

Preamble

The Government of the Republic of Costa Rica and the Government of the Republic of Singapore, hereinafter in this Agreement referred to as “the Parties”,

Recognizing the friendship and growing economic ties between them;

Aware of the increasing importance of trade and investment for the future prosperity of the economies of the Asia Pacific region ;

Desiring to contribute to the harmonious development and expansion of world trade and provide a catalyst to broader international cooperation;

Reaffirming their willingness to strengthen and reinforce the multilateral trading system as reflected in the World Trade Organization and other multilateral, regional and bilateral agreements and arrangements to which they are both parties;

Resolving to create an expanded and secure market for the goods and services produced in their territories and conscious that open, transparent and competitive markets are the key drivers of economic efficiency, innovation, wealth creation and consumer welfare;

Seeking to avoid distortions to their reciprocal trade;

Desiring to strengthen their economic partnership to bring economic and social benefits to their people and improve living standards ;

Willing to ensure a predictable commercial framework for business planning and investment;

Determined to create a legal framework for an economic partnership between the Parties;

Seeking to facilitate trade by promoting efficient and transparent customs procedures that reduce costs and ensure predictability for their importers and exporters;

Desiring to foster creativity and innovation, and promote trade in goods and services that are the subject of intellectual property rights;

Recognizing the importance of transparency in international trade;

Seeking to implement this Agreement in a manner consistent with environmental protection and conservation, and sustainable development,

Have agreed as follows:

Chapter 1

Initial Provisions and General Definitions

Section A: Initial Provisions

Article 1.1: Establishment of a Free Trade Area

The Parties to this Agreement, consistent with Article XXIV of the General Agreement on Tariffs and Trade 1994 and Article V of the General Agreement on Trade in Services, hereby establish a free trade area.

Article 1.2: Objectives

1. The objectives of this Agreement are to:
 - (a) encourage expansion and diversification of trade between the Parties;
 - (b) facilitate trade in goods and services;
 - (c) establish comprehensible rules in order to ensure a predictable and transparent environment for trade in goods and services between the Parties;
 - (d) promote conditions of fair competition in the free trade area;
 - (e) increase investment opportunities in the territories of the Parties;
 - (f) ensure an adequate and effective protection of intellectual property rights in the territories of the Parties, taking into consideration the economic situation and the social or cultural need of each country;
 - (g) confirm their commitment to the promotion of trade and reaffirm their aspiration to achieve an appropriate balance between the economic, social and environmental components of sustainable development;
 - (h) create effective procedures for the implementation and application of this Agreement, for its joint administration, and for the resolution of disputes; and
 - (i) establish a framework for further bilateral cooperation to expand and enhance the benefits of this Agreement.

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

Article 1.3: Relation to other Agreements

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

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

Section B: General Definitions

Article 1.4: Definitions of General Application

For purposes of this Agreement, unless otherwise specified:

central level of government means

- (a) for Costa Rica, the national level of government; and
- (b) for Singapore, the national level of government;

chapters, headings and subheadings refers to the first two digits in the case of chapters, first four digits in the case of headings and first six digits in the case of subheadings, used in the classification of the Harmonized System (HS);

Commission means the Free Trade Commission established under Article 16.1 (The Free Trade Commission);

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

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

- (a) charge equivalent to an internal tax imposed consistently with Article III.2 of GATT 1994, such as excise duties and sales tax¹;
- (b) antidumping or countervailing duty imposed pursuant to a Party's domestic law and consistently with Chapter 7 (Trade Remedies); or
- (c) fee or other charge in connection with importation commensurate with the cost of services rendered and which does not represent a direct or indirect protection for domestic goods or a taxation of imports for fiscal purposes;

Customs Valuation Agreement means the *WTO Agreement on Implementation of Article VII of the General Agreement on Tariffs and Trade 1994*;

days means calendar days;

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

GATS means the *WTO General Agreement on Trade in Services*;

GATT 1994 means the *WTO General Agreement on Tariffs and Trade 1994*;

goods of a Party means domestic products as these are understood in GATT 1994 or such goods as the Parties may agree, and includes originating goods of that Party;

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

local level of government means

- (a) for Costa Rica, the municipalities; and
- (b) for Singapore, entities with sub-national legislative or executive powers under domestic law, including Town Councils and Community Development Councils;

measure includes any law, regulation, procedure, requirement, or practice;

¹ For Singapore, the sales tax refers to Goods and Services Tax.

national means a natural person who has the nationality of a Party according to Article 1.5 (Country-Specific Definitions) or a permanent resident of a Party;

originating means qualifying under the rules of origin set out in Chapter 3 (Rules of Origin);

Party means any State for which this Agreement is in force;

person means a natural person or an enterprise;

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

preferential tariff treatment means the duty rate applicable under this Agreement to an originating good;

Safeguards Agreement means the *WTO Agreement on Safeguards*;

sanitary or phytosanitary measure means any measure referred to in Annex A, paragraph 1, of the SPS Agreement;

SPS Agreement means the *WTO Agreement on the Application of Sanitary and Phytosanitary Measures*;

TBT Agreement means the *WTO Agreement on Technical Barriers to Trade*;

territory means for a Party the territory of that Party as set out in Article 1.5 (Country-Specific Definitions);

TRIPS Agreement means the *WTO Agreement on Trade-Related Aspects of Intellectual Property Rights*;

WTO means the World Trade Organization; and

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

Article 1.5: Country-Specific Definitions

For purposes of this Agreement, unless otherwise specified:

1. **national** means:
 - (a) with respect to the Republic of Costa Rica, a Costa Rican as defined in Articles 13 and 14 of the *Constitución Política de la República de Costa Rica* (Political Constitution of the Republic of Costa Rica);

- (b) with respect to the Republic of Singapore, any person who is a citizen of Singapore within the meaning of its Constitution and its domestic laws.

2. **territory** means:

- (a) with respect to the Republic of Costa Rica, the national territory including air and maritime space, where the State exercises complete and exclusive sovereignty or special jurisdiction in accordance with Articles 5 and 6 of the *Constitución Política de la República de Costa Rica* and international law;
- (b) with respect to the Republic of Singapore, its land territory, internal waters and territorial sea, as well as any maritime area situated beyond the territorial sea which has been or might in the future be designated under its national law, in accordance with international law, as an area within which Singapore may exercise sovereign rights or jurisdiction with regards to the sea, the sea-bed, the subsoil and the natural resources.

Chapter 2 Trade in Goods

Article 2.1: Scope and Coverage

Except as otherwise provided in this Agreement, this Chapter applies to trade in goods between the Parties.

Article 2.2: Definitions

For purposes of this Chapter:

advertising films and recordings means recorded audio/visual or audio media designed to advertise or promote goods or services by any person having an established business or resident in the territory of a Party, excluding such media for broadcast to the general public;

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

consular transactions means requirements that goods of a Party intended for export to the territory of the importing Party must first be submitted to the supervision of the consul of the importing Party in the territory of the exporting Party for the purpose of obtaining consular invoices or consular visas for commercial invoices, certifications of origin, manifests, shippers' export declarations, or any other customs documentation required on or in connection with importation;

duty-free means free of customs duty;

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

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

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

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.
2. To this end, Article III of GATT 1994 and its interpretative notes are incorporated into and made part of this Agreement, *mutatis mutandis*.

Article 2.4: Elimination of Customs Duties

1. The provisions of this Chapter concerning the elimination of customs duties on imports shall apply to goods originating in the territories of the Parties.
2. Except as otherwise provided in this Agreement, each Party shall eliminate its customs duties on originating goods in accordance with Annex 2.1 (Elimination of Customs Duties).
3. During the customs duties elimination process, the Parties shall apply to originating goods traded between them, the lesser of the customs duties resulting from a comparison between the rates established in accordance with Annex 2.1 (Elimination of Customs Duties) and the existing rate pursuant to Article II of GATT 1994.
4. Each Party shall not increase an existing customs duty, introduce a new customs duty or impose an additional customs duty to that determined under paragraph 2, on the importation of originating goods.
5. Each Party shall refrain from applying any measure that reduces or nullifies the commitments of this Chapter.
6. The tariff classification of goods in trade between the Parties shall be governed by the national nomenclature of each Party, which shall be consistent with the Harmonized System.

Article 2.5: Accelerated Customs Duties Elimination

1. On the request of a Party, the Parties shall consult to consider accelerating the elimination of customs duties on originating goods as set out in Annex 2.1 (Elimination of Customs Duties).
2. An agreement by the Parties to accelerate the elimination of customs duties on originating goods shall enter into force after the Parties have exchanged written notifications informing that they have completed necessary internal legal procedures and on such date or dates as may be agreed between them.

3. A Party may at any time accelerate unilaterally the elimination of customs duties on originating goods of the other Party set out in Annex 2.1 (Elimination of Customs Duties). A Party considering doing so shall inform the other Party as early as possible.

Article 2.6: Export Taxes

A Party shall not adopt or maintain any duty, tax or other charge on the exportation of goods to the territory of the other Party, except as provided in Annex 2.2 (Export Taxes).

Article 2.7: Customs Valuation

The Parties shall determine the customs value of goods traded between them in accordance with the provisions of Article VII of GATT 1994 and the Customs Valuation Agreement.

Article 2.8: Administrative Fees and Formalities

Each Party shall ensure, in accordance with Article VIII.1 of GATT 1994, that all fees and charges of whatever character (other than customs duties, charges equivalent to an internal tax imposed consistently with Article III.2 of GATT 1994, and antidumping and countervailing duties imposed pursuant to a Party's domestic law and consistently with Chapter 7 (Trade Remedies)) imposed on or in connection with import or export are limited in amount to the approximate cost of services rendered and do not represent an indirect protection to domestic goods or a taxation on imports or exports for fiscal purposes.

Article 2.9: Consular Fees

1. Neither Party shall require consular transactions, including related fees and charges, in connection with the importation of any good of the other Party.
2. Each Party shall make available and maintain through the Internet a current list of the fees and charges it imposes in connection with importation or exportation.

Article 2.10: Temporary Admission of Goods

1. With the exception of liquor and tobacco products, each Party shall grant duty-free temporary admission for the following goods, regardless of their origin, imported by or for the use of a national or resident of the other Party:

- (a) professional equipment, including equipment for the press or television, software, and broadcasting and cinematographic equipment, necessary for carrying out the business activity, trade, or profession of a person who qualifies for temporary entry pursuant to the laws of the importing Party;
- (b) goods intended for display or demonstration;
- (c) commercial samples and advertising films and recordings; and
- (d) goods admitted for sports purposes.

2. Each Party, at the request of the person concerned and for reasons its customs authority considers valid, shall extend the time limit for temporary admission beyond the period initially fixed.

3. Neither Party shall condition the duty-free temporary admission of a good referred to in paragraph 1, other than to require that such good:

- (a) be used solely by or under the personal supervision of a national or resident of the other Party in the exercise of the business activity, trade, profession, or sport of that person;
- (b) not be sold or leased or consumed while in its territory;
- (c) be accompanied by a security in an amount no greater than the charges that would otherwise be owed on entry or final importation, releasable upon exportation of the good;
- (d) be capable of identification when admitted and exported;
- (e) be exported on the departure of the person referenced in subparagraph (a), or within such other period that is reasonably related to the purpose of the temporary admission, as the Party may establish;
- (f) be admitted in no greater quantity than is reasonable for its intended use; and
- (g) be otherwise admissible into the Party's territory under its law.

4. If any condition that a Party imposes under paragraph 3 has not been fulfilled, the Party may apply the customs duty and any other charge that would normally be owed on the final importation of the good plus any other charges or penalties provided for under its domestic law.

5. Each Party, through its customs authority, shall adopt procedures providing for the expeditious release of goods admitted under this Article. To the extent possible, such procedures shall provide that when such a good

accompanies a national or resident of the other Party who is seeking temporary entry, the good shall be released simultaneously with the entry of that national or resident.

6. Each Party shall permit a good temporarily admitted under this Article to be exported through a customs port other than that through which it was admitted.

7. Each Party shall provide that its customs authority or other competent authority relieve the importer or other person responsible for a good admitted under this Article from any liability for failure to export the good on presentation of satisfactory proof to the importing Party's customs authority that the good has been destroyed within the original period fixed for temporary admission or any lawful extension.

Article 2.11: Goods Re-entered After Repair or Alteration

1. Neither Party shall apply a customs duty to a good, regardless of its origin, that re-enters its territory after that good has 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.

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

3. For purposes of this Article, repair or alteration does not include an operation or process that:

- (a) destroys a good's essential characteristics or creates a new or commercially different good; or
- (b) transforms an unfinished good into a finished good.

Article 2.12: Duty-Free Entry of Commercial Samples of Negligible Value and Printed Advertising Materials

With the exception of liquor and tobacco products, each Party shall grant duty-free entry to commercial samples of negligible value, and to printed advertising materials, imported from the territory of the other Party, regardless of their origin, but may require that:

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

- (b) such advertising materials be imported in packages that each contain no more than one copy of each such material and that neither such materials nor packages form part of a larger consignment.

Article 2.13: Import and Export Restrictions

1. Neither Party shall adopt or maintain any non-tariff measures that prohibit or restrict the importation of any good of the other Party or on the exportation of any good destined for the territory of the other Party, except in accordance with its WTO rights and obligations, or in accordance with other provisions of this Agreement.
2. Each Party shall ensure that such measures are not adopted or applied with a view to or with the effect of creating unnecessary obstacles to trade between the Parties.

Chapter 3

Rules of Origin

Article 3.1: Definitions

For purposes of this Chapter:

aquaculture refers to the farming of aquatic organisms including fish, molluscs, crustaceans, other aquatic invertebrates and aquatic plants, from seed-stock such as eggs, fry, fingerlings and larvae, by intervention in the rearing or growth processes to enhance production, such as regular stocking, feeding, protection from predators, *etc*;

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

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

good means any merchandise, product, article, or material;

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

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

- (g) catalysts and solvents; and
- (h) any other goods that are not incorporated into the good but whose use in the production of the good can reasonably be demonstrated to be a part of that production;

material refers to a good used in the production of another good, including any parts or ingredients;

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

packing materials and containers for shipment refers to goods used to transport a good or to protect a good during its transportation, but does not include the packaging materials and containers in which a good is packaged for retail sale;

producer means a person who engages in the production of a good in the territory of a Party;

production means growing, harvesting, extracting, mining, raising, capturing, fishing, trapping, hunting, manufacturing, remanufacturing, processing, assembling or disassembling a good;

recovered goods means materials in the form of individual parts that result from:

- (a) the complete disassembly of used goods into individual parts; and
- (b) the cleaning, inspecting, or testing, and one or more of the following processes as necessary for improvement to sound working condition: welding, flame spraying, surface machining, knurling, plating, sleeving, and rewinding in order for such parts to be assembled with other parts, including other recovered parts in the production of a remanufactured good;

remanufactured good means an industrial good under chapters 84 to 90 of the Harmonized System, except for the goods classified under headings 8418, 8423, 8510, 8516 and 8536 that, assembled in the territory of a Party:

- (a) is entirely or partially comprised of recovered goods;
- (b) has the same life expectancy and meets the same performance standards as a new good; and

- (c) enjoys the same factory warranty as such a new good;
and

used means used or consumed in the production of goods.

Article 3.2: Originating Goods

1. Except as otherwise provided in this Chapter, each Party shall provide that a good is originating where:

- (a) the good is wholly obtained or produced entirely in the territory of one or both Parties, according to Article 3.4 (Wholly Obtained or Produced Goods);
- (b) the good is produced entirely in the territory of one or both Parties, exclusively from materials whose origin complies with the provisions of this Chapter; or
- (c) the good is produced in the territory of one or both Parties, using non-originating materials that conform to a change in tariff classification, a qualifying value content, or any other requirements, according to Article 3.5 (Not Wholly Obtained or Produced Goods).

2. In addition to paragraph 1, the good shall meet the other applicable requirements under this Chapter.

Article 3.3: Minimal Operations

Notwithstanding any provision in this Chapter and Annex 3.1 (Exceptions for the General Rule of Origin under Article 3.5), a good shall not be considered to have satisfied the requirements for an originating good merely by reason of going through any or all of the following operations:

- (a) operations to ensure the conservation or preservation of goods in good condition during transport and storage, such as ventilation, cooling, freezing, extraction of damaged parts, drying or addition of substances;
- (b) sifting, peeling, classifying, selecting, washing, filtering, cutting, shelling, and drying;
- (c) packaging, re-packaging, breaking up and putting the good for retail sale;
- (d) affixing of marks, labels, trade marks or other distinguishing signs on goods;

- (e) simple mixing, dilution in water or in another watery substance, ionized or saline;
- (f) application of oil, salt, sugar or any sweetener;
- (g) disassembly of goods in its parts;
- (h) placing in bottles, cases, boxes and other packaging operation; and
- (i) simple² assembly of parts or goods to constitute a complete good.

Article 3.4: Wholly Obtained or Produced Goods

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

- (a) plants and plant products harvested or gathered in the territory of one or both Parties;
- (b) live animals born and raised in the territory of one or both Parties;
- (c) goods obtained in the territory of one or both Parties from live animals;
- (d) goods obtained from hunting, trapping, fishing, or aquaculture conducted in the territory of one or both Parties;
- (e) minerals and other non-living natural resource not included in subparagraphs (a) through (d) extracted or taken from the territory of one or both Parties;
- (f) goods of sea fishing and other marine goods taken from outside its territory by a vessel registered, recorded or licensed with that Party, and entitled to fly its flag³;
- (g) goods produced and/or made on board a factory ship from goods referred to in subparagraph (f), provided such factory ship is registered, recorded or licensed with that Party and entitled to fly its flag;

² “Simple” generally describes an activity which does not need special skills, machines, apparatus or equipment specially produced or installed for carrying out the activity.

³ Costa Rica reiterates, under its domestic laws and international instruments, the commitments undertaken on the adoption, respect and promotion of responsible fisheries through fisheries management measures.

- (h) goods taken by a Party, or a person of a Party, from the seabed or beneath the seabed outside its territory, provided that the Party has rights to exploit such seabed;
- (i) waste and scrap derived from:
 - i. production in the territory of one or both Parties; or
 - ii. used goods collected in the territory of one or both Parties, provided that such goods are fit only for the recovery of raw materials;
- (j) recovered goods derived in the territory of one or both Parties from used goods and utilized in the territory of one or both Parties in the production of remanufactured goods; and
- (k) goods produced in the territory of one or both Parties exclusively from goods referred to in subparagraphs (a) through (j), or from their derivatives, at any stage of production.

Article 3.5: Not Wholly Obtained or Produced Goods

1. For purposes of this Agreement, goods, which have undergone sufficient production in the territory of one or both Parties, as provided under this Article, shall be treated as originating goods of that Party.
2. A good is considered to have undergone sufficient production in the territory of one or both Parties if:
 - (a) it fulfills the product-specific rule as set out in Annex 3.1 (Exceptions for the General Rule of Origin under Article 3.5); or
 - (b) where there is no product-specific rule as set out in Annex 3.1 (Exceptions for the General Rule of Origin under Article 3.5), it shall undergo a change in tariff classification at the six digit level of the Harmonized System from that of the good (“change in tariff subheading”); or the good shall fulfill a qualifying value content of not less than 35% determined in accordance with Article 3.6 (Qualifying Value Content).

Article 3.6: Qualifying Value Content

1. For the purpose of paragraph 2 of Article 3.5 (Not Wholly Obtained or Produced Goods), the following formula for qualifying value content shall be applied:

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

Where:

- (a) “QVC” is the qualifying value content of the good, expressed as a percentage;
- (b) “FOB” is the Free On Board value of the particular good determined in accordance with the Customs Valuation Agreement; and
- (c) “VNM” is the value of non-originating materials used by the producer in the production of the good, calculated in accordance with paragraph 2 below.

2. For the purpose of calculating the value of non-originating materials pursuant to subparagraph (c) above, the following formula shall be applied:

$$VNM = TVM - QVM$$

Where:

- (a) “TVM” is the total value of materials; and
- (b) “QVM” is the qualifying value of materials, which shall be calculated as:
 - i. the total value of the material if the material satisfies the rule established in Article 3.2 (Originating Goods), and the material has undergone its last production or operation in the territory of either Party; or
 - ii. the value of the material that can be attributed to one or both of the Parties if the material does not satisfy the rule established in Article 3.2 (Originating Goods).

3. All costs considered for the calculation of qualifying value content shall be recorded and maintained in conformity with the Generally Accepted Accounting Principles applicable in the territory of the Party where the good is produced.

Article 3.7: Value of Materials

For purposes of Article 3.6 (Qualifying Value Content), the value of a material shall be:

- (a) the CIF (Cost, Insurance and Freight) value of the material, determined in accordance with the Customs Valuation Agreement, for a material imported directly by the producer of the good;
- (b) for a material acquired by the producer in the territory where the good is produced, the transaction value, or if this is not known and cannot be ascertained, the first ascertainable price paid for the material in the Party; or
- (c) for a material that is self-produced, or where the relationship between the producer of the good and the seller of the material influences the price actually paid or payable for the material, including a material obtained without charge, the sum of:
 - i. all expenses incurred in the production of the material, including general expenses; and
 - ii. an amount for profit equivalent to the profit added in the normal course of trade.

Article 3.8: De Minimis

Notwithstanding Article 3.5 (Not Wholly Obtained or Produced Goods), a good shall be considered to be originating if the value of all non-originating materials used in the production of that good, which do not satisfy the requirement of change in tariff classification as set out in Article 3.5 (Not Wholly Obtained or Produced Goods) is not more than 10% of the FOB value of the good.

Article 3.9: Accumulation

1. Originating goods or materials from the territory of one or both Parties, used in the production of a good in the territory of the other Party, shall be considered to originate in the territory of the other Party.
2. The production of one or both Parties includes the production at different stages undertaken by one or more producers located in its territory.

Article 3.10: Accessories, Spare Parts, Tools

1. Each Party shall provide that accessories, spare parts, or tools delivered with a good that form part of the good's standard accessories, spare parts, or tools, shall be treated as originating goods if the good is an originating good, and shall be disregarded in determining whether all the non-originating materials used in the production of the good undergo the applicable change in tariff classification, provided that:

- (a) the accessories, spare parts, or tools are not invoiced separately from the good; and
- (b) the quantities and value of the accessories, spare parts, or tools are customary for the good.

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

Article 3.11: Packaging Materials and Containers for Retail Sale

Each Party shall provide that packaging materials and containers in which a good is packaged for retail sale, if classified with the good, shall be disregarded in determining whether all the non-originating materials used in the production of the good undergo the applicable change in tariff classification set out in Article 3.5 (Not Wholly Obtained or Produced Goods) and, if the good is subject to qualifying value content requirement, the value of such packaging materials and containers shall be taken into account as originating or non-originating materials, as the case may be, in calculating the qualifying value content of the good.

Article 3.12: Packing Materials and Containers for Shipment

Each Party shall provide that packing materials and containers in which a good is packed for shipment shall be disregarded in determining whether a good is originating.

Article 3.13: Fungible Goods and Materials

1. Each Party shall provide that the determination of whether fungible goods or materials are originating goods shall be made either by physical segregation of each good or material or through the use of any inventory management method, such as averaging, last-in first-out, or first-in first-out, recognized in the Generally Accepted Accounting Principles of the Party in which the production is performed or otherwise accepted by the Party in which the production is performed.

2. Each Party shall provide that an inventory management method selected under paragraph 1 for particular fungible goods or materials shall continue to be used for those fungible goods or materials throughout the fiscal year of the person that selected the inventory management method.

Article 3.14: Indirect Materials Used in Production

Each Party shall provide that an indirect material shall be treated as originating without regard to where it is produced and its value shall be the cost registered in the accounting records of the producer of the good.

Article 3.15: Transit Through Non-Parties

1. Preferential tariff treatment provided for in this Agreement shall be applied to goods that satisfy the requirements of this Chapter and which are directly transported among the Parties.

2. Notwithstanding paragraph 1, goods that transit through non-Party countries, with or without transshipment or temporary storage, shall be eligible for preferential treatment when proved to the satisfaction of the importing country's customs authority, that:

- (a) the goods have not undergone any operation there other than unloading, reloading, or any operation necessary to preserve them in good condition;
- (b) the goods have not entered into the commerce of such non-Parties after the shipment from the Party and before the importation into the other Party;
- (c) the transit entry is justified for geographical reason or by consideration related exclusively to transport requirements; and
- (d) the goods remain under the control of customs authorities⁴ in the territory of a non-Party.

⁴ The control referred to in subparagraph (d) refers to that which is exercised by the customs authority or the entity designated by the government of the non-Party to exercise customs functions or administer free trade zones.

Chapter 4 Customs

Section A: Customs Procedures

Article 4.1: Publication

1. Each Party shall publish, including on the Internet, its customs laws, regulations, and general administrative procedures.
2. Each Party shall designate one or more contact points to address enquiries from interested persons concerning customs matters, and shall make available on the Internet or in print form information concerning procedures for making such enquiries.

Article 4.2: Release of Goods

Each Party shall adopt or maintain procedures allowing, to the greatest extent possible, goods to be released:

- (a) within 48 hours of arrival; and
- (b) at the point of arrival, without temporary transfer to warehouses or other locations.

Article 4.3: Automation

1. The customs authorities shall each endeavour to provide an electronic environment that supports customs transactions with their trading communities.
2. In implementing initiatives that provide for paperless trading, the customs authorities of the Parties shall take into consideration, where applicable, the methods developed in the World Customs Organization.

Article 4.4: Risk Management

1. Each Party shall adopt a risk management approach to customs activities based on the identified risks of goods, in order to facilitate the swift clearance of low-risk consignments and focus its inspection activities on high-risk goods.
2. The Parties shall exchange information on risk management techniques in the performance of their customs procedures.

Article 4.5: Cooperation

To the extent permitted by their domestic law, the customs authorities of the Parties may, as they deem fit, assist each other, in relation to originating goods, by providing information on:

- (a) the implementation and operation of this Chapter;
- (b) investigation and prevention of customs offences;
- (c) developing and implementing customs best practices and risk management techniques;
- (d) simplifying and expediting customs procedures; and
- (e) advancing technical skills and use of technology.

Article 4.6: Confidentiality

1. Nothing in this Chapter shall be construed to require any Party to furnish or allow access to confidential information pursuant to this Chapter that would:

- (a) be contrary to the public interest as determined by its domestic law;
- (b) be contrary to its domestic law;
- (c) impede law enforcement; or
- (d) prejudice the competitive position of the person or Party providing the information.

2. Confidentiality must be maintained on all commercial information obtained in the course of a verification process on the determination of origin.

3. Any confidential information obtained in the course of a verification process on the determination of origin must only be used by the authorities responsible for the administration and application of the determination of origin.

4. Where a Party providing information to the other Party in accordance with this Chapter designates the information as confidential, the other Party shall maintain the confidentiality and use that information for purposes of the request.

Article 4.7 : Review and Appeal

1. Each Party shall ensure that, with respect to its determinations on customs matters, the importers in its territory have access to:
 - (a) administrative review independent of the official or office that issued the decision or administrative act subject to review⁵; and
 - (b) judicial review of the decision or administrative act taken at the final level of administrative review, in accordance with the Party's domestic law.
2. The outcome of any reviews referred to in paragraph 1 shall be notified to the appellant and the reasons for such decision shall be provided in writing.

Article 4.8: Penalties

Each Party shall adopt or maintain measures that provide for the imposition of civil, criminal or administrative penalties where appropriate, for violations of its customs laws and regulations, related to the provisions of this Chapter and Chapter 3 (Rules of Origin).

Article 4.9: Advance Rulings

1. Each Party, through its customs authority, on request of a person described in subparagraph 2(a), shall provide in writing advance rulings in respect of the tariff classification and origin of goods and whether a good qualifies for preferential tariff treatment.
2. Each Party shall adopt or maintain procedures for advance rulings, which shall:
 - (a) provide that an importer in its territory or an exporter or producer in the territory of the other Party may request an advance ruling before the importation of goods in question;
 - (b) require that a person requesting an advance ruling provide a detailed description of the goods and all relevant information needed to issue an advance ruling;
 - (c) provide that its customs authority may, within a specified period, request additional information in order to have all the relevant information needed;

⁵ For Singapore, this level of administrative review may include the Ministry supervising the customs authority.

- (d) provide that any advance ruling be based on the facts and circumstances presented, and any other relevant information in the possession of the decision-maker; and
 - (e) provide that an advance ruling be issued within 90 days of the receipt of all necessary information.
3. A Party may reject requests for an advance ruling where the additional information requested in accordance with subparagraph 2(c) is not provided within a specified time.
4. Each Party shall provide that advance rulings shall be in force from their date of issuance, or another date specified in the ruling, provided that the facts or circumstances on which the ruling is based remain unchanged.
5. A Party may modify or revoke an advance ruling upon a decision or administrative act that indicates that such ruling was based on an error of fact or law, the information provided is false or inaccurate, if there is a change in domestic law consistent with this Agreement, or there is a change in a material fact, or circumstances on which the ruling is based.
6. Where an importer claims that the treatment granted to an imported good should be governed by an advance ruling, the customs authority may evaluate whether the facts and circumstances of the importation are consistent with the facts and circumstances upon which the advance ruling was based.

Article 4.10: Resolution of Disputes on Classification of Goods

When the Parties cannot agree on the classification of a good, the Parties should hold the appropriate consultations with the World Customs Organization in order to obtain a recommendation that may permit the Parties to reach a uniform position regarding the correct classification of the good under the Harmonized System.

Section B: Customs Procedures Relating to Origin

Article 4.11: Definitions

For purposes of this Section:

competent government authority means the government authority in each Party that is responsible for the verification of origin, which:

- (a) in the case of Costa Rica, is the *Servicio Nacional de Aduanas* (National Customs Service); except for purposes of paragraphs 3 and 4 of Article 4.15

(Verification of Origin), for which the competent government authority is the *Promotora del Comercio Exterior* (“*PROCOMER*”) (Foreign Trade Corporation); and

(b) in the case of Singapore, is the Singapore Customs; and

day means calendar days, including weekends and holidays. Where the last day falls on a non-working day, the last day will be extended to the next working day.

Article 4.12: Claims for Preferential Treatment

1. For the purpose of obtaining preferential tariff treatment in the other Party, an exporter or producer of a Party shall complete and sign a Certification of Origin, certifying that a good qualifies as an originating good and for which an importer may claim preferential treatment upon the importation of the good into the territory of the other Party.

2. The Parties agree that the Certification of Origin does not need to be in a prescribed format and the data elements for this Certification of Origin are those stated in Annex 4.1 (Data Elements to be Included in the Certification of Origin). Such data elements may thereafter be revised by decision of the Commission.

3. Each Party shall:

(a) require an exporter in its territory to complete and sign a Certification of Origin for any exportation of a good for which an importer may claim preferential tariff treatment upon importation of the good into the territory of the other Party; and

(b) provide that where an exporter in its territory is not the producer of the good, the exporter may complete and sign a Certification of Origin on the basis of:

- i. his knowledge of whether the good qualifies as an originating good;
- ii. his reasonable reliance on the producer’s written declaration that the good qualifies as an originating good; or
- iii. a completed and signed Certification of Origin for the good voluntarily provided to the exporter by the producer.

4. Nothing in paragraph 3 shall be construed to require a producer to provide a Certification of Origin to an exporter.

5. Each Party shall provide that a Certification of Origin that has been completed and signed by an exporter or producer in the territory of the other Party that is applicable to a single importation of one or more goods into the Party's territory shall be accepted by its customs authority for 12 months from the date on which the Certification of Origin was signed.

Article 4.13: Waiver of Certification of Origin

Each Party shall provide that a Certification of Origin shall not be required for the importation of any good whose customs value does not exceed US\$1,500 or its equivalent amount in the Party's currency; or such higher amount as may be established by the importing Party, provided that the importation does not form part of a series of importations that may reasonably be considered to have been undertaken or arranged for the purpose of avoiding the certification requirements.

Article 4.14: Record Keeping Requirement

1. Each Party shall provide that an exporter or producer in its territory that completes and signs a Certification of Origin shall maintain in its territory, for 3 years after the date on which the Certification of Origin was issued or signed, all records relating to the origin of a good for which preferential tariff treatment was claimed in the territory of the other Party, including records associated with:

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

2. Each Party shall provide that an importer claiming preferential tariff treatment for a good imported into the Party's territory shall maintain in that territory, for 3 years after the date of importation of the good, such documentation, including a copy of the Certification of Origin, as the Party may require relating to the importation of the good.

3. The records to be maintained may include electronic records and shall be maintained in accordance with the domestic laws and practices of each Party.

Article 4.15: Verification of Origin

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

- (a) requests for information from the importer;
- (b) written questionnaires or requests for information to the exporter or producer of the good(s) in the territory of the other Party, through the competent government authority of the exporting Party, who shall notify the exporter or producer within 5 days upon receipt of such requests;
- (c) requests for assistance from the competent government authority of the exporting Party as provided for in paragraph 3 below; or
- (d) verification visits to the premises of an exporter or a producer in the territory of the other Party, to observe the facilities and the production processes of the good and to review the records referring to origin including accounting files.

2. For purposes of subparagraphs 1(a) and 1(b), the importer, exporter or producer:

- (a) shall answer and return the request within a period of 30 days from the date on which it was received;
- (b) may have one opportunity, before the expiration of the period established in subparagraph (a), to make a written request to the competent government authority of the importing Party for an extension of the answering period, for a period not exceeding 30 days. For the exporter or producer, this written request will be made through the competent government authority of the exporting Party.

In the case where the importer, exporter, or producer does not return the written request for the information made by the competent government authority of the importing Party within the given period or its extension, the importing Party may deny preferential treatment to the good that is subject to verification.

3. For purposes of subparagraph 1(c), the customs authority of the importing Party:

- (a) may request the assistance of the competent government authority of the exporting Party in verifying:

- i. whether the goods declared in the Certification of Origin qualify as originating goods; and/or
 - ii. the accuracy of any information contained in the Certification of Origin;
- (b) shall provide the competent government authority of the other Party with:
 - i. the reasons why such assistance is sought;
 - ii. the Certification of Origin, or a copy thereof; and
 - iii. any information and documents as may be necessary for the purpose of providing such assistance.

4. To the extent allowed by its domestic law and practices, the competent government authority of the exporting Party shall fully cooperate in any action to verify the origin as established under subparagraph 1(b) and paragraph 3 above. In the absence of such cooperation, the importing Party shall determine the accuracy of the information contained in the Certification of Origin with the best information available at that moment.

5. For purposes of subparagraph 1(d), the competent government authority of the importing Party shall:

- (a) deliver, at least 30 days prior to conducting a verification visit, a written notification of its intention to conduct the visit to the exporter or producer and to the competent government authority of the exporting Party; and
- (b) obtain the written consent of the exporter or producer.

6. Pursuant to paragraph 5, the exporter or producer may within 15 days of receiving the notification, request to the competent government authority of the importing Party for a postponement of the proposed verification visit, for a period not exceeding 60 days. This extension shall be notified to the competent authorities of the importing and exporting Parties.

7. A Party shall not deny preferential tariff treatment to a good solely because a verification visit was postponed pursuant to paragraph 6.

8. In the case where an exporter or producer does not give its written consent to a proposed verification visit within 30 days from the receipt of notification, the importing Party may deny preferential treatment to the good that is subject to verification.

9. After concluding the actions related to subparagraphs 1(a), (b), (c) or (d), and no later than 15 days after the outcome of the actions taken, the competent government authority of the importing Party shall provide a written

determination of whether the good is originating and therefore eligible for preferential tariff treatment based on the relevant law and findings of fact. In respect of subparagraphs 1(a), (b), (c) or (d), the maximum time to be taken from the start of the verification to its conclusion should preferably not exceed 150 days.

10. When the customs authority, at time of importation of the goods in the customs territory of one of the Parties, is certain or has a reasonable doubt that the goods do not comply with the provisions under Chapter 3 (Rules of Origin) or the requirements under Annex 4.1 (Data Elements to be Included in the Certification of Origin), it can deny the preferential tariff treatment for such goods, upon notification to the importer by the established means. In such case, the importer can apply the actions and time frames provided by the domestic laws, including customs clearance upon security. Once the customs authority is satisfied that the goods comply with the provisions under Chapter 3 (Rules of Origin) or the requirements under Annex 4.1 (Data Elements to be Included in the Certification of Origin), the security or duties paid shall be refunded.

11. The importing Party may deny preferential treatment to an importer on any subsequent import of a good when its competent government authority had already determined that an identical good was not eligible for that treatment, provided that such good is exported by the same exporter or produced by the same producer subject to verification, until the importing Party determines that the importer, exporter, or producer is in compliance with this Chapter.

Article 4.16: Obligations Relating to Importations

1. Any good that meets all the applicable requirements in this Chapter and in Chapter 3 (Rules of Origin) is eligible for preferential tariff treatment.

2. A Party may deny preferential tariff treatment under this Agreement to imported good(s) if the importer fails to comply with any requirement of this Chapter or Chapter 3 (Rules of Origin).

3. Except as otherwise provided in this Chapter, each Party shall require an importer in its territory that claims preferential tariff treatment for a good imported into its territory from the territory of the other Party to:

- (a) declare in the importation document that the good qualifies as an originating good, based on a Certification of Origin;
- (b) have the Certification of Origin in its possession at the time the declaration is made;
- (c) provide, on the request of that Party's customs authority, a copy of the Certification of Origin; and

- (d) promptly submit a corrected declaration in a manner required by the customs authority of the importing Party and pay any owed duties where the importer has reason to believe that a Certification of Origin on which a declaration was based contains information that is not correct.

4. Each Party shall provide that, where a good qualified as originating when it was imported into the territory of that Party but no claim for preferential tariff treatment was made at that time, the importer of the good may, no later than 1 year after the date on which the good was imported, apply for a refund of any excess duties paid as the result of the good not having been granted preferential tariff treatment, on presentation of:

- (a) a written declaration that the good qualified as originating at the time of importation; and
- (b) a copy of the Certification of Origin.

Article 4.17: Obligations Relating to Exportations

1. Each Party shall provide that an exporter or a producer in its territory shall submit a copy of the Certification of Origin to its competent government authority upon request.

2. When an exporter or a producer in its territory has provided a Certification of Origin and has reason to believe that such Certification contains or is based on incorrect information, the exporter or producer shall promptly notify in writing every person to whom it has provided the Certification of any change that could affect the accuracy or validity of the Certification, provided that such notification is made before the initiation of audit procedures. Any penalty, if applicable, for providing an incorrect Certification of Origin for preferential tariff treatment shall be subject to Article 4.8 (Penalties).

Article 4.18: Third Party Invoicing

The importing Party shall accept a Certification of Origin in cases where the sales invoice is issued either by a company located in a non-Party or by an exporter in the exporting Party for the account of such company, provided that the good meets the requirements of Chapter 3 (Rules of Origin).

Chapter 5

Sanitary and Phytosanitary Measures

Article 5.1: Objectives

The objectives of this Chapter are to:

- (a) protect human, animal, or plant life or health in the territory of the Parties, and to provide a framework to address any sanitary and phytosanitary (SPS) bilateral matters so as to facilitate and increase trade between the Parties;
- (b) uphold and enhance the implementation of the SPS Agreement and applicable international standards, guidelines and recommendations developed by relevant international organizations; and
- (c) strengthen cooperation between the Parties' competent SPS authorities having responsibility for matters covered by this Chapter and to deepen mutual understanding of each Party's regulations and procedures.

Article 5.2: Definitions

For purposes of this Chapter:

- (a) the definitions in Annex A of the SPS Agreement and the definitions provided in the glossary of harmonized terms of the relevant international organizations shall apply to this Chapter; and
- (b) **relevant international organizations** refers to the organizations mentioned in the SPS Agreement, namely International Plant Protection Convention (IPPC), Codex Alimentarius (Codex) and World Organization for Animal Health (OIE).

Article 5.3: Scope and Coverage

1. This Chapter applies to all SPS measures that may, directly or indirectly, affect trade between the Parties.
2. This Chapter does not apply to standards, technical regulations and conformity assessment procedures as defined in the TBT Agreement which are covered by Chapter 6 (Technical Barriers to Trade) of this Agreement.

Article 5.4: General Provisions

1. The Parties reaffirm their existing rights and obligations with respect to each other under the SPS Agreement.
2. The Parties recognize and apply the decisions on the application of the SPS Agreement adopted by the WTO Committee on Sanitary and Phytosanitary Measures (WTO SPS Committee).

Article 5.5: Trade Facilitation

1. The Parties shall cooperate and jointly identify work in the field of SPS measures with a view to facilitating trade between the Parties. In particular, the Parties shall seek to identify initiatives that are appropriate for particular issues or sectors. Such initiatives may include cooperation on regulatory issues, such as unilateral recognition of equivalence, harmonization or other cooperative arrangements.
2. At the request of a Party, the other Party shall give favourable consideration to any sector-specific proposal that the former Party makes for consideration under this Chapter.

Article 5.6: Transparency

1. The Parties affirm their obligations on the transparency provisions set out in the SPS Agreement, as well as the relevant decisions of the WTO SPS Committee.
2. The importing Party shall notify to the exporting Party through the relevant competent SPS authority, within a reasonable period of time, the information regarding serious non-compliance of SPS requirements and which results in rejection by the importing Party.

Article 5.7: SPS Coordinators

1. To facilitate the implementation of this Chapter and cooperation between the Parties, each Party shall designate a SPS Coordinator, who shall be responsible for coordinating with competent SPS authorities in the Party's territory and communicating with the other Party's SPS Coordinator on all matters pertaining to this Chapter. The SPS Coordinators' functions shall include, among others:
 - (a) monitoring the implementation and administration of this Chapter;

- (b) enhancing communication between the Parties' competent SPS authorities and shall seek to facilitate a Party's response to written requests for information from the other Party in print or electronically without undue delay, and in any case within 30 days after the date of receipt of the request, at no cost or at reasonable cost;
- (c) facilitating information exchange so as to enhance mutual understanding of each Party's SPS measures and the regulatory processes that relate to those measures and their impact on trade in goods between the Parties;
- (d) promptly addressing any bilateral SPS issue that a Party raises, so as to enhance cooperation and consultation between the Parties and facilitate trade between them;
- (e) promoting the use of international standards by both Parties in their respective adoption and application of SPS measures;
- (f) reviewing progress on addressing SPS matters that may arise between the Parties' competent SPS authorities; and
- (g) without prejudice to Article 16.1 (The Free Trade Commission), convening, as necessary and appropriate, an *ad hoc* technical working group for addressing requests for technical clarification with the objective of identifying practical and workable solutions that would facilitate trade. Both Parties shall endeavour to convene the *ad hoc* technical working group without undue delay.

2. The SPS Coordinators shall normally carry out their functions through agreed communication channels such as telephone, facsimile, email; whichever is most expedient in the discharge of their functions.

3. Notwithstanding paragraph 2, in technical issues like notifications of interceptions, risk assessments or others, the contact between the competent SPS authorities can be made directly, with due communication to the SPS Coordinators.

Article 5.8: Technical Cooperation

The Parties agree to explore opportunities for future cooperation and collaboration on SPS matters of mutual benefit, which may include training and exchange visits. Such activities shall be mutually agreed upon and subject to the availability of resources.

Article 5.9: Final Provisions

1. Nothing in this Chapter shall limit the authority of a Party to determine the level of protection it considers necessary for the protection of, *inter alia*, human health or safety, animal or plant life or health. In pursuance of this, each Party retains all authority to interpret its laws, regulations and administrative provisions.
2. For purposes of this Chapter, the competent authorities are:
 - (a) in the case of Costa Rica:

Dirección de Aplicación de Acuerdos Comerciales Internacionales ("DAACI")
Ministerio de Comercio Exterior
(Directorate for the Application of International Trade Agreements, Ministry of Foreign Trade)
Address: 1st and 3rd Avenue, 40th Street, Paseo Colón, San José.
Tel: (506) 22 99 47 00
Fax: (506) 22 56 84 89
P.O. Box: 297-1007 Centro Colón
E-mail: daaci@comex.go.cr
Web: www.comex.go.cr

Dirección General de Salud Animal
Servicio Nacional de Salud Animal ("SENASA")
Ministerio de Agricultura y Ganadería
(Directorate-General of Animal Health, National Service of Animal Health, Ministry of Agriculture and Livestock)
Address: Campus Universidad Nacional, Lagunilla, Heredia.
Tel: (506) 22 62 02 21
Fax: (506) 22 62 02 21
P.O. Box: 3-3006 CENADA, Heredia
E-mail: infoepidemiologica@senasa.go.cr
Web: www.senasa.go.cr

Dirección Ejecutiva
Servicio Fitosanitario del Estado ("SFE")
Ministerio de Agricultura y Ganadería
(Executive Directorate, State Phytosanitary Service, Ministry of Agriculture and Livestock)
Address: Campus Universidad Nacional, Lagunilla, Heredia.
Tel: (506) 22 60 61 90
Fax: (506) 22 60 83 01
P.O. Box: 70-3006 Barreal de Heredia
E-mail: direccion@sfe.go.cr / centroinfo@sfe.go.cr
Web: www.sfe.go.cr

Dirección de Regulación de la Salud
Ministerio de Salud
(Directorate of Health Regulation,
Ministry of Health)
Address: 6th and 8th Avenue, 16th Street, San José.
Tel: (506) 22 58 67 65
Fax: (506) 22 55 45 12
P.O. Box: 10123-1000 San José
E-mail: infosalud@netsalud.sa.cr
Web: www.ministeriodesalud.sa.cr

- (b) in the case of Singapore:

Agri-Food and Veterinary Authority of Singapore
Address: 5 Maxwell Road # 04-00, Tower Block MND Complex
Singapore 069110, Republic of Singapore
Tel: (65) 6222 1211
Fax: (65) 6220 6068
E-mail: AVA_email@ava.gov.sg
Web: www.ava.gov.sg

or their successors.

3. For purposes of Article 5.7 (SPS Coordinators), the SPS Coordinators shall be:

- (a) in the case of Costa Rica:

Dirección de Aplicación de Acuerdos Comerciales Internacionales ("DAACI")
Ministerio de Comercio Exterior
(Directorate for the Application of International Trade Agreements, Ministry of Foreign Trade)
Address: 1st and 3rd Avenue, 40th Street, Paseo Colón, San José.
Tel: (506) 22 99 47 00
Fax: (506) 22 56 84 89
P.O. Box: 297-1007 Centro Colón
E-mail: daaci@comex.go.cr
Web: www.comex.go.cr

- (b) in the case of Singapore:

Ministry of Trade and Industry
Trade Division
Address: 100 High Street # 09-01, The Treasury
Singapore 179434, Republic of Singapore
Tel: (65) 6225 9911
Fax: (65) 6332 7260

E-mail: mti_fta@mti.gov.sg
Web: www.mti.gov.sg

or their successors or designated contact points.

Chapter 6

Technical Barriers to Trade

Article 6.1: Objective

1. The objective of this Chapter is to provide a framework to address the impact of technical barriers to trade (TBT) between the Parties.
2. The Parties agree to ensure that technical regulations, standards and conformity assessment procedures do not constitute barriers to trade within the terms of the TBT Agreement.
3. With a view to facilitating trade and increasing bilateral trade, the Parties shall seek to improve their cooperation and enhance mutual understanding of their respective systems.

Article 6.2: Scope and Coverage

1. The Parties reaffirm their existing rights and obligations under the TBT Agreement.
2. This Chapter is applicable to all standards, technical regulations and conformity assessment procedures, that may, directly or indirectly, affect trade in goods and/or assessments of manufacturers or manufacturing processes of goods traded between the Parties⁶.
3. This Chapter does not apply to sanitary and phytosanitary measures as defined in the SPS Agreement which are covered by Chapter 5 (Sanitary and Phytosanitary Measures) of this Agreement, or purchasing specifications prepared by governmental bodies for production or consumption requirements of governmental bodies which will be regulated by Chapter 8 (Government Procurement).

Article 6.3: Definitions

For purposes of this Chapter, standards, technical regulations and conformity assessment procedures shall have the meanings assigned to those terms in Annex 1 of the TBT Agreement.

⁶ The application of this Chapter to all goods traded between the Parties is regardless of origin.

Article 6.4: Technical Regulations

1. In consistency with Article 2.4 of the TBT Agreement, each Party shall use, to the maximum extent possible, relevant international standards as a basis for its technical regulations.
2. Each Party shall give positive consideration to accept as equivalent, technical regulations of the other Party, even if these regulations differ from its own, provided that it is satisfied that these regulations adequately fulfill the objectives of its own regulations.

Article 6.5: Standards

1. The Parties confirm their obligation, under Article 4.1 of the TBT Agreement, to ensure that their standardizing bodies accept and comply with the *Code of Good Practice for the Preparation, Adoption and Application of Standards*, established in Annex 3 of the TBT Agreement.
2. In determining whether an international standard, guide, or recommendation within the meaning of Articles 2, 5 and Annex 3 of the TBT Agreement exists, each Party shall apply the principles set out in *Decisions and Recommendations adopted by the Committee since 1 January 1995, G/TBT/1/Rev. 9, 8 September 2008 (Decision of the Committee on Principles for the Development of International Standards, Guides and Recommendations with relation to Articles 2, 5 and Annex 3 of the TBT Agreement)*.

Article 6.6: Conformity Assessment Procedures

1. The Parties recognize that a broad range of mechanisms exists to facilitate the acceptance of conformity assessment results, including:
 - (a) the importing Party's reliance on a supplier's declaration of conformity;
 - (b) voluntary arrangements between conformity assessment bodies from each Party's territory;
 - (c) agreements on mutual acceptance of the results or certification of conformity assessment procedures with respect to specified regulations conducted by bodies located in the territory of the other Party;
 - (d) accreditation procedures for qualifying conformity assessment bodies;
 - (e) government designation of conformity assessment bodies; and

- (f) recognition by one Party of the results of conformity assessment procedures performed in the other Party's territory on a unilateral basis for a sector nominated by that Party.
- 2. To this end, the Parties shall intensify their exchange of information on the variety of mechanisms to facilitate the acceptance of conformity assessment results or certification.
- 3. Each Party shall give positive consideration to accept the results of conformity assessment procedures carried out in the other Party. Where a Party does not accept the results of a conformity assessment procedure performed in the territory of the other Party, it shall, on request of the other Party, explain its reasons.
- 4. Each Party shall accredit, approve, license, or otherwise recognize conformity assessment bodies in the territory of the other Party on terms no less favourable than those it accords to conformity assessment bodies in its territory. If a Party accredits, approves, licenses, or otherwise recognizes a body assessing conformity with a particular technical regulation or standard in its territory and it refuses to accredit, approve, license, or otherwise recognize a body assessing conformity with that technical regulation or standard in the territory of the other Party, it shall, on request, explain the reasons for its refusal.
- 5. At the request of a Party, the other Party shall give favourable consideration to enter into negotiations to reach agreement on facilitating recognition in its territory of the results of conformity assessment procedures conducted by bodies in the other Party, including mutual recognition agreements, subject to the interests of both Parties. Where a Party declines a request from the other Party, it shall explain its reasons upon request.

Article 6.7: Transparency

Where a Party notifies a draft technical regulation or conformity assessment procedure, the Party shall:

- (a) at the request of the other Party, provide information during the comments period, with a view to clarify the draft measure; and
- (b) allow at least 60 days, or a period recommended by the WTO Committee on Technical Barriers to Trade, for the other Party to provide comments in writing on the proposal, except where urgent problems arise. Where possible, the notifying Party should give appropriate consideration to reasonable requests for extending the comment period.

Article 6.8: Trade Facilitation

The Parties shall cooperate and jointly identify work in the field of standards, technical regulations, and conformity assessment procedures, with a view to facilitating market access. In particular, the Parties shall seek to identify initiatives that are appropriate for particular issues or sectors.

Article 6.9: Information Exchange

The Parties agree to exchange information with a view to facilitating trade between them. Each Party shall respond expeditiously to any enquiry from the other Party on standards, technical regulations or conformity assessment procedures relating to any good traded between the Parties. Any information or explanation that is provided shall be given in print or electronically.

Article 6.10: Confidentiality

1. Nothing in this Chapter shall be construed to require either Party to furnish or allow access to information the disclosure of which it considers would:

- (a) be contrary to its essential security interests;
- (b) be contrary to the public interest as determined by its domestic laws, regulations and administrative provisions;
- (c) be contrary to any of its domestic laws, regulations and administrative provisions including but not limited to those protecting personal privacy or the financial affairs and accounts of individual customers of financial institutions;
- (d) impede law enforcement; or
- (e) prejudice legitimate commercial interests of particular public or private enterprises.

2. In pursuance of Articles 6.6 (Conformity Assessment Procedures), 6.9 (Information Exchange) and 6.11 (TBT Coordinators), a Party shall, in accordance with its applicable laws, protect the confidentiality of any proprietary information disclosed to it.

Article 6.11: TBT Coordinators

1. To facilitate trade and the implementation of this Chapter, as well as cooperation between the Parties, each Party shall designate a TBT Coordinator, who shall be responsible for coordinating and communicating

with the other Party's TBT Coordinator on all matters pertaining to this Chapter. The TBT Coordinators' functions shall include, among others:

- (a) monitoring the implementation and administration of this Chapter;
- (b) promptly addressing any issue that a Party raises related to the development, adoption, application, or enforcement of standards, technical regulations or conformity assessment procedures;
- (c) enhancing cooperation in the development and improvement of standards, technical regulations, and conformity assessment procedures;
- (d) exchanging information on standards, technical regulations and conformity assessment procedures, in response to all reasonable requests for such information from a Party;
- (e) considering and facilitating any sector-specific proposal a Party makes for further cooperation among conformity assessment bodies, whether governmental or non-governmental;
- (f) facilitating the consideration of a request by a Party for the recognition of the results of conformity assessment procedures, including a request for the negotiation of an agreement, in a sector nominated by that Party;
- (g) facilitating cooperation in the areas of specific technical regulations by referring enquiries from a Party to the appropriate regulatory authorities;
- (h) promptly consulting on any matter arising under this Chapter upon request by a Party;
- (i) reporting to the Commission on the implementation of the provisions of this Chapter, in particular the advances in the fulfillment of the goals established; and
- (j) reviewing this Chapter in light of any developments under the TBT Agreement, and developing recommendations for amendments to this Chapter in light of those developments.

2. The TBT Coordinators shall normally carry out their functions through agreed communication channels such as telephone, facsimile, email, whichever is most expedient in the discharge of their functions. The TBT Coordinators will meet at the same time as the Commission meets or any other occasion mutually agreed between the Parties should the situation warrant.

Article 6.12: Final Provisions

1. Nothing in this Chapter shall limit the authority of a Party to determine the level of protection it considers necessary for the protection of, *inter alia*, human health or safety, animal or plant life or health or the environment. In pursuance of this, each Party retains all authority to interpret its laws, regulations and administrative provisions.

2. For purposes of Article 6.11 (TBT Coordinators), the TBT Coordinators shall be:

(a) in the case of Costa Rica:

Dirección de Aplicación de Acuerdos Comerciales Internacionales ("DAACI")
Ministerio de Comercio Exterior
(Directorate for the Application of International Trade Agreements, Ministry of Foreign Trade)
Address: 1st and 3rd Avenue, 40th Street, Paseo Colón, San José.
Tel: (506) 22 99 47 00
Fax: (506) 22 56 84 89
P.O. Box: 297-1007 Centro Colón
E-mail: daaci@comex.go.cr
Web: www.comex.go.cr

(b) in the case of Singapore:

Ministry of Trade and Industry
Trade Division
Address: 100 High Street # 09-01, The Treasury
Singapore 179434, Republic of Singapore
Tel: (65) 6225 9911
Fax: (65) 6332 7260
E-mail: mti_fta@mti.gov.sg
Web: www.mti.gov.sg

or their successors or designated contact points.

Chapter 7 Trade Remedies

Section A: Global Safeguard Measures

Article 7.1: Global Safeguard Measures

1. Each Party retains its rights and obligations under Article XIX of GATT 1994 and the Safeguards Agreement.
2. This Agreement does not confer any additional rights or obligations on the Parties with regard to actions taken pursuant to Article XIX of GATT 1994 and the Safeguards Agreement, except that a Party taking such an action shall exclude imports of an originating good from the other Party if such imports are not a substantial cause of serious injury or threat thereof.
3. No Party shall apply, with respect to the same good, at the same time:
 - (a) a bilateral safeguard measure; and
 - (b) a measure under Article XIX of GATT 1994 and the Safeguards Agreement.

Section B: Bilateral Safeguard Measures

Article 7.2: Definitions

For purposes of this Section:

domestic industry means, with respect to an imported good, the producers as a whole of the like or directly competitive good operating within the territory of a Party, or those producers whose collective production of the like or directly competitive good constitutes a major proportion of the total domestic production of such goods;

safeguard measure means a measure described in Article 7.3 (Imposition of a Safeguard Measure);

serious injury means a significant overall impairment in the position of a domestic industry;

substantial cause means a cause which is important and not less than any other cause;

threat of serious injury means serious injury that, on the basis of facts and not merely on allegation, conjecture, or remote possibility, is clearly imminent; and

transition period means the period during which a Party may adopt and maintain safeguard measures, and that shall include, for each good, the customs duties elimination period set out in Annex 2.1 (Elimination of Customs Duties) to that good plus an additional period of 2 years counted from the end of such customs duties elimination period; with the exception of the goods in staging categories C and D, for which the transition period will be limited to the customs duties elimination period.

Article 7.3: Imposition of a Safeguard Measure

1. A Party may apply a measure described in paragraph 2, during the transition period only, if as a result of the reduction or elimination of a customs duty pursuant to this Agreement, an originating good is being imported into the Party's territory in such increased quantities, in absolute terms or relative to domestic production, and under such conditions as to constitute a substantial cause of serious injury, or threat thereof, to a domestic industry producing a like or directly competitive good.

2. If the conditions in paragraph 1 are met, a Party may to the extent necessary to prevent or remedy serious injury, or threat thereof, and facilitate adjustment:

- (a) suspend the further reduction of any rate of customs duty on the good provided for under this Agreement; or
- (b) increase the rate of customs duty on the good to a level not to exceed the lesser of:
 - i. the most-favoured-nation (MFN) applied rate of duty on the good in effect at the time the action is taken; and
 - ii. the MFN applied rate of duty on the good in effect on the day immediately preceding the date of entry into force of this Agreement⁷.

3. Neither Party may maintain a safeguard measure:

- (a) for a period exceeding 2 years; except that the period may be extended by up to 1 year if the competent authorities determine that the safeguard measure continues to be necessary to

⁷ The Parties understand that neither tariff rate quotas nor quantitative restrictions would be a permissible form of safeguard measure.

prevent or remedy serious injury and to facilitate adjustment and that there is evidence that the industry is adjusting;

- (b) beyond the expiration of the transition period, except with the consent of the other Party.

4. On the termination of a safeguard measure, the rate of duty shall be the customs duty set out in Annex 2.1 (Elimination of Customs Duties) as if the safeguard measure had never been applied.

Article 7.4: Investigation Procedures and Transparency Requirement

1. A Party shall apply a safeguard measure only following an investigation by the Party's competent investigating authority in accordance with Articles 3 and 4.2(c) of the Safeguards Agreement; and to this end, Articles 3 and 4.2(c) of the Safeguards Agreement are incorporated into and made part of this Agreement, *mutatis mutandis*.

2. In determining whether increased imports of an originating good of the other Party have caused serious injury or are threatening to cause serious injury to a domestic industry, the competent investigating authority of the importing Party shall follow the rules in Article 4.2(a) and (b) of the Safeguards Agreement; and to this end, Articles 4.2(a) and (b) of the Safeguards Agreement are incorporated into and made part of this Agreement, *mutatis mutandis*.

Article 7.5: Provisional Safeguard Measures

1. In critical circumstances, where delay would cause damage which would be difficult to repair, a Party may apply a provisional safeguard measure pursuant to a preliminary determination that there is clear evidence that the increased imports have caused, or are threatening to cause, serious injury to a domestic industry.

2. The duration of the provisional safeguard measure shall not exceed 200 days, during which period the pertinent requirements of Article 7.3 (Imposition of a Safeguard Measure) and 7.4 (Investigation Procedures and Transparency Requirement) shall be met. The provisional safeguard measure shall adopt any of the forms set out in Article 7.3 (Imposition of a Safeguard Measure) of this Section. The guarantees or the received funds arising from the imposition of a provisional safeguard measure shall be promptly released or refunded as it corresponds, when the investigation does not determine that increased imports have caused, or threaten to cause, serious injury to a domestic industry. The duration of any such provisional safeguard measure shall be counted as a part of the initial period and any extension of a definitive safeguard measure.

Article 7.6: Notification and Consultations

1. A Party shall promptly notify the other Party, in writing, when:
 - (a) initiating an investigation under this Section;
 - (b) applying a provisional measure; and
 - (c) adopting the determination to apply or extend a safeguard measure.
2. On request of a Party whose good is subject to a safeguard investigation under this Chapter, the Party conducting that investigation shall enter into consultations with the other Party to review a notification under paragraph 1, or any public notice or report that the competent investigating authority has issued in connection with the investigation.
3. Consultations may be held in person or by any technological means available to the Parties. In the event that the Parties decide to hold consultations in person, these shall be held in the place agreed by the Parties, or if there is no agreement, in the capital of the requested Party.

Article 7.7: Compensation and Suspension of Concessions

1. A Party applying a safeguard measure shall, in consultation with the other Party, provide mutually-agreed trade liberalizing compensation in the form of concessions having substantially equivalent trade effects or equivalent to the value of the additional duties expected to result from the measure. The Party applying the safeguard measure shall provide opportunity for such consultations no later than 30 days after the application of the safeguard measure.
2. If the Parties are unable to reach agreement on compensation within 30 days of the commencement of consultations, the exporting Party may suspend the application of substantially equivalent concessions to the trade of the Party applying the safeguard measure.
3. The exporting Party shall notify the other Party in writing at least 30 days before suspending concessions under paragraph 2.

Section C: Antidumping, Subsidies and Countervailing Measures

Article 7.8: General Provision

Except as otherwise provided in this Section, the Parties retain their rights and obligations under Articles VI and XVI of GATT 1994, the *WTO Agreement on Implementation of Article VI of the GATT 1994*, the *WTO*

Agreement on Subsidies and Countervailing Measures, and the WTO Agreement on Agriculture.

Article 7.9: Agricultural Export Subsidies

Neither Party may introduce or maintain any export subsidy on any agricultural good destined for the territory of the other Party.

Article 7.10: Transparency and Legal Certainty

1. The Parties agree that investigations and impositions of antidumping and countervailing measures shall be based on a fair and transparent system.
2. The Parties agree to observe the following practices in antidumping and countervailing measures cases between them:
 - (a) immediately following the receipt of a properly documented application from an industry in one Party for the initiation of an antidumping or countervailing measure investigation in respect of goods from the other Party, the Party that has received the properly documented application shall immediately notify the other Party of the receipt of the application;
 - (b) when the authorities are satisfied that there is sufficient evidence to justify the initiation of an investigation, they shall notify it to the other Party and to other interested parties at least 7 working days in advance of the date of initiation of such investigation;
 - (c) a Party's investigating authority shall take due account of any difficulties experienced by exporters of the other Party in supplying information requested and provide any assistance practicable. On request of an exporter of the other Party, a Party's investigating authority shall make available the timeframes, procedures and any documents necessary for the offering of an undertaking.

Article 7.11: Lesser Duty Rule

Should a Party decide to impose an antidumping duty, the amount of such duty shall not exceed the margin of dumping, but it shall be less than the margin of dumping if such lesser duty would be adequate to remove the injury to the domestic industry.

Article 7.12: Consideration of Public Interest

Antidumping or countervailing measures may not be applied by a Party where, on the basis of the information made available during the investigation, it can clearly be concluded that it is not in the public interest to apply such measures. Public interest shall take into account the situation of the domestic industry, importers and their representative associations, representative users and representative consumer organizations, to the extent they have provided relevant information to the investigating authorities.

Article 7.13: Prohibition of Zeroing⁸

When determining dumping margins, the Parties shall ensure that the practice of zeroing is not used in any of the stages included in an antidumping investigation, including the reviews listed in Articles 9 and 11 of the *WTO Agreement on Implementation of Article VI of the GATT 1994*.

⁸ The term “zeroing” shall be understood as the practice of converting to zero the negative dumping margins, obtained for one or several types of goods, when calculating the margin of dumping of the investigated good.

Chapter 8 Government Procurement

Article 8.1: Objective

1. The Parties recognize the importance of transparency and the need to maximize competitive opportunities for their suppliers and to reduce costs of doing business for both government and industry through reciprocal and gradual opening of their respective procurement market, taking into account the contribution of transparent and competitive tendering to sustainable economic development.
2. The Parties shall achieve this objective through:
 - (a) ensuring their suppliers the opportunity to compete on an equal and transparent basis for government procurements ;
 - (b) ensuring the non-application against their suppliers of preferential schemes and other forms of discrimination based on the place of origin of goods and services ; and
 - (c) promoting the use of electronic procurement.

Article 8.2: Definitions

For purposes of this Chapter:

build-operate-transfer contract and **public works concession contract** mean any contractual arrangement the primary purpose of which is to provide for the construction or rehabilitation of physical infrastructure, plant, buildings, facilities, or other government-owned works and under which, as consideration for a supplier's execution of a contractual arrangement, a procuring entity grants the supplier, for a specified period of time, temporary ownership, or a right to control and operate, and demand payment for the use of, such works for the duration of the contract;

conditions for participation means any registration, qualification or other prerequisites for participation in a procurement ;

government procurement means the process by which a procuring entity purchases goods and services ;

in writing or **written** means any worded or numbered expression that can be read, reproduced, and later communicated, including electronically transmitted and stored information ;

limited tendering means a procurement method where the procuring entity contacts a supplier or suppliers of its choice;

measure means any law, regulation, procedure, requirement or practice;

notice of intended procurement means a notice to be published in advance by a procuring entity inviting interested suppliers to submit tenders for that procurement;

offsets means measures used to encourage local development or improve the balance-of-payments accounts by means of domestic content, licensing of technology, investment requirements, counter-trade or similar requirements;

open tendering means a procurement method where all interested suppliers may submit a tender;

procuring entity means an entity listed in Annex 8.1 (Government Procurement Schedules);

services includes construction services, unless otherwise specified ;

standard means a document approved by a recognized 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. It may also include or deal exclusively with terminology, symbols, packaging, marking or labelling requirements as they apply to a product, service, process or production method;

supplier means a person that provides or could provide goods or services to a procuring entity; and

technical specification means a tendering requirement that:

- (a) 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
- (b) addresses terminology, symbols, packaging, marking or labelling requirements, as they apply to a good or service.

Article 8.3: Scope and Coverage

1. This Chapter applies to all measures regarding any covered procurement by entities covered by this Chapter as specified in Annex 8.1 (Government Procurement Schedules).

2. This Chapter applies to procurement of goods or services, or any combination of goods and services by any contractual means, including through such methods as purchase or as lease, rental or hire purchase, with or without an option to buy, build-operate-transfer contracts and public works concessions.

3. Where procuring entities, in the context of a procurement covered under this Chapter, require public entities not covered to award contracts in the name of the covered entity, Article 8.4 (National Treatment and Non-Discrimination) shall apply, *mutatis mutandis*, to such requirements.

4. This Chapter applies to any procurement contract with a value of not less than the relevant threshold specified in Annex 8.1 (Government Procurement Schedules).

5. Except as otherwise specified in Annex 8.1 (Government Procurement Schedules), this Chapter does not cover:

- (a) non-contractual agreements or any form of governmental assistance, including cooperative agreements, grants, loans, equity infusions, guarantees, fiscal incentives and governmental provision of goods and services to persons or governmental authorities;
- (b) purchases funded by international grants, loans or other assistance, where the provision of such assistance is subject to conditions inconsistent with the provisions of this Chapter ;
- (c) acquisition of fiscal agency or depository services, liquidation and management services for regulated financial institutions, and services related to the sale, redemption and distribution of government debt⁹;
- (d) hiring of government employees and its related employment measures;
- (e) the acquisition or rental of land, buildings or other immovable property or the rights thereon; and
- (f) procurement between public entities of the same Party.

6. No procuring entity may, at any stage of the procurement, prepare, design or otherwise structure or divide any procurement in order to avoid any obligation under this Chapter.

⁹ For greater certainty, this Chapter does not apply to procurement of banking, financial or specialized services related to the following activities:

- (a) the incurring of public indebtedness; or
- (b) public debt management.

7. Nothing in this Chapter shall prevent the Parties from using government procurement to promote industry development including measures to assist small and medium enterprises (SMEs) within their territory to gain access to the government procurement market.

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

9. The provisions of this Chapter do not affect the rights and obligations provided for in Chapter 2 (Trade in Goods), Chapter 10 (Trade in Services) and Chapter 11 (Investment).

Article 8.4: National Treatment and Non-Discrimination

1. With respect to all measures regarding government procurement covered by this Chapter, each Party shall provide immediately and unconditionally to the goods, services and suppliers of the other Party offering such goods and services, treatment no less favourable than that accorded to domestic goods, services and suppliers.

2. With respect to all measures regarding government procurement covered by this Chapter, each Party shall ensure that its entities shall not:

- (a) treat a locally established supplier less favourably than another locally established supplier on the basis of degree of foreign affiliation or ownership; nor
- (b) discriminate against a locally established supplier on the basis that it is a supplier of a good or service of the other Party.

3. The provisions of paragraphs 1 and 2 shall not apply to customs duties and charges of any kind imposed on or in connection with importation, the method of levying such duties and charges, other import regulations and formalities, and measures affecting trade in services other than measures regarding government procurement covered by this Chapter.

Article 8.5: Valuation of Procurements

The following provisions shall apply in determining the value of a procurement for purposes of implementing this Chapter:

- (a) valuation shall take into account all forms of remuneration, including at least any premiums, fees, commissions and interest receivable;

- (b) the selection of a valuation method by a government body shall not be made, nor shall any procurement requirement be divided, with the intention of avoiding the application of this Chapter ; and
- (c) in cases where an intended procurement specifies the need for option clauses, the basis for valuation shall be the total value of the maximum permissible procurement, inclusive of optional purchases.

Article 8.6: Rules of Origin

For purposes of covered procurement, neither Party may apply rules of origin to goods imported or supplied from the other Party, that are different from the rules of origin the Party applies at the same time in the normal course of trade, to imports or supplies of the same goods from the same Party.

Article 8.7: Offsets

A procuring entity shall not impose, seek or consider offsets in the qualification and selection of suppliers, goods or services, or in the evaluation of tenders and award of contracts.

Article 8.8: Publication of Information on Procurement Measures

Each Party shall promptly publish any law, regulation, judicial decision, administrative ruling of general application, procedure (including standard contract clauses), and any modifications or additions thereof, regarding government procurement covered by this Chapter, in the relevant officially designated electronic medium, as listed in Annex 8.2 (Officially Designated Electronic Media for the Publication of Information on Government Procurement), and in such a manner as to enable the other Party and suppliers to become acquainted with them. Each Party shall be prepared, upon request, to explain or provide information to the other Party concerning the application of such provisions.

Article 8.9: Publication of Notice of Intended Procurement

1. For each procurement covered by this Chapter, a procuring entity shall publish in advance a notice of intended procurement inviting all interested suppliers to submit tenders for that procurement except as otherwise provided in Article 8.14 (Limited Tendering Procedures). This notice shall be published in the relevant officially designated electronic medium, as listed in Annex 8.2 (Officially Designated Electronic Media for the Publication of Information on Government Procurement). Each notice shall be accessible during the entire period established for tendering for the relevant procurement.

2. Each notice of intended procurement shall include a description of the intended procurement, any conditions that suppliers must fulfill to participate in the procurement, the name of the procuring entity issuing the notice, the address and contact where suppliers may obtain all documents relating to the procurement, and the time limits for submission of tenders. The dates for delivery of goods and services may be provided in the tendering documents.
3. Each Party shall encourage its procuring entities to publish, as early as possible in each year, information regarding their future procurement plans in the relevant officially designated electronic medium, as listed in Annex 8.2 (Officially Designated Electronic Media for the Publication of Information on Government Procurement). Where such information is published, a procuring entity may apply Article 8.10 (Time Limits for the Tendering Process) for the purpose of establishing shorter time limits for tendering.

Article 8.10: Time Limits for the Tendering Process

1. A procuring entity shall prescribe time limits for the tendering process that allow sufficient time for suppliers to prepare and submit responsive tenders, taking into account the nature and complexity of the procurement. A procuring entity shall provide no less than 25 days between the date on which it publishes the notice of intended procurement and the deadline for submitting tenders.
2. Notwithstanding paragraph 1, where there are no qualification requirements for suppliers, a procuring entity may establish a time limit of less than 25 days, but in no case less than 10 days, in the following circumstances:
 - (a) where the procuring entity has published a separate notice containing the information specified in Article 8.9.3 (Publication of Notice of Intended Procurement) containing the information specified in Article 8.9.2 (Publication of Notice of Intended Procurement) in the relevant officially designated electronic medium, as listed in Annex 8.2 (Officially Designated Electronic Media for the Publication of Information on Government Procurement) at least 25 days and not more than 12 months in advance;
 - (b) in the case of the second or subsequent publication of notices for procurement of a recurring nature;
 - (c) where a state of urgency duly substantiated by the procuring entity renders the time limit specified in paragraph 1 impracticable; or
 - (d) where the procuring entity has published a notice of intended procurement by electronic means in the relevant officially

designated electronic medium, as listed in Annex 8.2 (Officially Designated Media for the Publication of Information on Government Procurement).

Article 8.11: Tender Documentation and Technical Specifications

1. Tender documentation:

- (a) A procuring entity shall provide interested suppliers tender documentation that includes all the information necessary to permit suppliers to prepare and submit responsive tenders. The documentation shall include all the criteria that the procuring entity will consider in awarding the contract, including all cost factors, and the weights or, where appropriate, the relative values that the procuring entity will assign to these criteria in evaluating tenders.
- (b) To the extent possible, a procuring entity should make available relevant tender documentation on electronic networks openly and publicly accessible to all suppliers. Where a procuring entity does not publish all the tender documentation by electronic means, the entity shall, on request of any supplier, promptly make the documentation available in written form to the supplier.

2. Technical specifications:

- (a) Technical specifications laying down the characteristics of the goods or services to be procured shall not be prepared, adopted or applied with a view to, or with the effect of, creating unnecessary obstacles to trade between the Parties.
- (b) Technical specifications prescribed by a procuring entity shall, where appropriate, be:
 - i. expressed in terms of performance requirements rather than design or descriptive characteristics ; and
 - ii. based on international standards, where applicable otherwise, on national technical regulations, recognized national standards or building codes.
- (c) There shall be no requirement or reference to a particular trademark or trade name, patent, design or type, specific origin or producer or supplier unless there is no sufficiently precise or intelligible way of otherwise describing the procurement requirements and provided that, in such cases, words such as “or equivalent” are included in the tender documentation.

- (d) A procuring entity shall not seek or accept, in a manner that would have the effect of precluding competition, advice that may be used in the preparation or adoption of any technical specification for a specific procurement from a person that may have a commercial interest in that procurement.
- (e) If, during the course of a procurement, a procuring entity modifies any part of the tender documentation referred to in paragraph 1, including the criteria or technical requirements thereof, it shall transmit all such modifications in writing:
 - i. to all suppliers that are participating in the procurement at the time the criteria was modified, if the identities of such suppliers are known, and in all other cases, in the same manner the original information was transmitted; and
 - ii. in adequate time to allow such suppliers to modify and resubmit their tenders, as appropriate.

Article 8.12: Qualification of Suppliers

1. In the process of qualifying suppliers, a procuring entity shall not discriminate between domestic suppliers and suppliers of the other Party.
2. Any conditions for participation in open tendering procedures shall be no less favourable to suppliers of the other Party than to domestic suppliers.
3. The process of, and the time required for, registering and/or qualifying suppliers shall not be used in order to exclude suppliers of the other Party, from being considered for a particular procurement.
4. Qualification procedures shall be consistent with the following:
 - (a) any condition for participation in the procurement, including financial guarantees, technical qualifications and information necessary for establishing the legal, financial, commercial and technical capacity of suppliers, as well as the verifications of qualifications, shall be limited to those which are essential to ensure the supplier's capability to fulfill the contract in question. The legal, financial, commercial and technical capacity of a supplier shall be judged both on the basis of that supplier's global business activity and its activity in the territory of the procuring entity taking due account of the legal relationship between the supply organizations;
 - (b) recognize as qualified all suppliers of the other Party that have met the requisite conditions for participation;

- (c) a procuring entity shall promptly communicate to any supplier that has applied for qualification its decision on whether that supplier is qualified. Where a procuring entity rejects an application for qualification or ceases to recognize a supplier as qualified, that procuring entity shall, on request of the supplier, promptly provide it with a written explanation; and
- (d) any conditions for participation in tendering procedures shall be published in adequate time to enable interested suppliers to initiate and, to the extent that it is compatible with efficient operation of the procurement process, complete the qualification procedures.

5. Nothing in this Article shall preclude a procuring entity from excluding a supplier from a procurement on grounds such as bankruptcy or false declaration, provided that such an action is consistent with the national treatment provisions of this Chapter.

Article 8.13: Ensuring Integrity in Procurement Practices

The Parties may adopt or maintain procedures to debar, for a specific period of time, suppliers who have been reasonably determined to have defaulted on their contractual performances or engaged in fraudulent or other illegal actions pertaining to procurement. If there is adequate evidence available, actions may be taken on such errant suppliers under the respective Party's domestic laws.

Article 8.14: Limited Tendering Procedures

1. A procuring entity shall award contracts by means of open tendering procedures, in the course of which any interested supplier may submit a tender.

2. Provided that the tendering procedure is not used to avoid competition or to protect domestic suppliers, a procuring entity may award contracts by means other than open tendering procedures in the following circumstances, where applicable:

- (a) when no tenders were submitted in response to a prior notice or invitation to participate, or in the absence of tenders that conform to the essential requirements in the tender documentation provided in a prior invitation to tender, including any conditions for participation, on condition that the requirements of the initial procurement are not substantially modified in the contract as awarded;
- (b) when, for works of art, or for reasons connected with the protection of exclusive rights, such as patents or copyrights, or

proprietary information, or where there is an absence of competition for technical reasons, the goods or services can be supplied only by a particular supplier and no reasonable alternative or substitute exists;

- (c) for additional deliveries by the original supplier that are intended either as replacement parts, extensions, or continuing services for existing equipment, software, services or installations, where a change of supplier would compel the procuring entity to procure goods or services not meeting requirements of interchangeability with existing equipment, software, services, or installations;
- (d) for goods purchased on a commodity market;
- (e) when a procuring entity procures a prototype or a first good or service that is developed at its request in the course of, and for, a particular contract for research, experiment, study or original development. When such contracts have been fulfilled, subsequent procurements of such goods or services shall be subject to the principles and procedures laid down in this Chapter;
- (f) where additional construction services that were not included in the initial contract but that were within the objectives of the original tender documentation have, due to unforeseeable circumstances, become necessary to complete the construction services described therein. However, the total value of contracts awarded for additional construction services may not exceed 50% of the amount of the initial contract;
- (g) for new construction services consisting of the repetition of similar services which conform to a basic project for which an initial contract was awarded following an open procurement method, and for which the procuring entity has indicated in the notice of intended procurement concerning the initial service, that a limited procurement method might be used in awarding contracts for such new services;
- (h) in so far as is strictly necessary where, for reasons of extreme urgency brought about by events unforeseeable by the procuring entity, the goods or services could not be obtained in time by means of an open tendering procedure and the use of an open tendering procedure would result in serious injury to the procuring entity, or the procuring entity's program responsibilities or the Party;
- (i) for purchases made under exceptionally advantageous conditions which only arise in the very short term in the case of unusual disposals such as those arising from liquidation,

receivership or bankruptcy and not for routine purchases from regular suppliers; or

- (j) in the case of a contract awarded to a winner of a design contest, provided that:
 - i. the contest has been organized in a manner that is consistent with the principles of this Chapter; and
 - ii. the participants are judged by an independent jury with a view to a design contract being awarded to a winner.

3. A procuring entity shall maintain records or prepare a written report on the contract awarded under these provisions, containing the name of the procuring entity, the value and kind of goods or services procured, and the specific justifications for use of tender procedures other than open tendering procedures, as provided in paragraph 2.

Article 8.15: Evaluation of Tenders

The tender evaluation process shall be fair and non-discriminatory, and shall have a mechanism to eliminate any potential conflict of interest between public officials administering the process and suppliers participating in the process.

Article 8.16: Information on Awards

1. Subject to Article 8.22 (Non-Disclosure of Information), a procuring entity shall promptly inform suppliers participating in a tendering procedure of its contract award decision. The award notice should include at least the following information:

- (a) the name of the procuring entity;
- (b) a description of the goods or services procured ;
- (c) the name of the winning supplier;
- (d) the date of award;
- (e) the value of the contract award; and
- (f) the type of procurement method used.

2. Where the procuring entity has not used an open tendering procedure, the entity shall promptly provide pertinent information concerning circumstances, in accordance to Article 8.14 (Limited Tendering Procedures), justifying the procedure used.

3. A procuring entity shall, on request from an unsuccessful supplier of the other Party which participated in the relevant tender, promptly provide pertinent information concerning reasons for the rejection of its tender, unless the release of such information would impede law enforcement or otherwise be contrary to the public interest or would prejudice the legitimate commercial interest of particular enterprises, public or private, or might prejudice fair competition between suppliers.

Article 8.17: Modifications and Rectifications to Coverage

1. Each Party may make rectifications of a purely formal nature to its coverage under this Chapter, or minor amendments to its Schedules in Annex 8.1 (Government Procurement Schedules), provided that it notifies the other Party in writing and that Party does not object in writing within 30 days of the notification. A Party that makes such a rectification or minor amendment does not need to provide compensatory adjustments to the other Party.

2. Where a Party proposes to make a modification to its Schedules in Annex 8.1 (Government Procurement Schedules), when the business or commercial operations or functions of any of its procuring entities or part thereof is constituted or established as an enterprise with a legal entity separate and distinct from the Government of the Party, regardless of whether or not the Government holds any shares or interest in such a legal entity, it shall notify the other Party. The proposed removal of such an entity or modification shall become effective 30 days from the date of notification. The other Party shall not be entitled to compensatory adjustments.

Article 8.18: Transparency

The Parties shall apply all procurement measures consistently, fairly and equitably so that their corporate governance structures provide transparency to potential suppliers.

Article 8.19: Electronic Procurement

1. The Parties shall, within the context of their commitment to promote electronic commerce, seek to provide opportunities for government procurement to be undertaken through electronic means, hereinafter referred to as “e-procurement”.

2. Each Party shall make best efforts in order to work toward a single entry point for the purpose of enabling suppliers to access information on covered procurement opportunities in its territory.

3. Each Party shall, to the extent possible, make procurement opportunities that are available to the public, accessible to suppliers via the

internet or a comparable publicly available computer-based telecommunications network openly accessible to all suppliers. To the extent possible, each Party shall make relevant documentation available by the same means.

4. For purposes of this Chapter, the Parties shall perform best efforts to provide summaries of notices of intended procurement in a language that is accessible to the other Party. The notice of intended procurement shall contain at least the following information:

- (a) the subject matter of the contract;
- (b) the time-limits set for the submission of tenders; and
- (c) the addresses and contact from which documents relating to the contracts may be requested.

Article 8.20: Challenge Procedures

1. In the event of a complaint by a supplier of a Party that there has been a breach of this Chapter in the context of procurement by the other Party, that Party may encourage the supplier to first seek resolution of its complaint in consultation with the procuring entity of the other Party. Such consultations shall not prevent the Party from applying time periods for submitting challenges.

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

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

4. Challenges shall be heard by a court or by an impartial and independent review body with no interest in the outcome of the procurement and the members of which are secure from external influence during the term of appointment.

5. Challenge procedures shall provide for correction of the breach of agreement or compensation for the loss or damages suffered, according to each Party's domestic laws, which may be limited to costs for tender preparation or protest.

Article 8.21: Exceptions

1. Nothing in this Chapter shall be construed to prevent a Party from taking any action or not disclosing any information which it considers necessary for the protection of its essential security interests relating to the

procurement of arms, ammunition or war materials, or to procurement indispensable for national security or for national defence purposes.

2. Subject to the requirement that such measures are not applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination between countries where the same conditions prevail or a disguised restriction on international trade, 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 the products or services of handicapped persons, of philanthropic institutions or of prison labour.

Article 8.22: Non-Disclosure of Information

1. The Parties, their procuring entities, and their review authorities shall not disclose confidential information if such disclosure would prejudice legitimate commercial interests of a particular person or might prejudice fair competition between suppliers, without the formal authorization of the person that provided the information to the Party.

2. Nothing in this Chapter shall be construed as requiring a Party, including its procuring entities, to disclose confidential information if such disclosure would impede law enforcement or otherwise be contrary to the public interest.

Chapter 9 Competition Policy

Article 9.1: Objective

1. The objective of this Chapter is to contribute to the fulfillment of the objectives of this Agreement, through the promotion of fair competition and the proscription of anti-competitive practices within the free trade area.
2. For purposes of this Chapter, anti-competitive practices as specified in the Parties' respective competition laws include, but are not limited to, the following:
 - (a) anti-competitive horizontal arrangements between competitors;
 - (b) abuse of dominant position or substantial market power; and
 - (c) anti-competitive mergers and acquisitions or economic concentrations.

Article 9.2: Promotion of Competition

1. Each Party shall promote competition by adopting or maintaining national competition laws that proscribe anti-competitive practices in its territory and shall take measures as it deems appropriate and effective to counter such practices.
2. Each Party shall maintain one or more authorities responsible for enforcing measures to promote competition and for the enforcement of its competition laws. The enforcement policy of the Parties' authorities shall be consistent with the principles of transparency, timeliness, non-discrimination and procedural fairness.
3. Each Party shall maintain its autonomy in developing and enforcing its competition laws.

Article 9.3: Cooperation

1. The Parties recognize the importance of cooperation and coordination to further effective competition law and policy development in the free trade area, and agree to cooperate on these matters in accordance with the provisions of this Chapter and subject to their respective domestic laws.
2. Both Parties will seek to enhance a better understanding, communication and cooperation between the authorities responsible for the

enforcement of their respective competition laws, in relation to the issues related to this Chapter.

Article 9.4: Consultations

1. To foster understanding between the Parties, or to address specific matters that arise under this Chapter, a Party shall, at the request of the other Party, enter into consultations. In its request, the Party shall indicate, if relevant, how the matter affects trade or investment between the Parties. The Party to which a request is addressed shall consider the issue of concern to the other Party, and inform it of the outcome of such consideration.
2. Any information or documents exchanged between the Parties in relation to any consultations conducted pursuant to this Chapter shall be kept confidential.

Article 9.5: Transparency and Information Request

1. The Parties shall publish or otherwise make publicly available their competition laws, including information on any exemptions provided under such laws.
2. On request, each Party shall make available to the other Party public information concerning its competition law enforcement activities, including any competition law enforcement activities that may affect the requesting Party's trade or investment within the free trade area, provided that this is not contrary to the Parties' competition laws and does not affect any investigation being carried out.

Article 9.6: Dispute Settlement

1. Nothing in this Chapter permits a Party to challenge any decision made by any authority of the other Party in enforcing the applicable competition laws.
2. Neither Party shall have recourse to any dispute settlement procedures under this Agreement for any issue arising from or relating to this Chapter.

Chapter 10

Trade in Services

Article 10.1: Definitions

For purposes of this Chapter:

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

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

but does not include the supply of a service in the territory of a Party by an investor of the other Party or an investment of an investor of the other Party as defined in Article 11.1 (Definitions);

enterprise means any legal entity constituted or organized under applicable law, whether or not for profit, and whether privately or governmentally owned, including a corporation, trust, partnership, sole proprietorship, joint venture, association, or similar organization and a branch of an enterprise;

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

monopoly supplier of a service means any person, public or private, which in the relevant market of the territory of a Party is authorized or established formally or in effect by that Party as the sole supplier of that service;

services includes any service in any sector except services supplied in the exercise of governmental authority;

service consumer means any person that receives or uses a service;

service of the other Party means a service which is supplied:

- (a) from or in the territory of the other Party, or in the case of maritime transport, by a vessel registered under the laws of the other Party, or by a person of the other Party which

supplies the service through the operation of a vessel and/or its use in whole or in part; or

- (b) in the case of the supply of a service through commercial presence or through the presence of natural persons, by a service supplier of the other Party;

service supplier of a Party means a person of that Party that seeks to supply or supplies a service¹⁰; and

supply of a service includes the production, distribution, marketing, sale and delivery of a service.

Article 10.2: Scope and Coverage

1. (a) This Chapter applies to measures adopted or maintained by a Party affecting cross-border trade in services by service suppliers of the other Party.
- (b) Measures covered by subparagraph (a) include measures affecting:
 - i. the production, distribution, marketing, sale and delivery of a service;
 - ii. the purchase or use of, or payment for, a service;
 - iii. the access to and use of distribution, transport, or telecommunications networks and services in connection with the supply of a service;
 - iv. the presence in its territory of a service supplier of the other Party; and
 - v. the provision of a bond or other form of financial security as a condition for the supply of a service.
- (c) For purposes of this Chapter, measures adopted or maintained by a Party means measures adopted or maintained by:
 - i. central, regional or local governments and authorities; and

¹⁰ The Parties understand that for purposes of Article 10.3 (National Treatment), Article 10.4 (Most-Favoured-Nation Treatment), and Article 10.5 (Market Access) of this Agreement, “service suppliers” has the same meaning as “services and service suppliers” as used in GATS.

- ii. non-governmental bodies in the exercise of powers delegated by central, regional or local governments or authorities.
- 2. Articles 10.5 (Market Access) and 10.8 (Domestic Regulation) also apply to measures by a Party affecting the supply of a service in its territory by an investor of the other Party or an investment of an investor of the other Party as defined in Article 11.1 (Definitions)¹¹.
- 3. This Chapter does not apply to:
 - (a) government procurement as defined in Article 8.2 (Definitions) of Chapter 8 (Government Procurement);
 - (b) air services¹², including domestic and international air transportation services, whether scheduled or non-scheduled, and related services in support of air services, other than:
 - i. aircraft repair and maintenance services;
 - ii. the selling and marketing of air transport services;
 - iii. computer reservation system (CRS) services;
 - (c) subsidies or grants provided by a Party, including government-supported loans, guarantees and insurance, or to any conditions attached to the receipt or continued receipt of such subsidies or grants, whether or not such subsidies or grants are offered exclusively to domestic services, service consumers or service suppliers.
- 4. This Chapter does not impose any obligation on a Party with respect to a national of the other Party seeking access to its employment market, or employed on a permanent basis in its territory, and does not confer any right on that national with respect to that access or employment nor shall it apply to measures regarding citizenship or residence on a permanent basis.
- 5.
 - (a) This Chapter does not apply to services supplied in the exercise of governmental authority in a Party's territory.
 - (b) For purposes of this Chapter, a service supplied in the exercise of governmental authority means any service which is supplied neither on a commercial basis, nor in competition with one or more service suppliers.

¹¹ The Parties understand that nothing in this Chapter, including this paragraph, is subject to investor-State dispute settlement pursuant to Article 11.16 (Investor-State Dispute Settlement) of Chapter 11 (Investment).

¹² For greater certainty, the term "air services" includes traffic rights.

6. Nothing in this Chapter shall prevent a Party from applying measures to regulate the entry of natural persons of the other Party 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 the terms of this Chapter¹³.

7. This Chapter shall not apply to financial services¹⁴. The Parties reaffirm their commitments under GATS with respect to financial services.

8. The rights and obligations of the Parties with respect to telecommunications services shall be governed by this Chapter and Annex 10.1 (Telecommunications Services).

Article 10.3: National Treatment

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

Article 10.4: Most-Favoured-Nation Treatment

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

Article 10.5: Market Access

1. A Party shall not adopt or maintain, either on the basis of a regional subdivision or on the basis of its entire territory, measures that:

- (a) impose limitations on:
 - i. the number of service suppliers whether in the form of numerical quotas, monopolies, exclusive service suppliers or the requirement of an economic needs test;

¹³ The sole fact of requiring a visa for natural persons of the other Party shall not be regarded as nullifying or impairing benefits under a specific commitment.

¹⁴ For purposes of this paragraph, "financial services" is as defined in subparagraph 5 (a) of the Annex on Financial Services in GATS.

- ii. the total value of service transactions or assets in the form of numerical quotas or the requirement of an economic needs test;
 - iii. the total number of service operations or the total quantity of services output expressed in terms of designated numerical units in the form of quotas or the requirement of an economic needs test¹⁵;
 - iv. the total number of natural persons that may be employed in a particular service sector or that a service supplier may employ and who are necessary for, and directly related to, the supply of a specific service in the form of numerical quotas or the requirement of an economic needs test; and
- (b) restrict or require specific types of legal entity or joint venture through which a service supplier may supply a service.

Article 10.6: Local Presence

Neither Party may 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 10.7: Non-Conforming Measures

1. Articles 10.3 (National Treatment), 10.4 (Most-Favoured-Nation Treatment), 10.5 (Market Access), and 10.6 (Local Presence) do not apply to:

- (a) any existing non-conforming measure that is maintained by a Party at:
 - i. the central level of government, as set out by that Party in its Schedule to Annex I (Non-Conforming Measures); or
 - ii. a local level of government;
- (b) the continuation or prompt renewal of any non-conforming measure referred to in subparagraph (a); or
- (c) an amendment to any non-conforming measure referred to in subparagraph (a) to the extent that the amendment does not decrease the conformity of the measure, as it existed immediately before the amendment, with Articles 10.3 (National

¹⁵ This subparagraph does not cover measures of a Party which limit inputs for the supply of services.

Treatment), 10.4 (Most-Favoured-Nation Treatment), 10.5 (Market Access), and 10.6 (Local Presence).

2. Articles 10.3 (National Treatment), 10.4 (Most-Favoured-Nation Treatment), 10.5 (Market Access), and 10.6 (Local Presence) do not apply to any measure that a Party adopts or maintains with respect to sectors, sub-sectors or activities, as set out in its Schedule to Annex II (Non-Conforming Measures).

Article 10.8: Domestic Regulation

1. Where a Party requires authorization for the supply of a service, the Party's competent authorities shall, within a reasonable period of time after the submission of an application considered complete under domestic laws and regulations, inform the applicant of the decision concerning the application. At the request of the applicant, the competent authorities of the Party shall provide, without undue delay, information concerning the status of the application. This obligation shall not apply to authorization requirements that are within the scope of Article 10.7.2 (Non-Conforming Measures).

2. With a view to ensuring that measures relating to qualification requirements and procedures, technical standards and licensing requirements do not constitute unnecessary barriers to trade in services, each Party shall endeavour to ensure, as appropriate, for individual sectors that such measures are:

- (a) based on objective and transparent criteria, such as competence and the ability to supply the service;
- (b) not more burdensome than necessary to ensure the quality of the service; and
- (c) in the case of licensing procedures, not in themselves a restriction on the supply of the service.

3. If the results of the negotiations related to Article VI.4 of GATS (or the results of any similar negotiations undertaken in other multilateral *fora* in which both Parties participate) enter into effect for both Parties, this Article shall be amended, as appropriate, after consultations between the Parties, to bring those results into effect under this Agreement. The Parties agree to coordinate on such negotiations, as appropriate.

Article 10.9: Recognition

1. For purposes of the fulfillment, in whole or in part, of its standards or criteria for the authorization, licensing or certification of services suppliers, and subject to the requirements of paragraph 4, a Party may recognize the education or experience obtained, requirements met, or licenses or

certifications granted in a particular country, including the other Party and non-Parties. Such recognition, which may be achieved through harmonization or otherwise, may be based upon an agreement or arrangement with the country concerned or may be accorded autonomously.

2. Where a Party recognizes, autonomously or by agreement or arrangement, the education or experience obtained, requirements met, or licenses or certifications granted in the territory of a non-Party, nothing in Article 10.4 (Most-Favoured-Nation Treatment) shall be construed to require the Party to accord such recognition to the education or experience obtained, requirements met, or licenses or certifications granted in the territory of the other Party.

3. A Party that is a party to an agreement or arrangement of the type referred to in paragraph 1, whether existing or future, shall afford adequate opportunity for the other Party, if the other Party is interested, to negotiate its accession to such an agreement or arrangement or to negotiate comparable ones with it. Where a Party accords recognition autonomously, it shall afford adequate opportunity for the other Party to demonstrate that education, experience, licenses, or certifications obtained or requirements met in that other Party's territory should be recognized.

4. A Party shall not accord recognition in a manner which would constitute a means of discrimination between countries in the application of its standards or criteria for the authorization, licensing or certification of services suppliers, or a disguised restriction on trade in services.

Article 10.10: Monopolies and Exclusive Service Suppliers

1. Each Party shall ensure that any monopoly supplier of a service in its territory does not, in the supply of the monopoly service in the relevant market, act in a manner inconsistent with that Party's obligations under Articles 10.3 (National Treatment), 10.4 (Most-Favoured-Nation Treatment) and 10.5 (Market Access).

2. Where a Party's monopoly supplier competes, either directly or through an affiliated company, in the supply of a service outside the scope of its monopoly rights and which is subject to that Party's obligations under Articles 10.3 (National Treatment) and 10.5 (Market Access), the Party shall ensure that such a supplier does not abuse its monopoly position to act in its territory in a manner inconsistent with such obligations.

3. If a Party has reason to believe that a monopoly supplier of a service of the other Party is acting in a manner inconsistent with paragraph 1 or 2, it may request the other Party establishing, maintaining or authorizing such supplier to provide specific information concerning the relevant operations.

4. The provisions of this Article shall also apply to cases of exclusive service suppliers, where a Party, formally or in effect:

- (a) authorizes or establishes a small number of service suppliers; and
- (b) substantially prevents competition among those suppliers in its territory.

Article 10.11: Transfers and Payments

1. Each Party shall permit all transfers and payments relating to the cross-border supply of services to be made freely and without delay into and out of its territory.

2. Each Party shall permit such transfers and payments relating to the cross-border supply of services to be made in a freely usable currency at the market rate of exchange prevailing on the date of transfer.

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

- (a) bankruptcy, insolvency or the protection of the rights of creditors;
- (b) issuing, trading or dealing in securities, futures, options, or derivatives;
- (c) financial reporting or record keeping of transfers when necessary to assist law enforcement or financial regulatory authorities;
- (d) criminal or penal offenses;
- (e) ensuring compliance with orders or judgments in judicial or administrative proceedings; or
- (f) social security, public retirement or compulsory savings schemes.

4. Nothing in this Chapter shall affect the rights and obligations of the members of the International Monetary Fund under the Articles of Agreement of the Fund, including the use of exchange actions which are in conformity with the Articles of Agreement, provided that a Party shall not impose restrictions on any capital transactions inconsistently with its obligations under this Chapter regarding such transactions, except under Article 18.5 (Restrictions to Safeguard the Balance of Payments) or at the request of the Fund.

Article 10.12: Denial of Benefits

Subject to prior notification and consultation, a Party may deny the benefits of this Chapter to:

- (a) a service supplier of the other Party if the service supplier is an enterprise owned or controlled by persons of a non-Party and such enterprise has no substantive business operations in the territory of the other Party; or
- (b) a service supplier of the other Party if the service supplier is an enterprise owned or controlled by persons of the denying Party and such enterprise has no substantive business operations in the territory of the other Party.

Chapter 11 Investment

Article 11.1: Definitions

For purposes of this Chapter:

enterprise means any legal entity constituted or organized under applicable law, whether or not for profit, and whether privately or governmentally owned, including a corporation, trust, partnership, sole proprietorship, joint venture, association, or similar organization; and a branch of an enterprise;

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

freely usable currency means “freely usable currency” as determined by the International Monetary Fund under the Articles of Agreement of the Fund and any amendments thereto;

investment means every kind of asset, owned or controlled, directly or indirectly, by an investor, that includes characteristics such as the commitment of capital or other resources, the expectation of gain or profit, or the assumption of risk, including but not limited to the following:

- (a) an enterprise;
- (b) shares, stock, and other forms of equity participation in an enterprise;
- (c) bonds, debentures, and loans and other debt instruments¹⁶;
- (d) futures, options, and other derivatives;
- (e) turnkey, construction, management, production, concession, revenue-sharing, and other similar contracts;
- (f) claims to money or to any contractual performance related to a business and having an economic value;

¹⁶ For purposes of this Chapter, “loans and other debt instruments” described in (c) and “claims to money or to any contractual performance” described in (f) of this Article refer to assets which relate to a business activity and do not refer to assets which are of a personal nature, unrelated to any business activity.

- (g) intellectual property rights, including goodwill;
- (h) licenses, authorizations, permits, and similar rights conferred pursuant to applicable domestic law, including any concession to search for, cultivate, extract or exploit natural resources^{17 18}; and
- (i) other tangible or intangible, movable or immovable property, and related property rights, such as leases, mortgages, liens, and pledges;

for purposes of this definition, returns that are invested shall be treated as investments and any alteration of the form in which assets are invested or reinvested shall not affect their character as investments;

investor means a national or an enterprise of a Party, that attempts to make, is making, or has made an investment in the territory of the other Party; provided, however, that a natural person who possesses dual nationality shall be deemed to possess exclusively the nationality of the State of his or her dominant and effective nationality; and

national means a natural person who has the nationality of a Party according to Article 1.5 (Country-Specific Definitions) of Chapter 1 (Initial Provisions and General Definitions)¹⁹.

Article 11.2: Scope and Coverage

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

- (a) investors of the other Party;
- (b) investments of investors of the other Party in the territory of the former Party;
- (c) with respect to Article 11.8 (Performance Requirements), all the investments in the territory of the Party.

¹⁷ The term “investment” does not include an order or judgment entered in a judicial or administrative action.

¹⁸ Whether a particular type of license, authorization, permit, or similar instrument (including a concession, to the extent that it has the nature of such an instrument) has the characteristics of an investment depends on such factors as the nature and extent of the rights that the holder has under the domestic law of the Party. For greater certainty, the foregoing is without prejudice to whether any asset associated with the license, authorization, permit, or similar instrument has the characteristics of an investment.

¹⁹ If any future international agreement that contains provisions for investment protection, and to which Costa Rica is a party, includes provisions to cover permanent residents, the provisions of this Chapter shall also cover the permanent residents of both Parties.

2. This Chapter shall not apply to:
 - (a) any taxation measure unless otherwise provided; and
 - (b) services supplied in the exercise of governmental authority within the territory of the respective Party. For purposes of this Chapter, a service supplied in the exercise of governmental authority means any service which is supplied neither on a commercial basis, nor in competition with one or more service suppliers.
3. In the event of any inconsistency between this Chapter and another Chapter, the other Chapter shall prevail over this Chapter to the extent of the inconsistency.
4. The rights and obligations of the Parties with respect to investors and investments in telecommunications services shall be governed by this Chapter and Annex 10.1 (Telecommunications Services).
5. The requirement by a Party that a service supplier of the other Party post a bond or other form of financial security as a condition of the cross-border supply of a service into its territory does not of itself make this Chapter applicable to that cross-border supply of a service. This Chapter applies to that Party's treatment of the posted bond or financial security, to the extent that such bond or financial security is an investment of an investor of the other Party.
6. This Chapter does not apply to disputes arising out of events which occurred, or disputes which had been raised, prior to the entry into force of this Agreement.

Article 11.3: Financial Services²⁰

1. This Chapter shall not apply to measures adopted or maintained by a Party in respect of investors of the other Party and investments of such investors in the financial institutions²¹ in the other Party, except for the following provisions:

- (a) Article 11.7 (Compensation for Losses);
- (b) Article 11.9 (Special Formalities and Information Requirements);

²⁰ For purposes of this Article, "financial services" is as defined in subparagraph 5 (a) of the Annex on Financial Services in GATS.

²¹ "Financial institution" means any financial intermediary or other enterprise that is authorized to do business and regulated or supervised as a financial institution under the law of the Party in whose territory it is located.

- (c) Article 11.10 (Expropriation and Nationalization);
- (d) Article 11.11 (Transfers);
- (e) Article 11.12 (Senior Management and Board of Directors);
- (f) Article 11.14 (Denial of Benefits); and
- (g) Article 11.16 (Investor-State Dispute Settlement).

The Parties reaffirm their commitments under GATS with respect to financial services.

2. For purposes of paragraph 1, Article 11.16 (Investor-State Dispute Settlement) shall apply solely for claims that a Party has breached Articles 11.10 (Expropriation and Nationalization), 11.11 (Transfers), and 11.14 (Denial of Benefits).

3. This Chapter shall not apply to measures adopted or maintained by a Party relating to:

- (a) activities or services forming part of a public retirement plan or statutory system of social security;
- (b) activities or services conducted for the account or with the guarantee or using the financial resources of the Party, including its public entities; or
- (c) activities conducted by a central bank or monetary authority or by any other public entity in pursuit of monetary or exchange rate policies;

except that the provisions referred to in paragraph 1 shall apply if a Party allows any of the activities or services referred to in subparagraph (a) or (b) to be conducted by its financial institutions in competition with a public entity or a financial institution.

4. Notwithstanding any other provisions of this Chapter, each Party may adopt or maintain measures for prudential reasons, such as: the protection of investors, depositors, policy-holders or persons to whom a fiduciary duty is owed by a financial institution or financial services supplier; the maintenance of the safety, soundness, integrity or financial responsibility of financial services suppliers; and ensuring the integrity and stability of a Party's financial system. Such measures shall not be used as a means of avoiding a Party's obligations under the provisions referred to in paragraph 1.

5. Notwithstanding Article 11.11 (Transfers), a Party may prevent or limit transfers by a financial institution or financial services supplier to, or for the benefit of, an affiliate of or person related to such institution or supplier, through the equitable, non-discriminatory, and good faith application of

measures relating to maintenance of the safety, soundness, integrity, or financial responsibility of financial institutions or financial services suppliers. This paragraph does not prejudice any other provision of this Agreement that permits a Party to restrict transfers.

6. Nothing in this Chapter shall be construed to prevent the adoption or enforcement by any Party of measures necessary to secure compliance with laws or regulations that are not inconsistent with this Chapter, including those relating to the prevention of deceptive and fraudulent practices or to deal with the effects of a default on financial services contracts, subject to the requirement that such measures are not applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination between countries where like conditions prevail, or a disguised restriction on investment in financial institutions.

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

Article 11.4: National Treatment

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

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

Article 11.5: Most-Favoured-Nation Treatment

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

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

3. For greater certainty, paragraphs 1 and 2 of this Article shall not be construed as granting to investors mechanisms or procedures for the

settlement of disputes other than those set out in Article 11.16 (Investor-State Dispute Settlement).

Article 11.6: Minimum Standard of Treatment

1. Each Party shall accord to investments of investors of the other Party treatment in accordance with customary international law minimum standard of treatment of aliens²², including fair and equitable treatment and full protection and security.

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

(a) The obligation to provide “fair and equitable treatment” includes the obligation not to deny justice in criminal, civil or administrative adjudicatory proceedings in accordance with the principle of due process embodied in the principal legal systems of the world.

(b) The obligation to provide “full protection and security” requires each Party to provide the level of police protection required under customary international law.

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

Article 11.7: Compensation for Losses

1. Investors of one Party whose investments in the territory of the other Party suffer losses owing to war or other armed conflict, revolution, a state of national emergency, insurrection, riot or any other similar event, shall be accorded by the latter Party treatment, as regards restitution, indemnification, compensation or other settlement, no less favourable than that which the latter Party accords to investments of its own investors or investments of investors of any non-Party, whichever is more favourable, to the investment of the investor of the former Party. All payments that may result shall be deemed freely transferable.

2. Paragraph 1 does not apply to existing measures relating to subsidies or grants provided by a Party, or to any conditions attached to the receipt or continued receipt of such subsidies or grants, whether or not such subsidies

²² Customary international law results from a general and consistent practice of States that they follow from a sense of legal obligation. With regards to this Article, the customary international law minimum standard of treatment of aliens refers to all customary international law principles that protect the economic rights and interests of aliens.

or grants are offered exclusively to investors of the Party or investments of investors of the Party, including government-supported loans, guarantees and insurance, that would be inconsistent with Article 11.4 (National Treatment) and Article 11.5 (Most-Favoured-Nation Treatment) but for Article 11.13.4 (Non-Conforming Measures).

Article 11.8: Performance Requirements

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

- (a) to export a given level or percentage of goods or services;
- (b) to achieve a given level or percentage of domestic content;
- (c) to purchase, use or accord a preference to goods produced in its territory, or to purchase goods from persons in its territory;
- (d) to relate in any way the volume or value of imports to the volume or value of exports or to the amount of foreign exchange inflows associated with such investment;
- (e) to restrict sales of goods or services in its territory that such investment produces or supplies by relating such sales in any way to the volume or value of its exports or foreign exchange earnings;
- (f) to transfer a particular technology, production process or other proprietary knowledge to a person in its territory; or
- (g) to supply exclusively from the territory of the Party the goods that it produces or the services that it provides to a specific regional market or to the world market.

2. Neither Party may condition the receipt or continued receipt of an advantage, in connection with the establishment, acquisition, expansion, management, conduct, operation, or sale or other disposition of an investment in its territory of an investor of a Party or of a non-Party, on compliance with any of the following requirements:

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

- (c) to relate in any way the volume or value of imports to the volume or value of exports or to the amount of foreign exchange inflows associated with such investment; or
 - (d) to restrict sales of goods or services in its territory that such investment produces or supplies by relating such sales in any way to the volume or value of its exports or foreign exchange earnings.
3. (a) Nothing in paragraph 2 shall be construed to prevent a Party from conditioning the receipt or continued receipt of an advantage, in connection with an investment in its territory of an investor of a Party or of a non-Party, 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.
- (b) The provisions of subparagraph 1(f) do not apply:
- i. when a Party authorizes use of an intellectual property right in accordance with Article 31 of the TRIPS Agreement, and to measures requiring the disclosure of proprietary information that fall within the scope of, and are consistent with Article 39 of the TRIPS Agreement²³; or
 - ii. when the requirement is imposed or the commitment or undertaking is enforced by a court, administrative tribunal or competition authority to remedy a practice determined after judicial or administrative process to be anti-competitive under the Party's competition laws²⁴.
- (c) Provided that such measures are not applied in an arbitrary or unjustifiable manner, and provided that such measures do not constitute a disguised restriction on international trade or investment, subparagraphs 1(b), (c), and (f), and 2(a) and (b), shall not be construed to prevent a Party from adopting or maintaining measures, including environmental measures:
- i. necessary to secure compliance with laws and regulations that are not inconsistent with this Agreement;
 - ii. necessary to protect human, animal, or plant life or health; or

²³ For greater certainty, the references to the TRIPS Agreement in subparagraph 3(b)(i) include any waiver in force between the Parties of any provision of that Agreement granted by WTO Members in accordance with the WTO Agreement.

²⁴ The Parties recognize that a patent does not necessarily confer market power.

iii. related to the conservation of living or non-living exhaustible natural resources.

(d) Subparagraphs (1)(a), (b) and (c), and (2)(a) and (b) do not apply to qualification requirements for goods or services with respect to export promotion and foreign aid programmes.

(e) The provisions of subparagraphs (2)(a) and (b) do not apply to requirements imposed by an importing Party relating to the content of goods necessary to qualify for preferential tariffs or preferential quotas.

(f) Subparagraphs 1(b), (c), (f) and (g), and 2(a) and (b), do not apply to government procurement.

4. For greater certainty, paragraphs 1 and 2 do not apply to any requirement other than the requirements set out in those paragraphs.

5. This Article does not preclude the application of any commitment, undertaking or requirement between private parties, where a Party did not impose or require the commitment, undertaking or requirement.

Article 11.9: Special Formalities and Information Requirements

1. Nothing in Article 11.4 (National Treatment) shall be construed to prevent a Party from adopting or maintaining a measure that prescribes special formalities in connection with investments of investors of the other Party, such as a requirement that investors be residents of the Party or that investments of investors of the other Party be legally constituted under the laws or regulations of the Party, provided that such formalities do not materially impair the protections afforded by a Party to investors of the other Party and investments of investors of the other Party pursuant to this Chapter. The Parties shall endeavour to exchange information on any existing or future special formalities.

2. Notwithstanding Article 11.4 (National Treatment) and Article 11.5 (Most-Favoured-Nation Treatment), a Party may require an investor of the other Party or investment of investor of the other Party, to provide information concerning that investment solely for informational or statistical purposes. The Party shall protect any confidential business information from any disclosure that would prejudice the competitive position of the investor or the investment of investor of the other Party. Nothing in this paragraph shall be construed to prevent a Party from otherwise obtaining or disclosing information in connection with the equitable and good faith application of its law.

Article 11.10: Expropriation and Nationalization²⁵

1. Neither Party shall expropriate or nationalize the investments of investors of the other Party either directly or indirectly through measures equivalent to expropriation or nationalization (hereinafter referred to as “expropriation”), unless such a measure is taken on a non-discriminatory basis, for a public purpose, in accordance with due process of law and Article 11.6 (Minimum Standard of Treatment), and upon payment of compensation in accordance with this Article²⁶.

2. The expropriation shall be accompanied by the payment of prompt, adequate and effective compensation. Compensation shall be equivalent to the fair market value of the expropriated investment immediately before the expropriation or impending expropriation became public knowledge. Compensation shall carry an appropriate interest, taking into account the date of expropriation until the date of payment. Such compensation shall be effectively realizable, freely transferable in accordance with Article 11.11 (Transfers) and made without delay.

3. This Article does not apply to the issuance of compulsory licenses granted in relation to intellectual property rights, or to the revocation, limitation or creation of intellectual property rights, to the extent that such issuance, revocation, limitation or creation is consistent with the TRIPS Agreement²⁷.

Article 11.11: Transfers

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

- (a) contributions to capital;
- (b) profits, dividends, capital gains, and proceeds from the sale of all or any part of the investment or from the partial or complete liquidation of the investment;
- (c) interest, royalty payments, management fees, and technical assistance and other fees;

²⁵ This Article shall be interpreted in accordance with Annex 11.1 (Expropriation and Nationalization).

²⁶ For Singapore, any measure of expropriation relating to land, which shall be as defined in the existing domestic legislation on the date of entry into force of this Agreement, shall be for a purpose and upon payment of compensation in accordance with the aforesaid legislation and any subsequent amendments thereto relating to the amount of compensation where such amendments follow the general trends in the market value of the land.

²⁷ For greater certainty, the reference to the TRIPS Agreement in paragraph 3 includes any waiver in force between the Parties of any provision of that Agreement granted by WTO Members in accordance with the WTO Agreement.

- (d) payments made under a contract entered into by the investor, or its investment, including payments made pursuant to a loan agreement;
- (e) payments made pursuant to Article 11.7 (Compensation for Losses) and Article 11.10 (Expropriation and Nationalization); and
- (f) payments arising under Article 11.16 (Investor-State Dispute Settlement).

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

3. Each Party shall permit returns in kind relating to an investment of investors of the other Party to be made as authorized or specified in a written agreement between the Party and an investment by an investor of the other Party, or an investor of the other Party.

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

- (a) bankruptcy, insolvency, or the protection of the rights of creditors;
- (b) issuing, trading, or dealing in securities, futures, options, or derivatives;
- (c) financial reporting or record keeping of transfers when necessary to assist law enforcement or financial regulatory authorities;
- (d) criminal or penal offenses;
- (e) ensuring compliance with orders or judgments in judicial or administrative proceedings; or
- (f) social security, public retirement or compulsory savings schemes.

5. Nothing in this Chapter shall affect the rights and obligations of the members of the International Monetary Fund under the Articles of Agreement of the Fund, including the use of exchange actions which are in conformity with the Articles of Agreement, provided that a Party shall not impose restrictions on any capital transactions inconsistently with its obligations under this Chapter regarding such transactions, except under Article 18.5 (Restrictions to Safeguard the Balance of Payments) or at the request of the Fund.

Article 11.12: Senior Management and Board of Directors

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

Article 11.13: Non-Conforming Measures

1. Articles 11.4 (National Treatment), 11.5 (Most-Favoured-Nation Treatment), 11.8 (Performance Requirements) and 11.12 (Senior Management and Board of Directors) do not apply to:
 - (a) any existing non-conforming measure that is maintained by a Party at:
 - i. the central level of government, as set out by that Party in its Schedule to Annex I (Non-Conforming Measures); or
 - ii. a local level of government;
 - (b) the continuation or prompt renewal of any non-conforming measure referred to in subparagraph (a); or
 - (c) an amendment to any non-conforming measure referred to in subparagraph (a) to the extent that the amendment does not decrease the conformity of the measure, as it existed immediately before the amendment, with Articles 11.4 (National Treatment), 11.5 (Most-Favoured-Nation Treatment), 11.8 (Performance Requirements) and 11.12 (Senior Management and Board of Directors).
2. Articles 11.4 (National Treatment), 11.5 (Most-Favoured-Nation Treatment), 11.8 (Performance Requirements) and 11.12 (Senior Management and Board of Directors) do not apply to any measure that a Party adopts or maintains with respect to sectors, sub-sectors, or activities, as set out in its Schedule to Annex II (Non-Conforming Measures).
3. Neither Party may, under any measure adopted after the date of entry into force of this Agreement and covered by its Schedule to Annex II (Non-Conforming Measures), require an investor of the other Party, by reason of its

nationality, to sell or otherwise dispose of an investment existing at the time the measure becomes effective.

4. Articles 11.4 (National Treatment), 11.5 (Most-Favoured-Nation Treatment) and 11.12 (Senior Management and Board of Directors) shall not apply to subsidies or grants provided by a Party, or to any conditions attached to the receipt or continued receipt of such subsidies or grants, whether or not such subsidies or grants are offered exclusively to investors of the Party or investments of investors of the Party, including government supported loans, guarantees and insurance.

5. Articles 11.4 (National Treatment), 11.5 (Most-Favoured-Nation Treatment) and 11.12 (Senior Management and Board of Directors) shall not apply to government procurement as defined in Article 8.2 (Definitions) of Chapter 8 (Government Procurement).

6. Articles 11.4 (National Treatment) and 11.5 (Most-Favoured-Nation Treatment) do not apply to any measure that is an exception to, or derogation from, a Party's obligations under the TRIPS Agreement, as specifically provided for in that Agreement.

Article 11.14: Denial of Benefits

Subject to prior notification and consultation, a Party may deny the benefits of this Chapter to:

- (a) an investor of the other Party and to its investments if the investor is an enterprise owned or controlled by persons of a non-Party and such enterprise has no substantive business operations in the territory of the other Party; or
- (b) an investor of the other Party and to its investments if the investor is an enterprise owned or controlled by persons of the denying Party and such enterprise has no substantive business operations in the territory of the other Party.

Article 11.15: Subrogation

1. If a Party or a designated agency of a Party makes a payment to any of its investors under a guarantee, a contract of insurance or other form of indemnity it has granted in respect of an investment of an investor of that Party, the other Party shall recognize the subrogation or transfer of any right or title in respect of such investment. The subrogated or transferred right or claim shall not be greater than the original right or claim of the investor.

2. Where a Party or a designated agency of a Party has made a payment to an investor of that Party and has taken over rights and claims of the investor, that investor shall not, unless authorized to act on behalf of the Party

or the designated agency of the Party making the payment, pursue those rights and claims against the other Party.

Article 11.16: Investor-State Dispute Settlement

1. This Article shall apply to disputes between a Party and an investor of the other Party concerning an alleged breach of an obligation of a Party under this Chapter which results in loss or damage to the investor or its investment by reason of that breach.

2. The parties to the dispute shall initially seek to resolve the dispute by consultations and negotiations.

3. Where the dispute cannot be resolved as provided for under paragraph 2 within 6 months from the date of a request for consultations and negotiations, then, and unless the disputing investor and the disputing Party agree otherwise or if the disputing investor has already submitted the dispute for resolution before the courts or administrative tribunals of the disputing Party (excluding proceedings for interim measures of protection referred to in paragraph 5 of this Article) or to any other dispute settlement procedures, the disputing investor may submit the dispute for settlement to²⁸:

- (a) the International Centre for Settlement of Investment Disputes (ICSID) for conciliation or arbitration pursuant to the *Convention on the Settlement of Investment Disputes between States and Nationals of Other States* (ICSID Convention), if both Parties are parties to the ICSID Convention;
- (b) the *Additional Facility Rules* of ICSID for conciliation or arbitration, provided that one of the Parties, but not both, is a party to the ICSID Convention; or
- (c) arbitration under the rules of the United Nations Commission on International Trade Law (UNCITRAL).

The conciliation or arbitration rules applicable under subparagraphs (a), (b) and (c), and in effect on the date the dispute is submitted to conciliation or arbitration under this Article, shall govern the conciliation or arbitration except to the extent modified by this Article.

4. Each Party hereby consents to the submission of a dispute to conciliation or arbitration under subparagraphs 3 (a), (b) and (c) in accordance with the provisions of this Article, conditional upon:

²⁸ For greater certainty, if a disputing investor elects to submit a dispute of the type described in paragraph 1 of this Article to the courts or administrative tribunals of the disputing Party or to any other dispute settlement procedures, that election shall be definitive, and the disputing investor may not thereafter submit the dispute to conciliation or arbitration under this Article.

- (a) the submission of the dispute to such conciliation or arbitration taking place within 3 years of the time at which the disputing investor became aware, or should reasonably have become aware, of a breach of an obligation under this Chapter resulting in loss or damage to the disputing investor or its investment by reason of that breach; and
- (b) the disputing investor providing written notice to the disputing Party of its intent to submit the dispute to such conciliation or arbitration, at least 30 days before the dispute is submitted, and which:
 - i. states the name and address of the disputing investor and, where a dispute is submitted on behalf of an enterprise, the name, address, and place of constitution of the enterprise;
 - ii. nominates either subparagraphs 3(a), (b) or (c) of this Article as the procedure for dispute settlement (and, in the case of ICSID, nominates whether conciliation or arbitration is being sought);
 - iii. waives its right to initiate or continue any proceedings before the courts or administrative tribunals of the disputing Party (excluding proceedings for interim measures of protection referred to in paragraph 5 of this Article) or to any other dispute settlement procedures or other dispute settlement *fora* referred to in paragraph 3 in relation to the matter under dispute; and
 - iv. briefly summarizes the alleged breach of the disputing Party under this Chapter (including the Articles alleged to have been breached), the legal and factual basis for the dispute, and the loss or damage allegedly caused to the disputing investor or its investment by reason of that breach.

5. Neither Party shall prevent the disputing investor from seeking interim measures of protection under the laws of the disputing Party, not involving the payment of damages or resolution of the substance of the matter in dispute before the courts or administrative tribunals of the disputing Party for the preservation of its rights and interests.

6. Neither Party shall give diplomatic protection, or bring an international claim, in respect of a dispute which one of its investors and the other Party shall have consented to submit or have submitted to conciliation or arbitration under this Article, unless such other Party has failed to abide by and comply with the award rendered in such dispute. Diplomatic protection, for purposes of this paragraph, shall not include informal diplomatic exchanges for the sole purpose of facilitating a settlement of the dispute.

7. The arbitral awards shall be based on the provisions of this Agreement, the laws of the disputing Party, including its rules on the conflict of laws, and the applicable rules of international law. The arbitral award shall be final and binding and each Party shall ensure the recognition and enforcement of the arbitral award in accordance with its laws.

Chapter 12 Electronic Commerce

Article 12.1: General

1. The Parties recognize the economic growth and opportunities that electronic commerce provides, the importance of avoiding barriers to its use and development, and the applicability of WTO rules to measures affecting electronic commerce.
2. For greater certainty, nothing in this Chapter shall be construed to prevent a Party from imposing internal taxes, directly or indirectly, on digital products, provided they are imposed in a manner consistent with this Agreement.

Article 12.2: Definitions

For purposes of this Chapter:

carrier medium means any physical object capable of storing the digital codes that form a digital product by any method now known or later developed, and from which a digital product can be perceived, reproduced, or communicated, directly or indirectly, and includes an optical medium, a floppy disk, and a magnetic tape;

digital products means computer programs, text, video, images, sound recordings, and other products that are digitally encoded, regardless of whether they are fixed on a carrier medium or transmitted electronically²⁹;

electronic transmission or **transmitted electronically** means the transfer of digital products using any electromagnetic or photonic means; and

using electronic means means employing computer processing.

Article 12.3: Electronic Supply of Services

For greater certainty, the Parties affirm that measures affecting the supply of a service using electronic means fall within the scope of the obligations contained in the relevant provisions of Chapter 10 (Trade in Services) and Chapter 11 (Investment), subject to any exceptions or non-

²⁹ For greater certainty, digital products do not include digitized representations of financial instruments.

conforming measures set out in this Agreement, which are applicable to such obligations.

Article 12.4: Digital Products

1. Neither Party shall impose customs duties, fees, or other charges on or in connection with the importation or exportation of digital products by electronic transmission.

2. Each Party shall determine the customs value of an imported carrier medium bearing a digital product based on the cost or value of the carrier medium alone, without regard to the cost or value of the digital product stored on the carrier medium.

3. Neither Party shall accord less favourable treatment to some digital products transmitted electronically than it accords to other like digital products transmitted electronically:

(a) on the basis that:

- i. the digital products receiving less favourable treatment are created, produced, published, stored, transmitted, contracted for, commissioned, or first made available on commercial terms outside its territory; or
- ii. the author, performer, producer, developer, or distributor of such digital products is a person of the other Party or non-Party;

or

(b) so as otherwise to afford protection to the other like digital products that are created, produced, published, stored, transmitted, contracted for, commissioned, or first made available on commercial terms in its territory³⁰.

4. Neither Party shall accord less favourable treatment to digital products transmitted electronically:

- (a) that are created, produced, published, stored, transmitted, contracted for, commissioned, or first made available on commercial terms in the territory of the other Party than it accords to like digital products transmitted electronically that are created, produced, published, stored, transmitted, contracted for, commissioned, or first made available on commercial terms in the territory of a non-Party; or

³⁰ For greater certainty, this paragraph does not provide any right to a non-Party or a person of a non-Party.

- (b) whose author, performer, producer, developer, or distributor is a person of the other Party than it accords to like digital products transmitted electronically whose author, performer, producer, developer, or distributor is a person of a non-Party.

5. Paragraphs 3 and 4 do not apply to any non-conforming measure described in Articles 10.7 (Non-Conforming Measures), or 11.13 (Non-Conforming Measures).

6. This Article does not apply to measures affecting broadcasting services, including the electronic transmission of a series of text, video, images, sound recordings, and other products scheduled by a content provider for aural and/or visual reception, and for which the content consumer has no choice over the scheduling of the series.

Article 12.5: Transparency

Each Party shall publish or otherwise make available to the public its laws, regulations, and other measures of general application that pertain to electronic commerce.

Article 12.6: Cooperation

Recognizing the global nature of electronic commerce, the Parties shall encourage cooperative activities to promote it. The areas of cooperation may include the following:

- (a) promoting and facilitating the use of electronic commerce by small and medium sized enterprises; and
- (b) sharing information and experiences as mutually agreed on laws, regulations and programmes in the sphere of electronic commerce.

Chapter 13

Intellectual Property and Innovation

Article 13.1: Principles

1. The Parties recognize the importance of intellectual property rights in promoting economic and social development, particularly in the globalization of technological innovation and trade, science, as well as the transfer and dissemination of knowledge and technology to the mutual advantage of technology producers and users, and agree to encourage the development of social economic well-being and trade through these means.
2. The Parties recognize the need to achieve a balance between the rights of right holders and the legitimate interests of users and the community with regard to protected subject matter.

Article 13.2: General Provisions

1. Each Party reaffirms its commitments established in existing international agreements in the field of intellectual property rights, to which both are parties, in particular the TRIPS Agreement.
2. Each Party shall establish and maintain transparent intellectual property rights regimes and systems that seek to:
 - (a) provide certainty over the protection and enforcement of intellectual property rights; and
 - (b) facilitate international trade through the dissemination of ideas, technology, science and creative works.
3. Nothing in this Chapter shall prevent a Party from adopting appropriate measures to prevent the abuse of intellectual property rights by right holders or practices that unreasonably restrain trade or the international transfer of technology or practices that in particular cases have an adverse effect on competition in the relevant market, provided that such measures are consistent with each Party's international obligations and domestic laws.

Article 13.3: Genetic Resources, Traditional Knowledge and Folklore

1. The Parties recognize the contribution made by the genetic resources, traditional knowledge and folklore to scientific, cultural and economic development.
2. The Parties acknowledge and reaffirm the principles and provisions established in the *Convention on Biological Diversity* adopted on 5 June 1992

and encourage a mutually supportive relationship between the TRIPS Agreement and the *Convention on Biological Diversity*.

3. Subject to each Party's international obligations and domestic laws, each Party may adopt or maintain measures to promote the conservation of biological diversity, the sustainable utilization of its components and the fair and equitable participation in the benefits arising from the utilization of genetic resources, traditional knowledge and folklore in conformity with what is established in the aforementioned *Convention*.

Article 13.4: Patents and Public Health

1. The Parties recognize the principles established in the *Doha Declaration on the TRIPS Agreement and Public Health* adopted on 14 November 2001 by the Ministerial Conference of the WTO (as found in document WT/MIN(01)/DEC/2 dated 20 November 2001). In interpreting and implementing the provisions under this Chapter, the Parties shall ensure consistency with this *Declaration*.

2. The Parties shall respect the Decision of the WTO General Council of 30 August 2003 on *Implementation of Paragraph 6 of the Doha Declaration on the TRIPS Agreement and Public Health*, as well as the *Protocol Amending the TRIPS Agreement*, done at Geneva on 6 December 2005.

Article 13.5: Geographical Indications

1. The Parties recognize the importance of geographical indications and reaffirm the obligations in the TRIPS Agreement in relation to Articles 22, 23 and 24 on geographical indications, and shall provide for protection of geographical indications in their domestic laws consistent with the TRIPS Agreement.

2. The Parties agree to launch future negotiations through the Commission for the inclusion of a list of terms that are recognized as geographical indications for agricultural products in the respective Party, within the meaning of Article 22.1 of the TRIPS Agreement. The particular terms to be included and the number of such terms remain to be discussed and agreed by the Commission. Subject to the respective Party's domestic laws, in a manner that is consistent with the TRIPS Agreement, such terms if included, will be protected as geographical indications in the territory of the other Party³¹.

³¹ For greater certainty, the Parties acknowledge that geographical indications contained in any such lists will be recognized and protected in each Party only to the extent permitted by and according to terms and conditions set out in its domestic laws.

Article 13.6: Cooperation

1. In relation to intellectual property, the Parties agree that they may cooperate on the following areas:

- (a) intellectual property management, licensing, registration, and exploitation, through the exchange of information and sharing of experiences;
- (b) technology and market intelligence through exchange of experience and information, as mutually agreed by the Parties;
- (c) exchange of information on the implementation of intellectual property systems, aimed at promoting the efficient registration of intellectual property rights;
- (d) policy dialogue on intellectual property initiatives in multilateral and regional *fora*; and
- (e) exchange of information and cooperation on appropriate initiatives to promote awareness of the benefits of intellectual property rights and systems.

2. All cooperation under this Article shall be carried out on terms that are mutually acceptable to the intellectual property offices and relevant authorities of each Party. Cooperation shall also be subject to the availability of resources of each Party.

Chapter 14

Cooperation, Promotion and Enhancement of Trade Relations

Section A: General Provisions

Article 14.1: General Objective

The objective of this Chapter is to implement programs of mutual assistance in areas that will allow a high level of benefits derived from trade relations and the promotion of investment. This objective shall be accomplished through the framework set out in this Chapter for present and future development of cooperative relations between the Parties.

Article 14.2: Specific Objectives

In this Chapter, priority shall be given to the following objectives:

- (a) promoting economic and social development;
- (b) strengthening the capabilities and competitiveness of the Parties to maximize the opportunities and benefits derived from this Agreement;
- (c) increasing the level and depth of cooperative activities among the Parties in areas of mutual interest, with special attention to economic, trade, financial, technological, educational and cultural aspects;
- (d) encouraging the presence of the Parties and their goods and services in their respective markets in Asia Pacific and Latin America;
- (e) stimulating productive synergies, creating new opportunities for trade and investment, and promoting competitiveness and innovation;
- (f) accomplishing a greater impact in scientific, technological and knowledge transfer, research and development, innovation, and entrepreneurship;
- (g) increasing the export capacity of small and medium enterprises (SMEs);
- (h) generating a greater and deeper level of supply chain linkages; and

- (i) reinforcing and expanding cooperation, collaboration, mutual interchanges and good practices in areas of mutual interest.

Section B: Cooperation Areas

Without prejudice to the possibility of extending cooperation to other areas, the Parties agree to set as priority the areas in this Section, with the aim of accomplishing the objectives of this Chapter.

Article 14.3: Small and Medium Enterprises

1. The Parties shall support the enhancement of SMEs' competitiveness and their insertion in the international markets on the basis of strengthening their productive capabilities.
2. Cooperation shall include, among others, activities to:
 - (a) design and execute mechanisms to encourage partnerships and development of productive linkages; and
 - (b) develop SMEs' competitiveness through the exchange of information between the relevant institutions of both Parties and such other mechanisms as may be agreed by these institutions.

Article 14.4: Promotion of Science and Technology, Innovation, Technology and Knowledge Transfer, and Entrepreneurship

1. The Parties recognize the importance of the promotion and the facilitation of cooperation activities in science and technology, innovation, technology and knowledge transfer, and entrepreneurship, aiming to achieve a greater social and economic development. The Parties shall also consider the access to and transfer of knowledge and technology between them at national (including different stakeholders such as universities, private sector, and government) and international levels.
2. The Parties shall encourage and facilitate, as appropriate, the following activities, among others:
 - (a) supporting the participation of public, private and social organizations, including universities, research and development institutions and non-governmental organizations, in the execution of programs and projects related with the areas mentioned in paragraph 1;
 - (b) exchange of specialists, researchers and university professors;

- (c) apprenticeship programs for professional training and instruction;
- (d) joint or coordinated implementation of research and/or technological development programs and projects that link centers for research industry;
- (e) information exchange on scientific and technological research;
- (f) development of joint cooperation activities in third countries, as may be agreed by the Parties;
- (g) granting scholarships for studies of professional specialization and intermediate studies of technical instruction;
- (h) organizing seminars, workshops and conferences;
- (i) exchanging or sharing of equipment subject to the agreement of both Parties; and
- (j) promoting public/private sector partnerships in support of the development of innovative products, processes and services.

Article 14.5: Export Promotion and Attraction of Investments

1. For the purpose of reaching greater benefits arising from this Agreement, the Parties recognize the importance of supporting the existing programs related to export and investment promotion, and to launch new ones, as well as to enhance both Parties' investment climates.

2. Cooperation shall include, among others, activities to:

- (a) strengthen the export capacity, through training and existing technical assistance programs;
- (b) establish and develop mechanisms related with market research, including exchange of information and access to international databases;
- (c) create exchange programs for exporters in order to provide knowledge of the markets of each Party;
- (d) promote greater participation of SMEs in exports;
- (e) support the export and investment promotion activities between the Parties;
- (f) support entrepreneurship processes as an instrument to strengthen the export capacity and promote investment;

- (g) promote the implementation of research and development, technological and innovation programs with the objective of increasing the export supply and encouraging investment;
- (h) promote joint venture opportunities between both Parties' private sectors; and
- (i) promote simplified administrative procedures.

Article 14.6: Culture, Sports and Recreation Activities

1. The Parties recognize the importance and significance of arts, culture, sports and recreation as means of consolidation and promotion of partnership among the Parties. In this framework, the Parties shall undertake cooperation in these areas with the purpose of enhancing mutual understanding, fostering balanced exchanges and activities between individuals, institutions and organizations representing civil society.

2. The Parties shall encourage and facilitate the following activities, among others:

- (a) promote arts, cultural and information exchanges between the Parties;
- (b) encourage arts, cultural, recreational and sports events between the Parties;
- (c) establish the possibility of cooperation between arts, cultural, sports and recreational agencies, institutions and associations of both Parties;
- (d) promote the exchange of goods and services related to arts, cultural, sports and recreational activities;
- (e) provide a platform for athletes to travel to, and for training and competing in, the territory of the other Party;
- (f) support activities that raise awareness of artistic works;
- (g) promote the exchange of experiences with respect to the conservation and restoration of national heritage, protection of archaeological monuments and cultural heritage;
- (h) encourage the exchange and training of professionals and technicians, including coaches, players, sports medicine personnel and special needs sports personnel;

- (i) exchange visits to review arts, cultural, sports and recreational facilities and share experiences in the area of implementation, developing, maintenance and operation of these facilities;
- (j) exchange experience on management of different sports disciplines; and
- (k) promote cooperation in audio-visual and media sectors, through joint initiatives in training, as well as audio-visual development, production and distribution activities, including the educational and cultural fields.

Article 14.7: Agro-Industrial Cooperation

1. The Parties shall encourage and facilitate cooperation in the food industry and agribusiness.
2. The Parties shall facilitate partnerships between the public and/or private sectors for co-development and process improvements pertaining to the food industry and the agro-industry.

Article 14.8: Environmental Cooperation

1. The Parties recognize the importance of contributing globally to the protection of the environment and, accordingly, reaffirm their commitments and obligations under multilateral environmental agreements to which they are parties.
2. The Parties recognize the importance of strengthening capacities to protect the environment and to promote sustainable development, in accordance with their efforts of strengthening their trade and investment relations. Accordingly, the Parties agree to cooperate on environmental matters of mutual interest and benefit, taking into account their national priorities and available resources. Cooperative activities may be in areas including, but not limited to, the promotion of:
 - (a) green markets and clean technologies; and
 - (b) sustainable environmental management.

Article 14.9: Labour Cooperation

1. The Parties recognize the importance of labour matters, which must go hand in hand with economic development, and share a similar commitment to uphold labour standards in the context of global economic development and trade liberalization.

2. The Parties reaffirm their commitment to a high standard of labour laws, policies and practices and to seek to cooperate in the promotion of employment and better understanding and observance of the principles embodied in the *International Labour Organization Declaration of Fundamental Principles and Rights at Work and its Follow-up (1998)*. Accordingly, the Parties agree to cooperate on labour matters of mutual interest and benefit, taking into account their national priorities and available resources. Cooperative activities may be in areas including, but not limited to:

- (a) skills development and employability;
- (b) occupational safety and health;
- (c) industrial relations and labour-management cooperation; and
- (d) strengthening of institutional capacities.

Article 14.10: Other Cooperation Areas

Additionally, the Parties shall engage in the promotion of the following cooperation areas:

- (a) **Health:** Cooperation in the health area shall include, among others, activities to:
 - i. develop efficient health systems, train sufficient health workforce, develop fair financing mechanisms and social protection schemes;
 - ii. promote primary health care and prevention through integrated approaches and actions involving other policy sectors;
 - iii. promote information exchanges about policies, training programs, and product manufacturing, among others;
 - iv. promote the use, application and training of new health technologies; and
 - v. encourage the development of research centers focused in the production of high-quality technologies.
- (b) **Infrastructure: Ports, Airports and Roads:** Cooperation in the ports, airports and roads shall include, among others, activities to:
 - i. design, restructure and modernize infrastructure related to urban planning, air, maritime, rail and road transport and related infrastructure systems;

- ii. promote cooperation between relevant authorities, in aspects related to railways, ports and airports; and
 - iii. encourage the exchange of information on the Parties' policies, especially regarding urban transport and the interconnection and interoperability of multimodal transport networks and other issues of mutual interest.
- (c) **Dispute Settlement:** Cooperation in dispute settlement shall include, among others, activities to:
- i. encourage and facilitate the use of arbitration and other means of alternative dispute resolution for the settlement of international commercial disputes between private parties in the free trade area;
 - ii. promote the execution of technical cooperation projects between private parties;
 - iii. promote the subscription of cooperation agreements between institutions dedicated to the analysis of alternative dispute resolution mechanisms or the administration of these procedures; and
 - iv. strengthen capacity building for the management of dispute settlement conflicts, which could include exchange of better practices, training, internships, consultancies, among others.
- (d) **Information Communication Technology (ICT):** Cooperation in the ICT area shall include, among others:
- i. promotion of electronic commerce;
 - ii. promotion of the use of ICT related services, including newly emerging services, by consumers, the public and private sectors; and
 - iii. human resource development in the area of ICT;
- by, for instance:
- i. promoting dialogue on ICT policy issues and national ICT strategies including e-Government;
 - ii. promoting cooperation between the respective private sectors of the Parties;

- iii. enhancing cooperation in international *fora* relating to ICT; and
- iv. undertaking other appropriate cooperative activities.

Article 14.11: Framework for Cooperation

1. In order to administer this Chapter, the Parties shall maintain contact points to facilitate the management of cooperation activities, communications, follow-up mechanisms and specific cooperation programs.

2. The contact points for the Parties are:

(a) in the case of Costa Rica:

- i. *Dirección General de Comercio Exterior,
Ministerio de Comercio Exterior*
(Directorate General for Foreign Trade,
Ministry of Foreign Trade)
Address: 1st and 3rd Avenue, 40th Street, Paseo Colón,
San José.
Tel: (506) 22 99 47 00
Fax: (506) 22 55 32 81
P.O. Box: 297-1007 Centro Colón
E-mail: dgce@comex.go.cr
Web: www.comex.go.cr

and

- ii. *Área de Cooperación Internacional,
Ministerio de Planificación Nacional y Política Económica*
(International Cooperation Area,
Ministry of Planning and Economic Policy)
Address: Los Yoses, San Pedro, San José.
Tel: (506) 22 81 27 00
Fax: (506) 22 81 27 47
E-mail: cooperacionbilateral@mideplan.go.cr
Web: www.mideplan.go.cr

(b) in the case of Singapore:

*Ministry of Trade and Industry
Trade Division*
Address: 100 High Street #09-01, The Treasury
Singapore 179434, Republic of Singapore
Tel: (65) 6225 9911
Fax: (65) 6332 7260
Email: mti_fta@mti.gov.sg
Web: www.mti.gov.sg

or their successors or designated contact points.

3. The contact points shall report to the Commission all the cooperation activities carried out through this Chapter.

4. The Parties will make maximum use of diplomatic channels to promote dialogue and cooperation consistent with this Agreement.

5. The Parties may agree to cooperate in other areas of mutual interest other than the ones set out in this Agreement. Cooperation in other areas shall be carried out through the relevant authorities of each Party and upon agreement.

6. Any cooperation activity agreed to between the Parties pursuant to the Chapter shall be in writing and shall specify the objectives, financial and technical resources required, time-frame, as well as the task that must be performed by each Party, subject to each Party's internal procedures.

7. Neither Party shall have recourse to any dispute settlement procedures under this Agreement for any issue arising from or relating to this Chapter.

Chapter 15 Transparency

Article 15.1: Definitions

For purposes of this Chapter:

administrative ruling of general application means an administrative ruling or interpretation that applies to all persons and fact situations that fall generally within its ambit and that establishes a norm of conduct but does not include:

- (a) a determination or ruling made in an administrative proceeding that applies to a particular person, good, or service of the other Party in a specific case; or
- (b) a ruling that adjudicates with respect to a particular act or practice.

Article 15.2: Contact Points

1. Each Party shall designate, within 60 days of the date of entry into force of this Agreement, a contact point to facilitate communications between the Parties on any matter covered by this Agreement.
2. On the request of the other Party, the contact point shall identify the office or official responsible for the matter and assist, as necessary, in facilitating communication with the requesting Party.
3. Any information, request or notification provided under this Chapter shall be provided to the other Party through the contact point, unless otherwise established in this Agreement or subsequently agreed by the Parties.

Article 15.3: Publication

1. Each Party shall ensure that its laws, regulations, procedures and administrative rulings of general application respecting any matter covered by this Agreement are promptly published or otherwise made available in such a manner as to enable the other Party and interested persons to become acquainted with them.
2. To the extent possible, each Party shall publish in advance any law that it proposes to adopt.

Article 15.4: Notification and Provision of Information

1. To the maximum extent possible, each Party shall notify the other Party of any actual measure that the Party considers might materially affect the operation of this Agreement or otherwise substantially affect that other Party's interests under this Agreement.
2. On request of the other Party, a Party shall promptly and at no cost, provide information and respond to questions pertaining to any actual or proposed measure, whether or not the other Party has been previously notified of that measure.
3. Any notification or information provided under this Article shall be without prejudice as to whether the measure is consistent with this Agreement.

Article 15.5: Administrative Proceedings

With a view to administering in a consistent, impartial, and reasonable manner all measures of general application affecting matters covered by this Agreement referred to in Article 15.3 (Publication), each Party shall ensure, in its administrative proceedings applying such measures to particular persons, goods, or services of the other Party in specific cases, that:

- (a) wherever possible, persons of the other Party that are directly affected by a proceeding are provided reasonable notice, in accordance with domestic procedures, when a proceeding is initiated; such notice shall include a description of the nature of the proceeding, a statement of the legal authority under which the proceeding is initiated, and a general description of any issues in controversy;
- (b) such persons are afforded a reasonable opportunity to present facts and arguments in support of their positions prior to any final administrative action, when time, the nature of the proceeding, and the public interest permit; and
- (c) its procedures are in accordance with domestic law.

Article 15.6: Review and Appeal

1. Each Party shall establish or maintain judicial or administrative tribunals or procedures for the purpose of the prompt review and, where warranted, correction of final administrative actions³² regarding matters covered by this Agreement. Such tribunals shall be impartial and independent of the office or authority entrusted with administrative enforcement and shall not have any substantial interest in the outcome of the matter.
2. Each Party shall ensure that, in any such tribunals or procedures, the parties to the proceeding are provided with the right to:
 - (a) a reasonable opportunity to support or defend their respective positions; and
 - (b) a decision based on the evidence and submissions of record or, where required by domestic law, the record compiled by the administrative authority.
3. Each Party shall ensure, subject to appeal or further review as provided in its domestic law, that such decisions shall be implemented by, and shall govern the practice of, the office or authority with respect to the administrative action at issue.

Article 15.7: Specific Rules

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

³² For greater certainty, in the case of Singapore:

- (a) the review of final administrative actions can take the form of common law judicial review; and
- (b) the correction of final administrative actions may include a referral back to the body that took such action for corrective action.

Chapter 16

Administration of the Agreement

Article 16.1: The Free Trade Commission

1. The Parties hereby establish the Free Trade Commission, comprising the Minister of Foreign Trade of Costa Rica and the Minister for Trade and Industry of Singapore, or their designees.
2. The Commission shall:
 - (a) supervise the operation and implementation of this Agreement;
 - (b) oversee the further elaboration of this Agreement ;
 - (c) seek to resolve disputes that may arise regarding the interpretation or application of this Agreement ;
 - (d) supervise the work of any committees, working groups or coordinators under this Agreement;
 - (e) establish the amount of remuneration and expenses that will be paid in dispute settlement proceedings ; and
 - (f) consider any other matter that may affect the operation of this Agreement.
3. The Commission may:
 - (a) establish and delegate responsibilities to committees, working groups and coordinators;
 - (b) modify in fulfillment of the Agreement's objectives:
 - i. Appendix to Annex 2.1 (Elimination of Customs Duties), by accelerating tariff elimination;
 - ii. Annex 3.1 (Exceptions for the General Rule of Origin under Article 3.5);
 - iii. Annex 4.1 (Data Elements to be Included in the Certification of Origin);
 - iv. Annexes 8.1 (Government Procurement Schedules) and 8.2 (Officially Designated Electronic Media for the Publication of Information on Government Procurement); and

- v. Annexes I and II (Non-Conforming Measures) on Trade in Services and Investment;
- (c) issue interpretations of the provisions of this Agreement ;
- (d) seek the advice of non-governmental persons or groups; and
- (e) take such other action in the exercise of its functions as the Parties may agree.

Each Party shall implement, in accordance with its applicable legal procedures, any modification referred to in subparagraph 3(b) within such period as the Parties may agree.

4. The Commission shall establish its rules and procedures. All decisions of the Commission shall be taken by consensus.

5. The Commission shall normally convene every 2 years in regular session, unless the Commission otherwise decides. Regular sessions of the Commission shall be chaired successively by each Party. The sessions may be held by any technological means available to the Parties.

Article 16.2: Free Trade Agreement Coordinators

1. Each Party shall appoint a free trade agreement coordinator.
2. The coordinators shall work jointly to develop agendas and make other preparations for Commission meetings, and shall follow up on Commission decisions, as appropriate.

Article 16.3: Administration of Dispute Settlement Proceedings

1. Each Party shall:
 - (a) designate an office that shall provide administrative assistance to the panels established under Chapter 17 (Dispute Settlement) and perform such other administrative functions as the Commission may direct; and
 - (b) notify the Commission of the location of its designated office.
2. Each Party shall be responsible for:
 - (a) the operation and costs of its designated office;
 - (b) the remuneration and payment of expenses, as set out in Article 16.1 (The Free Trade Commission) and Annex 16.2 (Remuneration and Payment of Common Expenses); and

- (c) its own expenses and legal costs incurred in dispute settlement proceedings.

Chapter 17

Dispute Settlement

Article 17.1: Cooperation

The Parties shall at all times endeavour to agree on the interpretation and application of this Agreement, and shall make every attempt through cooperation, consultations or other means to arrive at a mutually satisfactory resolution of any matter that might affect its operation.

Article 17.2: Scope of Application

Except as otherwise provided in this Agreement, the dispute settlement provisions of this Chapter shall apply:

- (a) with respect to the avoidance or settlement of all disputes between the Parties regarding the interpretation or application of this Agreement; and
- (b) wherever a Party considers that a measure of the other Party is inconsistent with the obligations of this Agreement or the other Party has otherwise failed to carry out its obligations under this Agreement.

Article 17.3: Choice of Forum

1. Where a dispute regarding any matter arises under this Agreement and under the WTO Agreement or any other agreement to which both Parties are party, the complaining Party may select the forum in which to settle the dispute.
2. Once a Party has requested the establishment of a panel under an agreement referred to in paragraph 1, the forum selected shall be used to the exclusion of the others in respect of that matter, unless both Parties otherwise agree.

Article 17.4: Consultations

1. A Party may request, in writing, consultations with the other Party with respect to any measure or any other matter that it considers might affect the operation of this Agreement.
2. The requesting Party shall deliver the request to the other Party, and shall set out the reasons for the request, including identification of the

measure or other matter at issue and an indication of the legal basis for the complaint.

3. The consulting Parties shall make every attempt to arrive at a mutually satisfactory resolution of any matter through consultations under this Article or other consultation provisions in this Agreement. To this end, the consulting Parties shall:

- (a) provide sufficient information to enable a full examination of how the measure or other matter at issue might affect the operation of this Agreement; and
- (b) treat any confidential information exchanged in the course of consultations on the same basis as the Party providing the information.

4. In the consultations under this Article, any consulting Party may request the other Party to make available personnel of its government agencies or other regulatory bodies who have expertise in the matter which is the subject of the consultations.

5. Consultations may be held in person or by any technological means available to the Parties. In the event that the Parties decide to hold consultations in person, these shall be held in a place agreed by the Parties, or if there is no agreement, in the capital of the requested Party.

6. The consultation period shall not exceed 45 days from the date of receipt of the formal request to initiate consultations, unless both Parties agree to extend this period. On disputes concerning perishable goods³³, the consultation period shall not exceed 20 days from the date of receipt of the formal request to initiate consultations, unless both Parties agree to extend this period.

7. If the requested Party does not answer the request for consultations within 10 days from the date of receipt of the formal request to initiate consultations, if consultations are not held within the periods laid down in paragraph 6, or if the consultation period has expired and the dispute has not been resolved, the requesting Party may request the establishment of a Panel in accordance with Article 17.6 (Request for a Panel).

8. Consultations shall be confidential and without prejudice to the rights of any Party in any further proceedings.

³³ For greater certainty, the term "perishable goods" means perishable agricultural and fish goods classified in chapters 1 through 24 of the Harmonized System.

Article 17.5: Good Offices, Conciliation and Mediation

1. Good offices, conciliation and mediation are procedures undertaken voluntarily if the Parties so agree.
2. Proceedings involving good offices, conciliation and mediation, and in particular the positions taken by the disputing Parties during these proceedings, shall be confidential and without prejudice to the rights of either Party in any further proceedings under this Chapter.
3. Good offices, conciliation or mediation may be requested at any time by either Party. They may begin at any time and be terminated at any time.
4. If the Parties agree, good offices, conciliation or mediation may continue while the dispute proceeds for resolution before a Panel established under Article 17.8 (Panel Selection).

Article 17.6: Request for a Panel

1. Where the Parties have failed to resolve the dispute in accordance with Article 17.4 (Consultations), the complaining Party may send a written request to the other Party for the establishment of a Panel to consider the matter. The request shall include an identification of the measure or other matter at issue and the provisions of this Agreement considered pertinent, as well as any other relevant circumstances.
2. Unless otherwise agreed by the disputing Parties, the Panel shall be established and perform its functions in a manner consistent with the provisions of this Chapter.

Article 17.7: List of Panelists

1. The Parties shall establish within 6 months of the date of entry into force of this Agreement and maintain a list of up to 15 individuals who are willing and able to serve as panelists. Each Party may propose up to 5 individuals to serve as panelists. The Parties may also agree on the selection of up to 5 individuals who are not nationals of either Party, who shall act as chairperson of the Panel. The members of the list shall be appointed by consensus, and may be reappointed. The Parties, by consensus, may modify the list or include new members when they consider it necessary.
2. Members of the list shall:
 - (a) have expertise or experience in law, international trade, other matters covered by this Agreement, or the resolution of disputes arising under international trade agreements;
 - (b) be chosen strictly on the basis of objectivity, reliability, and

sound judgment;

- (c) be independent of, and not be affiliated with or take instructions from, any Party; and
- (d) comply with the *Rules of Conduct for the Understanding on Rules and Procedures Governing the Settlement of Disputes of the WTO*.

3. The Parties may proceed to use the list, even if it is incomplete, with the candidates already proposed and appointed by consensus under paragraph 1.

Article 17.8: Panel Selection

1. The Parties shall apply the following procedures in selecting a Panel:
 - (a) The Panel shall comprise 3 members.
 - (b) Each Party shall appoint a panelist within 10 days of the delivery of the request for the establishment of the Panel.
 - (c) Panelists shall normally be selected from the list. Any Party may exercise a peremptory challenge against any individual not on the list who is proposed as a panelist by a Party within 10 days after the individual has been proposed.
 - (d) The Parties shall endeavour to agree on a third panelist who shall not be a national of any of the Parties to serve as the chairperson of the Panel within 15 days of the appointment of the second panelist. If the Parties cannot reach an agreement during this period, the 2 appointed panelists shall endeavour to unanimously select a third panelist to serve as chairperson within the following 10 days.
 - (e) In the event that a panelist cannot be appointed in accordance with the procedures set out in subparagraphs (c) and (d), said panelist shall be selected by lot among the relevant list members established under Article 17.7 (List of Panelists); namely, the members of the list proposed by the Party that did not appoint a panelist or the members of the list that the Parties agreed on to act as chairperson. The chair of the Commission or the chair's designee shall carry out the lot within 5 days of receipt of a request to do so from one or both Parties. The lot shall be carried out at a time and place to be promptly communicated to the Parties. The Parties may, if they so choose, be present during the lot in person or by any technological means.

- (f) All panelists shall meet the qualifications set out in Article 17.7 (List of Panelists). Each Party shall endeavour to appoint panelists who have expertise or experience relevant to the subject matter of the dispute, as appropriate.
 - (g) Individuals may not serve as panelists for a dispute in which they have participated in another capacity pursuant to Article 17.5 (Good Offices, Conciliation and Mediation).
2. The date of establishment of the Panel shall be the date on which the chairperson is appointed.
 3. If any of the panelists resigns or becomes unable to act, a new panelist shall be appointed in accordance with this Article.
 4. If a Party believes that a panelist is in violation of the *Rules of Conduct* referred to in Article 17.7 (List of Panelists), both Parties shall consult and, if they agree, the panelist shall be removed and a new panelist shall be appointed in accordance with this Article.
 5. Where, in accordance with paragraphs 3 and 4, there is a need to appoint a new panelist, panel proceedings shall be suspended until the new panelist is appointed. The new panelist shall have all the powers and duties of the original panelist.
 6. The procedures set out in this Article shall apply in those cases where the original Panel or some of its members are unable to reconvene pursuant to Article 17.15 (Implementation of the Final Report), Article 17.16 (Review of any Measure Taken to Comply with the Final Report), Article 17.17 (Non-Implementation – Compensation and Suspension of Benefits) and Article 17.18 (Compliance Review). In these cases, the period for notifying the report shall be counted from the date on which the last panelist is appointed.

Article 17.9: Rules of Procedure

1. The Commission shall establish Rules of Procedure no later than during its first session. The Rules of Procedure shall ensure:
 - (a) a right to at least one hearing before the Panel;
 - (b) an opportunity for each Party to provide initial and rebuttal written submissions;
 - (c) the protection of confidential information; and
 - (d) the possibility of using technological means to conduct the proceedings.

2. Unless the Parties otherwise agree, the Panel shall conduct its proceedings in accordance with the Rules of Procedure.

3. The Parties may, by agreement, modify the Rules of Procedure for specific proceedings.

4. Unless the Parties otherwise agree within 20 days from the date of the delivery of the request for the establishment of the Panel, the Terms of Reference shall be:

“To examine, in the light of the relevant provisions of this Agreement, the matter referred to in the panel request and to make findings, determinations and recommendations, as provided in Article 17.11 (Initial Report) and Article 17.12 (Final Report).”

5. Where the Parties have agreed on different Terms of Reference, they shall notify these to the Panel within 2 days of their agreement.

6. If a Party wishes the Panel to make findings as to the degree of adverse trade effects on either Party of any measure or matter at issue found not to conform with the obligations of the Agreement, the Terms of Reference shall so indicate.

7. The location of any hearings of the Panel, if they are held in person, shall be decided by mutual agreement of the Parties, failing which, it shall be held in the capital of the Party complained against.

8. The remuneration of the panelists and other expenses of the Panel shall be borne by the Parties in equal shares.

Article 17.10: Role of Experts

1. On request of a Party, or on its own initiative, unless both Parties disapprove it, the Panel may seek information and technical advice from any person or body that it deems appropriate.

2. Before the Panel may request information or technical advice, appropriate procedures shall be established in consultation with the Parties. The Panel shall provide the Parties with:

- (a) prior notification and time to make observations before the Panel regarding requests for information and technical advice pursuant to paragraph 1; and
- (b) a copy of any information or technical advice submitted in answer to a request made pursuant to paragraph 1, and the time to submit comments.

3. When the Panel takes into consideration such information or technical advice in the preparation of its report, it shall also take into account any comments or observations submitted by the Parties on the information or technical advice.

4. When a request for information or technical advice is made in accordance with this Article, any period regarding the procedure shall be suspended from the delivery of the request to the date when the written report is delivered to the Panel.

Article 17.11: Initial Report

1. Unless the Parties otherwise agree, the Panel shall base its report on the relevant provisions of the Agreement, the submissions and arguments of the Parties, and any information taken into consideration pursuant to Article 17.10 (Role of Experts).

2. Unless the Parties otherwise agree, the Panel shall, within 90 days, and within 50 days in the case of perishable goods, after the establishment of the Panel, notify to the Parties an initial report containing:

- (a) findings of fact, including any findings pursuant to a request under Article 17.9.6 (Rules of Procedure);
- (b) its determination as to whether the measure or other matter at issue is inconsistent with this Agreement or any other determination requested in the Terms of Reference; and
- (c) its recommendations, if any, for resolution of the dispute.

3. A Party may submit written comments to the Panel on its initial report within 14 days of the notification of the report or within such other period as the Parties may agree. A copy of the comments submitted shall be provided to the other Party.

4. After considering any such written comments on the initial report, the Panel may reconsider its report, and make any further examination it considers appropriate.

Article 17.12: Final Report

1. The Panel shall notify its final report to the Parties, containing the elements listed in Article 17.11.2 (Initial Report), and including any separate opinions on matters not unanimously agreed, within 30 days of notification of the initial report, unless the Parties otherwise agree.

2. The Parties shall release the final report to the public within 15 days thereafter or 7 days after a clarification pursuant to Article 17.13 (Request for

Clarification of the Final Report), subject to the protection of confidential information.

3. Where the Panel considers that the deadlines referred to in paragraph 1 cannot be met, the chairperson of the Panel shall promptly notify the Parties in writing, stating the reasons for the delay and the date on which the Panel plans to conclude its work. Unless exceptional circumstances apply, the report should be notified no later than 150 days from the date of the establishment of the Panel, and 90 days in the case of perishable goods.

4. The Panel shall make every effort to take any decision by consensus. Where, nevertheless, a decision cannot be arrived at by consensus, the matter shall be decided by majority vote. Panelists may furnish separate opinions on matters not unanimously agreed, however, no panel may, in its initial and final reports, disclose which panelists are associated with majority or minority opinions.

5. The report of the Panel shall be final and shall not add to or diminish the rights and obligations of the Parties under this Agreement.

Article 17.13: Request for Clarification of the Final Report

1. Within 10 days of the notification of the final report by the Panel, either Party may submit a written request to the Panel for clarification of its final report. Any clarification by the Panel shall not affect its findings, determinations and recommendations.

2. The Panel shall respond to the request within no more than 20 days, counted from the date of submission of the request. The request for clarification shall not postpone the deadline for compliance with the adopted decision, unless the Panel decides otherwise or if the circumstances so require.

Article 17.14: Suspension and Termination of Proceedings

1. The Parties may agree to suspend the work of the Panel at any time for a period not exceeding 12 months from the date of such agreement. In any event, if the work of the Panel has been suspended for more than 12 months, the Terms of Reference of the Panel shall lapse unless the Parties agree otherwise. If the Terms of Reference of the Panel have lapsed and the Parties have not reached an agreement on the settlement of the dispute, nothing in this provision shall prevent a Party from requesting consultations and subsequently, the establishment of a Panel on the same matter at a later stage. The Terms of Reference shall not lapse where the suspension is the result of attempts in good faith at reaching a mutually satisfactory solution pursuant to Article 17.5 (Good Offices, Conciliation and Mediation).

2. The Parties may agree to terminate the proceedings before a Panel at any time by jointly notifying the chairperson of the Panel to this effect.

Article 17.15: Implementation of the Final Report

1. On receipt of the final report of a Panel, the Party complained against shall, without undue delay, take any measure necessary to comply in good faith with the final report.
2. The disputing Parties may also agree at any time on a mutually satisfactory solution to the dispute, which normally shall conform with the determinations and recommendations, if any, of the Panel.
3. If it is not practicable to comply immediately, the Parties shall endeavour to agree on a reasonable period of time to comply, within 30 days after the date of the notification of the final report.
4. Failing agreement between the Parties on the reasonable period of time in accordance with paragraph 3, either Party may request the original Panel to determine the length of the reasonable period of time. Such a request shall be made in writing and notified to the other Party. The Panel shall notify its report to the Parties within 20 days from the date of the submission of the request.
5. The reasonable period of time may be extended by mutual agreement of the Parties. All periods contained in this Article constitute part of the reasonable period of time.

Article 17.16: Review of any Measure Taken to Comply with the Final Report

1. The Party complained against shall notify the complaining Party by the end of the reasonable period of time of any measure that it has taken to comply with the final report of the Panel and provide the details such as the effective date, the relevant text of the measure and a factual and juridical explanation of how the measure taken to comply brings the Party complained against into compliance.
2. In the event of disagreement between the Parties concerning the existence or the consistency of any measure notified under paragraph 1 with the provisions of this Agreement, the complaining Party may request the original Panel to rule on the matter. Such request shall be made in writing, identify the specific measure at issue and explain how such measure is inconsistent with the provisions of this Agreement. The Panel shall notify its report within 45 days of the date of the submission of the request.

Article 17.17: Non-Implementation – Compensation and Suspension of Benefits

1. If a Panel has made a determination of the type described in Article 17.12 (Final Report) and the Party complained against fails to notify any measure taken to comply with the final report of the Panel before the expiry of the reasonable period of time, or if the complaining Party considers that the Party complained against has failed to carry out the mutually satisfactory solution, or if the Panel rules that the measure notified under Article 17.16 (Review of any Measure Taken to Comply with the Final Report) is inconsistent with that Party's obligations under this Agreement, the Party complained against shall enter into negotiations with the complaining Party with a view to developing mutually acceptable compensation. This compensation shall be effective from the moment the Parties agree to it until the Party complained against complies.

2. If the disputing Parties:

- (a) are unable to agree on compensation within 30 days after the period for developing such compensation has begun; or
- (b) have agreed on compensation and the complaining Party considers that the other Party has failed to observe the terms of the agreement,

the complaining Party may at any time thereafter provide written notice to the Party complained against that it intends to suspend the application, to that Party, of benefits of equivalent effect. The notice shall specify the level of benefits that the Party proposes to suspend. The complaining Party may begin suspending benefits 30 days after the date on which it provides written notice under this paragraph, or 7 days after the Panel issues its determination under paragraph 3, as the case may be, and until the Party complained against complies.

3. If the Party complained against considers that:

- (a) the level of benefits proposed to be suspended is manifestly excessive; or
- (b) it has complied,

it may, within 30 days after the complaining Party provides notice under paragraph 2, request that the original Panel be reconvened to consider the matter. The Party complained against shall also deliver its request in writing to the complaining Party. The Panel shall reconvene as soon as possible after delivery of the request and shall notify its determination to the disputing Parties within 60 days after it reconvenes. If the Panel determines that the level of benefits proposed to be suspended is manifestly excessive, it shall determine the level of benefits it considers to be of equivalent effect.

4. The complaining Party may suspend benefits up to the level the Panel has determined under paragraph 3 or, if the Panel has not determined the level, the level the complaining Party has proposed to suspend under paragraph 2, unless the Panel has determined that the Party complained against has complied.

5. In considering what benefits to suspend pursuant to paragraph 2:

- (a) a complaining Party should first seek to suspend benefits in the same sector or sectors as that affected by the measure or other matter that the Panel has found to be inconsistent with the obligations of this Agreement; and
- (b) a complaining Party that considers it is not practicable or effective to suspend benefits in the same sector or sectors may suspend benefits in other sectors.

Article 17.18: Compliance Review

1. In those cases where suspension of benefits has been applied, and the Party complained against considers that it has complied, it may provide written notice to the complaining Party to request the end of the suspension of benefits. If the complaining Party disagrees, the Party complained against may refer the matter to the Panel. The Panel shall notify its report on the matter within 30 days after the Party complained against refers the matter to it.

2. If the Panel decides that the Party complained against has complied, the complaining Party shall promptly reinstate any benefits suspended under Article 17.17 (Non-Implementation – Compensation and Suspension of Benefits).

Article 17.19: Time Periods

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

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

Chapter 18 Exceptions

Article 18.1: Definitions

For purposes of this Chapter:

tax convention means a convention for the avoidance of double taxation or other international taxation agreement or arrangement ; and

taxes and **taxation measures** do not include:

- (a) **customs duties** as defined in Article 1.4 (Definitions of General Application); or
- (b) the measures listed in exceptions (b) and (c) to the definition of **customs duties** in Article 1.4 (Definitions of General Application).

Article 18.2: General Exceptions

1. For purposes of Chapter 2 (Trade in Goods), Chapter 3 (Rules of Origin), Chapter 4 (Customs), Chapter 5 (Sanitary and Phytosanitary Measures) and Chapter 6 (Technical Barriers to Trade), Article XX of GATT 1994 and its interpretative notes are incorporated into and made part of this Agreement, *mutatis mutandis*. The Parties understand that the measures referred to in Article XX(b) of GATT 1994 include environmental measures necessary to protect human, animal, or plant life or health, and that Article XX(g) of GATT 1994 applies to measures relating to the conservation of living and non-living exhaustible natural resources.

2. For purposes of Chapter 10 (Trade in Services), Chapter 11 (Investment) and Chapter 12 (Electronic Commerce), Article XIV of GATS (including its footnotes) is incorporated into and made part of this Agreement, *mutatis mutandis*. The Parties understand that the measures referred to in Article XIV(b) of GATS include environmental measures necessary to protect human, animal, or plant life or health.

Article 18.3: Essential Security

Nothing in this Agreement shall be construed:

- (a) to require a Party to furnish or allow access to any information the disclosure of which it determines to be contrary to its essential security interests; or

- (b) to preclude a Party from applying measures that it considers necessary for the fulfillment of its obligations with respect to the maintenance or restoration of international peace or security, or the protection of its own essential security interests³⁴.

Article 18.4: Taxation

1. Except as set out in this Article, nothing in this Agreement shall apply to taxation measures.
2. Nothing in this Agreement shall affect the rights and obligations of any Party under any tax convention. In the event of any inconsistency between this Agreement and any such convention, that convention shall prevail to the extent of the inconsistency. In the case of a tax convention between the Parties, the competent authorities under that convention shall have sole responsibility for determining whether any inconsistency exists between this Agreement and that convention.
3. Notwithstanding paragraph 2:
 - (a) Article 2.3 (National Treatment) and such other provisions of this Agreement as are necessary to give effect to that Article shall apply to taxation measures to the same extent as does Article III of GATT 1994; and
 - (b) Article 2.6 (Export Taxes) shall apply to taxation measures.
4. Articles 11.10 (Expropriation and Nationalization) and 11.16 (Investor-State Dispute Settlement) shall apply to taxation measures to the extent that such a taxation measure constitutes expropriation as provided for therein³⁵. An investor that seeks to invoke Article 11.10 (Expropriation and Nationalization) with respect to a taxation measure must first refer to the competent authorities described in paragraph 5, at the time that it gives

³⁴ For greater certainty, nothing in this Agreement shall prevent a Party from taking any action which it considers necessary for the protection of critical public infrastructure, including but not limited to communications, power and water infrastructure, from deliberate attempts intended to disable or degrade such infrastructure.

³⁵ With reference to Article 11.10 (Expropriation and Nationalization), in assessing whether a taxation measure constitutes expropriation, the following considerations are relevant: (a) the imposition of taxes does not generally constitute expropriation. The mere introduction of new taxation measures or the imposition of taxes in more than one jurisdiction in respect of an investment, does not in and of itself constitute expropriation; (b) taxation measures which are consistent with internationally recognized tax policies, principles and practices do not constitute expropriation and in particular, taxation measures aimed at preventing the avoidance or evasion of taxes should not, generally, be considered to be expropriatory; and (c) taxation measures which are applied on a non-discriminatory basis, as opposed to being targeted at investors of a particular nationality or specific individual taxpayers, are less likely to constitute expropriation. A taxation measure should not constitute expropriation if, when the investment is made, it was already in force, and information about the measure was made public or otherwise made publicly available.

written notice under Article 11.16 (Investor-State Dispute Settlement), the issue of whether that taxation measure involves an expropriation. If the competent authorities do not agree to consider the issue or, having agreed to consider it, fail to agree that the measure is not an expropriation within a period of 6 months of such referral, the investor may submit its dispute to arbitration under Article 11.16 (Investor-State Dispute Settlement). However, no investor may invoke Article 11.10 (Expropriation and Nationalization) as the basis of a dispute where it has been determined pursuant to this paragraph that the measure is not an expropriation.

5. For purposes of this Article:

competent authorities means

- (a) in the case of Costa Rica, the *Ministerio de Hacienda*;
 - (b) in the case of Singapore, the *Ministry of Finance*;
- or their successors.

Article 18.5: Restrictions to Safeguard the Balance of Payments

1. With respect to matters covered by this Agreement, the Parties may adopt or maintain restrictions to safeguard the balance of payments in a manner consistent with the conditions established in the WTO Agreement and with the *Articles of Agreement of the International Monetary Fund*.
2. For purposes of this Article, any notification or consultation with respect to any restriction to safeguard the balance of payments shall be carried out between the Parties, in accordance with the applicable agreements referred to in paragraph 1.
3. For greater certainty, it is clarified that such restrictions shall be applied on a non-discriminatory basis.

Article 18.6: Disclosure of Information

Nothing in this Agreement shall be construed to require a Party to furnish or allow access to 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.

Chapter 19

Final Provisions

Article 19.1: Annexes, Appendices, and Footnotes

The Annexes, Appendices, and footnotes to this Agreement constitute an integral part of this Agreement.

Article 19.2: Amendments

1. The Parties may agree in writing on any amendment of this Agreement.
2. Such amendment shall enter into force and constitute an integral part of this Agreement on the date on which the Parties have exchanged written notifications confirming the completion of their respective applicable legal procedures for its entry into force, or on such other date as the Parties may agree.

Article 19.3: Amendment of the WTO Agreement

If any provision of the WTO Agreement that the Parties have incorporated into this Agreement is amended, the Parties shall consult with a view to amending the relevant provision of this Agreement, as appropriate, in accordance with Article 19.2 (Amendments).

Article 19.4: Entry into Force

This Agreement shall enter into force 60 days after the date on which the Parties have exchanged written notifications confirming the completion of their respective applicable legal procedures for its entry into force.

Article 19.5: Termination

Either Party may terminate this Agreement by written notification to the other Party. The termination shall take effect 6 months after the date of such notification.

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

DONE at Singapore on this 6th day of April 2010, in duplicate in the English and Spanish languages, both texts being equally authentic.

For the Government of the
Republic of Costa Rica

For the Government of the
Republic of Singapore

Marco Vinicio Ruiz
Minister of Foreign Trade

S Iswaran
Senior Minister of State
for Trade and Industry and Education