinct and functionally independent from any supplier of public telecommunications networks or services, or telecommunications equipment. With a view to ensuring the independence and impartiality of telecommunications regulatory authorities, each Party shall ensure that its telecommunications regulatory authority does not hold a financial interest or maintain an operating or management role in any supplier of public telecommunications networks or services, or telecommunications equipment. A Party that retains ownership or control of suppliers of telecommunications networks or services shall ensure effective structural separation of the regulatory function from activities associated with ownership or control.

2. Each Party shall ensure that regulatory decisions and procedures of its telecommunications regulatory authority, related to this Chapter, are impartial with respect to all market participants.

3. Each Party shall ensure that its telecommunications regulatory authority acts independently and does not seek or take instructions from any other body in relation to the exercise of the tasks assigned to it under the law of a Party to enforce the obligations set out in Articles 16.5, 16.6, 16.7, 16.9 and 16.10.

4. Each Party shall ensure that its telecommunications regulatory authority has the regulatory power, as well as adequate financial and human resources, to carry out the tasks assigned to it in order to enforce the obligations set out in this Chapter. Such power shall be exercised in a transparent and timely manner. The tasks of the telecommunications regulatory authority shall be made public in an easily accessible and clear form, in particular where those tasks are assigned to more than one body.

5. Each Party shall provide its telecommunications regulatory authority with the power to ensure that suppliers of telecommunications networks or services provide it, promptly upon request, with all the information, including financial information, which is necessary to enable the telecommunications regulatory authority to carry out its tasks in accordance with this Chapter. Information received shall be treated in accordance with the applicable confidentiality requirements of the Parties.

6. Each Party shall ensure that a user or supplier of telecommunications networks or services affected by a decision of the telecommunications regulatory authority has the right to challenge that decision before a body that is independent of the telecommunications regulatory authority and of the parties affected by the decision[76]. Pending the outcome of that procedure, the decision of the telecommunications regulatory authority shall stand, unless interim measures are granted in accordance with the law of the Party concerned.

[76] For Mexico, the general rules, acts or omissions of the Telecommunication Regulatory Commission (Comisión Reguladora de Telecomunicaciones (CRT)) may only be challenged through an indirect *amparo* trial before federal courts specialised in competition, broadcasting and telecommunications and shall not be subject to a suspension order.

ARTICLE 16.4

Licensing Procedures

1. If a Party requires a supplier of public telecommunications networks or services to have a licence, it shall ensure that the following information is publicly available:

(a) the types of telecommunications services requiring licences;

(b) all the licensing criteria and procedures it applies;

(c) the period of time it normally requires to reach a decision concerning an application for a licence if a decision is required; and

(d) the terms and conditions generally applicable to a licence.

2. A Party requiring a supplier of public telecommunications networks or services to have a licence shall decide upon the granting of the licence within a reasonable period of time so as to allow the supplier to start providing its telecommunications networks or services without undue delay.

3. Any licensing criteria, applicable procedures and, if imposed, obligations or conditions, shall be related to the telecommunications services provided and shall be objective, proportionate, transparent and non-discriminatory.

4. Each Party shall ensure that an applicant or a licensee receives, as a procedural requirement or upon request, the written reasons for:

(a) denial of a licence;

(b) imposition of supplier-specific conditions or obligations on a licence;

(c) revocation of the licence; or

(d) refusal to renew a licence.

5. Any administrative fees imposed on suppliers shall be objective, transparent, non-discriminatory and proportionate to the administrative costs reasonably incurred in the management, control and enforcement of the obligations set out in this Chapter[77].

ARTICLE 16.5

Interconnection

Each Party shall ensure that a supplier of public telecommunications networks or services has the right and, when requested by another supplier of public telecommunications networks or services, the obligation to negotiate interconnection for the purposes of providing public telecommunications networks or services.

[77] Administrative fees do not include payments for rights to use scarce resources and mandated contributions to universal service provision.

ARTICLE 16.6

Access to and Use of Public Telecommunications Networks and Services

1. Each Party shall ensure that any service supplier of the other Party is accorded access to, and use of, public telecommunications networks or services, including leased circuits, offered in its territory or across its borders on reasonable and non-discriminatory terms and conditions, for the supply of a service liberalised pursuant to Chapters 10 (Investment) and 11 (Cross-Border Trade in Services). This obligation shall be implemented, inter alia, by complying with paragraphs 2 to 6.

2. Each Party shall ensure that a service supplier of the other Party is permitted to:

(a) purchase or lease and attach terminal or other equipment which interfaces with a public telecommunications network;

(b) provide services to individual or multiple end users over leased or owned circuits;

(c) connect private leased or owned circuits with public telecommunications networks and services or with circuits leased or owned by another service supplier; and

(d) use operating protocols of the service supplier's choice in the supply of any service, other than as necessary to ensure the availability of telecommunications services to the public generally.

3. Each Party shall ensure that service suppliers of the other Party may use public telecommunications networks and services for the movement of information in its territory or across its borders, including for intra-corporate communications of such service suppliers, and for access to information contained in databases or otherwise stored in machine-readable form in the territory of either Party.

4. Notwithstanding paragraph 3, a Party may adopt or maintain measures that are necessary to ensure the security and confidentiality of communications, subject to the requirement that those measures are not applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination or a disguised restriction on trade in services.

5. Each Party shall ensure that no condition is imposed on access to and use of public telecommunications networks and services other than conditions necessary to:

(a) safeguard the public service responsibilities of suppliers of public telecommunications networks or services, in particular their ability to make their public telecommunications services available to the public generally; or

(b) protect the technical integrity of public telecommunications networks or services.

6. Provided that they satisfy the criteria set out in paragraph 5, the conditions for access to and use of public telecommunications networks and services may include:

(a) restrictions on resale or shared use of those services;

(b) a requirement to use specified technical interfaces, including interface protocols, for interconnection with those networks and services;

(c) requirements, if necessary, for the interoperability of those services and for encouraging the achievement of the goals set out in Article 16.18;

(d) type approval of terminal or other equipment which interfaces with the network and technical requirements relating to the attachment of that equipment to those networks;

(e) restrictions on interconnection of private leased or owned circuits with those networks or services or with circuits leased or owned by another service supplier; or

(f) notification, registration and licensing requirements.

ARTICLE 16.7

Resolution of Disputes on Telecommunications

1. Each Party shall ensure that in a dispute arising between suppliers of telecommunications networks or services in connection with the rights and obligations set out in this Chapter, its telecommunications regulatory authority issues at the request of either party involved in the dispute, a binding decision to resolve the dispute within the timeframe stipulated in the law of that Party.

2. Each Party shall ensure that the decision issued by the telecommunications regulatory authority is made available to the public, having regard to the requirements of business confidentiality. Each Party shall ensure that the parties involved in the dispute receive a full statement of the reasons on which the decision is based and have the right to challenge that decision in accordance with Article 16.3.6.

3. Paragraphs 1 and 2 shall not preclude a party involved in the dispute from bringing an action before the judicial authorities[78].

[78] For Mexico, the general rules, acts or omissions of the Telecommunication Regulatory Commission (Comisión Reguladora de Telecomunicaciones (CRT)) may only be challenged through an indirect *amparo* trial before federal courts specialised in competition, broadcasting and telecommunications and shall not be subject to a suspension order.

ARTICLE 16.8

Competitive Safeguards on Major Suppliers

1. Each Party shall adopt or maintain appropriate measures for the purpose of preventing suppliers of public telecommunications networks or services that, alone or together, are a major supplier from engaging in or continuing anticompetitive practices.

2. The anticompetitive practices referred to in paragraph 1 include in particular:

(a) engaging in anticompetitive cross-subsidisation;

(b) using information obtained from competitors with anticompetitive results; and

(c) not making available to other service suppliers on a timely basis technical information about essential facilities and commercially relevant information which is necessary for them to provide services.

ARTICLE 16.9

Interconnection with Major Suppliers

1. Each Party shall ensure that a major supplier of public telecommunications networks and services in its territory provides interconnection with suppliers of public telecommunications services of the other Party:

(a) at any technically feasible point in the network of that major supplier;

(b) on non-discriminatory terms and conditions including as regards rates, technical standards, specifications, quality and maintenance;

(c) of a quality no less favourable than that provided for its own like services, or for like services of its subsidiaries or other affiliates;

(d) in a timely fashion, and on terms and conditions, including rates[79], technical standards and specifications, that are transparent, reasonable, having regard to economic feasibility, and sufficiently unbundled so that the suppliers of public telecommunications services do not need to pay for network components or facilities that they do not require for the service to be provided; and

[79] Nothing in this paragraph shall preclude a Party from requiring that a major supplier provides interconnection at cost-oriented rates. "Cost-oriented rates" means rates based on cost, which may include a reasonable profit, and may involve different cost methodologies for different facilities or services.

(e) on request, at points in addition to the network termination points offered to the majority of users, subject to charges that reflect the cost of construction of the necessary additional facilities.

2. Each Party shall ensure that major suppliers in its territory make publicly available, as appropriate, either:

(a) a reference interconnection offer or another standard interconnection offer containing the terms and conditions, and rates that the major supplier offers generally to suppliers of public telecommunications services; or

(b) the terms and conditions of an interconnection agreement in effect.

3. Each Party shall make publicly available the applicable procedures for interconnection negotiations with a major supplier in its territory.

ARTICLE 16.10

Access to Essential Facilities

1. Each Party shall ensure that a major supplier in its territory grants access to its essential facilities to suppliers of public telecommunications networks or services on reasonable, transparent and non-discriminatory terms and conditions based on a generally available offer for the purpose of providing public telecommunications services, except where such access is not necessary to achieve effective competition on the basis of the facts collected and the assessment of market conditions conducted by the telecommunications regulatory authority. The essential facilities of a major supplier may include network elements, leased circuits services and associated facilities.

2. Each Party shall provide its telecommunications regulatory authority with the power to determine the essential facilities required to be made available in its territory by a major supplier, and to what extent those essential facilities are to be unbundled. Such determination shall be based, among other things, on the objective of achieving effective competition and the benefit of the long-term interest of end users.

3. If a Party requires a major supplier to offer its public telecommunications services for resale, it shall ensure that the major supplier does not impose unreasonable or discriminatory conditions on the resale of its public telecommunications services.

ARTICLE 16.11

Scarce Resources

1. Each Party shall ensure that the allocation and granting of rights of use of scarce resources, including radio spectrum, numbers and rights of way, is carried out in an open, objective, timely, transparent, non-discriminatory and proportionate manner and in pursuit of general interest objectives, including the promotion of competition. Procedures, and conditions and obligations attached to rights of use, shall be based on objective, transparent, non-discriminatory and proportionate criteria.

2. Each Party shall ensure that the current use of allocated frequency bands is made publicly available, but detailed identification of radio spectrum allocated for specific government purposes is not required.

3. A Party may rely on market-based approaches, such as bidding procedures, to assign radio spectrum for commercial use.

4. Measures of a Party allocating and assigning radio spectrum and managing frequency are not *per se* inconsistent with Articles 10.6 (Market Access) and 11.4 (Market Access). Each Party retains the right to adopt and maintain spectrum and frequency management measures that could have the effect of limiting the number of suppliers of telecommunications services, provided that those measures are consistent with the other provisions of this Agreement. That right includes the ability to allocate frequency bands taking into account current and future needs and radio spectrum availability.

ARTICLE 16.12

Number Portability

Each Party shall ensure that suppliers of public telecommunications services within its territory provide number portability on a timely basis, without impairing quality, reliability or convenience, and on reasonable and non-discriminatory terms and conditions.

ARTICLE 16.13

Universal Service

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

2. Each Party shall administer any universal service obligation in a manner that is transparent, non-discriminatory and neutral with respect to competition. Each Party shall ensure that any universal service obligation it imposes is not more burdensome than necessary for the kind of universal service that it has defined. Universal service obligations defined according to these principles shall not *per se* be regarded as anticompetitive.

3. Each Party shall ensure that procedures for the designation of universal service suppliers are open to all suppliers of public telecommunications networks or services. The designation shall be made through an efficient, transparent and non-discriminatory mechanism.

4. If a Party decides to compensate the suppliers of universal services, it shall ensure that such compensation does not exceed the needs directly attributable to the universal services obligation, as determined through a competitive process or a determination of net costs.

ARTICLE 16.14

Confidentiality of Information

1. Each Party shall ensure that suppliers of public telecommunications networks or services that acquire information from another supplier of public telecommunications networks or services, in the process of negotiating arrangements pursuant to Article 16.5, 16.9 or 16.10, use that information solely for the purpose for which it was supplied and respect at all times the confidentiality of that information.

2. Each Party shall ensure the confidentiality of telecommunications and related traffic data transmitted by public telecommunications networks or services, subject to the requirement that measures applied to that end do not constitute a means of arbitrary or unjustifiable discrimination or a disguised restriction on trade in services.

ARTICLE 16.15

Technological Neutrality

The Parties recognise the benefits of technological neutrality, in particular with regard to allowing suppliers of public telecommunications services to choose the technologies they desire to use for supplying their services. A Party may restrict such choice by adopting or maintaining requirements necessary to satisfy legitimate public policy objectives, provided that those requirements do not create unnecessary obstacles to trade.

ARTICLE 16.16

Treatment by Major Suppliers

Each Party shall provide its telecommunications regulatory authority with the power to require, where appropriate, that a major supplier in its territory accords suppliers of public telecommunications networks or services of the other Party treatment no less favourable than that which the major supplier accords in like situations to its subsidiaries or its affiliates, regarding:

(a) the availability, provisioning, rates or quality of like telecommunications services; and

(b) the availability of technical interfaces necessary for interconnection.

ARTICLE 16.17

International Mobile Roaming

1. The Parties shall endeavour to cooperate on the promotion of transparent and reasonable rates for international mobile roaming services with a view to promoting the growth of trade between the Parties and enhancing consumer welfare.

2. A Party may enhance transparency and competition with respect to international mobile roaming rates and technological alternatives to roaming services in particular by:

(a) ensuring that information regarding retail rates is easily accessible to consumers; and

(b) minimising impediments to the use of technological alternatives to roaming, whereby consumers visiting its territory can access telecommunications services using the device of their choice.

ARTICLE 16.18

International Standards and Organisations

The Parties recognise the importance of international standards for global compatibility and interoperability of telecommunications networks or services and shall promote those standards through the work of relevant international bodies including the International Telecommunication Union and the International Organization for Standardization.

CHAPTER 17

INTERNATIONAL MARITIME TRANSPORT SERVICES

ARTICLE 17.1

Definitions

1. For the purposes of this Chapter, Section B (Liberalisation of Investments) of Chapter 10 (Investment), as well as Chapters 11 (Cross-Border Trade in Services), 12 (Temporary Presence of Natural Persons for Business Purposes) and 18 (Financial Services):

(a) "container station and depot services" means activities consisting of storing containers, whether in port areas or inland, with a view to their stuffing or stripping, repairing and making them available for shipments;

(b) "customs clearance services" means activities consisting of carrying out on behalf of another party customs formalities concerning import, export or through transport of cargoes, on behalf of another party, whether those services are the main activity of the service provider or a usual complement of its main activity;

(c) "door-to-door or multimodal transport operations" means the transport of cargo using more than one mode of transport, involving an international sea-leg, under a single transport document;

(d) "freight forwarding services" means the activity consisting of organising and monitoring shipment operations on behalf of shippers, through the acquisition of transport and related services, preparation of documentation and provision of business information;

(e) "international cargo" means cargo transported between a port of a Party and a port of the other Party or of a third country, or between a port of one Member State of the European Union and a port of another Member State of the European Union;

(f) "international maritime transport services" means the transport of passengers or cargo by sea-going vessels between a port of a Party and a port of the other Party or of a third country or between a port of one Member State of the European Union and a port of another Member State of the European Union, including direct contracting with providers of other transport services, with a view to covering door-to-door or multimodal transport operations under a single transport document, but not including the right to provide such other transport services;

(g) "maritime auxiliary services" means maritime cargo handling services, customs clearance services, container station and depot services, maritime agency services and maritime freight forwarding services;

(h) "maritime agency services" means activities consisting of representing, within a given geographic area, as an agent, the business interests of one or more shipping lines or shipping companies, for the purposes of:

(i) marketing and sales of maritime transport and related services, from quotation to invoicing, and issuance of bills of lading on behalf of those companies, acquisition and resale of the necessary related services, preparation of documentation, and provision of business information; or

(ii) acting on behalf of those companies by organising the call of the ship or taking over cargoes when required; and

(i) "maritime cargo handling services" means activities exercised by stevedore companies, including terminal operators but not including the direct activities of dockers, where dockers are organised independently of the stevedoring or terminal operator companies; including the organisation and supervision of:

(i) the loading or discharging of cargo to or from a ship;

(ii) the lashing or unlashing of cargo; or

(iii) the reception or delivery and safekeeping of cargoes before shipment or after discharge.

ARTICLE 17.2

Objective

This Chapter sets out the principles regarding the liberalisation of international maritime transport services pursuant to Section B (Liberalisation of Investments) of Chapter 10 (Investment), as well as Chapters 11 (Cross-Border Trade in Services), 12 (Temporary Presence of Natural Persons for Business Purposes) and 18 (Financial Services).

ARTICLE 17.3

Principles

1. Subject to any measure that a Party adopts or maintains with respect to sectors, sub-sectors or activities, in accordance with Annexes I, II, III and VI, each Party shall:

(a) effectively apply the principle of unrestricted access to the international maritime markets and trades on a commercial and non-discriminatory basis; and

(b) grant to ships flying the flag of the other Party, or operated by service suppliers of the other Party, treatment no less favourable than that accorded to its own ships with regard to, among other things, access to ports, use of infrastructure and services of ports, and use of maritime auxiliary services, as well as with regard to related fees and charges, customs facilities and assignment of berths and facilities for loading and unloading.

2. In applying the principles referred to in subparagraphs 1(a) and (b), the Parties shall:

(a) not introduce cargo-sharing arrangements in future agreements with third countries concerning maritime transport services, including dry and liquid bulk and liner trade, and terminate, within a reasonable period of time, such cargo-sharing arrangements in case they exist in previous agreements; and

(b) upon the entry into force of this Agreement, abolish and abstain from introducing any unilateral measures or administrative, technical or other obstacles which could constitute a disguised restriction or have discriminatory effects on the free supply of international maritime transport services.

3. Each Party shall permit international maritime service suppliers of the other Party to have an enterprise established and operating in its territory in accordance with Annexes I, II, III and VI.

4. The Parties shall make available to suppliers of international maritime transport services of the other Party, on reasonable and non-discriminatory terms and conditions, the following services at the port: pilotage, towing and tug assistance, provisioning, fuelling and watering, garbage collecting and ballast waste disposal, port captain's services, navigation aids, emergency repair facilities, anchorage, berth and berthing services, as well as shore-based operational services essential to ship operations, including communications, water and electrical supplies.

CHAPTER 18

FINANCIAL SERVICES

ARTICLE 18.1

Definitions

For the purposes of this Chapter:

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

(b) "cross-border trade in financial services" or "cross-border supply of financial services" means the supply of a financial service:

(i) from the territory of one Party into the territory of the other Party; or

(ii) in the territory of one Party to a service consumer of the other Party; such supply of a financial service does not include the supply of a financial service in the territory of one Party by an investment in that territory;

(c) "financial institution" means any financial service supplier that carries out a financial service if that supplier is authorised to do business, regulated or supervised as a financial institution under the law of the Party in whose territory the supplier is located, including a branch in the territory of the Party of a financial service supplier whose head office is located in the territory of the other Party;

(d) "financial institution of the other Party" means a financial institution located in the territory of a Party that is controlled by a person of the other Party;

(e) "financial service" means any service of a financial nature including all insurance and insurance-related services, and all banking and other financial services (excluding insurance); covering the following activities:

(i) insurance and insurance-related services:

(A) direct insurance including co-insurance:

(1) life;

(2) non-life;

(B) reinsurance and retrocession;

(C) insurance intermediation, such as brokerage and agency; and

(D) services auxiliary to insurance, such as consultancy, actuarial, risk assessment, and claim settlement services; and

(ii) banking and other financial services (excluding insurance):

(A) acceptance of deposits and other repayable funds from the public;

(B) lending of all types, including consumer credit, mortgage credit, factoring, and financing of commercial transactions;

(C) financial leasing;

(D) all payment and money transmission services, including credit, charge and debit cards, travellers checks, and bankers drafts;

(E) guarantees and commitments;

(F) trading for own account or for account of customers, whether on an exchange, in an over-the-counter market, or otherwise, the following:

(1) money market instruments including checks, bills, certificates of deposits;

(2) foreign exchange;

(3) derivative products including, futures and options;

(4) exchange rate and interest rate instruments, including products such as swaps, forward rate agreements;

(5) transferable securities; and

(6) other negotiable instruments and financial assets, including bullion;

(G) participation in the issuing of all kinds of securities, including underwriting and placement as agent (whether publicly or privately) and provision of services related to such issues;

(H) money broking;

(I) asset management, such as cash or portfolio management, all forms of collective investment management, pension fund management, custodial, depository, and trust services;

(J) settlement and clearing services for financial assets, including securities, derivative products, and other negotiable instruments;

(K) provision and transfer of financial information, and financial data processing and related software by suppliers of other financial services; and

(L) advisory, intermediation, and other auxiliary financial services on all the activities listed in subparagraphs (A) to (K), including credit reference and analysis, investment and portfolio research and advice, advice on acquisitions and on corporate restructuring and strategy;

(f) "financial service supplier" means a person of a Party that seeks to supply or supplies a financial service within the territory of that Party but does not include a public entity;

(g) "investment" means an investment as defined in paragraph 2 of Article 10.1 (Definitions) except that with respect to loans and other debt instruments referred to in that definition:

(i) a loan to, or debt instrument issued by, a financial institution is covered by the term investment if it is treated as regulatory capital by the Party in whose territory the financial institution is located, regardless of its maturity; and

(ii) a loan granted, or debt instrument owned, by a financial institution, other than a loan to or debt instrument of a financial institution referred to in subparagraph (i) is not covered by the term investment;

for greater certainty, a loan granted by, or debt instrument owned by, a cross-border financial service supplier, other than a loan to or debt instrument issued by a financial institution, is an investment for the purposes of Chapter 10 (Investment), provided that the loan or debt instrument meets the criteria for investments set out in Article 10.1 (Definitions);

(h) "investor of a Party" means an investor of a Party as defined in Article 10.1 (Definitions).

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

(j) "public entity" means:

(i) a government, a central bank or a monetary authority, of a Party, or an entity owned or controlled by a Party, that is principally engaged in carrying out governmental functions or activities for governmental purposes, not including an entity principally engaged in supplying financial services on commercial terms; or

(ii) a private entity, performing functions normally performed by a central bank or monetary authority, when exercising those functions; and

(k) "self-regulatory organisation" means any non-governmental body, including any securities or futures exchange or market, clearing agency, or other organisation or association, that exercises regulatory or supervisory authority over financial service suppliers or financial institutions by statute or delegation from a Party.

ARTICLE 18.2

Scope

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

(a) financial institutions of the other Party;

(b) investors of the other Party, and investments of those investors, in financial institutions in the Party's territory; and

(c) cross-border trade in financial services.

2. For greater certainty, Chapter 10 (Investment) applies to measures adopted or maintained by a Party:

(a) relating to investors of a Party, and investments of those investors in financial service suppliers which are not financial institutions; and

(b) other than measures relating to the supply of financial services or relating to investors of a Party, or investments of those investors, in financial institutions.

3. This Chapter does not apply to measures adopted or maintained by a Party relating to the following activities or services, except to the extent that that Party allows any of those activities or services to be conducted by its financial institutions in competition with a public entity or financial institution:

(a) activities or services forming part of a public retirement plan or statutory system of social security; or

(b) activities or services conducted for the account or with the guarantee or using the financial resources of the Party, including its public entities.

4. This Chapter does not apply to government procurement of financial services.

5. Nothing in this Agreement applies to activities conducted by a central bank or monetary authority or by any other public entity in pursuit of monetary or exchange rate policies.

6. The provisions of Chapters 10 (Investment) and 11 (Cross-Border Trade in Services) apply to measures within the scope of this Chapter only to the extent that those provisions are incorporated into and made part of this Chapter.

7. The following provisions are hereby incorporated into and made part of this Chapter and apply *mutatis mutandis* to measures adopted or maintained by a Party relating to financial institutions of the other Party, investors of the other Party, and investments of those investors, in financial institutions in the Party's territory:

(a) Articles 10.11 (Formal Requirements), 10.14 (Investment and Regulatory Objectives and Measures), 10.15 (Treatment of Investors and of Covered Investments), 10.16 (Transfers), 10.17 (Compensation for Losses), 10.18 (Expropriation and Compensation), 10.19 (Subrogation), 10.52 (Denial of Benefits) and 11.9 (Denial of Benefits); and

(b) Section D (Resolution of Investment Disputes) of Chapter 10 (Investment) solely for claims that a Party has breached Article 18.3 or 18.4 with respect to the operation of a financial institution or of an investment in a financial institution, or has breached Article 10.11 (Formal Requirements), 10.15 (Treatment of Investors and of Covered Investments), 10.16 (Transfers), 10.17 (Compensation for Losses), 10.18 (Expropriation and Compensation), 10.52 (Denial of Benefits) or 11.9 (Denial of Benefits).

8. If an inconsistency arises between this Chapter and any other provision of this Agreement, this Chapter shall prevail to the extent of the inconsistency.

ARTICLE 18.3

National Treatment

1. Article 10.7 (National Treatment) is hereby incorporated into and made part of this Chapter and applies to measures adopted or maintained by a Party relating to the treatment of financial institutions and investors of the other Party and their investments in financial institutions.

2. The treatment accorded by a Party to its own investors and to their investments pursuant to Article 10.7 (National Treatment) means treatment accorded to its own financial institutions and investments of its own investors in financial institutions.

ARTICLE 18.4

Most-Favoured-Nation Treatment

1. Article 10.8 (Most-Favoured-Nation Treatment) is hereby incorporated into and made part of this Chapter and applies to measures adopted or maintained by a Party relating to the treatment of financial institutions and investors of the other Party and their investments in financial institutions.

2. The treatment accorded by a Party to investors of a third country and to their investments pursuant to Article 10.8 (Most-Favoured-Nation Treatment) means treatment accorded to financial institutions of a third country and investments of a third country in financial institutions.

ARTICLE 18.5

Market Access

1. A Party shall not adopt or maintain with respect to a financial institution of the other Party or with respect to market access through establishment of a financial institution by an investor of the other Party, either on the basis of its entire territory or on the basis of a territorial subdivision, a measure that:

(a) imposes limitations on:

(i) the number of financial institutions, whether in the form of numerical quotas, monopolies, exclusive service suppliers or the requirement of an economic needs test;

(ii) the total value of financial service transactions or assets in the form of numerical quotas or the requirement of an economic needs test;

(iii) the total number of financial service operations or the total quantity of financial services output expressed in terms of designated numerical units in the form of quotas or the requirement of an economic needs test; or

(iv) the total number of natural persons that may be employed in a particular financial services sector or that a financial institution may employ and who are necessary for, and directly related to, the performance of a specific financial service in the form of numerical quotas or the requirement of an economic needs test; or

(b) restricts or requires specific types of legal entity or joint venture through which a financial institution may perform an economic activity.

2. For greater certainty, this Article shall not be construed as preventing a Party from requiring a financial institution to supply certain financial services through separate legal entities if, under the law of that Party, the range of financial services supplied by the financial institution may not be supplied through a single entity.

ARTICLE 18.6

Senior Management and Board of Directors

Article 10.10 (Senior Management and Board of Directors) is hereby incorporated into and made part of this Chapter and applies to measures adopted or maintained by a Party relating to financial institutions of the other Party.

ARTICLE 18.7

Cross-Border Trade in Financial Services

1. Articles 11.4 (Market Access) and 11.6 (National Treatment), are hereby incorporated into and made part of this Chapter and apply to measures adopted or maintained by a Party relating to cross-border financial service suppliers of the other Party supplying the financial services specified in Annex 18-A.

2. The treatment accorded by a Party to its own services and service suppliers pursuant to Article 11.6 (National Treatment) means, for the purposes of this Chapter, treatment accorded to its own financial services and financial service suppliers.

3. The measures which a Party shall not adopt or maintain with respect to services and service suppliers of the other Party pursuant to Article 11.4 (Market Access) means, for the purposes of this Chapter, measures relating to cross-border financial service suppliers of the other Party supplying financial services.

4. Article 11.7 (Most-Favoured-Nation Treatment) is hereby incorporated into and made part of this Chapter and applies to measures adopted or maintained by a Party regarding cross-border financial service suppliers of the other Party.

5. The treatment accorded by a Party to services and service suppliers of a third country pursuant to Article 11.7 (Most-Favoured-Nation Treatment) means, for the purposes of this Chapter, treatment accorded to financial services of a third country and financial service suppliers of a third country.

6. Article 11.5 (Local Presence) is hereby incorporated into and made part of this Chapter and applies to cross-border financial service suppliers of the other Party supplying the financial services specified in Annex 18-A.

7. Each Party shall permit persons located in its territory, and its nationals wherever located, to purchase financial services from cross-border financial service suppliers of the other Party located in its territory. That obligation does not require a Party to permit such suppliers to do business or solicit in its territory. A Party may define "doing business" and "solicitation" for the purposes of that obligation provided that those definitions are not inconsistent with paragraph 1.

8. This Article shall not be construed as preventing a Party from adopting or maintaining a measure that prescribes formal requirements in connection with the supply of a cross-border financial service, such as the registration or authorisation of cross-border financial service suppliers and of financial instruments, provided that those requirements are not applied in a discriminatory manner.

ARTICLE 18.8

Performance Requirements

1. The Parties shall jointly determine disciplines on performance requirements such as those set out in Article 10.9 (Performance Requirements) that shall apply to investments in financial institutions.

2. Within 180 days following the joint determination of the disciplines on performance requirements pursuant to paragraph 1, the Joint Council shall modify, by decision, paragraph 1 in order to integrate those disciplines into this Article and may modify, as appropriate, the reservations and non-conforming measures of each Party in Annex VI.

3. Article 18.12 applies to measures listed with respect to the disciplines on performance requirements referred to in paragraph 1.

ARTICLE 18.9

Financial Services New to the Territory of a Party

1. A Party shall permit a financial institution of the other Party to supply any new financial service that the former Party would permit its own financial institutions to supply in accordance with its domestic law in like situations without adopting laws or regulations modifying an existing law.

2. Notwithstanding Article 18.8(1) in conjunction with Article 11.4 (Market Access), a Party may determine the institutional and legal form through which the new financial service may be supplied and may require authorisation for the supply of the service. If such authorisation is required, a decision on any application for such authorisation shall be made within a reasonable time and the authorisation may only be refused for prudential reasons.

ARTICLE 18.10

Review Clause on Data Flows

The Parties shall reassess within three years of the date of entry into force of this Agreement the need to include provisions on the free flow of data for conducting the activities that are within the scope of this Chapter.

ARTICLE 18.11

Treatment of Information

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

ARTICLE 18.12

Reservations and Non-Conforming Measures

1. Articles 18.3 to 18.7 do not apply to:

(a) any existing non-conforming measure that is maintained by a Party at the level of:

(i) the European Union, as set out in Appendix VI-A to Annex VI;

(ii) a central government, as set out by that Party in Section A of its list in Appendix VI-A or VI-B to Annex VI;

(iii) a regional government, as set out by that Party in Section A of its list in Appendix VI-A or VI-B to Annex VI; or

(iv) 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:

(i) immediately before the amendment, with Article 18.3, 18.4, 18.5 or 18.6; or

(ii) on the date of entry into force of this Agreement, with Article 18.7.

2. Articles 18.3 to 18.7 do not apply to any measure that a Party adopts or maintains with respect to sectors, subsectors or activities, as set out by that Party in Section B of its list in Appendix VI-A or VI-B to Annex VI.

3. A reservation of a Party to Article 10.6 (Market Access), 10.7 (National Treatment), 10.8 (Most-Favoured-Nation Treatment), 10.10 (Senior Management and Board of Directors), 11.4 (Market Access), 11.5 (Local Presence), 11.6 (National Treatment) or 11.7 (Most-Favoured-Nation Treatment) set out in its list in Appendix I-A, I-B-1 or I-B-2 to Annex I or Appendix II-A or II-B to Annex II also constitutes a reservation to Article 18.3, 18.4, 18.5, 18.6 or 18.7, as the case may be, to the extent that the measure, sector, subsector or activity set out in the reservation is within the scope of this Chapter.

4. A Party shall not adopt any measure covered by a reservation set out in its list in Appendix II-A or II-B to Annex II that requires, directly or indirectly, 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.

ARTICLE 18.13

Prudential Carve-Out

1. Nothing in this Agreement shall be construed as preventing a Party from adopting or maintaining measures for prudential reasons[80], including to:

(a) protect investors, depositors, policyholders or persons to whom a fiduciary duty is owed by a financial service supplier; or

[80] The Parties recognise that the term "prudential reasons" includes the maintenance of the safety, soundness, integrity or financial responsibility of individual financial service suppliers.

(b) ensure the integrity and stability of the financial system of that Party.

2. Where the measures referred to in paragraph 1 do not conform to the other provisions of this Agreement, they shall not be used as a means of avoiding the commitments or obligations of a Party under this Agreement.

ARTICLE 18.14

Recognition

1. A Party may recognise prudential measures of the other Party or a third country by determining how the measures of that other Party or that third country relating to financial services shall be applied. Such recognition may be achieved either autonomously, through harmonisation, or based on an agreement or other arrangement.

2. If a Party recognises a prudential measure of a third country in accordance with paragraph 1, that Party shall afford adequate opportunity to the other Party to demonstrate that the circumstances under which the Party recognised the prudential measure of the third country exist in the other Party and that under those circumstances there are or would be equivalent regulation, oversight and implementation in the other Party as well as, if appropriate, procedures for exchanging information between the Parties.

3. Nothing in this Agreement shall be construed as requiring a Party to recognise a prudential measure of the other Party.

ARTICLE 18.15

International Standards

Each Party shall endeavour to ensure that internationally agreed standards for regulation and supervision in the financial services sector and for the fight against avoidance and evasion of taxes are implemented and applied in its territory. Those internationally agreed standards include, among others, those adopted by the G20, the Financial Stability Board (FSB), the Basel Committee on Banking Supervision (BCBS), the International Association of Insurance Supervisors (IAIS), the International Organisation of Securities Commissions (IOSCO), the Financial Action Task Force (FATF) and the Global Forum on Transparency and Exchange of Information for Tax Purposes of the OECD.

ARTICLE 18.16

Self-Regulatory Organisations

If a Party requires a financial institution or a cross-border financial service supplier of the other Party to be a member of, participate in, or to have access to, a self-regulatory organisation in order to provide a financial service in or into its territory, the former Party shall ensure that the self-regulatory organisation complies with the obligations set out in Articles 18.3, 18.4 and 18.7.

ARTICLE 18.17

Payment and Clearing Systems

Each Party shall grant to financial institutions of the other Party established in its territory access to payment and clearing systems operated by public entities, and to official funding and refinancing facilities available in the normal course of ordinary business under terms and conditions that accord national treatment. This Article does not confer access to the Party's lender of last resort facilities.

ARTICLE 18.18

Domestic Regulation and Transparency

1. Chapters 13 (Domestic Regulation) and 28 (Good Regulatory Practices) do not apply to measures adopted or maintained by a Party relating to the scope of this Chapter.

2. Each Party shall ensure that all measures of general application to which this Chapter applies are administered in a reasonable, objective and impartial manner.

3. For the purposes of paragraph 2, each Party shall, to the extent practicable and in a manner consistent with its law:

(a) publish in advance its proposed laws and regulations relating to matters within the scope of this Chapter, or publish in advance documents that provide sufficient details about such potential new laws and regulations to allow interested persons and the other Party to assess whether and how their interests could be significantly affected;

(b) provide interested persons and the other Party with a reasonable opportunity to comment on the proposed measures or documents referred to in subparagraph (a); and

(c) consider comments received in accordance with subparagraph (b).

4. If a Party requires an authorisation for the supply of a financial service, the competent authorities of that Party shall:

(a) permit an applicant, to the extent practicable, to submit an application at any time;

(b) allow a reasonable period of time for the submission of an application if specific time periods for applications exist;

(c) provide to service suppliers and persons seeking to supply a service the information necessary to comply with the requirements and procedures for obtaining, maintaining, amending and renewing such authorisation;

(d) provide, to the extent practicable, an indicative timeframe for the processing of an application;

(e) endeavour to accept applications in electronic format;

(f) accept copies of documents which are authenticated in accordance with the law of the Party, in place of original documents, unless the presentation of original documents is required for protecting the integrity of the authorisation process;

(g) provide, at the request of the applicant and without undue delay, information concerning the status of the application;

(h) if an application is considered complete for processing under the law of the Party, ensure that the processing of an application is finalised and that the applicant is informed of the decision within a reasonable period of time after the submission of the application, to the extent possible in writing[81];

(i) if an application is considered incomplete for processing under the law of the Party, within a reasonable period of time and to the extent practicable:

(i) inform the applicant that the application is incomplete;

(ii) provide, at the request of the applicant, guidance on why the application is considered incomplete;

(iii) provide the applicant with the opportunity[82] to submit the additional information that is required to complete the application; and

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81 The competent authorities can meet this requirement by informing an applicant in advance in writing, including through a published measure, that lack of response after a specified period of time from the date of submission of the application indicates either acceptance or rejection of the application. For greater certainty, informing in writing may include in electronic form.

82 For greater certainty, that opportunity does not require a competent authority to grant an extension of deadlines.

(iv) where none of the above is practicable, and the application is rejected due to incompleteness, ensure that the applicant is informed within a reasonable period of time;

(j) if an application is rejected, inform the applicant, to the extent practicable, either on their own initiative or on request of the applicant, of the reasons for rejection and, where applicable, the procedures for resubmission of an application;

(k) ensure that the authorisation fees[83] charged by the competent authority are reasonable and transparent and do not in themselves restrict the supply of the relevant service or the pursuit of any other economic activity; and

(l) ensure that the authorisation, once granted, enters into effect without undue delay subject to the applicable terms and conditions.

[83] Authorisation fees include licensing fees and fees relating to qualification procedures. They do not include fees for the use of natural resources, payments for auction, tendering or other non-discriminatory means of awarding concessions, or mandated contributions to universal service provision.

ARTICLE 18.19

Sub-Committee on Financial Services

1. The Sub-Committee on Financial Services established by subparagraph 1(i) of Article 1.10 (Sub-Committees and Other Bodies of Part III of this Agreement) shall meet annually, unless otherwise agreed, to:

(a) monitor the implementation and operation of this Chapter;

(b) consider matters regarding financial services that are referred to it by a Party;

(c) provide a forum for dialogue between the Parties on the regulation of the financial services sector with a view to improving mutual knowledge of their respective regulatory systems and to cooperate in the development of international standards;

(d) participate in dispute settlement procedures in accordance with Article 18.22 (Investment Disputes in Financial Services); and

(e) to assess the functioning of this Agreement as it applies to financial services.

2. The Sub-Committee on Financial Services shall include financial services experts and representatives of authorities in charge of financial services policy. For Mexico, the authority responsible for financial services policy is the Ministry of Finance and Public Credit (*Secretaría de Hacienda y Crédito Público*) or its successor.

3. On request of either Party, the Sub-Committee on Financial Services shall discuss the development of appropriate guidelines for the interpretation of this Chapter. The Joint Council may adopt such guidelines by means of a recommendation.

ARTICLE 18.20

Consultations

1. A Party may request, in writing, consultations with the other Party regarding any matter arising under this Agreement that affects financial services. The other Party shall accord sympathetic consideration to that request. The consulting Parties shall report the results of their consultations to the Sub-Committee on Financial Services.

2. Each Party shall ensure that its delegation in the consultations includes officials with the relevant expertise in financial services or financial institutions covered by this Chapter. For Mexico, the officials of the Ministry of Finance and Public Credit (*Secretaría de Hacienda y Crédito Público*) or its successor fulfil this requirement.

3. Nothing in this Article shall be construed as requiring a Party to derogate from its law regarding the sharing of information among financial authorities or from the requirements of an agreement or arrangement between financial authorities of the Parties, or to require financial authorities to take any action that would interfere with specific regulatory, supervisory, administrative or enforcement matters.

4. Nothing in this Article shall be construed as preventing a Party from requiring information for supervisory purposes concerning a financial institution, or a cross-border financial service supplier, located in the territory of the other Party. A Party may approach the financial authority of the other Party to seek such information.

ARTICLE 18.21

Dispute Settlement

1. Chapter 31 (Dispute Settlement), including Annexes 31-A (Rules of Procedure) and 31-B (Code of Conduct for Panellists and Mediators), applies *mutatis mutandis*, subject to the provisions of this Article, to the settlement of disputes concerning the application and interpretation of the provisions of this Chapter.

2. In addition to the requirements set out in Article 31.9 (Requirements for Panellists), panellists shall have expertise or experience in financial services law or practice, which may include the regulation of financial institutions, unless the Parties agree otherwise.

3. The Joint Committee shall, no later than six months after the date of entry into force of this Agreement, adopt a list of at least 15 individuals, fulfilling the requirements set out in paragraph 2, who are willing and able to serve as panellists. The list shall be composed of three sub-lists:

(a) a sub-list of individuals of the European Union;

(b) a sub-list of individuals of Mexico; and

(c) a sub-list of individuals who shall serve as chairperson of the panel.

4. For the purposes of this Chapter, the sub-lists referred to in paragraph 3 of this Article shall, after adoption, replace the sub-lists set out in paragraph 1 of Article 31.8 (Lists of Panellists).

5. In any dispute where a panel finds a measure to be inconsistent with the obligations of this Agreement and that measure affects:

(a) the financial services sector and any other sector, the complaining Party may suspend benefits in the financial services sector that have an effect equivalent to the effect of the measure in the financial services sector of the other Party; or

(b) only a sector other than the financial services sector, the complaining Party shall not suspend benefits in the financial services sector.

ARTICLE 18.22

Investment Disputes in Financial Services

1. Section D (Resolution of Investment Disputes) of Chapter 10 (Investment) as incorporated and made part of this Chapter by Article 18.2.7 applies *mutatis mutandis*, subject to the provisions of this Article, to:

(a) investment disputes pertaining to measures to which this Chapter applies and in which an investor claims that a Party has breached paragraph 2 of Article 10.7 (National Treatment), paragraph 2 of Article 10.8 (Most-Favoured-Nation Treatment), Article 10.15 (Treatment of Investors and of Covered Investments), 10.16 (Transfers), 10.17 (Compensation for Losses), 10.18 (Expropriation and Compensation) or 10.52 (Denial of Benefits); or

(b) investment disputes commenced pursuant to Section D (Resolution of Investment Disputes) of Chapter 10 (Investment) in which Article 18.13 (Prudential Carve-Out) has been invoked.

2. In the case of an investment dispute pursuant to subparagraph 1(a), or if the respondent invokes Article 18.13 (Prudential Carve-Out) pursuant to subparagraph 1(b) within 60 days of the submission of a claim to the Tribunal in accordance with Article 10.26 (Submission of a Claim to the Tribunal), the division of the Tribunal hearing the case shall appoint, after consulting the disputing parties and pursuant to Article 10.44 (Expert Reports), one or more experts from the list of panellists referred to in Article 18.21.3to report to it on any factual issue concerning financial services matters raised by a disputing party in the proceedings. The list of experts shall be adopted by the Joint Council no later than six months after the entry into force of this Agreement and shall be composed of six experts who have demonstrated expertise or experience in financial services law or practice, which may include the regulation of financial institutions. If the list of panellists referred to in Article 18.21.3 has not been adopted on the day that the claim is submitted pursuant to Article 10.26 (Submission of a Claim to the Tribunal), the experts shall be appointed from the individuals who have been designated and notified to the other Party by a Party or both Parties for the purposes of adopting that list.

3. The respondent may refer the matter in writing to the Sub-Committee on Financial Services for a decision as to whether and, if so, to what extent the exception under Article 18.13 (Prudential Carve-Out) is a valid defence to the claim. This referral shall be made no later than the date which the Tribunal fixes for the respondent to deliver its submission. If the respondent refers the matter to the Sub-Committee on Financial Services pursuant to this paragraph, the periods of time or proceedings referred to in Section D (Resolution of Investment Disputes) of Chapter 10 (Investment) are suspended.

4. In a referral pursuant to paragraph 3 of this Article, the Sub-Committee on Financial Services may make a joint determination as to whether and to what extent a prudential carve-out in accordance with Article 18.13 is a valid defence to the claim and transmit a copy thereof to the investor and the Tribunal. If the joint determination concludes that Article 18.13 is a valid defence to all parts of the claim in its entirety, the investor is deemed to have withdrawn its claim and the proceedings are discontinued in accordance with Article 10.40 (Discontinuance). If the joint determination concludes that Article 18.13 is a valid defence to only parts of the claim, the joint determination is binding on the Tribunal with respect to those parts of the claim. In that case, the suspension of the periods of time or proceedings described in paragraph 3 does not apply and the investor may proceed with the remaining parts of the claim.

5. If the Sub-Committee on Financial Services has not made a joint determination within three months after the referral of the matter by the respondent, the suspension of the periods of time or proceedings referred to in paragraph 3 does not apply and the investor may proceed with its claim.

6. At the request of the respondent and in case the Sub-Committee on Financial Services failed to make a joint determination within the three-month period referred to in paragraph 5, the Tribunal shall decide as a preliminary matter whether and to what extent Article 18.13 is a valid defence. Failure of the respondent to make that request is without prejudice to the right of the respondent to assert Article 18.13 as a defence in a later phase of the proceedings. The Tribunal shall draw no adverse inference from the fact that the Sub-Committee on Financial Services has not agreed on a joint determination.

7. Proceedings pursuant to paragraph 6 shall be conducted by the division of the Tribunal hearing the claim and shall in particular ensure that the disputing parties have an opportunity to present at least one written submission. The Tribunal shall issue its preliminary decision within 120 days after the reception of the last submission. If the Tribunal requires additional time to issue its preliminary decision, it shall provide the reasons for the delay. If the Tribunal concludes that Article 18.13 is a valid defence to all parts of the claim in its entirety, the investor is deemed to have withdrawn its claim and the proceedings are discontinued in accordance with Article 10.40 (Discontinuance). If the Tribunal concludes that Article 18.13 is a valid defence to only parts of the claim, the proceedings shall continue with the remaining parts of the claim.

CHAPTER 19

DIGITAL TRADE

ARTICLE 19.1

Definitions

For the purposes of this Chapter:

(a) "consumer" means any natural person, or enterprise if provided for in the law of the Party concerned, using or requesting a publicly available telecommunications service for purposes outside their trade, business, craft or profession;

(b) "data message" means information generated, sent, received or stored by electronic, optical or similar means;

(c) "electronic authentication service" means a service that enables to confirm:

(i) the identity of a natural person or enterprise; or

(ii) the origin and integrity of a data message from the time when it was first generated in its final form;

(d) "electronic signature" means data in electronic form affixed to or logically associated with a data message, which may be used to identify the signatory of that data message and to indicate its approval of the information contained in that data message, to ensure its origin and integrity in a way that any subsequent alteration in the data is detectable;

(e) "electronic trust service" means an electronic service consisting of the creation, verification and validation of electronic signatures, electronic time stamps, electronic registered delivery, certified digitisation services, website authentication and certificates related to those services;

(f) "end-user" means any natural person, or enterprise if provided for in the law of the Party concerned, using or requesting a publicly available telecommunications service, either as a consumer or for trade, business, craft or professional purposes;

(g) "trust service provider" means a natural person or enterprise who provides electronic trust services; and

(h) "unsolicited commercial electronic message" means an electronic message, including at least electronic mail, short message system (SMS) and multimedia message system (MMS) messages, which is sent for commercial purposes, without the consent of the recipient or despite the explicit rejection of the recipient, directly to end-users via a telecommunications network and, to the extent provided for under the law of a Party, other telecommunications services.

ARTICLE 19.2

Scope

1. This Chapter applies to measures of a Party affecting trade enabled by electronic means.

2. This Chapter does not apply to:

(a) gambling services;

(b) broadcasting services;

(c) audio-visual services;

(d) services of notaries or equivalent professions;

(e) legal representation services; and

(f) government procurement, with the exception of Articles 19.7, 19.8 and 19.11.

ARTICLE 19.3

General Principles

The Parties recognise the economic growth and opportunities provided by digital trade and the importance of adopting frameworks that promote consumer confidence in digital trade and of avoiding unnecessary barriers to its use and development.

ARTICLE 19.4

Right to Regulate

The Parties affirm the right to regulate within their territories in order to achieve legitimate policy objectives, such as those relating to public health, social services, public education, safety, environment, public morals, social or consumer protection, privacy and data protection, the promotion and protection of cultural diversity, or competition.

ARTICLE 19.5

Customs Duties on Electronic Transmissions

1. A Party shall not impose customs duties on electronic transmissions between a person of a Party and a person of the other Party.

2. For greater certainty, paragraph 1 does not preclude a Party from imposing internal taxes, fees or other charges on electronic transmissions, provided that those taxes, fees or charges are imposed in a manner consistent with this Agreement.

ARTICLE 19.6

No Prior Authorisation

1. Each Party shall ensure that the supply of services by electronic means is not subject to prior authorisation.

2. Paragraph 1 is without prejudice to authorisation requirements which are not specifically and exclusively targeted at services provided by electronic means, or which apply to telecommunications services.

ARTICLE 19.7

Electronic Contracts

1. Each Party shall ensure that its legal system allows the conclusion of contracts by electronic means and that those contracts shall not be denied legal effect, validity or enforceability solely on the ground of having been concluded by electronic means.

2. This Article does not apply to contracts:

(a) that create or transfer rights in real estate;

(b) requiring by law the involvement of courts, public authorities or professions exercising public authority;

(c) of suretyship granted and contracts on collateral securities furnished by persons acting for purposes outside their trade, business, craft or profession, as required by law; and

(d) governed by family law or by the law of succession.

ARTICLE 19.8

Electronic Trust and Authentication Services

1. A Party shall not deny the legal validity of an electronic trust or an electronic authentication service solely on the basis that the service is provided in electronic form.

2. A Party shall not adopt or maintain measures regulating electronic trust and electronic authentication services that would:

(a) prohibit parties to an electronic transaction from mutually determining the appropriate electronic methods for their transaction; or

(b) prevent parties to an electronic transaction from having the opportunity to establish before judicial or administrative authorities that their electronic transaction complies with any legal requirements with respect to electronic trust and electronic authentication services.

3. Notwithstanding paragraph 2, a Party may require that, for a particular category of electronic transactions, the method of electronic authentication meets certain performance standards or is certified by an authority accredited in accordance with its law. Such requirements shall be objective, transparent and non-discriminatory and shall relate only to the specific characteristics of the category of electronic transactions concerned.

4. The Parties shall encourage the use of interoperable electronic trust and electronic authentication services, and the mutual recognition of electronic trust and electronic authentication services provided by recognised trust services providers.

ARTICLE 19.9

Protection of Online Consumers

1. The Parties recognise the importance of maintaining and adopting transparent and effective measures that contribute to consumer trust, including but not limited to measures that protect consumers from fraudulent and deceptive commercial practices when they engage in electronic commerce transactions.

2. Each Party shall adopt or maintain measures that contribute to consumer trust, including measures that prohibit fraudulent and deceptive commercial practices that cause harm or potentially cause harm to consumers.

3. The Parties recognise the importance of cooperation between their respective consumer protection agencies or other relevant bodies on activities related to electronic commerce between the Parties in order to improve consumer trust and thereby enhance consumer welfare.

ARTICLE 19.10

Unsolicited Commercial Electronic Messages

1. Each Party shall adopt or maintain measures that:

(a) require senders of unsolicited commercial electronic messages to facilitate the ability of end-users to prevent ongoing reception of those messages; or

(b) require the consent, as specified according to the laws and regulations of each Party, of recipients to receive commercial electronic messages.

2. Each Party shall ensure that unsolicited commercial electronic messages are clearly identifiable as such, clearly disclose on whose behalf they are sent and contain the necessary information to enable end-users to request cessation free of charge and at any moment.

3. Each Party shall provide recourse against senders of unsolicited commercial electronic messages that do not comply with the measures adopted or maintained pursuant to paragraphs 1 and 2.

4. The Parties shall endeavour to cooperate, where appropriate, in cases of mutual concern regarding the regulation of unsolicited commercial electronic messages.

ARTICLE 19.11

Source Code

1. A Party shall not require the transfer of, or access to, source code of software owned by a natural person or enterprise of the other Party.

2. For greater certainty, paragraph 1 does not:

(a) prevent a Party from adopting or maintaining measures to achieve a legitimate public policy objective, including to ensure security and safety, for instance in the context of a certification procedure, in accordance with Articles 18.13 (Prudential Carve-Out), 32.1 (General Exceptions) and Article 2.8 (Security Exception) of Part IV of this Agreement; or

(b) apply to the voluntary transfer of or granting of access to source code on a commercial basis by a person of the other Party, for instance in the context of a public procurement transaction or a freely negotiated contract.

3. Nothing in this Article shall affect:

(a) requirements by a court, administrative tribunal or competition authority to remedy a violation of competition laws;

(b) intellectual property rights and their enforcement; or

(c) the right of a Party to take any action or not disclose any information that 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 for national defence purposes.

ARTICLE 19.12

Open Internet Access

Each Party shall endeavour to ensure that, subject to applicable policies and laws and regulations, end-users in its territory are able to:

(a) access, distribute and use services and applications of their choice available on the Internet, subject to reasonable and non-discriminatory network management;

(b) connect devices of their choice to the Internet, provided that such devices do not harm the network; and

(c) have access to information on the network management practices of their Internet access service supplier.

ARTICLE 19.13

Cooperation

1. Recognising the global nature of digital trade, the Parties shall cooperate on regulatory matters and best practices through the existing sectoral dialogues, which shall address, among other things:

(a) the recognition and facilitation of interoperable cross-border electronic trust and authentication services;

(b) the treatment of direct marketing communications;

(c) the challenges for small and medium-sized enterprises in digital trade;

(d) the protection of consumers and the building of consumer trust in the ambit of electronic commerce;

(e) common cyber security issues; and

(f) any other matter relevant for the development of digital trade.

2. The cooperation on regulatory matters and best practices referred to in paragraph 1 shall focus on the exchange of information and views on the Parties' respective legislation on those as well as on the implementation of such legislation.

3. The Parties affirm the importance of actively participating in multilateral fora to promote the development of digital trade.

ARTICLE 19.14

Review Clause on Data Flows

The Parties shall reassess within three years after the date of entry into force of this Agreement the need for inclusion of provisions on the free flow of data into this Agreement.

CHAPTER 20

CAPITAL MOVEMENTS, PAYMENTS AND TRANSFERS AND TEMPORARY SAFEGUARD MEASURES

ARTICLE 20.1

Current Account

Without prejudice to other provisions of this Agreement, each Party shall allow any transfers or payments with regard to transactions on the current account of the balance of payments between the Parties that fall within the scope of this Agreement, in freely convertible currency, and in accordance with the Articles of Agreement of the International Monetary Fund adopted in Bretton Woods, New Hampshire on 22 July 1944, as applicable.

ARTICLE 20.2

Capital Movements

Without prejudice to other provisions of this Agreement, each Party shall allow, with regard to transactions on the capital and financial account of balance of payments, the free movement of capital for the purpose of liberalisation of investments and other transactions, as provided for in Section B (Liberalisation of Investments) of Chapter 10 (Investment), Chapter 11 (Cross-Border Trade in Services), Chapter 12 (Temporary Presence of Natural Persons for Business Purposes) and Chapter 18 (Financial Services).

ARTICLE 20.3

Application of Laws and Regulations Relating to
Capital Movements, Payments or Transfers

1. Article 10.16 (Transfers) and subparagraph 6(a) of Article 18.2 (Scope), as well as Articles 20.1 and 20.2 shall not preclude a Party from applying its laws and regulations relating to:

(a) bankruptcy, insolvency and the protection of the rights of creditors;

(b) issuing, trading or dealing in financial instruments;

(c) financial reporting or record keeping of capital movements, payments or transfers where necessary to assist law enforcement or financial regulatory authorities;

(d) criminal or penal offences, or deceptive or fraudulent practices;

(e) ensuring compliance with orders or judgments in adjudicatory proceedings; or

(f) social security, public retirement or compulsory savings schemes.

2. The laws and regulations referred to in paragraph 1 shall not be applied in an arbitrary or discriminatory manner, or in a manner which otherwise constitutes a disguised restriction on capital movements, payments or transfers.

ARTICLE 20.4

Temporary Safeguard Measures

1. In exceptional circumstances of serious difficulties for the operation of the European Union's economic and monetary union, or threat thereof, the European Union may adopt or maintain safeguard measures with regard to capital movements, payments or transfers. Those measures shall be limited to the extent that is strictly necessary to address such difficulties and shall be in force for a period not exceeding six months.

2. Measures imposed by the European Union pursuant to paragraph 1 shall not constitute a means of arbitrary or unjustifiable discrimination between Mexico and a third country. The European Union shall inform Mexico forthwith and present a schedule for the removal of such measures as soon as possible.

ARTICLE 20.5

Restrictions in Case of Balance of Payments,
External Financing and Macroeconomic Difficulties

1. A Party may adopt or maintain restrictive measures with regard to capital movements, payments or transfers[84]:

(a) in cases of serious balance-of-payments or external financial difficulties, or threat thereof[85], or

(b) in cases of exceptional circumstances in which payments or transfers relating to capital movements cause or threaten to cause serious macroeconomic difficulties related to monetary and exchange rate policies in Mexico or a Member State of the European Union.

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[84] In the case of the European Union, those measures may be taken by a Member State of the European Union in situations other than those referred to in Article 20.4 which affect the economy of that Member State.

[85] For greater certainty, serious balance-of-payments or external financial difficulties, or threat thereof, as referred to in subparagraph 1(a) may be caused by, among other factors, serious macroeconomic difficulties related to monetary and exchange rate policies, or threat thereof, as referred to in subparagraph 1(b).

2. The measures referred to in paragraph 1 shall:

(a) be consistent with the Articles of Agreement of the International Monetary Fund, as applicable;

(b) not exceed those necessary to deal with the situation described in paragraph 1;

(c) be temporary and be phased out progressively as the situation specified in paragraph 1 improves;

(d) avoid unnecessary damage to the commercial, economic and financial interests of the other Party;

(e) not treat the other Party less favourably than a third country in like situations; and

(f) not be used as a substitute for macroeconomic policies that are needed for warranted external adjustment.

3. In the case of trade in goods, a Party may adopt or maintain restrictive measures in order to safeguard its external financial position or balance of payments. Those measures shall be in accordance with Article XII of GATT 1994 and the Understanding on the Balance of Payments Provisions of the General Agreement on Tariffs and Trade 1994.

4. In the case of trade in services, a Party may adopt or maintain restrictive measures in order to safeguard its external financial position or balance of payments. Those measures shall be in accordance with Article XII of GATS.

5. A Party shall endeavour not to adopt or maintain restrictive measures that take the form of tariff surcharges, quotas, licences or similar measures. The Party shall explain the rationale for using those restrictive measures when it notifies the other Party of the measures pursuant to paragraph 2.

6. A Party adopting or maintaining restrictive measures shall promptly notify them to the other Party.

7. If temporary safeguard measures or restrictive measures are adopted or maintained pursuant to Article 20.4 or this Article, the Parties shall promptly hold consultations in the Sub-Committee on Services and Investment unless consultations are held in other international fora to which both Parties are members. The consultations shall assess the balance-of-payments or external financial difficulties that led to the respective measures, taking into account factors such as:

(a) the nature and extent of the difficulties;

(b) the external economic and trading environment; and

(c) alternative corrective measures which may be available.

8. The consultations referred to in paragraph 7 shall address the compliance of any temporary safeguard measures or restrictive measures with Article 20.4 or paragraphs 1 and 2 of this Article. The Parties shall accept all relevant findings of statistical or factual nature presented by the International Monetary Fund ("IMF"), where available, and their conclusions shall take into account the assessment by the IMF of the balance-of-payments and the external financial situation of the Party concerned.

CHAPTER 21

PUBLIC PROCUREMENT

ARTICLE 21.1

Definitions

For the purposes of this Chapter:

(a) "commercial goods or services" means goods or services of a type generally sold or offered for sale in the commercial marketplace to, and customarily purchased by, non-governmental buyers for non-governmental purposes;

(b) "construction services" means services that have as their objective the realisation by whatever means of civil or building works, based on Division 51 of the United Nations Provisional Central Product Classification (CPC);

(c) "covered procurement" means procurement for governmental purposes:

(i) of a good, a service, or any combination thereof:

(A) as specified for each Party in Annex 21-A or 21-B respectively; and

(B) not procured with a view to commercial sale or resale, or for use in the production or supply of a good or a service for commercial sale or resale;

(ii) by any contractual means, including:

(A) purchase;

(B) lease; and

(C) rental or hire purchase, with or without an option to buy;

(iii) for which the value, as estimated in accordance with Article 21.2, equals or exceeds the relevant threshold specified for each Party in Annex 21-A or 21-B respectively at the time of publication of a notice in accordance with Article 21.6;

(iv) by a procuring entity; and

(v) that is not otherwise excluded from coverage by Article 21.2.2 or by Annex 21-A or 21-B;

(d) "electronic auction" means an iterative process that involves the use of electronic means for the presentation by suppliers of either new prices, or new values for quantifiable non-price elements of the tender related to the evaluation criteria, or both, resulting in a ranking or re-ranking of tenders;

(e) "in writing" or "written" means any worded or numbered expression that can be read, reproduced and later communicated and may include electronically transmitted and stored information;

(f) "limited tendering" means a procurement method whereby the procuring entity contacts a supplier or suppliers of its choice;

(g) "multi-use list" means a list of suppliers that a procuring entity has determined satisfy the conditions for participation in that list, and that the procuring entity intends to use more than once;

(h) "notice of intended procurement" means a notice published by a procuring entity inviting interested suppliers to submit a request for participation, a tender, or both;

(i) "offset" means any condition or undertaking that encourages local development or improves a Party's balance-of-payments accounts, such as the use of domestic content, the licensing of technology, investment, counter-trade and similar action or requirement;

(j) "open tendering" means a procurement method whereby all interested suppliers may submit a tender;

(k) "procuring entity" means an entity covered under Sections A, B and C of Annexes 21-A and 21-B;

(l) "qualified supplier" means a supplier that a procuring entity recognises as having satisfied the conditions for participation;

(m) "selective tendering" means a procurement method whereby only qualified suppliers are invited by the procuring entity to submit a tender;

(n) "services" includes construction services, unless otherwise specified;

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

(p) "supplier" means a person or group of persons that provides or could provide goods or services; and

(q) "technical specification" means a tendering requirement that:

(i) lays down the characteristics of goods or services to be procured, including quality, performance, safety and dimensions, or the processes and methods for their production or provision; or

(ii) addresses terminology, symbols, packaging, marking or labelling requirements, as they apply to a good or service.

ARTICLE 21.2

Scope and Coverage

Application of this Chapter

1. This Chapter applies to any measure regarding covered procurement, whether or not it is conducted exclusively or partially by electronic means.

2. Except as otherwise provided for in Annexes 21-A and 21-B, this Chapter does not apply to:

(a) the acquisition or rental of land, existing buildings or other immovable property, or the rights thereon;

(b) non-contractual agreements or any form of assistance that a Party provides, including cooperative agreements, grants, loans, equity infusions, guarantees and fiscal incentives;

(c) the procurement or acquisition of fiscal agency or depository services, liquidation and management services for regulated financial institutions or services related to the sale, redemption and distribution of public debt, including loans and government bonds, notes and other securities;

(d) public employment contracts;

(e) procurement conducted:

(i) for the specific purpose of providing international assistance, including development aid;

(ii) under the particular procedure or condition of an international agreement relating to the stationing of troops or relating to the joint implementation by the signatory countries of a project; or

(iii) under the particular procedure or condition of an international organisation, or funded by international grants, loans or other assistance if the applicable procedure or condition would be inconsistent with this Chapter.

3. The commitments of each Party on covered procurement are set out in Annexes 21-A and 21-B in accordance with the following structure:

(a) in Section A, the central government entities whose procurement is covered by this Chapter;

(b) in Section B, the sub-central government entities whose procurement is covered by this Chapter including, with regard to Mexico, other entities at sub-central level;

(c) in Section C, all other entities whose procurement is covered by this Chapter;

(d) in Section D, the goods covered by this Chapter;

(e) in Section E, the services, other than construction services, covered by this Chapter;

(f) in Section F, the construction services covered by this Chapter;

(g) in Section G, the public private partnership or works concessions covered by this Chapter;

(h) in Section H, any general notes and derogations; and

(i) in Section I, the media in which the Party publishes its procurement notices, award notices, and other information related to its public procurement system.

4. If the law of a Party allows a covered procurement to be carried out on behalf of the procuring entity by other entities or persons whose procurement is not covered with respect to the goods and services concerned, this Chapter shall also apply.

Valuation

5. In estimating the value of a procurement for the purpose of ascertaining whether it is a covered procurement, a procuring entity shall:

(a) neither divide a procurement into separate procurements nor select or use a particular valuation method for estimating the value of a procurement with the intention of totally or partially excluding it from the application of this Chapter; and

(b) include the estimated maximum total value of the procurement over its entire duration, whether awarded to one or more suppliers, taking into account all forms of remuneration, including:

(i) premiums, fees, commissions and interest; and

(ii) if the procurement provides for the possibility of options, the total value of such options.

6. If an individual requirement for a procurement results in the award of more than one contract or in the award of contracts in separate parts, (hereinafter referred to as "recurring contracts") the calculation of the estimated maximum total value shall be based on:

(a) the value of recurring contracts of the same type of good or service awarded during the preceding 12 months or the procuring entity's preceding fiscal year, adjusted, if possible, to take into account anticipated changes in the quantity or value of the good or service being procured over the following 12 months; or

(b) the estimated value of recurring contracts of the same type of good or service to be awarded during the 12 months following the initial contract award or the procuring entity's fiscal year.

7. In the case of procurement by lease, rental or hire purchase of goods or services, or procurement for which a total price is not specified, the basis for valuation shall be:

(a) in the case of a fixed-term contract:

(i) if the term of the contract is 12 months or less, the total estimated maximum value for its duration; or

(ii) if the term of the contract exceeds 12 months, the total estimated maximum value, including any estimated residual value;

(b) if the contract is for an indefinite period, the estimated monthly instalment multiplied by 48;

(c) if it is not certain whether the contract is to be a fixed-term contract, subparagraph (b) applies.

ARTICLE 21.3

Security and General Exceptions

1. Nothing in this Chapter shall be construed to prevent a Party from taking any action or not disclosing any information that 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 for national defence purposes.

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

(a) necessary to protect public morals, order or safety;

(b) necessary to protect human, animal or plant life or health;

(c) necessary to protect intellectual property; or

(d) relating to goods or services of persons with disabilities, of philanthropic institutions or of prison labour.

ARTICLE 21.4

General Principles

Non-Discrimination

1. Notwithstanding the scope of application set out in Article 21.2, an enterprise of a Party that is legally established through the constitution, acquisition or maintenance of a commercial presence in the territory of the other Party may participate in government procurement of that other Party under the same conditions as the enterprises of that other Party as provided for under the law of that other Party.

2. With respect to any measure regarding covered procurement, a Party, including its procuring entities, shall accord immediately and unconditionally to the goods and services of the other Party, and to the suppliers of the other Party offering such goods or services, treatment no less favourable than the treatment that the Party, including its procuring entities, accords to its own goods, services and suppliers.

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

(a) treat a locally established supplier less favourably than another locally established supplier on the basis of the degree of foreign affiliation or ownership; or

(b) discriminate against a locally established supplier on the basis that the goods or services offered by that supplier for a particular procurement are goods or services of the other Party.

Use of Electronic Means

4. When conducting covered procurement by electronic means, a procuring entity shall:

(a) ensure that the procurement is conducted using information technology systems and software, including those related to authentication and encryption of information, that are generally available and interoperable with other generally available information technology systems and software;

(b) maintain mechanisms that ensure the integrity of requests for participation and tenders, including establishment of the time of receipt and the prevention of inappropriate access; and

(c) use electronic means of information and communication for the publication of notices and tender documentation in procurement procedures and, to the widest extent practicable, for the submission of tenders.

Conduct of Procurement

5. A procuring entity shall conduct covered procurement in a transparent and impartial manner that:

(a) is consistent with this Chapter, using one of the following methods: open tendering, selective tendering or limited tendering;

(b) prevents conflicts of interest and corrupt practices, in accordance with the law of the Party concerned.

Anti-corruption Measures

6. Each Party shall ensure that it has appropriate measures in place to prevent corruption in its government procurement. Those measures shall include procedures to render ineligible for participation in the procurements of a Party, either indefinitely or for a stated period of time, suppliers that the judicial authorities of that Party have determined by final decision to have engaged in fraudulent or other illegal actions in relation to government procurement in the territory of that Party. Each Party shall also ensure that they have in place policies and procedures to eliminate to the extent possible or manage any potential conflict of interest on the part of those engaged in or having influence over a procurement.

Rules of Origin

7. A Party shall not apply rules of origin to goods imported or services supplied from the other Party for purposes of government procurement covered by this Chapter that are different from the rules of origin which that Party applies in the normal course of trade to imports or supplies of the same goods or services.

Denial of Benefits

8. A Party may deny the benefits of this Chapter to a service supplier of the other Party, subject to prior notification and consultation, where the Party establishes that the service is being provided by an enterprise that has no substantial business activities in the territory of either Party.

Offsets

9. With regard to covered procurement, a Party, including its procuring entities, shall not seek, take account of, impose or enforce any offset.

Measures Not Specific to Procurement

10. Paragraphs 2 and 3 do not apply to:

(a) customs duties and charges of any kind imposed on, or in connection with, importation;

(b) the method of levying such duties and charges; and

(c) other import regulations or formalities and measures affecting trade in services other than measures governing covered procurement.

ARTICLE 21.5

Information on the Procurement System

1. Each Party shall:

(a) promptly publish any law, regulation, judicial decision, administrative ruling of general application, standard contract clause mandated by law or regulation and incorporated by reference in notices or tender documentation and procedure regarding covered procurement, and any modifications thereof, in an officially designated electronic or paper medium that is widely disseminated and remains readily accessible to the public; and

(b) provide an explanation thereof to the other Party, on request.

2. Each Party shall list in Section I of Annex 21-A or 21-B, respectively:

(a) the electronic or paper media in which the Party publishes the information described in paragraph 1(a);

(b) the electronic or paper media in which the Party publishes the notices required by Articles 21.6, 21.8.7 and 21.15.2; and

(c) the website address or addresses where the Party publishes:

(i) its procurement statistics referred to in Article 21.15.4; or

(ii) its notices concerning awarded contracts pursuant to Article 21.15.6.

3. Each Party shall promptly notify the Sub-Committee on Public Procurement of any modification to its information listed in Section I of Annex 21-A or 21-B.

ARTICLE 21.6

Notices

Notice of Intended Procurement

1. For each covered procurement, a procuring entity shall publish a notice of intended procurement, except in the circumstances described in Article 21.12.

2. Except as otherwise provided for in this Chapter, each notice of intended procurement shall include:

(a) the name and address of the procuring entity and other information necessary to contact the procuring entity and obtain all relevant documents relating to the procurement, and their cost and terms of payment, if any;

(b) a description of the procurement, including the nature and the quantity of the goods or services to be procured or, where the quantity is not known, the estimated quantity;

(c) for recurring contracts, an estimate, if possible, of the timing of subsequent notices of intended procurement;

(d) a description of any options;

(e) the timeframe for delivery of goods or services or the duration of the contract;

(f) the procurement method that will be used and whether it will involve negotiation or electronic auction;

(g) if applicable, the address and any final date for the submission of requests for participation in the procurement;

(h) the address and the final date for the submission of tenders;

(i) the language or languages in which tenders or requests for participation may be submitted, if they may be submitted in a language other than an official language of the Party of the procuring entity;

(j) a list and brief description of any conditions for participation of suppliers, including any requirements for specific documents or certifications to be provided by suppliers in connection with that participation, unless such requirements are included in tender documentation that is made available to all interested suppliers at the same time as the notice of intended procurement;

(k) if, pursuant to Article 21.8, a procuring entity intends to select a limited number of qualified suppliers to be invited to tender, the criteria that will be used to select them and, if applicable, any limitation on the number of suppliers that will be permitted to tender; and

(l) an indication that the procurement is covered by this Chapter.

Summary Notice

3. For each case of intended procurement, a procuring entity shall publish a summary notice that is readily accessible, at the same time as the publication of the notice of intended procurement, in one of the WTO languages.

The summary notice shall contain at least the following information:

(a) the subject matter of the procurement;

(b) the final date for the submission of tenders or, if applicable, any final date for the submission of requests for participation in the procurement or for inclusion on a multi-use list; and

(c) the address from which documents relating to the procurement may be requested.

Notice of Planned Procurement

4. Procuring entities are encouraged to publish as early as possible in each fiscal year a notice regarding their future procurement plans (hereinafter referred to as "notice of planned procurement"). The notice of planned procurement should include the subject matter of the procurement and the approximate date of the publication of the notice of intended procurement or the approximate period in which the procurement may be carried out.

5. A procuring entity covered under Section B or C of Annex 21-A or 21-B may use a notice of planned procurement as a notice of intended procurement provided that the notice of planned procurement includes as much of the information referred to in paragraph 2 as is available to the procuring entity and a statement that interested suppliers should express their interest in the procurement to the procuring entity.

General Rules on Notices

6. All notices of intended procurement, summary notices and notices of planned procurement shall be directly accessible by electronic means free of charge through an online single point of access. In addition, the notices may also be published in an appropriate paper medium which is widely disseminated and shall remain readily accessible to the public, at least until expiration of the time period indicated in the notice.

ARTICLE 21.7

Conditions for Participation

1. A procuring entity shall limit any conditions for participation in a procurement to those that are essential to ensure that a supplier has the legal and financial capacities and the commercial and technical abilities to undertake the relevant procurement.

2. In establishing the conditions for participation, a procuring entity:

(a) 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 a procuring entity of a Party;

(b) may require relevant prior experience if essential to meet the requirements of the procurement; and

(c) shall not require prior experience in the territory of the Party to be a condition of the procurement.

3. In assessing whether a supplier satisfies the conditions for participation, a procuring entity:

(a) shall evaluate the financial capacity and the commercial and technical abilities of a supplier on the basis of that supplier's business activities both inside and outside the territory of the Party of the procuring entity; and

(b) shall base its evaluation on the conditions that it has specified in advance in notices or tender documentation.

4. If there is supporting evidence, a Party, including its procuring entities, may exclude a supplier on grounds such as:

(a) bankruptcy;

(b) false declarations;

(c) significant or persistent deficiencies in performance of any substantive requirement or obligation under a prior contract;

(d) final judgments in respect of serious crimes or other serious offences under the law of that Party;

(e) professional misconduct or acts or omissions that adversely reflect on the commercial integrity of the supplier; or

(f) failure to pay taxes.

ARTICLE 21.8

Qualification of Suppliers

Registration Systems and Qualification Procedures

1. A Party, including its procuring entities, may maintain a supplier registration system under which interested suppliers are required to register and provide certain information. In this case, the Party shall ensure that interested suppliers have full access to information on the registration system by electronic means and that they may request registration at any time during its validity. The competent authority shall inform them within a reasonable period of time of the decision to grant or reject this request. If the request is rejected, the decision shall be duly motivated.

2. Each Party shall ensure that:

(a) its procuring entities make efforts to minimise differences in their qualification procedures; and

(b) if its procuring entities maintain registration systems, the entities make efforts to minimise differences in their registration systems.

3. A Party, including its procuring entities, shall not adopt or apply a registration system or qualification procedure with the purpose or the effect of creating unnecessary obstacles to the participation of suppliers of the other Party in its procurement.

Selective Tendering

4. If a procuring entity intends to use selective tendering, the entity shall:

(a) include in the notice of intended procurement at least the information specified in Article 21.6.2 (a), (b), (f), (g), (j), (k) and (l) and invite suppliers to submit a request for participation; and

(b) provide, by the commencement of the time period for tendering, at least the information in Article 21.6.2(c), (d), (e), (h) and (i) to the qualified suppliers that it notifies as specified in Article 21.10.3(b).

5. A procuring entity shall allow all qualified suppliers to participate in a particular procurement, unless the procuring entity states in the notice of intended procurement any limitation on the number of suppliers permitted to tender and the criteria for selecting the limited number of suppliers. An invitation to submit a tender shall be addressed to a number of suppliers necessary to ensure effective competition.

6. If the tender documentation is not made publicly available from the date of publication of the notice of intended procurement, a procuring entity shall ensure that those documents are made available at the same time to all the qualified suppliers selected in accordance with paragraph 5.

Multi-Use Lists

7. A procuring entity may maintain a multi-use list provided that a notice inviting interested suppliers to apply for inclusion on the list is published annually in the appropriate medium listed in Section I of Annexes 21-A and 21-B and, if published by electronic means, made available continuously.

8. The notice provided for in paragraph 7 shall include:

(a) a description of the goods or services, or categories thereof, for which the list may be used;

(b) the conditions for participation to be satisfied by suppliers for inclusion on the list and the methods that the procuring entity will use to verify that a supplier satisfies the conditions;

(c) the name and address of the procuring entity and other information necessary to contact the procuring entity and obtain all relevant documents relating to the list;

(d) the period of validity of the list and the means for its renewal or termination, or if the period of validity is not provided, an indication of the method by which notice will be given of the termination of use of the list; and

(e) an indication that the list may be used for procurement covered by this Chapter.

9. Notwithstanding paragraph 7, if a multi-use list will be valid for three years or less, a procuring entity may publish the notice referred to in paragraph 7 only once, at the beginning of the period of validity of the list, provided that the notice:

(a) states the period of validity and that further notices will not be published; and

(b) is published by electronic means and is made available continuously during the period of its validity.

10. A procuring entity shall allow suppliers to apply at any time for inclusion on a multi-use list and shall include on the list all qualified suppliers within a reasonably short time.

11. If a supplier that is not included on a multi-use list submits a request for participation in a procurement based on a multi-use list and all required documents, within the time period provided for in Article 21.10.2, a procuring entity shall examine the request. The procuring entity shall not exclude the supplier from consideration in respect of the procurement on the grounds that the procuring entity does not have sufficient time to examine the request, unless, in exceptional cases, due to the complexity of the procurement, the procuring entity is not able to complete the examination of the request within the time period allowed for the submission of tenders.

Other Entities of Sections B and C of Annexes 21-A and 21-B

12. A procuring entity of a Party covered under Section B or C of Annex 21-A or 21-B may use a notice inviting suppliers to apply for inclusion on a multi-use list as a notice of intended procurement, provided that:

(a) the notice is published in accordance with paragraph 7 of this Article and includes the information required under paragraph 8 of this Article, as much of the information required in Article 21.6.2 as is available, and a statement that it constitutes a notice of intended procurement or that only the suppliers on the multi-use list will receive further notices of procurement covered by the multi-use list; and

(b) the procuring entity promptly provides the suppliers that have expressed an interest in a given procurement with sufficient information to permit them to assess their interest in the procurement, including all remaining information required in Article 21.6.2, to the extent that such information is available.

13. A procuring entity covered under Section B or C of Annex 21-A or 21-B may allow a supplier that has applied for inclusion on a multi-use list in accordance with paragraph 10 to tender in a given procurement, if there is sufficient time for the procuring entity to examine whether the supplier satisfies the conditions for participation.

Information on Procuring Entity Decisions

14. A procuring entity shall promptly inform any supplier that submits a request for participation in a procurement, or an application for inclusion on a multi-use list, of the procuring entity's decision with respect to the request or application.

15. If a procuring entity rejects a supplier's request for participation in a procurement or application for inclusion on a multi-use list, ceases to recognise a supplier as qualified, or removes a supplier from a multi-use list, the procuring entity shall promptly inform the supplier and, on request of the supplier, promptly provide the supplier with a written explanation of the reasons for its decision.

ARTICLE 21.9

Technical Specifications and Tender Documentation

Technical Specifications

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

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

(a) set out the technical specification in terms of performance and functional requirements, rather than design or descriptive characteristics; and

(b) base the technical specification on international standards, if such standards exist, or otherwise on national technical regulations, recognised national standards or building codes.

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

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

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

6. A Party may allow its procuring entities to take into account environmental and social considerations, provided that they are non-discriminatory and that they are linked to the subject matter of the contract.

7. For greater certainty, a Party, including its procuring entities, may, in accordance with this Article, prepare, adopt or apply technical specifications to promote the conservation of natural resources or protect the environment.

Tender Documentation

8. A procuring entity shall make available to suppliers tender documentation that includes all information necessary to permit suppliers to prepare and submit responsive tenders. Unless already provided in the notice of intended procurement, such documentation shall include a complete description of:

(a) the procurement, including the nature and the quantity of the goods or services to be procured or, if the quantity is not known, the estimated quantity and any requirements to be fulfilled, including any technical specifications, conformity assessment certification, plans, drawings or instructional materials;

(b) any conditions for participation of suppliers, including a list of information and documents that suppliers are required to submit in connection with the conditions for participation;

(c) all evaluation criteria the procuring entity will apply in the awarding of the contract and, unless price is the sole criterion, the relative importance of those criteria;

(d) if the procuring entity will conduct the procurement by electronic means, any authentication and encryption requirements or other requirements related to the submission of information by electronic means;

(e) if the procuring entity will hold an electronic auction, the rules, including identification of the elements of the tender related to the evaluation criteria, on the basis of which the auction will be conducted;

(f) if there will be a public opening of tenders, the date, time and place for the opening and, if appropriate, the persons authorised to be present;

(g) any other terms or conditions, including terms of payment and any limitation on the means by which tenders may be submitted, such as whether on paper or by electronic means; and

(h) any dates for the delivery of goods or the supply of services.

9. In establishing any date for the delivery of goods or the supply of services being procured, a procuring entity shall take into account such factors as the complexity of the procurement, the extent of subcontracting anticipated and the realistic time required for production, de-stocking and transport of goods from the point of supply or for supply of services.

10. The evaluation criteria set out in the notice of intended procurement or tender documentation may include, among other things, price and other cost factors, quality, technical merit, environmental characteristics and terms of delivery.

11. A procuring entity shall promptly:

(a) make available tender documentation to ensure that interested suppliers have sufficient time to submit responsive tenders;

(b) provide, on request, the tender documentation to any interested supplier; and

(c) reply to any reasonable request for relevant information by any interested or participating supplier, provided that such information does not give that supplier an advantage over other suppliers.

Modifications

12. If a procuring entity, prior to the award of a contract, modifies the criteria or requirements set out in the notice of intended procurement or tender documentation provided to participating suppliers, or amends or reissues a notice or tender documentation, it shall transmit in writing all such modifications or amended or re-issued notice or tender documentation:

(a) to all suppliers that are participating at the time of the modification, amendment or re-issuance, if those suppliers are known to the procuring entity, and in all other cases, in the same manner as the original information was made available; and

(b) in adequate time to allow those suppliers to modify and re-submit amended tenders, as appropriate.

ARTICLE 21.10

Time Periods

1. A procuring entity shall, in accordance with its own reasonable needs, provide sufficient time for suppliers to prepare and submit requests for participation and responsive tenders, taking into account factors such as:

(a) the nature and complexity of the procurement;

(b) the extent of subcontracting anticipated; and

(c) the time necessary for transmitting tenders by non-electronic means from points located in the other Party or in the territory of the procuring entity, if electronic means are not used.

The time periods, including any extension thereof, shall be the same for all interested or participating suppliers.

2. A procuring entity that uses selective tendering shall establish that the final date for the submission of requests for participation shall not, in principle, be less than 25 days from the date of publication of the notice of intended procurement. If a state of urgency duly substantiated by the procuring entity renders this time period impracticable, the time period may be reduced to not less than 10 days.

3. Except as provided for in paragraphs 4, 5, 7 and 8, a procuring entity shall establish that the final date for the submission of tenders shall not be less than 40 days from the date on which:

(a) in the case of open tendering, the notice of intended procurement is published; or

(b) in the case of selective tendering, the procuring entity notifies suppliers that they will be invited to submit tenders, whether or not it uses a multi-use list.

4. A procuring entity may reduce the time period for tendering established in accordance with paragraph 3 to not less than 10 days if:

(a) the procuring entity has published a notice of planned procurement as described in Article 21.6.4 at least 40 days but not more than 12 months in advance of the publication of the notice of intended procurement, and the notice of planned procurement contains:

(i) a description of the procurement;

(ii) the approximate final dates for the submission of tenders or requests for participation;

(iii) a statement that interested suppliers should express their interest in the procurement to the procuring entity;

(iv) the address from which documents relating to the procurement may be obtained; and

(v) as much of the information that is required for the notice of intended procurement under Article 21.6.2 as is available;

(b) the procuring entity, for contracts of a recurring nature, indicates in an initial notice of intended procurement that subsequent notices will provide time periods for tendering based on this paragraph; or

(c) a state of urgency duly substantiated by the procuring entity renders the time period for tendering established in accordance with paragraph 3 impracticable.

5. A procuring entity may reduce the time period for tendering established in accordance with paragraph 3 by five days for each one of the following circumstances:

(a) the notice of intended procurement is published by electronic means;

(b) all the tender documentation is made available by electronic means from the date of the publication of the notice of intended procurement; and

(c) the procuring entity accepts tenders by electronic means.

6. The application of paragraph 5, in conjunction with paragraph 4, shall in no case result in the reduction of the time period for tendering established in accordance with paragraph 3 to less than 10 days from the date on which the notice of intended procurement is published.

7. Notwithstanding any other provision of this Article, if a procuring entity purchases commercial goods or services, or any combination thereof, it may reduce the time period for tendering established in accordance with paragraph 3 to not less than 13 days, provided that it publishes by electronic means, at the same time, both the notice of intended procurement and the tender documentation. In addition, if the procuring entity accepts tenders for commercial goods or services by electronic means, it may reduce the time period established in accordance with paragraph 3 to not less than 10 days.

8. If a procuring entity covered under Section B or C of Annex 21-A or 21-B has selected all or a limited number of qualified suppliers, the time period for tendering may be determined by mutual agreement between the procuring entity and the selected suppliers. In the absence of agreement, the time period shall not be less than 10 days.

ARTICLE 21.11

Negotiation

1. A Party may provide for its procuring entities to conduct negotiations with suppliers if:

(a) the procuring entity has indicated its intent to conduct negotiations in the notice of intended procurement required pursuant to Article 21.6.1; or

(b) it appears from the evaluation that no tender is obviously the most advantageous in terms of the specific evaluation criteria set out in the notice of intended procurement or tender documentation.

2. A procuring entity shall:

(a) ensure that any elimination of suppliers participating in negotiations is carried out in accordance with the evaluation criteria set out in the notice of intended procurement or tender documentation; and

(b) when negotiations are concluded, provide a common deadline for the remaining participating suppliers to submit any new or revised tenders.

ARTICLE 21.12

Limited Tendering

1. Provided that it is not used for the purpose of avoiding competition among suppliers or in a manner that discriminates against suppliers of the other Party or protects domestic suppliers, a procuring entity may use limited tendering and choose not to apply Articles 21.6 to 21.8, 21.9.8 to 21.9.12 and Articles 21.10, 21.11, 21.13 and 21.14 under any of the following circumstances:

(a) provided that the requirements of the tender documentation are not substantially modified, if:

(i) no tenders were submitted or no suppliers requested participation;

(ii) no tenders that conform to the essential requirements of the tender documentation were submitted;

(iii) no suppliers satisfied the conditions for participation; or

(iv) the tenders submitted have been collusive;

(b) the goods or services can be supplied only by a particular supplier and no reasonable alternative or substitute goods or services exist for any of the following reasons:

(i) the tendering is for a work of art;

(ii) the protection of patents, copyrights or other exclusive rights; or

(iii) an absence of competition for technical reasons;

(c) for additional deliveries by the original supplier of goods or services that were not included in the initial procurement, if a change of supplier for such additional goods or services:

(i) cannot be made for economic or technical reasons such as requirements of interchangeability or interoperability with existing equipment, software, services or installations procured under the initial procurement; and

(ii) would cause significant inconvenience or substantial duplication of costs for the procuring entity;

(d) insofar as is strictly necessary if, for reasons of extreme urgency brought about by events unforeseeable by the procuring entity, the goods or services could not be obtained in time using open tendering or selective tendering;

(e) for goods purchased on a commodity market;

(f) if a procuring entity procures a prototype or a first good or service that is developed at its request in the course of, and for, a particular contract for research, experiment, study or original development;

original development of a first good or service may include limited production or supply in order to incorporate the results of field testing and to demonstrate that the good or service is suitable for production or supply in quantity to acceptable quality standards, but does not include quantity production or supply to establish commercial viability or to recover research and development costs;

(g) for purchases made under exceptionally advantageous conditions that only arise in the very short term in the case of unusual disposals such as those arising from liquidation, receivership or bankruptcy, but not for routine purchases from regular suppliers; or

(h) if a contract is awarded to a winner of a design contest, provided that:

(i) the contest has been organised in a manner that is consistent with the principles of this Chapter, in particular relating to the publication of a notice of intended procurement; and

(ii) the participants are judged by an independent jury with a view to a design contract being awarded to a winner.

2. A procuring entity shall prepare a report in writing on each contract awarded under paragraph 1. The report shall include the name of the procuring entity, the value and kind of goods or services procured and a statement indicating the circumstances and conditions described in paragraph 1 that justified the use of limited tendering.

ARTICLE 21.13

Electronic Auctions

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

(a) the automatic evaluation method, including the mathematical formula, that is based on the evaluation criteria set out in the tender documentation and that will be used in the automatic ranking or re-ranking during the auction;

(b) the results of any initial evaluation of the elements of its tender if the contract is to be awarded on the basis of the most advantageous tender; and

(c) any other relevant information relating to the conduct of the auction.

ARTICLE 21.14

Treatment of Tenders and Awarding of Contracts

Treatment of Tenders

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

2. If a procuring entity provides a supplier with an opportunity to correct unintentional errors of form between the opening of tenders and the awarding of the contract, the procuring entity shall provide the same opportunity to all participating suppliers.

Awarding of Contracts

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

4. Unless a procuring entity determines that it is not in the public interest to award a contract, it shall award the contract to the supplier that the procuring entity has determined to be capable of fulfilling the terms of the contract and that, based solely on the evaluation criteria specified in the notices and tender documentation, has submitted:

(a) the most advantageous tender; or

(b) if price is the sole criterion, the lowest price.

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

6. A procuring entity shall not use options, cancel a procurement or modify awarded contracts in a manner that circumvents the obligations under this Chapter.

7. Each Party may provide, as a general rule, for a standstill period between the award and the conclusion of a contract in order to give sufficient time to unsuccessful bidders to review and challenge the award decision.

ARTICLE 21.15

Transparency of Procurement Information

Information Provided to Suppliers

1. A procuring entity shall promptly inform participating suppliers of its contract award decisions and, on the request of a supplier, shall do so in writing. Subject to Articles 21.16.2 and 21.16.3, a procuring entity shall, on request, provide an unsuccessful supplier with an explanation of the reasons why the procuring entity did not select its tender and the relative advantages of the successful supplier's tender.

Publication of Award Information

2. A procuring entity shall publish a notice in the appropriate paper or electronic medium listed in Section I of Annex 21-A or 21-B no later than 72 days after the award of each contract covered by this Chapter. If the procuring entity publishes the notice only in an electronic medium, the information shall remain readily accessible for a reasonable period of time. The notice shall include at least the following information:

(a) a description of the goods or services procured;

(b) the name and address of the procuring entity;

(c) the name and address of the successful supplier;

(d) the value of the successful tender or the highest and lowest offers taken into account in the award of the contract;

(e) the date of award; and

(f) the type of procurement method used, and in cases where limited tendering was used in accordance with Article 21.12, a description of the circumstances justifying the use of limited tendering.

Maintenance of Documentation, Reports and Electronic Traceability

3. A procuring entity shall, for a period of at least three years from the date it awards a contract, maintain:

(a) the documentation and reports of tendering procedures and contract awards relating to covered procurement, including the reports required under Article 21.12.2; and

(b) data that ensure the appropriate traceability of the conduct of covered procurement by electronic means.

Exchange of Statistics

4. Each Party shall collect and exchange on an annual basis statistics on its procurements covered by this Chapter[86]. Those statistical reports shall contain, with respect to contracts awarded by all procuring entities of the Party concerned that are covered under this Chapter, statistics on the estimated value of contracts awarded for covered procurement on a global basis and broken down by categories of procuring entities.

5. To the extent that such information is available, each Party shall provide statistics on the country of origin of products and services purchased by its procuring entities. With a view to ensuring that such statistics are comparable, the Sub-Committee on Public Procurement established pursuant to Article 21.19 shall provide guidance on the methods to be used. With a view to ensuring effective monitoring of procurements covered by this Chapter, the Joint Council may decide to modify the requirements set out in paragraph 4.

6. If a Party requires notices concerning awarded contracts to be published electronically, pursuant to paragraph 2, and if such notices are accessible to the public through a single database in a form permitting analysis of the awarded contracts, the Party may, instead of reporting to the Sub-Committee on Public Procurement, provide a link to the website, together with any instructions necessary to access and use such data.

[86] The first exchange of information shall take place one year after the entry into force of this Agreement.

ARTICLE 21.16

Disclosure of information

Provision of Information to Parties

1. On request of the other Party, a Party shall provide promptly any information necessary to determine whether a covered procurement was conducted fairly, impartially and in accordance with this Chapter, including information on the characteristics and relative advantages of the successful tender. The Party that receives the information shall not disclose that information to any supplier if this would prejudice competition in future tenders, except after obtaining the consent of the Party that provided the information.

Non-Disclosure of Information

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

3. Nothing in this Chapter shall be construed as requiring a Party, including its procuring entities, authorities and review bodies, to disclose confidential information if such disclosure:

(a) would impede law enforcement;

(b) might prejudice fair competition between suppliers;

(c) would prejudice the legitimate commercial interests of particular persons, including the protection of intellectual property; or

(d) would otherwise be contrary to the public interest.

ARTICLE 21.17

Domestic Review Procedures

1. Each Party shall provide a timely, effective, transparent and non-discriminatory administrative or judicial review procedure through which, in the context of a covered procurement in which the supplier has, or has had, an interest, a supplier may challenge:

(a) a breach of this Chapter; or

(b) if the supplier does not have a right to challenge directly a breach of this Chapter under the law of a Party, a failure to comply with a Party's measures implementing this Chapter.

The procedural rules for all challenges shall be in writing and made generally available.

2. In case of a complaint by a supplier, arising in the context of covered procurement in which the supplier has, or has had, an interest, that there has been a breach or a failure as referred to in paragraph 1, the Party of the procuring entity conducting the covered procurement shall encourage the procuring entity and the supplier to seek resolution of the complaint through consultations. The procuring entity shall accord impartial and timely consideration to any such complaint in a manner that is not prejudicial to the supplier's participation in ongoing or future procurement or its right to seek corrective measures under the administrative or judicial review procedure.

3. Each supplier shall be allowed a sufficient period of time to prepare and submit a challenge, which in no case shall be less than 10 days from the time when the basis of the challenge became known or reasonably should have become known to the supplier.

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

5. If a body other than an authority referred to in paragraph 4 initially reviews a challenge, the Party shall ensure that the supplier may appeal the initial decision to an impartial administrative or judicial authority that is independent of the procuring entity whose procurement is the subject of the challenge.

6. Each Party shall ensure that a review body that is not a court shall have its decision subject to judicial review or have procedures that provide that:

(a) the procuring entity shall respond in writing to the challenge and disclose all relevant documents to the review body;

(b) the participants to the proceedings (hereinafter referred to as "participants") shall have the right to be heard prior to a decision of the review body being made on the challenge;

(c) the participants shall have the right to be represented and accompanied;

(d) the participants shall have access to all proceedings;

(e) the participants shall have the right to request that the proceedings take place in public and that witnesses may be presented; and

(f) the review body shall make its decisions or recommendations in a timely fashion, in writing, and shall include an explanation of the basis for each decision or recommendation.

7. Each Party shall adopt or maintain procedures that provide for rapid interim measures to preserve the supplier's opportunity to participate in the procurement. Those interim measures may result in suspension of the procurement process. Such procedures may provide that overriding adverse consequences for the interests concerned, including the public interest, may be taken into account when deciding whether such interim measures should be applied. Any justification for not acting shall be provided in writing.

8. Each Party shall adopt or maintain procedures that provide for corrective action or compensation for the loss or damages suffered if a review body has determined that there has been a breach or a failure as referred to in paragraph 1. The compensation for the loss or damages suffered may be limited to either the costs for the preparation of the tender or the costs relating to the challenge, or both.

ARTICLE 21.18

Modifications and Rectifications to Coverage

1. The European Union may modify or rectify Annex 21-A and Mexico may modify or rectify Annex 21-B.

Modifications

2. If a Party intends to modify Annex 21-A or 21-B respectively, that Party shall:

(a) notify the other Party in writing; and

(b) include in the notification a proposal for appropriate compensatory adjustments to the other Party to maintain a level of coverage comparable to that existing prior to the modification.

3. Notwithstanding subparagraph 2(b), a Party does not need to provide compensatory adjustments if the modification covers a procuring entity over which the Party has effectively eliminated its control or influence. Government control or influence over the covered procurement of procuring entities covered under Section C of Annex 21-A, or under Sub-list 2 of each State of Section B or C of Annex 21-B is presumed to be effectively eliminated if the procuring entity is exposed to competition on markets to which access is not restricted.

4. The other Party may object to the proposed modification, notified pursuant to paragraph 2, if it disputes that:

(a) an adjustment proposed in accordance with subparagraph 2(b) is adequate to maintain a comparable level to the existing coverage provided for in this Chapter;

(b) the modification covers a procuring entity over which the Party has effectively eliminated its control or influence in accordance with paragraph 3.

The objection shall be made in writing within 45 days of receipt of the notification referred to in subparagraph 2(a) or that Party shall be deemed to have accepted the adjustment or modification, including for the purposes of Chapter 31 (Dispute Settlement).

Rectifications

5. The following changes to Annex 21-A or 21-B shall be considered a rectification of a purely formal nature, provided that they do not affect the existing coverage provided for in this Chapter:

(a) a change in the name of a procuring entity;

(b) a merger of two or more entities covered under Section A, B or C of Annex 21-A or 21-B; and

(c) the separation of an entity covered under Section A, B or C of Annex 21-A or 21-B into two or more entities that are all added to the procuring entities covered under the same Section of Annex 21-A or 21-B.

6. Each Party shall notify the other Party every three years following the entry into force of this Agreement of proposed rectifications to Annex 21-A or 21-B.

7. A Party may notify the other Party of an objection to a proposed rectification within 45 days from having received the notification. If a Party submits an objection, it shall explain why it considers that the proposed rectification is not a change provided for in paragraph 5, and describe the effect of the proposed rectification on the coverage provided for in this Chapter. If no objection is submitted in writing within 45 days after the date of receipt of the notification, the other Party shall be deemed to have accepted the proposed rectification.

Consultations and Dispute Resolution

8. If the other Party objects to the proposed modification or rectification, the Parties shall seek to resolve the issue through consultations. If no agreement is found within 60 days after the date of receipt of the objection, the Party seeking to modify or rectify Annex 21-A or 21-B may refer the matter to dispute settlement under Chapter 31 (Dispute Settlement). The proposed modification or rectification shall take effect only when both Parties have agreed or if so provided for in the ruling of a panel in a final report in accordance with Article 31.14 (Final Report).

ARTICLE 21.19

Sub-Committee on Public Procurement

The Sub-Committee on Public Procurement established pursuant to subparagraph 1(j) of Article 1.10 (Sub-Committees and other Bodies of Part III of this Agreement) shall address matters related to the implementation and operation of this Chapter, such as:

(a) the modification of Annexes 21-A and 21-B;

(b) the preparation for the Joint Council of the decisions modifying Annexes 21-A and 21-B;

(c) matters regarding government procurement related to this Chapter that are referred to it by a Party; and

(d) any other matter related to the operation of this Chapter.

CHAPTER 22

STATE-OWNED ENTERPRISES, ENTERPRISES GRANTED SPECIAL RIGHTS OR PRIVILEGES AND DESIGNATED MONOPOLIES

ARTICLE 22.1

Definitions

For the purposes of this Chapter:

(a) "Arrangement" means the Arrangement on Officially Supported Export Credits, developed within the framework of the OECD or a successor undertaking, whether developed within or outside of the OECD framework, that has been adopted by at least 12 original WTO Members that were Participants to the Arrangement as of 1 January 1979;

(b) "commercial activities" means activities the end result of which is the production of a good or supply of a service, which will be sold in the relevant market in quantities and at prices determined by an enterprise through the conditions of supply and demand, and which are undertaken with an orientation towards profit-making[87];

[87] For greater certainty, this excludes activities undertaken by an enterprise: (a) which operates on a not-for-profit basis; or (b) which operates on a cost recovery basis.

(c) "commercial considerations" means price, quality, availability, marketability, transportation and other terms and conditions of purchase or sale; or other factors that would normally be taken into account in the commercial decisions of a private enterprise operating according to market economy principles in the relevant business or industry;

(d) "designate" means to establish or authorise a monopoly, or to expand the scope of a monopoly to cover an additional good or service;

(e) "designated monopoly" means an entity, public or private, including a consortium or a government agency, that in any relevant market in the territory of a Party is designated as the sole supplier or purchaser of a good or service, but does not include an entity that has been granted an exclusive intellectual property right solely by reason of such grant[88];

(f) "enterprise granted special rights or privileges" means an enterprise, public or private, including a subsidiary, to which a Party has granted special rights or privileges, in law or in fact; special rights or privileges are granted by a Party if it designates, or limits the number of, enterprises authorised to supply a good or a service according to criteria that are not objective, proportionate and non-discriminatory, thereby substantially affecting the ability of any other enterprise to supply the same good or service in the same geographical area under substantially equivalent conditions;

[88] For greater certainty, this Chapter does not apply to natural monopolies unless they are designated within the meaning of subparagraph 1(d).

(g) "financial institution" and "financial service", have the same meaning as in Article 18.1 (Definitions);

(h) "service supplied in the exercise of governmental authority" means a service supplied in the exercise of governmental authority as defined in GATS and, if applicable, the Annex on Financial Services to GATS[89];

(i) "state-owned enterprise" means an enterprise owned or controlled by a Party[90].

ARTICLE 22.2

Delegated Authority

Unless otherwise specified in this Agreement, each Party shall ensure that any person, including a state-owned enterprise, an enterprise granted special rights or privileges or a designated monopoly that has been delegated regulatory, administrative or other governmental authority by a Party, acts in accordance with the Party's obligations as set out under this Agreement in the exercise of that authority.

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89 For greater certainty, services supplied in the exercise of governmental authority include services supplied by a central bank, a monetary authority, a financial regulatory body or a resolution authority of a Party.

90 For the establishment of ownership or control, all relevant legal and factual elements shall be examined on a case-by-case basis.

ARTICLE 22.3

Scope

1. This Chapter applies to state-owned enterprises, enterprises granted special rights or privileges and designated monopolies engaged in commercial activities. If a state-owned enterprise, an enterprise granted special rights or privileges or a designated monopoly combines commercial and non-commercial activities[91], only the commercial activities are covered by this Chapter.

2. This Chapter does not apply to:

(a) state-owned enterprises, enterprises granted special rights or privileges and designated monopolies when acting as procuring entities conducting covered procurement as defined in subparagraph (c) of Article 21.1 (Definitions);

(b) any service supplied in the exercise of governmental authority;

(c) activities carried out by:

(i) a financial institution or other legal entity, owned or controlled by a Party, that is established or operated temporarily and solely for resolution purposes[92];

[91] Non-commercial activities include carrying out a legitimate public service mandate.

[92] For greater certainty: (a) the term "resolution" is interpreted in accordance with the law of the Party in which the financial institution or other legal entity is established, (b) "solely for resolution purposes" means that the financial institution or other legal entity does not engage in any commercial activity which is not directly related to its resolution purposes.

(ii) a public entity, including a public trust that, pursuant solely to a public service mandate which aims to contribute to the balanced and steady development of the Party concerned, supplies financial services for the account or with the guarantee or using the financial resources of that Party; and

(iii) a public entity pursuant to a public service mandate relating to a statutory system of social security or public retirement plans; and

(d) state-owned enterprises, enterprises granted special rights or privileges and designated monopolies if, at the time the determination of the amount of the threshold is made, in any one of the three previous consecutive fiscal years the annual revenue derived from its commercial activities was less than 200 million special drawing rights.

3. Article 22.6 does not apply to the supply of financial services by a state-owned enterprise, an enterprise granted special rights or privileges or a designated monopoly pursuant to a government mandate, if that supply of financial services:

(a) supports exports or imports, provided that those services are:

(i) not intended to displace commercial financing; or

(ii) offered on terms no more favourable than those that could be obtained for comparable financial services in the commercial market[93];

[93] If no comparable financial services are offered in the commercial market: (a) for the purposes of subparagraphs (a)(ii) and (b)(ii), the state-owned enterprise may rely as necessary on available evidence to establish a benchmark of the terms on which such services would be offered in the commercial market; and (b) for the purposes of subparagraphs (a)(i) and (b)(i), the supply of the financial services shall be deemed not to be intended to displace commercial financing.

(b) supports private investment outside the territory of the Party, provided that those services are:

(i) not intended to displace commercial financing; or

(ii) offered on terms no more favourable than those that could be obtained for comparable financial services in the commercial market; or

(c) is offered on terms consistent with the Arrangement, provided that the financial services fall within the scope of the Arrangement.

4. Article 22.6 does not apply to the sectors set out in subparagraphs 2(c) to (e) of Article 10.5 (Scope).

5. Article 22.6 does not apply to the extent that a Party's state-owned enterprises, enterprises granted special rights or privileges and designated monopolies make purchases and sales of goods or services pursuant to:

(a) any existing non-conforming measure that the Party maintains, continues, renews or amends in accordance with Article 10.12 (Non-Conforming Measures and Exceptions), 11.8 (Non-Conforming Measures and Exceptions) or 18.12 (Reservations and Non-Conforming Measures) as set out in Annex I (Existing Measures), and Section B of Appendix VI-A or VI-B to Annex VI (Financial Services); or

(b) any non-conforming measure that the Party adopts or maintains with respect to sectors, subsectors, or activities in accordance with Articles 10.12 (Non-Conforming Measures and Exceptions), 11.8 (Non-Conforming Measures and Exceptions) or 18.12 (Reservations and Non-Conforming Measures) as set out in Annex II (Future Measures), and Section B of Appendix VI-A or VI-B to Annex VI (Financial Services).

6. The Parties share the understanding that a measure adopted or maintained under Annex 22-A, or excluded from the scope of this Chapter, may be maintained, provided that such measure, to the extent that it falls within the scope of the WTO Agreement, is applied in accordance with the rights and obligations of the Party taking such measure under the WTO Agreement[94].

ARTICLE 22.4

Non-Conforming Activities

Article 22.6 does not apply with respect to the non-conforming activities of state-owned enterprises or designated monopolies listed in Annex 22-A in accordance with the terms of that Annex.

[94] For greater certainty, the only forum to determine whether a measure of a Party is applied in accordance with that Party's rights and obligations under the WTO Agreement is the dispute settlement mechanism under the DSU.

ARTICLE 22.5

General Provisions

1. Without prejudice to the rights and obligations of each Party under this Chapter, nothing in this Chapter shall be construed as preventing a Party from establishing or maintaining a state-owned enterprise, granting an enterprise special rights or privileges or designating or maintaining a monopoly.

2. A Party shall not require or encourage a state-owned enterprise, an enterprise granted special rights or privileges or a designated monopoly to act in a manner inconsistent with this Chapter.

ARTICLE 22.6

Non-Discriminatory Treatment and Commercial Considerations

1. Each Party shall ensure that each of its state-owned enterprises, enterprises granted special rights or privileges and designated monopolies, when engaging in commercial activities:

(a) acts in accordance with commercial considerations in its purchase or sale of a good or a service, except to fulfil the terms of a public service mandate that is not inconsistent with subparagraph (b) or (c);

(b) in its purchase of a good or service:

(i) accords to a good or service supplied by an enterprise of the other Party treatment no less favourable than it accords to a like good or a like service supplied by enterprises of the Party; and

(ii) accords to a good or service supplied by an enterprise that is a covered investment within the meaning of subparagraph 1(a) of Article 10.1 (Definitions) in the Party's territory treatment no less favourable than it accords to a like good or a like service supplied by enterprises of the Party in the relevant market in the Party's territory; and

(c) in its sale of a good or service:

(i) accords to an enterprise of the other Party treatment no less favourable than it accords to enterprises of the Party; and

(ii) accords to an enterprise that is a covered investment within the meaning of subparagraph 1(a) of Article 10.1 (Definitions) in the Party's territory treatment no less favourable than it accords to enterprises of the Party in the relevant market in the Party's territory[95].

[95] For greater certainty, this Article does not apply with respect to the purchase or sale of shares, stock or other forms of equity by a state-owned enterprise, an enterprise granted special rights or privileges or a designated monopoly as a means of its equity participation in another enterprise.

2. Provided that such different terms or conditions or refusal are in accordance with commercial considerations, paragraph 1 does not preclude state-owned enterprises, enterprises granted special rights or privileges or designated monopolies from:

(a) purchasing or supplying goods or services on different terms or conditions than those set out in paragraph 1, including terms or conditions relating to price; or

(b) refusing to purchase or supply goods or services.

ARTICLE 22.7

Regulatory Framework

1. The Parties shall endeavour to respect and make best use of relevant international standards, including the OECD Guidelines on Corporate Governance of State-Owned Enterprises.

2. Each Party shall ensure that any regulatory body or competent authority exercising a regulatory function that the Party establishes or maintains:

(a) is independent from and not accountable to any of the enterprises that that regulatory body or competent authority regulates in order to ensure the effectiveness of the regulatory function; and

(b) acts impartially[96] in like circumstances with respect to all enterprises that that regulatory body or competent authority regulates, including state-owned enterprises, enterprises granted special rights or privileges and designated monopolies[97].

3. Each Party shall ensure the enforcement of laws and regulations in a consistent and non-discriminatory manner, including with respect to state-owned enterprises, enterprises granted special rights or privileges and designated monopolies.

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[96] For greater certainty, the impartiality with which the regulatory body or competent authority exercises its regulatory functions is to be assessed by reference to a general pattern or practice of that regulatory body or competent authority.

[97] For greater certainty, for those sectors in which the Parties have agreed to specific obligations relating to the regulatory body or competent authority in other Chapters, the relevant provision of those other Chapters shall prevail.

ARTICLE 22.8

Transparency

1. A Party shall, on written request of the other Party, promptly provide the following information concerning a state-owned enterprise, an enterprise granted special rights or privileges or a designated monopoly, provided that the request includes an explanation of how the activities of that state-owned enterprise, enterprise granted special rights or privileges or designated monopoly might be affecting the requesting Party's interests under this Chapter:

(a) the percentage of shares that the requested Party, its state-owned enterprises, enterprises granted special rights or privileges or designated monopolies cumulatively own, and the percentage of voting rights that they cumulatively hold, in the state-owned enterprise, enterprise granted special rights or privileges or designated monopoly;

(b) a description of any special shares or special voting rights or other special rights that the requested Party, its state-owned enterprises, enterprises granted special rights or privileges or designated monopolies hold, to the extent that those rights are different from the rights attached to the general common shares of such state-owned enterprise, enterprise granted special rights or privileges or designated monopoly;

(c) the organisational structure of the state-owned enterprise, enterprise granted special rights or privileges or designated monopoly, the composition of its board of directors or of an equivalent body, the official titles of any public official serving as an officer or member of the board of directors or that equivalent body;

(d) a description of the government departments or public bodies which regulate or monitor the state-owned enterprises, the enterprises granted special rights or privileges or the designated monopolies, a description of the reporting requirements imposed on them by those departments or public bodies if practicable, and the rights and practices[98] of those government departments or any public bodies with respect to the appointment, dismissal or remuneration of senior executives and members of the board of directors or any other equivalent body;

(e) annual revenue and total assets of the state-owned enterprise, enterprise granted special rights or privileges or designated monopoly over the most recent three-year period for which information is available;

(f) any exemptions and immunities from which the state-owned enterprise, enterprise granted special rights or privileges or designated monopoly benefits under the law of the requested Party; and

[98] For greater certainty, the term "practices" does not include the reasons for an appointment, dismissal or remuneration of senior executives and members of the board of directors or any other equivalent body.

(g) any additional information regarding the state-owned enterprise, enterprise granted special rights or privileges or designated monopoly that is publicly available, including annual financial reports and third-party audits.

2. If the requested information is not available, the requested Party shall provide the reasons therefor in writing to the requesting Party.

3. If a Party provides written information pursuant to a request in accordance with this Article and informs the requesting Party that it considers that information to be confidential, the requesting Party shall not disclose that information without the prior consent of the Party providing the information.

CHAPTER 23

COMPETITION POLICY

ARTICLE 23.1

General Principles

The Parties recognise the importance of free and undistorted competition in their trade and investment relations. The Parties acknowledge that anticompetitive business practices and State interventions have the potential to distort the proper functioning of markets and undermine the benefits of the liberalisation of trade and investment. The Parties share the view that prohibiting such conduct, implementing competition policy, promoting advocacy actions and cooperating on matters covered by this Chapter will help secure the benefits of this Agreement.

ARTICLE 23.2

Competition Law and Anticompetitive Business Practices

1. Each Party shall adopt or maintain in its territory comprehensive competition law which applies to all sectors of the economy[99] and addresses the following business practices in an effective manner:

(a) agreements between enterprises, decisions by associations of enterprises and concerted practices which have as their object or effect the prevention, restriction or distortion of competition;

(b) abuses by one or more enterprises, which individually or jointly have substantial power in the relevant market, and which abuses have or may have as their object or effect the prevention, restriction or distortion of competition in that relevant market or any related market; and

[99] For greater certainty, competition law in the EU applies to the agricultural sector in accordance with Regulation (EU) 1308/2013 of the European Parliament and of the Council establishing a common organisation of the markets in agricultural products and repealing Council Regulations (EEC) No 922/72, (EEC) No 234/79, (EC) No 1037/2001 and (EC) No 1234/2007, OJ EU L 347, 20.12.2013, p. 671. For greater certainty, the *Ley Federal de Competencia Económica* (Federal Economic Competition Law), published in the *Diario Oficial de la Federación* (Official Journal of the Federation) on 23 May 2014, applies to all sectors in Mexico for which the competition authorities elaborate their own regulations, criteria or guidelines in accordance with the 2013 Constitutional amendments, published in the *Diario Oficial de la Federación* (Official Journal of the Federation) on 11 June 2013.

(c) concentrations between enterprises which result or may result in a substantial lessening of competition or which significantly impede or may significantly impede effective competition, in particular as a result of the creation or strengthening of a dominant position.

2. All enterprises, private or public, shall be subject to the competition law referred to in this Article.

3. Each Party shall take appropriate action with respect to anticompetitive business practices, with the objective of promoting competition policy.

4. To the extent provided for in the law of a Party, the application of the competition law should not obstruct the performance, in law or in fact, of the particular tasks of public interest that may be assigned to enterprises. Exemptions from the competition law of a Party should be limited to tasks of public interest, proportionate to the desired public policy objective and transparent.

ARTICLE 23.3

Implementation

1. Each Party shall maintain its autonomy in amending and enforcing its competition law.

2. Each Party shall establish or maintain a functionally independent authority or authorities responsible for, and appropriately equipped with the powers and resources necessary for, the full application and the effective enforcement of their respective competition law.

3. Each Party shall apply its competition law in a transparent and non-discriminatory manner, respecting the principles of procedural fairness and the right of defence of the enterprises concerned, including the right to be heard prior to a final decision or resolution.

4. In their enforcement policy, the competition authority or authorities of a Party shall not discriminate on the basis of the nationality of the respondent in an enforcement procedure[100] or of the third persons granted a right to participate in such enforcement procedure.

5. Each Party shall ensure that a respondent in an enforcement procedure, carried out to determine whether that respondent's conduct violates its competition law or which administrative sanctions or remedies should be ordered for violation of that law, is afforded the opportunity to be heard and provide evidence in its defence. In particular, each Party shall ensure that the respondent has a reasonable opportunity to review and contest the evidence on which the determination is based.

[100] For the purposes of this Article, an enforcement procedure means a judicial or administrative procedure following an investigation into the alleged violation of the competition law.

6. Each Party shall guarantee that the addressee of a decision or resolution imposing an administrative sanction or a remedy for violation of its competition law is given the opportunity to seek judicial review of that decision or resolution.

ARTICLE 23.4

Transparency

1. The Parties recognise the value of transparency in their competition enforcement policies.

2. Each Party shall publish its administrative or procedural rules contained in legal acts pursuant to which its competition law investigations and enforcement procedures are conducted. Those administrative or procedural rules may, to the extent provided in each Party's competition law, include rules on reasonable timeframes for providing evidence in such procedures.

3. Each Party shall ensure that a non-confidential version of any final decision or resolution determining a violation of its competition law and, as the case may be, any order implementing such a resolution, is published in order to enable interested persons to become acquainted with them.

4. Each Party shall ensure that all final decisions or resolutions determining a violation of its competition law are in writing and set out the findings of fact and the reasoning, including the legal and, if applicable, economic analysis, on which the decision or resolution is based.

ARTICLE 23.5

Cooperation and Coordination

1. The Parties recognise the importance of cooperation and coordination between their respective competition authorities on matters related to their competition law and policies in the free trade area. Accordingly, the competition authorities of the Parties shall endeavour to cooperate on matters related to their respective competition law, including through assistance, notification, consultation, and exchange of information.

2. The Parties shall strengthen cooperation in the enforcement of their competition law to the extent compatible with their respective laws and important interests, and within the limits of their reasonably available resources. For that purpose, the competition authorities of the Parties shall endeavour to exchange non-confidential information, experiences and views with regard to:

(a) their respective competition law, policies and practices, including information about exemptions granted under their competition law;

(b) the enforcement of their respective competition law; and

(c) their respective advocacy actions.

3. The Parties shall endeavour to strengthen coordination between their respective competition authorities in areas of mutual concern and to the extent compatible with their respective laws and important interests, and within the limits of their reasonably available resources. For that purpose, the Parties shall endeavour to coordinate, to the extent possible, their enforcement activities relating to the same or related cases.

4. The Parties affirm that their competition authorities recognise the use of confidentiality waivers in their areas of enforcement and acknowledge that the decision of an enterprise to waive its right for the protection of confidential information is voluntary.

5. Nothing in this Article shall limit the discretion of the competition authorities of a Party to decide whether to take action on particular requests by the other Party's competition authorities.

6. Nothing in this Article shall preclude the competition authorities of either Party from taking action with respect to particular cases.

7. The Parties' competition authorities may consider entering into a separate cooperation arrangement that sets out mutually agreed terms for implementing cooperation.

ARTICLE 23.6

Technical Cooperation

The Parties consider that it is in their common interest to support the objectives of this Agreement with technical cooperation for the purposes of sharing experiences in developing and implementing competition policy and in enforcing their respective competition law, subject to the resources reasonably available to each Party.

ARTICLE 23.7

Consultations

1. To foster mutual understanding between the Parties, or to address specific matters on the interpretation or application of this Chapter, a Party shall, upon the request of the other Party, enter into consultations on matters raised by the other Party. The Party requesting consultations shall indicate, if relevant, how the matter affects trade or investment between the Parties.

2. The Parties shall promptly discuss any questions arising from the interpretation or application of this Chapter.

3. To facilitate discussion of the matter that is subject to consultations, each Party shall endeavour to provide relevant non-confidential information to the other Party.

ARTICLE 23.8

Confidentiality of Information

1. Notwithstanding any other provision of this Chapter, a Party is not required to provide information if the disclosure of that information is prohibited by the laws of the Party possessing the information.

2. If a Party provides information under this Chapter, the other Party shall maintain the confidentiality of that information.

3. If a Party's competition authorities receive confidential information from the competition authorities of the other Party subject to a confidentiality waiver, the Party's competition authorities shall use the information received in accordance with the terms of the waiver.

ARTICLE 23.9

Competition Authorities

For the purposes of this Chapter, the competition authorities are the following, or their successors:

(a) for the European Union: the European Commission; and

(b) for Mexico:

(i) National Antitrust Commission (*Comisión Nacional Antimonopolio*); and

(ii) Telecommunication Regulatory Commission (*Comisión Reguladora de Telecomunicaciones* (CRT)).

ARTICLE 23.10

Non-Application of Dispute Settlement

A Party shall not have recourse to dispute settlement under Chapter 31 (Dispute Settlement) concerning the interpretation or application of the provisions of this Chapter.

CHAPTER 24

SUBSIDIES

ARTICLE 24.1

Definitions

For the purposes of this Chapter:

(a) "subsidy provided for goods" means a measure which fulfils the conditions set out in Article 1.1 of the SCM Agreement and is specific in accordance with and within the meaning of Article 2 of the SCM Agreement.

(b) "subsidy provided for services" means a measure which involves a financial contribution by a government or a public body and confers a benefit to and is specific to an enterprise or industry or a group of enterprises or industries in accordance with and within the meaning of Article 2 of the SCM Agreement[101].

[101] This definition is without prejudice to the outcome of future discussions in the WTO on the definition of subsidies for services. Depending on the progress of those discussions, the Joint Council may adopt a decision to adapt this Agreement in this respect.

ARTICLE 24.2

General Principles

The Parties recognise that subsidies may be granted when they are necessary to achieve a public policy objective. The Parties acknowledge, however, that certain subsidies have the potential to distort the proper functioning of markets and undermine the benefits of the liberalisation of trade and investment. In principle, a Party should not grant subsidies to enterprises providing goods or services if they negatively affect, or are likely to negatively affect, trade or investment.

ARTICLE 24.3

Scope

1. This Chapter applies to subsidies to any enterprise pursuing an economic activity. If an enterprise combines economic and non-economic activities, this Chapter only applies to the economic activities of that enterprise.

2. This Chapter does not apply to subsidies granted to enterprises entrusted with the provision of particular services of public interest, including those entrusted through special rights or privileges, to the extent that such subsidies are limited to the amount necessary to cover the costs of the service in question.

3. This Chapter does not apply to subsidies provided for agricultural goods or subsidies provided for fish and fisheries products.

4. With the exception of Article 24.5, this Chapter does not apply to subsidies provided in the audio-visual sector.

5. Article 24.7 does not apply to subsidies provided for services.

ARTICLE 24.4

Relationship with the WTO

The Parties affirm their rights and obligations pursuant to Article XV of GATS, Article XVI of GATT 1994, and under the SCM Agreement.

ARTICLE 24.5

Transparency

1. Each Party shall, with respect to any subsidy granted or maintained within its territory, make the following information available to the public:

(a) the legal basis of the subsidy;

(b) the form of the subsidy;

(c) the amount of the subsidy or the amount budgeted for the subsidy; and

(d) if possible, the name of the recipient[102].

2. A Party shall be deemed to comply with paragraph 1 if:

(a) a notification is provided to the WTO pursuant to Article 25.1 of the SCM Agreement, and, if possible, the name of the recipient has been disclosed to the public; or

[102] Subparagraph 1(d) applies to subsidies of 500 000 special drawing rights and above.

(b) the information required in paragraph 1 has been made available by that Party or on its behalf on a publicly accessible website by 31 December of the calendar year subsequent to the one in which a subsidy was maintained or granted[103].

3. With respect to subsidies provided for services, this Article applies only if:

(a) the amount of the subsidy per beneficiary over a period of three consecutive years is above 400 000 special drawing rights; and

(b) the subsidy is granted for the provision of services in the following sectors: audio-visual, telecommunication, financial services, transport (including maritime transport), energy (including electricity distribution), environment, computer, architecture and engineering, construction, or postal and courier services.

[103] For greater certainty, the publication of a subsidy or subsidy programme on the website does not prejudge its legal status or the nature of the program itself.

ARTICLE 24.6

Consultations

1. If a Party considers that a subsidy granted by the other Party is negatively affecting, or is likely to negatively affect, its trade or investment, the former Party may express its concern to the other Party and request consultations on the matter. The requested Party shall accord full and sympathetic consideration to such a request.

2. During the consultations, the requesting Party may request the other Party to provide additional information about the subsidy, such as:

(a) the legal basis and policy objective or purpose of the subsidy;

(b) the form of the subsidy;

(c) the dates and duration of the subsidy and any other time limits attached to it;

(d) the eligibility requirements of the subsidy;

(e) the total or annual amount budgeted for the subsidy;

(f) the name of the recipient of the subsidy, if possible; and

(g) any other information permitting an assessment of the negative effects of the subsidy on trade or investment.

3. The requested Party shall provide a written response containing relevant information on the subsidy in question no later than 60 days after the date of receipt of the request referred to in paragraph 2. If any relevant information requested pursuant to paragraph 2 is not provided in the written response, the requested Party shall explain the absence of such information in its written response.

4. If the requesting Party, after receiving the information provided pursuant to paragraphs 2 and 3, informs the requested Party that it considers that the subsidy concerned has or may have a significant negative effect on its trade or investment, the requested Party shall use its best endeavours to eliminate or minimise those significant negative effects within one year thereafter.

ARTICLE 24.7

Subsidies Subject to Conditions

1. Each Party shall apply conditions to the following subsidies, in so far as they negatively affect or are likely to negatively affect trade or investment of the other Party, as follows:

(a) subsidies or legal arrangements whereby a government is responsible for covering debts or liabilities of certain enterprises are allowed subject to the condition that the coverage of those debts and liabilities is limited as regards the amount of those debts and liabilities or the duration of that responsibility;

(b) subsidies to ailing or insolvent enterprises or to those on the brink of insolvency are allowed subject to the following conditions:

(i) a credible restructuring plan has been prepared; that plan shall be based on realistic assumptions with a view to ensuring the return of the enterprise to long-term viability within a reasonable time period; and

(ii) enterprises other than small and medium-sized enterprises contribute to the costs of restructuring themselves.

2. Subparagraph 1(b) shall not be construed as preventing a Party from providing temporary liquidity support in the form of loan guarantees or loans for a time reasonably necessary to prepare a restructuring plan. Such temporary liquidity support shall be limited to the amount needed to keep the enterprise in business.

ARTICLE 24.8

Use of Subsidies

Each Party shall ensure that enterprises use the subsidies it has granted only for the policy objective or purpose for which they were granted[104].

ARTICLE 24.9

Non-Application of Dispute Settlement

A Party shall not have recourse to dispute settlement under Chapter 31 (Dispute Settlement) concerning the interpretation or application of Article 24.5, in so far as it concerns subsidies provided for services, or Article 24.6.4.

[104] For greater certainty, a Party is deemed to fulfil this obligation if it has set up the appropriate legislative framework and administrative procedures to that effect.

CHAPTER 25

INTELLECTUAL PROPERTY

SECTION A

General Provisions

ARTICLE 25.1

Objectives and Principles

1. The objective of this Chapter is to achieve an adequate and effective level of protection and enforcement of intellectual property rights in order to:

(a) contribute to the promotion of technological innovation and to the transfer and dissemination of technology, to the mutual advantage of producers and users of technological knowledge and in a manner conducive to social and economic welfare, and to a balance of rights and obligations; and

(b) promote and govern trade between the Parties as well as reduce distortions of and impediments to trade.

2. A Party may, in formulating or amending its laws and regulations, adopt measures necessary to protect public health and nutrition, and to promote the public interest in sectors of vital importance to their socio-economic and technological development, provided that such measures are consistent with this Chapter.

3. A Party may adopt appropriate measures, provided that they are consistent with the provisions of this Chapter, to prevent the abuse of intellectual property rights by right holders or the resort to practices which unreasonably restrain trade or adversely affect the international transfer of technology.

4. Taking into consideration the underlying public policy objectives of domestic systems, the Parties recognise the need to do the following through their respective intellectual property systems, while respecting the principle of transparency, and taking into account the interests of all relevant stakeholders, including right holders, users and the public:

(a) promote innovation and creativity;

(b) facilitate the diffusion of information, knowledge, technology, culture and the arts; and

(c) foster competition and open and efficient markets.

ARTICLE 25.2

Nature and Scope of Obligations

1. The Parties commit to ensure an adequate and effective implementation of the international treaties dealing with intellectual property to which they are parties, including the TRIPS Agreement. This Chapter shall complement and further specify the rights and obligations of the Parties under the TRIPS Agreement and other international treaties in the field of intellectual property to which they are parties.

2. For the purposes of this Chapter, "intellectual property rights" means all categories of intellectual property rights that are covered by Sections 1 to 7 of Part II of the TRIPS Agreement as well as plant variety rights. The protection of intellectual property includes protection against unfair competition as referred to in Article 10bis of the Paris Convention for the Protection of Industrial Property of 20 March 1883, as last revised at Stockholm on 14 July 1967 (hereinafter referred to as "Paris Convention").

3. Each Party shall give effect to the provisions of this Chapter. A Party may, but shall not be obliged to, provide more extensive protection for, or enforcement of, intellectual property rights under its law than is required by this Chapter, provided that such protection or enforcement does not contravene this Chapter. Each Party shall be free to determine the appropriate method of implementing this Chapter within its own legal system and practice.

ARTICLE 25.3

Exhaustion

This Chapter does not affect the freedom of the Parties to determine whether and under what conditions the exhaustion of intellectual property rights applies.

ARTICLE 25.4

National Treatment

1. Each Party shall accord to nationals[105] of the other Party treatment no less favourable than it accords to its own nationals with regard to the protection[106] of intellectual property rights covered by this Chapter, subject to the exceptions provided in, respectively, the Paris Convention, the Berne Convention for the Protection of Literary and Artistic Works of 9 September 1886, as last revised at Paris on 24 July 1971 (hereinafter referred to as "Berne Convention"), the International Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organisations, done at Rome on 26 October 1961 (hereinafter referred to as "Rome Convention"), or the Treaty on Intellectual Property in Respect of Integrated Circuits, done at Washington, D.C. on 26 May 1989. In respect of performers, producers of phonograms and broadcasting organisations, that obligation only applies in respect of the rights provided under this Agreement.

[105] For the purposes of this Chapter, the definition of nationals in the TRIPS Agreement applies.

[106] For the purposes of this provision, "protection" shall include matters affecting the availability, acquisition, scope, maintenance and enforcement of intellectual property rights as well as matters affecting the use of intellectual property rights specifically addressed in this Chapter.

2. A Party shall not, as a condition for according national treatment pursuant to this Article, require right holders to comply with any formalities or conditions in order to acquire rights in respect of copyright and related rights[107].

3. A Party may avail itself of the exceptions referred to in paragraph 1 in relation to judicial and administrative procedures, including the designation of an address for service or the appointment of an agent within its jurisdiction, only where such exceptions are:

(a) necessary to secure compliance with laws or regulations that are not inconsistent with this Chapter; and

(b) not applied in a manner that would constitute a disguised restriction on trade.

4. A Party shall not have any obligation pursuant to this Article with respect to procedures provided in multilateral agreements concluded under the auspices of the World Intellectual Property Organization (hereinafter referred to as "WIPO") relating to the acquisition or maintenance of intellectual property rights.

[107] This paragraph is without prejudice to Article 11 of the Rome Convention.

SECTION B

Standards Concerning Intellectual Property Rights

SUB-SECTION B.1

Copyright and Related Rights

ARTICLE 25.5

International Treaties

1. The Parties affirm their commitment to comply with the following international agreements:

(a) the Berne Convention;

(b) the Rome Convention;

(c) the WIPO Copyright Treaty, adopted in Geneva on 20 December 1996; and

(d) the WIPO Performances and Phonograms Treaty, adopted in Geneva on 20 December 1996.

2. The Parties shall make all reasonable efforts to comply with the provisions of the Beijing Treaty on Audiovisual Performances, adopted in Beijing on 24 June 2012, and the Marrakesh Treaty to Facilitate Access to Published Works for Persons Who Are Blind, Visually Impaired, or Otherwise Print Disabled, adopted in Marrakesh, on 27 June 2013.

ARTICLE 25.6

Authors

Each Party shall provide authors with the exclusive right to authorise or prohibit:

(a) the direct or indirect, temporary or permanent reproduction by any means and in any form, in whole or in part, of their works;

(b) any form of distribution to the public, by sale or otherwise, of the original of their works or of copies thereof;

(c) any communication to the public of their works, by wire or wireless means, including the making available to the public of their works in such a way that members of the public may access them from a place and at a time individually chosen by them; and

(d) the commercial rental to the public of originals or copies of their works.

ARTICLE 25.7

Performers

Each Party shall provide performers with the exclusive right to authorise or prohibit:

(a) the fixation[108] of their performances;

(b) the direct or indirect, temporary or permanent reproduction by any means and in any form, in whole or in part, of fixations of their performances;

(c) the distribution to the public, by sale or otherwise, of the fixations of their performances;

(d) the making available to the public of fixations of their performances, by wire or wireless means, in such a way that members of the public may access them from a place and at a time individually chosen by them;

(e) the broadcasting by wireless means and the communication to the public of their performances, except where the performance is itself already a broadcast performance or is made from a fixation; and

[108] "Fixation" means an embodiment of sounds or moving images, or of the representation thereof, from which they can be perceived, reproduced or communicated by means of a device.

(f) the commercial rental to the public of the fixation of their performances.

ARTICLE 25.8

Producers of Phonograms

Each Party shall provide producers with the exclusive right to authorise or prohibit:

(a) the direct or indirect, temporary or permanent reproduction by any means and in any form, in whole or in part, of their phonograms;

(b) the distribution to the public, by sale or otherwise, of their phonograms, including copies thereof;

(c) the making available to the public of their phonograms, by wire or wireless means, in such a way that members of the public may access them from a place and at a time individually chosen by them; and

(d) the commercial rental of their phonograms to the public.

ARTICLE 25.9

Broadcasting Organisations

Each Party shall provide broadcasting organisations with the exclusive right to authorise or prohibit[109]:

(a) the fixation of their broadcasts, whether those broadcasts are transmitted by wire or over the air, including by cable or satellite;

(b) the direct or indirect, temporary or permanent reproduction by any means and in any form, in whole or in part, of fixations of their broadcasts, whether those broadcasts were transmitted by wire or over the air, including by cable or satellite;

(c) the making available to the public, by wire or wireless means, of fixations of their broadcasts, whether those broadcasts were transmitted by wire or over the air, including by cable or satellite, in such a way that members of the public may access them from a place and at a time individually chosen by them;

[109] For Mexico, this provision is without prejudice to the requirement to comply with its obligations under its Telecommunication and Broadcasting Law (*Ley en Materia de Telecomunicaciones y Radiodifusión*), as published in its Official Journal on 16 July 2025.

(d) the distribution to the public, by sale or otherwise, of fixations, including copies thereof, of their broadcasts, whether those broadcasts were transmitted by wire or over the air, including by cable or satellite; and

(e) the rebroadcasting of their broadcasts by wireless means, as well as the communication to the public of their broadcasts if such communication is made in places accessible to the public against payment of an entrance fee.

ARTICLE 25.10

Broadcasting and Communication to the Public of Phonograms Published for Commercial Purposes[110]

1. Each Party shall provide performers and producers of phonograms with the right to a single equitable remuneration paid by the user if a phonogram published for commercial purposes, or a reproduction of such phonogram, is used for broadcasting by wireless means or for any communication to the public[111].

[110] Each Party may grant to performers and producers of phonograms more extensive rights as regards the broadcasting and communication to the public of phonograms published for commercial purposes.

[111] For the purpose of this Article, "communication to the public" does not include the making available to the public of a phonogram, by wire or wireless means, in such a way that members of the public may access it from a place and at a time individually chosen by them.

2. The Parties recognise that the single equitable remuneration should be distributed between the performers and producers of the corresponding phonograms. Each Party may enact legislation that, in the absence of an agreement between performers and producers of phonograms, sets out the terms according to which performers and producers of phonograms are to share the single equitable remuneration.

ARTICLE 25.11

Term of Protection

1. The rights of the author of a work shall run for the life of the author and for at least 70 years after the death of the author, irrespective of the date when the work is lawfully made available to the public.

2. The term of protection of a musical composition with words shall expire not less than 70 years after the death of the last of the following persons to survive, whether or not those persons are designated as co-authors: the author of the lyrics and the composer of the musical composition[112].

[112] A Party may decide that the application of this paragraph requires that both contributions were specifically created for the musical composition with words concerned.

3. In the case of anonymous or pseudonymous works, the term of protection shall expire at least 70 years after the work is lawfully made available to the public. However, if the pseudonym adopted by the author leaves no doubt as to the author's identity, or if the author discloses his or her identity during the period referred to in the first sentence, the term of protection laid down in paragraph 1 applies.

4. The term of protection of cinematographic or audiovisual works shall expire at least 70 years after the death of the last of at least the following persons to survive, whether or not those persons are designated as co-authors: the principal director, the author of the screenplay, the author of the dialogue and the composer of the music[113].

5. The rights of broadcasting organisations shall expire not less than 50 years after the first transmission of a broadcast, whether that broadcast is transmitted by wire or over the air, including by cable or satellite.

[113] A Party may decide that the music must be specifically created for the use in the cinematographic or audiovisual work concerned.

6. Each Party shall provide[114] that:

(a) the term of protection of the rights of performers shall expire 75 years after the first fixation of the performance in a phonogram, or the first performance of works not fixated in phonograms, or the transmission for the first time by any means; and

(b) the term of protection of the rights of producers of phonograms shall expire 75 years after the first fixation of the sounds in the phonogram.

Alternatively, a Party shall provide that:

(c) the rights of performers for their performances fixed otherwise than in a phonogram shall expire not less than 50 years after the fixation of the performance and, if published within this period, not less than 50 years after the first lawful publication; and

(d) the rights of performers for their performances fixed in phonograms and of producers of phonograms shall expire not less than 50 years after the fixation of the performance in the phonogram and, if published within this period, not less than 70 years after the first lawful publication; the Party shall take effective measures to ensure that the profit generated during the 20 years of protection beyond 50 years after the first lawful publication is shared fairly between the performers and the producers of phonograms.

[114] For greater certainty, each Party shall choose between the option referred to in subparagraphs (a) and (b) or the alternative referred to in subparagraphs (c) and (d), based on its domestic legislation.

7. The terms of protection set out in this Article shall be calculated from 1 January of the year following the event.

ARTICLE 25.12

Resale Right

1. Each Party shall provide, for the benefit of the author of works of graphic or plastic art, except for applied works of art, a resale right, defined as an inalienable right, which cannot be waived, even in advance, to receive a participation[115] in the price obtained from any resale of that work, after the first transfer of that work by the author[116].

2. The right referred to in paragraph 1 applies to all acts of resale involving art market professionals, such as salesrooms, art galleries and, in general, any dealers in works of art, as sellers, buyers or intermediaries.

[115] A Party may express this participation as a percentage of the resale price.
[116] A Party may establish minimum conditions for the application of the resale right.

ARTICLE 25.13

Cooperation on Collective Management of Rights

1. The Parties shall promote cooperation between their respective collective management organisations for the purposes of fostering the availability of works and other protected subject-matter in the territories of the Parties and the transfer of revenue from the rights for the use of such works or other protected subject-matter.

2. The Parties agree to promote transparency and non-discrimination among entitled members of collective management organisations, in particular as regards the revenue from the rights they collect, deductions they apply to such revenue, the use of the rights revenue collected, the distribution policy and their repertoire.

ARTICLE 25.14

Exceptions and Limitations

Each Party shall confine exceptions or limitations to the rights set out in this Sub-Section to certain special cases that do not conflict with a normal exploitation of the work, performance, phonogram, or broadcast, and do not unreasonably prejudice the legitimate interests of the right holder.

ARTICLE 25.15

Protection of Technological Measures

1. Each Party shall provide adequate legal protection against the circumvention of any effective technological measures, which a person carries out in the knowledge, or with reasonable grounds to know, that he or she is pursuing the objective of circumvention.

2. Each Party shall provide adequate legal protection against the manufacture, import, distribution, sale, rental, advertisement for sale or rental, or possession for commercial purposes of devices, products or components or the provision of services which:

(a) are promoted, advertised or marketed for the purpose of circumventing any effective technological measures;

(b) have only a limited commercially significant purpose or use other than to circumvent effective technological measures; or

(c) are primarily designed, produced, adapted or performed for the purpose of enabling or facilitating the circumvention of any effective technological measures.

3. For the purposes of this Article, "technological measures" means any technology, device or component that, in the normal course of its operation, is designed to prevent or restrict acts, in respect of works or other subject-matter, which are not authorised by the right holder of any copyright or related right as provided for by the law of the Party concerned. Technological measures shall be deemed "effective" where the use of a protected work or other subject-matter is controlled by the right holder through the application of an access control or protection process, such as encryption, scrambling or other transformation of the work or other subject-matter, or a copy control mechanism, which achieves the objective of protection.

4. Notwithstanding the legal protection provided for in paragraph 1, in the absence of voluntary measures taken by the right holders, each Party may take appropriate measures, as necessary, to ensure that the adequate legal protection against the circumvention of effective technological measures provided for in accordance with this Article does not prevent beneficiaries from enjoying exceptions and limitations provided for in accordance with Article 25.14.

ARTICLE 25.16

Obligations Concerning Rights-Management Information

1. Each Party shall provide adequate legal protection against any person knowingly performing, without authority, any of the following acts, if such person knows, or has reasonable grounds to know, that by so doing he or she is inducing, enabling, facilitating or concealing an infringement of any copyright or any related rights:

(a) the removal or alteration of any electronic rights-management information; or

(b) the distribution, importation for distribution, broadcasting, communication or making available to the public of works or other subject-matter protected under this Sub-Section from which electronic rights-management information has been removed or altered without authorisation.

2. For the purposes of this Sub-Section, "rights-management information" means any information provided by right holders which identifies the work or other subject-matter referred to in this Sub-Section, the author or any other right holder, any information about the terms and conditions of use of the work or other subject-matter, or any numbers or codes that represent such information.

3. Paragraph 2 applies where any of the items referred to in that paragraph is associated with a copy of, or appears in connection with the communication to the public of, a work or other subject-matter referred to in this Sub-Section.

SUB-SECTION B.2

Trademarks

ARTICLE 25.17

International Agreements

Each Party:

(a) shall make all reasonable efforts to adhere to the Trademark Law Treaty, done at Geneva on 27 October 1994, and to the Singapore Treaty on the Law of Trademarks, done at Singapore on 27 March 2006;

(b) shall adhere to the Protocol Relating to the Madrid Agreement concerning the International Registration of Marks, adopted at Madrid on 27 June 1989, as last amended on 12 November 2007, and to the Nice Agreement Concerning the International Classification of Goods and Services for the Purposes of the Registration of Marks, done at Nice on 15 June 1957, as amended on 28 September 1979 (hereinafter referred to as "Nice Classification").

ARTICLE 25.18

Registration Procedure

1. Each Party shall establish a system for the registration of trademarks in which each final negative decision, including the partial refusal of registration issued by the relevant trademark administration, shall be notified in writing, duly reasoned and open to challenge.

2. Each Party shall provide for the possibility to oppose applications to register trademarks or, if appropriate, trademark registrations, and for the opportunity for the trademark applicant to respond to such opposition[117].

[117] Each Party shall make all reasonable efforts to adopt an adversarial procedure for the opposition.

3. Each Party shall provide a publicly available electronic database of applications and registrations of trademarks.

ARTICLE 25.19

Rights Conferred by a Trademark

1. A registered trademark shall confer on the proprietor exclusive rights therein. The proprietor shall be entitled to prevent all third parties not having his consent from using in the course of trade:

(a) any sign which is identical to the trademark in relation to goods or services which are identical to those for which the trademark is registered; and

(b) any sign where, because of its identity with, or similarity to, the trademark and the identity or similarity of the goods or services covered by the trademark and the sign, there exists a likelihood of confusion on the part of the public, which includes the likelihood of association between the sign and the trademark.

2. The proprietor of a registered trademark shall be entitled to prevent all third parties from bringing, in the course of trade, goods into the territory of the Party where the trademark is registered without being released for free circulation there, if such goods, including packaging, come from third countries and bear without authorisation a trademark which is identical to the trademark registered in respect of such goods, or which cannot be distinguished in its essential aspects from that trademark[118].

ARTICLE 25.20

Well-known Trademarks

For the purposes of giving effect to the protection of well-known trademarks, as referred to in Article 6bis of the Paris Convention and paragraphs 2 and 3 of Article 16 of the TRIPS Agreement, each Party shall apply the Joint Recommendation Concerning Provisions on the Protection of Well-Known Marks, adopted by the Assembly of the Paris Union for the Protection of Industrial Property and the General Assembly of the WIPO at the Thirty-Fourth Series of Meetings of the Assemblies of the Member States of WIPO on 20 to 29 September 1999.

[118] A Party may provide that the entitlement of the proprietor of the trademark shall lapse if, during the proceedings to determine whether there was a breach of the registered trademark, evidence is provided by the declarant or the holder of the goods that the proprietor of the registered trademark is not entitled to prohibit the placing of the goods on the market in the country of final destination.

ARTICLE 25.21

Bad Faith Applications

Each Party may provide that a trademark shall not be registered if the application for registration of the trademark was made in bad faith by the applicant. Each Party shall provide that such a trademark shall be declared invalid if it has been registered.

ARTICLE 25.22

Cancellation

1. Each Party shall provide that a trademark shall be liable to cancellation[119] if, within a period of time determined by its law, the trademark has not been used[120] in the relevant territory in connection with the goods or services in respect of which it is registered, and there are no proper reasons for non-use.

[119] For greater certainty, a Party may define cancellation as revocation, expiration or nullity.

[120] A Party may require that the use is of genuine character or made in a quantity or manner corresponding to commercial use. A Party may further decide to disregard the commencement or resumption of use just before the filing of the cancellation request.

2. A trademark shall also be liable to cancellation if, after the date on which it was registered, in consequence of acts or inactivity of the proprietor, it has become the common name in the trade for a product or service in respect of which it is registered.

3. A trademark shall also be liable to cancellation if it was registered despite being capable of deceiving the public as to the nature, quality or geographical origin of the goods or services for which it was registered[121].

ARTICLE 25.23

Exceptions to the Rights Conferred by a Trademark

Provided that the legitimate interests of the owners of the trademarks and of third parties are taken into account, each Party:

(a) shall provide for the fair use of descriptive terms[122] as a limited exception to the rights conferred by trademarks; and

[121] For greater certainty, a Party may also cancel a trademark if, as a consequence of the use made of it by the proprietor of the trademark or with his consent in respect of the goods or services for which it is registered, it is liable to mislead the public.

[122] The fair use of descriptive terms includes the use of a sign to indicate the geographic origin of the goods or services, where such use is in accordance with honest practices in industrial or commercial matters.

(b) may provide for other limited exceptions.

SUB-SECTION B.3

Industrial Designs

ARTICLE 25.24

International Agreements

Each Party shall make all reasonable efforts to accede to the Geneva Act of the Hague Agreement Concerning the International Registration of Industrial Designs, adopted at Geneva on 2 July 1999.

ARTICLE 25.25

Protection of Registered Industrial Designs

1. Each Party shall provide for the protection of independently created industrial designs that are new or original[123]. That protection shall be provided by registration and shall confer an exclusive right upon their holders in accordance with this Sub-Section.

2. The holder of a registered industrial design shall have the right to prevent third parties not having the holder's consent at least from using and notably making, offering for sale, selling, putting on the market or importing a product, or using articles bearing or embodying the protected industrial design, if such acts are undertaken for commercial purposes, unduly prejudice the normal exploitation of the industrial design, or are not compatible with fair trade practice.

3. An industrial design applied to or incorporated in a product which constitutes a component part of a complex product shall only be considered to be new or original:

(a) if the component part, once it has been incorporated into the complex product, remains visible during normal use of the latter; and

(b) to the extent that those visible features of the component part fulfil in themselves the requirements as to novelty or originality.

[123] If the law of a Party so provides, individual character of industrial designs may also be required.

4. "Normal use" referred to in subparagraph 3(a) means use by the end user, excluding maintenance, servicing or repair work.

ARTICLE 25.26

Term of Protection

The term of protection shall be determined by each Party and may be renewable for one or more periods of five years each, up to a total term of protection of 25 years from the date of filing of the application.

ARTICLE 25.27

Exceptions and Exclusions

1. Each Party may provide limited exceptions to the protection of industrial designs, provided that such exceptions do not unreasonably conflict with the normal exploitation of protected industrial designs and do not unreasonably prejudice the legitimate interests of the holder of the protected industrial design, taking account of the legitimate interests of third parties.

2. Industrial design protection shall not extend to designs dictated essentially by technical or functional considerations. In particular, an industrial design shall not be protected if it consists of features of appearance of a product which must necessarily be reproduced in their exact form and dimensions in order to permit the product in which the industrial design is incorporated, or to which it is applied, to be mechanically connected to, or placed in, around or in contact with another product so that either product may perform its function.

3. By way of derogation from paragraph 2, an industrial design right may subsist in an industrial design which has the purpose of allowing the multiple assembly or connection of mutually interchangeable products within a modular system.

ARTICLE 25.28

Relation to Copyright

An industrial design shall also be eligible for protection under the law of copyright of a Party as from the date on which the industrial design was created or fixed in any form. The extent to which, and the conditions under which, such a copyright protection is conferred, including the level of originality required, shall be determined by each Party.

SUB-SECTION B.4

Geographical Indications

ARTICLE 25.29

Definitions

For the purposes of this Sub-Section:

(a) "geographical indication" means an indication which identifies 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; and

(b) "product class" means the class of a product taking into consideration the Nice Classification.

ARTICLE 25.30

International Agreements

1. The Parties affirm their commitment to protect geographical indications in their territory in accordance with Articles 22, 23 and 24 of the TRIPS Agreement.

2. Each Party shall make all reasonable efforts to adhere to the Geneva Act of the Lisbon Agreement for the Protection of Appellations of Origin and their International Registration, adopted at Geneva on 20 May 2015.

ARTICLE 25.31

Scope

1. This Sub-Section applies to the recognition and protection of geographical indications identifying goods falling within the relevant product class and listed in Annex 25-B.

2. The Parties shall consider extending the scope of geographical indications covered by this Sub-Section to geographical indications in product classes other than food and agricultural goods. For that reason, the Parties have included in Annex 25-C names identifying goods originating and protected in their territory that, provided that the scope of protection of this Agreement is extended, will be considered to be included under the scope of protection of this Agreement subject to the conclusion of the procedures set out in this Sub-Section[124].

ARTICLE 25.32

Listed Geographical Indications

For the purposes of this Sub-Section, the geographical indications listed in:

(a) Section A of Annex 25-B are geographical indications which identify a good as originating in the territory of the European Union or a region or locality in that territory; and

(b) Section B of Annex 25-B are geographical indications which identify a good as originating in the territory of Mexico or a region or locality in that territory.

[124] The Parties recognise that, for the purpose of assessment of trademark applications, insofar as this is relevant under the law of a Party, those names are protected in the country of origin.

ARTICLE 25.33

Established Geographical Indications

Having considered the names listed in Annex 25-B and having completed an opposition procedure in accordance with Annex 25-A, each Party shall protect those geographical indications according to the level of protection laid down in this Sub-Section.

ARTICLE 25.34

Protection of Geographical Indications Listed in Annex 25-B

1. Each Party shall provide the legal means for interested parties to prevent:

(a) the use of a geographical indication of the other Party listed in Annex 25-B[125] for a good that falls within the product class for that geographical indication and that either:

(i) does not originate in the place of origin specified in Annex 25-B for that geographical indication; or

[125] As regards the list of geographical indications set out in Annex 25-B, the protection provided in accordance with this Article does not cover individual terms which are part of a compound geographical indication name as set out in Appendix 25-B-1.

(ii) originates in the place of origin specified in Annex 25-B for that geographical indication but was not produced or manufactured in accordance with the laws and regulations of the other Party that would apply if the good were for consumption in the other Party;

(b) the use of any means in the designation or presentation of a good that indicates or suggests that the good in question originates in a geographical area other than the true place of origin in a manner which misleads the public as to the geographical origin of the good; and

(c) any other use which constitutes an act of unfair competition within the meaning of Article 10bis of the Paris Convention.

2. Each Party shall provide the protection referred to in subparagraph 1(a) even where the true origin of the good is indicated, or the geographical indication is used in translation or the geographical indication is accompanied by expressions such as "kind", "type", "style", "imitation" or the like.

3. Each Party shall provide for enforcement, by administrative action and in the form provided for by its law, against:

(a) any direct or indirect commercial use of a protected name;

(b) any imitation, variation or deceiving use of a protected name;

(c) any false or misleading indication of a protected name; or

(d) any practice likely to mislead the consumer as to the true origin, provenance and nature of the good.

4. The geographical indications protected under this Sub-Section shall not become generic in the territories of the Parties.

5. Nothing in this Sub-Section shall oblige a Party to protect a geographical indication of the other Party which is not or has ceased to be protected in the territory of the originating Party. Each Party shall notify the other Party if a geographical indication ceases to be protected in its territory. That notification shall take place within three months after the competent authority issues its final determination that the geographical indication has ceased to be protected.

6. The provisions of this Article shall apply, *mutatis mutandis*, to the list of names in Annexes I and II to the Agreement between the European Community and the United Mexican States on the mutual recognition and protection of designations for spirit drinks, done at Brussels on 27 May 1997 (hereinafter referred to as the "Spirits Agreement").

ARTICLE 25.35

Modification of the List of Geographical Indications

1. The Joint Council, in accordance with Article 25.42, may decide to modify Annex 25-B by adding or correcting geographical indications, or by removing geographical indications which have ceased to be protected or have fallen into disuse in their place of origin. The Sub-Committee on Intellectual Property established by subparagraph 1(k) of Article 1.10 (Sub-Committees and Other Bodies of Part III of this Agreement) shall prepare such decisions.

2. New geographical indications shall be added by a decision of the Joint Council after the names submitted have been considered and an opposition procedure as referred to in Article 25.33 has been completed.

3. The Joint Council may amend, by decision, Annexes I and II to the Spirits Agreement, following the procedure referred to in Article 25.33 in the case of new geographical indications.

ARTICLE 25.36

Right of Use of Geographical Indications

1. A geographical indication protected under this Sub-Section may be used by any operator marketing a good which conforms to the corresponding technical specifications.

2. Once a geographical indication is protected under this Sub-Section, the use of that protected geographical indication shall not be subject to any registration of users or other requirements.

3. Indications, abbreviations and symbols referring to a geographical indication shall only be used in relation to the good protected or registered in the respective territory and produced in conformity with the corresponding technical specifications.

ARTICLE 25.37

Relation between Trademarks and Geographical Indications

1. This Sub-Section shall be without prejudice to the rights conferred by a prior trademark applied for or registered in good faith, or acquired through use in good faith, in the territory of a Party. As a limited exception to the rights conferred by a trademark, in certain circumstances a prior trademark may not entitle its owner to prevent a registered geographical indication from being granted protection or being used in the Party in which the trademark is applied for, registered or used. The protection of the registered geographical indication shall not limit in any other way the rights conferred by that trademark, including the possibility to request renewals or variations of a distinctive sign provided that the variation does not constitute an act of unfair competition.

2. A Party shall not be required to protect a name as a geographical indication pursuant to Article 25.34 if, in light of a trademark's reputation and renown and the length of time it has been used, that name is likely to mislead the consumer as to the true identity of the good.

3. Subject to Article 25.39 and building upon paragraph 3 of Article 22 of the TRIPS Agreement, in respect of geographical indications listed in Annex 25-B to this Agreement and remaining protected as geographical indications by the Party of origin, a Party shall refuse or invalidate *ex officio*, if permitted by its law or at the request of an interested party, the registration of a trademark, provided that:

(a) the registration of the trademark for goods would be inconsistent with Article 25.34;

(b) the trademark relates to the same or a similar good;

(c) the trademark relates to goods not having the origin of the geographical indication concerned; and

(d) the application to register the trademark is submitted after the date of submission of the application for protection of the geographical indication in the territory of the Party concerned.

4. For geographical indications referred to in Article 25.32, the date of submission of the application for protection referred to in subparagraph 3(d) of this Article shall be the date of the signing of this Agreement.

5. For new geographical indications, as referred to in Article 25.35.2, the date of submission of the application for protection referred to in subparagraph 3(d) of this Article shall be the date of the publication of the geographical indication in the opposition procedure.

6. Protection provided to the geographical indications listed in Annex 25-B shall commence no earlier than the date of entry into force of this Agreement.

ARTICLE 25.38

Enforcement of Protection

Each Party shall enforce the protection provided for in Articles 25.34 to 25.37 by way of appropriate administrative or judicial procedures, in accordance with its law and practice. The competent authorities shall enforce that protection in any or both of the following ways:

(a) on their own initiative; or

(b) on request of an interested party.

ARTICLE 25.39

General Rules

1. A Party shall not be required to protect a name as a geographical indication under this Sub-Section if that name conflicts with the name of a plant variety or an animal breed and as a result is likely to mislead the consumer as to the true origin of the good.

2. A homonymous name which is likely to mislead the consumer into believing that a good comes from another territory shall not be registered as a geographical indication even if the name is accurate as far as the actual territory, region or locality of origin of the good is concerned. Without prejudice to Article 23 of the TRIPS Agreement, the Parties shall jointly decide the practical conditions under which wholly or partially homonymous geographical indications will be differentiated from each other, taking into account the need to ensure equitable treatment of the producers concerned and that consumers are not misled.

3. If a Party, in the context of bilateral negotiations with a third country, proposes to protect a geographical indication of that third country which is wholly or partially homonymous with a geographical indication of the other Party, it shall inform the other Party, which shall be given the opportunity to comment before the geographical indication of the third country is protected.

4. A technical specification referred to in this Sub-Section shall be approved, including any amendments, by the authorities of the Party in the territory from which the good originates.

ARTICLE 25.40

Exceptions

1. Nothing in this Sub-Section shall require a Party to apply the provisions of this Sub-Section in respect of a geographical indication, or an individual term contained in a multi-component geographical indication, of the other Party with respect to goods or services for which the relevant indication is identical to the term customary in common language as the common name for such goods or services in the territory of that Party.

2. If a translation of a geographical indication is identical to or contains a term customary in common language as the common name for a good in the territory of a Party, or if a geographical indication is not identical to but contains that term, this Sub-Section shall be without prejudice to the right of any person to use that term in association with that good in the territory of that Party.

3. In determining whether a term is the term customary in common language as the common name for a good in the territory of a Party, that Party's authorities shall have the authority to take into account how consumers understand that term in its territory. Factors relevant to that consumer understanding may include:

(a) whether the term is used to refer to the type of good in question, as indicated by competent sources such as dictionaries, newspapers and relevant websites; and

(b) how the good referenced by the term is marketed and used in trade in the territory of that Party[126].

4. Nothing in this Sub-Section shall prevent the use in the territory of a Party, with respect to any good, of a customary name of a plant variety or an animal breed, existing in the territory of that Party as of the date of entry into force of this Agreement.

5. Nothing in this Agreement shall prejudice the right of any person to use, in the course of trade, that person's name or the name of that person's predecessor in business, except where such name is used in such a manner as to mislead the public.

ARTICLE 25.41

Incorporation of Existing Agreement

1. The Spirits Agreement is incorporated into and made part of this Agreement, and applies *mutatis mutandis*[127].

[126] For the purposes of this subparagraph, the authorities of a Party may take into account, as appropriate, whether the term is used in relevant international standards recognised by that Party to refer to a type or class of good in its territory.

[127] For greater certainty, this includes all past and future amendments of the Spirits Agreement.

2. The Sub-Committee on Intellectual Property shall replace the Joint Committee established by Article 17 of the Spirits Agreement and fulfil the functions set out in that Article.

ARTICLE 25.42

Cooperation

1. The Sub-Committee on Intellectual Property shall be the appropriate forum for monitoring the implementation and administration of this Sub-Section.

2. The Parties shall notify each other if a geographical indication listed in Annex 25-B ceases to be protected in the territory of the Party concerned. Following such notification, the Sub-Committee on Intellectual Property shall prepare for the Joint Council the decision to modify Annex 25-B in accordance with the procedures set out in this Agreement.

3. A Party may, either directly or through the Sub-Committee on Intellectual Property, request the other Party to provide information relating to technical specifications and their amendments.

4. Each Party may make publicly available the technical specifications corresponding to the geographical indications of the other Party protected under this Sub-Section, in Spanish or English[128].

5. Any matter arising from technical specifications of protected geographical indications shall be dealt with by the Sub-Committee on Intellectual Property.

ARTICLE 25.43

Protection under the law of a Party

This Sub-Section is without prejudice to the right of a holder of a geographical indication in one Party to seek recognition and protection of a geographical indication in the other Party under the law of that Party.

[128] Mexico may make those technical specifications publicly available in Spanish or English.

SUB-SECTION B.5

Patents

ARTICLE 25.44

International Agreements

Each Party shall adhere to the Patent Cooperation Treaty, done at Washington on 19 June 1970, as amended on 28 September 1979 and last modified on 3 October 2001, and recognise the importance of adopting or maintaining procedural standards consistent with the Patent Law Treaty, adopted in Geneva on 1 June 2000.

ARTICLE 25.45

Patents and Public Health

1. The rights and obligations established in this Sub-Section do not and shall not prevent a Party from taking measures to protect public health. The Parties recognise the importance and affirm their commitment to the Declaration on the TRIPS Agreement and Public Health, adopted in Doha on 14 November 2001 (hereinafter referred to as the "Doha Declaration"). In interpreting and implementing the rights and obligations under this Sub-Section, the Parties shall ensure consistency with the Doha Declaration.

2. The Parties shall contribute to the implementation and respect the decision of the WTO General Council of 30 August 2003 on implementation of paragraph 6 of the Doha Declaration as well as the Protocol of 6 December 2005 amending the TRIPS Agreement.

ARTICLE 25.46

Supplementary Protection in Case of Delays in Marketing Approval for Pharmaceutical Products Including Biologic Products[129]

1. The Parties recognise that pharmaceutical products, including biologic products[130], protected by a patent in their respective territory may be subject to an administrative approval[131] procedure before being put on the market. They recognise that the period that elapses between the filing of the application for a patent and the approval to place the product on their respective market, as defined for that purpose by the relevant law of a Party, may shorten the period of effective protection under the patent.

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[129] Mexico shall implement the obligations provided for in this Article no later than two years after the entry into force of this Agreement.

[130] Each Party shall determine which products fall under the terms "pharmaceutical products" and "biologic products" in accordance with its law in place on 21 April 2018.

[131] For greater certainty, the term "marketing approval" is equivalent to the term "marketing authorisation".

2. Each Party shall provide for an adequate and effective mechanism to compensate the patent owner for the reduction of the period of effective protection under the patent resulting from unreasonable delays[132] in the granting of the first marketing approval in its territory. Such compensation shall take the form of a supplementary *sui generis* protection, the term of which shall be equal to the time constituting the unreasonable delay. The maximum term of this supplementary protection shall not exceed five years[133].

3. As an alternative to the compensation mechanism referred to in paragraph 2, a Party may make available an extension, not exceeding five years[134], of the duration of the rights conferred by the patent protection to compensate the patent owner for the reduction of the period of effective protection under the patent resulting from the marketing approval procedure. Such extension of the duration shall take effect at the end of the lawful term of the patent for a period equal to the period which elapsed between the date on which the application for a patent was filed and the date of the first approval to place the product on the market in that Party, reduced by a period of five years.

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132 For the purposes of this Article, an "unreasonable delay" includes a delay of more than two years in the first response to the applicant following the date of filing of the application for marketing approval. Any delays that occur in the granting of a marketing approval due to periods attributable to the applicant or any period that is out of control of the marketing approval authority need not be included in the determination of such delay.

133 If a Party complies with this paragraph, that Party is not obliged to comply with the alternative provided in paragraph 3.

134 This period can be extended for six months in the case of pharmaceutical products if paediatric studies have been carried out and the results of those studies are reflected in the product information.

4. In implementing the obligations of this Article, each Party may determine conditions and limitations, provided that the Party continues to comply with this Article.

5. Each Party shall make best efforts to process applications for marketing approval of pharmaceutical products in an efficient and timely manner, with a view to avoiding unreasonable or unnecessary delays. With the objective of avoiding unreasonable delays, a Party may adopt or maintain procedures that expedite the processing of marketing approval application.

SUB-SECTION B.6

Plant Varieties

ARTICLE 25.47

International Agreements

Each Party shall protect plant varieties rights, in accordance with the International Convention for the Protection of New Varieties of Plants, adopted in Paris on 2 December 1961, as lastly revised in Geneva on 19 March 1991, including the exceptions to the breeder's right as referred to in Article 15 of that Convention, and cooperate to promote and enforce these rights[135].

[135] Mexico shall implement this provision no later than four years after the date of entry into force of this Agreement.

SUB-SECTION B.7

Protection of Undisclosed Information

ARTICLE 25.48

Scope of Protection of Trade Secrets

1. In the course of ensuring effective protection against unfair competition as provided in Article 10bis of the Paris Convention, each Party shall provide the legal means, including administrative or civil judicial proceedings[136], to enable any person to prevent trade secrets from being disclosed to, acquired by, or used by others without the consent of the person lawfully in control of the information in a manner contrary to honest commercial practices[137]. For the purposes of this Sub-Section, trade secrets encompass undisclosed information as provided for in paragraph 2 of Article 39 of the TRIPS Agreement.

[136] For greater certainty, a Party may provide those legal means through criminal procedures in accordance with its law.

[137] A Party may consider not to apply these procedures if the conduct contrary to honest commercial practices is carried out, in accordance with its law, with a view to revealing misconduct, wrongdoing or an illegal activity or for the purpose of protecting a legitimate interest recognised by its law.

2. For the purposes of this Sub-Section, a Party shall consider at least the following conduct to be contrary to honest commercial practices:

(a) the acquisition of a trade secret without the consent of the trade secret holder, whenever carried out by unauthorised access to, appropriation of, or copying of any documents, objects, materials or electronic files, lawfully under the control of the trade secret holder, containing the trade secret or from which the trade secret can be deduced; or

(b) the use or disclosure of a trade secret without the consent of the trade secret holder, whenever carried out by a person who acquired the trade secret unlawfully or in breach of a confidentiality agreement or of any other duty not to disclose the trade secret or to limit its use[138,139].

[138] For greater certainty, the criteria provided in the laws and regulations of each Party contain the breach of a duty to limit the use of a trade secret.

[139] For greater certainty, the European Union considers that the following situations do not fall under this paragraph:
(a) independent discovery or creation by a person of the relevant information;
(b) reverse engineering of a product by a person who is lawfully in possession of it and who is free from any legally valid duty to limit the acquisition of the relevant information;
(c) acquisition, use or disclosure of information required or allowed by the law of a Party;
(d) use by employees of their experience and skills honestly acquired in the normal course of their employment; or
(e) disclosure of information in the exercise of the right to freedom of expression and information.

ARTICLE 25.49

Administrative or Civil Judicial Proceedings of Trade Secrets

1. Each Party shall ensure that any person participating in the proceedings referred to in Article 25.48.1 or having access to documents which form part of those proceedings, is not permitted to use or disclose any trade secret or alleged trade secret which the competent authorities have, in response to a duly reasoned application by an interested party, identified as confidential and of which they have become aware as a result of such participation or access.

2. In the proceedings referred to in Article 25.48.1, each Party shall provide that its competent authorities have the authority at least to take specific measures to preserve the confidentiality of any trade secret or alleged trade secret produced in the proceedings. Such specific measures may include, in accordance with the law of each Party, the possibility of restricting access to certain documents in whole or in part, of restricting access to hearings and their corresponding records or transcripts, and of making available a non-confidential version of judicial decisions in which the passages containing trade secrets have been removed or redacted.

ARTICLE 25.50

Protection of Undisclosed Data Related to
Pharmaceutical Products Including Biologic Products[140]

1. If a Party requires, as a condition for a marketing approval of new[141] pharmaceutical products, including biologic products[142], the submission of undisclosed test or other data of pre-clinical tests or clinical trials necessary to determine whether the use of those products is safe and effective, the Party shall protect those data against disclosure to third parties, if the origination of those data involves considerable effort, except where the disclosure is necessary for an overriding public interest or unless steps are taken to ensure that the data are protected against unfair commercial use.

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[140] Mexico shall implement this obligation no later than two years after the entry into force of this Agreement.

[141] For the purposes of this Article, the term "new" implies that the products contain a new chemical entity that has not been previously approved in the territory of the Party or refers to a new biologic or biotechnological product that has not been previously approved in the territory of the Party.

[142] Each Party shall determine which products fall under the terms "pharmaceutical products" and "biologic products" in accordance with its law in place on 21 April 2018.

2. For pharmaceutical products, including biologic products, a Party shall not grant a marketing approval to third persons which permits them, without the consent of the person that previously submitted the data referred to in paragraph 1, to market the product[143] on the basis of those data or on the basis of the marketing approval granted to the person that submitted those data[144], for at least six years from the date[145] of the marketing approval of the new product in the territory of that Party[146].

3. There shall be no limitation on either Party to implement abbreviated authorisation procedures for such products on the basis of bioequivalence and bioavailability studies.

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143 For the purposes of this paragraph, a Party may provide that the term "product" refers to the same or a similar product.

144 For greater certainty, this includes data submitted for authorisations granted to the person that submitted such data in the territories of the Parties and of third countries.

145 For greater certainty, a Party may limit the period of protection under this paragraph to six years.

146 A Party may provide that, for biologic products, the protection of undisclosed data referred to in this Article applies only to the first marketing approval of the new biologic product.

ARTICLE 25.51

Protection of Undisclosed Data Related to Plant Protection Products[147]

1. If a Party requires, as a condition for a marketing approval[148] of a new[149] plant protection product, the submission of undisclosed test or other data concerning the safety or efficacy of the product[150], the Party shall protect those data against disclosure to third parties, except where the disclosure is necessary for an overriding public interest or unless steps are taken to ensure that the data are protected against unfair commercial use.

147 Mexico shall implement this obligation no later than two years after the entry into force of this Agreement.

148 For purposes of this article, the term "marketing approval" is synonymous with "sanitary approval" under the law of a Party.

149 For purposes of this article, the term "new" implies that the product contains a new chemical entity that has not been previously approved in the territory of the Party.

150 For greater certainty, this Article applies to cases in which the Party requires the submission of undisclosed test or other data concerning only the safety of the product, only the efficacy of the product or both.

2. For plant protection products, a Party shall not grant a marketing approval to third persons which permits them, without the consent of the person that previously submitted the data referred to in paragraph 1, to market the product on the basis of those data or on the basis of the marketing approval granted to the person that submitted those data, for at least 10 years[151] from the date of the marketing approval of the new product in the territory of that Party.

3. Each Party shall establish rules to avoid duplicative testing on vertebrate animals.

4. There shall be no limitation on either Party to implement abbreviated authorisation procedures for such products on the basis of equivalence studies.

[151] For greater certainty, a Party may limit the period of protection pursuant to this Article to 10 years.

SECTION C

Enforcement of Intellectual Property Rights

SUB-SECTION C.1

General Provisions

ARTICLE 25.52

General Obligations

1. The Parties affirm their commitments under the TRIPS Agreement and in particular Part III thereof. Each Party shall provide for the complementary measures, procedures and remedies under this Section which are necessary to ensure the enforcement of intellectual property rights. Those measures, procedures and remedies shall be fair and equitable, and shall not be unnecessarily complicated or costly, or entail unreasonable time limits or unwarranted delays.

2. The measures, procedures and remedies referred to in paragraph 1 shall also be effective, proportionate and dissuasive and shall be applied in such a manner as to avoid the creation of barriers to legitimate trade and to provide for safeguards against their abuse.

3. This Section does not create any obligation for a Party to put in place a judicial system for the enforcement of intellectual property rights distinct from that for the enforcement of law in general, nor does it affect the capacity of a Party to enforce its law in general. This Sub-Section does not create any obligation with respect to how a Party distributes resources between the enforcement of intellectual property rights and the enforcement of law in general.

ARTICLE 25.53

Persons Entitled to Apply for the Application of Measures, Procedures and Remedies

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

(a) the holders of intellectual property rights in accordance with its law;

(b) all other persons authorised to use those intellectual property rights, in particular licensees, in so far as permitted by, and in accordance with, its law;

(c) intellectual property collective rights management bodies which are regularly recognised as having a right to represent holders of intellectual property rights, in so far as permitted by, and in accordance with, its law; and

(d) professional defence bodies which are regularly recognised as having a right to represent holders of intellectual property rights, in so far as permitted by, and in accordance with, its law.

SUB-SECTION C.2

Civil and Administrative Enforcement

ARTICLE 25.54

Evidence

1. Each Party shall ensure that, even before the commencement of proceedings on the merits of the case, the competent judicial authorities, on application by a party which has presented reasonably available evidence to support its claim that its intellectual property right has been infringed or is about to be infringed, have the authority to order prompt and effective provisional measures to preserve relevant evidence in respect of the alleged infringement, subject to the protection of confidential information.

2. The provisional measures referred to in paragraph 1 may include the detailed description, with or without the taking of samples, or the physical seizure of the alleged infringing goods, and, in appropriate cases, the materials and implements used in the production or distribution of those goods, and the documents relating thereto.

3. Each Party shall take the measures necessary to provide its competent judicial authorities with the authority to order, in case of infringement of an intellectual property right committed on a commercial scale, if appropriate and on request of a party in the proceedings, the communication of banking, financial or commercial documents under the control of the opposing party, subject to the protection of confidential information[152].

[152] Mexico may limit that authority to criminal procedures, in accordance with its law.

ARTICLE 25.55

Right of Information

1. Each Party shall ensure that, in proceedings concerning an infringement of an intellectual property right and in response to a justified and proportionate request of the claimant, the competent judicial authorities have the authority to order the infringer or any other person who is party to the proceedings or a witness therein, to provide information on the origin and distribution networks of the goods or services which infringe an intellectual property right[153].

[153] The European Union may decide that:
(a) "any other person" means a person who was:
(i) found in possession of the infringing goods on a commercial scale;
(ii) found to be using the infringing services on a commercial scale;
(iii) found to be providing on a commercial scale services used in infringing activities; or
(iv) indicated by the person referred to in subparagraphs (i) to (iii) as being involved in the production, manufacture or distribution of the infringing goods or the provision of the infringing services;
(b) "information" shall, as appropriate, comprise:
(i) the names and addresses of the producers, manufacturers, distributors, suppliers and other previous holders of the goods or services, as well as the intended wholesalers and retailers; or
(ii) information on the quantities produced, manufactured, delivered, received or ordered, as well as the price obtained for the goods or services in question.

2. This Article applies without prejudice to other provisions of the law of a Party which:

(a) grant the right holder rights to receive further information;

(b) govern the use in civil or criminal proceedings of the information communicated pursuant to this Article;

(c) govern the responsibility for misuse of the right of information;

(d) afford the opportunity to refuse to provide information that would force the person referred to in paragraph 1 to admit his own participation or that of his close relatives in an infringement of an intellectual property right; or

(e) govern the protection of confidentiality of information sources or the processing of personal data.

ARTICLE 25.56

Provisional and Precautionary Measures

1. Each Party shall ensure that its judicial authorities, on request of the applicant, have the authority to issue against the alleged infringer an interlocutory injunction intended to prevent any imminent infringement of an intellectual property right, or to forbid, on a provisional basis and subject, if appropriate, to a recurring penalty payment if provided for by its law, the continuation of the alleged infringements of that right, or to make that continuation subject to the provision of guarantees intended to ensure the compensation of the right holder. An interlocutory injunction may also be issued, under the same conditions, against an intermediary whose services are being used by a third party to infringe an intellectual property right. For the purposes of this Article, "intermediaries" includes internet service providers.

2. Each Party shall ensure that an interlocutory injunction may also be issued to order the seizure or delivery up of goods suspected of infringing an intellectual property right, so as to prevent their entry into or movement within the channels of commerce.

3. Each Party shall provide that, in the case of an alleged infringement, its judicial authorities have the authority to order the precautionary seizure of the movable and immovable property of the alleged infringer, including the blocking of his bank accounts and other assets. To that end, those authorities may order the communication of bank, financial or commercial documents, or appropriate access to the relevant information[154].

ARTICLE 25.57

Remedies

1. Each Party shall ensure that the competent judicial authorities have the authority to order, on request of the applicant and without prejudice to any damages due to the right holder by reason of the infringement, and without compensation of any sort, the destruction or at least the definitive removal from the channels of commerce, of goods that they have found to infringe an intellectual property right. Each Party shall ensure that, if appropriate, the competent judicial authorities may also order destruction of materials and implements predominantly used in the creation or manufacture of those goods.

[154] Mexico may limit the authority to order the communication of bank, financial or commercial documents to criminal procedures in accordance with its law. Each Party may limit that authority to infringements committed on a commercial scale and situations where the applicant demonstrates the existence of circumstances likely to endanger the recovery of damages.

2. In considering a request for remedies as referred to in paragraph 1, the need for proportionality between the seriousness of the infringement and the remedies ordered as well as the interests of third parties shall be taken into account.

ARTICLE 25.58

Injunctions

Each Party shall ensure that, if a judicial decision finds an infringement of an intellectual property right, the competent judicial authorities have the authority to issue against the infringer, as well as against an intermediary whose services are being used by a third party to infringe an intellectual property right, an injunction aimed at prohibiting the continuation of the infringement.

ARTICLE 25.59

Damages

1. Each Party shall provide that its judicial authorities have the authority at least to order the infringer who knowingly, or with reasonable grounds to know, engaged in activities infringing intellectual property rights, to pay the right holder damages adequate to compensate for the injury that the right holder has suffered as a result of the infringement of its intellectual property right[155].

[155] A Party may provide that the initiation of a procedure to claim damages is not subject to a final finding of a violation of intellectual property rights.

2. In determining the amount of damages pursuant to paragraph 1, the judicial authorities of each Party shall take into account all appropriate aspects and shall have the authority to consider, among other things, any legitimate measure of value that the right holder submits, including lost profits, the value of the goods or services that are the object of the infringement, measured by the market price, or the suggested retail price.

3. Each Party shall provide that, at least in cases of infringement of copyright or related rights and trademark counterfeiting, its judicial authorities have the authority to order the infringer, at least in the cases referred to in paragraph 1, to pay the right holder the infringer's profits that are attributable to the infringement. A Party may comply with this paragraph through a presumption that those profits correspond to the damages referred to in paragraph 1.

4. Each Party may provide that the judicial authorities may order in favour of the injured party the recovery of profits or the payment of damages which may be pre-established, where the infringer did not engage, knowingly, or with reasonable grounds to know, in infringing activity.

ARTICLE 25.60

Legal Costs

Each Party shall ensure that reasonable and proportionate legal costs and other expenses incurred by the successful party shall, as a general rule, be borne by the unsuccessful party, unless equity does not allow this.

ARTICLE 25.61

Publication of Judicial Decisions

Without prejudice to its law governing the protection of confidentiality of information sources or the protection of personal data, each Party shall ensure that, in legal proceedings concerning the infringement of an intellectual property right, the competent judicial authorities have the authority to order, on request of the applicant, appropriate measures for the dissemination of the information concerning the decision, including displaying the decision and publishing it in full or in part.

ARTICLE 25.62

Presumption of Authorship or Ownership

1. Each Party shall recognise that, for the purposes of applying the measures, procedures and remedies provided for in this Sub-Section, in the absence of proof to the contrary, it is sufficient for the name of an author of a literary or artistic work to appear on the work in the usual manner, in order for the author to be regarded as such, and consequently to be entitled to institute infringement proceedings.

2. Paragraph 1 applies, *mutatis mutandis*, to the holders of rights related to copyright with regard to their protected subject matter.

ARTICLE 25.63

Administrative Procedures

To the extent that any civil remedy can be ordered as a result of administrative procedures on the merits of a case, such procedures shall conform to principles equivalent in substance to those set out in this Sub-Section.

ARTICLE 25.64

Voluntary Stakeholder Initiatives

Each Party shall endeavour to facilitate voluntary stakeholder initiatives to reduce infringements of intellectual property rights, including online and in other marketplaces, which focus on concrete problems and seek practical solutions that are realistic, balanced, proportionate and fair for all stakeholders concerned.

SECTION D

Border Enforcement

ARTICLE 25.65

Consistency with GATT and the TRIPS Agreement

In implementing border measures for the enforcement of intellectual property rights by customs authorities, whether or not covered by this Agreement, each Party shall ensure consistency with its obligations under GATT and the TRIPS Agreement and, in particular, with Article 41 and Section 4 of Part III of the TRIPS Agreement.

ARTICLE 25.66

Border Enforcement Measures Related to Intellectual Property Rights

1. Each Party shall have in place procedures allowing for the destruction of goods infringing intellectual property rights, in accordance with Articles 46 and 59 of the TRIPS Agreement.

2. With respect to goods under customs control, each Party shall ensure that its customs authorities are active, in accordance with its laws and regulations and in coordination with other relevant authorities, in targeting and identifying shipments containing goods suspected of infringing trademarks, copyright or other intellectual property rights. At least with regard to import goods, these activities should be carried out on the basis of risk analysis.

3. Each Party shall adopt and maintain a centrally managed electronic database relating at least to trademarks and industrial designs, which shall serve as a relevant tool for cooperation between the competent authorities and right holders, free of charge, and for the provision of information for risk analysis. Each Party shall endeavour to extend the electronic database for risk analysis to other intellectual property rights.

4. Each Party shall ensure that information provided by the right holder is automatically included in the electronic database provided that it complies with the relevant requirements, in accordance with its laws and regulations. The validation of the information provided by a right holder shall be automatic or done within a reasonable period of time by the competent authorities of each Party.

5. The Parties recognise the benefits of maintaining and improving an electronic database, with a view to contributing to the detection of infringements of intellectual property rights and to providing elements to initiate the procedure to suspend the release of or detain goods under customs control referred to in paragraph 6.

6. Each Party shall provide that its customs authorities may act on their own initiative to suspend the release of or detain goods suspected of infringing an intellectual property right, or to inform the right holder or the relevant authorities in order to allow them to assess the need to initiate a procedure that may lead to the suspension of the release of, or to the detention of, those goods.

7. A Party is encouraged to have in place procedures allowing for the swift destruction of counterfeit trademark and pirated goods sent through postal or express couriers' consignments.

8. The customs authorities of each Party shall maintain a regular dialogue and promote cooperation with stakeholders and with other authorities involved in the enforcement of the intellectual property rights referred to in this Article.

9. The Parties shall cooperate with respect to international trade in goods suspected to infringe intellectual property rights and, in particular, to share information on such trade, in accordance with their laws and regulations.

10. The Parties shall have a regular exchange on the proper implementation and administration of this Article.

SECTION E

Final Provisions

ARTICLE 25.67

Cooperation and Transparency

1. The Parties shall cooperate with a view to supporting the implementation of this Chapter.

2. Areas of cooperation include, but are not limited to, the following activities:

(a) the exchange of information on developments in the domestic and international policy regarding intellectual property rights;

(b) the exchange of information on intellectual property laws and regulations of the Parties, including initiatives or amendments;

(c) the exchange of experience between the Parties on the enforcement of intellectual property rights;

(d) coordination to prevent trade of counterfeit goods, including with third countries;

(e) technical assistance, capacity building, and exchange and training of personnel;

(f) the protection and defence of intellectual property rights and the dissemination of information in this regard in, among others, business circles and civil society;

(g) education and awareness raising relating to intellectual property rights, including the impact of infringements of intellectual property rights on the economy and the safety of consumers;

(h) enhancement of institutional cooperation, in particular between the authorities in charge of intellectual property rights;

(i) collaboration with small and medium-sized enterprises, including at events or gatherings focused on such enterprises, regarding protecting and enforcing intellectual property rights and reducing infringements; and

(j) exchange of information between the Parties regarding efforts to facilitate voluntary stakeholder initiatives in their respective territories.

3. The Sub-Committee on Intellectual Property shall monitor the implementation and administration of this Chapter and any other relevant matters.

The Sub-Committee on Intellectual Property shall meet at least once per year, except if the Parties agree otherwise.

4. Each Party shall designate a contact point to facilitate cooperation and coordination under this Chapter, and notify the other Party of its contact details. The Parties shall promptly notify each other of any changes to those contact details.

CHAPTER 26

TRADE AND SUSTAINABLE DEVELOPMENT

ARTICLE 26.1

Objective and Scope

1. The objective of this Chapter is to enhance the integration of sustainable development in the trade and investment between the Parties, notably by establishing principles and actions concerning labour[156] and environmental aspects of sustainable development of specific relevance in the context of trade and investment.

[156] For the purposes of this Chapter, the term "labour" means the strategic objectives of the ILO under the Decent Work Agenda, which is expressed in the ILO Declaration on Social Justice for a Fair Globalization of 2008.

2. The Parties recall Agenda 21 and the Rio Declaration on Environment and Development of 1992, adopted by the UN Conference on Environment and Development in 1992; the Johannesburg Plan of Implementation of the World Summit on Sustainable Development of 2002; the International Labour Organization's Declaration on Social Justice for a Fair Globalization of 2008 adopted by the International Labour Conference at its 97th Session, Geneva, 10 June 2008; the outcome document of the UN Conference on Sustainable Development of 2012, incorporated in Resolution 66/288 adopted by the UN General Assembly on 27 July 2012, entitled "The Future We Want"; and the Sustainable Development Goals (SDGs) of the 2030 Agenda for Sustainable Development document "Transforming our World: the 2030 Agenda for Sustainable Development".

3. Consistent with the instruments referred to in paragraph 2, the Parties shall promote:

(a) sustainable development, which encompasses economic development, social development and environmental protection, all three being inter-dependent and mutually reinforcing;

(b) the development of international trade and investment in a manner that contributes to the objective of achieving the Sustainable Development Goals; and

(c) inclusive green growth and circular economy so as to foster economic growth while ensuring environmental protection and promoting social development.

ARTICLE 26.2

Right to Regulate and Levels of Protection

1. The Parties recognise the right of each Party to determine its sustainable development policies and priorities, to establish its levels of domestic environmental and labour protection and to adopt or modify its relevant laws and regulations, and policies as it deems appropriate. Such levels, laws and regulations, and policies shall be consistent with each Party's commitment to the internationally recognised standards and agreements referred to in Articles 26.3 and 26.4.

2. Each Party shall strive to ensure that its relevant laws and regulations, and policies, provide for and encourage high levels of environmental and labour protection; and shall continue to strive to improve such laws and regulations, and policies, and their underlying levels of protection.

3. A Party should not weaken the levels of protection afforded in its environmental or labour law in order to encourage trade or investment.

4. A Party shall not waive or derogate from, or offer to waive or derogate from, its environmental or labour law in order to encourage trade or investment.

5. A Party shall not, through a sustained or recurring course of action or inaction, fail to effectively enforce its environmental or labour law in order to encourage trade or investment.

ARTICLE 26.3

Multilateral Labour Standards and Agreements

1. The Parties affirm their commitment to promote the development of international trade in a way that is conducive to full and productive employment and decent work for all, in particular women, young people and persons with disabilities.

2. In accordance with the International Labour Organization (hereinafter referred to as the "ILO") Constitution and the ILO Declaration on Fundamental Principles and Rights at Work and its Follow-up, adopted by the International Labour Conference at its 86th Session, Geneva, 18 June 1998, each Party shall respect, promote and effectively implement the principles concerning the fundamental rights at work, as defined in the fundamental ILO conventions, which are:

(a) freedom of association and the effective recognition of the right to collective bargaining;

(b) the elimination of all forms of forced or compulsory labour;

(c) the effective abolition of child labour; and

(d) the elimination of discrimination in respect of employment and occupation.

3. Pursuant to paragraphs 1 and 2 and underlining the commitment of the Parties to support multilateral governance, each Party shall effectively implement the ILO conventions and protocols it has ratified.

4. Each Party shall make continued and sustained efforts towards ratifying the fundamental ILO conventions.

5. The Parties shall regularly exchange information on their respective progress with regard to ratification of the fundamental ILO conventions and related protocols and of other ILO conventions or protocols to which they are not yet party and which are considered as up-to-date by the ILO.

6. The Parties shall consult as appropriate and should cooperate on trade-related labour issues of mutual interest, including in the context of the ILO.

7. Recalling the ILO Declaration on Social Justice for a Fair Globalization of 2008, the Parties note that the violation of fundamental principles and rights at work cannot be invoked or otherwise used as a legitimate comparative advantage and that labour standards should not be used for protectionist trade purposes.

8. Each Party shall promote decent work as defined in the ILO Declaration on Social Justice for a Fair Globalization of 2008. Each Party shall, in accordance with its conditions and priorities, pay particular attention to:

(a) developing and enhancing measures for occupational safety and health, including compensation in case of occupational injury or illness, as defined in the relevant ILO conventions and other international commitments;

(b) decent working conditions for all, with regard to wages and earnings, working hours and other conditions of work; and

(c) maintaining an effective labour inspection system in accordance with its international commitments and relevant ILO standards.

9. Each Party shall ensure that its administrative, judicial and labour tribunal proceedings for the enforcement of its labour law are fair, accessible and transparent, and permit effective action against infringements of labour rights referred to in this Chapter.

ARTICLE 26.4

Multilateral Environmental Governance and Agreements

1. The Parties recognise the importance of the United Nations Environment Assembly (UNEA) of the United Nations Environment Programme (UNEP) and multilateral environmental governance and agreements as a response of the international community to global or regional environmental challenges and aim to enhance the mutual supportiveness between trade and environment policies.

2. Pursuant to paragraph 1 and in order to support multilateral environmental governance, each Party shall effectively implement the multilateral environmental agreements, protocols and amendments to which it is a party.

3. The Parties shall regularly exchange information on their respective initiatives regarding the ratifications of multilateral environmental agreements, including their protocols and amendments.

4. The Parties shall consult as appropriate and should cooperate on trade-related environmental matters of mutual interest, including in the context of multilateral environmental agreements.

5. The Parties acknowledge the right of each Party to invoke Article 32.1 (General Exceptions) in relation to measures taken pursuant to multilateral environmental agreements to which they are party.

ARTICLE 26.5

Trade and Climate Change

1. The Parties recognise the importance of pursuing the ultimate objective of the United Nations Framework Convention on Climate Change (UNFCCC), done at New York on 9 May 1992, in order to address the urgent threat of climate change and recognise the role of trade to that end.

2. Pursuant to paragraph 1, each Party shall:

(a) effectively implement the UNFCCC and the Paris Agreement, including through actions that contribute to the implementation of the Nationally Determined Contributions (NDCs) in accordance with the Paris Agreement;

(b) promote the positive contribution of trade to the transition to a sustainable low-carbon economy and to climate-resilient development; and

(c) promote green economic growth based on actions on climate change mitigation and adaptation, including ecosystem-based adaptation, renewable energies and energy-efficient solutions.

3. The Parties should cooperate on trade-related matters concerning climate change bilaterally, regionally and in international fora, as appropriate, including in the UNFCCC, the WTO and the Montreal Protocol on Substances that Deplete the Ozone Layer, done at Montreal on 16 September 1987.

ARTICLE 26.6

Trade and Biological Diversity

1. The Parties recognise the importance of conserving and sustainably using biological diversity and the role of trade in pursuing those objectives, consistent with the Convention on Biological Diversity (CBD), done at Rio de Janeiro on 5 June 1992, and its Protocols, the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES), signed at Washington D.C. on 3 March 1973, and other relevant international instruments to which they are party, including the decisions and resolutions adopted thereunder.

2. Parties recognise that mainstreaming the conservation and sustainable use of biological diversity across relevant sectors of the economy and strengthening legal, institutional and regulatory domestic frameworks can contribute to generating positive impacts on biological diversity and its ecosystem services as well as to achieving sustainable development.

3. Pursuant to paragraph 1, each Party shall:

(a) implement effective measures to combat illegal wildlife trade, including through cooperation activities with third countries as appropriate;

(b) promote the inclusion of animal and plant species in the appendices to CITES where the conservation status of that species is considered at risk because of international trade, and conduct periodic reviews, which may result in a recommendation to amend the appendices to the CITES, in order to ensure that they properly reflect the conservation needs of species subject to international trade;

(c) promote the long-term conservation and sustainable use of CITES-listed species, including their legal and traceable trade, while providing benefits to stakeholders in the value chain, in particular to the local communities where CITES-listed species are obtained;

(d) take measures to conserve biological diversity when it is subject to pressures linked to trade and investment, in particular through measures to prevent the spread of invasive alien species; and

(e) exchange information with the other Party on initiatives on trade in natural resource-based products with the aim of promoting conservation and sustainable use of biological diversity and promote such trade.

4. Each Party should cooperate with the other Party bilaterally, regionally and in international fora, including with relevant stakeholders, on matters concerning trade and the conservation and sustainable use of biological diversity, as well as on combatting illegal wildlife trade, including through initiatives to reduce demand for illegal wildlife products and specimens, and to enhance cooperation on law enforcement and information sharing.

ARTICLE 26.7

Trade and Sustainable Management of Forests

1. The Parties recognise the importance of sustainable forest management and the role of trade in pursuing this objective.

2. Pursuant to paragraph 1, each Party shall:

(a) encourage the conservation and sustainable management of forests and the promotion of trade and consumption of timber and timber products from sustainably managed forests;

(b) promote trade in forest products that has not given rise to deforestation or forest degradation;

(c) implement measures to combat illegal logging and related trade, including through cooperation activities with third countries as appropriate; and

(d) exchange information with the other Party on trade-related initiatives on forest governance and on the conservation of forest cover, and cooperate with the other Party to maximise positive impacts and ensure the mutual supportiveness of their respective policies of mutual interest.

3. Each Party should cooperate with the other Party bilaterally, regionally and in international fora, including with relevant stakeholders, on matters concerning trade and the conservation of forests as well as sustainable forest management.

ARTICLE 26.8

Trade and Sustainable Management of Marine Biological Resources and Aquaculture

1. The Parties recognise the importance of conserving and sustainably managing marine biological resources and marine ecosystems as well as of promoting responsible and sustainable aquaculture with the aim of ensuring sustainable economic, environmental and social conditions; and the role of trade in pursuing these objectives.

2. The Parties acknowledge that illegal, unreported and unregulated fishing (hereinafter referred to as "IUU fishing") has negative impacts on trade and the environment, and confirm the need for action to end IUU fishing to address the problems of overfishing and unsustainable utilisation of fisheries resources.

3. Pursuant to paragraphs 1 and 2, each Party shall:

(a) act in accordance with the principles of the United Nations Convention on the Law of the Sea, done at Montego Bay on 10 December 1982, the United Nations Agreement for the Implementation of the Provisions of the United Nations Convention on the Law of the Sea of 10 December 1982 relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks, opened for signature at New York on 4 December 1995, the Food and Agriculture Organization (hereinafter referred to as "FAO") Agreement to Promote Compliance with International Conservation and Management Measures by Fishing Vessels on the High Seas, approved on 24 November 1993 by Resolution 15/93 of the 27th Session of the FAO Conference, the FAO Code of Conduct for Responsible Fisheries, adopted on 31 October 1995 by the FAO Conference, and the FAO Agreement on Port State Measures to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing, approved on 22 November 2009 at the 36th Session of the FAO Conference;

(b) implement long-term conservation and management measures and sustainable exploitation of marine living resources as defined in the main United Nations and FAO instruments relating to those issues[157];

(c) participate actively in the work of the regional fisheries management organisations of which both Parties are members, observers or cooperating non-contracting parties, with the aim of ensuring the sustainable exploitation, management and conservation of marine biological resources and the marine environment, including, if applicable, active participation in the adoption of management, conservation and control measures by those regional fisheries management organisations and their effective implementation and enforcement, including, where applicable, catch documentation or certification schemes;

(d) implement effective measures to combat IUU fishing, including measures to exclude IUU fishing products from trade flows, and cooperate and exchange information to that end; and

[157] Those instruments include, among others and as they may apply: the UN Convention on the Law of the Sea, the FAO Agreement to Promote Compliance with International Conservation and Management Measures by Fishing Vessels on the High Seas, the UN Agreement for the Implementation of the Provisions of the United Nations Convention on the Law of the Sea of 10 December 1982 relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks, and the FAO Agreement on Port State Measures to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing.

(e) promote the development of sustainable and responsible aquaculture, including with regard to the implementation of the objectives and principles contained in the FAO Code of Conduct for Responsible Fisheries.

4. Each Party should cooperate with the other Party and within regional fisheries management organisations and other international fora with the aim of achieving sustainable fisheries management.

ARTICLE 26.9

Trade and Responsible Management of Supply Chains

1. The Parties recognise the importance of responsible management of supply chains through responsible business conduct and corporate social responsibility practices, which contribute to an enabling environment, and the role of trade in pursuing the objective of responsible management of supply chains.

2. Pursuant to paragraph 1, each Party shall:

(a) promote corporate social responsibility or responsible business conduct, including by encouraging the uptake of relevant practices by businesses; and

(b) support the dissemination and use of relevant international instruments, such as the OECD Guidelines for Multinational Enterprises on Responsible Business Conduct, the ILO Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy, adopted in Geneva in November 1977, the UN Global Compact and the UN Guiding Principles on Business and Human Rights, endorsed by the Human Rights Council in its resolution 17/4 of 16 June 2011.

3. The Parties recognise the utility of international sector-specific guidelines in the area of corporate social responsibility or responsible business conduct, such as the OECD Due Diligence Guidance documents for responsible supply chains, and shall promote joint work in this regard, including with respect to third countries. Each Party shall promote the uptake of those guidelines supported by that Party.

4. Each Party shall exchange information as well as best practices and, as appropriate, cooperate with the other Party bilaterally, regionally and in international fora on matters covered by this Article.

ARTICLE 26.10

Other Trade and Investment-Related Initiatives Favouring Sustainable Development

1. The Parties confirm their commitment to enhancing the contribution of trade and investment to the goal of sustainable development in its economic, social and environmental dimensions.

2. Pursuant to paragraph 1, each Party shall promote:

(a) trade and investment policies that support the objectives of the ILO Decent Work Agenda, and are consistent with the ILO Declaration on Social Justice for a Fair Globalization of 2008, including policies with regard to wages, earnings and working hours, inclusive social protection, health and safety at work, and other aspects related to working conditions;

(b) trade and investment facilitation in environmental goods and services, including those of particular relevance for climate change mitigation such as sustainable and renewable energy and energy efficient products and services by, among others, addressing related non-tariff barriers, adopting policy frameworks conducive to the deployment of best available technologies and cooperating in relation to initiatives in that area; and

(c) trade in goods that contribute to enhanced social conditions and environmentally sound practices, including goods that are covered by voluntary sustainability assurance schemes such as fair and ethical trade schemes and eco-labels.

3. Each Party should cooperate with the other Party bilaterally, regionally and in international fora on matters covered by this Article.

ARTICLE 26.11

Scientific and Technical Information

1. When establishing or implementing measures aimed at protecting the environment or occupational safety and health that may affect trade or investment, each Party shall take into account available scientific and technical information, relevant international standards, guidelines or recommendations.

2. If there is a lack of full scientific certainty and there are threats of serious or irreversible damage to the environment or to occupational safety and health, a Party may adopt cost-effective measures based on the precautionary principle. Such measures shall be consistent with, or justified under, this Agreement. They shall be based upon available pertinent information and subject to periodic review in the light of new scientific information.

ARTICLE 26.12

Transparency

When a Party adopts and implements measures of general application aimed at the protection of the environment and labour conditions that may affect trade or investment between the Parties, or trade or investment measures that may affect the protection of the environment or labour conditions, that Party shall do so in accordance with Chapter 27 (Transparency), and shall provide reasonable opportunities for interested persons to submit views on the proposed measures in accordance with its domestic laws and regulations.

ARTICLE 26.13

Cooperation on Trade and Sustainable Development

1. The Parties recognise the importance of cooperating in order to achieve the objectives of this Chapter.

2. The cooperation referred to in paragraph 1 may cover areas such as:

(a) labour and environmental aspects of trade and sustainable development in international fora, including in particular the WTO, the ILO, the United Nations Environment Assembly and Programme and multilateral environmental agreements;

(b) the impact of labour and environmental law and standards on trade and investment; and

(c) the impact of trade and investment law on labour and the environment.

3. The cooperation referred to in paragraph 1 may also cover trade-related aspects of:

(a) the fundamental, governance and other up-to-date ILO conventions of relevance in a trade context;

(b) the ILO Decent Work Agenda, including cooperation on the inter-linkages between trade and full and productive employment, labour market adjustment, core labour standards, decent work in global supply chains, social protection and social inclusion, social dialogue, skills development and gender equality;

(c) multilateral environmental agreements, including customs cooperation and support for each other's participation in such agreements;

(d) the current and future international climate change regime, including means to promote low-carbon technologies and energy efficiency, preparation and adoption of carbon pricing action, including emissions trading systems, ecosystem-based adaptation and water management adaptation approaches to climate change;

(e) the Montreal Protocol on Substances that Deplete the Ozone Layer and its Kigali Amendment, in particular:

(i) measures to control the production and consumption of and trade in ozone-depleting substances (ODSs) and hydrofluorocarbons (HFCs);

(ii) introduction of environmentally friendly alternatives;

(iii) updating of standards; and

(iv) combatting illegal trade of substances regulated by that agreement;

(f) the promotion of inclusive green growth and a circular economy;

(g) transparent private and public sustainability assurance schemes, including eco-labelling;

(h) the protection and restoration of ecosystems, access to genetic resources and the fair and equitable sharing of benefits from their utilisation in accordance with the Nagoya Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits Arising from their Utilization to the Convention on Biological Diversity, done at Nagoya on 29 October 2010, as well as the valuation of ecosystems and their services and related economic instruments;

(i) corporate social responsibility, responsible business conduct and responsible management of global supply chains, including with regard to adherence, implementation and dissemination of internationally agreed instruments;

(j) the sound management of chemicals and waste;

(k) the promotion of the conservation and sustainable use of biological diversity, including by combatting illegal wildlife trade, as referred to in Article 26.6;

(l) the promotion of the conservation and sustainable management of forests with a view to halting deforestation and illegal logging, including the promotion of trade in forest products that have not given rise to deforestation or forest degradation, as referred to in Article 26.7; and

(m) the promotion of sustainable fishing practices and trade in sustainably managed fish products, as well as the protection and restoration of the marine environment, as referred to in Article 26.8.

ARTICLE 26.14

Sub-Committee on Trade and Sustainable Development

1. The Sub-Committee on Trade and Sustainable Development established by subparagraph 1(l) of Article 1.10 (Sub-Committees and Other Bodies of Part III of this Agreement) shall meet within a year of the date of entry into force of this Agreement, unless otherwise agreed by the Parties, and thereafter as necessary in accordance with paragraph 3 of Article 1.4 (Sub-Committees and Other Bodies) of Part IV of this Agreement.

2. The Sub-Committee on Trade and Sustainable Development shall:

(a) facilitate and monitor the effective implementation and administration of this Chapter, including cooperation activities undertaken under this Chapter;

(b) carry out the tasks referred to in Articles 26.17 to 26.19;

(c) make recommendations to the Joint Committee, including with regard to topics for discussion with the Domestic Advisory Group and Civil Society Forum, referred to in Articles 1.7 (Domestic Advisory Groups) and 1.8 (Civil Society Forum), respectively, of Part IV of this Agreement; and

(d) consider any other matters related to this Chapter as the Parties may agree.

3. The Sub-Committee on Trade and Sustainable Development shall issue a public report after each of its meetings.

4. Each Party shall give due consideration to communications and opinions from the public on matters related to this Chapter and shall inform of such communications and opinions the Sub-Committee on Trade and Sustainable Development and its civil society mechanisms referred to in Article 1.6 (Relationship with Civil Society) of Part IV of this Agreement.

ARTICLE 26.15

Trade and Sustainable Development Contact Points

Each Party shall designate a contact point to facilitate communication and coordination between the Parties on any matters relating to the implementation of this Chapter and notify the other Party of its contact details. The Parties shall promptly notify each other of any changes to those contact details.

ARTICLE 26.16

Dispute Resolution

In case of disagreement between the Parties regarding the interpretation or application of this Chapter, the Parties shall have recourse exclusively to the dispute resolution procedures referred to in Articles 26.17 and 26.18.

ARTICLE 26.17

Consultations

1. A Party may request consultations with the other Party regarding the interpretation or application of this Chapter by delivering a written request to the contact point of the other Party established in accordance with Article 26.15. The request shall set out the reasons for requesting consultations, including a description of the matter at issue. Consultations shall start promptly after a Party delivers a request for consultations, and in any event no later than 30 days after the date of receipt of the request, unless the Parties agree otherwise. Consultations shall be held in person or, if the Parties so agree, by electronic means.

2. The Parties shall enter into consultations with the aim of reaching a mutually satisfactory resolution of the matter. With respect to matters related to the multilateral agreements referred to in this Chapter, the Parties shall take into account information from the ILO or relevant multilateral environmental organisations or bodies in order to ensure coherence between the work of the Parties and the work of those organisations or bodies. Where relevant and mutually agreed, the Parties shall seek advice from such organisations or bodies, or any other expert or body they deem appropriate.

3. If, 30 days after the date of receipt of the request referred to in paragraph 1, a Party considers that the matter needs further discussion, that Party may request in writing that the Sub-Committee on Trade and Sustainable Development be convened and shall notify that request to the contact point referred to in paragraph 1.The Sub-Committee on Trade and Sustainable Development shall meet promptly and endeavour to reach a mutually satisfactory resolution of the matter.

4. The Sub-Committee on Trade and Sustainable Development shall seek, as appropriate, the advice of the Domestic Advisory Groups referred to in Article 1.7 (Domestic Advisory Groups) of Part IV of this Agreement or other expert advice.

5. Any resolution reached by the Parties shall be made available to the public.

ARTICLE 26.18

Panel of Experts

1. If, within 90 days after a request for consultations pursuant to Article 26.17, the Parties have not reached a mutually agreed solution, a Party may request the establishment of a panel of experts to examine the matter. That request shall be made in writing to the contact point of the other Party designated pursuant to Article 26.15. The request shall identify the reasons for requesting the establishment of a panel of experts, including an indication of the legal basis for the complaint.

2. Except as otherwise provided for in this Article, Articles 31.6 (Establishment of a Panel), 31.10 (Functions of the Panel), 31.20 (Replacement of Panellists), 31.21 (Rules of Procedure), 31.22 (Suspension and Termination), 31.23 (Receipt of Information) and 31.24 (Rules of Interpretation); and Section E (Common Provisions) of Chapter 31 (Dispute Settlement); as well as Annexes 31-A (Rules of Procedure) and 31-B (Code of Conduct for Panellists and Mediators), apply.

3. The Sub-Committee on Trade and Sustainable Development shall, at its first meeting after the entry into force of this Agreement, establish a list of at least 15 individuals who are willing and able to serve as panellists on the panel of experts. The list shall be composed of three sub-lists: one sub-list for each Party and one sub-list of individuals that are not nationals of either Party and who may serve as chairperson of the panel of experts. Each Party shall propose at least five individuals for its sub-list. The Parties shall also select at least five individuals for the list of chairpersons. The Sub-Committee on Trade and Sustainable Development shall ensure that the list is kept updated and that the number of experts is maintained at least at 15 individuals.

4. The individuals referred to in paragraph 3 shall have specialised knowledge of, or expertise in, labour or environmental law, issues addressed in this Chapter or the resolution of disputes arising under international agreements. They shall be independent, serve in their individual capacities and shall not take instructions from any organisation or government with regard to issues related to the disagreement or be affiliated with the government of any Party, and shall comply with the provisions set out in Annex 31-B (Code of Conduct for Panellists and Mediators).

5. A panel of experts shall be established in accordance with the procedures set out in paragraphs 2 and 3 of Article 31.6 (Establishment of a Panel). The experts shall be selected from the individuals on the sub-lists referred to in paragraph 3 of this Article, in accordance with Article 31.7 (Composition of a Panel).

6. Unless the Parties agree otherwise within five days after the date of establishment of the panel of experts, as defined in paragraph 3 of Article 31.6 (Establishment of a Panel), the terms of reference of the panel shall be:

"to examine, in the light of the relevant provisions of Chapter 26 (Trade and Sustainable Development) of Part III (Trade and Investment) of this Agreement, the matter referred to in the request for the establishment of the Panel of Experts, to make findings and recommendations for the resolution of the matter and to deliver a report, in accordance with paragraph 8 of Article 26.18 (Panel of Experts)".

7. In matters related to the respect of multilateral agreements referred to in this Chapter, the panel of experts shall endeavour to seek information and advice from relevant bodies of the ILO or other bodies established under those agreements.

8. The panel of experts shall issue to the Parties an interim report within 90 days after the establishment of the panel of experts and a final report no later than 30 days after issuing the interim report. Those reports shall set out the findings of fact, the applicability of the relevant provisions and the basic rationale behind any findings and recommendations. Each Party shall make the final report available to the public within 15 days after its delivery by the panel of experts.

9. The Parties shall discuss appropriate measures to be implemented taking into account the report and recommendations of the panel of experts. The Party implementing appropriate measures shall inform its Domestic Advisory Group referred to in Article 1.7 (Domestic Advisory Groups) of Part IV of this Agreement and the other Party of any actions or measures to be implemented no later than three months after the report has been made available to the public. The Sub-Committee on Trade and Sustainable Development shall monitor the follow-up to the report of the panel of experts and its recommendations. The domestic advisory groups referred to in Article 1.7 (Domestic Advisory Groups) of Part IV of this Agreement may submit observations to the Sub-Committee on Trade and Sustainable Development in this regard.

ARTICLE 26.19

Review

1. For the purposes of enhancing the effective implementation of this Chapter, the Parties shall initiate, upon entry into force of this Agreement, a formal review process taking into account, among other things, the experience gained through implementation of this Chapter, policy developments in each Party, developments in international agreements and views presented by stakeholders. The Parties will aim to conclude the review process within 12 months.

2. For the purpose of paragraph 1, the Parties shall in particular discuss at the meetings of the Sub-Committee on Trade and Sustainable Development, the operation of the institutional and dispute settlement provisions set out in Articles 26.14 to 26.18, including a possible review of their effectiveness and the enhancement of the enforcement mechanism, including the possibility to apply a compliance phase and relevant countermeasures as last resort.

3. The Sub-Committee on Trade and Sustainable Development may prepare amendments to the relevant provisions of this Chapter reflecting the outcome of the discussions referred to in paragraphs 1 and 2 of this Article, in accordance with the amendment procedure established in Article 2.4 (Amendments) of Part IV of this Agreement.

4. Without prejudice to the outcome of the review, the Parties shall consider the possibility and manner of including the Paris Agreement as an essential element of this Agreement.

CHAPTER 27

TRANSPARENCY

ARTICLE 27.1

Definitions

For the purposes of this Chapter:

(a) "measures of general application" means laws, regulations, procedures and administrative rulings of general application;

(b) "interested person" means any natural or legal person that may be affected by a measure of general application; and

(c) "administrative action" means an action or decision having a legal effect that affects the rights and obligations of a specific person in an individual case, and covers an administrative action or failure to take an administrative action or decision as provided for in the Party's law.

ARTICLE 27.2

Objective

The Parties aim to promote a transparent regulatory environment.

ARTICLE 27.3

Publication

1. Each Party shall ensure that any measure of general application with respect to any matter covered by this Part of this Agreement:

(a) is promptly published via an officially designated medium and, if feasible, electronic means, or otherwise made available in such a manner as to enable traders and other interested parties to become acquainted with it; and

(b) if adopted by the central level of government, provides an explanation of its objective and rationale.

2. To the extent possible, when introducing or changing a measure referred to in paragraph 1, each Party shall provide sufficient time to become acquainted with it between publication and entry into force.

ARTICLE 27.4

Provision of Information

1. A Party shall, at the request of the other Party, promptly provide information and respond to questions pertaining to any existing or proposed measure of general application that materially affects the operation of this Agreement.

2. Information provided pursuant to this Article is without prejudice as to whether the measure is consistent with this Agreement.

ARTICLE 27.5

Administration of Measures of General Application

1. Each Party shall administer, in an objective, impartial, consistent and reasonable manner, all measures of general application with respect to any matter covered by this Part of this Agreement.

2. When applying measures of general application in specific cases to particular persons, goods or services of the other Party, each Party shall:

(a) endeavour to provide a person who is directly affected by administrative proceedings with reasonable notice, in accordance with its laws and regulations, when those proceedings are initiated, including a description of the nature of the proceedings, a statement of the legal authority under which the proceedings are initiated and a general description of any controversial issues;

(b) afford a person who is directly affected by administrative proceedings a reasonable opportunity to present facts and arguments in support of that person's position prior to any final administrative action if time, the nature of the proceedings and public interest allow; and

(c) ensure that the proceedings referred to in subparagraphs (a) and (b) are in accordance with its law.

ARTICLE 27.6

Review and Appeal

1. Each Party shall establish or maintain judicial, arbitral or administrative tribunals or procedures for the purposes of the prompt review and, where warranted, correction of an administrative action with respect to any matter covered by this Part of this Agreement[158]. Each Party shall ensure that its procedures for appeal or review are carried out in a non-discriminatory and impartial manner by tribunals that are independent of the authority entrusted with administrative enforcement and shall not have any substantial interest in the outcome of the matter.

2. Each Party shall ensure that the parties to the procedures referred to in paragraph 1 are provided with the right to:

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

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

3. The decision referred to in subparagraph 2(b) shall, subject to appeal or further review as provided for under law of that Party, be implemented by, and govern the practice of, the office or authority entrusted with administrative enforcement.

[158] For greater certainty, for the review and correction of an administrative action, a Party may require the exhaustion of the available administrative remedies.

CHAPTER 28

GOOD REGULATORY PRACTICES

ARTICLE 28.1

Definitions

For the purposes of this Chapter:

(a) "regulatory authority" means:

(i) for the European Union: the European Commission; and

(ii) for Mexico: the Federal Public Administration, including any decentralised bodies of the Federal Public Administration; and

(b) "regulatory measures" means measures of general application, developed by a regulatory authority and adopted by a Party, with which compliance is mandatory, which are:

(i) for the European Union:

(A) regulations and directives, as provided for in Article 288 TFEU; and

(B) delegated and implementing acts, as provided for in Articles 290 and 291 TFEU, respectively; and

(ii) for Mexico:

(A) laws and legislative decrees presented by the executive branch of the Federal Government; and

(B) any other administrative acts of general application, including, but not limited to, regulations, decrees, agreements and *Normas Oficiales Mexicanas* ("NOMs", Mexican Official Standards).

ARTICLE 28.2

General Principles

1. The Parties recognise the importance of:

(a) using good regulatory practices in the process of planning, designing, issuing, implementing, evaluating and reviewing regulatory measures in order to achieve domestic policy objectives; and

(b) maintaining and enhancing the benefits of this Agreement through the use of good regulatory practices to facilitate trade in goods and services and increase investment between the Parties.

2. Each Party shall have the right to determine its approach to good regulatory practices under this Agreement in a manner consistent with its own legal framework, practice and fundamental principles[159] underlying its regulatory system.

3. The provisions of this Chapter shall not be construed as requiring a Party to:

(a) deviate from domestic procedures for identifying its regulatory priorities and for preparing and adopting regulatory measures that ensure the levels of protection that it considers appropriate;

(b) take actions that would undermine or impede the timely adoption of regulatory measures to achieve its public policy objectives; or

(c) achieve any particular regulatory outcome.

ARTICLE 28.3

Scope

1. This Chapter applies to regulatory measures with respect to any matter covered by this Part of this Agreement.

[159] For the European Union, such principles include those included in and derived from the TFEU.

2. This Chapter does not apply to regulatory authorities and regulatory measures, practices or approaches of the Member States of the European Union.

ARTICLE 28.4

Internal Consultation and Coordination of Regulatory Development

1. The Parties recognise that the implementation of good regulatory practices can be facilitated through domestic mechanisms that improve internal consultation and coordination required for processes or mechanisms for the development of regulatory measures.

2. Each Party shall adopt or maintain internal coordination or review processes or mechanisms with respect to regulatory measures that its regulatory authority is developing.

3. Such processes or mechanisms should seek, among other things, to:

(a) foster good regulatory practices, including those set out in this Chapter;

(b) strengthen internal consultations and coordination for the identification and avoidance of unnecessary duplication and inconsistency of the requirements in the Party's regulatory measures;

(c) promote that the potential impacts of the regulatory measures under preparation, including those on small and medium-sized enterprises, are taken into consideration in the subsequent decision-making process;

(d) ensure compliance with international trade and investment obligations; and

(e) promote that relevant developments in international and other fora are taken into consideration.

4. The Parties recognise that the processes or mechanisms referred to in paragraph 2 could vary depending on their respective circumstances. In this regard, each Party may, in accordance with its domestic rules and procedures, improve its regulatory system through additional internal consultation and coordination mechanisms.

5. Each Party may establish or maintain a central coordinating body.

ARTICLE 28.5

Transparency of the Regulatory Processes and Mechanisms

Each Party shall make publicly available descriptions of the processes and mechanisms used by its regulatory authority to prepare, evaluate or review regulatory measures. Those descriptions shall refer to relevant guidelines, rules or procedures, including those regarding opportunities for the public to provide comments.

ARTICLE 28.6

Early Information on Planned Regulatory Measures

1. Each Party shall make publicly available, at least on an annual basis, a list of planned major[160] regulatory measures that its regulatory authority reasonably expect to adopt within the year.

2. With respect to each of the regulatory measures included in the list referred to in paragraph 1, each Party should also make publicly available:

(a) a brief description of its scope and objectives; and

(b) the estimated time for its adoption including, if possible, the period for public consultation.

[160] For greater certainty, a "major regulatory measure" means a measure that has a significant regulatory impact as determined by each Party, in accordance with its rules and procedures.

ARTICLE 28.7

Public Consultations

1. When developing a major regulatory measure, each Party shall, in accordance with its rules and procedures:

(a) publish a draft regulatory measure or consultation documents providing sufficient details about the new regulatory measure under preparation in order to allow any person to assess whether and how its interests might be significantly affected;

(b) offer reasonable opportunities for any person, on a non-discriminatory basis, to provide comments; and

(c) consider the comments received.

2. Each Party should make use of electronic means of communication and seek to use a dedicated single access point for providing information related to public consultations, including on how to provide comments.

3. Each Party shall make publicly available any comments it receives, as well as a summary of the results of the consultations. That obligation does not apply to the extent necessary to protect confidential information or personal data, or to withhold inappropriate content.

ARTICLE 28.8

Regulatory Impact Assessment

1. Each Party shall promote that its regulatory authority, in accordance with the applicable rules and procedures, carries out regulatory impact assessments when developing major regulatory measures.

2. When carrying out an regulatory impact assessment in accordance with paragraph 1, the regulatory authority of each Party shall establish and maintain processes and mechanisms that promote the consideration of the following factors:

(a) the need for a regulatory measure, including the nature and significance of the problem that the regulatory measure is intended to address;

(b) any feasible and appropriate regulatory and non-regulatory alternatives, including the option of not regulating, that would achieve the public policy objective of that Party;

(c) to the extent possible and relevant, the potential costs and benefits and social, economic and environmental impact of those alternatives, including on international trade and investment and on small and medium-sized enterprises; recognising that some costs and benefits are difficult to quantify and to express in monetary terms;

(d) how the options under consideration relate to relevant international standards, including the reason for any divergence, where appropriate; and

(e) how the public policy objectives are best achieved in terms of effectiveness and efficiency.

3. When carrying out a regulatory impact assessment in accordance with paragraph 1, the regulatory authority shall rely on the best reasonably obtainable evidence including scientific, technical, economic or other information.

4. With respect to any regulatory impact assessment that a regulatory authority has carried out for a regulatory measure, the Party concerned shall prepare a final report that sets out in detail the factors that the regulatory authority considered in its assessment and the relevant findings. Such report shall be made publicly available no later than the date on which the regulatory measure is made publicly available.

ARTICLE 28.9

Retrospective Evaluation

1. The regulatory authority of each Party shall maintain processes or mechanisms to promote periodic retrospective evaluations or reviews of its regulatory measures at intervals it deems appropriate.

2. When conducting a periodic retrospective evaluation, the regulatory authorities of a Party shall consider whether there are opportunities to more effectively achieve public policy objectives and to reduce unnecessary regulatory burdens, including on small and medium-sized enterprises. On the basis of those periodic retrospective evaluations, each Party should determine whether its regulatory measures should be modified, streamlined, expanded or repealed.

3. Each Party shall make publicly available its plans for and the results of its periodic retrospective evaluations.

ARTICLE 28.10

Regulatory Register

Each Party shall ensure, in accordance with its rules and procedures, that regulatory measures which are in effect are available on a single, freely accessible website. That website should allow searches for regulatory measures by citation or by word and be periodically updated.

ARTICLE 28.11

Contact Points

1. The contact points for communication between the Parties on matters arising under this Chapter are:

(a) for Mexico, the General Directorate for International Trade Disciplines of the Undersecretariat of Foreign Trade of the Ministry of Economy (*Dirección General de Disciplinas de Comercio Internacional de la Subsecretaría de Comercio Exterior de la Secretaría de Economía*) or its successor; and

(b) for the European Union, the Directorate-General for Trade, or its successor.

2. Each contact point is responsible for consulting and coordinating within its respective regulatory authority, as appropriate, on matters arising under this Chapter.

3. Each Party shall notify the other Party of the contact details of its contact point and promptly notify the other Party of any changes to those contact details.

ARTICLE 28.12

Cooperation and Exchange of Information

1. The Parties shall cooperate in order to facilitate the implementation of this Chapter. That cooperation may include the organisation of any relevant activities, including mutual assistance, to strengthen cooperation between their regulatory authorities.

2. No later than one year after the date of entry into force of this Agreement, the Parties shall exchange information on their existing rules and procedures on good regulatory practices and, if applicable, on any steps taken for the implementation of this Chapter.

ARTICLE 28.13

Dispute Settlement

A Party shall not have recourse to dispute settlement under Chapter 31 (Dispute Settlement) concerning the application or interpretation of the provisions of this Chapter.

CHAPTER 29

SMALL AND MEDIUM-SIZED ENTERPRISES

ARTICLE 29.1

Objective

The Parties recognise the importance of enhancing cooperation on matters relevant for small and medium-sized enterprises (hereinafter referred to as "SMEs") by the means provided for in this Chapter as well as by other provisions of this Agreement that may otherwise be of particular benefit to SMEs.

ARTICLE 29.2

Information Sharing

1. Each Party shall establish or maintain a publicly accessible website containing information regarding this Agreement, including:

(a) the text of this Agreement, including all annexes;

(b) a summary of this Agreement; and

(c) information designed for use by SMEs that shall contain:

(i) a description of the provisions of this Agreement that the Party considers to be relevant for SMEs of both Parties; and

(ii) any additional information that the Party considers useful for SMEs interested in benefitting from the opportunities provided under this Agreement.

2. Each Party shall include in the website referred to in paragraph 1 links to:

(a) the equivalent website of the other Party; and

(b) the websites of its government authorities and other appropriate entities that the Party considers would provide useful information to SMEs that are interested in trading or doing business in that Party.

3. The websites referred to in subparagraph 2(b) shall include information related to the following:

(a) customs laws and regulations, and procedures for importation, exportation and transit as well as forms and documents required therefor;

(b) laws and regulations, and procedures concerning intellectual property rights;

(c) technical regulations and, in cases where third-party conformity assessment is mandatory as provided for in Chapter 9 (Technical Barriers to Trade), mandatory conformity assessment procedures and links to lists of conformity assessment bodies;

(d) sanitary and phytosanitary measures relating to importation and exportation;

(e) rules on public procurement, a database containing public procurement notices and the relevant provisions of Chapter 21 (Public Procurement);

(f) business registration procedures; and

(g) other information which the Party considers to be useful to SMEs.

4. Each Party shall include in the website referred to in paragraph 1 a link to a database that is electronically searchable by tariff nomenclature code. That database shall:

(a) include the following information with respect to access of goods to its market:

(i) rates of customs duties and tariff rate quotas, if applicable, concerning most-favoured-nation and non most-favoured-nation countries as well as preferential rates of customs duties and tariff rate quotas;

(ii) excise duties;

(iii) value added tax;

(iv) customs charges or other fees, including product-specific fees;

(v) rules of origin as provided for in Chapter 3 (Rules of Origin and Origin Procedures); and

(vi) criteria used to determine the customs value of goods; and

(b) endeavour to include the following information with respect to access of goods to its market:

(i) other tariff measures;

(ii) duty drawback, deferral or other types of relief that reduce, refund or waive customs duties;

(iii) if applicable, country of origin marking requirements, including placement and method of marking;

(iv) information required for import procedures; and

(v) information related to non-tariff measures.

5. Each Party shall regularly update the information and links provided pursuant to paragraphs 1 to 4 to ensure that they are accurate.

6. Each Party shall ensure that the information provided in accordance with this Article is presented in a manner adequate for the use of SMEs. Each Party shall endeavour to make the information available in English.

7. A Party shall not apply any fee for access to the information provided pursuant to paragraphs 1 to 4 to any person of a Party.

ARTICLE 29.3

SME Contact Points

1. Each Party shall designate a contact point ("SME Contact Point") in charge of the functions set out in this Article and shall notify the other Party of its contact details. The Parties shall promptly notify each other of any changes to those contact details.

2. The SME Contact Points shall:

(a) ensure that the needs of SMEs are taken into account in the implementation of this Agreement and consider ways to increase trade and investment opportunities for SMEs by strengthening cooperation between the Parties on SME matters;

(b) identify ways and exchange information for SMEs of the Parties to take advantage of new opportunities created under this Agreement;

(c) ensure that the information included in the websites referred to in Article 29.2 is up-to-date and relevant for SMEs, and consider including in those websites any additional information that an SME Contact Point might recommend;

(d) address any other matter of interest to SMEs in connection with the implementation of this Agreement with regards to SMEs, including by:

(i) exchanging information;

(ii) participating, if appropriate, in the work of the sub-committees and working groups established under this Agreement, and presenting to those sub-committees and working groups, in their respective specific areas of activity, matters and recommendations of particular interest to SMEs, while avoiding duplication of work programmes; and

(iii) identifying and proposing possible mutually acceptable solutions for improving the ability of SMEs to engage in trade and investment between the Parties;

(e) report periodically on their activities for the consideration of the Joint Committee; and

(f) consider any other matter arising under this Agreement pertaining to SMEs as the Parties may agree.

3. SME Contact Points shall meet as necessary and shall carry out their work through the appropriate communication channels agreed by the SME Contact Points which may include electronic mail, videoconferencing or other electronic communication means.

4. SME Contact Points may seek to cooperate with experts and external organisations, as appropriate, in carrying out their activities.

ARTICLE 29.4

Non-Application of Dispute Settlement

A Party shall not have recourse to dispute settlement under Chapter 31 (Dispute Settlement) concerning the interpretation or application of the provisions of this Chapter.

CHAPTER 30

RAW MATERIALS

ARTICLE 30.1

Definitions

For the purposes of this Chapter:

(a) "authorisation" means the permission, licence, concession or similar administrative or contractual instrument by which the competent authority of a Party entitles an entity to exercise a certain economic activity in its territory;

(b) "entity" refers to any natural person or enterprise or group thereof; and

(c) "raw materials" means substances used in the manufacture of industrial products, excluding processed fishery products and agricultural products, which consist of salt, sulphur, earths and stone, plastering materials, lime and cement (HS 25); ores, slag and ash (HS 26); goods included in HS 27; inorganic chemicals (HS 28); organic chemicals (HS 29); fertilisers (HS 31); natural rubber (HS 40); raw hides, skins and leather (HS 41); and basic and precious metals and processed minerals (ex HS 71, 72; 74-76; 78-81), excluding uranium and thorium (HS 26.12) and radioactive elements and isotopes (HS 28.44, 28.45).

ARTICLE 30.2

Principles

1. Each Party retains the sovereign right to determine whether areas are available for exploration and production of raw materials in its territory, determined in accordance with its law and the United Nations Convention on the Law of the Sea.

2. In accordance with the provisions of this Chapter, the Parties reserve their right to adopt, maintain and enforce measures necessary to pursue legitimate public policy objectives, such as securing the supply of raw materials, protecting society, the environment, public health and consumers, and promoting public security and safety.

ARTICLE 30.3

Export and Import Monopolisation

A Party shall not designate or maintain an import or export monopoly for raw materials. For the purposes of this Article, import or export monopoly means the exclusive right or grant of authority by a Party to an entity to import or export raw materials to the other Party[161].

[161] For greater certainty, this provision is without prejudice of the provisions of Chapter 10 (Investment) and Chapter 11 (Cross-Border Trade in Services) and the annexes thereto and does not include any right that results from the grant of an exclusive intellectual property right.

ARTICLE 30.4

Export Pricing

A Party shall not adopt or maintain a higher price for exports of raw materials to the other Party than the price charged for those goods when destined for the domestic market, by means of any measure.

ARTICLE 30.5

Domestic Pricing

1. The Parties may only regulate the price of the domestic supply of raw materials (hereinafter referred to as "regulated price") by imposing a public service obligation.

2. If a Party imposes a public service obligation, it shall ensure that the obligation:

(a) is clearly defined, transparent and proportionate; and

(b) is not maintained if the circumstances or objectives giving rise to its imposition no longer exist.

3. A Party regulating the price shall ensure that the methodology underlying the calculation of the regulated price referred to in paragraph 2 is published prior to its entry into force.

ARTICLE 30.6

Cooperation on Raw Materials

The Parties shall cooperate in the area of raw materials with a view to, among other things:

(a) reducing or eliminating measures that distort trade and investment in third countries and affect raw materials;

(b) coordinating their positions in international fora where trade and investment issues related to raw materials are discussed, and fostering international programmes in the areas of raw materials;

(c) fostering exchange of market data in the area of raw materials;

(d) promoting corporate social responsibility in accordance with international standards, such as the OECD Guidelines for Multinational Enterprises on Responsible Business Conduct and the OECD Due Diligence Guidance for Responsible Business Conduct;

(e) promoting research, development, innovation and training in relevant fields of common interest in the area of raw materials;

(f) fostering the exchange of information and best practices on domestic policy developments; and

(g) promoting the efficient use of resources, including improving production processes as well as durability, reparability, design for disassembly, ease of reuse and recycling of goods.

CHAPTER 31

DISPUTE SETTLEMENT

SECTION A

Objective and Scope

ARTICLE 31.1

Objective

The objective of this Chapter is to establish an effective and efficient mechanism for avoiding and settling any dispute between the Parties concerning the interpretation and application of this Part of this Agreement with a view to reaching, where possible, a mutually agreed solution.

ARTICLE 31.2

Scope

Unless otherwise provided, this Chapter applies with respect to any dispute between the Parties concerning the interpretation or application of the provisions of this Part of this Agreement (hereinafter referred to as "covered provisions"), if a Party considers that a measure[162] of the other Party is inconsistent with any covered provision.

ARTICLE 31.3

Definitions

For the purposes of this Chapter, the definitions set out in Annexes 31-A and 31-B apply.

[162] For greater certainty, any act or omission attributable to a Party can be a measure of that Party for the purposes of this Chapter. A proposed measure of a Party may be the subject of consultations under Article 31.5. A panel shall not be established to review a proposed measure.

ARTICLE 31.4

Choice of Forum

1. If a dispute arises regarding a measure allegedly inconsistent with an obligation under this Part of this Agreement and a substantially equivalent obligation under another international agreement to which both Parties are party, including the WTO Agreement, the Party seeking redress shall select the forum in which to settle the dispute.

2. Once a Party has initiated dispute settlement procedures under this Chapter or under another international agreement, that Party shall not initiate dispute settlement procedures in another forum with respect to the measure referred to in paragraph 1, unless the forum selected first fails to make findings for procedural or jurisdictional reasons.

3. For the purposes of this Article:

(a) dispute settlement procedures under this Chapter are deemed to be initiated by a Party's request for the establishment of a panel pursuant to Article 31.6;

(b) dispute settlement procedures under the WTO Agreement are deemed to be initiated by a Party's request for the establishment of a panel pursuant to Article 6 of the DSU; and

(c) dispute settlement procedures under any other agreement are deemed to be initiated in accordance with the relevant provisions of that agreement.

4. Without prejudice to paragraph 2, nothing in this Agreement shall preclude a Party from suspending obligations authorised by the Dispute Settlement Body of the WTO or authorised under the dispute settlement procedures of another international agreement to which the Parties are party. The WTO Agreement or any other international agreement between the Parties shall not be invoked to preclude a Party from suspending obligations under this Part of this Agreement.

SECTION B

Consultations

ARTICLE 31.5

Consultations

1. The Parties shall endeavour to resolve any dispute referred to in Article 31.2 by entering into consultations in good faith with the aim of reaching a mutually agreed solution.

2. A Party shall seek consultations by means of a written request to the other Party identifying the measure at issue and the covered provisions that it considers applicable.

3. The Party to which the request for consultations is made shall promptly reply to the request and in any case no later than 10 days after the date of its receipt. Consultations shall be held no later than 30 days after the date of receipt of the request and take place, unless the Parties agree otherwise, in the territory of the Party to which the request is made. Consultations shall be deemed as concluded 30 days after the date of receipt of the request unless the Parties agree to continue consultations.

4. Consultations on matters of urgency, including those regarding perishable goods, shall be held within 15 days after the date of receipt of the request for consultations. Consultations shall be deemed as concluded within those 15 days unless the Parties agree to continue consultations.

5. During consultations, each Party shall provide to the other Party sufficient factual information to allow a complete examination of the manner in which the measure at issue could affect the application of this Part. Each Party shall endeavour to ensure the participation of personnel of its competent governmental authorities who have expertise in the matter subject to consultations.

6. Consultations, and in particular positions taken by the Parties during consultations, shall be confidential and without prejudice to the rights of either Party in any further proceedings. Each Party shall protect any confidential information received in the course of consultations as requested by the Party providing the information.

7. If the Party to which the request is made does not respond to the request for consultations within 10 days after the date of its receipt, if consultations are not held within the timeframes set out in paragraphs 3 or 4, if the Parties agree not to have consultations, or if consultations have been concluded and no mutually agreed solution has been reached, the Party that sought consultations may have recourse to Article 31.6.

SECTION C

Panel Procedures

ARTICLE 31.6

Establishment of a Panel

1. If the Parties fail to resolve the dispute through recourse to consultations as provided for in Article 31.5, the Party that sought consultations may request the establishment of a panel.

2. The request for the establishment of a panel shall be made by means of a written request to the other Party. The complaining Party shall identify in its request the measure at issue and explain how that measure is inconsistent with the covered provisions in a manner sufficient to present the legal basis for the complaint clearly.

3. A panel shall be established following the request.

ARTICLE 31.7

Composition of a Panel

1. A panel shall be composed of three panellists.

2. Within 15 days after the date of receipt of the written request referred to in Article 31.6.2, the Parties shall consult with a view to agreeing on the composition of the panel. For that purpose, each Party shall, within 10 days after the date of receipt of such written request, designate a panellist, who may be a national of that Party, and propose to the other Party up to three candidates to serve as chairperson. The Parties shall endeavour to agree on the chairperson from among the chairperson candidates within 15 days after the date of receipt of the written request referred to in Article 31.6.2. A Party may object to a panellist designated by the other Party if it considers that such individual does not comply with the requirements set out in Article 31.9.

3. If the Parties fail to agree on the composition of the panel within the time period of 15 days set out in paragraph 2, the Parties shall apply the procedures set out in paragraphs 4 to 9 to compose a panel.

4. Each Party shall, within seven days after the expiry of the time period of 15 days set out in paragraph 2, appoint a panellist from its sub-list referred to in Article 31.8.

5. If the complaining Party fails to appoint a panellist within the period specified in paragraph 4, the dispute settlement proceedings shall lapse at the end of that period.

6. If the Party complained against fails to appoint a panellist within the period specified in paragraph 4, the complaining Party may request an appointing authority listed in the Rules of Procedure in Annex 31-A to select the panellist by lot. The appointing authority shall select the panellist by lot from the sub-list of the Party complained against referred to in Article 31.8 within 15 days after the receipt of the request of the complaining Party.

7. If the Parties fail to agree on the chairperson within the time period of 15 days set out in paragraph 2, the complaining Party or, in case of procedures pursuant to Article 31.18, either Party, may request an appointing authority listed in Rule 6 of the Rules of Procedure in Annex 31-A to select by lot the chairperson of the panel from the sub-list of individuals who shall serve as chairpersons referred to in Article 31.8, within seven days after the expiry of that time period. The appointing authority shall select the chairperson within 15 days after the receipt of the request referred to in this paragraph.

8. For the purposes of paragraphs 6 and 7, the appointing authorities listed in Rule 6 of the Rules of Procedure in Annex 31-A shall select the panellists in accordance with the provisions of this Chapter and those Rules of Procedure.

9. If any of the lists referred to in Article 31.8 have not been adopted by the Joint Committee, the panellists or chairperson shall be appointed from the individuals who have been designated by one or both Parties and notified in writing to the other Party for the purposes of adopting that list.

ARTICLE 31.8

Lists of Panellists

1. The Joint Committee shall, no later than six months after the date of entry into force of this Agreement, adopt a list of at least 15 individuals who are willing and able to serve as panellists. The list shall be composed of the three following sub-lists:

(a) a sub-list of individuals of the European Union;

(b) a sub-list of individuals of Mexico; and

(c) a sub-list of individuals who shall serve as chairperson of the panel.

2. Each sub-list shall include at least five individuals. The sub-list referred to in subparagraph 1(c) shall not contain individuals who are nationals of either Party.

3. The Joint Committee may adopt additional lists of individuals with expertise in specific sectors covered by this Agreement. Subject to the agreement of the Parties, such additional lists shall be used to compose the panel in accordance with the procedure set out in Article 31.7.

ARTICLE 31.9

Requirements for Panellists

1. Each panellist shall:

(a) have demonstrated expertise in law, international trade, and other matters covered by this Agreement, such as the resolution of disputes arising under other international trade agreements;

(b) be independent of, and not be affiliated with or take instructions from, either Party;

(c) serve in his or her individual capacities and not take instructions from any organisation or government with regard to matters related to the dispute; and

(d) comply with the Code of Conduct for Panellists and Mediators in Annex 31-B.

2. The chairperson shall also have experience in dispute settlement procedures.

3. In view of the subject-matter of a particular dispute, the Parties may agree to derogate from the requirements listed in subparagraph 1(a).

ARTICLE 31.10

Functions of the Panel

The panel:

(a) shall make an objective assessment of the matter before it, including an objective assessment of the facts of the case, and the applicability of the covered provisions and the conformity of the measures at issue with the covered provisions;

(b) shall set out, in its decisions and reports, the findings of fact, the applicability of the covered provisions, the basic rationale for any findings and conclusions and, if the parties have jointly requested them, any recommendations; and

(c) should regularly consult with the Parties and provide adequate opportunities for the development of a mutually agreed solution.

ARTICLE 31.11

Terms of Reference

1. Unless the Parties agree otherwise, within five days after the date of appointment of the last panellist, the terms of reference of the panel shall be:

"to examine, in the light of the relevant provisions of Part III (Trade and Investment) of this Agreement cited by the Parties, the matter referred to in the request for the establishment of the panel; to make findings on the conformity of the measure at issue with the provisions of Part III (Trade and Investment) of this Agreement referred to in Article 31.2 (Scope); to make recommendations, if the parties have jointly requested them; and to deliver a report in accordance with Articles 31.13 (Interim Report) and 31.14 (Final Report)."

2. If the Parties agree on other terms of reference, they shall notify the agreed terms of reference to the panel within the time period set out in paragraph 1.

ARTICLE 31.12

Decision on Urgency

1. If a Party so requests no later than five days from the date of delivery of the request of establishment of the panel, the panel shall decide, within 10 days of the appointment of the last panellist, whether the case concerns matters of urgency. The other Party shall have the opportunity to comment on the request within five days of the date of delivery of such request.

2. In cases of urgency, the applicable time periods set out in Section C shall be half the time prescribed therein, except for the time periods referred to in Articles 31.6 and 31.11.

ARTICLE 31.13

Interim Report

1. The panel shall deliver an interim report to the Parties within 90 days after the date of the appointment of the last panellist. When the panel considers that this deadline cannot be met, the chairperson of the panel shall notify the Parties in writing, stating the reasons for the delay and the date on which the panel plans to deliver its interim report. The panel shall under no circumstances deliver its interim report later than 120 days after the date of the appointment of the last panellist.

2. Each Party may deliver to the panel a written request to review precise aspects of the interim report within 10 days of its receipt. A Party may comment on the other Party's request within six days of its delivery.

ARTICLE 31.14

Final Report

1. The panel shall deliver its final report to the Parties within 120 days after the date of establishment of the panel. When the panel considers that this deadline cannot be met, the chairperson of the panel shall notify the Parties in writing, stating the reasons for the delay and the date on which the panel plans to deliver its final report. The panel shall under no circumstance deliver its final report later than 150 days after the date of establishment of the panel.

2. The final report shall include a discussion of any written request by the Parties on the interim report and clearly address any comments thereto. After considering any written request and comments by the Parties on the interim report, the panel may modify its report and make any further examination it considers appropriate.

3. The ruling of the panel in the final report shall be final and binding on the Parties.

ARTICLE 31.15

Compliance Measures

1. The Parties recognise the importance of prompt compliance with the findings and conclusions of the panel in the final report in order to ensure an effective resolution of the dispute. The Party complained against shall take any measures necessary to promptly comply with the findings and conclusions in the final report in order to bring itself into compliance with the covered provisions.

2. The Party complained against shall, no later than 30 days after receipt of the final report, deliver a notification to the complaining Party of the measures which it has taken, or which it envisages to take, to comply.

3. Unless the Parties reach a mutually agreed solution pursuant to Article 31.33, the resolution of a dispute shall require the removal of any measures inconsistent with this Agreement.

ARTICLE 31.16

Reasonable Period of Time

1. If immediate compliance is not possible, the Party complained against shall, no later than 30 days after receipt of the final report, deliver to the complaining Party a notification of the reasonable period of time it will require for compliance. The Parties shall endeavour to agree on a reasonable period of time to comply with the final report. The reasonable period of time should not exceed 15 months from the delivery of the final report under Article 31.14.

2. If the Parties do not agree on a reasonable period of time, the complaining Party may, at the earliest 20 days after receipt of the notification referred to in paragraph 1, request in writing the original panel to determine the reasonable period of time. The panel shall deliver its decision to the Parties within 20 days after the date of receipt of the request.

3. The Party complained against shall deliver a written notification of its progress in complying with the final report to the complaining Party at least one month before the expiry of the reasonable period of time.

4. The Parties may agree to extend the reasonable period of time.

ARTICLE 31.17

Compliance Review

1. The Party complained against shall, no later than the date of expiry of the reasonable period of time, deliver a notification to the complaining Party of any measures taken to comply with the final report.

2. When the Parties disagree on the existence of measures taken to comply or their consistency with the covered provisions, the complaining Party may deliver a written request to the original panel to decide on the matter. The request shall identify any measures at issue and explain how those measures would be inconsistent with the covered provisions in a manner sufficient to present the legal basis for the complaint clearly. The panel shall deliver its decision to the Parties within 60 days after the date of receipt of the request.

ARTICLE 31.18

Temporary Remedies

1. The Party complained against shall, upon request by and after consultations with the complaining Party, present an offer for temporary compensation if:

(a) the Party complained against delivers a notification to the complaining Party that it is not possible to comply with the final report; or

(b) the Party complained against fails to deliver a notification of any measure taken to comply within the deadline referred to in Article 31.15.2 or by the date of expiry of the reasonable period of time; or

(c) the panel finds that no measure taken to comply exists or that the measure taken to comply is inconsistent with the covered provisions.

2. Under any of the conditions referred to in subparagraphs 1(a) to (c), the complaining Party may deliver a written notification to the Party complained against that it intends to suspend the application of obligations under the covered provisions if:

(a) the complaining Party decides not to make a request pursuant to paragraph 1; or

(b) when a request pursuant to paragraph 1 is made, the Parties do not agree on the temporary compensation within 20 days after:

(i) the date of the notification of the Party complained against that it is not possible to comply with the final report;

(ii) the date of expiry of the reasonable period of time; or

(iii) the delivery of the panel decision pursuant to Article 31.17.2.

3. The notification referred to in paragraph 2 shall specify the level of intended suspension of obligations. In considering which benefits to suspend, the complaining Party should first seek to suspend benefits in the same sector or sectors as that or those affected by the measure that the panel has found to be inconsistent with this Part of this Agreement or cause nullification or impairment. The suspension of concessions or other obligations may be applied to sectors covered by this Chapter other than the one or ones in which the panel has found nullification or impairment, in particular if the complaining Party is of the view that such suspension in the other sector is practicable or effective in inducing compliance. The level of the suspension of concessions or other obligations shall not exceed the level equivalent to the nullification or impairment caused by the violation.

4. The complaining Party may suspend the obligations 15 days after the date of delivery of the notification referred to in paragraph 2, unless the Party complained against has made a request under paragraph 5.

5. If the Party complained against considers that the notified level of suspension of concessions or other obligations exceeds the level equivalent to the nullification or impairment caused by the violation, it may deliver a written request to the original panel before the expiry of the 15-day period set out in paragraph 4 to decide on the matter. The panel shall determine the level of benefits it considers to be equivalent and shall deliver its decision to the Parties within 30 days after the date of the request. The complaining Party shall not suspend any obligations until the panel has delivered its decision. The suspension of obligations shall be consistent with that decision.

6. The suspension of obligations or the compensation referred to in this Article shall be temporary and shall not be applied after:

(a) the Parties have reached a mutually agreed solution pursuant to Article 31.33;

(b) the Parties have agreed that the measure taken to comply brings the Party complained against into conformity with the covered provisions; or

(c) any measure taken to comply which the panel found to be inconsistent with the covered provisions has been withdrawn or amended so as to bring the Party complained against into conformity with those provisions.

ARTICLE 31.19

Review of any Measure Taken to Comply after the Adoption of Temporary Remedies

1. The Party complained against shall deliver a notification to the complaining Party of any measure taken to comply following the suspension of obligations or following the application of temporary compensation, as the case may be. With the exception of cases under paragraph 2, the complaining Party shall terminate the suspension of obligations within 30 days after the receipt of that notification. In cases where compensation has been applied, and with the exception of cases under paragraph 2, the Party complained against may terminate the application of such compensation within 30 days after receipt by the complaining Party of its notification that it has complied.

2. If the Parties do not reach an agreement on whether the notified measure brings the Party complained against into conformity with the covered provisions within 30 days of the date of receipt of the notification referred to in paragraph 1, the complaining Party shall deliver a written request to the original panel to decide on the matter. The panel shall deliver its decision to the Parties within 60 days after the date of the receipt of the request. If the panel finds that the measure taken to comply is in conformity with the covered provisions, the suspension of obligations or compensation, as the case may be, shall be terminated. If relevant, the level of suspension of obligations or of compensation shall be adjusted in light of the panel decision.

ARTICLE 31.20

Replacement of Panellists

If during dispute settlement procedures a panellist is unable to participate, withdraws or needs to be replaced because he or she does not comply with the requirements of the Code of Conduct for Panellists and Mediators in Annex 31-B, a new panellist shall be appointed in accordance with Article 31.7 and the Rules of Procedure in Annex 31-A. The time period for the delivery of the report or decision shall be extended as necessary until the appointment of the new panellist.

ARTICLE 31.21

Rules of Procedure

1. Panel procedures under this Section shall be governed by this Chapter and the Rules of Procedure in Annex 31-A.

2. The Rules of Procedure shall ensure in particular that:

(a) Parties have the right to at least one hearing before the panel at which each Party may present its views orally;

(b) each Party has an opportunity to provide an initial written submission and a written rebuttal;

(c) subject to the protection of confidential information, each Party makes available to the public its written submissions, its written version of an oral statement and its written responses to a request or question from the panel, if any, as soon as possible after those documents are submitted and no later than the date of delivery of the final report; and

(d) the panel and the Parties treat as confidential any information submitted by a Party to the panel.

3. Any hearing of the panel shall be open to the public, unless otherwise agreed by the Parties.

ARTICLE 31.22

Suspension and Termination

1. At the request of both Parties, the panel shall suspend its work at any time for a time period agreed by the Parties and not exceeding 12 consecutive months. The panel shall resume its work before the end of the suspension period at the written request of both Parties, or on the last day of the suspension period at the written request of either Party. The requesting Party shall deliver a notification to the other Party accordingly.

2. If neither Party requests the resumption of the panel's work before the end of the expiry of the suspension period, the authority of the panel shall lapse and the dispute settlement procedures shall be terminated. This shall be without prejudice to the Parties' right to initiate new proceedings on the same matter.

3. If the work of the panel is suspended, the relevant time periods under this Section shall be extended by the same time period for which the work of the panel was suspended.

ARTICLE 31.23

Receipt of Information

1. At the request of a Party or on its own initiative, the panel may seek from the Parties information it considers necessary and appropriate. The Parties shall promptly and fully respond to any request by the panel for such information.

2. On request of a Party or on its own initiative, the panel may seek any information it deems appropriate from any source. The panel also has the right to seek an opinion or technical advice from experts, as it deems appropriate, and subject to any terms and conditions agreed by the Parties, where applicable.

3. The panel shall consider *amicus curiae* submissions from natural persons of a Party or legal persons established in the territory of a Party in accordance with the Rules of Procedure in Annex 31-A.

4. Any information obtained by the panel pursuant to this Article shall be disclosed to the Parties, and the Parties may provide comments on that information.

ARTICLE 31.24

Rules of Interpretation

1. The panel shall interpret the covered provisions in accordance with customary rules of interpretation of public international law, including those codified in the Vienna Convention on the Law of Treaties. The panel shall also take into account relevant interpretations in reports of WTO panels and reports of the Appellate Body as adopted by the Dispute Settlement Body of the WTO.

2. Reports and decisions of the panel shall not add to or diminish the rights and obligations of the Parties under this Agreement.

ARTICLE 31.25

Reports and Decisions of the Panel

1. The deliberations of the panel shall be kept confidential. The panel shall make every effort to draft reports and take decisions by consensus. If that is not possible, the panel shall decide the matter by majority vote. In no case shall separate opinions of panellists be disclosed.

2. The decisions and reports of the panel shall be accepted unconditionally by the Parties. They shall not create any rights or obligations with respect to natural or legal persons.

3. Each Party shall make the reports and decisions of the panel publicly available as soon as possible after the date of delivery to the Parties, subject to the protection of confidential information.

SECTION D

Mediation Mechanism

ARTICLE 31.26

Objective

The objective of the mediation mechanism is to facilitate the finding of a mutually agreed solution through a comprehensive and expeditious procedure with the assistance of a mediator.

ARTICLE 31.27

Initiation of the Mediation Procedure

1. A Party may at any time request the other Party, in writing, to enter into a mediation procedure with respect to any measure of that Party adversely affecting trade or investment between the Parties. Consultations are not required before initiating the mediation procedure.

2. The request shall be sufficiently detailed to clearly present the concerns of the requesting Party and shall:

(a) identify the measure at issue;

(b) provide a statement of the adverse effects that the requesting Party considers that the measure has, or will have, on trade or investment between the Parties; and

(c) explain how the requesting Party considers that those effects are linked to the measure.

3. The mediation procedure may only be initiated by mutual agreement of the Parties. The Party to which the request is made shall give sympathetic consideration to the request and deliver its written acceptance or rejection to the requesting Party within 10 days after its receipt. Otherwise the request shall be regarded as rejected.

ARTICLE 31.28

Selection of the Mediator

1. The Parties shall endeavour to agree on a mediator, if possible no later than 15 days after the receipt of the acceptance of the request.

2. In the event that the Parties are unable to agree on a mediator within the time period set out in paragraph 1, either Party may request an appointing authority listed in the Rules of Procedure in Annex 31-A to select the mediator by lot, within five days after the request, from the sub-list of individuals who shall serve as chairpersons referred to in Article 31.8.

3. If the sub-list of individuals who shall serve as chairpersons referred to in Article 31.8 has not been adopted by the Joint Committee at the time of a request pursuant to Article 31.27, the mediator shall be drawn by lot from the individuals designated by one or both Parties for that sub-list, as the case may be.

4. A mediator shall not be a national of either Party or employed by either Party, unless the Parties agree otherwise.

5. A mediator shall comply with the Code of Conduct for Panellists and Mediators in Annex 31-B.

ARTICLE 31.29

Rules of the Mediation Procedure

1. Within 10 days of the appointment of the mediator, the Party which requested the mediation procedure shall deliver to the mediator and to the other Party a detailed written description of its concerns, in particular relating to the operation of the measure at issue and its possible adverse effects on trade or investment between the Parties. Within 20 days after the receipt of such description, the other Party may deliver written comments on that description.

2. The mediator shall assist the Parties in a transparent manner in bringing clarity to the measure at issue and its possible adverse effects on trade or investment between the Parties. In particular, the mediator may organise meetings between the Parties, consult the Parties jointly or individually, seek the assistance of, or consult with, relevant experts and stakeholders, and provide any additional support requested by the Parties. The mediator shall consult with the Parties before seeking the assistance of, or consulting with, relevant experts and stakeholders.

3. The mediator may offer advice and propose a solution for the consideration of the Parties. The Parties may accept or reject the proposed solution, or agree on a different solution. The mediator shall not advise or comment on the consistency of the measure at issue with this Agreement.

4. The mediation procedure shall take place in the territory of the Party to which the request to enter into a mediation procedure was addressed or, by mutual agreement, in any other location or by any other means of communication.

5. The Parties shall endeavour to reach a mutually agreed solution within 60 days after the appointment of the mediator. In reaching such solution, the Parties may consider the completion of any necessary internal procedures. Pending a final agreement, the Parties may consider possible interim solutions, in particular if the measure relates to perishable goods.

6. On request of either Party, the mediator shall deliver a draft factual report to the Parties providing:

(a) a brief summary of the measure at issue;

(b) the procedures followed; and

(c) any mutually agreed solution reached, including any possible interim solutions.

7. The mediator shall allow the Parties 15 days to comment on the draft factual report. After considering the comments of the Parties, the mediator shall, within 15 days, deliver a final factual report to the Parties. The factual report shall not include any interpretation of this Agreement.

8. The procedure shall be terminated:

(a) by the adoption of a mutually agreed solution by the Parties, on the date of the adoption thereof;

(b) by mutual agreement of the Parties at any stage of the procedure, on the date of that agreement;

(c) by a written declaration of the mediator, after consultation with the Parties, that further efforts at mediation would be to no avail, on the date of that declaration; or

(d) by a written declaration of a Party after having explored mutually agreed solutions under the mediation procedure and after having considered any advice and proposed solutions by the mediator, on the date of that declaration.

ARTICLE 31.30

Confidentiality

1. Unless the Parties agree otherwise, all steps of the mediation procedure, including any advice or proposed solution, are confidential. Each Party may disclose to the public the fact that mediation is taking place.

2. If agreed by the Parties, mutually agreed solutions shall be made publicly available. The version disclosed to the public shall not contain any information that a Party has designated as confidential.

ARTICLE 31.31

Relation to Dispute Settlement Procedures

1. The mediation procedure is without prejudice to the Parties' rights and obligations under Sections B and C or dispute settlement procedures under any other agreement. For greater certainty, a mediation procedure may be initiated or continue while panel procedures are in progress.

2. A Party shall not rely on or introduce as evidence in other dispute settlement procedures under this Agreement or any other agreement, nor shall a panel take into consideration:

(a) positions taken by the other Party in the course of the mediation procedure or information exclusively gathered in accordance with paragraph 2 of Article 31.29;

(b) the fact that the other Party has indicated its willingness to accept a solution to the measure subject to mediation; or

(c) advice given or proposals made by the mediator.

3. Unless the Parties agree otherwise, a mediator shall not serve as a panellist in dispute settlement procedures under this Agreement or under any other agreement involving the same matter for which he or she has been a mediator.

SECTION E

Common Provisions

ARTICLE 31.32

Request for Information

1. Before a request for consultations or mediation is made pursuant to Article 31.5 or 31.27, respectively, a Party may request information regarding a measure adversely affecting trade or investment between the Parties. The Party to which such request is made shall, within 20 days after the receipt of the request, deliver a written response with its comments on the requested information.

2. A Party is normally expected to request information pursuant to paragraph 1 prior to requesting consultations or initiating a mediation procedure or any other relevant cooperation or consultations procedures under this Agreement.

ARTICLE 31.33

Mutually Agreed Solution

1. The Parties may reach a mutually agreed solution at any time with respect to any dispute covered by Article 31.2.

2. If a mutually agreed solution is reached during the panel or mediation procedure, or during any other alternative means of dispute resolution agreed by the Parties, including procedures involving good offices or conciliation, the Parties shall jointly notify that solution to the chairperson of the panel or the mediator, as the case may be. Upon such notification, the panel or mediation procedure shall be terminated.

3. Each Party shall take the measures necessary to implement the mutually agreed solution within an agreed time period.

4. No later than the date of expiry of the agreed time period, the implementing Party shall inform the other Party, in writing, of any measure that it has taken to implement the mutually agreed solution.

ARTICLE 31.34

Time Periods

1. All time periods set out in this Chapter shall be counted in calendar days from the day following that on which the act referred to occurred.

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

3. Under Section C, the panel may at any time propose to the Parties to modify any time period referred to in this Chapter, stating the reasons for the proposal.

ARTICLE 31.35

Costs

1. Each Party shall bear its own expenses derived from the participation in the panel or mediation procedure.

2. The Parties shall be jointly liable for the expenses derived from organisational matters, including the remuneration and expenses of the panellists and of the mediator, and shall share them equally. The remuneration of the panellists shall be determined in accordance with the Rules of Procedure in Annex 31-A. The remuneration of the mediator shall be determined in accordance with that provided for a chairperson of a panel in accordance with the Rules of Procedure in Annex 31-A.

ARTICLE 31.36

Administration of the Dispute Settlement Procedure

1. Each Party shall:

(a) designate an office which shall be responsible for the administration of the dispute settlement procedures under this Chapter; and

(b) notify the other Party in writing of the office's location and contact information within three months after the entry into force of this Agreement.

2. Each Party shall be responsible for the operation and costs of its respective designated office.

3. Notwithstanding paragraph 1, the Parties may agree to jointly entrust an external body with providing support for certain administrative tasks for the dispute settlement procedure under this Chapter.

ARTICLE 31.37

Private Rights

A Party shall not provide for a right of action under its domestic law against the other Party on the grounds that a measure of the other Party is inconsistent with this Agreement.

ARTICLE 31.38

Modification of Annexes

The Joint Council may modify Annexes 31-A and 31-B.

CHAPTER 32

EXCEPTIONS

ARTICLE 32.1

General Exceptions

1. Article XX of GATT 1994, including its Notes and Supplementary Provisions, is incorporated into and made part of this Agreement, and applies *mutatis mutandis* to Chapter 2 (Trade in Goods), Chapter 3 (Rules of Origin and Origin Procedures), Chapter 4 (Customs and Trade Facilitation), Chapter 6 (Sanitary and Phytosanitary Measures), Chapter 8 (Recognition of the Parties' Right to Regulate the Energy Sector), Chapter 9 (Technical Barriers to Trade), Chapter 22 (State-Owned Enterprises, Enterprises Granted Special Rights or Privileges and Designated Monopolies), Section B (Liberalisation of Investments) of Chapter 10 (Investment), and Chapter 30 (Raw Materials).

2. The Parties share the understanding that:

(a) the measures referred to in subparagraph (b) of Article XX of GATT 1994 include environmental measures[163], which are necessary to protect human, animal or plant life or health; and

[163] The Parties acknowledge the right to invoke Article XX (b) of GATT 1994 in relation to measures taken pursuant to multilateral environmental agreements to which they are party.

(b) subparagraph (g) of Article XX of GATT 1994 applies to measures relating to the conservation of living and non-living exhaustible natural resources.

3. If a Party intends to take any measures in accordance with subparagraph (i) or (j) of Article XX of GATT 1994, that Party shall provide the other Party with:

(a) all relevant information; and

(b) upon request, a reasonable opportunity for consultation with respect to any matter related to such measure, with a view to seeking a mutually acceptable solution.

The Parties may agree on any means necessary to resolve the matters subject to consultation referred to in subparagraph (b) of this paragraph.

If exceptional and critical circumstances requiring immediate action make prior information or consultation impossible, the Party intending to take the measures concerned may immediately take the measures necessary to address those circumstances and shall immediately inform the other Party thereof.

4. Subparagraphs (a), (b) and (c) of Article XIV of GATS are incorporated into and made part of this Agreement, and apply *mutatis mutandis* to Chapters 11 (Cross-Border Trade in Services), 12 (Temporary Presence of Natural Persons for Business Purposes), 13 (Domestic Regulation), 14 (Mutual Recognition of Professional Qualifications), 16 (Telecommunications services), 17 (International Maritime Transport Services), 18 (Financial Services), 19 (Digital Trade), 22 (State-Owned Enterprises, Enterprises Granted Special Rights or Privileges and Designated Monopolies) and in Section B (Liberalisation of Investments) of Chapter 10 (Investment).

5. The Parties share the understanding that the measures referred to in subparagraph (b) of Article XIV of GATS include environmental measures[164] necessary to protect human, animal or plant life or health.

6. For greater certainty, Article 2.8 (Security Exception) of Part IV of this Agreement is deemed to be a provision of this Part.

ARTICLE 32.2

Taxation

1. For the purposes of this Article:

(a) "residence" means residence for tax purposes; and

[164] The Parties acknowledge the right to invoke subparagraph (b) of Article XIV of GATS in relation to measures taken pursuant to multilateral environmental agreements to which they are party.

(b) "tax convention" means a convention for the avoidance of double taxation or any other international agreement or arrangement relating wholly or mainly to taxation to which either Party is party.

2. Nothing in this Part of this Agreement shall affect the rights and obligations of a Party under a tax convention. In the event of any inconsistency between this Agreement and any tax convention, the tax convention shall prevail to the extent of the inconsistency.

3. Articles 10.8 (Most-Favoured-Nation Treatment), 11.7 (Most-Favoured-Nation Treatment), 18.4 (Most-Favoured Nation-Treatment) and paragraph 4 of Article 18.7 (Cross-Border Trade in Financial Services) do not apply to an advantage accorded by a Party pursuant to a tax convention.

4. Subject to the requirement that such measures are not applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination between the Parties if like conditions prevail, or a disguised restriction on trade and investment, nothing in this Agreement shall be construed as preventing a Party from adopting, maintaining or enforcing any measure aimed at ensuring the equitable or effective imposition or collection of direct taxes that:

(a) distinguish between taxpayers, who are not in the same situation, in particular with regard to their place of residence or the place where their capital is invested; or

(b) aim at preventing the avoidance or evasion of taxes pursuant to the provisions of any tax convention or domestic tax legislation.

5. For greater certainty, the fact that a taxation measure constitutes a significant amendment to an existing taxation measure, takes immediate effect as of its announcement, clarifies the intended application of an existing taxation measure, or has an unexpected impact on an investor or covered investment, does not, in and of itself, constitute a violation of Article 10.15 (Treatment of Investors and of Covered Investments).

6. If an investor submits a request for consultations pursuant to Article 10.22 (Consultations) claiming that a taxation measure breaches an obligation pursuant to paragraph 2 of Article 10.7 (National Treatment) or paragraph 2 of Article 10.8 (Most-Favoured-Nation Treatment) or pursuant to Section C (Investment Protection) of Chapter 10 (Investment), the respondent may refer the matter for consultation and joint determination by the Parties as to whether:

(a) the measure is a taxation measure;

(b) the measure, if it is found to be a taxation measure, breaches an obligation under paragraph 2 of Article 10.7 (National Treatment) or paragraph 2 of Article 10.8 (Most-Favoured-Nation Treatment) or Section C (Investment Protection) of Chapter 10 (Investment); or

(c) there is an inconsistency between the obligations under this Agreement that are alleged to have been breached and those under a tax convention.

7. A referral pursuant to paragraph 6 cannot be made later than the date that the Tribunal determines for the respondent to submit its counter-memorial or statement of defence. If the respondent makes such a referral, the time periods or proceedings specified in Section D (Resolution of Investment Disputes) of Chapter 10 (Investment) shall be suspended. If within 180 days after the referral the Parties do not agree to consider the issue, or fail to make a joint determination, the suspension of the time periods or proceedings shall no longer apply and the investor may proceed with its claim.

8. A joint determination by the Parties pursuant to paragraph 6 shall be binding on the Tribunal.

9. Each Party shall ensure that its delegation for the consultations to be conducted pursuant to paragraph 6 includes persons with relevant expertise on the issues covered by this Article, including representatives from the relevant tax authorities[165] of each Party.

[165] For Mexico, "representatives from the relevant tax authorities" means officials from the Ministry of Finance and Public Credit.

ARTICLE 32.3

Disclosure of Information

1. Nothing in this Agreement shall be construed as requiring a Party to make available confidential information, the disclosure of which would impede law enforcement, or otherwise be contrary to the public interest, or which would prejudice the legitimate commercial interests of particular enterprises, public or private.

2. The disclosure of information throughout the dispute settlement proceedings under this Part of this Agreement shall be governed by the provisions of the applicable chapters.

3. When a Party submits information to the other Party under this Agreement, including through the bodies established under this Agreement, which is considered as confidential under the laws and regulations of the submitting Party, the other Party shall treat that information as confidential, unless the submitting Party agrees otherwise.

ARTICLE 32.4

WTO Waivers

If a right or obligation established by a provision of this Part of this Agreement duplicates one in the WTO Agreement, any measure taken in conformity with a waiver decision adopted pursuant to paragraphs 3 and 4 of Article IX of the WTO Agreement is deemed to be in conformity with the provision in this Agreement.

PART IV[166]

INSTITUTIONAL AND FINAL PROVISIONS

CHAPTER 1

INSTITUTIONAL FRAMEWORK

ARTICLE 1.1

Summit

1. The highest level of political and policy dialogue between the Parties shall be at summit level. Summits shall be held every two years or as mutually agreed.

2. The summits shall provide overall guidance for the strategic partnership between the Parties and for the implementation of this Agreement and shall provide a forum to discuss any bilateral, regional, bi-regional, or international matters of mutual interest.

[166] Where a provision of this Part contains a reference to another provision of this Agreement, that reference is to another provision of this Part, unless explicitly indicated otherwise.

ARTICLE 1.2

Joint Council

1. A Joint Council is hereby established. The Joint Council shall:

(a) oversee the fulfilment of the objectives of this Agreement;

(b) supervise the operation and implementation of this Agreement;

(c) examine any matters arising within the framework of this Agreement; and

(d) address any other bilateral or international issues of mutual interest.

2. The Joint Council shall meet at regular intervals, every two years or as mutually agreed.

3. The Joint Council shall be composed of representatives of the Parties at ministerial level, in accordance with the Parties' respective internal arrangements and taking into consideration the specific matters to be addressed at any given meeting. The Joint Council shall meet in all necessary configurations, by mutual agreement.

4. The Joint Council shall establish its own rules of procedure, and the rules of procedure of the Joint Committee.

5. The Joint Council shall be co-chaired by a representative of the European Union and a representative of Mexico, in accordance with the provisions laid down in its rules of procedure.

6. The Joint Council shall have the power to adopt decisions and recommendations, as appropriate, as provided for in this Agreement. Within the scope of Parts I, II and IV of this Agreement, the Joint Council shall also have the power to adopt decisions and recommendations as otherwise mutually agreed by the Parties. The decisions shall be binding on the Parties, which shall take all necessary measures to implement them.

7. The Joint Council shall have the power to modify this Agreement if so provided for in accordance with paragraph 2 of Article 2.4 (Amendments).

8. The Joint Council shall adopt decisions and recommendations by consent between the Parties in accordance with its rules of procedure, following the completion of their respective internal procedures necessary for the adoption. The decisions shall be binding on the Parties, which shall take all necessary measures to implement them.

9. The Joint Council may delegate to the Joint Committee any of its functions, including the power to take binding decisions.

ARTICLE 1.3

Joint Committee

1. A Joint Committee is hereby established. The Joint Committee shall assist the Joint Council in the performance of its functions.

2. The Joint Committee shall be responsible for the general implementation of this Agreement, including the definition and supervision of sectoral dialogues.

3. The Joint Committee shall prepare the meetings of the Joint Council.

4. The Joint Committee shall be composed of representatives of the Parties at senior official level or as otherwise designated by the Parties and taking into consideration the specific matters to be addressed at any given meeting.

5. The Joint Committee shall meet in a specific configuration to address all matters related to Part III of this Agreement. When the Joint Committee addresses any of those matters it shall be composed of representatives of the Parties with responsibility for trade and investment matters, as provided for in Article 1.8 (Specific Functions of the Joint Committee) of Part III of this Agreement.

6. The Joint Committee shall be co-chaired by a representative of the European Union and a representative of Mexico.

7. The Joint Committee shall meet as mutually agreed, on a date and with an agenda agreed in advance by the Parties, in Brussels and Mexico City alternately. Special meetings may be convened, by mutual agreement, on request of a Party. Meetings may also be held by any technological means available to the Parties.

8. The Joint Committee shall have the power to adopt decisions and recommendations in the cases provided for in this Agreement or in areas in which the Joint Council has delegated powers to it. The decisions and recommendations shall be adopted by consent between the Parties in accordance with its rules of procedure, following the completion of their respective internal procedures necessary for the adoption. The decisions shall be binding on the Parties, which shall take all necessary measures to implement them.

ARTICLE 1.4

Sub-Committees and Other Bodies

1. The Joint Committee may establish, if needed and on an ad hoc basis, sub-committees or other bodies to assist it in the exercise of its functions and to address specific tasks or subject matters. It may change the tasks assigned to, or dissolve, any sub-committee or other bodies set up for those purposes.

2. The Joint Committee shall adopt rules of procedure which determine the composition, duties and functioning of the sub-committees and other bodies.

3. Except as otherwise provided for in this Agreement or agreed between the Parties, sub-committees and other bodies shall meet as needed or on request of either Party or of the Joint Committee. Meetings shall take place in person or by any technological means available to the Parties. When in person, meetings shall be held in Brussels and Mexico City alternately.

4. Sub-committees and other bodies shall be co-chaired by a representative of the European Union and a representative of Mexico.

5. The sub-committees and other bodies shall report on their activities to the Joint Committee.

6. The establishment of a sub-committee or other body shall not prevent either Party from bringing any matter directly to the Joint Committee.

7. A Sub-Committee for Development and International Cooperation is hereby established to coordinate and supervise the implementation of cooperation activities in the areas referred to in Part II of this Agreement. It shall assist the Joint Committee in the performance of its functions regarding these matters.

8. A Sub-Committee on Anti-Corruption on Trade and Investment is hereby established for the purposes of Article 23 of the Protocol on the Prevention of and Fight against Corruption.

9. In addition to the provisions of this Article, the operation of the sub-committees and other bodies established by Article 1.10 (Sub-Committees and Other Bodies of Part III of this Agreement) of Part III of this Agreement shall be governed by Part III of this Agreement, and those sub-committees shall report to the Joint Committee when meeting in its trade configuration.

ARTICLE 1.5

Joint Parliamentary Committee

1. A Joint Parliamentary Committee is hereby established. The Joint Parliamentary Committee shall be a forum for meeting and exchanging views and fostering closer relations.

2. The Joint Parliamentary Committee shall be composed of Members of the European Parliament and of the Congress of Mexico.

3. The Joint Parliamentary Committee shall be co-chaired by a representative of the European Parliament and a representative of the Congress of Mexico.

4. The Joint Parliamentary Committee shall meet in Brussels and Mexico alternately at intervals which it shall itself determine.

5. The Joint Parliamentary Committee may establish its own rules of procedure.

6. The Joint Parliamentary Committee shall be informed of the decisions and recommendations of the Joint Council or, if delegated, of the Joint Committee. The Joint Parliamentary Committee may request relevant information on matters of relevance to this Agreement.

7. The Joint Parliamentary Committee may make recommendations to the Joint Council.

ARTICLE 1.6

Relationship with Civil Society

The Parties shall consult civil society on matters of relevance to this Agreement, in particular through the interaction with the Domestic Advisory Groups and the Civil Society Forum referred to in Article 1.7 and 1.8, respectively.

ARTICLE 1.7

Domestic Advisory Groups

1. Each Party shall designate one or more domestic advisory groups within a year after the entry into force of this Agreement.

2. The domestic advisory group shall advise the Party concerned on matters covered by this Agreement. If more than one domestic advisory group is designated, no more than one domestic advisory group shall address each part of this Agreement.

3. If more than one domestic advisory group is designated, each domestic advisory group may have different members but shall comprise a balanced representation of independent civil society organisations, including non-governmental organisations, business organisations and trade unions active in relation to economic, sustainable development, social, human rights, environmental and other matters.

4. The domestic advisory group may meet in different configurations to discuss matters of relevance to different parts of this Agreement.

5. Each Party shall meet with its domestic advisory group or groups at least once a year. Each Party shall consider views or recommendations submitted by any of its domestic advisory groups on matters of relevance to this Agreement.

6. In order to promote public awareness of the domestic advisory groups, each Party shall publish the list of organisations participating therein, as well as a contact point for each domestic advisory group.

7. The Parties shall encourage their respective domestic advisory groups to interact with each other.

ARTICLE 1.8

Civil Society Forum

1. The Parties shall facilitate the organisation of a Civil Society Forum with participants of the Parties to conduct a public dialogue on matters of relevance to this Agreement.

2. The Civil Society Forum shall meet in conjunction with the meeting of the Joint Committee, including when the Joint Committee meets in its trade configuration. The Parties may also facilitate participation in the Civil Society Forum by technological means.

3. The Civil Society Forum shall be open for the participation of independent civil society organisations established in the territories of the Parties, including members of each domestic advisory group referred to in Article 1.7. The Parties shall promote a balanced representation of independent civil society organisations including non-governmental organisations, business organisations and trade unions active on economic, sustainable development, social, human rights, environmental and other matters.

4. The representatives of the Parties participating in the Joint Committee may, as appropriate, take part in a session of the meeting of the Civil Society Forum in order to present information on matters pertaining to the functioning of this Agreement and to engage in a dialogue with the Civil Society Forum.

That session shall be chaired by the co-chairs of the Joint Committee or their representatives, as appropriate. Each Party shall publish the formal statements that it delivered at the Civil Society Forum.

CHAPTER 2

FINAL PROVISIONS

ARTICLE 2.1

Definition of the Parties

For the purposes of this Agreement:

(a) "Party" means the European Union or its Member States or the European Union and its Member States in accordance with their respective areas of competence (the "EU Party"), or Mexico;

(b) "Parties" means, on the one hand, the EU Party and, on the other hand, Mexico.

ARTICLE 2.2

Territorial Application

1. Unless otherwise specified, this Agreement applies, with respect to the European Union, to the territories in which the TEU and the TFEU apply and under the conditions laid down in those Treaties. The provisions concerning the tariff treatment of goods, rules of origin and origin procedures apply also to the customs territory of the European Union not covered by the first sentence of this paragraph. The term "territory" in Chapter 4 (Customs and Trade Facilitation) and Articles 2.7 (Goods Re-Entered after Repair or Alteration), 2.13 (Temporary Admission of Goods) and 25.66 (Border Enforcement Measures Related to Intellectual Property Rights) of Part III shall be understood, in relation to the EU Party, to refer to the customs territory of the European Union. The customs territory of the European Union is the territory referred to in Article 4 of Regulation (EU) No 952/2013 of the European Parliament and of the Council[167].

2. Unless otherwise specified, this Agreement shall apply, with respect to Mexico, to the land territory, air space, internal waters, territorial sea and any areas beyond the territorial seas of Mexico within which Mexico may exercise sovereign rights and jurisdiction, as determined by its domestic law, consistent with the UN Convention on the Law of the Sea.

[167] Regulation (EU) No 952/2013 of the European Parliament and of the Council of 9 October 2013 laying down the Union Customs Code (OJ EU L 269, 10.10.2013, p. 1).

ARTICLE 2.3

Fulfilment of Obligations

1. Each Party is responsible for the compliance with the provisions of this Agreement. To that end, each Party shall take any general or specific measures required to fulfil its obligations under this Agreement.

2. If either Party considers that the other Party has failed to fulfil any of the obligations under Part III of this Agreement, the specific mechanisms provided for in that Part of this Agreement shall apply.

3. If either Party considers that the other Party has failed to fulfil any of the obligations that are described as essential elements in Article 2 of Part I and Article 1.4 of Part II, it may take appropriate measures. For the purpose of this paragraph, "appropriate measures" may include the suspension, in part or in full, of this Agreement.

4. If either Party considers that the other Party has failed to fulfil any obligation under this Agreement, save those falling within the scope of paragraphs 2 and 3 of this Article, it shall notify the other Party and provide all relevant information. The Parties shall hold consultations under the auspices of the Joint Council with a view to reaching a mutually acceptable solution. Where the Joint Council is unable to reach a mutually acceptable solution, the notifying Party may take appropriate measures. For the purpose of this paragraph, "appropriate measures" may include the suspension only of Parts I, II and IV of this Agreement.

5. "Appropriate measures" referred to in paragraphs 3 and 4 of this Article shall be taken in full respect of international law and shall be proportionate to the failure to implement obligations under this Agreement. Priority shall be given to those which least disturb the functioning of this Agreement. It is understood that suspension, in part or in full, of this Agreement would be a measure of last resort.

ARTICLE 2.4

Amendments

1. This Agreement may be amended by written agreement between the Parties. Any amendment shall enter into force on the date agreed by the Parties and after the completion of their respective legal requirements and procedures.

2. Notwithstanding paragraph 1, this Agreement may be amended in the cases specified in this Agreement by a decision of the Joint Council, or the Joint Committee, to modify provisions of or annexes to this Agreement.

ARTICLE 2.5

Entry into Force and Provisional Application

1. This Agreement shall be approved by the Parties in accordance with the Parties' respective internal procedures.

2. This Agreement shall enter into force on the first day of the second month following the date on which both Parties have notified each other of the completion of their respective internal procedures as referred to in paragraph 1.

3. Notwithstanding paragraph 2 and pending its entry into force, the European Union and Mexico may apply this Agreement on a provisional basis, in whole or in part, in accordance with their respective internal procedures, as applicable.

4. The provisional application shall begin on the first day of the second month following the date of the last of the following notifications:

(a) the notification by which the European Union informs Mexico of the completion of its necessary internal procedures, indicating the parts of this Agreement that are to be provisionally applied; and

(b) the notification by which Mexico informs the European Union of the completion of its necessary internal procedures.

5. During the period of provisional application, the provisions of the Economic Partnership, Political Coordination and Cooperation Agreement between the European Community and its Member States, of the one part, and the United Mexican States, of the other part, signed in Brussels on 8 December 1997, shall continue to apply in so far as they are not covered by the provisional application of this Agreement.

6. The European Union or Mexico may notify the other Party in writing of its intention to terminate the provisional application of this Agreement. The termination shall take effect on the first day of the second month following that notification.

7. If this Agreement is, or certain provisions of this Agreement are, provisionally applied in accordance with paragraph 4, the Parties shall understand the term "date of entry into force of this Agreement" as meaning the date of provisional application. The Joint Council and other bodies established under this Agreement may exercise their functions during the provisional application of this Agreement. Any decisions or recommendations adopted in the exercise of their functions shall cease to be effective if the provisional application of this Agreement is terminated pursuant to paragraph 6.

8. Notifications made in accordance with this Article shall be sent, for the EU Party, to the General Secretariat of the Council of the European Union and, for Mexico, to the Mexican Ministry of Foreign Affairs.

ARTICLE 2.6

Relation to Other Agreements

1. The Economic Partnership, Political Coordination and Cooperation Agreement between the European Community and its Member States, of the one part, and the United Mexican States, of the other part, signed in Brussels on 8 December 1997, including any subsequent decision by its institutional bodies, except for Decision No 5/2004 of the EU-Mexico Joint Council[168], shall cease to have effect and be replaced by this Agreement.

2. The EU-Mexico Interim Agreement on Trade shall cease to have effect and be replaced by this Agreement upon entry into force of this Agreement.

3. References to the agreements referred to in paragraphs 1 and 2 in any other agreements between the Parties shall be construed as referring to this Agreement.

4. The Parties may complement this Agreement by concluding specific agreements in any area of cooperation falling within the scope of this Agreement. Such specific agreements shall form an integral part of the overall bilateral relations as governed by this Agreement and shall be subject to the common institutional framework established under this Agreement.

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168 Decision No 5/2004 of the EU-Mexico Joint Council of 15 December 2004 adopting, pursuant to Article 17(3) of Decision No 2/2000, an Annex to the said Decision on mutual administrative assistance in customs matters (OJ EU L 66, 12.3.2005, p. 15).

5. Existing agreements relating to specific areas of cooperation falling within the scope of this Agreement shall be considered to form an integral part of the overall bilateral relations governed by this Agreement and shall be subject to the common institutional framework established under this Agreement.

6. Upon entry into force of this Agreement, any decisions adopted by the Trade Council established by the EU-Mexico Interim Agreement on Trade shall be deemed to have been adopted by the Joint Council established by Article 1.2. Any decisions adopted by the Trade Committee established by the EU-Mexico Interim Agreement on Trade shall be deemed to have been adopted by the Joint Committee established by Article 1.3.

7. Notwithstanding paragraph 2 of this Article:

(a) temporary measures adopted pursuant to paragraph 7 of Article 2.24 (Certification of Wine Products and Spirits) and 20.4 (Temporary Safeguard Measures) of the EU-Mexico Interim Agreement on Trade which are in place on the date of entry into force of this Agreement shall remain applicable until their natural expiration;

(b) bilateral safeguard measures adopted pursuant to Section C (Bilateral Safeguard Measures) of Chapter 5 (Trade Remedies) of the EU-Mexico Interim Agreement on Trade which are in place on the date of entry into force of this Agreement shall remain applicable until their natural expiration;

(c) a dispute settlement procedure already initiated pursuant to Article 31.6 (Establishment of a Panel) of the EU-Mexico Interim Agreement on Trade shall, as from the date of entry into force of this Agreement, be deemed to be a dispute settlement procedure under this Agreement and shall continue until its completion; and

(d) the binding outcome of any dispute settlement procedure initiated pursuant to Article 31.6 (Establishment of a Panel) of the EU-Mexico Interim Agreement on Trade shall remain binding on the Parties after the date of entry into force of this Agreement.

8. The Parties shall not be able to bring dispute settlement proceedings under this Agreement on matters that have been the subject of a final panel report under Chapter 31 (Dispute Settlement) of the EU-Mexico Interim Agreement on Trade.

9. Transitional periods already completely or partially elapsed under the EU-Mexico Interim Agreement on Trade shall be taken into account when calculating transitional periods provided for in equivalent provisions under this Agreement. Such transitional periods under this Agreement shall be calculated as starting from the date of entry into force of this Agreement.

ARTICLE 2.7

Annexes, Protocols and Joint Declarations

1. The annexes, including their appendices, protocols, notes and joint declarations to this Agreement shall form an integral part thereof.

2. Each annex to this Agreement, including its appendices, identified by a code starting with an Arabic number, shall form an integral part of the chapter of Part III of this Agreement that is identified with the same Arabic number and in which reference is made to that particular annex.

3. Annexes I to VII to this Agreement, including their appendices, which are identified by a Roman number, shall form an integral part of Chapters 10 to 19 of Part III of this Agreement. Unless otherwise provided, the definitions set out in Chapters 10 to 19 apply equally to those annexes.

ARTICLE 2.8

Security Exception

Nothing in this Agreement shall be construed as:

(a) requiring a Party to furnish or allow access to any information the disclosure of which it considers contrary to its essential security interests;

(b) preventing a Party from taking an action which it considers necessary for the protection of its essential security interests:

(i) connected to the production of or traffic in arms, ammunition and implements of war and to such traffic or transactions in other goods and materials, carried out directly or indirectly for the purpose of supplying a military establishment;

(ii) relating to the supply of services and technology, and to economic activities, carried out directly or indirectly for the purpose of supplying a military establishment;

(iii) relating to fissionable and fusionable materials or the materials from which they are derived;

(iv) taken in time of war or other emergency in international relations; or

(c) preventing a Party from taking any action in order to carry out its international obligations under the UN Charter for the purpose of maintaining international peace and security.

ARTICLE 2.9

Accession of New Member States to the European Union

1. The European Union shall promptly inform Mexico of any request by a third country to accede to the European Union.

2. The European Union shall notify Mexico of the entry into force of any treaty concerning the accession of a third country to the European Union (hereinafter referred to as the "Accession Treaty").

3. During the negotiations between the European Union and the third country seeking accession, the European Union shall:

(a) provide, on request of Mexico, and to the extent possible, any information regarding any matter covered by this Agreement; and

(b) take into account any concerns expressed by Mexico in relation to the matters covered under this Agreement.

4. A new Member State of the European Union shall accede to this Agreement in accordance with the terms decided by the Joint Council. That accession shall take effect from the date of accession of the new Member State to the European Union. The Joint Council shall amend, by decision, this Agreement and thereby establish the terms of accession.

5. Notwithstanding paragraph 4, as regards Part III of this Agreement, the Joint Committee meeting in trade configuration shall:

(a) examine, sufficiently in advance of the date of accession of the third country to the European Union, any effects of such accession on this Agreement; and

(b) before the entry into force of the accession of the third country to the European Union, address the effects of such accession on this Agreement and agree on any necessary amendments, adjustments or transitional measures relating to Part III of this Agreement, to allow for the application of that Part by the Parties, to the extent possible, as of the date of accession of the new Member State to the European Union.

6. Decisions of the Joint Council and of the Joint Committee pursuant to this Article shall be adopted in accordance with Article 1.2 (Joint Council).

ARTICLE 2.10

Future Accessions to this Agreement

This Agreement is open to accession by any State that is prepared to comply with the obligations set out in this Agreement, subject to such terms and conditions as may be agreed between the State and the Parties, and following approval in accordance with the applicable legal procedures of each Party and the acceding State.

ARTICLE 2.11

Private Rights

Nothing in this Agreement shall be construed as conferring rights or imposing obligations on persons other than those created between the Parties under public international law or, without prejudice to the domestic legislation of Mexico, as permitting this Agreement to be directly invoked in the domestic legal systems of the Parties.

ARTICLE 2.12

Authentic Texts

This Agreement is drawn up in duplicate in the Bulgarian, Croatian, Czech, Danish, Dutch, English, Estonian, Finnish, French, German, Greek, Hungarian, Irish, Italian, Latvian, Lithuanian, Maltese, Polish, Portuguese, Romanian, Slovak, Slovenian, Spanish and Swedish languages, each text being equally authentic.

ARTICLE 2.13

Duration and Termination

1. This Agreement shall remain in force for an unlimited period.

2. The EU Party or Mexico may notify, in writing, the other Party of its intention to terminate this Agreement. The termination shall take effect six months after the date of receipt of that notification.

IN WITNESS WHEREOF the undersigned Plenipotentiaries, duly authorised to this effect, have signed this Agreement.

Done at …, this … day of … in the year…,

For the Kingdom of Belgium,

For the Republic of Bulgaria,

For the Czech Republic,

For the Kingdom of Denmark,

For the Federal Republic of Germany,

For the Republic of Estonia,

For Ireland,

For the Hellenic Republic,

For the Kingdom of Spain,

For the French Republic,

For the Republic of Croatia,

For the Italian Republic,

For the Republic of Cyprus,

For the Republic of Latvia,

For the Republic of Lithuania,

For the Grand Duchy of Luxembourg,

For Hungary,

For the Republic of Malta,

For the Kingdom of the Netherlands,

For the Republic of Austria,

For the Republic of Poland,

For the Portuguese Republic,

For Romania,

For the Republic of Slovenia,

For the Slovak Republic,

For the Republic of Finland,

For the Kingdom of Sweden,

For the European Union

For the United Mexican States