

PART SIX – ADMINISTRATIVE AND INSTITUTIONAL PROVISIONS

CHAPTER 16: TRANSPARENCY

Article 16-01

Definitions

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

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

Article 16-02

Contact Points

1. Each Party shall designate a contact point to facilitate communications between the Parties on any matter covered by this Agreement.
2. On the request of the other Party, the contact point shall identify the office or official responsible for the matter and assist, as necessary, in facilitating communication with the requesting Party.

Article 16-03

Publication

1. Each Party shall ensure that its laws, regulations, procedures and administrative rulings of general application respecting any matter covered by this Agreement are promptly published or otherwise made available in such a manner as to enable the other Party and interested persons to become acquainted with them.
2. To the extent possible, each Party shall:
 - (a) publish in advance any such measure that it proposes to adopt; and
 - (b) provide interested persons and the other Party a reasonable opportunity to comment on such proposed measures.

Article 16-04

Notification and Provision of Information

1. To the extent possible, each Party shall notify the other Party of any proposed or actual measure that the Party considers might affect or substantially affects the other Party's interests under this Agreement.
2. On request of the other Party, a Party shall provide information and respond promptly to questions pertaining to any actual or proposed measure, whether or not the other Party has been previously notified of that measure.
3. Any notification or information provided under this Article shall be without prejudice as to whether the measure is consistent with this Agreement.

Article 16-05

Administrative Proceedings

With a view to administering in a consistent, impartial and reasonable manner all measures of general application affecting matters covered by this Agreement, each Party shall ensure that in its administrative proceedings applying measures referred to in Article 16-03 to particular persons, goods or services of the other Party in specific cases that:

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

Article 16-06

Review and Appeal

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

CHAPTER 17: ADMINISTRATION OF THE AGREEMENT

Article 17-01

Free Trade Commission

1. The Parties hereby establish the Free Trade Commission, comprising the officials mentioned in Annex 17-01(1) or their designees.
2. The Commission shall:
 - (a) supervise the adequate implementation of this Agreement;
 - (b) evaluate the results of the implementation of this Agreement;
 - (c) resolve disputes that may arise regarding its interpretation or application;
 - (d) supervise the work of all committees, sub-committees and working groups established under this Agreement, referred to in Annex 17-01(2); and
 - (e) consider any other matter that may affect the operation of this Agreement and any other matter referred to it by the Parties.
3. The Commission may:

- (a) establish, and delegate responsibilities to, ad hoc or standing committees or expert groups;
- (b) seek the advice of non-governmental persons or groups;
- (c) modify the following in accordance with Annex 17-01(3):
 - (i) the rules of origin set out in Annex 4-03 (Specific Rules of Origin),
 - (ii) the terms set out in Annex 3-04(3) (Tariff Reduction Programme) to accelerate tariff elimination,
 - (iii) the schedule of products of a Party set out in Annex 3-04(4) (Exceptions) to include one or more goods on that schedule in Annex 3-04(3) (Tariff Reduction Programme),
 - (iv) the Uniform Regulations; and
- (d) take such other action in the exercise of its functions as the Parties may agree.

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

5. The Commission shall convene at least once a year. The meetings shall be chaired alternately by each Party.

Article 17-02

The Secretariat

1. The Commission shall establish and oversee a Secretariat comprising national Sections.

2. Each Party shall:

- (a) establish a permanent office of its Section;
- (b) be responsible for:
 - (i) the operation and costs of its Section, and
 - (ii) the remuneration and payment of expenses of panellists, their assistants, experts and members of the scientific review boards established under this Agreement, as set out in Annex 17-02;
- (c) designate an individual to serve as Secretary for its Section, who shall be responsible for its administration and management; and

- (d) notify the Commission of the location of its Section's office.
- 3. The Secretariat shall:
 - (a) provide assistance to the Commission;
 - (b) provide administrative assistance to panels established under Chapter 18 (Dispute Settlement), in accordance with procedures established pursuant to Article 18-10 (Model Rules of Procedure);
 - (c) as the Commission may direct, support the work of other committees, sub-committees and groups of experts established under this Agreement; and
 - (d) carry out other functions referred by the Commission.

CHAPTER 18: DISPUTE SETTLEMENT

Section A – Dispute Settlement

Article 18-01

Cooperation

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

Article 18-02

Scope and Coverage

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

- (a) with respect to the avoidance or settlement of all disputes between the Parties regarding the application or interpretation of this Agreement; and
- (b) wherever a Party considers that an actual or proposed measure of the other Party is or would be inconsistent with the obligations of this Agreement or cause nullification or impairment in the sense of Annex 18-02.

Article 18-03

WTO Dispute Settlement

1. Any matter arising under both this Agreement, the WTO Agreement and any agreement negotiated thereunder may be settled in either forum at the discretion of the complaining Party.
2. Once dispute settlement proceedings have been initiated under Article 18-05 or under the WTO Agreement, the forum selected shall be used to the exclusion of the other, unless a Party makes a request pursuant to paragraph 3.
3. In any dispute referred to in paragraph 1, where the responding Party claims that its action is subject to Article 1-06 (Relation to Environmental and Conservation Agreements) and requests in writing that the matter be considered under this Agreement, the complaining Party may, in respect of that matter, thereafter have recourse to dispute settlement procedures solely under this Agreement.
4. The responding Party shall deliver a copy of a request made pursuant to paragraph 3 to the other Party and its Section of the Secretariat. Where the complaining Party has initiated dispute settlement proceedings regarding any matter subject to paragraph 3, the responding Party shall deliver its request no later than 15 days thereafter. On receipt of such request, the complaining Party shall promptly withdraw from participation in those proceedings and may initiate dispute settlement procedures under Article 18-05.
5. For purposes of this Article, dispute settlement proceedings under the WTO Agreement are deemed to be initiated by a Party's request for a panel, such as under Article 6 of the Understanding on Rules and Procedures Governing the Settlement of Disputes, which is part of the WTO Agreement.

Consultations

Article 18-04

Consultations

1. A Party may request in writing consultations with the other Party regarding any actual or proposed measure or any other matter that it considers might affect the operation of this Agreement.
2. The requesting Party under paragraph 1 shall deliver the request to its Section of the Secretariat and the other Party.
3. Consultations on matters regarding perishable agricultural goods shall commence within 15 days of the date of delivery of the request.
4. The Parties shall:
 - (a) provide information to enable an examination of how the actual or proposed measure or other matter might affect the operation of this Agreement; and

- (b) treat any confidential information exchanged in the course of consultations on the same basis as the Party providing the information.

5. The Parties, by mutual agreement, may directly request that the Commission meet in accordance with Article 18-05, even where the consultations provided for in this Article have not been held.

Initiation of Procedures

Article 18-05

Commission - Good Offices, Conciliation and Mediation

1. If the Parties fail to resolve a matter pursuant to Article 18-04 within:
 - (a) 30 days of delivery of a request for consultations,
 - (b) 15 days of delivery of a request for consultations in matters regarding perishable agricultural goods, or
 - (c) such other period as they may agree,

either Party may request in writing a meeting of the Commission.

2. A Party may also request in writing a meeting of the Commission where:
 - (a) it has initiated dispute settlement proceedings under the WTO Agreement regarding any matter subject to Article 18-03(3) and has received a request pursuant to Article 18-03(4) for recourse to dispute settlement procedures under this Chapter; or
 - (b) consultations have been held pursuant to Article 7-12(4) (Technical Consultations).

3. The requesting Party shall state in the request the measure or other matter complained of and indicate the provisions of this Agreement that it considers relevant, and shall deliver the request to its Section of the Secretariat and the other Party.

4. Unless it decides otherwise, the Commission shall convene within 10 days of delivery of the request and shall endeavour to resolve the dispute promptly. The Commission may:

- (a) call on such technical advisers or create such expert groups as it deems necessary,
- (b) have recourse to good offices, conciliation, mediation or such other dispute resolution procedures, or

- (c) make recommendations,

as may assist the Parties to reach a mutually satisfactory resolution of the dispute.

5. Unless it decides otherwise, the Commission shall consolidate two or more proceedings before it pursuant to this Article regarding the same measure. The Commission may consolidate two or more proceedings regarding other matters before it pursuant to this Article that it determines are appropriate to be considered jointly.

Panel Proceedings

Article 18-06

Request for an Arbitral Panel

1. If the Commission has convened pursuant to Article 18-05(4) and the matter has not been resolved within:

- (a) 30 days thereafter,
- (b) 30 days after the Commission has convened in respect of the matter most recently referred to it, where proceedings have been consolidated pursuant to Article 18-05(5), or
- (c) such other period as the Parties may agree,

a Party may request in writing the establishment of an arbitral panel. The requesting Party shall deliver the request to its Section of the Secretariat and the other Party.

2. On delivery of the request, the Commission shall establish an arbitral panel.

3. Unless otherwise agreed by the Parties, the panel shall be established and perform its functions in a manner consistent with the provisions of this Chapter.

Article 18-07

Roster

1. By agreement, the Parties shall establish by 1 October 1998 at the latest a roster of up to 20 individuals, four whom must not be citizens of either of the Parties, who are willing and able to serve as panellists. The roster may be modified every three years.

2. Roster members shall:

- (a) have expertise or experience in law, international trade, other matters covered by this Agreement or the resolution of disputes arising under international trade agreements;

- (b) be chosen strictly on the basis of objectivity, reliability and sound judgement;
- (c) be independent of, and not be affiliated with or take instructions from, any Party; and
- (d) comply with a code of conduct to be established by the Commission.

Article 18-08

Qualifications of Panellists

1. All panellists shall meet the qualifications set out in Article 18-07(2).
2. Individuals may not serve as panellists for a dispute in which they have participated pursuant to Article 18-05(4).

Article 18-09

Panel Selection

1. The panel shall comprise five members.
2. The Parties shall endeavour to agree on the chair of the panel within 15 days of the delivery of the request for the establishment of the panel. If the Parties are unable to agree on the chair within this period, the Party chosen by lot shall select within five days as chair an individual who is not a citizen of the Party making the selection.
3. Within 15 days of selection of the chair, each Party shall select two panellists who are citizens of the other Party.
4. If a Party fails to select its panellists within the period established in paragraph 3, such panellists shall be selected by lot from among the roster members who are citizens of the other Party.
5. Panellists shall normally be selected from the roster. A Party may exercise a peremptory challenge against any individual not on the roster who is proposed as a panellist by the other Party within 15 days after the individual has been proposed.
6. If a Party believes that a panellist is in violation of the code of conduct, the Parties shall consult and if they agree, the panellist shall be removed and a new panellist shall be selected in accordance with this Article.

Article 18-10

Model Rules of Procedure

1. The Commission shall establish, by 1 October 1998 at the latest, Model Rules of Procedure, in accordance with the following principles:

- (a) the procedures shall assure a right to at least one hearing before the panel as well as the opportunity to provide initial and rebuttal written submissions; and
 - (b) the panel's hearings, deliberations and initial report, and all written submissions to and communications with the panel shall be confidential.
- 2. Unless the Parties otherwise agree, the panel shall conduct its proceedings in accordance with the Model Rules of Procedure.
- 3. The Commission may amend from time to time the Model Rules of Procedure referred to in paragraph 1.
- 4. Unless the Parties otherwise agree within 20 days from the date of the delivery of the request for the establishment of the panel, the terms of reference shall be:

“To examine, in the light of the relevant provisions of the Agreement, the matter referred to the Commission, as set out in the request for a Commission meeting, and to issue the reports referred to in Articles 18-13 and 18-14.”
- 5. If the complaining Party wishes to argue that a matter has nullified or impaired benefits, the terms of reference shall so indicate.
- 6. If a Party wishes the panel to make findings as to the degree of adverse trade effects on a Party of any measure found not to conform with the obligations of the Agreement or to have caused nullification or impairment in the sense of Annex 18-02, the terms of reference shall so indicate.

Article 18-11

Role of Experts

On request of a Party, or on its own initiative, the panel may seek information and technical advice from any person or body that it deems appropriate.

Article 18-12

Scientific Review Boards

- 1. On request of a Party or, unless the Parties disapprove, on its own initiative, the panel may request a written report of a scientific review board on any factual issue concerning environmental, health, safety or other scientific matters raised by a Party in a proceeding, subject to such terms and conditions as the Parties may agree.

2. The board shall be selected by the panel from among highly qualified, independent experts in the scientific matters, after consultations with the Parties and in accordance with the Model Rules of Procedure.

3. The Parties shall be provided:

- (a) advance notice of, and an opportunity to provide comments to the panel on, the factual issues to be referred to the board; and
- (b) a copy of the board's report and an opportunity to provide comments on the report to the panel.

4. The panel shall take the board's report and any comments by the Parties on the report into account in the preparation of its report.

Article 18-13

Initial Report

1. Unless the Parties otherwise agree, the panel shall base its initial report on the submissions and arguments of the Parties and on any information before it pursuant to Articles 18-11 and 18-12.

2. Unless the Parties otherwise agree, the panel shall, within 90 days after the last panellist is selected, present to the Parties an initial report containing:

- (a) findings of fact, including any findings pursuant to a request under Article 18-10(6);
- (b) its determination as to whether the measure at issue is or would be inconsistent with the obligations of this Agreement or cause nullification or impairment in the sense of Annex 18-02, or any other determination requested in the terms of reference; and
- (c) its recommendations, if any, for resolution of the dispute.

3. Panellists may furnish separate opinions on matters not unanimously agreed.

4. A Party may submit written comments to the panel on its initial report within 14 days of presentation of the report.

5. In such an event, and after considering such written comments, the panel, on its own initiative or on the request of a Party, may:

- (a) make any further examination that it considers appropriate; and
- (b) reconsider its report.

Article 18-14

Final Report

1. The panel shall present to the Commission a final report, including any separate opinions on matters not unanimously agreed, within 30 days of presentation of the initial report, unless the Parties otherwise agree.
2. The Parties may send written comments on the final report to the Commission.
3. No panel may, either in its initial report or its final report, disclose which panellists are associated with majority or minority opinions.
4. Unless the Commission decides otherwise, the final report of the panel shall be published 15 days after it is transmitted to the Commission.

Implementation of Panel Final Reports

Article 18-15

Implementation of Final Reports

1. The final report of the panel shall be binding on the Parties. Unless the Parties otherwise agree, they shall implement the final report in the terms and conditions ordered in it.
2. Where a final report by an arbitral panel finds that the measure is non-conforming with this Agreement or causes nullification or impairment in the sense of Annex 18-02., the Party complained against shall, wherever possible, not implement the measure or remove it.

Article 18-16

Non-Implementation - Suspension of Benefits

1. The complaining Party may suspend application of benefits of equivalent effect to the Party complained against if the panel determines:
 - (a) that a measure is inconsistent with the obligations of this Agreement and the Party complained against fails to comply with the final report within 30 days of its receipt; or
 - (b) that a measure is the cause nullification or impairment in the sense of Annex 18-02 and the Parties are unable to reach a mutually satisfactory settlement of the dispute within 30 days of receipt of the final report.

2. Benefits shall be suspended until such time as the Party complained against complies with the final report of the arbitral panel or until the Parties reach a mutually satisfactory settlement of the dispute.
3. In considering what benefits to suspend pursuant to paragraph 1:
 - (a) the complaining Party should first seek to suspend benefits in the same sector or sectors as that affected by the measure or other matter that the panel has found to be inconsistent with the obligations of this Agreement or to have caused nullification or impairment in the sense of Annex 18-02; and
 - (b) if the complaining Party considers that it is not practicable or effective to suspend benefits in the same sector or sectors, it may suspend benefits in other sectors.
4. On the written request of a Party delivered to the other Party and its Section of the Secretariat, the Commission shall establish a panel to determine whether the level of benefits suspended by a Party pursuant to paragraph 1 is manifestly excessive.
5. The panel proceedings under paragraph 4 shall be conducted in accordance with the Model Rules of Procedure. The panel shall present its determination within 60 days after the last panellist is selected or such other period as the Parties may agree.

Section B - Domestic Proceedings and Private Commercial Dispute Settlement

Article 18-17

Referrals of Matters from Judicial or Administrative Proceedings

1. If an issue of interpretation or application of this Agreement arises in any domestic judicial or administrative proceeding of a Party, that the other Party considers would merit its intervention, or if a court or administrative body of a Party solicits the views of the other Party, the Party in whose territory the body is located shall notify the other Party and its Section of the Secretariat. The Commission shall endeavour to agree on an appropriate response as expeditiously as possible.
2. The Party in whose territory the court or administrative body is located shall submit any agreed interpretation of the Commission to the court or administrative body in accordance with the rules of that forum.
3. If the Commission is unable to agree, each Party may submit its own views to the court or administrative body in accordance with the rules of that forum.

Article 18-18

Private Rights

Neither Party may provide for a right of action under its domestic law against the other Party on the ground that a measure of the other Party is inconsistent with this Agreement.

Article 18-19

Alternative Dispute Resolution

1. Each Party shall, to the maximum extent possible, encourage and facilitate the use of arbitration and other means of alternative dispute resolution for the settlement of international commercial disputes between private parties in the free trade area.
2. Each Party shall provide appropriate procedures to ensure observance of agreements to arbitrate and for the recognition and enforcement of arbitral awards in such disputes. To this end, the Parties shall conform to the 1958 United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards or the 1975 Inter-American Convention on International Commercial Arbitration.
3. The Commission shall establish an Advisory Committee on Private Commercial Disputes comprising persons with expertise or experience in the resolution of private international commercial disputes. The Committee shall report and provide recommendations to the Commission on general issues referred to it by the Commission respecting the availability, use and effectiveness of arbitration and other procedures for the resolution of such disputes in the free trade area.

CHAPTER 19: EXCEPTIONS

Article 19-01

Definitions

For the purposes of this Chapter:

international capital transactions means “international capital transactions” as defined under the Articles of Agreement of the IMF;

IMF means the International Monetary Fund;

payments for current international transactions means “payments for current international transactions” as defined under the Articles of Agreement of the IMF;

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

taxes and taxation measures do not include:

- (a) a “customs duty” as defined in Article 2-01 (Definitions of General Application); or
- (b) the measures listed in exceptions (b), (c) and (d) of that definition; and

transfers means international transactions and related international transfers and payments.

Article 19-02

General Exceptions

1. Article XX of the GATT 1994 and its interpretative notes are incorporated into and made part of this Agreement for the purposes of:

- (a) Part Two (Trade in Goods), except to the extent that a provision of that Part applies to services or investment;
- (b) Chapter 7 (Sanitary and Phytosanitary Measures), except to the extent that a provision of that Chapter applies to services or investment; and
- (c) Chapter 8 (Standardization-Related Measures), except to the extent that a provision of that Chapter applies to services.

2. Article XIV (a), (b) and (c) of GATS, is incorporated into and made part of this Agreement for the purposes of:

- (a) Part Two (Trade in Goods), to the extent that a provision of that Part applies to services;
- (b) Part Three (Technical Standards);
- (c) Chapter 10 (Cross-Border Trade in Services);
- (d) Chapter 11 (Air Transportation Services); and
- (e) Chapter 12 (Telecommunications).

Article 19-03

National Security

1. Nothing in this Agreement shall be construed:
 - (a) to require either Party to furnish or allow access to any information the disclosure of which it determines to be contrary to its essential security interests;
 - (b) to prevent either Party from taking any actions that it considers necessary for the protection of its essential security interests:
 - (i) relating to the traffic in arms, ammunition and implements of war and to such traffic and transactions in other goods, materials, services and technology undertaken directly or indirectly for the purpose of supplying a military or other security establishment,
 - (ii) taken in time of war or other emergency in international relations, or
 - (iii) relating to the implementation of national policies or international agreements respecting the non-proliferation of nuclear weapons or other nuclear explosive devices; or
 - (c) to prevent either Party from taking action in pursuance of its obligations under the United Nations Charter for the maintenance of international peace and security.

Article 19-04

Exceptions to Disclosure of Information

Nothing in this Agreement shall be construed to require a Party to furnish or allow access to information the disclosure of which would impede compliance with or be contrary to its Constitution or laws protecting personal privacy or the financial affairs and accounts of individual customers of financial institutions.

Article 19-05

Taxation

1. Except as set out in this Article, nothing in this Agreement shall apply to taxation measures.
2. Nothing in this Agreement shall affect the rights and obligations of 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.
3. Notwithstanding paragraph 2:
 - (a) Article 3-03 (National Treatment) and such other provisions of this Agreement as are necessary to give effect to that Article shall apply to taxation measures to the same extent as does Article III of the GATT 1994; and
 - (b) Article 3-11 (Export Taxes) shall apply to taxation measures.
4. Article 9-11 (Expropriation and Compensation) shall apply to taxation measures except that no investor may invoke that Article as the basis for a claim under Article 9-17 (Claim by an Investor of a Party on Its Own Behalf) or 9-18 (Claim by an Investor of a Party on Behalf of an Enterprise), where it has been determined pursuant to this paragraph that the measure is not an expropriation. The investor shall refer the issue of whether the measure is not an expropriation for a determination to the appropriate competent authorities set out in Annex 19-05 at the time that it gives notice under Article 9-20 (Notice of Intent to Submit a Claim to Arbitration). If the competent authorities do not agree to consider the issue or, having agreed to consider it, fail to agree that the measure is not an expropriation within a period of six months of such referral, the investor may submit its claim to arbitration under Article 9-21 (Submission of a Claim to Arbitration).

Article 19-06

Balance of Payments

1. Nothing in this Agreement shall be construed to prevent a Party from adopting or maintaining measures that restrict transfers where the Party experiences serious balance of payments difficulties, or the threat thereof, and such restrictions are consistent with this Article.

2. As soon as practicable after a Party imposes a measure under this Article, the Party shall:

- (a) submit any current account exchange restrictions to the IMF for review under Article VIII of the Articles of Agreement of the IMF;
- (b) enter into good faith consultations with the IMF on economic adjustment measures to address the fundamental underlying economic problems causing the difficulties; and
- (c) adopt or maintain economic policies consistent with such consultations.

3. A measure adopted or maintained under this Article shall:

- (a) avoid unnecessary damage to the commercial, economic or financial interests of the other Party;
- (b) not be more burdensome than necessary to deal with the balance of payments difficulties or threat thereof;
- (c) be temporary and be phased out progressively as the balance of payments situation improves;
- (d) be consistent with paragraph 2(c) and with the Articles of Agreement of the IMF; and
- (e) be applied on a national treatment or most-favoured-nation treatment basis, whichever is better.

4. A Party may adopt or maintain a measure under this Article that gives priority to services that are essential to its economic programme, provided that a Party may not impose a measure for the purpose of protecting a specific industry or sector unless the measure is consistent with paragraph 2(c) and with Article VIII(3) of the Articles of Agreement of the IMF.

5. Restrictions imposed on transfers:

- (a) where imposed on payments for current international transactions, shall be consistent with Article VIII(3) of the Articles of Agreement of the IMF;
- (b) where imposed on international capital transactions, shall be consistent with Article VI of the Articles of Agreement of the IMF and

be imposed only in conjunction with measures imposed on current international transactions under paragraph 2(a);

- (c) where imposed on transfers covered by Article 9-10 (Transfers) and transfers related to trade in goods, may not substantially impede transfers from being made in a freely usable currency at a market rate of exchange; and
- (d) may not take the form of tariff surcharges, quotas, licences or similar measures.

Article 20-01

Annexes

The Annexes constitute integral parts of this Agreement.

Article 20-02

Amendments

1. The Parties may agree on any modification of or addition to this Agreement.
2. When so agreed, and approved in accordance with the applicable legal procedures of each Party, a modification or addition shall enter into force and constitute an integral part of this Agreement.

Article 20-03

Convergence

The Parties shall promote the convergence of this Agreement with other integration agreements of the Latin American countries, in accordance with the mechanisms established in the Montevideo Treaty 1980.

Article 20-04

Duration and Entry into Force

1. This Agreement shall have an indefinite duration.
2. The Parties shall undertake the necessary legal procedures, including an exchange of communications accrediting that the legal formalities have concluded, to enable this Agreement to enter into force on 1 October 1998. Otherwise, the Agreement shall enter into force 30 days after the exchange.

Article 20-05

Reservations

This Agreement shall not be subject to reservations or interpretative statements on the occasion of ratification.

Article 20-06

Accession

1. In compliance with the Montevideo Treaty 1980, this Agreement is open to accession, after negotiation, to the other member countries of the Latin American Integration Association.

2. Accession shall be formalized once the terms have been negotiated by the Parties and the acceding country, through an Additional Protocol to this Agreement, which shall enter into force 30 days after it is deposited at the General Secretariat of the Latin American Integration Association.

Article 20-07

Termination

1. Either Party may terminate this Agreement. Termination shall be effective 180 days after notice to the other Party unless the Parties agree to a different period.

2. Regardless of whether a Party has terminated the Agreement, in the event of accession by a country or group of countries, as established in Article 20-06, it shall remain in force for the other Parties.

Article 20-08

Future Negotiations

Unless otherwise agreed, the Commission shall:

- (a) begin negotiations on a chapter on financial services no later than 30 June 1999, at which time it shall appoint negotiators and establish appropriate procedures;
- (b) begin negotiations to reciprocally eliminate antidumping duties, one year after this Agreement comes into force at which time it shall appoint negotiators and establish appropriate procedures; and
- (c) begin negotiations on a chapter on government procurement one year after this Agreement comes into force, at which time it shall appoint negotiators and establish appropriate procedures.

Article 20-09

Cooperation on Rules of Origin

For closer trade integration and in accordance with Article 1-01 (Establishment of the Free Trade Zone), 1-03 (Relation to Other International Agreements) and 1-04 (Observance of the Agreement), the Parties shall seek to hold negotiations with non-member countries with which both Parties have entered into trade agreements similar to this Agreement, to study and establish mechanisms to achieve joint harmonization of the rules of origin.

Article 20-10

Revocations and Transitory Provisions

1. The Parties revoke ECA No. 17. However, with respect to Chapter 5 (Customs Procedures), importers may request that ECA No. 17 be applied for 30 days after this Agreement enters into force. To that effect, the certificates of origin issued under ECA No. 17 shall have been completed prior to the entry into force of this Agreement, be in effect and be made use of within that period.

2. With regard to Chapter 4 (Rules of Origin), for goods classified in subheadings 8422.40 and 8431.43, the applicable regional value content shall be determined in accordance with the following timetable:

- (a) during the first year this Agreement is in force, forty-five per cent based on the transaction value method or thirty-six per cent based on the net cost method;
- (b) during the second year this Agreement is in force, forty-six and one half per cent based on the transaction value method or thirty-eight per cent based on the net cost method; and
- (c) during the third year this Agreement is in force, the regional value content established in Annex 4-03 (Specific Rules of Origin) shall be applied.

3. In the event that the roster referred to in Article 11-04(2)(c) (Dispute Settlement) has not been established, each Party shall appoint one panellist and the third shall be appointed by mutual agreement. Where a panel is not established in accordance with this paragraph within the term set out in Article 18-09 (Panel Selection), on the request of either of the Parties, the President of the Council of the International Civil Aviation Organization shall appoint the remaining panellists, following that organization's procedures.
