Observação

Tendo em vista a conclusão, em 2 de julho de 2025, das negociações do Acordo de Livre Comércio entre o MERCOSUL e a EFTA, o Brasil decidiu publicar os textos negociados com o objetivo de assegurar o efetivo exercício do direito de acesso à informação pública e a transparência da gestão pública.

Ressalta-se que os textos disponibilizados têm caráter exclusivamente informativo e poderão sofrer modificações adicionais em decorrência do processo de revisão legal, sem prejuízo dos compromissos assumidos.

Os textos definitivos serão publicados após a assinatura do Acordo. O Acordo será vinculante para as Partes, nos termos do direito internacional, somente após a conclusão dos procedimentos legais internos necessários à sua entrada em vigor.

FREE TRADE AGREEMENT

BETWEEN

THE EFTA STATES

AND

MERCOSUR

PREAMBLE

Iceland, the Principality of Liechtenstein, the Kingdom of Norway and the Swiss Confederation (EFTA States),

and

The Common Market of the South (MERCOSUR) and its State Parties, signatories of this Agreement, the Argentine Republic, the Federative Republic of Brazil, the Republic of Paraguay and the Oriental Republic of Uruguay (MERCOSUR States),

hereinafter referred to as the "Parties"[1]

RECOGNISING the common wish to strengthen the links between the Parties by establishing close and lasting relations;

DESIRING to create favourable conditions for the development and diversification of trade between the Parties and for the promotion of commercial and economic cooperation in areas of common interest on the basis of mutual benefit, non-discrimination and international law;

DETERMINED to promote and further strengthen the multilateral trading system, building on their respective rights and obligations under the Marrakesh Agreement establishing the World Trade Organization (WTO Agreement) and the other agreements negotiated thereunder to which they are a party, thereby contributing to the harmonious development and expansion of world trade;

REAFFIRMING their commitment to democracy, the rule of law, human rights and fundamental freedoms in accordance with their obligations under international law, including as set out in the United Nations Charter and the Universal Declaration of Human Rights;

AIMING to promote economic and social development, to create new employment opportunities, to improve living standards and to ensure high levels of protection of health and safety and of the environment;

RECOGNISING the importance of coherent and mutually supportive trade, environmental and labour policies and reaffirming their commitment to pursue the objective of sustainable development, their rights and obligations under multilateral environmental agreements to which they are a party, and the respect for the fundamental principles and rights at work, including the principles set out in the International Labour Organisation (ILO) Conventions to which they are a party;

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[1] For the purposes of this Agreement, "State Party" means an EFTA State or a MERCOSUR State.

DETERMINED to implement this Agreement in line with the objectives to preserve and protect the environment through sound environmental management and to promote an optimal use of the world's resources in accordance with the objective of sustainable development;

RECOGNISING the importance of ensuring predictability for the trading communities of the Parties;

AFFIRMING their commitment to prevent and combat corruption, including bribery of foreign public officials, in international trade and investment and to promote the principles of transparency and good public governance;

ACKNOWLEDGING the importance of good corporate governance and corporate social responsibility for sustainable development, and affirming their aim to encourage enterprises to observe internationally recognised guidelines and principles in this respect, such as the OECD Guidelines for Multinational Enterprises, the OECD Principles of Corporate Governance and the UN Global Compact;

CONVINCED that this Agreement will enhance the competitiveness of their firms in global markets and create conditions encouraging economic, trade and investment relations between the Parties;

HAVE AGREED, in pursuit of the above, to conclude the following Free Trade Agreement (Agreement):

CHAPTER 1

GENERAL PROVISIONS

ARTICLE 1.1

Objectives

1. The Parties hereby establish a free trade area in accordance with the provisions of this Agreement, which is based on trade relations between market economies and on the respect for democratic principles and human rights, with a view to spurring prosperity and sustainable development.

2. The objectives of this Agreement are:

(a) to liberalise trade in goods, in conformity with Article XXIV of the General Agreement on Tariffs and Trade 1994 (GATT 1994);

(b) to liberalise trade in services, in conformity with Article V of the General Agreement on Trade in Services (GATS);

(c) to mutually enhance investment opportunities;

(d) to prevent or eliminate unnecessary technical barriers to trade and unnecessary sanitary and phytosanitary measures;

(e) to promote competition in their economies, particularly as it relates to the economic relations between the Parties;

(f) to improve mutual access to the government procurement markets of the State Parties;

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

(h) to develop international trade in such a way as to contribute to the objective of sustainable development and to ensure that this objective is integrated and reflected in the Parties' trade relations; and

(i) to contribute to the harmonious development and expansion of world trade.

ARTICLE 1.2

Geographical Scope

1. Except as otherwise specified in Annex I (Rules of Origin), this Agreement applies to:

(a) the land territory, internal waters and the territorial sea of a State Party, and the air-space above the territory of a State Party, in accordance with international law; and

(b) the exclusive economic zone and the continental shelf of a State Party, in accordance with international law.

2. This Agreement shall not apply to the Norwegian territory of Svalbard, with the exception of trade in goods.

ARTICLE 1.3

Trade and Economic Relations Governed by this Agreement

1. This Agreement applies to the trade and economic relations between, on the one side, the individual EFTA States and, on the other side, the individual MERCOSUR States or MERCOSUR. This Agreement applies neither to the economic relations between individual EFTA States, nor to the economic relations between the MERCOSUR States, unless otherwise provided for in this Agreement.

2. In accordance with the Customs Treaty of 29 March 1923 between Switzerland and Liechtenstein, Switzerland shall represent Liechtenstein in matters covered therein.

ARTICLE 1.4

Relation to Other International Agreements

1. The Parties affirm their rights and obligations under the WTO Agreement and the other agreements negotiated thereunder to which they are a party, and any other international agreement to which they are a party.

2. If a Party considers that the development or establishment of a customs union, free trade area or another preferential agreement by another Party has the effect of altering the trade regime provided for by this Agreement, it may request consultations. The Party concluding such agreement shall afford adequate opportunity for consultations with the requesting Party.

ARTICLE 1.5

Fulfilment of Obligations

1. Each Party shall take any general or specific measures required to fulfil its obligations under this Agreement.

2. Each State Party shall ensure the observance of all obligations and commitments under this Agreement by its respective central, regional and local governments and authorities, and by non-governmental bodies in the exercise of governmental powers delegated to them by central, regional and local governments or authorities.

ARTICLE 1.6

Transparency

1. The Parties shall publish, or otherwise make publicly available, their laws, regulations, judicial decisions, administrative rulings of general application as well as their respective international agreements, that may affect the operation of this Agreement.

2. The Parties shall promptly respond to specific questions and provide, upon request, information to each other on matters referred to in paragraph 1.

3. Nothing in this Agreement shall be construed to require any Party to disclose confidential information, the disclosure of which would impede law enforcement, or otherwise be contrary to the public interest, or which would prejudice the legitimate commercial interests of any economic operator.

4. In case of any inconsistency between this Article and provisions relating to transparency in other parts of this Agreement, the latter shall prevail to the extent of the inconsistency.

CHAPTER 2

TRADE IN GOODS

ARTICLE 2.1

Scope

This Chapter applies to trade in goods between the Parties.

ARTICLE 2.2

National Treatment on Internal Taxation and Regulation

Each Party shall accord national treatment to the goods of another Party. Article III of GATT 1994 applies to this Chapter and is hereby incorporated into and made part of this Agreement, *mutatis mutandis*.

ARTICLE 2.3

Customs Duties on Imports

1. Each Party shall apply customs duties on imports on goods originating in another Party in accordance with Annexes II-V (Schedules of Tariff Commitments on Goods).

2. Customs duties on imports include any duty or charge of any kind[2] imposed on or in connection with the importation of goods, but do not include any:

(a) internal taxes or other internal charges imposed in accordance with Article III of GATT 1994;

(b) anti-dumping or countervailing duties applied in accordance with Articles VI and XVI of GATT 1994, the WTO Agreement on Implementation of Article VI of GATT 1994 (ADA) and the WTO Agreement on Subsidies and Countervailing Measures (ASCM) as well as with Chapter 3 (WTO Trade Defence and Global Safeguards);

(c) safeguard measures applied in accordance with Article XIX of GATT 1994 and the WTO Agreement on Safeguards (ASFG) as well as with Chapters 3 (WTO Trade Defence and Global Safeguards) and 4 (Bilateral Safeguard Measures);

[2] This includes, *inter alia, ad valorem* import duties, agricultural components, additional duties on sugar content, additional duties on flour content, specific duties, mixed duties, seasonal duties and additional duties from entry price systems.

(d) measures authorised by the WTO Dispute Settlement Body or under Chapter 15 (Dispute Settlement);

(e) fees or other charges, imposed in accordance with Article VIII of GATT 1994; and

(f) measures adopted to safeguard a State Party's external financial position and its balance of payments, in accordance with Article 2.13 (Balance-of-Payments).

3. Unless otherwise provided for in this Agreement, no Party shall introduce any new customs duties on imports, or increase those already applied on goods originating in another Party in accordance with its Schedule of Tariff Commitments. This paragraph shall not preclude a Party from raising customs duties on imports to the level established in its Schedule of Tariff Commitments following a unilateral reduction.

4. A Party may create a new tariff line as long as the customs duty applicable to the corresponding goods under the new tariff line is equal to or lower than the original tariff line, according to its Schedule of Tariff Commitments, and that the agreed tariff concessions remain unchanged. The respective Schedule of Tariff Commitments shall indicate which version of the Harmonized Commodity Description and Coding System (HS) each Party has used.

ARTICLE 2.4

Goods Re-Entered After Repair

1. For the purposes of this Article, "repair" means any processing operation undertaken on goods to remedy operating defects or material damage, entailing the re-establishment of goods to their original function, or to ensure their compliance with technical requirements for their use, without which such goods could no longer be fit for their intended purposes. Repair of goods includes restoration and maintenance. It shall not include any operation or process that:

(a) destroys the essential characteristics of the goods or creates new goods or goods fit for different commercial purposes;

(b) transforms the unfinished goods into finished goods; or

(c) is used to improve the technical performance of goods.

2. No Party shall apply customs duties to goods referred to in paragraph 1, regardless of their origin, that re-enter its customs territory after those goods have been temporarily exported from its customs territory to the customs territory of another Party for repair, regardless of whether such repair could be performed in the customs territory of the Party from which the goods were exported for repair.

3. Paragraph 2 shall not apply to goods imported in bond, into free trade zones, or zones of similar status, that are exported for repair and are not re-imported in bond, into free trade zones, or zones of similar status.

4. No Party shall apply customs duties to goods, regardless of their origin, imported temporarily from the customs territory of another Party for repair.

ARTICLE 2.5

Exchange of Information on Trade

1. For the purpose of monitoring the functioning of this Agreement and calculating preference utilisation rates, the Parties shall annually exchange import statistics and applied most-favoured-nation tariff rates starting one year after the entry into force of this Agreement until ten years after the tariff elimination is completed for all goods in accordance with Annexes II-V (Schedules of Tariff Commitments on Goods). Unless the EFTA-MERCOSUR Joint Committee (Joint Committee) decides otherwise, this period shall be automatically extended for five years. Thereafter, the Joint Committee may decide on further extension.

2. The exchange of import statistics shall cover data pertaining to the most recent year available, including value and, where applicable, volume, at the tariff line level (eight-digit level tariff lines based on Harmonized System Nomenclature) for imports of goods from another Party benefitting from preferential treatment under this Agreement and for imports of goods from another Party that received non-preferential treatment. The preferential and the applied most-favoured-nation tariff rates exchanged shall pertain to the same year as the import statistics.

3. Notwithstanding paragraph 2, no Party shall be obliged to exchange import data that is confidential in accordance with its domestic laws and regulations.

ARTICLE 2.6

Quantitative Restrictions

Except as otherwise provided for in this Agreement, no Party may adopt or maintain any prohibition or restriction on the importation of goods of another Party or on the exportation or sale for export of goods destined for the territory of another Party, whether applied by quotas, licences or other measures, except those in accordance with Article XI of GATT 1994, including its interpretative notes. To this end, Article XI of GATT 1994 applies to this Chapter and is hereby incorporated into and made part of this Agreement, *mutatis mutandis*.

ARTICLE 2.7

Import Licensing

1. The WTO Agreement on Import Licensing Procedures applies to this Chapter and is hereby incorporated into and made part of this Agreement, *mutatis mutandis*.

2. The State Parties may only adopt or maintain licensing procedures as a condition for importation if other appropriate procedures to achieve an administrative purpose are not reasonably available.

3. The State Parties shall not adopt or maintain import licensing procedures in order to implement a measure that is inconsistent with this Agreement, GATT 1994 or the WTO Agreement on Trade-Related Investment Measures. A Party adopting non-automatic licensing procedures shall clearly indicate the measure implemented through such licensing procedures.

4. The State Parties shall ensure that all import licensing procedures are neutral in application, and administered in a fair, equitable, non-discriminatory, transparent, predictable and least trade-restrictive manner.

5. If a State Party has denied an application for an import licence it shall, without undue delay, provide the applicant with a written explanation of the reasons for the denial;

6. Each State Party shall provide effective, non-discriminatory and prompt and easily accessible procedures in accordance with its domestic laws and regulations to guarantee the right of appeal against administrative decisions on applications for import licences. Appeal procedures shall include administrative review by the supervising authority or judicial review in accordance with the domestic laws and regulations of each State Party. If the denial of an import licence is upheld in an appeal, the State Party granting the licence shall provide the applicant with a written justification without undue delay.

7. A State Party adopting or amending regulations related to import licensing that are likely to affect trade between the Parties, shall promptly notify the other State Parties. The notice shall clearly state the purpose of such licensing procedures and any conditions on eligibility for obtaining an import licence. A notification made by a State Party in accordance with the WTO Agreement on Import Licensing Procedures shall be deemed equivalent to a notification under this Agreement.

ARTICLE 2.8

Rules of Origin and Administrative Cooperation

The provisions on rules of origin and administrative cooperation procedures applicable between the State Parties are set out in Annex I (Rules of Origin).

ARTICLE 2.9

Trade Facilitation

The provisions on trade facilitation applicable between the State Parties are set out in Annex VI (Trade Facilitation).

ARTICLE 2.10

State Trading Enterprises

Article XVII of GATT 1994 and the Understanding on the Interpretation of Article XVII of the General Agreement on Tariffs and Trade 1994 apply to this Chapter and are hereby incorporated into and made part of this Agreement, *mutatis mutandis*.

ARTICLE 2.11

General Exceptions

Article XX of GATT 1994 and its interpretative notes apply to this Chapter and Chapters 5 (Technical Barriers to Trade) and 6 (Sanitary and Phytosanitary Measures) and are hereby incorporated into and made part of this Agreement, *mutatis mutandis*.

ARTICLE 2.12

Security Exceptions

Article XXI of GATT 1994 applies to this Chapter and Chapters 5 (Technical Barriers to Trade) and 6 (Sanitary and Phytosanitary Measures) and is hereby incorporated into and made part of this Agreement, *mutatis mutandis.*

ARTICLE 2.13

Balance-of-Payments

1. A State Party, in serious balance of payments difficulties, or under imminent threat thereof, may, in accordance with the conditions established under GATT 1994 and the WTO Understanding on the Balance of Payments Provisions of the General Agreement on Tariffs and Trade 1994, adopt trade restrictive measures, which shall be of limited duration and non-discriminatory, and may not go beyond what is necessary to remedy the balance of payments situation.

2. The State Party introducing a measure under this Article shall promptly notify the Joint Committee.

ARTICLE 2.14

Sub-Committee on Trade in Goods

1. A Sub-Committee on Trade in Goods (Sub-Committee) is hereby established.

2. The mandate of the Sub-Committee is set out in Annex VII (Mandate of the Sub-Committee on Trade in Goods).

ARTICLE 2.15

Tariff Rate Quota Administration

1. A Party granting bilateral tariff rate quotas (TRQ) as referred to in Annexes II, IV, and V (Schedules of Tariff Commitments on Goods) shall administer its bilateral TRQ in a manner that does not result in underfill due to domestic laws, regulations, or administrative procedures related to TRQ administration.

2. TRQ administration shall be transparent, based on clearly specified timeframes, procedures, and requirements, no more administratively burdensome than necessary, and conducted in a timely manner.

3. The Party granting the bilateral TRQ shall make publicly available, in a timely and continuous manner, relevant information concerning TRQ administration, including volume available, eligibility criteria, intra-quota tariffs whenever applicable and effective fill rates.

4. A Party shall promptly notify the other Parties of any changes to its domestic laws, regulations, or administrative procedures that may affect TRQ administration and, on request of another Party, shall provide information and respond to questions pertaining to such domestic laws, regulations or administrative procedures related to TRQ administration.

5. In cases where an exporting State Party considers that a bilateral TRQ is being consistently underfilled due to the importing State Party's domestic laws, regulations, or administrative procedures related to TRQ administration:

(a) the importing Party shall, upon request and within 30 days from receipt of the request, undertake consultations with the exporting State Party to address any such measure, including by providing, if applicable, information on any reasonable commercial conditions that may have caused the TRQ underfill; and

(b) if consultations under subparagraph (a) do not result in a satisfactory resolution, the Subc-Committee on Trade in Goods and the Joint Committee shall, as appropriate, make recommendations or take decisions to ensure the proper implementation of the obligations set out on this Article and in Annexes II, IV and V (Schedules of Tariff Commitments on Goods).

6. Products exported under bilateral TRQ granted by an EFTA State shall be accompanied by an official document issued by the exporting MERCOSUR State Party. The model of the official document shall be communicated to the EFTA States by MERCOSUR no later than at entry into force of this Agreement.

ARTICLE 2.16

Wine Terms

The State Parties have addressed the use of certain wine terms in the Record of Understanding on Trade in Wine Products which constitutes an integral part of this Agreement.

ARTICLE 2.17

Review

Upon request of a Party, beginning three years from the entry into force of this Agreement, the Parties shall undertake a review of the tariff commitments in Annexes II to V (Schedules of Tariff Commitments on Goods). As a result of such review, the Parties may agree to enter into negotiations on possible improvement of market access conditions under this Chapter and Annexes II to V (Schedules of Tariff Commitments on Goods).

CHAPTER 3

WTO TRADE DEFENSE AND GLOBAL SAFEGUARDS

ARTICLE 3.1

Relationship with the WTO Agreements

1. This Chapter applies without prejudice to the rights and obligations established under Articles VI, XVI and XIX of GATT 1994 and the ADA, the ASCM and the ASFG. For clarity, non-preferential rules of origin shall be applied under the WTO Agreements referred to in this paragraph.

2. Measures pursuant to this Chapter shall be used in a fair and transparent manner and except as otherwise provided for in this Chapter, in full compliance with the relevant WTO requirements.

ARTICLE 3.2

Anti-Dumping

1. The State Parties shall endeavour to apply the ADA in a way that least affects trade between the Parties.

2. Except where circumstances have changed, a State Party shall not initiate an investigation if its previous investigation regarding the same product from the same State Party resulted in a negative final determination less than one year prior to the filing of the application. If an investigation is initiated in such a case, that State Party shall, in the notice of initiation, explain the change in circumstances which warrants the initiation.

3. A State Party conducting an investigation shall take into account the information provided by industrial users of the product under investigation, importers and, if applicable, representative consumer organisations according to Article 6.12 of the ADA.

4. In addition to the conditions set forth in Article 7.1 of the ADA, provisional measures may only be applied if interested parties have been given adequate opportunities to submit information, including responses to questionnaires sent in accordance with Article 6.1.1 of the ADA, and a preliminary affirmative determination has been made of dumping and consequent injury to a domestic industry taking into account responses to questionnaires received from, and other relevant information submitted by, interested parties.

5. A State Party shall carefully consider proposals of price undertakings made by exporters of another State Party concerned.

6. If a State Party decides to apply an anti-dumping measure, that State Party shall favour the imposition of a duty that is less than the margin of dumping if that level is adequate to remove the injury to the domestic industry.

7. A State Party shall carefully consider terminating an anti-dumping measure as soon as material injury and imminent threat thereof to the domestic industry have been removed, if possible and without prejudice to the rights and obligations established under the ADA, within five years from its imposition.

ARTICLE 3.3

Global Safeguard Measures

1. A State Party adopting global safeguard measures shall impose them in a way that least affects bilateral trade.

2. Upon request of the exporting State Party, the State Party initiating a safeguard investigation shall immediately provide:

(a) the information referred to in Articles 12.2 and 12.6 of the ASFG, in the format prescribed by the WTO Committee on Safeguards; and

(b) the public notice of initiation of the investigation and the public version of the complaint filed by the domestic industry.

3. Upon request of the exporting State Party, the State Party intending to adopt provisional or definitive safeguard measures shall immediately provide the information referred to in Article 12.2 of the ASFG, in the format prescribed by the WTO Committee on Safeguards, and a public report setting forth the findings and reasoned conclusions on all pertinent issues of fact and law considered in the safeguard investigation. The public report shall include an analysis that attributes injury to the factors causing it and set out the method used in defining the safeguard measures.

4. When intending to impose definitive safeguard measures that include one or several State Parties, the importing State Party shall inform the exporting State Parties and offer to hold informal consultations. The importing State Party shall not adopt definitive safeguard measures until 30 days have elapsed from the date the offer for consultations was made.

ARTICLE 3.4

Transparency

1. For transparency purposes and without prejudice to Article 6.5 of the ADA, Article 12.4 of the ASCM and Article 3.2 of the ASFG, each State Party shall ensure that:

(a) as soon as possible after the imposition of provisional measures, interested parties be given full access to the facts that are the basis of the determinations, the injury assessment, calculation of the dumping or subsidy margins, if applicable, and causality; and

(b) before the final determination, there is a full and meaningful disclosure of all essential facts and considerations which form the basis for the final determination and the decision to apply measures, including those related

to injury assessment, calculation of the dumping or subsidy margins, if applicable, and causality.

2. All information referred to in paragraph 1 shall be sent in writing, preferably in electronic version.

ARTICLE 3.5

Notification and Consultations

1. As soon as possible after an application is accepted and before initiating an investigation in accordance with the ADA or the ASCM concerning imports from another State Party, the importing State Party shall notify in writing the State Party concerned.

2. As soon as possible after the corresponding public notice has been issued, the importing State Party shall notify the exporting State Party of:

(a) any decision to initiate an investigation;

(b) any decision to apply a provisional measure; and

(c) any decision to apply or not a definitive measure.

3. At any stage of the investigation, a State Party may request consultations with the State Party intending to apply or applying measures pursuant to this Chapter. The importing State Party shall offer to hold consultations between competent authorities within ten days from the request.

4. Upon request of a State Party, consultations may take place in the Joint Committee. Such consultations may take place partially or entirely by videoconference if a State Party so requests.

ARTICLE 3.6

Dispute Settlement

The Parties shall not have recourse to Chapter 15 (Dispute Settlement) for any matter arising under this Chapter.

CHAPTER 4

BILATERAL SAFEGUARD MEASURES

ARTICLE 4.1

Definitions

For the purposes of this Chapter, the terms "serious injury", "threat of serious injury", "domestic industry" and "like or directly competitive product" mean the same as under the ASFG.

ARTICLE 4.2

Conditions for the Application of Bilateral Safeguard Measures

1. A State Party may, in exceptional circumstances, apply bilateral safeguard measures to imports from another State Party under the conditions established in this Chapter, if imports of a product under preferential terms have increased in such quantities, absolute or relative to domestic production or consumption of the importing State Party, and under such conditions as to cause or threaten to cause serious injury to the domestic industry of the importing State Party. Bilateral safeguard measures shall be applied only to the extent necessary to prevent or remedy serious injury or threat thereof.

2. Bilateral safeguard measures shall only be applied following an investigation by the competent investigating authorities[3] of the importing State Party under the procedures established in the Annex VIII (Investigation and Transparency Procedures). The purpose of the investigation shall be the assessment of the conditions provided for in paragraph 1.

3. Bilateral safeguard measures shall only be applied between an EFTA State on the one side and a MERCOSUR State on the other.

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[3] For the purposes of this Chapter and of Annex VIII (Investigation and Transparency Procedures), competent investigating authority means, in the case of the MERCOSUR States, Ministerio de Economía or its successor in Argentina,Ministério do Desenvolvimento, Indústria, Comércio e Serviços or its successor in Brazil, Ministerio de Industria y Comercio or its successor in Paraguay, and Política Comercial del Ministerio de Economía y Finanzas or its successor in Uruguay. In the case of the EFTA States, the competent investigating authorities shall be communicated to the State Party concerned upon notification of an investigation.

ARTICLE 4.3

Application of Bilateral Safeguard Measures

Bilateral safeguard measures adopted under this Chapter shall consist of:

(a) a temporary suspension of the further reduction of any customs duty provided for under this Agreement for the product concerned; or

(b) an increase of the rate of customs duty or a reduction of the tariff preference of the product concerned so that the rate of customs duties does not exceed the lesser of:

(i) the most-favoured-nation applied rate of customs duty on the product in effect at the time the measure is taken;

(ii) the base rate of customs duty referred to in the respective Party's Schedule of Tariff Commitments on Goods; or

(iii) the most-favoured-nation applied rate of customs duty on the product on the date of the entry into force of this Agreement.

ARTICLE 4.4

Preservation of Market Access

1. When applying subparagraph (b) of Article 4.3 (Application of Bilateral Safeguard Measures), a State Party should ensure that historical trade flows that do not cause or threaten to cause serious injury to the domestic industry of the importing State Party are preserved. The State Party that applies a bilateral safeguard measure shall, if possible, establish an import quota for the product concerned within which such product continues to benefit from the agreed preference established under this Agreement. The import quota shall not be less than the average imports of the product concerned during the 36 month-period prior to the last 12 months of the period defined in paragraph 3 of Article 3 of Annex VIII (Investigation and Transparency Procedures), unless a clear justification is given that a lower level is necessary to prevent or remedy serious injury.

2. If no quota is established, the bilateral safeguard measure shall only consist of a reduction of the tariff preference applicable to such product, which shall not be higher than 50 % of the tariff preference established under this Agreement.

3. A State Party that may be affected by a bilateral safeguard measure may request any adequate means of compensation in the form of substantially equivalent trade liberalisation.

ARTICLE 4.5

Duration

1. Bilateral safeguard measures shall be applied only for a period necessary to prevent or remedy the serious injury and to facilitate adjustment of the domestic industry. That period shall not exceed two years. In exceptional circumstances, after review by the importing State Party's investigating authority and notification to the Joint Committee, the measures may be applied up to a total maximum period of three years, including the period of application of any provisional measure.

2. Upon termination of the bilateral safeguard measure, the margin of preference shall be the one that would be applied to the product in the absence of the measure, according to the Schedule of Tariff Commitments on Goods.

3. No bilateral safeguard measure shall be applied to a product which has already been subject to a bilateral safeguard measure unless a period of half the total duration of the previous measure has elapsed.

4. The State Parties shall not apply, extend or keep in force a bilateral safeguard measure beyond the expiration of a transition period of 12 years from the date of entry into force of this Agreement. Regarding any goods for which the Schedule of Tariff Commitments on Goods of the State Party applying the measure provides for tariff elimination in ten or more years, the transition period shall be 18 years from the date of the entry into force of this Agreement.

ARTICLE 4.6

Provisional Bilateral Safeguard Measures

In critical circumstances, where delay may cause damage which would be difficult to repair, a State Party may, after due notification, apply a provisional bilateral safeguard measure pursuant to a preliminary determination that there is clear evidence that increased preferential imports have caused or are threatening to cause serious injury to the domestic industry. The duration of the provisional bilateral safeguard measure shall not exceed 200 days, during which period the requirements of this Chapter shall be met. If the final determination concludes that there was no serious injury or threat thereof to the domestic industry caused by imports under preferential terms, the increased tariff or provisional guarantee, if collected or imposed under provisional bilateral safeguard measures, shall be promptly refunded

ARTICLE 4.7

Notification and Consultations between the State Parties

1. If a State Party has determined that the conditions to impose a definitive bilateral safeguard measure are met, it shall notify and at the same time invite the exporting State Party for consultations. The notification and the invitation shall be made at least 30 days before a definitive bilateral safeguard measure is expected to come into force. No

definitive bilateral safeguard measure shall be applied in the absence of such notification and such invitation.

2. The notification shall include:

(a) evidence of serious injury or threat of serious injury to the domestic industry caused by the increased preferential imports;

(b) a precise description of the imported product subject to the measure, and its classification under the HS;

(c) a description of the measure proposed;

(d) the date of entry into force of the measure and its duration; and

(e) the period for consultations.

3. The objective of the consultations referred to in paragraph 1 shall be a mutual understanding of the facts and an exchange of views, aimed at reaching a mutually satisfactory solution. If no satisfactory solution is reached within 30 days from the notification, the State Party may apply the bilateral safeguard measure at the end of the 30 day period.

4. For provisional bilateral safeguard measures, consultations shall take place within 30 days from the receipt of the notification, but they shall not be a prerequisite for the imposition of provisional bilateral safeguard measures.

5. At any stage of the investigation, the notified State Party may request consultations with the notifying State Party, or any additional information that it considers necessary.

CHAPTER 5

TECHNICAL BARRIERS TO TRADE

ARTICLE 5.1

Scope

1. This Chapter applies to the preparation, adoption and application of standards, technical regulations and conformity assessment procedures that may affect trade in goods between the Parties.

2. This Chapter shall not apply to:

(a) purchasing specifications prepared by governmental bodies for their production or consumption requirements; or

(b) sanitary and phytosanitary measures as defined in Annex A of the WTO Agreement on the Application of Sanitary and Phytosanitary Measures (SPS Agreement).

ARTICLE 5.2

Objectives

The objectives of this Chapter are:

(a) to further the implementation of the WTO Agreement on Technical Barriers to Trade (TBT Agreement) and facilitate trade in goods between the Parties by identifying, preventing and eliminating unnecessary technical barriers to trade;

(b) to facilitate exchange of information and cooperation in the field of technical regulations, standards and conformity assessment, including metrology and accreditation, between the Parties;

(c) to enhance mutual understanding of the regulatory systems of the Parties;

(d) to promote the implementation of good regulatory practices; and

(e) to contribute to solve trade concerns arising between the Parties.

ARTICLE 5.3

Incorporation of the TBT Agreement

The TBT Agreement applies to this Chapter and is hereby incorporated into and made part of this Agreement, *mutatis mutandis*.

ARTICLE 5.4

Trade Facilitating Initiatives

1. The Parties recognise the importance of intensifying their collaboration with a view to achieving a better understanding of their respective systems and preventing, eliminating or reducing the creation of technical barriers to trade. To this end, the Parties shall work towards the identification, promotion, development, and implementation, as appropriate, of trade facilitating initiatives on a case-by-case basis.

2. A Party may propose trade facilitating initiatives for specific products or sectors in areas covered by this Chapter to the other Parties. These proposals shall be transmitted to the contact points and may include, *inter alia*:

(a) exchange of information on regulatory approaches and practices;

(b) initiatives to further align technical regulations and conformity assessment procedures with relevant international standards;

(c) initiatives on regulatory convergence;

(d) initiatives to facilitate the acceptance of the results of conformity assessment procedures conducted in another Party, in accordance with paragraph 1 of Article 5.7 (Conformity Assessment Procedures); and

(e) considering mutual or unilateral recognition of conformity assessment results.

3. If a Party proposes a trade facilitating initiative, the other Parties concerned shall duly consider the proposal and reply within a reasonable period of time. Any Party rejecting the proposal shall explain the reasons for its decision to the Party proposing a trade facilitating initiative.

4. If a Party proposes sectoral initiatives already agreed between each Party concerned and the European Union (EU), the Parties concerned shall, without undue delay, negotiate the proposal to extend to each other equivalent treatment related to technical regulations, standards or conformity assessments. Such proposals extending to each other equivalent treatment related to technical regulations, standards or conformity assessments mutually agreed between each Party concerned and the EU shall only cover sectors falling under harmonised EU legislation.

5. When agreed by the Parties concerned and necessary for the implementation of trade facilitating initiatives under this Article, the State Parties shall facilitate the access of technical teams to demonstrate their conformity assessment schemes and systems in order to increase mutual understanding.

6. The Parties engaged in a trade facilitating initiative shall, when needed, define the terms of work envisaged under this Article and involve their competent regulatory and governmental authorities. The Parties may establish *ad hoc* working groups and, if appropriate and previously agreed upon by the Parties, invite representatives of the private

sector, academia and civil society, *inter alia*, to participate in specific activities of these working groups.

7. The results of an understanding reached under this Article should be incorporated into an appropriate instrument, depending on the subject matter and the agreed tool and shall be reported to the contact points.

8. Further to paragraph 7, whenever the Parties concerned consider that the result of a trade facilitating initiative under this Chapter shall be incorporated into this Agreement, this understanding shall be reported to the Joint Committee, which may decide on the adoption of a new Annex to this Agreement.

9. The Parties have concluded Annex IX (Electrical and Electronic Products) to prevent, eliminate, or reduce unnecessary non-tariff barriers to trade, including to avoid duplicative and unnecessarily burdensome conformity assessment procedures related to electrical and electronic products. The Parties may present amendment proposals to the Joint Committee regarding Annex IX (Electrical and Electronic Products) and Annexes created pursuant to paragraph 8.

ARTICLE 5.5

Technical Regulations

1. The Parties shall make best use of good regulatory practices with regard to the preparation, adoption and application of technical regulations, as provided for in the TBT Agreement, including, for example, preference for performance-based technical regulations, use of impact assessments or stakeholder consultation. In particular, the Parties shall:

(a) reinforce the role of relevant international standards as a basis for their technical regulations, including conformity assessment procedures;

(b) where international standards have not been used as a basis for a technical regulation, which may have a significant effect on trade, explain upon request of a Party the reasons why such standards have been judged inappropriate or ineffective for the aim pursued;

(c) promote the development of regional technical regulations and their adoption at national level in order to facilitate trade between the Parties;

(d) carry out an impact analysis of planned technical regulations in accordance with its respective rules and procedures; and

(e) when preparing technical regulations, take due account of the characteristics and special needs of micro, small and medium-sized enterprises (MSMEs).

2. Each State Party shall ensure that goods, once placed on the market and fully complying with the relevant technical regulations and the respective conformity

assessment procedures of the importing State Party, may freely move within its territory without any further technical requirement related to this Chapter.

3. If a State Party detains at a port of entry goods exported from another State Party due to an alleged failure to comply with a technical regulation, the reasons for the detention shall be promptly notified to the importer.

4. If a State Party withdraws from its market goods exported from another State Party, the reasons for the withdrawal shall be promptly notified to the person responsible for placing the goods on the market.

ARTICLE 5.6

Standards

1. The State Parties recognise their responsibility under Article 4.1 of the TBT Agreement to take all reasonable measures to ensure that their standardisation bodies comply with the Code of Good Practice for the Preparation and Adoption of Standards in Annex 3 to the TBT Agreement.

2. For the purposes of this Chapter, "relevant international standards" referred to in Article 2.4 of the TBT Agreement means standards developed by international standardising organisations, such as the International Organization for Standardization (ISO), International Electrotechnical (IEC), the International Telecommunication Union (ITU), Codex Alimentarius Commission and the World Organization for Animal Health (WOAH), provided that in their development these organisations have complied with the principles and procedures set out in the Decision of the WTO Committee on Technical Barriers to Trade on Principles for the Development of International Standards, Guides and Recommendations.

3. Within the limits of their competence and resources, the Parties shall encourage their standardising bodies, as well as the regional standardising bodies which the State Parties or their standardising bodies are members of, to:

(a) cooperate with the relevant national and regional standardisation bodies of another Party in international standardisation activities; and

(b) use relevant international standards as a basis for the standards they develop, except where such international standards would be ineffective or inappropriate, for instance because of an insufficient level of protection, fundamental climatic or geographical factors, fundamental technological problems or development concerns of developing countries.

ARTICLE 5.7

Conformity Assessment Procedures

1. The State Parties acknowledge that a broad range of mechanisms exist to facilitate acceptance of the results of conformity assessment procedures conducted in another State Party, such as:

(a) use of accreditation based on international standards to qualify conformity assessment bodies;

(b) government designation of conformity assessment bodies;

(c) voluntary arrangements between conformity assessment bodies in each State Party;

(d) unilateral recognition by a State Party of the results of conformity assessments performed in another State Party;

(e) agreements on mutual acceptance of the results of conformity assessment procedures with respect to specified technical regulations conducted by recognised conformity assessment bodies; and

(f) the importing State Party's acceptance of a supplier's declaration of conformity, based on international standards.

2. The State Parties recognise that the selection of the appropriate mechanisms depends on the institutional and the legal framework of each State Party.

3. The State Parties shall encourage mutual acceptance of conformity assessment results of bodies accredited in accordance with subparagraph 1 (a), which have been recognised under the relevant international agreements, such as the International Laboratory Accreditation Cooperation (ILAC) and the International Accreditation Forum (IAF).

4. If a State Party requires positive assurance of conformity with domestic technical regulations, it shall consider in its internal regulatory process the use of supplier's declaration of conformity among other options as an assurance of conformity.

5. If a supplier's declaration of conformity, without mandatory third party assessment, is considered a valid conformity assessment procedure in the EFTA States, test reports issued by conformity assessment bodies that are located in the territory of a MERCOSUR State shall be accepted as a valid document in the process of demonstrating that a product conforms with the requirements of the EFTA State's technical regulations. The manufacturer shall remain responsible for the conformity of the product in all cases.

ARTICLE 5.8

Transparency

1. The State Parties reaffirm their transparency obligations under the TBT Agreement with regard to the preparation, adoption and application of standards, technical regulations and conformity assessment procedures.

2. For the purposes of paragraph 1, the State Parties shall:

(a) take another State Party's views into account where a part of the process of developing a technical regulation is open to public consultations;

(b) ensure that economic operators and other interested persons of another State Party are allowed to participate in any formal public consultative process concerning the development of technical regulations; and

(c) when making notifications in accordance with Article 2.9 of the TBT Agreement, to endeavour to allow at least 60 days for another State Party to provide comments in writing to the proposal.

3. Where practicable, the State Parties shall give appropriate consideration to reasonable requests to extend the comment period.

4. Each State Party shall ensure that all technical regulations and mandatory conformity assessment procedures adopted and in force are publicly available on an official website. If the presumption of conformity with technical regulations relies on standards not referred to in these technical regulations, the State Party concerned shall, upon request, provide the list of standards designated under the corresponding regulations.

ARTICLE 5.9

Marking and Labelling

1. The Parties affirm that their technical regulations including or dealing exclusively with marking or labelling shall observe the principles of Article 2 of the TBT Agreement.

2. Where a Party requires mandatory marking or labelling of goods:

(a) the Party shall only require information which is relevant for consumers, users of the product or the competent authorities, or an indication of the product’s conformity with the mandatory technical requirements;

(b) where a State Party requires any prior approval, registration or certification of the labels of markings of the goods, as a precondition for placing goods on the market that otherwise comply with its mandatory technical requirements, it shall ensure that the requests submitted by the economic operators of another State Party are decided without undue delay and on a non-discriminatory basis;

(c) where the State Party requires the use of a unique identification number by economic operators, the State Party shall issue such number to the economic operators of another State Party without undue delay and on a non-discriminatory basis;

(d) provided it is neither misleading nor confusing in relation to the information required, nor contradicting the regulatory requirements in the importing State Party, the Party shall permit the following:

(i) information in other languages in addition to the language required by the importing State Party; and

(ii) nomenclatures, pictograms, symbols or graphics adopted in international standards;

(e) the State Party, whenever possible and not compromising legitimate objectives under the TBT Agreement, shall accept that supplementary labelling and corrections to labelling take place in customs warehouses or other designated areas at the point of import as an alternative to labelling in the country of origin; and

(f) the State Party shall endeavour to accept non-permanent or detachable labels, or inclusion of relevant information in the accompanying documentation, rather than labels that are physically attached to the product, unless such labelling is required for public health or safety reasons or any other legitimate objectives under the TBT Agreement.

3. Paragraph 2 shall not apply to marking or labelling of medicinal products.

ARTICLE 5.10

Technical Cooperation

1. With a view to increasing mutual understanding of their respective systems and facilitating access to their respective markets, the Parties shall strengthen their cooperation. Such cooperation may include, but shall not be limited to:

(a) activities of international standardisation bodies and the WTO Committee on Technical Barriers to Trade;

(b) communication between their competent authorities, exchange of information with respect to technical regulations, good regulatory practice, standards, conformity assessment procedures, border control and market surveillance;

(c) strengthening the technical and institutional capacity of the national regulatory, metrology, standardisation, conformity assessment and accreditation institutions, by means of cooperation and joint activities that support the development of a technical infrastructure and continuous training of human resources; and

(d) supporting activities by national, regional and international organisations in the areas covered by this Chapter.

2. Upon request, and taking into account the different levels of development of the involved Parties, a Party shall give appropriate consideration to proposals for cooperation according to this Article.

ARTICLE 5.11

Technical Consultations

1. Upon request of a Party, which considers that a technical regulation, standard or conformity assessment procedure of another Party has created, or is likely to create, an obstacle to trade, consultations shall be held with the objective of finding a mutually acceptable solution.

2. Consultations shall take place within 60 days from the receipt of the request by the contact point, unless the request identifies the matter as urgent, in which case the Parties shall endeavour to hold the technical discussions sooner. The consultations may be conducted by any method agreed by the consulting Parties. The Joint Committee shall be informed of the consultations.

3. For greater certainty, this Article shall be without prejudice to a Party's rights and obligations under Chapter 15 (Dispute Settlement).

ARTICLE 5.12

Contact Points

The Parties shall exchange names and addresses of contact points in order to facilitate the implementation of this Chapter.

CHAPTER 6

SANITARY AND PHYTOSANITARY MEASURES

ARTICLE 6.1

Scope

This Chapter applies to sanitary and phytosanitary measures as defined in Annex A to the SPS Agreement which may, directly or indirectly, affect trade between the Parties.

ARTICLE 6.2

Incorporation of the SPS Agreement

The SPS Agreement applies to this Chapter and is hereby incorporated into and made part of this Agreement, *mutatis mutandis*. The State Parties agree to take due account of decisions adopted by consensus within the framework of the WTO Committee on Sanitary and Phytosanitary Measures.

ARTICLE 6.3

International Standards

For the purposes of this Chapter, "international standards" means the standards, guidelines and recommendations of the Codex Alimentarius Commission, the WOAH and the International Plant Protection Convention (IPPC).

ARTICLE 6.4

Consultations

1. Upon request of a State Party, which considers that a sanitary or phytosanitary measure, or a draft measure, of another State Party has created, or is likely to create, an obstacle to trade, consultations shall be held with the objective of finding a mutually acceptable solution.

2. If an exporting State Party considers that a sanitary or phytosanitary measure, or a draft measure, that is planned to be adopted by a regional integration scheme in which another State Party participates or has agreed to harmonise its domestic laws and regulations with, is likely to create an obstacle to trade, that State Party may bring their concerns to the attention of the importing State Party. Upon request of a State Party, the State Parties shall hold consultations and seek possible ways to address the matter.

3. Upon request of a State Party, consultations shall be held on the procedures and criteria employed when conducting import checks by an importing State Party of products of an exporting State Party

4. Consultations shall take place within 30 days from the receipt of the request by the contact point. In case of perishable goods, consultations between the competent authorities shall be held without undue delay. Such consultations may be held by any method agreed by the consulting State Parties. The Joint Committee shall be informed of the consultations.

5. In case an emergency measure is applied, consultations shall be held without undue delay upon request of a State Party. The State Parties shall exchange comments and information on the measure and its justification.

6. Consultations under this Article shall be without prejudice to Chapter 15 (Dispute Settlement).

ARTICLE 6.5

Import Checks

1. The State Parties shall carry out import checks and border controls as expeditiously as possible in a manner that is no more trade-restrictive than necessary. Import checks shall be carried out taking international standards into account.

2. In case products or consignments are rejected as a result of non-compliance with sanitary and phytosanitary import requirements at the import check, the importing State Party shall notify the exporting State Party of the results of the import checks as soon as possible and normally within five working days from the date of rejection. Upon request, the importing State Party shall provide the exporting State Party with the factual basis and scientific justification as soon as possible.

3. If import checks reveal non-compliance with the relevant sanitary and phytosanitary import requirements, the action taken by the competent authorities of the importing State Party shall be, in accordance with its domestic laws and regulations, justified, based on the identified non-compliance and no more trade-restrictive than required to achieve the importing State Party's appropriate level of sanitary or phytosanitary protection.

4. Goods subject to random and routine import checks should not be detained pending test results.

5. If a State Party detains a product at the border due to a perceived risk, it shall take a decision on clearance as soon as possible and make every effort to avoid deterioration of perishable goods.

6. If a State Party rejects a product at a port of entry, it shall ensure that appropriate legal procedures exist for the importer (the person responsible for the consignment) or his or her representative to appeal the decision.

ARTICLE 6.6

Certificates

1. Official certificates, where required, should be in line with international standards.

2. A State Party which introduces or modifies a certificate shall inform the other State Parties of the proposed new or revised certificate, in English, as soon as possible. The State Party shall provide the factual basis and justification of the new or modified certificate and give the other State Parties sufficient time to adapt to the new requirements, except in emergency cases, provided they are scientifically justified.

ARTICLE 6.7

Approval of Products and Establishments for Imports of Products of Animal Origin

5. The importing State Party may require an assessment of the exporting State Party and its competent authority in order to allow imports from a specific category of food of animal origin. The State Parties agree to use system audits as their preferred assessment method. System audits shall be conducted in accordance with the SPS Agreement and relevant international standards, guidelines and recommendations.[4] The State Parties shall justify the need to use a plant-by-plant approach for the approval of establishments.

6. If necessary and justified, the importing State Party may conduct an inspection or audit of an establishment for the purposes of verifying that the establishment complies with its sanitary requirements.

7. The costs incurred in carrying out the audit shall be borne by the importing State Party, unless the State Parties concerned decide otherwise.

8. If the importing State Party requires a list of establishments, the competent authorities of the exporting State Party shall ensure that lists of establishments are drawn up, kept up-to-date and notified to the importing State Party.[5] The competent authorities of the exporting State Party shall guarantee that the listed establishments comply with relevant requirements of the importing State Party or with requirements that have been determined to be equivalent with those requirements.

9. The importing State Party shall publish, without undue delay, the approved categories of food of animal origin and/or lists of establishments from the other State Parties and keep this information up to date. The legal basis and procedures for the approval of categories of food of animal origin and/or lists of establishments shall also be made publicly available.

10. Upon request of a State Party which considers that the approval of specific categories of food of animal origin or lists of establishments is likely to create, or has

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[4] In particular, standards and guidelines developed by the Codex Alimentarius Committee on Food Import and Export Inspection and Certification Systems (CAC/GL 26-1997).

[5] The EFTA States participate in the European Internal Market. The EU's lists of Non-EU Countries Authorised Establishments are also valid for the EFTA States.

created, an obstacle to trade, consultations shall be held in accordance with Article 6.4 (Consultations).

ARTICLE 6.8

Cooperation

With a view to increasing mutual understanding of their respective systems and facilitating access to their respective markets, the State Parties shall strengthen their cooperation. Such cooperation may include, but shall not be limited to:

(a) collaboration between the relevant scientific institutions that provide the State Parties with scientific advice and risk analysis;

(b) bilateral technical cooperation, on mutually agreed terms and conditions, to improve the State Parties' sanitary and phytosanitary measures, and related activities, including research, process technology, among others;

(c) exchange of positions, where possible, in regional or multilateral fora in which international sanitary and phytosanitary standards, guidelines or recommendations are developed or related aspects are negotiated in particular in international standard setting bodies recognised in the framework of the SPS Agreement; and

(d) exchange of information on the procedures employed when conducting import checks on verifications of compliance with sanitary and phytosanitary requirements.

ARTICLE 6.9

Transparency and Notifications

1. The State Parties reaffirm their international transparency obligations and agree to notify:

(a) any draft sanitary and phytosanitary measures, in accordance with the SPS Agreement;

(b) animal health status changes, such as the outbreaks of exotic diseases, diseases, infections and infestations listed by the WOAH in its Terrestrial and Aquatic Codes or sanitary warnings on food products, within 24 hours from the confirmation of the problem; and

(c) phytosanitary status changes according to the provisions of the IPPC, such as the occurrence, outbreak or spread of pests that may be of immediate or potential danger, if possible within 72 hours from their verification.

2. In case a State Party does not fulfil the obligations under paragraph 1, it shall notify the respective sanitary and phytosanitary measure to the other State Parties.

3. Each State Party shall ensure that all sanitary and phytosanitary measures in force are publicly available on an official website. Upon request, a State Party shall provide supplementary information regarding import requirements, as far as practicable in English.

4. In every case of adoption of a sanitary or phytosanitary emergency measure affecting trade between the Parties, the State Party adopting the measure shall immediately notify the other State Parties.

ARTICLE 6.10

Equivalent Treatment

Upon request of a State Party, another State Party shall, without undue delay, consider extending to each other equivalent[6] treatment related to sanitary and phytosanitary measures which the State Parties concerned apply, according to their domestic laws and regulations, to the EU or its member states.

ARTICLE 6.11

Contact Points and Competent Authorities

1. The State Parties shall exchange names and addresses of their single contact point in order to facilitate the implementation of this Chapter.

2. Upon entry into force of this Agreement, each State Party shall provide the other State Parties with the name of its official competent authorities.[7] Such information shall also include a description of the distribution of competences between the respective authorities.

3. Each State Party shall notify any substantial change in structure, organisation and division of responsibilities of its competent authorities and contact points to the other State Parties.

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[6] For the purposes of this Article, the term "equivalent" shall not be understood as having the same meaning as the term "equivalence" according to the SPS Agreement.

[7] For the purposes of this Chapter, "the official competent authorities" means the authorities of the State Parties that according to the respective domestic laws and regulations have been empowered to enforce the domestic laws and regulations of a State Party falling within the scope of this Chapter to ensure compliance with the requirements of this Chapter, or any other authority to which such authority has delegated that power.

CHAPTER 7

DIALOGUES

ARTICLE 7.1

Cooperation in Combating Antimicrobial Resistance

1. The State Parties recognise that antimicrobial resistance is a serious threat to human and animal health. Antibiotic use in animal production can contribute to antimicrobial resistance that may represent a risk to humans, either through direct infection by resistant zoonotic bacteria or by the transfer of resistance determinants to other bacteria. The State Parties recognise that the nature of the threat is transnational.

2. The State Parties agree to cooperate and follow existing and future guidelines, standards, recommendations and actions developed in relevant international organisations, initiatives and national plans aiming to promote reduced use of antibiotics and relating to animal production and veterinary practices.

3. The State Parties support the implementation of agreed international action plans on antimicrobial resistance.

ARTICLE 7.2

Maximum Residual Levels

The State Parties agree to:

(a) exchange scientific and technical information on food and feed safety, animal and plant health areas, including risk assessment and the scientific information supporting the establishment of Maximum Residue Levels (MRL);

(b) exchange information on new policies, domestic laws and regulations, guidelines, good agricultural practices, in particular those aimed at improving the authorisation process of veterinary medicines, pesticide products and food and feed additives and their uses; and

(c) facilitate scientific cooperation, dialogue and the exchange of information in particular regarding risk assessment and processes for authorising veterinary medicines, pesticide products and food and feed additives and for establishing their respective MRL.

ARTICLE 7.3

Animal Welfare

1. The State Parties recognise that animals are sentient beings. They undertake to reach a common understanding on animal welfare matters for their mutual benefit taking into consideration the WOAH guidelines and recommendations, and to respect trade conditions that aim to protect animal welfare.

2. The State Parties undertake to exchange information, expertise and experiences in animal welfare in order to improve, whenever necessary, their respective approaches on regulatory standards including those related to production systems, transportation, traceability and slaughter of animals.

3. The State Parties undertake to cooperate in international fora, including the WOAH, with the aim to promote the further development of good animal welfare practices and their implementation.

ARTICLE 7.4

Agricultural Biotechnology

This dialogue shall cover, *inter alia*:

(a) exchange of information on policies, legislation, guidelines, and good practices of agricultural biotechnology products;

(b) exchange of information on national positions in the framework of relevant international organisations;

(c) discussions of specific topics on biotechnology that could have impact on trade between the Parties;

(d) exchange of information on topics related to asynchronous authorisations of genetically modified organisms (GMOs);

(e) exchange of information on the economic and trade outlook of authorisations of GMOs, if available; and

(f) exchange of information about low level presence of GMOs in shipments that are non-authorised in the importing State Party but authorised in the exporting State Party.

CHAPTER 8

TRADE IN SERVICES

ARTICLE 8.1

Scope and Coverage

1. This Chapter applies to measures by the State Parties affecting trade in services and taken by central, regional or local governments and authorities as well as by non-governmental bodies in the exercise of powers delegated by central, regional or local governments or authorities. It applies to all services sectors.

2. With respect to air transport services, this Chapter shall not apply to measures affecting air traffic rights or measures affecting services directly related to the exercise of air traffic rights, except measures affecting:

(a) aircraft repair and maintenance services;

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

(c) computer reservation systems (CRS) services.

3. Nothing in this Chapter shall be construed to impose any obligation on the State Parties regarding government procurement**,** which shall be subject to Chapter 11 (Government Procurement).

ARTICLE 8.2

Definitions

For the purposes of this Chapter:

(a) "trade in services" means the supply of a service:

(i) from the territory of a State Party to the territory of another State Party;

(ii) in the territory of a State Party to the service consumer of another State Party;

(iii) by a service supplier of a State Party, through commercial presence in the territory of another State Party;

(iv) by a service supplier of a State Party, through presence of natural persons of a State Party in the territory of another State Party.

(b) "services" means any service in any sector, except services supplied in the exercise of governmental authority;

(c) "a service supplied in the exercise of governmental authority" means any service which is supplied neither on a commercial basis nor in competition with one or more service suppliers;

(d) "service supplier" means any person that supplies, or seeks to supply, a service;[8]

(e) "natural person of another State Party" means a natural person who, under the legislation of that State Party, is:

(i) a national of that State Party who resides in the territory of any Member of the WTO; or

(ii) a permanent resident of that State Party who resides in the territory of a State Party, if the former State Party accords substantially the same treatment to its permanent residents as to its nationals with respect to measures affecting trade in services. For the purpose of the supply of a service through presence of natural persons (Mode 4), this definition covers a permanent resident of that other State Party who resides in the territory of a State Party;

(f) "juridical person of another State Party" means a juridical person which is either:

(i) constituted or otherwise organised under the domestic laws and regulations of that State Party, and is engaged in substantive business operations in the territory of a State Party; or

(ii) in the case of the supply of a service through commercial presence, owned or controlled by:

(aa) natural persons of that State Party; or

(bb) juridical persons of that State Party identified under subparagraph (f) (i);

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

(h) "supply of a service" includes the production, distribution, marketing, sale and delivery of a service;

[8] Where the service is not supplied or sought to be supplied directly by a juridical person but through other forms of commercial presence such as a branch or a representative office, the service supplier shall, nonetheless, through such commercial presence be accorded the treatment provided for service suppliers under this Chapter. Such treatment shall be extended to the commercial presence through which the service is supplied or sought to be supplied and need not be extended to any other parts of the service supplier located outside the territory where the service is supplied or sought to be supplied.

(i) "measures by a State Party affecting trade in services" include measures with respect to:

(i) the purchase, payment or use of a service;

(ii) the access to and use of, in connection with the supply of a service, services which are required by those State Parties to be offered to the public generally;

(iii) the presence, including commercial presence, of persons of a State Party for the supply of a service in the territory of another State Party;

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

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

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

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

(k) "sector" of a service means:

(i) with reference to a specific commitment, one or more subsectors of that service, as specified in a State Party's Schedule of Specific Commitments; or

(ii) the whole of that service sector, including all of its subsectors;

(l) "service of another State Party" means a service which is supplied:

(i) from or in the territory of that State Party, or in the case of maritime transport, by a vessel registered under the domestic laws and regulations of that State Party, or by a person of that State Party which supplies the service through the operation of a vessel or its use in whole or in part; or

(ii) in the case of the supply of a service through commercial presence or through the presence of natural persons, by service supplier of that State Party;

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

(n) "service consumer" means any person that receives or uses a service;

(o) "person" means either a natural person or a juridical person;

(p) "juridical person" means any legal entity duly constituted or otherwise organised under applicable law, whether for profit or otherwise, and whether privately-owned or governmentally-owned, including any

corporation, trust, partnership, joint venture, sole proprietorship or association;

(q) a juridical person is:

(i) "owned" by persons of a State Party if more than 50 percent of the equity interest in it is beneficially owned by persons of that State Party;

(ii) "controlled" by persons of a State Party if such persons have the power to name a majority of its directors or otherwise to legally direct its actions;

(iii) "affiliated" with another person if it controls, or is controlled by, that other person; or if it and the other person are both controlled by the same person; and

(r) "direct taxes" means all taxes on total income, on total capital or on elements of income or of capital, including taxes on gains from the alienation of property, taxes on estates, inheritances and gifts, and taxes on the total amounts of wages or salaries paid by enterprises, as well as taxes on capital appreciation.

ARTICLE 8.3

Most-Favoured-Nation Treatment

1. Without prejudice to measures taken in accordance with Article VII of GATS, and except as provided for in its List of MFN Exemptions contained in Annex XI (List of MFN Exemptions), each State Party shall accord immediately and unconditionally, with respect to all measures affecting the supply of services, to services and service suppliers of another State Party treatment no less favourable than the treatment it accords to like services and service suppliers of any non-Party.

2. Treatment granted under other existing or future agreements concluded by a State Party and notified under Article V or Article V*bis* of GATS shall not be subject to paragraph 1.

3. If a State Party concludes or amends an agreement referred to in paragraph 2, it shall notify the other State Parties without delay and endeavour to accord to the other State Parties treatment no less favourable than that provided under that new agreement or under the scope of the amendment to the existing agreement. The State Party concluding or amending an agreement shall, upon request by another State Party, negotiate the incorporation into this Agreement of a treatment no less favourable than that provided under that former agreement.

4. This Chapter shall not be so construed as to prevent any State Party from conferring or according advantages to adjacent countries in order to facilitate exchanges limited to contiguous zones of services that are both locally produced and consumed.

ARTICLE 8.4

Market Access

1. With respect to market access through the modes of supply identified in subparagraph (a) of Article 8.2 (Definitions), each State Party shall accord services and service suppliers of another State Party treatment no less favourable than that provided for under the terms, limitations and conditions agreed and specified in its Schedule of Specific Commitments.[9]

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

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

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

(c) limitations on the total number of service operations or on the total quantity of service output expressed in terms of designated numerical units in the form of quotas or the requirement of an economic needs test;[10]

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

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

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

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[9] If a State Party undertakes a market-access commitment in relation to the supply of a service through the mode of supply referred to in subparagraph 1 (a) (i) of Article 8.2 (Definitions) and if the cross-border movement of capital is an essential part of the service itself, that State Party is thereby committed to allow such movement of capital. If a State Party undertakes a market access commitment in relation to the supply of a service through the mode of supply referred to in subparagraph 1 (a) (iii) of Article 8.2 (Definitions), it is thereby committed to allow related transfers of capital into its territory.

[10] Subparagraph 2 (c) does not cover measures of a State Party which limit inputs for the supply of services.

ARTICLE 8.5

National Treatment

1. In the sectors inscribed in its Schedule of Specific Commitments, and subject to any conditions and qualifications set out therein, each State Party shall accord to services and service suppliers of another State Party, with respect to all measures affecting the supply of services, treatment no less favourable than it accords to its own like services and service suppliers.[11]

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

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

ARTICLE 8.6

Additional Commitments

The State Parties may negotiate commitments with respect to measures affecting trade in services not subject to scheduling under Articles 8.4 (Market Access) or 8.5 (National Treatment), including those regarding qualifications, standards or licensing matters. Such commitments shall be inscribed in a State Party's Schedule of Specific Commitments.

ARTICLE 8.7

Domestic Regulation

1. In sectors where specific commitments are undertaken, each State Party shall ensure that all measures of general application affecting trade in services are administered in a reasonable, objective and impartial manner.

2. Each State Party shall maintain or institute as soon as practicable judicial, arbitral or administrative tribunals or procedures which provide, at the request of an affected service supplier, for the prompt review of, and where justified, appropriate remedies for, administrative decisions affecting trade in services. Where such procedures are not independent of the agency entrusted with the administrative decision concerned, each

[11] Specific commitments assumed under this Article shall not be construed to require any State Party to compensate for any inherent competitive disadvantages, which result from the foreign character of the relevant services or service suppliers.

State Party shall ensure that the procedures in fact provide for an objective and impartial review.

3. Where authorisation is required for the supply of a service on which a specific commitment has been made, the competent authorities of a State Party shall, within a reasonable period of time after the submission of an application considered complete under its domestic laws and regulations, inform the applicant of the decision concerning the application. At the request of the applicant, the competent authorities of the State Party shall provide, without undue delay, information concerning the status of the application.

4. With a view to ensuring that measures relating to qualification requirements and procedures, technical standards and licensing requirements and procedures do not constitute unnecessary barriers to trade in services, the State Parties shall jointly review any disciplines developed in the WTO in accordance with paragraph 4 of Article VI of GATS. The Joint Committee shall decide on the incorporation of such disciplines into this Agreement. The State Parties may also, jointly or bilaterally, decide to develop further disciplines.

5. In sectors in which a State Party has undertaken specific commitments, pending the entry into force of a decision incorporating WTO disciplines for these sectors pursuant to paragraph 4, that State Party shall not apply licensing and qualification requirements or procedures and technical standards that nullify or impair such specific commitments in a manner which is:

(a) not based on objective and transparent criteria, such as competence and the ability to supply the service;

(b) more burdensome than necessary to ensure the quality of the service; and

(c) in the case of licensing procedures, in itself a restriction on the supply of the service.

ARTICLE 8.8

Recognition

1. For the purposes of fulfilment of its relevant standards or criteria for authorisation, licensing or certification of service suppliers, each State Party shall give due consideration to any requests by another State Party to recognise the education or experience obtained, requirements met, or licences or certifications granted in that State Party. Such recognition may be based upon an agreement or arrangement with that State Party, or accorded autonomously.

2. Where a State Party recognises, by agreement or arrangement, the education or experience obtained, requirements met, or licences or certifications granted, in a non-Party, that State Party shall afford another State Party adequate opportunity to negotiate its accession to such an agreement or arrangement, whether existing or future, or to negotiate a comparable agreement or arrangement with it. Where a State Party accords recognition autonomously, it shall afford adequate opportunity for another State Party to

demonstrate that the education or experience obtained, requirements met, or licences or certifications granted, in the territory of that State Party should also be recognised.

3. Any such agreement or arrangement or autonomous recognition shall be in conformity with the relevant WTO provisions, in particular paragraph 3 of Article VII of GATS.

4. Where professional bodies of the State Parties are mutually interested in establishing dialogues on issues relating to recognition of professional qualifications, licensing or registration, each State Party should consider supporting the dialogue of those bodies where requested and appropriate.

ARTICLE 8.9

Procedures for Recognition

Where a State Party has requirements for the authorisation, licensing or certification of service suppliers, whether by competent governmental authorities or relevant professional bodies, as the case may be, that State Party shall:

(a) establish or maintain procedures under which a service supplier has ways and means to request the recognition of its qualifications obtained in another State Party; and

(b) inform the service supplier requesting recognition when the qualifications obtained in another State Party are found to be insufficient. In that case, that State Party shall endeavour to provide, under its procedures, for at least one means to achieve equivalence.

ARTICLE 8.10

Movement of Natural Persons

1. This Article applies to measures affecting natural persons who are service suppliers of a State Party, and natural persons of a State Party who are employed by a service supplier of a State Party, with respect to the supply of a service.

2. This Chapter shall not apply to measures affecting natural persons seeking access to the employment market of a State Party, nor shall it apply to measures regarding citizenship, residence or employment on a permanent basis.

3. Natural persons covered by a specific commitment shall be allowed to supply the service in accordance with the terms of that commitment.

4. This Chapter shall not prevent a State Party from applying measures to regulate the entry of natural persons of another State Party into, or their temporary stay in, its territory, including those measures necessary to protect the integrity of, and to ensure the orderly movement of natural persons across its borders, provided that such measures are

not applied in such a manner as to nullify or impair the benefits accruing to any State Party under the terms of a specific commitment.[12]

ARTICLE 8.11

Transparency

1. Each Party shall publish promptly and, except in emergency situations, at the latest by the time of their entry into force, all relevant measures of general application which pertain to or affect the operation of this Chapter. International agreements pertaining to or affecting trade in services to which a Party is a signatory shall also be published.

2. If publication in accordance with paragraph 1 is not practicable, such information shall be made otherwise publicly available.

ARTICLE 8.12

Disclosure of Confidential Information

Nothing in this Chapter shall require any State Party to provide confidential information, the disclosure of which would impede law enforcement, or otherwise be contrary to the public interest, or which would prejudice legitimate commercial interests of particular enterprises, public or private.

ARTICLE 8.13

Monopolies and Exclusive Service Suppliers

1. Each State Party shall ensure that any monopoly supplier of a service in its territory does not, in the supply of the monopoly service in the relevant market, act in a manner inconsistent with that State Party's obligations under Article 8.3 (Most-Favoured Nation Treatment) and its Schedule of Specific Commitments.

2. Where a State Party's monopoly supplier competes, either directly or through an affiliated company, in the supply of a service outside the scope of its monopoly rights and which is subject to that State Party's Schedule of Specific Commitments, that State Party shall ensure that such a supplier does not abuse its monopoly position to act in its territory in a manner inconsistent with such commitments.

3. This Article shall also apply to cases of exclusive service suppliers, where a State Party, formally or in effect:

(a) authorises or establishes a small number of service suppliers; and

(b) substantially prevents competition among those suppliers in its territory.

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[12] The sole fact of requiring a visa for natural persons shall not be regarded as nullifying or impairing benefits under a specific commitment.

ARTICLE 8.14

Payments and Transfers

1. Except under the circumstances referred to in Article 8.15 (Restrictions to Safeguard the Balance-of-Payments), no State Party shall apply restrictions on international transfers and payments for current transactions with another State Party.

2. Nothing in this Chapter shall affect the rights and obligations of the State Parties under the Articles of Agreement of the International Monetary Fund (IMF), including the use of exchange actions, which are in conformity with the Articles of Agreement of the IMF, provided that a State Party shall not impose restrictions on capital transactions inconsistent with its specific commitments regarding such transactions, except under Article 8.15 (Restrictions to Safeguard the Balance-of-Payments) or at the request of the IMF.

ARTICLE 8.15

Restrictions to Safeguard the Balance-of-Payments

1. In the event of serious balance-of-payments and external financial difficulties or threat thereof, a State Party may adopt or maintain restrictions on trade in services on which it has undertaken specific commitments, including on payments or transfers for transactions related to such commitments. It is recognised that particular pressures on the balance-of-payments of a State Party in the process of economic development or economic transition may necessitate the use of restrictions to ensure, inter alia, the maintenance of a level of financial reserves adequate for the implementation of its program of economic development or economic transition.

2. The restrictions referred to in paragraph 1 shall:

(a) not discriminate against a State Party in comparison to another State Party or to a non-Party;

(b) be consistent with the Articles of Agreement of the IMF;

(c) avoid unnecessary damage to the commercial, economic and financial interests of another State Party;

(d) not exceed those necessary to deal with the circumstances described in paragraph 1;

(e) be temporary and be phased out progressively as the situation specified in paragraph 1 improves.

3. In determining the incidence of such restrictions, the State Parties may give priority to the supply of services which are more essential to their economic or development programs. However, such restrictions shall not be adopted or maintained for the purpose of protecting a particular service sector.

4. Any restrictions adopted or maintained under paragraph 1, or any changes thereof, shall be promptly notified to the Joint Committee.

ARTICLE 8.16

General Exceptions

Article XIV of GATS applies to this Chapter and is hereby incorporated into and made part of this Agreement, *mutatis mutandis*.

ARTICLE 8.17

Security Exceptions

Article XIV*bis* of GATS applies to this Chapter and is hereby incorporated into and made part of this Agreement, *mutatis mutandis*.

ARTICLE 8.18

Schedules of Specific Commitments

1. Each State Party shall set out in a Schedule the Specific Commitments it undertakes under Articles 8.4 (Market Access), 8.5 (National Treatment) and 8.6 (Additional Commitments). With respect to sectors where such commitments are undertaken, each Schedule of Specific Commitments shall specify:

(a) terms, limitations and conditions on market access;

(b) conditions and qualifications on national treatment;

(c) undertakings relating to additional commitments referred to in Article 8.6 (Additional Commitments); and

(d) where appropriate, the timeframe for implementation of such commitments and the date of entry into force of such commitments.

2. Measures inconsistent with both Articles 8.4 (Market Access) and 8.5 (National Treatment) shall be inscribed in the column relating to Article 8.4 (Market Access). In this case, the inscription shall be considered to provide an additional condition or qualification to Article 8.5 (National Treatment).

3. The State Parties' Schedules of Specific Commitments are set out in Annex X (Schedules of Specific Commitments).

ARTICLE 8.19

Modification of Schedules

1. The State Parties shall, upon written request by a State Party, hold consultations to consider any modification or withdrawal of a specific commitment in the requesting State Party's Schedule of Specific Commitments. The consultations shall be held within three months from the receipt of the request.

2. In the consultations, the State Parties shall aim to ensure that a general level of mutually advantageous commitments no less favourable than that provided for in the Schedule of Specific Commitments prior to such consultations is maintained.

ARTICLE 8.20

Review

With the objective of further liberalising trade in services between them, the State Parties shall review whenever necessary, but normally every two years, their Schedules of Specific Commitments and their Lists of MFN Exemptions, taking into account in particular any autonomous liberalisation and on-going work in the WTO. The first review shall take place no later than three years from the entry into force of this Agreement.

ARTICLE 8.21

Annexes

The following Annexes form an integral part of this Chapter:

(a) Annex X (Schedules of Specific Commitments);

(b) Annex XI (List of MFN Exemptions);

(c) Annex XII (Financial Services);

(d) Annex XIII (Telecommunication Services); and

(e) Annex XIV (Movement of Natural Persons).

CHAPTER 9

INVESTMENT

ARTICLE 9.1

Scope and Coverage

1. This Chapter applies to commercial presence in all sectors, with the exception of services sectors as set out in Article 8.1 (Scope and Coverage).[13]

2. Notwithstanding paragraph 1, the provisions regarding investment facilitation and cooperation (Articles 9.16, Administration of this Chapter, 9.17; Focal Points; 9.18, Provision of Information; and 9.19, Cooperation Between Agencies Responsible for Investment Promotion) apply to commercial presence in all sectors.

3. This Chapter shall be without prejudice to the interpretation or application of other international agreements relating to investment or taxation to which one or several EFTA States and one or several MERCOSUR States are parties.

4. Nothing in this Chapter shall be construed to impose any obligation on the State Parties regarding government procurement**,** which shall be subject to Chapter 11 (Government Procurement).

ARTICLE 9.2

Definitions

For the purposes of this Chapter:

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

(b) "juridical person of a State Party" means a juridical person constituted or otherwise organised under the domestic laws and regulations of a State Party and engaged in substantive business operations in the territory of that State Party;

(c) "natural person" means a person who has the nationality, or is a permanent resident, of a State Party in accordance with its applicable domestic laws and regulations;

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13. It is understood that services specifically exempted from the scope of Chapter 8 (Trade in Services) shall not fall within the scope of this Chapter.

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

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

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

within the territory of another State Party for the purpose of performing an economic activity.[14]

ARTICLE 9.3

National Treatment

In the sectors covered by Annex XV (Schedules of Specific Commitments) and subject to any conditions and qualifications set out therein, each State Party shall accord to juridical and natural persons of another State Party and to the commercial presence of such persons, treatment no less favourable than that it accords, in like situations, to its own juridical and natural persons and to the commercial presence of such persons.

ARTICLE 9.4

Schedule of Specific Commitments

The sectors liberalised by each State Party pursuant to this Chapter and the conditions and qualifications referred to in Article 9.3 (National Treatment) are set out in the Schedules of Specific Commitments included in Annex XV (Schedules of Specific Commitments).

ARTICLE 9.5

Modification of Schedules

1. The State Parties shall, upon written request by a State Party, hold consultations to consider any modification or withdrawal of a specific commitment in the requesting State Party's Schedule of Specific Commitments. The consultations shall be held within three months from the receipt of the request.

2. In the consultations, the State Parties shall aim to ensure that a general level of mutually advantageous commitments no less favourable than that provided for in the Schedule of Specific Commitments prior to such consultations is maintained.

[14] Where the economic activity is not performed directly by a juridical person but through other forms of commercial presence such as a branch or a representative office, the juridical person shall, nonetheless, through such commercial presence be accorded the treatment provided for under this Chapter. Such treatment shall be extended to the commercial presence through which the substantive business operations are carried out and need not be extended to any other parts of the commercial presence located outside the territory where the substantive business operations are carried out.

Modifications of Schedules of Specific Commitments are subject to the procedures set out in Articles 14 (Joint Committee) and 16.2 (Amendments).

ARTICLE 9.6

Key Personnel

1. Each State Party shall, subject to its domestic laws and regulations, grant natural persons of another State Party, and key personnel who are employed by natural or juridical persons of another State Party, entry and temporary stay in its territory in order to engage in activities connected with commercial presence, including the provision of advice or key technical services.

2. Each State Party shall, subject to its domestic laws and regulations, permit natural or juridical persons of another State Party, and their commercial presence, to employ, in connection with commercial presence, any key personnel of the natural or juridical person's choice regardless of nationality and citizenship provided that such key personnel has been permitted to enter, stay and work in its territory and that the employment concerned conforms to the terms, conditions and time limits of the permission granted to such key personnel.

3. Each State Party shall, subject to its domestic laws and regulations, grant entry and temporary stay and provide any necessary confirming documentation to the spouse and minor children of a natural person who has been granted entry, temporary stay and authorisation to work in accordance with paragraphs 1 and 2. The spouse and minor children shall be admitted for the period of the stay of that person.

ARTICLE 9.7

Right to Regulate

1. The State Parties reaffirm their inherent right to regulate within their territories to achieve legitimate policy objectives, such as the protection of public health, safety, the environment or public morals, social or consumer protection, the conservation of living or non-living exhaustible natural resources, or the promotion and protection of cultural diversity.

2. A State Party shall not waive or otherwise derogate from, or offer to waive or otherwise derogate from, measures according to paragraph 1 as an encouragement for the establishment, acquisition, expansion or retention in its territory of a commercial presence of persons of another State Party or a non-Party.

ARTICLE 9.8

Responsible Business Conduct

The State Parties commit to promoting responsible business conduct, including by encouraging relevant practices such as responsible management of supply chains by businesses. In this regard, the State Parties acknowledge the importance of internationally recognised principles and guidelines, such as the OECD Guidelines for Multinational Enterprises, the ILO Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy, the UN Global Compact and the UN Guiding Principles on Business and Human Rights.

ARTICLE 9.9

Transparency

The State Parties shall promptly publish, or otherwise make publicly available in a manner as to enable the State Parties and their juridical and natural persons to become acquainted with them, their laws, regulations, judicial decisions, administrative rulings of general application as well their respective international agreements, which affect matters covered by this Chapter.

ARTICLE 9.10

Disclosure of Confidential Information

Nothing in this Chapter shall require any State Party to provide confidential information, the disclosure of which would impede law enforcement, or otherwise be contrary to the public interest, or would prejudice the legitimate commercial interests of any juridical or natural person.

ARTICLE 9.11

Payments and Transfers

1. Except under the circumstances envisaged in Article 9.12 (Restrictions to Safeguard the Balance-of-Payments), a State Party shall not apply restrictions on current payments and capital movements relating to commercial presence activities in non-services sectors.

2. Nothing in this Chapter shall affect the rights and obligations of the State Parties under the Articles of Agreement of the IMF, including the use of exchange actions, which are in conformity with the Articles of Agreement of the IMF, provided that no State Party shall impose restrictions on capital transactions inconsistent with its specific commitments regarding such transactions, except under Article 9.12 (Restrictions to Safeguard the Balance-of-Payments) or at the request of the IMF.

ARTICLE 9.12

Restrictions to Safeguard the Balance-of-Payments

1. In the event of serious balance-of-payments and external financial difficulties or threat thereof, a State Party may adopt or maintain restrictions in sectors on which it has undertaken specific commitments, including on payments or transfers for transactions related to such commitments. It is recognised that particular pressures on the balance of payments of a State Party in the process of economic development or economic transition may necessitate the use of restrictions to ensure, *inter alia*, the maintenance of a level of financial reserves adequate for the implementation of its programme of economic development or economic transition.

2. The restrictions referred to in paragraph 1 shall:

(a) not discriminate against a State Party in comparison to another State Party or to a non-Party;

(b) be consistent with the Articles of Agreement of the IMF;

(c) avoid unnecessary damage to the commercial, economic and financial interests of another State Party;

(d) not exceed those necessary to deal with the circumstances described in paragraph 1; and

(e) be temporary and be phased out progressively as the situation specified in paragraph 1 improves.

3. In determining the incidence of such restrictions, the State Parties may give priority to commercial presence which is more essential to their economic or development programmes. However, such restrictions shall not be adopted or maintained for the purpose of protecting a particular sector.

4. A State Party adopting or maintaining such restrictions shall promptly notify the Joint Committee.

ARTICLE 9.13

General Exceptions

Article XIV of GATS applies to this Chapter and is hereby incorporated into and made part of this Agreement, *mutatis mutandis*.

ARTICLE 9.14

Security Exceptions

Article XIV*bis* of GATS applies to this Chapter and is hereby incorporated into and made part of this Agreement, *mutatis mutandis*.

ARTICLE 9.15

Review

The Joint Committee shall review, whenever necessary, but normally every two years, the possibility to further improve the commitments of the State Parties contained in this Chapter, taking into account, *inter alia*, the commitments undertaken with non-Parties in agreements concluded after the entry into force of this Agreement.

ARTICLE 9.16

Administration of this Chapter

Upon request of a State Party, the Joint Committee shall:

(a) exchange information and consider developments relevant for the establishment and expansion of commercial presence and investment facilitation;

(b) endeavour to resolve and prevent disputes that may arise regarding the interpretation or application of this Chapter; and

(c) identify opportunities for cooperation and further investment facilitation, with a view to developing and coordinating, as appropriate, the implementation of cooperation and facilitation programmes which have been mutually agreed by the interested State Parties.

ARTICLE 9.17

Focal Points

1. The State Parties shall establish focal points in order to facilitate communication, information flow and respond to inquiries from another State Party regarding measures affecting matters covered by this Chapter.

2. The focal points shall have the following responsibilities:

(a) interaction and cooperation with the focal points of the other State Parties in accordance with this Chapter;
(b) interaction with the State Party's competent governmental authorities and natural and juridical persons of another State Party in accordance with this Chapter, including in the event of inquiries brought by such persons; and
(c) facilitate access for natural and juridical persons of another State Party to the information referred to in Article 9.18 (Provision of Information).

3. The focal points referred to in paragraph 1 are set out in Annex XVI (Focal Points for Investment and Agencies Responsible for Investment Promotion).

ARTICLE 9.18

Provision of Information

1. Upon request of another State Party and through the focal points referred to in Article 9.17 (Focal Points), each State Party shall, to the extent possible, provide information to the requesting State Party on:

(a) laws, regulations, judicial decisions and administrative rulings of general application made effective by a State Party, and agreements in force between the State Parties, which affect matters covered by this Chapter as referred to in Article 9.9 (Transparency); and

(b) measures to promote investments.

2. Upon request of another State Party, each State Party shall provide the requesting State Party with details of relevant publications or websites where information referred to in paragraph 1 is made available.

ARTICLE 9.19

Cooperation between Agencies Responsible for Investment Promotion

1. The State Parties shall encourage their agencies or entities responsible for the promotion of investments to share experiences and relevant information and to identify areas for cooperation and joint events to the extent possible.

2. The agencies or entities referred to in paragraph 1 are set out in Annex XVI (Focal Points for Investment and Agencies Responsible for Investment Protection).

CHAPTER 10

INTELLECTUAL PROPERTY

ARTICLE 10

Protection of Intellectual Property Rights

1. The State Parties shall grant and ensure adequate, effective and non-discriminatory protection of intellectual property rights, and provide for measures for the enforcement of such rights against infringement thereof, including counterfeiting and piracy, in accordance with this Chapter, Annex XVII (Protection of Intellectual Property Rights), the Appendix to Annex XVII (Geographical Indications) and the international agreements referred to in paragraph 1 of Article 2 of Annex XVII.

2. Each State Party shall be free to determine the appropriate method of implementing this Chapter, Annex XVII (Intellectual Property Rights) and the Appendix (Geographical Indications) within its own legal system and practice.

3. The State Parties shall accord to each other's nationals treatment no less favourable than that it accords:

(a) to its own nationals, subject to the exceptions provided for in Article 3 and 5 of the WTO Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS Agreement); and

(b) to nationals of a non-Party. Exemptions from this obligation shall be in accordance with the substantive provisions of the TRIPS Agreement, in particular Articles 4 and 5.

4. This Chapter, Annex XVII (Intellectual Property Rights), and the Appendix (Geographical Indications) shall not affect the freedom of the State Parties to determine whether and under which conditions the exhaustion of intellectual property rights applies.

5. As objectives of this Chapter and Annex, the State Parties recognise that intellectual property rights incentivise research, development and creative activity with a view to promoting economic and social development, fair competition, control of anti-competitive practices, public health, the public domain, as well as the transfer of technology and the dissemination of knowledge. The State Parties acknowledge that the protection and enforcement of intellectual property rights should strike a balance between the legitimate interest of the right holders, society and the public at large.

6. Upon request of a State Party, the Joint Committee shall review this Chapter, Annex XVII (Intellectual Property Rights) and the Appendix (Geographical Indications), with a view to further improving the levels of protection and to avoiding or remedying trade distortions caused by actual levels of protection of intellectual property rights.

CHAPTER 11

GOVERNMENT PROCUREMENT

ARTICLE 11.1

Definitions

For the purposes of this Chapter:

(a) "commercial goods or services" means goods or services of a type generally sold or offered for sale in the commercial marketplace to, and customarily purchased by, non-governmental buyers for non-governmental purposes;

(b) "construction service" means a service that has as its objective the realisation by whatever means of civil or building works, based on Division 51 of the United Nations Provisional Central Product Classification (CPC);

(c) "days" means calendar days;

(d) "electronic auction" means an iterative process that involves the use of electronic means for the presentation by suppliers of either new prices, or new values for quantifiable non-price elements of the tender related to the evaluation criteria, or both, resulting in a ranking or re-ranking of tenders;

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

(f) "limited tendering" means a procurement procedure whereby the procuring entity contacts a supplier or suppliers of its choice;

(g) "measure" means any law, regulation, procedure, administrative guidance or practice, or any action of a procuring entity relating to a covered procurement;

(h) "multi-use list" means a list of suppliers that a procuring entity has determined satisfy the conditions for participation in that list, and that the procuring entity intends to use more than once;

(i) "notice of intended procurement" means a notice published by a procuring entity inviting interested suppliers to submit a request for participation, a tender, or both;

(j) "notice of planned procurement" means a notice published by a procuring entity regarding its future procurement plans;

(k) "offset" means any condition or undertaking that encourages local development or improves a State Party's balance-of-payments accounts,

such as the use of domestic content, the licensing of technology, investment, counter-trade, and similar actions or requirements;

(l) "open tendering" means a procurement procedure where all interested suppliers may submit a tender;

(m) "person" means a natural person or a juridical person;

(i) "natural person" means a person who has the nationality, or is a permanent resident, of a State Party in accordance with its applicable law;

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

(n) "procuring entity" means an entity covered under Appendices 1 to 3 to Annex XVIII (Government Procurement);

(o) "qualified supplier" means a supplier that a procuring entity recognises as having satisfied the conditions for participation;

(p) "selective tendering" means a procurement procedure whereby only qualified suppliers are invited by the procuring entity to submit a tender;

(q) "services" includes construction services as defined in subparagraph (b), unless otherwise specified;

(r) "standard" means a document approved by a recognised body, that provides for common and repeated use, rules, guidelines, or characteristics for goods or services, or related processes and production methods, with which compliance is not mandatory. It may also include or deal exclusively with terminology, symbols, packaging, marking, or labelling requirements as they apply to a good, service, process, or production method;

(s) "supplier" means a person or group of persons that provides or could provide goods or services; and

(t) "technical specification" means a tendering requirement that:

(i) lays down the characteristics of goods or services to be procured, including quality, performance, safety and dimensions, or the processes and methods for their production or provision; or

(ii) addresses terminology, symbols, packaging, marking, or labelling requirements, as they apply to goods or services.

ARTICLE 11.2

Scope and Coverage

1. This Chapter applies to covered procurement for governmental purposes:

   (a) of goods, services, or any combination thereof:

      (i) as specified in the Appendices to Annex XVIII (Government Procurement); and

      (ii) not procured with a view to commercial sale or resale, or for use in the production or supply of goods or services for commercial sale or resale;

   (b) by any contractual means, including purchase, lease, rental or hire purchase, with or without an option to buy;

   (c) for which the value, as estimated in accordance with the rules specified in Article 11.3 (Valuation of Contracts) and Appendix 9 to Annex XVIII (Government Procurement) equals or exceeds the relevant threshold specified in Appendices 1 to 3 to Annex XVIII (Government Procurement) at the time of publication of a notice in accordance with Article 11.12 (Notices);

   (d) by a procuring entity as specified in the Appendices to Annex XVIII (Government Procurement); and

   (e) that is not otherwise excluded from coverage pursuant to paragraph 2 or Annex XVIII (Government Procurement).

2. This Chapter does not apply to:

   (a) acquisition or rental of land, existing buildings, or other immovable property or the rights thereon;

   (b) non-contractual agreements or any form of assistance that a State Party provides, including cooperative agreements, grants, loans, equity infusions, guarantees and fiscal incentives;

   (c) procurement or acquisition of fiscal agency or depository services, liquidation and management services for regulated financial institutions or services related to sale, redemption and distribution of public debt, including loans and government bonds, notes and other securities;

   (d) public employment contracts;

   (e) procurement conducted:

      (i) for the specific purpose of providing international assistance, including development aid;

      (ii) under a particular procedure or condition of an international agreement relating to the stationing of troops or relating to the joint implementation by the signatory countries of a project; or

(iii) under a particular procedure or condition of an international organisation, or funded by international grants, loans or other assistance where the applicable procedure or condition would be inconsistent with this Chapter.

ARTICLE 11.3

Valuation of Contracts

1. In estimating the value of a procurement for the purpose of ascertaining whether it is a covered procurement, a procuring entity shall:

(a) neither divide a procurement into separate procurements nor use a particular method for estimating the value of a procurement with the intention of totally or partially excluding it from the application of this Chapter; and

(b) include the estimated maximum total value of the procurement over its entire duration, taking into account all forms of remuneration, including:

(i) premiums, fees, commissions, interest; and

(ii) where the procurement provides for the possibility of option clauses, the total value of such options.

2 Where an individual requirement for a procurement results in the award of more than one contract, or in the award of contracts in separate parts (hereinafter referred to as "recurring contracts), the calculation shall be based on the estimated maximum total value of the procurement. The estimation of the maximum total value may be based on:

(a) the value of recurring contracts of the same type of good or service awarded during the preceding 12 months or the procuring entity's preceding fiscal year, adjusted, where possible, to take into account anticipated changes in the quantity or value of the good or service being procured over the following 12 months; or

(b) the estimated value of recurring contracts of the same type of good or service to be awarded during the 12 months following the initial contract award or the procuring entity's fiscal year.

3. Where a State Party's domestic laws and regulations allow for contracts to be concluded for an indefinite period and a total price is not specified, the basis for valuation of such contracts shall be based on the estimated monthly instalment multiplied by 48.

ARTICLE 11.4

Security and General Exceptions

1. Nothing in this Chapter shall be construed to prevent a State Party from taking any action or not disclosing any information that it considers necessary for the protection of its essential security interests relating to the procurement of arms, ammunition, or war materials, or to procurement indispensable for national security or for national defence purposes.

2. Subject to the requirement that such measures are not applied in a manner that would constitute a means of arbitrary or unjustifiable discrimination between the State Parties where the same conditions prevail or a disguised restriction on trade between the State Parties, nothing in this Chapter shall be construed to prevent a State Party from imposing or enforcing measures:

(a) necessary to protect public morals, order or safety;

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

(c) necessary to protect intellectual property; or

(d) relating to goods or services of persons with disabilities, philanthropic institutions, or prison labour.

ARTICLE 11.5

National Treatment and Non-Discrimination

1. With respect to any measure related to covered procurement:

(a) Each EFTA State, including its procuring entities, shall accord immediately and unconditionally to the goods and services of the MERCOSUR States and to the suppliers of the MERCOSUR States such goods or services, treatment no less favourable than the treatment accorded to its own goods, services and suppliers;

(b) Each MERCOSUR State, including its procuring entities, shall accord immediately and unconditionally to the goods and services of the EFTA States and to the suppliers of the EFTA State offering such goods or services, treatment no less favourable than the treatment accorded to its own goods, services and suppliers.

2. With respect to any measure regarding covered procurement each State Party, including its procuring entities, shall not:

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

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

3. This Article shall not apply to:

(a) customs duties and charges of any kind imposed on, or in connection with, importation;

(b) the method of levying such duties and charges; or

(c) other import regulations or formalities and measures affecting trade in services different to the ones which specifically regulate public procurement covered under this Chapter.

ARTICLE 11.6

Use of Electronic Means

1. The State Parties shall, to the extent possible, endeavour to use electronic means of communication to permit efficient dissemination of information on government procurement, particularly as regards tender opportunities offered by entities, in accordance with the principles of transparency and non-discrimination.

2. When conducting covered procurement by electronic means, a procuring entity shall:

(a) ensure that the procurement is conducted using information technology systems and software, including those related to authentication and encryption of information, that are generally available and interoperable with other generally available information technology systems and software; and

(b) maintain mechanisms that ensure the integrity of requests for participation and tenders, including establishment of the time of receipt and the prevention of inappropriate access.

ARTICLE 11.7

Conduct of Procurement

1. A procuring entity shall conduct covered procurement in a transparent and impartial manner that:

(a) is consistent with this Chapter, using procedures such as open tendering, selective tendering, and limited tendering;

(b) avoids conflicts of interest; and

(c) prevents corrupt practices.

2. The State Parties may establish or maintain sanctions against corruptive practices according to their domestic laws and regulations.

ARTICLE 11.8

Rules of Origin

For the purposes of covered procurement, no State Party may apply rules of origin to goods imported from another State Party that are different from the rules of origin the State Party applies at the same time in the normal course of trade to imports of the same goods from the same State Party.

ARTICLE 11.9

Denial of Benefits

Upon prior notification to a service supplier of another State Party, a State Party may deny the benefits under this Chapter, if such supplier is a juridical person of another State Party not engaged in substantial business operation in the territory of that other State Party.

ARTICLE 11.10

Offsets

With regard to covered procurement, a State Party, including its procuring entities, shall not seek, take account of, impose or enforce any offset.

ARTICLE 11.11

Information on the Procurement System

1. Each State Party shall promptly publish any measure of general application regarding covered procurement and any modification to this information, in an officially designated electronic or paper medium that is widely disseminated and remains readily accessible to the public.

2. Each State Party shall, upon request, provide another State Party with an explanation relating to such information.

ARTICLE 11.12

Notices

1. For each covered procurement, a procuring entity shall publish a notice of intended procurement, except in the circumstances referred to in Article 11.22 (Limited Tendering). The notice shall be published in the electronic or paper medium listed in Appendix 7 to Annex XVIII (Government Procurement). Such medium shall be widely disseminated and the notice shall remain accessible, at least, until expiration of the time period indicated in the notice. The notice shall:

(a) be accessible by electronic means free of charge through a single point of access, for procuring entities covered by Appendix 1 to Annex XVIII (Government Procurement); and

(b) where accessible by electronic means, be provided, to the extent possible, at least through links in a gateway electronic site that is accessible free of charge, for procuring entities covered by Appendix 2 or 3 to Annex XVIII (Government Procurement).

2. The State Parties, including such procuring entities covered by Appendix 2 or 3 to Annex XVIII (Government Procurement), are encouraged to publish their notices by electronic means free of charge through a single point of access.

3. Except as otherwise provided in this Chapter, each notice of intended procurement shall include:

(a) the name and address of the procuring entity and other information necessary to contact the procuring entity and obtain all relevant documents relating to the procurement, and their cost and terms of payment, if any;

(b) a description of the procurement, including the nature and the quantity of the goods or services to be procured or, where the quantity is not known, the estimated quantity;

(c) for recurring contracts, whenever possible, an estimate of the timing of subsequent notices of intended procurement;

(d) a description of any options;

(e) the time-frame for delivery of goods or services or the duration of the contract;

(f) the procurement procedure that will be used and whether it will involve negotiation or electronic auction;

(g) where applicable, the address and any final date for the submission of requests for participation in the procurement;

(h) the address and the final date for the submission of tenders;

(i) the language or languages in which tenders or requests for participation may be submitted, if they may be submitted in a language other than an official language of the State Party of the procuring entity;

(j) a list and brief description of any conditions for participation of suppliers, including any requirements for specific documents or certifications to be provided by suppliers in connection therewith, unless such requirements are included in tender documentation that is made available to all interested suppliers at the same time as the notice of intended procurement; and

(k) where, pursuant to Article 11.15 (Selective Tendering), a procuring entity intends to select a limited number of qualified suppliers to be invited to tender, the criteria that will be used to select them and, where applicable, any limitation on the number of suppliers that will be permitted to tender.

4. Each State Party shall encourage its procuring entities to publish in the appropriate paper or electronic medium listed in Appendix 7 to Annex XVIII (Government Procurement), as early as possible in each fiscal year, a notice regarding their future procurement plans. The notice of planned procurement should include the subject-matter of the procurement and the planned date of the publication of the notice of intended procurement.

5. A procuring entity covered under Appendix 2 or 3 to Annex XVIII (Government Procurement) may use a notice of planned procurement as a notice of intended procurement, provided that the notice of planned procurement includes as much of the information referred to in paragraph 3 as is available to the entity and a statement that interested suppliers should express their interest in the procurement to the procuring entity.

ARTICLE 11.13

Conditions for Participation

1. In establishing the conditions for participation and assessing whether a supplier satisfies such conditions, a State Party, including its procuring entities:

(a) shall limit any conditions for participation in a procurement to those that are essential to ensure that a supplier has the legal and financial capacities and the commercial and technical abilities to undertake the relevant procurement;

(b) shall evaluate the financial capacity and the commercial and technical abilities of a supplier on the basis of that supplier's business activities both inside and outside the territory of the State Party of the procuring entity;

(c) shall base its evaluation solely on the conditions that the procuring entity has specified in advance in notices or tender documentation;

(d) shall not impose the condition that, in order for a supplier to participate in a procurement, the supplier has previously been awarded one or more contracts by a procuring entity of a given State Party or that the supplier

has prior work experience in the territory of a given State Party; and

(e) may require relevant prior experience where essential to meet the requirements of the procurement.

2. Where there is supporting evidence, a State Party, including its procuring entities, may exclude a supplier on grounds such as:

(a) bankruptcy;

(b) false declarations;

(c) significant or persistent deficiencies in performance of any substantive requirement or obligation under a prior contract or contracts;

(d) final judgments in respect of serious crimes or other serious offences;

(e) grave professional misconduct, which renders its integrity questionable if demonstrated by appropriate means by the contracting authority;

(f) failure to pay taxes; or

(g) other sanctions and grounds provided for in a State Party's domestic laws and regulations that disqualify the supplier to contract with entities of the State Parties.

ARTICLE 11.14

Registration Systems and Qualification Procedures

1. A State Party, including its procuring entities provided that the State Party provides for it in its domestic laws and regulations, may maintain a supplier registration system under which interested suppliers are required to register and provide certain information.

2. A supplier registration system or a qualification procedure shall not be adopted or applied with the purpose or the effect of creating unnecessary obstacles to the participation of suppliers of another State Party in a State Party's procurement.

3. State Parties that use registration systems or qualification procedures shall:

(a) ensure that suppliers are treated equally and without discrimination;

(b) ensure that all requirements for inclusion in such registries or for participation in such procedures are publicly available; and

(c) act in a transparent and reasonable manner.

ARTICLE 11.15

Selective Tendering

1. Where a procuring entity intends to use selective tendering, the entity shall:

   (a) include in the notice of intended procurement at least the information specified in subparagraphs 3 (a), 3 (b), 3 (f), 3 (g), 3 (j), and 3 (k) of Article 11.12 (Notices) and invite suppliers to submit a request for participation; and

   (b) provide, by the commencement of the time-period for tendering, at least the information in subparagraphs 3 (c), 3 (d), 3 (e), 3 (h) and 3 (i) of Article 11.12 (Notices) to the qualified suppliers that it notifies as specified in subparagraph 2 (b) of Appendix 8 to Annex XVIII (Government Procurement).

2. Where a procuring entity intends to use selective tendering, it shall allow all qualified suppliers to participate in a particular procurement, unless the procuring entity states in the notice of intended procurement any limitation on the number of suppliers that will be permitted to tender and the criteria for selecting the limited number of suppliers.

3. Where the tender documentation is not made publicly available from the date of publication of the notice referred to in paragraph 1, a procuring entity shall ensure that those documents are made available at the same time to all the qualified suppliers selected in accordance with paragraph 2.

ARTICLE 11.16

Multi-Use Lists

1. If a State Party, in its domestic laws and regulations, provides for the possibility for procuring entities to maintain a multi-use list of suppliers, such laws and regulations shall ensure that a notice inviting interested suppliers to apply for inclusion on the list is:

   (a) published annually in the appropriate medium listed in Appendix 7 to Annex XVIII (Government Procurement); and

   (b) where published by electronic means, made available continuously in the electronic medium listed in Appendix 7 of Annex XVIII (Government Procurement).

2. Where a multi-use list will be valid for three years or less, a procuring entity may publish the notice only once, at the beginning of the period of validity of the list, provided that the notice:

   (a) states the period of validity and that further notices will not be published; and

(b) is published by electronic means and is made available continuously during the period of its validity.

3. The notice referred to in paragraph 1 shall include:

(a) a description of the goods or services, or categories thereof, for which the list may be used;

(b) the conditions for participation to be satisfied by suppliers for inclusion on the list and the methods that the procuring entity will use to verify that a supplier satisfies the conditions;

(c) the name and address of the procuring entity and other information necessary to contact the entity and obtain all relevant documents relating to the list;

(d) the period of validity of the list and the means for its renewal or termination, or where the period of validity is not provided, an indication of the method by which notice will be given of the termination of use of the list; and

(e) to the extent possible, an indication that the list may be used for procurement covered by this Agreement unless that indication is publicly available through information published pursuant to Article 11.11 (Information on the Procurement System).

4. A procuring entity shall allow suppliers to apply at any time for inclusion on a multi-use list and shall include on that list all qualified suppliers within a reasonably short time.

5. Where a supplier that is not included on a multi-use list submits a request for participation in a procurement based on a multi-use list and all required documents relating thereto, within the time period provided for in Appendix 8 to Annex XVIII (Government Procurement), a procuring entity shall examine the request. The procuring entity shall not exclude the supplier from consideration in respect of the procurement on the grounds that the entity has insufficient time to examine the request, unless, in exceptional cases, due to the complexity of the procurement, the entity is not able to complete the examination of the request within the time period allowed for the submission of tenders.

ARTICLE 11.17

Information on Procuring Entity Decisions

1. A procuring entity shall promptly inform any supplier that submits a request for participation in a procurement or application for inclusion on a multi-use list of the procuring entity's decision with respect to the request or application.

2. Where a procuring entity rejects a supplier's request for participation in a procurement or application for inclusion on a multi-use list, ceases to recognise a supplier as qualified, or removes a supplier from a multi-use list, the entity shall promptly inform

the supplier and, on request of the supplier, promptly provide it with a written explanation of the reasons for its decision.

ARTICLE 11.18

Tender Documentation

1. A procuring entity shall make available to suppliers tender documentation that includes all information necessary to permit suppliers to prepare and submit responsive tenders. Unless already provided for in the notice of intended procurement, such documentation shall include a complete description of:

(a) the procurement, including the nature and the quantity of the goods or services to be procured or, where the quantity is not known, the estimated quantity and any requirements to be fulfilled, including any technical specifications, conformity assessment certification, plans, drawings or instructional materials;

(b) any conditions for participation of suppliers, including a list of information and documents that suppliers are required to submit in connection with the conditions for participation;

(c) all evaluation criteria the entity will apply in the awarding of the contract, and, except where price is the sole criterion, the relative importance of such criteria;

(d) where the procuring entity will conduct the procurement by electronic means, any authentication and encryption requirements or other requirements related to the submission of information by electronic means;

(e) where the procuring entity will hold an electronic auction, the rules, including identification of the elements of the tender related to the evaluation criteria on which the auction will be conducted;

(f) where there will be a public opening of tenders, the date, time and place for the opening and, where appropriate, the persons authorised to be present;

(g) any other terms or conditions, including terms of payment and any limitation on the means by which tenders may be submitted, such as whether on paper or by electronic means; and

(h) any dates for the delivery of goods or the supply of services.

2. In establishing, in the tender documentation, any delivery date for the goods or services being procured, a procuring entity shall take into account such factors as the complexity of the procurement, the extent of subcontracting anticipated and the realistic time required for production, de-stocking and transport of goods from the point of supply or for supply of services.

3. The evaluation criteria set out in the notice of intended procurement or tender documentation may include, among others, price and other cost factors, quality, technical merit, environmental characteristics and terms of delivery.

4. Where contracting entities do not offer free direct access to the entire tender documents and any supporting documents by electronic means, entities shall make promptly available the tender documentation at the request of any interested supplier of the State Parties. The procuring entities shall also promptly make available any relevant information requested by any interested or participating supplier, provided that such information does not give that supplier an advantage over other suppliers, and that the request was presented within the corresponding time limits.

5. Procuring entities may require bidders to provide guarantees for maintaining the offer, and the successful bidder to provide a guarantee for the execution of the contract.

ARTICLE 11.19

Technical Specifications

1. A procuring entity shall not prepare, adopt or apply any technical specification nor prescribe any conformity assessment procedure with the purpose or the effect of limiting competition, creating unnecessary obstacles to trade between the State Parties or discriminating between suppliers.

2. In prescribing the technical specifications for the goods or services being procured, a procuring entity shall, where appropriate:

(a) set out the technical specification in terms of performance and functional requirements, rather than design or descriptive characteristics; and

(b) base the technical specification on international standards, where such exist or otherwise, on national technical regulations, recognised national standards or building codes.

3. Where design or descriptive characteristics are used in the technical specifications, a procuring entity should indicate, where appropriate, that it will consider tenders of equivalent goods or services that demonstrably fulfil the requirements of the procurement by including words such as “or equivalent” in the tender documentation.

4. A procuring entity shall not prescribe any technical specifications that require or refer to a particular trademark or trade name, patent, copyright, design or type, specific origin, producer or supplier, unless there is no other sufficiently precise or intelligible way of describing the procurement requirements and provided that, in such cases, the entity includes words such as “or equivalent” in the tender documentation.

5. A procuring entity shall not seek or accept, in a manner that would have the effect of precluding competition, advice that may be used in the preparation or adoption of any technical specification for a specific procurement from a person that may have a commercial interest in the procurement.

6. For greater certainty, a State Party, including its procuring entities, may, in accordance with this Article, prepare, adopt or apply technical specifications to promote the conservation of natural resources or protect the environment.

ARTICLE 11.20

Modifications of the Tender Documentation and Technical Specifications

1. Where, prior to the opening of tenders, a procuring entity modifies the criteria or requirements set out in a notice or tender documentation provided to participating suppliers, or amends or reissues a notice or tender documentation, it shall transmit in writing all such modifications or amended or re-issued notice or tender documentation:

(a) to all suppliers that are participating at the time of the modification, amendment or re-issuance, if known, and in all other cases, in the same manner as the original information was made available; and

(b) in adequate time to allow such suppliers to modify and re-submit amended tenders, as appropriate.

2. A procuring entity may modify the criteria or requirements set out in a notice or tender documentation between the opening of tenders and the award of a contract, provided that such modification is in accordance with the State Party's domestic laws and regulations. In this case, a procuring entity shall not make substantial modifications to the criteria or requirements set out in the notice or tender documentation, and shall transmit in writing all such modifications in the same manner prescribed by paragraph 1.

ARTICLE 11.21

Time Periods

1. A procuring entity shall, consistent with its own reasonable needs, provide suppliers sufficient time to prepare and submit requests for participation and responsive tenders, taking into account such factors as the nature and complexity of the procurement, the extent of subcontracting anticipated, the time for transmitting tenders from foreign as well as domestic points, where electronic means are not used.

2. Each State Party shall apply time-periods in accordance with Appendix 8 to Annex XVIII (Government Procurement). Such time periods, including any extension, shall be the same for all interested or participating suppliers.

ARTICLE 11.22

Limited Tendering

1. Provided that it does not use this provision for the purpose of avoiding competition among suppliers or in a manner that discriminates against suppliers of another State Party or protects domestic suppliers, a procuring entity of a State Party may use limited tendering, and, in accordance with the domestic laws and regulations of that State Party, may choose not to apply Articles 11.12 (Notices), 11.13 (Conditions for Participation), 11.14 (Registration Systems and Qualification Procedures), 11.15 (Selective Tendering), 11.16 (Multi-Use Lists), 11.17 (Information on Procuring Entity Decisions), 11.18 (Tender Documentation), 11.21 (Time Periods), 11.23 (Electronic Auctions), 11.24

(Negotiations), 11.25 (Treatment of Tenders) and 11.26 (Awarding of Contracts) only under the following circumstances:

(a) provided that the requirements of the tender documentation are not substantially modified, where:

(i) no tenders were submitted, or no supplier requested participation;

(ii) no tenders that conform to the essential requirements of the tender documentation were submitted;

(iii) no suppliers satisfied the conditions for participation; or

(iv) the tenders submitted have been collusive;

(b) where the goods or services can be supplied only by a particular supplier and no reasonable alternative or substitute goods or services exist for any of the following reasons:

(i) the requirement is for a work of art;

(ii) the protection of patents, copyrights or other exclusive rights; or

(iii) due to an absence of competition for technical reasons;

(c) for additional deliveries by the original supplier of goods and services that were not included in the initial procurement, where a change of supplier for such additional goods and services:

(i) cannot be made for economic or technical reasons, such as requirements of interchangeability or interoperability with existing equipment, software, services or installations procured under the initial procurement; and

(ii) would cause significant inconvenience or substantial duplication of costs to the procuring entity;

(d) insofar as is strictly necessary where, for reasons of extreme urgency brought about by events unforeseeable by the procuring entity, the goods or services could not be obtained in time using an open or selective tendering procedure;

(e) for goods purchased on a commodity market;

(f) where a procuring entity procures a prototype or a first good or service that is developed at its request in the course of, and for, a particular contract for research, experiment, study or original development. Original development of a first good or service may include limited production or supply in order to incorporate the results of field testing and to demonstrate that the good or service is suitable for production or supply in quantity to acceptable quality standards, but does not include quantity production or supply to establish commercial viability or to recover research and development costs. When such contracts have been completed subsequent procurements of the developed goods or services shall be subject to this Chapter.

(g) for purchases made under exceptionally advantageous conditions that only arise in the very short term in the case of unusual disposals such as those arising from liquidation, receivership or bankruptcy, but not for routine purchases from regular suppliers; or

(h) where a contract is awarded to a winner of a design contest provided that:

(i) the contest has been organised in a manner that is consistent with the principles of this Chapter, in particular relating to the publication of a notice of intended procurement; and

(ii) the participants are judged by an independent jury with a view to a design contract being awarded to a winner.

2. A procuring entity shall prepare a report in writing, or maintain records, on each contract awarded according to paragraph 1. The report or the records shall include the name of the procuring entity, the value and kind of goods or services procured and a statement indicating the circumstances and conditions described in paragraph 1 that justified the use of limited tendering.

ARTICLE 11.23

Electronic Auctions

Where a procuring entity intends to conduct a covered procurement using an electronic auction, the entity shall provide each participant, before commencing the electronic auction, with:

(a) the automatic evaluation method, including the mathematical formula, that is based on the evaluation criteria set out in the tender documentation and that will be used in the automatic ranking or re-ranking during the auction;

(b) the results of any initial evaluation of the elements of its tender where the contract is to be awarded on the basis of the most advantageous tender; and

(c) any other relevant information relating to the conduct of the auction.

ARTICLE 11.24

Negotiations

1. If a State Party provides for its procuring entities to conduct procurement through negotiations, procuring entities may do so in the following cases:

(a) where the entity has indicated such intent in the notice of intended procurement pursuant to Article 11.12 (Notices); or

(b) where it appears from the evaluation that no tender is obviously the most advantageous in terms of the specific evaluation criteria set out in the notice of intended procurement or tender documentation.

2. A procuring entity shall:

(a) ensure that any elimination of suppliers participating in negotiations is carried out in accordance with the evaluation criteria set out in the notice of intended procurement or tender documentation; and

(b) where negotiations are concluded, provide a common deadline for the remaining participating suppliers to submit any new or revised tenders.

ARTICLE 11.25

Treatment of Tenders

1. A procuring entity shall receive, open and treat all tenders under procedures that guarantee the fairness and impartiality of the procurement process and the confidentiality of tenders.

2. A procuring entity of a State Party, in accordance with the domestic laws and regulations of that State Party, shall not penalise any supplier whose tender is received after the time specified for receiving tenders if the delay is due solely to mishandling on the part of the procuring entity.

3. Where a procuring entity provides suppliers with an opportunity to correct errors between the opening of tenders and the awarding of the contract, the entity shall provide all participating suppliers with the same opportunity, provided that the correction of the error does not substantially alter the submitted tender, nor affect the principles of transparency and fair competition between suppliers.

ARTICLE 11.26

Awarding of Contracts

1. To be considered for award, a tender shall be submitted in writing and shall, at the time of opening, comply with the essential requirements set out in the notices and tender documentation and be from a supplier that satisfies the conditions for participation.

2. Unless a procuring entity determines that it is not in the public interest to award a contract, the entity shall award the contract to the supplier that it has determined to be capable of fulfilling the terms of the contract and that, based solely on the evaluation criteria specified in the notices and tender documentation, has submitted:

(a) the most advantageous tender; or

(b) where price is the sole criterion, the lowest price.

3. Where a procuring entity receives a tender with a price that is abnormally lower than the prices in other tenders submitted, it may verify with the supplier that it satisfies the conditions for participation and is capable of fulfilling the terms of the contract.

4. A procuring entity shall not use option clauses, cancel a procurement or modify awarded contracts in a manner that circumvents the obligations under this Chapter.

5. The State Parties may provide that if, for reasons imputable to the supplier to which the contract has been awarded, the contract is not concluded within a reasonable time, or the supplier does not fulfil the required guarantee for the execution of the contract or does not comply with the contract terms, the contract may be awarded to the next tenderer and so forth.

ARTICLE 11.27

Transparency of Procurement Information

1. A procuring entity shall promptly inform participating suppliers of its contract award decisions and, upon request, shall do so in writing.

2. Subject to Article 11.28 (Disclosure of Information), a procuring entity shall, upon request, provide an unsuccessful supplier with an explanation of the reasons why the entity did not select its tender and the relative advantages of the successful supplier's tender.

3. After the award of a contract covered by this Chapter, a procuring entity shall, as soon as possible, according to the time limits established in each State Party's domestic laws and regulations, and no later than 72 days from the award of the contract, publish in a paper or electronic medium listed in Appendix 7 of Annex XVIII (Government Procurement), a notice that includes at least the following information about the contract:

(a) a description of the goods or services procured;

(b) the name and address of the procuring entity;

(c) the name and, if applicable, the address of the successful supplier;

(d) the value of the successful tender or the highest and lowest offers taken into account in the award of the contract;

(e) the date of award; and

(f) the type of procurement procedure used, and in cases where limited tendering was used pursuant to Article 11.22 (Limited Tendering), a description of the circumstances justifying the use of limited tendering.

4. Where the entity publishes the notice referred to in paragraph 3 only in an electronic medium, the information shall remain readily accessible for a reasonable period of time.

5. Each procuring entity shall, for a period of at least three years from the date it awards a contract, maintain the documentation and reports or records of tendering procedures and contract awards relating to covered procurement, including the reports or records provided for in Article 11.22 (Limited Tendering) and data that demonstrates how covered procurement by electronic means has been conducted.

ARTICLE 11.28

Disclosure of Information

1. Upon request of another State Party, a State Party shall promptly provide any information necessary to determine whether a procurement was conducted fairly, impartially and in accordance with this Chapter, including information on the characteristics and relative advantages of the successful tender.

2. In cases where the release of such information would prejudice competition in future tenders, the State Party that receives the information shall not disclose it to any supplier, except after consulting with, and obtaining the agreement of, the State Party that provided the information.

3. Notwithstanding any other provision of this Chapter, a State Party, including its procuring entities, shall not provide information to a supplier that might prejudice fair competition between suppliers.

4. Nothing in this Chapter shall be construed to require a State Party, including its procuring entities, authorities and review bodies, to disclose confidential information where disclosure:

(a) would impede law enforcement;

(b) might prejudice fair competition between suppliers;

(c) would prejudice the legitimate commercial interests of particular persons, including the protection of intellectual property; or

(d) would otherwise be contrary to the public interest.

ARTICLE 11.29

Domestic Review Procedures for Supplier Challenges

1. Each State Party shall provide a timely, effective, transparent and non-discriminatory administrative or judicial review procedure according to the due process principle through which a supplier may challenge:

(a) breaches of this Chapter; or

(b) breaches of a State Party's measures implementing this Chapter, where the supplier does not have a right to challenge directly a breach of this Chapter under the domestic laws and regulations of a State Party.

Arising in the context of a covered procurement, in which the supplier has, or has had, an interest. The procedural rules for all challenges shall be in writing and made generally available.

2. In the event of a complaint by a supplier arising in the context of covered procurement in which the supplier has, or has had, an interest, that there has been a breach as referred to in paragraph 1, the State Party of the procuring entity may encourage that entity and the supplier to seek resolution of the complaint through consultations.

3. Each supplier shall be allowed a sufficient period of time to prepare and submit a challenge, which in no case shall be less than ten days from the date the basis of the challenge became known or reasonably should have become known to the supplier.

4. Each State Party shall establish or designate at least one impartial administrative or judicial authority that is independent of its procuring entities to receive and review a challenge by a supplier arising in the context of a covered procurement.

5. Where a body other than an authority referred to in paragraph 4 initially reviews a challenge, the State Party shall ensure that the supplier may appeal the initial decision to an impartial administrative or judicial authority that is independent of the procuring entity whose procurement is the subject of the challenge.

6. Each State Party shall ensure that a review body that is not a court shall either have its decisions subject to judicial review or have procedures that provide that:

(a) the procuring entity shall respond in writing to the challenge and disclose all relevant documents to the review body;

(b) the participants to the proceedings (hereinafter referred to as "participants") shall have the right to be heard prior to a decision of the review body being made on the challenge;

(c) the participants shall have the right to be represented and accompanied;

(d) the participants shall have access to all proceedings;

(e) the participants shall have the right to request that the proceedings take place in public and that witnesses may be presented; and

(f) the review body shall make its decisions or recommendations in a timely fashion in writing, and shall include an explanation of the basis for each decision or recommendation.

7. Each State Party shall adopt or maintain procedures that provide for:

(a) rapid interim measures to preserve the supplier's opportunity to participate in the procurement. Such interim measures may result in the suspension of the procurement process. The procedures may provide that overriding adverse consequences for the interests concerned, including the public interest, may be taken into account when deciding whether such measures should be applied. Just cause for not acting shall be provided in writing; and

(b) where a review body has determined that there has been a breach of this Chapter as referred to in paragraph 1, corrective action or compensation for the loss or damages suffered, which may be limited to either the costs for the preparation of the tender or the costs relating to the challenge, or both.

ARTICLE 11.30

Modifications and Rectifications to Coverage

1. A State Party may modify or rectify its Appendices to Annex XVIII (Government Procurement) in accordance with paragraphs 2 to 10.

Modifications

2. A State Party intending to modify its Appendices to Annex XVIII (Government Procurement) shall:

(a) notify the other State Parties in writing; and

(b) include in the notification a proposal for appropriate compensatory adjustments to the other State Parties to maintain a level of coverage comparable to that existing prior to the modification.

3. Notwithstanding subparagraph 2 (b), a State Party does not need to provide compensatory adjustments if the modification covers an entity over which the State Party has effectively eliminated its control or influence.

4. If a State Party disputes that:

(a) an adjustment proposed under subparagraph 2 (b) is adequate to maintain a comparable level of mutually agreed coverage; or

(b) the modification covers an entity over which the State Party has effectively eliminated its control or influence according to paragraph 3.

It shall object in writing within 45 days from the receipt of the notification referred to in subparagraph 2 (a). If no such objection is submitted within 45 days from the receipt of the notification, the State Party shall be deemed to have agreed to the proposed modification. Thereafter, the State Party modifying its Appendices to Annex XVIII (Government Procurement) shall deposit the modification with the Depositary.

Rectifications

5. The following changes to a State Party's Appendices to Annex XVIII (Government Procurement) shall be considered a rectification of a purely formal nature, provided that they do not affect the mutually agreed coverage under this Chapter:

(a) a change in the name of an entity;

(b) a merger of two or more entities listed in an Appendix; and

(c) the separation of an entity listed in an Appendix into two or more entities that are all added to the entities listed in the same Appendix.

6. The State Party making such rectification of a purely formal nature shall not be obliged to provide for compensatory adjustments.

7. In the case of proposed rectifications to a State Party's Appendices to Annex XVIII (Government Procurement), the State Party shall notify the other State Parties every two years following the entry into force of this Agreement.

8. A State Party may notify the other State Parties of an objection to a proposed rectification within 45 days from the receipt of the notification. Where a State Party submits an objection, it shall set out the reasons why it believes the proposed rectification is not a change provided for in paragraph 5 and describe the effect of the proposed rectification on the mutually agreed coverage under this Chapter. If no such objection is submitted in writing within 45 days from the receipt of the notification, the other State Parties shall be deemed to have agreed to the proposed rectification. Thereafter, the State Party rectifying its Appendices to Annex XVIII (Government Procurement) shall deposit the rectification with the Depositary.

Consultations and Dispute Resolution

9. If another State Party objects to the proposed modification or rectification, or to the proposed compensatory adjustments, the State Parties shall seek to resolve the issue through consultations. If no agreement is found within 60 days from the receipt of the objection, the State Party seeking to modify or rectify its Appendices to Annex XVIII (Government Procurement) may have recourse to Chapter 15 (Dispute Settlement) unless the State Parties concerned agree to extend the deadline.

10. Consultations under paragraph 9 shall be without prejudice to Chapter 15 (Dispute Settlement).

ARTICLE 11.31

Further Negotiations

If a State Party offers in the future to a non-Party, in an international agreement, additional benefits with regard to its respective government procurement market access coverage agreed under this Chapter, it shall, upon request of another State Party, enter into negotiations with a view to extending coverage, taking into consideration the needs of the State Parties.

ARTICLE 11.32

Work Assignments on Government Procurement

The Joint Committee or, if established in accordance with Chapter 14 (Institutional Provisions), a Sub Committee or a working group, may:

(a) review the implementation and application of this Chapter and the mutual opening of procurement markets;

(b) exchange information relating to the government procurement opportunities in each State Party, including exchanges on procurement statistical data;

(c) discuss the extent and the means of cooperation in government procurement between the State Parties as referred to in Article 11.33 (Cooperation) and;

(d) consider any other matters that may affect the operation of this Chapter.

ARTICLE 11.33

Cooperation

1. The State Parties recognise the importance of cooperation with a view to achieving a better understanding of their respective government procurement systems, as well as a better access to their respective markets, in particular for MSMEs.

2. The State Parties shall endeavour to cooperate to ensure an effective implementation of this Chapter.

3. In particular, cooperation activities may be carried out *inter alia* through:

(b) exchange of experience and information in areas of mutual interest, such as best practices, statistical data, expertise and policies;

(c) exchange of best practices regarding the use of sustainable procurement practices;

(d) promoting networks, seminars and workshops in topics of mutual interest; and

(e) sharing of information between the State Parties, with a view to facilitating access to the government procurement markets of the State Parties, in particular for MSMEs, as well as to achieving a better understanding of their respective government procurement systems and statistics.

ARTICLE 11.34

Facilitation of Participation of MSMEs

1. The State Parties recognise the important contribution of MSMEs to economic growth and employment and the importance of facilitating their participation in government procurement.

2. If available, a State Party shall, upon request of another State Party, provide information regarding its measures aimed at promoting, encouraging and facilitating the participation of MSMEs in government procurement.

3. With a view to facilitating participation by MSMEs in government procurement, each State Party shall, to the extent possible, and if appropriate:

(a) share information related to MSMEs;

(b) endeavour to make all tender documentation available free of charge; and

(c) undertake activities aimed at facilitating the participation of MSMEs in government procurement.

CHAPTER 12

COMPETITION

ARTICLE 12.1

Rules of Competition

1. The following practices of enterprises are incompatible with the proper functioning of this Agreement in so far as they may affect trade between the Parties:

(a) agreements between enterprises, decisions by associations of enterprises and concerted practices between enterprises which have as their object or effect the prevention, restriction or distortion of competition; and

(b) abuse by one or more enterprises of a dominant position in the territory of a State Party as a whole or in a substantial part thereof.

2. Paragraph 1 also applies to the activities of public enterprises and enterprises to which the State Parties grant special or exclusive rights in so far as the application of these provisions does not obstruct the performance, in law or in fact, of the particular public tasks assigned to them.

3. Paragraphs 1 and 2 shall not be construed as creating any direct obligations for enterprises.

4. This Chapter shall be without prejudice to the autonomy of each State Party to develop, maintain and enforce its competition laws and regulations.

ARTICLE 12.2

Cooperation

1. The State Parties shall cooperate and consult in their dealings with anti-competitive practices as outlined in paragraph 1 of Article 12.1 (Rules of Competition), with the aim of putting an end to such practices or their adverse effects on trade.

2. Cooperation may include the exchange of pertinent information that is available to the State Parties. No State Party shall be required to disclose information that is confidential in accordance with its domestic laws and regulations.

ARTICLE 12.3

Consultations

1. If a State Party considers that a given practice continues to affect trade in the sense of paragraph 1 of Article 12.1 (Rules of Competition), after cooperation or consultations pursuant to Article 12.2 (Cooperation), it may request consultations in the Joint Committee. This request shall indicate the reasons for such consultations.

2. The State Parties concerned shall provide the Joint Committee with all the support and available information required, to the extent permitted by those State Parties' domestic laws and regulations, in order to examine the case in accordance with the objectives set forth in this Chapter.

3. The Joint Committee shall, within 60 days from the receipt of the request, examine the information provided in order to facilitate a mutually acceptable solution of the matter.

ARTICLE 12.4

Technical Cooperation

The State Parties may engage in technical cooperation activities, including through capacity building in the area of competition policy with the aim of strengthening and effectively enforcing competition laws and regulations, subject to the availability of funding for such activities under the State Parties' cooperation instruments and programmes.

ARTICLE 12.5

Dispute Settlement

The Parties shall not have recourse to Chapter 15 (Dispute Settlement) for any matter arising under this Chapter.

CHAPTER 13

TRADE AND SUSTAINABLE DEVELOPMENT

ARTICLE 13.1

Scope

Except as otherwise provided in this Chapter, this Chapter applies to measures adopted or maintained by the State Parties affecting trade-related and investment-related aspects of labour and environmental issues.

ARTICLE 13.2

Context and Objectives

1. The State Parties recall the Declaration of the United Nations Conference on the Human Environment of 1972, the Rio Declaration on Environment and Development of 1992, Agenda 21 on Environment and Development of 1992, the Johannesburg Declaration on Sustainable Development of 2002 and the Plan of Implementation on Sustainable Development of 2002, the outcome document of the United Nations Conference on Sustainable Development, "The Future We Want" of 2012, the outcome document of the UN Summit on Sustainable Development "Transforming Our World: the 2030 Agenda for Sustainable Development" of 2015, the ILO Declaration on Fundamental Principles and Rights at Work and its Follow-up of 1998, the Ministerial Declaration of the UN Economic and Social Council on Creating an environment at the national and international levels conducive to generating full and productive employment and decent work for all, and its impact on sustainable development of 2006 and the ILO Declaration on Social Justice for a Fair Globalization of 2008.

2. The State Parties shall promote sustainable development, which encompasses the economic, social and environmental dimensions, all three being interdependent and mutually reinforcing components of sustainable development. They underline the benefit of cooperation on trade-related labour and environmental issues as part of a global approach to trade and sustainable development.

3. The State Parties reaffirm their commitment to promote the development of international trade and investment in such a way as to contribute to the objective of sustainable development and to ensure that this objective is integrated and reflected in the Parties' trade relations.

4. The State Parties agree that this Chapter embodies a cooperative approach based on common values and interests, taking into account their national circumstances and priorities.

ARTICLE 13.3

Right to Regulate and Levels of Protection

1. Recognising the right of each State Party, subject to this Agreement, to establish its own levels of environmental and labour protection, and to adopt or modify accordingly its relevant domestic laws, policies and practices, each State Party shall seek to ensure that its domestic laws, policies and practices provide for and encourage high levels of environmental and labour protection, consistent with standards, principles and agreements referred to in Articles 13.5 (International Labour Standards and Agreements) and 13.6 (Multilateral Environmental Agreements), and shall strive to further improve the level of protection provided for in those laws policies and practices.

2. The State Parties recognise the importance of scientific and technical information, as well as relevant international standards, guidelines and recommendations when preparing and implementing measures related to the environment and labour conditions that affect trade and investment between the Parties.

ARTICLE 13.4

Upholding Levels of Protection

1. A State Party shall not fail to effectively enforce its domestic environmental and labour laws, regulations or standards in a manner affecting trade or investment between the Parties.

2. Subject to Article 13.3 (Right to Regulate and Levels of Protection), no State Party shall:

(a) weaken or reduce the level of environmental or labour protection provided by its domestic laws, regulations or standards with the sole intention to encourage investment from another State Party or to seek or to enhance a competitive trade advantage of producers or service providers operating in its territory; or

(b) waive or otherwise derogate from, or offer to waive or otherwise derogate from, its domestic laws, regulations or standards in order to encourage investment from another State Party or to seek or to enhance a competitive trade advantage of producers or service providers operating in its territory.

ARTICLE 13.5

International Labour Standards and Agreements

1. The State Parties reaffirm their commitment to promote the development of international trade in a way that is conducive to full and productive employment and decent work for all.

2. The State Parties recall the obligations deriving from membership of the ILO and the ILO Declaration on Fundamental Principles and Rights at Work and its Follow-up adopted by the International Labour Conference at its 86th Session in 1998, to respect, promote and realise the principles concerning the fundamental rights, namely:

(a) freedom of association and the effective recognition of the right to collective bargaining;

(b) elimination of all forms of forced or compulsory labour;

(c) effective abolition of child labour; and

(d) elimination of discrimination in respect of employment and occupation.

3. The State Parties shall ensure that their labour laws, regulations and practices embody and provide protection for the fundamental principles and rights at work which are listed in paragraph 2.

4. The State Parties recall the obligations deriving from membership of the ILO to effectively implement the ILO Conventions which they have ratified and their commitment to make continued efforts towards ratifying the fundamental ILO Conventions as well as the other conventions that are classified as "up-to-date" by the ILO.

5. The State Parties reaffirm their commitment, under the Ministerial Declaration of the UN Economic and Social Council on Full Employment and Decent Work of 2006, to recognise the importance of full and productive employment and decent work for all as a key element of sustainable development for all countries and as a priority objective of international cooperation.

6. The State Parties commit to promote the strategic objectives of the ILO under the Decent Work Agenda and reaffirm in this regard the Declaration on Social Justice for a Fair Globalization of 2008 adopted by the International Labour Conference at its 97th Session.

7. The State Parties shall pay particular attention to developing and enhancing measures for:

(a) occupational safety and health, including compensation in case of occupational injury or illness;

(b) decent working conditions for all, with regard to, *inter alia*, wages and earnings, working hours and other conditions of work;

(c) labour inspection; and

(d) non-discrimination with respect to working conditions, including for migrant workers.

8. Each State Party shall ensure that administrative and judicial proceedings are accessible and available in order to permit effective action to be taken against infringements of labour rights referred to in this Chapter.

9. The State Parties reaffirm that the violation of fundamental principles and rights at work cannot be invoked or otherwise used as a legitimate comparative advantage and that labour standards shall not be used for protectionist trade purposes, as stated in the ILO Declaration on Fundamental Principles and Rights at Work 1998, and the ILO Declaration on Social Justice for a Fair Globalisation, 2008.

ARTICLE 13.6

Multilateral Environmental Agreements

1. The State Parties recognise the importance of multilateral environmental agreements and other environmental instruments as a response of the international community to global or regional environmental challenges and stress the need to enhance the mutual supportiveness between trade and environment policies.

2. Each State Party reaffirms its commitment to the effective implementation in its laws, regulations and practices of the multilateral environmental agreements to which it is a party, as well as its adherence to environmental principles reflected in the international instruments referred to in Article 13.2 (Context and Objectives).

ARTICLE 13.7

Promotion of Trade and Investment Favouring Sustainable Development

1. The State Parties shall strive to facilitate and promote investment, trade in and dissemination of goods and services that contribute to sustainable development and support the objectives of the Decent Work Agenda, including environmentally sound technologies, renewable energy and goods and services that are energy efficient or subject to voluntary sustainability certification schemes.

2. For the purposes of paragraph 1, the State Parties agree to exchange views and may consider, jointly or bilaterally, cooperation in this area.

3. The State Parties shall encourage cooperation between enterprises in relation to goods, services and technologies that contribute to sustainable development and are beneficial to the environment.

ARTICLE 13.8

Trade and Climate Change

1. The State Parties recognise the importance of pursuing the objectives of the United Nations Framework Convention on Climate Change (UNFCCC) and the Paris Agreement in order to address the urgent threat of climate change and the role of trade in pursuing these objectives.

2. Pursuant to paragraph 1, the State Parties commit to:

(a) effectively implement the commitments established by the UNFCCC and the Paris Agreement;

(b) promote the contribution of trade to the transition to a low-carbon-economy and to climate-resilient development, in a manner that does not threaten food production; and

(c) cooperate bilaterally, regionally and in international fora, as appropriate, on trade-related climate change issues, including exchange of information on adaptation practices and processes.

ARTICLE 13.9

Trade and Biological Diversity

1. The State Parties recognise the importance of the conservation and sustainable use of biological diversity, and the role of trade in pursuing these objectives.

2. Pursuant to paragraph 1, the State Parties commit to:

(a) promote the inclusion of animal and plant species in the Appendices to the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) where a species is threatened or may be threatened with extinction in relation to international trade;

(b) implement effective measures to combat transnational organised wildlife crime and address both demand for and the supply chains of illegal wildlife products;

(c) enhance efforts to prevent, eradicate or control the introduction and spread of alien species which threaten ecosystems, habitats or species, in connection with trade activities;

(d) cooperate, where applicable, on issues concerning trade and the conservation and sustainable use of biological diversity, including initiatives to reduce demand for illegal wildlife products; and

(e) promote, in accordance with the rights and obligations under the international agreements to which they are a party, including the Convention on Biological Diversity (CDB), the fair and equitable sharing of benefits arising from the commercial use of genetic resources, and,

where appropriate, measures for access to genetic resources and obtention of prior informed consent.

ARTICLE 13.10

Sustainable Forest Management and Associated Trade

1. The State Parties recognise the importance of ensuring conservation and sustainable management of forests and related ecosystems with the objective to, inter alia, preserve biological diversity and reduce greenhouse gas emissions resulting from deforestation and degradation of forests and related ecosystems, including from land use and land-use change, in line with their international commitments.

2. With the aim of contributing to the conservation and sustainable management of forests and related ecosystems, the State Parties, undertake to*, inter alia*:

(a) promote trade in products that derive from sustainably managed forests;

(b) promote the effective use of CITES with regard to endangered timber species;

(c) combat illegal logging by improving forest law enforcement and governance and by promoting the effective implementation and use of instruments to ensure that only legally sourced timber is traded among the State Parties;

(d) promote the development and use of certification schemes for products from sustainably managed forests;

(e) cooperate on issues relating to sustainable forest management through existing bilateral arrangements, if applicable, and in the relevant multilateral fora in which they participate, such as through the United Nations initiative to Reducing Emissions from Deforestation and Forest Degradation (REDD+) as encouraged by the Paris Agreement;

(f) promote, as appropriate and with their free, prior and informed consent, the inclusion of indigenous peoples and other forest dependent communities in sustainable supply chains for responsible business of timber and non-timber forest products, as a means of enhancing their livelihoods and of promoting the conservation and sustainable use of forests; and

(g) implement measures to promote forest restoration for its conservation or sustainable use.

ARTICLE 13.11

Trade and Sustainable Management of Fisheries and Aquaculture

1. The State Parties recognise the importance of ensuring the conservation and sustainable management of living marine resources and marine ecosystems and the role of trade in pursuing these objectives.

2. Pursuant to paragraph 1, the State Parties commit to:

(a) implement, consistent with their international obligations, comprehensive, effective and transparent policies and measures to combat illegal, unreported and unregulated (IUU) fishing and to exclude from international trade products that do not comply with such policies and measures;

(b) promote the use of FAO´s voluntary guidelines for Catch Documentation Schemes;

(c) cooperate bilaterally and in relevant international fora in the fight against IUU fishing with the aim of achieving sustainable fisheries management by, *inter alia*, facilitating the exchange of information on IUU fishing activities;

(d) promote the development of sustainable and responsible aquaculture; and

(e) contribute to the fulfilment of the objectives set out in the 2030 Agenda for Sustainable Development regarding fisheries subsidies.

ARTICLE 13.12

Trade and Sustainable Agriculture and Food Systems

1. The State Parties recognise the importance of sustainable agriculture and food systems and the role of trade in achieving these objectives. The State Parties reiterate their shared commitment to achieve the 2030 Agenda for Sustainable Development and its Sustainable Development Goals.

2. Pursuant to paragraph 1, the State Parties shall:

(a) promote sustainable agriculture and associated trade;

(b) promote sustainable food systems so as to contribute to, *inter alia,* food security;

(c) exchange information, experience and good practices concerning sustainable agriculture and food systems and relevant trade-related initiatives;

(d) conduct a dialogue on issues addressed in this Article; and

(e) report on progress made in attaining sustainable agriculture and food systems through the use and development of agricultural practices and technologies.

ARTICLE 13.13

Cooperation

The State Parties recognise the importance of working together, in order to achieve the objectives of this Chapter. To this end, they may work together on, *inter alia*:

(a) trade and investment related labour and environmental issues of mutual interest in relevant bilateral, regional and multilateral fora;

(b) voluntary sustainability certification schemes such as fair and ethical trade schemes and eco-labels; or

(c) trade-related aspects of the implementation of multilateral environmental agreements and the fundamental and other up-to-date ILO Conventions.

ARTICLE 13.14

Implementation, Consultations and Panel of Experts

1. The State Parties shall designate contact points for the purpose of implementing this Chapter.

2. The State Parties shall make every effort through dialogue, consultations, exchange of information and cooperation to address any matter arising under this Chapter and shall try to reach a mutually satisfactory solution of such matter.

3. Any time period mentioned in Articles 13.15 (Consultation Procedures) and 13.16 (Panel of Experts) may be extended by mutual agreement of the State Parties concerned. All time periods established under this Chapter shall be counted from the day following the act or fact to which they refer.

4. The State Parties shall not have recourse to Chapter 15 (Dispute Settlement) for any matter arising under this Chapter.

ARTICLE 13.15

Consultations Procedures

1. A State Party may request consultations with another State Party regarding the interpretation or application of this Chapter by delivering a written request to that State Party. The State Party requesting consultations shall at the same time notify the other State Parties in writing of the request. The request shall provide a brief summary of the matter at issue, including an indication of the relevant provisions of this Chapter and an explanation on how it affects the commitments thereunder, as well as any other

information the requesting State Party deems relevant. Consultations shall start promptly after the request for consultations has been delivered, and in any event no later than 30 days from the date of receipt of the request.

2. Consultations shall be held in person or, if agreed by the State Parties concerned, by videoconference or other virtual means. If the consultations are held in person, they shall be held in the State Party to whom the request is directed, unless the State Parties concerned agree otherwise.

3. The State Parties concerned shall enter into consultations with the aim of reaching a mutually satisfactory solution of the matter. With regard to matters related to the multilateral agreements referred to in this Chapter, the State Parties concerned shall take into account information from relevant organisations or bodies responsible for the multilateral agreements to which they are parties, in order to promote coherence between the work of the State Parties and these organisations. Where relevant, the State Parties concerned may agree to seek advice from such organisations or bodies, or any other relevant expert, international organisation or body they deem appropriate.

4. If a State Party concerned considers that the matter needs further discussion, that State Party may request in writing the other State Party concerned that a Joint Committee meeting shall take place. The State Party requesting consultations in the Joint Committee shall at the same time notify the other State Parties in writing of the request. Such a request shall be made no earlier than 60 days from the date of the receipt of the request under paragraph 1. The Joint Committee shall meet promptly and endeavour to reach a mutually satisfactory solution of the matter.

5. Consultations under this Article, and the positions taken by the State Parties during such consultations, shall be confidential. Notwithstanding the preceding sentence, the outcome of these consultations shall be made public unless the consulting parties agree otherwise. Where the outcome of consultations is made public, this shall be through a jointly agreed report.

6. Each State Party shall treat as confidential any information exchanged in the consultations which another State Party has designated as confidential.

ARTICLE 13.16

Panel of Experts

1. If within 120 days from the date of receipt of a request for consultation under paragraph 1 of Article 13.15 (Consultation Procedures) the State Parties concerned fail to reach a mutually satisfactory solution of a matter arising under this Chapter, a State Party may request the establishment of a panel of experts to examine the matter. Such request shall be made in writing to the other State Party concerned and shall identify the reasons for requesting the establishment of a panel of experts, including a description of the matter at issue and indicating the relevant provisions of this Chapter that it considers applicable.

2. A State Party requesting the establishment of a panel of experts shall at the same time notify the other State Parties in writing of the request.

3. The Joint Committee shall agree on the establishment, composition, terms of reference and rules of procedure of the panel of experts at its first meeting.

Should a matter arise before the Joint Committee has reached an agreement, Articles 15.6 (Establishment of the Arbitration Panel), 15.7 (Composition of the Arbitration Panel)), 15.8 (Rules of Procedure), 15.10 (Hearings), 15.16 (Costs) and 15.17 (Confidentiality) as well as Annex XIX (Rules of Procedure) shall apply, mutatis mutandis. In such a case, the terms of reference shall be: "To examine, in the light of the relevant provisions of Chapter 13 (Trade and Sustainable Development) and the Record of Understanding Relating to Chapter 13 (Trade and Sustainable Development) of the Free Trade Agreement Between the EFTA States the MERCOSUR State Parties (Record of Understanding), the matter referred to in the request for the establishment of the panel of experts, and to issue a report, in accordance with Article 13.16 (Panel of Experts), making recommendations for the resolution of the matter."

4. The panellists should have specialised knowledge of, or expertise in, issues addressed in this Chapter or the Record of Understanding including in international trade law and international labour law or environmental law. They shall be independent, serve in their individual capacities and shall not take instructions from any organisation or government with regard to issues related to the matter arising under this Chapter or the Record of Understanding, or be affiliated with the government of a State Party.

5. The panel of experts may seek information or advice from relevant international organisations or bodies. Any information obtained shall be submitted to the State Parties concerned for their comments.

6. Where the matter arising under this Chapter or the Record of Understanding regards compliance with obligations under a multilateral environmental agreement to which the consulting State Parties are parties, the requesting State Party should, where appropriate, address the matter through the consultative procedure or other procedures under that multilateral environmental agreement.

7. The panel of experts shall interpret this Chapter and the Record of Understanding in accordance with the customary rules of interpretation of public international law.

8. The panel of experts shall submit an interim report containing its findings and recommendations to the State Parties concerned within 90 days from the date of establishment of the panel of experts. A State Party concerned may submit written comments to the panel of experts on its initial report within 45 days from the date of receipt of the report. After considering such written comments, the panel of experts may modify the interim report and make any further examination it considers appropriate. The panel of experts shall issue a final report to the State Parties concerned no later than 60 days from the date of receipt of the interim report. The final report shall be made publicly available within 15 days from its issuance by the panel of experts.

9. If the panel of experts considers that it cannot comply with a timeframe provided for under this Article, it shall inform the State Parties concerned in writing and provide an estimate of the additional time required. Any additional time should not exceed 30 days.

10. The State Parties concerned shall discuss appropriate measures to be implemented taking into account the final report and recommendations of the panel of experts. Such measures shall be communicated to the other State Parties no later than 90 days from the date of issuance of the final report and shall be monitored by the Joint Committee.

ARTICLE 13.17

Review

The Joint Committee shall periodically review progress achieved in pursuing the objectives set out in this Chapter and consider relevant international developments in order to identify areas where further action could promote these objectives.

CHAPTER 14

INSTITUTIONAL PROVISIONS

ARTICLE 14

Joint Committee

1. The Parties hereby establish the EFTA-MERCOSUR Joint Committee. The Joint Committee shall be composed of representatives of each State Party at senior official level or as otherwise designated by the State Parties in accordance with their internal arrangements.

2. The Joint Committee shall:

(a) supervise and review the implementation of this Agreement;

(b) review the possibility of further removal of barriers to trade and other restrictive measures concerning trade between the Parties;

(c) oversee any further elaboration of this Agreement;

(d) supervise the work of all sub-committees and working groups established under this Agreement;

(e) endeavour to resolve disagreements that may arise regarding the interpretation or application of this Agreement; and

(f) consider any other matter that may affect the operation of this Agreement.

3. The Joint Committee may decide to set up sub-committees and working groups to assist it in accomplishing its tasks. Except where otherwise provided for in this Agreement, the sub-committees and working groups shall work under a mandate established by the Joint Committee.

4. The Joint Committee may take decisions as provided for in this Agreement.[15] On other matters the Joint Committee may make recommendations.

5. The Joint Committee may:

(a) consider and recommend to the Parties amendments to this Agreement; and

(b) decide to amend any Annexes or Appendices to this Agreement.

6. The Joint Committee shall take decisions and make recommendations by consensus among all State Parties. The Joint Committee may adopt decisions and make recommendations regarding issues related to only one or several EFTA States on the one

[15] In case the Joint Committee takes binding decisions that are not amendments to this Agreement, the Joint Committee shall specify whether such decision shall be subject to Chapter 15 (Dispute Settlement).

side and one or several MERCOSUR States on the other side. In this case, consensus shall only involve and the decision or recommendation shall only apply to those State Parties.

7. The Joint Committee shall meet within one year of the entry into force of this Agreement. Thereafter, it shall meet whenever necessary but normally every two years. Its meetings shall be chaired jointly by one of the EFTA States and one of the MERCOSUR States. If the State Parties agree, a meeting of the Joint Committee may be held by electronic means.

8. Each State Party may request at any time, through a notice in writing to the other State Parties, that a special meeting of the Joint Committee be held. Such a meeting shall take place within 30 days from the receipt of the request, unless the State Parties agree otherwise.

9. If a State Party in the Joint Committee has accepted a decision subject to the fulfilment of domestic legal requirements, the decision shall enter into force on the date that the last State Party notifies that its internal requirements have been fulfilled, unless otherwise agreed. The Joint Committee may decide that the decision enters into force for those Parties that have fulfilled their internal requirements, provided that at least one EFTA State and one MERCOSUR State is one of those Parties.

10. The Joint Committee shall establish its rules of procedure.

CHAPTER 15

DISPUTE SETTLEMENT

ARTICLE 15.1

Scope and Coverage

Unless otherwise specified in this Agreement, this Chapter applies to any disputes concerning the interpretation or application of this Agreement.

ARTICLE 15.2

Choice of Forum

1. Disputes regarding the same matter arising under this Agreement and under the WTO Agreement may be settled under this Chapter or under the WTO Dispute Settlement Understanding at the discretion of the complaining Party.[16] The forum thus selected shall be used to the exclusion of the other**.**

2. For the purposes of paragraph 1, dispute settlement procedures are deemed to be initiated, and thus the forum selected:

(a) under the WTO Agreement, upon a Party's request for the establishment of a panel under Article 6 of the WTO Understanding on Rules and Procedures Governing the Settlement of Disputes of the WTO; and

(b) under this Agreement, upon a Party's request for arbitration pursuant to paragraph 1 of Article 15.6 (Establishment of the Arbitration Panel).

ARTICLE 15.3

Parties to a Dispute

1. For the purposes of this Chapter, one or more EFTA States, MERCOSUR or one or more MERCOSUR States, may be parties to a dispute.

2. One or more EFTA States may initiate a dispute settlement proceeding against one or more MERCOSUR States. In case of a measure of MERCOSUR, one or more EFTA States may in addition initiate a dispute settlement proceeding against MERCOSUR. The fact that a measure of a MERCOSUR State is derived from or related to a measure of MERCOSUR shall not preclude a dispute settlement proceeding against the MERCOSUR State concerning its measure. A MERCOSUR State complained against

[16] For the purposes of this Chapter, the terms "Party", "party to the dispute", "complaining Party" and "Party complained against" can denote one or more Parties.

may not invoke as a defence that the measure is an implementation of a MERCOSUR measure.

3. MERCOSUR may initiate a dispute settlement proceeding against one or more EFTA States whenever the measure at issue is a measure of one or more EFTA States that affects all MERCOSUR States.

4. One or more MERCOSUR States may initiate a dispute settlement proceeding against one or more EFTA States.

ARTICLE 15.4

Good Offices, Conciliation or Mediation

1. Good offices, conciliation and mediation are procedures that are undertaken voluntarily if the parties to the dispute so agree. They may begin and, upon request of a party to the dispute be terminated at any time. They may continue while proceedings of an arbitration panel established in accordance with this Chapter are in progress.

2. Proceedings involving good offices, conciliation and mediation, and in particular positions taken by the parties to the dispute during these proceedings, shall be confidential. These proceedings shall be without prejudice to the rights of the parties to the dispute in any other proceedings.

ARTICLE 15.5

Consultations

1. The Parties shall at all times endeavour to settle any disputes referred to in Article 15.1 (Scope and Coverage) and shall make every attempt through cooperation and consultations to agree on the interpretation and application of this Agreement and to reach a mutually satisfactory solution of any matter raised in accordance with this Article.

2. A Party may request in writing bilateral consultations with another Party if it considers that a measure is inconsistent with this Agreement. The Party requesting bilateral consultations shall at the same time notify the other Parties in writing of the request. The Party to which the request is made shall reply within ten days from the receipt of the request.

3. Bilateral consultations shall commence within 30 days from the receipt of the request for consultations. Bilateral consultations on urgent matters, including those on perishable goods, shall commence within 15 days from the receipt of the request for consultations. If the Party to which the request is made does not reply within ten days or does not enter into consultations within 30 days from the receipt of the request for bilateral consultations, or within 15 days for urgent matters, the Party making the request is entitled to request the establishment of an arbitration panel in accordance with Article 15.6 (Establishment of the Arbitration Panel).

4. If the parties to the dispute do not reach a mutually agreed solution through bilateral consultations in accordance with paragraph 3, within 45 days, or within 30 days for urgent matters, from the receipt of the request for such consultations, each party to the

dispute may request in writing consultations in the Joint Committee established under Article 14 (Joint Committee).

5. Consultations in the Joint Committee shall commence within 75 days, or within 50 days for urgent matters, from the receipt of the request for bilateral consultations. If the Party to which the request is made does not enter into consultations in the Joint Committee within these deadlines, the Party making the request is entitled to request the establishment of an arbitration panel in accordance with Article 15.6 (Establishment of the Arbitration Panel). Should it not be possible to hold the meeting of the Joint Committee within this period of time, the parties to the dispute may extend this term by consensus.

6. The parties to the dispute shall provide information to enable a complete examination of whether the measure is inconsistent with this Agreement and treat any confidential information exchanged in the course of consultations in the same manner as the Party providing the information.

7. Upon agreement of the parties to the dispute, the bilateral consultations and the consultations in the Joint Committee may be held in person or by any technological means available. If consultations are held in person, these should take place in the territory of the Party complained against, unless the parties to the dispute agree otherwise.

8. Consultations shall be confidential and without prejudice to the rights of the parties to the dispute in any other proceedings.

9. The parties to the dispute shall inform the other Parties of any mutually agreed resolution of the matter.

ARTICLE 15.6

Establishment of the Arbitration Panel

1. If the consultations referred to in Article 15.5 (Consultations) fail to settle a dispute within 105 days, or 60 days in relation to urgent matters, including those on perishable goods, from the receipt of the request for bilateral consultations by the Party complained against, the complaining Party may request the establishment of an arbitration panel by means of a written request to the Party complained against. A copy of this request shall be communicated to the other Parties so that they may determine whether to participate in the arbitration proceeding.

2. The request for the establishment of an arbitration panel shall identify the specific measure at issue and provide a brief summary of the legal and factual basis of the complaint.

3. The arbitration panel shall be appointed pursuant to Article 15.7 (Composition of the Arbitration Panel). The date of establishment of the arbitration panel shall be the date on which the Chair has accepted appointment.

4. Unless the parties to the dispute agree otherwise within 20 days from the receipt of the request for the establishment of the arbitration panel, the terms of reference for the arbitration panel shall be:

"To examine, in light of the relevant provisions of this Agreement, the matter referred to in the request for the establishment of an arbitration panel pursuant to Article 15.6 (Establishment of the Arbitration Panel) and to make findings of law and fact together with the reasons, as well as recommendations, if any, for the resolution of the dispute and the implementation of the ruling."

5. Where more than one Party requests the establishment of an arbitration panel relating to the same matter or where the request involves more than one Party complained against, and whenever feasible, a single arbitration panel should be established.

6. A Party which is not a party to the dispute shall be entitled, on delivery of a written notice to the parties to the dispute, to make written submissions to the arbitration panel, receive written submissions, including annexes, from the parties to the dispute, attend hearings and make oral statements.

ARTICLE 15.7

Composition of the Arbitration Panel

1. The arbitration panel shall comprise three arbitrators appointed in accordance with paragraphs 2 to 4.

2. In the written request pursuant to paragraph 2 of Article 15.6 (Establishment of the Arbitration Panel), the complaining Party shall appoint one arbitrator. In addition, the complaining Party shall present a list of four individuals who are willing to serve as the third arbitrator.

3. Within 30 days from the receipt of the request, the Party complained against shall appoint a second arbitrator and present a second list of four individuals who are willing to serve as the third arbitrator. If the Party complained against fails to appoint the second arbitrator within these 30 days, the first arbitrator shall appoint the second arbitrator from the list established in paragraph 2 within 10 days.

4. Within 30 days from the appointment of the second arbitrator, the parties to the dispute shall jointly appoint a third arbitrator taking into account the individuals proposed in the lists presented pursuant to paragraphs 2 and 3. If the third arbitrator has not been appointed within 60 days from the appointment of the second arbitrator, the two appointed arbitrators shall appoint the third arbitrator jointly within 30 days. The third arbitrator shall not be a national or permanent resident of a State Party. The third arbitrator thus appointed shall be the Chair of the arbitration panel.

5. Arbitrators must have specialised knowledge and experience in law and international trade.

6. The arbitrators appointed to serve in an arbitration panel shall be independent, serve in their individual capacities, shall not take instructions from any organisation or government and shall not act as representatives nor be affiliated with the government or any governmental organisation of a Party. A person who has acted in any capacity in previous phases of the dispute settlement procedure or who does not have the necessary

independence with regard to the positions of the parties to the dispute shall not act as an arbitrator in an arbitration panel.

7. Any arbitrator may be challenged by any party to the dispute if circumstances give rise to justifiable doubts as to the arbitrator's objectivity, reliability, sound judgment or independence. If the other party to the dispute does not agree with the challenge or the challenged arbitrator does not withdraw within 15 days from the date when the evidence in support of the challenge was notified in writing to the other party to the dispute, the party to the dispute making the challenge may request that such matter be referred to the Chair of the arbitration panel whose decision shall be final. In case the challenged arbitrator is the Chair, the challenge shall be referred to the other two arbitrators.

8. Whenever possible, the arbitration panel referred to in Articles 15.13 (Implementation of the Arbitral Award) and 15.14 (Compensation and Suspension of Benefits) shall comprise the same arbitrators who issued the arbitral award.

9. If an arbitrator resigns, is removed or becomes unable to act, a successor shall be appointed in the same manner as prescribed for the appointment of the original arbitrator. The work of the arbitration panel shall be suspended pending appointment of the successor.

ARTICLE 15.8

Rules of Procedure

1. Annex XIX (Rules of Procedure) shall apply with respect to the proceedings of the arbitration panel, unless the parties to the dispute agree otherwise.

2. The Joint Committee shall review and complete Annex XIX (Rules of Procedure) at its first meeting.

3. Where a procedural question arises that is not covered by this Agreement, an arbitration panel may, after consultation with the parties to the dispute, adopt an appropriate procedure that is consistent with this Agreement.

ARTICLE 15.9

Applicable Law

The arbitration panel shall examine the matter referred to it in the request for the establishment of an arbitration panel in the light of the relevant provisions of this Agreement, in accordance with the rules of interpretation of public international law.

ARTICLE 15.10

Hearings

1. The hearings of the arbitration panel shall be open to the public, unless the parties to the dispute agree otherwise. The hearings of the arbitration panel shall be partially or completely closed to the public for the discussion of information, which a party to the dispute has designated as confidential.

2. The location of any hearing of the arbitration panel, if it is held in person, shall be decided by mutual agreement of the parties to the dispute, failing which, it shall be decided by the arbitration panel.

ARTICLE 15.11

Interim Reports and Arbitral Award

1. The arbitration panel should submit an interim report containing its findings and rulings to the parties to the dispute no later than 90 days from the date of establishment of the arbitration panel. A party to the dispute may submit written comments to the arbitration panel within 14 days from the receipt of the interim report. The arbitration panel should present to the parties to the dispute an arbitral award within 30 days from the receipt of the interim report.

2. The arbitral award, as well as any ruling under Articles 15.13 (Implementation of the Arbitral Award) and 15.14 (Compensation and Suspension of Benefits), shall be communicated to the Parties. The award, as well as the rulings, shall be made public, unless the parties to the dispute decide otherwise.

3. The arbitral award, as well as any ruling of the arbitration panel under this Chapter shall be final and binding upon the parties to the dispute.

4. Decisions of the arbitration panel shall be taken by a majority of the arbitrators if consensus cannot be reached. The arbitration panel shall not disclose any minority opinions.

ARTICLE 15.12

Suspension or Termination of Arbitration Panel Proceedings

1. Where the parties to the dispute agree, an arbitration panel may suspend its work at any time for a period not exceeding 12 months. If the work of an arbitration panel has been suspended for more than 12 months, the arbitration panel's authority for considering the dispute shall lapse, unless the parties to the dispute agree otherwise.

2. The complaining Party may withdraw its complaint at any time before the interim report has been issued. Such withdrawal shall be without prejudice to its right to introduce a new complaint regarding the same issue at a later point in time, unless the parties to the dispute agree otherwise.

3. The parties to the dispute may agree at any time to terminate the proceedings of an arbitration panel established under this Agreement by jointly notifying in writing the Chair of that arbitration panel.

ARTICLE 15.13

Implementation of the Arbitral Award

1. The Party complained against shall promptly comply with the ruling in the arbitral award. If it is impracticable to comply immediately, the parties to the dispute shall endeavour to agree on a reasonable period of time to do so. In the absence of such agreement within 45 days from the issuance of the arbitral award, either party to the dispute may request the original arbitration panel to determine the length of the reasonable period of time, in light of the particular circumstances of the case. The ruling of the arbitration panel should be given within 60 days from the receipt of that request.

2. The Party complained against shall, within the time period established in accordance with paragraph 1, notify the other party to the dispute of the measure adopted in order to comply with the ruling in the arbitral award, as well as provide a description of how the measure ensures compliance in a manner that allows the other party to the dispute to assess the measure.

3. In case of disagreement as to the existence of a measure complying with the ruling in the arbitral award or to the consistency of that measure with the ruling in the arbitral award, such disagreement shall be decided by the same arbitration panel upon request of either party to the dispute before compensation can be sought or suspension of benefits can be applied in accordance with Article 15.14 (Compensation and Suspension of Benefits). Such request shall identify the specific measure at issue and explain how such measure does not comply with the arbitral award in a manner to present the legal basis for the complaint. The ruling of the arbitration panel should be rendered within 90 days from the receipt of that request.

ARTICLE 15.14

Compensation and Suspension of Benefits

1. If the Party complained against does not comply with an arbitral award of the arbitration panel referred to in Article 15.13 (Implementation of the Arbitral Award), or notifies the complaining Party that it does not intend to comply with the ruling in the arbitral award, that Party shall, if so requested by the complaining Party, enter into consultations with a view to agreeing on mutually acceptable compensation. If no such agreement has been reached within 20 days from the receipt of the request, the complaining Party shall be entitled to suspend the application of benefits granted under this Agreement but only equivalent to the benefits affected by the measure that the arbitration panel has found to be inconsistent with this Agreement.

2. In considering what benefits to suspend, the complaining Party should first seek to suspend benefits in the same sector or sectors as that affected by the measure that the arbitration panel has found to be inconsistent with this Agreement. The 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 indicating the reasons that justify its decision.

3. The complaining Party shall notify the Party complained against of the benefits which it intends to suspend, the grounds for such suspension and when suspension will commence, no later than 30 days before the date on which the suspension is due to take effect. Within 15 days from the receipt of that notification, the Party complained against may request the original arbitration panel to rule on whether the benefits which the complaining Party intends to suspend are equivalent to the benefits affected by the measure found to be inconsistent with this Agreement, and whether the proposed suspension is in accordance with paragraphs 1 and 2. Within 10 days from the date of the request for the arbitration panel referred to in this paragraph, the complaining Party shall present a document indicating the methodology it has used to calculate the level of the suspension of benefits. The ruling of the arbitration panel should be given within 45 days from the receipt of that request. Benefits shall not be suspended until the arbitration panel has issued its ruling.

4. Compensation and suspension of benefits shall be temporary measures and shall only be applied by the complaining Party until the measure found to be inconsistent with this Agreement has been withdrawn or amended so as to bring it into conformity with this Agreement, or until the parties to the dispute have resolved the dispute otherwise.

5. At the request of a party to the dispute, the original arbitration panel shall rule on the conformity with the arbitral award of any implementing measures adopted after the suspension of benefits and, in light of such ruling, whether the suspension of benefits should be terminated or modified. The ruling of the arbitration panel should be given within 30 days from the receipt of that request.

ARTICLE 15.15

Time Periods

1. Any time period mentioned in this Chapter may be extended by mutual agreement of the parties to the dispute or by the arbitration panel upon request of a Party to the dispute.

2. When an arbitration panel considers that it cannot comply with a timeframe imposed on it under this Chapter, it shall inform the parties to the dispute in writing and provide an estimate of the additional time required. Any additional time required should not exceed 30 days.

ARTICLE 15.16

Costs

The costs of arbitration shall be borne by the parties to the dispute in equal shares. Each party to the dispute shall bear its own legal and other costs incurred in relation to the arbitration. The arbitration panel may decide that the costs be distributed differently taking into account the particular circumstances of the case.

ARTICLE 15.17

Confidentiality

1. The Parties shall treat as confidential the information which has been designated as confidential by a Party submitting the information to the arbitration panel.

2. Written submissions of a party to the dispute shall not be published by the other party to the dispute or by the arbitration panel without explicit consent of the party to the dispute that presented the submission.

3. A party to the dispute shall, upon request of another party to the dispute, provide a non-confidential summary of the information contained in its written submission that may be disclosed to the public.

CHAPTER 16

FINAL PROVISIONS

ARTICLE 16.1

Annexes and Appendices

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

ARTICLE 16.2

Amendments

1. Any Party may submit proposals for amendments to this Agreement to the Joint Committee for consideration and recommendation.

2. Amendments to this Agreement other than those referred to in Article 14 (Joint Committee) shall be subject to ratification, acceptance or approval.

3. Unless otherwise agreed, amendments shall enter into force on the first day of the third month following the date on which at least one EFTA State and one MERCOSUR State have deposited their instrument of ratification, acceptance or approval with the Depositary. In relation to an EFTA State or a MERCOSUR State depositing its instrument of ratification, acceptance or approval after the date on which at least one EFTA State and one MERCOSUR State have deposited their instrument of ratification, acceptance or approval with the Depositary, the amendment shall enter into force on the first day of the third month following the deposit of its instrument.

4. Amendments regarding issues related only to one or several EFTA States and one or several MERCOSUR States shall be agreed upon by the State Parties concerned.

5. The text of the amendments and the instruments of ratification, acceptance or approval shall be deposited with the Depositary.

6. A State Party may apply an amendment provisionally, subject to its domestic legal requirements. Provisional application of amendments shall be notified to the Depositary. The provisional application of an amendment shall begin:

(a) for an EFTA State, on the first day of the third month following the date of its notification to the Depositary, provided that at least one MERCOSUR State has notified its intention to apply the amendment provisionally or deposited its instruments of ratification, acceptance or approval; and

(b) for a MERCOSUR State, on the first day of the third month following the date of its notification to the Depositary, provided that at least one EFTA

State has notified its intention to apply the amendment provisionally or deposited its instrument of ratification, acceptance or approval.

ARTICLE 16.3

Accession

1. Any State becoming a Member of EFTA or MERCOSUR, may accede to this Agreement on terms and conditions agreed by the State Parties and the acceding State.

2. In relation to an acceding State, this Agreement shall enter into force on the first day of the third month following the date on which the acceding State and the last State Party have deposited their instruments of ratification, acceptance or approval of the terms of accession.

ARTICLE 16.4

Withdrawal and Expiration

1. The MERCOSUR States may collectively withdraw from this Agreement by means of a written notification to the Depositary. Any EFTA State may withdraw from this Agreement by means of a written notification to the Depositary.

2. The withdrawal shall take effect six months from the date on which the notification is received by the Depositary.

3. Any EFTA State which withdraws from the Convention establishing the European Free Trade Association shall, ipso facto on the same day as the withdrawal takes effect, cease to be a Party to this Agreement.

4. Any MERCOSUR State which withdraws from the Treaty establishing the Common Market of the South shall, ipso facto, on the same day as the withdrawal takes effect, cease to be a Party to this Agreement.

5. Without prejudice to paragraphs 3 and 4, any State Party withdrawing from the Convention establishing the European Free Trade Association or from the Treaty establishing the Common Market of the South shall promptly notify the Depositary of the initiation of the withdrawal process. The Depositary shall promptly notify the other Parties.

6. If all the EFTA States withdraw or if all the MERCOSUR States collectively withdraw, this Agreement shall, ipso facto, be terminated.

ARTICLE 16.5

Entry into Force

1. This Agreement is subject to ratification, acceptance or approval. The instruments of ratification, acceptance or approval shall be deposited with the Depositary.

2. This Agreement shall enter into force on the first day of the third month following the date on which at least one EFTA State and one MERCOSUR State have deposited their instrument of ratification, acceptance or approval with the Depositary.

3. In relation to an EFTA State or a MERCOSUR State depositing its instrument of ratification, acceptance or approval after the date on which at least one EFTA State and a MERCOSUR State have deposited their instrument of ratification, acceptance or approval with the Depositary, this Agreement shall enter into force on the first day of the third month following the deposit of its instrument.

4. A State Party may apply this Agreement provisionally, subject to its domestic legal requirements. Provisional application of this Agreement shall be notified to the Depositary. The provisional application shall begin:

a) for an EFTA State, on the first day of the third month following the date of its notification to the Depositary, provided that at least one MERCOSUR State has notified its intention to apply this Agreement provisionally or deposited its instrument of ratification, acceptance or approval; and

b) for a MERCOSUR State, on the first day of the third month following the date of its notification to the Depositary, provided that at least one EFTA State has notified its intention to apply this Agreement provisionally or deposited its instrument of ratification, acceptance or approval.

ARTICLE 16.6

Depositary

1. The Government of Norway shall act as Depositary.

2. An original of this Agreement and of any amendment shall be lodged with Paraguay.

3. Paraguay shall coordinate the actions of the MERCOSUR States.

IN WITNESS WHEREOF the undersigned, being duly authorised thereto, have signed this Agreement.

Done at Rio de Janeiro, this 16th day of September 2025, in two originals in English, one of which shall be deposited with the Depositary and the other shall be lodged with Paraguay. The Depositary shall transmit certified copies to all the Parties. For internal approval purposes, official translations of the authentic text shall be prepared by the Parties and exchanged through diplomatic channels.

For Iceland	For the Argentine Republic
.....	.....
For the Principality of Liechtenstein	For the Federative Republic of Brazil
.....	……...
For the Kingdom of Norway	For the Republic of Paraguay
.....	……
For the Swiss Confederation	For the Oriental Republic of Uruguay
.....	…….