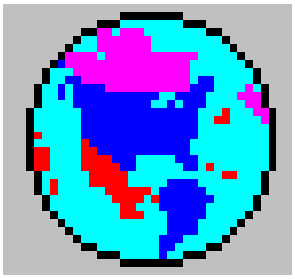
THE LAW OF REGIONAL ECONOMIC INTEGRATION IN THE AMERICAN HEMISPHERE



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Primary Sources

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FOREWORD

The importance of "primary sources" in researching on international trade law cannot be overemphasized. Black-letter laws (*lex scripta*) are more eloquent than one might easily imagine. They are also the very places that interpretation starts from. They even tell us about history and background of negotiations by leaving in themselves significant clues – sometimes, imperfections.

In this context, this unit is devoted for providing such primary sources (treaties or agreements) relating to NAFTA, GATT (WTO) and MERCOSUR. Most sources are edited for your convenience, but it is highly recommendable to rely on a full text when you face such need. Fortunately, you can be served much by the Internet (Web-site) for this purpose.

- WTO Agreement and other side agreements (including GATT): http://docsonline.wto.org/gen_browseDetail.asp?preprog=3
- NAFTA and two side agreements: www.nafta-sec-alena.org/english/index.htm or http://www.sice.oas.org/TRADEE.ASP#NAFTA
- Mercosur: http://www.sice.oas.org/TRADEE.ASP#MERCOSUR/MERCOSUL

Moreover, you must rely on other sources particularly for "dispute resolution". In terms of various panel decisions of NAFTA or GATT (WTO), you can consult the following web-sites.

- GATT 1947 or WTO Panel (Appellate Body) decisions: http://www.wto.org/english/tratop_e/dispu_e/dispu_e.htm
- NAFTA (US-Canada FTA) Panel decision: www.nafta-sec-alena.org/english/index.htm (Click "Decisions") or http://www.sice.oas.org/DISPUTE/nafdispe.asp

The list of treaties and agreements in this unit is *not* exhaustive for your research purpose. You may take advantage of some private and public "search engine" (links) as follows.

- FindLaw: www.findlaw.com/01topics/25interntrade/index.html
- Wasserman Schneider & Babb: www.customs.com/links.html
- USTR: http://www.ustr.gov/regions/whemisphere/naftalinks.shtml
- Organization of American States: http://www.sice.oas.org/stidre.stm#HEM/REG
- Yahoo: www.yahoo.com (Click "Law" ("Government") and then click again "Trade")

In addition, you can use WESTLAW (www.westlaw.com) or LEXIS-NEXIS (also www.lexis.com/xchange) with the help of relevant keywords. (*e.g.*, ILM: International Legal Material)

Finally, for more research information especially for NAFTA, please refer to *NAFTA / WTO Research Guides* provided by the Harvard Law School Library.

NAFTA Summary

Synopsis of the proposed North American Free Trade Agreement

Prepared by THE GOVERNMENTS OF CANADA, THE UNITED MEXICAN STATES AND THE UNITED STATES OF AMERICA

August 12, 1992

http://www.sice.oas.org/summary/RES_TLCE.asp

INTRODUCTION

This document provides a synopsis of the proposed North American Free Trade Agreement.

On August 12, 1992, Canadian Minister of Industry, Science and Technology and Minister for International Trade Michael Wilson, Mexican Secretary of Trade and Industrial Development Jaime Serra and United States Trade Representative Carla Hills completed negotiations on a proposed North American Free Trade Agreement (NAFTA). Officials of the three governments have been directed to complete work on the final text of the Agreement as soon as possible. The final text will be made public when completed. The following description does not itself constitute an agreement between the three countries and is not intended as an interpretation of the final text.

For ease of reference a summary of significant environmental provisions of the NAFTA is included at the end of this document.

(…)

PREAMBLE

The Preamble to the NAFTA sets out the principles and aspirations on which the Agreement is based. It affirms the three countries' commitment to promoting employment and economic growth in each country through the expansion of trade and investment opportunities in the free trade area and by enhancing the competitiveness of Canadian, Mexican and U.S. firms in global markets, in a manner that protects the environment. The Preamble confirms the resolve of the NAFTA partners to promote sustainable development, to protect, enhance and enforce workers' rights and to improve working conditions in each country.

OBJECTIVES AND OTHER OPENING PROVISIONS

The opening provisions of the NAFTA formally establish a free trade area between Canada, Mexico and the United States, consistent with the General Agreement on Tariffs and Trade (GATT). They set out the basic rules and principles that will govern the Agreement and the objectives that will serve as the basis for interpreting its provisions.

The objectives of the Agreement are to eliminate barriers to trade, promote conditions of fair competition, increase investment opportunities, provide adequate protection for intellectual property rights, establish effective procedures for the implementation and application of the Agreement and for the resolution of disputes and to further trilateral, regional and multilateral cooperation. The NAFTA countries will meet these objectives by observing the principles and rules of the Agreement, such as national treatment, most-favored-nation treatment and procedural "transparency".

Each country affirms its respective rights and obligations under the GATT and other international agreements. For purposes of interpretation, the Agreement establishes that the NAFTA takes priority over other agreements to the extent there is any conflict, but provides for exceptions to this general rule. For example, the trade provisions of certain environmental agreements take precedence over NAFTA, subject to a requirement to minimize inconsistencies with the Agreement.

The opening provisions also set out a general rule regarding the application of the Agreement to sub-federal levels of government in the three countries. In addition, this section defines terms that apply to the whole Agreement, to ensure uniform and consistent usage.

RULES OF ORIGIN

NAFTA eliminates all tariffs on goods originating in Canada, Mexico and the United States over a "transition period". Rules of origin are necessary to define which goods are eligible for this preferential tariff treatment.

This section of the Agreement is designed to:

- ensure that NAFTA benefits are accorded only to goods produced in the North American region-not goods made wholly or in large part in other countries;
- provide clear rules and predictable results; and
- minimize administrative burdens for exporters, importers and producers trading under NAFTA.

The rules of origin specify that goods originate in North America if they are wholly North American. Goods containing non-regional materials are also considered to be North American if the non-regional materials are sufficiently transformed in the NAFTA region so as to undergo a specified change in tariff classification. In some cases, goods must include a specified percentage of North American content in addition to meeting the tariff classification requirement. The rules of origin section also contains a provision similar to one in the Canada-United States Free Trade Agreement (FTA) that allows goods to be treated as originating when the finished good is specifically named in the same tariff subheading as its parts and it meets the required value content test.

Regional value content may be calculated using either the "transaction-value" or the "net-cost" method. The transaction-value method is based on the price paid or payable for a good; this avoids the need for complex cost accounting systems. The net-cost method is

based on the total cost of the good less the costs of royalties, sales promotion, and packing and shipping. Additionally, the net-cost method sets a limitation on allowable interest. Although producers generally have the option to use either method, the net-cost method must be used where the transaction value is not acceptable under the GATT Customs Valuation Code, and must also be used for certain products, such as automotive goods.

In order to qualify for preferential tariff treatment, automotive goods must contain a specified percentage of North American content (rising to 62.5 percent for passenger automobiles and light trucks as well as engines and transmissions for such vehicles, and to 60 percent for other vehicles and automotive parts) based on the net-cost formula. In calculating the content level of automotive goods, the value of imports of automotive parts from outside the NAFTA region will be traced through the production chain to improve the accuracy of the content calculation. Regional content averaging provisions afford administrative flexibility for automotive parts producers and assemblers.

A *de minimis* rule prevents goods from losing eligibility for preference solely because they contain minimal amounts of "non-originating" material. Under this rule, a good that would otherwise fail to meet a specific rule of origin will nonetheless be considered to be North American if the value of non-NAFTA materials comprises no more than seven percent of the price or total cost of the good.

CUSTOMS ADMINISTRATION

In order to ensure that only goods satisfying the rules of origin are accorded preferential tariff treatment under the Agreement, and to provide certainty to and streamlined procedures for importers, exporters and producers of the three countries, the NAFTA includes a number of provisions on customs administration. Specifically, this section provides for:

- uniform regulations to ensure consistent interpretation, application and administration of the rules of origin;
- a uniform Certificate of Origin as well as certification requirements and procedures for importers and exporters that claim preferential tariff treatment;
- common record-keeping requirements in the three countries for such goods;
- rules for both traders and customs authorities with respect to verifying the origin of such goods;
- importers, exporters and producers to obtain advance rulings on the origin of goods from the customs authority of the country into which the goods are to be imported;
- the importing country to give exporters and producers in other NAFTA countries substantially the same rights of review and appeal of its origin determinations and advance rulings as it provides to importers in its territory;
- a trilateral working group to address future modifications of the rules of origin and the uniform regulations; and

- specific time periods to ensure the expeditious resolution of disputes regarding the rules of origin between NAFTA partners.

TRADE IN GOODS

National Treatment

The NAFTA incorporates the fundamental national treatment obligation of the GATT. Once goods have been imported into one NAFTA country from another NAFTA country, they must not be the object of discrimination. This commitment extends to provincial and state measures.

Market Access

These provisions establish rules governing trade in goods with respect to customs duties and other charges, quantitative restrictions, such as quotas, licenses and permits, and import and export price requirements. They improve and make more secure the access for goods produced and traded within North America.

Elimination of Tariffs: The NAFTA provides for the progressive elimination of all tariffs on goods qualifying as North American under its rules of origin. For most goods, existing customs duties will either be eliminated immediately or phased out in five or 10 equal annual stages. For certain sensitive items, tariffs will be phased out over a period of up to 15 years. Tariffs will be phased out from the applied rates in effect on July 1, 1991, including the U.S. Generalized System of Preferences (GSP) and the Canadian General Preferential Tariff (GPT) rates. Tariff phase-outs under the Canada-U.S. FTA will continue as scheduled under that Agreement. The NAFTA provides that the three countries may consult and agree on a more rapid phase-out of tariffs.

Import and Export Restrictions: All three countries will eliminate prohibitions and quantitative restrictions applied at the border, such as quotas and import licenses. However, each NAFTA country maintains the right to impose border restrictions in limited circumstances, for example, to protect human, animal or plant life or health, or the environment. Special rules apply to trade in agriculture, autos, energy and textiles.

Drawback: NAFTA establishes rules on the use of "drawback" or similar programs that provide for the refund or waiver of customs duties on materials used in the production of goods subsequently exported to another NAFTA country.

Existing drawback programs will terminate by January 1, 2001, for Mexico-U.S. and Canada-Mexico trade; the Agreement will extend for two years the deadline established in the Canada-U.S. FTA for the elimination of drawback programs. At the time these programs are eliminated, each NAFTA country will adopt a procedure for goods still subject to duties in the free trade area to avoid the "double taxation" effects of the payment of duties in two countries.

Under these procedures, the amount of customs duties that a country may waive or refund under such programs will not exceed the lesser of:

- duties owed or paid on imported, non-North American materials used in the production of a good subsequently exported to another NAFTA country; or
- duties paid to that NAFTA country on the importation of such good.

Customs User Fees: The three countries have agreed not to impose new customs user fees similar to the U.S. merchandise processing fee or the Mexican customs processing fee ("derechos de trámite aduanero"). Mexico will eliminate by June 30, 1999, its existing customs processing fee on North American goods. The United States will eliminate its current merchandise processing fee on goods originating in Mexico by the same date. For goods originating in Canada, the United States currently is phasing down and will eliminate this fee by January 1, 1994, as provided in the CanadaU.S. FTA.

Waiver of Customs Duties: The NAFTA prohibits any new performancebased customs duty waiver or duty remission programs. Existing programs in Mexico will be eliminated by January 1, 2001. Consistent with the obligations of the Canada-U.S. FTA, Canada will end its existing duty remission programs by January 1, 1998.

Export Taxes: The NAFTA prohibits all three countries from applying export taxes unless such taxes are also applied on goods to be consumed domestically. Limited exceptions allow Mexico to impose export taxes in order to relieve critical shortages of foodstuffs and basic goods.

Other Export Measures: When a NAFTA country imposes an export restriction on a product, it must not reduce the proportion of total supply of that product made available to the other NAFTA countries below the level of the preceding three years or other agreed period, impose a higher price on exports to another NAFTA country than the domestic price or require the disruption of normal supply channels. Based on a reservation that Mexico has taken, these obligations do not apply as between Mexico and the other NAFTA countries.

DutyFree Temporary Admission of Goods: The Agreement allows business persons covered by NAFTA's "temporary entry" provisions to bring into a NAFTA country professional equipment and "tools of the trade" on a dutyfree, temporary basis. These rules also cover the importation of commercial samples, certain types of advertising films, and goods imported for sports purposes or for display and demonstration. Other rules provide that by 1998 all goods that are returned after repair or alteration in another NAFTA country will re-enter duty-free. The United States undertakes to clarify what ship repairs done in other NAFTA countries on U.S.flagged vessels qualify for preferential duty treatment.

Country-of-Origin Marking: This section also provides principles and rules governing country-of-origin marking. These provisions are designed to minimize unnecessary costs and facilitate the flow of trade within the region, while ensuring that accurate information about the country of origin remains available to purchasers.

Alcoholic Beverages - Distinctive Products: The three countries have agreed to recognize Canadian Whiskey, Tequila, Mezcal, Bourbon Whiskey and Tennessee Whiskey as "distinctive products" and to prohibit the sale of products under these names unless they meet the requirements of their country of origin.

TEXTILES AND APPAREL

This section provides special rules for trade in fibers, yarns, textiles and clothing in the North American market. The NAFTA textiles and apparel provisions take precedence over those of the Multifiber Arrangement and other agreements between NAFTA countries applicable to textile products.

Elimination of Tariff and Non-Tariff Barriers

The three countries will eliminate immediately or phase out over a maximum period of 10 years their customs duties on textile and apparel goods manufactured in North America that meet the NAFTA rules of origin. In addition, the United States will immediately remove import quotas on such goods produced in Mexico, and will gradually phase out import quotas on Mexican textile and apparel goods that do not meet such rules. No NAFTA country may impose any new quota, except in accordance with specified "safeguards" provisions.

Safeguards

If textile or apparel producers face serious damage as a result of increased imports from another NAFTA country, the importing country may, during the "transition period", either increase tariffs or, with the exception of Canada-U.S. trade, impose quotas on the imports to provide temporary relief to that industry, subject to specific disciplines. In the case of goods that meet NAFTA's rules of origin, the importing country may take safeguard actions only in the form of tariff increases.

Rules of Origin

Specific rules of origin in the NAFTA define when imported textile or apparel goods qualify for preferential treatment. For most products, the rule of origin is "yarn forward", which means that textile and apparel goods must be produced from yarn made in a NAFTA country in order to benefit from such treatment. A "fiber forward" rule is provided for certain products such as cotton and man-made fiber yarns. Fiber forward means that goods must be produced from fiber made in a NAFTA country. In other cases, apparel cut and sewn from certain imported fabrics that the NAFTA countries agree are in short supply, such as silk, linen and certain shirting fabrics, can qualify for preferential treatment.

Additional provisions, responsive to the needs of North American industry, include "tariff rate quotas" (TRQ's), under which yarns, fabrics and apparel that are made in North America, but that do not meet the rules of origin, can still qualify for preferential duty treatment up to specified import levels. The TRQ's for Canada that were included in the Canada-U.S. FTA have been increased and provided an annual growth rate for at least the first five years.

The NAFTA countries will undertake a general review of the textile and apparel rules of origin prior to January 1, 1998. In the interim, they will consult on request on whether specific goods should be made subject to different rules of origin, taking into account availability of supply within the free trade area. In addition, the three countries have established a process to permit annual adjustments to TRQ levels.

Labelling Requirements

A joint government and private sector Committee on Labelling for Textile Products will recommend ways to eliminate unnecessary obstacles to textile trade resulting from different labelling requirements in the three countries through a work program to develop uniform labelling requirements, for example regarding pictograms and symbols, care instructions, fiber content information and methods for attachment of labels.

AUTOMOTIVE GOODS

The NAFTA will eliminate barriers to trade in North American automobiles, trucks, buses and parts ("automotive goods") within the free trade area, and eliminate investment restrictions in this sector, over a 10-year transition period.

Tariff Elimination

Each NAFTA country will phase out all duties on its imports of North American automotive goods during the transition period. Most trade in automotive goods between Canada and the United States is conducted on a duty-free basis under the terms of either the Canada-U.S. FTA or the Canada-U.S. "Autopact".

Vehicles: Canada and the United States eliminated tariffs on their trade in vehicles under the Canada-U.S. FTA. Under the NAFTA, for its imports from Mexico, the United States will:

- eliminate immediately its tariffs on passenger automobiles;
- reduce immediately to 10 percent its tariffs on light trucks and phase out the remaining tariffs over five years; and
- phase out its tariffs on other vehicles over 10 years.

For imports from Canada and the United States, Mexico will:

- reduce immediately by 50 percent its tariffs on passenger automobiles and phase out the remaining tariffs over 10 years;
- reduce immediately by 50 percent its tariffs on light trucks and phase out the remaining tariffs over five years; and
- phase out its tariffs on all other vehicles over 10 years.

Canada will eliminate its tariffs on vehicles imported from Mexico on the same schedule as Mexico will follow for imports from Canada and the United States.

Parts: Each country will eliminate its remaining tariffs on certain automotive parts immediately and phase out duties on other parts over five years and a small portion over 10 years.

Rules of Origin

The NAFTA rules of origin section provides that in order to qualify for preferential tariff treatment, automotive goods must contain a specified percentage of North American content (rising to 62.5 percent for passenger automobiles and light trucks as well as engines and transmissions for such vehicles, and to 60 percent for other vehicles and automotive parts) based on the net-cost formula. In calculating the content level of automotive goods, the value of imports of automotive parts from outside the NAFTA region will be traced through the production chain to improve the accuracy of the content calculation.

Mexican Auto Decree

The Mexican Auto Decree will terminate at the end of the transition period. Over this period, the restrictions under the Auto Decree will be modified by:

- eliminating immediately the limitation on imports of vehicles based on sales in the Mexican market;
- amending its "trade balancing" requirements immediately to permit assemblers to reduce gradually the level of exports of vehicles and parts required to import such goods, and eliminating, at the end of the transition period, the requirement that only assemblers in Mexico may import vehicles;
- changing its "national value-added" rules by reducing gradually the percentage of parts required to be purchased from Mexican parts producers; by counting purchases from certain in-bond production facilities ("maquiladoras") toward this percentage; by ensuring that Canadian, Mexican and U.S. parts manufacturers may participate in the growing Mexican market on a competitive basis, while requiring assemblers in Mexico during the transition period to continue to purchase parts from Mexican parts producers; and by eliminating at the end of the transition period the national value added requirement.

Mexican Auto-Transportation Decree

The Mexican Auto-Transportation Decree covering trucks (other than light trucks) and buses will be eliminated immediately, and replaced with a transitional system of quotas in effect for five years.

Imports of Used Vehicles

Canada's remaining restrictions on the import of used motor vehicles from the United States will be eliminated on January 1, 1994, in accordance with the Canada-U.S. FTA. Beginning 15 years after the NAFTA goes into effect, Canada will phase out over 10 years its prohibition on imports of Mexican used motor vehicles. Mexico will phase out its prohibition on imports of North American used vehicles over the same period.

Investment Restrictions

In accordance with the NAFTA's investment provisions, Mexico will immediately permit "NAFTA investors" to make investments of up to 100 percent in Mexican "national suppliers" of parts, and up to 49 percent in other automotive parts enterprises, increasing to 100 percent after five years. Mexico's thresholds for the screening of takeovers in the automotive sector will be governed by NAFTA's investment provisions.

Corporate Average Fuel Economy Fleet Content

Under the NAFTA, the United States will modify the fleet content definition found in its Corporate Average Fuel Economy ("CAFE") rules, so that vehicle manufacturers may choose to have those Mexican-produced parts and vehicles they export to the United States classified as domestic. After 10 years, Mexican production exported to the United States will receive the same treatment as U.S. or Canadian production for purposes of CAFE. Canadian-produced automobiles currently may be classified as domestic for CAFE purposes. The NAFTA does not change the minimum fuel economy standards for vehicles sold in the United States.

Automotive Standards

The NAFTA creates a special intergovernmental group to review and make recommendations on federal automotive standards in the three countries, including recommendations to achieve greater compatibility in such standards.

ENERGY AND BASIC PETROCHEMICALS

This section sets out the rights and obligations of the three countries regarding crude oil, gas, refined products, basic petrochemicals, coal, electricity and nuclear energy.

In the NAFTA, the three countries confirm their full respect for their constitutions. They also recognize the desirability of strengthening the important role that trade in energy and basic petrochemical goods plays in the North American region and of enhancing this role through sustained and gradual liberalization.

The NAFTA's energy provisions incorporate and build on GATT disciplines regarding quantitative restrictions on imports and exports as they apply to energy and basic petrochemical trade. The NAFTA provides that under these disciplines a country may not impose minimum or maximum import or export price requirements, subject to the same exceptions that apply to quantitative restrictions. The NAFTA also makes clear that each country may administer export and import licensing systems, provided that they are operated in a manner consistent with the provisions of the Agreement. In addition, no country may impose a tax, duty or charge on the export of energy or basic petrochemical goods unless the same tax, duty or charge is applied to such goods when consumed domestically.

This section also provides that import and export restrictions on energy trade will be limited to certain specific circumstances, such as to conserve exhaustible natural resources, deal with a short supply situation or implement a price stabilization plan.

Further, when a NAFTA country imposes any such restriction, it must not reduce the proportion of total supply made available to the other NAFTA countries below the level of the preceding three years or other agreed period, impose a higher price on exports to another NAFTA country than the domestic price or require the disruption of normal supply channels. Based on a reservation that Mexico has taken, these obligations do not apply as between Mexico and the other NAFTA countries.

This section also limits the grounds on which a NAFTA country may restrict exports or imports of energy or basic petrochemical goods for reasons of national security. However, based on a reservation that Mexico has taken, energy trade between Mexico and the other NAFTA countries will not be subject to this discipline, but will instead be governed by the Agreement's general national security provision, described in the "Exceptions" section below.

The NAFTA confirms that energy regulatory measures are subject to the Agreement's general rules regarding national treatment, import and export restrictions and export taxes. The three countries also agree that the implementation of regulatory measures should be undertaken in a manner that recognizes the importance of a stable regulatory environment.

In the NAFTA, Mexico reserves to the Mexican State goods, activities and investments in Mexico in the oil, gas, refining, basic petrochemicals, nuclear and electricity sectors.

The NAFTA energy provisions recognize new private investment opportunities in Mexico in non-basic petrochemical goods and in electricity generating facilities for "own use", co-generation and independent power production by allowing NAFTA investors to acquire, establish and operate facilities in these activities. Investment in non-basic petrochemical goods is governed by the general provisions of the Agreement.

To promote cross-border trade in natural gas and basic petrochemicals, NAFTA provides that state enterprises, end users and suppliers have the right to negotiate supply contracts. In addition, independent power producers, CFE (Mexico's state-owned electricity firm) and electric utilities in other NAFTA countries also have the right to negotiate power purchase and sale contracts.

Each country will also allow its state enterprises to negotiate performance clauses in their service contracts.

Certain specific commitments relating to special aspects of Canada-U.S. energy trade, set out in the Energy Chapter of the Canada-U.S. FTA, will continue to apply between the two countries.

AGRICULTURE

The NAFTA sets out separate bilateral undertakings on cross-border trade in agricultural products, one between Canada and Mexico, and the other between Mexico and the United States. Both include a special transitional safeguard mechanism. As a general matter, the rules of the Canada-U.S. FTA on tariff and non-tariff barriers will continue to apply to agricultural trade between Canada and the United States. Trilateral provisions in the NAFTA address domestic support for agricultural goods and agricultural export subsidies.

Tariffs and Non-Tariff Barriers

Trade between Mexico and the United States: When the Agreement goes into effect, Mexico and the United States will eliminate immediately all non-tariff barriers to their agricultural trade, generally through their conversion to either "tariff-rate quotas" (TRQ's) or ordinary tariffs.

The TRQ's will facilitate the transition for producers of import-sensitive products in each country. No tariffs will be imposed on imports within the quota amount. The quantity eligible to enter duty-free under the TRQ will be based on recent average trade levels and will grow generally at three percent per year. The over-quota duty-initially established at a level designed to equal the existing tariff value of each non-tariff barrier-will progressively decline to zero during either a 10- or 15-year transition period, depending on the product.

Under the NAFTA, Mexico and the United States will eliminate immediately tariffs on a broad range of agricultural products. This means that roughly one-half of U.S.-Mexico bilateral agricultural trade will be duty-free when the Agreement goes into effect. All tariff barriers between Mexico and the United States will be eliminated no later than 10 years after the Agreement takes effect, with the exception of duties on certain highly sensitive products-including corn and dry beans for Mexico, and orange juice and sugar for the United States. Tariff phase-outs on these few remaining products will be completed after five more years.

Mexico and the United States will gradually liberalize bilateral trade in sugar. Both countries will apply TRQ's of equivalent effect on third country sugar by the sixth year after the Agreement goes into effect. All restrictions on trade in sugar between the two countries will be eliminated by the end of the 15-year transition period, except that sugar exported under the U.S. Sugar Re-Export Programs will remain subject to most-favored-nation (MFN) tariff rates.

Trade between Canada and Mexico: Canada and Mexico will eliminate all tariff and non-tariff barriers on their agricultural trade, with the exception of those in the dairy, poultry, egg and sugar sectors.

Canada will immediately exempt Mexico from import restrictions covering wheat, barley and their products, beef and veal, and margarine. Canada and Mexico will eliminate immediately or phase out within five years tariffs on many fruit and vegetable products, while tariffs on remaining fruit and vegetable products will be phased out over 10 years. A small number of these products will be subject to the special transitional safeguard described below.

Other than in the dairy, poultry and egg sectors, Mexico will replace its import licenses with tariffs, for example on wheat, or TRQ's, for example respecting corn and barley. These tariffs will generally be phased out over a 10-year period.

Special Safeguard Provision

During the first 10 years the Agreement is in effect, the NAFTA provides a special safeguard provision that applies to certain products within the scope of the bilateral undertakings described above. A NAFTA country may invoke the mechanism where imports of such products from the other country reach "trigger" levels set out in the Agreement. In such circumstances, the importing country may apply the tariff rate in effect at the time the Agreement went into effect or the then-current MFN rate, whichever is lower. This tariff rate may be applied for the remainder of the season or the calendar year, depending on the product. The trigger levels will increase over this 10-year period.

Domestic Support

Recognizing both the importance of domestic support measures to their respective agricultural sectors and the potential effect of such measures on trade, each of the NAFTA countries will endeavor to move toward domestic support policies that are not trade-distorting. In addition, the three countries recognize that a country may change its domestic support mechanisms so long as such change is in compliance with applicable GATT obligations.

Export Subsidies

Recognizing that the use of export subsidies within the free trade area is inappropriate except to counter subsidized imports from a non-NAFTA country, the Agreement provides that:

- a NAFTA exporting country must give three-days' notice of its intent to introduce a subsidy on agricultural exports to another NAFTA country;
- when an exporting NAFTA country believes that another NAFTA country is importing non-NAFTA agricultural goods that benefit from export subsidies, it may request consultations on measures the importing country could take against such subsidized imports; and
- if the importing country adopts mutually agreed measures to counter that subsidy, the NAFTA exporting country will not introduce its own export subsidy.

Building on the bilateral discipline on export subsidies in the Canada-U.S. FTA, the three countries will work toward the elimination of export subsidies in North American agricultural trade in pursuit of their objective of eliminating such subsidies worldwide.

Agricultural Marketing Standards

The NAFTA provides that when either Mexico or the United States applies a measure regarding the classification, grading or marketing of a domestic agricultural product, it will provide no less favorable treatment to like products imported from the other country for processing.

Resolution of Commercial Disputes

The three countries will work toward development of a mechanism for resolving private cross-border commercial disputes involving agricultural products.

Committee on Agricultural Trade

A trilateral committee on agricultural trade will monitor the implementation and administration of this section. In addition, a Mexico-U.S. working group and a Canada-Mexico working group will be established under the committee to review the operation of grade and quality standards.

SANITARY AND PHYTOSANITARY MEASURES

This section imposes disciplines on the development, adoption and enforcement of sanitary and phytosanitary (SPS) measures, namely those taken for the protection of human, animal or plant life or health from risks arising from animal or plant pests or diseases, food additives or contaminants. These disciplines are designed to prevent use of SPS measures as disguised restrictions on trade, while safeguarding each country's right to take SPS measures to protect human, animal or plant life or health.

Basic Rights and Obligations

The NAFTA confirms the right of each country to establish the level of SPS protection that it considers appropriate and provides that a NAFTA country may achieve that level of protection through SPS measures that:

- are based on scientific principles and a risk assessment;
- are applied only to the extent necessary to provide a country's chosen level of protection; and
- do not result in unfair discrimination or disguised restrictions on trade.

International Standards

To avoid creating unnecessary barriers to trade, the NAFTA encourages the three countries to use relevant international standards in the development of their SPS measures. However, it permits each country to adopt more stringent, science-based measures when necessary to achieve its chosen level of protection.

The NAFTA partners will promote the development and review of international SPS standards in such international and North American standardizing organizations as the Codex Alimentarius Commission, the International Office of Epizootics, the Tripartite Animal Health Commission, the International Plant Protection Convention and the North American Plant Protection Organization.

Harmonization and Equivalence

The three countries have agreed to work toward equivalent SPS measures without reducing any country's chosen level of protection of human, animal or plant life or health. Each NAFTA country will accept SPS measures of another NAFTA country as equivalent to its own, provided that the exporting country demonstrates that its measures achieve the importing country's chosen level of protection.

Risk Assessment

The NAFTA establishes disciplines on risk assessment, including for evaluating the likelihood of entry, establishment or spread of pests and diseases. SPS measures must be based on an assessment of risk to human, animal or plant life or health, taking into account risk assessment techniques developed by international or North American standardizing organizations. A NAFTA country may grant a phase-in period for compliance by goods from another NAFTA country where the phase-in would be consistent with ensuring the importing country's chosen level of SPS protection.

Adaptation to Regional Conditions

This section also establishes rules for the adaptation of SPS measures to regional conditions, in particular regarding pest- or disease-free areas and areas of low pest or disease prevalence. An exporting country must provide objective evidence whenever it claims that goods from its territory originate in a pest- or disease-free area or area of low pest or disease prevalence.

Procedural Transparency

The NAFTA requires public notice in most cases prior to the adoption or modification of any SPS measure that may affect trade in North America. The notice must identify the goods to be covered, and the objectives of and reasons for the measure. All SPS measures must be published promptly. Each NAFTA country will ensure that a designated inquiry point provides information regarding such measures.

Control, Inspection and Approval Procedures

The NAFTA also establishes rules governing procedures for ensuring the fulfillment of SPS measures. These rules allow for the continued operation of domestic control, inspection and approval procedures, including national systems for approving the use of additives or for establishing tolerances for contaminants in foods, beverages or feedstuffs, subject to such disciplines as national treatment, timeliness and procedural transparency.

Technical Assistance

The three countries will facilitate the provision of technical assistance concerning SPS measures either directly or through appropriate international or North American standardizing organizations.

Committee on Sanitary and Phytosanitary Measures

A Committee on Sanitary and Phytosanitary Measures will facilitate the enhancement of food safety and sanitary conditions in the free trade area, promote the harmonization and equivalence of SPS measures and facilitate technical cooperation and consultations, including consultations regarding disputes involving SPS measures.

TECHNICAL STANDARDS

This section applies to standardsrelated measures, namely standards, governmental technical regulations and the procedures used to determine that these standards and regulations are met. It recognizes the crucial role of these measures in promoting safety and protecting human, animal and plant life and health, the environment and consumers. The three countries have agreed not to use standardsrelated measures as unnecessary obstacles to trade, and will cooperate and work towards the enhancement and compatibility of these measures in the free trade area.

Basic Rights and Obligations

The NAFTA affirms that each country maintains the right to adopt, apply and enforce standardsrelated measures, to choose the level of protection it wishes to achieve through such measures and to conduct assessments of risk to ensure that those levels are achieved. In addition, the NAFTA affirms each country's rights and obligations under the GATT Agreement on Technical Barriers to Trade and other international agreements, including environmental and conservation agreements.

The NAFTA also sets out certain disciplines on the use of standardsrelated measures, with a view to facilitating trade between the NAFTA partners. For example, each country must ensure that its standards-related measures provide both national treatment and mostfavorednation treatment. That is, they must ensure that goods or specified services from the other two countries are treated no less favorably than like goods or services of national origin, and like goods or services from nonNAFTA countries.

International Standards

Each NAFTA country will use international standards as a basis for its standardsrelated measures if those standards are an effective and appropriate means to fulfill the country's objectives. However, each country retains the right to adopt, apply and enforce standardsrelated measures that result in a higher level of protection than would be achieved by measures based on international standards.

Compatibility

The NAFTA countries will work jointly to enhance safety, health and environmental and consumer protection. They will also seek to make their standardsrelated measures more compatible, taking into account international standard-setting activities, so as to facilitate trade and to reduce the additional costs that arise from having to meet different requirements in each country.

Conformity Assessment

Conformity assessment procedures are used to determine that the requirements set out in technical regulations or standards are fulfilled. The Agreement sets out a detailed list of rules governing these procedures to ensure that they do not create unnecessary obstacles to trade between the NAFTA countries.

Procedural Transparency

The NAFTA requires public notice in most cases prior to the adoption or modification of standardsrelated measures that may affect trade in North America. The notice must identify the goods or services to be covered and the objectives of and the reasons for the measure. Other NAFTA countries and anyone interested in a particular standardsrelated measure will be allowed to comment on it. Each NAFTA country will ensure that designated inquiry points are able to respond to questions and provide information regarding standardsrelated measures to other NAFTA countries and any interested person. **Technical Cooperation**

Each country will, on request, provide to another NAFTA country technical advice, information and assistance on mutually agreed terms and conditions to enhance their standardsrelated measures. The Agreement encourages cooperation between the standardizing bodies of the NAFTA countries.

Committee on StandardsRelated Measures

A Committee on Standards-Related Measures will monitor the implementation and administration of this section of the Agreement, facilitate the attainment of compatibility, enhance cooperation on developing, applying and enforcing standardsrelated measures and facilitate consultations regarding disputes in this area. Subcommittees and working groups will be created to deal with specific topics of interest. The Agreement provides that these subcommittees and working groups may invite the participation of scientists and representatives of interested nongovernmental organizations from the three countries.

EMERGENCY ACTION

This section of the Agreement establishes rules and procedures under which a NAFTA country may take "safeguard" actions to provide temporary relief to industries adversely affected by surges in imports. A transitional bilateral safeguard mechanism applies to emergency actions taken against import surges that result from tariff reductions under the NAFTA. A global safeguard applies to import surges from all countries.

The Agreement's procedures governing safeguard actions provide that relief may be imposed for only a limited period of time and require that the NAFTA country taking the action must compensate the NAFTA country against whose good the action is taken. If the countries are not able to agree on the appropriate compensation, the exporting country may take trade measures of equivalent effect to compensate for the trade effect of the safeguard.

Bilateral Safeguard

During the transition period, if increases in imports from another NAFTA country cause or threaten to cause serious injury to a domestic industry, a NAFTA country may take a safeguard action that temporarily suspends the agreed duty elimination or re-establishes the preNAFTA rate of duty. The injury must result from the elimination of duties under the NAFTA. Such a safeguard action may be taken only once, and for a maximum period of three years. In the case of certain extremely sensitive goods, a country may extend the safeguard action for a fourth year. Bilateral safeguard actions may be taken after the transition period only with the consent of the country whose good would be affected by such action.

Global Safeguard

The Agreement provides that where a NAFTA partner undertakes a safeguard action on a global or multilateral basis (in accordance with Article XIX of the GATT, which permits both tariff and quotabased safeguard measures), each NAFTA partner must be excluded from the action unless its exports:

- account for a substantial share of total imports of the good in question; and
- contribute importantly to the serious injury or the threat of injury.

The Agreement stipulates that a NAFTA country normally will not be considered to account for a substantial share of imports if it does not fall among the top five suppliers of the good. For a NAFTA country's goods to be deemed not to contribute importantly to injury, the rate of growth of imports of the goods entering from that country must be appreciably lower than that of total imports of those goods. Even if a NAFTA country is initially excluded from a safeguard action, the country taking the action has the right subsequently to include it in the action if a surge in imports from that country undermines the effectiveness of the action.

Procedural Requirements

This section also provides detailed procedures to guide the administration of safeguard measures, including:

- entrusting injury determinations to a specified administrative authority; and
- requirements for the form and content of petitions, the conduct of investigations, including public hearings to allow all interested parties an opportunity to present views, and notification and publication of investigations and decisions.

REVIEW OF ANTIDUMPING AND COUNTERVAILING DUTY MATTERS

The NAFTA establishes a mechanism for independent binational panels to review final antidumping (AD) and countervailing duty (CVD) determinations by administrative authorities in each country. Each country will make those changes to its law necessary to ensure effective panel review. This section also sets out procedures for panel review of future amendments to each country's antidumping and countervailing duty laws. In addition, it establishes an "extraordinary challenge" procedure to deal with allegations that certain actions may have affected a panel's decision and the panel review process. Finally, the NAFTA creates a safeguard mechanism designed to remedy instances in which application of a country's domestic law undermines the functioning of the panel process.

Panel Process

Binational panels will substitute for domestic judicial review in cases in which either the importing or exporting country seeks panel review of a determination based on a request by a person entitled to judicial review of that determination under the domestic law of the importing country.

Each panel will comprise five qualified individuals from the countries involved, drawn from a roster maintained by the three countries. Each country involved will select two panelists, with the fifth selected by agreement of those countries or, in the absence of agreement, by the agreement of the four designated panelists or by lot.

A panel must apply the domestic law of the importing country in reviewing a determination. The three countries will develop rules of procedure for panels. The panel will either uphold the determination or remand it to the administrative authority for action not inconsistent with the panel's decision. Panel decisions will be binding.

Retention of AD and CVD Laws

The NAFTA explicitly preserves the right of each country to retain its AD and CVD laws. Each country may amend its AD and CVD laws after the NAFTA takes effect. Any such amendment, to the extent it applies to imports from another NAFTA country, may be subject to panel review for inconsistency with the object and purpose of the Agreement, the GATT or the relevant GATT codes. If a panel finds such an inconsistency, and consultations fail to resolve the matter, the country that requested the review may take comparable legislative or administrative action or terminate the Agreement.

Extraordinary Challenge Procedure

The NAFTA also provides for an extraordinary challenge procedure and establishes certain grounds for invoking this procedure. Following a panel decision, either of the countries involved may request the establishment of a three-person extraordinary challenge committee, comprising judges or former judges from those countries. If it determines that one of the grounds for the extraordinary challenge has been met, it will vacate the original panel decision. In such event, a new panel will be established.

Special Committee to Safeguard the Panel Process

This section provides a safeguard mechanism to ensure that the panel process functions as intended. A NAFTA country may request a "special committee" to determine if the application of another country's domestic law has:

- prevented the establishment of a panel;
- prevented a panel from rendering a final decision;
- prevented the implementation of a panel's decision or denied it binding force and effect; or
- failed to provide opportunity for judicial review of the basis for the disputed administrative determination by an independent court applying the standards set out in the country's domestic law.

If a special committee makes an affirmative finding on any of these grounds, the countries involved will attempt to resolve the matter in the light of the special committee's finding. If they are unable to do so, the complaining country may suspend the binational panel system with respect to the other country or may suspend other benefits under the Agreement. If the

complaining country suspends the panel system, the country complained against may take reciprocal action. Unless the countries involved resolve the matter, or unless the country complained against demonstrates to the special committee that it has taken the necessary corrective action, any suspension of benefits may remain in effect.

GOVERNMENT PROCUREMENT

The Agreement opens a significant portion of the government procurement market in each NAFTA country on a non-discriminatory basis to suppliers from the other NAFTA countries for goods, services and construction services.

Coverage

The NAFTA covers procurements by specified federal government departments and agencies and federal government enterprises in each NAFTA country.

The NAFTA applies to procurements by federal government departments and agencies of:

- over US$50,000 for goods and services; and
- over US$6.5 million for construction services.

For federal government enterprises, the NAFTA applies to procurements of:

- over US$250,000 for goods and services; and
- over US$8 million for construction services.

For procurements covered by the Canada-U.S. FTA, the dollar thresholds of that Agreement will continue to apply.

Mexico will phase in its coverage over a transition period.

This section does not apply to the procurement of arms, ammunition, weapons and other national security procurements. Each country reserves the right to favor national suppliers for procurements specified in the Agreement.

Procedural Obligations

In addition to requiring national and most-favored NAFTA country treatment, the Agreement imposes procedural disciplines on covered procurements that:

- promote transparency and predictability by providing rules for technical specifications, qualifications of suppliers, setting of time limits and other aspects of the procurement process;
- prohibit offset practices and other discriminatory buy-national requirements; and
- require each country to establish a bid protest system that allows suppliers to challenge procedures or awards.

Technical Cooperation

The three countries will exchange information regarding their procurement systems to assist suppliers in each country to take advantage of the opportunities created by this section.

A Committee on Small Business will assist NAFTA small businesses to identify procurement opportunities in NAFTA countries.

Future Negotiations

Recognizing that improvements to NAFTA's procurement section are desirable, the three countries will endeavor to extend the coverage of this section to state and provincial governments that, after consultations, voluntarily accept its commitments.

CROSSBORDER TRADE IN SERVICES

The NAFTA expands on initiatives in the Canada-U.S. FTA and the Uruguay Round of multilateral trade negotiations to create internationally-agreed disciplines on government regulation of trade in services. The cross-border trade in services provisions establish a set of basic rules and obligations to facilitate trade in services between the three countries.

National Treatment

The Agreement extends to services the basic obligation of national treatment, which has long been applied to goods through the GATT and other trade agreements. Under NAFTA's national treatment rule, each NAFTA country must treat service providers of the other NAFTA countries no less favorably than it treats its own service providers in like circumstances.

With respect to measures of a state or province, national treatment means treatment no less favorable than the most favorable treatment that the state or province accords to the service providers of the country of which it forms a part.

Most-Favored-Nation Treatment

The Agreement also applies another basic GATT obligation to services: that of most-favored-nation treatment. This rule requires each NAFTA country to treat service providers of the other NAFTA countries no less favorably than it treats service providers of any other country in like circumstances.

Local Presence

Under the Agreement, a NAFTA country may not require a service provider of another NAFTA country to establish or maintain a residence, representative office, branch or any other form of enterprise in its territory as a condition for the provision of a service.

Reservations

Each NAFTA country will be able to keep certain current laws and other measures that do not comply with the rules and obligations described above. Such federal, state and provincial measures will be listed in the Agreement. Each NAFTA country will have up to two years to complete the list of state and provincial measures of this kind. All such measures currently in force at the municipal and other local government level may be retained.

Each NAFTA country may renew or amend its non-conforming measures provided that the renewal or amendment does not make a measure more inconsistent with the rules and obligations described above.

Non-Discriminatory Quantitative Restrictions

Each country will also list its existing non-discriminatory measures that limit the number of service providers or the operations of service providers in a particular sector. Any other NAFTA country will be able to request consultations on such measures with a view to negotiating their liberalization or removal.

Licensing and Certification

The NAFTA provisions related to professional licensing and certification are designed to avoid unnecessary barriers to trade. Specifically, each country must seek to ensure that its licensing and certification requirements and procedures are based on objective and transparent criteria such as professional competence, are no more burdensome than is necessary to ensure the quality of the service and are not in themselves a restriction on the provision of the service. This section also provides a mechanism for the mutual recognition of licenses and certifications, but does not require a NAFTA country automatically to recognize the credentials of service providers of another country. In particular, the three countries will undertake a work program with a view to liberalizing the licensing of foreign legal consultants and the temporary licensing of engineers.

Commencing two years after implementation of the Agreement, a NAFTA country will remove any citizenship or permanent residency requirement for the licensing and certification of professional service providers in its territory. Any failure to comply with this obligation will entitle the other NAFTA countries to maintain or reinstate equivalent requirements in the same service sector.

Denial of Benefits

A NAFTA country may deny the benefits of this section to a specific firm if the services involved are provided through an enterprise of another NAFTA country that is owned or controlled by persons of a non-NAFTA country and the enterprise has no substantive business activities in the free trade area. In addition, for transportation services, a NAFTA country may deny benefits to a firm if these services are provided with equipment that is not registered by any of the NAFTA countries.

Exclusions

The services section does not apply to a number of matters dealt with in other parts of the Agreement, including government procurement, subsidies, financial services and energy-related services. The rules described above also will not affect most air services, basic telecommunications, social services provided by the government of any NAFTA country, the maritime industry except for certain services between Canada and Mexico and sectors currently reserved by the Mexican Constitution to the Mexican State and Mexican nationals. Each NAFTA country maintains the right to take action necessary to enforce measures of general application that are consistent with the Agreement, such as regarding deceptive practices.

LAND TRANSPORTATION

The NAFTA provides a timetable for the removal of barriers to the provision of land transportation services between the NAFTA countries and for the establishment of compatible land transport technical and safety standards. It provides for the phase out of restrictions on cross-border land transportation services among the three countries in order to create equal opportunities in the North American international land transportation market. The provisions are designed to ensure that the land transportation services industries of the three countries will have a full opportunity to enhance their competitiveness without being placed at a disadvantage during the transition to liberalized trade.

Liberalization of Restrictions

Bus and Trucking Services: When the NAFTA goes into effect, the United States will amend its moratorium on grants of truck and bus operating authority by allowing full access for Mexican charter and tour bus operators to its cross-border market. Mexico will grant equivalent rights to U.S. and Canadian charter and tour bus operators. Canadian truck and bus companies are not subject to the U.S. moratorium. Canada will continue to permit U.S. and Mexican truck and bus operators to obtain operating authority in Canada on a national treatment basis.

Three years after signature of the Agreement, Mexico will allow U.S. and Canadian truck operators to make cross-border deliveries to, and pick up cargo in, Mexican border states, and the United States will allow Mexican truck operators to perform the same services in U.S. border states. At the same time, Mexico will allow 49 percent Canadian and U.S. investment in bus companies and in truck companies providing international cargo services (including point-to-point distribution of such cargo within Mexico). The United States and Canada will permit Mexican truck companies to distribute international cargo as well. The United States will maintain its moratorium on grants of operating authority for truck carriage of domestic cargo and for domestic passenger service, continuing to allow Mexicans to hold a noncontrolling interest in U.S. companies.

Three years after the Agreement goes into effect, the United States will allow bus firms from Mexico to begin scheduled cross-border bus service to and from any part of the United States. At the same time, Mexico will provide the same treatment to bus firms from Canada and the United States.

Six years after the Agreement goes into effect, the United States will provide crossborder access to its entire territory to trucking firms from Mexico. Mexico will provide the same treatment to trucking firms from Canada and the United States.

Seven years after the Agreement goes into effect, Mexico will allow 51 percent Canadian and U.S. investment in Mexican bus companies and in Mexican truck companies providing international cargo services. At the same time, the United States will lift its moratorium on domestic operating authority for Mexican bus companies.

Ten years after the Agreement goes into effect, Mexico will permit 100 percent investment in truck and bus companies in Mexico. No NAFTA country will be required to remove restrictions on truck carriage of domestic cargo.

Rail Services: Under the Agreement and consistent with a Mexican reservation taken pursuant to its Constitution, Canadian and U.S. railroads will continue to be free to market their services in Mexico, operate unit trains with their own locomotives, construct and own terminals and finance rail infrastructure. Mexico will continue to enjoy full access to the Canadian and U.S. railroad systems. The Agreement does not affect each NAFTA country's immigration law requirements for crews to change at or near their borders.

Port Services: The Agreement also liberalizes landside aspects of marine transport. Mexico will immediately allow 100 percent Canadian and U.S. investment in, and operation of, port facilities such as cranes, piers, terminals and stevedoring companies for enterprises that handle their own cargo. For enterprises handling other companies' cargo, 100 percent Canadian and U.S. ownership will be allowed after screening by the Mexican Foreign Investment Commission. Canada and the United States will continue to permit full Mexican participation in these activities.

Technical and Safety Standards

Consistent with their commitment to enhance safety, health and environmental and consumer protection, the NAFTA partners will endeavor to make compatible, over a period of six years, their standards-related measures with respect to motor carrier and rail operations, including:

- vehicles, including equipment such as tires and brakes, weights and dimensions, maintenance and repair and certain aspects of emission levels;
- non-medical testing and licensing of truck drivers;
- medical standards for truck drivers;
- locomotives and other rail equipment and operating personnel standards relevant to cross-border operations;
- standards relating to the transportation of dangerous goods; and
- road signs and supervision of motor carrier safety compliance.

Access to Information

Each NAFTA country will designate contact points to provide information regarding land transportation matters such as those related to operating authorizations and safety requirements.

Review Process

Beginning five years after the Agreement goes into effect, a committee of government officials will consider the effectiveness of liberalization in the land transportation sector, including any specific problems or unanticipated effects liberalization might have on each country's motor carrier industry. No later than seven years after the Agreement goes into effect, consultations will also address possible further liberalization. The results of these consultations will be forwarded to the NAFTA Trade Commission for appropriate action.

TELECOMMUNICATIONS

NAFTA provides that public telecommunications transport networks (public networks) and services are to be available on reasonable and nondiscriminatory terms and conditions for firms or individuals who use those networks for the conduct of their business. These uses include the provision of enhanced or valueadded telecommunications services and intracorporate communications. However, the operation and provision of public networks and services have not been made subject to the NAFTA.

Access to and Use of Public Networks

The three countries will ensure that reasonable conditions of access and use include the ability to:

- lease private lines;
- attach terminal or other equipment to public networks;
- interconnect private circuits to public networks;
- perform switching, signalling and processing functions; and
- use operating protocols of the user's choice.

Moreover, conditions on access and use may be imposed only if necessary to safeguard the public service responsibilities of network operators or to protect the technical integrity of public networks. Provided that these criteria are met, such conditions on access and use may include restrictions on resale or shared use of public telecommunications transport services, requirements to use specified technical interfaces with public networks or services and restrictions on the interconnection of private circuits to provide public networks or services.

Rates for public telecommunications transport services must reflect economic costs, and private leased circuits must be available on a flatrate pricing basis. However, NAFTA does not prohibit crosssubsidization between public telecommunications transport services. In

addition, firms or individuals may use public networks and services to move information within a country and across NAFTA borders.

The provisions in this section do not apply to measures affecting the distribution of radio or television programming by broadcast stations or cable systems, which will have continued access to and use of public networks and services.

Exclusions and Limitations

The three countries are not required to authorize a person of another NAFTA country to provide or operate telecommunications transport networks or services and may prohibit operators of private networks from providing public networks and services.

Enhanced Telecommunications

The NAFTA provides that each country will ensure that its licensing or other authorization procedures for the provision of enhanced or value-added telecommunications services are transparent, nondiscriminatory and applied expeditiously. Enhanced providers of the three countries will not be subject to obligations that are normally imposed on providers of public networks and services, such as providing services to the public generally or costjustifying their rates.

Standards Related Measures

The NAFTA limits the types of standards-related measures that may be imposed on the attachment of telecommunications equipment to public networks. Such measures must be necessary to prevent technical damage to, and interference with, public networks and services, to prevent billing equipment malfunctions and to ensure user safety and access. In addition, any technically qualified entity will be permitted to test equipment to be attached to public networks. This section also establishes procedures in each country to permit the acceptance of equipment test results conducted in the other NAFTA countries.

Monopoly Provision of Services

The NAFTA recognizes that a country may maintain or designate a monopoly provider of public networks or services. Each country will ensure that any such monopoly does not abuse its monopoly position by engaging in anticompetitive conduct outside its monopoly that adversely affects a person of another NAFTA country.

Provision of Information

Information affecting access to and use of public networks and services must be made publicly available, including:

- tariffs and other terms and conditions of service;
- specification of network and service technical interfaces;
- information on standardizing organizations;
- conditions for the attachment of terminal or other equipment; and

- notification, permit, registration or licensing requirements.

Technical Cooperation

The NAFTA countries will cooperate in the exchange of technical information and in the development of governmenttogovernment training programs. Recognizing the importance to global telecommunications of international standards, they will also promote such standards through the work of the International Telecommunications Union, the International Organization for Standardization and other relevant international organizations.

INVESTMENT

The NAFTA removes significant investment barriers, ensures basic protections for NAFTA investors and provides a mechanism for the settlement of disputes between such investors and a NAFTA country.

Coverage

This section covers investments in one country by NAFTA investors from another NAFTA country. NAFTA investors include all enterprises with substantial business activities in a NAFTA country. Investment covers all forms of ownership and interests in a business enterprise, tangible and intangible property and contractual investment interests.

Non-Discriminatory and Minimum Standards of Treatment

Each country will treat NAFTA investors and their investments no less favorably than its own investors-national treatment-and investors of other countries-most-favored-nation treatment. With respect to measures of a state, provincial or local government, national treatment is defined to mean treatment no less favorable than the most favorable treatment accorded to investors of the country of which it forms a part. In addition, each country must provide investments of NAFTA investors treatment in accordance with international law, including fair and equitable treatment and full protection and security.

Performance Requirements

No NAFTA country may impose specified "performance requirements" in connection with any investments in its territory, namely specified export levels, minimum domestic content, preferences for domestic sourcing, trade balancing, technology transfer or product mandating. However, these disciplines do not apply to any NAFTA country's government procurement, export promotion or foreign aid activities.

Transfers

NAFTA investors will be able to convert local currency into foreign currency at the prevailing market rate of exchange for earnings, proceeds of a sale, loan repayments or other transactions associated with an investment. Each NAFTA country will ensure that such foreign currency may be freely transferred.

Expropriation

No NAFTA country may directly or indirectly expropriate investments of NAFTA investors except for a public purpose, on a non-discriminatory basis and in accordance with principles of due process of law. Compensation to the investor must be paid without delay at the fair market value of the expropriated investment, plus any applicable interest.

Dispute Settlement

This section sets out a detailed mechanism for the resolution of investment disputes involving a breach of the NAFTA investment rules by the host country. A NAFTA investor, at its option, may seek either monetary damages through binding investor-state arbitration or the remedies that are available in the host country's domestic courts.

Country-Specific Commitments and Exceptions

The NAFTA includes explicit country-specific liberalization commitments and exceptions to the national treatment, MFN and performance requirement rules. In the case of Mexico, these exceptions take into account constitutional requirements reserving certain activities to the Mexican State. Each country will specify exceptions for state and provincial measures within two years. Exceptions may not be made more restrictive and, if liberalized, may not subsequently be made more restrictive. However, a few sectors, such as basic telecommunications, social services and maritime services, are not subject to this constraint.

Canada may review acquisitions as provided in the Canada-U.S. FTA. Mexico may review acquisitions with an initial threshold of $25 million phased up to $150 million in the tenth year after the Agreement goes into effect. Threshold levels will be indexed.

Exceptions

The investment provisions do not apply to government procurement and subsidies. Other provisions of the Agreement address exceptions related to national security and to Canada's cultural industries.

Investment and the Environment

The NAFTA provides that no country should lower its environmental standards to attract an investment and that the countries will consult on the observance of this provision. The Agreement also specifies that a country may take action consistent with the NAFTA's investment provisions to protect its environment.

COMPETITION POLICY, MONOPOLIESAND STATE ENTERPRISES

The NAFTA includes provisions on anticompetitive government and private business practices, in recognition that disciplines in this area will help fulfill the objectives of the Agreement.

Competition Policy

Each NAFTA country will adopt or maintain measures against anticompetitive business practices and will cooperate on issues of competition law enforcement and other competition issues.

Monopolies and State Enterprises

State Enterprises: The Agreement requires any enterprise owned or controlled by a federal, provincial or state government to act in a manner consistent with that country's NAFTA obligations when exercising regulatory, administrative or other governmental authority, such as the granting of licenses.

Monopolies: The NAFTA imposes certain additional disciplines on current and future federal government-owned monopolies and on any privately-owned monopoly that a NAFTA country may designate in the future. When buying or selling a monopoly good or service, the monopoly must follow commercial considerations, consistent with the terms of its government mandate, and must not discriminate against goods or businesses of the other NAFTA countries. NAFTA provides that each country must ensure that such monopolies do not use their monopoly positions to engage in anticompetitive practices in non-monopoly markets in that country's territory.

Trade and Competition Committee

A trilateral committee will consider issues concerning the relationship between competition laws and policies and trade in the free trade area.

FINANCIAL SERVICES

The NAFTA establishes a comprehensive principles-based approach to disciplining government measures regulating financial services. This section covers measures affecting the provision of financial services by financial institutions in the banking, insurance and securities sectors as well as other financial services. The section also sets out certain country-specific liberalization commitments, transition periods for compliance with the agreed principles and certain reservations listed by each country.

Principles

Commercial Presence and Cross-Border Services: Under the Agreement, financial service providers of a NAFTA country may establish in any other NAFTA country banking, insurance and securities operations as well as other types of financial services. Each country must permit its residents to purchase financial services in the territory of another NAFTA country. In addition, a country may not impose new restrictions on the cross-border provision of financial services in a sector, unless the country has exempted that sector from this obligation.

Non-Discriminatory Treatment: Each country will provide both national treatment, including treatment respecting competitive opportunities, and most-favored-nation treatment to other NAFTA financial service providers operating in its territory. Under the Agreement, any measure that does not disadvantage financial service providers of another NAFTA country in their ability

to provide financial services, by comparison to domestic providers, is deemed to provide equality of competitive opportunity.

Procedural Transparency: In processing applications for entry into its financial services markets, each country will:

- inform interested persons of its requirements for completing applications;
- provide information on the status of an application on request;
- make an administrative determination on a completed application within 120 days, where possible;
- publish measures of general application no later than their effective date and, where practicable, allow interested persons the opportunity to comment on proposed measures; and
- establish one or more inquiry points to answer questions about its financial services measures.

Prudential and Balance of Payments Measures: The NAFTA ensures that each country retains the right to take reasonable prudential measures notwithstanding any other provision of the Agreement. It also provides that a country may take measures for balance-of-payment purposes under limited circumstances.

Consultations

The Agreement provides specific procedures for NAFTA countries to consult on financial services matters.

Country-Specific Commitments

Canada: Under the Canada-U.S. FTA, U.S. firms and individuals are exempt from the non-resident provisions of Canada's "10/25" rules. Under the NAFTA, Canada will extend this exemption to Mexican firms and individuals who will thus be exempt from Canada's prohibition against non-residents collectively acquiring more than 25 percent of the shares of a federally-regulated Canadian financial institution. Mexican banks will also not be subject to the combined 12 percent asset ceiling that applies to non-NAFTA banks, nor will they be required to seek the approval of the Minister of Finance as a condition of opening multiple branches in Canada.

Mexico: Mexico will permit financial firms organized under the laws of another NAFTA country to establish financial institutions in Mexico, subject to certain market share limits that will apply during a transition period ending by the year 2000. Thereafter, temporary safeguard provisions may be applicable in the banking and securities sectors.

Banking and Securities: During the transition period, Mexico will gradually increase the aggregate market share limit in banking from eight percent to 15 percent. For securities firms, the limit will increase from 10 percent to 20 percent

over the same period. Mexico will apply individual market share caps of 1.5 percent for banks and four percent for securities dealers during the transition period. After the transition period, bank acquisitions will remain subject to reasonable prudential considerations and a four percent market share limit on the resulting institution.

Insurance: Under the NAFTA, Canadian and U.S. insurers may gain access to the Mexican market in two ways. First, firms that form joint ventures with Mexican insurers may increase their foreign equity participation in such ventures in steps from 30 percent in 1994 to 51 percent by 1998, and to 100 percent by the year 2000. These firms will not be subject to aggregate or individual market share limits. Second, foreign insurers may establish subsidiaries, subject to aggregate limits of six percent of market share, gradually increasing to 12 percent in 1999, and subject to individual market share caps of 1.5 percent. These limits will be eliminated on January 1, 2000. Canadian and U.S. firms that currently have an ownership interest in Mexican insurers may increase their equity participation to 100 percent by January 1, 1996. Intermediary and auxiliary insurance services companies will be permitted to establish subsidiaries with no ownership or market share limits when the Agreement goes into effect.

Finance Companies: Mexico will permit Canadian and U.S. finance companies, on terms no less favorable than those accorded to Mexican institutions, to establish separate subsidiaries in Mexico to provide consumer lending, commercial lending, mortgage lending or credit card services. However, during the transition period, the aggregate assets of such subsidiaries may not exceed three percent of the sum of the aggregate assets of all banks in Mexico plus the aggregate assets of all types of limited-scope financial institutions in Mexico. Lending by affiliates of automotive companies with respect to the vehicles such companies produce will not be subject to, or taken into account in, the three percent limit.

Other Firms: NAFTA factoring and leasing companies will be subject to transition limits on aggregate market share in Mexico of the same duration and magnitude as those applying to securities firms, except that they will not be subject to individual market share limits. NAFTA warehousing and bonding companies, foreign exchange houses and mutual fund management companies will be permitted to establish subsidiaries with no ownership or market share limits when the Agreement goes into effect.

United States: The United States will permit any Mexican financial group that has lawfully acquired a Mexican bank with operations in the United States to continue to operate a securities firm in the United States for five years after the acquisition. The acquisition must occur before the NAFTA goes into effect and the bank and securities firm involved must have been operating in the U.S. market on January 1, 1992 and June 30, 1992, respectively. The securities firm may not expand the scope of its activities or acquire other securities firms in the United States, and will be subject to nondiscriminatory restrictions on transactions between it and its affiliates. Other than these provisions, nothing in this commitment will affect the U.S. banking operations of a Mexican financial group.

Canada-United States: Financial services commitments of Canada and the United States to each other under the Canada-U.S. FTA will be incorporated into the NAFTA.

INTELLECTUAL PROPERTY

Building on the work done in the GATT and various international intellectual property treaties, NAFTA establishes a high level of obligations respecting intellectual property. Each country will provide adequate and effective protection of intellectual property rights on the basis of national treatment and will provide effective enforcement of these rights against infringement, both internally and at the border.

The Agreement sets out specific commitments regarding the protection of:

- copyrights, including sound recordings;
- patents;
- trademarks;
- plant breeders' rights;
- industrial designs;
- trade secrets;
- integrated circuits (semiconductor chips); and
- geographical indications.

Copyright

For copyright, the Agreement's obligations include requirements to:

- protect computer programs as literary works and databases as compilations;
- provide rental rights for computer programs and sound recordings; and
- provide a term of protection of at least 50 years for sound recordings.

Patents

The NAFTA provides protection for inventions by requiring each country to:

- provide product and process patents for virtually all types of inventions, including pharmaceuticals and agricultural chemicals;
- eliminate any special regimes for particular product categories, any special provisions for acquisition of patent rights and any discrimination in the availability and enjoyment of patent rights made available locally and abroad; and

- provide patent owners the opportunity to obtain product patent protection for pharmaceutical and agricultural chemical inventions for which product patents were previously unavailable.

Other Intellectual Property Rights

This section also provides rules for protecting:

- service marks to the same extent as trademarks;
- encrypted satellite signals against illegal use;
- trade secrets generally, as well as for protecting from disclosure by the government test data submitted by firms regarding the safety and efficacy of pharmaceutical and agri-chemical products;
- integrated circuits, both directly and in goods that incorporate them; and
- geographical indications so as to avoid misleading the public, while protecting trademark owners.

Enforcement Procedures

The NAFTA also includes detailed obligations regarding:

- procedures for the enforcement of intellectual property rights, including provisions on damages, injunctive relief and general due process issues; and
- enforcement of intellectual property rights at the border, including safeguards to prevent abuse.

TEMPORARY ENTRY FOR BUSINESS PERSONS

Taking account of the preferential trading relationship between the NAFTA countries, this section sets out commitments by the three countries to facilitate on a reciprocal basis temporary entry into their respective territories of business persons who are citizens of Canada, Mexico or the United States.

The NAFTA does not create a common market for the movement of labor. Each NAFTA country maintains its rights to protect the permanent employment base of its domestic labor force, to implement its own immigration policies and to protect the security of its borders.

This section's rules governing entry of business persons, constructed along the lines of similar provisions of the Canada-U.S. FTA, are tailored to meet the needs of all NAFTA partners.

Each country will grant temporary entry to four categories of business persons:

- *business visitors* engaged in international business activities for the purpose of conducting activities related to research and design, growth, manufacture and

production, marketing, sales, distribution, after-sales service and other general services;

- *traders* who carry on substantial trade in goods or services between their own country and the country they wish to enter, as well as *investors* seeking to commit a substantial amount of capital in that country, provided that such persons are employed or operate in a supervisory or executive capacity or one that involves essential skills;

- *intra-company transferees* employed by a company in a managerial or executive capacity or one that involves specialized knowledge and who are transferred within that company to another NAFTA country; and

- *certain categories of professionals* who meet minimum educational requirements or who possess alternative credentials and who seek to engage in business activities at a professional level in that country.

Mexico and the United States have agreed to an annual numerical limit of 5,500 Mexican professionals entering the United States. This number is in addition to those admitted under a similar category in U.S. law that is subject to a global limitation of 65,000 professionals, but which remains unaffected by the NAFTA. The numerical limit of 5,500 may be increased by agreement between the United States and Mexico, and will expire 10 years after the Agreement goes into effect unless the two countries decide to remove the limit earlier. Canada has not set a numerical limit with respect to Mexico.

Consultations

The three countries will consult through a specialized working group on temporary entry matters. As part of its work, the group will consider providing temporary entry to spouses of business persons granted entry under NAFTA for periods of one year or more as traders and investors, intra-company transferees and professionals. **Provision of Information**

Each country will publish clear explanatory material on procedures that business persons must follow to take advantage of the NAFTA temporary entry provisions.
Non-Compliance

The dispute settlement provisions of the Agreement may be invoked only if a country claims, on the basis of repeated practices, that another country has not complied with the temporary entry provisions.

INSTITUTIONAL ARRANGEMENTS AND DISPUTE SETTLEMENT PROCEDURES

Institutional Arrangements

This section establishes the institutions responsible for implementing the Agreement, ensuring its joint management and for avoiding and settling any disputes between the NAFTA countries regarding its interpretation and application.

Trade Commission: The central institution of the Agreement is the Trade Commission, comprising Ministers or cabinet-level officers designated by each country. Regular meetings are to be held annually, although the daytoday work of the Commission will be carried out by officials of the three governments participating in the various committees and working groups mandated by the Agreement, operating on the basis of consensus.

Secretariat: The NAFTA establishes a Secretariat to serve the Commission as well as other subsidiary bodies and dispute settlement panels. The administrative and technical support that the Secretariat will provide is designed to assist the Commission to ensure effective and joint management of the free trade area.

Dispute Settlement Procedures

The dispute settlement procedures of the NAFTA provide expeditious and effective means for the resolution of disputes.

Consultations: Whenever any matter arises that could affect a country's rights under the Agreement, it may request consultations and the countries concerned will promptly consult on the matter. The NAFTA places priority on reaching an amicable settlement. The third country may participate, or may seek its own consultations.

The Role of the Commission: Should the consultations fail to resolve the matter within 30 to 45 days, any country may call a meeting of the Trade Commission with all three countries present. The NAFTA directs the Commission to seek to settle the dispute promptly. The Commission may use good offices, mediation, conciliation or other means of alternative dispute resolution to this end.

Initiation of Panel Proceedings: If the countries concerned are unable to reach a mutually satisfactory resolution through the Commission, any consulting country may initiate panel proceedings.

Forum Selection

If a dispute could be brought under both the GATT and the NAFTA, the complaining country may choose either forum. If the third NAFTA country wants to bring the same case in the other forum, the two complaining countries will consult, with a view to agreement on a single forum. If those countries cannot agree, the dispute settlement proceeding normally will be heard by a NAFTA panel. Once selected, the chosen forum must be used to the exclusion of the other.

If a dispute involves factual issues regarding certain standards-related environmental, safety, health or conservation measures or if the dispute arises under specific environmental agreements, the responding country may elect to have the dispute considered by a NAFTA panel. The rules also set out procedures for addressing disputes relating to matters covered by the Canada-U.S. FTA.

Panel Procedures

If the complaining country elects to have the matter heard through NAFTA procedures, it may request the establishment of an arbitral panel. The third country may either join as a complaining country or limit its participation to oral and written submissions. The panel will typically be charged with making findings of fact and determining whether the action taken by the defending country is inconsistent with its obligations under the NAFTA, and may make recommendations for resolution of the dispute.

Panels will be composed of five members, who will normally be chosen from a trilaterally agreed roster of eminent trade, legal and other experts, including from countries outside the NAFTA. The NAFTA provides for a special roster of experts for disputes involving financial services.

The panel will be chosen through a process of "reverse selection" to ensure impartiality: the chair of the panel will be selected first, either by agreement of the disputing countries or, failing agreement, by designation of one disputing side, chosen by lot. The chair may not be a citizen of the side making the selection, and may be a non-NAFTA national. Each side will then select two additional panelists who are citizens of the country or countries on the other side. Whenever an individual not on the roster of panelists is nominated, any other disputing NAFTA country may exercise a peremptory challenge against that individual.

Rules of procedure, to be more fully elaborated by the Commission, provide for written submissions, rebuttals and at least one oral hearing. There are strict time limits to ensure prompt resolution. A special procedure permits scientific boards to provide expert advice to panels on factual questions related to the environment and other scientific matters.

Unless the disputing countries decide otherwise, within 90 days of a panel's selection, it will present to them a confidential initial report. They will then have 14 days in which to provide comments to the panel. Within 30 days of the presentation of its initial report, the panel will present its final report to the countries concerned. The report will then be transmitted to the Commission, which will normally publish it.

Implementation and Non-Compliance

Upon receiving the panel's report, the disputing countries are to agree on the resolution of the dispute, which will normally conform to the recommendations of the panel. If a panel determines that the responding country has acted in a manner inconsistent with its NAFTA obligations, and the disputing countries do not reach agreement within 30 days or other mutually agreed period after receipt of the report, the complaining country may suspend the application of equivalent benefits until the issue is resolved. Any country that considers the retaliation to be excessive may obtain a panel ruling on this question.

Alternate Dispute Resolution of Private Commercial Disputes

Special provisions, described in the investment section, set out procedures for international arbitration of disputes between investors and NAFTA governments. The NAFTA countries will also encourage and facilitate the use of alternative dispute resolution as a means of settling international commercial disputes between private parties in the NAFTA region. The three countries will provide for the enforcement of arbitral agreements and arbitral

awards. The Agreement establishes an advisory committee concerning the use of alternative dispute resolution for such disputes.

ADMINISTRATION OF LAWS

Procedural Transparency

This section provides rules designed to ensure that laws, regulations and other measures affecting traders and investors will be accessible and will be administered fairly and in accordance with notions of due process by officials in all three countries. Each country will also ensure, under its domestic laws, independent administrative or judicial review of government action relating to matters covered by the NAFTA.

The NAFTA's notification and exchange of information provisions will allow each government the opportunity to consult on any action taken by another country that could affect the operation of the Agreement. These provisions are designed to assist the three countries to avoid or minimize potential disputes.

Contact Points

Each country will designate a contact point to facilitate communications between NAFTA countries.

EXCEPTIONS

The NAFTA includes provisions that ensure that the Agreement does not constrain a country's ability to protect its national interests.

General Exceptions

This provision permits a country to take measures otherwise inconsistent with its obligations affecting trade in goods to protect such interests as public morals, human, animal or plant life or health or national treasures, to conserve exhaustible natural resources or to take enforcement measures regarding such matters as deceptive practices or anticompetitive behavior. However, such measures must not result in arbitrary discrimination or disguised restrictions on trade between NAFTA countries.

National Security

Nothing in the Agreement will affect a NAFTA country's ability to take measures it considers necessary for the protection of its essential security interests.

Taxation

The NAFTA provides that, as a general matter, taxation questions will be governed by applicable double taxation agreements between the NAFTA countries.

Balance of Payments

Under the Agreement, a NAFTA country may take trade-restrictive measures to protect its balance of payments only in limited circumstances and in accordance with the rules of the International Monetary Fund.

Cultural Industries

The rights of Canada and the United States with respect to cultural industries will be governed by the Canada-U.S. FTA. Each country reserves the right to take measures of equivalent commercial effect in response to any action regarding cultural industries that would have been a violation of the Canada-U.S. FTA but for the cultural industries provisions. Such compensatory measures will not be limited by the obligations imposed by the NAFTA.

The rights and obligations between Canada and Mexico regarding cultural industries will be identical to those applying between Canada and the United States.

FINAL PROVISIONS

Entry into Force

This section provides that the Agreement will enter into force on January 1, 1994, upon completion of domestic approval procedures.

Accession

The NAFTA provides that other countries or groups of countries may be admitted into the Agreement if the NAFTA countries agree, and subject to terms and conditions that they require and to the completion of domestic approval procedures in each country.

Amendments and Withdrawal

This section also provides for amendments to the Agreement, subject to domestic approval procedures. Any country may withdraw from the Agreement on six-months' notice.

SUMMARY OF ENVIRONMENTAL PROVISIONS

The three NAFTA countries have committed in the NAFTA to implementing the Agreement in a manner consistent with environmental protection and to promoting sustainable development. Specific provisions throughout the Agreement build upon these commitments. For example:

- The trade obligations of the NAFTA countries under specified international environmental agreements regarding endangered species, ozone-depleting substances and hazardous wastes will take precedence over NAFTA provisions, subject to a requirement to minimize inconsistency with the NAFTA. This ensures that the NAFTA will not diminish a country's right to take action under these environmental agreements.

- The Agreement affirms the right of each country to choose the level of protection of human, animal or plant life or health or of environmental protection that it considers appropriate.
- NAFTA also makes clear that each country may maintain and adopt standards and sanitary and phytosanitary measures, including those more stringent than international standards, to secure its chosen level of protection.
- The NAFTA countries will work jointly to enhance the protection of human, animal and plant life and health and the environment.
- The Agreement provides that no NAFTA country should lower its health, safety or environmental standards for the purpose of attracting investment.
- When a dispute regarding a country's standards raises factual issues concerning the environment, that country may choose to have the dispute submitted to NAFTA dispute settlement procedures rather than under the procedures of other trade agreements. This same option is available for disputes concerning trade measures taken under specified international environmental agreements.
- NAFTA dispute settlement panels may call on scientific experts, including environmental experts, to provide advice on factual questions related to the environment and other scientific matters.
- In dispute settlement, the complaining country bears the burden of proving that another NAFTA country's environmental or health measure is inconsistent with the NAFTA.

North American Free Trade Agreement*

* *(This is an edited version. A full text of NAFTA treaty can be found in the NAFTA Secretariat's web-site at* www.nafta-sec-alena.org/english/index.htm*)*

PREAMBLE

The Government of Canada, the Government of the United Mexican States and the Government of the United States of America, resolved to:

STRENGTHEN the special bonds of friendship and cooperation among their nations;

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

CREATE an expanded and secure market for the goods and services produced in their territories;

REDUCE distortions to trade;

ESTABLISH clear and mutually advantageous rules governing their trade;

ENSURE a predictable commercial framework for business planning and investment;

BUILD on their respective rights and obligations under the General Agreement on Tariffs and Trade and other multilateral and bilateral instruments of cooperation;

ENHANCE the competitiveness of their firms in global markets;

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

CREATE new employment opportunities and improve working conditions and living standards in their respective territories;

UNDERTAKE each of the preceding in a manner consistent with environmental protection and conservation;

PRESERVE their flexibility to safeguard the public welfare;

PROMOTE sustainable development;

STRENGTHEN the development and enforcement of environmental laws and regulations; and

PROTECT, enhance and enforce basic workers' rights;

HAVE AGREED as follows:

PART ONE: GENERAL PART

Chapter One: Objectives

Article 101: Establishment of the Free Trade Area
Article 102: Objectives
Article 103: Relation to Other Agreements
Article 104: Relation to Environmental and Conservation Agreements
Article 105: Extent of Obligations

Annex 104.1: Bilateral and Other Environmental and Conservation Agreements

Article 101: Establishment of the Free Trade Area

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

Article 102: Objectives

1. The objectives of this Agreement, as elaborated more specifically through its principles and rules, including national treatment, most-favored-nation treatment and transparency, are to:

a) eliminate barriers to trade in, and facilitate the cross-border movement of, goods and services between the territories of the Parties;

b) promote conditions of fair competition in the free trade area;

c) increase substantially investment opportunities in the territories of the Parties;

d) provide adequate and effective protection and enforcement of intellectual property rights in each Party's territory;

e) create effective procedures for the implementation and application of this Agreement, for its joint administration and for the resolution of disputes; and

f) establish a framework for further trilateral, regional and multilateral cooperation to expand and enhance the benefits of this Agreement.

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

Article 103: Relation to Other Agreements

1. The Parties affirm their existing rights and obligations with respect to each other under the General Agreement on Tariffs and Trade and other agreements to which such Parties are party.

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

Article 104: Relation to Environmental and Conservation Agreements

1. In the event of any inconsistency between this Agreement and the specific trade obligations set out in:

a) the Convention on International Trade in Endangered Species of Wild Fauna and Flora, done at Washington, March 3, 1973, as amended June 22, 1979,

b) the Montreal Protocol on Substances that Deplete the Ozone Layer, done at Montreal, September 16, 1987, as amended June 29, 1990,

c) the Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and Their Disposal, done at Basel, March 22, 1989, on its entry into force for Canada, Mexico and the United States, or

d) the agreements set out in Annex 104.1,

such obligations shall prevail to the extent of the inconsistency, provided that where a Party has a choice among equally effective and reasonably available means of complying with such obligations, the Party chooses the alternative that is the least inconsistent with the other provisions of this Agreement.

2. The Parties may agree in writing to modify Annex 104.1 to include any amendment to an agreement referred to in paragraph 1, and any other environmental or conservation agreement.

Article 105: Extent of Obligations

The Parties shall ensure that all necessary measures are taken in order to give effect to the provisions of this Agreement, including their observance, except as otherwise provided in this Agreement, by state and provincial governments.

Annex 104.1

Bilateral and Other Environmental and Conservation Agreements

1. The Agreement Between the Government of Canada and the Government of the United States of America Concerning the Transboundary Movement of Hazardous Waste, signed at Ottawa, October 28, 1986.

2. The Agreement Between the United States of America and the United Mexican States on Cooperation for the Protection and Improvement of the Environment in the Border Area, signed at La Paz, Baja California Sur, August 14, 1983.

Chapter Two: General Definitions

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PART TWO : Trade in Goods

Chapter Three: National Treatment and Market Access for Goods

Article 300: Scope and Coverage

Section A - National Treatment
Article 301: National Treatment

Section B - Tariffs
Article 302: Tariff Elimination
Article 303: Restriction on Drawback and Duty Referral Programs
Article 304: Waiver of Customs Duties
Article 305: Temporary Admission of Goods
Article 306: Duty-Free Entry of Certain Commercial Samples and Printed Advertising Materials
Article 307: Goods Re-Entered after Repair or Alteration
Article 308: Most-Favored-Nation Rates of Duty on Certain Goods

Section C - Non-Tariff Measures
Article 309: Import and Export Restrictions
Article 310: Customs User Fees
Article 311: Country of Origin Marking
Article 312: Wine and Distilled Spirits
Article 313: Distinctive Products
Article 314: Export Taxes
Article 315: Other Export Measures

Section D - Consultations
Article 316: Consultations and Committee on Trade in Goods
Article 317: Third-Country Dumping

Section E - Definitions
Article 318: Definitions

Annex 301.3: Exceptions to Articles 301 and 309
Annex 302.2: Tariff Elimination

Annex 303.6: Goods Not Subject to Article 303
Annex 303.7: Effective Dates for the Application of Article 303
Annex 303.8 : Exception to Article 303(8) for Certain Color Cathode-Ray Television Picture Tubes
Annex 304.1: Exceptions for Existing Waiver Measures
Annex 304.2: Continuation of Existing Waivers of Customs Duties
Annex 307.1: Goods Re-Entered after Repair or Alteration
Annex 307.3: Repair and Rebuilding of Vessels
Annex 308.1: Most-Favored-Nation Rates of Duty on Certain Automatic Data Processing Goods and Their Parts
Annex 308.2: Most-Favored-Nation Rates of Duty on Certain Color Cathode-Ray Television Picture Tubes
Annex 308.3: Most-Favored-Nation Duty-Free Treatment of Local Area Network Apparatus
Annex 310.1: Existing Customs User Fees
Annex 311: Country of Origin Marking
Annex 312.2: Wine and Distilled Spirits
Annex 313: Distinctive Products
Annex 314: Export Taxes
Annex 315: Other Export Measures

Annex 300-A: Trade and Investment in the Automotive Sector

Annex 300-B: Textile and Apparel Goods

Article 300: Scope and Coverage

This Chapter applies to trade in goods of a Party, including:

a) goods covered by Annex 300-A (Trade and Investment in the Automotive Sector),

b) goods covered by Annex 300-B (Textile and Apparel Goods), and

c) goods covered by another Chapter in this Part, except as provided in such Annex or Chapter.

Section A - National Treatment

Article 301: National Treatment

1. Each Party shall accord national treatment to the goods of another Party in accordance with Article III of the General Agreement on Tariffs and Trade (GATT), including its interpretative notes, and to this end Article III of the GATT and its interpretative notes, or any equivalent provision of a successor agreement to which all Parties are party, are incorporated into and made part of this Agreement.

2. The provisions of paragraph 1 regarding national treatment shall mean, with respect to a state or province, treatment no less favorable than the most favorable treatment accorded by such state or province to any like, directly competitive or substitutable goods, as the case may be, of the Party of which it forms a part.

3. Paragraphs 1 and 2 do not apply to the measures set out in Annex 301.3.

Section B - Tariffs

Article 302: Tariff Elimination

1. Except as otherwise provided in this Agreement, no Party may increase any existing customs duty, or adopt any customs duty, on an originating good.

2. Except as otherwise provided in this Agreement, each Party shall progressively eliminate its customs duties on originating goods in accordance with its Schedule to Annex 302.2.

3. On the request of any Party, the Parties shall consult to consider accelerating the elimination of customs duties set out in their Schedules. An agreement between two or more Parties to accelerate the elimination of a customs duty on a good shall supersede any duty rate or staging category determined pursuant to their Schedules for such good when approved by each such Party in accordance with its applicable legal procedures.

4. Each Party may adopt or maintain import measures to allocate in-quota imports made pursuant to a tariff rate quota set out in Annex 302.2, provided that such measures do not have trade restrictive effects on imports additional to those caused by the imposition of the tariff rate quota.

5. On written request of any Party, a Party applying or intending to apply measures pursuant to paragraph 4 shall consult to review the administration of those measures.

Article 303: Restriction on Drawback and Duty Deferral Programs

1. Except as otherwise provided in this Article, no Party may refund the amount of customs duties paid, or waive or reduce the amount of customs duties owed, on a good imported into its territory, on condition that the good is:

a) subsequently exported to the territory of another Party,

b) used as a material in the production of another good that is subsequently exported to the territory of another Party, or

c) substituted by an identical or similar good used as a material in the production of another good that is subsequently exported to the territory of another Party, in an amount that exceeds the lesser of the total amount of customs duties paid or owed on the good on importation into its territory and the total amount of customs duties paid to another Party on the good that has been subsequently exported to the territory of that other Party.

2. No Party may, on condition of export, refund, waive or reduce:

a) an antidumping or countervailing duty that is applied pursuant to a Party's domestic law and that is not applied inconsistently with Chapter Nineteen (Review and Dispute Settlement in Antidumping and Countervailing Duty Matters);

b) a premium offered or collected on an imported good arising out of any tendering system in respect of the administration of quantitative import restrictions, tariff rate quotas or tariff preference levels;

c) a fee applied pursuant to section 22 of the U.S. Agricultural Adjustment Act, subject to Chapter Seven (Agriculture and Sanitary and Phytosanitary Measures); or

d) customs duties paid or owed on a good imported into its territory and substituted by an identical or similar good that is subsequently exported to the territory of another Party.

3. Where a good is imported into the territory of a Party pursuant to a duty deferral program and is subsequently exported to the territory of another Party, or is used as a material in the production of another good that is subsequently exported to the territory of another Party, or is substituted by an identical or similar good used as a material in the production of another good that is subsequently exported to the territory of another Party, the Party from whose territory the good is exported:

a) shall assess the customs duties as if the exported good had been withdrawn for domestic consumption; and

b) may waive or reduce such customs duties to the extent permitted under paragraph 1.

* * *

Article 304: Waiver of Customs Duties

1. Except as set out in Annex 304.1, no Party may adopt any new waiver of customs duties, or expand with respect to existing recipients or extend to any new recipient the application of an existing waiver of customs duties, where the waiver is conditioned, explicitly or implicitly, on the fulfillment of a performance requirement.

2. Except as set out in Annex 304.2, no Party may, explicitly or implicitly, condition on the fulfillment of a performance requirement the continuation of any existing waiver of customs duties.

3. If a waiver or a combination of waivers of customs duties granted by a Party with respect to goods for commercial use by a designated person can be shown by another Party to have an adverse impact on the commercial interests of a person of that Party, or of a person owned or controlled by a person of that Party that is located in the territory of the Party granting the waiver, or on the other Party's economy, the Party granting the waiver shall either cease to grant it or make it generally available to any importer.

4. This Article shall not apply to measures subject to Article 303.

Article 305: Temporary Admission of Goods

1. Each Party shall grant duty-free temporary admission for:

a) professional equipment necessary for carrying out the business activity, trade or profession of a business person who qualifies for temporary entry pursuant to Chapter Sixteen (Temporary Entry for Business Persons),

b) equipment for the press or for sound or television broadcasting and cinematographic equipment,

c) goods imported for sports purposes and goods intended for display or demonstration, and

d) commercial samples and advertising films, imported from the territory of another Party, regardless of their origin and regardless of whether like, directly competitive or substitutable goods are available in the territory of the Party.

* * *

5. Subject to Chapters Eleven (Investment) and Twelve (Cross Border Trade in Services):

a) each Party shall allow a vehicle or container used in international traffic that enters its territory from the territory of another Party to exit its territory on any route that is reasonably related to the

economic and prompt departure of such vehicle or container;

b) no Party may require any bond or impose any penalty or charge solely by reason of any difference between the port of entry and the port of departure of a vehicle or container;

c) no Party may condition the release of any obligation, including any bond, that it imposes in respect of the entry of a vehicle or container into its territory on its exit through any particular port of departure; and

d) no Party may require that the vehicle or carrier bringing a container from the territory of another Party into its territory be the same vehicle or carrier that takes such container to the territory of another Party.

6. For purposes of paragraph 5, "vehicle" means a truck, a truck tractor, tractor, trailer unit or trailer, a locomotive, or a railway car or other railroad equipment.

Article 306: Duty-Free Entry of Certain Commercial Samples and Printed Advertising Materials

Each Party shall grant duty-free entry to commercial samples of negligible value, and to printed advertising materials, imported from the territory of another Party, regardless of their origin, but may require that:

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

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

Article 307: Goods Re-Entered After Repair or Alteration

1. Except as set out in Annex 307.1, no Party may apply a customs duty to a good, regardless of its origin, that re enters its territory after that good has been exported from its territory to the territory of another Party for repair or alteration, regardless of whether such repair or alteration could be performed in its territory.

2. Notwithstanding Article 303, no Party may apply a customs duty to a good, regardless of its origin, imported temporarily from the territory of another Party for repair or alteration.

3. Annex 307.3 applies to the Parties specified in that Annex respecting the repair and rebuilding of vessels.

* * *

Section C - Non-Tariff Measures

Article 309: Import and Export Restrictions

1. Except as otherwise provided in this Agreement, no Party may adopt or maintain any prohibition or restriction on the importation of any good of another Party or on the exportation or sale for export of any good destined for the territory of another Party, except in accordance with Article XI of the GATT, including its interpretative notes, and to this end Article XI of the GATT and its interpretative notes, or any equivalent provision of a successor agreement to which all Parties are party, are incorporated into

and made a part of this Agreement.

2. The Parties understand that the GATT rights and obligations incorporated by paragraph 1 prohibit, in any circumstances in which any other form of restriction is prohibited, export price requirements and, except as permitted in enforcement of countervailing and antidumping orders and undertakings, import price requirements.

3. In the event that a Party adopts or maintains a prohibition or restriction on the importation from or exportation to a non-Party of a good, nothing in this Agreement shall be construed to prevent the Party from:

a) limiting or prohibiting the importation from the territory of another Party of such good of that non- Party; or

b) requiring as a condition of export of such good of the Party to the territory of another Party, that the good not be re-exported to the non-Party, directly or indirectly, without being consumed in the territory of the other Party.

4. In the event that a Party adopts or maintains a prohibition or restriction on the importation of a good from a non-Party, the Parties, on request of any Party, shall consult with a view to avoiding undue interference with or distortion of pricing, marketing and distribution arrangements in another Party.

5. Paragraphs 1 through 4 shall not apply to the measures set out in Annex 301.3.

Article 310: Customs User Fees

1. No Party may adopt any customs user fee of the type referred to in Annex 310.1 for originating goods.

2. The Parties specified in Annex 310.1 may maintain existing such fees in accordance with that Annex.

Article 311: Country of Origin Marking

Annex 311 applies to measures relating to country of origin marking.

Article 312: Wine and Distilled Spirits

1. No Party may adopt or maintain any measure requiring that distilled spirits imported from the territory of another Party for bottling be blended with any distilled spirits of the Party.

2. Annex 312.2 applies to other measures relating to wine and distilled spirits.

Article 313: Distinctive Products

Annex 313 applies to standards and labelling of the distinctive products set out in that Annex.

Article 314: Export Taxes

Except as set out in Annex 314, no Party may adopt or maintain any duty, tax or other charge on the export of any good to the territory of another Party, unless such duty, tax or charge is adopted or maintained on:

a) exports of any such good to the territory of all other Parties; and

b) any such good when destined for domestic consumption.

Article 315: Other Export Measures

1. Except as set out in Annex 315, a Party may adopt or maintain a restriction otherwise justified under Articles XI:2(a) or XX(g), (i) or (j) of the GATT with respect to the export of a good of the Party to the territory of another Party, only if:

a) the restriction does not reduce the proportion of the total export shipments of the specific good made available to that other Party relative to the total supply of that good of the Party maintaining the restriction as compared to the proportion prevailing in the most recent 36month period for which data are available prior to the imposition of the measure, or in such other representative period on which the Parties may agree;

b) the Party does not impose a higher price for exports of a good to that other Party than the price charged for such good when consumed domestically, by means of any measure, such as licenses, fees, taxation and minimum price requirements. The foregoing provision does not apply to a higher price that may result from a measure taken pursuant to subparagraph (a) that only restricts the volume of exports; and

c) the restriction does not require the disruption of normal channels of supply to that other Party or normal proportions among specific goods or categories of goods supplied to that other Party.

2. The Parties shall cooperate in the maintenance and development of effective controls on the export of each other's goods to a non-Party in implementing this Article.

Section D - Consultations

* * *

Section E - Definitions

* * *

Annex 302.2

Tariff Elimination

1. Except as otherwise provided in a Party's Schedule attached to this Annex, the following staging categories apply to the elimination of customs duties by each Party pursuant to Article 302(2):

a) duties on goods provided for in the items in staging category A in a Party's Schedule shall be eliminated entirely and such goods shall be duty-free, effective January 1, 1994;

b) duties on goods provided for in the items in staging category B in a Party's Schedule shall be removed in five equal annual stages beginning on January 1, 1994, and such goods shall be duty-free, effective January 1, 1998;

c) duties on goods provided for in the items in staging category C in a Party's Schedule shall be

removed in 10 equal annual stages beginning on January 1, 1994, and such goods shall be duty-free, effective January 1, 2003;

d) duties on goods provided for in the items in staging category C+ in a Party's Schedule shall be removed in 15 equal annual stages beginning on January 1, 1994, and such goods shall be duty-free, effective January 1, 2008; and

e) goods provided for in the items in staging category D in a Party's Schedule shall continue to receive duty-free treatment.

2. The base rate of customs duty and staging category for determining the interim rate of customs duty at each stage of the U.S. Generalized System of Preferences and the General Preferential Tariff of Canada.

* * *

Annex 311

Country of Origin Marking

1. The Parties shall establish by January 1, 1994, rules for determining whether a good is a good of a Party ("Marking Rules") for purposes of this Annex, Annex 300-B and Annex 302.2, and for such other purposes as the Parties may agree.

2. Each Party may require that a good of another Party, as determined in accordance with the Marking Rules, bear a country of origin marking, when imported into its territory, that indicates to the ultimate purchaser of that good the name of its country of origin.

3. Each Party shall permit the country of origin marking of a good of another Party to be indicated in English, French or Spanish, except that a Party may, as part of its general consumer information measures, require that an imported good be marked with its country of origin in the same manner as prescribed for goods of that Party.

4. Each Party shall, in adopting, maintaining and applying any measure relating to country of origin marking, minimize the difficulties, costs and inconveniences that the measure may cause to the commerce and industry of the other Parties.

* * *

Annex 313

Distinctive Products

1. Canada and Mexico shall recognize Bourbon Whiskey and Tennessee Whiskey, which is a straight Bourbon Whiskey authorized to be produced only in the State of Tennessee, as distinctive products of the United States. Accordingly, Canada and Mexico shall not permit the sale of any product as Bourbon Whiskey or Tennessee Whiskey, unless it has been manufactured in the United States in accordance with the laws and regulations of the United States governing the manufacture of Bourbon Whiskey and Tennessee Whiskey.

2. Mexico and the United States shall recognize Canadian Whisky as a distinctive product of

Canada. Accordingly, Mexico and the United States shall not permit the sale of any product as Canadian Whisky, unless it has been manufactured in Canada in accordance with the laws and regulations of Canada governing the manufacture of Canadian Whisky for consumption in Canada.

3. Canada and the United States shall recognize Tequila and Mezcal as distinctive products of Mexico. Accordingly, Canada and the United States shall not permit the sale of any product as Tequila or Mezcal, unless it has been manufactured in Mexico in accordance with the laws and regulations of Mexico governing the manufacture of Tequila and Mezcal. This provision shall apply to Mezcal, either on the date of entry into force of this Agreement, or 90 days after the date when the official standard for this product is made obligatory by the Government of Mexico, whichever is later.

* * *

Annex 300-A

Trade and Investment in the Automotive Sector

1. Each Party shall accord to all existing producers of vehicles in its territory treatment no less favorable than it accords to any new producer of vehicles in its territory under the measures referred to in this Annex, except that this obligation shall not be construed to apply to any differences in treatment specifically provided for in the Appendices to this Annex.

2. The Parties shall review, no later than December 31, 2003, the status of the North American automotive sector and the effectiveness of the measures referred to in this Annex to determine actions that could be taken to strengthen the integration and global competitiveness of the sector.

3. Appendices 300-A.1, 300-A.2 and 300-A.3 apply to the Parties specified therein respecting trade and investment in the automotive sector.

* * *

Appendix 300-A.1

Canada

Existing Measures

1. Canada and the United States may maintain the Agreement Concerning Automotive Products between the Government of Canada and the Government of the United States of America, signed at Johnson City, Texas, January 16, 1965 and entered into force on September 16, 1966, in accordance with Article 1001, and Article 1002(1) and (4) (as they refer to Annex 1002.1, Part One), Article 1005(1) and (3), and Annex 1002.1, Part One (Waivers of Customs Duties) of the Canada - United States Free Trade Agreement, which provisions are hereby incorporated into and made a part of this Agreement for such purpose, except that for purposes of Article 1005(1) of that agreement, Chapter Four (Rules of Origin) of this Agreement shall be applied in the place of Chapter Three of the Canada - United States Free Trade Agreement.

2. Canada may maintain the measures referred to in Article 1002(1) and (4) (as they refer to Annex 1002.1, Parts Two and Three), Article 1002(2) and (3), Article 1003 and Parts Two (Export-Based Waivers of Customs Duties) and Three (Production- Based Waivers of Customs Duties) of Annex 1002.1 of the Canada - United States Free Trade Agreement. Canada shall eliminate those measures in accordance with the terms set out in that agreement.

3. For greater certainty, the differences in treatment pursuant to paragraphs 1 and 2 shall not be considered to be inconsistent with Article 1103 (Investment - Most-Favored- Nation Treatment).

* * *

Appendix 300-A.2

Mexico

Auto Decree and Auto Decree Implementing Regulations

1. Until January 1, 2004, Mexico may maintain the provisions of the Decree for Development and Modernization of the Automotive Industry ("Decreto para el Fomento y Modernización de la Industria Automotriz"), December 11, 1989, (the "Auto Decree") and the Resolution that Establishes Rules for the Implementation of the Auto Decree ("Acuerdo que Determina Reglas para la Aplicaci n para el Fomento y Modernización de la Industria Automotriz"), November 30, 1990, (the "Auto Decree Implementing Regulations") that would otherwise be inconsistent with this Agreement, subject to the conditions set out in paragraphs 2 through 18. No later than January 1, 2004, Mexico shall bring any inconsistent provision of the Auto Decree and the Auto Decree Implementing Regulations into conformity with the other provisions of this Agreement.

Autoparts Industry, National Suppliers and Independent Maquiladoras

2. Mexico may not require that an enterprise attain a level of national value added in excess of 20 percent of its total sales as one of the conditions to qualify as a national supplier or enterprise of the autoparts industry.

3. Mexico may require that a national supplier or an enterprise of the autoparts industry, in calculating its national value added solely for purposes of paragraph 2, include customs duties in the value of imports incorporated into the autoparts produced by such supplier or enterprise.

4. Mexico shall grant national supplier status to an independent maquiladora that requests such status and meets the requirements for that status set out in the existing Auto Decree, as modified by paragraphs 2 and 3. Mexico shall continue to grant to all independent maquiladoras that request national supplier status all existing rights and privileges accorded to independent maquiladoras under the existing Decree for the Promotion and Operation of the Maquiladora Export Industry ("Decreto para el Fomento y Operación de la Industria Maquiladora de Exportación"), December 22, 1989 (the "Maquiladora Decree").

National Value Added

5. Mexico shall provide that a manufacturer ("empresa de la industria terminal") calculate its required national value added from suppliers (VANp) as a percentage of:

(a) the manufacturer's reference value as set out in paragraph 8; or

(b) the manufacturer's total national value added (VANt),

whichever is greater, except that Mexico shall provide that a manufacturer beginning production of motor vehicles in Mexico after model year 1991 calculate its required national value added from suppliers (VANp) as a percentage of its total national value added (VANt).

6. Mexico may not require that the percentage referred to in paragraph 5 be greater than:

(a) 34 percent for each of the first five years beginning January 1, 1994;

(b) 33 percent for 1999;

(c) 32 percent for 2000;

(d) 31 percent for 2001;

(e) 30 percent for 2002; and

(f) 29 percent for 2003.

* * *

Trade Balance

12. Mexico may not require a manufacturer to include in the calculation of its trade balance (S) a percentage of the value of direct and indirect imports of autoparts that the manufacturer incorporated into that manufacturer's production in Mexico for sale in Mexico (VTVd) in the corresponding year, greater than the following:

(a) 80 percent for 1994;

(b) 77.2 percent for 1995;

(c) 74.4 percent for 1996;

(d) 71.6 percent for 1997;

(e) 68.9 percent for 1998;

(f) 66.1 percent for 1999;

(g) 63.3 percent for 2000;

(h) 60.5 percent for 2001;

(i) 57.7 percent for 2002; and

(j) 55.0 percent for 2003.

13. Mexico shall provide that, for purposes of determining a manufacturer's total national value added (VANt), paragraph 12 shall not apply to the calculation of the manufacturer's trade balance (S).

14. Mexico shall allow a manufacturer with a surplus in its extended trade balance to divide its extended trade balance by the applicable percentages in paragraph 12 to determine the total value of new motor vehicles that it may import.

* * *

Other Restrictions in the Auto Decree

17. Mexico shall eliminate any restriction that limits the number of motor vehicles that a manufacturer may import into Mexico in relation to the total number of motor vehicles that such manufacturer sells in

Mexico.

18. For greater certainty, the differences in treatment required under paragraphs 5, 7 and 15 shall not be considered to be inconsistent with Article 1103 (Investment - Most - Favored - Nation Treatment).

Other Restrictions

19. For the first 10 years after the date of entry into force of this Agreement, Mexico may maintain prohibitions or restrictions on the importation of new automotive products provided for in existing items 8407.34.02 (gasoline engines larger than 1000 cm^3 but smaller than or equal to 2000cm^3. except for motorcycles), and 8407.34.99 (gasoline engines larger than 2000cm^3, except for motorcycles) and 8703.10.99 (other special vehicles) in the Tariff Schedule of the General Import Duty Act ("Tarifa de la Ley del Impuesto General de Importación"), except that Mexico may not prohibit or restrict the importation of automotive products provided for in item 8407.34.02 (gasoline engines larger than 1000 cm^3 but smaller than or equal to 2000cm^3. except for motorcycles), 8407.34.99 (gasoline engines larger than 2000 cm^3, except for motorcycles), or 8703.10.99 (other special vehicles) by manufacturers that comply with the Auto Decree and the Auto Decree Implementing Regulations, as modified by this Appendix.

Autotransportation Decree and Autotransportation Implementing Regulations

20. Mexico shall eliminate the Mexican Decree for Development and Modernization of the Autotransportation Vehicle Manufacturing Industry, ("Decreto para el Fomento y Modernización de la Industria Manufacturera de Vehículos de Autotransporte"), December 1989, and the Resolution that Establishes Rules for the Implementation of the Autotransportation Decree ("Acuerdo que Establece Reglas de Aplicación del Decreto para el Fomento y Modernización de la Industria Manufacturera de Vehículos de Autotransporte"), November 1990. Mexico may adopt or maintain any measure respecting autotransportation vehicles, autotransportation parts or manufacturers of autotransportation vehicles provided that the measure is not inconsistent with this Agreement.

Importation of Autotransportation Vehicles

21. Mexico may adopt or maintain a prohibition or restriction on the importation of autotransportation vehicles of another Party until January 1, 1999, except with respect to the importation of autotransportation vehicles pursuant to paragraphs 22 and 23.

22. For each of the years 1994 through 1998, Mexico shall allow any manufacturer of autotransportation vehicles to import, for each type of autotransportation vehicle, a quantity of originating autotransportation vehicles equal to at least 50 percent of the number of vehicles of such type that the manufacturer produced in Mexico in that year.

23. For each of the years 1994 through 1998, Mexico shall allow persons other than manufacturers of autotransportation vehicles to import, in a quantity to be allocated among such persons, originating autotransportation vehicles of each type as follows:

(a) for each of the years 1994 and 1995, no less than 15 percent of the total number of vehicles of each type of autotransportation vehicle produced in Mexico;

(b) for 1996, no less than 20 percent of the total number of vehicles of each type of autotransportation vehicle produced in Mexico; and

(c) for each of the years 1997 and 1998, no less than 30 percent of the total number of vehicles of each type of autotransportation vehicle produced in Mexico.

Mexico shall allocate such quantity through a non-discriminatory auction.

* * *

Import Licensing Measures

26. Mexico may adopt or maintain import licensing measures to the extent necessary to administer restrictions pursuant to:

(a) the Auto Decree and the Auto Decree Implementing Regulations, as modified by this Appendix, on the importation of motor vehicles;

(b) paragraph 19 of this Appendix on the importation of new automotive products provided for in item 8407.34.02 (gasoline engines larger than 1000cm3, but smaller than or equal to 2000 cm³, except for motorcycles) or 8703.10.99 (other special vehicles) in the Tariff Schedule of the General Import Duty Act;

(c) paragraphs 22 and 23 of this Appendix on the importation of autotransportation vehicles; and

(d) paragraph 24 (a) through (f) of this Appendix on the importation of used vehicles that are motor vehicles or autotransportation vehicles or of other used vehicles provided for in existing items 8702.90.01 (trolley buses), 8705.10.01 (mobile cranes), 8705.20.99 (other mobile drilling derricks), 8705.90.01 (street sweepers) or 8705.90.99 (other special purpose vehicles, nes) in the Tariff Schedule of the General Import Duty Act;

provided that such measures shall not have trade restrictive effects on the importation of such goods additional to those due to restrictions imposed in accordance with this Appendix, and that a license shall be granted to any person that fulfills Mexico's legal requirements for the importation of the goods.

* * *

Appendix 300-A.3

United States - Corporate Average Fuel Economy

1. In accordance with the schedule set out in paragraph 2, for purposes of the Energy Policy and Conservation Act of 1975, 42 U.S.C. 6201 et seq. ("the CAFE Act"), the United States shall consider an automobile to be domestically manufactured in any model year if at least 75 percent of the cost to the manufacturer of such automobile is attributable to value added in Canada, Mexico or the United States, unless the assembly of the automobile is completed in Canada or Mexico and such automobile is not imported into the United States prior to the expiration of the 30 days following the end of the model year.

* * *

Annex 300-B

Textile and Apparel Goods

Section 1: Scope and Coverage

1. This Annex applies to the textile and apparel goods set out in Appendix 1.1.

2. In the event of any inconsistency between this Agreement and the Arrangement Regarding International Trade in Textiles (Multifiber Arrangement), as amended and extended, including any amendment or extension after January 1, 1994, or any other existing or future agreement applicable to trade in textile or apparel goods, this Agreement shall prevail to the extent of the inconsistency, unless the Parties agree otherwise.

Section 2: Tariff Elimination

1. Except as otherwise provided in this Agreement, each Party shall progressively eliminate its customs duties on originating textile and apparel goods in accordance with its Schedule to Annex 302.2 (Tariff Elimination), and as set out for ease of reference in Appendix 2.1.

* * *

Section 3: Import and Export Prohibitions, Restrictions and Consultation Levels

1. Each Party may maintain a prohibition, restriction or consultation level only in accordance with Appendix 3.1 or as otherwise provided in this Annex.

2. Each Party shall eliminate any prohibition, restriction or consultation level on a textile or apparel good that otherwise would be permitted under this Annex if that Party is required to eliminate such measure as a result of having integrated that good into the GATT as a result of commitments undertaken by that Party under any successor agreement to the Multifiber Arrangement.

Section 4: Bilateral Emergency Actions (Tariff Actions)

1. Subject to paragraphs 2 through 5 and during the transition period only, if, as a result of the reduction or elimination of a duty provided for in this Agreement, a textile or apparel good originating in the territory of a Party, or a good that has been integrated into the GATT pursuant to a commitment undertaken by a Party under any successor agreement to the Multifiber Arrangement and entered under a tariff preference level set out in Appendix 6, is being imported into the territory of another Party in such increased quantities, in absolute terms or relative to the domestic market for that good, and under such conditions as to cause serious damage, or actual threat thereof, to a domestic industry producing a like or directly competitive good, the importing Party may, to the minimum extent necessary to remedy the damage or actual threat thereof:

(a) suspend the further reduction of any rate of duty provided for under this Agreement on the good; or

(b) increase the rate of duty on the good to a level not to exceed the lesser of

(i) the most-favored-nation (MFN) applied rate of duty in effect at the time the action is taken, and

(ii) the MFN applied rate of duty in effect on December 31, 1993.

* * *

Section 5: Bilateral Emergency Actions (Quantitative Restrictions)

1. Subject to Appendix 5.1, a Party may take bilateral emergency action against non-originating textile or apparel goods of another Party in accordance with this Section and Appendix 3.1.

2. If a Party considers that a non-originating textile or apparel good, including a good entered under a tariff preference level set out in Appendix 6, is being imported into its territory from a Party in such increased quantities, in absolute terms or relative to the domestic market for that good, under such conditions as to cause serious damage, or actual threat thereof, to a domestic industry producing a like or directly competitive good in the importing Party, the importing Party may request consultations with the other Party with a view to eliminating the serious damage or actual threat thereof.

3. The Party requesting consultations shall include in its request for consultations the reasons that it considers demonstrate that such serious damage or actual threat thereof to its domestic industry is resulting from the imports of the other Party, including the latest data concerning such damage or threat.

4. In determining serious damage, or actual threat thereof, the Party shall apply Section 4(2).

5. The Parties concerned shall begin consultations within 60 days of the request for consultations and shall endeavor to agree on a mutually satisfactory level of restraint on exports of the particular good within 90 days of the request, unless the consulting Parties agree to extend this period. In reaching a mutually satisfactory level of export restraint, the consulting Parties shall:

(a) consider the situation in the market in the importing Party;

(b) consider the history of trade in textile and apparel goods between the consulting Parties, including previous levels of trade; and

(c) seek to ensure that the textile and apparel goods imported from the territory of the exporting Party are accorded equitable treatment as compared with treatment accorded like textile and apparel goods from non-Party suppliers.

6. If the consulting Parties do not agree on a mutually satisfactory level of export restraint, the Party requesting consultations may impose annual quantitative restrictions on imports of the good from the territory of the other Party, subject to paragraphs 7 through 13.

* * *

Chapter Four: Rules of Origin

Article 401: Originating Goods
Article 402: Regional Value Content
Article 403: Automotive Goods
Article 404: Accumulation
Article 405: De Minimis
Article 406: Fungible Goods and Materials
Article 407: Accessories, Spare Parts and Tools
Article 408: Indirect Materials
Article 409: Packaging Materials and Containers for Retail Sale
Article 410: Packing Materials and Containers for Shipment
Article 411: Transshipment
Article 412: Non-Qualifying Operations
Article 413: Interpretation and Application
Article 414: Consultation and Modifications
Article 415 : Definitions

Annex 403.1: List of Tariff Provisions for Article 403(1)
Annex 403.2: List of Components and Materials
Annex 403.3: Regional Value-Content Calculation for CAMI

Article 401: Originating Goods

Except as otherwise provided in this Chapter, a good shall originate in the territory of a Party where:

a) the good is wholly obtained or produced entirely in the territory of one or more of the Parties, as defined in Article 415;

b) each of the non-originating materials used in the production of the good undergoes an applicable change in tariff classification set out in Annex 401 as a result of production occurring entirely in the territory of one or more of the Parties, or the good otherwise satisfies the applicable requirements of that Annex where no change in tariff classification is required, and the good satisfies all other applicable requirements of this Chapter;

c) the good is produced entirely in the territory of one or more of the Parties exclusively from originating materials; or

d) except for a good provided for in Chapters 61 through 63 of the Harmonized System, the good is produced entirely in the territory of one or more of the Parties but one or more of the non-originating materials provided for as parts under the Harmonized System that are used in the production of the good does not undergo a change in tariff classification because

(i) the good was imported into the territory of a Party in an unassembled or a disassembled form but was classified as an assembled good pursuant to General Rule of Interpretation 2(a) of the Harmonized System, or

(ii) the heading for the good provides for and specifically describes both the good itself and its parts and is not further subdivided into subheadings, or the subheading for the good provides for and specifically describes both the good itself and its parts,

provided that the regional value content of the good, determined in accordance with Article 402, is not less than 60 percent where the transaction value method is used, or is not less than 50 percent where the net cost method is used, and that the good satisfies all other applicable requirements of this Chapter.

Article 402: Regional Value Content

1. Except as provided in paragraph 5, each Party shall provide that the regional value content of a good shall be calculated, at the choice of the exporter or producer of the good, on the basis of either the transaction value method set out in paragraph 2 or the net cost method set out in paragraph 3.

2. Each Party shall provide that an exporter or producer may calculate the regional value content of a good on the basis of the following transaction value method:

$$RVC = \frac{TV - VNM}{TV} \times 100$$

where

RVC
is the regional value content, expressed as a percentage;

TV
is the transaction value of the good adjusted to a F.O.B. basis; and

VNM
is the value of non-originating materials used by the producer in the production of the good.

3. Each Party shall provide that an exporter or producer may calculate the regional value content of a good on the basis of the following net cost method:

$$RVC = \frac{NC - VNM}{NC} \times 100$$

where

RVC
is the regional value content, expressed as a percentage;

NC
is the net cost of the good; and

VNM
is the value of non-originating materials used by the producer in the production of the good.

4. Except as provided in Article 403(1) and for a motor vehicle identified in Article 403(2) or a component identified in Annex 403.2, the value of non-originating materials used by the producer in the production of a good shall not, for purposes of calculating the regional value content of the good under paragraph 2 or 3, include the value of nonoriginating materials used to produce originating materials that are subsequently used in the production of the good.

* * *

Article 404: Accumulation

1. For purposes of determining whether a good is an originating good, the production of the good in the territory of one or more of the Parties by one or more producers shall, at the choice of the exporter or producer of the good for which preferential tariff treatment is claimed, be considered to have been performed in the territory of any of the Parties by that exporter or producer, provided that:

a) all non-originating materials used in the production of the good undergo an applicable tariff classification change set out in Annex 401, and the good satisfies any applicable regional value-content requirement, entirely in the territory of one or more of the Parties; and

b) the good satisfies all other applicable requirements of this Chapter.

2. For purposes of Article 402(10), the production of a producer that chooses to accumulate its production with that of other producers under paragraph 1 shall be considered to be the production of a single producer.

Article 405: De Minimis

1. Except as provided in paragraphs 3 through 6, a good shall be considered to be an originating good if the value of all non-originating materials used in the production of the good that do not undergo an applicable change in tariff classification set out in Annex 401 is not more than seven percent of the transaction value of the good, adjusted to a F.O.B. basis, or, if the transaction value of the good is unacceptable under Article 1 of the Customs Valuation Code, the value of all such non-originating materials is not more than seven percent of the total cost of the good, provided that:

a) if the good is subject to a regional value-content requirement, the value of such non-originating materials shall be taken into account in calculating the regional value content of the good; and

b) the good satisfies all other applicable requirements of this Chapter.

2. A good that is otherwise subject to a regional value-content requirement shall not be required to satisfy such requirement if the value of all non-originating materials used in the production of the good is not more than seven percent of the transaction value of the good, adjusted to a F.O.B. basis, or, if the transaction value of the good is unacceptable under Article 1 of the Customs Valuation Code, the value of all non-originating materials is not more than seven percent of the total cost of the good, provided that the good satisfies all other applicable requirements of this Chapter.

* * *

Article 411: Trans-shipment

A good shall not be considered to be an originating good by reason of having undergone production that satisfies the requirements of Article 401 if, subsequent to that production, the good undergoes further production or any other operation outside the territories of the Parties, other than unloading, reloading or any other operation necessary to preserve it in good condition or to transport the good to the territory of a Party.

Article 412: NonQualifying Operations

A good shall not be considered to be an originating good merely by reason of:

a) mere dilution with water or another substance that does not materially alter the characteristics of the good; or

(b) any production or pricing practice in respect of which it may be demonstrated, on the basis of a preponderance of evidence, that the object was to circumvent this Chapter.

Article 413: Interpretation and Application

For purposes of this Chapter:

a) the basis for tariff classification in this Chapter is the Harmonized System;

b) where a good referred to by a tariff item number is described in parentheses following the tariff item number, the description is provided for purposes of reference only;

c) where applying Article 401(d), the determination of whether a heading or subheading under the Harmonized System provides for and specifically describes both a good and its parts shall be made on the basis of the nomenclature of the heading or subheading, or the General Rules of Interpretation, the Chapter Notes or the Section Notes of the Harmonized System;

d) in applying the Customs Valuation Code under this Chapter,

(i) the principles of the Customs Valuation Code shall apply to domestic transactions, with such modifications as may be required by the circumstances, as would apply to international transactions,

(ii) the provisions of this Chapter shall take precedence over the Customs Valuation Code to the extent of any difference, and (iii) the definitions in Article 415 shall take precedence over the definitions in the Customs Valuation Code to the extent of any difference; and

e) all costs referred to in this Chapter shall be recorded and maintained in accordance with the Generally Accepted Accounting Principles applicable in the territory of the Party in which the good is produced.

* * *

Chapter Five: Customs Procedures

Section A - Certification of Origin
- Article 501: Certificate of Origin
- Article 502: Obligations Regarding Importations
- Article 503: Exceptions
- Article 504: Obligations Regarding Exportations

Section B - Administration and Enforcement
- Article 505: Records
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Section C - Advance Rulings
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Section D - Review and Appeal of Origin Determinations and Advance Rulings
- Article 510: Review and Appeal

Section E - Uniform Regulations
- Article 511: Uniform Regulations

Section F - Cooperation

Article 512: Cooperation
Article 513: Working Group and Customs Subgroup
Article 514: Definitions

Section A - Certification of Origin

Article 501: Certificate of Origin

1. The Parties shall establish by January 1, 1994 a Certificate of Origin for the purpose of certifying that a good being exported from the territory of a Party into the territory of another Party qualifies as an originating good, and may thereafter revise the Certificate by agreement.

2. Each Party may require that a Certificate of Origin for a good imported into its territory be completed in a language required under its law.

3. Each Party shall:

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

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

(i) its knowledge of whether the good qualifies as an originating good,

(ii) its reasonable reliance on the producer's written representation that the good qualifies as an originating good, or

(iii) a completed and signed Certificate for the good voluntarily provided to the exporter by the producer.

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

5. Each Party shall provide that a Certificate of Origin that has been completed and signed by an exporter or a producer in the territory of another Party that is applicable to:

a) a single importation of a good into the Party's territory, or

b) multiple importations of identical goods into the Party's territory that occur within a specified period, not exceeding 12 months, set out therein by the exporter or producer,

shall be accepted by its customs administration for four years after the date on which the Certificate was signed.

Article 502: Obligations Regarding Importations

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

a) make a written declaration, based on a valid Certificate of Origin, that the good qualifies as an originating good;

b) have the Certificate in its possession at the time the declaration is made;

c) provide, on the request of that Party's customs administration, a copy of the Certificate; and

d) promptly make a corrected declaration and pay any duties owing where the importer has reason to believe that a Certificate on which a declaration was based contains information that is not correct.

2. Each Party shall provide that, where an importer in its territory claims preferential tariff treatment for a good imported into its territory from the territory of another Party:

a) the Party may deny preferential tariff treatment to the good if the importer fails to comply with any requirement under this Chapter; and

b) the importer shall not be subject to penalties for the making of an incorrect declaration, if it voluntarily makes a corrected declaration pursuant to paragraph 1(d).

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

a) a written declaration that the good qualified as an originating good at the time of importation;

b) a copy of the Certificate of Origin; and

c) such other documentation relating to the importation of the good as that Party may require.

* * *

Section C - Advance Rulings

Article 509: Advance Rulings

1. Each Party shall, through its customs administration, provide for the expeditious issuance of written advance rulings, prior to the importation of a good into its territory, to an importer in its territory or an exporter or a producer in the territory of another Party, on the basis of the facts and circumstances presented by such importer, exporter or producer of the good, concerning:

a) whether materials imported from a non-Party used in the production of a good undergo an applicable change in tariff classification set out in Annex 401 as a result of production occurring entirely in the territory of one or more of the Parties;

b) whether a good satisfies a regional value-content requirement under either the transaction value method or the net cost method set out in Chapter Four;

c) for the purpose of determining whether a good satisfies a regional value-content requirement under Chapter Four, the appropriate basis or method for value to be applied by an exporter or a producer in the territory of another Party, in accordance with the principles of the Customs Valuation Code, for calculating the transaction value of the good or of the materials used in the

production of the good;

d) for the purpose of determining whether a good satisfies a regional value-content requirement under Chapter Four, the appropriate basis or method for reasonably allocating costs, in accordance with the allocation methods set out in the Uniform Regulations, for calculating the net cost of the good or the value of an intermediate material;

e) whether a good qualifies as an originating good under Chapter Four;

f) whether a good that re-enters its territory after the good has been exported from its territory to the territory of another Party for repair or alteration qualifies for dutyfree treatment in accordance with Article 307 (Goods Re-Entered after Repair or Alteration);

g) whether the proposed or actual marking of a good satisfies country of origin marking requirements under Article 311 (Country of Origin Marking);

h) whether an originating good qualifies as a good of a Party under Annex 300B (Textile and Apparel Goods), Annex 302.2 (Tariff Elimination) or Chapter Seven (Agriculture and Sanitary and Phytosanitary Measures);

(i) whether a good is a qualifying good under Chapter Seven; or

(j) such other matters as the Parties may agree.

* * *

Section D - Review and Appeal of Origin Determinations and Advance Rulings

Article 510: Review and Appeal

1. Each Party shall grant substantially the same rights of review and appeal of marking determinations of origin, country of origin determinations and advance rulings by its customs administration as it provides to importers in its territory to any person:

a) who completes and signs a Certificate of Origin for a good that has been the subject of a determination of origin;

b) whose good has been the subject of a country of origin marking determination pursuant to Article 311 (Country of Origin Marking); or

(c) who has received an advance ruling pursuant to Article 509(1).

2. Further to Articles 1804 (Administrative Proceedings) and 1805 (Review and Appeal), each Party shall provide that the rights of review and appeal referred to in paragraph 1 shall include access to:

a) at least one level of administrative review independent of the official or office responsible for the determination under review; and

b) in accordance with its domestic law, judicial or quasijudicial review of the determination or decision taken at the final level of administrative review.

Section E - Uniform Regulations

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Chapter Six: Energy and Basic Petrochemicals

Article 601: Principles
Article 602: Scope and Coverage
Article 603: Import and Export Restrictions
Article 604: Export Taxes
Article 605: Other Export Measures
Article 606: Energy Regulatory Measures
Article 607: National Security Measures
Article 608: Miscellaneous Provisions
Article 609: Definitions

Annex 602.3: Reservations and Special Provisions
Annex 603.6: Exception to Article 603
Annex 605: Exception to Article 605
Annex 607: National Security
Annex 608.2: Other Agreements

Article 601: Principles

1. The Parties confirm their full respect for their Constitutions.

2. The Parties recognize that it is desirable to strengthen the important role that trade in energy and basic petrochemical goods plays in the free trade area and to enhance this role through sustained and gradual liberalization.

3. The Parties recognize the importance of having viable and internationally competitive energy and petrochemical sectors to further their individual national interests.

Article 602: Scope and Coverage

1. This Chapter applies to measures relating to energy and basic petrochemical goods originating in the territories of the Parties and to measures relating to investment and to the cross-border trade in services associated with such goods, as set forth in this Chapter.

* * *

Article 603: Import and Export Restrictions

1. Subject to the further rights and obligations of this Agreement, the Parties incorporate the provisions of the General Agreement on Tariffs and Trade (GATT), with respect to prohibitions or restrictions on

trade in energy and basic petrochemical goods. The Parties agree that this language does not incorporate their respective protocols of provisional application to the GATT.

2. The Parties understand that the provisions of the GATT incorporated in paragraph 1 prohibit, in any circumstances in which any other form of quantitative restriction is prohibited, minimum or maximum export - price requirements and, except as permitted in enforcement of countervailing and antidumping orders and undertakings, minimum or maximum import-price requirements.

3. In circumstances where a Party adopts or maintains a restriction on importation from or exportation to a non-Party of an energy or basic petrochemical good, nothing in this Agreement shall be construed to prevent the Party from:

a) limiting or prohibiting the importation from the territory of any Party of such energy or basic petrochemical good of the nonParty; or

b) requiring as a condition of export of such energy or basic petrochemical good of the Party to the territory of any other Party that the good be consumed within the territory of the other Party.

4. In the event that a Party adopts or maintains a restriction on imports of an energy or basic petrochemical good from non-Party countries, the Parties, on request of any Party, shall consult with a view to avoiding undue interference with or distortion of pricing, marketing and distribution arrangements in another Party.

5. Each Party may administer a system of import and export licensing for energy or basic petrochemical goods provided that such system is operated in a manner consistent with the provisions of this Agreement, including paragraph 1 and Article 1502 (Monopolies and State Enterprises).

6. This Article is subject to the reservations set out in Annex 603.6.

Article 604: Export Taxes

No Party may adopt or maintain any duty, tax or other charge on the export of any energy or basic petrochemical good to the territory of another Party, unless such duty, tax or charge is adopted or maintained on:

a) exports of any such good to the territory of all other Parties; and

b) any such good when destined for domestic consumption.

Article 605: Other Export Measures

Subject to Annex 605, a Party may adopt or maintain a restriction otherwise justified under Articles XI:2(a) or XX(g), (i) or (j) of the GATT with respect to the export of an energy or basic petrochemical good to the territory of another Party, only if:

a) the restriction does not reduce the proportion of the total export shipments of the specific energy or basic petrochemical good made available to that other Party relative to the total supply of that good of the Party maintaining the restriction as compared to the proportion prevailing in the most recent 36month period for which data are available prior to the imposition of the measure, or in such other representative period on which the Parties may agree;

b) the Party does not impose a higher price for exports of an energy or basic petrochemical good to that other Party than the price charged for such good when consumed domestically, by means of any measure such as licenses, fees, taxation and minimum price requirements. The foregoing

provision does not apply to a higher price that may result from a measure taken pursuant to subparagraph (a) that only restricts the volume of exports; and

c) the restriction does not require the disruption of normal channels of supply to that other Party or normal proportions among specific energy or basic petrochemical goods supplied to that other Party, such as, for example, between crude oil and refined products and among different categories of crude oil and of refined products.

* * *

Annex 602.3

Reservations and Special Provisions

Reservations

1. The Mexican State reserves to itself the following strategic activities, including investment in such activities and the provision of services in such activities:

a) exploration and exploitation of crude oil and natural gas; refining or processing of crude oil and natural gas; and production of artificial gas, basic petrochemicals and their feedstocks and pipelines;

b) foreign trade; transportation, storage and distribution, up to and including the first hand sales of the following goods:

(i) crude oil,

(ii) natural and artificial gas,

(iii) goods covered by this Chapter obtained from the refining or processing of crude oil and natural gas, and

(iv) basic petrochemicals;

c) the supply of electricity as a public service in Mexico, including, except as provided in paragraph 5, the generation, transmission, transformation, distribution and sale of electricity; and

d) exploration, exploitation and processing of radioactive minerals, the nuclear fuel cycle, the generation of nuclear energy, the transportation and storage of nuclear waste, the use and reprocessing of nuclear fuel and the regulation of their applications for other purposes and the production of heavy water.

In the event of an inconsistency between this paragraph and another provision of this Agreement, this paragraph shall prevail to the extent of that inconsistency.

2. Pursuant to Article 1101(2), (Investment-Scope and Coverage), private investment is not permitted in the activities listed in paragraph 1. Chapter Twelve (CrossBorder Trade in Services) shall only apply to activities involving the provision of services covered in paragraph 1 when Mexico permits a contract to be granted in respect of such activities and only to the extent of that contract.

Trade in Natural Gas and Basic Petrochemicals

3. Where end-users and suppliers of natural gas or basic petrochemical goods consider that cross-border trade in such goods may be in their interests, each Party shall permit such end-users and suppliers, and

any state enterprise of that Party as may be required under its domestic law, to negotiate supply contracts.

Each Party shall leave the modalities of the implementation of any such contract to the endusers, suppliers, and any state enterprise of the Party as may be required under its domestic law, which may take the form of individual contracts between the state enterprise and each of the other entities. Such contracts may be subject to regulatory approval.

Performance Clauses

4. Each Party shall allow its state enterprises to negotiate performance clauses in their service contracts.

Activities and Investment in Electricity Generation Facilities

5. a) Production for Own Use

An enterprise of another Party may acquire, establish, and/or operate an electrical generating facility in Mexico to meet the enterprise's own supply needs. Electricity generated in excess of such needs must be sold to the Federal Electricity Commission (Comisi n Federal de Electricidad) (CFE) and CFE shall purchase such electricity under terms and conditions agreed to by CFE and the enterprise.

b) Co-generation

An enterprise of another Party may acquire, establish, and/or operate a co-generation facility in Mexico that generates electricity using heat, steam or other energy sources associated with an industrial process. Owners of the industrial facility need not be the owners of the co-generating facility. Electricity generated in excess of the industrial facility's supply requirements must be sold to CFE and CFE shall purchase such electricity under terms and conditions agreed to by CFE and the enterprise.

c) Independent Power Production

An enterprise of another Party may acquire, establish, and/or operate an electricity generating facility for independent power production (IPP) in Mexico. Electricity generated by such a facility for sale in Mexico shall be sold to CFE and CFE shall purchase such electricity under terms and conditions agreed to by CFE and the enterprise. Where an IPP located in Mexico and an electric utility of another Party consider that cross-border trade in electricity may be in their interests, each relevant Party shall permit these entities and CFE to negotiate terms and conditions of power purchase and power sale contracts. The modalities of implementing such supply contracts are left to the end users, suppliers and CFE and may take the form of individual contracts between CFE and each of the other entities. Each relevant Party shall determine whether such contracts are subject to regulatory approval.

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Part III. Technical Barriers to Trade

Chapter Seven: Agriculture and Sanitary and Phytosanitary Measures

Section A - Agriculture
Article 701: Scope and Coverage
Article 702: International Obligations
Article 703: Market Access
Article 704: Domestic Support
Article 705: Export Subsidies
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Annex 702.1: Incorporation of Trade Provisions
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Annex 703.2: Market Access - Section A
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Section B - Sanitary and Phytosanitary Measures
Article 709: Scope and Coverage
Article 710: Relation to Other Chapters
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Article 722: Committee on Sanitary and Phytosanitary Measures
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Article 724: Definitions

Section A - Agriculture

Article 701: Scope and Coverage

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

2. In the event of any inconsistency between this Section and another provision of this Agreement, this Section shall prevail to the extent of the inconsistency.

Article 702: International Obligations

1. Annex 702.1 applies to the Parties specified in that Annex with respect to agricultural trade under certain agreements between them.

2. Prior to adopting pursuant to an intergovernmental commodity agreement, a measure that may affect trade in an agricultural good between the Parties, the Party proposing to adopt the measure shall consult with the other Parties with a view to avoiding nullification or impairment of a concession granted by that Party in its Schedule to Annex 302.2.

3. Annex 702.3 applies to the Parties specified in that Annex with respect to measures adopted or maintained pursuant to an intergovernmental coffee agreement.

Article 703: Market Access

1. The Parties shall work together to improve access to their respective markets through the reduction or elimination of import barriers to trade between them in agricultural goods.

Customs Duties, Quantitative Restrictions, and Agricultural Grading and Marketing Standards

2. Annex 703.2 applies to the Parties specified in that Annex with respect to customs duties and quantitative restrictions, trade in sugar and syrup goods, and agricultural grading and marketing standards.

Special Safeguard Provisions

3. Each Party may, in accordance with its Schedule to Annex 302.2, adopt or maintain a special safeguard in the form of a tariff rate quota on an agricultural good listed in its Section of Annex 703.3. Notwithstanding Article 302.2, a Party may not apply an over-quota tariff rate under a special safeguard that exceeds the lesser of:

a) the most-favored-nation (MFN) rate as of July 1, 1991; and

b) the prevailing MFN rate.

4. No Party may, with respect to the same good and the same country, at the same time:

a) apply an over-quota tariff rate under paragraph 3; and

b) take an emergency action covered by Chapter Eight (Emergency Action).

Article 704: Domestic Support

The Parties recognize that domestic support measures can be of crucial importance to their agricultural sectors but may also have trade distorting and production effects and that domestic support reduction commitments may result from agricultural multilateral trade negotiations under the General Agreement on Tariffs and Trade (GATT). Accordingly, where a Party supports its agricultural producers, that Party should endeavor to work toward domestic support measures that:

a) have minimal or no trade distorting or production effects; or

b) are exempt from any applicable domestic support reduction commitments that may be negotiated under the GATT.

The Parties further recognize that a Party may change its domestic support measures, including those that may be subject to reduction commitments, at the Party's discretion, subject to its rights and obligations under the GATT.

Article 705: Export Subsidies

1. The Parties share the objective of the multilateral elimination of export subsidies for agricultural goods and shall cooperate in an effort to achieve an agreement under the GATT to eliminate those subsidies.

2. The Parties recognize that export subsidies for agricultural goods may prejudice the interests of importing and exporting Parties and, in particular, may disrupt the markets of importing Parties. Accordingly, in addition to the rights and obligations of the Parties specified in Annex 702.1, the Parties affirm that it is inappropriate for a Party to provide an export subsidy for an agricultural good exported to the territory of another Party where there are no other subsidized imports of that good into the territory of that other Party.

* * *

Section B- Sanitary and Phytosanitary Measures

Article 709: Scope and Coverage

In order to establish a framework of rules and disciplines to guide the development, adoption and enforcement of sanitary and phytosanitary measures, this Section applies to any such measure of a Party that may, directly or indirectly, affect trade between the Parties.

Article 710: Relation to Other Chapters

Articles 301 (National Treatment) and 309 (Import and Export Restrictions), and the provisions of Article XX(b) of the GATT as incorporated into Article 2101(1) (General Exceptions), do not apply to any sanitary or phytosanitary measure.

Article 711: Reliance on Non-Governmental Entities

Each Party shall ensure that any non-governmental entity on which it relies in applying a sanitary or phytosanitary measure acts in a manner consistent with this Section.

Article 712: Basic Rights and Obligations

Right to Take Sanitary and Phytosanitary Measures

1. Each Party may, in accordance with this Section, adopt, maintain or apply any sanitary or phytosanitary measure necessary for the protection of human, animal or plant life or health in its territory, including a measure more stringent than an international standard, guideline or recommendation.

Right to Establish Level of Protection

2. Notwithstanding any other provision of this Section, each Party may, in protecting human, animal or plant life or health, establish its appropriate levels of protection in accordance with Article 715.

Scientific Principles

3. Each Party shall ensure that any sanitary or phytosanitary measure that it adopts, maintains or applies

is:

a) based on scientific principles, taking into account relevant factors including, where appropriate, different geographic conditions;

b) not maintained where there is no longer a scientific basis for it; and

c) based on a risk assessment, as appropriate to the circumstances.

Non-Discriminatory Treatment

4. Each Party shall ensure that a sanitary or phytosanitary measure that it adopts, maintains or applies does not arbitrarily or unjustifiably discriminate between its goods and like goods of another Party, or between goods of another Party and like goods of any other country, where identical or similar conditions prevail.

Unnecessary Obstacles

5. Each Party shall ensure that any sanitary or phytosanitary measure that it adopts, maintains or applies is applied only to the extent necessary to achieve its appropriate level of protection, taking into account technical and economic feasibility.

Disguised Restrictions

6. No Party may adopt, maintain or apply any sanitary or phytosanitary measure with a view to, or with the effect of, creating a disguised restriction on trade between the Parties.

Article 713: International Standards and Standardizing Organizations

1. Without reducing the level of protection of human, animal or plant life or health, each Partyshall use, as a basis for its sanitary and phytosanitary measures, relevant international standards, guidelines or recommendations with the objective, among others, of making its sanitary and phytosanitary measures equivalent or, where appropriate, identical to those of the other Parties.

2. A Party's sanitary or phytosanitary measure that conforms to a relevant international standard, guideline or recommendation shall be presumed to be consistent with Article 712. A measure that results in a level of sanitary or phytosanitary protection different from that which would be achieved by a measure based on a relevant international standard, guideline or recommendation shall not for that reason alone be presumed to be inconsistent with this Section.

3. Nothing in Paragraph 1 shall be construed to prevent a Party from adopting, maintaining or applying, in accordance with the other provisions of this Section, a sanitary or phytosanitary measure that is more stringent than the relevant international standard, guideline or recommendation.

4. Where a Party has reason to believe that a sanitary or phytosanitary measure of another Party is adversely affecting or may adversely affect its exports and the measure is not based on a relevant international standard, guideline or recommendation, it may request, and the other Party shall provide in writing, the reasons for the measure.

5. Each Party shall, to the greatest extent practicable, participate in relevant international and North American standardizing organizations, including the Codex Alimentarius Commission, the International Office of Epizootics, the International Plant Protection Convention, and the North American Plant Protection Organization, with a view to promoting the development and periodic review of international standards, guidelines and recommendations.

Article 714: Equivalence

1. Without reducing the level of protection of human, animal or plant life or health, the Parties shall, to the greatest extent practicable and in accordance with this Section, pursue equivalence of their respective sanitary and phytosanitary measures.

* * *

Article 715: Risk Assessment and Appropriate Level of Protection

1. In conducting a risk assessment, each Party shall take into account:

a) relevant risk assessment techniques and methodologies developed by international or North American standardizing organizations;

b) relevant scientific evidence;

c) relevant processes and production methods;

d) relevant inspection, sampling and testing methods;

e) the prevalence of relevant diseases or pests, including the existence of pest-free or disease-free areas or areas of low pest or disease prevalence;

f) relevant ecological and other environmental conditions; and

g) relevant treatments, such as quarantines.

2. Further to paragraph 1, each Party shall, in establishing its appropriate level of protection regarding the risk associated with the introduction, establishment or spread of an animal or plant pest or disease, and in assessing the risk, also take into account the following economic factors, where relevant:

a) loss of production or sales that may result from the pest or disease;

b) costs of control or eradication of the pest or disease in its territory; and

c) the relative cost-effectiveness of alternative approaches to limiting risks.

3. Each Party, in establishing its appropriate level of protection:

a) should take into account the objective of minimizing negative trade effects; and

b) shall, with the objective of achieving consistency in such levels, avoid arbitrary or unjustifiable distinctions in such levels in different circumstances, where such distinctions result in arbitrary or unjustifiable discrimination against a good of another Party or constitute a disguised restriction on trade between the Parties.

4. Notwithstanding paragraphs (1) through (3) and Article 712(3)(c), where a Party conducting a risk assessment determines that available relevant scientific evidence or other information is insufficient to complete the assessment, it may adopt a provisional sanitary or phytosanitary measure on the basis of available relevant information, including from international or North American standardizing organizations and from sanitary or phytosanitary measures of other Parties. The Party shall, within a reasonable period after information sufficient to complete the assessment is presented to it, complete its assessment, review and, where appropriate, revise the provisional measure in the light of the assessment.

5. Where a Party is able to achieve its appropriate level of protection through the phased application of a sanitary or phytosanitary measure, it may, on the request of another Party and in accordance with this Section, allow for such a phased application, or grant specified exceptions for limited periods from the measure, taking into account the requesting Party's export interests.

Article 716: Adaptation to Regional Conditions

1. Each Party shall adapt any of its sanitary or phytosanitary measures relating to the introduction, establishment or spread of an animal or plant pest or disease, to the sanitary or phytosanitary characteristics of the area where a good subject to such a measure is produced and the area in its territory to which the good is destined, taking into account any relevant conditions, including those relating to transportation and handling, between those areas. In assessing such characteristics of an area, including whether an area is, and is likely to remain, a pest-free or disease-free area or an area of low pest or disease prevalence, each Party shall take into account, among other factors:

a) the prevalence of relevant pests or diseases in that area;

b) the existence of eradication or control programs in that area; and

c) any relevant international standard, guideline or recommendation.

* * *

Chapter Eight: Emergency Action

Article 801: Bilateral Actions
Article 802: Global Actions
Article 803: Administration of Emergency Action Proceedings
Article 804: Dispute Settlement in Emergency Action Matters
Article 805: Definitions

Annex 801.1: Bilateral Actions
Annex 803.3: Administration of Emergency Action Proceedings
Annex 805: Country-Specific Definitions

Article 801: Bilateral Actions

1. Subject to paragraphs 2 through 4 and Annex 801.1, and during the transition period only, if a good originating in the territory of a Party, as a result of the reduction or elimination of a duty provided for in this Agreement, is being imported into the territory of another Party in such increased quantities, in absolute terms, and under such conditions that the imports of the good from that Party alone constitute a substantial cause of serious injury, or threat thereof, to a domestic industry producing a like or directly competitive good, the Party into whose territory the good is being imported may, to the minimum extent

necessary to remedy or prevent the injury:

(a) suspend the further reduction of any rate of duty provided for under this Agreement on the good;

(b) increase the rate of duty on the good to a level not to exceed the lesser of

(i) the most-favored-nation (MFN) applied rate of duty in effect at the time the action is taken, and

(ii) the MFN applied rate of duty in effect on the day immediately preceding the date of entry into force of this Agreement; or

(c) in the case of a duty applied to a good on a seasonal basis, increase the rate of duty to a level not to exceed the MFN applied rate of duty that was in effect on the good for the corresponding season immediately preceding the date of entry into force of this Agreement.

* * *

Article 802: Global Actions

1. Each Party retains its rights and obligations under Article XIX of the GATT or any safeguard agreement pursuant thereto except those regarding compensation or retaliation and exclusion from an action to the extent that such rights or obligations are inconsistent with this Article. Any Party taking an emergency action under Article XIX or any such agreement shall exclude imports of a good from each other Party from the action unless:

(a) imports from a Party, considered individually, account for a substantial share of total imports; and

(b) imports from a Party, considered individually, or in exceptional circumstances imports from Parties considered collectively, contribute importantly to the serious injury, or threat thereof, caused by imports.

2. In determining whether:

(a) imports from a Party, considered individually, account for a substantial share of total imports, those imports normally shall not be considered to account for a substantial share of total imports if that Party is not among the top five suppliers of the good subject to the proceeding, measured in terms of import share during the most recent three-year period; and

(b) imports from a Party or Parties contribute importantly to the serious injury, or threat thereof, the competent investigating authority shall consider such factors as the change in the import share of each Party, and the level and change in the level of imports of each Party. In this regard, imports from a Party normally shall not be deemed to contribute importantly to serious injury, or the threat thereof, if the growth rate of imports from a Party during the period in which the injurious surge in imports occurred is appreciably lower than the growth rate of total imports from all sources over the same period.

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Chapter Nine: Standards-Related Measures

Article 901: Scope and Coverage
Article 902: Extent of Obligations
Article 903: Affirmation of Agreement on Technical Barriers to Trade and Other Agreements
Article 904: Basic Rights and Obligations
Article 905: Use of International Standards
Article 906: Compatibility and Equivalence
Article 907: Assessment of Risk
Article 908: Conformity Assessment
Article 909: Notification, Publication, and Provision of Information
Article 910: Inquiry Points
Article 911: Technical Cooperation
Article 912: Limitations on the Provision of Information
Article 913: Committee on Standards-Related Measures
Article 914: Technical Consultations
Article 915: Definitions

Annex 908.2: Transitional Rules for Conformity Assessment Procedures
Annex 913.5.a-1: Land Transportation Standards Subcommittee
Annex 913.5.a-2: Telecommunications Standards Subcommittee
Annex 913.5.a-3: Automotive Standards Council
Annex 913.5.a-4: Subcommittee on Labelling of Textile and Apparel Goods

Article 901: Scope and Coverage

1. This Chapter applies to standards-related measures of a Party, other than those covered by Section B of Chapter Seven (Sanitary and Phytosanitary Measures), that may, directly or indirectly, affect trade in goods or services between the Parties, and to measures of the Parties relating to such measures.

2. Technical specifications prepared by governmental bodies for production or consumption requirements of such bodies shall be governed exclusively by Chapter Ten (Government Procurement).

Article 902: Extent of Obligations

1. Article 105 (Extent of Obligations) does not apply to this Chapter.

2. Each Party shall seek, through appropriate measures, to ensure observance of Articles 904 through 908 by state or provincial governments and by non-governmental standardizing bodies in its territory.

Article 903: Affirmation of Agreement on Technical Barriers to Trade and Other Agreements

Further to Article 103 (Relation to Other Agreements), the Parties affirm with respect to each other their existing rights and obligations relating to standards-related measures under the GATT Agreement on Technical Barriers to Trade and all other international agreements, including environmental and conservation agreements, to which those Parties are party.

Article 904: Basic Rights and Obligations

Right to Take Standards-Related Measures

1. Each Party may, in accordance with this Agreement, adopt, maintain or apply any standards-related measure, including any such measure relating to safety, the protection of human, animal or plant life or health, the environment or consumers, and any measure to ensure its enforcement or implementation. Such measures include those to prohibit the importation of a good of another Party or the provision of a service by a service provider of another Party that fails to comply with the applicable requirements of those measures or to complete the Party's approval procedures.

Right to Establish Level of Protection

2. Notwithstanding any other provision of this Chapter, each Party may, in pursuing its legitimate objectives of safety or the protection of human, animal or plant life or health, the environment or consumers, establish the levels of protection that it considers appropriate in accordance with Article 907(2).

Non-Discriminatory Treatment

3. Each Party shall, in respect of its standards-related measures, accord to goods and service providers of another Party:

(a) national treatment in accordance with Article 301 (Market Access) or Article 1202 (Cross-Border Trade in Services); and

(b) treatment no less favorable than that it accords to like goods, or in like circumstances to service providers, of any other country.

Unnecessary Obstacles

4. No Party may prepare, adopt, maintain or apply any standards-related measure with a view to or with the effect of creating an unnecessary obstacle to trade between the Parties. An unnecessary obstacle to trade shall not be deemed to be created where:

(a) the demonstrable purpose of the measure is to achieve a legitimate objective; and

(b) the measure does not operate to exclude goods of another Party that meet that legitimate objective.

Article 905: Use of International Standards

1. Each Party shall use, as a basis for its standards-related measures, relevant international standards or international standards whose completion is imminent, except where such standards would be an ineffective or inappropriate means to fulfill its legitimate objectives, for example because of fundamental climatic, geographical, technological or infrastructural factors, scientific justification or the level of protection that the Party considers appropriate.

2. A Party's standards-related measure that conforms to an international standard shall be presumed to be consistent with Article 904(3) and (4).

3. Nothing in paragraph 1 shall be construed to prevent a Party, in pursuing its legitimate objectives, from adopting, maintaining or applying any standards-related measure that results in a higher level of protection than would be achieved if the measure were based on the relevant international standard.

Article 906: Compatibility and Equivalence

1. Recognizing the crucial role of standards-related measures in achieving legitimate objectives, the Parties shall, in accordance with this Chapter, work jointly to enhance the level of safety and of protection of human, animal and plant life and health, the environment and consumers.

2. Without reducing the level of safety or of protection of human, animal or plant life or health, the environment or consumers, without prejudice to the rights of any Party under this Chapter, and taking into account international standardization activities, the Parties shall, to the greatest extent practicable, make compatible their respective standards-related measures, so as to facilitate trade in a good or service between the Parties.

3. Further to Articles 902 and 905, a Party shall, on request of another Party, seek, through appropriate measures, to promote the compatibility of a specific standard or conformity assessment procedure that is maintained in its territory with the standards or conformity assessment procedures maintained in the territory of the other Party.

4. Each importing Party shall treat a technical regulation adopted or maintained by an exporting Party as equivalent to its own where the exporting Party, in cooperation with the importing Party, demonstrates to the satisfaction of the importing Party that its technical regulation adequately fulfills the importing Party's legitimate objectives.

5. The importing Party shall provide to the exporting Party, on request, its reasons in writing for not treating a technical regulation as equivalent under paragraph 4.

6. Each Party shall, wherever possible, accept the results of a conformity assessment procedure conducted in the territory of another Party, provided that it is satisfied that the procedure offers an assurance, equivalent to that provided by a procedure it conducts or a procedure conducted in its territory the results of which it accepts, that the relevant good or service complies with the applicable technical regulation or standard adopted or maintained in the Party's territory.

7. Prior to accepting the results of a conformity assessment procedure pursuant to paragraph 6, and to enhance confidence in the continued reliability of each other's conformity assessment results, the Parties may consult on such matters as the technical competence of the conformity assessment bodies involved, including verified compliance with relevant international standards through such means as accreditation.

Article 907: Assessment of Risk

1. A Party may, in pursuing its legitimate objectives, conduct an assessment of risk. In conducting an assessment, a Party may take into account, among other factors relating to a good or service:

(a) available scientific evidence or technical information;

(b) intended end uses;

(c) processes or production, operating, inspection, sampling or testing methods; or

(d) environmental conditions.

2. Where pursuant to Article 904(2) a Party establishes a level of protection that it considers appropriate and conducts an assessment of risk, it should avoid arbitrary or unjustifiable distinctions between similar goods or services in the level of protection it considers appropriate, where the distinctions:

(a) result in arbitrary or unjustifiable discrimination against goods or service providers of another Party;

(b) constitute a disguised restriction on trade between the Parties; or

(c) discriminate between similar goods or services for the same use under the same conditions that pose the same level of risk and provide similar benefits.

3. Where a Party conducting an assessment of risk determines that available scientific evidence or other information is insufficient to complete the assessment, it may adopt a provisional technical regulation on the basis of available relevant information. The Party shall, within a reasonable period after information sufficient to complete the assessment of risk is presented to it, complete its assessment, review and, where appropriate, revise the provisional technical regulation in the light of that assessment.

Article 908: Conformity Assessment

1. The Parties shall, further to Article 906 and recognizing the existence of substantial differences in the structure, organization and operation of conformity assessment procedures in their respective territories, make compatible those procedures to the greatest extent practicable.

2. Recognizing that it should be to the mutual advantage of the Parties concerned and except as set out in Annex 908.2, each Party shall accredit, approve, license or otherwise recognize conformity assessment bodies in the territory of another Party on terms no less favorable than those accorded to conformity assessment bodies in its territory.

3. Each Party shall, with respect to its conformity assessment procedures:

(a) not adopt or maintain any such procedure that is stricter, nor apply the procedure more strictly, than necessary to give it confidence that a good or a service conforms with an applicable technical regulation or standard, taking into account the risks that non-conformity would create;

(b) initiate and complete the procedure as expeditiously as possible;

(c) in accordance with Article 904(3), undertake processing of applications in non-discriminatory order;

(d) publish the normal processing period for each such procedure or communicate the anticipated processing period to an applicant on request;

(e) ensure that the competent body

(i) on receipt of an application, promptly examines the completeness of the documentation and informs the applicant in a precise and complete manner of any deficiency,

(ii) transmits to the applicant as soon as possible the results of the conformity assessment procedure in a form that is precise and complete so that the applicant may take any necessary corrective action,

(iii) where the application is deficient, proceeds as far as practicable with the procedure where the applicant so requests, and

(iv) informs the applicant, on request, of the status of the application and the reasons for any delay;

(f) limit the information the applicant is required to supply to that necessary to conduct the

procedure and to determine appropriate fees;

(g) accord confidential or proprietary information arising from, or supplied in connection with, the conduct of the procedure for a good of another Party or for a service provided by a person of another Party

(i) the same treatment as that for a good of the Party or a service provided by a person of the Party, and

(ii) in any event, treatment that protects an applicant's legitimate commercial interests to the extent provided under the Party's law;

(h) ensure that any fee it imposes for conducting the procedure is no higher for a good of another Party or a service provider of another Party than is equitable in relation to any such fee imposed for its like goods or service providers or for like goods or service providers of any other country, taking into account communication, transportation and other related costs;

(i) ensure that the location of facilities at which a conformity assessment procedure is conducted does not cause unnecessary inconvenience to an applicant or its agent;

(j) limit the procedure, for a good or service modified subsequent to a determination that the good or service conforms to the applicable technical regulation or standard, to that necessary to determine that the good or service continues to conform to the technical regulation or standard; and

(k) limit any requirement regarding samples of a good to that which is reasonable, and ensure that the selection of samples does not cause unnecessary inconvenience to an applicant or its agent.

4. Each Party shall apply, with such modifications as may be necessary, the relevant provisions of paragraph 3 to its approval procedures.

5. Each Party shall, on request of another Party, take such reasonable measures as may be available to it to facilitate access in its territory for conformity assessment activities.

6. Each Party shall give sympathetic consideration to a request by another Party to negotiate agreements for the mutual recognition of the results of that other Party's conformity assessment procedures.

* * *

Article 915: Definitions

1. For purposes of this Chapter:

* * *

legitimate objective includes an objective such as:

(a) safety,

(b) protection of human, animal or plant life or health, the environment or consumers, including matters relating to quality and identifiability of goods or services, and

(c) sustainable development,

considering, among other things, where appropriate, fundamental climatic or other geographical factors, technological or infrastructural factors, or scientific justification but does not include the protection of domestic production;

* * *

standard means a document, approved by a recognized body, that provides, for common and repeated use, rules, guidelines or characteristics for goods or related processes and production methods, or for services or related operating 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 good, process, or production or operating method;

* * *

technical regulation means a document which lays down goods characteristics or their related processes and production methods, or services characteristics or their related operating 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 good, process, or production or operating method;

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PART FOUR: GOVERNMENT PROCUREMENT

Chapter Ten: Government Procurement

Section A: Scope and Coverage and National Treatment
- Article 1001: Scope and Coverage
- Article 1002: Valuation of Contracts
- Article 1003: National Treatment and Non-Discrimination
- Article 1004: Rules of Origin
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Section A - Scope and Coverage and National Treatment

Article 1001: Scope and Coverage

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

(a) by a federal government entity set out in Annex 1001.1a-1, a government enterprise set out in Annex 1001.1a-2, or a state or provincial government entity set out in Annex 1001.1a-3 in accordance with Article 1024;

(b) of goods in accordance with Annex 1001.1b-1, services in accordance with Annex 1001.1b-2, or construction services in accordance with Annex 1001.1b-3; and

(c) where the value of the contract to be awarded is estimated to be equal to or greater than a threshold, calculated and adjusted according to the U.S. inflation rate as set out in Annex 1001.1c, of

(i) for federal government entities, US$50,000 for contracts for goods, services or any combination thereof, and US$6.5 million for contracts for construction services,

(ii) for government enterprises, US$250,000 for contracts for goods, services or any combination thereof, and US$8.0 million for contracts for construction services, and

(iii) for state and provincial government entities, the applicable threshold, as set out in Annex 1001.1a-3 in accordance with Article 1024.

* * *

Article 1003: National Treatment and Non-Discrimination

1. With respect to measures covered by this Chapter, each Party shall accord to goods of another Party, to the suppliers of such goods and to service suppliers of another Party, treatment no less favorable than the most favorable treatment that the Party accords to:

(a) its own goods and suppliers; and

(b) goods and suppliers of another Party.

2. With respect to measures covered by this Chapter, no Party may:

(a) treat a locally established supplier less favorably than another locally established supplier on the basis of degree of foreign affiliation or ownership; or

(b) discriminate against a locally established supplier on the basis that the goods or services offered by that supplier for the particular procurement are goods or services of another Party.

3. Paragraph 1 does not apply to measures respecting customs duties or other charges of any kind imposed on or in connection with importation, the method of levying such duties or charges or other import regulations, including restrictions and formalities.

Article 1004: Rules of Origin

No Party may apply rules of origin to goods imported from another Party for purposes of government procurement covered by this Chapter that are different from or inconsistent with the rules of origin the Party applies in the normal course of trade, which may be the Marking Rules established under Annex 311 if they become the rules of origin applied by that Party in the normal course of its trade.

Article 1005: Denial of Benefits

1. Subject to prior notification and consultation in accordance with Articles 1803 (Notification and Provision of Information) and 2006 (Consultations), a Party may deny the benefits of this Chapter to a service supplier of another Party where the Party establishes that the service is being provided by an enterprise that is owned or controlled by persons of a non-Party and that has no substantial business activities in the territory of any Party.

2. A Party may deny to an enterprise of another Party the benefits of this Chapter if nationals of a non-Party own or control the enterprise and:

(a) the circumstance set out in Article 1113(1)(a) (Denial of Benefits) is met; or

(b) the denying Party adopts or maintains measures with respect to the non-Party that prohibit transactions with the enterprise or that would be violated or circumvented if the benefits of this Chapter were accorded to the enterprise.

Article 1006: Prohibition of Offsets

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 the award of contracts, consider, seek or impose offsets. For purposes of this Article, offsets means 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.

Article 1007: Technical Specifications

1. Each Party shall ensure that its entities do not prepare, adopt or apply any technical specification with the purpose or the effect of creating unnecessary obstacles to trade.

2. Each Party shall ensure that any technical specification prescribed by its entities is, where appropriate:

(a) specified in terms of performance criteria rather than design or descriptive characteristics; and

(b) based on international standards, national technical regulations, recognized national standards, or building codes.

3. Each Party shall ensure that the technical specifications prescribed by its entities do not require or refer to a particular trademark or name, patent, design or type, specific origin or producer or supplier unless there is no sufficiently precise or intelligible way of otherwise describing the procurement requirements and provided that, in such cases, words such as "or equivalent" are included in the tender documentation.

4. Each Party shall ensure that its entities do not seek or accept, in a manner that would have the effect of precluding competition, advice that may be used in the preparation or adoption of any technical specification for a specific procurement from a person that may have a commercial interest in that procurement.

Section B - Tendering Procedures

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Section C - Bid Challenge

Article 1017: Bid Challenge

1. In order to promote fair, open and impartial procurement procedures, each Party shall adopt and maintain bid challenge procedures for procurement covered by this Chapter in accordance with the following:

(a) each Party shall allow suppliers to submit bid challenges concerning any aspect of the procurement process, which for the purposes of this Article begins after an entity has decided on its procurement requirement and continues through the contract award;

(b) a Party may encourage a supplier to seek a resolution of any complaint with the entity concerned prior to initiating a bid challenge;

(c) each Party shall ensure that its entities accord fair and timely consideration to any complaint regarding procurement covered by this Chapter;

(d) whether or not a supplier has attempted to resolve its complaint with the entity, or following an unsuccessful attempt at such a resolution, no Party may prevent the supplier from initiating a bid challenge or seeking any other relief;

(e) a Party may require a supplier to notify the entity on initiation of a bid challenge;

(f) a Party may limit the period within which a supplier may initiate a bid challenge, but in no case shall the period be less than 10 working days from the time when the basis of the complaint became known or reasonably should have become known to the supplier;

(g) each Party shall establish or designate a reviewing authority with no substantial interest in the outcome of procurements to receive bid challenges and make findings and recommendations concerning them;

(h) on receipt of a bid challenge, the reviewing authority shall expeditiously investigate the challenge;

(i) a Party may require its reviewing authority to limit its considerations to the challenge itself;

(j) in investigating the challenge, the reviewing authority may delay the awarding of the proposed contract pending resolution of the challenge, except in cases of urgency or where the delay would be contrary to the public interest;

(k) the reviewing authority shall issue a recommendation to resolve the challenge, which may include directing the entity to re-evaluate offers, terminate or re-compete the contract in question;

(l) entities normally shall follow the recommendations of the reviewing authority;

(m) each Party should authorize its reviewing authority, following the conclusion of a bid challenge procedure, to make additional recommendations in writing to an entity respecting any facet of the entity's procurement process that is identified as problematic during the investigation of the challenge, including recommendations for changes in the procurement procedures of the entity to bring them into conformity with this Chapter;

(n) the reviewing authority shall provide its findings and recommendations respecting bid challenges in writing and in a timely manner, and shall make them available to the Parties and interested persons;

(o) each Party shall specify in writing and shall make generally available all its bid challenge procedures; and

(p) each Party shall ensure that each of its entities maintains complete documentation regarding each of its procurements, including a written record of all communications substantially affecting each procurement, for at least three years from the date the contract was awarded, to allow verification that the procurement process was carried out in accordance with this Chapter.

2. A Party may require that a bid challenge be initiated only after the notice of procurement has been published or, where a notice is not published, after tender documentation has been made available. Where a Party imposes such a requirement, the 10-working day period described in paragraph 1(f) shall begin no earlier than the date that the notice is published or the tender documentation is made available.

Section D - General Provisions

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PART FIVE: INVESTMENT, SERVICES AND RELATED MATTERS

Chapter Eleven: Investment

Section A - Investment
- Article 1101: Scope and Coverage
- Article 1102: National Treatment
- Article 1103: Most-Favored-Nation Treatment
- Article 1104: Standard of Treatment
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- Article 1106: Performance Requirements
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- Article 1108: Reservations and Exceptions
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- Article 1110: Expropriation and Compensation
- Article 1111: Special Formalities and Information Requirements
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- Article 1113: Denial of Benefits
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Section B - Settlement of Disputes between a Party and an Investor of Another Party
- Article 1115: Purpose
- Article 1116: Claim by an Investor of a Party on Its Own Behalf
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Annex 1120.1: Submission of a Claim to Arbitration

Annex 1137.2: Service of Documents on a Party Under Section B
Annex 1137.4: Publication of an Award
Annex 1138.2: Exclusions from Dispute Settlement

Section A - Investment

Article 1101: Scope and Coverage

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

(a) investors of another Party;

(b) investments of investors of another Party in the territory of the Party; and

(c) with respect to Articles 1106 and 1114, all investments in the territory of the Party.

2. A Party has the right to perform exclusively the economic activities set out in Annex III and to refuse to permit the establishment of investment in such activities.

3. This Chapter does not apply to measures adopted or maintained by a Party to the extent that they are covered by Chapter Fourteen (Financial Services).

4. Nothing in this Chapter shall be construed to prevent a Party from providing a service or performing a function such as law enforcement, correctional services, income security or insurance, social security or insurance, social welfare, public education, public training, health, and child care, in a manner that is not inconsistent with this Chapter.

Article 1102: National Treatment

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

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

3. The treatment accorded by a Party under paragraphs 1 and 2 means, with respect to a state or province, treatment no less favorable than the most favorable treatment accorded, in like circumstances, by that state or province to investors, and to investments of investors, of the Party of which it forms a part.

4. For greater certainty, no Party may:

(a) impose on an investor of another Party a requirement that a minimum level of equity in an enterprise in the territory of the Party be held by its nationals, other than nominal qualifying shares for directors or incorporators of corporations; or

(b) require an investor of another Party, by reason of its nationality, to sell or otherwise dispose of an investment in the territory of the Party.

Article 1103: Most-Favored-Nation Treatment

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

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

Article 1104: Standard of Treatment

Each Party shall accord to investors of another Party and to investments of investors of another Party the better of the treatment required by Articles 1102 and 1103.

Article 1105: Minimum Standard of Treatment

1. Each Party shall accord to investments of investors of another Party treatment in accordance with international law, including fair and equitable treatment and full protection and security.

2. Without prejudice to paragraph 1 and notwithstanding Article 1108(7)(b), each Party shall accord to investors of another Party, and to investments of investors of another Party, non-discriminatory treatment with respect to measures it adopts or maintains relating to losses suffered by investments in its territory owing to armed conflict or civil strife.

3. Paragraph 2 does not apply to existing measures relating to subsidies or grants that would be inconsistent with Article 1102 but for Article 1108(7)(b).

Article 1106: Performance Requirements

1. No Party may impose or enforce any of the following requirements, or enforce any commitment or undertaking, in connection with the establishment, acquisition, expansion, management, conduct or operation of an investment of an investor of a Party or of a non-Party in its territory:

(a) to export a given level or percentage of goods or services;

(b) to achieve a given level or percentage of domestic content;

(c) to purchase, use or accord a preference to goods produced or services provided in its territory, or to purchase goods or services from persons in its territory;

(d) to relate in any way the volume or value of imports to the volume or value of exports or to the amount of foreign exchange inflows associated with such investment;

(e) to restrict sales of goods or services in its territory that such investment produces or provides by relating such sales in any way to the volume or value of its exports or foreign exchange earnings;

(f) to transfer technology, a production process or other proprietary knowledge to a person in its territory, except when the requirement is imposed or the commitment or undertaking is enforced by a court, administrative tribunal or competition authority to remedy an alleged violation of competition laws or to act in a manner not inconsistent with other provisions of this Agreement; or

(g) to act as the exclusive supplier of the goods it produces or services it provides to a specific

region or world market.

2. A measure that requires an investment to use a technology to meet generally applicable health, safety or environmental requirements shall not be construed to be inconsistent with paragraph 1(f). For greater certainty, Articles 1102 and 1103 apply to the measure.

3. No Party may condition the receipt or continued receipt of an advantage, in connection with an investment in its territory of an investor of a Party or of a non-Party, on compliance with any of the following requirements:

(a) to achieve a given level or percentage of domestic content;

(b) to purchase, use or accord a preference to goods produced in its territory, or to purchase goods from producers in its territory;

(c) to relate in any way the volume or value of imports to the volume or value of exports or to the amount of foreign exchange inflows associated with such investment; or

(d) to restrict sales of goods or services in its territory that such investment produces or provides by relating such sales in any way to the volume or value of its exports or foreign exchange earnings.

4. Nothing in paragraph 3 shall be construed to prevent a Party from conditioning the receipt or continued receipt of an advantage, in connection with an investment in its territory of an investor of a Party or of a non-Party, on compliance with a requirement to locate production, provide a service, train or employ workers, construct or expand particular facilities, or carry out research and development, in its territory.

5. Paragraphs 1 and 3 do not apply to any requirement other than the requirements set out in those paragraphs.

6. Provided that such measures are not applied in an arbitrary or unjustifiable manner, or do not constitute a disguised restriction on international trade or investment, nothing in paragraph 1(b) or (c) or 3(a) or (b) shall be construed to prevent any Party from adopting or maintaining measures, including environmental measures:

(a) necessary to secure compliance with laws and regulations that are not inconsistent with the provisions of this Agreement;

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

(c) necessary for the conservation of living or non-living exhaustible natural resources.

Article 1107: Senior Management and Boards of Directors

1. No Party may require that an enterprise of that Party that is an investment of an investor of another Party appoint to senior management positions individuals of any particular nationality.

2. A Party may require that a majority of the board of directors, or any committee thereof, of an enterprise of that Party that is an investment of an investor of another Party, be of a particular nationality, or resident in the territory of the Party, provided that the requirement does not materially impair the ability of the investor to exercise control over its investment.

* * *

Article 1109: Transfers

1. Each Party shall permit all transfers relating to an investment of an investor of another Party in the territory of the Party to be made freely and without delay. Such transfers include:

(a) profits, dividends, interest, capital gains, royalty payments, management fees, technical assistance and other fees, returns in kind and other amounts derived from the investment;

(b) proceeds from the sale of all or any part of the investment or from the partial or complete liquidation of the investment;

(c) payments made under a contract entered into by the investor, or its investment, including payments made pursuant to a loan agreement;

(d) payments made pursuant to Article 1110; and

(e) payments arising under Section B.

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

3. No Party may require its investors to transfer, or penalize its investors that fail to transfer, the income, earnings, profits or other amounts derived from, or attributable to, investments in the territory of another Party.

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

(a) bankruptcy, insolvency or the protection of the rights of creditors;

(b) issuing, trading or dealing in securities;

(c) criminal or penal offenses;

(d) reports of transfers of currency or other monetary instruments; or

(e) ensuring the satisfaction of judgments in adjudicatory proceedings.

5. Paragraph 3 shall not be construed to prevent a Party from imposing any measure through the equitable, non-discriminatory and good faith application of its laws relating to the matters set out in subparagraphs (a) through (e) of paragraph 4.

6. Notwithstanding paragraph 1, a Party may restrict transfers of returns in kind in circumstances where it could otherwise restrict such transfers under this Agreement, including as set out in paragraph 4.

Article 1110: Expropriation and Compensation

1. No Party may directly or indirectly nationalize or expropriate an investment of an investor of another Party in its territory or take a measure tantamount to nationalization or expropriation of such an investment ("expropriation"), except:

(a) for a public purpose;

(b) on a non-discriminatory basis;

(c) in accordance with due process of law and Article 1105(1); and

(d) on payment of compensation in accordance with paragraphs 2 through 6.

2. Compensation shall be equivalent to the fair market value of the expropriated investment immediately before the expropriation took place ("date of expropriation"), and shall not reflect any change in value occurring because the intended expropriation had become known earlier. Valuation criteria shall include going concern value, asset value including declared tax value of tangible property, and other criteria, as appropriate, to determine fair market value.

3. Compensation shall be paid without delay and be fully realizable.

4. If payment is made in a G7 currency, compensation shall include interest at a commercially reasonable rate for that currency from the date of expropriation until the date of actual payment.

5. If a Party elects to pay in a currency other than a G7 currency, the amount paid on the date of payment, if converted into a G7 currency at the market rate of exchange prevailing on that date, shall be no less than if the amount of compensation owed on the date of expropriation had been converted into that G7 currency at the market rate of exchange prevailing on that date, and interest had accrued at a commercially reasonable rate for that G7 currency from the date of expropriation until the date of payment.

6. On payment, compensation shall be freely transferable as provided in Article 1109.

7. This Article does not apply to the issuance of compulsory licenses granted in relation to intellectual property rights, or to the revocation, limitation or creation of intellectual property rights, to the extent that such issuance, revocation, limitation or creation is consistent with Chapter Seventeen (Intellectual Property).

8. For purposes of this Article and for greater certainty, a non-discriminatory measure of general application shall not be considered a measure tantamount to an expropriation of a debt security or loan covered by this Chapter solely on the ground that the measure imposes costs on the debtor that cause it to default on the debt.

* * *

Article 1112: Relation to Other Chapters

1. In the event of any inconsistency between this Chapter and another Chapter, the other Chapter shall prevail to the extent of the inconsistency.

2. A requirement by a Party that a service provider of another Party post a bond or other form of financial security as a condition of providing a service into its territory does not of itself make this Chapter applicable to the provision of that crossborder service. This Chapter applies to that Party's treatment of the posted bond or financial security.

Article 1113: Denial of Benefits

1. A Party may deny the benefits of this Chapter to an investor of another Party that is an enterprise of such Party and to investments of such investor if investors of a non-Party own or control the enterprise and the denying Party:

(a) does not maintain diplomatic relations with the non-Party; or

(b) adopts or maintains measures with respect to the non-Party that prohibit transactions with the enterprise or that would be violated or circumvented if the benefits of this Chapter were accorded

to the enterprise or to its investments.

2. Subject to prior notification and consultation in accordance with Articles 1803 (Notification and Provision of Information) and 2006 (Consultations), a Party may deny the benefits of this Chapter to an investor of another Party that is an enterprise of such Party and to investments of such investors if investors of a non-Party own or control the enterprise and the enterprise has no substantial business activities in the territory of the Party under whose law it is constituted or organized.

Article 1114: Environmental Measures

1. Nothing in this Chapter shall be construed to prevent a Party from adopting, maintaining or enforcing any measure otherwise consistent with this Chapter that it considers appropriate to ensure that investment activity in its territory is undertaken in a manner sensitive to environmental concerns.

2. The Parties recognize that it is inappropriate to encourage investment by relaxing domestic health, safety or environmental measures. Accordingly, a Party should not waive or otherwise derogate from, or offer to waive or otherwise derogate from, such measures as an encouragement for the establishment, acquisition, expansion or retention in its territory of an investment of an investor. If a Party considers that another Party has offered such an encouragement, it may request consultations with the other Party and the two Parties shall consult with a view to avoiding any such encouragement.

Section B Settlement of Disputes between a Party and an Investor of Another Party

Article 1115: Purpose

Without prejudice to the rights and obligations of the Parties under Chapter Twenty (Institutional Arrangements and Dispute Settlement Procedures), this Section establishes a mechanism for the settlement of investment disputes that assures both equal treatment among investors of the Parties in accordance with the principle of international reciprocity and due process before an impartial tribunal.

Article 1116: Claim by an Investor of a Party on Its Own Behalf

1. An investor of a Party may submit to arbitration under this Section a claim that another Party has breached an obligation under:

(a) Section A or Article 1503(2) (State Enterprises), or

(b) Article 1502(3)(a) (Monopolies and State Enterprises) where the monopoly has acted in a manner inconsistent with the Party's obligations under Section A,

and that the investor has incurred loss or damage by reason of, or arising out of, that breach.

2. An investor may not make a claim if more than three years have elapsed from the date on which the investor first acquired, or should have first acquired, knowledge of the alleged breach and knowledge that the investor has incurred loss or damage.

Article 1117: Claim by an Investor of a Party on Behalf of an Enterprise

1. An investor of a Party, on behalf of an enterprise of another Party that is a juridical person that the investor owns or controls directly or indirectly, may submit to arbitration under this Section a claim that the other Party has breached an obligation under:

(a) Section A or Article 1503(2) (State Enterprises), or

(b) Article 1502(3)(a) (Monopolies and State Enterprises) where the monopoly has acted in a manner inconsistent with the Party's obligations under Section A, and that the enterprise has incurred loss or damage by reason of, or arising out of, that breach.

2. An investor may not make a claim on behalf of an enterprise described in paragraph 1 if more than three years have elapsed from the date on which the enterprise first acquired, or should have first acquired, knowledge of the alleged breach and knowledge that the enterprise has incurred loss or damage.

3. Where an investor makes a claim under this Article and the investor or a non-controlling investor in the enterprise makes a claim under Article 1116 arising out of the same events that gave rise to the claim under this Article, and two or more of the claims are submitted to arbitration under Article 1120, the claims should be heard together by a Tribunal established under Article 1126, unless the Tribunal finds that the interests of a disputing party would be prejudiced thereby.

4. An investment may not make a claim under this Section.

Article 1118: Settlement of a Claim through Consultation and Negotiation

The disputing parties should first attempt to settle a claim through consultation or negotiation.

Article 1119: Notice of Intent to Submit a Claim to Arbitration

The disputing investor shall deliver to the disputing Party written notice of its intention to submit a claim to arbitration at least 90 days before the claim is submitted, which notice shall specify:

(a) the name and address of the disputing investor and, where a claim is made under Article 1117, the name and address of the enterprise;

(b) the provisions of this Agreement alleged to have been breached and any other relevant provisions;

(c) the issues and the factual basis for the claim; and

(d) the relief sought and the approximate amount of damages claimed.

Article 1120: Submission of a Claim to Arbitration

1. Except as provided in Annex 1120.1, and provided that six months have elapsed since the events giving rise to a claim, a disputing investor may submit the claim to arbitration under:

(a) the ICSID Convention, provided that both the disputing Party and the Party of the investor are parties to the Convention;

(b) the Additional Facility Rules of ICSID, provided that either the disputing Party or the Party of the investor, but not both, is a party to the ICSID Convention; or

(c) the UNCITRAL Arbitration Rules.

2. The applicable arbitration rules shall govern the arbitration except to the extent modified by this

Section.

Article 1121: Conditions Precedent to Submission of a Claim to Arbitration

1. A disputing investor may submit a claim under Article 1116 to arbitration only if:

(a) the investor consents to arbitration in accordance with the procedures set out in this Agreement; and

(b) the investor and, where the claim is for loss or damage to an interest in an enterprise of another Party that is a juridical person that the investor owns or controls directly or indirectly, the enterprise, waive their right to initiate or continue before any administrative tribunal or court under the law of any Party, or other dispute settlement procedures, any proceedings with respect to the measure of the disputing Party that is alleged to be a breach referred to in Article 1116, except for proceedings for injunctive, declaratory or other extraordinary relief, not involving the payment of damages, before an administrative tribunal or court under the law of the disputing Party.

2. A disputing investor may submit a claim under Article 1117 to arbitration only if both the investor and the enterprise:

(a) consent to arbitration in accordance with the procedures set out in this Agreement; and

(b) waive their right to initiate or continue before any administrative tribunal or court under the law of any Party, or other dispute settlement procedures, any proceedings with respect to the measure of the disputing Party that is alleged to be a breach referred to in Article 1117, except for proceedings for injunctive, declaratory or other extraordinary relief, not involving the payment of damages, before an administrative tribunal or court under the law of the disputing Party.

3. A consent and waiver required by this Article shall be in writing, shall be delivered to the disputing Party and shall be included in the submission of a claim to arbitration.

4. Only where a disputing Party has deprived a disputing investor of control of an enterprise:

(a) a waiver from the enterprise under paragraph 1(b) or 2(b) shall not be required; and

(b) Annex 1120.1(b) shall not apply.

Article 1122: Consent to Arbitration

1. Each Party consents to the submission of a claim to arbitration in accordance with the procedures set out in this Agreement.

2. The consent given by paragraph 1 and the submission by a disputing investor of a claim to arbitration shall satisfy the requirement of:

(a) Chapter II of the ICSID Convention (Jurisdiction of the Centre) and the Additional Facility Rules for written consent of the parties;

(b) Article II of the New York Convention for an agreement in writing; and

(c) Article I of the InterAmerican Convention for an agreement.

Article 1123: Number of Arbitrators and Method of Appointment

Except in respect of a Tribunal established under Article 1126, and unless the disputing parties otherwise agree, the Tribunal shall comprise three arbitrators, one arbitrator appointed by each of the disputing parties and the third, who shall be the presiding arbitrator, appointed by agreement of the disputing parties.

Article 1124: Constitution of a Tribunal When a Party Fails to Appoint an Arbitrator or the Disputing Parties Are Unable to Agree on a Presiding Arbitrator

1. The Secretary-General shall serve as appointing authority for an arbitration under this Section.

2. If a Tribunal, other than a Tribunal established under Article 1126, has not been constituted within 90 days from the date that a claim is submitted to arbitration, the Secretary-General, on the request of either disputing party, shall appoint, in his discretion, the arbitrator or arbitrators not yet appointed, except that the presiding arbitrator shall be appointed in accordance with paragraph 3.

3. The Secretary-General shall appoint the presiding arbitrator from the roster of presiding arbitrators referred to in paragraph 4, provided that the presiding arbitrator shall not be a national of the disputing Party or a national of the Party of the disputing investor. In the event that no such presiding arbitrator is available to serve, the Secretary-General shall appoint, from the ICSID Panel of Arbitrators, a presiding arbitrator who is not a national of any of the Parties.

4. On the date of entry into force of this Agreement, the Parties shall establish, and thereafter maintain, a roster of 45 presiding arbitrators meeting the qualifications of the Convention and rules referred to in Article 1120 and experienced in international law and investment matters. The roster members shall be appointed by consensus and without regard to nationality.

Article 1125: Agreement to Appointment of Arbitrators

For purposes of Article 39 of the ICSID Convention and Article 7 of Schedule C to the ICSID Additional Facility Rules, and without prejudice to an objection to an arbitrator based on Article 1124(3) or on a ground other than nationality:

(a) the disputing Party agrees to the appointment of each individual member of a Tribunal established under the ICSID Convention or the ICSID Additional Facility Rules;

(b) a disputing investor referred to in Article 1116 may submit a claim to arbitration, or continue a claim, under the ICSID Convention or the ICSID Additional Facility Rules, only on condition that the disputing investor agrees in writing to the appointment of each individual member of the Tribunal; and

(c) a disputing investor referred to in Article 1117(1) may submit a claim to arbitration, or continue a claim, under the ICSID Convention or the ICSID Additional Facility Rules, only on condition that the disputing investor and the enterprise agree in writing to the appointment of each individual member of the Tribunal.

* * *

Article 1130: Place of Arbitration

Unless the disputing parties agree otherwise, a Tribunal shall hold an arbitration in the territory of a Party that is a party to the New York Convention, selected in accordance with:

(a) the ICSID Additional Facility Rules if the arbitration is under those Rules or the ICSID Convention; or

(b) the UNCITRAL Arbitration Rules if the arbitration is under those Rules.

Article 1131: Governing Law

1. A Tribunal established under this Section shall decide the issues in dispute in accordance with this Agreement and applicable rules of international law.

2. An interpretation by the Commission of a provision of this Agreement shall be binding on a Tribunal established under this Section.

Article 1132: Interpretation of Annexes

1. Where a disputing Party asserts as a defense that the measure alleged to be a breach is within the scope of a reservation or exception set out in Annex I, Annex II, Annex III or Annex IV, on request of the disputing Party, the Tribunal shall request the interpretation of the Commission on the issue. The Commission, within 60 days of delivery of the request, shall submit in writing its interpretation to the Tribunal.

2. Further to Article 1131(2), a Commission interpretation submitted under paragraph 1 shall be binding on the Tribunal. If the Commission fails to submit an interpretation within 60 days, the Tribunal shall decide the issue.

Article 1133: Expert Reports

Without prejudice to the appointment of other kinds of experts where authorized by the applicable arbitration rules, a Tribunal, at the request of a disputing party or, unless the disputing parties disapprove, on its own initiative, may appoint one or more experts to report to it in writing on any factual issue concerning environmental, health, safety or other scientific matters raised by a disputing party in a proceeding, subject to such terms and conditions as the disputing parties may agree.

Article 1134: Interim Measures of Protection

A Tribunal may order an interim measure of protection to preserve the rights of a disputing party, or to ensure that the Tribunal's jurisdiction is made fully effective, including an order to preserve evidence in the possession or control of a disputing party or to protect the Tribunal's jurisdiction. A Tribunal may not order attachment or enjoin the application of the measure alleged to constitute a breach referred to in Article 1116 or 1117. For purposes of this paragraph, an order includes a recommendation.

Article 1135: Final Award

1. Where a Tribunal makes a final award against a Party, the Tribunal may award, separately or in combination, only:

(a) monetary damages and any applicable interest;

(b) restitution of property, in which case the award shall provide that the disputing Party may pay monetary damages and any applicable interest in lieu of restitution.

A tribunal may also award costs in accordance with the applicable arbitration rules.

2. Subject to paragraph 1, where a claim is made under Article 1117(1):

(a) an award of restitution of property shall provide that restitution be made to the enterprise;

(b) an award of monetary damages and any applicable interest shall provide that the sum be paid to the enterprise; and

(c) the award shall provide that it is made without prejudice to any right that any person may have in the relief under applicable domestic law.

3. A Tribunal may not order a Party to pay punitive damages.

Article 1136: Finality and Enforcement of an Award

1. An award made by a Tribunal shall have no binding force except between the disputing parties and in respect of the particular case.

2. Subject to paragraph 3 and the applicable review procedure for an interim award, a disputing party shall abide by and comply with an award without delay.

3. A disputing party may not seek enforcement of a final award until:

(a) in the case of a final award made under the ICSID Convention

(i) 120 days have elapsed from the date the award was rendered and no disputing party has requested revision or annulment of the award, or

(ii) revision or annulment proceedings have been completed; and

(b) in the case of a final award under the ICSID Additional Facility Rules or the UNCITRAL Arbitration Rules

(i) three months have elapsed from the date the award was rendered and no disputing party has commenced a proceeding to revise, set aside or annul the award, or

(ii) a court has dismissed or allowed an application to revise, set aside or annul the award and there is no further appeal.

4. Each Party shall provide for the enforcement of an award in its territory.

5. If a disputing Party fails to abide by or comply with a final award, the Commission, on delivery of a request by a Party whose investor was a party to the arbitration, shall establish a panel under Article 2008 (Request for an Arbitral Panel). The requesting Party may seek in such proceedings:

(a) a determination that the failure to abide by or comply with the final award is inconsistent with the obligations of this Agreement; and

(b) a recommendation that the Party abide by or comply with the final award.

6. A disputing investor may seek enforcement of an arbitration award under the ICSID Convention, the New York Convention or the InterAmerican Convention regardless of whether proceedings have been taken under paragraph 5.

7. A claim that is submitted to arbitration under this Section shall be considered to arise out of a commercial relationship or transaction for purposes of Article I of the New York Convention and Article I of the InterAmerican Convention.

* * *

Section C - Definitions

Article 1139: Definitions

For purposes of this Chapter:

disputing investor means an investor that makes a claim under Section B;

disputing parties means the disputing investor and the disputing Party;

disputing party means the disputing investor or the disputing Party;

disputing Party means a Party against which a claim is made under Section B;

enterprise means an "enterprise" as defined in Article 201 (Definitions of General Application), and a branch of an enterprise;

enterprise of a Party means an enterprise constituted or organized under the law of a Party, and a branch located in the territory of a Party and carrying out business activities there.

equity or debt securities includes voting and non-voting shares, bonds, convertible debentures, stock options and warrants;

G7 Currency means the currency of Canada, France, Germany, Italy, Japan, the United Kingdom of Great Britain and Northern Ireland or the United States;

ICSID means the International Centre for Settlement of Investment Disputes;

ICSID Convention means the Convention on the Settlement of Investment Disputes between States and Nationals of other States, done at Washington, March 18, 1965;

InterAmerican Convention means the InterAmerican Convention on International Commercial Arbitration, done at Panama, January 30, 1975;

investment means:

(a) an enterprise;

(b) an equity security of an enterprise;

(c) a debt security of an enterprise

(i) where the enterprise is an affiliate of the investor, or

(ii) where the original maturity of the debt security is at least three years,

but does not include a debt security, regardless of original maturity, of a state enterprise;

(d) a loan to an enterprise

(i) where the enterprise is an affiliate of the investor, or

(ii) where the original maturity of the loan is at least three years,

but does not include a loan, regardless of original maturity, to a state enterprise;

(e) an interest in an enterprise that entitles the owner to share in income or profits of the enterprise;

(f) an interest in an enterprise that entitles the owner to share in the assets of that enterprise on dissolution, other than a debt security or a loan excluded from subparagraph (c) or (d);

(g) real estate or other property, tangible or intangible, acquired in the expectation or used for the purpose of economic benefit or other business purposes; and

(h) interests arising from the commitment of capital or other resources in the territory of a Party to economic activity in such territory, such as under

(i) contracts involving the presence of an investor's property in the territory of the Party, including turnkey or construction contracts, or concessions, or

(ii) contracts where remuneration depends substantially on the production, revenues or profits of an enterprise;

but investment does not mean,

(i) claims to money that arise solely from

(i) commercial contracts for the sale of goods or services by a national or enterprise in the territory of a Party to an enterprise in the territory of another Party, or

(ii) the extension of credit in connection with a commercial transaction, such as trade financing, other than a loan covered by subparagraph (d); or

(j) any other claims to money,

that do not involve the kinds of interests set out in subparagraphs (a) through (h);

* * *

Chapter Twelve: Cross-Border Trade in Services

Article 1201: Scope and Coverage
Article 1202: National Treatment
Article 1203: Most-Favored-Nation Treatment
Article 1204: Standard of Treatment
Article 1205: Local Presence
Article 1206: Reservations
Article 1207: Quantitative Restrictions
Article 1208: Liberalization of Non-Discriminatory Measures
Article 1209: Procedures

Article 1210: Licensing and Certification
Article 1211: Denial of Benefits
Article 1212: Sectoral Annex
Article 1213: Definitions

Annex 1210.5: Professional Services
Appendix 1210.5-C: Civil Engineers
Annex 1212: Land Transportation

Article 1201: Scope and Coverage

1. This Chapter applies to measures adopted or maintained by a Party relating to cross-border trade in services by service providers of another Party, including measures respecting:

(a) the production, distribution, marketing, sale and delivery of a service;

(b) the purchase or use of, or payment for, a service;

(c) the access to and use of distribution and transportation systems in connection with the provision of a service;

(d) the presence in its territory of a service provider of another Party; and

(e) the provision of a bond or other form of financial security as a condition for the provision of a service.

2. This Chapter does not apply to:

(a) financial services, as defined in Chapter Fourteen (Financial Services);

(b) air services, including domestic and international air transportation services, whether scheduled or non-scheduled, and related services in support of air services, other than

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

(ii) specialty air services;

(c) procurement by a Party or a state enterprise; or

(d) subsidies or grants provided by a Party or a state enterprise, including government-supported loans, guarantees and insurance.

3. Nothing in this Chapter shall be construed to:

(a) impose any obligation on a Party with respect to a national of another Party seeking access to its employment market, or employed on a permanent basis in its territory, or to confer any right on that national with respect to that access or employment; or

(b) prevent a Party from providing a service or performing a function such as law enforcement, correctional services, income security or insurance, social security or insurance, social welfare, public education, public training, health, and child care, in a manner that is not inconsistent with this Chapter.

Article 1202: National Treatment

1. Each Party shall accord to service providers of another Party treatment no less favorable than that it accords, in like circumstances, to its own service providers.

2. The treatment accorded by a Party under paragraph 1 means, with respect to a state or province, treatment no less favorable than the most favorable treatment accorded, in like circumstances, by that state or province to service providers of the Party of which it forms a part.

Article 1203: Most-Favored-Nation Treatment

Each Party shall accord to service providers of another Party treatment no less favorable than that it accords, in like circumstances, to service providers of any other Party or of a non-Party.

Article 1204: Standard of Treatment

Each Party shall accord to service providers of any other Party the better of the treatment required by Articles 1202 and 1203.

Article 1205: Local Presence

No Party may require a service provider of another Party to establish or maintain a representative office or any form of enterprise, or to be resident, in its territory as a condition for the cross-border provision of a service.

* * *

Article 1207: Quantitative Restrictions

1. Each Party shall set out in its Schedule to Annex V any quantitative restriction that it maintains at the federal level.

2. Within one year of the date of entry into force of this Agreement, each Party shall set out in its Schedule to Annex V any quantitative restriction maintained by a state or province, not including a local government.

3. Each Party shall notify the other Parties of any quantitative restriction that it adopts, other than at the local government level, after the date of entry into force of this Agreement and shall set out the restriction in its Schedule to Annex V.

4. The Parties shall periodically, but in any event at least every two years, endeavor to negotiate the liberalization or removal of the quantitative restrictions set out in Annex V pursuant to paragraphs 1 through 3.

Article 1208: Liberalization of Non-Discriminatory Measures

Each Party shall set out in its Schedule to Annex VI its commitments to liberalize quantitative restrictions, licensing requirements, performance requirements or other non-discriminatory measures.

* * *

Article 1210: Licensing and Certification

1. With a view to ensuring that any measure adopted or maintained by a Party relating to the licensing or certification of nationals of another Party does not constitute an unnecessary barrier to trade, each Party shall endeavor to ensure that any such measure:

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

(b) is not more burdensome than necessary to ensure the quality of a service; and

(c) does not constitute a disguised restriction on the cross-border provision of a service.

2. Where a Party recognizes, unilaterally or by agreement, education, experience, licenses or certifications obtained in the territory of another Party or of a non-Party:

(a) nothing in Article 1203 shall be construed to require the Party to accord such recognition to education, experience, licenses or certifications obtained in the territory of another Party; and

(b) the Party shall afford another Party an adequate opportunity to demonstrate that education, experience, licenses or certifications obtained in that other Party's territory should also be recognized or to conclude an agreement or arrangement of comparable effect.

3. Each Party shall, within two years of the date of entry into force of this Agreement, eliminate any citizenship or permanent residency requirement set out in its Schedule to Annex I that it maintains for the licensing or certification of professional service providers of another Party. Where a Party does not comply with this obligation with respect to a particular sector, any other Party may, in the same sector and for such period as the noncomplying Party maintains its requirement, solely have recourse to maintaining an equivalent requirement set out in its Schedule to Annex I or reinstating:

(a) any such requirement at the federal level that it eliminated pursuant to this Article; or

(b) on notification to the non-complying Party, any such requirement at the state or provincial level existing on the date of entry into force of this Agreement.

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 providers.

5. Annex 1210.5 applies to measures adopted or maintained by a Party relating to the licensing or certification of professional service providers.

Article 1211: Denial of Benefits

1. A Party may deny the benefits of this Chapter to a service provider of another Party where the Party establishes that:

(a) the service is being provided by an enterprise owned or controlled by nationals of a non-Party, and

(i) the denying Party does not maintain diplomatic relations with the non-Party, or

(ii) the denying Party adopts or maintains measures with respect to the non-Party that prohibit transactions with the enterprise or that would be violated or circumvented if the benefits of this Chapter were accorded to the enterprise; or

(b) the cross-border provision of a transportation service covered by this Chapter is provided using equipment not registered by any Party.

2. Subject to prior notification and consultation in accordance with Articles 1803 (Notification and Provision of Information) and 2006 (Consultations), a Party may deny the benefits of this Chapter to a service provider of another Party where the Party establishes that the service is being provided by an enterprise that is owned or controlled by persons of a non-Party and that has no substantial business activities in the territory of any Party.

* * *

Annex 1210.5

Professional Services

Section A General Provisions

Processing of Applications for Licenses and Certifications

1. Each Party shall ensure that its competent authorities, within a reasonable time after the submission by a national of another Party of an application for a license 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 law.

Development of Professional Standards

2. The Parties shall encourage the relevant bodies in their respective territories to develop mutually acceptable standards and criteria for licensing and certification of professional service providers and to provide recommendations on mutual recognition to the Commission.

3. The standards and criteria referred to in paragraph 2 may be developed with regard to the following matters:

(a) education - accreditation of schools or academic programs;

(b) examinations - qualifying examinations for licensing, including alternative methods of assessment such as oral examinations and interviews;

(c) experience length and nature of experience required for licensing;

(d) conduct and ethics - standards of professional conduct and the nature of disciplinary action for non-conformity with those standards;

(e) professional development and re-certification - continuing education and ongoing requirements to maintain professional certification;

(f) scope of practice - extent of, or limitations on, permissible activities;

(g) local knowledge - requirements for knowledge of such matters as local laws, regulations, language, geography or climate; and

(h) consumer protection - alternatives to residency requirements, including bonding, professional liability insurance and client restitution funds, to provide for the protection of consumers.

4. On receipt of a recommendation referred to in paragraph 2, the Commission shall review the recommendation within a reasonable time to determine whether it is consistent with this Agreement. Based on the Commission's review, each Party shall encourage its respective competent authorities, where appropriate, to implement the recommendation within a mutually agreed time.

Temporary Licensing

5. Where the Parties agree, each Party shall encourage the relevant bodies in its territory to develop procedures for the temporary licensing of professional service providers of another Party.

Review

6. The Commission shall periodically, and at least once every three years, review the implementation of this Section.

Section B Foreign Legal Consultants

1. Each Party shall, in implementing its obligations and commitments regarding foreign legal consultants as set out in its relevant Schedules and subject to any reservations therein, ensure that a national of another Party is permitted to practice or advise on the law of any country in which that national is authorized to practice as a lawyer.

Consultations With Professional Bodies

2. Each Party shall consult with its relevant professional bodies to obtain their recommendations on:

(a) the form of association or partnership between lawyers authorized to practice in its territory and foreign legal consultants;

(b) the development of standards and criteria for the authorization of foreign legal consultants in conformity with Article 1210; and

(c) other matters relating to the provision of foreign legal consultancy services.

3. Prior to initiation of consultations under paragraph 7, each Party shall encourage its relevant professional bodies to consult with the relevant professional bodies designated by each of the other Parties regarding the development of joint recommendations on the matters referred to in paragraph 2.

Future Liberalization

4. Each Party shall establish a work program to develop common procedures throughout its territory for the authorization of foreign legal consultants.

5. Each Party shall promptly review any recommendation referred to in paragraphs 2 and 3 to ensure its consistency with this Agreement. If the recommendation is consistent with this Agreement, each Party shall encourage its competent authorities to implement the recommendation within one year.

6. Each Party shall report to the Commission within one year of the date of entry into force of this Agreement, and each year thereafter, on its progress in implementing the work program referred to in paragraph 4.

7. The Parties shall meet within one year of the date of entry into force of this Agreement with a view to:

(a) assessing the implementation of paragraphs 2 through 5;

(b) amending or removing, where appropriate, reservations on foreign legal consultancy services; and

(c) assessing further work that may be appropriate regarding foreign legal consultancy services.

Section C Temporary Licensing of Engineers

* * *

Chapter Thirteen: Telecommunications

Article 1301: Scope and Coverage
Article 1302: Access to and Use of Public Telecommunications Transport Networks and Services
Article 1303: Conditions for the Provision of Enhanced or Value-Added Services
Article 1304: Standards-Related Measures
Article 1305: Monopolies
Article 1306: Transparency
Article 1307: Relation to Other Chapters
Article 1308: Relation to International Organizations and Agreements
Article 1309: Technical Cooperation and Other Consultations
Article 1310: Definitions

Annex 1310: Conformity Assessment Procedures

Article 1301: Scope and Coverage

1. This Chapter applies to:

(a) measures adopted or maintained by a Party relating to access to and use of public telecommunications transport networks or services by persons of another Party, including access and use by such persons operating private networks;

(b) measures adopted or maintained by a Party relating to the provision of enhanced or value-added services by persons of another Party in the territory, or across the borders, of a Party; and

(c) standards-related measures relating to attachment of terminal or other equipment to public telecommunications transport networks.

2. Except to ensure that persons operating broadcast stations and cable systems have continued access to and use of public telecommunications transport networks and services, this Chapter does not apply to any measure adopted or maintained by a Party relating to cable or broadcast distribution of radio or television programming.

3. Nothing in this Chapter shall be construed to:

(a) require a Party to authorize a person of another Party to establish, construct, acquire, lease, operate or provide telecommunications transport networks or telecommunications transport services;

(b) require a Party, or require a Party to compel any person, to establish, construct, acquire, lease, operate or provide telecommunications transport networks or telecommunications transport services not offered to the public generally;

(c) prevent a Party from prohibiting persons operating private networks from using their networks to provide public telecommunications transport networks or services to third persons; or

(d) require a Party to compel any person engaged in the cable or broadcast distribution of radio or television programming to make available its cable or broadcast facilities as a public telecommunications transport network.

Article 1302: Access to and Use of Public Telecommunications Transport Networks and Services

1. Each Party shall ensure that persons of another Party have access to and use of any public telecommunications transport network or service, including private leased circuits, offered in its territory or across its borders for the conduct of their business, on reasonable and non-discriminatory terms and conditions, including as set out in paragraphs 2 through 8.

* * *

Article 1303: Conditions for the Provision of Enhanced or Value-Added Services

1. Each Party shall ensure that:

(a) any licensing, permit, registration or notification procedure that it adopts or maintains relating to the provision of enhanced or value-added services is transparent and non-discriminatory, and that applications filed thereunder are processed expeditiously; and

(b) information required under such procedures is limited to that necessary to demonstrate that the applicant has the financial solvency to begin providing services or to assess conformity of the applicant's terminal or other equipment with the Party's applicable standards or technical regulations.

2. No Party may require a person providing enhanced or value-added services to:

(a) provide those services to the public generally;

(b) cost-justify its rates;

(c) file a tariff;

(d) interconnect its networks with any particular customer or network; or

(e) conform with any particular standard or technical regulation for interconnection other than for interconnection to a public telecommunications transport network.

3. Notwithstanding paragraph 2(c), a Party may require the filing of a tariff by:

(a) such provider to remedy a practice of that provider that the Party has found in a particular case to be anticompetitive under its law; or

(b) a monopoly to which Article 1305 applies.

Article 1304: Standards-Related Measures

1. Further to Article 904(4) (Unnecessary Obstacles), each Party shall ensure that its standards-related measures relating to the attachment of terminal or other equipment to the public telecommunications transport networks, including those measures relating to the use of testing and measuring equipment for conformity assessment procedures, are adopted or maintained only to the extent necessary to:

(a) prevent technical damage to public telecommunications transport networks;

(b) prevent technical interference with, or degradation of, public telecommunications transport services;

(c) prevent electromagnetic interference, and ensure compatibility, with other uses of the electromagnetic spectrum;

(d) prevent billing equipment malfunction; or

(e) ensure users' safety and access to public telecommunications transport networks or services.

2. A Party may require approval for the attachment to the public telecommunications transport network of terminal or other equipment that is not authorized, provided that the criteria for that approval are consistent with paragraph 1.

3. Each Party shall ensure that the network termination points for its public telecommunications transport networks are defined on a reasonable and transparent basis.

4. No Party may require separate authorization for equipment that is connected on the customer's side of authorized equipment that serves as a protective device fulfilling the criteria of paragraph 1.

* * *

Article 1305: Monopolies

1. Where a Party maintains or designates a monopoly to provide public telecommunications transport networks or services, and the monopoly, directly or through an affiliate, competes in the provision of enhanced or value-added services or other telecommunications-related services or telecommunications-related goods, the Party shall ensure that the monopoly does not use its monopoly position to engage in anticompetitive conduct in those markets, either directly or through its dealings with its affiliates, in such a manner as to affect adversely a person of another Party. Such conduct may include cross-subsidization, predatory conduct and the discriminatory provision of access to public telecommunications transport networks or services.

2. To prevent such anticompetitive conduct, each Party shall adopt or maintain effective measures, such as:

(a) accounting requirements;

(b) requirements for structural separation;

(c) rules to ensure that the monopoly accords its competitors access to and use of its public telecommunications transport networks or services on terms and conditions no less favorable than those it accords to itself or its affiliates; or

(d) rules to ensure the timely disclosure of technical changes to public telecommunications transport networks and their interfaces.

* * *

Article 1310: Definitions

For purposes of this Chapter:

authorized equipment means terminal or other equipment that has been approved for attachment to the public telecommunications transport network in accordance with a Party's conformity assessment procedures;

conformity assessment procedure means "conformity assessment procedure" as defined in Article 915 (Standards-Related Measures-Definitions), and includes the procedures referred to in Annex 1310;

enhanced or value-added services means those telecommunications services employing computer processing applications that:

(a) act on the format, content, code, protocol or similar aspects of a customer's transmitted information;

(b) provide a customer with additional, different or restructured information; or

(c) involve customer interaction with stored information;

flat-rate pricing basis means pricing on the basis of a fixed charge per period of time regardless of the amount of use;

intracorporate communications means telecommunications through which an enterprise communicates:

(a) internally or with or among its subsidiaries, branches or affiliates, as defined by each Party, or

(b) on a non-commercial basis with other persons that are fundamental to the economic activity of the enterprise and that have a continuing contractual relationship with it,

but does not include telecommunications services provided to persons other than those described herein;

network termination point means the final demarcation of the public telecommunications transport network at the customer's premises;

private network means a telecommunications transport network that is used exclusively for intracorporate communications;

protocol means a set of rules and formats that govern the exchange of information between two peer entities for purposes of transferring signaling or data information;

public telecommunications transport network means public telecommunications infrastructure that permits telecommunications between defined network termination points;

public telecommunications transport networks or services means public telecommunications transport networks or public telecommunications transport services;

public telecommunications transport service means any telecommunications transport service required by a Party, explicitly or in effect, to be offered to the public generally, including telegraph, telephone, telex and data transmission, that typically involves the real-time transmission of customer-supplied information between two or more points without any end-to-end change in the form or content of the customer's information;

standards-related measure means a "standards-related measure" as defined in Article 915;

telecommunications means the transmission and reception of signals by any electromagnetic means; and

terminal equipment means any digital or analog device capable of processing, receiving, switching, signaling or transmitting signals by electromagnetic means and that is connected by radio or wire to a public telecommunications transport network at a termination point.

* * *

Chapter Fourteen: Financial Services

Article 1401: Scope and Coverage
Article 1402: Self-Regulatory Organizations
Article 1403: Establishment of Financial Institutions
Article 1404: Cross-Border Trade
Article 1405: National Treatment
Article 1406: Most-Favored-Nation Treatment
Article 1407: New Financial Services and Data Processing
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Annex 1401.4: Country Specific Commitments
Annex 1403.3: Review of Market Access
Annex 1404.4: Consultations on Liberalization of Cross-Border Trade
Annex 1409.1: Provincial and State Reservations
Annex 1412.1: Authorities Responsible for Financial Services

Annex 1413.6: Further Consultations and Arrangements

Article 1401: Scope and Coverage

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

(a) financial institutions of another Party;

(b) investors of another Party, and investments of such investors, in financial institutions in the Party's territory; and

(c) cross-border trade in financial services.

2. Articles 1109 through 1111, 1113, 1114 and 1211 are hereby incorporated into and made a part of this Chapter. Articles 1115 through 1138 are hereby incorporated into and made a part of this Chapter solely for breaches by a Party of Articles 1109 through 1111, 1113 and 1114, as incorporated into this Chapter.

3. Nothing in this Chapter shall be construed to prevent a Party, including its public entities, from exclusively conducting or providing in its territory:

(a) activities or services forming part of a public retirement plan or statutory system of social security; or

(b) activities or services for the account or with the guarantee or using the financial resources of the Party, including its public entities.

4. Annex 1401.4 applies to the Parties specified in that Annex.

Article 1402: Self-Regulatory Organizations

Where a Party requires a financial institution or a cross-border financial service provider of another Party to be a member of, participate in, or have access to, a selfregulatory organization to provide a financial service in or into the territory of that Party, the Party shall ensure observance of the obligations of this Chapter by such selfregulatory organization.

Article 1403: Establishment of Financial Institutions

1. The Parties recognize the principle that an investor of another Party should be permitted to establish a financial institution in the territory of a Party in the juridical form chosen by such investor.

2. The Parties also recognize the principle that an investor of another Party should be permitted to participate widely in a Party's market through the ability of such investor to:

(a) provide in that Party's territory a range of financial services through separate financial institutions as may be required by that Party;

(b) expand geographically in that Party's territory; and

(c) own financial institutions in that Party's territory without being subject to ownership requirements specific to foreign financial institutions.

3. Subject to Annex 1403.3, at such time as the United States permits commercial banks of another Party

located in its territory to expand through subsidiaries or direct branches into substantially all of the United States market, the Parties shall review and assess market access provided by each Party in relation to the principles in paragraphs 1 and 2 with a view to adopting arrangements permitting investors of another Party to choose the juridical form of establishment of commercial banks.

4. Each Party shall permit an investor of another Party that does not own or control a financial institution in the Party's territory to establish a financial institution in that territory. A Party may:

(a) require an investor of another Party to incorporate under the Party's law any financial institution it establishes in the Party's territory; or

(b) impose terms and conditions on establishment that are consistent with Article 1405.

5. For purposes of this Article, "investor of another Party" means an investor of another Party engaged in the business of providing financial services in the territory of that Party.

Article 1404: Cross-Border Trade

1. No Party may adopt any measure restricting any type of cross-border trade in financial services by cross-border financial service providers of another Party that the Party permits on the date of entry into force of this Agreement, except to the extent set out in Section B of the Party's Schedule to Annex VII.

2. Each Party shall permit persons located in its territory, and its nationals wherever located, to purchase financial services from cross-border financial service providers of another Party located in the territory of that other Party or of another Party. This obligation does not require a Party to permit such providers to do business or solicit in its territory. Subject to paragraph 1, each Party may define "doing business" and "solicitation" for purposes of this obligation.

3. Without prejudice to other means of prudential regulation of cross-border trade in financial services, a Party may require the registration of cross-border financial service providers of another Party and of financial instruments.

4. The Parties shall consult on future liberalization of cross-border trade in financial services as set out in Annex 1404.4.

Article 1405: National Treatment

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

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

3. Subject to Article 1404, where a Party permits the cross-border provision of a financial service it shall accord to the cross-border financial service providers of another Party treatment no less favorable than that it accords to its own financial service providers, in like circumstances, with respect to the provision of such service.

4. The treatment that a Party is required to accord under paragraphs 1, 2 and 3 means, with respect to a

measure of any state or province:

(a) in the case of an investor of another Party with an investment in a financial institution, an investment of such investor in a financial institution, or a financial institution of such investor, located in a state or province, treatment no less favorable than the treatment accorded to an investor of the Party in a financial institution, an investment of such investor in a financial institution, or a financial institution of such investor, located in that state or province, in like circumstances; and

(b) in any other case, treatment no less favorable than the most favorable treatment accorded to an investor of the Party in a financial institution, its financial institution or its investment in a financial institution, in like circumstances.

For greater certainty, in the case of an investor of another Party with investments in financial institutions or financial institutions of such investor, located in more than one state or province, the treatment required under subparagraph (a) means:

(c) treatment of the investor that is no less favorable than the most favorable treatment accorded to an investor of the Party with an investment located in such states, or provinces in like circumstances; and

(d) with respect to an investment of the investor in a financial institution or a financial institution of such investor, located in a state or province, treatment no less favorable than that accorded to an investment of an investor of the Party, or a financial institution of such investor, located in that state or province, in like circumstances.

5. A Party's treatment of financial institutions and cross-border financial service providers of another Party, whether different or identical to that accorded to its own institutions or providers in like circumstances, is consistent with paragraphs 1 through 3 if the treatment affords equal competitive opportunities.

6. A Party's treatment affords equal competitive opportunities if it does not disadvantage financial institutions and cross-border financial services providers of another Party in their ability to provide financial services as compared with the ability of the Party's own financial institutions and financial services providers to provide such services, in like circumstances.

7. Differences in market share, profitability or size do not in themselves establish a denial of equal competitive opportunities, but such differences may be used as evidence regarding whether a Party's treatment affords equal competitive opportunities.

Article 1406: Most-Favored-Nation Treatment

1. Each Party shall accord to investors of another Party, financial institutions of another Party, investments of investors in financial institutions and cross-border financial service providers of another Party treatment no less favorable than that it accords to the investors, financial institutions, investments of investors in financial institutions and cross-border financial service providers of any other Party or of a non-Party, in like circumstances.

2. A Party may recognize prudential measures of another Party or of a non-Party in the application of measures covered by this Chapter. Such recognition may be:

(a) accorded unilaterally;

(b) achieved through harmonization or other means; or

(c) based upon an agreement or arrangement with the other Party or non-Party.

3. A Party according recognition of prudential measures under paragraph 2 shall provide adequate opportunity to another Party to demonstrate that circumstances exist in which there are or would be equivalent regulation, oversight, implementation of regulation, and if appropriate, procedures concerning the sharing of information between the Parties.

4. Where a Party accords recognition of prudential measures under paragraph 2(c); and the circumstances set out in paragraph 3 exist, the Party shall provide adequate opportunity to another Party to negotiate accession to the agreement or arrangement, or to negotiate a comparable agreement or arrangement.

Article 1407: New Financial Services and Data Processing

1. Each Party shall permit a financial institution of another Party to provide any new financial service of a type similar to those services that the Party permits its own financial institutions, in like circumstances, to provide under its domestic law. A Party may determine the institutional and juridical form through which the service may be provided and may require authorization for the provision of the service. Where such authorization is required, a decision shall be made within a reasonable time and the authorization may only be refused for prudential reasons.

2. Each Party shall permit a financial institution of another Party to transfer information in electronic or other form, into and out of the Party's territory, for data processing where such processing is required in the ordinary course of business of such institution.

Article 1408: Senior Management and Boards of Directors

1. No Party may require financial institutions of another Party to engage individuals of any particular nationality as senior managerial or other essential personnel.

2. No Party may require that more than a simple majority of the board of directors of a financial institution of another Party be composed of nationals of the Party, persons residing in the territory of the Party, or a combination thereof.

* * *

Article 1414: Dispute Settlement

1. Section B of Chapter Twenty (Institutional Arrangements and Dispute Settlement Procedures) applies as modified by this Article to the settlement of disputes arising under this Chapter.

2. The Parties shall establish by January 1, 1994 and maintain a roster of up to 15 individuals who are willing and able to serve as financial services panelists. Financial services roster members shall be appointed by consensus for terms of three years, and may be reappointed.

3. Financial services roster members shall:

(a) have expertise or experience in financial services law or practice, which may include the regulation of financial institutions;

(b) be chosen strictly on the basis of objectivity, reliability and sound judgment; and

(c) meet the qualifications set out in Article 2009(2)(b) and (c) (Roster).

4. Where a Party claims that a dispute arises under this Chapter, Article 2011 (Panel Selection) shall

apply, except that:

(a) where the disputing Parties so agree, the panel shall be composed entirely of panelists meeting the qualifications in paragraph 3; and

(b) in any other case,

(i) each disputing Party may select panelists meeting the qualifications set out in paragraph 3 or in Article 2010(1) (Qualifications of Panelists), and

(ii) if the Party complained against invokes Article 1410, the chair of the panel shall meet the qualifications set out in paragraph 3.

5. In any dispute where a panel finds a measure to be inconsistent with the obligations of this Agreement and the measure affects:

(a) only the financial services sector, the complaining Party may suspend benefits only in the financial services sector;

(b) the financial services sector and any other sector, the complaining Party may suspend benefits in the financial services sector that have an effect equivalent to the effect of the measure in the Party's financial services sector; or

(c) only a sector other than the financial services sector, the complaining Party may not suspend benefits in the financial services sector.

Article 1415: Investment Disputes in Financial Services

1. Where an investor of another Party submits a claim under Article 1116 or 1117 to arbitration under Section B of Chapter Eleven (Investment Settlement of Disputes between a Party and an Investor of Another Party) against a Party and the disputing Party invokes Article 1410, on request of the disputing Party, the Tribunal shall refer the matter in writing to the Committee for a decision. The Tribunal may not proceed pending receipt of a decision or report under this Article.

2. In a referral pursuant to paragraph 1, the Committee shall decide the issue of whether and to what extent Article 1410 is a valid defense to the claim of the investor. The Committee shall transmit a copy of its decision to the Tribunal and to the Commission. The decision shall be binding on the Tribunal.

3. Where the Committee has not decided the issue within 60 days of the receipt of the referral under paragraph 1, the disputing Party or the Party of the disputing investor may request the establishment of an arbitral panel under Article 2008 (Request for an Arbitral Panel). The panel shall be constituted in accordance with Article 1414. Further to Article 2017 (Final Report), the panel shall transmit its final report to the Committee and to the Tribunal. The report shall be binding on the Tribunal.

4. Where no request for the establishment of a panel pursuant to paragraph 3 has been made within 10 days of the expiration of the 60day period referred to in paragraph 3, the Tribunal may proceed to decide the matter.

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Chapter Fifteen: Competition Policy, Monopolies and State Enterprises

Article 1501: Competition Law
Article 1502: Monopolies and State Enterprises
Article 1503: State Enterprises
Article 1504: Working Group on Trade and Competition
Article 1505: Definitions

Annex 1505: Country-Specific Definitions of State Enterprises

Article 1501: Competition Law

1. Each Party shall adopt or maintain measures to proscribe anticompetitive business conduct and take appropriate action with respect thereto, recognizing that such measures will enhance the fulfillment of the objectives of this Agreement. To this end the Parties shall consult from time to time about the effectiveness of measures undertaken by each Party.

2. Each Party recognizes the importance of cooperation and coordination among their authorities to further effective competition law enforcement in the free trade area. The Parties shall cooperate on issues of competition law enforcement policy, including mutual legal assistance, notification, consultation and exchange of information relating to the enforcement of competition laws and policies in the free trade area.

3. No Party may have recourse to dispute settlement under this Agreement for any matter arising under this Article.

Article 1502: Monopolies and State Enterprises

1. Nothing in this Agreement shall be construed to prevent a Party from designating a monopoly.

2. Where a Party intends to designate a monopoly and the designation may affect the interests of persons of another Party, the Party shall:

(a) wherever possible, provide prior written notification to the other Party of the designation; and

(b) endeavor to introduce at the time of the designation such conditions on the operation of the monopoly as will minimize or eliminate any nullification or impairment of benefits in the sense of Annex 2004 (Nullification and Impairment).

3. Each Party shall ensure, through regulatory control, administrative supervision or the application of other measures, that any privately owned monopoly that it designates and any government monopoly that it maintains or designates:

(a) acts in a manner that is not inconsistent with the Party's obligations under this Agreement wherever such a monopoly exercises any regulatory, administrative or other governmental authority that the Party has delegated to it in connection with the monopoly good or service, such as the power to grant import or export licenses, approve commercial transactions or impose quotas, fees or other charges;

(b) except to comply with any terms of its designation that are not inconsistent with subparagraph

(c) or (d), acts solely in accordance with commercial considerations in its purchase or sale of the monopoly good or service in the relevant market, including with regard to price, quality, availability, marketability, transportation and other terms and conditions of purchase or sale;

(c) provides non-discriminatory treatment to investments of investors, to goods and to service providers of another Party in its purchase or sale of the monopoly good or service in the relevant market; and

(d) does not use its monopoly position to engage, either directly or indirectly, including through its dealings with its parent, its subsidiary or other enterprise with common ownership, in anticompetitive practices in a non-monopolized market in its territory that adversely affect an investment of an investor of another Party, including through the discriminatory provision of the monopoly good or service, crosssubsidization or predatory conduct.

4. Paragraph 3 does not apply to procurement by governmental agencies of goods or services for governmental purposes and not with a view to commercial resale or with a view to use in the production of goods or the provision of services for commercial sale.

5. For purposes of this Article "maintain" means designate prior to the date of entry into force of this Agreement and existing on January 1, 1994.

Article 1503: State Enterprises

1. Nothing in this Agreement shall be construed to prevent a Party from maintaining or establishing a state enterprise.

2. Each Party shall ensure, through regulatory control, administrative supervision or the application of other measures, that any state enterprise that it maintains or establishes acts in a manner that is not inconsistent with the Party's obligations under Chapters Eleven (Investment) and Fourteen (Financial Services) wherever such enterprise exercises any regulatory, administrative or other governmental authority that the Party has delegated to it, such as the power to expropriate, grant licenses, approve commercial transactions or impose quotas, fees or other charges.

3. Each Party shall ensure that any state enterprise that it maintains or establishes accords non-discriminatory treatment in the sale of its goods or services to investments in the Party's territory of investors of another Party.

* * *

Chapter Sixteen: Temporary Entry for Business Persons

Article 1601: General Principles
Article 1602: General Obligations
Article 1603: Grant of Temporary Entry
Article 1604: Provision of Information
Article 1605: Working Group

Article 1606: Dispute Settlement
Article 1607: Relation to Other Chapters
Article 1608: Definitions

Annex 1603: Temporary Entry for Business Persons
Appendix 1603.A.1: Business Visitors
Appendix 1603.A.3:Existing Immigration Measures
Appendix 1603.D.1: Professionals
Appendix 1603.D.4: United States
Annex 1604.2: Provisions of Information
Annex 1608: Country Specific Definitions

Article 1601: General Principles

Further to Article 102 (Objectives), this Chapter reflects the preferential trading relationship between the Parties, the desirability of facilitating temporary entry on a reciprocal basis and of establishing transparent criteria and procedures for temporary entry, and the need to ensure border security and to protect the domestic labor force and permanent employment in their respective territories.

Article 1602: General Obligations

1. Each Party shall apply its measures relating to the provisions of this Chapter in accordance with Article 1601 and, in particular, shall apply expeditiously those measures so as to avoid unduly impairing or delaying trade in goods or services or conduct of investment activities under this Agreement.

2. The Parties shall endeavor to develop and adopt common criteria, definitions and interpretations for the implementation of this Chapter.

Article 1603: Grant of Temporary Entry

1. Each Party shall grant temporary entry to business persons who are otherwise qualified for entry under applicable measures relating to public health and safety and national security, in accordance with this Chapter, including the provisions of Annex 1603.

2. A Party may refuse to issue an immigration document authorizing employment to a business person where the temporary entry of that person might affect adversely:

(a) the settlement of any labor dispute that is in progress at the place or intended place of employment; or

(b) the employment of any person who is involved in such dispute.

3. When a Party refuses pursuant to paragraph 2 to issue an immigration document authorizing employment, it shall:

(a) inform in writing the business person of the reasons for the refusal; and

(b) promptly notify in writing the Party whose business person has been refused entry of the reasons for the refusal.

4. Each Party shall limit any fees for processing applications for temporary entry of business persons to the approximate cost of services rendered.

* * *

Annex 1603

Temporary Entry for Business Persons

Section A - Business Visitors

1. Each Party shall grant temporary entry to a business person seeking to engage in a business activity set out in Appendix 1603.A.1, without requiring that person to obtain an employment authorization, provided that the business person otherwise complies with existing immigration measures applicable to temporary entry, on presentation of:

(a) proof of citizenship of a Party;

(b) documentation demonstrating that the business person will be so engaged and describing the purpose of entry; and

(c) evidence demonstrating that the proposed business activity is international in scope and that the business person is not seeking to enter the local labor market.

2. Each Party shall provide that a business person may satisfy the requirements of paragraph 1(c) by demonstrating that:

(a) the primary source of remuneration for the proposed business activity is outside the territory of the Party granting temporary entry; and

(b) the business person's principal place of business and the actual place of accrual of profits, at least predominantly, remain outside such territory.

A Party shall normally accept an oral declaration as to the principal place of business and the actual place of accrual of profits. Where the Party requires further proof, it shall normally consider a letter from the employer attesting to these matters as sufficient proof.

3. Each Party shall grant temporary entry to a business person seeking to engage in a business activity other than those set out in Appendix 1603.A.1, without requiring that person to obtain an employment authorization, on a basis no less favorable than that provided under the existing provisions of the measures set out in Appendix 1603.A.3, provided that the business person otherwise complies with existing immigration measures applicable to temporary entry.

4. No Party may:

(a) as a condition for temporary entry under paragraph 1 or 3, require prior approval procedures, petitions, labor certification tests or other procedures of similar effect; or

(b) impose or maintain any numerical restriction relating to temporary entry under paragraph 1 or 3.

5. Notwithstanding paragraph 4, a Party may require a business person seeking temporary entry under this Section to obtain a visa or its equivalent prior to entry. Before imposing a visa requirement, the Party shall consult, on request, with a Party whose business persons would be affected with a view to avoiding the imposition of the requirement. With respect to an existing visa requirement, a Party shall consult, on request, with a Party whose business persons are subject to the requirement with a view to its removal.

Section B - Traders and Investors

1. Each Party shall grant temporary entry and provide confirming documentation to a business person seeking to:

(a) carry on substantial trade in goods or services principally between the territory of the Party of which the business person is a citizen and the territory of the Party into which entry is sought, or

(b) establish, develop, administer or provide advice or key technical services to the operation of an investment to which the business person or the business person's enterprise has committed, or is in the process of committing, a substantial amount of capital,

in a capacity that is supervisory, executive or involves essential skills, provided that the business person otherwise complies with existing immigration measures applicable to temporary entry.

2. No Party may:

(a) as a condition for temporary entry under paragraph 1, require labor certification tests or other procedures of similar effect; or

(b) impose or maintain any numerical restriction relating to temporary entry under paragraph 1.

3. Notwithstanding paragraph 2, a Party may require a business person seeking temporary entry under this Section to obtain a visa or its equivalent prior to entry.

Section C - Intra-Company Transferees

1. Each Party shall grant temporary entry and provide confirming documentation to a business person employed by an enterprise who seeks to render services to that enterprise or a subsidiary or affiliate thereof, in a capacity that is managerial, executive or involves specialized knowledge, provided that the business person otherwise complies with existing immigration measures applicable to temporary entry. A Party may require the business person to have been employed continuously by the enterprise for one year within the threeyear period immediately preceding the date of the application for admission.

2. No Party may:

(a) as a condition for temporary entry under paragraph 1, require labor certification tests or other procedures of similar effect; or

(b) impose or maintain any numerical restriction relating to temporary entry under paragraph 1.

3. Notwithstanding paragraph 2, a Party may require a business person seeking temporary entry under this Section to obtain a visa or its equivalent prior to entry. Before imposing a visa requirement, the Party shall consult with a Party whose business persons would be affected with a view to avoiding the imposition of the requirement. With respect to an existing visa requirement, a Party shall consult, on request, with a Party whose business persons are subject to the requirement with a view to its removal.

Section D - Professionals

1. Each Party shall grant temporary entry and provide confirming documentation to a business person seeking to engage in a business activity at a professional level in a profession set out in Appendix 1603.D.1, if the business person otherwise complies with existing immigration measures applicable to temporary entry, on presentation of:

(a) proof of citizenship of a Party; and

(b) documentation demonstrating that the business person will be so engaged and describing the purpose of entry.

2. No Party may:

(a) as a condition for temporary entry under paragraph 1, require prior approval procedures, petitions, labor certification tests or other procedures of similar effect; or

(b) impose or maintain any numerical restriction relating to temporary entry under paragraph 1.

3. Notwithstanding paragraph 2, a Party may require a business person seeking temporary entry under this Section to obtain a visa or its equivalent prior to entry. Before imposing a visa requirement, the Party shall consult with a Party whose business persons would be affected with a view to avoiding the imposition of the requirement. With respect to an existing visa requirement, a Party shall consult, on request, with a Party whose business persons are subject to the requirement with a view to its removal.

4. Notwithstanding paragraphs 1 and 2, a Party may establish an annual numerical limit, which shall be set out in Appendix 1603.D.4, regarding temporary entry of business persons of another Party seeking to engage in business activities at a professional level in a profession set out in Appendix 1603.D.1, if the Parties concerned have not agreed otherwise prior to the date of entry into force of this Agreement for those Parties. In establishing such a limit, the Party shall consult with the other Party concerned.

5. A Party establishing a numerical limit pursuant to paragraph 4, unless the Parties concerned agree otherwise:

(a) shall, for each year after the first year after the date of entry into force of this Agreement, consider increasing the numerical limit set out in Appendix 1603.D.4 by an amount to be established in consultation with the other Party concerned, taking into account the demand for temporary entry under this Section;

(b) shall not apply its procedures established pursuant to paragraph 1 to the temporary entry of a business person subject to the numerical limit, but may require the business person to comply with its other procedures applicable to the temporary entry of professionals; and

(c) may, in consultation with the other Party concerned, grant temporary entry under paragraph 1 to a business person who practices in a profession where accreditation, licensing, and certification requirements are mutually recognized by those Parties.

6. Nothing in paragraph 4 or 5 shall be construed to limit the ability of a business person to seek temporary entry under a Party's applicable immigration measures relating to the entry of professionals other than those adopted or maintained pursuant to paragraph 1.

7. Three years after a Party establishes a numerical limit pursuant to paragraph 4, it shall consult with the other Party concerned with a view to determining a date after which the limit shall cease to apply.

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PART SIX: INTELLECTUAL PROPERTY

Chapter Seventeen: Intellectual Property

Article 1701: Nature and Scope of Obligations
Article 1702: More Extensive Protection
Article 1703: National Treatment
Article 1704: Control of Abusive or Anticompetitive Practices or Conditions
Article 1705: Copyright
Article 1706: Sound Recordings
Article 1707: Protection of Encrypted Program-Carrying Satellite Signals
Article 1708: Trademarks
Article 1709: Patents
Article 1710: Layout Designs of Semiconductor Integrated Circuits
Article 1711: Trade Secrets
Article 1712: Geographical Indications
Article 1713: Industrial Designs
Article 1714: Enforcement of Intellectual Property Rights: General Provisions
Article 1715: Specific Procedural and Remedial Aspects of Civil and Administrative Procedures
Article 1716: Provisional Measures
Article 1717: Criminal Procedures and Penalties
Article 1718: Enforcement of Intellectual Property Rights at the Border
Article 1719: Cooperation and Technical Assistance
Article 1720: Protection of Existing Subject Matter
Article 1721: Definitions

Annex 1701.3: Intellectual Property Conventions
Annex 1705.7: Copyright
Annex 1710.9: Layout Designs
Annex 1718.14: Enforcement of Intellectual Property Rights

Article 1701: Nature and Scope of Obligations

1. Each Party shall provide in its territory to the nationals of another Party adequate and effective protection and enforcement of intellectual property rights, while ensuring that measures to enforce intellectual property rights do not themselves become barriers to legitimate trade.

2. To provide adequate and effective protection and enforcement of intellectual property rights, each Party shall, at a minimum, give effect to this Chapter and to the substantive provisions of:

(a) the Geneva Convention for the Protection of Producers of Phonograms Against Unauthorized Duplication of their Phonograms, 1971 (Geneva Convention);

(b) the Berne Convention for the Protection of Literary and Artistic Works, 1971 (Berne Convention);

(c) the Paris Convention for the Protection of Industrial Property, 1967 (Paris Convention); and

(d) the International Convention for the Protection of New Varieties of Plants, 1978 (UPOV Convention), or the International Convention for the Protection of New Varieties of Plants, 1991 (UPOV Convention).

If a Party has not acceded to the specified text of any such Conventions on or before the date of entry into force of this Agreement, it shall make every effort to accede.

3. Annex 1701.3 applies to the Parties specified in that Annex.

Article 1702: More Extensive Protection

A Party may implement in its domestic law more extensive protection of intellectual property rights than is required under this Agreement, provided that such protection is not inconsistent with this Agreement.

Article 1703: National Treatment

1. Each Party shall accord to nationals of another Party treatment no less favorable than that it accords to its own nationals with regard to the protection and enforcement of all intellectual property rights. In respect of sound recordings, each Party shall provide such treatment to producers and performers of another Party, except that a Party may limit rights of performers of another Party in respect of secondary uses of sound recordings to those rights its nationals are accorded in the territory of such other Party.

2. No Party may, as a condition of according national treatment under this Article, require right holders to comply with any formalities or conditions in order to acquire rights in respect of copyright and related rights.

3. A Party may derogate from paragraph 1 in relation to its judicial and administrative procedures for the protection or enforcement of intellectual property rights, including any procedure requiring a national of another Party to designate for service of process an address in the Party's territory or to appoint an agent in the Party's territory, if the derogation is consistent with the relevant Convention listed in Article 1701(2), provided that such derogation:

(a) is necessary to secure compliance with measures that are not inconsistent with this Chapter; and

(b) is not applied in a manner that would constitute a disguised restriction on trade.

4. No Party shall have any obligation under this Article with respect to procedures provided in multilateral agreements concluded under the auspices of the World Intellectual Property Organization relating to the acquisition or maintenance of intellectual property rights.

Article 1704: Control of Abusive or Anticompetitive Practices or Conditions

Nothing in this Chapter shall prevent a Party from specifying in its domestic law licensing practices or conditions that may in particular cases constitute an abuse of intellectual property rights having an adverse effect on competition in the relevant market. A Party may adopt or maintain, consistent with the other provisions of this Agreement, appropriate measures to prevent or control such practices or conditions.

Article 1705: Copyright

1. Each Party shall protect the works covered by Article 2 of the Berne Convention, including any other works that embody original expression within the meaning of that Convention. In particular:

(a) all types of computer programs are literary works within the meaning of the Berne Convention and each Party shall protect them as such; and

(b) compilations of data or other material, whether in machine readable or other form, which by reason of the selection or arrangement of their contents constitute intellectual creations, shall be protected as such.

The protection a Party provides under subparagraph (b) shall not extend to the data or material itself, or prejudice any copyright subsisting in that data or material.

2. Each Party shall provide to authors and their successors in interest those rights enumerated in the Berne Convention in respect of works covered by paragraph 1, including the right to authorize or prohibit:

(a) the importation into the Party's territory of copies of the work made without the right holder's authorization;

(b) the first public distribution of the original and each copy of the work by sale, rental or otherwise;

(c) the communication of a work to the public; and

(d) the commercial rental of the original or a copy of a computer program.

Subparagraph (d) shall not apply where the copy of the computer program is not itself an essential object of the rental. Each Party shall provide that putting the original or a copy of a computer program on the market with the right holder's consent shall not exhaust the rental right.

3. Each Party shall provide that for copyright and related rights:

(a) any person acquiring or holding economic rights may freely and separately transfer such rights by contract for purposes of their exploitation and enjoyment by the transferee; and

(b) any person acquiring or holding such economic rights by virtue of a contract, including contracts of employment underlying the creation of works and sound recordings, shall be able to exercise those rights in its own name and enjoy fully the benefits derived from those rights.

4. Each Party shall provide that, where the term of protection of a work, other than a photographic work or a work of applied art, is to be calculated on a basis other than the life of a natural person, the term shall be not less than 50 years from the end of the calendar year of the first authorized publication of the work or, failing such authorized publication within 50 years from the making of the work, 50 years from the end of the calendar year of making.

5. Each Party shall confine limitations or exceptions to the rights provided for in this Article to certain special cases that do not conflict with a normal exploitation of the work and do not unreasonably prejudice the legitimate interests of the right holder.

6. No Party may grant translation and reproduction licenses permitted under the Appendix to the Berne Convention where legitimate needs in that Party's territory for copies or translations of the work could be met by the right holder's voluntary actions but for obstacles created by the Party's measures.

7. Annex 1705.7 applies to the Parties specified in that Annex.

* * *

Article 1708: Trademarks

1. For purposes of this Agreement, a trademark consists of any sign, or any combination of signs, capable of distinguishing the goods or services of one person from those of another, including personal names, designs, letters, numerals, colors, figurative elements, or the shape of goods or of their packaging. Trademarks shall include service marks and collective marks, and may include certification marks. A Party may require, as a condition for registration, that a sign be visually perceptible.

2. Each Party shall provide to the owner of a registered trademark the right to prevent all persons not having the owner's consent from using in commerce identical or similar signs for goods or services that are identical or similar to those goods or services in respect of which the owner's trademark is registered, where such use would result in a likelihood of confusion. In the case of the use of an identical sign for identical goods or services, a likelihood of confusion shall be presumed. The rights described above shall not prejudice any prior rights, nor shall they affect the possibility of a Party making rights available on the basis of use.

3. A Party may make registrability depend on use. However, actual use of a trademark shall not be a condition for filing an application for registration. No Party may refuse an application solely on the ground that intended use has not taken place before the expiry of a period of three years from the date of application for registration.

4. Each Party shall provide a system for the registration of trademarks, which shall include:

(a) examination of applications;

(b) notice to be given to an applicant of the reasons for the refusal to register a trademark;

(c) a reasonable opportunity for the applicant to respond to the notice;

(d) publication of each trademark either before or promptly after it is registered; and

(e) a reasonable opportunity for interested persons to petition to cancel the registration of a trademark.

A Party may provide for a reasonable opportunity for interested persons to oppose the registration of a trademark.

5. The nature of the goods or services to which a trademark is to be applied shall in no case form an obstacle to the registration of the trademark.

6. Article 6bis of the Paris Convention shall apply, with such modifications as may be necessary, to services. In determining whether a trademark is wellknown, account shall be taken of the knowledge of the trademark in the relevant sector of the public, including knowledge in the Party's territory obtained as a result of the promotion of the trademark. No Party may require that the reputation of the trademark extend beyond the sector of the public that normally deals with the relevant goods or services.

7. Each Party shall provide that the initial registration of a trademark be for a term of at least 10 years and that the registration be indefinitely renewable for terms of not less than 10 years when conditions for renewal have been met.

8. Each Party shall require the use of a trademark to maintain a registration. The registration may be canceled for the reason of non-use only after an uninterrupted period of at least two years of non-use,

unless valid reasons based on the existence of obstacles to such use are shown by the trademark owner. Each Party shall recognize, as valid reasons for non- use, circumstances arising independently of the will of the trademark owner that constitute an obstacle to the use of the trademark, such as import restrictions on, or other government requirements for, goods or services identified by the trademark.

9. Each Party shall recognize use of a trademark by a person other than the trademark owner, where such use is subject to the owner's control, as use of the trademark for purposes of maintaining the registration.

10. No Party may encumber the use of a trademark in commerce by special requirements, such as a use that reduces the trademark's function as an indication of source or a use with another trademark.

11. A Party may determine conditions on the licensing and assignment of trademarks, it being understood that the compulsory licensing of trademarks shall not be permitted and that the owner of a registered trademark shall have the right to assign its trademark with or without the transfer of the business to which the trademark belongs.

12. A Party may provide limited exceptions to the rights conferred by a trademark, such as fair use of descriptive terms, provided that such exceptions take into account the legitimate interests of the trademark owner and of other persons.

13. Each Party shall prohibit the registration as a trademark of words, at least in English, French or Spanish, that generically designate goods or services or types of goods or services to which the trademark applies.

14. Each Party shall refuse to register trademarks that consist of or comprise immoral, deceptive or scandalous matter, or matter that may disparage or falsely suggest a connection with persons, living or dead, institutions, beliefs or any Party's national symbols, or bring them into contempt or disrepute.

Article 1709: Patents

1. Subject to paragraphs 2 and 3, each Party shall make patents available for any inventions, whether products or processes, in all fields of technology, provided that such inventions are new, result from an inventive step and are capable of industrial application. For purposes of this Article, a Party may deem the terms "inventive step" and "capable of industrial application" to be synonymous with the terms "non-obvious" and "useful", respectively.

2. A Party may exclude from patentability inventions if preventing in its territory the commercial exploitation of the inventions is necessary to protect ordre public or morality, including to protect human, animal or plant life or health or to avoid serious prejudice to nature or the environment, provided that the exclusion is not based solely on the ground that the Party prohibits commercial exploitation in its territory of the subject matter of the patent.

3. A Party may also exclude from patentability:

(a) diagnostic, therapeutic and surgical methods for the treatment of humans or animals;

(b) plants and animals other than microorganisms; and

(c) essentially biological processes for the production of plants or animals, other than non-biological and microbiological processes for such production.

Notwithstanding subparagraph (b), each Party shall provide for the protection of plant varieties through patents, an effective scheme of sui generis protection, or both.

4. If a Party has not made available product patent protection for pharmaceutical or agricultural chemicals commensurate with paragraph 1:

(a) as of January 1, 1992, for subject matter that relates to naturally occurring substances prepared or produced by, or significantly derived from, microbiological processes and intended for food or medicine, and

(b) as of July 1, 1991, for any other subject matter,

that Party shall provide to the inventor of any such product or its assignee the means to obtain product patent protection for such product for the unexpired term of the patent for such product granted in another Party, as long as the product has not been marketed in the Party providing protection under this paragraph and the person seeking such protection makes a timely request.

5. Each Party shall provide that:

(a) where the subject matter of a patent is a product, the patent shall confer on the patent owner the right to prevent other persons from making, using or selling the subject matter of the patent, without the patent owner's consent; and

(b) where the subject matter of a patent is a process, the patent shall confer on the patent owner the right to prevent other persons from using that process and from using, selling, or importing at least the product obtained directly by that process, without the patent owner's consent.

6. A Party may provide limited exceptions to the exclusive rights conferred by a patent, provided that such exceptions do not unreasonably conflict with a normal exploitation of the patent and do not unreasonably prejudice the legitimate interests of the patent owner, taking into account the legitimate interests of other persons.

7. Subject to paragraphs 2 and 3, patents shall be available and patent rights enjoyable without discrimination as to the field of technology, the territory of the Party where the invention was made and whether products are imported or locally produced.

8. A Party may revoke a patent only when:

(a) grounds exist that would have justified a refusal to grant the patent; or

(b) the grant of a compulsory license has not remedied the lack of exploitation of the patent.

9. Each Party shall permit patent owners to assign and transfer by succession their patents, and to conclude licensing contracts.

10. Where the law of a Party allows for use of the subject matter of a patent, other than that use allowed under paragraph 6, without the authorization of the right holder, including use by the government or other persons authorized by the government, the Party shall respect the following provisions:

(a) authorization of such use shall be considered on its individual merits;

(b) such use may only be permitted if, prior to such use, the proposed user has made efforts to obtain authorization from the right holder on reasonable commercial terms and conditions and such efforts have not been successful within a reasonable period of time. The requirement to make such efforts may be waived by a Party in the case of a national emergency or other circumstances of extreme urgency or in cases of public non-commercial use. In situations of national emergency or other circumstances of extreme urgency, the right holder shall, nevertheless, be notified as soon as reasonably practicable. In the case of public non-commercial use, where the government or contractor, without making a patent search, knows or has demonstrable grounds to know that a

valid patent is or will be used by or for the government, the right holder shall be informed promptly;

(c) the scope and duration of such use shall be limited to the purpose for which it was authorized;

(d) such use shall be non-exclusive;

(e) such use shall be non-assignable, except with that part of the enterprise or goodwill that enjoys such use;

(f) any such use shall be authorized predominantly for the supply of the Party's domestic market;

(g) authorization for such use shall be liable, subject to adequate protection of the legitimate interests of the persons so authorized, to be terminated if and when the circumstances that led to it cease to exist and are unlikely to recur. The competent authority shall have the authority to review, on motivated request, the continued existence of these circumstances;

(h) the right holder shall be paid adequate remuneration in the circumstances of each case, taking into account the economic value of the authorization;

(i) the legal validity of any decision relating to the authorization shall be subject to judicial or other independent review by a distinct higher authority;

(j) any decision relating to the remuneration provided in respect of such use shall be subject to judicial or other independent review by a distinct higher authority;

(k) the Party shall not be obliged to apply the conditions set out in subparagraphs (b) and (f) where such use is permitted to remedy a practice determined after judicial or administrative process to be anticompetitive. The need to correct anticompetitive practices may be taken into account in determining the amount of remuneration in such cases. Competent authorities shall have the authority to refuse termination of authorization if and when the conditions that led to such authorization are likely to recur;

(l) the Party shall not authorize the use of the subject matter of a patent to permit the exploitation of another patent except as a remedy for an adjudicated violation of domestic laws regarding anticompetitive practices.

11. Where the subject matter of a patent is a process for obtaining a product, each Party shall, in any infringement proceeding, place on the defendant the burden of establishing that the allegedly infringing product was made by a process other than the patented process in one of the following situations:

(a) the product obtained by the patented process is new; or

(b) a substantial likelihood exists that the allegedly infringing product was made by the process and the patent owner has been unable through reasonable efforts to determine the process actually used.

In the gathering and evaluation of evidence, the legitimate interests of the defendant in protecting its trade secrets shall be taken into account.

12. Each Party shall provide a term of protection for patents of at least 20 years from the date of filing or 17 years from the date of grant. A Party may extend the term of patent protection, in appropriate cases, to compensate for delays caused by regulatory approval processes.

* * *

Article 1711: Trade Secrets

1. Each Party shall provide the legal means for any person to prevent trade secrets from being disclosed to, acquired by, or used by others without the consent of the person lawfully in control of the information in a manner contrary to honest commercial practices, in so far as:

(a) the information is secret in the sense that it is not, as a body or in the precise configuration and assembly of its components, generally known among or readily accessible to persons that normally deal with the kind of information in question;

(b) the information has actual or potential commercial value because it is secret; and

(c) the person lawfully in control of the information has taken reasonable steps under the circumstances to keep it secret.

2. A Party may require that to qualify for protection a trade secret must be evidenced in documents, electronic or magnetic means, optical discs, microfilms, films or other similar instruments.

3. No Party may limit the duration of protection for trade secrets, so long as the conditions in paragraph 1 exist.

4. No Party may discourage or impede the voluntary licensing of trade secrets by imposing excessive or discriminatory conditions on such licenses or conditions that dilute the value of the trade secrets.

5. If a Party requires, as a condition for approving the marketing of pharmaceutical or agricultural chemical products that utilize new chemical entities, the submission of undisclosed test or other data necessary to determine whether the use of such products is safe and effective, the Party shall protect against disclosure of the data of persons making such submissions, where the origination of such data involves considerable effort, except where the disclosure is necessary to protect the public or unless steps are taken to ensure that the data is protected against unfair commercial use.

6. Each Party shall provide that for data subject to paragraph 5 that are submitted to the Party after the date of entry into force of this Agreement, no person other than the person that submitted them may, without the latter's permission, rely on such data in support of an application for product approval during a reasonable period of time after their submission. For this purpose, a reasonable period shall normally mean not less than five years from the date on which the Party granted approval to the person that produced the data for approval to market its product, taking account of the nature of the data and the person's efforts and expenditures in producing them. Subject to this provision, there shall be no limitation on any Party to implement abbreviated approval procedures for such products on the basis of bioequivalence and bioavailability studies.

7. Where a Party relies on a marketing approval granted by another Party, the reasonable period of exclusive use of the data submitted in connection with obtaining the approval relied on shall begin with the date of the first marketing approval relied on.

* * *

Article 1714: Enforcement of Intellectual Property Rights: General Provisions

1. Each Party shall ensure that enforcement procedures, as specified in this Article and Articles 1715 through 1718, are available under its domestic law so as to permit effective action to be taken against any act of infringement of intellectual property rights covered by this Chapter, including expeditious remedies to prevent infringements and remedies to deter further infringements. Such enforcement procedures shall be applied so as to avoid the creation of barriers to legitimate trade and to provide for safeguards against abuse of the procedures.

2. Each Party shall ensure that its procedures for the enforcement of intellectual property rights are fair

and equitable, are not unnecessarily complicated or costly, and do not entail unreasonable timelimits or unwarranted delays.

3. Each Party shall provide that decisions on the merits of a case in judicial and administrative enforcement proceedings shall:

(a) preferably be in writing and preferably state the reasons on which the decisions are based;

(b) be made available at least to the parties in a proceeding without undue delay; and

(c) be based only on evidence in respect of which such parties were offered the opportunity to be heard.

4. Each Party shall ensure that parties in a proceeding have an opportunity to have final administrative decisions reviewed by a judicial authority of that Party and, subject to jurisdictional provisions in its domestic laws concerning the importance of a case, to have reviewed at least the legal aspects of initial judicial decisions on the merits of a case. Notwithstanding the above, no Party shall be required to provide for judicial review of acquittals in criminal cases.

* * *

Article 1718: Enforcement of Intellectual Property Rights at the Border

1. Each Party shall, in conformity with this Article, adopt procedures to enable a right holder, who has valid grounds for suspecting that the importation of counterfeit trademark goods or pirated copyright goods may take place, to lodge an application in writing with its competent authorities, whether administrative or judicial, for the suspension by the customs administration of the release of such goods into free circulation. No Party shall be obligated to apply such procedures to goods in transit. A Party may permit such an application to be made in respect of goods that involve other infringements of intellectual property rights, provided that the requirements of this Article are met. A Party may also provide for corresponding procedures concerning the suspension by the customs administration of the release of infringing goods destined for exportation from its territory.

* * *

PART SEVEN: ADMINISTRATIVE AND INSTITUTIONAL PROVISIONS

Chapter Eighteen: Publication, Notification and Administration of Laws

Article 1801: Contact Points
Article 1802: Publication

Article 1803: Notification and Provision of Information
Article 1804: Administrative Proceedings
Article 1805: Review and Appeal
Article 1806: Definitions

* * *

Article 1804: 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 1802 to particular persons, goods or services of another Party in specific cases that:

(a) wherever possible, persons of another 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 1805: Review and Appeal

1. Each Party shall establish or maintain judicial, quasi-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, and shall govern the practice of, the offices or authorities with respect to the administrative action at issue.

Article 1806: Definitions

For purposes of this Chapter:

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

(a) a determination or ruling made in an administrative or quasi-judicial proceeding that applies to a particular person, good or service of another Party in a specific case; or

(b) a ruling that adjudicates with respect to a particular act or practice.

Chapter Nineteen: Review and Dispute Settlement in Antidumping and Countervailing Duty Matters

Article 1901: General Provisions
Article 1902: Retenetion of Domestic Antidumping Law and Countervailing Duty Law
Article 1903: Review of Statutory Amendments
Article 1904: Review of Final Antidumping and Countervailing Duty Determinations
Article 1905: Safeguarding the Panel Review System
Article 1906: Prospective Application
Article 1907: Consultations
Article 1908: Special Secretariat Provisions
Article 1909: Code of Conduct
Article 1910: Miscellaneous
Article 1911: Definitions

Annex 1901.2: Establishment of Binational Panels
Annex 1903.2: Panel Procedures Under Article 1903
Annex 1904.13: Extraordinary Challenge Procedure
Annex 1904.15: Amendments to Domestic Laws
Annex 1905.6: Special Committee Procedures
Annex 1911: Country Specific Definitions

Article 1901: General Provisions

1. Article 1904 applies only with respect to goods that the competent investigating authority of the importing Party, applying the importing Party's antidumping or countervailing duty law to the facts of a specific case, determines are goods of another Party.

2. For purposes of Articles 1903 and 1904, panels shall be established in accordance with the provisions of Annex 1901.2.

3. Except for Article 2203 (Entry into Force), no provision of any other Chapter of this Agreement shall be construed as imposing obligations on a Party with respect to the Party's antidumping law or countervailing duty law.

Article 1902: Retention of Domestic Antidumping Law and Countervailing Duty Law

1. Each Party reserves the right to apply its antidumping law and countervailing duty law to goods imported from the territory of any other Party. Antidumping law and countervailing duty law include, as appropriate for each Party, relevant statutes, legislative history, regulations, administrative practice and judicial precedents.

* * *

Article 1904: Review of Final Antidumping and Countervailing Duty Determinations

1. As provided in this Article, each Party shall replace judicial review of final antidumping and countervailing duty determinations with binational panel review.

2. An involved Party may request that a panel review, based on the administrative record, a final antidumping or countervailing duty determination of a competent investigating authority of an importing Party to determine whether such determination was in accordance with the antidumping or countervailing duty law of the importing Party. For this purpose, the antidumping or countervailing duty law consists of the relevant statutes, legislative history, regulations, administrative practice and judicial precedents to the extent that a court of the importing Party would rely on such materials in reviewing a final determination of the competent investigating authority. Solely for purposes of the panel review provided for in this Article, the antidumping and countervailing duty statutes of the Parties, as those statutes may be amended from time to time, are incorporated into and made a part of this Agreement.

3. The panel shall apply the standard of review set out in Annex 1911 and the general legal principles that a court of the importing Party otherwise would apply to a review of a determination of the competent investigating authority.

* * *

8. The panel may uphold a final determination, or remand it for action not inconsistent with the panel's decision. Where the panel remands a final determination, the panel shall establish as brief a time as is reasonable for compliance with the remand, taking into account the complexity of the factual and legal issues involved and the nature of the panel's decision. In no event shall the time permitted for compliance with a remand exceed an amount of time equal to the maximum amount of time (counted from the date of the filing of a petition, complaint or application) permitted by statute for the competent investigating authority in question to make a final determination in an investigation. If review of the action taken by the competent investigating authority on remand is needed, such review shall be before the same panel, which shall normally issue a final decision within 90 days of the date on which such remand action is submitted to it.

9. The decision of a panel under this Article shall be binding on the involved Parties with respect to the particular matter between the Parties that is before the panel.

10. This Agreement shall not affect:

(a) the judicial review procedures of any Party, or

(b) cases appealed under those procedures,

with respect to determinations other than final determinations.

11. A final determination shall not be reviewed under any judicial review procedures of the importing Party if an involved Party requests a panel with respect to that determination within the time limits set out in this Article. No Party may provide in its domestic legislation for an appeal from a panel decision to its domestic courts.

12. This Article shall not apply where:

(a) neither involved Party seeks panel review of a final determination;

(b) a revised final determination is issued as a direct result of judicial review of the original final determination by a court of the importing Party in cases where neither involved Party sought panel review of that original final determination; or

(c) a final determination is issued as a direct result of judicial review that was commenced in a court of the importing Party before the date of entry into force of this Agreement.

13. Where, within a reasonable time after the panel decision is issued, an involved Party alleges that:

(a) (i) a member of the panel was guilty of gross misconduct, bias, or a serious conflict of interest, or otherwise materially violated the rules of conduct,

(ii) the panel seriously departed from a fundamental rule of procedure, or

(iii) the panel manifestly exceeded its powers, authority or jurisdiction set out in this Article, for example by failing to apply the appropriate standard of review, and

(b) any of the actions set out in subparagraph (a) has materially affected the panel's decision and threatens the integrity of the binational panel review process, that Party may avail itself of the extraordinary challenge procedure set out in Annex 1904.13.

* * *

Article 1905: Safeguarding the Panel Review System

1. Where a Party alleges that the application of another Party's domestic law:

(a) has prevented the establishment of a panel requested by the complaining Party;

(b) has prevented a panel requested by the complaining Party from rendering a final decision;

(c) has prevented the implementation of the decision of a panel requested by the complaining Party or denied it binding force and effect with respect to the particular matter that was before the panel; or

(d) has resulted in a failure to provide opportunity for review of a final determination by a panel or court of competent jurisdiction that is independent of the competent investigating authorities, that examines the basis for the competent investigating authority's determination and whether the competent investigating authority properly applied domestic antidumping and countervailing duty law in reaching the challenged determination, and that employs the relevant standard of review identified in Article 1911,

the Party may request in writing consultations with the other Party regarding the allegations. The consultations shall begin within 15 days of the date of the request.

2. If the matter has not been resolved within 45 days of the request for consultations, or such other period as the consulting Parties may agree, the complaining Party may request the establishment of a special committee.

* * *

Annex 1901.2

Establishment of Binational Panels

1. On the date of entry into force of this Agreement, the Parties shall establish and thereafter maintain a roster of individuals to serve as panelists in disputes under this Chapter. The roster shall include judges or former judges to the fullest extent practicable. The Parties shall consult in developing the roster, which shall include at least 75 candidates. Each Party shall select at least 25 candidates, and all candidates shall be citizens of Canada, Mexico or the United States. Candidates shall be of good character, high standing and repute, and shall be chosen strictly on the basis of objectivity, reliability, sound judgment and general familiarity with international trade law. Candidates shall not be affiliated with a Party, and in no event shall a candidate take instructions from a Party. The Parties shall maintain the roster, and may amend it, when necessary, after consultations.

2. A majority of the panelists on each panel shall be lawyers in good standing. Within 30 days of a request for a panel, each involved Party shall appoint two panelists, in consultation with the other involved Party. The involved Parties normally shall appoint panelists from the roster. If a panelist is not selected from the roster, the panelist shall be chosen in accordance with and be subject to the criteria of paragraph 1. Each involved Party shall have the right to exercise four peremptory challenges, to be exercised simultaneously and in confidence, disqualifying from appointment to the panel up to four candidates proposed by the other involved Party. Peremptory challenges and the selection of alternative panelists shall occur within 45 days of the request for the panel. If an involved Party fails to appoint its members to a panel within 30 days or if a panelist is struck and no alternative panelist is selected within 45 days, such panelist shall be selected by lot on the 31st or 46th day, as the case may be, from that Party's candidates on the roster.

3. Within 55 days of the request for a panel, the involved Parties shall agree on the selection of a fifth panelist. If the involved Parties are unable to agree, they shall decide by lot which of them shall select, by the 61st day, the fifth panelist from the roster, excluding candidates eliminated by peremptory challenges.

4. On appointment of the fifth panelist, the panelists shall promptly appoint a chairman from among the lawyers on the panel by majority vote of the panelists. If there is no majority vote, the chairman shall be appointed by lot from among the lawyers on the panel.

5. Decisions of the panel shall be by majority vote and based on the votes of all members of the panel. The panel shall issue a written decision with reasons, together with any dissenting or concurring opinions of panelists.

* * *

Annex 1904.13

Extraordinary Challenge Procedure

1. The involved Parties shall establish an extraordinary challenge committee, composed of three members, within 15 days of a request pursuant to Article 1904(13). The members shall be selected from a 15-person roster comprised of judges or former judges of a federal judicial court of the United States or a judicial court of superior jurisdiction of Canada, or a federal judicial court of Mexico. Each Party shall name five persons to this roster. Each involved Party shall select one member from this roster and the involved Parties shall decide by lot which of them shall select the third member from the roster.

2. The Parties shall establish by the date of entry into force of the Agreement rules of procedure for committees. The rules shall provide for a decision of a committee within 90 days of its establishment.

3. Committee decisions shall be binding on the Parties with respect to the particular matter between the Parties that was before the panel. After examination of the legal and factual analysis underlying the findings

and conclusions of the panel's decision in order to determine whether one of the grounds set out in Article 1904(13) has been established, and on finding that one of those grounds has been established, the committee shall vacate the original panel decision or remand it to the original panel for action not inconsistent with the committee's decision; if the grounds are not established, it shall deny the challenge and, therefore, the original panel decision shall stand affirmed. If the original decision is vacated, a new panel shall be established pursuant to Annex 1901.2.

* * *

Annex 1905.6

Special Committee Procedures

The Parties shall establish rules of procedure by the date of entry into force of this Agreement in accordance with the following principles:

(a) the procedures shall assure a right to at least one hearing before the special committee as well as the opportunity to provide initial and rebuttal written submissions;

(b) the procedures shall assure that the special committee shall prepare an initial report typically within 60 days of the appointment of the last member, and shall afford the Parties 14 days to comment on that report prior to issuing a final report 30 days after presentation of the initial report;

(c) the special committee's hearings, deliberations, and initial report, and all written submissions to and communications with the special committee shall be confidential;

(d) unless the Parties to the dispute otherwise agree, the decision of the special committee shall be published 10 days after it is transmitted to the disputing Parties, along with any separate opinions of individual members and any written views that either Party may wish to be published; and

(e) unless the Parties to the dispute otherwise agree, meetings and hearings of the special committee shall take place at the office of the Section of the Secretariat of the Party complained against.

Annex 1911

Country-Specific Definitions

For purposes of this Chapter:

antidumping statute means:

(a) in the case of Canada, the relevant provisions of the Special Import Measures Act, as amended, and any successor statutes;

(b) in the case of the United States, the relevant provisions of Title VII of the Tariff Act of 1930, as amended, and any successor statutes;

(c) in the case of Mexico, the relevant provisions of the Foreign Trade Act Implementing Article 131 of the Constitution of the United Mexican States ("Ley Reglamentaria del Artículo 131 de la Constitución Política de los Estados Unidos Mexicanos en Materia de Comercio Exterior"), as amended, and any successor statutes; and

(d) the provisions of any other statute that provides for judicial review of final determinations under subparagraph (a), (b) or (c), or indicates the standard of review to be applied to such determinations;

competent investigating authority means:

(a) in the case of Canada (i) the Canadian International Trade Tribunal, or its successor, or (ii) the Deputy Minister of National Revenue for Customs and Excise as defined in the Special Import Measures Act, as amended, or the Deputy Minister's successor;

(b) in the case of the United States

(i) the International Trade Administration of the United States Department of Commerce, or its successor, or

(ii) the United States International Trade Commission, or its successor; and

(c) in the case of Mexico, the designated authority within the Secretariat of Trade and Industrial Development ("Secretaría de Comercio y Fomento Industrial"), or its successor;

countervailing duty statute means:

(a) in the case of Canada, the relevant provisions of the Special Import Measures Act, as amended, and any successor statutes;

(b) in the case of the United States, section 303 and the relevant provisions of Title VII of the Tariff Act of 1930, as amended, and any successor statutes;

(c) in the case of Mexico, the relevant provisions of the Foreign Trade Act Implementing Article 131 of the Constitution of the United Mexican States ("Ley Reglamentaria del Artículo 131 de la Constitución Política de los Estados Unidos Mexicanos en Materia de Comercio Exterior"), as amended, and any successor statutes; and

(d) the provisions of any other statute that provides for judicial review of final determinations under subparagraph (a), (b) or (c), or indicates the standard of review to be applied to such determinations;

final determination means:

(a) in the case of Canada,

(i) an order or finding of the Canadian International Trade Tribunal under subsection 43(1) of the Special Import Measures Act,

(ii) an order by the Canadian International Trade Tribunal under subsection 76(4) of the Special Import Measures Act, as amended, continuing an order or finding made under subsection 43(1) of the Act with or without amendment,

(iii) a determination by the Deputy Minister of National Revenue for Customs and Excise pursuant to section 41 of the Special Import Measures Act, as amended,

(iv) a redetermination by the Deputy Minister pursuant to section 59 of the Special Import Measures Act, as amended,

(v) a decision by the Canadian International Trade Tribunal pursuant to subsection 76(3) of the Special Import Measures Act, as amended, not to initiate a review,

(vi) a reconsideration by the Canadian International Trade Tribunal pursuant to subsection 91(3) of the Special Import Measures Act, as amended, and

(vii) a review by the Deputy Minister of an undertaking pursuant to subsection 53(1) of the Special Import Measures Act, as amended;

(b) in the case of the United States,

(i) a final affirmative determination by the International Trade Administration of the United States Department of Commerce or by the United States International Trade Commission under section 705 or 735 of the Tariff Act of 1930, as amended, including any negative part of such a determination,

(ii) a final negative determination by the International Trade Administration of the United States Department of Commerce or by the United States International Trade Commission under section 705 or 735 of the Tariff Act of 1930, as amended, including any affirmative part of such a determination,

(iii) a final determination, other than a determination in (iv), under section 751 of the Tariff Act of 1930, as amended,

(iv) a determination by the United States International Trade Commission under section 751(b) of the Tariff Act of 1930, as amended, not to review a determination based on changed circumstances, and

(v) a final determination by the International Trade Administration of the United States Department of Commerce as to whether a particular type of merchandise is within the class or kind of merchandise described in an existing finding of dumping or antidumping or countervailing duty order; and

(c) in the case of the Mexico,

(i) a final resolution regarding antidumping or countervailing duties investigations by the Secretar a de Comercio y Fomento Industrial ("Secretariat of Trade and Industrial Development"), pursuant to Article 13 of the Ley Reglamentaria del Artículo 131 de la Constitución Política de los Estados Unidos Mexicanos en Materia de Comercio Exterior ("Foreign Trade Act Implementing Article 131 of the Constitution of the United Mexican States"), as amended,

(ii) a final resolution regarding an annual administrative review of antidumping or countervailing duties by the Secretariat of Trade and Industrial Development ("Secretaría de Comercio y Fomento Industrial"), as described in paragraph (o) of its Schedule to Annex 1904.15, and

(iii) a final resolution by the Secretariat of Trade and Industrial Development ("Secretaría de Comercio y Fomento Industrial"), as to whether a particular type of merchandise is within the class or kind of merchandise described in an existing antidumping or countervailing duty resolution; and

standard of review means the following standards, as may be amended from time to time by the relevant Party:

(a) in the case of Canada, the grounds set out in subsection 18.1(4) of the Federal Court Act, as amended, with respect to all final determinations;

(b) in the case of the United States,

(i) the standard set out in section 516A(b)(l)(B) of the Tariff Act of 1930, as amended,

with the exception of a determination referred to in (ii), and

(ii) the standard set out in section 516A(b)(l)(A) of the Tariff Act of 1930, as amended, with respect to a determination by the United States International Trade Commission not to initiate a review pursuant to section 751(b) of the Tariff Act of 1930, as amended; and

(c) in the case of the Mexico, the standard set out in Article 238 of the Federal Fiscal Code ("Código Fiscal de la Federación"), or any successor statutes, based solely on the administrative record.

Chapter Twenty: Institutional Arrangements and Dispute Settlement Procedures

Section A - Institutions
- Article 2001: The Free Trade Commission
- Article 2002: The Secretariat

Section B - Dispute Settlement
- Article 2003: Cooperation
- Article 2004: Recourse to Dispute Settlement Procedures
- Article 2005: GATT Dispute Settlement
- Article 2006: Consultations
- Article 2007: Commission - Good Offices, Conciliation and Meditation
- Article 2008: Request for Arbitral Panel
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- Article 2010: Qualifications of Panelists
- Article 2011: Panel Selection
- Article 2012: Rules of Procedure
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Section C - Domestic Proceedings and Private Commercial Dispute Settlement
- Article 2020: Referrals of Matters from Judicial or Administrative Proceedings
- Article 2021: Private Rights
- Article 2022: Alternative Dispute Resolution

- Annex 2001.2: Committees and Working Groups
- Annex 2002.2: Remuneration and Payment of Expenses
- Annex 2004: Nullification and Impairment

Section A - Institutions

Article 2001: The Free Trade Commission

1. The Parties hereby establish the Free Trade Commission, comprising cabinet-level representatives of the Parties or their designees.

2. The Commission shall:

(a) supervise the implementation of this Agreement;

(b) oversee its further elaboration;

(c) resolve disputes that may arise regarding its interpretation or application;

(d) supervise the work of all committees and working groups established under this Agreement, referred to in Annex 2001.2; and

(e) consider any other matter that may affect the operation of this Agreement.

3. The Commission may:

(a) establish, and delegate responsibilities to, ad hoc or standing committees, working groups or expert groups;

(b) seek the advice of non-governmental persons or groups; and

(c) 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 consensus, except as the Commission may otherwise agree.

5. The Commission shall convene at least once a year in regular session. Regular sessions of the Commission shall be chaired successively by each Party.

Article 2002: 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 panelists and members of committees and scientific review boards established under this Agreement, as set out in Annex 2002.2;

(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

(i) panels and committees established under Chapter Nineteen (Review and Dispute Settlement in Antidumping and Countervailing Duty Matters), in accordance with the procedures established pursuant to Article 1908, and

(ii) panels established under this Chapter, in accordance with procedures established pursuant to Article 2012; and

(c) as the Commission may direct

(i) support the work of other committees and groups established under this Agreement, and

(ii) otherwise facilitate the operation of this Agreement.

Section B - Dispute Settlement

Article 2003: Cooperation

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.

Article 2004: Recourse to Dispute Settlement Procedures

Except for the matters covered in Chapter Nineteen (Review and Dispute Settlement in Antidumping and Countervailing Duty Matters) and as otherwise provided in this Agreement, the dispute settlement provisions of this Chapter shall apply with respect to the avoidance or settlement of all disputes between the Parties regarding the interpretation or application of this Agreement or wherever a Party considers that an actual or proposed measure of another Party is or would be inconsistent with the obligations of this Agreement or cause nullification or impairment in the sense of Annex 2004.

Article 2005: GATT Dispute Settlement

1. Subject to paragraphs 2, 3 and 4, disputes regarding any matter arising under both this Agreement and the General Agreement on Tariffs and Trade, any agreement negotiated thereunder, or any successor agreement (GATT), may be settled in either forum at the discretion of the complaining Party.

2. Before a Party initiates a dispute settlement proceeding in the GATT against another Party on grounds that are substantially equivalent to those available to that Party under this Agreement, that Party shall notify any third Party of its intention. If a third Party wishes to have recourse to dispute settlement procedures under this Agreement regarding the matter, it shall inform promptly the notifying Party and those Parties shall consult with a view to agreement on a single forum. If those Parties cannot agree, the dispute normally shall be settled under this Agreement.

3. In any dispute referred to in paragraph 1 where the responding Party claims that its action is subject to Article 104 (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. In any dispute referred to in paragraph 1 that arises under Section B of Chapter Seven (Sanitary and Phytosanitary Measures) or Chapter Nine (Standards-Related Measures):

(a) concerning a measure adopted or maintained by a Party to protect its human, animal or plant life or health, or to protect its environment, and

(b) that raises factual issues concerning the environment, health, safety or conservation, including directly related scientific matters,

where the responding Party 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.

5. The responding Party shall deliver a copy of a request made pursuant to paragraph 3 or 4 to the other Parties and to its Section of the Secretariat. Where the complaining Party has initiated dispute settlement proceedings regarding any matter subject to paragraph 3 or 4, 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 2007.

6. Once dispute settlement procedures have been initiated under Article 2007 or dispute settlement proceedings have been initiated under the GATT, the forum selected shall be used to the exclusion of the other, unless a Party makes a request pursuant to paragraph 3 or 4.

7. For purposes of this Article, dispute settlement proceedings under the GATT are deemed to be initiated by a Party's request for a panel, such as under Article XXIII:2 of the General Agreement on Tariffs and Trade 1947, or for a committee investigation, such as under Article 20.1 of the Customs Valuation Code.

Consultations

Article 2006: Consultations

1. Any Party may request in writing consultations with any 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 shall deliver the request to the other Parties and to its Section of the Secretariat.

3. Unless the Commission otherwise provides in its rules and procedures established under Article 2001(4), a third Party that considers it has a substantial interest in the matter shall be entitled to participate in the consultations on delivery of written notice to the other Parties and to its Section of the Secretariat.

4. Consultations on matters regarding perishable agricultural goods shall commence within 15 days of the date of delivery of the request.

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

(a) provide sufficient information to enable a full examination of how the actual or proposed measure or other matter might affect the operation of this Agreement;

(b) treat any confidential or proprietary information exchanged in the course of consultations on the same basis as the Party providing the information; and

(c) seek to avoid any resolution that adversely affects the interests under this Agreement of any other Party.

Initiation of Procedures

Article 2007: Commission - Good Offices, Conciliation and Mediation

1. If the consulting Parties fail to resolve a matter pursuant to Article 2006 within:

(a) 30 days of delivery of a request for consultations,

(b) 45 days of delivery of such request if any other Party has subsequently requested or has participated in consultations regarding the same matter,

(c) 15 days of delivery of a request for consultations in matters regarding perishable agricultural goods, or

(d) such other period as they may agree,

any such 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 GATT regarding any matter subject to Article 2005(3) or (4), and has received a request pursuant to Article 2005(5) for recourse to dispute settlement procedures under this Chapter; or

(b) consultations have been held pursuant to Article 513 (Working Group on Rules of Origin), Article 723 (Sanitary and Phytosanitary Measures Technical Consultations) and Article 914 (Standards-Related Measures 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 the other Parties and to its Section of the Secretariat.

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

5. The Commission may:

(a) call on such technical advisers or create such working groups or 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 consulting Parties to reach a mutually satisfactory resolution of the dispute.

6. 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 2008: Request for an Arbitral Panel

1. If the Commission has convened pursuant to Article 2007(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 2007(6), or

(c) such other period as the consulting Parties may agree,

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

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

3. A third Party that considers it has a substantial interest in the matter shall be entitled to join as a complaining Party on delivery of written notice of its intention to participate to the disputing Parties and its Section of the Secretariat. The notice shall be delivered at the earliest possible time, and in any event no later than seven days after the date of delivery of a request by a Party for the establishment of a panel.

4. If a third Party does not join as a complaining Party in accordance with paragraph 3, it normally shall refrain thereafter from initiating or continuing:

(a) a dispute settlement procedure under this Agreement, or

(b) a dispute settlement proceeding in the GATT on grounds that are substantially equivalent to those available to that Party under this Agreement,

regarding the same matter in the absence of a significant change in economic or commercial circumstances.

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

Article 2009: Roster

1. The Parties shall establish by January 1, 1994 and maintain a roster of up to 30 individuals who are willing and able to serve as panelists. The roster members shall be appointed by consensus for terms of three years, and may be reappointed.

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, and shall be chosen strictly on the basis of objectivity, reliability and sound judgment;

(b) be independent of, and not be affiliated with or take instructions from, any Party; and

(c) comply with a code of conduct to be established by the Commission.

Article 2010: Qualifications of Panelists

1. All panelists shall meet the qualifications set out in Article 2009(2).

2. Individuals may not serve as panelists for a dispute in which they have participated pursuant to Article 2007(5).

Article 2011: Panel Selection

1. Where there are two disputing Parties, the following procedures shall apply:

(a) The panel shall comprise five members.

(b) The disputing Parties shall endeavor 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 disputing Parties are unable to agree on the chair within this period, the disputing Party chosen by lot shall select within five days as chair an individual who is not a citizen of that Party.

(c) Within 15 days of selection of the chair, each disputing Party shall select two panelists who are citizens of the other disputing Party.

(d) If a disputing Party fails to select its panelists within such period, such panelists shall be selected by lot from among the roster members who are citizens of the other disputing Party.

2. Where there are more than two disputing Parties, the following procedures shall apply:

(a) The panel shall comprise five members.

(b) The disputing Parties shall endeavor 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 disputing Parties are unable to agree on the chair within this period, the Party or Parties on the side of the dispute chosen by lot shall select within 10 days a chair who is not a citizen of such Party or Parties.

(c) Within 15 days of selection of the chair, the Party complained against shall select two panelists, one of whom is a citizen of a complaining Party, and the other of whom is a citizen of another complaining Party. The complaining Parties shall select two panelists who are citizens of the Party complained against.

(d) If any disputing Party fails to select a panelist within such period, such panelist shall be selected by lot in accordance with the citizenship criteria of subparagraph (c).

3. Panelists shall normally be selected from the roster. Any disputing Party may exercise a peremptory challenge against any individual not on the roster who is proposed as a panelist by a disputing Party within 15 days after the individual has been proposed.

4. If a disputing Party believes that a panelist is in violation of the code of conduct, the disputing Parties shall consult and if they agree, the panelist shall be removed and a new panelist shall be selected in accordance with this Article.

* * *

Article 2017: Final Report

1. The panel shall present to the disputing Parties a final report, including any separate opinions on matters not unanimously agreed, within 30 days of presentation of the initial report, unless the disputing Parties otherwise agree.

2. No panel may, either in its initial report or its final report, disclose which panelists are associated with majority or minority opinions.

3. The disputing Parties shall transmit to the Commission the final report of the panel, including any report of a scientific review board established under Article 2015, as well as any written views that a disputing Party desires to be appended, on a confidential basis within a reasonable period of time after it is presented to them.

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 Reports

Article 2018: Implementation of Final Report

1. On receipt of the final report of a panel, the disputing Parties shall agree on the resolution of the dispute, which normally shall conform with the determinations and recommendations of the panel, and shall notify their Sections of the Secretariat of any agreed resolution of any dispute.

2. Wherever possible, the resolution shall be non-implementation or removal of a measure not conforming with this Agreement or causing nullification or impairment in the sense of Annex 2004 or, failing such a resolution, compensation.

Article 2019: Non-Implementation-Suspension of Benefits

1. If in its final report a panel has determined that a measure is inconsistent with the obligations of this Agreement or causes nullification or impairment in the sense of Annex 2004 and the Party complained against has not reached agreement with any complaining Party on a mutually satisfactory resolution pursuant to Article 2018(1) within 30 days of receiving the final report, such complaining Party may suspend the application to the Party complained against of benefits of equivalent effect until such time as they have reached agreement on a resolution of the dispute.

2. In considering what benefits to suspend pursuant to paragraph 1:

(a) a complaining Party should first seek to suspend benefits in the same sector or sectors as that affected by the measure or other matter that the panel has found to be inconsistent with the obligations of this Agreement or to have caused nullification or impairment in the sense of Annex 2004; and

(b) a complaining Party that considers it is not practicable or effective to suspend benefits in the same sector or sectors may suspend benefits in other sectors.

3. On the written request of any disputing Party delivered to the other Parties 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.

4. The panel proceedings shall be conducted in accordance with the Model Rules of Procedure. The

panel shall present its determination within 60 days after the last panelist is selected or such other period as the disputing Parties may agree.

Section C - Domestic Proceedings and Private Commercial Dispute Settlement

Article 2020: 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 any Party considers would merit its intervention, or if a court or administrative body solicits the views of a Party, that Party shall notify the other Parties and its Section of the Secretariat. The Commission shall endeavor 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, any Party may submit its own views to the court or administrative body in accordance with the rules of that forum.

Article 2021: Private Rights

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

Article 2022: 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. To this end, 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.

3. A Party shall be deemed to be in compliance with paragraph 2 if it is a party to and is in compliance with the 1958 United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards or the 1975 InterAmerican Convention on International Commercial Arbitration.

4. 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.

* * *

Annex 2004

Nullification and Impairment

1. If any Party considers that any benefit it could reasonably have expected to accrue to it under any

provision of:

(a) Part Two (Trade in Goods), except for those provisions of Annex 300-A (Automotive Sector) or Chapter Six (Energy) relating to investment,

(b) Part Three (Technical Barriers to Trade),

(c) Chapter Twelve (Cross-Border Trade in Services), or

(d) Part Six (Intellectual Property),

is being nullified or impaired as a result of the application of any measure that is not inconsistent with this Agreement, the Party may have recourse to dispute settlement under this Chapter.

2. A Party may not invoke:

(a) paragraph 1(a) or (b), to the extent that the benefit arises from any crossborder trade in services provision of Part Two, or

(b) paragraph 1(c) or (d),

with respect to any measure subject to an exception under Article 2101 (General Exceptions).

PART EIGHT: OTHER PROVISIONS

Chapter Twenty-One: Exceptions

Article 2101: General Exceptions
Article 2102: National Security
Article 2103: Taxation
Article 2104: Balance of Payments
Article 2105: Disclosure of Information
Article 2106: Cultural Industries
Article 2107: Definitions

Annex 2103.4: Specific Taxation Measures
Annex 2103.6: Competent Authorities
Annex 2106: Cultural Industries

Article 2101: General Exceptions

1. For purposes of:

(a) Part Two (Trade in Goods), except to the extent that a provision of that Part applies to services

or investment, and

(b) Part Three (Technical Barriers to Trade), except to the extent that a provision of that Part applies to services,

GATT Article XX and its interpretative notes, or any equivalent provision of a successor agreement to which all Parties are party, are incorporated into and made part of this Agreement.

The Parties understand that the measures referred to in GATT Article XX(b) include environmental measures necessary to protect human, animal or plant life or health, and that GATT Article XX(g) applies to measures relating to the conservation of living and non-living exhaustible natural resources.

2. Provided that such measures are not applied in a manner that would constitute a means of arbitrary or unjustifiable discrimination between countries where the same conditions prevail or a disguised restriction on trade between the Parties, nothing in:

(a) Part Two (Trade in Goods), to the extent that a provision of that Part applies to services,

(b) Part Three (Technical Barriers to Trade), to the extent that a provision of that Part applies to services,

(c) Chapter Twelve (Cross-Border Trade in Services), and

(d) Chapter Thirteen (Telecommunications),

shall be construed to prevent the adoption or enforcement by any Party of measures necessary to secure compliance with laws or regulations that are not inconsistent with the provisions of this Agreement, including those relating to health and safety and consumer protection.

Article 2102: National Security

1. Subject to Articles 607 (Energy - National Security Measures) and 1018 (Government Procurement Exceptions), nothing in this Agreement shall be construed:

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

Article 2103: Taxation

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

* * *

Article 2104: 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 paragraphs 2 through 4 and are:

(a) consistent with paragraph 5 to the extent they are imposed on transfers other than Cross-Border trade in financial services; or

(b) consistent with paragraphs 6 and 7 to the extent they are imposed on Cross-Border trade in financial services.

General Rules

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 another 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-favored-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 program, 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.

* * *

Article 2105: 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 law enforcement or would be contrary to the Party's law protecting personal privacy or the financial affairs and accounts of individual customers of financial institutions.

Article 2106: Cultural Industries

Annex 2106 applies to the Parties specified in that Annex with respect to cultural industries.

* * *

Annex 2106

Cultural Industries

Notwithstanding any other provision of this Agreement, as between Canada and the United States, any measure adopted or maintained with respect to cultural industries, except as specifically provided in Article 302 (Market Access - Tariff Elimination), and any measure of equivalent commercial effect taken in response, shall be governed under this Agreement exclusively in accordance with the provisions of the Canada - United States Free Trade Agreement*. The rights and obligations between Canada and any other Party with respect to such measures shall be identical to those applying between Canada and the United States.

* *Canada - United States Free Trade Agreement*

Article 2005: Cultural Industries

1. Cultural industries are exempt from the provisions of this Agreement, except as specifically provided in Article 401 (Tariff Elimination), paragraph 4 of Article 1607 (divestiture of an indirect acquisition) and Articles 2006 and 2007 of this Chapter.

2. Notwithstanding any other provision of this Agreement, a Party may take measures of equivalent commercial effect in response to actions that would have been inconsistent with this Agreement but for paragraph 1.

Chapter Twenty-Two: Final Provisions

Article 2201: Annexes
Article 2202: Amendments
Article 2203: Entry into Force
Article 2204: Accession
Article 2205: Withdrawal
Article 2206: Authentic Texts

Article 2201: Annexes

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

Article 2202: 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 constitute an integral part of this Agreement.

Article 2203: Entry into Force

This Agreement shall enter into force on January 1, 1994, on an exchange of written notifications certifying the completion of necessary legal procedures.

Article 2204: Accession

1. Any country or group of countries may accede to this Agreement subject to such terms and conditions as may be agreed between such country or countries and the Commission and following approval in accordance with the applicable legal procedures of each country.

2. This Agreement shall not apply as between any Party and any acceding country or group of countries if, at the time of accession, either does not consent to such application.

Article 2205: Withdrawal

A Party may withdraw from this Agreement six months after it provides written notice of withdrawal to the other Parties. If a Party withdraws, the Agreement shall remain in force for the remaining Parties.

Article 2206: Authentic Texts

The English, French and Spanish texts of this Agreement are equally authentic.

* * *

GATT

THE GENERAL AGREEMENT ON TARIFFS AND TRADE

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PREFACE

The General Agreement on Tariffs and Trade came into force on 1 January 1948. This booklet contains the complete text of the General Agreement together with all amendments which have become effective since its entry into force. The text is identical to that published, since 1969, as Volume IV in the series Basic Instruments and Selected Documents. A guide to the legal sources of the provisions of the Agreement is provided in an appendix. An Analytical Index, containing notes on the drafting, interpretation and application of the articles of the Agreement has been prepared and published by the secretariat. A second publication, complementary to this one, contains the text of the agreements reached as a result of the Tokyo Round of Multilateral Trade Negotiations (1973-1979).

The General Agreement is applied "provisionally" by all contracting parties. The original contracting parties, and also those former territories of Belgium, France, the Netherlands and the United Kingdom which, after attaining independence, acceded to the General Agreement under Article XXVI:5(*c*), apply the GATT under the Protocol of Provisional Application, the text of which is reproduced in this volume. Chile applies the General Agreement under a Special Protocol of September 1948. The contracting parties which have acceded since 1948 apply the General Agreement under their respective Protocols of Accession.

For the convenience of the reader, **asterisks** mark the portions of the text which should be read in conjunction with notes and supplementary provisions in Annex I to the Agreement. In accordance with Article XXXIV, Annexes A to I are an integral part of the Agreement. The Schedules of tariff concessions annexed to the General Agreement (not here reproduced) are also, in accordance with Article II:7, an integral part of the Agreement.

By the Decision of 23 March 1965, the CONTRACTING PARTIES changed the title of the head of the GATT secretariat from "Executive Secretary" to "Director-General". However, in the absence of an amendment to the General Agreement to take account of this change, the title "Executive Secretary" has been retained in the text of Articles XVIII:12(*e*), XXIII:2 and XXVI:4, 5 and 6. The Decision of 23 March 1965 provides that the duties and powers conferred upon the Executive Secretary by the General Agreement "shall be exercised by the person holding the position of Director-General, who shall, for this purpose, also hold the position of Executive Secretary".

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THE GENERAL AGREEMENT ON TARIFFS AND TRADE

The Governments of the COMMONWEALTH OF AUSTRALIA, the KINGDOM OF BELGIUM, the UNITED STATES OF BRAZIL, BURMA, CANADA, CEYLON, the REPUBLIC OF CHILE, the REPUBLIC OF CHINA, the REPUBLIC OF CUBA, the CZECHOSLOVAK REPUBLIC, the FRENCH REPUBLIC, INDIA, LEBANON, the GRAND-DUCHY OF LUXEMBURG, the KINGDOM OF THE NETHERLANDS, NEW ZEALAND, the KINGDOM OF NORWAY, PAKISTAN, SOUTHERN RHODESIA, SYRIA, the UNION OF SOUTH AFRICA, the UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND, and the UNITED STATES OF AMERICA:

Recognising that their relations in the field of trade and economic endeavour should be conducted with a view to raising standards of living, ensuring full employment and a large and steadily growing volume of real income and effective demand, developing the full use of the resources of the world and expanding the production and exchange of goods,

Being desirous of contributing to these objectives by entering into reciprocal and mutually advantageous arrangements directed to the substantial reduction of tariffs and other barriers to trade and to the elimination of discriminatory treatment in international commerce,

Have through their Representatives agreed as follows:

PART I

Article I

General Most-Favoured-Nation Treatment

1. With respect to customs duties and charges of any kind imposed on or in connection with importation or exportation or imposed on the international transfer of payments for imports or exports, and with respect to the method of levying such duties and charges, and with respect to all rules and formalities in connection with importation and exportation, and with respect to all matters referred to in paragraphs 2 and 4 of Article III,* any advantage, favour, privilege or immunity granted by any contracting party to any product originating in or destined for any other country shall be accorded immediately and unconditionally to the like product originating in or destined for the territories of all other contracting parties.

2. The provisions of paragraph 1 of this Article shall not require the elimination of any preferences in respect of import duties or charges which do not exceed the levels provided for in paragraph 4 of this Article and which fall within the following descriptions:

(*a*) Preferences in force exclusively between two or more of the territories listed in Annex A, subject to the conditions set forth therein;

(*b*) Preferences in force exclusively between two or more territories which on July 1, 1939, were connected by common sovereignty or relations of protection or suzerainty and which are listed in Annexes B, C and D, subject to the conditions set forth therein;

(*c*) Preferences in force exclusively between the United States of America and the Republic of Cuba;

(*d*) Preferences in force exclusively between neighbouring countries listed in Annexes E and F.

3. The provisions of paragraph 1 shall not apply to preferences between the countries formerly a part of the Ottoman Empire and detached from it on July 24, l923, provided such preferences are approved under paragraph 5† of Article XXV, which shall be applied in this respect in the light of paragraph 1 of Article XXIX.

_____

†The authentic text erroneously reads "sub-paragraph 5 (*a*)".

4. The margin of preference* on any product in respect of which a preference is permitted under paragraph 2 of this Article but is not specifically set forth as a maximum margin of preference in the appropriate Schedule annexed to this Agreement shall not exceed:

(*a*) in respect of duties or charges on any product described in such Schedule, the difference between the most-favoured-nation and preferential rates provided for therein; if no preferential rate is provided for, the preferential rate shall for the purposes of this paragraph be taken to be that in force on April 10, l947, and, if no most-favoured-nation rate is provided for, the margin shall not exceed the difference between the most-favoured-nation and preferential rates existing on April 10, 1947;

(*b*) in respect of duties or charges on any product not described in the appropriate Schedule, the difference between the most-favoured-nation and preferential rates existing on April 10, 1947.

In the case of the contracting parties named in Annex G, the date of April 10, 1947, referred to in sub-paragraph (*a*) and (*b*) of this paragraph shall be replaced by the respective dates set forth in that Annex.

Article II

Schedules of Concessions

1. (*a*) Each contracting party shall accord to the commerce of the other contracting parties treatment no less favourable than that provided for in the appropriate Part of the appropriate Schedule annexed to this Agreement.

(*b*) The products described in Part I of the Schedule relating to any contracting party, which are the products of territories of other contracting parties, shall, on their importation into the territory to which the Schedule relates, and subject to the terms, conditions or qualifications set forth in that Schedule, be exempt from ordinary customs duties in excess of those set forth and provided therein. Such products shall also be exempt from all other duties or charges of any kind imposed on or in connection with the importation in excess of those imposed on the date of this Agreement or those directly and mandatorily required to be imposed thereafter by legislation in force in the importing territory on that date.

(*c*) The products described in Part II of the Schedule relating to any contracting party which are the products of territories entitled under Article I to receive preferential treatment upon importation into the territory to which the Schedule relates shall, on their importation into such territory, and subject to the terms, conditions or qualifications set forth in that Schedule, be exempt from ordinary customs duties in excess of those set forth and provided for in Part II of that Schedule. Such products shall also be exempt from all other duties or charges of any kind imposed on or in connection with importation in excess of those imposed on the date of this Agreement or those directly or mandatorily required to be imposed thereafter by legislation in force in the importing territory on that date. Nothing in this Article shall prevent any contracting party from maintaining its requirements existing on the date of this Agreement as to the eligibility of goods for entry at preferential rates of duty.

2. Nothing in this Article shall prevent any contracting party from imposing at any time on the importation of any product:

(*a*) a charge equivalent to an internal tax imposed consistently with the provisions of paragraph 2 of Article III* in respect of the like domestic product or in respect of an article from which the imported product has been manufactured or produced in whole or in part;

(*b*) any anti-dumping or countervailing duty applied consistently with the provisions of Article VI;*

(*c*) fees or other charges commensurate with the cost of services rendered.

3. No contracting party shall alter its method of determining dutiable value or of converting currencies so as to impair the value of any of the concessions provided for in the appropriate Schedule annexed to this Agreement.

4. If any contracting party establishes, maintains or authorizes, formally or in effect, a monopoly of the importation of any product described in the appropriate Schedule annexed to this Agreement, such monopoly shall not, except as provided for in that Schedule or as otherwise agreed between the parties which initially negotiated the concession, operate so as to afford protection on the average in excess of the amount of protection provided for in that Schedule. The provisions of this paragraph shall not limit the use by contracting parties of any form of assistance to domestic producers permitted by other provisions of this Agreement.*

5. If any contracting party considers that a product is not receiving from another contracting party the treatment which the first contracting party believes to have been contemplated by a concession provided for in the appropriate Schedule annexed to this Agreement, it shall bring the matter directly to the attention of the other contracting party. If the latter agrees that the treatment contemplated was that claimed by the first contracting party, but declares that such treatment cannot be accorded because a court or other proper authority has ruled to the effect that the product involved cannot be classified under the tariff laws of such contracting party so as to permit the treatment contemplated in this Agreement, the two contracting parties, together with any other contracting parties substantially interested, shall enter promptly into further negotiations with a view to a compensatory adjustment of the matter.

6. (*a*) The specific duties and charges included in the Schedules relating to contracting parties members of the International Monetary Fund, and margins of preference in specific duties and charges maintained by such contracting parties, are expressed in the appropriate currency at the par value accepted or provisionally recognized by the Fund at the date of this Agreement. Accordingly, in case this par value is reduced consistently with the Articles of Agreement of the International Monetary Fund by more than twenty per centum, such specific duties and charges and margins of preference may be adjusted to take account of such reduction; *provided* that the CONTRACTING PARTIES (*i.e.*, the contracting parties acting jointly as provided for in Article XXV) concur that such adjustments will not impair the value of the concessions provided for in the appropriate Schedule or elsewhere in this Agreement, due account being taken of all factors which may influence the need for, or urgency of, such adjustments.

(*b*) Similar provisions shall apply to any contracting party not a member of the Fund, as from the date on which such contracting party becomes a member of the Fund or enters into a special exchange agreement in pursuance of Article XV.

7. The Schedules annexed to this Agreement are hereby made an integral part of Part I of this Agreement.

PART II

Article III*

National Treatment on Internal Taxation and Regulation

1. The contracting parties recognize that internal taxes and other internal charges, and laws, regulations and requirements affecting the internal sale, offering for sale, purchase, transportation, distribution or use of products, and internal quantitative regulations requiring the mixture, processing or use of products in specified amounts or proportions, should not be applied to imported or domestic products so as to afford protection to domestic production.*

2. The products of the territory of any contracting party imported into the territory of any other contracting party shall not be subject, 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, no contracting party shall otherwise apply internal taxes or other internal charges to imported or domestic products in a manner contrary to the principles set forth in paragraph 1.*

3. With respect to any existing internal tax which is inconsistent with the provisions of paragraph 2, but which is specifically authorized under a trade agreement, in force on April 10, l947, in which the import duty on the taxed product is bound against increase, the contracting party imposing the tax shall be free to postpone the application of the provisions of paragraph 2 to such tax until such time as it can obtain release from the obligations of such trade agreement in order to permit the increase of such duty to the extent necessary to compensate for the elimination of the protective element of the tax.

4. The products of the territory of any contracting party imported into the territory of any other contracting party shall be accorded treatment no less favourable than that accorded to like products of national origin 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.

5. No contracting 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, no contracting party shall otherwise apply internal quantitative regulations in a manner contrary to the principles set forth in paragraph 1.*

6. The provisions of paragraph 5 shall not apply to any internal quantitative regulation in force in the territory of any contracting party on July 1, 1939, April 10, 1947, or March 24, l948, at the option of that contracting party; *Provided* that any such regulation which is contrary to the provisions of paragraph 5 shall not be modified to the detriment of imports and shall be treated as a customs duty for the purpose of negotiation.

7. No internal quantitative regulation relating to the mixture, processing or use of products in specified amounts or proportions shall be applied in such a manner as to allocate any such amount or proportion among external sources of supply.

8. (*a*) The provisions of this Article shall not apply to laws, regulations or requirements governing the procurement by governmental agencies of products purchased for governmental purposes and not with a view to commercial resale or with a view to use in the production of goods for commercial sale.

(*b*) 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.

9. The contracting parties recognize that internal maximum price control measures, even though conforming to the other provisions of this Article, can have effects prejudicial to the interests of contracting parties supplying imported products. Accordingly, contracting parties applying such measures shall take account of the interests of exporting contracting parties with a view to avoiding to the fullest practicable extent such prejudicial effects.

10. The provisions of this Article shall not prevent any contracting party from establishing or maintaining internal quantitative regulations relating to exposed cinematograph films and meeting the requirements of Article IV.

Article IV

Special Provisions relating to Cinematograph Films

If any contracting party establishes or maintains internal quantitative regulations relating to exposed cinematograph films, such regulations shall take the form of screen quotas which shall conform to the following requirements:

(*a*) Screen quotas may require the exhibition of cinematograph films of national origin during a specified minimum proportion of the total screen time actually utilized, over a specified period of not less than one year, in the commercial exhibition of all films of whatever origin, and shall be computed on the basis of screen time per theatre per year or the equivalent thereof;

(*b*) With the exception of screen time reserved for films of national origin under a screen quota, screen time including that released by administrative action from screen time reserved for films of national origin, shall not be allocated formally or in effect among sources of supply;

(*c*) Notwithstanding the provisions of sub-paragraph (*b*) of this Article, any contracting party may maintain screen quotas conforming to the requirements of sub-paragraph (*a*) of this Article which reserve a minimum proportion of screen time for films of a specified origin other than that of the contracting party imposing such screen quotas; *Provided* that no such minimum proportion of screen time shall be increased above the level in effect on April 10, 1947;

(*d*) Screen quotas shall be subject to negotiation for their limitation, liberalization or elimination.

Article V

Freedom of Transit

1. Goods (including baggage), and also vessels and other means of transport, shall be deemed to be in transit across the territory of a contracting party when the passage across such territory, with or without trans-shipment, warehousing, breaking bulk, or change in the mode of transport, is only a portion of a complete journey beginning and terminating beyond the frontier of the contracting party across whose territory the traffic passes. Traffic of this nature is termed in this article "traffic in transit".

2. There shall be freedom of transit through the territory of each contracting party, via the routes most convenient for international transit, for traffic in transit to or from the territory of other contracting parties. No distinction shall be made which is based on the flag of vessels, the place of origin, departure, entry, exit or destination, or on any circumstances relating to the ownership of goods, of vessels or of other means of transport.

3. Any contracting party may require that traffic in transit through its territory be entered at the proper custom house, but, except in cases of failure to comply with applicable customs laws and

regulations, such traffic coming from or going to the territory of other contracting parties shall not be subject to any unnecessary delays or restrictions and shall be exempt from customs duties and from all transit duties or other charges imposed in respect of transit, except charges for transportation or those commensurate with administrative expenses entailed by transit or with the cost of services rendered.

4. All charges and regulations imposed by contracting parties on traffic in transit to or from the territories of other contracting parties shall be reasonable, having regard to the conditions of the traffic.

5. With respect to all charges, regulations and formalities in connection with transit, each contracting party shall accord to traffic in transit to or from the territory of any other contracting party treatment no less favourable than the treatment accorded to traffic in transit to or from any third country.*

6. Each contracting party shall accord to products which have been in transit through the territory of any other contracting party treatment no less favourable than that which would have been accorded to such products had they been transported from their place of origin to their destination without going through the territory of such other contracting party. Any contracting party shall, however, be free to maintain its requirements of direct consignment existing on the date of this Agreement, in respect of any goods in regard to which such direct consignment is a requisite condition of eligibility for entry of the goods at preferential rates of duty or has relation to the contracting party's prescribed method of valuation for duty purposes.

7. The provisions of this Article shall not apply to the operation of aircraft in transit, but shall apply to air transit of goods (including baggage).

Article VI

Anti-dumping and Countervailing Duties

1. The contracting parties recognize that dumping, by which products of one country are introduced into the commerce of another country at less than the normal value of the products, is to be condemned if it causes or threatens material injury to an established industry in the territory of a contracting party or materially retards the establishment of a domestic industry. For the purposes of this Article, a product is to be considered as being introduced into the commerce of an importing country at less than its normal value, if the price of the product exported from one country to another

(*a*) is less than the comparable price, in the ordinary course of trade, for the like product when destined for consumption in the exporting country, or,

(*b*) in the absence of such domestic price, is less than either

(i) the highest comparable price for the like product for export to any third country in the ordinary course of trade, or

(ii) the cost of production of the product in the country of origin plus a reasonable addition for selling cost and profit.

Due allowance shall be made in each case for differences in conditions and terms of sale, for differences in taxation, and for other differences affecting price comparability.*

2. In order to offset or prevent dumping, a contracting party may levy on any dumped product an anti-dumping duty not greater in amount than the margin of dumping in respect of such product. For the purposes of this Article, the margin of dumping is the price difference determined in accordance with the provisions of paragraph 1.*

3. No countervailing duty shall be levied on any product of the territory of any contracting party imported into the territory of another contracting party in excess of an amount equal to the estimated bounty or subsidy determined to have been granted, directly or indirectly, on the manufacture, production or export of such product in the country of origin or exportation, including any special subsidy to the transportation of a particular product. The term "countervailing duty" shall be understood to mean a special duty levied for the purpose of offsetting any bounty or subsidy bestowed, directly, or indirectly, upon the manufacture, production or export of any merchandise.*

4. No product of the territory of any contracting party imported into the territory of any other contracting party shall be subject to anti-dumping or countervailing duty by reason of the exemption of such product from duties or taxes borne by the like product when destined for consumption in the country of origin or exportation, or by reason of the refund of such duties or taxes.

5. No product of the territory of any contracting party imported into the territory of any other contracting party shall be subject to both anti-dumping and countervailing duties to compensate for the same situation of dumping or export subsidization.

6. (*a*) No contracting party shall levy any anti-dumping or countervailing duty on the importation of any product of the territory of another contracting party unless it determines that the effect of the dumping or subsidization, as the case may be, is such as to cause or threaten material injury to an established domestic industry, or is such as to retard materially the establishment of a domestic industry.

(*b*) The CONTRACTING PARTIES may waive the requirement of sub-paragraph (*a*) of this paragraph so as to permit a contracting party to levy an anti-dumping or countervailing duty on the importation of any product for the purpose of offsetting dumping or subsidization which causes or threatens material injury to an industry in the territory of another contracting party exporting the product concerned to the territory of the importing contracting party. The CONTRACTING PARTIES shall waive the requirements of sub-paragraph (*a*) of this paragraph, so as to permit the levying of a countervailing duty, in cases in which they find that a subsidy is causing or threatening material injury to an industry in the territory of another contracting party exporting the product concerned to the territory of the importing contracting party.*

(*c*) In exceptional circumstances, however, where delay might cause damage which would be difficult to repair, a contracting party may levy a countervailing duty for the purpose referred to in sub-paragraph (*b*) of this paragraph without the prior approval of the CONTRACTING PARTIES; *Provided* that such action shall be reported immediately to the CONTRACTING PARTIES and that the countervailing duty shall be withdrawn promptly if the CONTRACTING PARTIES disapprove.

7. A system for the stabilization of the domestic price or of the return to domestic producers of a primary commodity, independently of the movements of export prices, which results at times in the sale of the commodity for export at a price lower than the comparable price charged for the like commodity to buyers in the domestic market, shall be presumed not to result in material injury within the meaning of paragraph 6 if it is determined by consultation among the contracting parties substantially interested in the commodity concerned that:

(*a*) the system has also resulted in the sale of the commodity for export at a price higher than the comparable price charged for the like commodity to buyers in the domestic market, and

(*b*) the system is so operated, either because of the effective regulation of production, or otherwise, as not to stimulate exports unduly or otherwise seriously prejudice the interests of other contracting parties.

Article VII

Valuation for Customs Purposes

1. The contracting parties recognize the validity of the general principles of valuation set forth in the following paragraphs of this Article, and they undertake to give effect to such principles, in respect of all products subject to duties or other charges* or restrictions on importation and exportation based upon or regulated in any manner by value. Moreover, they shall, upon a request by another contracting party review the operation of any of their laws or regulations relating to value for customs purposes in the light of these principles. The CONTRACTING PARTIES may request from contracting parties reports on steps taken by them in pursuance of the provisions of this Article.

2. (*a*) The value for customs purposes of imported merchandise should be based on the actual value of the imported merchandise on which duty is assessed, or of like merchandise, and should not be based on the value of merchandise of national origin or on arbitrary or fictitious values.*

(*b*) "Actual value" should be the price at which, at a time and place determined by the legislation of the country of importation, such or like merchandise is sold or offered for sale in the ordinary course of trade under fully competitive conditions. To the extent to which the price of such or like merchandise is governed by the quantity in a particular transaction, the price to be considered should uniformly be related to either (i) comparable quantities, or (ii) quantities not less favourable to importers than those in which the greater volume of the merchandise is sold in the trade between the countries of exportation and importation.*

(*c*) When the actual value is not ascertainable in accordance with sub-paragraph (*b*) of this paragraph, the value for customs purposes should be based on the nearest ascertainable equivalent of such value.*

3. The value for customs purposes of any imported product should not include the amount of any internal tax, applicable within the country of origin or export, from which the imported product has been exempted or has been or will be relieved by means of refund.

4. (*a*) Except as otherwise provided for in this paragraph, where it is necessary for the purposes of paragraph 2 of this Article for a contracting party to convert into its own currency a price expressed in the currency of another country, the conversion rate of exchange to be used shall be based, for each currency involved, on the par value as established pursuant to the Articles of Agreement of the International Monetary Fund or on the rate of exchange recognized by the Fund, or on the par value established in accordance with a special exchange agreement entered into pursuant to Article XV of this Agreement.

(*b*) Where no such established par value and no such recognized rate of exchange exist, the conversion rate shall reflect effectively the current value of such currency in commercial transactions.

(*c*) The CONTRACTING PARTIES, in agreement with the International Monetary Fund, shall formulate rules governing the conversion by contracting parties of any foreign currency in respect of which multiple rates of exchange are maintained consistently with the Articles of Agreement of the International Monetary Fund. Any contracting party may apply such rules in respect of such foreign currencies for the purposes of paragraph 2 of this Article as an alternative to the use of par values. Until such rules are adopted by the CONTRACTING PARTIES, any contracting party may employ, in respect of any such foreign currency, rules of conversion for the purposes of paragraph 2 of this Article which are designed to reflect effectively the value of such foreign currency in commercial transactions.

(*d*) Nothing in this paragraph shall be construed to require any contracting party to alter the method of converting currencies for customs purposes which is applicable in its territory on the date of this Agreement, if such alteration would have the effect of increasing generally the amounts of duty payable.

5. The bases and methods for determining the value of products subject to duties or other charges or restrictions based upon or regulated in any manner by value should be stable and should be given

sufficient publicity to enable traders to estimate, with a reasonable degree of certainty, the value for customs purposes.

Article VIII

*Fees and Formalities connected with Importation and Exportation**

1. (*a*) All fees and charges of whatever character (other than import and export duties and other than taxes within the purview of Article III) imposed by contracting parties on or in connection with importation or exportation shall be limited in amount to the approximate cost of services rendered and shall not represent an indirect protection to domestic products or a taxation of imports or exports for fiscal purposes.

(*b*) The contracting parties recognize the need for reducing the number and diversity of fees and charges referred to in sub-paragraph (*a*).

(*c*) The contracting parties also recognize the need for minimizing the incidence and complexity of import and export formalities and for decreasing and simplifying import and export documentation requirements.*

2. A contracting party shall, upon request by another contracting party or by the CONTRACTING PARTIES, review the operation of its laws and regulations in the light of the provisions of this Article.

3. No contracting party shall impose substantial penalties for minor breaches of customs regulations or procedural requirements. In particular, no penalty in respect of any omission or mistake in customs documentation which is easily rectifiable and obviously made without fraudulent intent or gross negligence shall be greater than necessary to serve merely as a warning.

4. The provisions of this Article shall extend to fees, charges, formalities and requirements imposed by governmental authorities in connection with importation and exportation, including those relating to:

(*a*) consular transactions, such as consular invoices and certificates;
(*b*) quantitative restrictions;
(*c*) licensing;
(*d*) exchange control;
(*e*) statistical services;
(*f*) documents, documentation and certification;
(*g*) analysis and inspection; and
(*h*) quarantine, sanitation and fumigation.

Article IX

Marks of Origin

1. Each contracting party shall accord to the products of the territories of other contracting parties treatment with regard to marking requirements no less favourable than the treatment accorded to like products of any third country.

2. The contracting parties recognize that, in adopting and enforcing laws and regulations relating to marks of origin, the difficulties and inconveniences which such measures may cause to the

commerce and industry of exporting countries should be reduced to a minimum, due regard being had to the necessity of protecting consumers against fraudulent or misleading indications.

3. Whenever it is administratively practicable to do so, contracting parties should permit required marks of origin to be affixed at the time of importation.

4. The laws and regulations of contracting parties relating to the marking of imported products shall be such as to permit compliance without seriously damaging the products, or materially reducing their value, or unreasonably increasing their cost.

5. As a general rule, no special duty or penalty should be imposed by any contracting party for failure to comply with marking requirements prior to importation unless corrective marking is unreasonably delayed or deceptive marks have been affixed or the required marking has been intentionally omitted.

6. The contracting parties shall co-operate with each other with a view to preventing the use of trade names in such manner as to misrepresent the true origin of a product, to the detriment of such distinctive regional or geographical names of products of the territory of a contracting party as are protected by its legislation. Each contracting party shall accord full and sympathetic consideration to such requests or representations as may be made by any other contracting party regarding the application of the undertaking set forth in the preceding sentence to names of products which have been communicated to it by the other contracting party.

Article X

Publication and Administration of Trade Regulations

1. Laws, regulations, judicial decisions and administrative rulings of general application, made effective by any contracting party, pertaining to the classification or the valuation of products for customs purposes, or to rates of duty, taxes or other charges, or to requirements, restrictions or prohibitions on imports or exports or on the transfer of payments therefor, or affecting their sale, distribution, transportation, insurance, warehousing inspection, exhibition, processing, mixing or other use, shall be published promptly in such a manner as to enable governments and traders to become acquainted with them. Agreements affecting international trade policy which are in force between the government or a governmental agency of any contracting party and the government or governmental agency of any other contracting party shall also be published. The provisions of this paragraph shall not require any contracting party to disclose confidential information which would impede law enforcement or otherwise be contrary to the public interest or would prejudice the legitimate commercial interests of particular enterprises, public or private.

2. No measure of general application taken by any contracting party effecting an advance in a rate of duty or other charge on imports under an established and uniform practice, or imposing a new or more burdensome requirement, restriction or prohibition on imports, or on the transfer of payments therefor, shall be enforced before such measure has been officially published.

3. (*a*) Each contracting party shall administer in a uniform, impartial and reasonable manner all its laws, regulations, decisions and rulings of the kind described in paragraph 1 of this Article.

(*b*) Each contracting party shall maintain, or institute as soon as practicable, judicial, arbitral or administrative tribunals or procedures for the purpose, *inter alia*, of the prompt review and correction of administrative action relating to customs matters. Such tribunals or procedures shall be independent of the agencies entrusted with administrative enforcement and their decisions shall be implemented by, and shall govern the practice of, such agencies unless an appeal is lodged with a court or tribunal of superior jurisdiction within the time prescribed for appeals to be lodged by importers; *Provided* that the central administration of such agency may take steps to obtain a review of the matter in another

proceeding if there is good cause to believe that the decision is inconsistent with established principles of law or the actual facts.

(*c*) The provisions of sub-paragraph (*b*) of this paragraph shall not require the elimination or substitution of procedures in force in the territory of a contracting party on the date of this Agreement which in fact provide for an objective and impartial review of administrative action even though such procedures are not fully or formally independent of the agencies entrusted with administrative enforcement. Any contracting party employing such procedures shall, upon request, furnish the CONTRACTING PARTIES with full information thereon in order that they may determine whether such procedures conform to the requirements of this sub-paragraph.

Article XI*

General Elimination of Quantitative Restrictions

1. No prohibitions or restrictions other than duties, taxes or other charges, whether made effective through quotas, import or export licences or other measures, shall be instituted or maintained by any contracting party on the importation of any product of the territory of any other contracting party or on the exportation or sale for export of any product destined for the territory of any other contracting party.

2. The provisions of paragraph 1 of this Article shall not extend to the following:

(*a*) Export prohibitions or restrictions temporarily applied to prevent or relieve critical shortages of foodstuffs or other products essential to the exporting contracting party;

(*b*) Import and export prohibitions or restrictions necessary to the application of standards or regulations for the classification, grading or marketing of commodities in international trade;

(*c*) Import restrictions on any agricultural or fisheries product, imported in any form,* necessary to the enforcement of governmental measures which operate:

(i) to restrict the quantities of the like domestic product permitted to be marketed or produced, or, if there is no substantial domestic production of the like product, of a domestic product for which the imported product can be directly substituted; or

(ii) to remove a temporary surplus of the like domestic product, or, if there is no substantial domestic production of the like product, of a domestic product for which the imported product can be directly substituted, by making the surplus available to certain groups of domestic consumers free of charge or at prices below the current market level; or

(iii) to restrict the quantities permitted to be produced of any animal product the production of which is directly dependent, wholly or mainly, on the imported commodity, if the domestic production of that commodity is relatively negligible.

Any contracting party applying restrictions on the importation of any product pursuant to sub-paragraph (*c*) of this paragraph shall give public notice of the total quantity or value of the product permitted to be imported during a specified future period and of any change in such quantity or value. Moreover, any restrictions applied under (i) above shall not be such as will reduce the total of imports relative to the total of domestic production, as compared with the proportion which might reasonably be expected to rule between the two in the absence of restrictions. In determining this proportion, the contracting party shall pay due regard to the proportion prevailing during a previous representative period and to any special factors* which may have affected or may be affecting the trade in the product concerned.

Article XII*

Restrictions to Safeguard the Balance of Payments

1. Notwithstanding the provisions of paragraph 1 of Article XI, any contracting party, in order to safeguard its external financial position and its balance of payments, may restrict the quantity or value of merchandise permitted to be imported, subject to the provisions of the following paragraphs of this Article.

2. (*a*) Import restrictions instituted, maintained or intensified by a contracting party under this Article shall not exceed those necessary:

(i) to forestall the imminent threat of, or to stop, a serious decline in its monetary reserves, or

(ii) in the case of a contracting party with very low monetary reserves, to achieve a reasonable rate of increase in its reserves.

Due regard shall be paid in either case to any special factors which may be affecting the reserves of such contracting party or its need for reserves, including, where special external credits or other resources are available to it, the need to provide for the appropriate use of such credits or resources.

(*b*) Contracting parties applying restrictions under sub-paragraph (*a*) of this paragraph shall progressively relax them as such conditions improve,maintaining them only to the extent that the conditions specified in that sub-paragraph still justify their application. They shall eliminate the restrictions when conditions would no longer justify their institution or maintenance under that sub-paragraph.

3. (*a*) Contracting parties undertake, in carrying out their domestic policies, to pay due regard to the need for maintaining or restoring equilibrium in their balance of payments on a sound and lasting basis and to the desirability of avoiding an uneconomic employment of productive resources. They recognize that, in order to achieve these ends, it is desirable so far as possible to adopt measures which expand rather than contract international trade.

(*b*) Contracting parties applying restrictions under this Article may determine the incidence of the restrictions on imports of different products or classes of products in such a way as to give priority to the importation of those products which are more essential.

(*c*) Contracting parties applying restrictions under this Article undertake:

(i) to avoid unnecessary damage to the commercial or economic interests of any other contracting party;*

(ii) not to apply restrictions so as to prevent unreasonably the importation of any description of goods in minimum commercial quantities the exclusion of which would impair regular channels of trade; and

(iii) not to apply restrictions which would prevent the importations of commercial samples or prevent compliance with patent, trade mark, copyright, or similar procedures.

(*d*) The contracting parties recognize that, as a result of domestic policies directed towards the achievement and maintenance of full and productive employment or towards the development of economic resources, a contracting party may experience a high level of demand for imports involving a threat to its monetary reserves of the sort referred to in paragraph 2 (*a*) of this Article. Accordingly, a contracting party otherwise complying with the provisions of this Article shall not be required to withdraw or modify restrictions on the ground that a change in those policies would render unnecessary restrictions which it is applying under this Article.

4. (*a*) Any contracting party applying new restrictions or raising the general level of its existing restrictions by a substantial intensification of the measures applied under this Article shall immediately after instituting or intensifying such restrictions (or, in circumstances in which prior consultation is practicable, before doing so) consult with the CONTRACTING PARTIES as to the nature of its balance of payments difficulties, alternative corrective measures which may be available, and the possible effect of the restrictions on the economies of other contracting parties.

(*b*) On a date to be determined by them,* the CONTRACTING PARTIES shall review all restrictions still applied under this Article on that date. Beginning one year after that date, contracting parties applying import restrictions under this Article shall enter into consultations of the type provided for in sub-paragraph (*a*) of this paragraph with the CONTRACTING PARTIES annually.

(*c*) (i) If, in the course of consultations with a contracting party under sub-paragraph (*a*) or (*b*) above, the CONTRACTING PARTIES find that the restrictions are not consistent with provisions of this Article or with those of Article XIII (subject to the provisions of Article XIV), they shall indicate the nature of the inconsistency and may advise that the restrictions be suitably modified.

(ii) If, however, as a result of the consultations, the CONTRACTING PARTIES determine that the restrictions are being applied in a manner involving an inconsistency of a serious nature with the provisions of this Article or with those of Article XIII (subject to the provisions of Article XIV) and that damage to the trade of any contracting party is caused or threatened thereby, they shall so inform the contracting party applying the restrictions and shall make appropriate recommendations for securing conformity with such provisions within the specified period of time. If such contracting party does not comply with these recommendations within the specified period, the CONTRACTING PARTIES may release any contracting party the trade of which is adversely affected by the restrictions from such obligations under this Agreement towards the contracting party applying the restrictions as they determine to be appropriate in the circumstances.

(*d*) The CONTRACTING PARTIES shall invite any contracting party which is applying restrictions under this Article to enter into consultations with them at the request of any contracting party which can establish a *prima facie* case that the restrictions are inconsistent with the provisions of this Article or with those of Article XIII (subject to the provisions of Article XIV) and that its trade is adversely affected thereby. However, no such invitation shall be issued unless the CONTRACTING PARTIES have ascertained that direct discussions between the contracting parties concerned have not been successful. If, as a result of the consultations with the CONTRACTING PARTIES, no agreement is reached and they determine that the restrictions are being applied inconsistently with such provisions, and that damage to the trade of the contracting party initiating the procedure is caused or threatened thereby, they shall recommend the withdrawal or modification of the restrictions. If the restrictions are not withdrawn or modified within such time as the CONTRACTING PARTIES may prescribe, they may release the contracting party initiating the procedure from such obligations under this Agreement towards the contracting party applying the restrictions as they determine to be appropriate in the circumstances.

(*e*) In proceeding under this paragraph, the CONTRACTING PARTIES shall have due regard to any special external factors adversely affecting the export trade of the contracting party applying the restrictions.*

(*f*) Determinations under this paragraph shall be rendered expeditiously and, if possible, within sixty days of the initiation of the consultations.

5. If there is a persistent and widespread application of import restrictions under this Article, indicating the existence of a general disequilibrium which is restricting international trade, the CONTRACTING PARTIES shall initiate discussions to consider whether other measures might be taken, either by those contracting parties the balance of payments of which are under pressure or by those the balance of payments of which are tending to be exceptionally favourable, or by any appropriate intergovernmental organization, to

remove the underlying causes of the disequilibrium. On the invitation of the CONTRACTING PARTIES, contracting parties shall participate in such discussions.

Article XIII*

Non-discriminatory Administration of Quantitative Restrictions

1. No prohibition or restriction shall be applied by any contracting party on the importation of any product of the territory of any other contracting party or on the exportation of any product destined for the territory of any other contracting party, unless the importation of the like product of all third countries or the exportation of the like product to all third countries is similarly prohibited or restricted.

2. In applying import restrictions to any product, contracting parties shall aim at a distribution of trade in such product approaching as closely as possible the shares which the various contracting parties might be expected to obtain in the absence of such restrictions and to this end shall observe the following provisions:

(*a*) Wherever practicable, quotas representing the total amount of permitted imports (whether allocated among supplying countries or not) shall be fixed, and notice given of their amount in accordance with paragraph 3 (*b*) of this Article;

(*b*) In cases in which quotas are not practicable, the restrictions may be applied by means of import licences or permits without a quota;

(*c*) Contracting parties shall not, except for purposes of operating quotas allocated in accordance with sub-paragraph (*d*) of this paragraph, require that import licences or permits be utilized for the importation of the product concerned from a particular country or source;

(*d*) In cases in which a quota is allocated among supplying countries the contracting party applying the restrictions may seek agreement with respect to the allocation of shares in the quota with all other contracting parties having a substantial interest in supplying the product concerned. In cases in which this method is not reasonably practicable, the contracting party concerned shall allot to contracting parties having a substantial interest in supplying the product shares based upon the proportions, supplied by such contracting parties during a previous representative period, of the total quantity or value of imports of the product, due account being taken of any special factors which may have affected or may be affecting the trade in the product. No conditions or formalities shall be imposed which would prevent any contracting party from utilizing fully the share of any such total quantity or value which has been allotted to it, subject to importation being made within any prescribed period to which the quota may relate.*

3. (*a*) In cases in which import licences are issued in connection with import restrictions, the contracting party applying the restrictions shall provide, upon the request of any contracting party having an interest in the trade in the product concerned, all relevant information concerning the administration of the restrictions, the import licences granted over a recent period and the distribution of such licences among supplying countries; *Provided* that there shall be no obligation to supply information as to the names of importing or supplying enterprises.

(*b*) In the case of import restrictions involving the fixing of quotas, the contracting party applying the restrictions shall give public notice of the total quantity or value of the product or products which will be permitted to be imported during a specified future period and of any change in such quantity or value. Any supplies of the product in question which were *en route* at the time at which public notice was given shall not be excluded from entry; *Provided* that they may be counted so far as practicable, against the quantity permitted to be imported in the period in question, and also, where necessary, against the quantities permitted to be imported in the next following period or periods; and *Provided* further that if any contracting party customarily exempts from such restrictions products entered for consumption or withdrawn from warehouse for consumption during a period of thirty days after the day of such public notice, such practice shall be considered full compliance with this sub-paragraph.

(*c*) In the case of quotas allocated among supplying countries, the contracting party applying the restrictions shall promptly inform all other contracting parties having an interest in supplying the product concerned of the shares in the quota currently allocated, by quantity or value, to the various supplying countries and shall give public notice thereof.

4. With regard to restrictions applied in accordance with paragraph 2 (*d*) of this Article or under paragraph 2 (*c*) of Article XI, the selection of a representative period for any product and the appraisal of any special factors* affecting the trade in the product shall be made initially by the contracting party applying the restriction; *Provided* that such contracting party shall, upon the request of any other contracting party having a substantial interest in supplying that product or upon the request of the CONTRACTING PARTIES, consult promptly with the other contracting party or the CONTRACTING PARTIES regarding the need for an adjustment of the proportion determined or of the base period selected, or for the reappraisal of the special factors involved, or for the elimination of conditions, formalities or any other provisions established unilaterally relating to the allocation of an adequate quota or its unrestricted utilization.

5. The provisions of this Article shall apply to any tariff quota instituted or maintained by any contracting party, and, in so far as applicable, the principles of this Article shall also extend to export restrictions.

Article XIV*

Exceptions to the Rule of Non-discrimination

1. A contracting party which applies restrictions under Article XII or under Section B of Article XVIII may, in the application of such restrictions, deviate from the provisions of Article XIII in a manner having equivalent effect to restrictions on payments and transfers for current international transactions which that contracting party may at that time apply under Article VIII or XIV of the Articles of Agreement of the International Monetary Fund, or under analogous provisions of a special exchange agreement entered into pursuant to paragraph 6 of Article XV.*

2. A contracting party which is applying import restrictions under Article XII or under Section B of Article XVIII may, with the consent of the CONTRACTING PARTIES, temporarily deviate from the provisions of Article XIII in respect of a small part of its external trade where the benefits to the contracting party or contracting parties concerned substantially outweigh any injury which may result to the trade of other contracting parties.*

3. The provisions of Article XIII shall not preclude a group of territories having a common quota in the International Monetary Fund from applying against imports from other countries, but not among themselves, restrictions in accordance with the provisions of Article XII or of Section B of Article XVIII on condition that such restrictions are in all other respects consistent with the provisions of Article XIII.

4. A contracting party applying import restrictions under Article XII or under Section B of Article XVIII shall not be precluded by Articles XI to XV or Section B of Article XVIII of this Agreement from applying measures to direct its exports in such a manner as to increase its earnings of currencies which it can use without deviation from the provisions of Article XIII.

5. A contracting party shall not be precluded by Articles XI to XV, inclusive, or by Section B of Article XVIII, of this Agreement from applying quantitative restrictions:

(*a*) having equivalent effect to exchange restrictions authorized under Section 3 (*b*) of Article VII of the Articles of Agreement of the International Monetary Fund, or

(*b*) under the preferential arrangements provided for in Annex A of this Agreement, pending the outcome of the negotiations referred to therein.

Article XV

Exchange Arrangements

1. The CONTRACTING PARTIES shall seek co-operation with the International Monetary Fund to the end that the CONTRACTING PARTIES and the Fund may pursue a co-ordinated policy with regard to exchange questions within the jurisdiction of the Fund and questions of quantitative restrictions and other trade measures within the jurisdiction of the CONTRACTING PARTIES.

2. In all cases in which the CONTRACTING PARTIES are called upon to consider or deal with problems concerning monetary reserves, balances of payments or foreign exchange arrangements, they shall consult fully with the International Monetary Fund. In such consultations, the CONTRACTING PARTIES shall accept all findings of statistical and other facts presented by the Fund relating to foreign exchange, monetary reserves and balances of payments, and shall accept the determination of the Fund as to whether action by a contracting party in exchange matters is in accordance with the Articles of Agreement of the International Monetary Fund, or with the terms of a special exchange agreement between that contracting party and the CONTRACTING PARTIES. The CONTRACTING PARTIES in reaching their final decision in cases involving the criteria set forth in paragraph 2 (*a*) of Article XII or in paragraph 9 of Article XVIII, shall accept the determination of the Fund as to what constitutes a serious decline in the contracting party's monetary reserves, a very low level of its monetary reserves or a reasonable rate of increase in its monetary reserves, and as to the financial aspects of other matters covered in consultation in such cases.

3. The CONTRACTING PARTIES shall seek agreement with the Fund regarding procedures for consultation under paragraph 2 of this Article.

4. Contracting parties shall not, by exchange action, frustrate* the intent of the provisions of this Agreement, nor, by trade action, the intent of the provisions of the Articles of Agreement of the International Monetary Fund.

5. If the CONTRACTING PARTIES consider, at any time, that exchange restrictions on payments and transfers in connection with imports are being applied by a contracting party in a manner inconsistent with the exceptions provided for in this Agreement for quantitative restrictions, they shall report thereon to the Fund.

6. Any contracting party which is not a member of the Fund shall, within a time to be determined by the CONTRACTING PARTIES after consultation with the Fund, become a member of the Fund, or, failing that, enter into a special exchange agreement with the CONTRACTING PARTIES. A contracting party which ceases to be a member of the Fund shall forthwith enter into a special exchange agreement with the CONTRACTING PARTIES. Any special exchange agreement entered into by a contracting party under this paragraph shall thereupon become part of its obligations under this Agreement.

7. (*a*) A special exchange agreement between a contracting party and the CONTRACTING PARTIES under paragraph 6 of this Article shall provide to the satisfaction of the CONTRACTING PARTIES that the objectives of this Agreement will not be frustrated as a result of action in exchange matters by the contracting party in question.

(*b*) The terms of any such agreement shall not impose obligations on the contracting party in exchange matters generally more restrictive than those imposed by the Articles of Agreement of the International Monetary Fund on members of the Fund.

8. A contracting party which is not a member of the Fund shall furnish such information within the general scope of section 5 of Article VIII of the Articles of Agreement of the International

Monetary Fund as the CONTRACTING PARTIES may require in order to carry out their functions under this Agreement.

9. Nothing in this Agreement shall preclude:

(*a*) the use by a contracting party of exchange controls or exchange restrictions in accordance with the Articles of Agreement of the International Monetary Fund or with that contracting party's special exchange agreement with the CONTRACTING PARTIES, or

(*b*) the use by a contracting party of restrictions or controls in imports or exports, the sole effect of which, additional to the effects permitted under Articles XI, XII, XIII and XIV, is to make effective such exchange controls or exchange restrictions.

Article XVI*

Subsidies

Section A _ Subsidies in General

1. If any contracting party grants or maintains any subsidy, including any form of income or price support, which operates directly or indirectly to increase exports of any product from, or to reduce imports of any product into, its territory, it shall notify the CONTRACTING PARTIES in writing of the extent and nature of the subsidization, of the estimated effect of the subsidization on the quantity of the affected product or products imported into or exported from its territory and of the circumstances making the subsidization necessary. In any case in which it is determined that serious prejudice to the interests of any other contracting party is caused or threatened by any such subsidization, the contracting party granting the subsidy shall, upon request, discuss with the other contracting party or parties concerned, or with the CONTRACTING PARTIES, the possibility of limiting the subsidization.

Section B _ Additional Provisions on Export Subsidies*

2. The contracting parties recognize that the granting by a contracting party of a subsidy on the export of any product may have harmful effects for other contracting parties, both importing and exporting, may cause undue disturbance to their normal commercial interests, and may hinder the achievement of the objectives of this Agreement.

3. Accordingly, contracting parties should seek to avoid the use of subsidies on the export of primary products. If, however, a contracting party grants directly or indirectly any form of subsidy which operates to increase the export of any primary product from its territory, such subsidy shall not be applied in a manner which results in that contracting party having more than an equitable share of world export trade in that product, account being taken of the shares of the contracting parties in such trade in the product during a previous representative period, and any special factors which may have affected or may be affecting such trade in the product.*

4. Further, as from 1 January 1958 or the earliest practicable date thereafter, contracting parties shall cease to grant either directly or indirectly any form of subsidy on the export of any product other than a primary product which subsidy results in the sale of such product for export at a price lower than the comparable price charged for the like product to buyers in the domestic market. Until 31 December 1957 no contracting party shall extend the scope of any such subsidization beyond that existing on 1 January 1955 by the introduction of new, or the extension of existing, subsidies.*

5. The CONTRACTING PARTIES shall review the operation of the provisions of this Article from time to time with a view to examining its effectiveness, in the light of actual experience, in promoting

the objectives of this Agreement and avoiding subsidization seriously prejudicial to the trade or interests of contracting parties.

Article XVII

State Trading Enterprises

1.* (*a*) Each contracting party undertakes that if it establishes or maintains a State enterprise, wherever located, or grants to any enterprise, formally or in effect, exclusive or special privileges,* such enterprise shall, in its purchases or sales involving either imports or exports, act in a manner consistent with the general principles of non-discriminatory treatment prescribed in this Agreement for governmental measures affecting imports or exports by private traders.

(*b*) The provisions of sub-paragraph (*a*) of this paragraph shall be understood to require that such enterprises shall, having due regard to the other provisions of this Agreement, make any such purchases or sales solely in accordance with commercial considerations,* including price, quality, availability, marketability, transportation and other conditions of purchase or sale, and shall afford the enterprises of the other contracting parties adequate opportunity, in accordance with customary business practice, to compete for participation in such purchases or sales.

(*c*) No contracting party shall prevent any enterprise (whether or not an enterprise described in sub-paragraph (*a*) of this paragraph) under its jurisdiction from acting in accordance with the principles of sub-paragraphs (*a*) and (*b*) of this paragraph.

2. The provisions of paragraph 1 of this Article shall not apply to imports of products for immediate or ultimate consumption in governmental use and not otherwise for resale or use in the production of goods* for sale. With respect to such imports, each contracting party shall accord to the trade of the other contracting parties fair and equitable treatment.

3. The contracting parties recognize that enterprises of the kind described in paragraph 1 (*a*) of this Article might be operated so as to create serious obstacles to trade; thus negotiations on a reciprocal and mutually advantageous basis designed to limit or reduce such obstacles are of importance to the expansion of international trade.*

4. (*a*) Contracting parties shall notify the CONTRACTING PARTIES of the products which are imported into or exported from their territories by enterprises of the kind described in paragraph 1 (*a*) of this Article.

(*b*) A contracting party establishing, maintaining or authorizing an import monopoly of a product, which is not the subject of a concession under Article II, shall, on the request of another contracting party having a substantial trade in the product concerned, inform the CONTRACTING PARTIES of the import mark-up* on the product during a recent representative period, or, when it is not possible to do so, of the price charged on the resale of the product.

(*c*) The CONTRACTING PARTIES may, at the request of a contracting party which has reason to believe that its interest under this Agreement are being adversely affected by the operations of an enterprise of the kind described in paragraph 1 (*a*), request the contracting party establishing, maintaining or authorizing such enterprise to supply information about its operations related to the carrying out of the provisions of this Agreement.

(*d*) The provisions of this paragraph shall not require any contracting party to disclose confidential information which would impede law enforcement or otherwise be contrary to the public interest or would prejudice the legitimate commercial interests of particular enterprises.

Article XVIII*

Governmental Assistance to Economic Development

1. The contracting parties recognize that the attainment of the objectives of this Agreement will be facilitated by the progressive development of their economies, particularly of those contracting parties the economies of which can only support low standards of living* and are in the early stages of development.*

2. The contracting parties recognize further that it may be necessary for those contracting parties, in order to implement programmes and policies of economic development designed to raise the general standard of living of their people, to take protective or other measures affecting imports, and that such measures are justified in so far as they facilitate the attainment of the objectives of this Agreement. They agree, therefore, that those contracting parties should enjoy additional facilities to enable them (*a*) to maintain sufficient flexibility in their tariff structure to be able to grant the tariff protection required for the establishment of a particular industry* and (*b*) to apply quantitative restrictions for balance of payments purposes in a manner which takes full account of the continued high level of demand for imports likely to be generated by their programmes of economic development.

3. The contracting parties recognize finally that, with those additional facilities which are provided for in Sections A and B of this Article, the provisions of this Agreement would normally be sufficient to enable contracting parties to meet the requirements of their economic development. They agree, however, that there may be circumstances where no measure consistent with those provisions is practicable to permit a contracting party in the process of economic development to grant the governmental assistance required to promote the establishment of particular industries* with a view to raising the general standard of living of its people. Special procedures are laid down in Sections C and D of this Article to deal with those cases.

4. (*a*) Consequently, a contracting party, the economy of which can only support low standards of living* and is in the early stages of development,* shall be free to deviate temporarily from the provisions of the other Articles of this Agreement, as provided in Sections A, B and C of this Article.

(*b*) A contracting party, the economy of which is in the process of development, but which does not come within the scope of sub-paragraph (*a*) above, may submit applications to the CONTRACTING PARTIES under Section D of this Article.

5. The contracting parties recognize that the export earnings of contracting parties, the economies of which are of the type described in paragraph 4 (*a*) and (*b*) above and which depend on exports of a small number of primary commodities, may be seriously reduced by a decline in the sale of such commodities. Accordingly, when the exports of primary commodities by such a contracting party are seriously affected by measures taken by another contracting party, it may have resort to the consultation provisions of Article XXII of this Agreement.

6. The CONTRACTING PARTIES shall review annually all measures applied pursuant to the provisions of Sections C and D of this Article.

Section A

7. (*a*) If a contracting party coming within the scope of paragraph 4 (*a*) of this Article considers it desirable, in order to promote the establishment of a particular industry* with a view to raising the general standard of living of its people, to modify or withdraw a concession included in the appropriate Schedule annexed to this Agreement, it shall notify the CONTRACTING PARTIES to this effect and enter into negotiations with any contracting party with which such concession was initially negotiated, and with any other contracting party determined by the CONTRACTING PARTIES to have a substantial interest therein. If agreement is reached between such contracting parties concerned, they shall be free to modify or withdraw

concessions under the appropriate Schedules to this Agreement in order to give effect to such agreement, including any compensatory adjustments involved.

(*b*) If agreement is not reached within sixty days after the notification provided for in sub-paragraph (*a*) above, the contracting party which proposes to modify or withdraw the concession may refer the matter to the CONTRACTING PARTIES which shall promptly examine it. If they find that the contracting party which proposes to modify or withdraw the concession has made every effort to reach an agreement and that the compensatory adjustment offered by it is adequate, that contracting party shall be free to modify or withdraw the concession if, at the same time, it gives effect to the compensatory adjustment. If the CONTRACTING PARTIES do not find that the compensation offered by a contracting party proposing to modify or withdraw the concession is adequate, but find that it has made every reasonable effort to offer adequate compensation, that contracting party shall be free to proceed with such modification or withdrawal. If such action is taken, any other contracting party referred to in sub-paragraph (*a*) above shall be free to modify or withdraw substantially equivalent concessions initially negotiated with the contracting party which has taken the action.*

Section B

8. The contracting parties recognize that contracting parties coming within the scope of paragraph 4 (*a*) of this Article tend, when they are in rapid process of development, to experience balance of payments difficulties arising mainly from efforts to expand their internal markets as well as from the instability in their terms of trade.

9. In order to safeguard its external financial position and to ensure a level of reserves adequate for the implementation of its programme of economic development, a contracting party coming within the scope of paragraph 4 (*a*) of this Article may, subject to the provisions of paragraphs 10 to 12, control the general level of its imports by restricting the quantity or value of merchandise permitted to be imported; *Provided* that the import restrictions instituted, maintained or intensified shall not exceed those necessary:

(*a*) to forestall the threat of, or to stop, a serious decline in its monetary reserves, or

(*b*) in the case of a contracting party with inadequate monetary reserves, to achieve a reasonable rate of increase in its reserves.

Due regard shall be paid in either case to any special factors which may be affecting the reserves of the contracting party or its need for reserves, including, where special external credits or other resources are available to it, the need to provide for the appropriate use of such credits or resources.

10. In applying these restrictions, the contracting party may determine their incidence on imports of different products or classes of products in such a way as to give priority to the importation of those products which are more essential in the light of its policy of economic development; *Provided* that the restrictions are so applied as to avoid unnecessary damage to the commercial or economic interests of any other contracting party and not to prevent unreasonably the importation of any description of goods in minimum commercial quantities the exclusion of which would impair regular channels of trade; and *Provided* further that the restrictions are not so applied as to prevent the importation of commercial samples or to prevent compliance with patent, trade mark, copyright or similar procedures.

11. In carrying out its domestic policies, the contracting party concerned shall pay due regard to the need for restoring equilibrium in its balance of payments on a sound and lasting basis and to the desirability of assuring an economic employment of productive resources. It shall progressively relax any restrictions applied under this Section as conditions improve, maintaining them only to the extent necessary under the terms of paragraph 9 of this Article and shall eliminate them when conditions no longer justify such maintenance; *Provided* that no contracting party shall be required to withdraw or modify restrictions on the

ground that a change in its development policy would render unnecessary the restrictions which it is applying under this Section.*

12. (*a*) Any contracting party applying new restrictions or raising the general level of its existing restrictions by a substantial intensification of the measures applied under this Section, shall immediately after instituting or intensifying such restrictions (or, in circumstances in which prior consultation is practicable, before doing so) consult with the CONTRACTING PARTIES as to the nature of its balance of payments difficulties, alternative corrective measures which may be available, and the possible effect of the restrictions on the economies of other contracting parties.

(*b*) On a date to be determined by them* the CONTRACTING PARTIES shall review all restrictions still applied under this Section on that date. Beginning two years after that date, contracting parties applying restrictions under this Section shall enter into consultations of the type provided for in sub-paragraph (*a*) above with the CONTRACTING PARTIES at intervals of approximately, but not less than, two years according to a programme to be drawn up each year by the CONTRACTING PARTIES; *Provided* that no consultation under this sub-paragraph shall take place within two years after the conclusion of a consultation of a general nature under any other provision of this paragraph.

(*c*) (i) If, in the course of consultations with a contracting party under sub-paragraph (*a*) or (*b*) of this paragraph, the CONTRACTING PARTIES find that the restrictions are not consistent with the provisions of this Section or with those of Article XIII (subject to the provisions of Article XIV), they shall indicate the nature of the inconsistency and may advise that the restrictions be suitably modified.

(ii) If, however, as a result of the consultations, the CONTRACTING PARTIES determine that the restrictions are being applied in a manner involving an inconsistency of a serious nature with the provisions of this Section or with those of Article XIII (subject to the provisions of Article XIV) and that damage to the trade of any contracting party is caused or threatened thereby, they shall so inform the contracting party applying the restrictions and shall make appropriate recommendations for securing conformity with such provisions within a specified period. If such contracting party does not comply with these recommendations within the specified period, the CONTRACTING PARTIES may release any contracting party the trade of which is adversely affected by the restrictions from such obligations under this Agreement towards the contracting party applying the restrictions as they determine to be appropriate in the circumstances.

(*d*) The CONTRACTING PARTIES shall invite any contracting party which is applying restrictions under this Section to enter into consultations with them at the request of any contracting party which can establish a *prima facie* case that the restrictions are inconsistent with the provisions of this Section or with those of Article XIII (subject to the provisions of Article XIV) and that its trade is adversely affected thereby. However, no such invitation shall be issued unless the CONTRACTING PARTIES have ascertained that direct discussions between the contracting parties concerned have not been successful. If, as a result of the consultations with the CONTRACTING PARTIES no agreement is reached and they determine that the restrictions are being applied inconsistently with such provisions, and that damage to the trade of the contracting party initiating the procedure is caused or threatened thereby, they shall recommend the withdrawal or modification of the restrictions. If the restrictions are not withdrawn or modified within such time as the CONTRACTING PARTIES may prescribe, they may release the contracting party initiating the procedure from such obligations under this Agreement towards the contracting party applying the restrictions as they determine to be appropriate in the circumstances.

(*e*) If a contracting party against which action has been taken in accordance with the last sentence of sub-paragraph (*c*) (ii) or (*d*) of this paragraph, finds that the release of obligations authorized by the CONTRACTING PARTIES adversely affects the operation of its programme and policy of economic development, it shall be free, not later than sixty days after such action is taken, to give written notice to the Executive Secretary[1] to the CONTRACTING PARTIES of its intention to withdraw from this Agreement and such withdrawal shall take effect on the sixtieth day following the day on which the notice is received by him.

(*f*) In proceeding under this paragraph, the CONTRACTING PARTIES shall have due regard to the factors referred to in paragraph 2 of this Article. Determinations under this paragraph shall be rendered expeditiously and, if possible, within sixty days of the initiation of the consultations.

Section C

13. If a contracting party coming within the scope of paragraph 4 (*a*) of this Article finds that governmental assistance is required to promote the establishment of a particular industry* with a view to raising the general standard of living of its people, but that no measure consistent with the other provisions of this Agreement is practicable to achieve that objective, it may have recourse to the provisions and procedures set out in this Section.*

14. The contracting party concerned shall notify the CONTRACTING PARTIES of the special difficulties which it meets in the achievement of the objective outlined in paragraph 13 of this Article and shall indicate the specific measure affecting imports which it proposes to introduce in order to remedy these difficulties. It shall not introduce that measure before the expiration of the time-limit laid down in paragraph 15 or 17, as the case may be, or if the measure affects imports of a product which is the subject of a concession included in the appropriate Schedule annexed to this Agreement, unless it has secured the concurrence of the CONTRACTING PARTIES in accordance with provisions of paragraph 18; *Provided* that, if the industry receiving assistance has already started production, the contracting party may, after informing the CONTRACTING PARTIES, take such measures as may be necessary to prevent, during that period, imports of the product or products concerned from increasing substantially above a normal level.*

15. If, within thirty days of the notification of the measure, the CONTRACTING PARTIES do not request the contracting party concerned to consult with them,* that contracting party shall be free to deviate from the relevant provisions of the other Articles of this Agreement to the extent necessary to apply the proposed measure.

16. If it is requested by the CONTRACTING PARTIES to do so,* the contracting party concerned shall consult with them as to the purpose of the proposed measure, as to alternative measures which may be available under this Agreement, and as to the possible effect of the measure proposed on the commercial and economic interests of other contracting parties. If, as a result of such consultation, the CONTRACTING PARTIES agree that there is no measure consistent with the other provisions of this Agreement which is practicable in order to achieve the objective outlined in paragraph 13 of this Article, and concur* in the proposed measure, the contracting party concerned shall be released from its obligations under the relevant provisions of the other Articles of this Agreement to the extent necessary to apply that measure.

17. If, within ninety days after the date of the notification of the proposed measure under paragraph 14 of this Article, the CONTRACTING PARTIES have not concurred in such measure, the contracting party concerned may introduce the measure proposed after informing the CONTRACTING PARTIES.

18. If the proposed measure affects a product which is the subject of a concession included in the appropriate Schedule annexed to this Agreement, the contracting party concerned shall enter into consultations with any other contracting party with which the concession was initially negotiated, and with any other contracting party determined by the CONTRACTING PARTIES to have a substantial interest therein. The CONTRACTING PARTIES shall concur* in the measure if they agree that there is no measure consistent with the other provisions of this Agreement which is practicable in order to achieve the objective set forth in paragraph 13 of this Article, and if they are satisfied:

(*a*) that agreement has been reached with such other contracting parties as a result of the consultations referred to above, or

(*b*) if no such agreement has been reached within sixty days after the notification provided for in paragraph 14 has been received by the CONTRACTING PARTIES, that the contracting party having recourse

to this Section has made all reasonable efforts to reach an agreement and that the interests of other contracting parties are adequately safeguarded.*

The contracting party having recourse to this Section shall thereupon be released from its obligations under the relevant provisions of the other Articles of this Agreement to the extent necessary to permit it to apply the measure.

19. If a proposed measure of the type described in paragraph 13 of this Article concerns an industry the establishment of which has in the initial period been facilitated by incidental protection afforded by restrictions imposed by the contracting party concerned for balance of payments purposes under the relevant provisions of this Agreement, that contracting party may resort to the provisions and procedures of this Section; *Provided* that it shall not apply the proposed measure without the concurrence* of the CONTRACTING PARTIES.*

20. Nothing in the preceding paragraphs of this Section shall authorize any deviation from the provisions of Articles I, II and XIII of this Agreement. The provisos to paragraph 10 of this Article shall also be applicable to any restriction under this Section.

21. At any time while a measure is being applied under paragraph 17 of this Article any contracting party substantially affected by it may suspend the application to the trade of the contracting party having recourse to this Section of such substantially equivalent concessions or other obligations under this Agreement the suspension of which the CONTRACTING PARTIES do not disapprove;* *Provided* that sixty days' notice of such suspension is given to the CONTRACTING PARTIES not later than six months after the measure has been introduced or changed substantially to the detriment of the contracting party affected. Any such contracting party shall afford adequate opportunity for consultation in accordance with the provisions of Article XXII of this Agreement.

Section D

22. A contracting party coming within the scope of sub-paragraph 4 (*b*) of this Article desiring, in the interest of the development of its economy, to introduce a measure of the type described in paragraph 13 of this Article in respect of the establishment of a particular industry* may apply to the CONTRACTING PARTIES for approval of such measure. The CONTRACTING PARTIES shall promptly consult with such contracting party and shall, in making their decision, be guided by the considerations set out in paragraph 16. If the CONTRACTING PARTIES concur* in the proposed measure the contracting party concerned shall be released from its obligations under the relevant provisions of the other Articles of this Agreement to the extent necessary to permit it to apply the measure. If the proposed measure affects a product which is the subject of a concession included in the appropriate Schedule annexed to this Agreement, the provisions of paragraph 18 shall apply.*

23. Any measure applied under this Section shall comply with the provisions of paragraph 20 of this Article.

Article XIX

Emergency Action on Imports of Particular Products

1. (*a*) If, as a result of unforeseen developments and of the effect of the obligations incurred by a contracting party under this Agreement, including tariff concessions, any product is being imported into the territory of that contracting party in such increased quantities and under such conditions as to cause or threaten serious injury to domestic producers in that territory of like or directly competitive products, the contracting party shall be free, in respect of such product, and to the extent and for such time as may be necessary to prevent or remedy such injury, to suspend the obligation in whole or in part or to withdraw or modify the concession.

(*b*) If any product, which is the subject of a concession with respect to a preference, is being imported into the territory of a contracting party in the circumstances set forth in sub-paragraph (*a*) of this paragraph, so as to cause or threaten serious injury to domestic producers of like or directly competitive products in the territory of a contracting party which receives or received such preference, the importing contracting party shall be free, if that other contracting party so requests, to suspend the relevant obligation in whole or in part or to withdraw or modify the concession in respect of the product, to the extent and for such time as may be necessary to prevent or remedy such injury.

2. Before any contracting party shall take action pursuant to the provisions of paragraph 1 of this Article, it shall give notice in writing to the CONTRACTING PARTIES as far in advance as may be practicable and shall afford the CONTRACTING PARTIES and those contracting parties having a substantial interest as exporters of the product concerned an opportunity to consult with it in respect of the proposed action. When such notice is given in relation to a concession with respect to a preference, the notice shall name the contracting party which has requested the action. In critical circumstances, where delay would cause damage which it would be difficult to repair, action under paragraph 1 of this Article may be taken provisionally without prior consultation, on the condition that consultation shall be effected immediately after taking such action.

3. (*a*) If agreement among the interested contracting parties with respect to the action is not reached, the contracting party which proposes to take or continue the action shall, nevertheless, be free to do so, and if such action is taken or continued, the affected contracting parties shall then be free, not later than ninety days after such action is taken, to suspend, upon the expiration of thirty days from the day on which written notice of such suspension is received by the CONTRACTING PARTIES, the application to the trade of the contracting party taking such action, or, in the case envisaged in paragraph 1 (*b*) of this Article, to the trade of the contracting party requesting such action, of such substantially equivalent concessions or other obligations under this Agreement the suspension of which the CONTRACTING PARTIES do not disapprove.

(*b*) Notwithstanding the provisions of sub-paragraph (*a*) of this paragraph, where action is taken under paragraph 2 of this Article without prior consultation and causes or threatens serious injury in the territory of a contracting party to the domestic producers of products affected by the action, that contracting party shall, where delay would cause damage difficult to repair, be free to suspend, upon the taking of the action and throughout the period of consultation, such concessions or other obligations as may be necessary to prevent or remedy the injury.

Article XX

General Exceptions

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

(*a*) necessary to protect public morals;

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

(*c*) relating to the importations or exportations of gold or silver;

(*d*) necessary to secure compliance with laws or regulations which are not inconsistent with the provisions of this Agreement, including those

relating to customs enforcement, the enforcement of monopolies operated under paragraph 4 of Article II and Article XVII, the protection of patents, trade marks and copyrights, and the prevention of deceptive practices;

(*e*) relating to the products of prison labour;

(*f*) imposed for the protection of national treasures of artistic, historic or archaeological value;

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

(*h*) undertaken in pursuance of obligations under any intergovernmental commodity agreement which conforms to criteria submitted to the CONTRACTING PARTIES and not disapproved by them or which is itself so submitted and not so disapproved;*

(*i*) involving restrictions on exports of domestic materials necessary to ensure essential quantities of such materials to a domestic processing industry during periods when the domestic price of such materials is held below the world price as part of a governmental stabilization plan; *Provided* that such restrictions shall not operate to increase the exports of or the protection afforded to such domestic industry, and shall not depart from the provisions of this Agreement relating to non-discrimination;

(*j*) essential to the acquisition or distribution of products in general or local short supply; *Provided* that any such measures shall be consistent with the principle that all contracting parties are entitled to an equitable share of the international supply of such products, and that any such measures, which are inconsistent with the other provisions of the Agreement shall be discontinued as soon as the conditions giving rise to them have ceased to exist. The CONTRACTING PARTIES shall review the need for this sub-paragraph not later than 30 June 1960.

Article XXI

Security Exceptions

Nothing in this Agreement shall be construed

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

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

(i) relating to fissionable 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 as is carried on directly or indirectly for the purpose of supplying a military establishment;

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

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

Article XXII

Consultation

1. Each contracting party shall accord sympathetic consideration to, and shall afford adequate opportunity for consultation regarding, such representations as may be made by another contracting party with respect to any matter affecting the operation of this Agreement.

2. The CONTRACTING PARTIES may, at the request of a contracting party, consult with any contracting party or parties in respect of any matter for which it has not been possible to find a satisfactory solution through consultation under paragraph 1.

Article XXIII

Nullification or Impairment

1. If any contracting party should consider that any benefit accruing to it directly or indirectly under this Agreement is being nullified or impaired or that the attainment of any objective of the Agreement is being impeded as the result of

(*a*) the failure of another contracting party to carry out its obligations under this Agreement, or

(*b*) the application by another contracting party of any measure, whether or not it conflicts with the provisions of this Agreement, or

(*c*) the existence of any other situation,

the contracting party may, with a view to the satisfactory adjustment of the matter, make written representations or proposals to the other contracting party or parties which it considers to be concerned. Any contracting party thus approached shall give sympathetic consideration to the representations or proposals made to it.

2. If no satisfactory adjustment is effected between the contracting parties concerned within a reasonable time, or if the difficulty is of the type described in paragraph 1 (*c*) of this Article, the matter may be referred to the CONTRACTING PARTIES. The CONTRACTING PARTIES shall promptly investigate any matter so referred to them and shall make appropriate recommendations to the contracting parties which they consider to be concerned, or give a ruling on the matter, as appropriate. The CONTRACTING PARTIES may consult with contracting parties, with the Economic and Social Council of the United Nations and with any appropriate inter-governmental organization in cases where they consider such consultation necessary. If the CONTRACTING PARTIES consider that the circumstances are serious enough to justify such action, they may authorize a contracting party or parties to suspend the application to any other contracting party or parties of such concessions or other obligations under this Agreement as they determine to be appropriate in the circumstances. If the application to any contracting party of any concession or other obligation is in fact suspended, that contracting party shall then be free, not later than sixty days after such action is taken, to give written notice to the Executive Secretary[1] to the CONTRACTING PARTIES of its intention to withdraw from this Agreement and such withdrawal shall take effect upon the sixtieth day following the day on which such notice is received by him.

[1]See Preface.

PART III

Article XXIV

Territorial Application _ Frontier Traffic _ Customs Unions and Free-trade Areas

1. The provisions of this Agreement shall apply to the metropolitan customs territories of the contracting parties and to any other customs territories in respect of which this Agreement has been accepted under Article XXVI or is being applied under Article XXXIII or pursuant to the Protocol of Provisional Application. Each such customs territory shall, exclusively for the purposes of the territorial application of this Agreement, be treated as though it were a contracting party; *Provided* that the provisions of this paragraph shall not be construed to create any rights or obligations as between two or more customs territories in respect of which this Agreement has been accepted under Article XXVI or is being applied under Article XXXIII or pursuant to the Protocol of Provisional Application by a single contracting party.

2. For the purposes of this Agreement a customs territory shall be understood to mean any territory with respect to which separate tariffs or other regulations of commerce are maintained for a substantial part of the trade of such territory with other territories.

3. The provisions of this Agreement shall not be construed to prevent:

(*a*) Advantages accorded by any contracting party to adjacent countries in order to facilitate frontier traffic;

(*b*) Advantages accorded to the trade with the Free Territory of Trieste by countries contiguous to that territory, provided that such advantages are not in conflict with the Treaties of Peace arising out of the Second World War.

4. The contracting parties recognize the desirability of increasing freedom of trade by the development, through voluntary agreements, of closer integration between the economies of the countries parties to such agreements. They also recognize that the purpose of a customs union or of a free-trade area should be to facilitate trade between the constituent territories and not to raise barriers to the trade of other contracting parties with such territories.

5. Accordingly, the provisions of this Agreement shall not prevent, as between the territories of contracting parties, the formation of a customs union or of a free-trade area or the adoption of an interim agreement necessary for the formation of a customs union or of a free-trade area; *Provided* that:

(*a*) with respect to a customs union, or an interim agreement leading to a formation of a customs union, the duties and other regulations of commerce imposed at the institution of any such union or interim agreement in respect of trade with contracting parties not parties to such union or agreement shall not on the whole be higher or more restrictive than the general incidence of the duties and regulations of commerce applicable in the constituent territories prior to the formation of such union or the adoption of such interim agreement, as the case may be;

(*b*) with respect to a free-trade area, or an interim agreement leading to the formation of a free-trade area, the duties and other regulations of commerce maintained in each if the constituent territories and applicable at the formation of such free-trade area or the adoption of such interim agreement to the trade of contracting parties not included in such area or not parties to such agreement shall not be higher or more restrictive than the corresponding duties and other regulations of commerce existing in the same constituent territories prior to the formation of the free-trade area, or interim agreement as the case may be; and

(*c*) any interim agreement referred to in sub-paragraphs (*a*) and (*b*) shall include a plan and schedule for the formation of such a customs union or of such a free-trade area within a reasonable length of time.

6. If, in fulfilling the requirements of sub-paragraph 5 (*a*), a contracting party proposes to increase any rate of duty inconsistently with the provisions of Article II, the procedure set forth in Article XXVIII shall apply. In providing for compensatory adjustment, due account shall be taken of the

compensation already afforded by the reduction brought about in the corresponding duty of the other constituents of the union.

7. (*a*) Any contracting party deciding to enter into a customs union or free-trade area, or an interim agreement leading to the formation of such a union or area, shall promptly notify the CONTRACTING PARTIES and shall make available to them such information regarding the proposed union or area as will enable them to make such reports and recommendations to contracting parties as they may deem appropriate.

(*b*) If, after having studied the plan and schedule included in an interim agreement referred to in paragraph 5 in consultation with the parties to that agreement and taking due account of the information made available in accordance with the provisions of sub-paragraph (*a*), the CONTRACTING PARTIES find that such agreement is not likely to result in the formation of a customs union or of a free-trade area within the period contemplated by the parties to the agreement or that such period is not a reasonable one, the CONTRACTING PARTIES shall make recommendations to the parties to the agreement. The parties shall not maintain or put into force, as the case may be, such agreement if they are not prepared to modify it in accordance with these recommendations.

(*c*) Any substantial change in the plan or schedule referred to in paragraph 5 (*c*) shall be communicated to the CONTRACTING PARTIES, which may request the contracting parties concerned to consult with them if the change seems likely to jeopardize or delay unduly the formation of the customs union or of the free-trade area.

8. For the purposes of this Agreement:

(*a*) A customs union shall be understood to mean the substitution of a single customs territory for two or more customs territories, so that

(i) duties and other restrictive regulations of commerce (except, where necessary, those permitted under Articles XI, XII, XIII, XIV, XV and XX) are eliminated with respect to substantially all the trade between the constituent territories of the union or at least with respect to substantially all the trade in products originating in such territories, and,

(ii) subject to the provisions of paragraph 9, substantially the same duties and other regulations of commerce are applied by each of the members of the union to the trade of territories not included in the union;

(*b*) A free-trade area shall be understood to mean a group of two or more customs territories in which the duties and other restrictive regulations of commerce (except, where necessary, those permitted under Articles XI, XII, XIII, XIV, XV and XX) are eliminated on substantially all the trade between the constituent territories in products originating in such territories.

9. The preferences referred to in paragraph 2 of Article I shall not be affected by the formation of a customs union or of a free-trade area but may be eliminated or adjusted by means of negotiations with contracting parties affected.* This procedure of negotiations with affected contracting parties shall, in particular, apply to the elimination of preferences required to conform with the provisions of paragraph 8 (*a*)(i) and paragraph 8 (*b*).

10. The CONTRACTING PARTIES may by a two-thirds majority approve proposals which do not fully comply with the requirements of paragraphs 5 to 9 inclusive, provided that such proposals lead to the formation of a customs union or a free-trade area in the sense of this Article.

11. Taking into account the exceptional circumstances arising out of the establishment of India and Pakistan as independent States and recognizing the fact that they have long constituted an economic unit, the contracting parties agree that the provisions of this Agreement shall not prevent the two countries from

entering into special arrangements with respect to the trade between them, pending the establishment of their mutual trade relations on a definitive basis.*

12. Each contracting party shall take such reasonable measures as may be available to it to ensure observance of the provisions of this Agreement by the regional and local governments and authorities within its territories.

Article XXV

Joint Action by the Contracting Parties

1. Representatives of the contracting parties shall meet from time to time for the purpose of giving effect to those provisions of this Agreement which involve joint action and, generally, with a view to facilitating the operation and furthering the objectives of this Agreement. Wherever reference is made in this Agreement to the contracting parties acting jointly they are designated as the CONTRACTING PARTIES.

2. The Secretary-General of the United Nations is requested to convene the first meeting of the CONTRACTING PARTIES, which shall take place not later than March 1, 1948.

3. Each contracting party shall be entitled to have one vote at all meetings of the CONTRACTING PARTIES.

4. Except as otherwise provided for in this Agreement, decisions of the CONTRACTING PARTIES shall be taken by a majority of the votes cast.

5. In exceptional circumstances not elsewhere provided for in this Agreement, the CONTRACTING PARTIES may waive an obligation imposed upon a contracting party by this Agreement; *Provided* that any such decision shall be approved by a two-thirds majority of the votes cast and that such majority shall comprise more than half of the contracting parties. The CONTRACTING PARTIES may also by such a vote

(i) define certain categories of exceptional circumstances to which other voting requirements shall apply for the waiver of obligations, and

(ii) prescribe such criteria as may be necessary for the application of this paragraph.†

Article XXVI

Acceptance, Entry into Force and Registration

1. The date of this Agreement shall be 30 October 1947.

2. This Agreement shall be open for acceptance by any contracting party which, on 1 March 1955, was a contracting party or was negotiating with a view to accession to this Agreement.

3. This Agreement, done in a single English original and a single French original, both texts authentic, shall be deposited with the Secretary-General of the United Nations, who shall furnish certified copies thereof to all interested governments.

4. Each government accepting this Agreement shall deposit an instrument of acceptance with the Executive Secretary[1] to the CONTRACTING PARTIES, who will inform all interested governments of the date of deposit of each instrument of acceptance and of the day on which this Agreement enters into force under paragraph 6 of this Article.

5. (*a*) Each government accepting this Agreement does so in respect of its metropolitan territory and of the other territories for which it has international responsibility, except such separate customs territories as it shall notify to the Executive Secretary[1] to the CONTRACTING PARTIES at the time of its own acceptance.

(*b*) Any government, which has so notified the Executive Secretary[1] under the exceptions in sub-paragraph (*a*) of this paragraph, may at any time give notice to the Executive Secretary[1] that its acceptance shall be effective in respect of any separate customs territory or territories so excepted and such notice shall take effect on the thirtieth day following the day on which it is received by the Executive Secretary.[1]

(*c*) If any of the customs territories, in respect of which a contracting party has accepted this Agreement, possesses or acquires full autonomy in the conduct of its external commercial relations and of the other matters provided for in this Agreement, such territory shall, upon sponsorship through a declaration by the responsible contracting party establishing the above-mentioned fact, be deemed to be a contracting party.

6. This Agreement shall enter into force, as among the governments which have accepted it, on the thirtieth day following the day on which instruments of acceptance have been deposited with Executive Secretary[1] to the CONTRACTING PARTIES on behalf of governments named in Annex H, the territories of which account for 85 per centum of the total external trade of the territories of such governments, computed in accordance with the applicable column of percentages set forth therein, The instrument of acceptance of each other government shall take effect on the thirtieth day following the day on which such instrument has been deposited.

7. The United Nations is authorized to effect registration of this Agreement as soon as it enters into force.

Article XXVII

Withholding or Withdrawal of Concessions

Any contracting party shall at any time be free to withhold or to withdraw in whole or in part any concession, provided for in the appropriate Schedule annexed to this Agreement, in respect of which such contracting party determines that it was initially negotiated with a government which has not become, or has ceased to be, a contracting party. A contracting party taking such action shall notify the CONTRACTING PARTIES and, upon request, consult with contracting parties which have a substantial interest in the product concerned.

Article XXVIII*

Modification of Schedules

1. On the first day of each three-year period, the first period beginning on 1 January 1958 (or on the first day of any other period* that may be specified by the CONTRACTING PARTIES by two-thirds of the votes cast) a contracting party (hereafter in this Article referred to as the "applicant contracting party") may, by negotiation and agreement with any contracting party with which such concession was initially negotiated and with any other contracting party determined by the CONTRACTING PARTIES to have a principal supplying interest* (which two preceding categories of contracting parties, together with the applicant contracting party, are in this Article hereinafter referred to as the "contracting parties primarily concerned"), and subject to consultation with any other contracting party determined by the CONTRACTING PARTIES to have a substantial interest* in such concession, modify or withdraw a concession* included in the appropriate schedule annexed to this Agreement.

2. In such negotiations and agreement, which may include provision for compensatory adjustment with respect to other products, the contracting parties concerned shall endeavour to maintain a general level of reciprocal and mutually advantageous concessions not less favourable to trade than that provided for in this Agreement prior to such negotiations.

3. (*a*) If agreement between the contracting parties primarily concerned cannot be reached before 1 January 1958 or before the expiration of a period envisaged in paragraph 1 of this Article, the contracting party which proposes to modify or withdraw the concession shall, nevertheless, be free to do so and if such action is taken any contracting party with which such concession was initially negotiated, any contracting party determined under paragraph 1 to have a principal supplying interest and any contracting party determined under paragraph 1 to have a substantial interest shall then be free not later than six months after such action is taken, to withdraw, upon the expiration of thirty days from the day on which written notice of such withdrawal is received by the CONTRACTING PARTIES, substantially equivalent concessions initially negotiated with the applicant contracting party.

(*b*) If agreement between the contracting parties primarily concerned is reached but any other contracting party determined under paragraph 1 of this Article to have a substantial interest is not satisfied, such other contracting party shall be free, not later than six months after action under such agreement is taken, to withdraw, upon the expiration of thirty days from the day on which written notice of such withdrawal is received by the CONTRACTING PARTIES, substantially equivalent concessions initially negotiated with the applicant contracting party.

4. The CONTRACTING PARTIES may, at any time, in special circumstances, authorize* a contracting party to enter into negotiations for modification or withdrawal of a concession included in the appropriate Schedule annexed to this Agreement subject to the following procedures and conditions:

(*a*) Such negotiations* and any related consultations shall be conducted in accordance with the provisions of paragraph 1 and 2 of this Article.

(*b*) If agreement between the contracting parties primarily concerned is reached in the negotiations, the provisions of paragraph 3 (*b*) of this Article shall apply.

(*c*) If agreement between the contracting parties primarily concerned is not reached within a period of sixty days* after negotiations have been authorized, or within such longer period as the CONTRACTING PARTIES may have prescribed, the applicant contracting party may refer the matter to the CONTRACTING PARTIES.

(*d*) Upon such reference, the CONTRACTING PARTIES shall promptly examine the matter and submit their views to the contracting parties primarily concerned with the aim of achieving a settlement. If a settlement is reached, the provisions of paragraph 3 (*b*) shall apply as if agreement between the contracting parties primarily concerned had been reached. If no settlement is reached between the contracting parties primarily concerned, the applicant contracting party shall be free to modify or withdraw the concession, unless the CONTRACTING PARTIES determine that the applicant contracting party has unreasonably failed to offer adequate compensation.* If such action is taken, any contracting party with which the concession was initially negotiated, any contracting party determined under paragraph 4 (*a*) to have a principal supplying interest and any contracting party determined under paragraph 4 (*a*) to have a substantial interest, shall be free, not later than six months after such action is taken, to modify or withdraw, upon the expiration of thirty days from the day on which written notice of such withdrawal is received by the CONTRACTING PARTIES, substantially equivalent concessions initially negotiated with applicant contracting party.

5. Before 1 January 1958 and before the end of any period envisaged in paragraph 1 a contracting party may elect by notifying the CONTRACTING PARTIES to reserve the right, for the duration of the next period, to modify the appropriate Schedule in accordance with the procedures of paragraph 1 to 3. If a contracting party so elects, other contracting parties shall have the right, during the same period, to modify

or withdraw, in accordance with the same procedures, concessions initially negotiated with that contracting party.

Article XXVIII bis

Tariff Negotiations

1. The contracting parties recognize that customs duties often constitute serious obstacles to trade; thus negotiations on a reciprocal and mutually advantageous basis, directed to the substantial reduction of the general level of tariffs and other charges on imports and exports and in particular to the reduction of such high tariffs as discourage the importation even of minimum quantities, and conducted with due regard to the objectives of this Agreement and the varying
needs of individual contracting parties, are of great importance to the expansion of international trade. The CONTRACTING PARTIES may therefore sponsor such negotiations from time to time.

2. (*a*) Negotiations under this Article may be carried out on a selective product-by-product basis or by the application of such multilateral procedures as may be accepted by the contracting parties concerned. Such negotiations may be directed towards the reduction of duties, the binding of duties at then existing levels or undertakings that individual duties or the average duties on specified categories of products shall not exceed specified levels. The binding against increase of low duties or of duty-free treatment shall, in principle, be recognized as a concession equivalent in value to the reduction of high duties.

(*b*) The contracting parties recognize that in general the success of multilateral negotiations would depend on the participation of all contracting parties which conduct a substantial proportion of their external trade with one another.

3. Negotiations shall be conducted on a basis which affords adequate opportunity to take into account:

(*a*) the needs of individual contracting parties and individual industries;

(*b*) the needs of less-developed countries for a more flexible use of tariff protection to assist their economic development and the special needs of these countries to maintain tariffs for revenue purposes; and

(*c*) all other relevant circumstances, including the fiscal,* developmental, strategic and other needs of the contracting parties concerned.

Article XXIX

The Relation of this Agreement to the Havana Charter

1. The contracting parties undertake to observe to the fullest extent of their executive authority the general principles of Chapters I to VI inclusive and of Chapter IX of the Havana Charter pending their acceptance of it in accordance with their constitutional procedures.*

2. Part II of this Agreement shall be suspended on the day on which the Havana Charter enters into force.

3. If by September 30, 1949, the Havana Charter has not entered into force, the contracting parties shall meet before December 31, 1949, to agree whether this Agreement shall be amended, supplemented or maintained.

4. If at any time the Havana Charter should cease to be in force, the CONTRACTING PARTIES shall meet as soon as practicable thereafter to agree whether this Agreement shall be supplemented, amended or maintained. Pending such agreement, Part II of this Agreement shall again enter into force; *Provided* that the provisions of Part II other than Article XXIII shall be replaced, *mutatis mutandis*, in the form in which they then appeared in the Havana Charter; and *Provided* further that no contracting party shall be bound by any provisions which did not bind it at the time when the Havana Charter ceased to be in force.

5. If any contracting party has not accepted the Havana Charter by the date upon which it enters into force, the CONTRACTING PARTIES shall confer to agree whether, and if so in what way, this Agreement in so far as it affects relations between such contracting party and other contracting parties, shall be supplemented or amended. Pending such agreement the provisions of Part II of this Agreement shall, notwithstanding the provisions of paragraph 2 of this Article, continue to apply as between such contracting party and other contracting parties.

6. Contracting parties which are Members of the International Trade Organization shall not invoke the provisions of this Agreement so as to prevent the operation of any provision of the Havana Charter. The application of the principle underlying this paragraph to any contracting party which is not a Member of the International Trade Organization shall be the subject of an agreement pursuant to paragraph 5 of this Article.

Article XXX

Amendments

1. Except where provision for modification is made elsewhere in this Agreement, amendments to the provisions of Part I of this Agreement or the provisions of Article XXIX or of this Article shall become effective upon acceptance by all the contracting parties, and other amendments to this Agreement shall become effective, in respect of those contracting parties which accept them, upon acceptance by two-thirds of the contracting parties and thereafter for each other contracting party upon acceptance by it.

2. Any contracting party accepting an amendment to this Agreement shall deposit an instrument of acceptance with the Secretary-General of the United Nations within such period as the CONTRACTING PARTIES may specify. The CONTRACTING PARTIES may decide that any amendment made effective under this Article is of such a nature that any contracting party which has not accepted it within a period specified by the CONTRACTING PARTIES shall be free to withdraw from this Agreement, or to remain a contracting party with the consent of the CONTRACTING PARTIES.

Article XXXI

Withdrawal

Without prejudice to the provisions of paragraph 12 of Article XVIII, of Article XXIII or of paragraph 2 of Article XXX, any contracting party may withdraw from this Agreement, or may separately withdraw on behalf of any of the separate customs territories for which it has international responsibility and which at the time possesses full autonomy in the conduct of its external commercial relations and of the other matters provided for in this Agreement. The withdrawal shall take effect upon the expiration of six months from the day on which written notice of withdrawal is received by the Secretary-General of the United Nations.

Article XXXII

Contracting Parties

1. The contracting parties to this Agreement shall be understood to mean those governments which are applying the provisions of this Agreement under Articles XXVI or XXXIII or pursuant to the Protocol of Provisional Application.

2. At any time after the entry into force of this Agreement pursuant to paragraph 6 of Article XXVI, those contracting parties which have accepted this Agreement pursuant to paragraph 4 of Article XXVI may decide that any contracting party which has not so accepted it shall cease to be a contracting party.

Article XXXIII

Accession

A government not party to this Agreement, or a government acting on behalf of a separate customs territory possessing full autonomy in the conduct of its external commercial relations and of the other matters provided for in this Agreement, may accede to this Agreement, on its own behalf or on behalf of that territory, on terms to be agreed between such government and the CONTRACTING PARTIES. Decisions of the CONTRACTING PARTIES under this paragraph shall be taken by a two-thirds majority.

Article XXXIV

Annexes

The annexes to this Agreement are hereby made an integral part of this Agreement.

Article XXXV

Non-application of the Agreement between Particular Contracting Parties

1. This Agreement, or alternatively Article II of this Agreement, shall not apply as between any contracting party and any other contracting party if:

(*a*) the two contracting parties have not entered into tariff negotiations with each other, and

(*b*) either of the contracting parties, at the time either becomes a contracting party, does not consent to such application.

2. The CONTRACTING PARTIES may review the operation of this Article in particular cases at the request of any contracting party and make appropriate recommendations.

PART IV*

TRADE AND DEVELOPMENT

Article XXXVI

Principles and Objectives

1.* The contracting parties,

(*a*) recalling that the basic objectives of this Agreement include the raising of standards of living and the progressive development of the economies of all contracting parties, and considering that the attainment of these objectives is particularly urgent for less-developed contracting parties;

(*b*) considering that export earnings of the less-developed contracting parties can play a vital part in their economic development and that the extent of this contribution depends on the prices paid by the less-developed contracting parties for essential imports, the volume of their exports, and the prices received for these exports;

(*c*) noting, that there is a wide gap between standards of living in less-developed countries and in other countries;

(*d*) recognizing that individual and joint action is essential to further the development of the economies of less-developed contracting parties and to bring about a rapid advance in the standards of living in these countries;

(*e*) recognizing that international trade as a means of achieving economic and social advancement should be governed by such rules and procedures _ and measures in conformity with such rules and procedures _ as are consistent with the objectives set forth in this Article;

(*f*) noting that the CONTRACTING PARTIES may enable less-developed contracting parties to use special measures to promote their trade and development;

agree as follows.

2. There is need for a rapid and sustained expansion of the export earnings of the less-developed contracting parties.

3. There is need for positive efforts designed to ensure that less-developed contracting parties secure a share in the growth in international trade commensurate with the needs of their economic development.

4. Given the continued dependence of many less-developed contracting parties on the exportation of a limited range of primary products,* there is need to provide in the largest possible measure more favourable and acceptable conditions of access to world markets for these products, and wherever appropriate to devise measures designed to stabilize and improve conditions of world markets in these products, including in particular measures designed to attain stable, equitable and remunerative prices, thus permitting an expansion of world trade and demand and a dynamic and steady growth of the real export earnings of these countries so as to provide them with expanding resources for their economic development.

5. The rapid expansion of the economies of the less-developed contracting parties will be facilitated by a diversification* of the structure of their economies and the avoidance of an excessive dependence on the export of primary products. There is, therefore, need for increased access in the largest possible measure to markets under favourable conditions for processed and manufactured products currently or potentially of particular export interest to less-developed contracting parties.

6. Because of the chronic deficiency in the export proceeds and other foreign exchange earnings of less-developed contracting parties, there are important inter-relationships between trade and financial assistance to development. There is, therefore, need for close and continuing collaboration between the CONTRACTING PARTIES and the international lending agencies so that they can contribute most effectively to alleviating the burdens these less-developed contracting parties assume in the interest of their economic development.

7. There is need for appropriate collaboration between the CONTRACTING PARTIES, other intergovernmental bodies and the organs and agencies of the United Nations system, whose activities relate to the trade and economic development of less-developed countries.

8. The developed contracting parties do not expect reciprocity for commitments made by them in trade negotiations to reduce or remove tariffs and other barriers to the trade of less-developed contracting parties.*

9. The adoption of measures to give effect to these principles and objectives shall be a matter of conscious and purposeful effort on the part of the contracting parties both individually and jointly.

Article XXXVII

Commitments

1. The developed contracting parties shall to the fullest extent possible _ that is, except when compelling reasons, which may include legal reasons, make it impossible _ give effect to the following provisions:

(*a*) accord high priority to the reduction and elimination of barriers to products currently or potentially of particular export interest to less-developed contracting parties, including customs duties and other restrictions which differentiate unreasonably between such products in their primary and in their processed forms;*

(*b*) refrain from introducing, or increasing the incidence of, customs duties or non-tariff import barriers on products currently or potentially of particular export interest to less-developed contracting parties; and

(*c*) (i) refrain from imposing new fiscal measures, and

(ii) in any adjustments of fiscal policy accord high priority to the reduction and elimination of fiscal measures,

which would hamper, or which hamper, significantly the growth of consumption of primary products, in raw or processed form, wholly or mainly produced in the territories of less-developed contracting parties, and which are applied specifically to those products.

2. (*a*) Whenever it is considered that effect is not being given to any of the provisions of sub-paragraph (*a*), (*b*) or (*c*) of paragraph 1, the matter shall be reported to the CONTRACTING PARTIES either by the contracting party not so giving effect to the relevant provisions or by any other interested contracting party.

(*b*) (i) The CONTRACTING PARTIES shall, if requested so to do by any interested contracting party, and without prejudice to any bilateral consultations that may be undertaken, consult with the contracting party concerned and all interested contracting parties with respect to the matter with a view to reaching solutions satisfactory to all contracting parties concerned in order to further the objectives set forth in Article XXXVI. In the course of these consultations, the reasons given in cases where effect was not being given to the provisions of sub-paragraph (*a*), (*b*) or (*c*) of paragraph 1 shall be examined.

(ii) As the implementation of the provisions of sub-paragraph (*a*), (*b*) or (*c*) of paragraph 1 by individual contracting parties may in some cases be more readily achieved where action is taken jointly with other developed contracting parties, such consultation might, where appropriate, be directed towards this end.

(iii) The consultations by the CONTRACTING PARTIES might also, in appropriate cases, be directed towards agreement on joint action designed to further the objectives of this Agreement as envisaged in paragraph 1 of Article XXV.

3. The developed contracting parties shall:

(*a*) make every effort, in cases where a government directly or indirectly determines the resale price of products wholly or mainly produced in the territories of less-developed contracting parties, to maintain trade margins at equitable levels;

(*b*) give active consideration to the adoption of other measures* designed to provide greater scope for the development of imports from less-developed contracting parties and collaborate in appropriate international action to this end;

(*c*) have special regard to the trade interests of less-developed contracting parties when considering the application of other measures permitted under this Agreement to meet particular problems and explore all possibilities of constructive remedies before applying such measures where they would affect essential interests of those contracting parties.

4. Less-developed contracting parties agree to take appropriate action in implementation of the provisions of Part IV for the benefit of the trade of other less-developed contracting parties, in so far as such action is consistent with their individual present and future development, financial and trade needs taking into account past trade developments as well as the trade interests of less-developed contracting parties as a whole.

5. In the implementation of the commitments set forth in paragraph 1 to 4 each contracting party shall afford to any other interested contracting party or contracting parties full and prompt opportunity for consultations under the normal procedures of this Agreement with respect to any matter or difficulty which may arise.

Article XXXVIII

Joint Action

1. The contracting parties shall collaborate jointly, with the framework of this Agreement and elsewhere, as appropriate, to further the objectives set forth in Article XXXVI.

2. In particular, the CONTRACTING PARTIES shall:

(*a*) where appropriate, take action, including action through international arrangements, to provide improved and acceptable conditions of access to world markets for primary products of particular interest to less-developed contracting parties and to devise measures designed to stabilize and improve conditions of world markets in these products including measures designed to attain stable, equitable and remunerative prices for exports of such products;

(*b*) seek appropriate collaboration in matters of trade and development policy with the United Nations and its organs and agencies, including any institutions that may be created on the basis of recommendations by the United Nations Conference on Trade and Development;

(*c*) collaborate in analysing the development plans and policies of individual less-developed contracting parties and in examining trade and aid relationships with a view to devising concrete measures to promote the development of export potential and to facilitate access to export markets for the products of the industries thus developed and, in this connection, seek appropriate collaboration with governments and international organizations, and in particular with organizations having competence in relation to financial assistance for economic development, in systematic studies of trade and aid relationships in individual less-developed contracting parties aimed at obtaining a clear analysis of export potential, market prospects and any further action that may be required;

(*d*) keep under continuous review the development of world trade with special reference to the rate of growth of the trade of less-developed contracting parties and make such recommendations to contracting parties as may, in the circumstances, be deemed appropriate;

(*e*) collaborate in seeking feasible methods to expand trade for the purpose of economic development, through international harmonization and adjustment of national policies and regulations, through technical and commercial standards affecting production, transportation and marketing, and through export promotion by the establishment of facilities for the increased flow of trade information and the development of market research; and

(*f*) establish such institutional arrangements as may be necessary to further the objectives set forth in Article XXXVI and to give effect to the provision of this Part.

ANNEX I

NOTES AND SUPPLEMENTARY PROVISIONS

Ad *Article I*

Paragraph 1

The obligations incorporated in paragraph 1 of Article I by reference to paragraphs 2 and 4 of Article III and those incorporated in paragraph 2 (*b*) of Article II by reference to Article VI shall be considered as falling within Part II for the purposes of the Protocol of Provisional Application.

The cross-references, in the paragraph immediately above and in paragraph 1 of Article I, to paragraphs 2 and 4 of Article III shall only apply after Article III has been modified by the entry into force of the amendment provided for in the Protocol Modifying Part II and Article XXVI of the General Agreement on Tariffs and Trade, dated September 14, l948.[1]

Paragraph 4

The term "margin of preference" means the absolute difference between the most-favoured-nation rate of duty and the preferential rate of duty for the like product, and not the proportionate relation between those rates. As examples:

(1) If the most-favoured-nation rate were 36 per cent *ad valorem* and the preferential rate were 24 per cent *ad valorem*, the margin of preference would be 12 per cent *ad valorem*, and not one-third of the most-favoured-nation rate;

(2) If the most-favoured-nation rate were 36 per cent *ad valorem* and the preferential rate were expressed as two-thirds of the most-favoured-nation rate, the margin of preference would be 12 per cent *ad valorem*;

(3) If the most-favoured-nation rate were 2 francs per kilogramme and the preferential rate were 1.50 francs per kilogramme, the margin of preference would be 0.50 franc per kilogramme.

The following kinds of customs action, taken in accordance with established uniform procedures, would not be contrary to a general binding of margins of preference:

(i) The re-application to an imported product of a tariff classification or rate of duty, properly applicable to such product, in cases in which the application of such classification or rate to such product was temporarily suspended or inoperative on April 10, 1947; and

(ii) The classification of a particular product under a tariff item other than that under which importations of that product were classified on April 10, 1947, in cases in which the tariff law clearly contemplates that such product may be classified under more than one tariff item.

[1]This Protocol entered into force on 14 December 1948.

Ad *Article II*

Paragraph 2 (a)

The cross-reference, in paragraph 2 (*a*) of Article II, to paragraph 2 of Article III shall only apply after Article III has been modified by the entry into force of the amendment provided for in the Protocol Modifying Part II and Article XXVI of the General Agreement on Tariffs and Trade, dated September 14, 1948.[1]

Paragraph 2 (b)

See the note relating to paragraph 1 of Article I.

Paragraph 4

Except where otherwise specifically agreed between the contracting parties which initially negotiated the concession, the provisions of this paragraph will be applied in the light of the provisions of Article 31 of the Havana Charter.

Ad *Article III*

Any internal tax or other internal charge, or any law, regulation or requirement of the kind referred to in paragraph 1 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 1, and is accordingly subject to the provisions of Article III.

Paragraph 1

The application of paragraph 1 to internal taxes imposed by local governments and authorities with the territory of a contracting party is subject to the provisions of the final paragraph of Article XXIV. The term "reasonable measures" in the last-mentioned paragraph would not require, for example, the repeal of existing national legislation authorizing local governments to impose internal taxes which, although technically inconsistent with the letter of Article III, are not in fact inconsistent with its spirit, if such repeal would result in a serious financial hardship for the local governments or authorities concerned. With regard to taxation by local governments or authorities which is inconsistent with both the letter and spirit of Article III, the term "reasonable measures" would permit a contracting party to eliminate the inconsistent taxation gradually over a transition period, if abrupt action would create serious administrative and financial difficulties.

Paragraph 2

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

Paragraph 5

Regulations consistent with the provisions of the first sentence of paragraph 5 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.

Ad *Article V*

Paragraph 5

With regard to transportation charges, the principle laid down in paragraph 5 refers to like products being transported on the same route under like conditions.

Ad *Article VI*

Paragraph 1

1. Hidden dumping by associated houses (that is, the sale by an importer at a price below that corresponding to the price invoiced by an exporter with whom the importer is associated, and also below the price in the exporting country) constitutes a form of price dumping with respect to which the margin of dumping may be calculated on the basis of the price at which the goods are resold by the importer.

2. It is recognized that, in the case of imports from a country which has a complete or substantially complete monopoly of its trade and where all domestic prices are fixed by the State, special difficulties may exist in determining price comparability for the purposes of paragraph 1, and in such cases importing contracting parties may find it necessary to take into account the possibility that a strict comparison with domestic prices in such a country may not always be appropriate.

Paragraphs 2 and 3

1. As in many other cases in customs administration, a contracting party may require reasonable security (bond or cash deposit) for the payment of anti-dumping or countervailing duty pending final determination of the facts in any case of suspected dumping or subsidization.

2. Multiple currency practices can in certain circumstances constitute a subsidy to exports which may be met by countervailing duties under paragraph 3 or can constitute a form of dumping by means of a partial depreciation of a country's currency which may be met by action under paragraph 2. By "multiple currency practices" is meant practices by governments or sanctioned by governments.

Paragraph 6 (b)

Waivers under the provisions of this sub-paragraph shall be granted only on application by the contracting party proposing to levy an anti-dumping or countervailing duty, as the case may be.

Ad *Article VII*

Paragraph 1

The expression "or other charges" is not to be regarded as including internal taxes or equivalent charges imposed on or in connection with imported products.

Paragraph 2

1. It would be in conformity with Article VII to presume that "actual value" may be represented by the invoice price, plus any non-included charges for legitimate costs which are proper elements of "actual value" and plus any abnormal discount or other reduction from the ordinary competitive price.

2. It would be in conformity with Article VII, paragraph 2 (*b*), for a contracting party to construe the phrase "in the ordinary course of trade ... under fully competitive conditions", as excluding any transaction wherein the buyer and seller are not independent of each other and price is not the sole consideration.

3. The standard of "fully competitive conditions" permits a contracting party to exclude from consideration prices involving special discounts limited to exclusive agents.

4. The wording of sub-paragraphs (*a*) and (*b*) permits a contracting party to determine the value for customs purposes uniformly either (1) on the basis of a particular exporter's prices of the imported merchandise, or (2) on the basis of the general price level of like merchandise.

Ad *Article VIII*

1. While Article VIII does not cover the use of multiple rates of exchange as such, paragraphs 1 and 4 condemn the use of exchange taxes or fees as a device for implementing multiple currency practices; if, however, a contracting party is using multiple currency exchange fees for balance of payments reasons with the approval of the International Monetary Fund, the provisions of paragraph 9 (*a*) of Article XV fully safeguard its position.

2. It would be consistent with paragraph 1 if, on the importation of products from the territory of a contracting party into the territory of another contracting party, the production of certificates of origin should only be required to the extent that is strictly indispensable.

Ad *Articles XI, XII, XIII, XIV and XVIII*

Throughout Articles XI, XII, XIII, XIV and XVIII, the terms "import restrictions" or "export restrictions" include restrictions made effective through state-trading operations.

Ad *Article XI*

Paragraph 2 (c)

The term "in any form" in this paragraph covers the same products when in an early stage of processing and still perishable, which compete directly with the fresh product and if freely imported would tend to make the restriction on the fresh product ineffective.

Paragraph 2, last sub-paragraph

The term "special factors" includes changes in relative productive efficiency as between domestic and foreign producers, or as between different foreign producers, but not changes artificially brought about by means not permitted under the Agreement.

Ad *Article XII*

The CONTRACTING PARTIES shall make provision for the utmost secrecy in the conduct of any consultation under the provisions of this Article.

Paragraph 3 (c)(*i*)

Contracting parties applying restrictions shall endeavour to avoid causing serious prejudice to exports of a commodity on which the economy of a contracting party is largely dependent.

Paragraph 4 (b)

It is agreed that the date shall be within ninety days after the entry into force of the amendments of this Article effected by the Protocol Amending the Preamble and Parts II and III of this Agreement. However, should the CONTRACTING PARTIES find that conditions were not suitable for the application of the provisions of this sub-paragraph at the time envisaged, they may determine a later date; *Provided* that such date is not more than thirty days after such time as the obligations of Article VIII, Sections 2, 3 and 4, of the Articles of Agreement of the International Monetary Fund become applicable to contracting parties, members of the Fund, the combined foreign trade of which constitutes at least fifty per centum of the aggregate foreign trade of all contracting parties.

Paragraph 4 (e)

It is agreed that paragraph 4 (*e*) does not add any new criteria for the imposition or maintenance of quantitative restrictions for balance of payments reasons. It is solely intended to ensure that all external factors such as changes in the terms of trade, quantitative restrictions, excessive tariffs and subsidies, which may be contributing to the balance of payments difficulties of the contracting party applying restrictions, will be fully taken into account.

Ad *Article XIII*

Paragraph 2 (d)

No mention was made of "commercial considerations" as a rule for the allocation of quotas because it was considered that its application by governmental authorities might not always be practicable. Moreover, in cases where it is practicable, a contracting party could apply these considerations in the process of seeking agreement, consistently with the general rule laid down in the opening sentence of paragraph 2.

Paragraph 4

See note relating to "special factors" in connection with the last sub-paragraph of paragraph 2 of Article XI.

Ad *Article XIV*

Paragraph 1

The provisions of this paragraph shall not be so construed as to preclude full consideration by the CONTRACTING PARTIES, in the consultations provided for in paragraph 4 of Article XII and in paragraph 12 of Article XVIII, of the nature, effects and reasons for discrimination in the field of import restrictions.

Paragraph 2

One of the situations contemplated in paragraph 2 is that of a contracting party holding balances acquired as a result of current transactions which it finds itself unable to use without a measure of discrimination.

Ad *Article XV*

Paragraph 4

The word "frustrate" is intended to indicate, for example, that infringements of the letter of any Article of this Agreement by exchange action shall not be regarded as a violation of that Article if, in practice, there is no appreciable departure from the intent of the Article. Thus, a contracting party which, as part of its exchange control operated in accordance with the Articles of Agreement of the International Monetary Fund, requires payment to be received for its exports in its own currency or in the currency of one or more members of the International Monetary Fund will not thereby be deemed to contravene Article XI or Article XIII. Another example would be that of a contracting party which specifies on an import licence the country from which the goods may be imported, for the purpose not of introducing any additional element of discrimination in its import licensing system but of enforcing permissible exchange controls.

Ad *Article XVI*

The exemption of an exported product from duties or taxes borne by the like product when destined for domestic consumption, or the remission of such duties or taxes in amounts not in excess of those which have accrued, shall not be deemed to be a subsidy.

Section B

1. Nothing in Section B shall preclude the use by a contracting party of multiple rates of exchange in accordance with the Articles of Agreement of the International Monetary Fund.

2. For the purposes of Section B, a "primary product" is understood to be any product of farm, forest or fishery, or any mineral, in its natural form or which has undergone such processing as is customarily required to prepare it for marketing in substantial volume in international trade.

Paragraph 3

1. The fact that a contracting party has not exported the product in question during the previous representative period would not in itself preclude that contracting party from establishing its right to obtain a share of the trade in the product concerned.

2. A system for the stabilization of the domestic price or of the return to domestic producers of a primary product independently of the movements of export prices, which results at times in the sale of the product for export at a price lower than the comparable price charged for the like product to buyers in the domestic market, shall be considered not to involve a subsidy on exports within the meaning of paragraph 3 if the CONTRACTING PARTIES determine that:

(*a*) the system has also resulted, or is so designed as to result, in the sale of the product for export at a price higher than the comparable price charged for the like product to buyers in the domestic market; and

(*b*) the system is so operated, or is designed so to operate, either because of the effective regulation of production or otherwise, as not to stimulate exports unduly or otherwise seriously to prejudice the interests of other contracting parties.

Notwithstanding such determination by the CONTRACTING PARTIES, operations under such a system shall be subject to the provisions of paragraph 3 where they are wholly or partly financed out of government funds in addition to the funds collected from producers in respect of the product concerned.

Paragraph 4

The intention of paragraph 4 is that the contracting parties should seek before the end of 1957 to reach agreement to abolish all remaining subsidies as from 1 January 1958; or, failing this, to reach agreement to extend the application of the standstill until the earliest date thereafter by which they can expect to reach such agreement.

Ad *Article XVII*

Paragraph 1

The operations of Marketing Boards, which are established by contracting parties and are engaged in purchasing or selling, are subject to the provisions of sub-paragraphs (*a*) and (*b*).

The activities of Marketing Boards which are established by contracting parties and which do not purchase or sell but lay down regulations covering private trade are governed by the relevant Articles of this Agreement.

The charging by a state enterprise of different prices for its sales of a product in different markets is not precluded by the provisions of this Article, provided that such different prices are charged for commercial reasons, to meet conditions of supply and demand in export markets.

Paragraph 1 (a)

Governmental measures imposed to insure standards of quality and efficiency in the operation of external trade, or privileges granted for the exploitation of national natural resources but which do not empower the government to exercise control over the trading activities of the enterprise in question, do not constitute "exclusive or special privileges".

Paragraph 1 (b)

A country receiving a "tied loan" is free to take this loan into account as a "commercial consideration" when purchasing requirements abroad.

Paragraph 2

The term "goods" is limited to products as understood in commercial practice, and is not intended to include the purchase or sale of services.

Paragraph 3

Negotiations which contracting parties agree to conduct under this paragraph may be directed towards the reduction of duties and other charges on imports and exports or towards the conclusion of any other mutually satisfactory arrangement consistent with the provisions of this Agreement. (See paragraph 4 of Article II and the note to that paragraph.)

Paragraph 4 (b)

The term "import mark-up" in this paragraph shall represent the margin by which the price charged by the import monopoly for the imported product (exclusive of internal taxes within the purview of Article III, transportation, distribution, and other expenses incident to the purchase, sale or further processing, and a reasonable margin of profit) exceeds the landed cost.

Ad *Article XVIII*

The CONTRACTING PARTIES and the contracting parties concerned shall preserve the utmost secrecy in respect of matters arising under this Article.

Paragraphs 1 and 4

1. When they consider whether the economy of a contracting party "can only support low standards of living", the CONTRACTING PARTIES shall take into consideration the normal position of that economy and shall not base their determination on exceptional circumstances such as those which may result from the temporary existence of exceptionally favourable conditions for the staple export product or products of such contracting party.

2. The phrase "in the early stages of development" is not meant to apply only to contracting parties which have just started their economic development, but also to contracting parties the economies of which are undergoing a process of industrialization to correct an excessive dependence on primary production.

Paragraphs 2, 3, 7, 13 and 22

The reference to the establishment of particular industries shall apply not only to the establishment of a new industry, but also to the establishment of a new branch of production in an existing industry and to the substantial transformation of an existing industry, and to the substantial expansion of an existing industry supplying a relatively small proportion of the domestic demand. It shall also cover the reconstruction of an industry destroyed or substantially damaged as a result of hostilities or natural disasters.

Paragraph 7 (b)

A modification or withdrawal, pursuant to paragraph 7 (*b*), by a contracting party, other than the applicant contracting party, referred to in paragraph 7 (*a*), shall be made within six months of the day on which the action is taken by the applicant contracting party, and shall become effective on the thirtieth day following the day on which such modification or withdrawal has been notified to the CONTRACTING PARTIES.

Paragraph 11

The second sentence in paragraph 11 shall not be interpreted to mean that a contracting party is required to relax or remove restrictions if such relaxation or removal would thereupon produce conditions justifying the intensification or institution, respectively, of restrictions under paragraph 9 of Article XVIII.

Paragraph 12 (b)

The date referred to in paragraph 12 (*b*) shall be the date determined by the CONTRACTING PARTIES in accordance with the provisions of paragraph 4 (*b*) of Article XII of this Agreement.

Paragraphs 13 and 14

It is recognized that, before deciding on the introduction of a measure and notifying the CONTRACTING PARTIES in accordance with paragraph 14, a contracting party may need a reasonable period of time to assess the competitive position of the industry concerned.

Paragraphs 15 and 16

It is understood that the CONTRACTING PARTIES shall invite a contracting party proposing to apply a measure under Section C to consult with them pursuant to paragraph 16 if they are requested to do so by a contracting party the trade of which would be appreciably affected by the measure in question.

Paragraphs 16, 18, 19 and 22

1. It is understood that the CONTRACTING PARTIES may concur in a proposed measure subject to specific conditions or limitations. If the measure as applied does not conform to the terms of the concurrence it will to that extent be deemed a measure in which the CONTRACTING PARTIES have not concurred. In cases in which the CONTRACTING PARTIES have concurred in a measure for a specified period, the contracting party concerned, if it finds that the maintenance of the measure for a further period of time is required to achieve the objective for which the measure was originally taken, may apply to the CONTRACTING PARTIES for an extension of that period in accordance with the provisions and procedures of Section C or D, as the case may be.

2. It is expected that the CONTRACTING PARTIES will, as a rule, refrain from concurring in a measure which is likely to cause serious prejudice to exports of a commodity on which the economy of a contracting party is largely dependent.

Paragraph 18 and 22

The phrase "that the interests of other contracting parties are adequately safeguarded" is meant to provide latitude sufficient to permit consideration in each case of the most appropriate method of safeguarding those interests. The appropriate method may, for instance, take the form of an additional concession to be applied by the contracting party having recourse to Section C or D during such time as the deviation from the other Articles of the Agreement would remain in force or of the temporary suspension by any other contracting party referred to in paragraph 18 of a concession substantially equivalent to the impairment due to the introduction of the measure in question. Such contracting party would have the right to safeguard its interests through such a temporary suspension of a concession; *Provided* that this right will not be exercised when, in the case of a measure imposed by a contracting party coming within the scope of paragraph 4 (*a*), the CONTRACTING PARTIES have determined that the extent of the compensatory concession proposed was adequate.

Paragraph 19

The provisions of paragraph 19 are intended to cover the cases where an industry has been in existence beyond the "reasonable period of time" referred to in the note to paragraphs 13 and 14, and should not be so construed as to deprive a contracting party coming within the scope of paragraph 4 (*a*) of Article XVIII, of its right to resort to the other provisions of Section C, including paragraph 17, with regard to a newly established industry even though it has benefited from incidental protection afforded by balance of payments import restrictions.

Paragraph 21

Any measure taken pursuant to the provisions of paragraph 21 shall be withdrawn forthwith if the action taken in accordance with paragraph 17 is withdrawn or if the CONTRACTING PARTIES concur in the measure proposed after the expiration of the ninety-day time limit specified in paragraph 17.

Ad *Article XX*

Sub-paragraph (h)

The exception provided for in this sub-paragraph extends to any commodity agreement which conforms to the principles approved by the Economic and Social Council in its resolution 30 (IV) of 28 March l947.

Ad *Article XXIV*

Paragraph 9

It is understood that the provisions of Article I would require that, when a product which has been imported into the territory of a member of a customs union or free-trade area at a preferential rate of duty is re-exported to the territory of another member of such union or area, the latter member should collect a duty equal to the difference between the duty already paid and any higher duty that would be payable if the product were being imported directly into its territory.

Paragraph 11

Measures adopted by India and Pakistan in order to carry out definitive trade arrangements between them, once they have been agreed upon, might depart from particular provisions of this Agreement, but these measures would in general be consistent with the objectives of the Agreement.

Ad *Article XXVIII*

The CONTRACTING PARTIES and each contracting party concerned should arrange to conduct the negotiations and consultations with the greatest possible secrecy in order to avoid premature disclosure of details of prospective tariff changes. The CONTRACTING PARTIES shall be informed immediately of all changes in national tariffs resulting from recourse to this Article.

Paragraph 1

1. If the CONTRACTING PARTIES specify a period other than a three-year period, a contracting party may act pursuant to paragraph 1 or paragraph 3 of Article XXVIII on the first day following the expiration of such other period and, unless the CONTRACTING PARTIES have again specified another period, subsequent periods will be three-year periods following the expiration of such specified period.

2. The provision that on 1 January 1958, and on other days determined pursuant to paragraph 1, a contracting party "may ... modify or withdraw a concession" means that on such day, and on the first day after the end of each period, the legal obligation of such contracting party under Article II is altered; it does not mean that the changes in its customs tariff should necessarily be made effective on that day. If a tariff change resulting from negotiations undertaken pursuant to this Article is delayed, the entry into force of any compensatory concessions may be similarly delayed.

3. Not earlier than six months, nor later than three months, prior to 1 January 1958, or to the termination date of any subsequent period, a contracting party wishing to modify or withdraw any concession embodied in the appropriate Schedule, should notify the CONTRACTING PARTIES to this effect. The CONTRACTING PARTIES shall then determine the contracting party or contracting parties with which the negotiations or consultations referred to in paragraph 1 shall take place. Any contracting party so determined shall

participate in such negotiations or consultations with the applicant contracting party with the aim of reaching agreement before the end of the period. Any extension of the assured life of the Schedules shall relate to the Schedules as modified after such negotiations, in accordance with paragraphs 1, 2, and 3 of Article XXVIII. If the CONTRACTING PARTIES are arranging for multilateral tariff negotiations to take place within the period of six months before 1 January 1958, or before any other day determined pursuant to paragraph 1, they shall include in the arrangements for such negotiations suitable procedures for carrying out the negotiations referred to in this paragraph.

4. The object of providing for the participation in the negotiation of any contracting party with a principle supplying interest, in addition to any contracting party with which the concession was originally negotiated, is to ensure that a contracting party with a larger share in the trade affected by the concession than a contracting party with which the concession was originally negotiated shall have an effective opportunity to protect the contractual right which it enjoys under this Agreement. On the other hand, it is not intended that the scope of the negotiations should be such as to make negotiations and agreement under Article XXVIII unduly difficult nor to create complications in the application of this Article in the future to concessions which result from negotiations thereunder. Accordingly, the CONTRACTING PARTIES should only determine that a contracting party has a principal supplying interest if that contracting party has had, over a reasonable period of time prior to the negotiations, a larger share in the market of the applicant contracting party than a contracting party with which the concession was initially negotiated or would, in the judgement of the CONTRACTING PARTIES, have had such a share in the absence of discriminatory quantitative restrictions maintained by the applicant contracting party. It would therefore not be appropriate for the CONTRACTING PARTIES to determine that more than one contracting party, or in those exceptional cases where there is near equality more than two contracting parties, had a principal supplying interest.

5. Notwithstanding the definition of a principal supplying interest in note 4 to paragraph 1, the CONTRACTING PARTIES may exceptionally determine that a contracting party has a principal supplying interest if the concession in question affects trade which constitutes a major part of the total exports of such contracting party.

6. It is not intended that provision for participation in the negotiations of any contracting party with a principal supplying interest, and for consultation with any contracting party having a substantial interest in the concession which the applicant contracting party is seeking to modify or withdraw, should have the effect that it should have to pay compensation or suffer retaliation greater than the withdrawal or modification sought, judged in the light of the conditions of trade at the time of the proposed withdrawal or modification, making allowance for any discriminatory quantitative restrictions maintained by the applicant contracting party.

7. The expression "substantial interest" is not capable of a precise definition and accordingly may present difficulties for the CONTRACTING PARTIES. It is, however, intended to be construed to cover only those contracting parties which have, or in the absence of discriminatory quantitative restrictions affecting their exports could reasonably be expected to have, a significant share in the market of the contracting party seeking to modify or withdraw the concession.

Paragraph 4

1. Any request for authorization to enter into negotiations shall be accompanied by all relevant statistical and other data. A decision on such request shall be made within thirty days of its submission.

2. It is recognized that to permit certain contracting parties, depending in large measure on a relatively small number of primary commodities and relying on the tariff as an important aid for furthering diversification of their economies or as an important source of revenue, normally to negotiate for the modification or withdrawal of concessions only under paragraph 1 of Article XXVIII, might cause them at such time to make modifications or withdrawals which in the long run would prove unnecessary. To avoid such a situation the CONTRACTING PARTIES shall authorize any such contracting party, under paragraph 4, to enter into negotiations unless they consider this would result in, or contribute substantially towards, such an increase in tariff levels as to threaten the stability of the Schedules to this Agreement or lead to undue disturbance of international trade.

3. It is expected that negotiations authorized under paragraph 4 for modification or withdrawal of a single item, or a very small group of items, could normally be brought to a conclusion in sixty days. It is recognized, however, that such a period will be inadequate for cases involving negotiations for the modification or withdrawal of a larger number of items and in such cases, therefore, it would be appropriate for the CONTRACTING PARTIES to prescribe a longer period.

4. The determination referred to in paragraph 4 (*d*) shall be made by the CONTRACTING PARTIES within thirty days of the submission of the matter to them unless the applicant contracting party agrees to a longer period.

5. In determining under paragraph 4 (*d*) whether an applicant contracting party has unreasonably failed to offer adequate compensation, it is understood that the CONTRACTING PARTIES will take due account of the special position of a contracting party which has bound a high proportion of its tariffs at very low rates of duty and to this extent has less scope than other contracting parties to make compensatory adjustment.

Ad *Article XXVIII* bis

Paragraph 3

It is understood that the reference to fiscal needs would include the revenues aspect of duties and particularly duties imposed primarily for revenue purpose, or duties imposed on products which can be substituted for products subject to revenue duties to prevent the avoidance of such duties.

Ad *Article XXIX*

Paragraph 1

Chapters VII and VIII of the Havana Charter have been excluded from paragraph 1 because they generally deal with the organisation, functions and procedures of the International Trade Organisation.

Ad *Part IV*

The words "developed contracting parties" and the words "less-developed contracting parties" as used in Part IV are to be understood to refer to developed and less-developed countries which are parties to the General Agreement on Tariffs and Trade.

Ad *Article XXXVI*

Paragraph 1

This Article is based upon the objectives set forth in Article I as it will be amended by Section A of paragraph 1 of the Protocol Amending Part I and Articles XXIX and XXX when that Protocol enters into force.[1]

Paragraph 4

The term "primary products" includes agricultural products, *vide* paragraph 2 of the note *ad* Article XVI, Section B.

Paragraph 5

A diversification programme would generally include the intensification of activities for the processing of primary products and the development of manufacturing industries, taking into account the situation of the particular contracting party and the world outlook for production and consumption of different commodities.

Paragraph 8

It is understood that the phrase "do not expect reciprocity" means, in accordance with the objectives set forth in this Article, that the less-developed contracting parties should not be expected, in the course of trade negotiations, to make contributions which are inconsistent with their individual development, financial and trade needs, taking into consideration past trade developments.

This paragraph would apply in the event of action under Section A of Article XVIII, Article XXVIII, Article XXVIII *bis* (Article XXIX after the amendment set forth in Section A of paragraph 1 of the Protocol Amending Part I and Articles XXIX and XXX shall have become effective[1]), Article XXXIII, or any other procedure under this Agreement.

Ad *Article XXXVII*

Paragraph 1 (a)

This paragraph would apply in the event of negotiations for reduction or elimination of tariffs or other restrictive regulations of commerce under Articles XXVIII, XXVIII *bis* (XXIX after the amendment set forth in Section A of paragraph 1 of the Protocol Amending Part I and Articles XXIX and XXX shall have become effective[1]), and Article XXXIII, as well as in connection with other action to effect such reduction or elimination which contracting parties may be able to undertake.

Paragraph 3 (b)

The other measures referred to in this paragraph might include steps to promote domestic structural changes, to encourage the consumption of particular products, or to introduce measures of trade promotion.

[1]This Protocol was abandoned on 1 January 1968.

* * *

AGREEMENT ON TECHNICAL BARRIERS TO TRADE

http://docsonline.wto.org/gen_browseDetail.asp?preprog=3

Members,

Having regard to the Uruguay Round of Multilateral Trade Negotiations;

Desiring to further the objectives of GATT 1994;

Recognizing the important contribution that international standards and conformity assessment systems can make in this regard by improving efficiency of production and facilitating the conduct of international trade;

Desiring therefore to encourage the development of such international standards and conformity assessment systems;

Desiring however to ensure that technical regulations and standards, including packaging, marking and labelling requirements, and procedures for assessment of conformity with technical regulations and standards do not create unnecessary obstacles to international trade;

Recognizing that no country should be prevented from taking measures necessary to ensure the quality of its exports, or for the protection of human, animal or plant life or health, of the environment, or for the prevention of deceptive practices, at the levels it considers appropriate, subject to the requirement that they are not applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination between countries where the same conditions prevail or a disguised restriction on international trade, and are otherwise in accordance with the provisions of this Agreement;

Recognizing that no country should be prevented from taking measures necessary for the protection of its essential security interest;

Recognizing the contribution which international standardization can make to the transfer of technology from developed to developing countries;

Recognizing that developing countries may encounter special difficulties in the formulation and application of technical regulations and standards and procedures for assessment of conformity with technical regulations and standards, and desiring to assist them in their endeavours in this regard;

Hereby *agree* as follows:

Article 1

General Provisions

1.1 General terms for standardization and procedures for assessment of conformity shall normally have the meaning given to them by definitions adopted within the United Nations system and by international standardizing bodies taking into account their context and in the light of the object and purpose of this Agreement.

1.2 However, for the purposes of this Agreement the meaning of the terms given in Annex 1 applies.

1.3 All products, including industrial and agricultural products, shall be subject to the provisions of this Agreement.

1.4 Purchasing specifications prepared by governmental bodies for production or consumption requirements of governmental bodies are not subject to the provisions of this Agreement but are addressed in the Agreement on Government Procurement, according to its coverage.

1.5 The provisions of this Agreement do not apply to sanitary and phytosanitary measures as defined in Annex A of the Agreement on the Application of Sanitary and Phytosanitary Measures.

1.6 All references in this Agreement to technical regulations, standards and conformity assessment procedures shall be construed to include any amendments thereto and any additions to the rules or the product coverage thereof, except amendments and additions of an insignificant nature.

TECHNICAL REGULATIONS AND STANDARDS

Article 2

Preparation, Adoption and Application of Technical Regulations by Central Government Bodies

With respect to their central government bodies:

2.1 Members shall ensure that in respect of technical regulations, products imported from the territory of any Member shall be accorded treatment no less favourable than that accorded to like products of national origin and to like products originating in any other country.

2.2 Members shall ensure that technical regulations are not prepared, adopted or applied with a view to or with the effect of creating unnecessary obstacles to international trade. For this purpose, technical regulations shall not be more trade-restrictive than necessary to fulfil a legitimate objective, taking account of the risks non-fulfilment would create. Such legitimate objectives are, *inter alia:* national security requirements; the prevention of deceptive practices; protection of human health or safety, animal or plant life or health, or the environment. In assessing such risks, relevant elements of consideration are, *inter alia:* available scientific and technical information, related processing technology or intended end-uses of products.

2.3 Technical regulations shall not be maintained if the circumstances or objectives giving rise to their adoption no longer exist or if the changed circumstances or objectives can be addressed in a less trade-restrictive manner.

2.4 Where technical regulations are required and relevant international standards exist or their completion is imminent, Members shall use them, or the relevant parts of them, as a basis for their technical regulations except when such international standards or relevant parts would be an ineffective or inappropriate means for the fulfilment of the legitimate objectives pursued, for instance because of fundamental climatic or geographical factors or fundamental technological problems.

2.5 A Member preparing, adopting or applying a technical regulation which may have a significant effect on trade of other Members shall, upon the request of another Member, explain the justification for that technical regulation in terms of the provisions of paragraphs 2 to 4. Whenever a technical regulation is prepared, adopted or applied for one of the legitimate objectives explicitly mentioned in paragraph 2, and is in accordance with relevant international standards, it shall be rebuttably presumed not to create an unnecessary obstacle to international trade.

2.6 With a view to harmonizing technical regulations on as wide a basis as possible, Members shall play a full part, within the limits of their resources, in the preparation by appropriate international standardizing bodies of international standards for products for which they either have adopted, or expect to adopt, technical regulations.

2.7 Members shall give positive consideration to accepting as equivalent technical regulations of other Members, even if these regulations differ from their own, provided they are satisfied that these regulations adequately fulfil the objectives of their own regulations.

2.8 Wherever appropriate, Members shall specify technical regulations based on product requirements in terms of performance rather than design or descriptive characteristics.

2.9 Whenever a relevant international standard does not exist or the technical content of a proposed technical regulation is not in accordance with the technical content of relevant international standards, and if the technical regulation may have a significant effect on trade of other Members, Members shall:

2.9.1 publish a notice in a publication at an early appropriate stage, in such a manner as to enable interested parties in other Members to become acquainted with it, that they propose to introduce a particular technical regulation;

2.9.2 notify other Members through the Secretariat of the products to be covered by the proposed technical regulation, together with a brief indication of its objective and rationale. Such notifications shall take place at an early appropriate stage, when amendments can still be introduced and comments taken into account;

2.9.3 upon request, provide to other Members particulars or copies of the proposed technical regulation and, whenever possible, identify the parts which in substance deviate from relevant international standards;

2.9.4 without discrimination, allow reasonable time for other Members to make comments in writing, discuss these comments upon request, and take these written comments and the results of these discussions into account.

2.10 Subject to the provisions in the lead-in to paragraph 9, where urgent problems of safety, health, environmental protection or national security arise or threaten to arise for a Member, that Member may omit such of the steps enumerated in paragraph 9 as it finds necessary, provided that the Member, upon adoption of a technical regulation, shall:

2.10.1 notify immediately other Members through the Secretariat of the particular technical regulation and the products covered, with a brief indication of the objective and the rationale of the technical regulation, including the nature of the urgent problems;

2.10.2 upon request, provide other Members with copies of the technical regulation;

2.10.3 without discrimination, allow other Members to present their comments in writing, discuss these comments upon request, and take these written comments and the results of these discussions into account.

2.11 Members shall ensure that all technical regulations which have been adopted are published promptly or otherwise made available in such a manner as to enable interested parties in other Members to become acquainted with them.

2.12 Except in those urgent circumstances referred to in paragraph 10, Members shall allow a reasonable interval between the publication of technical regulations and their entry into force in order to allow time for producers in exporting Members, and particularly in developing country Members, to adapt their products or methods of production to the requirements of the importing Member.

Article 3

Preparation, Adoption and Application of Technical Regulations by Local Government Bodies and Non-Governmental Bodies

With respect to their local government and non-governmental bodies within their territories:

3.1 Members shall take such reasonable measures as may be available to them to ensure compliance by such bodies with the provisions of Article 2, with the exception of the obligation to notify as referred to in paragraphs 9.2 and 10.1 of Article 2.

3.2 Members shall ensure that the technical regulations of local governments on the level directly below that of the central government in Members are notified in accordance with the provisions of paragraphs 9.2 and 10.1 of Article 2, noting that notification shall not be required for technical regulations the technical content of which is substantially the same as that of previously notified technical regulations of central government bodies of the Member concerned.

3.3 Members may require contact with other Members, including the notifications, provision of information, comments and discussions referred to in paragraphs 9 and 10 of Article 2, to take place through the central government.

3.4 Members shall not take measures which require or encourage local government bodies or non-governmental bodies within their territories to act in a manner inconsistent with the provisions of Article 2.

3.5 Members are fully responsible under this Agreement for the observance of all provisions of Article 2. Members shall formulate and implement positive measures and mechanisms in support of the observance of the provisions of Article 2 by other than central government bodies.

Article 4

Preparation, Adoption and Application of Standards

4.1 Members shall ensure that their central government standardizing bodies accept and comply with the Code of Good Practice for the Preparation, Adoption and Application of Standards in Annex 3 to this Agreement (referred to in this Agreement as the "Code of Good Practice"). They shall take such reasonable measures as may be available to them to ensure that local government and non-governmental standardizing bodies within their territories, as well as regional standardizing bodies of which they or one or more bodies within their territories are members, accept and comply with this Code of Good Practice. In addition, Members shall not take measures which have the effect of, directly or indirectly, requiring or encouraging such standardizing bodies to act in a manner inconsistent with the Code of Good Practice. The obligations of Members with respect to compliance of standardizing bodies with the provisions of the Code of Good Practice shall apply irrespective of whether or not a standardizing body has accepted the Code of Good Practice.

4.2 Standardizing bodies that have accepted and are complying with the Code of Good Practice shall be acknowledged by the Members as complying with the principles of this Agreement.

Article 5

Procedures for Assessment of Conformity by Central Government Bodies

5.1 Members shall ensure that, in cases where a positive assurance of conformity with technical regulations or standards is required, their central government bodies apply the following provisions to products originating in the territories of other Members:

5.1.1 conformity assessment procedures are prepared, adopted and applied so as to grant access for suppliers of like products originating in the territories of other Members under conditions no less favourable than those accorded to suppliers of like products of national origin or originating in any other country, in a comparable situation; access entails suppliers' right to an assessment of conformity under the rules of the procedure, including, when foreseen by this procedure, the possibility to have conformity assessment activities undertaken at the site of facilities and to receive the mark of the system;

5.1.2 conformity assessment procedures are not prepared, adopted or applied with a view to or with the effect of creating unnecessary obstacles to international trade. This means, *inter alia*, that conformity assessment procedures shall not be more strict or be applied more strictly than is necessary to give the importing Member adequate confidence that products conform with the applicable technical regulations or standards, taking account of the risks non-conformity would create.

5.2 When implementing the provisions of paragraph 1, Members shall ensure that:

5.2.1 conformity assessment procedures are undertaken and completed as expeditiously as possible and in a no less favourable order for products originating in the territories of other Members than for like domestic products;

5.2.2 the standard processing period of each conformity assessment procedure is published or that the anticipated processing period is communicated to the applicant upon request; when receiving an application, the competent body promptly examines the completeness of the documentation and informs the applicant in a precise and complete manner of all deficiencies; the competent body transmits as soon as possible the results of the assessment in a precise and complete manner to the applicant so that corrective action may be taken if necessary; even when the application has deficiencies, the competent body proceeds as far as practicable with the conformity assessment if the applicant so requests; and that, upon request, the applicant is informed of the stage of the procedure, with any delay being explained;

5.2.3 information requirements are limited to what is necessary to assess conformity and determine fees;

5.2.4 the confidentiality of information about products originating in the territories of other Members arising from or supplied in connection with such conformity assessment procedures is respected in the same way as for domestic products and in such a manner that legitimate commercial interests are protected;

5.2.5 any fees imposed for assessing the conformity of products originating in the territories of other Members are equitable in relation to any fees chargeable for assessing the conformity of like products of national origin or originating in any other country, taking into account communication, transportation and other costs arising from differences between location of facilities of the applicant and the conformity assessment body;

5.2.6 the siting of facilities used in conformity assessment procedures and the selection of samples are not such as to cause unnecessary inconvenience to applicants or their agents;

5.2.7 whenever specifications of a product are changed subsequent to the determination of its conformity to the applicable technical regulations or standards, the conformity assessment procedure for the modified product is limited to what is necessary to determine whether adequate confidence exists that the product still meets the technical regulations or standards concerned;

5.2.8 a procedure exists to review complaints concerning the operation of a conformity assessment procedure and to take corrective action when a complaint is justified.

5.3 Nothing in paragraphs 1 and 2 shall prevent Members from carrying out reasonable spot checks within their territories.

5.4 In cases where a positive assurance is required that products conform with technical regulations or standards, and relevant guides or recommendations issued by international standardizing bodies exist or their completion is imminent, Members shall ensure that central government bodies use them, or the relevant parts of them, as a basis for their conformity assessment procedures, except where, as duly explained upon request, such guides or recommendations or relevant parts are inappropriate for the Members concerned, for, *inter alia*, such reasons as: national security requirements; the prevention of deceptive practices; protection of human health or safety, animal or plant life or health, or the environment; fundamental climatic or other geographical factors; fundamental technological or infrastructural problems.

5.5 With a view to harmonizing conformity assessment procedures on as wide a basis as possible, Members shall play a full part, within the limits of their resources, in the preparation by appropriate international standardizing bodies of guides and recommendations for conformity assessment procedures.

5.6 Whenever a relevant guide or recommendation issued by an international standardizing body does not exist or the technical content of a proposed conformity assessment procedure is not in accordance with relevant guides and recommendations issued by international standardizing bodies, and if the conformity assessment procedure may have a significant effect on trade of other Members, Members shall:

5.6.1 publish a notice in a publication at an early appropriate stage, in such a manner as to enable interested parties in other Members to become acquainted with it, that they propose to introduce a particular conformity assessment procedure;

5.6.2 notify other Members through the Secretariat of the products to be covered by the proposed conformity assessment procedure, together with a brief indication of its objective and rationale. Such notifications shall take place at an early appropriate stage, when amendments can still be introduced and comments taken into account;

5.6.3 upon request, provide to other Members particulars or copies of the proposed procedure and, whenever possible, identify the parts which in substance deviate from relevant guides or recommendations issued by international standardizing bodies;

5.6.4 without discrimination, allow reasonable time for other Members to make comments in writing, discuss these comments upon request, and take these written comments and the results of these discussions into account.

5.7 Subject to the provisions in the lead-in to paragraph 6, where urgent problems of safety, health, environmental protection or national security arise or threaten to arise for a Member, that Member may omit such of the steps enumerated in paragraph 6 as it finds necessary, provided that the Member, upon adoption of the procedure, shall:

5.7.1 notify immediately other Members through the Secretariat of the particular procedure and the products covered, with a brief indication of the objective and the rationale of the procedure, including the nature of the urgent problems;

5.7.2 upon request, provide other Members with copies of the rules of the procedure;

5.7.3 without discrimination, allow other Members to present their comments in writing, discuss these comments upon request, and take these written comments and the results of these discussions into account.

5.8 Members shall ensure that all conformity assessment procedures which have been adopted are published promptly or otherwise made available in such a manner as to enable interested parties in other Members to become acquainted with them.

5.9 Except in those urgent circumstances referred to in paragraph 7, Members shall allow a reasonable interval between the publication of requirements concerning conformity assessment procedures and their entry into force in order to allow time for producers in exporting Members, and particularly in developing country Members, to adapt their products or methods of production to the requirements of the importing Member.

Article 6

Recognition of Conformity Assessment by Central Government Bodies

With respect to their central government bodies:

6.1 Without prejudice to the provisions of paragraphs 3 and 4, Members shall ensure, whenever possible, that results of conformity assessment procedures in other Members are accepted, even when those procedures differ from their own, provided they are satisfied that those procedures offer an assurance of conformity with applicable technical regulations or standards equivalent to their own procedures. It is recognized that prior consultations may be necessary in order to arrive at a mutually satisfactory understanding regarding, in particular:

6.1.1 adequate and enduring technical competence of the relevant conformity assessment bodies in the exporting Member, so that confidence in the continued reliability of their conformity assessment results can exist; in this regard, verified compliance, for instance through accreditation, with relevant guides or recommendations issued by international standardizing bodies shall be taken into account as an indication of adequate technical competence;

6.1.2 limitation of the acceptance of conformity assessment results to those produced by designated bodies in the exporting Member.

6.2 Members shall ensure that their conformity assessment procedures permit, as far as practicable, the implementation of the provisions in paragraph 1.

6.3 Members are encouraged, at the request of other Members, to be willing to enter into negotiations for the conclusion of agreements for the mutual recognition of results of each other's conformity assessment procedures. Members may require that such agreements fulfil the criteria of paragraph 1 and give mutual satisfaction regarding their potential for facilitating trade in the products concerned.

6.4 Members are encouraged to permit participation of conformity assessment bodies located in the territories of other Members in their conformity assessment procedures under conditions no less favourable than those accorded to bodies located within their territory or the territory of any other country.

Article 7

Procedures for Assessment of Conformity by Local Government Bodies

With respect to their local government bodies within their territories:

7.1 Members shall take such reasonable measures as may be available to them to ensure compliance by such bodies with the provisions of Articles 5 and 6, with the exception of the obligation to notify as referred to in paragraphs 6.2 and 7.1 of Article 5.

7.2 Members shall ensure that the conformity assessment procedures of local governments on the level directly below that of the central government in Members are notified in accordance with the provisions of paragraphs 6.2 and 7.1 of Article 5, noting that notifications shall not be required for conformity assessment procedures the technical content of which is substantially the same as that of previously notified conformity assessment procedures of central government bodies of the Members concerned.

7.3 Members may require contact with other Members, including the notifications, provision of information, comments and discussions referred to in paragraphs 6 and 7 of Article 5, to take place through the central government.

7.4 Members shall not take measures which require or encourage local government bodies within their territories to act in a manner inconsistent with the provisions of Articles 5 and 6.

7.5 Members are fully responsible under this Agreement for the observance of all provisions of Articles 5 and 6. Members shall formulate and implement positive measures and mechanisms in support of the observance of the provisions of Articles 5 and 6 by other than central government bodies.

Article 8

Procedures for Assessment of Conformity by Non-Governmental Bodies

8.1 Members shall take such reasonable measures as may be available to them to ensure that non-governmental bodies within their territories which operate conformity assessment procedures comply with the provisions of Articles 5 and 6, with the exception of the obligation to notify proposed conformity assessment procedures. In addition, Members shall not take measures which have the effect of, directly or indirectly, requiring or encouraging such bodies to act in a manner inconsistent with the provisions of Articles 5 and 6.

8.2 Members shall ensure that their central government bodies rely on conformity assessment procedures operated by non-governmental bodies only if these latter bodies comply with the provisions of Articles 5 and 6, with the exception of the obligation to notify proposed conformity assessment procedures.

Article 9

International and Regional Systems

9.1 Where a positive assurance of conformity with a technical regulation or standard is required, Members shall, wherever practicable, formulate and adopt international systems for conformity assessment and become members thereof or participate therein.

9.2 Members shall take such reasonable measures as may be available to them to ensure that international and regional systems for conformity assessment in which relevant bodies within their territories are members or participants comply with the provisions of Articles 5 and 6. In addition, Members shall not take any measures which have the effect of, directly or indirectly, requiring or encouraging such systems to act in a manner inconsistent with any of the provisions of Articles 5 and 6.

9.3 Members shall ensure that their central government bodies rely on international or regional conformity assessment systems only to the extent that these systems comply with the provisions of Articles 5 and 6, as applicable.

INFORMATION AND ASSISTANCE

Article 10

Information About Technical Regulations, Standards and Conformity Assessment Procedures

10.1 Each Member shall ensure that an enquiry point exists which is able to answer all reasonable enquiries from other Members and interested parties in other Members as well as to provide the relevant documents regarding:

10.1.1 any technical regulations adopted or proposed within its territory by central or local government bodies, by non-governmental bodies which have legal power to enforce a technical regulation, or by regional standardizing bodies of which such bodies are members or participants;

10.1.2 any standards adopted or proposed within its territory by central or local government bodies, or by regional standardizing bodies of which such bodies are members or participants;

10.1.3 any conformity assessment procedures, or proposed conformity assessment procedures, which are operated within its territory by central or local government bodies, or by non-governmental bodies which have legal power to enforce a technical regulation, or by regional bodies of which such bodies are members or participants;

10.1.4 the membership and participation of the Member, or of relevant central or local government bodies within its territory, in international and regional standardizing bodies and conformity assessment systems, as well as in bilateral and multilateral arrangements within the scope of this Agreement; it shall also be able to provide reasonable information on the provisions of such systems and arrangements;

10.1.5 the location of notices published pursuant to this Agreement, or the provision of information as to where such information can be obtained; and

10.1.6 the location of the enquiry points mentioned in paragraph 3.

10.2 If, however, for legal or administrative reasons more than one enquiry point is established by a Member, that Member shall provide to the other Members complete and unambiguous information on the scope of responsibility of each of these enquiry points. In addition, that Member shall ensure that any enquiries addressed to an incorrect enquiry point shall promptly be conveyed to the correct enquiry point.

10.3 Each Member shall take such reasonable measures as may be available to it to ensure that one or more enquiry points exist which are able to answer all reasonable enquiries from other Members and interested parties in other Members as well as to provide the relevant documents or information as to where they can be obtained regarding:

10.3.1 any standards adopted or proposed within its territory by non-governmental standardizing bodies, or by regional standardizing bodies of which such bodies are members or participants; and

10.3.2 any conformity assessment procedures, or proposed conformity assessment procedures, which are operated within its territory by non-governmental bodies, or by regional bodies of which such bodies are members or participants;

10.3.3 the membership and participation of relevant non-governmental bodies within its territory in international and regional standardizing bodies and conformity assessment systems, as well as in bilateral and multilateral arrangements within the scope of this Agreement; they shall also be able to provide reasonable information on the provisions of such systems and arrangements.

10.4 Members shall take such reasonable measures as may be available to them to ensure that where copies of documents are requested by other Members or by interested parties in other Members, in accordance with the provisions of this Agreement, they are supplied at an equitable price (if any) which shall, apart from the real cost of delivery, be the same for the nationals[1] of the Member concerned or of any other Member.

10.5 Developed country Members shall, if requested by other Members, provide, in English, French or Spanish, translations of the documents covered by a specific notification or, in case of voluminous documents, of summaries of such documents.

10.6 The Secretariat shall, when it receives notifications in accordance with the provisions of this Agreement, circulate copies of the notifications to all Members and interested international standardizing and conformity assessment bodies, and draw the attention of developing country Members to any notifications relating to products of particular interest to them.

10.7 Whenever a Member has reached an agreement with any other country or countries on issues related to technical regulations, standards or conformity assessment procedures which may have a significant effect on trade, at least one Member party to the agreement shall notify other Members through the Secretariat of the products to be covered by the agreement and include a brief description of the agreement. Members concerned are encouraged to enter, upon request, into consultations with other Members for the purposes of concluding similar agreements or of arranging for their participation in such agreements.

10.8 Nothing in this Agreement shall be construed as requiring:

10.8.1 the publication of texts other than in the language of the Member;

10.8.2 the provision of particulars or copies of drafts other than in the language of the Member except as stated in paragraph 5; or

10.8.3 Members to furnish any information, the disclosure of which they consider contrary to their essential security interests.

10.9 Notifications to the Secretariat shall be in English, French or Spanish.

10.10 Members shall designate a single central government authority that is responsible for the implementation on the national level of the provisions concerning notification procedures under this Agreement except those included in Annex 3.

10.11 If, however, for legal or administrative reasons the responsibility for notification procedures is divided among two or more central government authorities, the Member concerned shall provide to the other Members complete and unambiguous information on the scope of responsibility of each of these authorities.

[1] "Nationals" here shall be deemed, in the case of a separate customs territory Member of the WTO, to mean persons, natural or legal, who are domiciled or who have a real and effective industrial or commercial establishment in that customs territory.

Article 11

Technical Assistance to Other Members

11.1 Members shall, if requested, advise other Members, especially the developing country Members, on the preparation of technical regulations.

11.2 Members shall, if requested, advise other Members, especially the developing country Members, and shall grant them technical assistance on mutually agreed terms and conditions regarding the establishment of national standardizing bodies, and participation in the international standardizing bodies, and shall encourage their national standardizing bodies to do likewise.

11.3 Members shall, if requested, take such reasonable measures as may be available to them to arrange for the regulatory bodies within their territories to advise other Members, especially the developing country Members, and shall grant them technical assistance on mutually agreed terms and conditions regarding:

11.3.1 the establishment of regulatory bodies, or bodies for the assessment of conformity with technical regulations; and

11.3.2 the methods by which their technical regulations can best be met.

11.4 Members shall, if requested, take such reasonable measures as may be available to them to arrange for advice to be given to other Members, especially the developing country Members, and shall grant them technical assistance on mutually agreed terms and conditions regarding the establishment of bodies for the assessment of conformity with standards adopted within the territory of the requesting Member.

11.5 Members shall, if requested, advise other Members, especially the developing country Members, and shall grant them technical assistance on mutually agreed terms and conditions regarding the steps that should be taken by their producers if they wish to have access to systems for conformity assessment operated by governmental or non-governmental bodies within the territory of the Member receiving the request.

11.6 Members which are members or participants of international or regional systems for conformity assessment shall, if requested, advise other Members, especially the developing country Members, and shall grant them technical assistance on mutually agreed terms and conditions regarding the establishment of the institutions and legal framework which would enable them to fulfil the obligations of membership or participation in such systems.

11.7 Members shall, if so requested, encourage bodies within their territories which are members or participants of international or regional systems for conformity assessment to advise other Members, especially the developing country Members, and should consider requests for technical assistance from them regarding the establishment of the institutions which would enable the relevant bodies within their territories to fulfil the obligations of membership or participation.

11.8 In providing advice and technical assistance to other Members in terms of paragraphs 1 to 7, Members shall give priority to the needs of the least-developed country Members.

Article 12

Special and Differential Treatment of Developing Country Members

12.1 Members shall provide differential and more favourable treatment to developing country Members to this Agreement, through the following provisions as well as through the relevant provisions of other Articles of this Agreement.

12.2 Members shall give particular attention to the provisions of this Agreement concerning developing country Members' rights and obligations and shall take into account the special development, financial and trade needs of developing country Members in the implementation of this Agreement, both nationally and in the operation of this Agreement's institutional arrangements.

12.3 Members shall, in the preparation and application of technical regulations, standards and conformity assessment procedures, take account of the special development, financial and trade needs of developing country Members, with a view to ensuring that such technical regulations, standards and conformity assessment procedures do not create unnecessary obstacles to exports from developing country Members.

12.4 Members recognize that, although international standards, guides or recommendations may exist, in their particular technological and socio-economic conditions, developing country Members adopt certain technical regulations, standards or conformity assessment procedures aimed at preserving indigenous technology and production methods and processes compatible with their development needs. Members therefore recognize that developing country Members should not be expected to use international standards as a basis for their technical regulations or standards, including test methods, which are not appropriate to their development, financial and trade needs.

12.5 Members shall take such reasonable measures as may be available to them to ensure that international standardizing bodies and international systems for conformity assessment are organized and operated in a way which facilitates active and representative participation of relevant bodies in all Members, taking into account the special problems of developing country Members.

12.6 Members shall take such reasonable measures as may be available to them to ensure that international standardizing bodies, upon request of developing country Members, examine the possibility of, and, if practicable, prepare international standards concerning products of special interest to developing country Members.

12.7 Members shall, in accordance with the provisions of Article 11, provide technical assistance to developing country Members to ensure that the preparation and application of technical regulations, standards and conformity assessment procedures do not create unnecessary obstacles to the expansion and diversification of exports from developing country Members. In determining the terms and conditions of the technical assistance, account shall be taken of the stage of development of the requesting Members and in particular of the least-developed country Members.

12.8 It is recognized that developing country Members may face special problems, including institutional and infrastructural problems, in the field of preparation and application of technical regulations, standards and conformity assessment procedures. It is further recognized that the special development and trade needs of developing country Members, as well as their stage of technological development, may hinder their ability to discharge fully their obligations under this Agreement. Members, therefore, shall take this fact fully into account. Accordingly, with a view to ensuring that developing country Members are able to comply with this Agreement, the Committee on Technical Barriers to Trade provided for in Article 13 (referred to in this Agreement as the "Committee") is enabled to grant, upon request, specified, time-limited exceptions in whole or in part from obligations under this Agreement. When considering such requests the Committee shall take into account the special problems, in the field of preparation and application of technical regulations, standards and conformity assessment procedures, and the special development and trade needs of the developing country Member, as well as its stage of technological development, which may hinder its ability to discharge fully its obligations under this Agreement. The Committee shall, in particular, take into account the special problems of the least-developed country Members.

12.9 During consultations, developed country Members shall bear in mind the special difficulties experienced by developing country Members in formulating and implementing standards and technical regulations and conformity assessment procedures, and in their desire to assist developing country Members with their efforts in this direction, developed country Members shall take account of the special needs of the former in regard to financing, trade and development.

12.10 The Committee shall examine periodically the special and differential treatment, as laid down in this Agreement, granted to developing country Members on national and international levels.

INSTITUTIONS, CONSULTATION AND DISPUTE SETTLEMENT

Article 13

The Committee on Technical Barriers to Trade

13.1 A Committee on Technical Barriers to Trade is hereby established, and shall be composed of representatives from each of the Members. The Committee shall elect its own Chairman and shall meet as necessary, but no less than once a year, for the purpose of affording Members the opportunity of consulting on any matters relating to the operation of this Agreement or the furtherance of its objectives, and shall carry out such responsibilities as assigned to it under this Agreement or by the Members.

13.2 The Committee shall establish working parties or other bodies as may be appropriate, which shall carry out such responsibilities as may be assigned to them by the Committee in accordance with the relevant provisions of this Agreement.

13.3 It is understood that unnecessary duplication should be avoided between the work under this Agreement and that of governments in other technical bodies. The Committee shall examine this problem with a view to minimizing such duplication.

Article 14

Consultation and Dispute Settlement

14.1 Consultations and the settlement of disputes with respect to any matter affecting the operation of this Agreement shall take place under the auspices of the Dispute Settlement Body and shall follow, *mutatis mutandis*, the provisions of Articles XXII and XXIII of GATT 1994, as elaborated and applied by the Dispute Settlement Understanding.

14.2 At the request of a party to a dispute, or at its own initiative, a panel may establish a technical expert group to assist in questions of a technical nature, requiring detailed consideration by experts.

14.3 Technical expert groups shall be governed by the procedures of Annex 2.

14.4 The dispute settlement provisions set out above can be invoked in cases where a Member considers that another Member has not achieved satisfactory results under Articles 3, 4, 7, 8 and 9 and its trade interests are significantly affected. In this respect, such results shall be equivalent to those as if the body in question were a Member.

FINAL PROVISIONS

Article 15

Final Provisions

Reservations

15.1 Reservations may not be entered in respect of any of the provisions of this Agreement without the consent of the other Members.

Review

15.2 Each Member shall, promptly after the date on which the WTO Agreement enters into force for it, inform the Committee of measures in existence or taken to ensure the implementation and administration of this Agreement. Any changes of such measures thereafter shall also be notified to the Committee.

15.3 The Committee shall review annually the implementation and operation of this Agreement taking into account the objectives thereof.

15.4 Not later than the end of the third year from the date of entry into force of the WTO Agreement and at the end of each three-year period thereafter, the Committee shall review the operation and implementation of this Agreement, including the provisions relating to transparency, with a view to recommending an adjustment of the rights and obligations of this Agreement where necessary to ensure mutual economic advantage and balance of rights and obligations, without prejudice to the provisions of Article 12. Having regard, *inter alia*, to the experience gained in the implementation of the Agreement, the Committee shall, where appropriate, submit proposals for amendments to the text of this Agreement to the Council for Trade in Goods.

Annexes

15.5 The annexes to this Agreement constitute an integral part thereof.

ANNEX 1

TERMS AND THEIR DEFINITIONS FOR THE
PURPOSE OF THIS AGREEMENT

The terms presented in the sixth edition of the ISO/IEC Guide 2: 1991, General Terms and Their Definitions Concerning Standardization and Related Activities, shall, when used in this Agreement, have the same meaning as given in the definitions in the said Guide taking into account that services are excluded from the coverage of this Agreement.

For the purpose of this Agreement, however, the following definitions shall apply:

1. *Technical regulation*

Document which lays down product characteristics 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, process or production method.

Explanatory note

The definition in ISO/IEC Guide 2 is not self-contained, but based on the so-called "building block" system.

2. *Standard*

Document approved by a recognized body, that provides, for common and repeated use, rules, guidelines or characteristics for products 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, process or production method.

Explanatory note

The terms as defined in ISO/IEC Guide 2 cover products, processes and services. This Agreement deals only with technical regulations, standards and conformity assessment procedures related to products or processes and production methods. Standards as defined by ISO/IEC Guide 2 may be mandatory or voluntary. For the purpose of this Agreement standards are defined as voluntary and technical regulations as mandatory documents. Standards prepared by the international standardization community are based on consensus. This Agreement covers also documents that are not based on consensus.

3. *Conformity assessment procedures*

Any procedure used, directly or indirectly, to determine that relevant requirements in technical regulations or standards are fulfilled.

Explanatory note

Conformity assessment procedures include, *inter alia*, procedures for sampling, testing and inspection; evaluation, verification and assurance of conformity; registration, accreditation and approval as well as their combinations.

4. *International body or system*

Body or system whose membership is open to the relevant bodies of at least all Members.

5. *Regional body or system*

Body or system whose membership is open to the relevant bodies of only some of the Members.

6. *Central government body*

Central government, its ministries and departments or any body subject to the control of the central government in respect of the activity in question.

Explanatory note:

In the case of the European Communities the provisions governing central government bodies apply. However, regional bodies or conformity assessment systems may be established within the European Communities, and in such cases would be subject to the provisions of this Agreement on regional bodies or conformity assessment systems.

7. *Local government body*

Government other than a central government (e.g. states, provinces, Länder, cantons, municipalities, etc.), its ministries or departments or any body subject to the control of such a government in respect of the activity in question.

8. *Non-governmental body*

Body other than a central government body or a local government body, including a non-governmental body which has legal power to enforce a technical regulation.

ANNEX 2

TECHNICAL EXPERT GROUPS

The following procedures shall apply to technical expert groups established in accordance with the provisions of Article 14.

1. Technical expert groups are under the panel's authority. Their terms of reference and detailed working procedures shall be decided by the panel, and they shall report to the panel.

2. Participation in technical expert groups shall be restricted to persons of professional standing and experience in the field in question.

3. Citizens of parties to the dispute shall not serve on a technical expert group without the joint agreement of the parties to the dispute, except in exceptional circumstances when the panel considers that the need for specialized scientific expertise cannot be fulfilled otherwise. Government officials of parties to the dispute shall not serve on a technical expert group. Members of technical expert groups shall serve in their individual capacities and not as government representatives, nor as representatives of any organization. Governments or organizations shall therefore not give them instructions with regard to matters before a technical expert group.

4. Technical expert groups may consult and seek information and technical advice from any source they deem appropriate. Before a technical expert group seeks such information or advice from a source within the jurisdiction of a Member, it shall inform the government of that Member. Any Member shall respond promptly and fully to any request by a technical expert group for such information as the technical expert group considers necessary and appropriate.

5. The parties to a dispute shall have access to all relevant information provided to a technical expert group, unless it is of a confidential nature. Confidential information provided to the technical expert group shall not be released without formal authorization from the government, organization or person providing the information. Where such information is requested from the technical expert group but release of such information by the technical expert group is not authorized, a non-confidential summary of the information will be provided by the government, organization or person supplying the information.

6. The technical expert group shall submit a draft report to the Members concerned with a view to obtaining their comments, and taking them into account, as appropriate, in the final report, which shall also be circulated to the Members concerned when it is submitted to the panel.

ANNEX 3

CODE OF GOOD PRACTICE FOR THE PREPARATION, ADOPTION AND APPLICATION OF STANDARDS

General Provisions

A. For the purposes of this Code the definitions in Annex 1 of this Agreement shall apply.

B. This Code is open to acceptance by any standardizing body within the territory of a Member of the WTO, whether a central government body, a local government body, or a non-governmental body; to any governmental regional standardizing body one or more members of which are Members of the WTO; and to any non-governmental regional standardizing body one or more members of which are situated within the territory of a Member of the WTO (referred to in this Code collectively as "standardizing bodies" and individually as "the standardizing body").

C. Standardizing bodies that have accepted or withdrawn from this Code shall notify this fact to the ISO/IEC Information Centre in Geneva. The notification shall include the name and address of the body concerned and the scope of its current and expected standardization activities. The notification may be sent either directly to the ISO/IEC Information Centre, or through the national member body of ISO/IEC or, preferably, through the relevant national member or international affiliate of ISONET, as appropriate.

SUBSTANTIVE PROVISIONS

D. In respect of standards, the standardizing body shall accord treatment to products originating in the territory of any other Member of the WTO no less favourable than that accorded to like products of national origin and to like products originating in any other country.

E. The standardizing body shall ensure that standards are not prepared, adopted or applied with a view to, or with the effect of, creating unnecessary obstacles to international trade.

F. Where international standards exist or their completion is imminent, the standardizing body shall use them, or the relevant parts of them, as a basis for the standards it develops, except where such international standards or relevant parts would be ineffective or inappropriate, for instance, because of an insufficient level of protection or fundamental climatic or geographical factors or fundamental technological problems.

G. With a view to harmonizing standards on as wide a basis as possible, the standardizing body shall, in an appropriate way, play a full part, within the limits of its resources, in the preparation by relevant international standardizing bodies of international standards regarding subject matter for which it either has adopted, or expects to adopt, standards. For standardizing bodies within the territory of a Member, participation in a particular international standardization activity shall, whenever possible, take place through one delegation representing all standardizing bodies in the territory that have adopted, or expect to adopt, standards for the subject matter to which the international standardization activity relates.

H. The standardizing body within the territory of a Member shall make every effort to avoid duplication of, or overlap with, the work of other standardizing bodies in the national territory or with the work of relevant international or regional standardizing bodies. They shall also make every effort to achieve a national consensus on the standards they develop. Likewise the regional standardizing body shall make every effort to avoid duplication of, or overlap with, the work of relevant international standardizing bodies.

I. Wherever appropriate, the standardizing body shall specify standards based on product requirements in terms of performance rather than design or descriptive characteristics.

J. At least once every six months, the standardizing body shall publish a work programme containing its name and address, the standards it is currently preparing and the standards which it has adopted in the preceding

period. A standard is under preparation from the moment a decision has been taken to develop a standard until that standard has been adopted. The titles of specific draft standards shall, upon request, be provided in English, French or Spanish. A notice of the existence of the work programme shall be published in a national or, as the case may be, regional publication of standardization activities.

The work programme shall for each standard indicate, in accordance with any ISONET rules, the classification relevant to the subject matter, the stage attained in the standard's development, and the references of any international standards taken as a basis. No later than at the time of publication of its work programme, the standardizing body shall notify the existence thereof to the ISO/IEC Information Centre in Geneva.

The notification shall contain the name and address of the standardizing body, the name and issue of the publication in which the work programme is published, the period to which the work programme applies, its price (if any), and how and where it can be obtained. The notification may be sent directly to the ISO/IEC Information Centre, or, preferably, through the relevant national member or international affiliate of ISONET, as appropriate.

K. The national member of ISO/IEC shall make every effort to become a member of ISONET or to appoint another body to become a member as well as to acquire the most advanced membership type possible for the ISONET member. Other standardizing bodies shall make every effort to associate themselves with the ISONET member.

L. Before adopting a standard, the standardizing body shall allow a period of at least 60 days for the submission of comments on the draft standard by interested parties within the territory of a Member of the WTO. This period may, however, be shortened in cases where urgent problems of safety, health or environment arise or threaten to arise. No later than at the start of the comment period, the standardizing body shall publish a notice announcing the period for commenting in the publication referred to in paragraph J. Such notification shall include, as far as practicable, whether the draft standard deviates from relevant international standards.

M. On the request of any interested party within the territory of a Member of the WTO, the standardizing body shall promptly provide, or arrange to provide, a copy of a draft standard which it has submitted for comments. Any fees charged for this service shall, apart from the real cost of delivery, be the same for foreign and domestic parties.

N. The standardizing body shall take into account, in the further processing of the standard, the comments received during the period for commenting. Comments received through standardizing bodies that have accepted this Code of Good Practice shall, if so requested, be replied to as promptly as possible. The reply shall include an explanation why a deviation from relevant international standards is necessary.

O. Once the standard has been adopted, it shall be promptly published.

P. On the request of any interested party within the territory of a Member of the WTO, the standardizing body shall promptly provide, or arrange to provide, a copy of its most recent work programme or of a standard which it produced. Any fees charged for this service shall, apart from the real cost of delivery, be the same for foreign and domestic parties.

Q. The standardizing body shall afford sympathetic consideration to, and adequate opportunity for, consultation regarding representations with respect to the operation of this Code presented by standardizing bodies that have accepted this Code of Good Practice. It shall make an objective effort to solve any complaints.

* * *

AGREEMENT ON THE APPLICATION OF SANITARY AND PHYTOSANITARY MEASURES

http://docsonline.wto.org/gen_browseDetail.asp?preprog=3

Members,

Reaffirming that no Member should be prevented from adopting or enforcing measures necessary to protect human, animal or plant life or health, subject to the requirement that these measures are not applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination between Members where the same conditions prevail or a disguised restriction on international trade;

Desiring to improve the human health, animal health and phytosanitary situation in all Members;

Noting that sanitary and phytosanitary measures are often applied on the basis of bilateral agreements or protocols;

Desiring the establishment of a multilateral framework of rules and disciplines to guide the development, adoption and enforcement of sanitary and phytosanitary measures in order to minimize their negative effects on trade;

Recognizing the important contribution that international standards, guidelines and recommendations can make in this regard;

Desiring to further the use of harmonized sanitary and phytosanitary measures between Members, on the basis of international standards, guidelines and recommendations developed by the relevant international organizations, including the Codex Alimentarius Commission, the International Office of Epizootics, and the relevant international and regional organizations operating within the framework of the International Plant Protection Convention, without requiring Members to change their appropriate level of protection of human, animal or plant life or health;

Recognizing that developing country Members may encounter special difficulties in complying with the sanitary or phytosanitary measures of importing Members, and as a consequence in access to markets, and also in the formulation and application of sanitary or phytosanitary measures in their own territories, and desiring to assist them in their endeavours in this regard;

Desiring therefore to elaborate rules for the application of the provisions of GATT 1994 which relate to the use of sanitary or phytosanitary measures, in particular the provisions of Article XX(b)[2];

Hereby agree as follows:

[2]In this Agreement, reference to Article XX(b) includes also the chapeau of that Article.

Article 1

General Provisions

1. This Agreement applies to all sanitary and phytosanitary measures which may, directly or indirectly, affect international trade. Such measures shall be developed and applied in accordance with the provisions of this Agreement.

2. For the purposes of this Agreement, the definitions provided in Annex A shall apply.

3. The annexes are an integral part of this Agreement.

4. Nothing in this Agreement shall affect the rights of Members under the Agreement on Technical Barriers to Trade with respect to measures not within the scope of this Agreement.

Article 2

Basic Rights and Obligations

1. Members have the right to take sanitary and phytosanitary measures necessary for the protection of human, animal or plant life or health, provided that such measures are not inconsistent with the provisions of this Agreement.

2. Members shall ensure that any sanitary or phytosanitary measure is applied only to the extent necessary to protect human, animal or plant life or health, is based on scientific principles and is not maintained without sufficient scientific evidence, except as provided for in paragraph 7 of Article 5.

3. Members shall ensure that their sanitary and phytosanitary measures do not arbitrarily or unjustifiably discriminate between Members where identical or similar conditions prevail, including between their own territory and that of other Members. Sanitary and phytosanitary measures shall not be applied in a manner which would constitute a disguised restriction on international trade.

4. Sanitary or phytosanitary measures which conform to the relevant provisions of this Agreement shall be presumed to be in accordance with the obligations of the Members under the provisions of GATT 1994 which relate to the use of sanitary or phytosanitary measures, in particular the provisions of Article XX(b).

Article 3

Harmonization

1. To harmonize sanitary and phytosanitary measures on as wide a basis as possible, Members shall base their sanitary or phytosanitary measures on international standards, guidelines or recommendations, where they exist, except as otherwise provided for in this Agreement, and in particular in paragraph 3.

2. Sanitary or phytosanitary measures which conform to international standards, guidelines or recommendations shall be deemed to be necessary to protect human, animal or plant life or health, and presumed to be consistent with the relevant provisions of this Agreement and of GATT 1994.

3. Members may introduce or maintain sanitary or phytosanitary measures which result in a higher level of sanitary or phytosanitary protection than would be achieved by measures based on the relevant international standards, guidelines or recommendations, if there is a scientific justification, or as a consequence of the level of sanitary or phytosanitary protection a Member determines to be appropriate in accordance with the relevant

provisions of paragraphs 1 through 8 of Article 5.[3] Notwithstanding the above, all measures which result in a level of sanitary or phytosanitary protection different from that which would be achieved by measures based on international standards, guidelines or recommendations shall not be inconsistent with any other provision of this Agreement.

4. Members shall play a full part, within the limits of their resources, in the relevant international organizations and their subsidiary bodies, in particular the Codex Alimentarius Commission, the International Office of Epizootics, and the international and regional organizations operating within the framework of the International Plant Protection Convention, to promote within these organizations the development and periodic review of standards, guidelines and recommendations with respect to all aspects of sanitary and phytosanitary measures.

5. The Committee on Sanitary and Phytosanitary Measures provided for in paragraphs 1 and 4 of Article 12 (referred to in this Agreement as the "Committee") shall develop a procedure to monitor the process of international harmonization and coordinate efforts in this regard with the relevant international organizations.

Article 4

Equivalence

1. Members shall accept the sanitary or phytosanitary measures of other Members as equivalent, even if these measures differ from their own or from those used by other Members trading in the same product, if the exporting Member objectively demonstrates to the importing Member that its measures achieve the importing Member's appropriate level of sanitary or phytosanitary protection. For this purpose, reasonable access shall be given, upon request, to the importing Member for inspection, testing and other relevant procedures.

2. Members shall, upon request, enter into consultations with the aim of achieving bilateral and multilateral agreements on recognition of the equivalence of specified sanitary or phytosanitary measures.

Article 5

Assessment of Risk and Determination of the Appropriate Level of Sanitary or Phytosanitary Protection

1. Members shall ensure that their sanitary or phytosanitary measures are based on an assessment, as appropriate to the circumstances, of the risks to human, animal or plant life or health, taking into account risk assessment techniques developed by the relevant international organizations.

2. In the assessment of risks, Members shall take into account available scientific evidence; relevant processes and production methods; relevant inspection, sampling and testing methods; prevalence of specific diseases or pests; existence of pest- or disease-free areas; relevant ecological and environmental conditions; and quarantine or other treatment.

3. In assessing the risk to animal or plant life or health and determining the measure to be applied for achieving the appropriate level of sanitary or phytosanitary protection from such risk, Members shall take into account as relevant economic factors: the potential damage in terms of loss of production or sales in the event of the entry, establishment or spread of a pest or disease; the costs of control or eradication in the territory of the importing Member; and the relative cost-effectiveness of alternative approaches to limiting risks.

[3]For the purposes of paragraph 3 of Article 3, there is a scientific justification if, on the basis of an examination and evaluation of available scientific information in conformity with the relevant provisions of this Agreement, a Member determines that the relevant international standards, guidelines or recommendations are not sufficient to achieve its appropriate level of sanitary or phytosanitary protection.

4. Members should, when determining the appropriate level of sanitary or phytosanitary protection, take into account the objective of minimizing negative trade effects.

5. With the objective of achieving consistency in the application of the concept of appropriate level of sanitary or phytosanitary protection against risks to human life or health, or to animal and plant life or health, each Member shall avoid arbitrary or unjustifiable distinctions in the levels it considers to be appropriate in different situations, if such distinctions result in discrimination or a disguised restriction on international trade. Members shall cooperate in the Committee, in accordance with paragraphs 1, 2 and 3 of Article 12, to develop guidelines to further the practical implementation of this provision. In developing the guidelines, the Committee shall take into account all relevant factors, including the exceptional character of human health risks to which people voluntarily expose themselves.

6. Without prejudice to paragraph 2 of Article 3, when establishing or maintaining sanitary or phytosanitary measures to achieve the appropriate level of sanitary or phytosanitary protection, Members shall ensure that such measures are not more trade-restrictive than required to achieve their appropriate level of sanitary or phytosanitary protection, taking into account technical and economic feasibility.[4]

7. In cases where relevant scientific evidence is insufficient, a Member may provisionally adopt sanitary or phytosanitary measures on the basis of available pertinent information, including that from the relevant international organizations as well as from sanitary or phytosanitary measures applied by other Members. In such circumstances, Members shall seek to obtain the additional information necessary for a more objective assessment of risk and review the sanitary or phytosanitary measure accordingly within a reasonable period of time.

8. When a Member has reason to believe that a specific sanitary or phytosanitary measure introduced or maintained by another Member is constraining, or has the potential to constrain, its exports and the measure is not based on the relevant international standards, guidelines or recommendations, or such standards, guidelines or recommendations do not exist, an explanation of the reasons for such sanitary or phytosanitary measure may be requested and shall be provided by the Member maintaining the measure.

Article 6

Adaptation to Regional Conditions, Including Pest- or Disease-Free Areas and Areas of Low Pest or Disease Prevalence

1. Members shall ensure that their sanitary or phytosanitary measures are adapted to the sanitary or phytosanitary characteristics of the area - whether all of a country, part of a country, or all or parts of several countries - from which the product originated and to which the product is destined. In assessing the sanitary or phytosanitary characteristics of a region, Members shall take into account, *inter alia*, the level of prevalence of specific diseases or pests, the existence of eradication or control programmes, and appropriate criteria or guidelines which may be developed by the relevant international organizations.

2. Members shall, in particular, recognize the concepts of pest- or disease-free areas and areas of low pest or disease prevalence. Determination of such areas shall be based on factors such as geography, ecosystems, epidemiological surveillance, and the effectiveness of sanitary or phytosanitary controls.

3. Exporting Members claiming that areas within their territories are pest- or disease-free areas or areas of low pest or disease prevalence shall provide the necessary evidence thereof in order to objectively demonstrate to the importing Member that such areas are, and are likely to remain, pest- or disease-free areas or areas of low pest or disease prevalence, respectively. For this purpose, reasonable access shall be given, upon request, to the importing Member for inspection, testing and other relevant procedures.

[4]For purposes of paragraph 6 of Article 5, a measure is not more trade-restrictive than required unless there is another measure, reasonably available taking into account technical and economic feasibility, that achieves the appropriate level of sanitary or phytosanitary protection and is significantly less restrictive to trade.

Article 7

Transparency

Members shall notify changes in their sanitary or phytosanitary measures and shall provide information on their sanitary or phytosanitary measures in accordance with the provisions of Annex B.

Article 8

Control, Inspection and Approval Procedures

Members shall observe the provisions of Annex C in the operation of control, inspection and approval procedures, including national systems for approving the use of additives or for establishing tolerances for contaminants in foods, beverages or feedstuffs, and otherwise ensure that their procedures are not inconsistent with the provisions of this Agreement.

Article 9

Technical Assistance

1. Members agree to facilitate the provision of technical assistance to other Members, especially developing country Members, either bilaterally or through the appropriate international organizations. Such assistance may be, *inter alia*, in the areas of processing technologies, research and infrastructure, including in the establishment of national regulatory bodies, and may take the form of advice, credits, donations and grants, including for the purpose of seeking technical expertise, training and equipment to allow such countries to adjust to, and comply with, sanitary or phytosanitary measures necessary to achieve the appropriate level of sanitary or phytosanitary protection in their export markets.

2. Where substantial investments are required in order for an exporting developing country Member to fulfil the sanitary or phytosanitary requirements of an importing Member, the latter shall consider providing such technical assistance as will permit the developing country Member to maintain and expand its market access opportunities for the product involved.

Article 10

Special and Differential Treatment

1. In the preparation and application of sanitary or phytosanitary measures, Members shall take account of the special needs of developing country Members, and in particular of the least-developed country Members.

2. Where the appropriate level of sanitary or phytosanitary protection allows scope for the phased introduction of new sanitary or phytosanitary measures, longer time-frames for compliance should be accorded on products of interest to developing country Members so as to maintain opportunities for their exports.

3. With a view to ensuring that developing country Members are able to comply with the provisions of this Agreement, the Committee is enabled to grant to such countries, upon request, specified, time-limited exceptions in whole or in part from obligations under this Agreement, taking into account their financial, trade and development needs.

4. Members should encourage and facilitate the active participation of developing country Members in the relevant international organizations.

Article 11

Consultations and Dispute Settlement

1. The provisions of Articles XXII and XXIII of GATT 1994 as elaborated and applied by the Dispute Settlement Understanding shall apply to consultations and the settlement of disputes under this Agreement, except as otherwise specifically provided herein.

2. In a dispute under this Agreement involving scientific or technical issues, a panel should seek advice from experts chosen by the panel in consultation with the parties to the dispute. To this end, the panel may, when it deems it appropriate, establish an advisory technical experts group, or consult the relevant international organizations, at the request of either party to the dispute or on its own initiative.

3. Nothing in this Agreement shall impair the rights of Members under other international agreements, including the right to resort to the good offices or dispute settlement mechanisms of other international organizations or established under any international agreement.

Article 12

Administration

1. A Committee on Sanitary and Phytosanitary Measures is hereby established to provide a regular forum for consultations. It shall carry out the functions necessary to implement the provisions of this Agreement and the furtherance of its objectives, in particular with respect to harmonization. The Committee shall reach its decisions by consensus.

2. The Committee shall encourage and facilitate ad hoc consultations or negotiations among Members on specific sanitary or phytosanitary issues. The Committee shall encourage the use of international standards, guidelines or recommendations by all Members and, in this regard, shall sponsor technical consultation and study with the objective of increasing coordination and integration between international and national systems and approaches for approving the use of food additives or for establishing tolerances for contaminants in foods, beverages or feedstuffs.

3. The Committee shall maintain close contact with the relevant international organizations in the field of sanitary and phytosanitary protection, especially with the Codex Alimentarius Commission, the International Office of Epizootics, and the Secretariat of the International Plant Protection Convention, with the objective of securing the best available scientific and technical advice for the administration of this Agreement and in order to ensure that unnecessary duplication of effort is avoided.

4. The Committee shall develop a procedure to monitor the process of international harmonization and the use of international standards, guidelines or recommendations. For this purpose, the Committee should, in conjunction with the relevant international organizations, establish a list of international standards, guidelines or recommendations relating to sanitary or phytosanitary measures which the Committee determines to have a major trade impact. The list should include an indication by Members of those international standards, guidelines or recommendations which they apply as conditions for import or on the basis of which imported products conforming to these standards can enjoy access to their markets. For those cases in which a Member does not apply an international standard, guideline or recommendation as a condition for import, the Member should provide an indication of the reason therefor, and, in particular, whether it considers that the standard is not stringent enough to provide the appropriate level of sanitary or phytosanitary protection. If a Member revises its position, following its indication of the use of a standard, guideline or recommendation as a condition for import, it should provide an explanation for its change and so inform the Secretariat as well as the relevant international organizations, unless such notification and explanation is given according to the procedures of Annex B.

5. In order to avoid unnecessary duplication, the Committee may decide, as appropriate, to use the information generated by the procedures, particularly for notification, which are in operation in the relevant international organizations.

6. The Committee may, on the basis of an initiative from one of the Members, through appropriate channels invite the relevant international organizations or their subsidiary bodies to examine specific matters with respect to a particular standard, guideline or recommendation, including the basis of explanations for non-use given according to paragraph 4.

7. The Committee shall review the operation and implementation of this Agreement three years after the date of entry into force of the WTO Agreement, and thereafter as the need arises. Where appropriate, the Committee may submit to the Council for Trade in Goods proposals to amend the text of this Agreement having regard, *inter alia*, to the experience gained in its implementation.

Article 13

Implementation

Members are fully responsible under this Agreement for the observance of all obligations set forth herein. Members shall formulate and implement positive measures and mechanisms in support of the observance of the provisions of this Agreement by other than central government bodies. Members shall take such reasonable measures as may be available to them to ensure that non-governmental entities within their territories, as well as regional bodies in which relevant entities within their territories are members, comply with the relevant provisions of this Agreement. In addition, Members shall not take measures which have the effect of, directly or indirectly, requiring or encouraging such regional or non-governmental entities, or local governmental bodies, to act in a manner inconsistent with the provisions of this Agreement. Members shall ensure that they rely on the services of non-governmental entities for implementing sanitary or phytosanitary measures only if these entities comply with the provisions of this Agreement.

Article 14

Final Provisions

The least-developed country Members may delay application of the provisions of this Agreement for a period of five years following the date of entry into force of the WTO Agreement with respect to their sanitary or phytosanitary measures affecting importation or imported products. Other developing country Members may delay application of the provisions of this Agreement, other than paragraph 8 of Article 5 and Article 7, for two years following the date of entry into force of the WTO Agreement with respect to their existing sanitary or phytosanitary measures affecting importation or imported products, where such application is prevented by a lack of technical expertise, technical infrastructure or resources.

ANNEX A

DEFINITIONS[5]

1. *Sanitary or phytosanitary measure* - Any measure applied:

(a) to protect animal or plant life or health within the territory of the Member from risks arising from the entry, establishment or spread of pests, diseases, disease-carrying organisms or disease-causing organisms;

(b) to protect human or animal life or health within the territory of the Member from risks arising from additives, contaminants, toxins or disease-causing organisms in foods, beverages or feedstuffs;

(c) to protect human life or health within the territory of the Member from risks arising from diseases carried by animals, plants or products thereof, or from the entry, establishment or spread of pests; or

(d) to prevent or limit other damage within the territory of the Member from the entry, establishment or spread of pests.

Sanitary or phytosanitary measures include all relevant laws, decrees, regulations, requirements and procedures including, *inter alia*, end product criteria; processes and production methods; testing, inspection, certification and approval procedures; quarantine treatments including relevant requirements associated with the transport of animals or plants, or with the materials necessary for their survival during transport; provisions on relevant statistical methods, sampling procedures and methods of risk assessment; and packaging and labelling requirements directly related to food safety.

2. *Harmonization* - The establishment, recognition and application of common sanitary and phytosanitary measures by different Members.

3. *International standards, guidelines and recommendations*

(a) for food safety, the standards, guidelines and recommendations established by the Codex Alimentarius Commission relating to food additives, veterinary drug and pesticide residues, contaminants, methods of analysis and sampling, and codes and guidelines of hygienic practice;

(b) for animal health and zoonoses, the standards, guidelines and recommendations developed under the auspices of the International Office of Epizootics;

(c) for plant health, the international standards, guidelines and recommendations developed under the auspices of the Secretariat of the International Plant Protection Convention in cooperation with regional organizations operating within the framework of the International Plant Protection Convention; and

(d) for matters not covered by the above organizations, appropriate standards, guidelines and recommendations promulgated by other relevant international organizations open for membership to all Members, as identified by the Committee.

4. *Risk assessment* - The evaluation of the likelihood of entry, establishment or spread of a pest or disease within the territory of an importing Member according to the sanitary or phytosanitary measures which

[5]For the purpose of these definitions, "animal" includes fish and wild fauna; "plant" includes forests and wild flora; "pests" include weeds; and "contaminants" include pesticide and veterinary drug residues and extraneous matter.

might be applied, and of the associated potential biological and economic consequences; or the evaluation of the potential for adverse effects on human or animal health arising from the presence of additives, contaminants, toxins or disease-causing organisms in food, beverages or feedstuffs.

5. *Appropriate level of sanitary or phytosanitary protection* - The level of protection deemed appropriate by the Member establishing a sanitary or phytosanitary measure to protect human, animal or plant life or health within its territory.

NOTE: Many Members otherwise refer to this concept as the "acceptable level of risk".

6. *Pest- or disease-free area* - An area, whether all of a country, part of a country, or all or parts of several countries, as identified by the competent authorities, in which a specific pest or disease does not occur.

NOTE: A pest- or disease-free area may surround, be surrounded by, or be adjacent to an area - whether within part of a country or in a geographic region which includes parts of or all of several countries -in which a specific pest or disease is known to occur but is subject to regional control measures such as the establishment of protection, surveillance and buffer zones which will confine or eradicate the pest or disease in question.

7. *Area of low pest or disease prevalence* - An area, whether all of a country, part of a country, or all or parts of several countries, as identified by the competent authorities, in which a specific pest or disease occurs at low levels and which is subject to effective surveillance, control or eradication measures.

ANNEX B

TRANSPARENCY OF SANITARY AND PHYTOSANITARY REGULATIONS

Publication of regulations

1. Members shall ensure that all sanitary and phytosanitary regulations[6] which have been adopted are published promptly in such a manner as to enable interested Members to become acquainted with them.

2. Except in urgent circumstances, Members shall allow a reasonable interval between the publication of a sanitary or phytosanitary regulation and its entry into force in order to allow time for producers in exporting Members, and particularly in developing country Members, to adapt their products and methods of production to the requirements of the importing Member.

Enquiry points

3. Each Member shall ensure that one enquiry point exists which is responsible for the provision of answers to all reasonable questions from interested Members as well as for the provision of relevant documents regarding:

(a) any sanitary or phytosanitary regulations adopted or proposed within its territory;

(b) any control and inspection procedures, production and quarantine treatment, pesticide tolerance and food additive approval procedures, which are operated within its territory;

(c) risk assessment procedures, factors taken into consideration, as well as the determination of the appropriate level of sanitary or phytosanitary protection;

(d) the membership and participation of the Member, or of relevant bodies within its territory, in international and regional sanitary and phytosanitary organizations and systems, as well as in bilateral and multilateral agreements and arrangements within the scope of this Agreement, and the texts of such agreements and arrangements.

4. Members shall ensure that where copies of documents are requested by interested Members, they are supplied at the same price (if any), apart from the cost of delivery, as to the nationals[7] of the Member concerned.

Notification procedures

5. Whenever an international standard, guideline or recommendation does not exist or the content of a proposed sanitary or phytosanitary regulation is not substantially the same as the content of an international standard, guideline or recommendation, and if the regulation may have a significant effect on trade of other Members, Members shall:

(a) publish a notice at an early stage in such a manner as to enable interested Members to become acquainted with the proposal to introduce a particular regulation;

(b) notify other Members, through the Secretariat, of the products to be covered by the regulation together with a brief indication of the objective and rationale of the proposed regulation. Such notifications shall take place at an early stage, when amendments can still be introduced and comments taken into account;

[6]Sanitary and phytosanitary measures such as laws, decrees or ordinances which are applicable generally.

[7]When "nationals" are referred to in this Agreement, the term shall be deemed, in the case of a separate customs territory Member of the WTO, to mean persons, natural or legal, who are domiciled or who have a real and effective industrial or commercial establishment in that customs territory.

(c) provide upon request to other Members copies of the proposed regulation and, whenever possible, identify the parts which in substance deviate from international standards, guidelines or recommendations;

(d) without discrimination, allow reasonable time for other Members to make comments in writing, discuss these comments upon request, and take the comments and the results of the discussions into account.

6. However, where urgent problems of health protection arise or threaten to arise for a Member, that Member may omit such of the steps enumerated in paragraph 5 of this Annex as it finds necessary, provided that the Member:

(a) immediately notifies other Members, through the Secretariat, of the particular regulation and the products covered, with a brief indication of the objective and the rationale of the regulation, including the nature of the urgent problem(s);

(b) provides, upon request, copies of the regulation to other Members;

(c) allows other Members to make comments in writing, discusses these comments upon request, and takes the comments and the results of the discussions into account.

7. Notifications to the Secretariat shall be in English, French or Spanish.

8. Developed country Members shall, if requested by other Members, provide copies of the documents or, in case of voluminous documents, summaries of the documents covered by a specific notification in English, French or Spanish.

9. The Secretariat shall promptly circulate copies of the notification to all Members and interested international organizations and draw the attention of developing country Members to any notifications relating to products of particular interest to them.

10. Members shall designate a single central government authority as responsible for the implementation, on the national level, of the provisions concerning notification procedures according to paragraphs 5, 6, 7 and 8 of this Annex.

General reservations

11. Nothing in this Agreement shall be construed as requiring:

(a) the provision of particulars or copies of drafts or the publication of texts other than in the language of the Member except as stated in paragraph 8 of this Annex; or

(b) Members to disclose confidential information which would impede enforcement of sanitary or phytosanitary legislation or which would prejudice the legitimate commercial interests of particular enterprises.

ANNEX C

CONTROL, INSPECTION AND APPROVAL PROCEDURES[8]

1. Members shall ensure, with respect to any procedure to check and ensure the fulfilment of sanitary or phytosanitary measures, that:

(a) such procedures are undertaken and completed without undue delay and in no less favourable manner for imported products than for like domestic products;

(b) the standard processing period of each procedure is published or that the anticipated processing period is communicated to the applicant upon request; when receiving an application, the competent body promptly examines the completeness of the documentation and informs the applicant in a precise and complete manner of all deficiencies; the competent body transmits as soon as possible the results of the procedure in a precise and complete manner to the applicant so that corrective action may be taken if necessary; even when the application has deficiencies, the competent body proceeds as far as practicable with the procedure if the applicant so requests; and that upon request, the applicant is informed of the stage of the procedure, with any delay being explained;

(c) information requirements are limited to what is necessary for appropriate control, inspection and approval procedures, including for approval of the use of additives or for the establishment of tolerances for contaminants in food, beverages or feedstuffs;

(d) the confidentiality of information about imported products arising from or supplied in connection with control, inspection and approval is respected in a way no less favourable than for domestic products and in such a manner that legitimate commercial interests are protected;

(e) any requirements for control, inspection and approval of individual specimens of a product are limited to what is reasonable and necessary;

(f) any fees imposed for the procedures on imported products are equitable in relation to any fees charged on like domestic products or products originating in any other Member and should be no higher than the actual cost of the service;

(g) the same criteria should be used in the siting of facilities used in the procedures and the selection of samples of imported products as for domestic products so as to minimize the inconvenience to applicants, importers, exporters or their agents;

(h) whenever specifications of a product are changed subsequent to its control and inspection in light of the applicable regulations, the procedure for the modified product is limited to what is necessary to determine whether adequate confidence exists that the product still meets the regulations concerned; and

(i) a procedure exists to review complaints concerning the operation of such procedures and to take corrective action when a complaint is justified.

Where an importing Member operates a system for the approval of the use of food additives or for the establishment of tolerances for contaminants in food, beverages or feedstuffs which prohibits or restricts access to its domestic markets for products based on the absence of an approval, the importing Member shall consider the use of a relevant international standard as the basis for access until a final determination is made.

[8]Control, inspection and approval procedures include, *inter alia*, procedures for sampling, testing and certification.

2. Where a sanitary or phytosanitary measure specifies control at the level of production, the Member in whose territory the production takes place shall provide the necessary assistance to facilitate such control and the work of the controlling authorities.

3. Nothing in this Agreement shall prevent Members from carrying out reasonable inspection within their own territories.

* * *

Southern Common Market (MERCOSUR) Agreement

(Also Known as The Treaty of Asunción)

http://www.sice.oas.org/TRADEE.ASP#MERCOSUR/MERCOSUL

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SOUTHERN COMMON MARKET (MERCOSUR) AGREEMENT

(Original: Spanish)

Treaty Establishing a Common Market between the Argentine Republic. the Federal Republic of Brazil. the Republic of Paraguay and the Eastern Republic of Uruguay

The Argentine Republic, the Federative Republic of Brazil, the Republic of Paraguay and the Eastern Republic of Uruguay, hereinafter referred to as the "States Parties",

CONSIDERING that the expansion of their domestic markets, through integration, is a vital prerequisite for accelerating their processes of economic development with social justice,

BELIEVING that this objective must be achieved by making optimum use of available resources, preserving the environment, improving physical links, coordinating macroeconomic policies and ensuring complementarily between the different sectors of
the economy, based on the principles of gradualism, flexibility and balance,

BEARING IN MIND international trends, particularly the integration of large economic areas. and the importance of securing their countries a proper place in the international economy.

BELIEVING that this integration process is an appropriate response to such trends,

AWARE that this Treaty must be viewed as a further step in efforts gradually to bring about Latin American integration, in keeping with the objectives of the Montevideo Treaty in 1980,

CONVINCED of the need to promote the scientific and technological development of the States Parties and to modernize their economies in order to expand the supply and improve the quality of available goods and services, with a view to enhancing the
living conditions of their populations,

REAFFIRMING their political will to lay the bases for increasingly close ties between their peoples, with a view to achieving the above-mentioned objectives,

HEREBY AGREE AS FOLLOWS:

CHAPTER I: PURPOSES, PRINCIPLES AND INSTRUMENTS

Article I

The States Parties hereby decide to establish a common market, which shall be in place by 31 December 1994 and shall be called the "common market of the southern cone" (MERCOSUR).

This common market shall involve:

The free movement of goods, services and factors of production between countries through, inter alia, the elimination of customs duties and non-tariff restrictions on the movement of goods, and any other equivalent measures;

The establishment of a common external tariff and the adoption of a common trade policy in relation to third States or groups of States, and the co-ordination of positions in regional and international economic and commercial forums;

The co-ordination of macroeconomic and sectoral policies between the States Parties in the areas of foreign trade, agriculture, industry, fiscal and monetary matters, foreign exchange and capital, services, customs, transport and communications and any
other areas that may be agreed upon, in order to ensure proper competition between the States Parties;

The commitment by States Parties to harmonize their legislation in the relevant areas in order to strengthen the integration process.

Article 2

The common market shall be based on reciprocity of rights and obligations between the States Parties.

Article 3

During the transition period, which shall last from the entry into force of this Treaty until 31 December 1994, and in order to facilitate the formation of the common market, the States Parties shall adopt general rules of origin, a system for the settlement of disputes and safeguard clauses, as contained in Annexes 11. III and IV respectively to this Treaty.

Article 4

The States Parties shall ensure equitable trade terms in their relations with third countries. To that end, they shall apply their domestic legislation to restrict imports whose prices are influenced by subsidies, dumping or any other unfair practice. At the same time, States Parties shall co-ordinate their respective domestic policies with a view to drafting common rules for trade competition.

Article 5

During the transition period, the main instruments for putting in place the common market shall be:

(a) A trade liberalization programma, which shall consist of progressive, linear and automatic tariff reductions accompanied by the elimination of non-tariff restrictions or equivalent measures, as well as any other restrictions on trade between the States Parties, with a view to arriving at a zero tariff and no non-tariff restrictions for the entire tariff area by 31 December 1994 (Annex I);

(b) The co-ordination of macroeconomic policies, which shall be carried out gradually and in parallel with the programmes for the reduction of tariffs and the elimination of non-tariff restrictions referred to in the preceding paragraph;

(c) A common external tariff which encourages the foreign competitiveness of the States Parties;

(d) The adoption of sectoral agreements in order to optimize the use and mobility of factors of production and to achieve efficient scales of operation.

Article 6

The States parties recognize certain differentials in the rate at which the Republic of Paraguay and the Eastern Republic of Uruguay will make the transition. These differentials are indicated in the trade liberalization programme (Annex 1).

Article 7

In the area of taxes, charges and other internal duties, products originating in the territory of one State Party shall enjoy, in the other States Parties, the same treatment as domestically produced products .

Article 8

The States Parties undertake to abide by commitments made prior to the date of signing of this Treaty, including agreements signed in the framework of the Latin American Integration Association (ALADI), and to co-ordinate their positions in any external trade negotiations they may undertake during the transitional period. To that end:

(a) They shall avoid affecting the interests of the States Parties in any trade negotiations they may conduct among themselves up to 31 December 1994;

(b) They shall avoid affecting the interests of the other States Parties or the aims of the common market in any agreements they may conclude with other countries members of the Latin American Integration Association during the transition period;

(c) They shall consult among themselves whenever negotiating comprehensive tariff reduction schemes for the formation of free trade areas with other countries members of the Latin American Integration Association;

(d) They shall extend automatically to the other States Parties any advantage, favour, exemption, immunity or privilege granted to a product originating in or destined for third countries which are not members of the Latin American Integration Association.

CHAPTER II: Organizational Structure

Article 9

The administration and implementation of this Treaty, and of any specific agreements or decisions adopted during the transition period within the legal framework established thereby, shall be entrusted to the following organs:

(a) The Council of the common market

(b) The Common Market Group

Article 10

The Council shall be the highest organ of the common market, with responsibility for its political leadership and for decision-making to ensure compliance with the objectives and time-limits set for the final establishment of the common market.

Article 11

The council shall consist of the Ministers for Foreign Affairs and the Ministers of the Economy of the States Parties.

It shall meet whenever its members deem appropriate, and at least once a year with the participation of the Presidents of the States Parties.

Article 12

The presidency of the Council shall rotate among the States Parties, in alphabetical order, for periods of six months.

Meetings of the Council shall be co-ordinated by the Minister for Foreign Affairs, and other ministers or ministerial authorities may be invited to participate in them.

Article 13

The Common Market Group shall be the executive organ of the common market and shall be co-ordinated by the Ministries of Foreign Affairs.

The Common Market Group shall have powers of initiative. Its duties shall be the following:

- to monitor compliance with the Treaty;

- to take the necessary steps to enforce decisions adopted by the Council;

- to propose specific measures for applying the trade liberalization programme, co-ordinating macroeconomic policies and negotiating agreements with third parties;

- to draw up programmes of work to ensure progress towards the formation of the common market.

The Common Market Group may set up whatever working groups are needed for it to perform its duties. To start with, it shall have the working groups mentioned in Annex V.

The Common Market Group shall draw up its own rules of procedure within 60 days of its establishment .

Article 14

The Common Market Group shall consist of four members and four alternates for each country, representing the following public bodies:

- Ministry of Foreign Affairs;

- Ministry of Economy or its equivalent (areas of industry, foreign trade and/or economic co-ordination);

- Central Bank.

In drafting and proposing specific measures as part of its work up to 31 December 1994, the Common Market Group may, whenever it deems appropriate, call on representatives of other government agencies or the private sector.

Article 15

The Common Market Group shall have an administrative secretariat whose main functions shall be to keep the Group's documents and report on its activities. It shall be headquartered in the city of Montevideo.

Article 16

During the transition period, decisions of the Council of the common market and the Common Market Group shall be taken by consensus, with all States Parties present.

Article 17

The official languages of the common market shall be Spanish and Portuguese, and the official version of its working documents shall be that drafted in the language of the country in which each meeting takes place.

Article 18

Prior to the establishment of the common market on 31 December 1994, the States Parties shall convene a special meeting to determine the final institutional structure of the administrative organs of the common market, as well as the specific powers of
each organ and its decision-making procedures.

CHAPTER III: Period of Application

Article 19

This Treaty shall be of unlimited duration and shall enter into force 30 days after the date of deposit of the third instrument of ratification. The instruments of ratification shall be deposited with the Government of the Republic of Paraguay, which shall notify the Governments of the other States Parties of the date of deposit.

The Government of the Republic of Paraguay shall notify the Governments of each of the other States Parties of the date of entry into force of this Treaty.

CHAPTER IV: Accession

Article 20

This Treaty shall be open to accession, through negotiation, by other countries members of the Latin American Integration Association; their applications may be considered by the States Parties once this Treaty has been in force for five years.

Notwithstanding the above, applications made by countries members of the Latin American Integration Association who do not belong to subregional integration schemes or an extraregional association may be considered before the date specified.

Approval of applications shall require the unanimous decision of the States Parties.

CHAPTER V: DENUNCIATION

Article 21

Any State Party wishing to withdraw from this Treaty shall inform the other States Parties of its intention expressly and formally and shall submit the document of denunciation within 60 days to the Ministry of Foreign Affairs of the Republic of Paraguay, which shall distribute it to the other States Parties.

Article 22

Once the denunciation has been formalized, those rights and obligations of the denouncing State deriving from its status as a State Party shall cease, while those relating to the liberalization programme under this Treaty and any other aspect to which the
States Parties, together with the denouncing State, may agree within the 60 days following the formalization of the denunciation shall continue. The latter rights and obligations of the denouncing Party shall remain in force for a period of two years from the date of the above-mentioned formalization.

CHAPTER VI: General Provisions

Article 23

This Treaty shall be called the "Treaty of Asuncion".

Article 24

In order to facilitate progress towards the formation of the common market, a Joint Parliamentary Commission of MERCOSUR shall be established. The executive branches of the States Parties shall keep their respective legislative branches informed of the progress of the common market established by this Treaty.

DONE at the city of Asuncion, on 26 March 1991, in one original in the Spanish and Portuguese languages, both texts being equally authentic. The Government of the Republic of Paraguay shall be the depositary of this Treaty and shall send a duly
authenticated copy thereof to the Governments of signatory and acceding States Parties.

For the Government of the Argentine Republic:

Carlos Saul Menem

Guido di Tella

For the Government of the Federative Republic of Brazil:

Fernando Collor

Francisco Rezek

For the Government of the Republic of Paraguay:

Andres Rodriguez

Alexis Frutos Vaesken

For the Governrnent of the Eastern Republic of Uruguay:

Luis Alberto Lacalle Herrera

Hector Gros Espiell

ANNEX I: Trade Liberalization Programme

Article I

The States Parties hereby agree to eliminate, by: 31 December 1994 at the latest, any duties, charges and other restrictions applied in their reciprocal trade.

With regard to the schedules of exceptions submitted by the Republic of Paraguay and the Eastern Republic of Uruguay, the period for their elimination shall extend to 31 December 1995, on the terms of article 7 of this annex.

Article 2

For the purposes of the preceding article:

(a) "Duties and charges" shall mean customs duties and any other charges of equivalent effect, whether related to fiscal, monetary, foreign exchange or other matters, levied on foreign trade. This concept does not cover fees and similar
charges corresponding to the approximate cost of services rendered; and

(b) "Restrictions" shall mean any administrative, financial, foreign exchange or other measures by which a State Party unilaterally prevents or impedes reciprocal trade. This concept does not cover measures taken in the situations envisaged in article 50 of the Montevideo Treaty of 1980.

Article 3

As of the date of entry into force of the Treaty, the States Parties shall begin a programme of gradual, linear and automatic tariff reductions, which shall benefit products classified according to the tariff nomenclature used by the Latin American Integration Association, observing the following timetable:

DATE	PERCENTAGE TARIFF REDUCTION
30 June 1991	47
31 Dec. 1991	54
30 June 1992	61
31 Dec. 1992	68
30 June 1993	75
31 Dec. 1993	82
30 June 1994	89
31 Dec. 1994	100

Preferences shall apply to the tariff in force at the time of their application and shall consist of a percentage reduction in the most favourable duties and charges applied to imports of products coming from third countries not members of the Latin American
Integration Association.

If one of the States Parties increases this tariff for imports from third countries, the established timetable shall continue to apply at the tariff level in force on 1 January 1991.

If tariffs are reduced, the corresponding preference shall apply automatically to the new tariff on the date on which that new tariff enters into force.

For the above purposes, the States Parties shall exchange among themselves and shall transmit to the Latin American Integration Association, within 30 days of the entry into force of the Treaty, updated copies of their customs tariffs and of those in force on I January 1991.

Article 4

Preferences agreed to in partial scope agreements concluded by the States Parties among themselves in the framework of the Latin American Integration Association shall be expanded, under the present tariff reduction programme, according to the following timetable:

DATE / PERCENTAGE TARIFF REDUCTION

31 Dec. 1990	30 June 1991	31 Dec. 1991	30 June 1992	31 Dec. 1992	30 June 1993	31 Dec. 1993	30 June 1994	31 De 199
00 to 40	47	54	61	68	75	82	89	100
41 to 45	52	59	66	73	80	87	94	100
46 to 50	57	64	71	78	85	92	100	
51 to 55	61	67	73	79	86	93	100	
56 to 60	67	74	81	88	95	100		
61 to 65	71	77	83	89	96	100		
66 to 70	75	80	85	90	95	100		
71 to 75	80	85	90	95	100			
76 to 80	85	90	95	100				
81 to 85	89	93	97	100				
86 to 90	95	100						
91 to 95	100							
96 to 100								

These reductions shall apply only in the context of the corresponding partial scope agreements and shall not benefit other members of the common market; nor shall they apply to products included in the respective schedules of exceptions.

Article 5

Without prejudice to the mechanism described in articles 3 and 4, States Parties may also expand preferences by means of negotiations conducted in the framework of the agreements envisaged in the Montevideo Treaty of 1980.

Article 6

The tariff reduction timetable referred to in articles 3 and 4 of this annex shall not apply to products included in the schedules of exceptions submitted by each of the States Parties with the following quantifies of ALADI nomenclature items:

Argentine Republic: 394

Federative Republic of Brazil: 324
Republic of Paraguay: 439
Eastern Republic of Uruguay: 960

Article 7

The schedules of exceptions shall be reduced at the end of each calendar year in accordance with the following timetable:

(a) For the Argentine Republic and the Federative Republic of Brazil, by 20 per cent per year of the component items; this reduction applies from 31 December 1990;

(b) For the Republic of Paraguay and the Eastern Republic of Uruguay, the reduction shall be at the following rates:

10 per cent on the date of entry into force of the Treaty

10 per cent on 31 December 1991

20 per cent on 31 December 1992

20 per cent on 31 December 1993

20 per cent on 31 December 1994

20 per cent on 31 December 1995

Article 8

The schedules of exceptions contained in appendices I, II, III and IV include the first reduction envisaged in the preceding article.

Article 9

Products which are removed from schedules of exceptions on the terms set forth in Article 7 shall automatically benefit from the preferences resulting from the tariff reduction programme established in Article 3 of this annex. They shall benefit, at the least, from the minimum percentage reduction provided on the date on which they are removed from the schedules.

Article 10

States Parties may apply up to 31 December 1994, to products included in the tariff reduction programme, only the non-tariff restrictions expressly mentioned in the notes supplementing the complementarity agreement to be concluded by the States Parties in the framework of the Montevideo Treaty of 1980.

As of 31 December 1994, all non-tariff restrictions shall be eliminated from the common market area.

Article 11

In order to ensure observance of the tariff reduction timetable established in Articles 3 and 4, and also the formation of the common market, the States Parties shall co-ordinate any rnacroeconomic and sectoral policies which may be agreed upon and to which the Treaty establishing the common market refers, beginning with those connected with trade flows and the composition of the States Parties' productive sectors.

Article 12

The provisions of this Annex shall not apply to the partial scope agreements, economic complementarity agreements Nos. 1, 2, 13 and 14 or trade and agricultural agreements signed in the framework of the Montevideo Treaty of 1980, such agreements being governed exclusively by their own provisions.

(The Spanish and Portuguese read: THIS IS A TRUE COPY OF THE ORIGINAL WHICH IS IN THE POSSESSION OF THE TREATY DEPARTMENT OF THE MINISTRY OF FOREIGN AFFAIRS)

(Signed) Bernardino H. Saguier Caballero
Under-Secretary for Foreign Affairs

ANNEX II: GENERAL RULES OF ORIGIN

Chapter I: General Rules for Classification of Origin

Article 1

The following shall be classified as originating in the States Parties:

(a) Products manufactured wholly in the territory of any of the Parties, when only materials originating in the States Parties are used in their manufacture;

(b) Products included in the chapters or headings of the tariff nomenclature of the Latin Arnerican Integration Association referred to in Annex 1 of resolution 78 of the Committee of Representatives of that Association, simply by virtue of the fact that they are produced in their respective territories.

The following shall be classified as produced in the territory of a State Party:

(i) Mineral, plant and animal products, including hunting and fishing products, extracted, harvested or gathered, born and raised in its territory or in its territorial waters or exclusive economic zone;

(ii) Marine products extracted outside its territorial waters and exclusive economic zone by vessels flying its flag or leased by companies established in its territory; and

(iii) Products resulting from operations or processes carried out in its territory by which they acquire the final form in which they will be marketed, except when such processes or operations simply involve assembly, packaging, division into lots or volumes, selection and classification, marking, the putting together of assortments of goods or other equivalent operations or processes;

(c) Products in whose manufacture materials not originating in the States Parties are used, when such products are changed by a process carried out in the territory of one of the States Parties which results in their reclassification in the tariff nomenclature of the Latin American Integration Association under a heading different from that of such materials, except in cases where the States Parties determine that the requirement of Article 2 of this Annex must also be met.

However, products resulting from operations or processes carried out in the territory of a State Party, by which they acquire the final form in which they will be marketed, shall not be classified as originating in the States Parties when such operations or processes use only materials or inputs not originating in their respective countries and simply involve assembly, division into lots or volumes, selection, classification, marking, the putting together of assortments of goods or other similar operations or processes;

(d) Until 31 December 1994, products resulting from assembly operations carried out in the territory of a State Party using materials originating in the States Parties and third countries, when the value of those materials is not less than 40 per cent of the f.o.b. export value of the final product; and

(e) Products which, in addition to being produced in their territory, meet the specific requirements established in Annex 2 of Resolution 78 of the Committee of Representatives of the Latin American Integration Association.

Article 2

In cases where the requirement of Article 1 (c) cannot be met because the process carried out does not involve a change in nomenclature heading, it shall suffice that the c.i.f. value of the third country materials at the port of destination or the maritime port does not exceed 50 per cent of the f.o.b. export value of the goods in question.

In considering materials originating in third countries for States Parties with no outlet to the sea, warehouses and free zones granted by the other States Parties when the rnaterials arrive by sea shall be treated as the port of destination.

Article 3

The States Parties may establish, by mutual consent, specific requirements of origin which shall prevail over general classification criteria.

Article 4

In determining the specific requirements of origin referred to in Article 3 and in reviewing those already established, State Parties shall take the following elements, individually or jointly, as a basis:

I. Materials and other inputs used in production:

(a) Raw materials:

(i) Preponderant raw material or that which essentially characterizes the product; and

(ii) Main raw materials.

(b) Parts or components:

(i) Part or component which essentially characterizes the product;

(ii) Main parts or components; and

(iii) Percentage of parts or components in relation to total weight.

(c) Other inputs.

II. Type of processing used.

III. Maximum proportion of the value of materials imported from third countries in relation to the total value of the product arrived at using the valuation procedure agreed to in each case.

Article 5

In exceptional cases, where specific requirements cannot be met because of circumstantial supply problems: availability, technical specifications, delivery date and price, taking into account the provisions of Article 4 of the Treaty, materials not
originating in the States Parties may be used.

In the situation envisaged in the preceding paragraph, the exporting country shall issue the corresponding certificate informing the importing State Party and the Common Market Group, together with any background information and evidence justifying
the issue of that document.

If such cases occur repeatedly, the exporting State Party or the importing State Party shall inform the Common Market Group of the situation so that the specific requirement can be reviewed.

This article does not cover products resulting from assembly operations and shall apply pending the entry into force of the common external tariff for products subject to specific requirements of origin and their materials or inputs.

Article 6

Any State Party may request that requirements of origin established pursuant to Article 1 above be reviewed. Such requests shall propose and justify the requirements applicable to the product or products in question.

Article 7

For the purpose of meeting requirements of origin, materials and other inputs originating in the territory of any State Party and used by a State Party in the manufacture of a given product shall be classified as originating in the territory of this latter State
Party.

Article 8

The criterion of maximum use of materials or other inputs originating in States Parties may not be taken into account in establishing requirements which involve the imposition of materials or other inputs of those States Parties when, in their view, such materials or inputs do not meet adequate supply, quality or price standards or are not adapted to the industrial processes or technologies used.

Article 9

In order for originating goods to benefit from preferential treatment, they must have been shipped directly from the exporting country to the importing country. For these purposes, the following shall be deemed direct shipment:

(a) Goods not shipped through the territory of a country that is not a party to the Treaty;

(b) Goods shipped in transit through one or more countries that are not parties to the Treaty, with or without transshipment or temporary storage, under the supervision of the competent customs authority in such countries, provided that:

(i) Transit is justified by geographical reasons or transport considerations;

(ii) The goods are not intended for trade or use in the country of transit; and

iii) The goods are not subjected, during shipment and storage, to any operation other than loading, unloading or handling to keep them in good condition or ensure their conservation.

Article 10

For the purposes of these general rules, it shall be understood that:

(a) Products coming from free zones located within the geographical boundaries of any of the States Parties shall meet the requirements envisaged in these general rules;

(b) The term "materials" shall include raw materials, intermediate products and parts and components used in the manufacture of goods.

CHAPTER II: Declaration, Certification and Verification

Article 11

In order for imports of products originating in the States Parties to benefit from the reductions in duties, charges and restrictions they have granted each other, the export documentation for such products must include a declaration certifying that they meet
the requirements of origin established in accordance with the preceding chapter.

Article 12

The declaration referred to in the preceding article shall be issued by the final producer or the exporter of the goods and certified by an official department or professional association with legal personality, authorized by the Government of the exporting State Party.

In authorizing professional associations, States Parties shall make sure that they are organizations which have national jurisdiction and can delegate authority to regional or local associations while remaining directly responsible for the veracity of the
certifications issued.

The States Parties undertake to establish, within a period of 90 days from the entry into force of the Treaty, a harmonized regime of administrative penalties for cases of false certification, without prejudice to the corresponding criminal proceedings.

Article 13

Certificates of origin issued for the purposes of this Treaty shall be valid for 180 days from the date of their issue.

Article 14

In all cases, the standard form annexed to agreement No .25 of the Committee of Representatives of the Latin American Integration Association shall be used until such time as another form approved by the States Parties comes into effect.

Article 15

States Parties shall transmit to the Latin American Integration Association the list of official departments and professional associations authorized to issue the certification referred to in the preceding article. with a record and exact copy of the authorized signatures.

Article 16

If a State Party considers that the certificates issued by an official department or professional association authorized by another State Party are not in compliance with the provisions of these general rules, it shall inform that State Party accordingly so that
the latter can take whatever steps it deems necessary to solve the problems that have arisen.

In no case may the importing country hold up import procedures for products covered by the certificates referred to in the preceding paragraph. It may, however, in addition to requesting the corresponding additional information from the governmental
authorities of the exporting country, take whatever measures it deems necessary to safeguard fiscal interests.

Article 17

For the purposes of subsequent verification, copies of certificates and the corresponding documents shall be kept for two years from the date of their issue.

Article 18

The provisions of these general rules and any amendments thereto shall not affect goods already loaded for shipment on the date of their adoption.

Article 19

The provisions of this Annex shall not apply to the partial scope agreements, economic complementarity agreements Nos. 1, 2, 13 and 14 or trade and agricultural agreements signed in the framework of the Montevideo Treaty of 1980, such agreements
being governed exclusively by their own provisions.

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(Signed) Bernardino H. Saguier Caballero
Under-Secretary for Foreign Affairs

ANNEX III: Settlement of Disputes

1.Any dispute arising between the States Parties as a result of the application of the Treaty shall be settled by means of direct negotiations.

If no solution can be found, the States Parties shall refer the dispute to the Common Market Group which, after evaluating the situation, shall within a period of 60 days make the relevant recommendations to the Parties for settling the dispute. To that end, the Common Market Group may establish or convene panels of experts or groups of specialists in order to obtain the necessary technical advice.

If the Common Market Group also fails to find a solution, the dispute shall be referred to the Council of the common market to adopt the relevant recommendations.

2.Within 120 days of the entry into force of the Treaty, the Common Market Group shall propose to the Governments of States Parties a system for the settlement of disputes which shall apply during the transition period.

3.Before 31 December 1994, the States Parties shall adopt a permanent disputes settlement system for the common market.

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Under-Secretary for Foreign Affairs

ANNEX IV: Safeguard Clauses

Article I

Each State Party may, up to 31 December 1994, apply safeguard clauses to imports of products benefiting from the trade liberalization programme established under the Treaty.

The States Parties hereby agree that they shall use these rules only in exceptional cases.

Article 2

If imports of a given product damage or threaten serious damage to its market as a result of a significant increase in imports of that product from the other States Parties over a short period of time, the importing country shall request the Common Market
Group to hold consultations with a view to ending such a situation.

The importing country shall accompany its request with a detailed statement of the supporting facts, reasons and justifications.

The Common Market Group shall begin consultations within a maximum of 10 calendar days from the submission of the request by the importing country and shall conclude them, having taken a decision thereon, within 20 calendar days from the start of
consultations.

Article 3

The existence or otherwise of damage or the threat of serious damage within the meaning of these rules shall be determined by each country, taking into account trends, inter alia, in the following aspects related to the product in question.

(a) Production level and capacity used;

(b) Employment level;

(c) Share of the market;

(d) Level of trade between the parties concerned or participating in the consultations;

(e) Performance of imports and exports in relation to third countries.

None of the above-mentioned factors shall, on its own, be decisive for determining the existence of damage or the threat of serious damage.

In determining the existence of damage or the threat of serious damage, factors such as technological changes or shifts in consumer preferences towards similar and/or directly competitive products in the same sector shall not be taken into account.

Application of the safeguard clause shall be subject, in each country, to the final approval of the national section of the Common Market Group.

Article 4

In order not to interrupt any trade flows which may have been generated, the importing country shall negotiate a quota for imports of the product in respect of which the safeguard clause has been invoked. This quota shall be governed by the same
preferences and other conditions established in the trade liberalization programme.

The above-mentioned quota shall be negotiated with the State Party in which the imports originate, during the period of consultation referred to in Article 2. If the period of consultation ends without an agreement being reached, the importing country which considers itself affected may fix a quota which shall be maintained for one year.

In no event may a quota fixed unilaterally by the importing country be less than the average physical volume imported in the last three calendar years.

Article 5

Safeguard clauses shall apply for a year and may be extended for a further consecutive year on the terms established in this Annex. Such measures may be adopted only once for each product.

In no event may the application of safeguard clauses extend beyond 31 December 1994.

Article 6

The application of safeguard clauses shall not affect goods already loaded for shipment on the date of their adoption. Such goods shall be computed into the quota provided for in article 4.

Article 7

During the transition period, any State Party which considers itself affected by serious difficulties in its economic activities shall request the Common Market Group to hold consultations so that the necessary corrective measures can be taken.

Within the periods established in Article 2 of this Annex, the Common Market Group shall evaluate the situation and decide on the measures to be taken, according to the circumstances.

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Under-Secretary for Foreign Affairs

ANNEX V: Working Groups of the Common Market Group

For the purposes of co-ordinating macroeconomic and sectoral policies, the Common Market Group shall establish. within 30 days of its formation, the following working groups:

Sub-Group 1: Commercial issues

Sub-Group 2: Customs issues

Sub-Group 3: Technical standards

Sub-Group 4: Fiscal and monetary policies relating to trade

Sub-Group 5: Inland transport

Sub-Group 6: Maritime transport

Sub-Group 7: Industrial and technological policy

Sub-Group 8: Agricultural policy

Sub-Group 9: Energy policy

Sub-Group 10: Co-ordination of rnacroeconomic policies

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(Signed) Bernardino H. Saguier Caballero
Under-Secretary for Foreign Affairs

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Southern Common Market (MERCOSUL)

Protocol of Ouro Preto

(Ouro Preto - December 17, 1994)

http://www.sice.oas.org/TRADEE.ASP#MERCOSUR/MERCOSUL

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Southern Common Market (MERCOSUL)

Protocol of Ouro Preto

(Ouro Preto - December 17, 1994)

The Argentine Republic, the Federative Republic of Brazil, the Republic of Paraguay and the Eastern Republic of Uruguay, hereinafter referred to as the "States Parties",

In compliance with the provisions of Article 18 of the Treaty of Asuncion of 26 March 1991,

Aware of the importance of the progress made and of the introduction of the customs union as a stage in the establishment of a common market,

Reaffirming the principles and objectives of the Treaty of Asuncion and mindful of the need to give special consideration to the less developed countries and regions of Mercosul,

Mindful of the forces for change inherent in any integration process and the consequent need to adapt the institutional structure of Mercosul to the transformations that have taken place,

Recognising the outstanding achievements of the existing bodies during the transition period,

Hereby agree as follows:

Chapter I: Structure of Mercosul

Article 1

The institutional structure of Mercosul shall comprise the following organs:

I.The Council of the Common Market (CCM);

II. The Common Market Group (CMG);

III. The Mercosul Trade Commission (MTC);

IV. The Joint Parliamentary Commission (JPC);

V. The Economic-Social Consultative Forum (ESCF);

VI. The Mercosul Administrative Secretariat (MAS).

Sole paragraph - Auxiliary organs necessary to attain the objectives of the integration process may be established, under the terms of this Protocol.

Article 2

The following are inter-governmental organs with decision-making powers: the Council of the Common Market, the Common Market Group and the Mercosul Trade Commission.

Section I: Council of the Common Market

Article 3

The Council of the Common Market is the highest organ of Mercosul, with responsibility for the political leadership of the integration process and for making the decisions necessary to ensure the achievement of the objectives defined by the Treaty of Asuncion and the final establishment of the common market.

Article 4

The Council of the Common Market shall consist of the Ministers for Foreign Affairs and the Ministers of the Economy of the States Parties, or their equivalents.

Article 5

The Presidency of the Council of the Common Market shall be rotated among the States Parties, in alphabetical order, for periods of six months.

Article 6

The Council of the Common Market shall meet whenever it deems appropriate, and at least once every six months, with the participation of the Presidents of the States Parties.

Article 7

The meetings of the Council of the Common Market shall be co-ordinated by the Ministers for Foreign Affairs, and other ministers or ministerial authorities may be invited to participate.

Article 8

The following are duties and functions of the Council of the Common Market:

I. To supervise the implementation of the Treaty of Asuncion, its protocols, and agreements signed within its context;

II. To formulate policies and promote the measures necessary to build the common market;

III. To assume the legal personality of Mercosul;

IV. To negotiate and sign agreements, on behalf of Mercosul, with third countries, groups of countries and international organisations. These functions may be delegated, by express mandate, to the Common Market Group under the conditions laid down in paragraph VII of Article 14;

V. To rule on proposals submitted to it by the Common Market Group;

VI. To arrange meetings of ministers and rule on agreements which those meetings refer to it;

VII. To establish the organs it considers appropriate, and to modify or abolish them;

VIII. To clarify, when it considers necessary, the substance and scope of its decisions;

IX. To appoint the Director of the Mercosul Administrative Secretariat;

X. To adopt financial and budgetary decisions;

XI. To approve the rules of procedure of the Common Market Group.

Article 9

The rulings of the Council of the Common Market shall take the form of Decisions which shall be binding upon the States Parties.

Section II: The Common Market Group

Article 10

The Common Market Group is the executive organ of Mercosul.

Article 11

The Common Market Group shall consist of four members and four alternates for each country, appointed by their respective governments, who must include representatives of the Ministries of Foreign Affairs, the Ministries of the Economy (or their equivalents) and the Central Banks. The Common Market Group shall be co-ordinated by the Ministries of Foreign Affairs.

Article 12

When drafting and proposing specific measures in the course of doing its work, the Common Market Group may, whenever it deems appropriate, call on representatives of other organs of government or of the institutional structure of Mercosul.

Article 13

The Common Market Group shall hold ordinary or extraordinary meetings, as often as necessary, in accordance with the terms of its rules of procedure.

Article 14

The following are duties and functions of the Common Market Group:

I. To monitor, within the limits of its competence, compliance with the Treaty of Asuncion, its Protocols, and agreements signed within its framework;

II. To propose draft Decisions to the Council of the Common Market;

III. To take the measures necessary to enforce the Decisions adopted by the Council of the Common Market;

IV. To draw up programmes of work to ensure progress towards the establishment of the common market;

V. To establish, modify or abolish organs such as working groups and special meetings for the purpose of achieving its objectives;

VI. To express its views on any proposals or recommendations submitted to it by other Mercosul organs within their sphere of competence;

VII. To negotiate, with the participation of representatives of all the States Parties, when expressly so delegated by the Council of the Common Market and within the limits laid down in special mandates granted for that purpose, agreements on behalf of Mercosul with third countries, groups of countries and international organisations. When so mandated, the Common Market Group shall sign the aforementioned agreements. When so authorised by the Council of the Common Market, the Common Market Group may delegate these powers to the Mercosul Trade Commission;

VIII. To approve the budget and the annual statement of accounts presented by the Mercosul Administrative Secretariat;

IX. To adopt financial and budgetary Resolutions based on the guidelines laid down by the Council;

X. To submit its rules of procedure to the Council of the Common Market;

XI. To organise the meetings of the Council of the Common Market and to prepare the reports and studies requested by the latter;

XII. To choose the Director of the Mercosul Administrative Secretariat;

XIII. To supervise the activities of the Mercosul Administrative Secretariat;

XIV. To approve the rules of procedure of the Trade Commission and the

Economic-Social Consultative Forum.

Article 15

The decisions of the Common Market Group shall take the form of Resolutions which shall be binding upon the States Parties.

Section III: The Mercosul Trade Commission

Article 16

It shall be the task of the Mercosul Trade Commission, a body responsible for assisting the Common Market Group, to monitor the application of the common trade policy instruments agreed by the States Parties in connection with the operation of the customs union, as well as to follow up and review questions and issues relating to common trade policies, intra-Mercosul trade and third countries.

Article 17

The Mercosul Trade Commission shall consist of four members and four alternates for each State Party and shall be co-ordinated by the Ministries of Foreign Affairs.

Article 18

The Mercosul Trade Commission shall meet at least once a month, or whenever requested to do so by the Common Market Group or any of the States Parties.

Article 19

The following are duties and functions of the Mercosul Trade Commission:

I. To monitor the application of the common trade policy instruments both within Mercosul and with respect to third countries, international organisations and trade agreements;

II. To consider and rule upon the requests submitted by the States Parties in connection with the application of and compliance with the common external tariff and other instruments of common trade policy;

III. To follow up the application of the common trade policy instruments in the States Parties;

IV. To analyse the development of the common trade policy instruments relating to the operation of the customs union and to submit Proposals in this respect to the Common Market Group;

V. To take decisions connected with the administration and application of the common external tariff and the common trade policy instruments agreed by the States Parties;

VI. To report to the Common Market Group on the development and application of the common trade policy instruments, on the consideration of requests received and on the decisions taken with respect to such requests;

VII. To propose to the Common Market Group new Mercosul trade and customs

regulations or changes in the existing regulations;

VIII. To propose the revision of the tariff rates for specific items of the common external tariff, inter alia, in order to deal with cases relating to new production activities within Mercosul;

IX. To set up the technical committees needed for it to perform its duties properly, and to direct and supervise their activities;

X. To perform tasks connected with the common trade policy requested by the Common Market Group;

XI. To adopt rules of procedure to be submitted to the Common Market Group for approval.

Article 20

The decisions of the Mercosul Trade Commission shall take the form of Directives or Proposals. The Directives shall be binding upon the States Parties.

Article 21

In addition to the duties and functions described in Articles 16 and 19 of this Protocol, the Mercosul Trade Commission shall be responsible for considering complaints referred to it by the National Sections of the Mercosul Trade Commission and originated by States Parties or individuals, whether natural or legal persons, relating to the situations provided for in Article 1 or 25 of the Brasilia Protocol, when they fall within its sphere of competence.

Paragraph 1. The examination of the aforesaid complaints within the Mercosul Trade Commission shall not prevent the complainant State Party taking action under the Brasilia Protocol for the Settlement of Disputes.

Paragraph 2. Complaints arising in the circumstances described in this Article shall be dealt with in accordance with the procedure laid down in the Annex to this Protocol.

Section IV: The Joint Parliamentary Commission

Article 22

The Joint Parliamentary Commission is the organ representing the parliaments of the States Parties within Mercosul.

Article 23

The Joint Parliamentary Commission shall consist of equal numbers of members of parliament representing the States Parties.

Article 24

The members of the Joint Parliamentary Commission shall be appointed by the respective national parliaments, in accordance with their internal procedures.

Article 25

The Joint Parliamentary Commission shall endeavour to speed up the corresponding internal procedures in the States Parties in order to ensure the prompt entry into force of the decisions taken by the Mercosul organs provided for in Article 2 of this Protocol. Similarly, it shall assist with the harmonisation of legislations, as required to advance the integration process. When necessary, the Council shall request the Joint Parliamentary Commission to examine priority issues.

Article 26

The Joint Parliamentary Commission shall submit Recommendations to the Council of the Common Market through the Common Market Group.

Article 27

The Joint Parliamentary Commission shall adopt its rules of procedure.

Section V: The Economic-Social Consultative Forum

Article 28

The Economic-Social Consultative Forum is the organ representing the economic and social sectors and shall consist of equal numbers of representatives from each State Party.

Article 29

The Economic-Social Consultative Forum shall have a consultative function and shall express its views in the form of Recommendations to the Common Market Group.

Article 30

The Economic-Social Consultative Forum shall submit its rules of procedure to the Common Market Group, for approval.

Section VI: The Mercosul Administrative Secretariat

Article 31

Mercosul shall have an Administrative Secretariat to provide operational support. The Mercosul Administrative Secretariat shall be responsible for providing services to the other Mercosul organs and shall be headquartered in the city of Montevideo.

Article 32

The Mercosul Administrative Secretariat shall carry out the following activities:

I. Serve as the official archive for Mercosul documentation;

II. Publish and circulate the decisions adopted within the framework of Mercosul. In this context, it shall;

i. Make, in co-ordination with the States Parties, authentic translations in Spanish and Portuguese of all the decisions adopted by the organs of the Mercosul institutional

structure, in accordance with the provisions of Article 39;

ii.Publish the Mercosul official journal.

III. Organise the logistical aspects of the meetings of the Council of the Common Market, the Common Market Group and the Mercosul Trade Commission and, as far as possible, the other Mercosul organs, when those meetings are held at its headquarters. In the case of meetings held outside its headquarters, the Mercosul Administrative Secretariat shall provide support for the State in which the meeting is held;

IV. Regularly inform the States Parties about the measures taken by each country to incorporate in its legal system the decisions adopted by the Mercosul organs provided for in Article 2 of this Protocol;

V. Compile national lists of arbitrators and experts, and perform other tasks defined in the Brasilia Protocol of 17 December 1991;

VI. Perform tasks requested by the Council of the Common Market, the Common Market Group and the Mercosul Trade Commission;

VII. Draw up its draft budget and, once this has been approved by the Common Market Group, do everything necessary to ensure its proper implementation;

VIII. Submit its statement of accounts annually to the Common Market Group, together with a report on its activities.

Article 33

The Mercosul Administrative Secretariat shall be headed by a Director who shall be a national of one of the States Parties. He shall be chosen by the Common Market Group, on a rotating basis, after consultation with the States Parties and shall be appointed by the Council of the Common Market. His term of office shall be two years and he may not be re-elected.

Chapter II: Legal Personality

Article 34

Mercosul shall possess legal personality of international law.

Article 35

In the exercise of its functions, Mercosul may take whatever action may be necessary to achieve its objectives, in particular sign contracts, buy and sell personal and real property, appear in court, hold funds and make transfers.

Article 36

Mercosul shall make headquarters agreements.

Chapter III: Decision-Making System

Article 37

The decisions of the Mercosul organs shall be taken by consensus and in the presence of all the States Parties.

Chapter IV: Internal Applications of the Decisions Adopted by Mercosul Organs

Article 38

The States Parties undertake to take all the measures necessary to ensure, in their respective territories, compliance with the decisions adopted by the Mercosul organs provided for in Article 2 of this Protocol. Sole paragraph. The States Parties shall inform the Mercosul Administrative Secretariat of the measures taken to this end.

Article 39

The content of the Decisions of the Council of the Common Market, the Resolutions of the Common Market Group, the Directives of the Mercosul Trade Commission and the Dispute Settlement Arbitration Rulings shall be published in full, in Spanish and Portuguese, in the Mercosul official journal, together with any instrument which, in the view of the Council of the Common Market or the Common Market Group requires official publicity.

Article 40

In order to ensure the simultaneous entry into force in the States Parties of the decisions adopted by the Mercosul organs provided for in Article 2 of this Protocol, the following procedure must be followed:

I. Once the decision has been adopted, the States Parties shall take the necessary measures to incorporate it in their domestic legal system and inform the Mercosul Administrative Secretariat.

II. When all the States Parties have reported incorporation in their respective domestic legal systems, the Mercosul Administrative Secretariat shall inform each State Party accordingly.

III. The decisions shall enter into force simultaneously in the States Parties 30 days after the date of the communication made by the Mercosul Administrative Secretariat, under the terms of the preceding subparagraph. To this end, the States Parties shall, within the time-limit mentioned, publish the entry into force of the decisions in question in their respective official journals.

Chapter V: Legal Sources of Mercosul

Article 41

The legal sources of Mercosul are:

I. The Treaty of Asuncion, its protocols and the additional or supplementary instruments;

II. The agreements concluded within the framework of the Treaty of Asuncion and its protocols;

III. The Decisions of the Council of the Common Market, the Resolutions of the Common Market Group and the Directives of the Mercosul Trade Commission adopted since the entry into force of the Treaty of Asuncion.

Article 42

The decisions adopted by the Mercosul organs provided for in Article 2 of this Protocol shall be binding and, when necessary, must be incorporated in the domestic legal systems in accordance with the procedures provided for in each country's legislation.

Chapter VI: Dispute Settlement System

Article 43

Disputes which arise between the States Parties concerning the interpretation, application or non-fulfilment of the provisions of the Treaty of Asuncion and the agreements concluded within its framework or of Decisions of the Council of the Common Market, Resolutions of the Common Market Group and Directives of the Mercosul Trade Commission shall be subject to the settlement procedures laid down in the Brasilia Protocol of 17 December 1991.

Sole paragraph. The Directives of the Mercosul Trade Commission are also incorporated in Articles 19 and 25 of the Brasilia Protocol.

Article 44

Before the Common External Tariff convergence process is complete, the States Parties shall review the present Mercosul dispute settlement system with a view to adopting the permanent system referred to in paragraph 3 of Annex III to the Treaty of Asuncion and Article 34 of the Brasilia Protocol.

Chapter VII: Budget

Article 45

The Mercosul Administrative Secretariat shall have a budget to cover its operating expenses and the expenses authorised by the Common Market Group. This budget shall be funded by equal

contributions from the State Parties.

Chapter VIII: Languages

Article 46

The official languages of Mercosul are Spanish and Portuguese. The official version of the working documents shall be that in the language of the country hosting the meeting.

Chapter IX: Review

Article 47

When they consider it opportune, the States Parties shall convene a diplomatic conference for the purpose of reviewing the institutional structure of Mercosul established by the present Protocol and the specific functions of each of its organs.

Chapter X: Entry Into Force

Article 48

This Protocol, which forms an integral part of the Treaty of Asuncion, shall be of unlimited duration and shall enter into force 30 days after the date of deposit of the third instrument of ratification. The Protocol and its instruments of ratification shall be deposited with the Government of the Republic of Paraguay.

Article 49

The Government of the Republic of Paraguay shall notify the Governments of the other States Parties of the date of deposit of the instruments of ratification and of entry into force of this Protocol.

Article 50

With regard to accession and denunciation, the rules established by the Treaty of Asuncion shall apply to this Protocol in their entirety. Accession to or denunciation of the Treaty of Asuncion or this Protocol shall imply, ipso jure, accession to or denunciation of this Protocol and the Treaty of Asuncion.

Chapter XI: Transitional Provision

Article 51

The institutional structure provided for in the Treaty of Asuncion of 26 March 1991 and the organs it created shall be maintained until this Protocol enters into force.

Chapter XII: General Provisions

Article 52

This Protocol shall be called the "Ouro Preto Protocol".

Article 53

All the provisions of the Treaty of Asuncion of 26 March 1991 which conflict with the terms of this Protocol or with the content of the Decisions adopted by the Council of the Common Market during the transition period are hereby repealed.

Done at the city of Ouro Preto, Federative Republic of Brazil, on 17 December 1994, in one original in the Portuguese and Spanish languages, both texts being equally authentic. The Government of Paraguay shall send an authenticated copy of this Protocol to the Governments of the other States Parties.

Argentine Republic

Federative Republic of Brazil

Republic of Paraguay

Eastern Republic of Uruguay

Carlos Saul Menem Guido Di Tella

Itamar Franco Celso L. N. Amorin

Juan Carlos Wasmosy Luis Ramirez Boettner

Luis Alberto Lacalle Herrera Sergio Abreu

Annex to the Protocol of Ouro Preto

General Procedure for Complaints to the Mercosul Trade Commission

Article 1

Complaints submitted by the National Sections of the Mercosul Trade Commission and originated by States Parties or individuals, whether natural or legal persons, in accordance with the provisions of Article 21 of the Protocol of Ouro Preto shall be subject to the procedure laid down in this Annex.

Article 2

The complainant State Party shall submit its complaint to the Pro-Tempore Chairman of the Mercosul Trade Commission who shall take the necessary steps to include the question on the Agenda of the next meeting of the Mercosul Trade Commission at least one week beforehand. If no decision is taken at that meeting, the Mercosul Trade Commission shall, without taking further action, pass on the dossier to a Technical Committee.

Article 3

Within a maximum of thirty (30) calendar days, the Technical Committee shall prepare and submit to the Mercosul Trade Commission a joint opinion on the question. This opinion or the conclusions of the experts making up the Technical Committee, if there is no joint opinion, shall be taken into consideration by the Mercosul Trade Commission when it rules on the complaint.

Article 4

The Mercosul Trade Commission shall rule on the complaint at its first ordinary meeting following receipt of the joint opinion or, should there be none, the conclusions of the experts, although an extraordinary meeting may also be convened for the purpose.

Article 5

If a consensus cannot be reached at the first meeting mentioned in Article 4, the Mercosul Trade Commission shall submit to the Common Market Group the various alternatives proposed, together with the joint opinion or the conclusions of the experts on the Technical Committee, in order that an appropriate decision may be taken. The Common Market Group shall give a ruling within thirty (30) calendar days of the receipt by the Pro-Tempore Chairman of the proposals submitted by the Mercosul Trade Commission.

Article 6

If there is agreement that the complaint is justified, the State Party against which it is made shall adopt the measures approved in the Mercosul Trade Commission or the Common Market Group. In each case, the Mercosul Trade Commission or, subsequently, the Common Market Group shall fix a reasonable period for the implementation of these measures. If this period expires without the State against which the complaint is made having complied with the provisions of the decision adopted, whether by the Mercosul Trade Commission or the Common Market Group, the complainant State may resort directly to the procedure provided for in Chapter IV of the Brasilia Protocol.

Article 7

If a consensus cannot be reached in the Mercosul Trade Commission, or subsequently, in the Common Market Group or if the State against which the complaint is made does not comply within the period provided for in Article 6 with the provisions of the decision adopted, the complainant State may resort directly to the procedure established in Chapter IV of the Brasilia Protocol and shall inform the Mercosul Administrative Secretariat accordingly.

Before giving a ruling, within fifteen (15) days of its being set up, the Arbitration Tribunal must announce the interim measures it considers appropriate under the conditions laid down in Article 18 of the Brasilia Protocol.

International Legal Materials
Treaties and Agreements
May, 1997

MERCOSUR (ARGENTINA, BRAZIL, PARAGUAY AND URUGUAY):

PROTOCOL OF BRASILIA FOR THE SETTLEMENT OF DISPUTES

Done at Brasilia, December 17, 1991

*691 Reproduced from the English translation of the official Spanish text of the Protocol provided by the Government of Argentina. The translation and the Introductory Note were provided to International Legal Materials by Evelina Teubal Alhadeff, Professor of Law at the University of Buenos Aires and I.L.M. Corresponding Editor for Argentina.

The Treaty Establishing a Common Market Between Argentina, Brazil, Paraguay and Uruguay [known by the Spanish acronym Mercosur] (the Treaty of Asuncion), March 26, 1991, with an Introductory Note by Professor Alhadeff, appears at 30 I.L.M. 1041 (1991), and the Additional Protocol to the Treaty of Asuncion on the Institutional Structure of Mercosur (Protocol of Ouro Preto), December 17, 1994, with an Introductory Note by Professor Alhadeff, appears at 34 I.L.M. 1244 (1995).

For additional information contact the Mercosur Secretariat, Ricon 575, Piso 12, Montevideo 11000, Uruguay (tel.: 598 2 964 590; fax: 598 2 964 591).

Introductory Note

by

Evelina Teubal Alhadeff

The Protocol of Brasilia, on dispute resolution, together with the Treaty of Asuncion for the Constitution of a Common Market among Brazil, Argentina, Uruguay and Paraguay (Mercosur) [30 I.L.M. 1044 (1991)] and the Protocol of Ouro Preto on the Institutional Structure of Mercosur [34 I.L.M. 1244 (1995)], forms part of the basic legal framework for the process of economic integration in the Southern cone of Latin America.

In order to avoid previous pitfalls due to the lack of an adequate dispute resolution system, the Treaty of Asuncion, March 26, 1991, the first of the three agreements, stipulated in Article III that the Parties "shall adopt...a system for the settlement of disputes" as contained in Annex III. Annex III provides, first, for direct negotiation between parties to a dispute and, failing this, action by the Common Market Group. If needed the Common Market Group can consult panels of experts to obtain technical advice.

Annex III also stated that within 120 days of the entry into force of the Treaty, the Common Market Group should draft a Dispute Resolution System for the period of transition and that before December 31, 1994, a permanent system should be adopted by the States Parties to the Treaty.

In fulfillment of these provisions, therefore, on December 17, 1991, the Parties adopted the Protocol of Brasilia for the Settlement of Disputes, which forms an integral part of the Treaty of Asuncion, as does the Protocol of Ouro Preto. The Protocol of Ouro Preto refers to dispute resolution in Article 21 (concerning duties and functions of the Mercosur Trade Commission), in Article 43 (reproducing Article 1 of the Protocol of Brasilia), and in an Annex on the general procedure for complaints to the Mercosur Trade Commission.

*692 Until the present, disputes had been settled by, or at least heard by, the Mercosur Trade Commission, and the system of consultations seemed sufficiently effective. However, Uruguay has recently applied to the Common Market Group, in the first application of the Protocol of Brasilia, to settle a dispute with Argentina on the classification of paper products in negotiated lists of products. The matter was scheduled to be heard in April, 1997.

I.L.M. Content Summary

[PREAMBLE] ..... I.L.M. Page 693
[The Parties are Argentina, Brazil, Paraguay and Uruguay; the purpose is to adopt a dispute settlement system for the period of transition under the Treaty of Asuncion]

CHAPTER 1 Scope ..... I.L.M. Page 693
Art. 1 [Disputes among the Parties concerning the Treaty]

CHAPTER II Direct Negotiations [Arts. 2-3] ..... I.L.M. Page 693

CHAPTER III Intervention of the Common Market Group [Arts. 4-6] ..... I.L.M. Page 694

CHAPTER IV Arbitration [Arts. 7-24] ..... I.L.M. Page 694

CHAPTER V Claims by Private Parties [Arts. 25-32] ..... I.L.M. Page 697

CHAPTER VI Concluding Provisions ..... I.L.M. Page 699
Arts. 33-36 [This Protocol constitutes an integral part of the Treaty; duration; accession; official languages (Spanish and Portuguese)]

[Authentic texts: Spanish and Portuguese]
[Done at Brasilia, December 17, 1991]
[Depositary: Paraguay]

***693 PROTOCOL OF BRASILIA FOR THE SETTLEMENT OF DISPUTES**

The Argentine Republic, the Federative Republic of Brasil, The Republic of Paraguay and the Eastern Republic of Uruguay, hereinafter referred to as the "States Parties",

In compliance with the provisions of Article 3, and Annex III of the Treaty of Asuncion, signed on March 26, 1991, stipulating that State Parties shall adopt a Dispute Settlement System for the period of transition,

Aware of the importance of an adequate instrument to ensure compliance with the aforementioned Treaty and provisions deriving therefrom,

Convinced that the Dispute Settlement System of the present Protocol will strengthen relations among the Parties on the basis of Justice and Equity,

Have agreed to the following:

CHAPTER 1

Scope

Article 1

Disputes arising among State Parties concerning the interpretation, application or non-fulfillment of the provisions of the Treaty of Asuncion, or agreements entered into within the framework of the aforementioned Treaty, as well as decisions of the Council of the Common Market, and resolutions of the Common Market Group shall be submitted to the settlement procedures outlined in this Protocol.

CHAPTER II

Direct Negotiations

Article 2

States Parties to a Dispute shall attempt to settle, first, by means of direct negotiations.

Article 3

1) States Parties to a Dispute shall keep the Common Market Group informed, through the Administrative Secretariat, of action taken during the aforementioned negotiations and the result thereof.

2) Unless the Parties to a Dispute agree to the contrary, direct negotiations shall not exceed a period of fifteen (15) days after the date on which a complaint was initiated.

CHAPTER III

Intervention of the Common Market Group

Article 4

1) If there is no agreement, or only partial agreement after direct negotiations, any of the States Parties to a Dispute may submit it to the Common Market Group.

2) The Common Market Group shall evaluate the situation, giving the Parties to the Dispute an opportunity to express their respective positions and, when needed, requesting the advice of experts selected from the list referred to in Article 30 of this Protocol.

3) The expenses incurred by this procedure shall be borne, either equally by the States Parties to the Dispute, or in proportions determined by the Common Market Group.

Article 5

At the end of this stage, the Common Market Group shall make recommendations to the States Parties to the Dispute, with a view to resolving the controversy.

Article 6

The procedure outlined in this Chapter may not extend beyond a period of thirty (30) days from the date on which the Dispute was put to the consideration of the Common Market Group.

CHAPTER IV

Arbitration

Article 7

1) If the Dispute has not been solved by the procedures referred to in Chapters II and III, any State Party to the Dispute may give notice to the Administrative Secretariat of its intention to make use of the Arbitral Proceedings laid down in this Protocol.

2) The Administrative Secretariat shall transmit this notice immediately to the other State Party or Parties involved in the Dispute, as well as to the Common Market Group. It shall be responsible for all the formalities concerning the proceedings.

Article 8

The States Parties state that they recognize, ipso facto, the jurisdiction of the Arbitral Tribunal, without need for a special agreement. The Tribunal shall be established, in each case, to examine and resolve any controversy within the framework of this Protocol.

Article 9

1) Arbitral Proceedings shall be substantiated by an ad hoc Tribunal composed of three (3) arbitrators selected from the list referred to in Article 10.

2) The Arbitrators shall be selected in the following manner:

I: Each State Party to the Dispute shall select one (1) Arbitrator. The third Arbitrator, who shall preside at the Tribunal, may not be a national of any of the States Parties to the Dispute and shall be selected by mutual agreement among them. Arbitrators are appointed for a period of fifteen days from the date on which the Administrative Secretariat has given notice to the other States Parties to the Dispute that one of them has decided to submit the Dispute to Arbitration.

II: Each of the States Parties to the Dispute shall also appoint an alternative arbitrator, under the same requirements, for the event of incapacity, or excusal from sitting on the Arbitral Tribunal, of the designated Arbitrator(s) either at the time of designation of the Tribunal or during the course of the proceedings.

Article 10

Each State Party shall designate ten (10) arbitrators comprising a list, to be filed with the Administrative Secretariat. This list, and all subsequent amendments, shall be notified to the States Parties.

Article 11

When a State Party to a Dispute has failed to appoint an Arbitrator within the terms provided for in Article 9, the Administrative Secretariat shall designate this Arbitrator from the list presented by that State Party, in the order established therein.

Article 12

1) If, within the delay provided for by Article 9, the States Parties to a Dispute have failed to appoint a third arbitrator, any one of them may request that the Administrative Secretariat do so, by means of a random selection from the list of sixteen (16) arbitrators drawn up by the Common Market Group.

2) This list, also to be filed with the Administrative Secretariat, shall comprise nationals of the States Parties and Nationals of third States in equal parts.

Article 13

Arbitrators referred to in Articles 10 and 12 must be jurisconsults of recognized competence in the subject matter over which the controversy has arisen.

Article 14

When two or more States Parties hold the same position in the Dispute, they shall be jointly represented before the Arbitral Tribunal and shall elect an Arbitrator by mutual agreement within the delay provided in Article 9 (2) I.

Article 15

The Arbitral Tribunal shall establish its offices, for each case, within the territory of one of the States Parties. It shall adopt its own rules of procedure. Such rules shall ensure that each of the parties to the Dispute has a fair hearing and the opportunity to present evidence and arguments and that proceedings are expeditious.

Article 16

States Parties to a Dispute shall notify the Arbitral Tribunal of action taken prior to the Arbitral Proceedings and shall state, briefly, the facts and applicable law concerning their respective positions.

Article 17

States Parties to a Dispute shall be represented by agents and may designate counsel or advocates for the defense of their rights.

Article 18

1) Upon request from the party concerned, and if there is good cause to believe that a continuation of the existing situation will produce serious and irreparable damage to one of the parties, the Arbitral Tribunal may order such interim measures as it deems necessary or desirable, to prevent an aggravation of the situation.

2) The parties shall comply immediately, or within the delay established by the Arbitral Tribunal, with all interim measures, until an Award is entered in conformity with Article 20.

Article 19

1) The Arbitral Tribunal shall settle the Dispute by applying: the provisions of the Treaty of Asuncion, agreements concluded within the framework thereof, the decisions of the Council of the Common Market, the resolutions of the Common Market Group, and applicable principles and rules of international law.

2) This provision shall not prejudice the power of the Arbitral Tribunal to decide a Dispute ex aequo et bono if the parties agree thereto.

Article 20

1) The Arbitral Tribunal shall enter an Award, in writing, within sixty (60) days, renewable, at most, for another thirty (30) days after the designation of its President.

2) The Award shall be decided by a majority of Arbitrators. It shall state the reasons on which it is based and shall be signed by the President and other Arbitrators. Dissenting Arbitrators are not entitled to a separate opinion and must maintain the confidentiality of the vote.

Article 21

1) The Awards of Arbitral Tribunals are final and without appeal. They shall have binding force for the States Parties to the Dispute from the moment of notification thereof.

2) Awards shall be complied with within fifteen (15) days, unless the Arbitral Tribunal decides otherwise.

Article 22

1) Within fifteen (15) days of having received notice of the Award, any of the States Parties to the Dispute may request a clarification of the meaning thereof or an interpretation regarding the manner in which it is to be carried out.

2) The Arbitral Tribunal shall enter a decision within the subsequent fifteen (15) days.

Article 23

In the event of non-compliance by a State Party of the Award of the Arbitral Tribunal, within a period of thirty (30) days, the remaining States Parties to the Dispute may adopt temporary compensatory measures, such as the suspension of concessions, or other equivalent measures, with a view to achieving compliance.

Article 24

1) Each State Party to the Dispute shall bear the expenses incurred by its designated Arbitrator.

2) The President of the Arbitral Tribunal shall receive a pecuniary compensation which, together with the remaining expenses of the Arbitral Tribunal, shall be borne in equal parts by the States Parties to the Dispute, unless the Tribunal should decide on a different form of distribution.

CHAPTER V

Claims by Private Parties

Article 25

The procedure laid down in this chapter applies to claims initiated by private parties (natural or legal persons), by reason of the adoption or application, by a State Party, of legal or administrative measures of a restrictive or discriminatory nature or leading to unfair competition, in violation of the Treaty of Asuncion, the agreements concluded within the framework thereof, decisions of the Council of the Common Market or resolutions of the Common Market Group.

Article 26

1) Individual claimants shall submit their complaints to the National Section of the Common Market Group corresponding either to their place of residence or their corporate headquarters.

2) They shall provide the necessary elements for the National Section to determine the plausibility of the violation and the existence or threat of prejudice.

Article 27

Unless the claim concerns a matter already having motivated the initiation of a Dispute settlement procedure under Chapters II, III, or IV of this Protocol, the National Section of the Common Market Group that has accepted the claim in conformity with Article 26 of this Chapter, in consultation with the affected party, may:

a) Enter into direct contact with the National Section of the Common Market Group of the State Party allegedly responsible for the violation, in order to seek an immediate solution to the controversy; or

b) Submit the claim to the Common Market Group without prior formalities.

Article 28

If, within fifteen (15) days after the date of notification of the claim, the controversy has not been solved, in conformity with Article 27 (a), the National Section having served the notice may, upon request from the affected party, submit it, forthwith, to the Common Market Group.

Article 29

1) At its first meeting after notification of the claim, the Common Market Group shall evaluate the reasons for its acceptance by the National Section. If it decides that the requirements needed to hear the claim have not been met, it shall reject the claim outright.

2) If the Common Market Group does not reject the claim, it shall convene, immediately, a group of experts to submit an opinion on the matter within a peremptory period of thirty (30) days after their designation.

3) Within this delay, the Group of Experts shall give the claimant and the State Party against which the claim was presented an opportunity to be heard and to present arguments.

Article 30

1) The Group of Experts referred to in Article 29 shall comprise three (3) members, appointed by the Common Market Group. Failing agreement on one or more experts, these shall be elected by ballot, with a vote taken on a list of twenty four (24) experts. The Administrative Secretariat shall notify the Common Market Group of the experts having received the greatest number of votes. In the latter case and unless the Common Market Group decides otherwise, one of the experts shall not be either a national of the State against which the claim has been made or of the State in which the claimant has formalized the complaint, under Article 26.

2) In drawing up the list of experts, each State Party shall designate six (6) persons of recognized competence in the subject matter over which the claim was made. This list shall be filed with the Administrative Secretariat.

Article 31

The expenses incurred by the Group of Experts shall be distributed in the proportions to be determined by the Common Market Group. Failing agreement, they shall be borne in equal parts by the parties directly involved.

Article 32

The Group of Experts shall submit its opinion to the Common Market Group. If this opinion considers the claim against a State Party to be justified, any other State Party may request the adoption of corrective measures or the annulment of the challenged provision. If this request is not granted within fifteen (15) days, the requesting State Party may immediately initiate Arbitral Proceedings, under the conditions provided in Chapter IV of this Protocol.

CHAPTER VI

Concluding Provisions

Article 33

This Protocol forms an integral part of the Treaty of Asuncion. It shall enter into force once the four States Parties have deposited their instruments of ratification. These instruments shall be deposited with the

Government of the Republic of Paraguay, which shall communicate the date of deposit to the Governments of the remaining States Parties.

Article 34

This Protocol shall remain in force until the entry into force of the Permanent System of Dispute Settlement for the Common Market provided for in paragraph 3 of Annex III of the Treaty of Asuncion.

Article 35

Any State acceding to the Treaty of Asuncion accedes, ipso iure, to this Protocol.

Article 36

The official languages for all proceedings under this Protocol are Spanish and Portuguese, as needed.

Done in the city of Brasilia on December 17, 1991 in one original in the Spanish and Portuguese languages, both texts being equally authentic. The government of the Republic of Paraguay shall be the depositary of this Protocol and shall send a duly authenticated copy to the other States Parties.

36 I.L.M. 691 (1997)
END OF DOCUMENT

International Legal Materials
Treaties and Agreements
September, 1997

MERCOSUR (ARGENTINA-BRAZIL-PARAGUAY-URUGUAY):

PROTOCOL OF BUENOS AIRES ON INTERNATIONAL JURISDICTION IN DISPUTES RELATING TO CONTRACTS

Done at Buenos Aires, August 5, 1994

***1263** The Common Market Council decided on August 5, 1994, to approve the Protocol of Buenos Aires on International Jurisdiction in Contractual Matters as provided in the Annex to Mercosur Decision CMC/Dec.Number 1/94. The English translation and Introductory Note are provided to International Legal Materials by Evelina T. Alhadeff, Professor of Law at the University of Buenos Aires and I.L.M. Corresponding Editor for Argentina.

The Common Market Between Argentina, Brazil, Paraguay and Uruguay [known as the Spanish acronym Mercosur] (the Treaty of Asuncion), March 26, 1991, with an Introductory Note by Professor Alhadeff, appears at 30 I.L.M. 1041 (1991), and the Additional Protocol to the Treaty of Asuncion on the Institutional Structure of Mercosur (Protocol of Ouro Preto), December 17, 1994, with an Introductory Note by Professor Alhadeff, appears at 34 I.L.M. 1244 (1995). The Protocol of Brasilia for the Settlement of Disputes, December 17, 1991, appears at 36 I.L.M. 691 (1997).

For additional information, contact the Mercosur Secretariat, Ricon 575, Piso 12, Montevideo 11000, Uruguay (tel.: 598 2 964 590; fax: 598 2 964 591).

Introductory Note

by

Evelina T. Alhadeff

The Mercosur organizational structure provides a variety of means for dispute settlement, both among states parties to the Treaty of Asuncion and between private parties affected by different aspects of the process of integration. Some of these have already been discussed in the introductory note to the Protocol of Brasilia on the Settlement of Disputes. [36 I.L.M. 691 (1997)]

The Protocol of Buenos Aires originated in the Common Market Council, one of the main organs of Mercosur. It is based on several previous instruments, namely: the Treaty of Asuncion, in which article 1 underlines the need to "harmonize legislation in relevant fields in order to further the process of integration", Decision 4/91 and Decision 5/92 of the Common Market Council on the simplification of the legal framework available to private parties in civil, commercial labor and administrative matters; as well as Resolution 39/94 of the Common Market Group and Agreement 2/94 of the Meeting of Mercosur Ministers of Justice.

The Protocol of Brasilia already had taken into account a variety of issues affecting private parties within the framework of Mercosur mainly referring to claims initiated by juridical or physical persons because of damage suffered as a result of restrictive or discriminatory measures or unfair competition (Chapter V, articles 25 to 32, of the Protocol of Brasilia).

However, the need was felt for a more agile mechanism with regard to contractual obligations among private parties within Mercosur. This originated a new series of agreements, among which the Protocol of Buenos Aires on International Jurisdiction in Disputes relating to Contracts ***1264** is a further link in the chain. A complementary agreement annexing forms for letters rogatory was signed in May, 1997.

The thrust of this instrument is in harmonizing principles on subject matter jurisdiction and competent courts for the different contractual situations regulated by its provisions. Strictly speaking, it provides rules of private international law for these situations rather than an international jurisdiction, as the title of the agreement states. The rationale is the need to improve judicial security for private parties within a group of countries in which litigation is costly and, generally, ineffective.

Instruments of ratification were deposited as follows:

Brazil: May 7, 1996

Argentina and Paraguay: October 31, 1996

This means that the Protocol entered into force on November 30, 1996, with respect to these three countries (article 16). As for Uruguay, the Protocol was approved by law number 597/95 of June 15, 1995, but as of August 11, 1997, the instrument of ratification had not yet been deposited. This formality is expected to take place in the near future.

I.L.M. Content Summary

[PREAMBLE] ..... I.L.M. Page 1266
[To harmonize legislation; to adopt common rules on international jurisdiction in contract disputes]

TITLE I: SCOPE ..... I.L.M. Page 1266

Articles 1-2 [International contract disputes; exceptions]

TITLE II ..... I.L.M. Page 1267

Article 3 [INTRODUCTION]
[A court's exercise of jurisdiction over a case constitutes fulfillment of the requirements under this Protocol]

CHAPTER I: SELECTION OF JURISDICTION ..... I.L.M. Page 1267

Articles 5-6 [The parties may agree upon a forum at any time; the choice-of-forum agreement is governed by the laws of the forum agreed upon; apply the rules of law that most favor validity of the agreement]

CHAPTER II: SUBSIDIARY JURISDICTION ..... I.L.M. Page 1268

Articles 7-12 [Absent agreement, the plaintiff may choose the country of contract execution, domicile of the defendant or domicile of the plaintiff (if the plaintiff has discharged its contractual duties); disputes between business partners; disputes against judicial entities]

CHAPTER III: COUNTERCLAIMS ..... I.L.M. Page 1269

Article 13 [Allowed if based upon the act or

event complained of]

TITLE III: JURISDICTION AS A REQUIREMENT FOR THE RECOGNITION AND EXECUTION OF JUDICIAL DECISIONS AND ARBITRAL AWARDS ..... I.L.M. Page 1270

Article 14 [This Protocol governs international jurisdiction in the Protocol of La Lenas]

TITLE IV: CONSULTATION AND SETTLEMENT OF DISPUTES ..... I.L.M. Page 1270

Article 15 [Direct diplomatic negotiation; procedures of the Treaty of Asuncion]

TITLE V: FINAL PROVISIONS ..... I.L.M. Page 1270

Articles 16-18 [The Protocol is an integral part of the Treaty of Asuncion; entry into force; accession; the depositary is Paraguay]

[Done at Buenos Aires on 5 August 1994]
[Authentic texts: Spanish and Portuguese]
[Signatures]

PROTOCOL OF BUENOS AIRES ON INTERNATIONAL JURISDICTION IN DISPUTESRELATING TO CONTRACTS

The Governments of the Argentine Republic, the Federal Republic of Brazil, the Republic of Paraguay, and the Republic of Uruguay,

CONSIDERING that the States Parties to the Treaty of Asuncion, of March 26, 1991, have therein bound themselves to harmonize their legislation in relevant matters;

REAFFIRMING their commitment to achieve common legal solutions in order to strengthen the process of integration;

UNDERLINING the need to provide private sectors within the States Parties with juridical security offering fair solutions and international harmony in judicial and arbitral decisions applying to contracts concluded within the framework of the Mercosur;

CONVINCED of the importance of adopting common rules on international jurisdiction in disputes arising over contracts, with a view to promoting economic relations among private sectors within the States Parties;

AWARE that in international business, contracts are the legal expression of trade conducted in the framework of the process of integration;

AGREE TO THE FOLLOWING:

TITLE I

SCOPE

Article 1

This Protocol shall apply to international jurisdiction in litigation relating to international civil or commercial contracts concluded among private parties, whether physical or legal persons:

a) either domiciled or having company headquarters in different State Parties to the Treaty of Asuncion;

b) when at least one of the Parties to the contract is domiciled or has company headquarters in any State Party to the Treaty of Asuncion and an agreement exists, among the Parties to the contract, on the selection of a forum or judge within a State Party to the aforementioned Treaty, providing a reasonable connection exists, in accordance with the rules on jurisdiction of this Protocol.

Article 2

This Protocol shall not apply to the following:

1) legal business between bankrupt parties and their creditors or other similar proceedings, such as, in particular, the rescheduling of payments and company reorganization;

2) agreements relating to family law and inheritance;

3) contracts on social security;

4) administrative contracts;

5) labor contracts;

6) contracts on consumer sales;

7) transport contracts;

8) insurance contracts;

9) real estate contracts.

TITLE II

Article 3

The procedural requirement of international jurisdiction in disputes arising over contracts shall be considered fulfilled when the relevant jurisdictional organ within a State Party exercises its jurisdiction in accordance with the provisions of this Protocol.

CHAPTER I

SELECTION OF JURISDICTION

Article 4

When a dispute arises, relating to international civil or commercial contracts, subject matter jurisdiction shall be exercised by the court(s) of the State Party to which the Parties have agreed, in writing, to submit the dispute, providing that the agreement was not obtained abusively.

Furthermore, jurisdiction may be extended to arbitral tribunals.

Article 5

An agreement on jurisdiction may be concluded either at the time of signature of the contract, or during its period of validity or whenever a dispute arises.

The validity and effects of an agreement on the selection of a forum shall be governed by the laws of the State Party enabled to exercise jurisdiction over the dispute, in conformity with the provisions of this Protocol.

In all cases, the rules of law most favorable to the validity of the agreement shall apply.

Article 6

Irrespectively of prior agreement on jurisdiction, the latter is considered valid within the State Party in which legal action has been initiated by one of the Parties to a dispute, when the defendant accepts that jurisdiction voluntarily and positively, and not merely by implication.

CHAPTER II

SUBSIDIARY JURISDICTION

Article 7

In the absence of an agreement, the plaintiff may choose among the following alternatives:

a) courts with jurisdiction within the country of execution of the contract;

b) courts with jurisdiction in the country in which the defendant is domiciled;

c) courts with jurisdiction over the plaintiff's domicile or company headquarters if it can be proved that the plaintiff's own contractual obligations have been discharged.

Article 8

1) Regarding article 7, paragraph a), the country of execution of the contract is understood to be the State Party in which the contractual obligation giving rise to the complaint was to have been performed.

2) Jurisdiction over contractual obligations shall be exercised in the following places:

a) in contracts referring to individualized goods, the place where the goods were to be found at the time the contract was signed;

b) in contracts on generic goods, the domicile of the defendant at the time the contract was concluded;

c) in contracts on fungible goods, the domicile of the defendant at the time the contract was signed;

d) in service contracts:

(1) if the service refers to goods, the place where these existed at the time the contract was signed;

(2) if performance of the contract is related to a particular place, in the forum with jurisdiction where the effects of the contract were to be produced;

(3) in all other cases, the domicile of the defendant upon conclusion of the contract.

Article 9

With respect to article 7, paragraph b), the defendant's domicile is understood to be:

a) in the case of private persons (physical persons):

(1) the habitual place of residence;

(2) subsidiarily, the defendant's main place of business;

(3) in all other cases, the place of residence.

b) in the case of juridical persons or companies, their principal administrative headquarters.

If a juridical person should have branch offices, establishments, agencies or any other type of representation, its domicile shall be considered to be the place where it performs its activities, and it is subject to the jurisdiction of local authorities, in regard to the aforementioned activities.

These considerations shall not encroach upon the right of the plaintiff to initiate proceedings in courts with jurisdiction over the head office of a corporation.

Article 10

In disputes arising among business partners, jurisdiction shall be exercised by courts having subject matter jurisdiction over the head office of the company.

Article 11

Juridical entities having their head office in one State Party and entering into a contract in another State Party may be sued in the courts of the latter State Party.

Article 12

When several defendants exist, legal action may be taken in the State Party in which any one of them is domiciled.

Legal action relating to personal guarantees or involving third parties may be brought before the court that has jurisdiction over the principal complaint.

CHAPTER III

COUNTERCLAIMS

Article 13

If the counterclaim is based on the same act or event that originated the complaint, the court exercising jurisdiction over the original complaint shall also exercise jurisdiction over the counterclaim.

TITLE III

JURISDICTION AS A REQUIREMENT FOR THE RECOGNITION AND EXECUTION OF JUDICIAL DECISIONS AND ARBITRAL AWARDS

Article 14

International jurisdiction as provided by article 2, paragraph c) of the Protocol of Las Lenas on Judicial Cooperation and Assistance in Civil, Commercial, Labor and Administrative matters shall be governed by this Protocol.

TITLE IV

CONSULTATION AND SETTLEMENT OF DISPUTES

Article 15

Disputes arising among State Parties over the application, interpretation or non compliance with this Protocol shall be settled by means of direct diplomatic negotiation.

If no agreement or only a partial agreement has been achieved through negotiation, the procedures provided by the System for the Settlement of Disputes in force among States Parties to the Treaty of Asuncion shall apply.

TITLE V

FINAL PROVISIONS

Article 16

This Protocol forms an integral part of the Treaty of Asuncion; it shall enter into force, between the first two Parties to ratify it, thirty (30) days after the deposit of the second instrument of ratification.

With respect to the other signatories, it shall enter into force on the thirtieth day subsequent to the deposit of the respective instrument of ratification, in the order in which said instruments are deposited.

Article 17

Accession by any State to the Treaty of Asuncion implies ipso jure accession to this Protocol.

Article 18

The Government of the Republic of Paraguay shall be the depositary of this Protocol and of its instruments of ratification. It shall send duly authenticated copies to the Governments of the other States Parties.

Furthermore, the Government of the Republic of Paraguay shall notify the dates of entry into force and the dates of deposit of instruments of ratification of this Protocol to the Governments of the other States Parties.

Done in the city of Buenos Aires on the fifth day of the month of August 1994, the original being in the Spanish and Portuguese languages; both texts are equally authentic.

For the Government of the Argentine Republic:

GUIDO DI TELLA

For the Government of the Federal Republic of Brazil:

CELSO L.N. AMORIN

For the Government of the Republic of Paraguay:

LUIS MARIA BOETTNER

For the Government of the Republic of Uruguay:

SERGIO ABREU
36 I.L.M. 1263 (1997)
END OF DOCUMENT

CARTAGENA AGREEMENT: Official Codified Text

http://www.comunidadandina.org/ingles/treaties.htm

CARTAGENA AGREEMENT
Official codified text

CODIFICATION OF THE CARTAGENA AGREEMENT
Decision 406

PRESENTATION

The Protocol of Trujillo was signed by the Andean Presidents during the Eighth Presidential Council that was held in the city of Trujillo, Peru, in March of 1996. It replaces Chapter II of the Cartagena Agreement and requests that the Commission adopt a codified text through a Decision.

It is in compliance with this Presidential Mandate that the Commission of the Andean Community, in its Eighty-seventh Special Term held in the city of Quito, Ecuador, on June 25, 1997, approved Decision 406: "Codification of the Andean Subregional Integration Agreement (Cartagena Agreement)".

This codified text includes the original Cartagena Agreement and its respective modifying instruments: the Additional Instrument for the accession of Venezuela (1973); the Protocol of Lima (1976); the Protocol of Arequipa (1978); the Protocol of Quito (1987), and the Protocol of Trujillo.

The Protocol of Trujillo, moreover, creates the Andean Community and establishes the Andean Integration System, with a series of bodies and institutions which have required that, in this text, the references "Commission of the Cartagena Agreement", "Board of the Cartagena Agreement", "Court of Justice of the Cartagena Agreement", and "Cartagena Agreement Law" be substituted for "Commission of the Andean Community", "General Secretariat of the Andean Community", "Court of Justice of the Andean Community", and "Andean Community Law", respectively.

In addition, the Protocol of Trujillo authorizes the necessary adjustments to the numbering of the articles, for which reason the numbering of the articles of the previous Codified Text (Decision 236) does not necessarily coincide with the present numbering (Decision 406).

This last point is particularly important to those who need to constantly refer to articles of the Agreement. For this reason, the final pages of this document include a Matching table between the Official Codified Text of the Cartagena Agreement after the Protocol of Quito (Decision 236), and that resulting from the Protocol of Trujillo (Decision 406).

Lima, August 1997

DECISION 406

Codification of the Andean Subregional Integration Agreement (Cartagena Agreement)

THE COMMISSION OF THE ANDEAN COMMUNITY,

HAVING SEEN: The second paragraph of the Modifying Protocol of the Andean Subregional Integration Agreement, adopted in Trujillo, and Proposal 307 of the Board;

CONSIDERING: That the Protocol of Trujillo entered into force on June 3, 1997;

That it is necessary and convenient to have a new codification of the Cartagena Agreement, in order to facilitate the knowledge, dissemination, and application of the fundamental rules by which the Andean subregional integration process is governed;

DECIDES:

Article 1.- To approve the codification of the Cartagena Agreement in the terms that appear in the annex to this Decision.

Article 2.- This Decision substitutes Decision 236 of July 15, 1988.

Adopted at the city of Quito, Ecuador, on the twenty-fifth day of the month of June nineteen ninety-seven.

ANDEAN SUBREGIONAL INTEGRATION AGREEMENT

(CARTAGENA AGREEMENT)

THE GOVERNMENTS of Bolivia, Colombia, Ecuador, Peru, and Venezuela,

INSPIRED by the Declaration of Bogota and by the Declaration of the Presidents of America;

RESOLVED to strengthen the union of their people and to lay the foundations to advance towards the formation of an Andean subregional community;

AWARE that integration constitutes a historical, political, economic, social, and cultural mandate for their countries, in order to preserve their sovereignty and independence;

BASED on the principles of equality, justice, peace, solidarity, and democracy;

DETERMINED to attain such goals by creating an integration and cooperation system that tends towards a balanced, harmonious, and shared economic development of their countries;

AGREE, through their duly authorized plenipotentiary representatives, to enter into the following SUBREGIONAL INTEGRATION AGREEMENT:

CHAPTER I

OBJECTIVES AND MECHANISMS

Article 1.- The objectives of this Agreement are to promote the balanced and harmonious development of the Member Countries under equitable conditions, through economic and social integration and cooperation; to accelerate their growth and the rate of creation of employment; to facilitate their participation in the process of regional integration, looking ahead toward the gradual formation of a Latin American Common Market.

Likewise, this Agreement seeks to reduce external vulnerability and to improve the position of the Member Countries within the international economic context; to strengthen subregional solidarity, and to reduce existing differences in the levels of development among the Member Countries.

The fulfillment of these objectives shall lead to an enduring improvement in the standard of living of the Subregion´s population.

Article 2.- Balanced and harmonious development shall lead to a fair distribution, among the Member Countries, of the benefits derived from integration so as to reduce existing differences among them. The results of such process shall be evaluated periodically, bearing in mind, among other things, their effects on the growth of each country's total exports, the behavior of its trade balance with the Subregion, the evolution of its gross national product, the creation of new jobs, and the formation of capital.

Article 3.- To fulfill the objectives of this Agreement, the following mechanisms and measures, among others, shall be employed:

a) The gradual harmonization of economic and social policies and the approximation of national laws in regard to pertinent matters;

b) Common industrial policies, the intensification of the subregional industrialization process, the implementation of industrial policies, and other forms of industrial integration;

c) A more advanced schedule of trade liberalization than the commitments derived from the Treaty of Montevideo 1980;

d) A Common External Tariff, preceded by the adoption of a Common Minimum External Tariff;

e) Programs that accelerate the development of agricultural and agroindustrial sectors;

f) Channeling of internal and external resources to the Subregion to finance those investments that are needed in the integration process;

g) Physical integration; and

h) Preferential treatment given to Bolivia and Ecuador.

In addition to the mechanisms set out above, the following economic and social cooperation policies shall be carried out jointly:

a) External actions in the economic field, in subjects of common interest;

b) Programs to promote scientific and technological development;

c) Border integration policies;

d) Programs in the area of tourism;

e) Policies for the use and preservation of natural resources and of the environment;

f) Programs in the services sector;

g) Social development programs; and

h) Policies in the social communications field.

Article 4.- To carry out this Agreement in the best way possible, Member Countries shall make the necessary efforts to seek adequate solutions to the problems derived from Bolivia's landlocked condition.

CHAPTER II

ON THE ANDEAN COMMUNITY AND THE ANDEAN INTEGRATION SYSTEM

Article 5.- The "Andean Community" is hereby created, composed by the sovereign States of Bolivia, Colombia, Ecuador, Peru, and Venezuela, and by the bodies and institutions of the Andean Integration System, which is established by this Agreement.

Article 6.- The Andean Integration System is made up of the following bodies and institutions:

-The Andean Presidential Council;

-The Andean Council of Ministers of Foreign Affairs;

-The Commission of the Andean Community;

-The General Secretariat of the Andean Community;

-The Court of Justice of the Andean Community;

-The Andean Parliament;

-The Business Advisory Council;

-The Labor Advisory Council;

-The Andean Development Corporation;

-The Latin-American Reserve Fund;

-The Simón Rodríguez Agreement, the Social Agreements which join the Andean Integration System, and those that are created within its framework;

-The Simón Bolívar Andean University;

-The Advisory Councils established by the Commission; and,

-The rest of the bodies and institutions created within the framework of Andean subregional integration.

Article 7.- The purpose of the System is to allow an effective coordination between the bodies and institutions that compose it, in order to deepen Andean subregional integration, to promote its external presence and to consolidate and strengthen actions related to the integration process.

Article 8.- The bodies and institutions of the Andean Integration System are governed by this Agreement, by their respective charters, and their modifying protocols.

Article 9.- With the purpose of achieving the best coordination within the Andean Integration System, the Chairman of the Andean Council of Ministers of Foreign Affairs will call and chair the Meeting of Representatives of the institutions that make up the System.

The main purposes of the Meeting shall be:

a) To exchange information about the actions taken by the respective institutions to carry out the Guidelines issued by the Andean Presidential Council;

b) To study the possibility and convenience of agreeing, among all the institutions or among some of them, to carry out coordinated actions, with the purpose of contributing to the achievement of the objectives of the Andean Integration System; and,

c) To present to the Andean Council of Ministers of Foreign Affairs in enlarged meetings, reports about the actions carried out in fulfillment of the received Guidelines;

Article 10.- The Meetings of Representatives of the institutions which make up the Andean Integration System shall be held in regular sessions at least once a year and, in special sessions, every time that any of the institutions that comprise it requests so, and it shall be held at the place agreed upon before the meeting is called.

The General Secretariat of the Andean Community shall act as the Secretariat of the Meeting.

Section A - On The Andean Presidential Council

Article 11.- The Andean Presidential Council is the highest-level body of the Andean Integration System and it is made up of the Heads of State of the Member Countries of the Cartagena Agreement. It issues Guidelines about the different areas of Andean subregional integration, which are carried out by the System's bodies and institutions, that the Council determines, according to the responsibilities and mechanisms established in their respective Treaties or Charters.

The bodies and institutions of the System shall carry out the political orientations included in the Guidelines issued by the Andean Presidential Council.

Article 12.- It is the Andean Presidential Council's responsibility:

a) To define Andean subregional integration policy;

b) To orient and promote actions on matters of interest for the Subregion as a whole, as well as those related to the coordination among the bodies and institutions of the Andean Integration System;

c) To evaluate the development and results of the process of Andean subregional integration;

d) To consider and issue opinions about reports, initiatives, and recommendations submitted by the bodies and institutions of the Andean Integration System; and,

e) To study all the subjects and matters concerning the development of the process of the Andean subregional integration and its external projection.

Article 13.- The Andean Presidential Council shall meet regularly once a year, preferably in the country that chairs it. In this meeting it will review the actions executed by the bodies and institutions of the Andean Integration System, as well as of their projects, programs, and suggestions. The members of the Andean Council of Ministers of Foreign Affairs, the Commission, and representatives of the bodies and institutions of the System shall be able to attend the meetings of the Andean Presidential Council, as observers.

The Andean Presidential Council shall be able to call a special meeting, whenever it considers it advisable, at the place agreed upon before the meeting is called.

Article 14.- The Andean Presidential Council shall have a Chairman who will be the Andean Community's top political representative, and who shall hold office for a period of one calendar year. That position shall be filled, successively and in alphabetical order, by each one of the Member Countries.

The responsibilities of the Chairman of the Andean Presidential Council shall be:

a) To call and chair the regular and special meetings of the Council;

b) To represent the Council and the Andean Community;

c) To supervise that the Guidelines issued by the Council are carried out by the other bodies and institutions of the Andean Integration System; and,

d) To carry out the tasks requested by the Council.

Section B - The Andean Council of Ministers of Foreign Affairs

Article 15.- The Andean Council of Ministers of Foreign Affairs is comprised by the Ministers of Foreign Affairs of the Member Countries of the Cartagena Agreement.

Article 16.- The responsibilities of the Andean Council of Ministers of Foreign Affairs shall be:

a) To formulate the Member Countries´ foreign policy in matters of subregional interest, as well as to orient and coordinate the external actions of the different bodies and institutions of the Andean Integration System;

b) To formulate, carry out, and evaluate, in coordination with the Commission, the general policy of the process of Andean subregional integration;

c) To carry out the Guidelines given to it by the Andean Presidential Council and to ensure that those given to the other bodies and institutions of the Andean Integration System are carried out;

d) To sign Covenants and Agreements with third countries or groups of countries or with international organizations in regard to issues of global foreign policy and cooperation;

e) To coordinate the joint position of the Member Countries in international fora and negotiations, within its areas of responsibility;

f) To represent the Andean Community in matters and activities of common interest, within the framework of its responsibilities, in accordance with the rules and objectives of the Agreement;

g) To recommend or adopt the measures that ensure the accomplishment of the purposes and objectives of the Cartagena Agreement, within its area of responsibility;

h) To ensure harmonious compliance with the obligations set out in this Agreement and in the Treaty of Montevideo of 1980;

i) To approve and modify its own regulations;

j) To approve the Regulations of the General Secretariat and all amendments thereto upon the Commission's proposal; and,

k) To hear and resolve all the other matters of common interest, within its area of responsibility.

Article 17.- The Andean Council of Ministers of Foreign Affairs shall express itself through Declarations and Decisions, adopted by consensus. The latter shall be part of the Andean Community Law.

Article 18.- The Andean Council of Ministers of Foreign Affairs shall meet in regular session twice a year, preferably in the country that holds its chair. Likewise, it shall be able to meet in special session, whenever deemed advisable, at the request of any of its members, in the place agreed upon before the meeting is called.

Article 19.- The Andean Council of Ministers of Foreign Affairs shall be presided by the Minister of Foreign Affairs of the country that chairs the Andean Presidential Council, who shall hold office for one calendar year.

The task of coordination that corresponds to the Chairman of this Council shall be fulfilled by the Ministry of Foreign Affairs of the country whose Head of State chairs the Andean Presidential Council, acting as the Pro Tempore Secretariat of both bodies and having the technical support of the General Secretariat of the Andean Community.

Article 20.- The Andean Council of Ministers of Foreign Affairs shall meet in enlarged sessions with the heads of the delegations to the Commission, at least once a year and, at the deputy level, every time it considers necessary, so as to discuss matters related to the Cartagena Agreement that are of interest to both bodies, such as:

a) To prepare the meetings of the Andean Presidential Council;

b) To choose and, when suitable, to remove the General Secretary of the Andean Community;

c) To propose any modifications to this Agreement to the Andean Presidential Council;

d) To evaluate the performance of the General Secretariat;

e) To consider the initiatives and proposals submitted for its consideration by the Member Countries or the General Secretariat; and,

f) All other subjects that both bodies by consent decide to address jointly.

Section C - The Commission of the Andean Community

Article 21.- The Commission of the Andean Community shall be comprised by a plenipotentiary representative from each one of the governments of the Member Countries. Each Government shall accredit a head of delegation and a deputy.

The Commission shall express its will through Decisions.

Article 22.- It is the Commission of the Andean Community's responsibility:

a) To prepare, carry out, and evaluate Andean subregional integration policy in the area of trade and investment and when required, in coordination with the Andean Council of Ministers of Foreign Affairs;

b) To take the necessary measures to accomplish the objectives of the Cartagena Agreement, and to carry out the Guidelines of the Andean Presidential Council;

c) To coordinate the joint position of the Member Countries in international fora and negotiations, in its area of responsibility;

d) To ensure harmonious compliance with the obligations set out in this Agreement and in the Treaty of Montevideo of 1980;

e) To approve and modify its own regulations;

f) To approve, reject or amend the proposals submitted to it by the Member Countries, individually or collectively, or by the General Secretariat;

g) To maintain ongoing relations with the bodies and institutions that make up the Andean Integration System, aimed at making possible the coordination of programs and policies directed to the achievement of their common objectives;

h) To represent the Andean Community in matters and activities of common interest, within the framework of its responsibilities, in accordance with the rules and objectives of this Agreement;

i) To approve the annual budget and evaluate the budgetary performance of the General Secretariat and that of the Court of Justice of the Andean Community, and to set the contributions of each one of the Member Countries; and,

j) To submit for consideration to the Andean Council of Ministers of Foreign Affairs the proposed Regulations of the General Secretariat.

In carrying out its responsibilities, the Commission shall give special consideration to the situation of Bolivia and Ecuador in terms of the objectives of this Agreement, the preferential treatments provided in their favor, and the landlocked situation of the former.

Article 23.- The Commission shall have a Chairman who shall hold office for one calendar year. Said office shall be held by the representative of the country that chairs the Andean Presidential Council.

Article 24.- The Commission shall meet on a regular basis three times a year and in special session whenever such a meeting is called by its Chairman at the request of any of the Member Countries or of the General Secretariat.

Its sessions shall be held at the headquarters of the General Secretariat, but they can also take place outside of it. The Commission shall meet with the presence of an absolute majority of the Member Countries.

Attendance to Commission meetings shall be compulsory and failure to attend shall be considered an abstention.

Article 25.- At the request of one or more of the Member Countries or of the General Secretariat, the Commission's Chairman shall call upon the Commission to meet as an Enlarged Commission, in order to address sectorial issues, to consider regulations for the coordination of development plans, and to harmonize the economic policies of the Member Countries, as well as to hear and resolve all other matters of common interest.

Such meetings shall be presided by the Commission's Chairman and shall be jointly comprised by the heads of delegation before the Commission and by the Ministers or Secretaries of State of the respective area. Each country shall exercise one vote in regard to the approval of Decisions, that shall be part of the Andean Community Law.

Article 26.- The Commission shall adopt its Decisions by affirmative vote of the absolute majority of the Member Countries. The exceptions to this general rule are:

a) The matters included in Annex 1 to this Agreement, in which the Commission shall adopt its Decisions by the affirmative vote of the Member Countries and with no negative votes being cast.

The Commission shall be able to add new matters to said Annex with the affirmative vote of the absolute majority of the Member Countries;

b) In the cases listed in Annex II, the proposals of the General Secretariat shall be approved with the affirmative vote of the absolute majority of the Member Countries provided that no negative vote is cast. Proposals receiving the affirmative vote of the absolute majority of the Member Countries, but also a negative vote shall be returned to the General Secretariat for consideration of the grounds for said negative vote. Within a period of time not shorter than two months and not longer than six, the General Secretariat shall present the proposal again for consideration by the Commission with the modifications which it considers appropriate. And in that case, the proposal as modified shall be considered approved if it receives the affirmative vote of the absolute majority of the Member Countries, with no negative vote. The vote of the country that dissented in the previous opportunity shall not be computed as a negative vote;

c) Matters related to the special regime for Bolivia and Ecuador, that are listed in Annex III. In this case, the Commission's Decisions shall be adopted by the affirmative vote of the absolute majority provided that one of them is cast by Bolivia or Ecuador; and,

d) Industrial Development Programs and Projects shall be approved with the affirmative vote of the absolute majority of the Member Countries provided that no negative vote is cast.

Article 27.- The General Secretariat or the Member Countries shall present their proposals at least fifteen days prior to the corresponding meeting of the Andean Council of Ministers of Foreign Affairs or of the Commission. Only in exceptional cases that are duly justified, and in accordance with the Andean Community Law, shall the required deadlines be ignored, provided that both the proponent and the other Member Countries agree to do so.

Proposals receiving the affirmative vote of the absolute majority of the Member Countries, but also a negative vote, shall be returned to the proponent for consideration of the grounds that gave rise to the negative vote.

In a period of time not shorter than a month and not longer than three, the proponent shall present the proposal again for consideration by the corresponding body with the modifications which it should consider appropriate and, in that case, the modified proposal shall be considered approved if it has the affirmative vote of the absolute majority of the Member Countries.

Article 28.- The Member Country that is behind more than four quarters in regard to the payment of its contributions to the General Secretariat or to the Court of Justice of the Andean Community, shall not be able to exercise the right to vote in the Commission until it solves its situation.

In such a case the quorum for attendance and voting shall be computed according to the number of contributing countries.

Section D - The General Secretariat of the Andean Community

Article 29.- The General Secretariat is the executive body of the Andean Community and as such it acts solely in accordance with the interests of the Subregion. The General Secretariat shall give technical support, when suitable, to the other bodies and institutions of the Andean Integration System.

The General Secretariat shall be headed by the General Secretary. For the fulfillment of his duties, the General Secretary shall rely on the Directors General, according to the respective regulation. Furthermore, the General Secretary shall have the technical and administrative staff required for the accomplishment of his duties. The General Secretariat shall express itself through Resolutions.

Article 30.- The Andean Community General Secretariat’s responsibilities are:

a) To ensure application of this Agreement and compliance with the rules that make up the Andean Community Law;

b) To carry out the tasks assigned to it by the Andean Council of Ministers of Foreign Affairs and the Commission;

c) To present to the Andean Council of Ministers of Foreign Affairs and to the Commission, drafts of Decisions, according to their respective responsibilities, as well as initiatives and suggestions to the enlarged meeting of the Andean Council of Ministers of Foreign Affairs, aimed at facilitating or hastening the fulfillment of this Agreement, with the purpose of achieving its objectives in the shortest possible time frame;

d) To carry out studies and propose the necessary measures for the application of the special treatments favoring Bolivia and Ecuador and, in general, those regarding the participation of the two countries in this Agreement;

e) To study and report annually to the Andean Council of Ministers of Foreign Affairs and to the Commission, the results of the application of this Agreement and the achievement of its objectives, paying special attention to the fulfillment of the principle of fair distribution of the benefits of integration, and to propose pertinent corrective measures;

f) To carry out technical studies and the coordination entrusted to it by the other bodies of the Andean Integration System and those studies that it considers necessary;

g) To maintain permanent working relationships with the Member Countries, in coordination with the national integration body indicated by each country for such purpose;

h) To prepare its annual work program, in which it shall give preference to the tasks entrusted to it by the other bodies of the System;

i) To promote periodic meetings of the national organizations in charge of the formulation or the carrying out of economic policy and, specially, of those charged with economic planning;

j) To maintain working relationships with the executive bodies of the other regional integration and cooperation organizations, in order to strengthen their relationship and their reciprocal cooperation;

k) To maintain the records of the enlarged meetings of the Andean Council of Ministers of Foreign Affairs and those of the Commission, and to prepare a tentative agenda of their meetings, in coordination with the chairmen of said bodies;

l) To be depository of the records of the meetings and other documents of the Andean Integration System's bodies and to certify their authenticity;

m) To edit the Official Gazette of the Cartagena Agreement;

n) To act as the Secretariat of the Meeting of Representatives of the institutions making up the Andean Integration System; and,

ñ) To carry out the other responsibilities expressly given to it by the Andean Community Law.

Article 31.- The General Secretariat shall operate on a permanent basis and its headquarters shall be in the city of Lima, Peru.

Article 32.- The General Secretariat shall be headed by a General Secretary who will be chosen by consensus for a five-year period by the Andean Council of Ministers of Foreign Affairs, and he may be reelected once.

The General Secretary shall be a person with broad representation, acknowledged prestige, and must be a national of one of the Member Countries. He will only act in the interest of the Subregion as a whole.

During his term in office, the General Secretary shall not be able to carry out any other activity; nor will he seek or accept instructions from any government, national entity or international body.

In case of vacancy, the Andean Council of Ministers of Foreign Affairs in an enlarged meeting shall immediately proceed to name a new Secretary General by consensus. Until such time, the Director-General with the most seniority shall temporarily head the General Secretariat.

Article 33.- The General Secretary can be removed, by consensus, at the request of a Member Country, only after committing a serious fault foreseen in the General Secretariat's Regulations, while exercising his duties.

Article 34.- The responsibilities of the Andean Community's General Secretary are:

a) To be the General Secretariat's legal representative;

b) To propose to the Commission or to the Andean Council of Ministers of Foreign Affairs initiatives in relation to the General Secretariat's Regulations;

c) To hire and remove, according to the General Secretariat's Regulations, technical and administrative staff;

d) To participate with the right to be heard in the sessions of the Andean Council of Ministers of Foreign Affairs, the Commission, respective enlarged meetings, and, when invited, in the meetings of the other bodies of the System;

e) To present the annual budget estimate to the Commission, for its approval; and,

f) To present an annual report of the General Secretariat's activities to the Andean Council of Ministers of Foreign Affairs in an enlarged meeting.

Article 35.- The General Secretary shall appoint the Directors-General, with the advice of the Member Countries and according to the General Secretariat's functional-organic structure. The Directors-General shall be top-level professionals, appointed strictly due to their academic background, ability, reputation, and experience, and they shall be responsible for a determined technical area.

The Directors-General shall be nationals of one of the Member Countries and in their appointment the General Secretary shall ensure a balanced subregional geographic distribution. The appointment and removal of the Directors-General shall proceed according to the General Secretariat's Regulations.

Article 36.- In carrying out proceedings involving the interests of two or more Member Countries, the General Secretary shall have technical support from special experts, whose appointment and method of participation shall be determined according to the General Secretariat's Regulations.

Article 37.- The General Secretary, when hiring technical and administrative staff, who may be of any nationality, shall strictly bear in mind the ability, competence, and reputation of the candidates and shall ensure that, provided that it is compatible with the prior criteria, there should be a balanced subregional geographic distribution.

The appointment and removal of the staff shall take place according to the criteria and grounds established in the Regulations of the General Secretariat, without prejudice for what is provided for such purpose by the Charter of the Court of Justice and its modifying protocols.

Article 38.- The staff of the General Secretariat, shall refrain from any action which may be incompatible with the nature of its duties, and shall neither seek nor accept any instructions from a Government, national entity or international body.

Article 39.- In the case of proceedings that must culminate with the adoption of a Resolution or Opinion, the individuals, legal entities, public or private persons from the Member Countries, shall cooperate with the investigations performed by the General Secretariat in carrying out its duties and in this sense must supply the information they are requested for this purpose.

The General Secretariat shall keep the confidentiality of the documents and information furnished, according to the rules established about the matter.

Section E - On Court of Justice of the Andean Community

Article 40.- The Court of Justice is the judicial body of the Andean Community.

Article 41.- The Court of Justice of the Andean Community is governed by its Charter, its modifying protocols and this Agreement.

The Court has its headquarters in the city of Quito, Ecuador.

Section F - On The Andean Parliament

Article 42.- The Andean Parliament is the deliberative body of the System. It has a community nature, it represents the peoples of the Andean Community and it shall be made up of representatives chosen by universal and direct suffrage, according to the procedure that shall be adopted through an Additional Protocol that shall include adequate criteria for national representation.

Until the Additional Protocol establishing direct elections is in force, the Andean Parliament shall be comprised of representatives of the National Congresses, according to their internal regulations and to the General Regulations of the Andean Parliament.

The headquarters of the Andean Parliament shall be in the city of Santafé de Bogotá, Colombia.

Article 43.- The Andean Parliament's responsibilities are:

a) To participate in the promotion and direction of the Andean Subregional integration process, with the aim of consolidating Latin American integration;

b) To study the progress of the Andean subregional integration process and the fulfillment of its objectives, requesting for that purpose, periodic information from the bodies and institutions of the System;

c) To formulate recommendations regarding the annual budget estimates of the bodies and institutions of the System, that are financed through direct contributions of the Member Countries;

d) To suggest to the bodies and institutions of the System actions or decisions, having as a goal or effect, the adoption of modifications, adjustments, or new general guidelines in relation to the programmed objectives and the institutional structure of the System;

e) To participate in the law-making process by suggesting to the bodies of the System draft rules and regulations on subjects of common interest, for incorporation to the Andean Community Law;

f) To promote the harmonization of Member Countries´ legislation; and,

g) To promote relationships for cooperation and coordination with the Parliaments of Member Countries, the bodies and institutions of the System, as well as with integration or cooperation parliamentary bodies from third countries.

Section G - On the Advisory Institutions

Article 44.- The Business Advisory Council and the Labor Advisory Council are the advisory institutions of the Andean Integration System. They are comprised by high-level delegates, who shall be directly chosen by the representative bodies in the business and labor sectors of each one of the Member Countries, according to their respective regulations, and officially accredited by them.

The responsibilities of the Advisory Councils shall be to express opinions before the Andean Council of Ministers of Foreign Affairs, the Commission or the General Secretariat, at the request of these bodies or upon their own initiative, with regard to programs or activities of the Andean subregional integration process that may be of interest to their respective sectors. They can also be called to meetings of working groups and of government experts, participate in the preparation of draft Decisions, and they shall be able to participate with a right to be heard in the meetings of the Commission.

Section H - On the Financial Institutions

Article 45.- The Andean Development Corporation and the Latin American Reserve Fund are the financial institutions of the System whose purpose is to promote the process of Andean subregional integration.

Article 46.- The General Secretariat and the executive bodies of the Andean Development Corporation and the Latin American Reserve Fund, shall keep working relationships, with the purpose of establishing an adequate coordination of activities and to facilitate, thereby, the achievement of the objectives of this Agreement.

Section I - On Dispute Resolution

Article 47.- The resolution of disputes that may arise due to the application of the Andean Community Law, shall be subject to the provisions of the Charter of the Court of Justice.

Section J - On the International Legal Capacity and the Privileges and Immunities

Article 48.- The Andean Community is a subregional organization with international legal capacity or international legal status

Article 49.- The General Secretariat, the Court of Justice, the Andean Parliament, the Andean Development Corporation, the Latin American Reserve Fund, and the Social Agreements which are part of the System, shall enjoy, within the territory of each one of the Member Countries, the privileges and immunities required for the fulfillment of their objectives. Their representatives and international staff shall have, likewise, the privileges and immunities required to carry out their duties, in relation to this agreement, with independence. Their premises are inviolable and their goods and property are immune to all judicial proceedings, unless expressly waived. Nevertheless, such a waiver shall not apply to any judicial executory measure.

CHAPTER III

HARMONIZATION OF ECONOMIC POLICIES AND COORDINATION OF DEVELOPMENT PLANS

Article 50.- Member Countries shall progressively adopt a strategy for the achievement of the subregional development objectives foreseen in this Agreement.

Article 51.- Member Countries shall coordinate their development plans in specific sectors and will gradually harmonize their economic and social policies, with the objective of achieving an integrated development of the area, through planned actions.

This process shall be carried out in parallel to and in coordination with the creation of the subregional market, by means of the following mechanisms, among others:

a) Industrial Development Programs;

b) Agricultural and Agroindustrial Development Programs;

c) Physical Infrastructure Development Programs;

d) The harmonization of foreign exchange, monetary, financial, and fiscal policies, including the treatment of subregional or foreign capital;

e) A common trade policy in relation to third countries; and

f) The harmonization of planning methods and techniques.

Article 52.- Before December 31, 1970, the Commission, shall at the General Secretariat's proposal, approve and submit to the Member Countries for their consideration a common regime on the treatment of foreign capital and, among others, about trademarks, patents, licenses, and royalties.

The Member Countries shall take the necessary measures to put this regime into effect within six months following its approval by the Commission.

Article 53.- Before December 31, 1971, the Commission shall, at the General Secretariat's proposal, approve and propose to the Member Countries a uniform regime that Andean multinational corporations must abide by.

Article 54.- The Commission shall, at the General Secretariat's proposal, establish permanent procedures and mechanisms deemed necessary to achieve the coordination and harmonization referred to in Article 51.

Article 55.- The Commission shall, at the General Secretariat's proposal and taking into account the progress and needs of the subregional integration process, as well as the balanced compliance with the mechanisms of the Agreement, approve rules, and determine dates for the gradual harmonization of the economic legislations and the instruments and mechanisms for the regulation and promotion of Member Countries´ foreign trade that affect the mechanisms foreseen in this Agreement for the creation of the subregional market.

Article 56.- The Member Countries shall include in their national development plans and in the formulation of their economic policies, the necessary measures to ensure compliance with the preceding Articles.

CHAPTER IV

INDUSTRIAL DEVELOPMENT PROGRAMS

Article 57.- The Member Countries pledge themselves to promote a common process of industrial development to attain, among others, the following objectives:

a) The expansion, specialization, diversification, and promotion of industrial activity;

b) The development of economies of scale;

c) An optimum utilization of resources available in the area, specially through the industrialization of natural resources;

d) The improvement in productivity;

e) A greater degree of relationship, linkage, and complementarity among the industrial enterprises of the Subregion;

f) An equitable distribution of benefits; and

g) An improved degree of participation of subregional industry in the international context.

Article 58.- With respect to the previous Article, the following shall constitute modes of industrial integration:

a) Industrial Integration Programs;

b) Industrial Complementarity Agreements ; and

c) Industrial Integration Projects.

Section A - On Industrial Integration Programs

Article 59.- The Commission shall, at the General Secretariat's proposal, adopt Industrial Integration Programs, preferably to promote new industrial production that is sectorial or intersectorial in scope, and that shall have the participation of at least four Member Countries.

The programs shall include clauses about:

a) Specific goals;

b) The determination of the products that are the subject matter of the Program;

c) Location of production facilities in the countries of the Subregion whenever required by the characteristics of the sector or sectors subject to the program, in which case, they must include rules regarding the commitment not to encourage production in countries which are not favored by the assignment;

d) A Tariff Reduction Program which may provide different rates of implementation by country and product;

e) A Common External Tariff;

f) Coordination of new investment on a subregional scale and measures to ensure its financing;

g) Harmonization of policies on aspects directly affecting the Program;

h) Complementary measures that may create greater industrial linkages and facilitate the fulfillment of the goals of the Program; and

i) The periods of time during which the rights and obligations arising from the Program shall be maintained, in case the Agreement is denounced.

Article 60.- In the Industrial Integration Programs, the nonparticipant country shall be subject to the following conditions:

a) When the products that are the subject matter of these programs belong to the list of reserved products, it may keep them as in a reserved position, with the commitment of improving the Tariff Reduction Program or the Common Minimum External Tariff, as the case may be, within a period which does not exceed that established in the Programs for these purposes; and

b) For the other products, by the general rules of this Agreement.

Article 61.- A country not participating in a Program of Industrial Integration may request its incorporation at any time in which case the Commission shall approve the conditions for said incorporation, through the voting system provided in paragraph b) of Article 26. In the respective proposals, the Commission shall take into account the negotiations carried out between participating and the nonparticipating countries.

Section B - On the Agreements of Industrial Complementarity

Article 62.- The Agreements of Industrial Complementarity shall promote industrial specialization among the Member Countries and may be entered into and carried out by two or more of them. Such Agreements must be notified to the Commission.

With respect to the preceding paragraph, the Agreements may include measures such as distribution of production, joint production, subcontracting of productive capacity, market agreements, and joint foreign trade operations, as well as others which may facilitate a greater articulation of the productive processes and entrepreneurial activity.

The Agreements of Industrial Complementarity shall be transitory in nature, and in addition to the determination of products that are their subject matter and of the expiration date of the rights and obligations of the participant Member Countries, may include special measures regarding tariff treatment, trade regulations, and the establishment of preferential margins, that are not applicable to nonparticipant countries, provided that such measures represent an equal or better level of conditions than those existing for reciprocal exchange. In this case, the duties applicable to third countries shall be determined.

Article 63.- In the case of Agreements of Industrial Complementarity, the following rules shall apply to the products subject to them:

a) Whenever they belong to the list of reserved products, the participant and nonparticipant countries may maintain them in it; and

b) Regarding the other products, the nonparticipant countries shall apply the general rules of this Agreement.

Article 64.- Countries not participating in the Agreements of Complementarity may request their incorporation at any time, in which case the conditions for said incorporation shall be approved by the participant countries. These conditions shall be notified to the Commission.

Section C - On Industrial Integration Projects

Article 65.- The Commission shall, at the General Secretariat's proposal, approve Industrial Integration Projects, which shall be carried out with regard to specified products or product families, preferably new ones, through collective cooperation policies and with the participation of all of the Member Countries.

In carrying out these Projects, the following tasks, among others, shall be performed:

a) Feasibility and design studies;

b) Supplying equipment, technical assistance, technology, and other goods and services, preferably of subregional origin;

c) Support by the Andean Development Corporation through financing or through equity; and

d) Joint negotiations with international entrepreneurs and government agencies to obtain foreign funds or the transfer of technology.

Industrial Integration Projects shall include clauses regarding the location of production facilities in the Member Countries whenever the characteristics of the corresponding sector or sectors so require and may include clauses that facilitate product access to the subregional market.

In the case of specific projects located in Bolivia or Ecuador, the Commission shall establish temporary and exclusive tariff treatment that improves the conditions of access of such products to the subregional market. Regarding products that are not produced in the Subregion, if these were to be included in this category, they shall include exceptions to the principle of irrevocability provided in the first paragraph of Article 75.

Other Provisions

Article 66.- In the application of the modes of industrial integration, the Commission and General Secretariat shall consider the situation and requirements of small and medium-sized industry, particularly those referred to the following aspects:

a) The installed capacity of the existing companies;

b) The financial and technical needs for the installation, expansion, modernization, or conversion of production facilities;

c) The perspectives for establishing joint marketing, technological and research systems, and other forms of cooperation among similar companies; and

d) Employee training requirements.

Article 67.- The modes of industrial integration may foresee industrial rationalization actions with the intention of achieving an optimum utilization of the factors of production and to reach higher levels of productivity and efficiency.

Article 68.- The General Secretariat may carry out or promote cooperation actions, including those for industrial rationalization and modernization, in favor of any activity of the sector and, particularly, of Subregional small and medium-sized industry, with the purpose of contributing to the industrial development of the Member Countries. These actions shall be carried out with priority in Bolivia and Ecuador.

Article 69.- When the General Secretariat deems it advisable and, in any case, in its periodic evaluations, it shall propose to the Commission the measures it considers essential for ensuring the equitable participation of the Member Countries in the modes of industrial integration that are covered under the present Chapter, in their execution, and in the attainment of their objectives.

Article 70.- It shall be the Commission and the General Secretariat's responsibility to maintain an adequate coordination with the Andean Development Corporation, and to arrange for the assistance of any other national or international institutions whose technical and financial contribution it considers desirable for:

a) Facilitating the coordination of policies and the joint programming of investments;

b) Channeling an increasing volume of funds to the solution of problems created for Member Countries by the process of industrial integration;

c) Promoting the financing of the investment projects that arise from the execution of the different modes of industrial integration,

d) Expanding, modernizing, or converting industrial plants that may be adversely affected by trade liberalization.

CHAPTER V

TARIFF REDUCTION PROGRAM

Article 71.- The objective of the Tariff Reduction Program is to eliminate the levies and restrictions of all kinds that affect the importation of products originating in the territory of any Member Country.

Article 72.- "Levies" are understood to mean the customs duties and any other charge with equivalent effect, whether fiscal or monetary in nature or related to foreign exchange, that may affect imports. Not included in this concept are analogous assessments and surcharges that correspond to the approximate cost of the services rendered.

"Restrictions of all kinds" are understood to mean any administrative, financial, or foreign exchange measure, whereby a Member Country through an unilateral decision, obstructs or hinders imports. Not included in this concept are the adoption and enforcement of measures for:

a) The protection of public morality;

b) The application of laws and regulations related to security;

c) The regulation of arms, ammunition, and other implements of war, and under exceptional circumstances, of all other military articles, as long as it does not interfere with what is provided in treaties in force between Member Countries relating to the freedom of transit;

d) The protection of human, animal, or plant life and health;

e) Import and export of metallic gold and silver;

f) The protection of national treasures of artistic, historic, or archaeological value; and

g) The exportation, use, or consumption of nuclear materials, radioactive products, or any other material that may be used in the development and use of nuclear energy.

Article 73.- For the purpose of the previous articles, the General Secretariat, on its own initiative or at the request of a party, shall determine, when necessary, if a measure adopted unilaterally by a Member Country constitutes a "levy" or "restriction."

Article 74.- As regards taxes, assessments, and other internal charges, products originating in a Member Country shall enjoy in the territory of the other Member Country treatment that is no less favorable than that accorded to similar domestic products.

Article 75.- The Tariff Reduction Program shall be automatic and irrevocable and it shall cover the entire product universe, except for the provisions regarding exceptions that are established in this Agreement, so that a total reduction is achieved by the dates and in the modes referred to in this Agreement.

This Program shall apply, in its various forms to:

a) Products that are the subject matter of Industrial Integration Programs;

b) Products included in the Common List referred to in Article 4 of the Treaty of Montevideo of 1960;

c) Products that are not produced in any of the Subregional countries, included in the corresponding list; and

d) Products not included in the above sections.

Article 76.- Every kind of restriction shall be eliminated by December 31, 1970, at the latest.

Excepted from the previous rule are restrictions applied to products reserved for Sectorial Programs and modes of industrial integration, which shall be eliminated when the reduction in their tariffs is initiated according to their respective program or mode or as provided in Article 83.

Bolivia and Ecuador shall eliminate every kind of restriction at the moment in which they initiate the Tariff Reduction Program for each product, according to the procedures provided in Articles 130 and 138, but may replace them with levies that do not exceed the lowest level indicated in subsection a) of Article 82, in which case this shall apply to imports from the Subregion as well as from outside of it.

Article 77.- The Commission shall, within the time period provided in the preceding Article and at the General Secretariat’s proposal, determine which products are to be reserved for Sectorial Programs of Industrial Development.

Before October 31, 1978, the Commission, at the General Secretariat’s proposal, shall approve a list of products to be excluded from the list of those reserved for programming and shall reserve from among those not produced two lists of goods to be produced in Bolivia and Ecuador, indicating the conditions and time periods.

On December 31, 1978, Colombia, Peru, and Venezuela, shall adopt for the products on this list the starting point provided in subsection a) of Article 82, and shall eliminate all of their restrictions applicable to the importation of said goods.

The remaining levies shall be removed in five annual and successive reductions of ten, fifteen, twenty, twenty-five, and thirty percent, the first of which shall take place on December 31, 1979.

On December 31, 1978, Colombia, Peru, and Venezuela shall eliminate the levies applicable to imports originating in Bolivia and Ecuador.

Bolivia and Ecuador shall eliminate duties on the importation of these products as foreseen in section b) of Article 130 of this Agreement.

Before December 31, 1995, the Commission shall approve Industrial Integration Programs and Projects with respect to products that had been reserved for that purpose.

Article 78.- The Commission and the Member Countries shall, whenever appropriate and at any time, adopt the modes of industrial integration referred to in Article 58 and shall determine the pertinent rules, taking into account that which is provided in Chapter IV and considering the importance of industrial programming as a fundamental mechanism of the Agreement.

Article 79.- The products included in the first section of the Common List referred to in Article 4 of the Treaty of Montevideo of 1960, shall be totally freed from all restrictions and levies on April 14, 1970.

Article 80.- Before December 31, 1970 the Commission, at the proposal of the General Secretariat, shall draw up a list of the goods not produced in any of the countries of the Subregion and which have not been reserved for Sectorial Programs of Industrial Development. It shall select those that should be reserved for production in Bolivia and Ecuador, establishing, for the latter , the terms and reserve periods.

Products appearing on that list shall be totally freed of levies on February 28, 1971. The elimination of duties on the goods reserved for production in Bolivia and Ecuador, shall benefit those countries exclusively.

Notwithstanding the foregoing, and within the period stipulated in the first paragraph of this Article, the General Secretariat may propose to the Commission that some of the products on that list be allocated to Colombia, Peru, and Venezuela. The country benefiting from the allocation shall remove the duties on the respective goods as provided for in Article 82.

If the General Secretariat is able to confirm that, four years after the date of the allocation, the favored country has not initiated the corresponding production or that the project is not underway, then as of that moment the effects of that allocation shall cease and the country benefited shall immediately proceed to eliminate the tariff on the product in question.

Article 81.- At any time after the expiration of the period indicated in the second paragraph of the foregoing Article the Commission, at the General Secretariat's proposal, may add new products to the list referred to in the first paragraph of that same Article. Those goods shall be free from all levies sixty days after the date of approval of their inclusion on the list in question.

Whenever the General Secretariat considers it to be technically and economically feasible, it shall propose to the Commission that some of the new products be reserved for production in Bolivia and Ecuador; in that case it shall stipulate the period and term of the reservation.

Article 82.- Products not covered by Articles 77, 79, and 80 shall be freed of levies in the following manner:

a) The lowest levy for each product in any of the national schedules of customs duties of Colombia and Peru or in their respective National Lists on the date the Agreement is signed, shall be used as the starting point. Said starting point may not be higher than one hundred percent ad valorem of the CIF price of the merchandise;

b) On December 31, 1970, all of the duties above the level cited in the preceding subsection shall be reduced to that level; and

c) The remaining levies shall be eliminated in five annual and successive reductions of ten percent each, the first of which shall be made on December 31, 1971; seven annual and successive reductions of six percent each, the first of which shall be made on December 31, 1976, and a final reduction of eight percent, to be made on December 31, 1983.

Article 83.- With respect to the products which, having been selected for Sectorial Programs and modes of Industrial Integration and which are maintained in reserve until the expiration of the period specified in the final subsection of Article 77, the Member Countries shall carry out the Tariff Reduction Program in the following way:

a) The Commission, at the General Secretariat's proposal, shall choose two lists of not produced goods, to be produced in Bolivia and Ecuador, and shall set the periods and terms of the reservation; and

b) Before December 31, 1995, the Commission, at the General Secretariat's proposal shall adopt a gradual tariff reduction program for the remaining products, which shall be completed by December 31, 1997. Colombia, Peru, and Venezuela shall eliminate the levies applicable to imports from Bolivia and Ecuador at the time said tariff reduction program is initiated.

Article 84.- The Member Countries shall refrain from changing the levels of the levies and from introducing any new restrictions on the importation of products which originate in the Subregion, in any way that would create a less favorable situation than that in existence at the time the Agreement comes into effect.

Excluded from the above are the changes which Bolivia and Ecuador must make in their schedules of customs duties to obtain optimum use from their trade policy instruments in order to ensure that certain production activities are initiated or expanded within their territories. These exceptions are to be reviewed by the General Secretariat and authorized by the Commission.

Also excepted from this rule are changes in levies resulting from the replacement of restrictions by levies referred to in Article 46.

Article 85.- Up until December 31, 1970, each of the Member Countries may submit to the General Secretariat a list of products currently being produced in the Subregion, in order to exempt them from the Tariff Reduction Program and from the establishment of the External Tariff. Colombia and Peru's lists of exceptions cannot contain products that are included in more than two hundred and fifty items of the NABALALC.

Within one hundred and twenty days after its Instrument of Accession to the Agreement, Venezuela will present to the General Secretariat a list of exceptions which may not cover products that are already included in more than two hundred and fifty items of the NABALALC.

The products included in the lists of exceptions shall be completely free of levies and other restrictions and covered under the Minimum Common External Tariff or the Common External Tariff, whichever is appropriate, through a process that shall include three stages of 44, 44 and 87 items, the first of which shall be liberalized on December 31, 1993; the second on December 31, 1994, and the final one on December 31, 1995.

Colombia, Peru, and Venezuela may maintain, after December 31, 1995, a set of residual exceptions that shall contain products that are included in no more than 75 items of the NABALALC.

Article 86.- A Member Country's incorporation of a product in its list of exceptions shall prevent it from enjoying the benefits deriving from the Agreement for that product.

A Member Country may withdraw products from its list of exceptions at any time. In that case, the products shall comply with the Tariff Reduction Program and the External Tariff in effect for such products, in the ways and levels that are appropriate, and they shall simultaneously begin to enjoy the respective benefits.

In duly qualified cases, the General Secretariat may authorize a Member Country to incorporate in its list of exceptions products that, having been reserved for Industrial Integration Programs and Projects, were not programmed.

In no case shall the incorporation involve an increase in the number of corresponding items.

Article 87.- The General Secretariat shall consider the possibility of incorporating the products Member Countries included in their lists of exceptions and in their lists of administered trade, to the Industrial Integration modes.

For purposes of the previous section, interested countries shall inform the General Secretariat of their intention to participate and once the respective mode of industrial integration is agreed upon, shall withdraw the product from its list of exceptions or from its list of administered trade.

Member Countries shall enter into negotiations in order to seek formulas that may allow for the liberalization of the products included in the lists of exceptions or the elimination of quotas on the products incorporated in the lists of administered trade, prior to the expiration of the corresponding deadlines.

Article 88.- The inclusion of products in the lists of exceptions shall not affect the exportation of goods originating in Bolivia or Ecuador which have been the subject of significant trade between the respective country and Bolivia or Ecuador over the last three years or which show a strong likelihood of significant trade in the immediate future.

The same shall be the case in the future for those products from Bolivia or Ecuador which appear in the lists of exceptions of any of the Member Countries and which show clear and immediate prospects of being exported from Bolivia or Ecuador to the country which has exempted them from the reduction of trade restrictions.

It shall be the responsibility of the General Secretariat to determine when significant trade exists or when there is a clear likelihood that it will exist.

Article 89.- The Member Countries shall seek to jointly reach partial-scope trade agreements, agreements of economic complementation, agricultural agreements, and trade promotion agreements, with the other Latin American countries in those sectors where it is feasible, according to the provisions of Article 98 of this Agreement and of the Montevideo Treaty of 1980.

CHAPTER VI

COMMON EXTERNAL TARIFF

Article 90.- Member Countries commit themselves to implementing a Common External Tariff within the time limits and in the manner established by the Commission.

Article 91.- The Commission, at the General Secretariat's proposal, shall approve a Common External Tariff that must provide adequate levels of protection in favor of subregional production, taking into account the Agreement's objective of gradually harmonizing the different economic policies of the Member Countries.

On the date indicated by the Commission, Colombia, Peru, and Venezuela will begin the process of approximating their levies, that apply under their national tariff schedules to the importation of products not originating within the Subregion, to the Common External Tariff, in an annual, automatic, and linear manner.

Article 92.- Before December 31, 1970, the Commission, at the proposal of the General Secretariat, shall approve a Minimum Common External Tariff, whose objectives shall be primarily the following:

a) To establish adequate protection for subregional production;

b) To progressively create a subregional margin of preference;

c) To facilitate the adoption of the Common External Tariff; and

d) To further the efficiency of subregional production.

Article 93.- On December 31, 1971, the Member Countries shall begin approximating their levies, that apply to imports from outside the Subregion, to the Minimum Common External Tariff, in those cases in which the former are lower than the latter, and they shall carry out this process in an annual, linear, and automatic manner, so that it is fully implemented by December 31, 1975.

Article 94.- Notwithstanding the provisions of Articles 91 and 93 the following rules shall be applied:

a) With respect to products that are subject matter of the Industrial Integration Programs, the rules established by said Programs regarding the Common External Tariff shall govern; and with respect to products that are the subject-matter of Industrial Integration Projects, the Commission, whenever appropriate, may determine, when approving the respective Decision, the levels of levies that apply to third countries and the corresponding conditions; and

b) At any time, in fulfilling the Tariff Reduction Program, a product is freed of levies and other restrictions, it shall be subject to the full and simultaneous application of the levies established in the Minimum Common External Tariff or in the Common External Tariff, as the case may be.

For goods not produced in the Subregion, each country may defer the application of the common levies until the General Secretariat verifies that its production has begun in the Subregion. Nevertheless, if in the General Secretariat's judgment the new production is insufficient to normally meet the needs of the Subregion, it shall propose to the Commission the necessary measures to reconcile the need to protect subregional production with that of ensuring a normal supply.

Article 95.- The Commission, at the General Secretariat's proposal, shall be able to approve subregional margins of preference with respect to the products that are still not required to comply with the Tariff Reduction Program and the Minimum Common External Tariff, providing in the corresponding Decision the conditions and terms for its application, until they are surpassed by the rules of the Tariff Reduction Program and the Minimum Common External Tariff or the Common External Tariff.

Article 96.- The Commission, at the General Secretariat's proposal, may modify the common tariff levels to the extent and at the time it deems advisable in order to:

a) Adjust them to the Subregion´s needs; and

b) Provide for the special situation of Bolivia and Ecuador.

Article 97.- The General Secretariat may propose to the Commission the measures which it considers essential to ensure normal conditions of supply in the Subregion.

Any Member Country undergoing temporary supply shortages may present the problem to the General Secretariat, which shall verify the situation within a period commensurate with the urgency of the case. Once the General Secretariat verifies the existence of the problem in question and so informs the country adversely affected, the latter may take steps, such as to reduce or temporarily suspend the External Tariff duties, within the necessary limits for correcting the disturbance.

In the cases referred to in the previous section, the General Secretariat shall call a special meeting of the Commission, if such is in order, or shall inform it of the action taken at its following regular meeting.

Article 98.- The Member Countries commit themselves not to alter unilaterally the levies set in the various stages of the External Tariff. They also commit to hold the necessary consultations in the Commission before taking on obligations of a tariff nature with countries outside the Subregion. The Commission, at the General Secretariat's proposal and through a Decision, shall state its opinion regarding said consultations, and shall set the terms with which commitments of a tariff nature must comply.

CHAPTER VII

AGRICULTURAL DEVELOPMENT PROGRAMS

Article 99.- With the purpose of promoting common agricultural and agroindustrial development and attaining greater subregional food security, the Member Countries shall carry out an Agricultural and Agroindustrial Development Program, harmonize their policies, and coordinate their national plans in the sector, bearing in mind, among others, the following objectives:

a) An improvement in the living standards of the rural population;

b) Taking care of the food and nutritional requirements of the population on satisfactory terms, to achieve the lowest possible dependence on supplies coming from outside the Subregion;

c) The appropriate and adequate supply of the subregional market and the protection against food shortage risks;

d) An increase in the production of staple foods and in productivity levels;

e) Subregional complementation and specialization of production with a view to improving the use of its inputs and to increase trade of agricultural and agroindustrial products; and

f) Subregional substitution of imports and the diversification and growth of exports.

Article 100.- To fulfill the objectives stated in the previous article, the Commission, at the proposal of the General Secretariat, shall take the following steps, among others:

a) To create an Andean System and National Systems of Food Security;

b) Joint policies for agricultural and agroindustrial development by products or groups of products;

c) Joint programs for agricultural and agroindustrial technological development, including policies for research, training, and the transfer of technology;

d) Promotion of intra-subregional agricultural and agroindustrial trade and entering into agreements for supplying agricultural products;

e) Joint programs and policies regarding agricultural and agroindustrial trade with third countries;

f) Common rules and programs about vegetable and animal health;

g) Creation of subregional funding mechanisms for the agricultural and agroindustrial sector;

h) Joint policies for the use and preservation of the natural resources of the sector; and

i) Joint cooperative policies in the fields of research and transfer of technology in areas of common interest for the Member Countries, such as genetics, floriculture, fishing, forestry, and those that the Commission determines in the future.

Article 101.- The Commission and the General Secretariat shall adopt the necessary steps to hasten the agricultural and agroindustrial development of Bolivia and Ecuador as well as their participation in the enlarged market.

Article 102.- Any Member Country may apply, in a non-discriminatory, manner, to the trade of products incorporated in the list referred to Article 104, the following measures destined to:

a) Restrict imports to what is necessary in order to cover internal production deficits; and

b) To level the prices of the imported product with those of the national product.

For the application of such measures, when appropriate, the Member Countries shall carry out actions through the existing national agencies, destined to the supply of agricultural and agroindustrial food products.

Article 103.- The country imposing the measures referred to in the previous article shall immediately notify the General Secretariat, enclosing a report on the underlying reasons for its action.

These measures shall be applied to Bolivia and Ecuador only in duly qualified cases and after the General Secretariat has confirmed that the damage arises essentially from their imports. The General Secretariat is required to express its views within fifteen days after receiving the report, and it may authorize application of the measures.

Any Member Country that considers itself affected by said measures may present its comments to the General Secretariat.

The General Secretariat shall study the case and propose to the Commission the positive measures that it deems advisable in the light of the objectives provided in Article 99.

The Commission shall decide with respect to the restrictions that were applied and the measures proposed by the General Secretariat.

Article 104.- Before December 31, 1970, the Commission, at the proposal of the General Secretariat, shall determine the list of agricultural products for purposes of applying Articles 102 and 103. Such list may be modified by the Commission, at the proposal of the General Secretariat.

CHAPTER VIII

COMPETITION

Article 105.- Before December 31, 1971, the Commission, shall adopt, at the General Secretariat's proposal, the rules which are needed to guard against or correct practices which may distort competition within the Subregion, such as dumping, improper price manipulations, maneuvers made to upset the normal supply of raw materials and others with a like effect. In this respect, the Commission shall consider the problems that could derive from the imposition of levies and other restrictions on exports.

It shall be the General Secretariat's responsibility to ensure the application of those rules in the particular cases that are reported.

Article 106.- The Member Countries may not adopt corrective measures without the General Secretariat's prior authorization. The Commission shall regulate the procedures for implementing the rules of this Chapter.

CHAPTER IX

SAFEGUARD CLAUSES

Article 107.- A Member Country, that has adopted measures to correct a disequilibrium in its overall balance of payments, may extend such measures, when previously authorized by the General Secretariat in a transitory and nondiscriminatory manner, to intrasubregional trade of products incorporated to the Tariff Reduction Program.

The Member Countries shall seek to ensure that the application of restrictions due to a balance of payments situation does not affect, within the Subregion, trade in products incorporated to the Tariff Reduction Program.

When the situation provided for in this Article requires an immediate response, the interested Member Country may apply, on an emergency basis, the foreseen measures,

having in that regard to immediately notify them to the General Secretariat, which shall express its views within the following thirty days, either authorizing, modifying, or suspending them.

If the application of the measures provided for in this Article lasts more than one year, the General Secretariat, on its own initiative or upon the request of any of the Member Countries, shall propose to the Commission that negotiations be immediately initiated in order to seek the elimination of the adopted restrictions.

Article 108.- If the execution of the Tariff Reduction Program of the Agreement causes or threatens to cause serious damage to the economy of a Member Country or to one of its significant economic sectors, that country may, with the prior permission of the General Secretariat, apply temporary corrective steps in a nondiscriminatory manner. When necessary, the General Secretariat may propose to the Commission collective cooperation measures for the purpose of surmounting the problems that arise.

The General Secretariat shall periodically study the evolution of the situation to keep the restrictive measures from lasting any longer than is strictly necessary or to consider new formulas for cooperation, if appropriate.

When the injuries dealt with in this Article are so serious that they require immediate steps, the Member Country adversely affected may apply corrective measures temporarily, on an emergency basis, subject to the subsequent pronouncement of the General Secretariat.

Those measures shall do the least damage possible to the Tariff Reduction Program, and so long as they are implemented unilaterally, they may not involve a decrease in the importation of the product or products in question in terms of the average for the twelve preceding months.

The Member Country which adopts those measures shall immediately inform the General Secretariat thereof and the latter shall issue its views on them within the thirty following days, either to authorize, modify, or suspend them.

Article 109.- When a product originating in the Subregion is being imported in such quantities or conditions as to cause a disturbance in the domestic production of specific products of a Member Country, it may apply corrective measures, that are nondiscriminatory and of a temporary nature, subject to the subsequent pronouncement of the General Secretariat.

The Member Country that applies the corrective measures, within no more than sixty days, must notify the General Secretariat and present a report regarding the underlying grounds for their application. The General Secretariat, within sixty days after receiving the aforementioned report, shall verify the disturbance and the origin of the imports causing it, and shall issue its pronouncement, either to suspend, modify, or authorize said measures, which may only be applied to the products of the Member Country where the disturbance originated. The corrective measures that are applied shall guarantee access for a volume of trade not inferior to the average for the last three years.

Article 110.- If a currency devaluation made by one of the Member Countries alters the normal conditions of competition, the country which considers itself to be adversely affected may bring the case before the General Secretariat, which should hand down its opinion briefly and summarily. Once the General Secretariat has verified, the existence of the disturbance, the adversely affected country may take temporary corrective measures so long as the condition exists, while abiding by the General Secretariat's recommendations. In any case, those measures may not involve a reduction in the levels of imports existing prior to the devaluation.

Without prejudice for the application of the temporary measures referred to, any of the Member Countries may request that the Commission give a final decision on the matter.

The Member Country which devalued its currency may request at any time that the General Secretariat review the situation, in order to ease or eliminate the cited corrective measures. The General Secretariat's opinion may be amended by the Commission.

In the situation referred to in this Article, the country which considers itself to be adversely affected may, in presenting the case to the General Secretariat, propose protective measures that are commensurate with the magnitude of the alleged disturbance, accompanied by the technical grounds for its proposal. The General Secretariat may request any supplementary information it considers advisable.

The brief and summary pronouncement of the General Secretariat shall be given within a period of one month after the request is received. If the General Secretariat does not hand down its opinion within that period and the requesting country feels that said delay may be harmful to its interests, it may adopt the initial measures which it proposed; it shall immediately inform the General Secretariat thereof and the latter, in its subsequent opinion, shall decide whether the measures taken should be maintained, modified, or eliminated.

In its pronouncement, the General Secretariat shall bear in mind, among other criteria, the economic indicators on the conditions of competition in the Subregion which the Commission may have adopted generally, at the General Secretariat's proposal, the individual characteristics of the foreign exchange systems of the Member Countries and any studies which the Monetary and Foreign Exchange Council carries out on the matter.

Until the system of economic indicators has been adopted by the Commission, the General Secretariat shall proceed according to its own criteria.

Notwithstanding the foregoing, if, during the period between the presentation in question and the General Secretariat's pronouncement, in the opinion of the applicant Member Country, there are background factors which give reasonable grounds to fear that, as a result of the devaluation, there shall be immediate harmful effects which may have serious implications for its economy and thus call for the adoption of protective measures on an emergency basis, it may bring the situation before the General Secretariat; the latter, if it finds the request to be well grounded may authorize the implementation of suitable measures, for which purpose it shall be given a period of seven continuous days. The General Secretariat's final pronouncement on the alteration of the normal conditions of competition shall, in any case, determine whether the authorized emergency measures shall be maintained, modified, or suspended.

The measures that are adopted in keeping with this Article may not involve a decrease in the levels of trade which existed prior to the devaluation.

The second and third subsections of this Article shall be fully applicable to these measures.

Article 111.- No safeguard clauses of any kind shall be applied to the importation of products originating in the Subregion and included in the Programs and Projects of Industrial Integration.

CHAPTER X

ORIGIN

Article 112.- The Commission shall, at the General Secretariat's proposal, adopt any special rules necessary for determining the origin of goods. Such rules shall constitute a

dynamic instrument for the development of the Subregion and shall appropriately contribute to the attainment the Agreement's objectives.

Article 113.- It shall be the General Secretariat's responsibility to establish the specific requirements of origin for the products requiring so. When an Industrial Integration Program calls for setting specific requirements, the General Secretariat shall decide on them as the corresponding program is being approved.

Within the year following the establishment of a specific requirement, the Member Countries may request its review by the General Secretariat, which must give its opinion summarily.

If a Member Country so requests it, the Commission shall examine those requirements and make a final decision within six to twelve months after having been set by the General Secretariat.

The General Secretariat may, at any time, either on its own initiative or at the request of a party, set or modify said requirements in order to adjust them to the economic and technological progress of the Subregion.

Article 114.- In adopting and deciding on the special rules or specific requirements of origin, as the case may be, the Commission and the General Secretariat shall seek to ensure that they do not hinder Bolivia and Ecuador from taking advantage of the benefits of implementing the Agreement.

Article 115.- The General Secretariat shall ensure compliance with the rules and requirements of origin in subregional trade. It shall, moreover, propose any measures necessary for resolving problems of origin that hinder the attainment of the Agreement's objectives.

CHAPTER XI

PHYSICAL INTEGRATION

Article 116.- The Member Countries shall develop joint actions in order to improve the use of physical spaces, to strengthen the infrastructure and services that are necessary to promote the process of economic integration of the Subregion. This action shall be taken primarily in the fields of energy, transportation, and communications and shall cover the necessary measures for facilitating border traffic among the Member Countries.

To this end, the Member Countries shall seek to establish multinational entities or businesses when possible and desirable for assisting in the execution and administration of those projects.

Article 117.- The Commission shall, at the General Secretariat's proposal, adopt programs in the fields referred to in the preceding Article in order to promote a continuous process aimed at expanding and modernizing the physical infrastructure and the transportation and communications services of the Subregion. These programs shall include insofar as possible, the following:

a) The identification of specific projects for incorporation in the national development plans and an indication of the order of priority for their execution:

b) The essential steps for financing the necessary preinvestment studies;

c) The technical and financial assistance needs to ensure the execution of the projects; and

d) The methods of joint action before the Andean Development Corporation and the international lending institutions to ensure that the required financial resources shall be provided.

Article 118.- The Programs referred to in the foregoing Article, as well as the Programs and Projects of Industrial Integration, shall include measures of collective cooperation to adequately cover the essential infrastructure required for their execution and shall give special consideration to the situation of Ecuador and the landlocked situation of Bolivia.

CHAPTER XII

FINANCIAL MATTERS

Article 119.- The Member Countries shall carry out actions and coordinate their policies regarding financial and payments matters, to the extent necessary to facilitate the attainment of the Agreement's objectives.

For that purpose, the Commission, at the General Secretariat's proposal, shall adopt the following actions:

a) Recommendations to channel the financial resources through the appropriate bodies, to meet the development requirements for the Subregion;

b) Promotion of investments for the Andean integration programs;

c) Financing of trade between the Member Countries and with countries outside the Subregion;

d) Measures that facilitate the movement of capital within the Subregion and particularly the promotion of Andean multinational companies;

e) Coordination of positions to strengthen the reciprocal payments and lending mechanisms within the framework of the ALADI;

f) Establishment of an Andean lending and payments system that includes the Andean Reserve Fund, a common unit of accounting, lines of credit for trade, a subregional clearinghouse, and a system of reciprocal credits;

g) Cooperation and coordination of positions with respect to external funding problems of the Member Countries; and

h) Coordination with the Andean Development Corporation and the Andean Reserve Fund for the purposes described in the preceding subsections.

Article 120.- If, as a result of the fulfillment of the Tariff Reduction Program of the Agreement, a Member Country experiences problems with its fiscal revenues, the General Secretariat may propose to the Commission, at the request of the country affected, measures for resolving those difficulties. In its proposals, the General Secretariat shall take into account the degrees of relative economic development of Member Countries.

CHAPTER XIII

SPECIAL REGIME FOR BOLIVIA AND ECUADOR

Article 121.- In order to gradually lessen the differences in development currently existing in the Subregion, Bolivia and Ecuador shall enjoy a special regime; this shall enable them to attain more rapid economic growth through effective and immediate participation in the benefits of the industrialization of the area and of the liberalization of trade.

To fulfill the aim of this Article, the bodies of the Agreement shall propose and take necessary measures, in accordance with its rules.

Section A - On the Harmonization of Economic Policies and the Coordination of Development Plans

Article 122.- In harmonizing economic and social policies and coordinating the plans referred to in Chapter III, differential treatments and sufficient incentives shall be established to compensate for the structural weaknesses of Bolivia and Ecuador and to ensure that the essential resources for attaining the objectives envisaged for their benefit by the Agreement are mobilized and allocated.

Section B - On Industrial Policy

Article 123.- When carrying out the Industrial Development Programs, Bolivia and Ecuador's situation shall be given special consideration in assigning, on a priority basis, the productions in their favor and the corresponding locations of the production facilities in their territories, specially through participation in the modes of industrial integration provided in Article 58. It shall also consider the development of a program for the integral industrialization of the natural resources of Bolivia and Ecuador.

Article 124.- The Programs and Projects of Industrial Integration shall provide for exclusive benefits and effective preferential treatments for Bolivia and Ecuador to help them effectively take advantage of the subregional market.

Article 125.- The General Secretariat, in proposing to the Commission the complementary measures envisaged in Article 69, shall provide for exclusive advantages and preferential treatment for Bolivia and Ecuador, when necessary.

The Commission, at the General Secretariat's proposal, shall adopt the measures that are necessary to ensure that the allocations granted to Bolivia and Ecuador, are effective and fully utilized, specially those aimed at strengthening commitments to respect the allocations made to those countries, to extend the time periods for the maintenance of the allocations, and to carry out the projects assigned in the Industrial Development Programs.

Section C - On Trade Policy

Article 126.- To enable Bolivia and Ecuador to participate immediately in the benefits of the enlarged market, the Member Countries shall, in an irrevocable and exclusive manner, eliminate for them all levies and restrictions of all kinds on the importation of products originating in the territories of the two countries, in the terms provided in Articles 127 and 128.

Article 127.- For the purposes indicated in the previous Article, products originating in Bolivia and Ecuador shall be governed by the following rules:

a) By December 31, 1973 at the latest, the products included in subsection d) of Article 75 shall have free and definitive access to the subregional market. Accordingly, the levies shall be eliminated automatically in three annual and successive reductions of forty, thirty, and thirty percent, respectively, the first of which shall be made on

December 31, 1971, using as a starting point the levels indicated in paragraph a) of Article 82;

b) The Commission, at the General Secretariat's proposal and prior to December 31, 1970, shall approve lists of products whose tariffs shall be eliminated for the benefit of Bolivia and Ecuador on January 1, 1971;

c) The products on the list referred to in the third subsection of Article 77 shall be totally freed from levies for Bolivia and Ecuador on December 31, 1978 and the products referred to in Article 83, shall be freed at the time the corresponding Tariff Reduction Program is begun.

d) Before March 31, 1971, the Commission, at the General Secretariat's proposal, shall establish margins of preference in favor of the two lists of products of special interest to Bolivia and Ecuador and shall decide on the length of time that such margins, which are to enter into force on April 1, 1971, shall be in effect. The list referred to in this paragraph is comprised of products from subsection d) of Article 75; and

e) The same procedure as that indicated in subsection d) shall be observed in connection with a list of products from those referred to in Article 83.

Article 128.- The elimination of levies on the products of the Common List for which the Member Countries have granted exclusive advantages to Bolivia and Ecuador, shall apply only for their benefit. Said exclusiveness is restricted to the country which granted that benefit.

Article 129.- The corrective measures referred to in Articles 102 and 108 shall be extended to imports from Bolivia and Ecuador only in duly qualified cases and when the General Secretariat has been able to ascertain that the serious adverse effects substantially derive from those imports. In this case, the General Secretariat shall observe the procedures of Articles 103 and 108 and the rules adopted by the Commission at the General Secretariat's proposal with respect to the corresponding safeguard regulations.

Article 130.- Bolivia and Ecuador shall carry out the Tariff Reduction Programs in the following way:

a) They shall liberalize the products incorporated in the Industrial Integration Programs in the manner provided for in each;

b) They shall liberalize the products referred to in Article 83 in the manner and within the time period determined by the Commission, at the General Secretariat's proposal. In making that decision, the Commission and the General Secretariat shall mainly take into account the benefits derived from the programming and site location referred to in Article 123. This time period may not exceed from December 31, 1999;

c) They shall liberalize the products that are not yet produced in the Subregion and that are not part of the reserve provided in their favor in Article 80, sixty days after the Commission approves said reserve.

Nevertheless, those products that the General Secretariat, on its own initiative or upon Bolivia or Ecuador's request, determines to be luxuries or dispensable, may be excepted from this treatment.

The subsequent tariff reduction for these products shall be subject to the procedure provided in paragraph d) of this Article; and

d) They shall begin on November 21, 1988, to carry out the Tariff Reduction Program for those products not covered under the previous paragraphs, through the elimination of all restrictions. They shall be followed by three annual and successive reductions of five percent each, starting on December 31, 1988. Once these reductions have taken place, said Program shall cease until the Commission, within ninety days, at the General Secretariat's proposal and after an evaluation of the compliance with the Tariff Reduction Program by all the Member Countries, adopts the appropriate adjustments and determines the time periods and methods for its continuation.

With respect to the tariff reductions previously provided, the Commission, on August 23, 1988, shall establish the starting point for the tariff reduction, based on the respective national tariff schedules of Bolivia and Ecuador, bound and in effect on that date.

Article 131.- The General Secretariat shall periodically assess the results obtained by Bolivia and Ecuador in their trade with the rest of the Member Countries and the degree to which they are effectively taking advantage of the benefits of the enlarged market. On the basis of those evaluations, the Commission may revise the time periods indicated in paragraphs b) and d) of the preceding Article.

Article 132.- The Lists of Exceptions of Bolivia and Ecuador may include products comprised in no more than six hundred items of the NABALALC.

The products included by Bolivia and Ecuador in their lists of exceptions will be free from levies and other restrictions through a process that will include three segments of 105, 105, and 210 items, the first of which will be freed on December 31, 1997, the second on December 31, 1998, and the last one, on December 31, 1999. These time limits may be extended in duly qualified cases by the General Secretariat.

After December 31, 1999 or after the termination of their extension, Bolivia and Ecuador shall maintain a residual set of exceptions which shall not comprise products included in over 180 items of the NABALALC.

Article 133.- Regarding the cooperation policies to which Article 68 refers to, the General Secretariat shall give special and priority attention to the industries of Bolivia and Ecuador whose products are excluded by such countries from their Tariff Reduction Programs, with the purpose of contributing to equip them to participate in the subregional market as rapidly as possible.

Section D - Common External Tariff

Article 134.- Bolivia and Ecuador shall begin the process of adoption of the Common External Tariff on an annual, automatic, and linear basis on the date established by the Commission.

Bolivia and Ecuador shall be required to adopt the Minimum Common External Tariff with regard to products which are not produced in the Subregion, as referred to in Article 80. In relation to such products they shall adopt the minimum tariff levels through a linear and automatic process which shall be concluded three years after the date in which they are first produced in the Subregion.

Without prejudice to the stipulations of the first subsection of this Article, the Commission, at the proposal of the General Secretariat, may determine that Bolivia and Ecuador should adopt the minimum tariff levels with regard to products of interest to the other Member Countries provided that the application of such levels does not cause disturbances to Bolivia or Ecuador.

The Commission, based on the evaluations referred to in Article 131, shall determine the procedure and time limit for the adoption of the Common Minimum Common External Tariff on the part of Bolivia and Ecuador. In any case, the Commission shall bear in mind the problems derived from the landlocked situation of Bolivia referred to in Article 4 of this Agreement.

At the General Secretariat's proposal, the Commission may also determine the adoption of the minimum tariff levels on the part of Bolivia and Ecuador regarding products whose importation from outside of the Subregion may cause serious disturbances to the Subregion.

In drafting its proposals about the Common External Tariff, the General Secretariat shall bear in mind the provisions of Article 4 in favor of Bolivia.

Article 135.- Bolivia and Ecuador may establish the exceptions authorized by the Commission, at the General Secretariat's proposal, to the process of approximation of their national tariff schedules to the Common External Tariff so as to enable them to apply their existing industrial development laws, mainly with respect to the importation of capital goods, intermediate goods, and raw materials necessary for their development.

Such exceptions shall not be applied in any case more than two years before the Common External Tariff is fully implemented.

Section E - On Financial Cooperation and Technical Assistance

Article 136.- The Member Countries commit themselves to act jointly before the Andean Development Corporation and any other subregional, national, or international organizations to secure technical assistance and financing for Bolivia and Ecuador's development needs and specially for projects related to the process of integration.

The allocation of the resources for those projects should be made in accordance with the basic objective of reducing the existing differences in development among the countries while making an attempt to favor Bolivia and Ecuador markedly.

The Member Countries, moreover, shall act jointly before the Andean Development Corporation so that it allocates its regular and special resources in such a way that Bolivia and Ecuador receive a substantially larger share than would result if the distribution were to be made proportional to the countries´ contribution to the Corporation's capital.

Section F - General Provisions

Article 137.- In its periodic evaluations and annual reports, the General Secretariat shall give separate and special consideration to Bolivia and Ecuador's situation in the subregional integration effort and shall propose to the Commission the measures which it deems appropriate to substantially improve their possibilities for development and increasingly expedite their participation in the area's industrialization.

Article 138.- The Commission may establish in favor of any of the least developed countries more favorable condition´s and procedures than those considered in this Chapter, bearing in mind the degree of development achieved and the conditions for taking advantage of the benefits of integration.

CHAPTER XIV

ECONOMIC AND SOCIAL COOPERATION

Article 139.- Member Countries may begin programs and policies in the area of economic and social cooperation, which must be agreed upon within the Commission and shall be limited to the responsibilities established by this Agreement.

Article 140.- Member Countries shall begin policies with an external scope, in matters of common interest, with the purpose of improving their participation in the international economy.

Article 141.- With respect to the provisions of the previous Article, the Commission shall adopt programs to direct the joint external actions of the Member Countries, particularly as regards to the negotiations with third countries and group of countries, as well as for the participation in fora and organizations specialized in matters related to the international economy.

Article 142.- Member Countries shall promote a joint scientific and technological development process to attain the following objectives:

a) The creation of the ability to respond subregionally to the challenges of the scientific-technological revolution in course;

b) The contribution of science and technology to the conception and execution of Andean development strategies and programs; and

c) Taking advantage of the mechanisms of economic integration in order to induce technological innovation and productive modernization.

Article 143.- With respect to the previous Article, the Member Countries shall adopt in the fields where there is a common interest:

a) Programs of cooperation and joint efforts in science and technology in which the subregional level is more effective to train human resources and to obtain the results of the investigation;

b) Technological development programs that contribute to the attainment of solutions to the common problems of the productive sectors; and

c) Programs for taking advantage of the enlarged market and of joint physical, human, and financial abilities, in order to induce technological development in sectors of common interest.

Article 144.- Member Countries shall undertake policies that promote the integral development of border regions and their effective incorporation to the domestic and Andean subregional economies.

Article 145.- In the area of tourism, the Member Countries shall develop joint programs seeking a better understanding of the Subregion and to stimulate economic activities related to this sector.

Article 146.- Member Countries shall undertake joint policies that enable a better use of their renewable and nonrenewable natural resources and the preservation and improvement of the environment.

Article 147.- Member countries shall undertake cooperation actions in the services sector. For that purpose the Commission shall adopt programs and projects in selected areas of the services sector, defining for each case the mechanisms and instruments to be applied.

Article 148.- Member Countries shall undertake joint cooperation actions destined to contribute to the attainment of the following objectives of social development of the Andean population:

a) The elimination of poverty among the excluded classes, in order to achieve social justice;

b) To strengthen the cultural identity of the Andean area;

c) Full participation of the inhabitants of the Subregion in the integration process; and

d) To meet the needs of the depressed areas, that are predominantly rural.

For the attainment of such objectives, programs and projects shall be developed in the areas of health, social security, social interest housing, education, and culture.

The fulfillment of the actions to be developed within the framework of this Article shall be coordinated with the different organizations of the Andean system.

Article 149.- Member Countries shall undertake policies in the area of social communication and policies oriented to promote a better understanding of the cultural, historical, and geographic heritage of the Subregion, its economic and social reality, and that of the Andean integration process.

Article 150.- The projects, policies, and programs to which this Chapter refers to shall be developed, in parallel and in coordination, with the improvement of the other mechanisms of the subregional integration process.

CHAPTER XV

ACCESSION, EFFECTIVE DATE AND DENOUNCEMENT

Article 151.- This Agreement may not be signed with reservations and shall remain open to the accession of the rest of the Latin American countries. Least developed countries which accede to the Agreement shall be entitled to a treatment similar to that agreed upon in Chapter XIII for Bolivia and Ecuador.

The terms of the accession shall be defined by the Commission, which shall bear in mind that the incorporation of new members shall comply with the objectives of the Agreement.

Article a 152.- This Agreement shall be submitted to the Permanent Executive Committee of the LAFTA for its considerations and once the Committee has declared its compatibility with the principals and objectives of the Treaty of Montevideo and with Resolution 203 (CM-II/VI-E), each of the Member Countries shall approve it in keeping with its respective national legal procedures and shall inform the Executive Secretariat of LAFTA of the corresponding act of approval. The Agreement shall become effective when three countries have communicated their approval to the Executive Secretariat of LAFTA.

For the rest of the countries the date of the Agreement’s entry into force shall be that in which they communicate the respective instrument of approval in accordance with the procedure set forth in the first subsection of this Article.

This Agreement shall remain in effect indefinitely.

Article 153.- Any Member Country wishing to denounce this Treaty shall so inform the Commission. From that moment on it shall cease to enjoy the rights and have the obligations deriving from its status as Member, with the exception of the benefits received and granted in accordance with the Subregional Tariff Reduction Program, which will remain effective for a period of five years after the date of the denouncement.

The time period stipulated in the paragraph above may be shortened in duly grounded cases by decision of the Commission and at the request of the interested Member Country.

As regards the Programs of Industrial Integration, the stipulation of paragraph i) of Article 59 shall be applied.

CHAPTER XVI

FINAL DISPOSITIONS

Article 154.- The Commission, at the proposal of the General Secretariat, and based upon the latter´s periodic reports and evaluations, shall adopt the necessary mechanisms to ensure the attainment of the objectives of the Agreement once the process of liberalization of trade and the establishment of the Common External Tariff have concluded. Such mechanisms must include special treatment in favor of Bolivia and Ecuador so long as existing differences in the degree of development continue to exist.

Article 155.- Any advantage, favor, exemption, immunity, or privilege applied by a Member Country regarding a product originating in or destined for any other country, shall be immediately and unconditionally extended to the similar product originating in or destined for the territory of the other Member Countries.

Advantages, favors, exemptions, immunities, and privileges already granted or to be granted by virtue of agreements among Member Countries or between Member Countries and third countries, with the purpose of facilitating border traffic shall be excepted from the treatment referred to in the previous subsection.

Likewise, the advantages, favors, exemptions, immunities, and privileges granted by Bolivia or Ecuador to third countries are excepted from the referred treatment until the Commission adopts the corresponding Decision based on the evaluation of the Tariff Reduction Program foreseen in paragraph d) of Article 130.

CHAPTER XVII

TRANSITORY PROVISIONS

First.- The Commission, at the proposal of the General Secretariat, shall review the Sectorial Programs of Industrial Development that are approved and related to the products of the metallurgical, petrochemicals, and iron and steel industries, the products included in the lists of Decision 28 and the others related to it and those included in Annexes III and IV of Decision 137, in light of the provisions of Articles 59 and 60, and may redefine sectorial or inter-sectorially the Tariff Reduction Program and the Common External Tariff originally agreed for the products which are the subject of said Programs, bearing in mind the need to preserve the investments and trade flows that have been generated.

The General Secretariat, in its Proposal, shall bear in mind the particular situation of Bolivia and Ecuador with the purpose of ensuring for them an equitable participation in the benefits derived from the Program or Programs that may be adopted by the Commission based on this Provision.

Second.--The Commission, at the proposal of the General Secretariat, shall approve the creation of a new list of reserve to apply the modes of industrial integration referred to in Article 77, beginning with the products that having been reserved for the Sectorial Programs of Industrial Development, were not programmed; the products which are not produced in any country of the Subregion, and those produced only in one of them. For such purpose it shall determine a redefinition of the Tariff Reduction Program and of the Minimum Common External Tariff or the Common External Tariff, as the case may be, corresponding to the products that shall make up the above mentioned list of reserve.

Third.-

1. With the purpose of regulating the conditions of access to the subregional market of specific products comprised in paragraph d) of Article 75 of this Agreement, affected by special situations, a transitory trade administration regime shall be established through the application of import quotas. For these purposes, the Member Countries may present the General Secretariat with a list of products which are the subject of administered trade.

2. Such lists of administered trade shall be subject to the following common rules:

a) Colombia, Peru, and Venezuela may present their respective lists on June 24, 1988 at the latest, and Bolivia and Ecuador on July 9, 1988 at the latest. If after such time a country does not present its list, it will be understood that it gives up the right foreseen in this Provision. Once the lists are presented, they may not be increased, nor may their products be substituted by others;

b) The lists of administered trade shall be in force until December 31, 1997. Products included in such lists shall be totally freed from the quotas through a gradual process of enlargement of the same or by the withdrawal of items in the list. Global and individual product quotas shall be increased in three opportunities at least, the first and second of 30 percent each, and the third one of 40 percent of the average value of the imports of the 1980-1985 period, that shall take place in order, on December 31, 1992, 1995, and 1997, date in which they shall be eliminated; and

c) The Member Countries shall hold periodic negotiations with the purpose of establishing the import quotas, for which they may use as a basis the most appropriate reference period of their reciprocal trade, the enlargement of quotas, and the withdrawal of products from the lists.

3. The lists of administered trade of Colombia, Peru, and Venezuela shall be subject to the following special rules:

a) They may comprise products included in no more than fifty items of the NABANDINA;

b) The annual, global, and specific product quotas, applied by each country may not be lower than thirty percent of the annual average value of the corresponding imports originating in the Member Countries and recorded in the 1980-1985 period;

c) The quantities of imports below the quotas referred to in the previous paragraph, shall be totally free of levies and no restriction different to that required to administer the quota may be applied to them.

d) After negotiation, the annual quotas of each one of the products may be applied by a Member Country in a directed way at the imports of another Member Country; and

e) As long as a product is included in an administered trade list, it may not enjoy the advantages derived for it from the Tariff Reduction Program. At any time, a Member

Country may remove products from its list and immediately enjoy the respective advantages.

4. The administered trade lists of Bolivia and Ecuador, directed at Colombia, Peru, and Venezuela, shall be subject to the following special rules:

a) Bolivia and Ecuador shall determine the annual quotas applicable to each one of the products of their respective lists, which must be balanced in relation to those established for their products of export; and

b) Imports carried out within the quotas referred to in the previous paragraph, shall be subject to the corresponding levies depending on their Tariff Reduction Program and no restriction different to that required to administer the quota may be applied to them.

Fourth.- The changes in levels that result from the conversion that Ecuador carries out in its National Custom Tariff as a consequence of the adoption of the Brussels Tariff Nomenclature, shall be excepted from what has been foreseen in Article 84.

Fifth.- The Commission may place the products of Decision 120, once it is derogated, in any of the categories of the Tariff Reduction Program; likewise, it may include them in the new list of reserve which the Second Transitory Provision refers to.

ANNEX 1

1. To delegate in the General Secretariat the attributions which it deems advisable.

2. To approve proposals that modify this Agreement.

3. To amend the proposals of the General Secretariat.

4. To approve the rules needed to make the coordination of the development plans and the harmonization of economic policies of the Member Countries possible.

5. To approve the rules and define the time limits for the gradual harmonization of the Member Countries´ instruments of foreign trade regulation.

6. To approve the programs of physical integration.

7. To accelerate the Tariff Reduction Program, by products or group of products.

8. To approve the joint agricultural and agroindustrial development programs by products or group of products.

9. To approve and modify the list of agricultural products which Article 104 refers to.

10. To approve the measures of joint cooperation established in Article 108.

11. To approve, not to approve, or amend the proposals of the Member Countries.

12. To reduce the number of matters included in this Annex.

13. To establish the condition for accession to this Agreement.

14. To approve the extension of the time limits referred to paragraph 1) of Article 7 of this Agreement.

15. To approve the Common External Tariff according to the categories foreseen in Chapter VI, to establish the conditions of its application and to modify the common tariff levels.

16.- To approve the measures referred to in the last subsection of Article 103.

17. To approve the margins of preference referred to in Article 95.

ANNEX II

1. To approve the conditions of incorporation for a nonparticipant Member Country in the Industrial Integration Programs.

2. To approve the list of products reserved for industrial integration modes.

3. To approve the Minimum Common External Tariff.

4. To approve the list of products which are not produced in any of the countries of the Subregion.

5. To approve the special rules of origin.

ANNEX III

1. To approve the list of products for immediate liberalization according to Article 127, paragraph b).

2. To fix margins of preference and to indicate the effective period for the lists of products of special interest to Bolivia and Ecuador (Article 127, paragraphs d) and e)).

3. To determine the way and time limits in which Bolivia and Ecuador shall liberalize the products referred to in Article 83 (Article 130, paragraph b).

4. To review the time limits for the liberalization of the products referred to in paragraphs b) and d) of Article 130.

5. To determine the minimum tariff levels adopted by Bolivia and Ecuador for products of interest to the other Member Countries (Article 134).

6. To approve the list of products which are not produced, reserved for production in Bolivia and Ecuador, and to fix the conditions and time limit of the reserve (Article 80).

Done at the city of Trujillo, on the tenth day of the month of March of the year nineteen ninety-six, in five originals, all of them equally valid.

Matching table between the Official Codified Text of the Cartagena Agreement after the Protocol of Quito (Decision 236) and that resulting from the Protocol of Trujillo (Decision 406).

Decision

New Elim.

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Printed in the printing shop of the General Secretariat of the Andean Community

TREATY CREATING THE COURT OF JUSTICE OF THE CARTAGENA AGREEMENT (Amended by the Cochabamba Protocol)

http://www.comunidadandina.org/ingles/treaties.htm

The Governments of Bolivia, Colombia, Ecuador, Peru and Venezuela, bearing in mind the changes introduced by the Protocol Amending the Andean Subregional Integration Agreement (Cartagena Agreement), approved in Trujillo, Peru on March 10, 1996,

AGREE to sign the following Protocol Amending the Treaty Creating the Court of Justice of the Cartagena Agreement:

FIRST.- The Treaty Creating the Court of Justice of the Cartagena Agreement is hereby amended in accordance with the following text:

"TREATY CREATING THE COURT OF JUSTICE

OF THE ANDEAN COMMUNITY

CHAPTER I

ON THE LEGAL SYSTEM OF THE ANDEAN COMMUNITY

Article 1.- The legal system of the Andean Community consists of:

a. The Cartagena Agreement, its Protocols and additional instruments;

b. This Treaty and its Amending Protocols;

c. The Decisions of the Andean Council of Foreign Ministers and of the Commission of the Andean Community;

d. The Resolutions of the General Secretariat of the Andean Community; and

e. The Industrial Complementarity Agreements and any such other agreements as the Member Countries may adopt among themselves within the context of the Andean subregional integration process.

Article 2.- Decisions become binding for Member Countries as of the date they are approved by the Andean Council of Foreign Ministers or the Commission of the Andean Community.

Article 3.- Decisions of the Andean Council of Foreign Ministers or of the Commission and Resolutions of the General Secretariat shall be directly applicable in Member Countries as of the date they are published in the Official Gazette of the Agreement, unless they indicate a later date.

When their text so stipulates, Decisions must be incorporated into national law through an express act stipulating the date they will enter into effect in each Member Country.

Article 4.- Member Countries are under the obligation to take such measures as may be necessary to ensure compliance with the provisions comprising the legal system of the Andean Community.

They further agree to refrain from adopting or employing any such measure as may be contrary to those provisions or that may in any way restrict their application.

CHAPTER II

ON THE CREATION AND ORGANIZATION OF THE COURT

Article 5.- The Court of Justice of the Andean Community is hereby created as its judicial body, with the organization and jurisdiction established in this Treaty and its Amending Protocols.

The Court shall have its headquarters in the city of Quito, Ecuador.

Article 6.- The Court shall consist of five judges who must be nationals of the Member Countries, enjoy a good moral reputation, and fulfill the necessary conditions for exercising the highest judicial functions in their respective countries or be highly competent jurists.

The judges shall enjoy full independence in the exercise of their duties. They may not perform other professional activities, either paid or free of charge, except for teaching; they shall also refrain from any act that is incompatible with the nature of their position.

The Andean Council of Foreign Ministers, in consultation with the Court, may alter the number of judges and create the position of Advocate General, to such number and with such powers as may be established for that purpose in the by-laws referred to in Article 13.

Article 7.- The judges shall be appointed by unanimous decision of the Plenipotentiary Representatives accredited for that purpose, from slates of three candidates each submitted by each Member Country. The government of the host country shall summon the Plenipotentiary Representatives.

Article 8.- Judges shall be appointed for a six-year term; they shall be renewed in part every three years and may be re-elected only once.

Article 9.- Judges shall each have a first and second alternate to replace them, in that order, in the event of their definitive or temporary absence or their impediment or recusal, as provided for in the Court's by-laws.

Alternates must fulfill the same qualifications as the principals. They shall be appointed on the same date, in the same manner and for the same period as the principal.

Article 10.- Judges may be removed from office at the request of the Government of a Member Country, in accordance with the procedure established in the Court's by-laws, only if in the exercise of their duties they commit a serious violation provided for in that by-laws. To this end, the Governments of Member Countries shall appoint Plenipotentiary representatives who, upon being summoned by the host country, shall decide the case by unanimous vote, at a special meeting.

Article 11.- At the conclusion of their term of office, judges shall continue to perform their duties until such time as the person replacing them takes office.

Article 12.- Member Countries shall give the Court all of the necessary facilities for the proper fulfillment of its functions.

Within the territory of the Member Countries, the Court and its judges shall enjoy all of the immunities recognited by international practice, particularly the Vienna Convention on Diplomatic Relations, with respect to the immunity of their records and their official correspondence and in all matters concerning civil and criminal jurisdiction, with the exceptions established in Article 31 of the cited Vienna Convention.

The Court's premises are inviolable and its property and assets are immune from all judicial procedures, unless it expressly waives that immunity. That waiver, however, shall not be applicable to any executory measure.

The judges, the Court Secretary and the officials appointed by the latter as international civil servants, shall enjoy the immunities and privileges corresponding to their status in the territory of the host country. Accordingly, judges shall enjoy a category equivalent to that of chief of mission, while the categories of other officials shall be established by mutual agreement between the Court and the government of the host country.

Article 13.- The Andean Council of Foreign Ministers shall adopt any amendments to the by-laws of the Court of Justice of the Cartagena Agreement, approved through Decision 184, at the proposal of the Commission and in consultation with the Court.

The Court shall be responsible for issuing its Internal Rules.

Article 14.- The Court shall appoint its Secretary and the necessary personnel to perform its duties.

Article 15.- The Court shall submit annual reports to the Andean Presidential Council, the Andean Council of Foreign Ministers, and the Commission.

Article 16.- Each year, the Commission of the Andean Community shall approve the Court's Annual Budget. To this end, the Court's President shall promptly submit the corresponding draft Annual Budget.

CHAPTER III

ON THE COURT'S JURISDICTION

Section One

On the Nullity Action

Article 17.- It is the responsibility of the Court to declare the nullity of Decisions of the Andean Council of Foreign Ministers and the Andean Community Commission, Resolutions of the General Secretariat, and the Agreements referred to in Article 1, paragraph e), if enacted or agreed upon in violation of the provisions comprising the legal system of the Andean Community, and even for the deviation of power, when requested by a Member Country, the Andean Council of Foreign Ministers, the Commission of the Andean Community, the General Secretariat, or natural or juridical persons whose rights or interests are affected as provided for in Article 19 of this Treaty.

Article 18.- Member Countries may bring a nullity action only in cases of Decisions or Agreements that were approved without their affirmative vote.

Article 19.- Natural or juridical persons may bring a nullity action against the Decisions taken by the Andean Council of Foreign Ministers or the Andean Community Commission, General Secretariat Resolutions, or Agreements that affect their subjective rights or their legitimate interests.

Article 20.- Any nullity action must be brought before the Court within a period of two years following the date when the Decision of the Andean Council of Foreign Ministers or of the Andean Community Commission, the General Secretariat's Resolution, or the Agreement in question becomes effective.

Even if the period provided for in the previous paragraph has expired, either of the parties to a litigation brought before national judges or courts can petition those judges or courts to declare that the Decision or Resolution is inapplicable to the specific case, provided that the said case is related to the application of that provision and that its validity is open to question, in accordance with the stipulation of article 17.

Upon the filing of the petition to declare inapplicability, the national judge shall submit an inquiry to the Court of Justice of the Andean Community regarding the legality of the Decision, Resolution, or Agreement; it shall then suspend the process until receipt of the Court's ruling, which the national judge must apply in his/her sentence.

Article 21.- The filing of a nullity action shall not affect the effectiveness or validity of the provision or the Agreement being challenged.

The Court may, however, at the request of the petitioning party and after a guarantee should it deem this necessary, through its final verdict, order the temporary suspension of the execution of the Decision, Resolution or Agreement being challenged or other cautionary measures, if such were to cause or could cause the petitioner damage that is irreparable or difficult to repair.

Article 22.- When the Court declares the total or partial nullity of the challenged Decision, Resolution, or Agreement, it shall indicate the effects of the judgement over time.

The body of the Andean Community whose act was annulled shall adopt the required provisions in order to ensure that the judgement is effectively fulfilled within the period set by the Court.

Section Two

On the Action to declare Noncompliance

Article 23.- If the General Secretariat considers that a Member Country has failed to comply with its obligations under the provisions or Agreements comprising the legal system of the Andean Community, it shall submit its observations to that Member Country in writing. The Member Country must respond to those observations within a period set by the General Secretariat in keeping with the urgency of the case, which shall not exceed sixty days. Once the reply has been received or the term has expired, the General Secretariat shall issue an administrative ruling, which must include its reasoning, regarding the state of compliance with those obligations.

If the General Secretariat decides that the Member Country has failed to comply with its obligations and it continues with the behavior that was the subject of the observations, the former shall request a ruling from the Court as soon as possible. The Member Country affected by that noncompliance can join the General Secretariat in the action.

Article 24.- If a Member Country considers that another Member Country has failed to comply with its obligations under the provisions comprising the legal system of the

Andean Community, it may take its claim to the General Secretariat, together with the respective background of the case. The latter may then take the necessary action to rectify the noncompliance within the period stipulated in the first paragraph of the previous article. If the response is received or the period elapses without any positive results, the General Secretariat shall, in keeping with its internal rules and within the following fifteen days, issue a ruling on the state of compliance with those obligations, which must include its reasoning.

If the General Secretariat decides that the Member Country has failed to comply with its obligations and the country continues with the behavior that gave rise to the claim, the General Secretariat shall request a ruling from the Court. Should the General Secretariat fail to bring that action within sixty days after the date of its administrative ruling, the claimant country may appeal directly to the Court.

If the General Secretariat fails to issue an administrative ruling within sixty-five days after the date the claim was filed, or if its ruling declares that no noncompliance exists, then the claimant country may appeal directly to the Court.

Article 25.- Natural or juridical persons whose rights have been affected by the failure of a Member Country to fulfill its obligations may appeal to the General Secretariat and to the Court, following the procedure provided for in Article 24.

An action brought as stipulated in the foregoing paragraph excludes the possibility of simultaneous recourse for the same purpose to the procedure provided for in Article 31.

Article 26.- If a Resolution has been issued to verify the existence of a duty or a restriction or in the event of flagrant noncompliance, the General Secretariat shall, in keeping with its internal rules, issue an administrative ruling including its reasoning as rapidly as possible, after which the General Secretariat or the Member Country affected may appeal directly to the Court.

Article 27.- Were the Court to decide that the Member Country has not complied with its obligations, the country at fault would be compelled to take the necessary steps to execute the judgment within a period of no more than ninety days after notification.

If that Member Country fails to fulfil the obligation stated in the previous paragraph, the Court, summarily and after hearing the opinion of the General Secretariat, shall establish the limits within which the claimant country or any other Member Country may restrict or suspend, in whole or in part, the benefits obtained by the Member Country at fault under the Cartagena Agreement.

In any case, the Court may order the adoption of other measures, should the restriction or suspension of the benefits of the Cartagena Agreement worsen the situation to be resolved or fail to be effective in that regard. The Court's by-laws shall stipulate the conditions and limitations on the exercise of this function.

The Court shall communicate its decision to the Member Countries via the General Secretariat.

Article 28.- Before handing down its final judgment, the Court may, at the petition of the claimant party and after bonding should it deem this necessary, order the temporary suspension of the allegedly violating measure if this were to or could cause the claimant country or the subregion irreparable damage or damage difficult to repair.

Article 29.- Judgements handed down in actions to declare noncompliance may be reviewed by the same Court at the request of one of the parties, based on a fact that may

have decisively influenced the result of the proceeding, provided that the party requesting the review was not aware of that fact on the date of sentencing.

The petition for a review must be submitted within ninety days after the date of discovery of the fact and, in any case, within a year after the judgement date.

Article 30.- A verdict of noncompliance issued by the Court, in the cases envisaged in Article 25, shall constitute legal and sufficient grounds for the party to ask the national judge for compensation for any damages or loss that may be due.

Article 31.- Natural or juridical persons shall have the right to appeal to the competent national courts, as provided for by domestic law, should Member Countries fail to comply with Article 4 of this Treaty in the event that the rights of those persons are affected by that noncompliance.

Section Three

On Pre-judgment Interpretation

Article 32.- It shall be the Court's responsibility to make a pre-judgment interpretation of the provisions comprising the legal system of the Andean Community, in order to ensure their uniform application in the territory of the Member Countries.

Article 33.- National judges hearing a case in which one of the provisions comprising the legal system of the Andean Community should be applied or is litigated, may directly request the Court's interpretation of such provisions, providing that the verdict is susceptible to appeal under national law. If the time comes to pass judgement without having received the Court's interpretation, the judge must decide the case.

In all proceedings in which the verdict is not susceptible to appeal under national law, the judge, either at his/her own initiative or at the request of one of the parties, shall suspend the proceeding and directly request the Court's interpretation.

Article 34.- The Court's interpretation must be limited to specifying the contents and scope of the provisions comprising the legal system of the Andean Community, which refer to the specific case. The Court may neither interpret the contents and scope of national law, nor judge the facts in dispute. Even so, it may refer to those facts when essential for the requested interpretation.

Article 35.- The judge trying the case must adopt the Court's interpretation in his/her sentencing.

Article 36.- The Andean Community Member Countries shall ensure the fulfillment of the provisions of this Treaty and particularly the observance by national judges of the stipulations in this section.

Section Four

On an Action due to Omission or Inactivity

Article 37.- Should the Andean Council of Foreign Ministers, the Andean Community Commission or the General Secretariat abstain from carrying out an activity for which it is expressly responsible under the legal system of the Andean Community, those bodies, Member Countries or natural or juridical persons whose rights and interests are affected as stipulated in Article 19 of this Treaty, may demand the fulfillment of those obligations.

If that request fails to be acted upon within the thirty following days, the petitioner may request to the Court of Justice of the Andean Community to hand down a ruling on the case.

Within thirty days after the request has been admitted, the Court shall issue the corresponding ruling based on the existing technical documentation, background of the case, and explanations by the body whose behavior is the subject matter of the action. That ruling, which shall be published in the Official Gazette of the Cartagena Agreement, should stipulate the form, way and period in which the body in question shall fulfill its obligation.

Section Five

On the Arbitration Function

Article 38.- The Court is competent to settle such disputes as may arise as a result of the application or interpretation of contracts, conventions or agreements signed between bodies and institutions of the Andean Integration System or between the latter and third parties, via arbitration, should the parties so agree.

Private parties may agree to submit to the Court's arbitration any disputes that may arise as a result of the application or interpretation of aspects contained in private contracts that are governed by the Andean Community's legal system.

The Court shall issue its arbitration award, either in law or in equity, as the parties choose, and this decision shall be binding and unappealable and shall constitute legal and sufficient grounds for demanding its execution in accordance with the national legislation of each Member Country.

Article 39.- The General Secretariat is competent to settle via arbitration such disputes as private parties may submit to it with respect to the application or interpretation of aspects contained in private contracts that are governed by the Andean Community's legal system.

The General Secretariat shall issue its arbitration award in equity according to criteria of fairness and technical elements that conform to the Andean Community's legal system. Its decision shall be binding and unappealable, unless the parties decide otherwise, and shall constitute legal and sufficient grounds for demanding its execution in keeping with the national legislation of each Member Country.

Section Six

On Labor Jurisdiction

Article 40.- The Court is competent to hear such labor disputes as may arise within the bodies and institutions of the Andean Integration System.

CHAPTER IV

GENERAL PROVISIONS

Article 41.- In order to be carried out, the Court's rulings and arbitration awards and the arbitration awards of the General Secretariat shall not require official approval or exequatur in any Member Country.

Article 42.- Member Countries shall not submit any dispute that may arise from the application of provisions comprising the legal system of the Andean Community to any

court, arbitration system or proceeding whatsoever except for those stipulated in this Treaty.

The Member Countries or bodies and institutions of the Andean Integration System may submit to the stipulations of this Treaty in regard to their relations with third countries or groups of countries.

Article 43.- The General Secretariat shall publish the Official Gazette of the Cartagena Agreement, in which the Decisions of the Andean Council of Foreign Ministers and of the Andean Community Commission, the Agreements, the Resolutions and administrative rulings of the General Secretariat, and the Court's judgments shall be published.

The Secretary General may, as an exception, order the publication of other legal acts, provided that they are of a general nature and that their contents are of interest to the Andean Community.

Article 44.- Should the Court consider it necessary for fulfilling its functions, it may communicate directly with the authorities of Member Countries.

Article 45.- The President of the Court shall coordinate meetings and actions with the highest-level judicial authorities of the Member Countries, in order to promote the dissemination and the perfecting of Community law, as well as its uniform application."

EFFECTIVENESS

SECOND.- This Amending Protocol shall become effective when all of the Member Countries signing it have deposited the respective instrument of ratification with the General Secretariat of the Andean Community and when the Amending Protocol to the Andean Subregional Integration Agreement (Cartagena Agreement), approved in Trujillo, Peru on March 10, 1996, has taken effect.

TRANSITORY PROVISIONS

THIRD.- The Andean Community Commission shall adopt the Decision containing the new codification of the Treaty Creating the Court of Justice of the Andean Community, whose draft shall be submitted to it by the Court.

FOURTH.- Such proceedings as may be underway before the Court and the General Secretariat on the date this Amending Protocol becomes effective shall be adjusted to its provisions.

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IN WITNESS WHEREOF, this Amending Protocol to the Treaty Creating the Court of Justice of the Andean Community is signed in the city of Cochabamba, Bolivia on May 28, 1996.

SIGNED BY:

ANTONIO ARANIBAR QUIROGA
Minister of Foreign Affairs and Worship of Bolivia

RODRIGO PARDO GARCÍA-PEÑA
Minister of Foreign Affairs of Colombia

GALO LEORO FRANCO
Minister of Foreign Affairs of Ecuador

FRANCISCO TUDELA
Minister of Foreign Affairs of Peru

MIGUEL ANGEL BURELLI RIVAS
Minister of Foreign Affairs of Venezuela

SUCRE PROTOCOL (Document to be ratified except for its Chapter on Associate Members and first Transitory Provision, which are in force.)

http://www.comunidadandina.org/ingles/treaties/trea/ande_trie4.htm

THE GOVERNMENTS OF BOLIVIA, COLOMBIA, ECUADOR, PERU AND VENEZUELA;

AGREE through their duly authorized plenipotentiary representatives to the following amendments to the Andean Subregional Integration Agreement (Cartagena Agreement):

Article 1. – In Article 2 replace the term "gross national product" by "gross domestic product."

Article 2.- Substitute the following text for Article 3:

"Article 3.- The following mechanisms and measures, among others, shall be used to achieve the objectives of this Agreement:

a. The intensification of integration with the other regional economic blocs and of political, social, economic, and commercial relations with extra-regional systems;

b. The gradual harmonization of economic and social policies and dovetailing of national laws on pertinent matters;

c. Joint programming, the intensification of subregional industrialization and the execution of industrial programs and other forms of industrial integration;

d. A more advanced trade liberalization schedule than the commitments arising out of the 1980 Treaty of Montevideo;

e. A Common External Tariff;

f. Programs to accelerate the development of the agricultural and agribusiness sectors;

g. The channeling of internal and external resources to the Subregion to finance the investments that are needed for the integration process;

h. Programs in the field of services and of the deregulation of intra-subregional trade in services;

i. Physical integration; and

j. Preferential treatment for Bolivia and Ecuador.

The following economic and social cooperation programs and actions shall be carried out in coordination to complement the above-cited mechanisms:

a. Programs designed to expedite scientific and technological development;

b. Actions in the field of border integration;

c. Tourism programs;

d. Actions for the use and conservation of natural resources and the environment;

e. Social development programs; and

f. Actions in the field of social communication

Article 3.- Eliminate Article 26c).

Article 4.- Add the following Chapter to the Agreement immediately after present Chapter II.

FOREIGN RELATIONS CHAPTER

Article.- The Andean Council of Foreign Ministers shall formulate the Common Foreign Policy on matters of subregional interest. To that end, the Council shall coordinate joint political positions that will enable the Community to participate effectively in international political forums and organizations.

Article.- The Andean Council of Foreign Ministers and the Andean Community Commission shall define and launch a Community strategy aimed at intensifying its integration with the other regional economic blocs and its political, social, economic, and trade relations with extra-regional systems.

Article.- To accomplish the aim cited in this Chapter, the Andean Council of Foreign Ministers and the Andean Community Commission shall take the following measures, among others:

a. Strengthen Community participation in international, multilateral, hemispheric, and regional economic and trade forums;

b. Coordinate joint Andean Community negotiations with other integration blocs or with third countries or groups of countries; and

c. Charge the General Secretariat with carrying out research, studies and actions that will enable the Community to achieve the cited objective and take the measures stipulated in this Chapter.

Article 5.- Add the following point after present Article 51c):

"c) Programs for Liberalizing Intra-subregional Services."

Article 6.- Replace Article 52 by the following text:

"Article.- The Andean Community shall possess a common regime for the treatment of foreign capital and on trademarks, patents, licenses and royalties, among other things."

Article 7 – Substitute the following text for present Article 53:

"Article.- The Andean Community shall have a standard regime by which Andean multinational enterprises shall abide."

Article 8.- Eliminate existing Article 60.

Article 9.- Replace the first paragraph of present Article 62 by the following text:

"Article ...- The purpose of the Industrial Complementarity Agreements shall be to promote industrial specialization among the Member Countries and may be entered into and executed by two or more of them. Those Agreements must be approved by the Commission."

Article 10.- Eliminate present Article 63.

Article 11.- Replace present Article 71 by the following text:

"Article .- The Program for Liberalizing the trade in goods is intended to eliminate all levies and restrictions of all kinds that affect the importation of products originating in the territory of any Member Country."

Article 12.- Eliminate present Articles 76, 77, 78, 79, 80, 81, 82 and 83.

Article 13.- Substitute the following text for present Article 84:

"Article ...- Member Countries shall refrain from imposing levies and restrictions of any kind on the importation of goods that originated in the Subregion."

Article 14.- Eliminate present Articles 85, 86, 87 and 88.

Article 15.- Incorporate the following Chapter into the Agreement after present Chapter V.

INTRA-SUBREGIONAL TRADE IN SERVICES CHAPTER

Article.- The Andean Community Commission, at the proposal of the General Secretariat, shall approve a general framework of principles and provisions for liberalizing intra-subregional trade in services.

Article.- The general framework provided for in the previous article shall be applied to the trade in services supplied in the following ways:

a. From the territory of one Member Country to that of another;

b. In the territory of a Member Country to a consumer from another Member Country;

c. Through the commercial presence of service companies of a Member Country in the territory of another Member Country; and

d. By natural persons of a Member Country in the territory of another Member Country.

Article 16.- Eliminate present Articles 92, 93 and 95.

Article 17.- Replace present Article 98 by the following text:

"Article .- The Member Countries commit themselves not to unilaterally change the Common External Tariff duties. They likewise agree to hold the necessary consultations within the Commission before acquiring any tariff commitments to countries outside the Subregion. The Commission, at the proposal of the General Secretariat and through the adoption of a Decision, shall go on record with its opinion regarding those consultations and shall set the terms with which tariff commitments must comply."

Article 18.- In Article 119f) and h) substitute the term "Latin American Reserve Fund" for

"Andean Reserve Fund."

Article 19.- Eliminate present Articles 126, 127, 128, 130, 131 and 132.

Article 20.- Substitute the following text for present Article 141:

"Article .- For purposes of the stipulation of the foregoing article, the Andean Council of Foreign Ministers and the Commission shall, within their respective spheres of competence, adopt programs to orient the joint external actions of the Member Countries, especially with regard to their negotiations with third countries and groups of countries in the political, social, and economic and trade spheres, as well as their participation in specialized international economic forums and organizations."

Article 21.- Add the following phrase to the end of Article 143 b) "particularly programs that are geared toward improving competitiveness in the different sectors of production."

Article 22.- Eliminate Article 147.

Article 23.- Replace Article 148b) by the following text:

"b) Affirmation of the cultural identity and formation of civic values conducive to the integration of the Andean area;"

Article 24.- Incorporate the following article after Article 148 of the Agreement:

"Article .- For purposes of the previous article, the respective social Ministers, meeting as an Enlarged Committee, shall adopt the following programs in fields that are of interest to the Community:

a. Educational programs designed to renew and improve the quality of basic education;

b. Programs that seek to diversify and enhance the technical level and coverage of professional education and job training systems;

c. Programs aimed at the recognition of higher educational degrees at the Andean level, in order to facilitate the provision of professional services in the Subregion;

d. Grass-roots programs geared toward fully incorporating the rural and semi-rural areas into the development process;

e. Programs for developing social support systems and projects geared toward promoting the associated participation of small enterprises and of circuits of microenterprises and associative enterprises in the enlarged economic space;

f. Programs for promoting initiatives aimed at the protection and welfare of the working population; and

g. Programs for harmonizing policies with regard to women's participation in economic activities; child and family support and protection; and service to ethnic groups and local communities."

Article 25 – Substitute the following text for present Article 152:

"Article .- This Agreement shall become effective when all of the signatory Member Countries have deposited their respective instruments of ratification at the Andean Community General Secretariat.

This Agreement may not be signed with reservations and shall remain in effect indefinitely."

Article 26.- Incorporate the following Chapter into the Agreement after present Chapter XV:

ASSOCIATE MEMBERS CHAPTER

Article.- At the proposal of the Andean Community Commission and after the interested country has expressed its desire, the Andean Council of Foreign Ministers, meeting in enlarged session, may confer the status of Associate Member on a country that has signed a free trade treaty with the Member Countries of the Andean Community.

Article.- Upon conferring the status of Associate Member on a country, the Andean Council of Foreign Ministers and the Andean Community Commission, within their respective spheres of competence and after having heard the opinion of the General Secretariat, shall decide the following matters:

a. The bodies and institutions of the Andean Integration System to which the Associate Member Country shall belong, together with the conditions for its participation;

b. The mechanisms and measures of the Cartagena Agreement in which the Associate Member Country shall participate;

c. The provisions to be applied in the relations between the Associate Member Country and the other Member Countries, together with the way those relations shall be administered.

The aspects provided for in this article may be revised at any moment in keeping with the procedures and spheres of competence contained herein.

Article 27.- Eliminate the final paragraph of present Article 155.

Article 28.- Eliminate the first, second and third Transitory Provisions.

Article 29.- Incorporate the following chapter of Transitory Provisions.

TRANSITORY PROVISIONS CHAPTER

First.- Notwithstanding the stipulation of Article 75 of the Cartagena Agreement, the Andean Community Commission shall define the terms of the Liberalization Program to be applied to the trade between Peru and the other Member Countries, so that the Andean Free Trade Area will become fully operational by December 31, 2005 at the latest. Peru shall not be obliged to apply the Common External Tariff until the Commission has decided upon the time limits and methods for Peru’s incorporation into this mechanism.

Second.- The Chapter on Associate Members and the First Temporary Provision shall be implemented provisionally by the Member Countries while the ratification procedures required by their respective national legislations are underway.

Third.- The Andean Community Commission may set up an arbitration mechanism for settling disputes between Member Countries that continue to exist after the General Secretariat has handed down its judgment."

Article 30.- Eliminate numbers 2 and 3 of Annex II to the Agreement.

Article 31.- Eliminate Annex III to the Agreement.

Article 32.- By means of a Decision, the Andean Community Commission shall adopt the single organized text of the Andean Subregional Integration Treaty (Cartagena Agreement) incorporating the amendments introduced by this Protocol. To that end, it shall make the necessary adjustments in the numbering of the articles.

Article 33.- This Protocol shall be called the "Sucre Protocol" and shall enter into effect when all of the Member Countries have deposited their respective instruments of ratification at the Andean Community General Secretariat.

Signed in Quito, Ecuador on the twenty-fifth of June of nineteen ninety-seven, in five original and equally valid copies.

For the Government of Bolivia

For the Government of Colombia

For the Government of Ecuador

For the Government of Peru

For the Government of Venezuela

ADDITIONAL PROTOCOL TO THE TREATY ESTABLISHING THE ANDEAN PARLIAMENT (Document to be ratified)

http://www.comunidadandina.org/ingles/treaties/trea/ande_trie5.htm

The Andean Community Countries,

Convinced that the peoples' participation is necessary to ensure the consolidation and future projection of the global integration of the countries of the Andean Subregion;

Conscious that it is essential to create a means of common action for affirming the principles, values and objectives that are identified with the effective exercise of democracy;

Bearing in mind that the incorporation of the national legislative bodies into the regional integration project, started with the establishment of the Latin American Parliament, calls for the existence of Community bodies to represent and interlink those national bodies; and

In conformity with the Act of Trujillo and the Protocol Amending the Andean Subregional Integration Agreement (Cartagena Agreement), signed on March 10, 1996, through which it was agreed to adjust the instruments establishing the bodies and institutions of the Andean Integration System;

AGREE, through their Plenipotentiary Representatives, to formalize the following

ADDITIONAL PROTOCOL TO THE TREATY ESTABLISHING THE ANDEAN PARLIAMENT

Chapter I

On the creation, composition and headquarters of the Parliament, the common deliberating body

Article 1.- The Andean Parliament is hereby created as the common deliberating body of the Andean Integration System, with the composition, organization, purposes and functions established by this Treaty.

Comprised of Representatives

Article 2.- The Andean Parliament is the deliberating body of the Andean Integration System. Its' nature is that of a Community body; it represents the nations of the Andean Community and shall be comprised of Representatives elected by Universal and Direct Vote in accordance with the procedure to be adopted through an Additional Protocol that shall include appropriate criteria for national representation.

Until the Additional Protocol instituting Direct Elections is signed, the Andean Parliament shall be comprised of five Representatives of each National Congress, chosen in keeping with its internal regulations and the General Regulations of the Andean Parliament.

The Andean Parliament shall have its permanent headquarters in the city of Bogotá, Colombia.

Common objectives

Article 3.- The Andean Parliament and the Representatives shall act in accordance with the common objectives and interests of the Contracting Parties.

Annual meetings

Article 4.- The Andean Parliament shall hold two Regular Meetings a year with no need for prior summons.

The place, date and duration of the annual meetings shall determined at the previous year's session, using a system of rotation among the countries.

The Andean Parliament may meet on a special basis to take cognizance of urgent and specific matters when requested to do so by at least one-third of the Representatives.

Chapter II

On the organization of the Parliament

Period of representation

Article 5.- Representatives shall be elected for a two-year period and may be reelected. Representatives shall continue to be members of the Andean Parliament until they have been legally replaced pursuant to article 2 of this Treaty.

Representative and alternates

Article 6.- Each Representative shall have a first and second alternate, who shall replace him/her, in that order, when absent temporarily or permanently.

Alternates shall be elected on the same dates, in the same way, and for the same period as the Titular Representatives.

Officers

Article 7.- The Andean Parliament shall elect, from among its Members, its President and such Vice-Presidents as its Regulations stipulate, for a two-year term of office.

Secretariat

Article 8.- The Andean Parliament shall have a General Secretariat, whose composition and functions shall be defined in the Regulations.

International legal status

Article 9.- The Andean Parliament shall have an international legal status and the capacity to exercise it.

Diplomatic immunity

Article 10.- The Members of the Andean Parliament, as part of the Andean Integration System, shall enjoy such privileges and immunities within the territories of each Member Country as they need to fulfill their objectives. Its international Representatives and officials shall likewise enjoy the privileges and immunities they require to perform their functions in connection with this Treaty with independence. Its premises are inviolable and its property and assets shall be immune from all judicial proceeding, unless this immunity is expressly waived. Notwithstanding, such a waiver shall not apply to any judicial executory measure.

Chapter III

On the objectives and functions of the Parliament

A. Objectives

Article 11.- The Andean Parliament has the following objectives:

a. To contribute to the promotion and orientation of the Andean Community integration process;

b. To uphold, within the Andean Subregion, the full rule of freedom, social justice and democracy in its broadest participatory exercise;

c. To ensure respect for Human Rights for all Contracting Parties, within the context of the international instruments existing in that area;

d. To promote the involvement of the nations as actors in the Andean integration process;

e. To promote the development of an Andean Community conscience and the integration of the Latin American Community;

f. To promote among the nations of the Andean Subregion an awareness and the broadest possible dissemination of the principles and provisions that guide the establishment of a new international order; and

g. To contribute to the strengthening of the democratic system, international peace and justice, and the right of nations to free self-determination.

A. Functions

Article 12.- The functions of the Andean Parliament are:

a. To take part in promoting and orienting the Andean Subregional Integration process with a view toward consolidating Latin American integration;

b. To examine the progress of Andean Subregional Integration and the fulfillment of its objectives by requesting periodic information for that purpose from the bodies and institutions of the Andean Integration System;

c. To formulate recommendations on the Draft Annual Budgets of the bodies and institutions of the Andean Integration System that are financed through the direct contributions of the Member Countries;

d. To suggest to the bodies and institutions of the Andean Integration System, actions or decisions that have as their goal or effect, the adoption of amendments, adjustments or new general guidelines in relation to the programmed objectives and the institutional structure of the Andean Integration System;

e. To participate in law-making for the process by suggesting to the bodies of the Andean Integration System, Draft Provisions on matters of common interest, for incorporation into the legal system of the Andean Community;

f. To promote the harmonization of Member Country legislation; and

g. To foster cooperation and coordination among the Parliaments of the Member Countries, the Bodies and Institutions of the Andean Integration System, and the Parliamentary Bodies for Integration or Cooperation with Third Countries.

Recommendations

Article 13.- The Andean Parliament shall go on record with its opinion through recommendations on matters covered by articles 11 and 12 of this Treaty.

Simple majority

Article 14.- The Andean Parliament shall adopt its recommendations by simple majority, except in the special cases provided for in its internal regulations.

Regulations

Article 15.- The Andean Parliament shall promulgate its General Regulations.

Agenda for its annual meeting

Article 16.- The President of the Andean Parliament, in consultation with the other Representatives, shall draw up the provisional agenda for the Annual Meetings.

Proceedings

Article 17.- The Proceedings of the Andean Parliament shall be published in the way specified by its Regulations.

Chapter IV

On the signing, accession, legal force, and denunciation

Signing without reservations

Article 18.- This Treaty may not be signed with reservations, nor shall these be accepted at the time of ratification or accession. Only Member States of the Andean Integration System, or those that become such, may be parties to this Treaty.

Ratification

Article 19.- This Treaty shall be subject to ratification by the Signatory States. It shall enter into force thirty (30) days after all of those States have ratified it. The instruments of ratification shall be deposited at the Andean Community General Secretariat, which shall notify the other Signatory States about their deposit.

Legal force and denunciation

Article 20.- This Treaty shall remain in force for the entire period of effectiveness of the Cartagena Agreement and may not be denounced independently of that Agreement. Denunciation of the Cartagena Agreement shall bear with it the denunciation of this Treaty.

Transitional Provision

The Election of the Representatives to the Andean Parliament by Universal and Direct Vote should be held within a period of no more than five (5) years.

Replacement

This Treaty replaces the Treaty Creating the Andean Parliament signed on October 25, 1979, which shall remain in force until this instrument becomes effective.

Final Provision

The amendments approved at the VIII Andean Presidential Council held in Trujillo, Peru on March tenth (10^{th}), nineteen ninety-six through the Protocol Amending the Andean Subregional Integration Agreement (Cartagena Agreement), have been adjusted to this Treaty.

In witness whereof, the Ministers of Foreign Affairs of the Andean Community Member Countries sign this Treaty on behalf of their respective Governments.

Enacted in the city of Sucre, on the twenty-third of April of nineteen ninety-seven, in four, equally authentic copies.

ADDITIONAL PROTOCOL TO THE TREATY CREATING THE ANDEAN PARLIAMENT, REGARDING THE DIRECT AND UNIVERSAL ELECTION OF ITS REPRESENTATIVES

ARTICLE 1.- This Protocol establishes the procedures that will be adopted in the Andean Parliament Member Countries for the Election of their Representatives by Universal, Direct and secret vote.

The election of the Representatives to the Andean Parliament by Universal and Direct Vote should be held within a period of no more than five (5) years.

ARTICLE 2.- The permanent headquarters of the Andean Parliament shall be located in Bogotá, Colombia.

ARTICLE 3.- Five (5) titular Representatives to the Andean Parliament shall be elected in each Member Country. Each Representative shall have a first and second alternate, who shall replace him/her in that order, in the case of temporary or permanent absence. Alternates shall be elected on the same date, in the same way, and for the same period as Titular Representatives.

ARTICLE 4.- Until a Uniform Electoral System has been established, the System for Electing the Titular Representatives to the Andean Parliament, as well as their alternates, shall be governed by the national legislation of each Member Country.

ARTICLE 5.- Representatives to the Andean Parliament shall be elected in each Member Country on the date of the Legislative or other general election, including special elections, in accordance with its own national laws.

ARTICLE 6.- Representatives to the Andean Parliament shall enjoy full autonomy in the exercise of their functions and are not subject to any imperative mandate. They shall vote on a personal and individual basis and shall act in accordance with Community objectives and interests. Andean Parliamentarians are not responsible to any authority or jurisdictional body whatsoever for the votes they cast or the opinions they express on matters connected with their position. Representatives to the Parliament shall all enjoy, in addition to the immunities stipulated in article 10 of the Treaty Establishing the Andean Parliament, Parliamentary immunity in the same way and to the same extent as the Legislators of their respective Member Country.

ARTICLE 7.- National Legislators of Member Countries may be Representatives to the Andean Parliament at the same time, although this in no way constitutes a requirement for eligibility.

ARTICLE 8.- The impediments to the exercise of the function of Representative to the Andean Parliament, in addition to those established in the national legislation of each Member Country, are the following:

a. Performing public functions in the service of a Member Country, except for legislative duties.

   Being a Representative, official or employee of any other Andean Integration System body.

   Being an official or employee of any Andean Community Institution or of the Specialized Bodies connected with them.

b. Furthermore, until the Uniform Electoral System enters into effect, each Member Country may enact national provisions regarding other incompatibilities.

Representatives who, after having assumed their mandate, demonstrate any of the incompatibilities stipulated in this article, shall cease their functions and shall be replaced by their respective alternates, so long as those incompatibilities exist.

ARTICLE 9.- Until the Uniform Electoral System enters into effect, the Member Countries shall report the official results of the election of their Representatives to the Andean Parliament. The latter shall also duly receive and verify the credentials of those persons elected.

ARTICLE 10.- The annual budget approved for the operation of the Andean Parliament shall be covered by resources contributed by each Member Country, in keeping with the regulatory provisions that are issued for that purpose.

Their respective Congresses shall pay the fees and other remunerations to which Andean Parliamentarians elected by the people are entitled, in proportions equal to those paid from the General Congressional Budgets to each country's Legislators.

ARTICLE 11.- This Protocol may not be signed with reservations, nor shall these be acceptable at the time of ratification or accession. Only Member States of the Andean Community, or those that become such, may be parties to this Protocol.

ARTICLE 12.- In order for this Protocol to enter into force, all of the Andean Community Member Countries must first deposit their instruments of ratification.

The Protocol shall become effective on the day after the last instrument of ratification has been deposited at the Andean Community General Secretariat and shall remain in force for the entire period of effectiveness of the Cartagena Agreement and the Treaty Establishing the Andean Parliament and may not be denounced independently of those instruments.

ARTICLE 13.- The Andean Parliament shall be responsible for the organic, structural and functional regulation of this Protocol.

Transitional Provision

The current system of Indirect Election under the responsibility of the respective National Legislative Bodies shall remain in effect until the Universal and Direct Elections provided for in article 1 of this instrument have been held.

In witness whereof, the Ministers of Foreign Affairs of the Andean Community Member Countries sign this Protocol on behalf of their respective Governments.

Signed in the city of Sucre, on the twenty-third of April of nineteen ninety-seven, in four, equally authentic copies.

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