

PART SEVEN
ADMINISTRATIVE AND INSTITUTIONAL PROVISIONS

CHAPTER 17
TRANSPARENCY

Article 17.01 Definitions

For purposes of this Chapter, “administrative ruling of general application” means an administrative ruling or interpretation that applies to all persons and situations of fact 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 17.02 Information Centre

1. Each Party shall designate an office as an information centre for facilitating the communications between the Parties on any subject covered in this Agreement.
2. When a Party requests it, the information centre of the other Party shall indicate the office or official responsible for the matter and shall offer assistance required for facilitating communications with the requesting Party.

Article 17.03 Publication

Each Party shall ensure that its laws, regulations, procedures and administrative rulings of general application which are in reference to any matter covered by this Agreement are promptly published or otherwise made available in such a manner as to enable the other Party and any interested person to become acquainted with them.

Article 17.04 Provision of Information

1. Each Party shall, to the maximum extent possible, notify the other Party of any actual measure in force which it considers could affect in the future or might already be materially affecting the interests of the other Party in terms of this Agreement.

2. Each Party, on request of the other Party, shall provide information and respond promptly to questions pertaining to any actual measure in force.

3. Any notification or the supplying of information on measures in force or proposed as referred to under this Article shall be made without prejudice to whether the measure is consistent with this Agreement.

Article 17.05 Guarantees on Hearing, Legality and Due Process

Each Party shall ensure that in legal and administrative proceedings related to the application of any measure referred to in Article 17.03 the guarantees on hearing, legality and due process established in their own laws are respected in the sense of Articles 17.06 and 17.07.

Article 17.06 Administrative Proceedings for Adopting Measures of General Applications

For purposes of administering in a consistent, impartial and reasonable manner all measures of general application which affect aspects covered by this Agreement, each Party shall, in its administrative proceedings which are applying measures referred to in Article 17.03 with respect to persons, goods or services in particular of the other Party in specific cases, ensure that:

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

Article 17.07 Review and Appeal

1. Each Party shall maintain tribunals or judicial proceedings or proceedings of an administrative nature according to the Party's laws for purposes of a prompt and timely review and, where warranted, correction of definitive 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, before the said tribunals or in its procedures, the parties to the proceeding have the right to:

(a) a reasonable opportunity to support or defend their respective positions and arguments; and

(b) a decision based on the evidence and arguments presented by them.

3. Subject to appeal or further review as provided for in its laws, each Party shall ensure that such decisions are implemented by the offices or authorities.

Article 17.08 Communications and Notifications

Except any provision to the contrary, a communication or notification shall be considered delivered to a Party upon its receipt by the national section of the Secretariat of such Party.

CHAPTER 18

ADMINISTRATION OF THE AGREEMENT

Section A - Commission, Sub-commission and Secretariat

Article 18.01 Administrative Commission of the Agreement

1. The Parties hereby establish the Administrative Commission of the Agreement, which is composed of the officials referred to in Annex 18.01 or of the persons designated by them.

2. The Commission shall have the following functions:

- (a) supervising the accomplishment and correct implementation of the provisions of this Agreement;
- (b) evaluating the results achieved by the implementation of this Agreement;
- (c) monitoring developments and making recommendations to the Parties for modifications as it deems appropriate;
- (d) resolving any dispute arising from the interpretation or application of this agreement, in accordance with Chapter 19 (Dispute Settlement);
- (e) supervising the work of all committees established or created under this Agreement and pursuant to Article 18.05(3); and
- (f) considering any other matter that may affect the functioning of this Agreement or that is entrusted to the Commission by the Parties.

3. The Commission may:

- (a) create *ad hoc* or standing committees, or expert groups as necessary for implementing this Agreement, and assign functions to them;
- (b) for purposes of accomplishing the objectives of this Agreement, modify:
 - (i) the schedule of goods of a Party contained in Annex 3.04 (Tariff Reduction Schedule) with the purposes of incorporating one or more of the goods excluded in the Tariff Reduction Schedule,

- (ii) the period established in Annex 3.04 (Tariff Reduction Schedule) with the purpose of accelerating tariff reduction,
 - (iii) the rules of origin set out in Annex 4.03 (Specific Rules of Origin),
 - (iv) the Uniform Regulations,
 - (v) Annex I, II, III and IV of Chapter 10 (Investment),
 - (vi) Annex I, II and V of Chapter 11 (Cross-border Trade in Services), and
 - (vii) Annex VI of Chapter 12 (Financial Services);
- (c) seek the advice of non-governmental persons or groups;
 - (d) make and approve regulations required for the implementation of this Agreement; and
 - (e) take any other action in the exercise of its functions as the Parties may agree upon.

4. The modifications referred to in paragraph 3(b) shall be implemented by the Parties according to their respective national laws.

5. The Commission may establish its rules and procedures, and all its decisions shall be made by consensus.

6. The Commission shall convene at least once a year in regular session, and shall convene by request of a Party in special session. The location of the meeting shall rotate between the Parties.

Article 18.02 Administrative Sub-commission of the Agreement

1. The Parties hereby establish the Administrative Sub-commission of the Agreement, which is composed of the officials as set out in Annex 18.02 or persons designated by them.

2. The Sub-commission shall have the following functions:

- (a) developing and reviewing the technical documents necessary for taking decisions under the Agreement;
- (b) following up the decisions adopted by the Commission;

(c) without prejudice to Article 18.01(2), may also supervise the work of all committees, sub-committees and expert groups established under this Agreement and pursuant to Article 18.05(3); and

(d) reviewing any other matter that may affect the functioning of this Agreement and that is assigned by the Commission.

3. The Commission may establish rules and procedures applicable to the proper operation of the Sub-commission.

Article 18.03 Secretariat

1. The Commission shall establish and oversee a Secretariat which is composed of their national sections.

2. Each Party:

(a) shall designate a permanent office or official responsible for acting on behalf of the national section of the Secretariat of such Party and shall notify the Commission of the address, phone number and any other relevant information where its national section is located;

(b) shall be responsible for:

(i) the operation and costs of its section; and

(ii) the remuneration and payment of the expenses of arbitrators, their assistants and the assigned experts under this Agreement, as set out in Annex 18.03; and

(c) shall designate a Secretary to serve in its national section, who shall be responsible for its administration.

3. The Secretariat shall have the following functions:

(a) providing assistance to the Commission and to the Sub-commission;

(b) providing administrative support to the arbitral groups created according to Chapter 19 (Dispute Settlement), in accordance with the proceedings established pursuant to Article 19.13(Model Rules of Procedure);

(c) by instructions of the Commission, supporting the work of the committees, sub-committees and expert groups established under this Agreement;

- (d) conducting communications and notifications pursuant to Article 17.08 (Communications and Notifications); and
- (e) other matters as assigned by the Commission.

Section B- Committees, Sub-committees and Expert Groups

Article 18.04 General Provisions

1. The provisions stated in this section shall, in a supplementary manner, apply to all committees, sub-committees and expert groups created under this Agreement.
2. Each committee, sub-committee and expert group shall be composed of representatives of each Party and all their decisions shall be made by consensus.

Article 18.05 Committees

1. The Commission may create committees other than those established according to Annex 18.04.
2. All committees shall have the following functions:
 - (a) monitoring by its jurisdiction the implementation of the Chapters of this Agreement;
 - (b) reviewing matters submitted by a Party claiming that a measure in force of the other Party by its jurisdiction has affected the effective implementation of the undertakings included in the Chapters of this Agreement;
 - (c) requesting the competent authority to prepare technical reports and taking necessary actions to settle the issue;
 - (d) assessing and recommending proposals to the Commission to modify, amend or add to the provisions of this Agreement within its competency;
 - (e) proposing to the Commission the revision of measures in force of a Party which it considers may be inconsistent with the obligations of this Agreement or may cause nullification or impairment in the sense of Annex 19.03 (Nullification and Impairment); and
 - (f) carrying out other tasks that the Commission may assign to it pursuant to the provisions of this Agreement and other instruments derived from it.

3. The Commission and the Sub-commission shall supervise the work of all committees established or created under this Agreement.

4. Each committee may establish its own rules and procedures and shall meet upon the request of a Party or the Commission.

Article 18.06 Sub-Committees

1. With the aim of delegating its functions, a committee may create standing sub-committees for matters specifically delegated to them, and supervise their work. Each sub-committee shall have the same functions as a committee on matters for which it was delegated.

2. Each sub-committee shall report to the committee on the implementation of its mandate.

3. The rules and procedures of a sub-committee may be established by the committee that created it. Sub-committees shall meet at the request of a Party or their corresponding committee.

Article 18.07 Expert Groups

1. Notwithstanding Article 18.01(3)(a), a committee or sub-committee may also create *ad hoc* expert groups, with the purpose of conducting necessary technical research that it deems appropriate for accomplishing its functions, and shall supervise their work. The expert groups shall strictly accomplish what they have been entrusted to do, and within the terms and timeframes established. Each expert group shall report to the committee or sub-committee that created it.

2. The rules and procedures of an expert group may be established by the committee or sub-committee that created it.

ANNEX 18.01

MEMBERS OF THE ADMINISTRATIVE COMMISSION OF THE AGREEMENT

The Administrative Commission of the Agreement under Article 18.01(1) shall be composed of:

- (a) in the case of Panama, the Minister of Trade and Industries, or his successor; and
- (b) in the case of the ROC, the Minister of Economic Affairs, or his successor.

ANNEX 18.02

MEMBERS OF THE ADMINISTRATIVE SUB-COMMISSION OF THE AGREEMENT

The Administrative Sub-commission of the Agreement under Article 18.02 is composed of:

- (a) in the case of Panama, the National Director for International Trade Negotiations, Ministry of Trade and Industries, or his successor; and
- (b) in the case of the ROC, the Director General of the Bureau of Foreign Trade, Ministry of Economic Affairs, or his successor.

ANNEX 18.03

REMUNERATION AND PAYMENT OF EXPENSES

1. The Commission shall establish the amounts of remuneration and expenses that shall be paid to arbitrators, their assistants and experts.
2. The remuneration for these arbitrators, their assistants and experts, their travel and lodging expenses, and all the general expenses of arbitral groups, shall be covered in equal parts by the Parties.
3. Each arbitrator, assistant and expert shall keep a record and render a final account of the person's time and expenses; the arbitral group shall keep a similar record and a final account of all general expenses.

ANNEX 18.04
COMMITTEE

Committee on Trade in Goods (Article 3.16)

Committee on Sanitary and Phytosanitary Measures (Article 8.11)

Committee on Standards, Metrology and Authorization Procedures (Article 9.12)

Committee on Investment and Cross-border Trade in Services (Article 11.14)

Committee on Financial Services (Article 12.11)

Committee on Intellectual Property (Article 16.13)

CHAPTER 19 DISPUTE SETTLEMENT

Section A - Dispute Settlement

Article 19.01 Definitions

For purposes of this Chapter, the following definitions shall be understood as:

complaining Party: the Party that makes a claim;

consulting Party: any Party that holds consultations under Article 19.06;

defendant Party: the Party against which a complaint is made; and

disputing Party: the complaining Party or the defendant Party.

Article 19.02 General Provisions

1. The Parties shall at all times endeavor 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.

2. Any settlement of matters raised under this Chapter shall be consistent with this Agreement and shall not nullify nor impair the benefits for the Parties deriving from it, nor shall impede the attainment of any objective of this Agreement.

3. The mutually satisfactory solutions reached by the Parties of any matters raised in accordance with the provisions of this Chapter, shall be notified to the Commission within a period of fifteen (15) days after the agreement on the settlement of the dispute in question is reached.

Article 19.03 Scope of Application

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

- (a) to prevent or settle disputes between the Parties regarding the application or interpretation of this Agreement; or

- (b) when a Party considers that an actual measure of the other Party is or would be inconsistent with the obligations of this Agreement or might cause nullification or impairment as set out in Annex 19.03.

Article 19.04 Choice of Fora

1. The disputes arising in connection with the provisions of this Agreement and the WTO Agreement or agreements negotiated in accordance with the WTO Agreement may be settled in one of those fora, as the complaining Party chooses.

2. Where a Party has requested the establishment of an arbitral group under Article 19.09 or has requested the establishment of a panel under Article 6 of the Understanding on Rules and Procedures Governing the Settlement of Disputes of the WTO Agreement, the forum chosen shall be used to the exclusion of the other.

Article 19.05 Urgent Cases

1. In cases of urgency including such cases, as contemplated in paragraphs 2 and 3, the Parties and the arbitral groups shall make every effort to accelerate to the greatest extent the proceedings.

2. In cases of perishable agricultural goods, fish and fish products that are perishable:

- (a) a consulting Party may request in writing that the Commission meet, when an issue is not resolved in accordance with Article 19.06 within fifteen (15) days following the submission of the request for consultations; and
- (b) the Party that has requested the intervention of the Commission, may request in writing the formation of an arbitral group when the issue has not been resolved within fifteen (15) days after the meeting of the Commission, or if the Commission has not met, within fifteen (15) days after submitting the request for such a meeting.

3. In cases of urgency other than those referred to in paragraph 2, the Parties shall try to the extent possible to reduce by half the timeframe as provided for in Articles 19.07 and 19.09 for requesting a meeting of the Commission and the establishment of an arbitral group respectively.

Article 19.06 Consultations

1. A Party may request in writing to enter into consultations with the other Party regarding any actual measure or any other matter that the Party considers may affect the operation of this Agreement in terms of Article 19.03.

2. The complaining Party requesting consultations shall submit their request to the responsible agency of the other Party.

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

- (a) provide information to allow the undertaking of the examining of how the actual measures or any other matter might affect the operation of this Agreement; and
- (b) treat the confidential information exchanged in the course of consultations on the same basis as the Party providing the information.

The Initiation of the Proceedings

Article 19.07 Commission Intervention

1. Any consulting Party may request in writing that the Commission meet provided that:

- (a) an issue that has not been resolved in accordance with Article 19.06 within thirty (30) days following the submission of the request for consultations, unless that the Parties agree another deadline by mutual consent; or
- (b) the Party that has been delivered the request for consultations has not answered within the deadline of ten (10) days following the submission of the request.

2. The request referred to in paragraph 1 shall indicate the measure or any other issue that is the object of a claim and the applicable provisions of this Agreement.

3. Unless otherwise decided, the Commission shall meet within ten (10) days following the submission of the request, and with the purpose of obtaining a mutually satisfactory dispute resolution, may:

- (a) call on technical advisors or create expert groups as it considers necessary;
- (b) request the good offices, conciliation or mediation of a person or group of persons or other alternative ways of dispute resolution; or

- (c) formulate recommendations.

4. Unless otherwise decided, the Commission shall consolidate 2 or more proceedings under this Article relating to the same measure. The Commission may accumulate 2 or more proceedings under this Article in relation to other issues, when considered convenient to examine them jointly.

Article 19.08 Good Offices, Conciliation and Mediation

1. Good offices, conciliation and mediation are procedures that are initiated on a voluntary basis if the Parties so agree.

2. Proceedings involving good office, conciliation and mediation, and in particular the positions of the Parties to the dispute during these proceedings, shall be confidential and without prejudice to the rights of either Party in any further proceedings under these procedures.

3. Good offices, conciliation or mediation may be requested at any time by either Party to a dispute. They may begin and be terminated at any time.

Proceeding of Arbitral Group

Article 19.09 Request for the Establishment of an Arbitral Group

1. The Party that has requested the intervention of the Commission, according to Article 19.07, may request in writing to the other Party for the establishment of an arbitral group, when the dispute in question cannot be resolved within:

- (a) thirty (30) days after the meeting of the Commission, or if this has not been held, thirty (30) days after the submission of the request for a meeting of the Commission;
- (b) thirty (30) days after the Commission has met and accumulated the most recent issue in accordance with Article 19.07(4); or
- (c) any other period that the Parties may agree upon.

2. The request for the establishment of an arbitral group shall be made in writing, and shall state whether the consultations have been held, and in case that the Commission has met, state the actions taken; and the Party shall give the reason for the request, including identification of the measures at issue and an indication of the legal basis for the complaint.

3. Within fifteen (15) days of the submission of the request to the responsible agency of the other Party, the Commission shall establish the arbitral group in accordance with Article 19.12.

4. Unless the Parties agree otherwise, the arbitral group shall be established and shall exercise its functions in accordance with the provisions of this Chapter.

Article 19.10 List of Arbitrators

1. Upon entry into force of this Agreement, the Parties shall establish and maintain a list of up to twenty individuals with the required qualification to serve as arbitrators. Said list shall be composed of the "List of Arbitrators of the Parties" and the "List of Arbitrators of Non-Party Countries". Each Party may designate five (5) national arbitrators to form the "List of Arbitrators of the Parties", and five (5) arbitrators of Non-Party countries to form the "List of Arbitrators of Non-Party Countries".

2. The rosters of arbitrators might be modified every 3 years. Notwithstanding, the Commission might revise, by request of a Party, the roster of arbitrators before the expiration of this period.

3. The members of the rosters of arbitrators shall meet the qualifications set forth in Article 19.11.

Article 19.11 Qualifications of the Arbitrators

1. All the arbitrators shall meet the following qualifications:

- (a) have specialized knowledge or experience in law, international trade, other matters related to this Agreement, or in the settlement of disputes arising from international trade agreements;
- (b) be elected strictly according to their objectivity, integrity, reliability and good judgement;
- (c) be independent, not associated with, and not accepting instructions from any Party, and
- (d) observe the Code of Conduct that the Commission establishes.

2. Persons that have participated in a dispute under Article 19.07 (3) cannot serve as arbitrators for the same dispute.

Article 19.12 Composition of the Arbitral Group

1. In the establishment of the arbitral group, the Parties shall observe the following procedures:

- (a) the arbitral group shall be composed of three members;
- (b) the Parties shall endeavor to agree on the designation of the chair of the arbitral group within fifteen (15) days after the submission of the request for the establishment of the arbitral group;
- (c) if the Parties do not reach an agreement within the above-mentioned timeframe, on the designation of the chair of the arbitral group, he or she shall be chosen by drawing lot from the “List of Arbitrators of non-Party Countries”;
- (d) within fifteen (15) days after the designation of the chair, each Party shall select an arbitrator from the “List of Arbitrators of the Parties”, and the arbitrator selected could be one of the disputing Party’s nationality; and
- (e) if a disputing Party does not select an arbitrator, the arbitrator shall be chosen by drawing lot from the “List of Arbitrators of the Parties” and shall be of that Party’s nationality.

2. Where a disputing Party considers that an arbitrator has violated the Code of Conduct, the Parties shall hold consultations and decide whether to remove that arbitrator and select a new one pursuant to the provisions of this Article.

Article 19.13 Model Rules of Procedure

1. Upon the entry into force of this Agreement, the Commission shall establish the Model Rules of Procedure in accordance with the following principles:

- (a) the procedures shall ensure the right of a hearing before the arbitral group and the opportunity to present allegations and rebuttals in writing; and
- (b) the hearings before the arbitral group, the deliberations and the preliminary report, as well as all the writings and communications presented in it shall be confidential.

2. The Commission may modify the Model Rules of Procedure.

3. Unless the Parties agree otherwise, the proceeding before the arbitral group shall follow the Model Rules of Procedure.

4. Unless the Parties agree otherwise, the mandate of the arbitral group shall be:

“To examine in light of the provisions of this Agreement the dispute submitted for its consideration under the terms set forth in the request for the meeting of the Commission, and make reports as provided for in Articles 19.15 and 19.16”.

5. If the complaining Party claims that a matter was a cause of nullification or impairment of benefits in the sense of Annex 19.03, the mandate shall state it.

6. When a disputing Party requests that the arbitral group reaches conclusions about the extent of the adverse trade effects brought upon by the measure adopted by the other Party and considered by the disputing Party as inconsistent with the Agreement, or that the measure has caused nullification or impairment in the sense of Annex 19.03, the mandate shall state it.

Article 19.14 Information and Technical Advice

At the request of a disputing Party or *ex officio*, the arbitral group may seek information and technical advice from the persons or institutions that it deems appropriate under the Model Rules of Procedure.

Article 19.15 Preliminary Report

1. The arbitral group shall issue a preliminary report based on the arguments and submissions presented by the Parties and on any information received in accordance with Article 19.14, unless the Parties agree otherwise.

2. Unless the Parties agree otherwise, the arbitral group shall present to the Parties, within ninety (90) days of the nomination of the last arbitrator a preliminary report which includes :

- (a) findings of fact, including any findings pursuant to a request under Article 19.13(6);
- (b) a decision about the inconsistency or possible inconsistency of the measure in question with the obligations arising from this Agreement or about the measure being a cause of nullification or impairment as set out in Annex 19.03 or any other decision requested in the mandate;

- (c) its recommendations, if any, to settle the dispute; and
 - (d) if this is the case, the timeframe for the implementation of the report in accordance with paragraphs 2 and 3 of Article 19.17.
3. Arbitrators may furnish separate opinions in writing on matters in which the consensus is not reached.
4. The Parties may make comments in writing to the arbitral group about the preliminary report within fourteen (14) days of its presentation.
5. In such an event and after examining the written comments, the arbitral group may *ex officio* or at the request of a disputing Party:
- (a) request the comments from the Parties;
 - (b) reconsider its preliminary report; and
 - (c) take any steps deemed appropriate.

Article 19.16 Final Report

1. The arbitral group shall notify the Parties of its final report by majority vote, including any separate opinions in writing on matters in which there is no consensus, within thirty (30) days of the presentation of the preliminary report, unless the Parties agree on a different timeframe.
2. No arbitral group may reveal in its preliminary or final report the identity of the arbitrators that have joined either the majority or the minority vote.
3. The final report shall be published within fifteen (15) days of its notification to the Parties, unless they agree otherwise.

Article 19.17 Implementation of the Final Report

1. The final report shall make mandatory for the Parties the requirements and periods that it orders. The timeframe for implementing the final report shall not exceed 6 months from the date on which the final report was notified to the Parties, unless the Parties agree on a different timeframe.

2. If the final report of the arbitral group states that the measure is inconsistent with this Agreement, the defendant Party shall refrain from executing the measure or shall repeal it. The arbitral group shall determine a timeframe for implementation, taking into account the complexity of the *de facto* and *de jure* issues implied and the nature of the final report. This period shall not exceed 180 days.

3. If the final report states that the measure is a cause of nullification or impairment as set out in Annex 19.03, it shall specify the degree of nullification or impairment and may suggest the adjustments that it considers mutually satisfactory for the Parties. At the same time, the timeframe for reaching mutually satisfactory solutions should be determined, taking into account, the complexity of the *de facto* and *de jure* issues implied and the nature of the final report. This period should not exceed 180 days.

4. Within 5 days after the expiration of the timeframe determined by the arbitral group, the defendant Party shall inform the arbitral group and the other Party of actions adopted to comply with the final report. Within thirty (30) days after expiration of the timeframe as referred to in paragraphs 2 and 3, the arbitral group shall determine whether the defendant Party has complied with the final report. In case the arbitral group determines that the defendant Party has not complied with the final report, the complaining Party may suspend benefits in accordance with Article 19.18.

Article 19.18 Suspension of Benefits

1. The complaining Party may suspend the benefits to the defendant Party arising from this Agreement that have an effect equivalent to the benefits not received, if the arbitral group decides that:

- (a) a measure is inconsistent with the obligations of this Agreement and that the defendant Party has not complied with the final report within the timeframe determined by the arbitral group in the final report; or
- (b) a measure is a cause of nullification or impairment as set out in Annex 19.03 and the Parties have not reached a mutually satisfactory agreement on the dispute within the timeframe determined by the arbitral group.

2. The suspension of benefits shall last until the defendant Party complies with the final report or until the Parties reach a mutually satisfactory agreement on the dispute, as the case may be. When the defendant Party, after suspension of benefits, considers that it has adopted measures necessary to implement the final report and the complaining Party does not restore benefits previously suspended, it may ask for the establishment of an arbitral group in accordance with paragraph (4) to determine if it has complied with the final report.

3. In considering the benefits to be suspended in accordance with this Article:

- (a) the complaining Party shall endeavor first to suspend benefits within the same sector or sectors affected by the measure or by other matter considered by the arbitral group as inconsistent with the obligations arising from this Agreement or that has been a cause of nullification or impairment as set out in Annex 19.03; and
- (b) if the complaining Party considers that it is not feasible nor effective to suspend benefits in the same sector or sectors, it may suspend benefits in other sectors.

4. Once the benefits have been suspended pursuant to this Article, the Parties, by request in writing from a Party, shall establish an arbitral group if necessary to determine if the final report has been complied with or if the level of benefits suspended to the defendant Party by the complaining Party under this Article is obviously excessive. To the extent practicable, the arbitral group shall be composed of the same arbitrators who have knowledge over the dispute.

5. The proceedings before the arbitral group established for purposes of paragraph 4 shall be carried forward pursuant to the Model Rules of Procedure set out in Article 19.13 and the final report shall be issued within sixty (60) days of the nomination of the last arbitrator, or any other timeframe agreed upon by the Parties. If this arbitral group was composed of the same arbitrators who have knowledge over the dispute, it shall present its final report within thirty (30) days of the presentation of the request referred to in paragraph 4.

Section B –Domestic Proceedings and Settlement of Private Commercial Disputes

Article 19.19 Interpretation of the Agreement Before Judicial and Administrative Proceedings

1. The Commission shall endeavor to give, as soon as possible, an appropriate and non-binding interpretation or response, where:

- (a) a Party considers that a matter of interpretation or application of this Agreement arisen or that arises in a judicial or administrative proceeding of the other Party merits an interpretation by the Commission; or
- (b) a Party communicates to the Commission of the reception of a request for an opinion about a matter of interpretation or implementation of this Agreement in a judicial or administrative proceeding of this Party.

2. The Party in which territory a judicial or administrative proceeding is taking place shall present in the proceeding the interpretation or response of the Commission in accordance with the procedures of that forum.

3. When the Commission does not agree upon an interpretation or response, a Party may submit its own opinion to the judicial or administrative proceeding in accordance with the procedures of that forum.

Article 19.20 Private Rights

No Party may provide for a right of action under its domestic law against the other Party on the grounds that a measure of that Party is inconsistent with this Agreement.

Article 19.21 Alternative Dispute Settlement Methods Between Individuals

1. Each Party shall promote and facilitate arbitration and other alternative methods to settle international commercial disputes between individuals in the territories of the Parties.

2. For purposes of paragraph 1, each Party shall have appropriate procedures ensuring the observance of the international arbitration conventions that it has ratified and the recognition and implementation of arbitral awards in these disputes.

3. The Commission may establish a Consultative Committee on Private Commercial Disputes, composed of persons with specialized knowledge or experience in the resolution of private international commercial disputes. Once the Committee is created, it shall present reports and recommendations in general nature about the existence, use and efficiency of arbitration and other procedures for dispute settlement.

ANNEX 19.03
NULLIFICATION AND IMPAIRMENT

1. A Party may resort to the dispute settlement mechanism of this Chapter, when in light of the application of a measure from the other Party that does not contravene this Agreement, it considers that the benefits that might be reasonably expected are nullified or impaired in:

- (a) Part Two (Trade in Goods);
- (b) Part Three (Technical Barriers to Trade); or
- (c) Chapter Eleven (Cross-border Trade in Services)

2. With respect to any measure subject to an exception in accordance with Article 20.02 (General Exceptions), a Party may not invoke:

- (a) paragraph 1(a) or (b), to the extent that the benefit arises from any cross-border trade in services provision of Part Two (Trade in Goods), or of Part Three (Technical Barriers to Trade); or
- (b) paragraph 1 (c).

3. To determine the elements of nullification and impairment, the Parties may take into account the principles set out in the jurisprudence of paragraph 1(b) of Article XXIII of GATT 1994.

CHAPTER 20 EXCEPTIONS

Article 20.01 Definitions

For purposes of this Chapter, the following terms shall be understood as:

IMF: the International Monetary Fund;

international capital transactions: "international capital transactions" as defined under the Articles of Agreement of the International Monetary Fund;

payments for current international transactions: "payments for current international transactions" as defined under the Articles of Agreement of the International Monetary Fund;

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

transfers: international transactions and related international transfers and payments.

Article 20.02 General Exceptions

1. Article XX of GATT 1994 and its interpretative notes are incorporated into this Agreement and form an integral part of it for purposes of:

- (a) Part Two (Trade in Goods), except to the extent that some of its provisions apply to services or investment;
- (b) Part Three (Technical Barriers to Trade), except to the extent that some of its provisions apply to services or to investment; and
- (c) Part Five (Competition Policy), to the extent that some of its provisions apply to goods.

2. Subparagraphs (a), (b) and (c) of Article XIV of GATS are incorporated into this Agreement and form an integral part of it, for purposes of:

- (a) Part Two (Trade in Goods), to the extent that some of its provisions apply to services;

- (b) Part Three (Technical Barriers to Trade), to the extent that some of its provisions apply to services;
- (c) Chapter 10 (Investment);
- (d) Chapter 11 (Cross-border Trade in Services);
- (e) Chapter 12 (Financial Services);
- (f) Chapter 13 (Telecommunications);
- (g) Chapter 14 (Temporary Entry for Business Persons); and
- (h) Chapter 15 (Competition Policy, Monopolies and State Enterprises), to the extent that some of its provisions apply to services.

Article 20.03 National Security

Nothing in this Agreement shall be construed to:

- (a) require any Party to furnish or allow access to any information the disclosure of which it determines to be contrary to its essential security interests;
- (b) prevent any 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 purposes 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) prevent any Party from taking action in fulfilling of its obligations under the United Nations Charter for the maintenance of international peace and security.

Article 20.04 Balance of Payments

1. Nothing in this Agreement shall be construed to prevent a Party from adopting or maintaining measures that restrict transfers when the Party is facing serious balance of payments difficulties, or the threat thereof, so long as such restrictions are consistent with this Article. A Party taking such measure shall do so in accordance with the conditions established under Article XII of GATT 1994 and the Understanding on the Balance-of-Payments Provisions of the GATT 1994.

2. The Party shall notify the other Party within thirty (30) days after the adoption of a measure in accordance with paragraph 1. In the event that both Parties become party to the Articles of Agreement of the IMF, the procedure of the following paragraph (paragraph 3 of this Article) should be followed.

3. As soon as feasible after a Party has applied a measure conforming with this Article, in accordance with the Party's international obligations, 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.

4. 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 3(c) and with the Articles of Agreement of the IMF; and

- (e) be applied on a national treatment or most-favored-nation treatment basis, whichever is more favorable.

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

6. Restrictions imposed on transfers:

- (a) where they apply to payments for current international transactions, shall be consistent with Article VIII(3) of the Articles of Agreement of the IMF;
- (b) where they apply to 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 3(a); and
- (c) may not take the form of tariff surcharges, quotas, licenses or other similar measures.

Article 20.05 Disclosure of Information

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

Article 20.06 Taxation

1. Except as set out in this Article, nothing in this Agreement shall apply to taxation measures.

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

3. Notwithstanding paragraph 2:

(a) Article 3.03 (National Treatment) and other provisions of this Agreement necessary to make said Article effective shall apply to taxation measures to the same extent as does Article III of the GATT 1994; and

(b) Article 3.14 (Export Taxes) shall apply to taxation measures.

4. For purposes of this Article, taxation measures do not include:

(a) a “customs duty” as defined in Article 2.01 (Definitions of General Application); nor

(b) the measures listed in exceptions (b), (c) and (d) under the definition of customs duty.

5. Subject to paragraph 2:

(a) Articles 11.03 (National Treatment) and 12.06 (National Treatment) shall apply to taxation measures on profits, capital gains or on taxable capital of enterprises related to the purchase or consumption of particular services;

(b) Articles 10.02 (National Treatment), 10.03 (Most-Favored-Nation Treatment), 11.03 (National Treatment), 11.04 (Most-Favored-Nation Treatment), 12.06 (National Treatment) and 12.07 (Most-Favored-Nation Treatment) shall apply to taxation measures other than those related to profits, capital gains or taxable capital of enterprises, as well as estate, inheritance and gift taxes,

except that nothing in those Articles shall apply to:

(i) any most-favored-nation obligations with respect to an advantage accorded by a Party in fulfillment of a tax convention;

(ii) any existing taxation measure which provides different tax treatment between residents and non-residents;

(iii) the amendment to a non-conforming provision of any existing tax measure as provided for in paragraph (d) above to the extent that the amendment does not decrease its conformity, at the time of the amendment with any of these Articles; or

(iv) any new tax measure which aims at ensuring the equitable and effective imposition or collection of taxes, and that does not arbitrarily discriminate between persons, goods or services of the Parties or

arbitrarily nullify or impair benefits accorded pursuant to those Articles, in the sense of Annex 19.03 (Nullification and Impairment).

CHAPTER 21

FINAL PROVISIONS

Article 21.01 Modifications

1. Any modification of this Agreement shall be agreed upon by both Parties.
2. The modifications agreed upon shall enter into force after their approval according to the applicable legal procedures of each Party and shall be made a part of this Agreement.

Article 21.02 Reservations

This Agreement may not be subject to reservations or interpretative declarations by either Party at the time of its ratification.

Article 21.03 Validity

1. This Agreement shall have indefinite duration and shall enter into force between Panama and the ROC on the thirtieth day after the day on which the countries have exchanged their ratification instruments certifying that the procedures and legal formalities have been concluded.
2. For this Agreement to become effective between Panama and the ROC, it shall be stated in the ratification instruments that the legal procedures and requirements have been completed, which includes:
 - (a) Annex 3.04 (Tariff Reduction Schedule), relating to the Tariff Reduction Schedule between Panama and the ROC;
 - (b) Section C of Annex 4.03 (Specific Rules of Origin), applicable between Panama and the ROC;
 - (c) Annexes I, II, III and IV of Chapter 10 (Investment), relating to applicable reservations and restrictions on investment between Panama and the ROC;
 - (d) Annexes I, II and V of Chapter 11 (Cross-border Trade in Services), relating to applicable reservations and restrictions on cross-border services between Panama and the ROC;
 - (e) Annex VI of Chapter 12 (Financial Services), relating to applicable reservations and restrictions on financial services between Panama and the ROC;
 - (f) Annex 3.11(6) (Import and Export Restrictions), as appropriate; and

(g) Other matters as agreed upon by the Parties.

Article 21.04 Annexes

The Annexes to this Agreement constitute an integral part of this Agreement.

Article 21.05 Termination

1. Either Party may terminate this Agreement.
2. The termination shall enter into force 180 days after notification to the other Party without prejudice to a different date that the Parties may agree.

Article 21.06 Authentic Texts

The English, Spanish and Chinese texts of this Agreement are equally authentic. In the event of any discrepancy in the interpretation of this Agreement, the English version shall prevail.

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

DONE at Taipei, in duplicate in the Chinese, Spanish and English languages, this twenty-first day of August of the year two thousand and three.

FOR THE GOVERNMENT OF
THE REPUBLIC OF CHINA:

FOR THE GOVERNMENT OF
THE REPUBLIC OF PANAMA:

Chen Shui-bian
President
Republic of China

Mireya Moscoso Rodriguez
President
Republic of Panama
