

Resources

1. With the aim of contributing to fulfilling the cooperation objectives established in this Agreement, the Parties commit themselves to providing, within the limits of their capacities and through their own channels, the appropriate resources, including financial resources.

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2. The Parties shall take all appropriate measures to promote and facilitate the European Investment Bank's activities in Chile, in accordance with its own procedures and financing criteria and with their laws and regulations, and without prejudice to the powers of their competent authorities.

Article 54

Specific Tasks Of The Association Committee In Cooperation Matters

1. When the Association Committee performs any of the tasks conferred upon it in Part III, it shall be composed of representatives of the Community and Chile with responsibility for cooperation matters, normally at senior official level.

2. Notwithstanding the provisions of Article 6, the Association Committee shall have, in particular, the following functions:

(a) to assist the Association Council in the performance of its functions regarding cooperation related matters;

(b) to supervise the implementation of the cooperation framework agreed between the Parties;

(c) to make recommendations on the strategic cooperation between the Parties, which shall serve to set long-term objectives, the strategic priorities and specific fields for action, on the multiannual indicative programmes, which shall contain a description of sectoral priorities, specific objectives, expected results and indicative amounts, and annual action programmes; and

(d) to report regularly to the Association Council on the application and fulfilment of the objectives and matters of Part III.

PART IV : TRADE AND TRADE-RELATED MATTERS

TITLE I : GENERAL PROVISIONS

Article 55

Objectives

The objectives of this Part shall be as follows:

(a) the progressive and reciprocal liberalisation of trade in goods, in conformity with Article XXIV of General Agreement on Tariffs and Trade 1994 ("the GATT 1994");

(b) the facilitation of trade in goods through, *inter alia*, the agreed provisions regarding customs and related matters, standards, technical regulations and conformity assessment procedures, sanitary and phytosanitary measures and trade in wines and spirit drinks and aromatised drinks;

(c) the reciprocal liberalisation of trade in services, in conformity with Article V of General Agreement on Trade in Services ("the GATS");

(d) the improvement of the investment environment and, in particular, the conditions of establishment between the Parties, on the basis of the principle of non-discrimination;

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(e) the liberalisation of current payments and capital movements, in conformity with the commitments undertaken in the framework of the international financial institutions and with due consideration for each Party's currency stability;

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

(g) the adequate and effective protection of intellectual property rights, in accordance with the highest international standards;

(h) the establishment of an effective cooperation mechanism in the field of competition; and

(i) the establishment of an effective dispute settlement mechanism.

Article 56

Customs Unions And Free Trade Areas

1. Nothing in this Agreement shall preclude the maintenance or establishment of customs unions, free trade areas or other arrangements between either of the Parties and third countries, insofar as they do not alter the rights and obligations provided for in this Agreement.

2. At the request of a Party, consultations between them shall take place within the Association Committee concerning agreements establishing or adjusting customs unions or free trade areas and, where required, on other major issues related to the Parties' respective trade policies with third countries. In particular, in the event of accession, such consultation shall take place so as to ensure that account can be taken of the mutual interests of the Parties.

TITLE II : FREE MOVEMENT OF GOODS

Article 57

Objective

The Parties shall progressively and reciprocally liberalise trade in goods over a transitional period starting from the entry into force of this Agreement, in accordance with the provisions of this Agreement and in conformity with Article XXIV of the GATT 1994.

CHAPTER I : ELIMINATION OF CUSTOMS DUTIES

Section 1 : Common Provisions

Article 58

Scope

1. The provisions of this Chapter concerning the elimination of customs duties on imports shall apply to products originating in one Party and exported to the other Party. For the purposes of this Chapter, "originating" means qualifying under the rules of origin set out in Annex III.

2. The provisions of this Chapter concerning the elimination of customs duties on exports shall apply to all goods exported from one Party to the other Party.

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Article 59

Customs Duty

A customs duty includes any duty or charge of any kind imposed in connection with the importation or exportation of goods, including any form of surtax or surcharge in connection with such importation or exportation, but does not include any:

- (a) internal taxes or other internal charges imposed consistently with Article 77;
- (b) antidumping or countervailing duties applied consistently with Article 78;
- (c) fees or other charges imposed consistently with Article 63.

Article 60

Elimination Of Customs Duties

1. Customs duties on imports between the Parties shall be eliminated in accordance with the provisions of Articles 64 to 72.

2. Customs duties on exports between the Parties shall be eliminated as from the date of entry into force of this Agreement.

3. For each product, the basic customs duty to which the successive reductions are to be applied pursuant to Articles 64 to 72 shall be that specified in each Party's Tariff Elimination Schedule set out in Annexes I and II, respectively.

4. If a Party reduces its applied most favoured nation customs duty rate after the entry into force of this Agreement and before the end of the transitional period, the Tariff Elimination Schedule of that Party shall apply to the reduced rates.

5. Each Party declares its readiness to reduce its customs duties more rapidly than is provided for in Articles 64 to 72, or otherwise improve the conditions of access under such Articles, if its general economic situation and the situation of the economic sector concerned so permit. A decision by the Association Council to accelerate the elimination of a customs duty or otherwise improve conditions of access shall supersede the terms established in Articles 64 to 72 for the product concerned.

Article 61

Standstill

1. No new customs duties shall be introduced nor shall those already applied be increased in trade between the Parties as from the date of entry into force of this Agreement.

2. Notwithstanding paragraph 1, Chile may maintain its price band system as established in Article 12 of Law 18,525 or succeeding system for the products covered by that law, provided it is applied consistently with Chile's rights and obligations under the WTO Agreement and in a manner that does not afford more favourable treatment to imports of any third country, including countries with which Chile has concluded or will conclude in the future an agreement notified under Article XXIV of the GATT 1994.

Article 62

Classification Of Goods

The classification of goods in trade between the Parties shall be that set out in each Party's respective tariff nomenclature in conformity with the Harmonised Commodity Description and Coding System ("HS").

Article 63

Fees And Other Charges

Fees and other charges referred to in Article 59 shall be limited in amount to the approximate cost of services rendered and shall not represent an indirect protection for domestic products or a taxation of imports or exports for fiscal purposes. They shall be based on specific rates that correspond to the real value of the service rendered.

Section 2 : Elimination Of Customs Duties

Subsection 2.1 : Industrial Products

Article 64

Scope

This sub-section applies to products of HS chapters 25 to 97 not covered by agricultural and processed agricultural products as defined in Article 70.

Article 65

Customs Duties On Industrial Imports Originating In Chile

Customs duties on imports into the Community of industrial products originating in Chile listed in Annex I (Tariff Elimination Schedule of the Community) under category "Year 0" and "Year 3" shall be eliminated in accordance with the following timetable, so that these customs duties are completely eliminated by the entry into force of the Agreement and on 1 January 2006, respectively:

Percentages Of Annual Tariff Reduction

Category	Entry into force	1.1.04	1.1.05	1.1.06
Year 0				100%
Year 3	25%	50%	75%	100%

Article 66

Customs Duties On Industrial Imports Originating In The Community

Customs duties on imports into Chile of products originating in the Community listed in Annex II (Tariff Elimination Schedule of Chile) under category "Year 0", "Year 5" and "Year 7" shall be eliminated in accordance with the following timetable, so that these customs duties are completely eliminated by the entry into force of this Agreement, 1 January 2008 and 1 January 2010, respectively:

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Percentages Of Annual Tariff Reduction

Category	Entry into force	1.1.04	1.1.05	1.1.06	1.1.07	1.1.08	1.1.09	1.1.10
Year 0								100%
Year 5	16,7%	33,3%		50%	66,7%	83,3%		100%
Year 7	12,5%	25%	37,5%	50%	62,5%	75%	87,5%	100%

Subsection 2.2 : Fish And Fisheries Products

Article 67

Scope

This sub-section applies to fish and fisheries products as covered by HS chapter 3, HS headings 1604 and 1605, HS subheadings 0511 91 and 2301 20, and HS heading ex 1902 20.⁽¹⁾

Article 68

Customs Duties On Fish And Fisheries Imports Originating In Chile

1. Customs duties on imports into the Community of fish and fisheries products originating in Chile listed in Annex I under category "Year 0", "Year 4", "Year 7" and "Year 10" shall be eliminated in accordance with the following timetable, so that these customs duties are completely eliminated by the entry into force of this Agreement, 1 January 2007, 1 January 2010 and 1 January 2013, respectively:

Percentages Of Annual Tariff Reduction											
Category	Entry into Force	1.1.04	1.1.05	1.1.06	1.1.07	1.1.08	1.1.09	1.1.10	1.1.11	1.1.12	1.1.13
Year 0						100%					
Year 4		20%		40%		60%		80%		100%	
Year 7		12,5%	25%	37,5%	50%	62,5%	75%	87,5%	100%		
Year 10	9%	18%	27%	36%	45%	54%	63%	72%	81%	90%	100%

2. Tariff quotas on imports into the Community of certain fish and fisheries products originating in Chile listed in Annex I under category "TQ" shall be applied as from the entry into force of this Agreement, in accordance with the conditions mentioned in that Annex. These quotas shall be managed on a first-come first-served basis.

Article 69

Customs Duties On Fish And Fisheries Imports Originating In The Community

1. Customs duties on imports into Chile of fish and fisheries products originating in the Community listed in Annex II under category "Year 0" shall be eliminated at the entry into force of this Agreement.

2. Tariff quotas on imports into Chile of certain fish and fisheries products originating in the Community listed in Annex II under category "TQ" shall be applied as from entry into force of this

(1) Ex 1902 20 is "stuffed pasta containing more than 20% by weight of fish, crustaceans, molluscs or other aquatic invertebrates".

Agreement, in accordance with the conditions mentioned in that Annex. These quotas shall be managed on a first-come first-served basis.

Subsection 2.3 : Agricultural And Processed Agricultural Products

Article 70

Scope

This sub-section applies to agricultural and processed agricultural products as covered by Annex I of the WTO Agreement on Agriculture.

Article 71

Customs Duties On Agricultural And Processed Agricultural Imports Originating In Chile

1. Customs duties on imports into the Community of agricultural and processed agricultural products originating in Chile listed in Annex I under category "Year 0", "Year 4", "Year 7" and "Year 10" shall be eliminated in accordance with the following timetable, so that these customs duties are completely eliminated by the entry into force of this Agreement, 1 January 2007, 1 January 2010 and 1 January 2013, respectively:

Percentages Of Annual Tariff Reduction											
Category	Entry into Force	1.1.04	1.1.05	1.1.06	1.1.07	1.1.08	1.1.09	1.1.10	1.1.11	1.1.12	1.1.13
Year 0											100%
Year 4		20%		40%		60%		80%		100%	
Year 7		12,5 %	25%	37,5%	50%	62,5%	75%	87,5 %	100%		
Year 10		9%	18%	27 %	36 %	45%	54%	63 %	72 %	81%	90% 100 %

2. For the agricultural products originating in Chile covered by chapters 7 and 8 and headings 20.09 and 22.04.30 of the Combined Nomenclature and listed in Annex I under category "EP", for which the Common Customs Tariff provides for the application of *ad valorem* customs duties and a specific customs duty, the tariff elimination shall only apply to the *ad valorem* customs duty.

3. For agricultural and processed agricultural products originating in Chile listed in Annex I under category "SP", for which the Common Customs Tariff provides for the application of *ad valorem* customs duties and a specific customs duty, the tariff elimination shall only apply to the *ad valorem* customs duty.

4. The Community shall allow imports of processed agricultural products originating in Chile listed in Annex I under category "R" to enter the Community with a customs duty of 50 % of the basic customs duty as from the entry into force of this Agreement.

5. Tariff quotas on imports into the Community of certain agricultural and processed agricultural products originating in Chile listed in Annex I under category "TQ" shall be applied as from the entry into force of this Agreement, in accordance with the conditions mentioned in that Annex. These quotas shall be managed on a first-come first-served basis, or, as applicable in the Community, on the basis of a system of import and export licences.

6. Tariff concessions shall not apply to imports into the Community of products originating in Chile listed in Annex I under category "PN" as these products are covered by denominations protected in the Community.

Article 72

Customs Duties On Agricultural And Processed Agricultural Imports Originating In The Community

1. Customs duties on imports into Chile of agricultural and processed agricultural products originating in the Community listed in Annex II under category "Year 0", "Year 5" and "Year 10" shall be eliminated in accordance with the following timetable, so that these customs duties are completely eliminated by the entry into force of this Agreement, 1 January 2008 and 1 January 2013, respectively:

Percentages Of Annual Tariff Reduction											
Category	Entry into Force	1.1.04	1.1.05	1.1.06	1.1.07	1.1.08	1.1.09	1.1.10	1.1.11	1.1.12	1.1.13
Year 0						100%					
Year 5		16,7%		33,3%		50%	66,6%		83,3%		100%
Year 10	9%	18%	27%	36%	45%	54%	63%	72%	81%	90%	100%

2. Tariff quotas on imports into Chile of certain agricultural products originating in the Community listed in Annex II under category "TQ" shall be applied as from the entry into force of this Agreement, in accordance with the conditions mentioned in that Annex. These quotas shall be managed on a first-come first-served basis.

Article 73

Emergency Clause For Agricultural And Processed Agricultural Products

1. Notwithstanding Article 92 of this Agreement and Article 5 of the WTO Agreement on Agriculture, if, given the particular sensitivity of the agricultural markets, a product originating in a Party is being imported into the other Party in such increased quantities and under such conditions as to cause or threaten to cause serious injury or disturbance in the markets of like or directly competitive products of the other Party, that Party may take appropriate measures under the conditions and in accordance with the procedures laid down in this Article.

2. If the conditions in paragraph 1 are met, the importing Party may:

(a) suspend the further reduction of any customs duties on the products concerned provided for under this Title; or

(b) increase the customs duty on the product to a level which does not exceed the lesser of:

(i) the most-favoured-nation customs duty; or

(ii) the basic customs duty referred to in Article 60(3).

3. Before applying the measure as defined under paragraph 2, the Party concerned shall refer the matter to the Association Committee for a thorough examination of the situation, with a view to seeking a mutually acceptable solution. If the other Party so requests, the Parties shall hold consultations within the Association Committee. If no solution is found within 30 days of the request for such consultation, safeguard measures may be applied.

4. Where exceptional circumstances require immediate action, the importing Party may take the measures provided for in paragraph 2 on a transitional basis without complying with the requirements

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of paragraph 3 for a maximum period of 120 days. Such measures shall not exceed what is strictly necessary to limit or redress the injury or disturbance. The importing Party shall inform the other Party immediately.

5. The measures taken under this Article shall not exceed what is necessary to remedy the difficulties which have arisen. The Party imposing the measure shall preserve the overall level of preferences granted for the agricultural sector. To achieve this objective, the Parties may agree on compensation for the adverse effects of the measure on their trade, including the period during which a transitional measure applied in accordance with paragraph 4 is in place.

To this effect, the Parties shall hold consultations to reach a mutually agreed solution. If no agreement is reached within 30 days, the affected exporting Party may, after notification to the Association Council, suspend the application of substantially equivalent concessions under this Title.

6. For the purposes of this Article:

(a) "serious injury" shall be understood to mean a significant overall impairment in the position of the producers as a whole of the like or directly competitive products operating in a Party;

(b) "threat of serious injury" shall be understood to mean serious injury that is clearly imminent based on facts and not merely on allegations, conjecture or remote possibility.

Article 74

Evolution Clause

During the third year after the entry into force of this Agreement, the Parties shall assess the situation, taking account of the pattern of trade in agricultural products and processed agricultural products between the Parties, the particular sensitivities of such products and the development of agricultural policy on both sides. The Parties shall examine, in the Association Committee, product by product and on an orderly and appropriate reciprocal basis, the opportunities for granting each other further concessions with a view to improving liberalisation of trade in agricultural and processed agricultural products.

CHAPTER II : NON TARIFF MEASURES

Section 1 : Common Provisions

Article 75

Scope

The provisions of this Chapter shall apply to trade in goods between the Parties.

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(1) Any internal tax or other internal charge, or any law, regulation or requirement of the kind referred to in paragraph 2 which applies to an imported product and to the like domestic product and is collected or enforced in the case of the imported product at the time or point of importation, is nevertheless to be regarded as an internal tax or other internal charge, or a law, regulation or requirement of the kind referred to in paragraph 2, and is accordingly subject to the provisions of this Article.

(2) A tax conforming to the requirements of the first sentence shall be considered inconsistent with the provisions of the second sentence only in cases where competition is involved between, on the one hand, a taxed product and, on the other hand, a directly competitive or substitutable product which is not similarly taxed.

(3) Regulations consistent with the provisions of the first sentence shall not be considered to be contrary to the provisions of the second sentence in any case in which all of the products subject to the regulations are produced domestically in substantial quantities. A regulation cannot be justified as being consistent with the provisions of the second sentence on the ground that the proportion or amount allocated to each of the products which are the subject of the regulation constitutes an equitable relationship between imported and domestic products.

Article 76

Prohibition Of Quantitative Restrictions

All import or export prohibitions or restrictions in trade between the Parties, other than customs duties and taxes, whether made effective through quotas, import or export licenses or other measures, shall be eliminated upon the entry into force of this Agreement. No new such measures shall be introduced.

Article 77

National Treatment On Internal Taxation And Regulation⁽¹⁾

1. Imported products of the territory of the other Party shall not be subject, either directly or indirectly, to internal taxes or other internal charges of any kind in excess of those applied, directly or indirectly, to like domestic products. Moreover, the Parties shall not otherwise apply internal taxes or other internal charges so as to afford protection to domestic production.⁽²⁾

2. Imported products of the territory of the other Party shall be accorded treatment no less favourable than that accorded to like domestic products in respect of all laws, regulations and requirements affecting their internal sale, offering for sale, purchase, transportation, distribution or use. The provisions of this paragraph shall not prevent the application of differential internal transportation charges which are based exclusively on the economic operation of the means of transport and not on the nationality of the product.

3. Neither Party shall establish or maintain any internal quantitative regulation relating to the mixture, processing or use of products in specified amounts or proportions which requires, directly or indirectly, that any specified amount or proportion of any product which is the subject of the regulation must be supplied from domestic sources. Moreover, neither Party shall otherwise apply internal quantitative regulations so as to afford protection to domestic production.⁽³⁾

4. The provisions of this Article shall not prevent the payment of subsidies exclusively to domestic producers, including payments to domestic producers derived from the proceeds of internal taxes or charges applied consistently with the provisions of this Article and subsidies effected through governmental purchases of domestic products.

5. The provisions of this Article shall not apply to laws, regulations, procedures or practices governing public procurement, which shall be subject exclusively to the provisions of Title IV of this Part.

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Section 2 : Antidumping And Countervailing Measures

Article 78

Antidumping And Countervailing Measures

If a Party determines that dumping and/or countervailable subsidisation is taking place in its trade with the other Party, it may take appropriate measures in accordance with the WTO Agreement

on Implementation of Article VI of the GATT 1994 and the WTO Agreement on Subsidies and Countervailing Measures.

Section 3 : Customs And Related Matters

Article 79

Customs And Related Trade Matters

1. In order to ensure compliance with the provisions of this Title as they relate to customs and trade-related matters, and to facilitate trade without prejudice to the need for effective control, the Parties undertake to:

- (a) cooperate and exchange information concerning customs legislation and procedures;
- (b) apply customs rules and procedures agreed by the Parties at a bilateral or multilateral level;
- (c) simplify requirements and formalities in respect of the release and clearance of goods, including, to the extent possible, collaboration on the development of procedures enabling the submission of import or export data to a single agency; and to coordinate between customs and other control agencies so as to enable official controls upon import or export to be carried out, as far as possible, by a single agency;
- (d) cooperate on all issues concerning rules of origin and the customs procedures related to them; and
- (e) cooperate on all customs valuation matters, in accordance with the Agreement on Implementation of Article VII of the GATT 1994, particularly with the aim of reaching common views regarding the application of valuation criteria, the use of indicative or reference indices, operational aspects and working methods.

2. In order to improve working methods and to ensure transparency and efficiency of customs operations, the Parties shall:

- (a) ensure that the highest standards of integrity be maintained, through application of measures reflecting the principles of the relevant international conventions and instruments in this field, as provided for in each Party's legislation;
- (b) take further steps wherever possible, towards the reduction, simplification and standardisation of data in the documentation required by customs, including the use of a single customs entry document or data message and a single customs exit document or data message, based on international standards and relying as far as possible on commercially available information;

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- (c) collaborate wherever possible on legislative and operational initiatives relating to import, export and customs procedures, and, to the extent possible, towards improving the service to the business community;
- (d) cooperate where appropriate on technical assistance, including the organisation of seminars and placements;

- (e) cooperate on the computerisation of customs procedures and collaborate, where possible, towards the establishment of common standards;
- (f) apply the international rules and standards in the field of customs, including wherever possible, the substantive elements of the revised Kyoto Convention on the Simplification and Harmonisation of Customs Procedures;
- (g) as far as possible, establish common positions in international organisations in the field of customs such as the WTO, the World Customs Organisation (WCO), the United Nations Organization (UN) and the United Nations Conference on Trade and Development (UNCTAD);
- (h) provide effective and prompt procedures enabling the right of appeal, against customs and other agency administrative actions, rulings and decisions affecting import or export of goods, in conformity with Article X of the GATT 1994; and
- (i) collaborate wherever possible towards facilitating transshipment operations and transit movements through their respective territories.

3. The Parties agree that their respective trade and customs provisions and procedures shall be based upon:

- (a) legislation that avoids unnecessary burdens on economic operators, that will not hinder the fight against fraud and provides further facilitation for operators that meet high levels of compliance;
- (b) the protection of legitimate trade through the effective enforcement of legislative requirements;
- (c) the application of modern customs techniques, including risk assessment, simplified procedures for entry and release of goods, post release controls, and company audit methods, whilst respecting the confidential nature of commercial data in accordance with the provisions applicable in each Party. Each Party shall take the necessary measures to ensure the effectiveness of the risk assessment methods;
- (d) procedures that are transparent, efficient and where appropriate simplified, in order to reduce costs and increase predictability for economic operators;
- (e) the development of information technology-based systems, for both export and import operations, between economic operators and customs administrations, and between customs and other agencies. Such systems may also provide for the payment of duties, taxes and other fees by electronic transfer;
- (f) rules and procedures that provide for advance binding rulings on tariff classification and rules of origin. A ruling may be modified or revoked at any time but only after notification to the affected operator and without retroactive effect unless the ruling has been made on the basis of incorrect or incomplete information being provided;

(g) provisions that in principle facilitate the importation of goods through the use of simplified or pre-arrival customs procedures and processes; and

(h) import provisions that do not include any requirements for pre-shipment inspections as defined by the WTO Agreement on Pre-shipment Inspection;

(i) rules that ensure that any penalties imposed for minor breaches of customs regulations or procedural requirements are proportionate and, in their application, do not give rise to undue delays in customs clearance, in accordance with Article VIII of the GATT 1994.

4. The Parties agree:

(a) on the need for timely consultation with economic operators on substantial matters concerning legislative proposals and general procedures related to customs. To that end, appropriate consultation mechanisms between administrations and the operators shall be established by each Party;

(b) to publish, as far as possible through electronic means, and publicise new legislation and general procedures related to customs, as well as any modifications, no later than the entry into force of such legislation and procedures. They shall also make publicly available general information of interest to economic operators, such as the hours of operation for customs offices, including those at ports and border crossing points, and the points of contact for information enquiries;

(c) to foster cooperation between operators and customs administrations via the use of objective and publicly accessible Memoranda of Understanding, based on those promulgated by the WCO; and

(d) to ensure that their respective customs and related requirements and procedures continue to meet the needs of the trading community and follow best practices.

5. Notwithstanding paragraphs 1 to 4, the administrations of both Parties shall provide mutual administrative assistance in customs matters in accordance with the provisions of the Protocol of 13 June 2001 on Mutual Administrative Assistance in Customs Matters to the Framework Cooperation Agreement.

Article 80

Customs Valuation

The WTO Agreement on Implementation of Article VII of the GATT 1994, without the reserves and options provided for in Article 20 and paragraphs 2, 3 and 4 of Annex III of that Agreement, shall govern customs valuation rules applied to trade between the Parties.

Article 81

Special Committee On Customs Cooperation And Rules Of Origin

1. The Parties hereby establish a Special Committee on Customs Cooperation and Rules of Origin, composed of representatives of the Parties. The Committee shall meet on a date and with an agenda agreed in advance by the Parties. The office of chairperson of the Committee shall

be held alternately by each of the Parties. The Committee shall report to the Association Committee.

2. The functions of the Committee shall include:

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(a) monitoring the implementation and administration of Articles 79 and 80 and of Annex III and any other customs matters related to market access;

(b) providing a forum to consult and discuss on all issues concerning customs, including in particular, rules of origin and related customs procedures, general customs procedures, customs valuation, tariff regimes, customs nomenclature, customs cooperation and mutual administrative assistance in customs matters;

(c) enhancing cooperation on the development, application and enforcement of rules of origin and related customs procedures, general customs procedures and mutual administrative assistance in customs matters;

(d) any other issues agreed by the Parties.

3. In order to fulfil the tasks referred to in this Article, the Parties may agree to hold ad hoc meetings.

Article 82

Enforcement Of Preferential Treatment

1. The Parties agree that administrative cooperation is essential for the implementation and control of the preferences granted under this Title and reaffirm their commitment to combat irregularities and fraud related to origin, including customs classification and customs value.

2. In this regard, a Party may temporarily suspend the preferential treatment granted under this Title for a product or products in respect of which that Party determines, in accordance with this Article, that there has been systematic failure to provide administrative cooperation or fraud by the other Party.

3. For the purpose of this Article, systematic failure to provide administrative cooperation shall mean:

(a) the absence of administrative cooperation, such as a failure to provide names and addresses of customs or government authorities responsible for issuing and checking certificates of origin, or specimens of stamps used to authenticate the certificates, or a failure to update that information where appropriate;

(b) a systematic lack or inadequacy of action in verifying the originating status of products and the fulfilment of the other requirements of Annex III and identifying or preventing contravention of the rules of origin;

(c) a systematic refusal or undue delay to carry out subsequent verification of the proof of origin at the request of the other Party, and to communicate its results in time;

(d) the absence or systematic lack of administrative cooperation in verifying conduct where there is a presumption of origin-related fraud. For this purpose, a Party may presume the existence of fraud, *inter alia*, where imports of a product or products under this Agreement massively exceed the usual levels of production and export capacity of the other Party.

4. The Party which has made a finding of systematic failure to provide administrative cooperation or presumption of fraud shall, before applying the temporary suspension provided under this Article, supply the Association Committee with all relevant information required for a thorough examination of the situation with a view to seeking a solution acceptable to the Parties. At the same

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time, it shall publish in its Official Journal a notice to the importers indicating the product or products for which a finding of systematic failure to provide administrative cooperation or presumption of fraud has been made. The legal consequences of this publication shall be governed by the domestic law of each Party.

5. Within 10 days after the day of notification of the information referred to in paragraph 4, the Parties shall hold consultations within the Association Committee. If the Parties do not reach an agreement on a solution to avoid application of the temporary suspension of the preferential treatment within 30 days from the initiation of such consultations, the Party concerned may suspend temporarily the preferential treatment of the product or products concerned.

The temporary suspension shall not exceed what is necessary to protect the financial interests of the Party concerned.

6. Temporary suspensions under this Article shall be notified immediately after their adoption to the Association Committee. They shall not exceed a period of six months which may be renewed. They shall be subject to periodic consultations within the Association Committee, particularly with a view to their abolition as soon as circumstances permit.

Section 4 : Standards, Technical Regulations And Conformity Assessment Procedures

Article 83

Objective

The objective of this section is to facilitate and increase trade in goods by eliminating and preventing unnecessary barriers to trade while taking into account the legitimate objectives of the Parties and the principle of non-discrimination, within the meaning of the WTO Agreement on Technical Barriers to Trade ("the TBT Agreement").

Article 84

Scope And Coverage

The provisions of this section apply to trade in goods in the area of standards, technical regulations and conformity assessment procedures, as defined in the TBT Agreement. They do not apply to measures covered by section 5 of this Chapter. Technical specifications prepared by governmental bodies for public procurement purposes are not subject to the provisions of this section but are addressed in Title IV of this Part.

Article 85

Definitions

For the purpose of this section, the definitions of Annex I to the TBT Agreement shall apply. In this respect, the Decision of the WTO Committee on Technical Barriers to Trade on Principles for the Development of International Standards, Guides and Recommendations with relation to Articles 2, 5 and Annex 3 of that Agreement shall also apply.

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Article 86

Basic Rights And Obligations

The Parties confirm their rights and obligations under the TBT Agreement and their commitment to its comprehensive implementation. In this respect and in line with the objective of this section, cooperation activities and measures pursued under this section shall be conducted with a view to enhancing and reinforcing the implementation of those rights and obligations.

Article 87

Specific Actions To Be Pursued Under This Agreement

With a view to fulfilling the objective of this section:

1. The Parties shall intensify their bilateral cooperation in the field of standards, technical regulations and conformity assessment with a view to facilitating access to their respective markets, by increasing the mutual knowledge, understanding and compatibility of their respective systems.

2. In their bilateral cooperation the Parties shall aim at identifying which mechanisms or combination of mechanisms are the most appropriate for particular issues or sectors. Such mechanisms include aspects of regulatory cooperation, *inter alia* convergence and/or equivalence of technical regulations and standards, alignment to international standards, reliance on the supplier's declaration of conformity and use of accreditation to qualify conformity assessment bodies, and mutual recognition agreements.

3. Based on progress made in their bilateral cooperation, the Parties shall agree on what specific arrangements should be concluded with a view to implementing the mechanisms identified.

4. To this end, the Parties shall work towards:

(a) developing common views on good regulatory practices, including, but not limited to:

(i) transparency in the preparation, adoption and application of technical regulations, standards and conformity assessment procedures;

(ii) necessity and proportionality of regulatory measures and related conformity assessment procedures, including the use of suppliers declaration of conformity;

(iii) use of international standards as a basis for technical regulations, except when such international standards would be an ineffective or inappropriate means for the fulfilment of the legitimate objectives pursued;

(iv) enforcement of technical regulations and market surveillance activities;

(v) the necessary technical infrastructure, in terms of metrology, standardisation, testing, certification and accreditation, to support technical regulations; and

(vi) mechanisms and methods for reviewing technical regulations and conformity assessment procedures;

(b) reinforcing regulatory cooperation through, for example, exchange of information, experiences and data, and through scientific and technical cooperation with a view to

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improving the quality and level of their technical regulations and making efficient use of regulatory resources;

(c) compatibility and/or equivalence of their respective technical regulations, standards and conformity assessment procedures;

(d) promoting and encouraging bilateral cooperation between their respective organisation, public and/or private, responsible for metrology, standardisation, testing, certification and accreditation;

(e) promoting and encouraging full participation in international standard setting bodies, and reinforcing the role of international standards as a basis for technical regulations; and

(f) increasing their bilateral cooperation in the relevant international organisations and fora dealing with the issues covered by this section.

Article 88

Committee On Standards, Technical Regulations And Conformity Assessment

1. The Parties hereby establish a Special Committee on Technical Regulations, Standards and Conformity Assessment in order to achieve the objectives set out in this section. The Committee, made up of representatives of the Parties, shall be co-chaired by a representative of each Party. The Committee shall meet at least once a year, unless otherwise agreed by the Parties. The Committee shall report to the Association Committee.

2. The Committee may address any matter related to the effective functioning of this section. In particular, it shall have the following responsibilities and functions:

(a) monitoring and reviewing the implementation and administration of this section. In this connection, the Committee shall draw up a work program aimed at achieving the objectives of the section and in particular those set out in Article 87;

(b) providing a forum for discussion and exchanging information on any matter related to this section and in particular as it relates to the Parties' systems for technical regulations, standards and conformity assessment procedures, as well as developments in related international organisations;

(c) providing a forum for consultation and prompt resolution of issues that act or can act as unnecessary barriers to trade, within the scope and meaning of this section, between the Parties;

(d) encouraging, promoting and otherwise facilitating cooperation between the Parties' organisations, public and/or private, for metrology, standardisation, testing, certification, inspection and accreditation; and

(e) exploring any means aimed at improving access to the Parties' respective markets and enhancing the functioning of this section.

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Section 5 : Sanitary and Phytosanitary Measures

Article 89

Sanitary And Phytosanitary Measures

1. The objective of this section is to facilitate trade between the Parties in the field of sanitary and phytosanitary legislation, whilst safeguarding public, animal and plant health by further implementing the principles of the WTO on the Application of Sanitary and Phytosanitary Measures ("the WTO SPS Agreement"). An additional objective of this section is to consider animal welfare standards.

2. The objectives of this section are pursued through the "Agreement on Sanitary and Phytosanitary Measures Applicable to Trade in Animals and Animal Products, Plants, Plant Products and other Goods and Animal Welfare", which is attached as Annex IV.

3. By way of derogation from Article 193, the Association Committee, when dealing with sanitary or phytosanitary measures, shall be composed of representatives of the Community and Chile with responsibility for sanitary and phytosanitary matters. This Committee shall then be called the "Joint Management Committee for Sanitary and Phytosanitary Matters". The functions of the Committee are set out in Article 16 of Annex IV.

4. For the purpose of Article 184, consultations held under Article 16 of Annex IV shall be deemed to constitute the consultations referred to in Article 183, unless the Parties decide otherwise.

Section 6 : Wines And Spirits

Article 90

Wines And Spirits

The Agreement on Trade in Wine and the Agreement on Trade in Spirit Drinks and Aromatised Drinks are attached as Annex V and VI, respectively.

CHAPTER III : EXCEPTIONS

Article 91

General Exception Clause

Subject to the requirement that such measures are not applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination between the Parties where the same conditions prevail, or a disguised restriction on trade between the Parties, nothing in this Title shall be construed to prevent the adoption or enforcement by either Party of measures which:

(a) are necessary to protect public morals;

(b) are necessary to protect human, animal or plant life or health;

(c) are necessary to secure compliance with laws or regulations which are not inconsistent with this Agreement, including those relating to customs enforcement, the protection of intellectual property rights, and the prevention of deceptive practices;

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(d) relate to the importation or exportation of gold or silver;

(e) relate to the protection of national treasures of artistic, historic or archaeological value;

(f) relate to the conservation of exhaustible natural resources if such measures are made effective in conjunction with restrictions on domestic production or consumption; or

(g) relate to the products of prison labour.

Article 92

Safeguard Clause

1. Unless otherwise provided by this Article, the provisions of Article XIX of the GATT 1994 and of the WTO Agreement on Safeguards shall apply between the Parties. The provisions of paragraphs 2, 3, 4, 5, 7, 8 and 9 of this Article shall apply only when a Party has a substantial interest as exporter of the product concerned, as defined in paragraph 10.

2. Each Party shall provide, immediately and in any case no later than seven days from the event, ad hoc written notification to the Association Committee of all pertinent information on the initiation of a safeguard investigation and on the final findings of the investigation.

3. The information provided under paragraph 2 shall include in particular an explanation of the domestic procedure on the basis of which the investigation will be carried out and an indication of the time schedules for hearings and other appropriate opportunities for interested parties to present their views on the matter. Furthermore, each Party shall provide advance written notification to the Association Committee of all pertinent information on the decision to apply provisional safeguard measures. Such notice must be received at least seven days before the application of such measures.

4. Upon notification of the final findings of the investigation and before applying safeguard measures pursuant to the provisions of Article XIX of the GATT 1994 and of the WTO Agreement on Safeguards, the Party intending to apply such measures shall refer the matter to the Association Committee for a thorough examination of the situation with a view to seeking a mutually acceptable solution. In order to find such a solution and if the Party concerned so requests, the Parties shall hold prior consultations within the Association Committee.

5. Notwithstanding paragraph 4, nothing shall prevent a Party from applying measures pursuant to the provisions of Article XIX of the GATT 1994 and of the WTO Agreement on Safeguards.

6. In the selection of safeguard measures referred to in this Article, the Parties shall give priority to those which cause least disturbance to the achievement of the objectives of this

Agreement. Such measures shall not exceed what is necessary to remedy the serious injury, and shall preserve the level/margin of preference granted under this Title.

7. The Parties confirm their rights and obligations under paragraphs 1 and 2 of Article 8 of the WTO Safeguard Agreement.

8. The right of suspension referred to in Article 8(2) of the WTO Safeguard Agreement shall not be exercised between the Parties for the first 18 months that a safeguard measure is in effect, provided that the safeguard measure has been taken as a result of an absolute increase in imports and that such a measure conforms to the provisions of the WTO Safeguard Agreement.

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9. Safeguard measures shall upon application be notified immediately to the Association Committee and shall be the subject of consultations once a year within the Committee, particularly with a view to their liberalisation or abolition.

10. For the purposes of this Article, it is considered that a Party has a substantial interest when it is among the five largest suppliers of the imported product during the most recent three-year period of time, measured in terms of either absolute volume or value.

11. In the event of either Party subjecting to a surveillance procedure imports of products liable to give rise to the conditions for the application of a safeguard measure pursuant to this Article, it shall inform the other Party.

Article 93

Shortage Clause

1. Where compliance with the provisions of this Title leads to:

- (a) a critical shortage, or threat thereof, of foodstuffs or other products essential to the exporting Party; or
- (b) a shortage of essential quantities of domestic materials for a domestic processing industry during periods when the domestic price of such materials is held below the world price as part of a governmental stabilisation plan;

and where the situations referred to above give rise or are likely to give rise to major difficulties for the exporting Party, that Party may take appropriate measures under the conditions and in accordance with the procedures laid down in this Article.

2. In the selection of measures, priority must be given to those which least disturb the functioning of the arrangements in this Agreement. Such measures shall not be applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination where the same conditions prevail, or a disguised restriction on trade, and shall be eliminated when the conditions no longer justify their maintenance. In addition, the measures which may be adopted pursuant to paragraph 1(b) shall not operate to increase the exports of or the protection afforded to the domestic processing industry concerned, and shall not depart from the provisions of this Agreement relating to non-discrimination.

3. Before taking the measures provided for in paragraph 1, or as soon as possible in cases to which paragraph 4 applies, the Party intending to take the measures shall supply the

Association Committee with all relevant information, with a view to seeking a solution acceptable to the Parties. The Parties within the Association Committee may agree on any means needed to put an end to the difficulties. If no agreement is reached within 30 days of the matter being referred to the Association Committee, the exporting Party may apply measures under this Article on the exportation of the product concerned.

4. Where exceptional and critical circumstances requiring immediate action make prior information or examination impossible, the Party intending to take the measures may apply forthwith the precautionary measures necessary to deal with the situation and shall inform the other Party immediately thereof.

5. Any measures applied pursuant to this Article shall be immediately notified to the Association Committee and shall be the subject of periodic consultations within that body, particularly with a view to establishing a timetable for their elimination as soon as circumstances permit.

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TITLE III : TRADE IN SERVICES AND ESTABLISHMENT

Article 94

Objectives

1. The Parties shall reciprocally liberalise trade in services, in accordance with the provisions of this Title and in conformity with Article V of the GATS.

2. The aim of Chapter III is the improvement of the investment environment, and in particular the conditions of establishment between the Parties, on the basis of the principle of non-discrimination.

CHAPTER I : SERVICES

Section 1 : General Provisions

Article 95

Scope

1. For the purposes of this Chapter, trade in services is defined as the supply of a service through the following modes:

- (a) from the territory of a Party into the territory of the other Party (mode 1);
- (b) in the territory of a Party to the service consumer of the other Party (mode 2);
- (c) by a service supplier of a Party, through commercial presence in the territory of the other Party (mode 3);
- (d) by a service supplier of a Party, through presence of natural persons in the territory of the other Party (mode 4).

2. This Chapter applies to trade in all service sectors with the exception of:

- (a) financial services, which is subject to Chapter II;
- (b) audio-visual services;

(c) national maritime cabotage; and

(d) air transport services, including domestic and international air transportation services, whether scheduled or non-scheduled, and services directly related to the exercise of traffic rights, other than:

(i) aircraft repair and maintenance services during which an aircraft is withdrawn from service;

(ii) the selling and marketing of air transport services; and

(iii) computer reservation system (CRS) services.

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3. Nothing in this Chapter shall be construed to impose any obligation with respect to government procurement, which is subject to Title IV of this Part.

4. The provisions of this Chapter shall not apply to subsidies granted by the Parties. The Parties shall review the issue of disciplines on subsidies related to trade in services in the context of the review of this Chapter, as provided in Article 100, with a view to incorporating any disciplines agreed under Article XV of the GATS.

5. This Section applies to international maritime transport and telecommunication services subject to the provisions laid down in sections 2 and 3.

Article 96

Definitions

For the purposes of this Chapter:

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

(b) "measure adopted or maintained by a Party" means measures taken by:

(i) central, regional or local governments and authorities; and

(ii) non-governmental bodies in the exercise of powers delegated by central, regional or local governments or authorities;

(c) "service supplier" means any legal or natural person that seeks to supply or supplies a service;

(d) "commercial presence" means any type of business or professional establishment, including through:

(i) the constitution, acquisition or maintenance of a legal person, or

(ii) the creation or maintenance of a branch or a representative office,

within the territory of a Party for the purpose of supplying a service;

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

(f) "legal person of a Party" means a legal person constituted or otherwise organised under the law of the Community or its Member States or of Chile.

Should such a legal person have only its registered office or central administration in the territory of the Community or of Chile, it shall not be considered as a Community or a Chilean legal person respectively, unless it is engaged in substantive business operations in the territory of the Community or of Chile, respectively.

(g) A "natural person" means a national of one of the Member States or of Chile according to their respective legislation.

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(1) Paragraph 2(c) does not cover measures of a Party which limit inputs for the supply of services.
(2) Specific commitments assumed under this Article shall not be construed to require the Parties to compensate for any inherent competitive disadvantages which result from the foreign character of the relevant services or service suppliers.

Article 97

Market Access

1. With respect to market access through the modes of supply identified in Article 95, each Party shall accord services and service suppliers of the other Party treatment no less favourable than that provided for under the terms, limitations and conditions agreed and specified in its Schedule referred to in Article 99.

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

(a) limitations on the number of services suppliers whether in the form of numerical quotas, monopolies, exclusive service suppliers or the requirements of an economic needs test;

(b) limitations on the total value of service transactions or assets in the form of numerical quotas or the requirement of an economic needs test;

(c) limitations on the total number of service operations or on the total quantity of service output expressed in terms of designated numerical units in the form of quotas or the requirement of an economic needs test;⁽¹⁾

(d) limitations on 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 a requirement of an economic needs test;

(e) measures which restrict or require specific types of legal entities or joint ventures through which a service supplier of the other Party may supply a service; and

(f) limitations on the participation of foreign capital in terms of maximum percentage limit on foreign shareholding or the total value of individual or aggregate foreign investment.

Article 98

National Treatment

1. In the sectors inscribed in its Schedule, and subject to the conditions and qualifications set out therein, each Party shall grant to services and service suppliers of the other Party, in respect of all measures affecting the supply of services, treatment no less favourable than that it accords to its own like services and service suppliers.⁽²⁾

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

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

Article 99

Schedule Of Specific Commitments

1. The specific commitments undertaken by each Party under Articles 97 and 98 are set out in the schedule included in Annex VII. With respect to sectors where such commitments are undertaken, each Schedule specifies:

- (a) terms, limitations and conditions on market access;
- (b) conditions and qualifications on national treatment;
- (c) undertakings relating to additional commitments referred to in paragraph 3;
- (d) where appropriate, the time-frame for implementation of such commitments and the date of entry into force of such commitments.

2. Measures inconsistent with both Articles 97 and 98 are inscribed in the column relating to Article 97. In this case the inscription is considered to provide a condition or qualification to Article 98 as well.

3. Where a Party undertakes specific commitments on measures affecting trade in services not subject to scheduling under Articles 97 and 98, such commitments are inscribed in its Schedule as additional commitments.

Article 100

Review

1. The Parties shall review this Chapter three years after the entry into force of this Agreement, with a view to further deepening liberalisation and reducing or eliminating remaining

restrictions on a mutually advantageous basis and ensuring an overall balance of rights and obligations.

2. The Association Committee shall examine the operation of this Chapter every three years after the review undertaken under paragraph 1 and shall submit appropriate proposals to the Association Council.

Article 101

Movement Of Natural Persons

Two years after the entry into force of this Agreement, the Parties shall review the rules and conditions applicable to movement of natural persons (mode 4) with a view to achieving further liberalisation. This review may also address the revision of the definition of natural person provided in Article 96(g).

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Article 102

Domestic Regulation

1. In sectors where a Party has undertaken commitments in its Schedule, and with a view to ensuring that any measure relating to the requirements and procedures of licensing and certification of service suppliers of the other Party does not constitute an unnecessary barrier to trade, that Party shall endeavour to ensure that any such measure:

(a) is based on objective and transparent criteria, such as, *inter alia*, competence and the ability to provide the service;

(b) is not more trade-restrictive than necessary to ensure the achievement of a legitimate policy objective;

(c) does not constitute a disguised restriction on the supply of a service.

2. The disciplines of paragraph 1 may be reviewed within the framework of the procedure of Article 100 in order to take into account the disciplines agreed under Article VI of the GATS with a view to their incorporation into this Agreement.

3. Where a Party recognises, unilaterally or by agreement, education, experience, licenses or certifications obtained in the territory of a third country, that Party shall afford the other Party an adequate opportunity to demonstrate that education, experience, licenses or certifications obtained in the other Party's territory should also be recognised or to conclude an agreement or arrangement of comparable effect.

4. The Parties shall consult periodically with a view to determining the feasibility of removing any remaining citizenship or permanent residency requirement for the licensing or certification of each other's service suppliers.

Article 103

Mutual Recognition

1. Each Party shall ensure that its competent authorities, within a reasonable period of time after the submission by a services supplier of the other Party of an application for a licence or certification:

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

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

2. The Parties shall encourage the relevant bodies in their respective territories to provide recommendations on mutual recognition, for the purpose of enabling service suppliers to fulfil, in whole or in part, the criteria applied by each Party for the authorisation, licensing, accreditation, operation and certification of service suppliers and in particular professional services.

3. The Association Committee, within a reasonable period of time and considering the level of correspondence of the respective regulations, shall decide whether a recommendation referred to in paragraph 2 is consistent with this Chapter. If that is the case, such a recommendation shall be implemented through an agreement on mutual recognition of requirements, qualifications, licences and other regulations to be negotiated by the competent authorities.

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⁽¹⁾ The inclusion of this provision in this Chapter is made without prejudice of the Chilean position on the question of whether or not electronic commerce should be considered as a supply of services.

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

5. Where the Parties agree, each Party shall encourage its relevant bodies to develop procedures for the temporary licensing of professional service suppliers of the other Party.

6. The Association Committee shall periodically, and at least once every three years, review the implementation of this Article.

Article 104

Electronic Commerce⁽¹⁾

The Parties, recognising that the use of electronic means increases trade opportunities in many sectors, agree to promote the development of electronic commerce between them, in particular by cooperating on the market access and regulatory issues raised by electronic commerce.

Article 105

Transparency

Each Party shall respond promptly to all requests by the other Party for specific information on any of its measures of general application or international agreements which pertain to or affect this Chapter. The contact point referred to in Article 190 shall provide specific information on all such matters to service suppliers of the other Party upon request. Contact points need not be depositories of laws and regulations.

Section 2 : International Maritime Transport

Article 106

Scope

1. Notwithstanding Article 95(5), the provisions of this section shall apply with respect to shipping companies established outside the Community or Chile and controlled by nationals of a Member State or of Chile, respectively, if their vessels are registered in accordance with their

respective legislation, in that Member State or in Chile and carry the flag of a Member State or Chile.

2. This Article applies to international maritime transport, including door-to-door and intermodal transport operations involving a sea-leg.

Article 107 Definitions

For the purposes of this section:

(a) "intermodal transport operations" is defined as the right to arrange door-to-door transport services of international cargo and to this effect directly contract with providers of other modes of transport;

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(1) Broadcasting is defined as the uninterrupted chain of transmission required for the distribution of TV and radio programme signals to the general public, but does not cover contribution links between operators.

(b) "international maritime service suppliers" covers the suppliers of services relating to international cargo for maritime services, cargo handling, storage and warehousing services, customs clearance services, container station and depot services, agency services and freight forwarding services.

Article 108 Market Access And National Treatment

1. In view of the existing levels of liberalisation between the Parties in international maritime transport:

(a) the Parties shall continue to effectively apply the principle of unrestricted access to the international maritime market and traffic on a commercial and non-discriminatory basis;

(b) each Party shall continue to grant to ships flying the flag of or operated by service suppliers of the other Party treatment no less favourable than that accorded to its own ships with regard to, *inter alia*, access to ports, use of infrastructure and auxiliary maritime services of the ports, and related fees and charges, customs facilities and the assignment of berths and facilities for loading and unloading.

2. In applying the principles of paragraph 1, the Parties shall:

(a) not introduce cargo-sharing clauses in future bilateral agreements with third countries, other than in those exceptional circumstances where liner shipping companies from the Party concerned would not otherwise have an effective opportunity to ply for trade to and from the third country concerned;

(b) prohibit cargo-sharing arrangements in future bilateral agreements concerning dry and liquid bulk trade;

(c) abolish, upon the entry into force of this Agreement, all unilateral measures and administrative, technical and other barriers which could have restrictive or

discriminatory effects on the free supply of services in international maritime transport.

3. Each Party shall permit international maritime service suppliers of the other Party to have a commercial presence in its territory under conditions of establishment and operation no less favourable than those accorded to its own service suppliers or those of any third country, whichever are the better, in accordance with the conditions inscribed in its Schedule.

Section 3 : Telecommunications Services

Article 109

Definitions

For the purposes of this section:

(a) "telecommunications services" means the transport of electro-magnetic signals - sound, data image and any combinations thereof, excluding broadcasting⁽¹⁾.

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Therefore, commitments in this sector do not cover the economic activity consisting of content provision which require telecommunications services for its transport. The provision of that content, transported via a telecommunications service, is subject to the specific commitments undertaken by the Parties in other relevant sectors.

(b) a "regulatory authority" means the body or bodies with any of the regulatory tasks assigned in relation to the issues mentioned in this section.

(c) "essential telecommunications facilities" mean facilities of a public telecommunications transport network and service that:

(i) are exclusively or predominantly provided by a single supplier or a limited number of suppliers; and

(ii) cannot feasibly be economically or technically substituted in order to provide a service.

Article 110

Regulatory Authority

1. Regulatory authorities for telecommunications services shall be separate from, and not accountable to, any supplier of basic telecommunications services.

2. The decisions of and the procedures used by regulatory authorities shall be impartial with respect to all market participants.

3. A supplier affected by the decision of a regulatory authority shall have a right to appeal against that decision.

Article 111

Supply Of Services

1. Where a licence is required, the terms and conditions for such a license shall be made publicly available and the period of time normally required to reach a decision concerning an application for a licence shall be made publicly available.

2. Where a licence is required, the reasons for the denial of a licence shall be made known to the applicant upon request.

Article 112

Major Suppliers

1. A major supplier is a supplier which has the ability to materially affect the terms of participation having regard to price and supply in the relevant market for basic telecommunications services as a result of:

(a) control over essential facilities; or

(b) the use of its position in the market.

2. Appropriate measures shall be maintained for the purpose of preventing suppliers who, alone or together, are a major supplier from engaging in or continuing anti-competitive practices.

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3. The anti-competitive practices referred to above shall include in particular:

(a) engaging in anti-competitive cross-subsidisation;

(b) using information obtained from competitors with anti-competitive results;
and

(c) not making available to other services suppliers on a timely basis technical information about essential facilities and commercially relevant information which are necessary for them to supply services.

Article 113

Interconnection

1. This section applies to linking with suppliers providing public telecommunications transport networks or services in order to allow the users of one supplier to communicate with users of another supplier and to access services provided by another supplier.

2. Interconnection with a major supplier shall be ensured at any technically feasible point in the network. Such interconnection shall be provided:

(a) under non-discriminatory terms, conditions (including technical standards and specifications) and rates and of a quality no less favourable than that provided for its own like services or for like services of non-affiliated service suppliers or for its subsidiaries or other affiliates;

(b) in a timely fashion, on terms, conditions (including technical standards and specifications) and cost-oriented rates that are transparent, reasonable, having regard to economic feasibility, and sufficiently unbundled so that the supplier

need not pay for network components or facilities that it does not require for the service to be provided; and

(c) upon request, at points in addition to the network termination points offered to the majority of users, subject to charges that reflect the cost of construction of necessary additional facilities.

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

5. Major suppliers shall make interconnection agreements available to service suppliers of the Parties to ensure non-discrimination, and/or shall publish reference interconnection offers in advance, unless they are already available to the public.

Article 114

Scarce Resources

Any procedures for the allocation and use of scarce resources, including frequencies, numbers and rights of way, shall be carried out in an objective, timely, transparent and non-discriminatory manner.

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Article 115

Universal Service

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

2. The provisions governing universal service shall be transparent, objective and non-discriminatory. They shall also be neutral with respect to competition and be no more burdensome than necessary.

CHAPTER II : FINANCIAL SERVICES

Article 116

Scope

1. This Chapter applies to measures adopted or maintained by the Parties affecting trade in financial services.

2. For the purposes of this Chapter, trade in financial services is defined as the supply of a financial service through the following modes:

(a) from the territory of a Party into the territory of the other Party (mode 1);

(b) in the territory of a Party to the financial service consumer of the other Party (mode 2);

(c) by a financial service supplier of a Party, through commercial presence in the territory of the other Party (mode 3);

(d) by a financial service supplier of a Party, through presence of natural persons in the territory of the other Party (mode 4).

3. Nothing in this Chapter shall be construed to impose any obligation with respect to government procurement, which is subject to Title IV of this Part.

4. The provisions of this Chapter shall not apply to subsidies granted by the Parties. The Parties shall review the issue of disciplines on subsidies related to trade in financial services, with a view to incorporating in this Agreement any disciplines agreed under Article XV of GATS.

5. This Chapter does not apply to:

- (i) activities conducted by a central bank or monetary authority or by any other public entity in pursuit of monetary or exchange rate policies;
- (ii) activities forming part of a statutory system of social security or public retirement plans; and
- (iii) other activities conducted by a public entity for the account or with the guarantee or using the financial resources of the Government.

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6. For the purposes of paragraph 5, if a Party allows any of the activities referred to in paragraph 5(ii) or (iii) to be conducted by its financial service suppliers in competition with a public entity or a financial service supplier, this Chapter shall apply to such activities.

Article 117

Definitions

For the purposes of this Chapter:

1. "measure" means any measure by a Party, whether in the form of a law, regulation, rule, procedure, decision, administrative action, or any other form;

2. "measures adopted or maintained by a Party" means measures taken by:

- (i) central, regional or local governments and authorities; and
- (ii) non-governmental bodies in the exercise of powers delegated by central, regional or local governments or authorities;

3. "financial service supplier" means any natural or legal person that seeks to supply or supplies financial services but the term "financial service supplier" does not include a public entity;

4. "public entity" means:

- (i) a government, a central bank or a monetary authority of a Party, or an entity owned or controlled by a Party, that is principally engaged in carrying out governmental functions or activities for governmental purposes, not including an entity principally engaged in supplying financial services on commercial terms; or
- (ii) a private entity, performing functions normally performed by a central bank or monetary authority, when exercising those functions;

5. "commercial presence" means any type of business or professional establishment, including through:

- (i) the constitution, acquisition or maintenance of a legal person, or
 - (ii) the creation or maintenance of a branch or a representative office,
- within the territory of a Party for the purpose of supplying a financial service;

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

7. "legal person of a Party" means a legal person constituted or otherwise organised under the law of the Community or its Member States or of Chile.

Should such a legal person have only its registered office or central administration in the territory of the Community or Chile, it shall not be considered as a Community or a Chilean legal person respectively, unless it is engaged in substantive business operations in the territory of the Community or Chile, respectively.

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8. "natural person" means a national of one of the Member States or of Chile according to their respective legislation.

9. "financial service" means any service of a financial nature offered by a financial service supplier of a Party. Financial services comprise the following activities:

Insurance And Insurance-Related Services

- (i) direct insurance (including co-insurance):

(A) life

(B) non-life

- (ii) reinsurance and retrocession;
- (iii) insurance intermediation, such as brokerage and agency;
- (iv) services auxiliary to insurance, such as consultancy, actuarial, risk assessment and claim settlement services.

Banking And Other Financial Services (Excluding Insurance)

- (v) acceptance of deposits and other repayable funds from the public;
- (vi) lending of all types, including consumer credit, mortgage credit, factoring and financing of commercial transactions;
- (vii) financial leasing;

- (viii) all payment and money transmission services, including credit, charge and debit cards, travellers cheques and bankers drafts;
- (ix) guarantees and commitments;
- (x) trading for own account or for account of customers, whether on an exchange, in an over-the-counter market or otherwise, the following:
 - (A) money market instruments, including cheques, bills, certificates of deposits;
 - (B) foreign exchange;
 - (C) derivative products including, but not limited to, futures and options;
 - (D) exchange rate and interest rate instruments, including products such as swaps, forward rate agreements;
 - (E) transferable securities;
 - (F) other negotiable instruments and financial assets, including bullion.
 - (xi) participation in issues of all kinds of securities, including underwriting and placement as agent (whether publicly or privately) and provision of services related to such issues;

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(1) Paragraph 2(c) does not cover measures of a Party which limit inputs for the supply of financial services.

- (xii) money broking;
- (xiii) asset management, such as cash or portfolio management, all forms of collective investment management, pension fund management, custodial, depository and trust services;
- (xiv) settlement and clearing services for financial assets, including securities, derivative products, and other negotiable instruments;
- (xv) provision and transfer of financial information, and financial data processing and related software by suppliers of other financial services;
- (xvi) advisory, intermediation and other auxiliary financial services on all the activities listed in subparagraphs (v) through (xv), including credit reference and analysis, investment and portfolio research and advice, advice on acquisitions, and on corporate restructuring and strategy.

10. "new financial service" means a service of a financial nature, including services related to existing and new products or the manner in which a product is delivered, that is not supplied by any financial service supplier in the territory of a Party but which is supplied in the territory of the other Party.

Article 118

Market Access

1. With respect to market access through the modes of supply identified in Article 116, each Party shall accord financial services and financial service suppliers of the other Party

treatment no less favourable than that provided for under the terms, limitations and conditions agreed and specified in its Schedule referred to in Article 120.

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

(a) limitations on the number of financial services suppliers whether in the form of numerical quotas, monopolies, exclusive service suppliers or the requirements of an economic needs test;

(b) limitations on the total value of financial service transactions or assets in the form of numerical quotas or the requirement of an economic needs test;

(c) limitations on the total number of financial service operations or on the total quantity of service output expressed in terms of designated numerical units in the form of quotas or the requirement of an economic needs test;⁽¹⁾

(d) limitations on the total number of natural persons that may be employed in a particular financial service sector or that a financial service supplier may employ and who are necessary for, and directly related to, the supply of a specific financial service in the form of numerical quotas or a requirement of an economic needs test;

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⁽¹⁾ Specific commitments assumed under this Article shall not be construed to require the Parties to compensate for any inherent competitive disadvantages which result from the foreign character of the relevant financial services or financial service suppliers.

(e) measures which restrict or require specific types of legal entities or joint ventures through which a financial service supplier of the other Party may supply a financial service; and

(f) limitations on the participation of foreign capital in terms of maximum percentage limit on foreign shareholding or the total value of individual or aggregate foreign investment.

Article 119

National Treatment

1. In the sectors inscribed in its Schedule, and subject to the conditions and qualifications set out therein, each Party shall accord to financial services and financial service suppliers of the other Party, in respect of all measures affecting the supply of financial services, treatment no less favourable than that it accords to its own like financial services and financial service suppliers.⁽¹⁾

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

3. Formally identical or formally different treatment shall be considered to be less favourable if it modifies the conditions of competition in favour of financial services or financial

service suppliers of a Party compared to like financial services or financial service suppliers of the other Party.

Article 120

Schedule Of Specific Commitments

1. The specific commitment undertaken by each Party under Articles 118 and 119 are set out in the Schedule included in Annex VIII. With respect to sectors where such commitments are undertaken, each Schedule specifies:

- (a) terms, limitations and conditions on market access;
- (b) conditions and qualifications on national treatment;
- (c) undertakings relating to additional commitments referred to in paragraph 3;
- (d) where appropriate the time-frame for implementation of such commitments and the date of entry into force of such commitments.

2. Measures inconsistent with both Articles 118 and 119 are inscribed in the column relating to Article 118. In this case, the inscription is considered to provide a condition or qualification to Article 119 as well.

3. Where a Party undertakes specific commitments on measures affecting trade in financial services not subject to scheduling under Articles 118 and 119, such commitments are inscribed in its Schedule as additional commitments.

Article 121

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New Financial Services

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

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

Article 122

Data Processing In The Financial Services Sector

1. Each Party shall permit a financial service supplier of the other Party to transfer information in electronic or other form, into and out of its territory, for data processing where such processing is required in the ordinary course of business of such financial service supplier.

2. Where the information referred to in paragraph 1 consists of or contains personal data, the transfer of such information from the territory of one Party to the territory of the other Party

shall take place in accordance with the domestic law regulating the protection of individuals with respect to the transferring and processing of personal data of the Party out of whose territory the information is transferred.

Article 123

Effective And Transparent Regulation In The Financial Services Sector

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

(a) by means of an official publication; or

(b) in other written or electronic form.

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

3. On the request of an applicant, the appropriate financial authority shall inform the applicant of the status of its application. If such authority requires additional information from the applicant, it shall notify the applicant without undue delay.

4. Each Party shall make its best endeavours to implement and apply in its territory internationally agreed standards for regulation and supervision in the financial services sector and for the fight against money laundering. For this purpose, the Parties shall cooperate and exchange information and experience within the Special Committee on Financial Services referred to in Article 127.

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Article 124

Confidential Information

Nothing in this Chapter:

(a) shall require any of the Parties to provide confidential information, the disclosure of which would impede law enforcement, or otherwise be contrary to the public interest, or which would prejudice legitimate commercial interests of particular enterprises, public or private;

(b) shall be construed to require a Party to disclose information relating to the financial affairs and accounts of individual customers of financial service suppliers, or any confidential or proprietary information in the possession of public entities.

Article 125

Prudential Carve-Out

1. Nothing in this Chapter shall be construed to prevent a Party from adopting or maintaining reasonable measures for prudential reasons, such as:

(a) the protection of investors, depositors, financial market participants, policy-holders, or persons to whom a fiduciary duty is owed by a financial services supplier;

(b) the maintenance of the safety, soundness, integrity or financial responsibility of financial services suppliers; and

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

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

Article 126

Recognition

1. A Party may recognise prudential measures of the other Party in determining how the Party's measures relating to financial services shall be applied. Such recognition, which may be achieved through harmonisation or otherwise, may be based upon an agreement or arrangement or may be accorded autonomously.

2. A Party that is a party to an agreement or arrangement with a third party such as those referred to in paragraph 1, whether future or existing, shall afford adequate opportunity for the other Party to negotiate its accession to such agreements or arrangements, or to negotiate comparable ones with it, under circumstances in which there would be equivalent regulation, oversight, implementation of such regulation, and, if appropriate, procedures concerning the sharing of information between the Parties to the agreement or arrangement. Where a Party accords recognition autonomously, it shall afford adequate opportunity for the other Party to demonstrate that such circumstances exist.

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Article 127

Special Committee On Financial Services

1. The Parties hereby establish a Special Committee on Financial Services. The Special Committee shall be composed of representatives of the Parties. The principal representative of each Party shall be an official of the Party's authority responsible for financial services set out in Annex IX.

2. The functions of the Special Committee shall include:

(a) supervising the implementation of this Chapter;

(b) considering issues regarding financial services that are referred to it by a Party.

3. The Special Committee shall meet at the request of one of the Parties on a date and with an agenda agreed in advance by the Parties. The office of chairperson shall be held alternately. The Special Committee shall report to the Association Committee the results of its meetings.

4. Three years after the entry into force of this Agreement the Special Committee on Financial Services shall consider actions with the aim of facilitating and expanding trade in financial services and further contributing to the objectives of this Agreement, and shall report to the Association Committee.

Article 128
Consultations

1. A Party may request consultations with the other Party regarding any matter arising under this Chapter. The other Party shall give sympathetic consideration to the request. The Parties shall report the results of their consultations to the Special Committee on Financial Services.

2. Consultations under this Article shall include officials of the authorities specified in Annex IX.

3. Nothing in this Article shall be construed to require financial authorities participating in consultations to disclose information or take any action that would interfere with individual regulatory, supervisory, administrative or enforcement matters.

4. Where a financial authority of a Party requires information for supervisory purposes concerning a financial service supplier in the other Party's territory, such financial authority may approach the competent financial authority in the other Party's territory to seek the information. The provision of such information may be subject to the terms, conditions and limitations contained in the other Party's relevant law or to the requirement of a prior agreement or arrangement between the respective financial authorities.

Article 129
Specific Provisions On Dispute Settlement

1. Except as otherwise provided in this Article, any disputes under this Chapter shall be settled in accordance with the provisions of Title VIII.

2. For the purpose of Article 184, consultations held under Article 128 shall be deemed to constitute the consultations referred to in Article 183, unless the Parties otherwise agree. Upon initiation of consultations, the Parties shall provide information to enable the examination of how a

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measure of a Party or any other matter may affect the operation and application of this Chapter, and give confidential treatment to the information exchanged during consultations. If the matter has not been resolved within 45 days after holding the consultations under Article 128 or 90 days after the delivery of the request for consultations under Article 128(1), whichever is earlier, the complaining Party may request in writing the establishment of an arbitration panel. The Parties shall report the results of their consultations directly to the Association Committee.

3. For the purpose of Article 185:

(a) the chairperson of the arbitration panel shall be a financial expert;

(b) the Association Committee shall, no later than six months after the entry into force of this Agreement, establish a list of at least five individuals who are not nationals of either Party, and who are willing and able to serve as arbitrators and be identified as chairperson of arbitration panels in financial services. The Association Committee shall ensure that the list always contains five individuals at any point in time. Those individuals shall have expertise or experience in financial services law or practice, which may include the regulation of financial

institutions, be independent, serve in their individual capacities and not be affiliated with, nor take instructions from, any Party or organisation and shall comply with the Code of Conduct set out in Annex XVI. Such list may be amended every three years;

(c) within three days of the request for establishment of the arbitration panel, the chairperson of the arbitration panel shall be selected by lot by the chairperson of the Association Committee from the list referred to in paragraph (b). The other two arbitrators of the panel shall be selected by lot by the chairperson of the Association Committee from the list referred to in Article 185(2), one among the individuals proposed to the Association Committee by the complaining Party, and the other among the individuals proposed to the Association Committee by the Party complained against.

CHAPTER III : ESTABLISHMENT

Article 130

Scope

This Chapter shall apply to establishment in all sectors with the exception of all services sectors, including the financial services sector.

Article 131

Definitions

For the purposes of this Chapter,

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

(b) "legal person of a Party" means a legal person constituted or otherwise organised under the law of the Community or its Member States or of Chile.

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Should such a legal person have only its registered office or central administration in the territory of the Community or of Chile, it shall not be considered as a Community or a Chilean legal person respectively, unless it is engaged in substantive business operations in the territory of the Community or of Chile respectively.

(c) "natural person" means a national of one of the Member States or of Chile according to their respective legislation.

(d) "establishment" means:

(i) the constitution, acquisition or maintenance of a legal person, or

(ii) the creation or maintenance of a branch or a representative office,

within the territory of a Party for the purpose of performing an economic activity.

As regards natural persons, this shall not extend to seeking or taking employment in the labour market or confer a right of access to the labour market of a Party.

Article 132

National Treatment

In the sectors inscribed in Annex X, and subject to any conditions and qualifications set out therein, with respect to establishment, each Party shall grant to legal and natural persons of the other Party treatment no less favourable than that it accords to its own legal and natural persons performing a like economic activity.

Article 133

Right To Regulate

Subject to the provisions of Article 132, each Party may regulate the establishment of legal and natural persons.

Article 134

Final Provisions

1. With respect to this Chapter, the Parties confirm their rights and obligations existing under any bilateral or multilateral agreements to which they are parties.

2. With the objective of progressive liberalisation of investment conditions, the Parties affirm their commitment to review the investment legal framework, the investment environment and the flow of investment between them consistent with their commitments in international investment agreements, no later than three years after the entry into force of this Agreement.

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(1) In particular, a Party may require that natural persons must possess the necessary academic qualifications and/or professional experience specified in the territory where the service or financial service is supplied or the establishment is set-up, for the sector of activity concerned.

CHAPTER IV : EXCEPTIONS

Article 135

Exceptions

1. Subject to the requirement that such measures are not applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination between the Parties where like conditions prevail, or a disguised restriction on trade in services, financial services or establishment, nothing in this Title shall be construed to prevent the adoption or enforcement by either Party of measures:

(a) necessary to protect public morals or to maintain public order and public security;

(b) necessary to protect human, animal or plant life or health;

(c) relating to the conservation of exhaustible natural resources if such measures are applied in conjunction with restrictions on the domestic supply or consumption of services or on domestic investments;

(d) necessary for the protection of national treasures of artistic, historic or archaeological value;

(e) necessary to secure compliance with laws or regulations which are not inconsistent with the provisions of this Title including those relating to:

- (i) the prevention of deceptive and fraudulent practices or to deal with the effects of a default on services contracts;
- (ii) the protection of the privacy of individuals in relation to the processing and dissemination of personal data and the protection of confidentiality of individual records and accounts; or
- (iii) safety.

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

3. Nothing in this Title shall prevent a Party from applying its laws, regulations and requirements regarding entry and stay, work, labour conditions, and establishment of natural persons⁽¹⁾ provided that, in so doing, it does not apply to them in such a manner as to nullify or impair the benefits accruing to the other Party under the terms of a specific provision of this Title.

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TITLE IV : GOVERNMENT PROCUREMENT

Article 136

Objective

In accordance with the provisions of this Title, the Parties shall ensure the effective and reciprocal opening of their government procurement markets.

Article 137

Scope And Coverage

1. This Title applies to any law, regulation, procedure or practice regarding any procurement, by the entities of the Parties, of goods and services including works, subject to the conditions specified by each Party in Annexes XI, XII and XIII.

2. This Title shall not be applicable to:

(a) contracts awarded pursuant to:

- (i) an international agreement intended for the joint implementation or exploitation of a project by the contracting parties;
- (ii) an international agreement relating to the stationing of troops; and
- (iii) the particular procedure of an international organisation.

(b) non-contractual agreements or any form of government assistance and procurement made in the framework of assistance or cooperation programmes.

(c) contracts for:

- (i) the acquisition or rental of land, existing buildings, or other immovable property or concerning rights thereon;
- (ii) the acquisition, development, production or co-production of programme material by broadcasters and contracts for broadcasting time.

(iii) arbitration and conciliation services;

(iv) employment contracts; and

(v) research and development services other than those where the benefits accrue exclusively to the entity for its use in the conduct of its own affairs, on condition that the service is wholly remunerated by the entity; and

(d) financial services.

3. Public works concessions, as defined in Article 138(i), shall also be subject to this Title, as specified in Annexes XI, XII and XIII.

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

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Article 138

Definitions

For the purpose of this Title, the following definitions shall apply:

(a) "government procurement" means any type of procurement of goods, services or a combination thereof, including works carried out by public entities of the Parties for governmental purposes and not with a view to commercial resale or with a view to use in the production of goods or the supply of services for commercial sale, unless otherwise specified. It includes procurement by such methods as purchase or lease, or rental or hire purchase, with or without an option to buy;

(b) "entities" means the public entities of the Parties, such as central, sub-central or local government entities, municipalities, public undertakings and all other entities that procure in accordance with the provisions of this Title, as set out in Annexes XI, XII and XIII;

(c) "public undertakings" means any undertaking over which the public authorities may exercise directly or indirectly a dominant influence by virtue of their ownership of it, their financial participation therein, or the rules which govern it. A dominant influence on the part of the public authorities shall be presumed when these authorities, directly or indirectly, in relation to an undertaking:

(i) hold the majority of the undertaking's subscribed capital;

(ii) control the majority of the votes attaching to shares issued by the undertaking; or

(iii) can appoint more than half of the members of the undertaking's administrative, managerial or supervisory body.

(d) "supplier of the Parties" means any natural or legal person or public body or group of such persons of a Party and/or bodies of a Party which can provide

goods, services or the execution of works. The term shall cover equally a supplier of goods, a service provider or a contractor;

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

(f) "legal person of a Party" means a legal person constituted or otherwise organised under the law of the Community or its Member States or of Chile;

Should such a legal person have only its registered office or central administration in the territory of the Community or Chile, it shall not be considered as a Community or a Chilean legal person respectively, unless it is engaged in substantive business operations in the territory of the Community or Chile respectively.

(g) a "natural person" means a national of one of the Member States or of Chile according to their respective legislation;

(h) "tenderer" means a supplier who has submitted a tender;

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(i) "public works concessions" means a contract of the same type as public works procurement contracts, except for the fact that the remuneration for the works to be carried out consists either solely in the right to exploit the construction or in this right together with a payment;

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

(k) "in writing or written" means any expression of information in words, numbers or other symbols, including electronic means, that can be read, reproduced and stored;

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

(m) "privatisation" means a process by means of which government control over an entity is effectively eliminated and is transferred to the private sector;

(n) "liberalisation" means a process as a result of which an entity enjoys no exclusive or special rights and is exclusively engaged in the provision of goods or services on markets that are subject to effective competition.

Article 139

National Treatment And Non-Discrimination

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

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

3. With respect to any laws, regulations, procedures and practices regarding government procurement covered by this Title, each Party shall ensure:

(a) that its entities do not treat a locally-established supplier less favourably than another locally-established supplier on the basis of the degree of foreign affiliation to, or ownership by, a person of the other Party; and

(b) that its entities do not discriminate against a locally-established supplier on the basis that the goods or services offered by that supplier for a particular procurement are goods or services of the other Party.

4. This Article shall not apply to measures concerning customs duties or other charges of any kind imposed on or in connection with importation, the method of levying such duties and charges, other import regulations, including restrictions and formalities, nor to measures affecting trade in services other than measures specifically governing procurement covered by this Title.

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Article 140

Prohibition Of Offsets And National Preferences

Each Party shall ensure that its entities do not, in the qualification and selection of suppliers, goods or services, in the evaluation of bids or in the award of contracts, consider, seek or impose offsets, nor conditions regarding national preferences such as margins allowing price preference.

Article 141

Valuation Rules

1. Entities shall not split up a procurement, nor use any other method of contract valuation with the intention of evading the application of this Title when determining whether a contract is covered by the disciplines of thereof, subject to the conditions set out in Annexes XI and XII, Appendices 1 to 3.

2. In calculating the value of a contract, an entity shall take into account all forms of remuneration, such as premiums, fees, commissions and interests, as well as the maximum permitted total amount, including option clauses, provided for by the contract.

3. When, due to the nature of the contract, it is not possible to calculate in advance its precise value, entities shall estimate this value on the basis of objective criteria.

Article 142

Transparency

1. Each Party shall promptly publish any law, regulation, judicial decision and administrative ruling of general application and procedure, including standard contract clauses, regarding procurement covered by this Title in the appropriate publications referred to in Annex XIII, Appendix 2, including officially designated electronic media.

2. Each Party shall promptly publish in the same manner all modifications to such measures.

Article 143

Tendering Procedures

1. Entities shall award their public contracts by open or selective tendering procedures according to their national procedures, in compliance with this Title and in a non-discriminatory manner.

2. For the purposes of this Title:

(a) open tendering procedures are those procedures whereby any interested supplier may submit a tender.

(b) selective tendering procedures are those procedures whereby, consistent with Article 144 and other relevant provisions of this Title, only suppliers satisfying qualification requirements established by the entities are invited to submit a tender.

3. However, in the specific cases and only under the conditions laid down in Article 145, entities may use a procedure other than the open or selective tendering procedures referred to in paragraph 1 of that Article, in which case the entities may choose not to publish a notice of intended procurement,

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and may consult the suppliers of their choice and negotiate the terms of contract with one or more of these.

4. Entities shall treat tenders in confidence. In particular, they shall not provide information intended to assist particular participants to bring their tenders up to the level of other participants.

Article 144

Selective Tendering

1. In selective tendering, entities may limit the number of qualified suppliers they will invite to tender, consistent with the efficient operation of the procurement process, provided that they select the maximum number of domestic suppliers and suppliers of the other Party, and that they make the selection in a fair and non-discriminatory manner and on the basis of the criteria indicated in the notice of intended procurement or in tender documents.

2. Entities maintaining permanent lists of qualified suppliers may select suppliers to be invited to tender from among those listed, under the conditions of Article 146(7). Any selection shall allow for equitable opportunities for suppliers on the lists.

Article 145

Other Procedures

1. Provided that the tendering procedure is not used to avoid maximum possible competition or to protect domestic suppliers, entities shall be allowed to award contracts by means other than an open or selective tendering procedure in the following circumstances and subject to the following conditions, where applicable:

(a) when no suitable tenders or request to participate have been submitted in response to a prior procurement, on condition that the requirements of the initial procurement are not substantially modified;

(b) when, for technical or artistic reasons, or for reasons connected with protection of exclusive rights, the contract may be performed only by a particular supplier and no reasonable alternative or substitute exists;

(c) for reasons of extreme urgency brought about by events unforeseeable by the entity, the goods or services could not be obtained in time by means of open or selective tendering procedures;

(d) for additional deliveries of goods or services by the original supplier where a change of supplier would compel the entity to procure equipment or services not meeting requirements of interchangeability with already existing equipment, software or services;

(e) when an entity procures prototypes or a first product or service which are developed at its request in the course of, and for, a particular contract for research, experiment, study or original development;

(f) when additional services which were not included in the initial contract but which were within the objectives of the original tender documentation have, through unforeseeable circumstances, become necessary to complete the services described therein. However, the total value of contracts awarded for the additional construction services may not exceed 50 % of the amount of the main contract;

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(g) for new services consisting of the repetition of similar services and for which the entity has indicated, in the notice concerning the initial service, that tendering procedures other than open or selective might be used in awarding contracts for such new services;

(h) in the case of contracts awarded to the winner of a design contest, provided that the contest has been organised in a manner which is consistent with the principles of this Title; in case of several successful candidates, all successful candidates shall be invited to participate in the negotiations; and

(i) for quoted goods purchased on a commodity market and for purchases of goods made under exceptionally advantageous conditions which only arise in the very short term in the case of unusual disposals and not for routine purchases from regular suppliers.

2. The Parties shall ensure that, whenever it is necessary for entities to resort to a procedure other than the open or selective tendering procedures based on the circumstances set forth in paragraph 1, the entities shall maintain a record or prepare a written report providing specific justification for the contract awarded under that paragraph.

Article 146

Qualification Of Suppliers

1. Any conditions for participation in procurement shall be limited to those that are essential to ensure that the potential supplier has the capability to fulfil the requirements of the procurement and the ability to execute the contract in question.

2. In the process of qualifying suppliers, entities shall not discriminate between domestic suppliers and suppliers of the other Party.

3. A Party shall not impose the condition that, in order for a supplier to participate in a procurement, the supplier has previously been awarded one or more contracts by an entity of that Party or that the supplier has prior work experience in the territory of that Party.

4. Entities shall recognise as qualified suppliers all suppliers who meet the conditions for participation in a particular intended procurement. Entities shall base their qualification decisions solely on the conditions for participation that have been specified in advance in notices or tender documentation.

5. Nothing in this Title shall preclude the exclusion of any supplier on grounds such as bankruptcy or false declarations or conviction for serious crime such as participation in criminal organisations.

6. Entities shall promptly communicate to suppliers that have applied for qualification their decision on whether or not they qualify.

Permanent Lists Of Qualified Suppliers

7. Entities may establish permanent lists of qualified suppliers provided that the following rules are respected:

(a) entities establishing permanent lists shall ensure that suppliers may apply for qualification at any time.

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(b) any supplier having requested to become a qualified supplier shall be notified by the entities concerned of the decision in this regard.

(c) suppliers requesting to participate in a given intended procurement who are not on the permanent list of qualified suppliers shall be given the possibility to participate in the procurement by presenting the equivalent certifications and other means of proof requested from suppliers who are on the list.

(d) when an entity operating in the utilities sector uses a notice on the existence of a permanent list as a notice of intended procurement, as provided in Article 147(7), suppliers requesting to participate who are not on the permanent list of

qualified suppliers shall also be considered for the procurement, provided there is sufficient time to complete the qualification procedure; in this event, the procuring entity shall promptly start procedures for qualification and the process of, and the time required for, qualifying suppliers shall not be used in order to keep suppliers of other Parties off the suppliers' list.

Article 147
Publication Of Notices

General Provisions

1. Each Party shall ensure that its entities provide for effective dissemination of the tendering opportunities generated by the relevant government procurement processes, providing suppliers of the other Party with all the information required to take part in such procurement.

2. For each contract covered by this Title, except as set out in Articles 143(3) and 145, entities shall publish in advance a notice inviting interested suppliers to submit tenders, or where appropriate, requests for participation for that contract.

3. The information in each notice of intended procurement shall include at least the following:

- (a) name, address, telefax number, electronic address of the entity and, if different, the address where all documents relating to the procurement may be obtained;
- (b) the tendering procedure chosen and the form of the contract;
- (c) a description of the intended procurement, as well as essential contract requirements to be fulfilled;
- (d) any conditions that suppliers must fulfil to participate in the procurement;
- (e) time-limits for submission of tenders and, where appropriate, other time limits;
- (f) main criteria to be used for award of the contract; and
- (g) if possible, terms of payment and any other terms.

Notice Of Planned Procurement

4. Each Party shall encourage its entities to publish as early as possible in each fiscal year, a notice of planned procurement containing information regarding entities' future procurement plans. Such notice should include the subject matter of the procurement and the planned date of the publication of the notice of intended procurement.

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5. Entities operating in the utilities sector may use a notice of planned procurement as a notice of intended procurement, under the condition that such notice contains as much of the information referred to in paragraph 3 as is available, and that it explicitly invites interested suppliers to express their interest in the procurement to the entity.

6. Entities having used a notice of planned procurement as a notice of intended procurement shall subsequently communicate to all suppliers who have expressed an initial interest further information that shall include, at least, the information referred to in paragraph 3 and ask them to confirm their interest on that basis.

Notice Regarding Permanent Lists Of Qualified Suppliers

7. Entities which intend to maintain permanent lists shall, consistently with paragraph 2, publish a notice which shall identify the entity, and indicate the purpose of the permanent list and the availability of the rules concerning its operation, including criteria for qualification and disqualification, as well as its duration.

8. Where the permanent list is of a duration greater than three years, the notice shall be published annually.

9. Entities operating in the utilities sector may use a notice on the existence of permanent lists of qualified suppliers as a notice of intended procurement. In that case, they shall provide, in a timely manner, information which allows all those who have expressed an interest to assess their interest in participating in the procurement. This information shall include the information contained in the notice referred to in paragraph 3, to the extent that such information is available. Information provided to one interested supplier shall be provided in a non-discriminatory manner to the other interested suppliers.

Common Provisions

10. Each notice referred to in this Article shall be accessible during the entire time period established for tendering for the relevant procurement.

11. Entities shall publish the notices in a timely manner through means which offer the widest possible and non-discriminatory access to the interested suppliers of the Parties. These means shall be accessible free of charge through a single point of access specified in Annex XIII, Appendix 2.

Article 148

Tender Documentation

1. Tender documentation provided to suppliers shall contain all information necessary to permit them to submit responsive tenders.

2. Where contracting entities do not offer free direct access to the entire tender documents and any supporting documents by electronic means, entities shall make promptly available the tender documentation at the request of any supplier of the Parties.

3. Entities shall promptly reply to any reasonable request for relevant information relating to the intended procurement, on condition that such information does not give that supplier an advantage over its competitors.

⁽¹⁾ For the purpose of this Title, a technical regulation is a document which lays down characteristics of a product or a service or their related processes and production methods, including the applicable administrative provisions, with which compliance is mandatory. It may also include or deal

exclusively with terminology, symbols, packaging, marking or labelling requirements as they apply to a product, service, process or production method.

(2) For the purpose of this Title, a standard is a document approved by a recognised body, that provides, for common and repeated use, rules, guidelines or characteristics for products or services or related processes and production methods, with which compliance is not mandatory. It may also include or deal exclusively with terminology, symbols, packaging, marking or labelling requirements as they apply to a product, service, process or production method.

Article 149

Technical Specifications

1. Technical specifications shall be set out in the notices, tender documents or additional documents.

2. Each Party shall ensure that its entities do not prepare, adopt or apply any technical specifications with a view to, or with the effect of, creating unnecessary barriers to trade between the Parties.

3. Technical specifications prescribed by entities shall

(a) be in terms of performance and functional requirements rather than design or descriptive characteristics; and

(b) be based on international standards, where these exist or, in their absence, on national technical regulations⁽¹⁾, recognised national standards⁽²⁾, or building codes.

4. The provisions of paragraph 3 do not apply when the entity can objectively demonstrate that the use of technical specifications referred to in that paragraph would be ineffective or inappropriate for the fulfilment of the legitimate objectives pursued.

5. In all cases, entities shall consider bids which do not comply with the technical specifications but meet the essential requirements thereof and are fit for the purpose intended. The reference to technical specifications in the tender documents must include words such as "or equivalent".

6. There shall be no requirement for or reference to a particular trademark or trade name, patent, design or type, specific origin, producer or supplier, unless there is no other sufficiently precise or intelligible way of describing the procurement requirements and provided that words, such as "or equivalent", are included in the tender documentation.

7. The tenderer shall have the burden of proving that his bid meets the essential requirements.

Article 150

Time-Limits

1. All time-limits established by the entities for the receipt of tenders and requests to participate shall be adequate to allow suppliers of the other Party, as well as domestic suppliers, to prepare and to submit tenders, and where appropriate, requests for participation or applications for qualifying. In determining any such time-limit, entities shall, consistent with their own reasonable needs, take into account such factors as the complexity of the intended procurement and the normal time for transmitting tenders from foreign as well as domestic points.

2. Each Party shall ensure that its entities shall take due account of publication delays when setting the final date for receipt of tenders or of request for participation or for qualifying for the supplier's list.

3. The minimum time-limits for the receipt of tenders are specified in Annex XIII, Appendix 3.

Article 151

Negotiations

1. A Party may provide for its entities to conduct negotiations:

(a) in the context of procurements in which they have indicated such intent in the notice of intended procurement; or

(b) when it appears from evaluation that no one tender is obviously the most advantageous in terms of the specific evaluation criteria set forth in the notices or tender documentation.

2. Negotiations shall primarily be used to identify the strengths and weaknesses in tenders.

3. Entities shall not, in the course of negotiations, discriminate between tenderers. In particular, they shall ensure that:

(a) any elimination of participants is carried out in accordance with the criteria set forth in the notices and tender documentation;

(b) all modifications to the criteria and to the technical requirements are transmitted in writing to all remaining participants in the negotiations; and

(c) on the basis of the revised requirements and/or when negotiations are concluded, all remaining participants are afforded an opportunity to submit new or amended tenders in accordance with a common deadline.

Article 152

Submission, Receipt And Opening Of Tenders

1. Tenders and requests to participate in procedures shall be submitted in writing.

2. Entities shall receive and open bids from tenderers under procedures and conditions guaranteeing the respect of the principles of transparency and non-discrimination.

Article 153

Awarding Of Contracts

1. To be considered for award, a tender must, at the time of opening, conform to the essential requirements of the notices or tender documentation and be submitted by a supplier which complies with the conditions for participation.

2. Entities shall make the award to the tenderer whose tender is either the lowest tender or the tender which, in terms of the specific objective evaluation criteria previously set forth in the notices or tender documentation, is determined to be the most advantageous.

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Article 154

Information On Contract Award

1. Each Party shall ensure that its entities provide for effective dissemination of the results of government procurement processes.

2. Entities shall promptly inform tenderers of decisions regarding the award of the contract and of the characteristics and relative advantages of the selected tender. Upon request, entities shall inform any eliminated tenderer of the reasons for the rejection of its tender.

3. Entities may decide to withhold certain information on the contract award where release of such information would prevent law enforcement or otherwise be contrary to the public interest, would prejudice the legitimate commercial interests of suppliers, or might prejudice fair competition between them.

Article 155

Bid Challenges

1. Entities shall accord impartial and timely consideration to any complaints from suppliers regarding an alleged breach of this Title in the context of a procurement procedure.

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

3. Challenges shall be heard by an impartial and independent reviewing authority. A reviewing authority which is not a court shall either be subject to judicial review or shall have procedural guarantees similar to those of a court.

4. Challenge procedures shall provide for:

(a) rapid interim measures to correct breaches of this Title and to preserve commercial opportunities. Such action may result in suspension of the procurement process. However, procedures may provide that overriding adverse consequences for the interests concerned, including the public interest, may be taken into account in deciding whether such measures should be applied; and

(b) if appropriate, correction of the breach of this Title or, in the absence of such correction, compensation for the loss or damages suffered, which may be limited to costs for tender preparation and protest.

Article 156

Information Technology

1. The Parties shall, to the extent possible, endeavour to use electronic means of communication to permit efficient dissemination of information on government procurement,

particularly as regards tender opportunities offered by entities, while respecting the principles of transparency and non-discrimination.

2. With a view to improving access to government procurement markets, each Party shall endeavour to implement an electronic information system, which is compulsory for their respective entities.

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3. The Parties shall encourage the use of electronic means for the transmission of offers.

Article 157

Cooperation And Assistance

The Parties shall endeavour to provide each other with technical cooperation and assistance through the development of training programs with a view to achieving a better understanding of their respective government procurement systems and statistics and better access to their respective markets.

Article 158

Statistical Reports

Where a Party does not ensure an acceptable level of compliance with Article 147(11), it shall, upon request of the other Party, collect and provide to the other Party on an annual basis statistics on its procurements covered by this Title. Such reports shall contain the information established in Annex XIII, Appendix 4.

Article 159

Modifications To Coverage

1. Either Party may modify its coverage under this Title, provided that it:

(a) notifies the other Party of the modification; and

(b) provides the other Party, within 30 days following the date of such notification, appropriate compensatory adjustments to its coverage in order to maintain a level of coverage comparable to that existing prior to the modification.

2. Notwithstanding paragraph 1(b), no compensatory adjustments shall be provided to the other Party where the modification by a Party of its coverage under this Title concerns:

(a) rectifications of a purely formal nature and minor amendments to Annexes XI and XII; or

(b) one or more covered entities on which government control or influence has been effectively eliminated as a result of privatisation or liberalisation.

3. Where appropriate, the Association Committee shall by decision modify the relevant Annex to reflect the modification notified by the Party concerned.

Article 160

Further Negotiations

If either Party should offer in the future a third party additional advantages with regard to access to their respective procurement markets beyond what has been agreed under this Title, it shall

agree to enter into negotiations with the other Party with a view to extending these advantages to it on a reciprocal basis by means of a decision of the Association Committee.
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Article 161

Exceptions

Provided that such measures are not applied in a manner that would constitute a means of arbitrary or unjustifiable discrimination between the Parties or a disguised restriction on trade between them, nothing in this Title shall be construed to prevent any Party from adopting or maintaining measures:

- (a) necessary to protect public morals, order or safety;
- (b) necessary to protect human life, health or security;
- (c) necessary to protect animal or plant life or health;
- (d) necessary to protect intellectual property; or
- (e) relating to goods or services of handicapped persons, of philanthropic institutions or of prison labour.

Article 162

Review And Implementation

The Association Committee shall review the implementation of this Title every two years, unless otherwise agreed by the Parties; it shall consider any issue arising from it, and take appropriate action in the exercise of its functions. It shall, in particular, fulfil the following tasks:

- (a) coordinate exchanges between the Parties regarding the development and implementation of information technology systems in the field of public procurement;
- (b) make appropriate recommendations regarding the cooperation between the Parties; and
- (c) adopt decisions where provided for under this Title.

TITLE V : CURRENT PAYMENTS AND CAPITAL MOVEMENTS

Article 163

Objective And Scope

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

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

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Article 164

Current Account

The Parties shall allow, in freely convertible currency and in accordance with the Articles of Agreement of the International Monetary Fund, any payments and transfers of the Current Account between the Parties.

Article 165

Capital Account

With regard to movement of capital of the Balance of Payments, from the entry into force of this Agreement, the Parties shall allow the free movements of capital relating to direct investments made in accordance with the laws of the host country and investments established in accordance with the provisions of Title III of this Part, and the liquidation or repatriation of these capitals and of any profit stemming therefrom.

Article 166

Exceptions And Safeguard Measures

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

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

Article 167

Final Provisions

1. With respect to this Title, the Parties confirm the rights and obligations existing under any bilateral or multilateral agreements to which they are parties.

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

TITLE VI : INTELLECTUAL PROPERTY RIGHTS

Article 168

Objective

The Parties shall grant and ensure adequate and effective protection of intellectual property rights in accordance with the highest international standards, including effective means of enforcing such rights provided for in international treaties.

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Article 169

Scope

For the purposes of this Agreement, intellectual property rights embodies copyright - including copyright in computer programs and in databases - and related rights, the rights related to patents, industrial designs, geographical indications including appellation of origins, trademarks, layout-designs (topographies) of integrated circuits, as well as protection of undisclosed information and protection against unfair competition as referred to in Article 10 bis of the Paris Convention for the Protection of Industrial Property (Stockholm Act, 1967).

Article 170

Protection Of Intellectual Property Rights

In pursuance of the objectives set out in Article 168, the Parties shall:

- (a) continue to ensure an adequate and effective implementation of the obligations arising from the following conventions:

(i) the Agreement on Trade-related Aspects of Intellectual Property, Annex 1C to the Agreement establishing the World Trade Organisation ("the TRIPs");

(ii) the Paris Convention for the Protection of Industrial Property (Stockholm Act, 1967);

(iii) the Berne Convention for the Protection of Literary and Artistic Works (Paris Act, 1971);

(iv) the Rome Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organisations (Rome, 1961); and

(v) the International Convention for the Protection of New Varieties of Plants 1978 ("1978 UPOV Convention"), or the International Convention for the Protection of New Varieties of Plants 1991 ("1991 UPOV Convention");

(b) by 1 January 2007 accede to and ensure an adequate and effective implementation of the obligations arising from the following multilateral conventions:

(i) the Nice Agreement Concerning the International Classification of Goods and Services for the Purposes of Registration of Marks (Geneva Act, 1977, amended in 1979);

(ii) the World Intellectual Property Organization Copyright Treaty (Geneva, 1996);

(iii) the World Intellectual Property Organization Performances and Phonograms Treaty (Geneva, 1996);

(iv) the Patent Co-operation Treaty (Washington, 1970, amended in 1979 and modified in 1984); and

(v) the 1971 Strasbourg Agreement Concerning the International Patent Classification (Strasbourg 1971, amended in 1979);

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(c) by 1 January 2009 accede to and ensure an adequate and effective implementation of the obligations arising from the following multilateral conventions:

(i) the Convention for the Protection of Producers of Phonograms against the Unauthorised Duplication of their Phonograms (Geneva 1971);

(ii) the Locarno Agreement establishing an International Classification for Industrial Designs (Locarno Union 1968, amended in 1979);

(iii) the Budapest Treaty on the International Recognition of the Deposit of Micro-organisms for the Purposes of Patent Procedure (1977, amended in 1980); and

(iv) the Trademark Law Treaty (Geneva, 1994);

(d) make every effort to ratify and ensure an adequate and effective implementation of the obligations arising from the following multilateral conventions at the earliest possible opportunity:

(i) the Protocol to the Madrid Agreement concerning the International Registration of Marks (1989);

(ii) the Madrid Agreement concerning the International Registration of Marks (Stockholm Act 1967, amended in 1979); and

(iii) the Vienna Agreement establishing an International Classification of Figurative Elements of Marks (Vienna 1973, amended in 1985).

Article 171

Review

While the Parties express their attachment to observing the obligations deriving from the above multilateral conventions, the Association Council may decide to include in Article 170 other multilateral conventions in this field.

TITLE VII : COMPETITION

Article 172

Objectives

1. The Parties undertake to apply their respective competition laws in a manner consistent with this Part of the Agreement so as to avoid the benefits of the liberalisation process in goods and services being diminished or cancelled out by anti-competitive business conduct. To this end, the Parties agree to cooperate and coordinate among their competition authorities under the provisions of this Title.

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

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

Article 173

Definitions

For the purpose of this Title:

1. "competition laws" includes:

(a) for the Community, Articles 81, 82 and 86 of the Treaty establishing the European Community, Regulation (EEC) No 4064/89 and their implementing regulations or amendments;

(b) for Chile, Decreto Ley No 211 of 1973 and Ley No 19.610 of 1999 and their implementing regulations or amendments; and

(c) any changes that the abovementioned legislation may undergo after the entry into force of this Agreement.

2. "competition authority" means:

(a) for the Community, the Commission of the European Communities; and

(b) for Chile, the Fiscalía Nacional Económica and the Comisión Resolutiva.

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

Article 174

Notifications

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

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

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

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

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

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

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

Article 175

Coordination Of Enforcement Activities

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

Article 176

Consultations When The Important Interests Of One Party Are Adversely Affected In The Territory Of The Other Party

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

2. The competition authority of a Party which considers that the interests of that Party are being substantially and adversely affected by anti-competitive practices of whatever origin that are or have been engaged in by one or more enterprises situated in the other Party may request consultations with the competition authority of that Party. Such consultations shall be without prejudice to the full freedom of ultimate decision of the competition authority concerned. A competition authority so consulted may take whatever corrective measures under its competition laws it deems appropriate, consistent with its own domestic law, and without prejudice to its full enforcement discretion.

Article 177

Exchange Of Information And Confidentiality

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

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

3. Each Party shall provide the other Party with information on state aid on an annual basis, including the overall amount of aid and, if possible, the segregation by sector. Each Party may request information on individual cases affecting trade between the Parties. The requested Party will use its best efforts to provide non-confidential information.

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

5. Each competition authority shall maintain the confidentiality of any information provided to it in confidence by the other competition authority, and oppose any application for

disclosure of such information by a third party that is not authorised by the competition authority that supplied the information.

6. In particular, where the laws of a Party so provides, confidential information may be provided to their respective courts of justice, subject to maintaining its confidentiality by the respective courts.

Article 178

Technical Assistance

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

Article 179

Public Enterprises And Enterprises Entrusted With Special Or Exclusive Rights, Including Designated Monopolies

1. Nothing in this Title prevents a Party from designating or maintaining public or private monopolies according to their respective laws.

2. With regard to public enterprises and enterprises to which special or exclusive rights have been granted, the Association Committee shall ensure that, following the date of entry into force of this Agreement, there is neither enacted nor maintained any measure distorting trade in goods or services between the Parties to an extent contrary to the Parties' interests and that such enterprises shall be subject to the rules of competition insofar as the application of such rules does not obstruct the performance, in law or in fact, of the particular tasks assigned to them.

Article 180

Dispute Settlement

Neither Party may have recourse to dispute settlement under this Agreement for any matter arising under this Title.

TITLE VIII : DISPUTE SETTLEMENT CHAPTER I : OBJECTIVE AND SCOPE

Article 181

Objective

The objective of this Title is to avoid and settle disputes between the Parties concerning the good faith application of this Part of the Agreement and to arrive to a mutually satisfactory resolution of any matter that might affect its operation.

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Article 182

Scope

The provisions of this Title shall apply with respect to any matter arising from the interpretation and application of this Part of the Agreement, except otherwise expressly provided.

CHAPTER II : DISPUTE AVOIDANCE

Article 183

Consultations

1. The Parties shall at all times endeavour to agree on the interpretation and application of this Part of the Agreement and shall make every attempt through cooperation and consultations to avoid and settle disputes between them and to arrive at a mutually satisfactory resolution of any matter that might affect its operation.

2. Each Party may request consultations within the Association Committee with respect to an existing or proposed measure or any matter relating to the application or interpretation of this Part of the Agreement or any other matter that it considers might affect its operation. For the purposes of this Title, a "measure" shall also include a practice. The Party shall state in the request the measure or other matter complained of, indicate the provisions of this Agreement that it considers applicable and deliver the request to the other Party.

3. The Association Committee shall convene within 30 days of delivery of the request. Upon initiation of consultations, the Parties shall provide information to enable the examination of how the measure or any other matter might affect the operation and application of this Part of the Agreement, and give confidential treatment to the information exchanged during consultations. The Association Committee shall endeavour to resolve the dispute promptly by means of a decision. That decision shall specify the implementing measures to be taken by the Party concerned, and the timeframe for doing so.

CHAPTER III : DISPUTE SETTLEMENT PROCEDURE

Article 184

Initiation Of The Procedure

1. Parties shall at all times endeavour to reach a mutually satisfactory agreement on the dispute.

2. Where a Party considers that an existing measure of the other Party is in breach of an obligation under the provisions referred to in Article 182 and such matter has not been resolved within 15 days after the Association Committee has convened pursuant to Article 183(3) or 45 days after the delivery of the request for consultations within the Association Committee, whichever is earlier, it may request in writing the establishment of an arbitration panel.

3. The complaining Party shall state in the request the existing measure it considers to be in breach of this Part of the Agreement and indicate the provisions of this Agreement that it considers relevant, and shall deliver the request to the other Party and to the Association Committee.

Article 185

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Appointment Of Arbitrators

1. Arbitration panels shall consist of three arbitrators.

2. The Association Committee shall, no later than six months after the entry into force of this Agreement, establish a list of at least 15 individuals who are willing and able to serve as arbitrators, a third of whom must not be national of either Party and are identified as chairperson of arbitration panels. The Association Committee shall ensure that the list always contains 15 individuals at any point in time. Those individuals shall have specialised knowledge or experience in law, international trade or other matters relating to this Part of the Agreement or in the resolution of disputes deriving from international trade agreements, be independent, serve in their individual capacities and not be affiliated with, nor take instructions from, any Party or organisation and shall comply with the Code of Conduct set out in Annex XVI. Such list may be amended every three years.

3. Within three days of the request for the establishment of the arbitration panel, the three arbitrators shall be selected by lot by the chairperson of the Association Committee from the list referred to in paragraph 2, one among the individuals proposed to the Association Committee by the complaining Party, one among the individuals proposed to the Association Committee by the Party complained against and the chairperson among the individuals identified for that purpose under paragraph 2.

4. The date of establishment of the arbitration panel shall be the date on which the three arbitrators are selected by lot.

5. Where a Party considers that an arbitrator does not comply with the requirements of the Code of Conduct, the Parties shall consult and, if so agreed, they shall replace that arbitrator and select a new one pursuant to paragraph 6.

6. If an arbitrator is unable to participate in the proceeding, withdraws or is replaced, a replacement shall be selected within three days in accordance with the selection procedure followed to select that arbitrator. In such a case, any timeframe applicable to the arbitration panel proceeding shall be suspended for a period beginning on the date the arbitrator is unable to participate in the proceeding, withdraws or is replaced and ending on the date the replacement is selected.

Article 186

Information And Technical Advice

At the request of a Party or on its own initiative, the panel may obtain the information and technical advice of persons and bodies that it deems appropriate. Any information so obtained shall be submitted to the Parties for comments.

Article 187

Arbitration Panel Ruling

1. The arbitration panel shall transmit its ruling containing its findings and conclusions to the Parties and the Association Committee, as a general rule not later than three months from the date of establishment of the arbitration panel. In no case should it do so later than five months from this date. The arbitration panel shall base its ruling on the submissions and communications of the Parties and on any information it has received pursuant to Article 186. The ruling is final and shall be publicly available.

2. The ruling shall set out the findings of fact, the applicability of the relevant provisions of this Agreement and the basic rationale behind any findings and conclusions that it makes.

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3. Arbitration panels shall interpret the provisions of this Agreement in accordance with customary rules of interpretation of public international law, due account being taken of the fact that the Parties must perform this Agreement in good faith and avoid circumvention of their obligations.

4. A Party asserting that a measure of the other Party is inconsistent with the provisions of this Part of the Agreement shall have the burden of establishing such inconsistency. A Party asserting that a measure is subject to an exception under this Part of the Agreement shall have the burden of establishing that the exception applies.

5. In cases of urgency, including those involving perishable goods, the arbitration panel shall make every effort to issue its ruling to the Parties within 75 days from the date of establishment of the arbitration panel. In no case should it do so later than four months from that date. The arbitration panel may give a preliminary ruling on whether a case is urgent.

6. All decisions of the arbitration panel, including the adoption of the ruling and of any preliminary ruling, shall be taken by majority vote.

7. The complaining Party may, with the agreement of the Party complained against, withdraw its complaint at any time before the ruling is transmitted to the Parties and the Association Committee. Such withdrawal is without prejudice to its right to introduce a new complaint regarding the same matter at a later point in time.

8. The arbitration panel may, with the agreement of the Party complained against, suspend its work at any time at the request of the complaining Party for a period not to exceed 12 months. In the event of such a suspension, the time-frames set out in paragraphs 1 and 5 shall be extended by the amount of time that the work was suspended. If the work of the panel has been suspended for more than 12 months, the authority for establishment of the panel shall lapse, without prejudice to the right of the complaining Party to request at a later stage the establishment of an arbitration panel on the same subject matter.

Article 188

Compliance

1. Each Party shall be bound to take the measures necessary to comply with the ruling of the arbitration panel.

2. The Parties shall endeavour to agree on the specific measures that are required for complying with the ruling.

3. Within 30 days after the ruling has been transmitted to the Parties and the Association Committee, the Party complained against shall notify the other Party:

(a) of the specific measures required for complying with the ruling;

(b) of the reasonable timeframe for doing so; and

(c) of a concrete proposal for a temporary compensation until the full implementation of the specific measures required for compliance with the ruling.

4. In the event of disagreement between the Parties on the content of such notification, the complaining Party shall request the original arbitration panel to rule on whether the proposed measures referred to under paragraph 3(a) would be consistent with this Part of the Agreement, on the duration of the timeframe and on whether the compensation proposal is manifestly disproportionate. The ruling shall be given within 45 days after that request.

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5. The Party concerned shall notify to the other Party and to the Association Committee the implementing measures adopted in order to put an end to the violation of its obligations under this Part of the Agreement, before the expiry of the reasonable timeframe agreed by the Parties or determined in accordance with paragraph 4. Upon that notification, that other Party may request

the original arbitration panel to rule on the conformity of those measures with this Part of the Agreement if they are not similar to the measures which the arbitration panel, acting under paragraph 4, has ruled that they would be consistent with this Part of the Agreement. The ruling of the arbitration panel shall be given within 45 days from that request.

6. If the Party concerned fails to notify the implementing measures before the expiry of the reasonable timeframe or if the arbitration panel rules that the implementing measures notified by the Party concerned are inconsistent with its obligations under this Part of the Agreement, the complaining Party shall, if no agreement on compensation has been found, be entitled to suspend the application of benefits granted under this Part of the Agreement equivalent to the level of nullification and impairment caused by the measure found to violate this Part of the Agreement.

7. In considering what benefits to suspend, a complaining Party should first seek to suspend benefits in the same Title or Titles of this Part of the Agreement as that affected by the measure that the arbitration panel has found to violate this Part of the Agreement. A complaining Party that considers that it is not practicable or effective to suspend benefits in the same Title or Titles may suspend benefits in other Titles, provided it submits written justification. In the selection of the benefits to suspend, priority must be given to those which least disturb the functioning of this Agreement.

8. The complaining Party shall notify the other Party and the Association Committee of the benefits which it intends to suspend. Within five days from that notification, the other Party may request the original arbitration panel to rule on whether the benefits which the complaining Party intends to suspend are equivalent to the level of nullification and impairment caused by the measure found to violate this Part of the Agreement, and whether the proposed suspension is in accordance with paragraph 7. The ruling of the arbitration panel shall be given within 45 days from that request. Benefits shall not be suspended until the arbitration panel has issued its ruling.

9. The suspension of benefits shall be temporary and shall only be applied by the complaining Party until the measure found to violate this Part of the Agreement has been withdrawn or amended so as to bring it into conformity with this Part of the Agreement, or the Parties have reached agreement on a resolution of the dispute.

10. At the request of any of the Parties, the original arbitration panel shall rule on the conformity with this Part of the Agreement of any implementing measures adopted after the suspension of benefits and, in the light of such ruling, whether the suspension of benefits should be terminated or modified. The ruling of the arbitration panel shall be given within 45 days from the date of that request.

11. The rulings provided for in this Article shall be final and binding. They shall be transmitted to the Association Committee and be publicly available.

CHAPTER IV : GENERAL PROVISIONS

Article 189

General Provisions

1. Any time-period mentioned in this Title may be modified by mutual agreement of the Parties.

2. Unless the Parties otherwise agree, the procedure before the arbitration panel shall be governed by the Model Rules of Procedure set out in Annex XV. The Association Committee may, whenever it considers necessary, amend the Model Rules of Procedure and the Code of Conduct set out in Annex XVI, by means of a decision.

3. The hearings of the arbitration panels shall be closed to the public, unless the Parties decide otherwise.

4. (a) When a Party seeks redress of a violation of an obligation under the WTO Agreement, it shall have recourse to the relevant rules and procedures of the WTO Agreement, which apply notwithstanding the provisions of this Agreement.

(b) When a Party seeks redress of a violation of an obligation under this Part of the Agreement, it shall have recourse to the rules and procedures of this Title.

(c) Unless the Parties otherwise agree, when a Party seeks redress of a violation of an obligation under this Part of the Agreement which is equivalent in substance to an obligation under the WTO, it shall have recourse to the relevant rules and procedures of the WTO Agreement, which apply notwithstanding the provisions of this Agreement.

(d) Once dispute settlement procedures have been initiated, the forum selected, if it has not declined its jurisdiction, shall be used to the exclusion of the other. Any question on the jurisdiction of the arbitration panels established under this Title shall be raised within 10 days of the establishment of the panel, and shall be settled by a preliminary ruling of the panel within 30 days of the establishment of the panel.

TITLE IX : TRANSPARENCY

Article 190

Contact Points And Exchange Of Information

1. In order to facilitate communication between the Parties on any trade matter covered by this Part of the Agreement, each Party shall designate a contact point. On the request of either Party, the contact point of the other Party shall indicate the office or official responsible for the matter and provide the required support to facilitate communication with the requesting Party.

2. On request of the other Party, and to the extent possible under its domestic laws and principles, each Party shall provide information and reply to any question from the other Party relating to an actual or proposed measure that might substantially affect the operation of this Part of the Agreement.

3. The information referred to under this Article shall be considered to have been provided when the information has been made available by appropriate notification to the WTO or when the information has been made available on the official, publicly and fee-free accessible website of the Party concerned.

Article 191

Cooperation On Increased Transparency

The Parties agree to cooperate in bilateral and multilateral fora on ways to increase transparency in trade matters.

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Article 192

Publication

Each Party shall ensure that its laws, regulations, procedures and administrative rulings of general application relating to any trade matter covered by this Part of the Agreement are promptly published or made publicly available.

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

Article 193

Specific Tasks

1. When the Association Committee performs any of the tasks conferred upon it in this Part of the Agreement, it shall be composed of representatives of the Community and Chile with a responsibility for trade-related matters, normally at senior official level.

2. Notwithstanding the provisions of Article 6, the Association Committee shall have, in particular, the following functions:

(a) to supervise the implementation and proper application of the provisions of this Part of the Agreement, as well as of any other instrument agreed by the Parties concerning trade-related matters, within the framework of this Agreement;

(b) to oversee the further elaboration of the provisions of this Part of the Agreement and evaluate the results obtained in its application;

(c) to resolve disputes that may arise regarding the interpretation or application of this Part of the Agreement, in accordance with the provisions of Article 183;

(d) to assist the Association Council in the performance of its functions regarding trade-related matters;

(e) to supervise the work of all the special committees established under this Part of the Agreement;

(f) to carry out any other function assigned to it under this Part of the Agreement or entrusted to it by the Association Council, concerning trade-related matters; and

(g) to report annually to the Association Council.

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

(a) set up any special committees or bodies to deal with matters falling within its competence, and determine their composition and duties, and their rules of procedure;

(b) meet at any time agreed by the Parties;

(c) consider any issues regarding trade-related matters, and take appropriate action in the exercise of its functions; and

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(d) take decisions or make recommendations on trade-related matters, in accordance with Article 6.

4. Pursuant to Articles 5 and 6(4), the Parties shall implement decisions resulting from the application of Articles 60(5) and 74 and Article 38 of Annex III in accordance with Annex XVII.

TITLE XI : EXCEPTIONS IN THE AREA OF TRADE

Article 194

National Security Clause

1. Nothing in this Agreement shall be construed:

(a) to require a Party to furnish any information the disclosure of which it considers contrary to its essential security interests;

(b) to prevent a Party from taking any action which it considers necessary for the protection of its essential security interests

(i) relating to fissionable and fusionable materials or the materials from which they are derived;

(ii) relating to the traffic in arms, ammunition and implements of war and to such traffic in other goods and materials or relating to the supply of services, as carried on directly or indirectly for the purpose of supplying or provisioning a military establishment;

(iii) relating to government procurement indispensable for national security or for national defence purposes; or

(iv) taken in time of war or other emergency in international relations; or

(c) to prevent a Party from taking any action in pursuance of its obligations under the United Nations Charter for the maintenance of international peace and security.

2. The Association Committee shall be informed to the fullest extent possible of measures taken under paragraphs 1(b) and (c) and of their termination.

Article 195

Balance Of Payments Difficulties

1. Where a Party is in serious balance of payments and external financial difficulties, or under threat thereof, it may adopt or maintain restrictive measures with regard to trade in goods and in services and with regard to payments and capital movements, including those related to direct investment.

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

3. Any restrictive measure adopted or maintained under this Article shall be non-discriminatory and of limited duration and shall not go beyond what is necessary to remedy the balance of payments and external financial situation. They shall be in accordance with the conditions established in the

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WTO Agreements and consistent with the Articles of Agreement of the International Monetary Fund, as applicable.

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

5. The Party applying restrictive measures shall consult promptly within the Association Committee. Such consultations shall assess the balance of payments situation of the Party concerned and the restrictions adopted or maintained under this Article, taking into account, *inter alia*, such factors as:

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

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

Article 196

Taxation

1. Nothing in this Part of the Agreement or in any arrangement adopted under this Agreement shall be construed to prevent the Parties from distinguishing, in the application of the relevant provisions of their fiscal legislation, between taxpayers who are not in the same situation, in particular with regard to their place of residence or with regard to the place where their capital is invested.

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

3. Nothing in this Part of the Agreement shall affect the rights and obligations of either Party under any tax convention. In the event of any inconsistency between this Agreement and any such convention, that convention shall prevail to the extent of the inconsistency.