FREE TRADE AGREEMENT BETWEEN THE UNITED MEXICAN STATES AND THE REPUBLIC OF NICARAGUA

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FREE TRADE AGREEMENT BETWEEN THE GOVERNMENT OF THE UNITED MEXICAN STATES AND THE GOVERNMENT OF THE REPUBLIC OF NICARAGUA

PREAMBLE

The Government of the Republic of Nicaragua and the Government of the United Mexican States, resolved to:

Strengthen the special bonds of friendship and cooperation between their peoples;

Accelerate and revitalize American integration schemes;

Achieve a better balance in their trade relations, bearing in mind their levels of economic development;

Contribute to the harmonious development and expansion of world trade and broader international cooperation;

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

Reduce distortions in their reciprocal trade;

Establish clear and mutually advantageous rules governing their trade;

Ensure a predictable commercial framework for business planning and investment;

Build on their respective rights and obligations under the Marrakesh Agreement Establishing the World Trade Organization (WTO Agreement), and other multilateral and bilateral instruments of integration and cooperation;

Enhance the competitiveness of their firms in global markets;

Encourage innovation and creativity through the protection of intellectual property rights;

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

Protect the basic rights of their workers;

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

Strengthen the development and enforcement of environmental laws and regulations;

Promote sustainable development;

Preserve their capacity to safeguard the public welfare; and

Promote dynamic participation by the different economic agents, particularly the private sector, in efforts to enhance economic relations between the Parties and to develop and cultivate to the greatest extent possible the opportunities for their joint presence on international markets;

Enter into the following Free Trade Agreement in accordance with the provisions of the WTO Agreement:

PART ONE: GENERAL PART

CHAPTER I: INITIAL PROVISIONS

Article 1-01

Establishment of the Free Trade Area

The Parties establish a free trade zone pursuant to Article XXIV of the General Agreement on Tariffs and Trade of 1994 (GATT 1994) and Article V of the General Agreement on Trade in Services.

Article 1-02

Objectives

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

(a) Encourage the expansion and diversification of trade between the Parties;

(b) eliminate barriers to trade in, and facilitate the movement of goods between the territories of the Parties;

(c) provide fair conditions of competition affecting trade between the Parties;

(d) increase substantially investment opportunities in the territories of the Parties;

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

(f) establish a framework for further cooperation between the Parties, as well as bilateral and multilateral cooperation to expand and enhance the benefits of this Agreement; and

(g) create effective procedures for the implementation and application of, and compliance with this Agreement, and for the resolution of disputes.

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

Article 1-03

Relation to Other International Agreements

1. The Parties affirm their existing rights and obligations with respect to each other under the WTO Agreement and other agreements to which they are party.

2. In the event of any inconsistency between this Agreement and the agreements referred to in paragraph 1, this Agreement shall prevail to the extent of the inconsistency.

Article 1-04

Observance of the Agreement

The Parties shall ensure that all necessary measures are taken to give effect to the provisions of this Agreement in their territories by their federal or central, state and regional governments, except as otherwise provided in this Agreement.

Article 1-05

Successor Agreements

All references to any other international agreement or treaty shall be understood to apply in the same terms to a successor agreement or treaty to which the Parties are party.

CHAPTER II: GENERAL DEFINITIONS

Article 2-01

Definitions of General Application

For the purposes of this Agreement, unless otherwise specified:

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

(a) Charge equivalent to an internal tax imposed consistently with Article III:2 of the GATT, in respect of similar, directly competitive or substitutable goods of the Party, or in respect of goods from which the imported good has been manufactured or produced in whole or in part;

(b) countervailing duty that is applied pursuant to a Party's domestic law and not applied inconsistently with Chapter IX (Unfair International Trade Practices);

(c) fee or other charge, provided that it is commensurate with the cost of services rendered; and

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

good of a Party means a domestic product as understood in GATT 1994 or such goods as the Parties may agree, and includes originating goods of that Party. A good of a Party may incorporate materials from other countries;

originating good means a good qualifying as such under the rules of origin set out in Chapter VI (Rules of Origin);

Customs Valuation Code means the Agreement on Implementation of Article VII of the General Agreement on Tariffs and Trade 1994, including its interpretative notes, which is part of the WTO Agreement;

Commission means the Administrative Commission established under Article 19-01;

anti-dumping or countervailing duty means any anti-dumping or countervailing duty that is applied pursuant to a Party's domestic law;

days means calendar days;

enterprise means any entity constituted or organized under applicable law, whether or not for profit, and whether privately or governmentally owned, including other economic organizations or units constituted or organized under the applicable law, including any branch, foundation, corporation, trust, partnership, sole proprietorship, joint venture or other association;

state enterprise means an enterprise that is owned or controlled through ownership interests by a Party;

enterprise of a Party means an enterprise constituted or organized under the law of a Party;

tariff item means the tariff classification number consisting of more than six digits under the Harmonized System;

measure includes any law, regulation, procedure, requirement or administrative practice;

national means a natural person who is a citizen of a Party as established in its applicable legislation. The term also includes persons who are permanent residents in the territory of that Party under its law;

Party means a State in which this Agreement has entered into force;

exporting Party means the Party from whose territory a textile or apparel good is exported;

importing Party means the Party into whose territory a good or service is imported;

heading means the four-digit tariff classification number under the Harmonized System;

person means a natural person or an enterprise

person of a Party means a national or an enterprise of a Party;

Tariff Elimination Programme means the programme established in Article 3-04;

Secretariat means the Secretariat established under Article 19-02;

Harmonized System: means the Harmonized Commodity Description and Coding System, including its General Rules of Interpretation and its explanatory notes;

subheading means the six-digit tariff classification number under the Harmonized System;

territory means, for each Party, the territory of that Party defined in Annex 2-01;

ANNEX 2-01

Country-Specific Definitions

For the purposes of this Agreement, unless otherwise specified:

territory means

(a) With respect to Mexico

(i) the states of the Federation and the Federal District;

(ii) the islands, including the reefs and keys, in adjacent seas;

(iii) the islands of Guadalupe and Revillagigedo situated in the Pacific Ocean;

(iv) the continental shelf and the submarine shelf of such islands, keys and reefs;

(v) the waters of the territorial seas, in accordance with international law, and its interior maritime waters;

(vi) the space located above the national territory, in accordance with international law; and

(vii) any areas beyond the territorial seas of Mexico within which Mexico may exercise rights with respect to the seabed and subsoil and their natural resources, in accordance with international law, including the United Nations Convention on the Law of the Sea, and its domestic law;

(b) with respect to Nicaragua, the terrestrial, maritime and air space under its sovereignty, and the marine and submarine zones over which the Republic of Nicaragua exercises sovereign rights and jurisdiction in accordance with its own legislation and international law.

PART TWO: TRADE IN GOODS

CHAPTER III: NATIONAL TREATMENT AND MARKET ACCESS FOR GOODS

Section A - Definitions, Scope and Coverage

Article 3-01

Definitions

For the purposes of this Chapter:

consumed means

(a) Actually consumed; or

(b) further processed or manufactured so as to result in a substantial change in value, form or use of a good, or in the production of another good;

performance requirement means a requirement that:

(a) A given level or percentage of goods or services be exported;

(b) domestic goods or services of the Party granting a waiver of customs duties be substituted for imported goods or services;

(c) a person benefiting from a waiver of customs duties purchase other goods or services in the territory of the Party granting the waiver, or accord a preference to domestically produced goods or services;

(d) a person benefiting from a waiver of customs duties produce goods or provide services, in the territory of the Party granting the waiver, with a given level or percentage of domestic content; or

(e) relate in some way the volume or value of imports to the volume or value of exports, or to the amount of foreign exchange inflows;

samples of no commercial value means commercial samples that are so marked, torn, perforated or otherwise treated that they are unsuitable for sale or for use except as commercial samples; and

Article 3-02

Scope and Coverage

This Chapter applies to trade in goods between the Parties, except as provided otherwise in this Agreement.

Section B - National Treatment

Article 3-03

National Treatment

1. Each Party shall accord national treatment to the goods of the other Party in accordance with Article III of GATT 1994, including its interpretative notes, and to this end Article III of GATT 1994 and its interpretative notes are incorporated into and made part of this Agreement.

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

3. Paragraphs 1 and 2 do not apply to the measures set out in Articles 3-03 and 3-09.

Section C - Customs Duties

Article 3-04

Tariff Elimination

1. Except as otherwise provided in this Agreement, neither Party may increase any existing customs duty, or adopt any new duty, on an originating good.[1, 2]

[1] Paragraph 1 does not prevent a Party from raising a customs duty to a level not greater than the level established in the Tariff Elimination Programme, where that customs duty has previously been unilaterally reduced to a level below that established in the Tariff Elimination Programme.

[2] Paragraphs 1 and 2 are not intended to prevent a Party from increasing a customs duty that may be permitted under any provision arising from a WTO dispute settlement procedure between the Parties.

2. Except as otherwise provided herein, when this Agreement comes into force, each Party shall progressively eliminate its customs duties on all originating goods in accordance with the terms of Annex 3-04.

3. At the request of either Party, the Parties shall consult to consider accelerating the elimination of customs duties set out in their Tariff Elimination Programme. When approved by the Parties in accordance with their applicable legal procedures, any agreement between the Parties to accelerate the elimination of the customs duty on a good shall supersede any duty rate or staging category determined pursuant to their Schedules for such good.

4. Except as otherwise provided herein, this Agreement shall incorporate any tariff preferences negotiated previously between the Parties, pursuant to the First Amendatory Protocol of the Partial Scope Agreement signed between Mexico and Nicaragua, as reflected in the Tariff Elimination Programme. When this Agreement comes into force, the preferences negotiated or granted between the Parties previously under the First Amendatory Protocol of the Partial Scope Agreement between Mexico and Nicaragua shall be rescinded.

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

6. On written request of the other Party, a Party applying or intending to apply measures on imports pursuant to paragraph 5 shall consult to review the administration of those measures.

Article 3-05

Restriction on Drawback and Duty Deferral Programmes

1. For the purposes of this Article:

customs duty means the customs duties that would be applicable to a good entered for consumption in the customs territory of a Party if the good were not exported to the territory of the other Party;

fungible goods means "fungible goods" as defined in Chapter VI (Rules of Origin);

identical or similar goods means goods that are the same in all respects, including their physical characteristics, quality, and reputation; and also goods which, although not the same in every respect, have similar characteristics and composition, which enables them to fulfil the same functions and be commercially interchangeable; and

material means "material" as defined in Chapter VI (Rules of Origin);

2. Neither Party may refund the amount of customs duties paid, or waive or reduce customs duties owed, on a good imported into its territory, by an amount that exceeds the total duty paid or owed on that quantity of the imported good in question, with an appropriate discount for wastage, on the condition that it is:

(a) Used as a material in the production of another good that is subsequently exported to the territory of the other Party; or

(b) substituted by an identical or similar good used as a material in the production of another good that is subsequently exported to the territory of the other Party.

3. Neither Party may, on condition of export, refund, waive or reduce:

(a) A countervailing duty that is applied pursuant to a Party's domestic law;

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

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

4. Except as provided otherwise in this Article, as from 1 July 2005, and in the circumstances indicated in paragraph 6, neither Party may refund the amount of customs duties paid, or waive or reduce the amount of customs duties owed, on a good imported into its territory, on condition that the good is:

(a) Used as a material in the production of an originating good that is subsequently exported to the territory of the other Party; or

(b) substituted by an identical or similar good used as a material in the production of an originating good that is subsequently exported to the territory of the other Party.

5. Effective 1 July 2005 and in the circumstances indicated in paragraph 6, when a good is imported into the territory of a Party pursuant to a duty deferral programme, and any of the conditions indicated in paragraphs 4(a) and (b) are fulfilled, the Party from whose territory the good was exported:

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

(b) within 60 days counted from the date of the export, shall collect the amount of the customs duties as if the exported good had been withdrawn for domestic consumption.

6. Paragraphs 4 and 5 shall apply:

(a) From the time when Nicaragua applies provisions similar to those contained in those paragraphs to a non-Party; or

(b) to a good imported to the territory of one of the Parties that fulfils the conditions of paragraph 4(a) and (b). In this case the refund of customs duties shall be suspended for three years, where it is shown that the refund, waiver, or reduction of customs duties simultaneously:

(i) creates a significant distortion in the tariff treatment applied by the Party granting the refund, waiver, or reduction of tariffs in favour of the exportation of goods from the territory that Party; and

(ii) causes damage to the domestic production of identical or similar goods, or direct competitors of the other Party.

7. For the purposes of paragraph 6, a significant distortion exists in the tariff treatment applied by the Party granting the refund, waiver, or reduction of customs duties in favour of the exportation of goods from the territory of that Party, when:

(a) The amount of customs duties refunded, waived or reduced on goods imported to the territory of that Party, which fulfil the conditions set out in subparagraphs 4(a) and (b) and which are produced in the territory of the Parties, exceeds 5 per cent of the total value of the annual imports of originating goods classified in a tariff item of the Party to whose territory those originating goods are exported; or

(b) a Party refunds, waives, or reduces customs duties on goods or materials arriving from the territory of a non-Party, on the importation of which it maintains quantitative restrictions, and those goods or materials are subsequently exported to the other Party, used in the production of goods subsequently exported to the other Party, or substituted by identical or similar materials used in the production of goods subsequently exported to the other Party.

8. For the purposes of paragraph 6, for the determination of damage:

(a) Damage means significant impairment of domestic production; and

(b) domestic production means the producer or producers of identical or similar goods, or direct competitors operating within the territory of a Party and which account for significantly more than 35 per cent of the total domestic production of those goods.

9. Paragraphs 3, 4 and 5 do not apply to:

(a) A good entered under bond or guarantee for transportation and exportation to the territory of the other Party;

(b) a good exported to the territory of the other Party in the same condition as when imported into the territory of the Party from which the good was exported. Processes such as testing, cleaning, repacking or inspecting the good, or preserving it in its same condition, shall not be considered to change a good's condition. When a good has been commingled with fungible goods and exported in the same condition, its origin for the purposes of this paragraph may be determined on the basis of the inventory methods provided for in Chapter VI (Rules of Origin).

(c) a good imported into the territory of a Party that is subsequently deemed to be exported from its territory, or used as a material in the production of another good that is deemed to be exported to the territory of the other Party, or is substituted by an identical or similar good used as a material in the production of another good that is deemed to be exported to the territory of the other Party, by reason of:

(i) its delivery to a duty-free shop; or

(ii) its delivery for ships stores or supplies for ships or aircraft;

(d) the refund of customs duties by a Party on a particular good imported into its territory and subsequently exported to the territory of the other Party, where that refund is granted by reason of the failure of such good to conform to sample or specification, or by reason of the shipment of such good without the consent of the consignee; or

(e) an originating good that is imported into the territory of a Party and subsequently exported to the territory of the other Party, or used as a material in the production of another good that is subsequently exported to the territory of the other Party, or is substituted by an identical or similar good used as a material in the production of another good that is subsequently exported to the territory of the other Party.

10. A Party that reimburses, waives or reduces customs duties shall provide, at the request of the other Party, such information as is needed to verify the existence of the conditions set out in paragraph 6, including statistical information relating to the imports on which reimbursements, waivers or reductions of customs duties are granted, in relation to a good exported to the territory of the other Party.

11. As a condition for excluding from the calculation of the percentage referred to in paragraph 9(a), the refunds, waivers or reductions in tariff duties granted on a good satisfying the conditions of paragraphs 4(a) and (b), the Party that refunds, waives or reduces those customs duties shall demonstrate that there is no production in the free trade area of a good that is identical or similar to that good.

12. For the purposes of paragraph 11, at the request of the Party that refunds, waives or reduces customs duties on a good, the other Party shall provide, as far as possible, the relevant and available information on that good.

13. Each Party shall establish clear and strict procedures for the application of paragraphs 4 and 5, pursuant to the following:

(a) The Party that decides to initiate an investigation to apply paragraphs 4 and 5 shall announce the start thereof in the corresponding official media, and shall notify the exporting Party in writing on the day following publication;

(b) for the purposes of determining a significant distortion and damage pursuant to paragraph 6(b) (i) and (ii), the competent authorities shall evaluate all objective and quantifiable factors;

(c) to determine the application of paragraphs 4 and 5, a direct causal relation shall be demonstrated between the refund, waiver or reduction, and the distortion and damage to domestic production of identical or similar goods, or direct competitors;

(d) if, as a result of such investigation, the competent authority should determine, on the basis of objective evidence, that the assumptions envisaged in this Article are fulfilled, the importing Party may initiate consultations with the other Party;

(e) the consultation procedure shall not oblige the Parties to reveal information that has been provided on a confidential basis, disclosure of which could impede compliance with the laws of the Party on the subject, or damage commercial interests;

(f) the period of prior consultations shall begin on the day following receipt of the notification of a request to initiate consultations by the exporting Party. The period of prior consultations shall last 45 days, unless the Parties agree upon a shorter period;

(g) the notification referred to in subparagraph (f) shall be made through the competent authority and shall contain sufficient information to substantiate the application of paragraphs 4 and 5, including:

(i) the names and addresses of the domestic producers of identical or similar goods, or direct competitors representative of domestic production, their share of domestic production of that good and the basis for claiming that they are representative of that sector;

(ii) a clear and full description of the good subject to the procedure, the tariff subheading under which it is classified, its current tariff treatment and the description of the identical, similar or directly competitive domestic good;

(iii) import data for each of the three most recent calendar years that form the basis of the claim that the good is being imported in increasing quantities, either in absolute terms or relative to domestic production;

(iv) data on total domestic production of the identical or similar or directly competitive good for each of the three most recent years; and

(v) data demonstrating the injury caused by imports of the good in question, pursuant to subparagraphs (b) and (c);

(h) paragraphs 4 and 5 may only be applied once the period for prior consultations has expired;

(i) during the consultation period, the exporting Party shall make any observations it considers relevant; and

(j) the exporting Party shall apply paragraphs 4 and 5 on conclusion of the consultation period provided for in subparagraph (f), if any of the assumptions established in paragraph 6 is proven to exist.

14. The Parties shall hold annual consultations on the application of this Article.

Article 3-06

Temporary Importation of Goods

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

(a) Professional equipment necessary for carrying out the business activity, trade or profession of a business person;

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

(c) goods imported for sports purposes and goods intended for display or demonstration, including components, auxiliary apparatus and accessories; and

(d) commercial samples and advertising films;

imported from the territory of the other Party, regardless of their origin and regardless of whether similar, directly competitive or substitutable goods are available in the territory of the Party.

2. Except as otherwise provided in this Agreement, no Party may condition the duty-free temporary admission of a good referred to in paragraph 1(a), (b) or (c), other than to require that such good:

(a) Be imported by a national or resident of the other Party;

(b) be used solely by or under the personal supervision of such person in the exercise of the business activity, trade or profession of that person;

(c) not be sold or leased or transferred in any other form while in its territory under the temporary importation regime;

(d) be accompanied by a bond in an amount no greater than 110 per cent of the charges that would otherwise be owed on entry or final importation, or by another form of security, releasable on exportation of the good, except that a bond for customs duties shall not be required for an originating good;

(e) be capable of identification by such reasonable means as may be established by the customs authority;

(f) be exported on the departure of that person or within the period of time corresponding to the purpose of the temporary admission;

(g) be imported in no greater quantity than is reasonable for its intended use.

(h) not undergo any transformation or modification during the authorized period of importation, apart from wear and tear arising from normal use; and

(i) comply with the sanitary and phytosanitary measures adopted pursuant to Chapter V (Sanitary and Phytosanitary Measures) and with standards-related measures pursuant to Chapter XIV (Standards-Related Measures).

3. Except as otherwise provided in this Agreement, neither Party may condition the duty-free temporary admission of a good referred to in paragraph 1(d), other than to require that such good:

(a) Be imported solely for the solicitation of orders for goods, or services provided from the territory of the other Party or of a non-Party;

(b) not be sold, leased or transferred in any other form, or put to any use other than exhibition or demonstration while in its territory;

(c) be accompanied by a bond in an amount no greater than 110 per cent of the charges that would otherwise be owed on entry or final importation, or by another form of security, releasable on exportation of the good, except that a bond for customs duties shall not be required for an originating good;

(d) be capable of identification by any reasonable means established by the customs authority;

(e) be exported within such period as is reasonably related to the purpose of the temporary admission;

(f) be imported in no greater quantity than is reasonable for its intended use.

(g) not undergo any transformation or modification during the authorized period of importation, apart from wear and tear arising from normal use; and

(h) comply with the sanitary and phytosanitary measures adopted pursuant to Chapter V (Sanitary and Phytosanitary Measures) and with standards-related measures pursuant to Chapter XIV (Standards-Related Measures).

4. A Party may impose the customs duty and any other charge on a good temporarily admitted duty-free that would be owed on entry or final importation of such good if any condition that the Party imposes under paragraph 2 or 3 has not been fulfilled.

Article 3-07

Duty-Free Entry of Commercial Samples of No Commercial Value

Each Party shall grant duty-free entry to commercial samples of no commercial value imported from the territory of the other Party.

Article 3-08

Waiver of Customs Duties

1. Neither Party may adopt any new waiver of customs duties, when the waiver is conditioned, explicitly or implicitly, on the fulfilment of a performance requirement.

2. Effective 1 July 2007, neither Party may, explicitly or implicitly, make the continuation of any existing waiver of customs duties conditional on the fulfilment of a performance requirement.

3. If a waiver or a combination of waivers of customs duties granted by a Party with respect to goods for commercial use by a designated person can be shown by the other Party to have an adverse impact on:

(a) Its economy;

(b) the commercial interests of a person of that Party; or

(c) the commercial interests of an enterprise owned or controlled by a person of that Party, whose production facilities are located in the territory of the Party granting the waiver,

the Party granting the waiver shall either cease to grant it or make it generally available to any importer.

Section D - Non-Tariff Measures

Article 3-09

Import and Export Restrictions

1. Except as otherwise provided in this Agreement, neither Party may adopt or maintain any prohibition or restriction on the importation of any good of the other Party or on the exportation or sale for export of any good destined for the territory of the other Party, except in accordance with Article XI of GATT 1994, including its interpretative notes. To this end, Article XI of GATT 1994 and its interpretative notes, are incorporated into, and made a part of, this Agreement.

2. The Parties understand that the rights and obligations of GATT 1994 incorporated by paragraph 1 prohibit, in any circumstances in which any other form of restriction is prohibited, export price requirements and, except as permitted in enforcement of countervailing and anti-dumping orders and undertakings, import price requirements.

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

(a) Limiting or prohibiting the importation from the territory of the other Party of such good of that non-Party; or

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

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

5. Paragraphs 1 through 4 do not apply to the measures set out in Annexes 3-03 and 3-09.

Article 3-10

Export Taxes

1. Except as set out in this Article, neither Party may adopt or maintain any duty, tax or other charge on the export of any good to the territory of the other Party, unless such duty, tax or charge is adopted or maintained on any such good when destined for domestic consumption.

2. Each Party may adopt or maintain a duty, tax or other charge on the export of those basic foodstuffs set out in paragraph 3, on their ingredients, or on the goods from which such foodstuffs are derived, if such duty, tax or other charge is used:

(a) To limit to domestic consumers the benefits of a domestic food assistance programme with respect to such foodstuff; or

(b) to ensure the availability of sufficient quantities of such foodstuff to domestic consumers, or of sufficient quantities of its ingredients or of the goods from which such foodstuffs are derived, to a domestic processing industry, when the domestic price of such foodstuff is held below the world price as part of a governmental stabilization plan, provided that such duty, tax, or other charge:

(i) does not operate to increase the protection afforded to such domestic industry; and

(ii) is maintained only for such period of time as is necessary to maintain the integrity of the stabilization plan.

3. For the purposes of paragraph 1, basic foodstuffs means:

Beans
Beef liver
Beef remnants and bones
Beef steak or pulp
Beer
Bread
Brown sugar
Canned peppers
Canned sardines
Canned tuna
Cheese
Chicken broth
Condensed milk
Cooked ham
Corn
Corn dough
Corn flour
Corn tortillas
Crackers
Eggs
Evaporated milk
Fillet of fish
French rolls *(pan blanco)*
Gelatine
Ground beef
Instant coffee
Low-priced cookies
Margarine
Meat of poultry
Oak flakes
Pasteurized milk
Powdered chocolate
Powdered milk
Powdered milk for children
Rice
Roasted coffee
Salt
Soft drinks
Soup paste
Tomato purée
Vegetable fat
Vegetable oil
Wheat flour
White sugar

4. Notwithstanding paragraph 1, each of the Parties may adopt or maintain a duty, tax or other charge on the export of any foodstuff to the territory of the other Party if such duty, tax or other charge is temporarily applied to relieve critical shortages of that foodstuff. For the purposes of this paragraph, "temporarily" means up to one year, or such longer period as the Parties may agree.

Article 3-11

Customs User Fees

Neither Party may increase or establish new customs user fees for originating goods, and shall eliminate all their customs user fees on originating goods, effective 1 July 2005.

Article 3-12

Country of Origin Marking

Annex 3-12 applies to measures related to country of origin marking.

Article 3-13

Distinctive Products

Annex 3-13 applies to the products listed therein.

Section E - Publication and Notification

Article 3-14

Publication and Notification

1. Each Party shall ensure that its laws, regulations, procedures and administrative rulings of general application, which it has implemented respecting the classification, valuation or a customs valuation of goods, the rates of customs duties, taxes and other charges or restrictions or prohibitions on importation or exportation, or on the transfer of payments in relation thereto, or to the sale, distribution, transport, insurance, storage, inspection, display, processing, mixture, or any other use of such goods, are promptly published or otherwise made available in such a manner as to enable the other Party and interested persons to become acquainted with them. Each Party shall also publish agreements related to international trade policy that are in force between the government or a governmental organization of that Party, and the government or a governmental organization of the other Party.

2. To the extent possible, each Party shall publish in advance any measure indicated in paragraph 1 that it proposes to adopt, and provide interested persons a reasonable opportunity to comment thereon.

3. Neither Party shall apply, before its official publication, any measure of a general nature adopted by the Party that has the effect of increasing a customs duty or other charge on the importation of goods from the other Party, or which imposes a new or stricter measure, restriction, or prohibition on the importation of goods from the other Party, or for the transfer of funds relative thereto.

4. The provisions of this Article do not oblige either Party to reveal information of a confidential nature, the disclosure which could constitute an obstacle to the fulfilment of laws, be contrary to the public interest, or damage the legitimate commercial interests of public or private enterprises.

5. Each Party shall identify, in terms of tariff item and nomenclature under their respective tariffs, the measures, restrictions or prohibitions on the importation or exportation of goods for reasons of national security, public health, preservation of wildlife, the environment, animal health, standards, labelling, international commitments, requirements of public order or any other regulation.

Section F - Provisions on Textile Goods

Article 3-15

Levels of temporary flexibility for goods classified in Chapters 61 and 62 of the Harmonized System

1. Each Party shall grant to goods classified in Chapter 61 and 62 of the Harmonized System, produced in the territory of the other Party and imported into its territory pursuant to paragraph 2, the preferential tariff treatment established in the Tariff Elimination Programme corresponding to originating goods, in accordance with the amounts and periods established below:

(a) During the period 1 July 1998 through 30 June 1999, US$125,000;

(b) for the period 1 July 1999 through 30 June 2000, US$145,000;

(c) for the period 1 July 2000 through 30 June 2001, US$165,000;

(d) for the period 1 July 2001 through 30 June 2002, US$170,000; and

(e) for the period 1 July 2002 through 30 June 2003, US$175,000.

2. For the purposes of this Article, goods classified in chapters 61 and 62 of the Harmonized System shall fulfil the following requirements:

(a) Goods classified in chapter 61 of the Harmonized System, a change to headings 61.01 through 61.17 of any other chapter, provided the good is cut (or machine woven) and sewn, or otherwise assembled in the territory of the exporting Party; and

(b) goods classified in chapter 62 of the Harmonized System, a change to headings 62.01 through 62.17 of any other chapter, provided the good is cut (or machine woven) and sewn, or otherwise assembled in the territory of the exporting Party;

3. The annual amounts established in paragraph 1 may not be assigned to goods classified in a given heading in an amount that exceeds 25 per cent of the total annual amount.

4. Effective 1 July 2003, each Party shall only grant preferential tariff treatment to originating goods classified in chapters 61 and 62 of the Harmonized System.

5. Where the importation of such goods exceeds the amounts determined in paragraph 1, each Party shall only grant the preferential tariff treatment established in the Tariff Elimination Programme if such goods fulfil the corresponding rule of origin established in Annex 6-03.

ANNEXES 3-03 and 3.09

Exceptions to Article 3-03 and Article 3-09

Measures of Mexico

1. Notwithstanding Article 3-09, Mexico may adopt or maintain prohibitions or restrictions on the importation of goods provided for in headings 63.09 and 63.10 of the Tariff Schedule of the General Import Duty Act (Tarifa de la "Ley del Impuesto General de Importación"), based on the Harmonized System classification.

2. Notwithstanding Article 3-09, Mexico may adopt or maintain prohibitions or restrictions on the importation of used goods provided for in the following headings, subheadings and tariff items of the Harmonized System:

(Descriptions are provided next to the corresponding item for reference purposes only)

Heading, subheading or tariff item	**Description**
8413.11	Pumps for dispensing fuel or lubricants, of the type used in filling stations, service stations or garages
8413.40	Concrete pumps
8426.12	Mobil lifting frames on tyres and straddle carriers
8426.19	Other (transporter cranes, gantry cranes and bridge cranes)
8426.30	Portal or pedestal jib cranes
8426.41	Cranes, self-propelled, on tyres
8426.49	Other cranes, self-propelled
8426.91	Cranes designed for mounting on road vehicles
8426.99	Other (derrick and works trucks fitted with a crane)
8427.10	Self-propelled trucks powered by an electric motor
8427.20	Other self-propelled trucks
8428.40	Escalators and moving walkways
8428.90	Other lifting, handling, loading or unloading machinery
8429.11	Caterpillar type self-propelled bulldozers and angledozers
8429.19	Other self-propelled bulldozers and angle dozers
8429.20	Self-propelled graders and levellers
8429.30	Self-propelled scrapers
8429.40	Self-propelled tamping machines and road rollers
8429.51	Front-end shovel loaders, self-propelled
8429.52	Machinery with a 360degrees revolving superstructure
8429.59	Mechanical shovels and other shovel loaders
8430.31	Coal or rock cutters and tunnelling machinery, self-propelled
8430.39	Other coal or rock cutters and tunnelling machinery
8430.41	Other boring or sinking machinery, self-propelled
8430.49	Other boring or sinking machinery
8430.50	Other moving, grading, levelling or tamping machinery, self-propelled
8430.61	Tamping or compacting machinery, not self-propelled
8430.62	Scrapers, not self-propelled
8430.69	Other moving, grading or levelling machinery, not self-propelled
8452.10	Sewing machines of the household type
8452.21	Sewing machines, automatic units
8452.29	Other sewing machines
8452.90	Other parts of sewing machines
84.71	Automatic data processing machines and units thereof; magnetic or optical readers, machines for transcribing data onto data media in coded form, and machines for the treatment or processing of such data not elsewhere specified.
8474.20	Crushing or grinding machines for mineral substances
8474.39	Other mixing or kneading machines for mineral substances
8474.80	Machinery for agglomerating, shaping or moulding mineral products
8475.10	Machines for assembling electric lamps or tubes, in glass envelopes
8477.10	Injection-moulding machines, for rubber or plastic industry
8504.40.12	Power supplies recognizable as designed exclusively for the automatic data

	processing machines of heading 84.71
8701.30	Caterpillar tractors
8701.90	Other tractors suitable for agricultural use
8711.10	Motorcycles, side-cars, with reciprocating internal combustion piston engine not exceeding 50 cc
8711.20	Motorcycles, side-cars, with reciprocating internal combustion piston engine exceeding 50 cc but not exceeding 250 cc
8711.30	Motorcycles, side-cars, with reciprocating internal combustion piston engine exceeding 250 cc but not exceeding 500 cc
8711.40	Motorcycles, side-cars, with reciprocating internal combustion piston engine exceeding 500 cc but not exceeding 800 cc
8711.90	Other motorcycles, side-cars, with reciprocating engine
8712.00	Bicycles and other cycles (including delivery tricycles), not motorized
8716.10	Trailers and semi-trailers for housing or camping
8716.31	Tanker trailers and tanker semi-trailers
8716.39	Other trailers and semi-trailers for the transport of goods
8716.40	Other trailers and semi-trailers
8716.80	Other vehicles not mechanically propelled

3. Notwithstanding Article 3-09, Mexico may adopt or maintain prohibitions or restrictions on the importation of goods described in the following headings and subheadings of the Harmonized System:

(Descriptions are provided next to the corresponding item for reference purposes only)

Heading or subheading	**Description**
27.07	Oils and other products from the high temperature distillation of coal tar, similar products in which the weight of aromatic constituents exceeds that of non-aromatic constituents.
27.09	Petroleum oils and oils obtained from bituminous minerals, crude.
27.10	Petroleum oils and oils obtained from bituminous, minerals, other than crude; preparations not elsewhere specified or included, containing by weight 70 per cent
27.11	Petroleum gas and other gaseous hydrocarbons
27.12	Petroleum jelly, paraffin wax, micro- crystalline petroleum wax, slack wax, ozokerite, lignite wax, peat wax, other mineral waxes, and similar products obtained by synthesis or by other processes, whether or not coloured
27.13	Petroleum coke, petroleum bitumen & other residues
27.14	Bitumen and asphalt natural; bituminous or oil shale and tar sands; asphaltites and asphaltic rocks.
2901.10	Saturated acyclic hydrocarbons

4. Notwithstanding Article 3-09, Mexico may adopt or maintain prohibitions or restrictions on the importation of used goods described in the following headings and subheadings of the Harmonized System:

(Descriptions are provided next to the corresponding item for reference purposes only)

Heading or subheading	**Description**
8407.34	Reciprocating piston engines of a kind used for the propulsion of vehicles of Chapter 87, of a cylinder capacity exceeding 1,000 cc.

8701.20	Road tractors for semi-trailers.
87.02	Motor vehicles for the transport of ten or more persons.
87.03	Motor cars and other motor vehicles principally designed for the transport of persons, (other than those of heading 87.02), including station wagons and racing cars.
87.04	Motor vehicles for the transport of goods.
8705.20	Mobile drilling derricks.
8705.40	Concrete mixers.
87.06	Chassis fitted with engines, for the motor vehicles of headings 87.01 to 87.05

5. Notwithstanding Article 3-09, Mexico may adopt or maintain prohibitions or restrictions on the importation of goods described in the following headings and subheadings of the Harmonized System:

(Descriptions are provided next to the corresponding item for reference purposes only)

Heading or subheading	**Description**
8407.34	Reciprocating piston engines of a kind used for the propulsion of vehicles of Chapter 87, of a cylinder capacity exceeding 1,000 cc.
8701.20	Road tractors for semi-trailers.
87.02	Motor vehicles for the transport of ten or more persons.
87.03	Motor cars and other motor vehicles principally designed for the transport of persons, (other than those of heading 87.02), including station wagons and racing cars.
87.04	Motor vehicles for the transport of goods.
8705.20	Mobile drilling derricks.
8705.40	Concrete mixers.
87.06	Chassis fitted with engines, for the motor vehicles of headings 87.01 to 87.05

6. Notwithstanding Article 3-03, Until 1 January 2006, Mexico may maintain the provisions of the Decree for Development and Modernization of the Automotive Industry ("Decreto para el Fomento y Modernización de la Industria Automotriz"), of 11 December 1989, and any renewal or amendment thereof even if inconsistent with this Agreement.

Section B - Measures of Nicaragua

1. Notwithstanding Article 3-09, Nicaragua may adopt or maintain prohibitions or restrictions on the importation of goods described in headings 6309 and 6310 (Textile Articles) of the Central American Tariff System.

2. Notwithstanding Article 3-09, Nicaragua may adopt or maintain prohibitions or restrictions on the importation of goods described in the following headings, subheadings and items of the Central American Tariff System:

(Descriptions are provided next to the corresponding item for reference purposes only)

Heading, subheading or tariff item	**Description**
4004.00.00.00	Waste, parings and scrap of unvulcanized rubber, including powders and granules

4012.10.00.00	Retreaded pneumatic tyres
4012.20.00	Used pneumatic tires
84.09	Electromechanical domestic appliances with self-contained electric motor
8414.5	Fans.
84.15	Air conditioning machines, comprising a motor-driven fan and elements for changing the temperature and humidity.
84.18	Refrigerators, freezers and other materials, machines and apparatus for the production of cold, electric or other.
84.50	Washing machines, including machines which both wash and dry.
84.70	Calculating machines; accounting machines, postage-franking machines, ticket-issuing machines and similar machines, incorporating a calculating device; cash registers.
84.71	Automatic data processing machines and units thereof; magnetic or optical readers, machines for transcribing data onto data media in coded form.
85.16	Electric water heaters and immersion heaters; electric space heating apparatus and floor heating apparatus; electrothermic hairdressing apparatus; electric flatirons; other electronic domestic appliances; electric heating resistors
85.19	Turntables, record players, cassette players and other sound reproducing apparatus.
85.21	Video recording or reproducing apparatus.
85.27	Reception apparatus for radiotelephony, radiotelegraphy or radio broadcasting
85.28	Reception apparatus for television.
87.02	Motor vehicles for the transport of ten or more persons including the driver.
87.03	Motor cars and other motor vehicles principally designed for the transport of persons, (other than those of heading 87.02), including station wagons and racing cars.
87.04	Motor vehicles for the transport of goods.
87.05	Special purpose motor vehicles, other than those principally designed for the transport of persons or goods (for example, wagons, service trucks, mobile cranes, fire fighting vehicles, concrete mixers, road sweepers, spraying vehicles, mobile workshops, mobile radiological units)
87.06	Chassis fitted with engines, for the motor vehicles of headings 87.01 to 87.05.
87.07	Bodies (including cabs) for the motor vehicles of headings 87.01 to 87.05.
87.11	Motorcycles (including mopeds) and cycles fitted with an auxiliary motor, with or without side-cars.
90.09	Photocopying apparatus incorporating an optical system or of the contact type and thermocopying apparatus.

3. Notwithstanding Article 3-09, Nicaragua may adopt or maintain prohibitions or restrictions on the importation of goods described in the following headings, subheadings and items of the Central American Tariff System

(Descriptions are provided next to the corresponding item for reference purposes only)

Heading, subheading or tariff item	**Description**
2709.00.00.00	Petroleum oils and oils obtained from bituminous minerals, crude.
2710.00.10.20	Gasoline with antidetonant
2710.00.10.30	Gasoline without antidetonant
2710.00.10.40	Aviation turbo fuel
2710.00.10.50	Aviation gasoline (Av gas)

2710.00.10.90	Other uses
2710.00.20.	Medium oils
2710.00.30.	10 Gas oil
2710.00.30.20	Fuel oil (Energy)
2710.00.30.30	Fuel oil (other)
2710.00.30.40	Diesel oil
2710.00.30.9	Other uses
2710.00.90.00	Other
27.11	Petroleum gases and other gaseous hydrocarbons
2714.90.00.00	Other uses (Asphalts)

4. Notwithstanding Article 3-09, Nicaragua may adopt or maintain prohibitions or restrictions on the export of wood products (exclusively the cedro and caoba species, classified in the following tariff items of the Central American Tariff System:

(Descriptions are provided next to the corresponding item for reference purposes only))

Item	**Description**
4401.10.00.00	Fuel wood
4401.22.00.00	Non-coniferous-Dry
4401.30.00.00	Sawdust and wood waste and scrap
4403.10.00.00	Painted
4403.49.00.00	Other
4403.99.00.00	Other
4404.20.00.00	Non-coniferous
4405.00.00.00	Wood wool (excelsior);
4406.10.00.00	Railway or tramway sleepers; not impregnated
4406.90.00.00	Railway or tramway sleepers; other
4407.29.00.00	Other (sawn wood)
4407.99.00.00	Other (sawn wood)
4408.39.00.00	Other (veneer sheets)
4408.90.00.00	Other
4409.20.00.00	Wood, continuously shaped, non-coniferous
4410.11.00.00	Boards known as waferboard
4411.19.00.00	Fibreboards of wood, other
4411.21.00.00	Not mechanically worked
4411.29.00.00	Other
4411.31.00.00	Not mechanically worked
4411.39.00.00	Other
4411.91.00.00	Not mechanically worked
4411.99.00.00	Other
4413.00.00.00	Densified wood, in blocks

ANNEX 3-04

Tariff Reduction Programme

1. Except as otherwise provided in each Party's Schedule, the following staging categories apply to the elimination of customs duties by each Party pursuant to Article 3-04:

(a) Duties on goods provided for in the items in staging category A in a Party's Schedule shall be eliminated entirely, and such goods shall be duty-free as from 1 July 1998;

(b) duties on goods provided for in the items in staging category B in Mexico's Schedule shall be removed in five equal annual stages beginning on 1 July 1998, and such goods shall be duty-free as from 1 July 2002;

(c) duties on goods provided for in the items in staging category B in Nicaragua's Schedule shall be removed in three equal annual stages beginning on 1 July 2000, and such goods shall be duty-free as from 1 July 2002;

(d) duties on goods provided for in the items in staging category C in Mexico's Schedule shall be removed in ten equal annual stages beginning on 1 July 1998, and such goods shall be duty-free as from 1 July 2007;

(e) duties on goods provided for in the items in staging category C in Nicaragua's Schedule shall be removed in equal annual stages beginning on 1 July 2000, and such goods shall be duty-free as from 1 July 2007;

(f) duties on goods provided for in the items in staging category C15 in Mexico's Schedule shall be removed in 15 equal annual stages beginning on 1 July 1998, and such goods shall be duty-free as from 2012;

(g) duties on goods provided for in the items in staging category C15 in Nicaragua's Schedule shall be removed in 13 equal annual stages beginning on 1 July 2000, and such goods shall be duty-free as from July 2012;

(h) on an originating good included in the tariff items identified by the code "DES NIC", Nicaragua shall apply the lower of the following customs duties:

(i) Nicaragua's most-favoured-nation tariff; and

(ii) the customs duty applied by Mexico to the same good.

effective from the date on which Mexico completely removes its customs duties, in accordance with the Tariff Elimination Programme, Nicaragua shall also remove its customs duties completely; and

(i) on originating the goods from Nicaragua provided for in the tariff items of category "TA", Mexico shall apply tariffs as established in Annex 4-04(2).

2. Notwithstanding paragraphs Article 3-04 (1) and (2), a Party may adopt or maintain customs duties in accordance with its rights and duties under the GATT 1994 on the originating goods provided for in a tariff item marked with the code "EXCL" in each Party's Schedule.

3. The base rate of customs duty and staging category for determining the interim rate of customs duty at each stage of elimination for a tariff item is indicated for that tariff item in each Party's Schedule. For the case of Mexico they are indicated in the columns "tasa base" and "veldes", and for Nicaragua they are indicated in the columns "TB2000" and "veldes", respectively.

4. Notwithstanding paragraphs 1 and 2, Nicaragua may apply the component of the customs duty that appears in the temporary protective tariff column, marked ATP, in its Schedule on originating goods provided for in the corresponding tariff item, and shall eliminate the duty for originating goods effective 1 January 1999, except for products specified in paragraph 5.

5. The temporary protective tariff (TPT) applicable to the originating goods listed below shall be eliminated according to the following Schedule:

TPT applicable as from:

Item	TPT	1-Jul-98	1-Jan-99	1-Jan-00	1-Jul-00	1-Jan-01	1-Jul-01
2201.10.00.90	35%	25%	20%	15%	10%	5%	0
2202.10.00.11	35%	25%	20%	15%	10%	5%	0
2202.10.00.12	35%	25%	10%	15%	10%	5%	0
2202.10.00.19	35%	25%	20%	15%	10%	5%	0
2202.90.10.00	20%	10%	5%	0	0	0	0
2202.90.90.10	35%	25%	20%	15%	10%	5%	0
2202.90.90.90	20%	10%	5%	0	0	0	0
2203.00.00.10	35%	25%	20%	15%	10%	5%	0
2203.00.00.90	35%	25%	20%	15%	10%	5%	0
2207.10.10.00	25%	15%	10%	5%	0	0	0
2207.10.90.10	20%	10%	5%	0	0	0	0
2207.10.90.90	20%	10%	5%	0	0	0	0
2207.20.00.10	20%	10%	5%	0	0	0	0
2207.20.00.90	20%	10%	5%	0	0	0	0
2208.20.00.00	30%	20%	15%	10%	5%	0	0
2208.30.00.00	35%	25%	20%	15%	10%	5%	0
2208.40.10.00	35%	25%	20%	15%	10%	5%	0
2208.40.90.10	35%	25%	20%	15%	10%	5%	0
2208.40.90.90	35%	25%	20%	15%	10%	5%	0
2208.50.00.00	35%	25%	20%	15%	10%	5%	0
2208.60.00.00	30%	20%	15%	10%	5%	0	0
2208.70.00.00	30%	20%	15%	10%	5%	0	0
2208.90.10.00	25%	15%	10%	5%	0	0	0
2208.90.20.00	30%	20%	15%	10%	5%	0	0
2208.90.90.00	30%	20%	15%	10%	5%	0	0
2402.10.00.00	35%	25%	20%	15%	10%	5%	0
2402.20.00.00	35%	25%	20%	15%	10%	5%	0
2402.90.00.00	35%	25%	20%	15%	10%	5%	0
2403.10.10.00	35%	25%	20%	15%	10%	5%	0
2403.10.90.00	35%	25%	20%	15%	10%	5%	0
2403.91.00.00	35%	25%	20%	15%	10%	5%	0
2403.99.00.00	35%	25%	20%	15%	10%	5%	0
3605.00.00.00	20%	10%	5%	0	0	0	0

6. The customs duty component that appears in column TPT of Nicaragua's Tariff Elimination Schedule, applicable to originating goods, shall not be greater than the lesser of:

(a) Customs duty component established in accordance with paragraph 4; and

(b) the customs duty applicable to member countries of the General Treaty on Central American Integration.

7. For the purposes of elimination of customs duties pursuant to Article 3-04, transitional rates will be rounded to one decimal place, using the nearest tenth of a percentage point above or below. If the tariff rate is expressed in monetary units, it shall be expressed at least to the nearest .001, below or above, of the Party's official monetary unit.

Section A - Tariff Schedule of Mexico
(Attached as a separate volume)

Section B - Tariff Schedule of Nicaragua
(Attached as a separate volume)

ANNEX 3-12

Country of Origin Marking

1. For the purposes of this Annex:

ultimate purchaser means the last person in the territory of the importing Party that purchases the good in the form in which it was imported; such purchaser need not be the last person that will use the good;

container includes a carton, packaging, packet or wrapping;

usual container means the container in which a good will ordinarily reach its ultimate purchaser;

legible means capable of being easily read;

sufficiently permanent means capable of remaining in place until the good reaches the ultimate purchaser, unless deliberately removed;

customs value means the value of a good for the purpose of levying customs duties on an imported good, pursuant to the principles of the Customs Valuation Code; and

conspicuous means capable of being easily seen with normal handling of the good or container;

2. Each Party may require that a good of the other Party, when imported into its territory, bear a country of origin marking that indicates to the ultimate purchaser of that good the name of its country of origin.

3. Each Party may, as part of its general consumer information measures, require that an imported good be marked with its country of origin in the same manner as prescribed for goods of that Party.

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

5. Each Party shall:

(a) Accept any reasonable method of marking of a good of the other Party, including the use of stickers, labels, tags or paint, that ensures that the marking is conspicuous, legible and sufficiently permanent;

(b) exempt from a country of origin marking requirement a good of the other Party that:

(i) is incapable of being marked;

(ii) cannot be marked prior to exportation to the territory of the other Party without damaging the goods;

(iii) cannot be marked except at a cost that is substantial in relation to its customs value so as to discourage its exportation to the territory of the other Party;

(iv) cannot be marked without materially impairing its function or substantially detracting from its appearance;

(v) is in a container that is marked in a manner that will reasonably indicate the good's origin to the ultimate purchaser;

(vi) is a crude substance;

(vii) is to undergo production in the territory of the importing Party by the importer, or on its behalf, in a manner that would result in the good becoming a good of the importing Party under the Marking Rules;

(viii) by reason of its character, or the circumstances of its importation, the ultimate purchaser would reasonably know its country of origin even though it is not marked;

(ix) was produced more than 20 years prior to its importation,

(x) was imported without the required marking and cannot be marked after its importation except at a cost that would be substantial in relation to its customs value, provided that the failure to mark the good before importation was not for the purpose of avoiding compliance with the requirement;

(xi) for the purpose of temporary duty-free admission, is in transit or in bond or otherwise under customs administration control;

(xii) is an original work of art; or

(xiii) is imported for use by the importer and is not intended for sale in the form in which it was imported.

6. Except for a good described in paragraphs 5(b)(vi), (vii), (viii), (ix), (x) and (xii), a Party may provide that, wherever a good is exempted from the country of origin marking requirement pursuant to paragraph 5(b), its outermost usual container shall be marked so as to indicate the country of origin of the good it contains.

7. Each Party shall provide that:

(a) A usual container imported empty, whether or not disposable, shall not be required to be marked with its own country of origin, but the container in which it is imported may be required to be marked with the country of origin of its contents; and

(b) a usual container imported filled, whether or not disposable:

(i) shall not be required to be marked with its own country of origin, but

(ii) may be required to be marked with the country of origin of its contents, unless the contents are marked with their country of origin and the container can be readily opened for inspection of the contents, or the marking of the contents is clearly visible through the container.

8. Each Party shall, wherever administratively practicable, permit an importer to mark a good of the other Party subsequent to importation but prior to release of the good from customs control or custody, unless that importer has repeatedly violated the country of origin marking requirements of the Party and has been previously notified in writing that such good is required to be marked prior to importation.

9. Each Party shall provide that, except with respect to importers that have been notified under paragraph 8, no special duty or penalty shall be imposed for failure to comply with country of origin marking requirements of that Party, unless the good is removed from customs custody or control without being properly marked, or a deceptive marking has been used.

10. The Parties shall cooperate and consult on matters related to this Annex, including additional exemptions from a country of origin marking requirement.

ANNEX 3-13

Distinctive Products[3]

Nicaragua shall recognize tequila and mezcal as distinctive products of Mexico, and therefore shall not permit the sale of any product as tequila or mezcal unless it has been manufactured in Mexico in accordance with the laws and regulations of Mexico governing those products.

CHAPTER IV: AGRICULTURAL SECTOR

Article 4-01

Definitions

For the purposes of this Chapter:

agricultural product means a product described in any of the following headings or subheadings of the Harmonized System:

[3] For this purpose of this Annex, letters will be exchanged at ministerial level, allowing Nicaragua to prepare a schedule of its distinctive products, which will be recognized as such by Mexico provided this is compatible with Mexico's domestic and international commitments.

(Descriptions are provided next to the corresponding item for reference purposes only)

(a) Chapters 1 to 24 (except fish and fish products); and

(b)	**Heading or subheading**	**Description**
	2905.43	Mannitol
	2905.44	Sorbitol
	2918.14	Citric acid
	2918.15	Salts and esters of citric acid
	2936.27	Vitamin C and its derivatives
	33.01	Essential oils
	35.01 - 35.05	Albuminoidal products based on modified starches
	3809.10	Finishing agents
	3823.60	Sorbitol n.e.p.
	41.01 - 41.03	Hides and skins.
	43.01	Raw furskins
	50.01 - 50.03	Raw silk and silk waste
	51.01 - 51.03	Wool and animal hair
	52.01 - 52.03	Cotton yarn, cotton waste and carded or combed cotton
	53.01	Raw flax
	53.02	Raw hemp

fish and fish products means fish, crustaceans, molluscs and all other aquatic invertebrates, marine mammals and by-products thereof, classified in one of the following chapters, headings or subheadings of the Harmonized System:

(Descriptions are provided next to the corresponding item for reference purposes only)

Chapter, heading or subheading	**Description**
03	Fish and crustaceans, molluscs and other aquatic invertebrates.
05.07	Ivory, tortoise-shell, whalebone, horns, antlers, hooves, nails, claws and beaks and products thereof.
05.08	Coral and similar materials.
05.09	Natural sponges of animal origin.
05.11	Products of fish or crustaceans, molluscs or any other aquatic invertebrate; dead animals of chapter 3
15.04	Fats and oils and their fractions, of fish or marine mammals
16.03	Extracts and juices other than of meat
16.04	Prepared or preserved fish
16.05	Crustaceans, molluscs and other aquatic invertebrates, prepared or preserved
2301.20	Flours, meals and pellets, of fish

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export subsidies means

(a) The provision by governments or their agencies of direct subsidies, including payments in kind, to a firm, to an industry, to producers of an agricultural product, to a cooperative or other association of such producers, or to a marketing board, contingent on export performance;

(b) the sale or disposal for export by governments or their agencies of non-commercial stocks of agricultural products at a price lower than the comparable price charged to buyers for a similar product in the domestic market;

(c) payments on the export of an agricultural product that are financed by virtue of governmental action, whether or not a charge on the public account is involved, including payments that are financed from the proceeds of a levy imposed on the agricultural product concerned or on an agricultural product from which the exported product is derived;

(d) the provision of subsidies to reduce the costs of marketing exports of agricultural products (other than widely available export promotion and advisory services) including handling, upgrading and other processing costs, and the costs of international transport and freight;

(e) internal transport and freight charges on export shipments, provided or mandated by governments, on terms more favourable than for domestic shipments; and

(f) subsidies on agricultural products contingent on their incorporation in exported products; and

over-quota tariff rate means the rate of customs duty applicable to quantities in excess of the amount specified under a tariff rate quota;

Article 4-02

Scope and Coverage

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

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

Article 4-03

International Obligations

A Party, prior to adopting a measure under an inter-governmental agreement on goods pursuant to Article XX(h) of GATT 1994, which may affect the trade in an agricultural between the Parties, shall consult the other Party to prevent the nullification or impairment of a concession granted by that Party under the Tariff Elimination Programme of this Agreement.

Article 4-04

Market Access

1. The Parties agree to facilitate access to their respective markets reducing or eliminating import barriers to trade in agricultural goods, and they undertake not to establish new barriers to trade between them.

Customs duties and quantitative restrictions

2. The Parties waive their rights under Article XI:2(c) of GATT 1994, and those rights as incorporated by Article 3-09, regarding any measure adopted or maintained with respect to the importation of agricultural goods.

3. Notwithstanding any other provision of this Agreement, with regard to products listed in Annex 4-04(1), either Party may adopt or maintain customs duties on the importation of such products, pursuant to their rights and obligations under the WTO agreement.

4. Once a year following the entry into force of this Agreement, the Parties shall review, through the Committee on Agricultural Trade established in Article 4-08, the possibility of gradually eliminating customs duties on the importation of agricultural products listed in Annex 4-04(1).

5. Access to the products listed in Annex 4-04(2) shall be governed by the provisions of that Annex.

6. A Party may not apply an over-quota tariff rate under a special safeguard that exceeds that provided for in the Tariff Elimination Programme agreed between the Parties.

Restrictions on the drawback of customs duties on products exported in identical or similar conditions.

7. Effective the date of entry into force of this Agreement, neither Party may refund the amount of customs duties paid, or waive or reduce the amount of customs duties owed, on any agricultural good imported into its territory that is:

(a) Substituted by an identical or similar good that is subsequently exported to the territory of the other Party; or

(b) substituted by an identical or similar good that used as a material in the production of another good that is subsequently exported to the territory of the other Party.

Article 4-05

Domestic Support

1. The Parties recognize that, while domestic support measures can be of crucial importance to their agricultural sectors, such measures may also have trade distorting and production effects. They also recognize that domestic support reduction commitments may result from agricultural multilateral trade in the WTO framework. Accordingly, where a Party supports its agricultural producers, that Party should endeavour to work toward domestic support measures that:

(a) Have minimal or no trade distorting or production effects; or

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

2. The Parties further recognize that a Party may change its domestic support measures, including those that may be subject to reduction commitments, pursuant to its rights and obligations under the WTO Agreement.

Article 4-06

Export Subsidies

1. The Parties share the objective of the multilateral elimination of export subsidies on agricultural goods and shall cooperate to achieve an agreement to eliminate such subsidies in the WTO framework.

2. Subject to Chapter IX (Unfair Trade Practices), effective the date of entry into force of this Agreement, the Parties may not increase subsidies above 7 per cent of the f.o.b. export value.

3. Effective the date at which tariffs on originating agricultural products reach a zero rate under the Tariff Elimination Programme, and under no circumstances after 1 July 2007, the Parties may not maintain subsidies on the exportation of agricultural products in their reciprocal trade.

4. Notwithstanding the foregoing, effective the date of entry into force of this Agreement, the Parties may not maintain, in their reciprocal trade, subsidies on the exportation of agricultural products listed in Article 5 of Export Promotion Decree (Decreto de Promoción de Exportaciones) No. 37-91 of Nicaragua, and those that are subject to tariff rate quotas under the Tariff Elimination Programme.

Article 4-07

Agricultural Grading and Marketing Standards

1. Trade in agricultural products between the Parties shall be subject to the provisions of Chapter XIV (Standards-Related Measures).

2. The Parties hereby establish a Committee on Agricultural Grading and Marketing Standards, comprising representatives of each Party, which shall meet annually or as otherwise agreed. The Committee shall review the operation of agricultural grading and quality standards as they affect trade between the Parties, and shall resolve issues that may arise regarding the operation of those standards. This Committee shall report to the Committee on Agricultural Trade established under Article 4-08.

3. Each Party shall grant to the agricultural products imported from the other Party treatment no less favourable than that accorded to its own agricultural products in the application of agricultural grading and marketing standards in terms of packaging, grading, quality, and size.

Article 4-08

Committee on Agricultural Trade

1. The Parties hereby establish a Committee on Agricultural Trade, comprising representatives of each Party.

2. Among other functions, the Committee's shall:

(a) Monitor and promote cooperation on the implementation and administration of this Chapter;

(b) provide a forum for the Parties to consult on issues related to this Chapter at least semi-annually and as the Parties may otherwise agree;

(c) report annually to the Commission on the implementation of this Chapter; and

(d) precisely and expeditiously analyse possible mechanisms for inclusion in the Tariff Elimination Programme of products provided for in tariff subheadings 0901.21, 0901.22 and 0901.90 (roasted coffee), and present them to the Commission for its consideration.

ANNEX 4-04(1)

Exclusions

Products listed in the Tariff Elimination Programme, whose column "Speed of elimination" contains the category EXCL, shall be excluded from the elimination.

ANNEX 4-04(2)

Trade in Sugar

1. The Parties agree to establish a Committee on Sugar Analysis, comprising representatives of each Party.

2. The share corresponding to Nicaragua within the duty-free tariff quota scheme for sugar to be applied by Mexico in the event of its requiring sugar in a given year, will be 20 per cent in the first four years after this treaty comes into force. The share for subsequent years shall be determined by the Committee.

3. Should Mexico not require sugar in a given year, the preferential quota for sugar that Mexico grants to Nicaragua shall be zero. Accordingly, for that year, no preferential access would be granted for Nicaragua.

4. Notwithstanding Article 4-04, over and above the duty-free tariff quota that Mexico might grant to Nicaragua, Mexico may adopt or maintain customs duties on sugar originating from Nicaragua, pursuant to its rights and obligations under the WTO agreement.

5. For the purposes of this Annex, sugar means, in the case of imports from Mexico, the following subheadings or tariff items described in the Tariff Schedule of the General Import Duty of Mexico: 1701.11.01, 1701.11.99, 1701.12.01, 1701.12.99, 1701.91 (except those containing flavourings), 1701.99.01 and 1701.99.99.

CHAPTER V: SANITARY AND PHYTOSANITARY MEASURES

Article 5-01

Definitions

For the purposes of this Chapter:

food additive means any substance not normally consumed as a food itself or used as a basic food ingredient, irrespective of its nutritional value, which is added to a food product during its production, manufacturing, processing, preparation, treatment, bottling, packaging, transport or storage, such that it, or one of its by-products, directly or indirectly, becomes a component of the food product, or affects its characteristics. This definition does not include contaminants or substances added to the food product to maintain or improve its nutritional qualities;

food means any processed, semiprocessed or raw substance, which is used for human consumption, including beverages, chewing gum and any other substance used in its manufacture, preparation or treatment, as well as balanced substances used for animal consumption (fodder); but does not include cosmetics, tobacco or substances used solely as medication;

animal means any vertebrate or invertebrate species, including aquatic and wild fauna;

harmonization means the establishment, recognition and application of common sanitary and phytosanitary measures by the Parties;

good means foods, animals and plants, and their products and by-products;

contaminant means any substance or living organism not intentionally added to the food product, which is present therein as a result of the production (including operations undertaken in agriculture, zootechnology and veterinary medicine), manufacture, processing, preparation, treatment, bottling, packaging, transport or storage of that food product, or as the result of environmental pollution;

disease means clinical or other infection caused by one or more aetiological agents of diseases listed in the International Zoosanitary Code of the International Office of Epizootics.

risk assessment means

(a) The potential for the introduction, establishment or spread of a disease or pest, and the associated biological and economic consequences; or

(b) the potential for adverse effects on human, animal or plant life or health, arising from the presence of food additives, contaminants, toxins or disease-causing organisms in a good:

food safety means the quality that ensures foods pose no risk to human or animal health;

scientific information means data or information obtained by using scientific principles and methods;

sanitary or phytosanitary measure means a measure that a Party adopts, maintains or applies in its territory to:

(a) Protect human, animal or plant life or health in its territory from risks arising from the introduction, establishment or spread of a pest or disease;

(b) protect human, animal or plant life or health in its territory from risks arising from the presence of a food additive, contaminant, toxin or disease-causing organism in a good;

(c) protect human life or health from risks arising from a disease-causing organism or pest carried by an animal or plant, or a product thereof; or

(d) prevent or limit other damage arising from the introduction, establishment or spread of a pest or disease.

Sanitary and phytosanitary measures encompass all relevant laws, regulations, prescriptions and procedures, including criteria relating to the final good; methods of processing or production directly related to the good; testing, inspections, certifications or approval procedures; relevant statistical methods; sampling procedures; risk assessment methods; packaging and labelling requirements directly related to food safety; and quarantine regimes, such as relevant requirements for the transportation of animals or plants, or the material needed for their survival during transportation;

appropriate level of sanitary or phytosanitary protection means the level of protection human and animal life and health, and plant health, that a Party considers appropriate;

international standards, guidelines or recommendations means:

(a) In relation to food safety, those adopted by the Codex Alimentarius Commission, including those regarding product decomposition elaborated by the Codex Committee on Fish and Fishery Products, food additives, contaminants, hygiene practices, and methods of analysis and sampling;

(b) in relation to animal health and zoonoses, those developed under the auspices of the International Office of Epizootics;

(c) in relation to plant health, those developed under the auspices of the Secretariat of the International Plant Protection Convention; or

(d) those established by or developed under any other international organization agreed on by the Parties;

pest means a species, race or biotype of plant, animal or pathogenic agent that is harmful or potentially harmful to plants, animals or their products;

pesticide means a substance used to prevent, destroy, attract, repel or combat any pest, including undesired plant or animal species, during the production, storage, transport, distribution and preparation of food products, plants and their products or animal feed, or which can be administered to animals to combat ectoparasites. It also includes substances intended for use in controlling plant growth, defoliants, drying agents, agents to reduce fruit density, or germination inhibitors, and substances applied to crops before or after harvest to protect the product from deterioration during storage and transport. The term does not normally include fertilizers, nutrients of plant or animal origin, food additives, or animal medications;

approval procedure means a procedure for the registration, certification, notification or any other mandatory administrative procedure to approve the use of a food additive or to establish a tolerance level for a contaminant for defined purposes or under agreed conditions in a food, drink or fodder, prior to allowing its use or commercialization when any of these contain the food additive or contaminant in question;

control or inspection procedure means any procedure used, directly or indirectly, to determine that a sanitary or phytosanitary measure is fulfilled, including sampling, testing, inspection, evaluation, verification, monitoring, auditing, assurance of conformity, accreditation, registration, certification or other procedure involving the physical examination of a good, of the packaging of a good, or of the equipment or facilities directly related to production, marketing or use of a good, but does not mean an approval procedure;

pesticide residue means a substance that is present in foods, plants and their products, or animal feed, as a consequence of the use of a pesticide. The term includes any pesticide derivative, such as conversion products, metabolites and reaction products, and impurities considered to be of toxicological significance;

transport means the medium of mobilization, type of packing and haulage modality established in a sanitary or phytosanitary measure;

plant means living plants and parts thereof, including seeds and germoplasm;

area of low pest or disease prevalence means an area designated by the competent authorities, which can encompass the whole of the country, part of the country or the whole or part of several countries, in which a specific pest or disease only occurs at low levels, and is subject to effective means of surveillance and control of the pest or disease, or eradication thereof; and

pest-free or disease-free area means an area designated by the competent authorities, which can encompass the whole of the country, part of the country or the whole or part of several countries, in which a specific pest or disease does not occur. A pest-free or disease-free area may surround, be surrounded by, or the adjacent to an area — either within part of a country or in a geographic region that may encompass the whole or parts of several countries — in which a given pest or disease is known to exist but is subject to regional control measures, such as the establishment of protection, surveillance and buffer zones that isolate or eradicate the pest or disease in question.

Article 5-02

Scope and Coverage

In order to establish a framework of disciplines and rules to guide the development, adoption and fulfilment of sanitary and phytosanitary measures, the provisions of this Chapter are applicable to any measure of that type, which may affect trade between the Parties, either directly or indirectly.

Article 5-03

Basic Rights and Obligations

Adoption of sanitary and phytosanitary measures

1. Each Party may establish, adopt, maintain or apply any sanitary or phytosanitary measure, including those relating to food safety and to the importation of any good from the territory of the other Party, when it does not fulfil the applicable requirements or does not satisfy the approval procedures, This includes measures that afford a higher level of protection than would be achieved through measures based on an international standard, guideline or recommendation, provided they are based on scientific principles.

Scientific principles

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

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

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

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

Non-discriminatory treatment

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

Disguised restrictions and unnecessary obstacles

4. No Party may adopt, maintain or apply a sanitary or phytosanitary measure that constitutes a disguised restriction on trade between the Parties, or which aims to create unnecessary obstacles thereto. Each Party shall ensure that any sanitary or phytosanitary measure that it adopts, maintains or applies is applied only to the extent necessary to achieve its appropriate level of protection, taking into account technical and economic feasibility.

Right to establish level of protection

5 . Notwithstanding any other provision of this Section, each Party may, in protecting human, animal or plant life or health, establish its appropriate levels of protection in accordance with Article 5-06.

Reliance on other organizations

6. Each Party shall ensure that any organization on which it relies in designing or applying a sanitary or phytosanitary measure acts in a manner consistent with this Chapter.

Article 5-04

International Standards and Standardizing Organizations

1. Each Party shall use, as a basis for its sanitary and phytosanitary measures, relevant international standards and guidelines or recommendations, except where these do not constitute an effective or appropriate method for protecting human and animal life and health, and plant health, owing to climatic, geographic, technological or infrastructure factors, or else for scientifically justified reasons, or because the appropriate level of sanitary or phytosanitary protection is not obtained.

2. A Party's sanitary or phytosanitary measure that conforms to a relevant international standard, shall be presumed consistent with Article 5-03 (1) through (5).

3. Nothing in Paragraph 1 shall be construed to prevent a Party from adopting, maintaining or applying a sanitary or phytosanitary measure that is more stringent than the relevant international standard, guideline or recommendation, provided it is based on scientific principles, in order to achieve appropriate levels of sanitary and phytosanitary protection.

4. Where a Party has reason to believe that a sanitary or phytosanitary measure of the other Party is adversely affecting or may adversely affect its exports, and the measure is not based on a relevant international standard, guideline or recommendation, it may request reasons for the measure, and the other Party shall provide such reasons in writing within 30 days.

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

Article 5 -05

Equivalence

1. Without reducing the level of protection of human, animal or plant life or health established in its law, and in order to facilitate trade in goods, the Parties shall, as far as possible, make their respective sanitary or phytosanitary measures equivalent, taking into account international standardization guidelines and recommendations.

2. The importing Party shall treat a sanitary or phytosanitary measure adopted or maintained by the exporting Party as equivalent to its own, where the latter objectively demonstrates with scientific data and risk assessment methodologies based on international rules agreed on by those Parties, that the measure in question achieves the appropriate level of sanitary or phytosanitary protection required by the importing Party.

3. Each Party shall accept the results of the sanitary and phytosanitary control procedures carried out in the territory of the other Party, provided satisfactory guarantees are offered that the good satisfies the sanitary or phytosanitary measures established, adopted, maintained or applied in the territory of that Party.

4. Pursuant to paragraph 3, the importing Party shall be granted access to perform the relevant control or inspection procedures, if it so requests.

5. In designing a sanitary or phytosanitary measure, each Party shall consider the relevant sanitary or phytosanitary measures currently in force or proposed in the territory of the other Party, with a view to standardizing them.

6. At the request of either Party, the Parties shall open consultations aimed at recognizing the equivalence of specific sanitary or phytosanitary measures, based on international standards, guidelines or recommendations.

Article 5-06

Risk Assessment and Appropriate Level of Sanitary and Phytosanitary Protection

1. The Parties shall ensure that their sanitary and phytosanitary measures are based on an evaluation, appropriate to the circumstances, of the risks existing for human and animal life, and for plant health, taking into account risk assessment techniques developed by the competent standardization organizations agreed upon by the Parties.

2. In conducting a risk assessment on a specific good, including risks in relation to food additives and contaminants, each Party shall take the following factors into account:

(a) Relevant available scientific evidence;

(b) the prevalence of relevant diseases or pests, including the existence of pest-free or disease-free areas or areas of low pest or disease prevalence, recognized by the Parties;

(c) the epidemiology of the risk diseases and pests;

(d) critical control points in processes of production, handling, packing, packaging and transport;

(e) relevant ecological and other environmental conditions;

(f) relevant inspection, sampling and testing methods; and

(g) the applicable quarantine and treatment measures that satisfy the importing country with regard to mitigation of the risk.

3. Further to paragraph 2, each Party shall, in establishing its appropriate level of sanitary and phytosanitary protection take into account the risk associated with the introduction, establishment or

spread of an animal or plant pest or disease; and, in assessing the risk, it shall also take into account the following economic factors, where relevant:

(a) Loss of production or sales that may result from the introduction, establishment or spread the pest or disease;

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

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

4. Notwithstanding paragraphs 2 and 3 and Article 5-03 (2)(c), where a Party conducting a risk assessment determines that available relevant scientific evidence or other information is insufficient to complete the assessment, it may adopt a provisional sanitary or phytosanitary measure on the basis of available relevant information. The Party shall, within a reasonable period after information sufficient to complete the assessment is presented to it, complete its assessment, review and, where appropriate, revise the provisional measure in the light of the assessment.

Article 5-07

Adaptation to Regional Conditions and recognition of pest- or disease-free areas and areas of low pest or disease prevalence

1. Each Party shall adapt any of its sanitary or phytosanitary measures relating to the introduction, establishment or spread of an animal or plant pest or disease, to the sanitary or phytosanitary characteristics of the area where a good subject to such a measure is produced and the area in its territory for which the good is destined, taking into account any relevant conditions, including those relating to transportation and handling, between those areas. In assessing the sanitary and phytosanitary characteristics of an area, each Party shall take into account, among other factors, the prevalence of specific pests or diseases, the existence of eradication or control programmes, and the criteria or guidelines prepared by the competent organizations, as agreed upon by the Parties.

2. The Parties shall, in particular, recognize the concept of pest-free or disease-free areas and those of low pest or disease prevalence. The determination of such areas shall be based on factors such as geography, ecosystems, epidemiological surveillance and the effectiveness of sanitary or phytosanitary controls.

3. A Party that declares an area free from a given pest or disease in its territory, shall demonstrate that condition with scientific information to the other Party, and provide an assurance that it will remain so, based on the protection measures adopted by the authorities responsible for sanitary and phytosanitary services.

4. A Party wishing to obtain recognition of an area as free from a given pest or disease shall make the request and provide the corresponding scientific and technical information to the other Party.

5. A Party that receives a request for recognition mentioned in paragraph 4, shall respond within a time period agreed upon by the Parties, for which purpose it may undertake verifications in the territory of the exporting Party for inspection, testing and other procedures. In the event of non-acceptance, it shall provide the scientific and technical foundation for its decision in writing.

6. The Parties shall establish agreements on specific requirements allowing a good produced in an area of low pest or disease prevalence to be imported if it achieves the appropriate level of sanitary or phytosanitary protection.

Article 5-08

Control, Inspection and Approval Procedures

1. Each Party shall initiate and complete any control or inspection procedure as expeditiously as possible and communicate the anticipated processing period to the applicant on request.

2. Each Party shall ensure that its competent body:

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

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

(c) where the application is deficient, proceeds as far as practicable with the procedure if the applicant so requests, respecting the established time-limits; and reports on the status of the application and the reasons for any delay, if the applicant so requests;

(d) limits the information the applicant is required to supply to that necessary for conducting the procedure;

(e) accords confidential or proprietary status to any information arising from the procedure conducted for a good of the other Party;

(f) protects the applicant's legitimate commercial interests, to the extent provided under each Party's law;

(g) limits any requirement regarding individual specimens or samples of a good to that which is necessary;

(h) does not charge a fee, for performing the procedure on the good of the other Party, that is higher than any such fee it imposes on its own goods;

(i) in selecting the location of the facilities at which the procedure is performed and selecting samples of goods, uses criteria that do not cause unnecessary inconvenience to an applicant or its agent;

(j) provides a mechanism to review complaints concerning the operation of the procedure and take corrective action when a complaint is justified; and

(k) for a good modified following a determination that it fulfils the requirements of the applicable measure, limits the procedure to that necessary to determine that the good continues to fulfil the requirements of that measure.

3. Each Party shall apply the provisions of paragraph 2 to its approval procedures.

4. Where the importing Party requires a control or inspection procedure to be performed during production, the exporting Party shall, on the request of the importing Party, take such reasonable measures as may be available to it to facilitate access in its territory and to provide assistance necessary to facilitate the importing Party's control or inspection procedure.

5. For the purposes of ensuring food safety, each Party may establish in its approval procedures and in accordance with its current regulations, authorization requirements for the use of a food

additive or the establishment of a level of tolerance for a contaminant therein, before granting access to its market. Where that Party so requires, it may adopt a relevant international standard, guideline or recommendation as the basis for granting access until a final decision is taken.

Article 5-09

Notification, Publication and Provision of Information

1. A Party that proposes to adopt or modify a sanitary or phytosanitary measure in its territory, where it could have an effect on the trade of the other Party, shall:

(a) Publish a notice and notify the other Party in writing, at least 60 days in advance of its intention to adopt or modify the measure, other than a law; and publish and provide to the other Party the full text of the proposed measure; and, wherever possible, identify any provision that deviates in substance from relevant international standards, guidelines or recommendations, so as to enable interested persons to become acquainted with the proposed measure;

(b) identify the good to which the measure will apply, and provide a brief description of the objective and reasons for the measure; and

(c) provide a copy of the proposed measure to any interested person that so requests, and, without discrimination, allow other Parties and interested persons to make comments in writing, and, on request, discuss the comments and take the results of such discussions into account.

2. Where a Party considers it necessary to address an urgent problem relating to sanitary or phytosanitary protection, it may omit any of the steps set out in paragraph 1, provided that, on adoption of a sanitary or phytosanitary measure, it:

(a) Immediately provides to the other Party a notification of the type referred to in paragraph 1(b), including a brief description of the urgent problem; and

(b) provides a copy of the measure to the other Party or interested person that so requests, and, without discrimination, allows the other Party and interested persons to make comments in writing, and, on request, discuss the comments and take the results of such discussions into account.

3. Except where necessary to address an urgent problem referred to in paragraph 2, each Party shall allow a reasonable period between the publication of a sanitary or phytosanitary measure of general application and the date on which it becomes effective, to allow time for interested persons to adapt to the measure.

4. Where the importing Party denies entry into its territory of a good of the exporting Party, because it does not comply with a sanitary or phytosanitary measure, it shall notify the exporting Party in writing, within seven days, giving an explanation that identifies the applicable measure and the reasons why good is not in compliance.

5. Each Party shall appoint a government authority responsible for the implementation in its territory of the notification provisions of this Article, within 30 days following the entry into force of this Agreement.

Article 5-10

Inquiry Points

1. Each Party shall ensure that there is one inquiry point within its territory that is able to answer all reasonable inquiries from the other Party and interested persons, and to provide relevant documents, regarding:

(a) Any sanitary or phytosanitary measure proposed, adopted, or maintained in its territory, including control and inspection procedures, approval procedures, production and quarantine regimes, and procedures relating to tolerance limits for pesticides;

(b) the Party's risk assessment procedures and the factors it considers when conducting the assessment and in establishing its appropriate levels of protection; and

(c) membership and participation in international and regional sanitary and phytosanitary organizations and systems, and in bilateral and multilateral arrangements within the scope of this Chapter; the provisions of those organizations, systems, and agreements; and the location of notices published pursuant to this Chapter or where such information can be obtained.

2. When a Party designates more than one inquiry point, it shall notify the other Party of the scope of the responsibilities of each inquiry point.

3. Each Party shall ensure that where copies of documents are requested by the other Party or by interested persons in accordance with this Chapter, they are supplied at the domestic purchase price plus the cost of delivery.

Article 5-11

Limitations on the Provision of Information

Further to the provisions contained in Article 21-03, nothing in this Chapter shall be construed to require a Party to furnish any confidential information, the disclosure of which could prejudice the legitimate commercial interests of an enterprise.

Article 5-12

Committee on Sanitary and Phytosanitary Measures

1. The Parties hereby establish a Committee on Sanitary and Phytosanitary Measures, comprising representatives of each Party holding responsibilities for sanitary and phytosanitary matters. The Committee shall be established within 90 days after this Agreement comes into force.

The Committee shall oversee application of the provisions of this Chapter and the achievement of its objectives, and shall issue expeditious recommendations on specific sanitary and phytosanitary problems.

2. The Committee shall:

(a) Establish adequate terms and conditions for the coordination and solution of matters submitted to it;

(b) facilitate agricultural trade between the Parties, promoting an improvement of sanitary and phytosanitary conditions in the territory of the Parties;

(c) promote the activities indicated by the Parties, pursuant to Articles 5-04, 5-05, 5-06, 5-07 and 5-15;

(d) facilitate consultations on specific matters relating to sanitary or phytosanitary measures;

(e) establish working groups on animal and plant health and food safety, establishing their mandates, objectives, and lines of action; and

(f) meet once a year, unless otherwise agreed, and report annually to the Commission on the application of this Chapter.

Article 5-13

Technical Cooperation

1. The Parties shall:

(a) Facilitate the provision of technical advice, information and assistance, on mutually agreed terms and conditions, to enhance their sanitary and phytosanitary measures and related activities, including research, processing technologies, infrastructure and the establishment of national regulatory bodies. Such assistance may include credits, donations and grants for the acquisition of technical expertise, training and equipment that will facilitate adjustment to and compliance with a sanitary or phytosanitary measure adopted by a Party; and

(b) provide information on their technical cooperation programmes regarding sanitary or phytosanitary measures relating to specific areas of interest.

2. Expenses arising from technical assistance activities shall be subject to the availability of funds and each Party's priorities on this issue. Expenses arising from control or inspection and approval procedures shall be borne by the interested parties.

Article 5-14

Technical Consultations

1. A Party may request consultations with the other Party on any matter covered by this Chapter.

2. Where a Party requests consultations regarding the application of this Chapter to a sanitary or phytosanitary measure adopted by the other Party, and so notifies the Committee on Sanitary and Phytosanitary Measures, the Committee may facilitate the consultations. If the Committee does not consider the matter itself, it shall refer the matter for non-binding technical advice or recommendations to an ad hoc working group, or to another forum.

3. Each Party may use the good offices of relevant international standardizing organizations, including those referred to in Article 5-04, for advice and assistance on sanitary and phytosanitary matters within their respective mandates.

Article 5-15

Dispute Settlement

1. Where a Party considers that a sanitary or phytosanitary measure of the other Party is being interpreted or applied inconsistently with the provisions of this Chapter, it shall be required to demonstrate such inconsistency.

2. Where the Parties have had recourse to consultations under Article 5-14 (1) and (2), the consultations shall, on the agreement of the Parties involved, constitute consultations under Article 20-05.

CHAPTER VI: RULES OF ORIGIN

Article 6-01

Definitions

For the purposes of this Chapter:

good means any merchandise, product, article or material;

fungible goods means goods that are interchangeable for commercial purposes and the properties of which are essentially identical and cannot be differentiated by a simple visual examination;

identical or similar goods "means "identical goods " and "similar goods", respectively, as defined in the Customs Valuation Code;

goods wholly obtained or produced entirely in the territory of one or both Parties means

(a) Mineral goods extracted in the territory of either or both of the Parties;

(b) vegetable goods harvested in the territory of either or both Parties;

(c) live animals born and raised in the territory of either or both Parties;

(d) goods obtained from hunting or fishing in the territory of either or both Parties;

(e) fish, shellfish and other marine species taken from the sea by vessels registered or recorded with a Party and flying its flag;

(f) goods produced on board factory ships from the goods referred to in subparagraph (e) provided such factory ships are registered or recorded with a Party and fly its flag;

(g) goods taken by a Party or a person of a Party from the seabed or beneath the seabed outside territorial waters, provided that a Party has rights to exploit such seabed;

(h) waste and scrap derived from:

(i) production in the territory of either or both Parties; or

(ii) used goods collected in the territory of either or both Parties, provided such goods are fit only for the recovery of raw materials; and

(i) goods produced in the territory of either or both Parties exclusively from goods referred to in subparagraphs (a) through (h), or from their derivatives, at any stage of production;

packing materials and containers for shipment means goods that are used to protect a good during transportation, other than packaging materials and containers for retail sale;

shipping and repacking costs means the costs incurred in the repacking and transportation of a good outside the territory in which the producer or exporter of the good is located;

sales promotion, marketing and after-sales service costs means the following costs related to sales promotion, marketing and after-sales service:

(a) Sales and marketing promotion; media advertising; advertising and market research; promotional and demonstration materials; exhibits; market research; promotional and demonstration materials; exhibits; sales promotion conferences; trade shows and conventions; banners; marketing displays; free samples; sales, marketing and after-sales service literature such as product brochures, catalogues, technical literature, price lists, service manuals, sales aid information; establishment and protection of logos and trademarks; sponsorships; wholesale and retail restocking charges; entertainment;

(b) merchandise sales and marketing incentives; consumer, retailer or wholesaler rebates;

(c) for sales promotion, marketing and after-sales service personnel: wages and salaries, sales commissions and bonuses; medical insurance and pension benefits; travelling and living expenses; membership and professional fees;

(d) recruitment and training of sales promotion, marketing and after-sales service personnel, and after-sales training of customers' employees;

(e) product liability insurance premiums;

(f) office supplies for sales promotion, marketing and after-sales service;

(g) telephone, mail and other communications media for sales promotion, marketing and after-sales service;

(h) rental and depreciation of sales promotion, marketing and after-sales service offices and distribution centres;

(i) property insurance premiums, taxes, utility costs, office and distribution centre repair and maintenance costs; and

(j) payments by the producer to other persons in respect of warranty repairs;

net cost means total cost less sales promotion, marketing and after-sales service costs, royalties, shipping and repackaging costs and non-allowable interest costs, pursuant to Annex 6-04;

non-allowable interest costs means interest costs incurred by a producer on its financial liabilities that are more than 10 basis points above the applicable federal or central government interest rate, as the case may be, of the Party in whose territory the producer is located, as established in Annex 6-04.

total cost means the sum of the following elements as established in Annex 6-04.

(a) The cost of direct materials used in the production of the good;

(b) the cost of direct labour used in the production of the good; and

(c) direct and indirect overheads reasonably allocated to the production of the good, except for the following:

(i) the costs and expenses of a service provided by the producer of the good to another person, where the service is not related to the good;

(ii) the costs and losses resulting from a sale of a part of the producer's enterprise, which constitutes a discontinued operation;

(iii) costs relating to the cumulative effect of changes in the application of generally accepted accounting principles;

(iv) costs and losses resulting from the sale of the producer's capital assets;

(v) costs and expenses arising from acts of God or *force majeure*; and

(vi) profits obtained by the producer of the good, regardless of whether they were retained by the producer or paid to other persons as dividends, and the taxes paid on such profits, including taxes on capital gains;

direct overhead means expenses incurred during a given period, directly related to the good, other than direct material and labour costs;

indirect overhead means expenses incurred during a period, other than direct overhead, direct labour costs and direct material costs;

f.o.b. means free on board

place where the producer is located means, in relation to a good, the production plant of that good;

material means a good that is used in the production of another good;

self-produced material means a material that is produced by the producer of a good and used in the production of that good;

fungible materials means materials that are interchangeable for commercial purposes and whose properties are essentially identical

indirect material means a good used in the production, testing or inspection of a good, but not physically incorporated into the good; or a good used in the maintenance of buildings or the operation of equipment associated with the production of a good, including:

(a) Fuel and energy;

(b) tools, dies and molds;

(c) spare parts and materials used in the maintenance of equipment and buildings;

(d) lubricants, greases, compounding and other materials used either in production or to operate equipment and buildings;

(e) gloves, glasses, footwear, clothing, safety equipment and supplies;

(f) equipment, devices and supplies used for testing or inspecting the goods;

(g) catalysts and solvents; or

(h) any other goods that are not incorporated into the good itself but whose use in the production of the good can reasonably be demonstrated to be a part of that production;

intermediate material means a material that is self-produced pursuant to Article 6-07;

related person means a person related to another person on the basis that:

(a) One of them is an officer or director of one of the other's businesses;

(b) they are legally recognized partners in business;

(c) they are employer and employee;

(d) one of them directly or indirectly owns, controls or holds 25 per cent or more of the outstanding voting stock or shares of each of them;

(e) one of them directly or indirectly controls the other;

(f) both of them are directly or indirectly controlled by a third person;

(g) together they directly or indirectly control a third person; or

(h) they are members of the same family (children, brothers, sisters, parents, grandparents, or spouses);

generally accepted accounting principles means the recognized consensus or substantial authoritative support in the territory of a Party with respect to the recording of revenues, expenses, costs, assets and liabilities, disclosure of information and preparation of financial statements These standards may encompass broad guidelines of general application as well as detailed standards, practices and procedures;

production means cultivating, rearing, mining, harvesting, fishing, hunting, manufacturing, processing or assembling a good;

producer means a person who cultivates, rears, mines, harvests, fishes, hunts, manufactures, processes or assembles a good;

royalties means the payments made as consideration for the use of intellectual property;

used means used or consumed in the production of goods;

transaction value of a good means the price actually paid or payable for a good with respect to a transaction of the producer of the good, pursuant to the principles of Article 1 of the Customs Valuation Code, adjusted in accordance with the principles of Articles 8.1, 8.3 and 8.4 thereof, regardless of whether the good is sold for export. For the purposes of this definition, the seller referred to in the Customs Valuation Code shall be the producer of the good; and

transaction value of a material means the price actually paid or payable for a material with respect to a transaction of the producer of the good, pursuant to the principles of Article 1 of the

Customs Valuation Code, adjusted in accordance with the principles of Articles 8.1, 8.3 and 8.4 thereof, regardless of whether the material is sold for export. For the purposes of this definition, the seller referred to in the Customs Valuation Code shall be the supplier of the material, and the buyer referred to in the Customs Valuation Code shall be the producer of the good;

Article 6-02

Interpretation and Application

For the purposes of this Chapter:

(a) The basis for tariff classification is the Harmonized System;

(b) the determination of transaction value of a good or of a material shall be made in accordance with the principles of the Customs Valuation Code; and

(c) all costs referred to in this Chapter shall be recorded and maintained in accordance with the generally accepted accounting principles applicable in the territory of the Party in which the good is produced.

Article 6-03[*]

Originating goods

1. A good shall be considered originating where:

(a) It is wholly obtained or produced entirely in the territory of one or both Parties, as defined in Article 6-01;

(b) it is produced entirely in the territory of one or both Parties, exclusively from materials that qualify as originating pursuant to this Chapter;

(c) it is produced in the territory of one or both of the Parties from non-originating materials that undergo a change in tariff classification, comply with a regional value content or meet other requirements, as specified in Annex 6-03, and the good satisfies all other applicable provisions of this Chapter;

(d) it is produced in the territory of one or both of the Parties, from non-originating materials that undergo a change in tariff classification and comply with other requirements, and the good complies with a regional value content as specified in Annex 6-03 and satisfies all other applicable provisions of this Chapter;

(e) it is produced in the territory of one or both of the Parties, complies with a regional value content as specified in Annex 6-03 and satisfies all other applicable provisions of this Chapter; or

(f) except for a good provided for in Chapters 61 through 63 of the Harmonized System, the good is produced entirely in the territory of one or both Parties, but one or more of the non-originating materials used in the production of the good does not undergo a change in tariff classification because:

[*] See footnote on page 1.

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

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

provided that the regional value content of the good, determined in accordance with Article 6-04, unless otherwise provided in Articles 6-15 or 6-20 is not less than 50 per cent when the transaction value method is used, or 41.66 per cent when the net cost method is used, and the good satisfies other applicable provisions of this Chapter.

2. For the purposes of this Chapter, the production of a good from non-originating materials that undergo an applicable change in tariff classification and satisfy other requirements, as specified in Annex 6-03, shall occur entirely in the territory of one or both Parties and every regional value content of a good shall be entirely satisfied in the territory of one or both Parties.

Article 6-04

Regional Value Content

1. Except as provided in paragraph 5, each Party shall provide that the regional value content of a good shall be calculated, at the choice of the exporter or producer of the good, on the basis of either the transaction value method set out in paragraph 2 or the net cost method set out in paragraph 4.

2. For the purpose of calculating the regional value content of a good by the transaction value method, the following formula shall be applied:

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

where:

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

TV is the transaction value of the good adjusted to an f.o.b. basis, except as provided in paragraph 3; and

VNM is the value of non-originating materials used by the producer in the production of the good, determined pursuant to Article 6-05.

3. For the purposes of paragraph 2, when the producer of the good does not export it directly, the transaction value of the good shall be adjusted to the point where the buyer receives the good in the territory where the producer is located.

4. For the purpose of calculating the regional value content of a good by the net cost method, the following formula shall be applied:

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

where:

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

NC is the net cost of the good; and

VNM is the value of non-originating materials used by the producer in the production of the good, determined pursuant to Article 6-05.

5. Each Party shall provide that an exporter or producer shall calculate the regional value content of a good solely on the basis of the net cost method set out in paragraph 4 where:

(a) There is no transaction value because the good is not the subject of a sale;

(b) the transaction value of the good cannot be determined because there are restrictions on the disposition or use of the good by the buyer, other than restrictions that:

(i) are imposed or required by law or by the public authorities of the Party where the buyer of the good is located;

(ii) limit the geographical area in which the good may be resold; or

(iii) do not substantially affect the value of the good;

(c) the sale or price is subject to a condition or consideration for which a value cannot be determined with respect to the good;

(d) part of the proceeds of any subsequent resale, disposal or use of the good by the buyer will accrue directly or indirectly to the seller, unless the proper adjustment pursuant to Article 8 of the Customs Valuation Code can be made;

(e) the buyer and seller are related persons and their relationship between them influenced the price, except as provided in Article 1.2 of the Customs Valuation Code;

(f) the good is sold by the producer to a related person, and the volume, by units of quantity, of sales of identical or similar goods to related persons during the six-month period immediately preceding the month in which the producer sold the good exceeds 85 per cent of the producer’s total sales of such goods during that period;

(g) the exporter or producer chooses to accumulate the regional value content of the good pursuant to Article 6-08;

(h) the good is:

(i) a motor vehicle provided for in heading 87.01 or 87.02, subheading 8703.21 through 8703.90, or heading 87.04, 87.05 or 87.06; or

(ii) identified in Annex 6-15(1) or Annex 6-15(2) and is for use in a motor vehicle provided for in heading 87.01 or 87.02, subheading 8703.21 through 8703.90, or heading 87.04, 87.05 or 87.06; or

(i) the good is designated as an intermediate material and is subject to a regional value content requirement.

Article 6-05

Value of Materials

1. The value of a material:

(a) Shall be the transaction value of the material; or

(b) in the event that there is no transaction value or the transaction value of the material is unacceptable under Article 1 of the Customs Valuation Code, shall be determined in accordance with the principles set out in Articles 2 through 7 of the Customs Valuation Code.

2. Where not included under paragraphs 1(a) or (b), the value of a material shall include:

(a) Freight, insurance, packing and all other costs incurred in transporting the material to the importation port in the territory of the Party where the producer of the good is located, except as provided in paragraph 3; and

(b) the cost of waste and spoilage resulting from the use of the material in the production of the good, less any costs recovered, provided the recovery does not exceed 30 per cent of the value of the material, determined in accordance with paragraph 1.

3. Where the producer of a good buys a non-originating material in the territory of the Party where the producer is located, the value of the non-originating material shall not include freight, insurance, packing or any other cost incurred in transporting the material from the warehouse of the supplier to the location of the producer.

4. To calculate the regional value content under Article 6-04, except as provided in Article 6-15 (2), for a motor vehicle identified in Article 6-15 (3) or a component identified in Annex 6-15(2), the value of the non-originating materials used by the producer in the production of a good shall not include the value of the non-originating materials used by:

(a) Another producer in the production of an originating material, which is acquired and used by the producer of the good in the production of such good; or

(b) the producer of the good in the production of an originating intermediate material.

Article 6-06

De minimis

1. A good shall be considered to be an originating good if the value of all non-originating materials used in the production of the good that do not undergo the applicable change in tariff classification set out in Article 6-03 is not more than 7 per cent of the transaction value of the good, adjusted on the basis of Article 6-04 (2) or (3) as appropriate, or in the cases referred to in Article 6-04 (5)(a) through (e), if the value of all non-originating materials is not more than 7 per cent of the total cost of the good.

2. Where that same good is also subject to a regional value content, the value of such non-originating materials shall be taken into account in determining the regional value of the good, and the good shall be required to satisfy all other applicable requirements under this Chapter.

3. A good that is subject to a regional value-content requirement as established in Annex 6-03 shall not be required to satisfy such requirement if the value of all non-originating materials is not more than 7 per cent of the transaction value of the good, adjusted on the basis of Article 6-04 (2) or (3) as appropriate, or in the cases referred to in Article 6-04 (5)(a) through (e) , if the value of all non-originating materials is not more than 7 per cent of the total cost of the good.

4. Paragraph 1 does not apply to:

(a) A good provided for in chapters 50 through 63 of the Harmonized System; or

(b) a non-originating material used in the production of goods provided for in chapters 01 through 27 of the Harmonized System, except where the non-originating material is provided for in a different subheading to the good for which the origin is being determined under this Article.

5. A good provided for in chapters 50 through 63 of the Harmonized System that does not originate because certain fibres or yarns used in the production of the material that determines the tariff classification of the good do not undergo an applicable change in tariff classification as set out in Annex 6-03, shall nonetheless be considered to originate if the total weight of all such fibres or yarns in that material is not more than 7 per cent of the total weight of that material.

Article 6-07

Intermediate materials

1. For the purpose of calculating the regional value content under Article 6-04, the producer of a good may designate as an intermediate material any self-produced material used in the production of the good, provided such material is an originating good as established in Article 6-03, except for the components listed in Annex 6-15(2) and the goods provided for in heading 87.06, intended for use in motor vehicles included in Article 6-15 (3).

2. Where an intermediate material is subject to a regional value content under Annex 6-03, the value shall be calculated on the basis of the net cost method established in Article 6-04.

3. For the purpose of determining the regional value content of the good, the value of the intermediate material shall be the total cost that can be reasonably allocated to that intermediate material pursuant to Annex 6-04.

4. Where a material that has been designated as intermediate material is subject to a regional value content, no other self-produced material subject to a regional value content used in the production of such intermediate material may, at the same time, be designated by the producer as intermediate material.

5. Where one of the goods listed in Article 6-15 (2) is designated as intermediate material, that designation shall apply only to the calculation of the net cost of the good, and the value of non-originating materials shall be calculated pursuant to Article 6-15 (2).

Article 6-08

Accumulation

For the purpose of determining whether a good is an originating good, a producer may accumulate its production of materials incorporated in the good with that of one or more producers in the territory of one or both Parties, such that the production of materials be considered to have been performed by that producer, provided that the provisions of Article 6-03 are satisfied.

Article 6-09

Fungible Goods and Materials

1. For the purpose of determining whether a good is an originating good, where originating and non-originating fungible materials that are commingled in an inventory are used in the production of the good, the origin of the materials may be determined using one of the inventory management methods set out in paragraph 3.

2. Where originating and non-originating fungible goods are commingled and, prior to exportation, do not undergo any production process or any operation in the territory of the Party where they were commingled other than unloading, loading or any other operation necessary to preserve the goods in good condition or to transport them to the territory of the other Party, the origin of the good may be determined on the basis of any of the inventory management methods set out in paragraph 3.

3. The inventory management methods for fungible goods or materials shall be the following:

(a) "FIFO method" (first in-first out) — the inventory management method by which the origin of the number of fungible goods or materials first received in the inventory is considered to be the origin of the same number of fungible goods or materials first withdrawn from the inventory;

(b) "LIFO method" (last in-first out) — the inventory management method by which the origin of the number of fungible goods or materials last received in the inventory is considered to be the origin of the same number of fungible goods or materials first withdrawn from the inventory; or

(c) "average method" — the inventory management method by which, except as provided in paragraph 4, the origin of fungible goods or materials is determined through the following formula:

$$AOM = \frac{TOM}{TONM} \times 100$$

where:

AOM is the average of originating fungible materials or goods;

TOM is the total units of fungible originating goods or materials in the inventory prior to the shipment; and

TONM is the total sum of units of fungible originating and non-originating goods or materials in the inventory prior to the shipment.

4. Where a good is subject to a regional value content, the determination of non-originating fungible materials shall be made through the following formula:

$$ANM = \frac{TNM}{TONM} \times 100$$

where:

ANM is the average of non-originating materials;

TNM is the total value of fungible non-originating materials in the inventory prior to the shipment; and

TONM is the total value of fungible originating and non-originating materials in the inventory prior to the shipment.

5. Once an inventory management method set out in paragraph 3 has been chosen, it shall be used throughout the fiscal year or period.

Article 6-10

Sets and Assortments of Goods

1. Sets and assortments of goods classified as pursuant to Rule 3 of the General Rules of Interpretation of the Harmonized System, and goods the description of which under the nomenclature of the Harmonized System is specifically that of a set or assortment shall qualify as originating, provided that each of the goods in the set or assortment complies with the rules of origin established in this Chapter.

2. Notwithstanding paragraph 1, a set or assortment of goods shall be considered as originating, if the value of all non-originating goods used in the set or assortment does not exceed 7 per cent of the transaction value of the set or assortment, adjusted to the basis set out in Article 6-04 (2) or (3), as the case may be, or in the cases referred to in Article 6-04 (5)(a) through (e), if the value of all such non-originating goods is not more than 7 per cent of the total cost of the set or assortment.

The provisions of this Article shall prevail over the specific rules set out in Annex 6-03.

Article 6-11

Indirect Materials

Indirect materials shall be considered to be originating without regard to where the good is produced, and the value of such materials shall be their cost as reported in the accounting records of the producer of the good.

Article 6-12

Accessories, Spare Parts and Tools

1. Accessories, spare parts or tools delivered with the good as part of the good's standard accessories, spare parts or tools, shall be disregarded in determining whether all the non-originating materials used in the production of the good undergo the applicable change in tariff classification as set out in Annex 6-03, provided that:

(a) The accessories, spare parts or tools are not invoiced separately from the good, irrespective of whether they are separately in the commercial invoice; and

(b) the quantities and value of the accessories, spare parts or tools are customary for the good.

2. If the good is subject to a regional value content, the value of the accessories, spare parts or tools shall be taken into account as originating or non-originating materials, as the case may be, in calculating the regional value content of the good.

Article 6-13

Packaging Materials and Containers for Retail Sale

1. The packaging materials and containers in which a good is packaged for retail sale shall, if classified with the good, be disregarded in determining whether all the non-originating materials used in the production of the good undergo the applicable change in tariff classification as set out in Annex 6-03.

2. If the good is subject to a regional value content requirement, the value of such packaging materials and containers shall be taken into account as originating or non- originating materials, as the case may be, in calculating the regional value content of the good.

Article 6-14

Packing Materials and Containers for Shipment

1. The packing materials and containers in which the good is packed for shipment shall be disregarded in determining whether the non-originating materials used in the production of the good undergo an applicable change in tariff classification as set out in Annex 6-03.

2. If the good is subject to a regional value content requirement, the value of such packaging materials and containers shall be taken into account as originating or non- originating materials, as the case may be, in calculating the regional value content of the good, and the value of those materials shall correspond to their costs as reported in the accounts of the producer of the good.

Article 6-15

Automotive Goods

1. For the purposes of this Article:

underbody means the floor pan of a motor vehicle;

class of motor vehicles means any one of the following categories of motor vehicles:

(a) Motor vehicles provided for in subheading 8701.20, tariff item 8702.10.03 or 8702.90.04 or, in the case of Nicaragua, subheadings 8702.10 or 8702.90 (vehicles for the transport of 16 or more persons), or subheadings 8704.10, 8704.22, 8704.23, 8704.32 or 8704.90, or headings 87.05 and 87.06;

(b) motor vehicles provided for in subheadings 8701.10 or 8701.30 through 8701.90;

(c) motor vehicles provided for in Mexican tariff items 8702.10.01, 8702.10.02, 8702.90.01, 8702.90.02 or 8702.90.03 or, in the case of Nicaragua, subheadings 8702.10 or 8702.90 (vehicles for the transport of up to 15 persons), or subheadings 8704.21 and 8704.31; or

(d) motor vehicles provided for in subheadings 8703.21 through 8703.90;

motor vehicle assembler means a producer of motor vehicles and any related persons or joint ventures in which the producer participates;

original equipment means the material incorporated into a motor vehicle before the first transfer of ownership or consignment of the motor vehicle to a person other than an assembler of motor vehicles. Such material is:

(a) A good included in Annex 6-15(1); or

(b) a set of motor vehicle components, a motor vehicle component, or an item of material listed in Annex 6-15(2);

model line means a group of motor vehicles having the same platform or model name;

model name means the word, group of words, letter or letters, number or numbers or similar designation assigned to a motor vehicle by a marketing division of a motor vehicle assembler to:

(a) Differentiate the motor vehicle from other motor vehicles that use the same platform design;

(b) associate the motor vehicle with other motor vehicles that use different platform designs; or

(c) to denote a platform design;

platform means the primary load-bearing structural assembly of a motor vehicle that determines the basic size of the motor vehicle, and is the structural base that supports the driveline and links the suspension components of the motor vehicle for various types of frames, such as the body-on-frame or space-frame, and monoblocks;

motor vehicle means a good provided for in headings 87.01, 87.02, 87.03, 87.04, 87.05 or 87.06;

2. For the purpose of calculating the regional value content, in accordance with the net cost method set out in Article 6-04 for

(a) A good that is a motor vehicle provided for in Mexican tariff items 8702.10.01, 8702.10.02, 8702.90.01, 8702.90.02 or 8702.90.03 or, in the case of Nicaragua, subheadings 8702.10 or 8702.90 (vehicles for the transport of up to 15 persons), or subheadings 8704.21 through 8703.90, 8703.21 or 8704.31; or

(b) a good that is a motor vehicle provided for in the annex to this Article where the good is subject to a regional value content requirement and is for use as original equipment in the production of a good provided for in Mexican tariff items 8702.10.01, 8702.10.02, 8702.90.01, 8702.90.02 or 8702.90.03 or, in the case of Nicaragua, subheadings 8702.10 or 8702.90 (vehicles for the transport of up to 15 persons), or subheadings 8703.21 through 8703.90, 8704.21 or 8704.31,

The value of non-originating materials used by the producer in the production of the good shall be the sum of the values of non-originating materials, determined in accordance with Article 6-05 (1) and (2) that are imported from outside the territories of the Parties under the tariff provisions listed in Annex 6-15(1) and are used in the production of the good or in the production of any material used in the production of the good.

3. For the purpose of calculating the regional value content under the net cost method set out in Article 6-04, for a good that is a motor vehicle provided for in heading 87.01, Mexican tariff items 8702.10.03 or 8702.90.04 or, in the case of Nicaragua, in subheadings 8702.10 or 8702.90 (vehicles for the transport of 16 or more persons), subheadings 8704.10, 8704.22, 8704.23, 8704.32 or 8704.90, or headings 87.05 or 87.06, or for a component identified in Annex 6-15(2) for use as original equipment in the production of the motor vehicle described in this paragraph, the value of non-originating materials used by the producer in the production of the good shall be the sum of:

(a) For each material used by the producer listed in Annex 6-15(2), whether or not produced by that producer, at the choice of the producer and determined in accordance with Article 6-05 or Article 6-07 (3), either:

(i) the value of such material that is non- originating; or

(ii) the value of non-originating materials used in the production of such material; and

(b) the value of any other non-originating material used by the producer of the good that is not listed in Annex 6-15(2), determined in accordance with Article 6-05 or Article 6-07 (3).

4. For the purpose of calculating the regional value content of a motor vehicle identified in paragraph 2 or 3, the producer may average its calculation over its fiscal year or period, using any one of the following categories, on the basis of either all motor vehicles in the category or only those motor vehicles in the category that are exported to the territory of the other Party:

(a) The same model line of motor vehicles in the same class of vehicles produced in the same plant in the territory of a Party;

(b) the same class of motor vehicles produced in the same plant in the territory of a Party; or

(c) the same model line of motor vehicles produced in the territory of a Party.

5. For the purpose of calculating the regional value content for any or all goods provided for in a tariff provision listed in Annex 6-15(1), or a component or material identified in Annex 6-15(2), produced in the same plant, the producer of the good may:

(a) Average its calculation:

(i) over the fiscal year or period of the motor vehicle producer to whom the good is sold;

(ii) over any quarter or month; or

(iii) over its fiscal year or period, if the good is sold as an aftermarket or spare part;

(b) calculate the average referred to in subparagraph (a) separately for any or all goods sold to one or more motor vehicle producers; or

(c) with respect to any calculation under this paragraph, calculate separately those goods that are exported to the territory of the other Party.

6. Notwithstanding Annex 6-03(1), the regional value-content requirement shall be:

(a) For a good that is a motor vehicle provided for in heading 87.01, Mexican tariff items 8702.10.03 or 8702.90.04 or, in the case of Nicaragua, subheadings 8702.10 or 8702.90 (vehicles for the transport of 16 or more persons), subheadings 8704.10, 8704.22, 8704.23, 8704.32 or 8704.90, or headings 87.05 or 87.06, 35 per cent according to the net cost method, for the fiscal year or period of a producer that begins on the date closest to 1 July 1998 until the fiscal year or period ending on the date closest to 1 July 2000; and

(b) for the goods listed in Article 6-15(1), subject to a regional content value and destined for use in motor vehicles included in paragraphs 2 and 3, except for goods provided for in headings 84.07, 84.08 or subheading 8708.40, when destined for use in motor vehicles included in paragraphs 2 and 3, in which case the applicable regional content will be as defined in footnotes 4 and 32 of section B of Annex 6-03, except for heading 87.06, in which case the provisions established in subparagraph (a) shall be applicable:

(i) 40 per cent, according to the net cost method, for the fiscal year or period of a producer beginning on the day closest to 1 July 1998 until the fiscal year or period ending on the day closest to 1 July 2003; and

(ii) 50 per cent, according to the net cost method, for the fiscal year or period of a producer that begins on the date closest to 1 July 2003 until the fiscal year or period of a producer that ends on the date closest to 1 July 2008.

Article 6-16

Non-Qualifying Operations and Practices

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

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

(b) simple operations for the maintenance of the good during transportation or storing, such as ventilation, refrigeration, removal of damaged parts, drying or addition of substances;

(c) removal of dust, sieving, classification, selection, washing;

(d) packing, repacking or packaging for retail sale;

(e) collection of goods to form sets or assortments;

(f) application of stamps, labels or similar distinctive signs;

(g) washing, including removal of oxide, oil, paint or other coverings; and

(h) mere collection of parts and components classified as a good, according to Rule 2(a) of the General Rules of Interpretation of the Harmonized System. This shall not apply to originating goods previously assembled and then disassembled for considerations of packaging, handling or transportation.

2. A good shall not be considered originating merely by a production or pricing practice in respect of which it may be demonstrated, on the basis of a preponderance of evidence, that the object was to circumvent this Chapter.

3. The provisions of this Article shall prevail over the specific rules set out in the Annex 6-03.

Article 6-17

Transhipment and Direct Expedition

1. A good shall not be considered to be an originating good, even if it has undergone production that satisfies the requirements of Article 6-03 if, subsequent to that production, the good undergoes further production or any other operation outside the territories of the Parties, other than unloading, reloading or any other operation necessary to preserve it in good condition or to transport the good to the territory of the other Party.

2. A good shall not lose its originating status where, in transit through the territory of one or more non-Party countries, with or without transhipment or temporary storage, under surveillance of the customs authorities of such countries:

(a) Transit is justified by geographical or transportation requirement considerations;

(b) the good is not destined for trade or use in the transit countries; and

(c) during transportation and storage the good is not submitted to operations other than packing, packaging, loading, unloading or handling to preserve it in good condition.

Article 6-18

Consultation and Modifications

1. The Parties hereby establish a Committee on Rules of Origin and Customs Procedures, comprising representatives of each Party, which shall meet on the request of either Party.

2. The Committee shall:

(a) Ensure the effective implementation and administration of this Chapter;

(b) agree on the interpretation, application and administration of this Chapter;

(c) in relation to non-allowable interest costs, annually review the percentage points above the highest interest rate on government bonds issued by the federal or central government, as the case may be; and

(d) consider any other matter as the Parties may agree.

3. The Parties shall consult regularly and shall cooperate to ensure that this Chapter is applied in an effective and uniform manner, in accordance with the spirit and the objectives of this Agreement.

4. If a Party considers that this Chapter requires modification because of changes in the development of productive processes or other matters, it may submit to the Committee a modification proposal for its consideration, providing reasons and studies to substantiate it. The Committee shall submit a report to the Commission, and the latter shall make such recommendations to the Parties as it deems appropriate.

Article 6-19

Interpretation

For the purposes of this Chapter, when applying the Customs Valuation Code to determine the origin of a good:

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

(b) the provisions of this Chapter shall prevail over the Customs Valuation Code to the extent of any difference.

Article 6-20

Transitory Provisions on Regional Value Content

1. For the purpose of calculating the regional value content of a good under that requirement, the good produced in the territory of one or both of the Parties should have a regional value content no less than:

(a) 45 per cent under the transaction value method, or 37.5 per cent under the net cost method, effective 1 July 1998 until 30 June 2001;

(b) 46 per cent under the transaction value method, or 38.5 per cent under the net cost method, effective from 1 July 2001 through 30 June 2002; and

(c) 47.5 per cent under the transaction value method, or 40 per cent under the cost method, effective from 1 July 2002 through 30 June 2003.

2. Effective 1 July 2003, the percentage regional value content shall be as established in Annex 6-03.

3. The provisions contained in this Article shall not be applicable for calculating the regional value content of the goods listed in Article 6-15.

ANNEX 6-04

Calculation of Net Cost

Section A - Definitions

For the purposes of this Annex:

allocation base means any of the following allocation bases used by the producer to calculate the cost ratio with respect to the good:

(a) The sum of the direct labour costs and the direct material costs of the good;

(b) the sum of the direct labour costs, the direct material costs and the direct overhead of the good;

(c) direct labour hours or direct labour costs;

(d) units produced;

(e) machine-hours;

(f) sales amount;

(g) floor space; or

(h) any other allocation bases that are considered reasonable and measurable;

non-allowable costs means sales promotion, marketing and after-sales service costs; royalties; shipping and packing costs; and non-allowable interest costs; and

for internal management purposes means any cost allocation procedure that is used for purposes relating to tax reporting, financial reporting, internal control, financial planning, decision-making, pricing, cost recovery, cost control management or performance measurement.

Section B - Calculation of the Net Cost

1. The net cost is calculated by the following formula:

$$NC = TC - NAC$$

where:

NC is net cost;

TC is total cost; and

NAC is non-allowable costs.

2. For the purpose of calculating the total cost:

(a) The producer of the good may choose to average the total cost with respect to the good and other identical or similar goods produced in a single plant by the producer over:

(i) a month; or

(ii) during any period longer than one month within that producer's fiscal year or period;

(b) for the purposes of subparagraph (a), the producer of the good shall consider all the good's units produced within the chosen period. The producer may not rescind or modify that period, once chosen;

(c) for the purpose of calculating total cost, where, for internal management purposes, the producer of the good is using a method to allocate the direct material costs, the direct labour costs, or the direct or indirect overhead or part thereof to the good, and that method reasonably reflects the direct material costs, the direct labour costs or direct or indirect overhead incurred in the production of the good, it shall be considered as a reasonable method to allocate costs and shall be used to allocate the costs to the good;

(d) the producer of the good may determine a reasonable amount of costs, when those costs have not been allocated to the good, as follows:

(i) with respect to direct material costs and direct labour costs, on the basis of any method that reasonably reflects the material and labour directly used in the production of the good; and

(ii) with respect to direct and indirect overhead, the producer of the good may choose one or more allocation bases that reflect a relationship between the overhead and the good, in accordance with subparagraphs (f) and (g);

(e) the producer of the good may choose any reasonable cost allocation method, which shall be used throughout the producer's fiscal year or period;

(f) with respect to each allocation base, the producer may chose to calculate a cost ratio for each good produced, in accordance with the following formula:

$$PC = \frac{AB}{TAB} \times 100$$

where:

CR is the cost ratio with respect to the good;

AB is the allocation base for the good; and

TAB is the total allocation base for all the goods produced by the producer of the good.

(g) the costs with respect to which an allocation base is chosen are allocated to a good in accordance with the following formula:

$$CAG = CA \times CR$$

where:

CAG is the costs allocated to the good;

CA is the costs to be allocated; and

CR is the cost ratio with respect to the good.

(h) for the purpose of calculating the net cost, where non-allowable costs are included in the total cost to be allocated to a good, the cost ratio used to allocate those costs to the good shall also be used to determine the amount of non-allowable costs to be subtracted from the total cost allocated to the good; and

(i) any costs allocated in accordance with any reasonable cost allocation method used for internal management purpose are considered not to be reasonably allocated, when it may be demonstrated, on the basis of a preponderance of evidence, that the object was to circumvent the provisions of this Chapter.

3. For the purpose of calculating non-allowable interest costs, the producer of the good shall:

(a) consider, for the calculation of non-allowable interest, only loans contracted at a fixed or variable interest rate above the highest interest rate on bonds issued by the federal or central government, as the case may be, plus 10percentage points;

(b) calculate the rate of interest accrued in the period chosen by the producer, in accordance with paragraph 2 (a), by applying the following formula:

$$TID = \frac{IPP}{MPP} \times 100$$

where:

TID is the rate of interest accrued in the period;

IPP is the amount of interest accrued in the period; and

MPP is the amount of loans accruing interest in the period.

For the purposes of this subparagraph, the amount of loans accruing interest and the amount of interest accrued shall be those corresponding to loans as established in subparagraph (a); and, if the accrued interest does not correspond to the whole period chosen by the producer for calculating the total cost, only the proportion of the loan corresponding to the period in which the interest accrued shall be considered.

(c) shall use the following formula to calculate the rate of non-allowable interest, based on the calculation of the rate of interest accrued, as established in subparagraph (a):

$$TIN = TID - (TOG + 10)$$

where:

TIN is the rate of non-allowable interest;

TID is the rate of interest accrued in the period; and

TOG is the interest rate on bonds issued by the Federal or central government, as the case may be;

(d) use the following formula to calculate non-allowable interest costs:

$$CIN = TIN \times MPP$$

where:

CIN is the non-allowable interest costs;

TIN is the non-allowable interest rate; and

MPP is the amount of loans accruing interest in the period.

For the purposes of this subparagraph, the amount of loans accruing interest in the period shall be calculated in accordance with the provisions of subparagraph (b).

4. Where the producer of a good has calculated the regional value content of the good under the net cost method on the basis of estimated costs, including standard costs, budgeted forecasts or other similar estimating procedures, before or during the chosen period, as set out in paragraph 2(a), the producer shall perform the calculation based on the actual costs incurred over that period with respect to the production of the good.

CHAPTER VII: CUSTOMS PROCEDURES

Article 7-01

Definitions

1. For the purposes of this Chapter:

competent authority means the authority that, according to the legislation of each Party, is responsible for the administration of its customs laws and regulations;

identical goods means "identical goods", as defined in the Customs Valuation Code;

determination of origin means a ruling issued as a result of verification conducted in accordance with Article 7-07, establishing whether the good qualifies as originating; and

preferential tariff treatment means the duty rate applicable to an originating good in accordance with the Tariff Elimination Programme;

2. This Chapter includes the definitions established in Chapter VI (Rules of Origin).

Article 7-02

Declaration and Certification of Origin

1. For the purposes of this Chapter, before the date on which this Agreement comes into force, the Parties shall prepare a single form for the certificate of origin and a single form for the declaration of origin,

2. The certificate of origin referred to in paragraph 1 shall serve to certify that a good exported from the territory of one Party to the territory of the other Party qualifies as an originating good.

3. Each Party shall require its exporters to complete and sign a Certificate of origin for any exportation of a good for which an importer may claim preferential tariff treatment.

4. Each Party shall require that:

(a) Where an exporter is not the producer of the good, the exporter completes and signs a certificate of origin on the basis of the declaration of origin referred to in paragraph 1; and

(b) the declaration of origin applicable to the good to be exported shall be completed and signed by the producer of the good and given voluntarily to the exporter.

5. Each Party shall provide that a certificate of origin that has been completed and signed by the exporter is applicable to:

(a) A single importation of one or more goods; or

(b) multiple importations of identical goods within a specified period, set out in the certificate by the exporter, not exceeding the period established in paragraph 6.

6. Each Party shall provide that the certificate of origin be accepted by the competent authority of the importing Party for one year counted from the date of its signing.

Article 7-03

Obligations Regarding Importations

1. Each Party shall require an importer that claims preferential tariff treatment for a good imported into its territory from the territory of the other Party to:

(a) Make a written statement in the import document envisaged in its legislation, based on a valid certificate of origin, that the good qualifies as an originating good;

(b) have the certificate in its possession at the time the statement is made;

(c) provide, on the request by the competent authority, a copy of the certificate; and

(d) promptly make a corrected statement and pay any duties owing where the importer has reason to believe that a certificate on which a statement was based contains information that is not correct. Where the importer submits such a statement before the authorities begin a revision it shall not be subject to penalties.

2. Each Party shall provide that, where an importer fails to comply with any of the requirements established in this paragraph 1, it shall be denied the preferential tariff treatment claimed for the good imported into the territory of the other Party.

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

(a) A written statement that the good qualified as an originating good at the time of importation;

(b) a copy of the certificate of origin; and

(c) such other documentation relating to the importation of the good as the competent authority may require.

Article 7-04

Obligations Regarding Exportations

1. Each Party shall provide that an exporter or a producer in its territory that has completed and signed a certificate or declaration of origin, shall provide a copy of the certificate or declaration to its competent authority on request.

2. Each Party shall provide that an exporter or a producer in its territory that has completed and signed a certificate or declaration of origin, and that has reason to believe that the certificate contains information that is not correct, shall promptly notify in writing all persons to whom the certificate or declaration was given of any change that could affect the accuracy or validity of the certificate or declaration and, in accordance with its legislation, its competent authority. In such cases, the exporter or producer shall not be subject to penalties for having presented an incorrect certificate or declaration.

3. The competent authority of the exporting Party shall inform the competent authority of the importing Party in writing of the notification by the exporter or producer referred to in paragraph 2.

4. Each Party shall provide that a false certification or statement by an exporter or a producer that a good to be exported to the territory of the other Party qualifies as an originating good shall have the same legal consequences, with appropriate modifications, as would apply to an importer in its territory for a contravention of its customs laws and regulations regarding the making of a false statement or representation.

Article 7-05

Exceptions

Provided that an importation does not form part of two or more importations that have been undertaken or arranged for the purpose of avoiding the certification requirements of Articles 7-02 and 7-03, the Parties shall not require a certificate of origin in the following cases:

(a) A commercial importation of a good whose customs value does not exceed US$1,000 or its equivalent in the Party's currency, except that it may require that the invoice accompanying the importation include a statement by the importer or exporter certifying that the good qualifies as an originating good;

(b) a non-commercial importation of a good whose value does not exceed US$1,000 or its equivalent in the Party's currency; and

(c) an importation of a good for which the importing Party has waived the requirement for a certificate of origin.

Article 7-06

Accounting Records

Each Party shall provide that:

(a) Its exporter or producer that completes and signs a certificate or declaration of origin shall maintain in its territory, for a minimum of five years after the date on which the certificate or declaration was signed, all records and documents relating to the origin of a good, including records associated with:

(i) the purchase of, cost of, value of, and payment for, the good that is exported from its territory;

(ii) the purchase of, cost of, value of, and payment for, all materials used in the production of the good that is exported from its territory; and

(iii) the production of the good in the form in which the good is exported from its territory;

(b) for the purpose of the verification procedure established in Article 7-07, the exporter or producer shall provide to the competent authority of the importing Party the records and documents referred to in subparagraph (a). When the records and documents are not in the possession of the exporter or producer, the exporter may request from the producer or supplier of the materials the records and documents to be delivered by it to the competent authority to perform the verification; and

(c) an importer claiming preferential tariff treatment for a good imported into the Party's territory from the territory of the other Party shall maintain, for a minimum of five years after the date of importation of the good, the certificate of origin and all documentation relating to the importation of the good, as the importing Party may require.

Article 7-07

Procedures for Origin Verifications

1. The importing Party may request information from the exporting Party on the origin of a good, through its competent authority.

2. For the purpose of determining whether a good imported into its territory from the territory of the other Party qualifies as an originating good, a Party may, through its competent authority, conduct a verification by means of:

(a) Written questionnaires to an exporter or a producer in the territory of the other Party; or

(b) verification visits to the premises of an exporter or a producer in the territory of the other Party to review the records and documents that demonstrate compliance with the rules of origin, pursuant to Article 7-06 and to observe the facilities used in the production of the good and, as the case may be, the facilities used in the production of the materials used in the production of the good.

3. The provisions of paragraph 2 shall be without prejudice to any review that the importing Party may conduct on its own importers, exporters or producers.

4. On receipt of a questionnaire pursuant to paragraph 2(a), the exporter or producer shall reply to it and return it within 30 days of having received it. During that period, the exporter or producer may request in writing from the importing Party an extension, which, if granted may not be longer than 30 days. This request shall not result in the denial of preferential tariff treatment.

5. Should the exporter or producer not reply to or return the questionnaire within the established deadline, the importing Party may deny preferential tariff treatment subject to a ruling under the terms of paragraph 11.

6. Prior to conducting a verification visit under paragraph (2)(b), the importing Party shall, through its customs administration, deliver a written notification of its intention to conduct the visit. The notification shall be sent to the exporter or producer whose premises are to be visited, to the competent authority of the Party in whose territory the visit is to be conducted and, if requested by the latter, to the embassy of the other Party in the territory of the importing Party. The competent authority of the importing Party shall obtain the written consent of the exporter or producer whose premises are to be visited.

7. The notification referred to in paragraph 6 shall include:

(a) The identity of the competent authority issuing the notification;

(b) the name of the exporter or producer whose premises are to be visited;

(c) the date and place of the proposed verification visit;

(d) the object and scope of the proposed verification visit, including specific reference to the period and the good or goods subject of the verification referred to in the certificates of origin;

(e) the names, identification and titles of the officials performing the verification; and

(f) the legal authority for the verification visit.

8. Any modification to the information referred to in paragraph 7(e), shall be notified in writing, prior to the verification visit, to the exporter or producer, and to the competent authority of the exporting Party. Any modification to the information referred to in paragraphs 7(a), (b), (c), (d) and (f) shall be notified in accordance with the terms of paragraph 6.

9. If within 30 days from the date of the notification of the proposed visit under paragraph 6, the exporter or producer has not given its written consent to such a visit, the importing Party may deny preferential tariff treatment to the good or goods that would have been the subject of the visit.

10. Each Party shall provide that, where its competent authority receives a notification pursuant to paragraph 6, it may, within 15 days of receipt of the notification, postpone the proposed verification visit for a period not exceeding 60 days from the date of such receipt, or for such a longer period as the Parties may agree.

11. A Party shall not deny preferential tariff treatment to a good based solely on the postponement of a verification visit pursuant to paragraph 10.

12. The Party conducting a verification visit shall permit an exporter or a producer whose good or goods are the subject of a verification visit, to designate two observers to be present during the visit, provided that the observers do not participate in a manner other than as observers. Failure by the exporter or producer to designate observers shall not result in the postponement of the visit.

13. Within 120 days following the completion of the verification visit, the competent authority shall provide the exporter or producer whose good is subject to the verification, a written determination of whether or not the good qualifies as an originating good, including findings of fact and the legal basis for the determination.

14. Where the verification completed by a Party indicates that an exporter or a producer has repeatedly made false or unsupported representations that a good imported into its territory qualifies as an originating good, the Party may withhold preferential tariff treatment to identical goods exported or produced by such person until that person establishes compliance with Chapter VI (Rules of Origin).

15. Each Party shall maintain the confidentiality of information collected in the origin verification process, in accordance with its legislation.

Article 7-08

Review and Appeal

1. Each Party shall grant the same rights of review and appeal of determinations of origin and advance rulings by its competent authority as it provides to importers in its territory to exporters or producers from the other Party who:

(a) Complete and sign a certificate or declaration of origin for a good that has been the subject of a determination of origin; or

(b) have received an advance ruling pursuant to Article 7-10.

2. The rights referred to in paragraph 1 include access to at least one level of administrative review independent of the official or office responsible for the determination or ruling under review, and access to judicial or quasi-judicial review of the determination or decision taken at the final level of administrative review, in accordance with the legislation of each Party.

Article 7-09

Penalties

Each Party shall establish or maintain measures imposing criminal, civil or administrative penalties for violations of its laws and regulations relating to this Chapter.

Article 7-10

Advance Rulings

1. Each Party shall, through its competent authority, provide for the expeditious issuance of written advance rulings, prior to the importation of a good into its territory. The advance rulings shall be issued to its importer or to the exporter or producer in the territory of the other Party, on the basis of the facts and circumstances presented by them concerning the origin of the goods.

2. Advance rulings shall relate to:

(a) Whether non-originating materials used in the production of a good undergo the corresponding change in tariff classification as set out in Annex 6-03;

(b) whether the good satisfies the regional value-content requirement under Chapter VI (Rules of Origin);

(c) whether the method for value to be applied by an exporter or a producer in the territory of the other Party, in accordance with the principles of the Customs Valuation Code, for calculating the transaction value of the good or of the materials used in the production of a good for which an advance ruling is requested, is appropriate for the purpose of determining whether a good satisfies a regional value-content requirement under Chapter VI (Rules of Origin);

(d) whether the method applied by the exporter or producer in the territory of the other Party, for reasonably allocating costs in accordance with the Annex 6-04, is appropriate for the purpose of determining whether a good satisfies a regional value-content under Chapter VI (Rules of Origin);

(e) whether the country of origin marking made or proposed for the good satisfies the provisions of Article 3-12;

(f) whether the good qualifies as an originating good under Chapter VI (Rules of Origin); and

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

3. Each Party shall adopt or maintain procedures for the issuance of advance rulings, prior to their publication, including:

(a) Information reasonably required to process an application for a ruling;

(b) the right of its competent authority to request, at any time during the course of an evaluation of an application for an advance ruling, supplemental information from the person requesting the ruling;

(c) the obligation of the competent authority to issue the advance ruling within 120 days, after it has obtained all necessary information from the person requesting the ruling; and

(d) the obligation to provide a full explanation of the reasons for the advance ruling.

4. Each Party shall apply advance rulings to importations into its territory beginning on the date of their issuance or such later date as may be specified in the ruling, unless the advance ruling is modified or revoked under paragraph 6.

5. Each Party shall provide to any person requesting an advance ruling the same treatment, including the same interpretation and application of provisions of Chapter VI (Rules of Origin), regarding a determination of origin, as it provided to any other person to whom it issued an advance ruling, provided that the facts and circumstances are identical in all material respects.

6. An advance ruling may be modified or revoked in the following cases:

(a) If the ruling is based on an error:

(i) of fact;

(ii) in the tariff classification of a good or a materials; or

(iii) in the application of a regional value-content requirement;

(b) where the ruling is not in accordance with an interpretation agreed upon by the Parties or a modification with regard to Article 3-12 or Chapter VI (Rules of Origin);

(c) where there is a change in the material facts or circumstances on which the ruling is based; or

(d) to comply with an administrative or judicial decision.

7. Each Party shall provide that any modification or revocation of an advance ruling shall be effective on the date on which it is issued, or on such later date as may be specified therein, and shall not be applied to importations of a good that have occurred prior to those dates, unless the person to whom the advance ruling was issued has not acted in accordance with its terms and conditions.

8. Notwithstanding paragraph 7, the Party issuing the advance ruling shall postpone the date of entry into force of the modification or revocation for a period not exceeding 90 days, when the person to whom the advance ruling was issued has acted thereon in good faith.

9. Each Party shall provide that where its competent authority examines the regional value content of a good for which it has issued an advance ruling, it shall assess whether:

(a) The exporter or producer has complied with the terms and conditions of the advance ruling;

(b) the exporter’s or producer’s operations are consistent with the material facts and circumstances on which the advance ruling is based; and

(c) the supporting data and computations used in applying the basis or method for calculating value or allocating costs were correct in all material respects.

10. Each Party shall provide that where its competent authority determines that any requirement in paragraph 10 has not been satisfied, it may modify or revoke the advance ruling as the circumstances may warrant.

11. Each Party shall provide that where its customs administration determines that an advance ruling was based on incorrect information, the person to whom it was issued shall not be subject to penalties, provided that person demonstrates that it used reasonable care and acted in good faith in presenting the facts and circumstances on which the ruling was based.

12. Each Party shall provide that where an advance ruling is issued to a person that has misrepresented or omitted material facts or circumstances on which the ruling is based, or has failed to act in accordance with the terms and conditions of the ruling, the customs administration that issued the ruling may apply such measures as the circumstances may warrant.

13. The validity of an advance ruling shall be subject to the permanent obligation of the holder thereof to inform the competent authority of any substantial change in the facts or circumstances on which the ruling was based.

14. Each Party shall maintain the confidentiality of the information gathered in the process of issuing advance rulings in accordance with its legislation.

Article 7-11

Customs Procedures Committee

1. The Parties hereby establish the Customs Procedures Committee, comprising representatives of each of the Parties, which shall meet at least twice a year, and at the request of either of the Parties.

2. The Committee shall:

(a) Endeavour to agree on:

(i) the interpretation, application and administration of this Chapter;

(ii) tariff classification and customs valuation matters relating to determinations of origin;

(iii) procedures for the request, approval, modification, revocation and implementation of advance rulings;

(iv) modifications to the certificate or declaration of origin mentioned in Article 7-02, and

(v) any other matter raised by one of the Parties; and

(b) examine proposals for administrative or operational modifications in customs-related matters that could affect trade flows between the Parties.

3. The Parties shall establish and implement, through their respective laws and regulations, criteria which, on matters of interpretation, application and administration, maybe agreed upon by this Committee.

CHAPTER VIII: SAFEGUARDS

Article 8-01

Definitions

For the purposes of this Chapter:

threat of serious injury means serious injury that is clearly imminent, taking into consideration all relevant factors of an objective and quantifiable nature, in relation to the situation of a domestic industry, particularly in accordance with Article 8-10. A determination of the existence of a threat of serious injury shall be based on facts and not merely on presumptions, conjectures or remote possibilities;

investigating authority means "investigating authority" as defined in Chapter IX (Unfair International Trade Practices);

directly competing good means a good which, although not identical or a similar to the good with which it compares, is essentially equivalent for commercial purposes, by being intended for the same use and interchangeable with it;

similar good means a good which, although not alike in all respects, has similar characteristics and similar component materials which enable it to perform the same functions and to be commercially interchangeable with the good to which it is compared;

serious injury means a general and significant overall impairment of a domestic industry;

bilateral actions means safeguard measures pursuant to Articles 8-03, 8-04 and other applicable provisions of this Chapter;

global actions means emergency actions on imports of goods pursuant to Article XIX of GATT 1994 and the WTO Safeguards Agreement;

tariff elimination period means the period of elimination applicable to each good, as set out in the Tariff Elimination Programme; and

domestic industry means the producers as a whole of the similar or directly competitive products operating in the territory of a Party;

Article 8-02

Safeguards Regime

The Parties may apply to the importation of goods under this Agreement, a regime of safeguards, the application of which shall be based on clear, objective and strict criteria, and for a predefined period. The safeguards regime involves bilateral or global actions.

Section A - Bilateral Actions

Article 8-03

Conditions of Application

If, as a result of a Party’s application of the Tariff Elimination Programme, one or more originating goods from the other Party are being imported into that Party’s territory at a rate, and under such conditions as, on their own, to cause or threaten to cause serious injury to the domestic

industry that produces like or directly competitive products, the importing Party may adopt bilateral actions, which shall be applied in accordance with the following rules:

(a) Where strictly necessary to counteract the serious injury or threat of serious injury caused by imports from the other Party of one or more originating goods, a Party may adopt bilateral actions within the tariff elimination period;

(b) bilateral actions shall be temporary and exclusively tariff-based. Under no circumstances may the tariff determined be greater than the lower of the most-favoured nation tariff for that good at the time when the bilateral action is adopted and the most-favoured nation tariff corresponding to the good on the day before the entry into force of the Tariff Elimination Programme;

(c) bilateral actions may be applied for a period of up to one year, and may be renewed once only, for up to an equal and consecutive period, provided it is shown that the conditions justifying it persist;

(d) in justified cases, a bilateral action can be maintained for a third year when the Party applying it determines that:

(i) the domestic industry affected has made competitive adjustments; and

(ii) requires a second year of renewal.

In such cases, it will be essential that the increased tariff in the first year of application of the bilateral action is substantially reduced when the second year of renewal begins; and

(e) on expiry of the bilateral action, the rate or tariff shall be that corresponding to the good subject to the bilateral action at that date under the Tariff Elimination Programme.

Article 8-04

Compensation for bilateral actions

1. A Party intending to take a bilateral action shall provide mutually agreed compensation to the affected Party, in the form of additional tariff concessions having effects on the trade of the exporting country that are equivalent to the impact of the bilateral action taken.

2. The Parties shall agree upon the terms of the compensation referred to in paragraph 1 during the stage of prior consultations established in Article 8-14.

3. Should the Parties fail to reach agreement on compensation, the Party proposing to take the bilateral action shall be empowered to do so, and the exporting Party may impose tariff measures that have equivalent trade effects to those of the bilateral action taken.

Section B- Global Actions

Article 8-05

WTO Rights

The Parties retain their rights and obligations under Article XIX of GATT 1994 and the WTO Safeguards Agreement, except those relating to compensation or retaliation, and exclusion from a global action, when incompatible with the provisions of this section, in relation to any global action taken by a Party.

Article 8-06

Criteria for Taking a Global Action

1. When a Party decides to take a global action, it may only apply it to the other Party when the imports of a good from that Party, considered individually, represent a substantial fraction of total imports and contribute significantly to the serious injury or threat of serious injury to the domestic industry of the importing Party.

2. For the purposes of paragraph 1, the following criteria shall be taken into account:

(a) Imports of the good from the other Party are normally not considered substantial if that Party is not among the main suppliers, whose exported jointly account for 80 per cent of total imports of the similar or directly competitive good of the importing country; and

(b) imports from a Party shall not normally be deemed to contribute significantly to serious injury, or the threat thereof, if the growth rate of such imports during the period in which the injurious surge in imports occurred is appreciably lower than the growth rate of total imports of the similar or directly competitive good of the Party proposing to take the global action, from all sources over the same period.

Article 8-07

Compensation for Global Emergency Actions

1. The Party intending to take a global action shall provide mutually agreed compensation to the affected Party, in the form of additional tariff concessions having effects on the trade of the exporting country that are equivalent to the impact of the bilateral action take.

2. The Parties shall agree upon the terms of the compensation referred to in paragraph 1 during the stage of prior consultations established in Article 8-14.

3. Should the Parties fail to reach agreement on compensation, the Party proposing to take the global action shall be empowered to do so, and the exporting Party may impose tariff measures that have equivalent trade effects to those of the bilateral action taken.

Section C - Procedure

Article 8-08

Procedures for Taking Emergency Action

The Party intending to take an emergency bilateral global action under this Chapter shall fulfil the procedure set out in this section.

Article 8-09

Investigation

1. To determine the basis for application of a safeguard measure, the investigating authority of the importing Party shall carry out an investigation, either on its own initiative or on request of the Party.

2. An investigation that could result in the taking of a bilateral action shall not be initiated unless the investigating authority has determined that the request is supported by domestic producers whose joint production represents at least 35 per cent of the total production of the similar or directly competitive good.

3. The investigation shall:

(a) Evaluate the volume of and conditions under which imports of the good in question are made;

(b) verify the existence of serious injury or threat of serious injury to the domestic industry; and

(c) verify the existence of a relation of direct causality between the increase in imports of the good and the serious injury or threat thereof to the domestic industry.

4. Safeguard measures shall be applied in accordance with the legislation of each Party.

Article 8-10

Determination of Serious Injury or Threat Thereof

For the purpose of verifying the existence of serious injury or threat thereof, the investigating authority shall evaluate all objective and quantifiable factors relating to the affected domestic industry, in particular, the rate and amount of the increase in imports of the good in question, in both absolute and relative terms; the share of the domestic market taken by the increased imports, changes in the level of sales, domestic prices, production, productivity, capacity utilization, profits and losses, and employment.

Article 8-11

Effect of Other Factors

Where other factors are present, apart from the increase in imports of an originating good, or of a good from the other Party, as the case may be, which simultaneously damage the domestic industry, the serious injury or threat thereof caused by such factors may not be attributed to the imports in question.

Article 8-12

Publication and Notification

The Parties shall publish the rulings mentioned in this Chapter, in accordance with Annex 8-12, and shall notify the exporting Party thereof on the day following their publication.

Article 8-13

Content of the Notification

On launching an investigation, the investigating authority shall fulfil the notification requirements referred to in Article 8-12. Such notification shall contain sufficient information to substantiate and justify the launch of the investigation, including:

(a) The names and addresses of domestic producers of similar or directly competitive goods representative of the domestic industry; their share in domestic production of those goods and the reasons why they are considered representative of that sector;

(b) a clear and complete description of the goods subject to the investigation, the tariff items in which they are classified and the current tariff treatment, as well as the identification of similar or directly competitive goods;

(c) import data for each of the three years prior to the launch of the investigation, which provide the basis for the allegation that the good in question is being imported in increasingly large amounts, either in absolute terms or relative to total domestic production of similar or directly competitive goods;

(d) data on total domestic production of similar or directly competitive goods for the three years prior to the launch of the investigation;

(e) data showing that the imports are causing serious injury or threat thereof to the domestic industry in question, together with a listing and description of the causes of the serious injury or threat thereof, and a summary of the basis for the allegation that increased imports of those goods, in absolute terms or relative to domestic production of similar or directly competitive goods is the cause thereof;

(f) where appropriate, criteria and objective information demonstrating fulfilment of the prerequisites for application of a global emergency action to the other Party, as established in this Chapter; and

(g) the duration of the intended safeguard measure.

Article 8-14

Prior Consultations

1. A Party launching proceedings under this Chapter shall notify the other Party in writing in the terms set out in Articles 8-12 and 8-13, and shall also request prior consultations as provided for in this Chapter.

2. The importing Party shall provide adequate opportunities for prior consultations. The period of prior consultations shall start on the day following receipt by the exporting Party of notification containing the request for such consultations.

3. The period of prior consultations shall last for 30 working days, unless otherwise agreed between the Parties.

4. Safeguard measures may only be adopted once the period of prior consultations has ended.

Article 8-15

Confidential Information

1. The consultation procedure shall not oblige the Parties to furnish any information provided to them on a confidential basis, disclosure of which could violate their laws on this subject or damage legitimate commercial interests.

2. Without prejudice to the above, the importing Party intending to apply the emergency action shall submit a non-confidential summary of the confidential information.

Article 8-16

Observations by the Exporting Party

During the period of prior consultations, the exporting Party shall formulate such observations as it considers relevant, in particular, regarding the basis for invoking the safeguard and the safeguard measures proposed.

Article 8-17

Extension

Where the importing Party determines that the grounds that gave rise to the bilateral safeguard measure persist, it shall notify the competent authority of the exporting Party of its intention to extend the measure, at least 60 days in advance of its expiry. The extension procedure shall be carried out in accordance with the provisions established in this Chapter for the adoption of safeguard measures.

ANNEX 8-12

The Parties shall fulfil the publication requirements mentioned in this Chapter in the following communications media:

(a) Mexico, in the Official Gazette of the Federation ("Diario Oficial de la Federación"); and

(b) Nicaragua, in a daily newspaper of national circulation, without prejudice to its subsequent publication in the Official Gazette ("La Gaceta, Diario Oficial").

CHAPTER IX: UNFAIR INTERNATIONAL TRADE PRACTICES

Article 9-01

Definitions

For the purposes of this Chapter:

WTO Agreements means the Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade of 1994 and the Agreement on Subsidies and Countervailing Measures of the WTO;

competent authority means the authority indicated by each Party in Annex 1 to this Article;

investigating authority means The authority indicated by each Party in Annex 2 this Article;

injury means a significant injury caused to a domestic industry, threat of significant injury to a domestic industry, or a significant setback in the creation of this industry;

f.o.b. means "f.o.b.", as defined in Chapter VI (Rules of Origin);

Interested Parties means the producers, importers and exporters of the good subject to investigation, as well as domestic or foreign persons that have a direct interest in the investigation in question, including the government of the Party whose good is subject to an investigation. Any such interest should be made known in writing;

serious injury means "serious injury", as defined in the WTO Agreement on Subsidies and Countervailing Measures;

resolution launching the investigation means the resolution issued by the competent authority formally declaring the launch of the investigation;

preliminary determination means the determination issued by the competent authority as to whether or not there is a basis for imposing a provisional countervailing measure; and

final determination means the determination issued by the competent authority as to whether or not there is a basis for imposing definitive countervailing measures;

Article 9-02

General Provisions

The Parties hereby reject any unfair international trade practice that contravenes the provisions of this Chapter.

Article 9-03

Export Subsidies

1. Effective from the entry into force of this Agreement, the Parties may not increase subsidies above 7 per cent of the f.o.b. export value.

2. As from the moment at which tariffs on originating agricultural products reach zero in accordance with the Tariff Elimination Programme, and in no circumstances later than 1 July 2007, the Parties may not maintain export subsidies on agricultural products in their reciprocal trade.

3. Notwithstanding the above, as from the date of entry into force of this Agreement, the Parties may not maintain in their reciprocal trade export subsidies on agricultural products included in Article 5 of Export Promotion Decree 37-91 of Nicaragua, and those subject to tariff quotas under the Tariff Elimination Programme.

Article 9-04

Rights and Obligations of Interested Parties

Each Party shall ensure that the interested parties in the administrative investigation have the same rights and obligations, and that these shall be respected and observed, both during the procedure and in the administrative mechanisms and appeals lodged against final determinations.

Article 9-05

Countervailing Measures

In accordance with its domestic legislation, this Agreement and WTO agreements, the importing Party may establish and apply countervailing measures, when its investigating authority, through an objective review based on positive evidence:

(a) Determines the existence of imports:

(i) under conditions of dumping; or

(ii) goods that have benefited from export subsidies;

(b) proves the existence of:

(i) injury; or

(ii) serious injury; and

(c) proves that the injury or serious injury, as the case may be, is a direct consequence of imports of identical or similar goods of the other Party, under dumping or subsidy conditions.

Article 9-06

Sending of Copies

Interested parties in the investigation shall, at their own expense, send to the other interested parties copies of the public version of each of the reports, documents and means of evidence they submit to the investigating authority in the course of the investigation.

Article 9-07

Publication

1. The Parties shall publish the determinations referred to in this Chapter, in accordance with the annex to this Article.

2. Resolutions requiring publication are as follows:

(a) Resolutions launching the investigation and the preliminary and final determinations;

(b) resolutions declaring the investigation concluded:

(i) as a result of commitments with the exporting Party or with the exporters, as the case may be; and

(ii) as a result of commitments arising from the holding of conciliatory hearings.

Article 9-08

Content of Resolutions

Resolutions launching the preliminary and definitive investigation shall contain the following at least:

(a) Identity of the investigating authority, and the place and date at which the resolution is issued;

(b) the name or official designation and address of the requester, and those of other domestic producers of identical or similar goods;

(c) indication of the imported good subject to the procedure and its tariff classification;

(d) the elements and evidence used to determine the existence of the margin of dumping or the amount of the subsidy; the injury or serious injury and its causal relation;

(e) the considerations of fact and law that led the competent authority to launch an investigation or to impose a countervailing measure; and

(f) the legal argument, data, facts or circumstances that substantiate and justify the determination in question.

Article 9-09

Notifications and Deadlines

1. Each Party shall notify the determination on this issue directly to its importers and the exporters of the other Party of which it has knowledge, to the competent authority, to the diplomatic mission of the exporting Party accredited in the Party undertaking the investigation, and, where appropriate, the government of the exporting Party. The Parties shall also take action to identify and locate persons with an interest in the procedure to guarantee due process and equality between such persons.

2. Once the Party has made sure that there is sufficient evidence to justify launching an investigation, it shall notify the exporting Party, before issuing the resolution launching the investigation.

3. Notification of the resolution launching the investigation shall be made within five working days following its publication.

4. Notification of the resolution launching the investigation shall contain the following information at least:

(a) The time-limits and place for presentation of allegations, evidence and other documents; and

(b) the name, address and telephone number of the office at which information can be obtained, consultations made and the case record inspected.

5. Together with the notification, exporters shall be sent a copy of:

(a) The respective publication referred to in paragraph 3;

(b) the written document containing the allegation and the public version of its annexes; and

(c) the corresponding questionnaires.

6. The importing Party shall grant all interested persons of whom it has knowledge, at least 30 working days from the day following the publication of the resolution launching an investigation, to

make such representations as they deem fit. Subject to prior substantiated written request by the interested person, the deadline of 30 days may be extended for up to one further equal period.

Article 9-10

Deadlines for Provisional Measures

Neither Party shall impose a provisional countervailing measure before 60 working days have elapsed from the date of publication of the resolution launching investigation.

Article 9-11

Adoption and Publication of the Preliminary Determination

1. Within 130 working days following publication of the resolution launching the investigation, the competent authority shall issue a preliminary determination. This shall indicate whether or not the investigation will continue and, if appropriate, whether or not provisional measures will be imposed. The determination should be substantiated, based on the evidence contained in the administrative case record and published in accordance with Article 9-07.

2. Provisional countervailing measures shall take the form of a guarantee, pursuant to the legislation of each Party. The amount of such guarantee shall be equal to the amount of the provisional countervailing measure.

Article 9-12

Content of the Preliminary Determination

In addition to the information set out in Article 9-08, as appropriate, the corresponding preliminary determination shall contain the following:

(a) The normal value, export price, margin of dumping or, as the case may be, the amount of the subsidy and its incidence on the export price obtained by the investigating authority, together with a description of the methodology used to determine them;

(b) a description of:

  (i) injury; or

  (ii) serious injury, and a description of the analysis of each of the factors taken into account;

(c) a description of the determination of a causal relation; and

(d) where appropriate, the amount of the provisional countervailing measure, that will have to be guaranteed.

Article 9-13

Conciliatory Hearings

During the course of the investigation, any interested person may ask the investigating authority to hold conciliatory hearings in order to achieve a satisfactory solution.

Article 9-14

Information Meetings

1. Subject to prior written request from interested persons, the investigating authority of the importing Party shall hold information meetings to disseminate information pertaining to the content of the preliminary and final determinations.

2. The requests referred to in paragraph 1 should be presented within five working days following the publication of respective determination. In both cases, the investigating authorities shall hold the meeting within 15 working days following the presentation of the request.

3. The meeting shall be held in the headquarters of the investigating authority of the importing Party.

4. At the information meetings referred to in paragraphs 1 and 2, interested persons shall have the right to review reports or technical papers, the methodology, calculation spreadsheets and, in general, any element of which the corresponding determination has been based.

Article 9-15

Public Hearings

1. Subject to prior written request by any of the interested persons, the investigating authority shall hold public hearings which interested persons may attend and question their counterparties regarding such information or evidence as the investigating authority deems appropriate. It shall also give interested persons an opportunity to submit pleas after the public hearing even though the period for evidence may have ended. Such pleas shall consist of written presentation of conclusions relating to the information and arguments used in the course of the investigation. Notification to interested persons of the holding of a public hearing shall be made at least 15 working days before the date of the hearings.

2. The public hearing shall be held at the headquarters of the investigating authority of the importing Party.

Article 9-16

Obligation to Terminate an Investigation

1. The importing Party shall terminate an investigation:

   (a) With regard to an interested person, when its competent authority determines that:

      (i) the margin of dumping or the amount of the subsidy is *de minimis*; or

      (ii) there is insufficient evidence of dumping, subsidy, injury, serious injury, or causal relation; or

   (b) when its competent authority determines that the volume of imports subject to dumping or subsidy, or the injury, are insignificant.

2. For the purposes of paragraph 1, it shall be considered that:

   (a) The margin of dumping is *de minimis* when it is less than 2 per cent of the export price;

(b) the amount of the subsidy is *de minimis* when it is less than 1 per cent *ad valorem*; and

(c) the volume of imports subject to dumping or subsidies, or the injury, are insignificant if they represent less than 3 per cent of total imports of identical or similar goods by the importing Party.

Article 9-17

Period of Validity of Countervailing Measures

1. A final countervailing measure shall be eliminated automatically if, after five years have elapsed since the day following publication of the final resolution, none of the interested persons has requested its review, and the competent authority has not initiated a review on its own initiative.

2. When a Party initiates a review on its own initiative it shall immediately notify the other Party.

Article 9-18

Refund or Drawback

If a final ruling determines a countervailing measure below that determined provisionally, the competent authority of the importing Party shall instruct the corresponding authorities to return amounts paid in excess within a maximum period of 60 working days, counted from the day following publication of the final ruling, in accordance with the legislation of each Party.

Article 9-19

Clarifications

Once the countervailing measure has been imposed, whether provisional or final, interested persons may request, in writing, that the investigating authority determines whether a good is subject to the measure being imposed, or clarify any aspect of the corresponding resolution.

Article 9-20

Review

1. Final countervailing measures may be reviewed annually, subject to written request by any of the interested persons, and at any time, by the competent authority on its own initiative following a change of circumstances. The countervailing measures may be ratified, modified, or eliminated depending on the outcome of the review.

2. The procedure for review of definitive countervailing measures shall abide by the substantive provisions and procedures set out in this Chapter.

3. The review procedure may be requested in writing by interested persons that participated in the procedure giving rise to the final countervailing measure, or by any producer, importer, or exporter which, without having participated in the procedure, can accredit legal interest in writing before the investigating authority.

Article 9-21

Access to the Case Record

Interested persons shall have access to the administrative record of the procedure in question, at the headquarters of the investigating authority.

Article 9-22

Access to Other Records

In the course of an investigation, the investigating authority of each Party shall allow interested persons access to public information contained in the administrative record of any other investigation, once 60 working days have elapsed since the day following the publication of the final determination.

Article 9-23

Access to Confidential Information

1. The investigating authority of each Party shall allow access to confidential information, in accordance with its legislation, when reciprocity exists in the other Party regarding access to such information.

2. Confidential information shall only be available to the legal representatives of the interested persons accredited before the investigating authority in the administrative investigation. Such information shall be for strictly personal use and shall not be transferable for any reason.

3. In the event of such information being disclosed or used for personal benefit, the legal representative shall be entitled to claim criminal, civil, and administrative sanctions pursuant to the legislation of each Party.

Article 9-24

Reforms to Domestic Legislation

1. When a Party decides to reform, add to, or repeal its laws on unfair practices, it shall notify the other Party in writing immediately following publication.

2. Reforms, additions or repeals shall be compatible with the international regulations cited in Article 9-05.

3. Where a Party considers that such reforms, additions, or repeals violate the provisions of this Chapter, it may have recourse to the dispute settlement mechanism of Chapter XX (Dispute Settlement).

ANNEX 9-01(1)

Competent authority

Competent authority means

(a) For Mexico: the Ministry of Trade and Industrial Development (SECOFI), or its successor; and

(b) for Nicaragua: the Ministry of Economic Affairs and Development (MEDE), or its successor.

ANNEX 9-01(2)

Investigating authority

Investigating authority means the national authority responsible for conducting investigations into unfair international trade practices:

(a) For Mexico: the International Trade Practices unit of SECOFI, or its successor; and

(b) for Nicaragua: the Directorate General of Economic Integration of MEDE, or, as appropriate, the directorate with jurisdiction over matters relating to Central American economic integration, or the unit responsible for investigation of unfair trade practices, or its successor.

ANNEX 9-07

Publication

The Parties shall publish the determinations referred to in this Chapter as follows:

(a) Mexico, in the Official Gazette of the Federation (Diario Oficial de la Federación);

(b) Nicaragua, in a daily newspaper of national circulation, without prejudice to its subsequent publication in the Official Gazette (La Gaceta, Diario Oficial).

PART THREE: TRADE IN SERVICES

CHAPTER X: GENERAL PRINCIPLES ON TRADE IN SERVICES

Article 10-01

Definitions

For the purposes of this Chapter:

trade in services means the provision of a service:

(a) From the territory of a Party into the territory of the other Party;

(b) in the territory of a Party to a consumer of the other Party;

(c) by service providing enterprises of a Party located in the territory of the other Party; and

(d) by physical persons of a Party in the territory of the other Party;

service provider of a Party means a person of a Party that seeks to provide or provides a service; and

quantitative restriction means a non-discriminatory measure that imposes restrictions on:

(a) The number of service providers, whether in the form of a quota, a monopoly or an economic needs test, or by any other quantitative means; or

(b) the operations of any service provider, whether in the form of a quota or an economic needs test, or by any other quantitative means; and

professional services means services, the provision of which requires specialized post-secondary education, or equivalent training or experience, and for which the right to practice is granted or restricted by a Party, but does not include services provided by tradespersons or vessel and aircraft crew members.

Article 10-02

Scope and Coverage

1. This Chapter applies to measures adopted or maintained by a Party relating to services provided by service providers of the other Party, including measures regarding:

(a) The production, distribution, marketing, sale and delivery of a service;

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

(c) access to and use of distribution and transportation systems in connection with the provision of a service;

(d) access to and use of public telecommunications networks and services;

(e) the presence in its territory of a service provider of the other Party; and

(f) the provision of a bond or other form of financial security as a condition for the provision of a service.

2. A reference to federal, state or regional governments includes any non-governmental body in the exercise of any regulatory, administrative or other governmental authority delegated to it by those governments.

3. This Chapter does not apply to:

(a) Air services, including domestic and international air transportation services, whether scheduled or non-scheduled, and related services in support of air services, other than:

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

(ii) specialty air services; and

(iii) computerized reservation systems;

(b) subsidies or grants provided by a Party or by a state enterprise, including government-supported loans, guarantees and insurance;

(c) government services or functions, such as law enforcement, correctional services, income security or insurance, social security, social welfare, public education, public training, health and child care; or

(d) financial services.

4. Nothing in this Agreement shall be construed:

(a) To impose any obligation on a Party with respect to a national of the other Party seeking access to its employment market, or employed on a permanent basis in its territory, or to confer any right on that national with respect to such access or employment; or

(b) to impose any obligation or grant any right to a Party in respect of public sector procurement made by a Party or state enterprise.

5. The provisions of this Chapter shall apply to services-related measures set out in the annexes, only to the extent of and under the terms stipulated in those annexes.

Article 10-03

Most-Favoured-Nation Treatment

1. Each Party shall accord to the services and service providers of the other Party treatment no less favourable than it accords, in similar circumstances, to the services and service providers of any other country, whether or not a Party to this Agreement.

2. The provisions of this Chapter shall not be construed as preventing a Party from conferring or according advantages to neighbouring countries in order to facilitate exchange, limited to contiguous border zones, of services that are produced and consumed locally.

Article 10-04

National Treatment

1. Each Party shall accord to service providers of the other Party treatment no less favourable than that it accords, in similar circumstances, to its own services or service providers.

2. The treatment accorded by a Party under paragraph 1 means, with respect to a state or region, treatment no less favourable than the most favourable treatment accorded, in similar circumstances, by that State to service providers of the Party of which it forms a part.

Article 10-05

Non-Compulsory Local Presence

Neither Party may require a service provider of the other Party to establish or maintain a representative office or any form of enterprise, or to be resident, in its territory as a condition for the provision of a service

Article 10-06

Consolidation of Measures

1. Neither Party shall increase the degree of non-conformity of its measures with respect to Articles 10-03, 10-04 and 10-05. Any reform of any such measure shall not reduce the degree of conformity of the measure existing immediately before the reform.

2. Within a period not exceeding one year following the entry into force of this Agreement, the Parties shall register in their schedule, contained in Annex 10-06, any federal or central measures that are not in conformity with Articles 10-03, 10-04 and 10-05.

3. For any state or regional measures that are not in conformity with Articles 10-03, 10-04 and 10-05, the deadline for registering them in the Schedule to Annex 10-06, shall be no greater than two years following the entry into force of this Agreement.

4. The Parties are not required to register municipal measures.

Article 10-07

Transparency

1. Further to the provisions contained in Article 18-02, each Party shall publish promptly and, except in situations of emergency, no later than the date of their entry into force, all relevant laws, regulations and administrative directives and other decisions, resolutions or generally applicable measures that relate to or affect the operation of this Chapter, and have been implemented by institutions at any level of government or by a non-governmental regulatory body. It shall also publish any international agreements that relate to or affect trade in services and those to which a Party to this treaty is a signatory.

2. Whenever it is not feasible or practicable to publish the information referred to in paragraph 1, it shall be made available to the public in another way.

3. Each Party shall promptly inform the other Party, at least annually, of the establishment of any new laws, regulations or administrative directives that considerably affect trade in services covered by their specific commitments under this Chapter, or of any modifications made to pre-existing commitments.

4. Each Party shall reply promptly to any request for specific information submitted by the other Party regarding any of its measures referred to in paragraph 1. The other Party shall establish one or more inquiry centres to furnish information on the measures referred to in paragraph 1, at the request of the other Party, and on which it has an obligation to notify under paragraph 3.

5. Wherever possible, each Party shall provide the other Party and interested persons a reasonable chance to make observations on the measures proposed.

Article 10-08

Quantitative restrictions

1. Periodically, and at least once every two years, the Parties shall endeavour to negotiate the liberalization or removal of:

(a) The existing quantitative restrictions maintained by:

(i) a Party at the federal or central level as set out in the Schedule to Annex 10-08, in accordance with paragraph 2; and

(ii) a State or region, as indicated by a Party in the Schedule to Annex 10-08, in accordance with paragraph 2; and

(b) any quantitative restrictions adopted by a Party after this Agreement comes into force.

2. Each Party shall have one year from the date on which is agreement enters into force to indicate in its Schedule to Annex 10-08 any quantitative restrictions maintained by a State or region, not including those maintained by municipal governments.

3. Each Party shall notify the other Party of any quantitative restriction adopted after this Agreement enters into force, except those of municipal governments, and shall register the restriction in its Schedule to Annex 10-08.

Article 10-09

Future Liberalization

1. The Commission shall convene future negotiations through which the Parties will deepen the liberalization achieved in the different services sectors, in order to eliminate remaining restrictions registered in accordance with Article 10-06 (2) and (3).

2. The elimination of barriers to land transport flows between the Parties shall be subject to the provisions set out in Annex 10-09.

Article 10-10

Liberalization of Non-discriminatory Measures

Each Party shall indicate in its Schedule to Annex 10-10 its commitments to phase out quantitative restrictions, licensing requirements and other non-discriminatory measures.

Article 10-11

Procedures

The Commission shall establish procedures for:

(a) A Party to notify the other Party and include in its relevant Schedule:

(i) federal or central measures pursuant to Article 10-06 (2) and amendments thereto;

(ii) state or regional measures, pursuant to Article 10-06 (3) and amendments thereto;

(iii) non-discriminatory quantitative restrictions pursuant to Article 10-08;

(iv) measures pursuant to Article 10-10; and

(b) the holding of future negotiations pursuant to Article 10-09

Article 10-12

Limitations on the Provision of Information

Further to the provisions of Article 21-03, nothing in this Chapter shall be construed to require a Party to furnish any information the disclosure of which could prejudice the legitimate commercial interests of a public or private enterprise.

Article 10-13

Licensing and Certification

1. With a view to ensuring that any measure adopted or maintained by a Party relating to the licensing or certification of nationals of the other Party does not constitute an unnecessary barrier to trade, each Party shall endeavour to ensure that any such measure:

(a) Is based on objective and transparent criteria, such as competence and the ability to provide a service;

(b) is not more burdensome than necessary to ensure the quality of a service; and

(c) does not constitute a disguised restriction on the cross-border provision of a service.

2. Where a Party, unilaterally or by agreement, recognizes education, experience, licenses or certifications obtained in the territory of the other Party or of a non-Party:

(a) Nothing in Article 10-03 shall be construed to require the Party to accord such recognition to education, experience, licenses or certifications obtained in the territory of the other Party; and

(b) the Party shall afford the other Party an adequate opportunity to demonstrate that education, experience, licenses or certifications obtained in that other Party's territory should also be recognized, or to negotiate or conclude an agreement or arrangement of comparable effect.

3. Within two years from the date of entry into force of this Agreement, each Party shall eliminate any citizenship or permanent residency requirement that it maintains for the licensing or certification of professional service providers of the other Party. Where a Party does not comply with this obligation with respect to a particular sector, the other Party may, in the same sector and for such period as the noncomplying Party maintains its requirement, solely have recourse to maintaining an equivalent requirement set out in its Schedule to Annex 10-06, or reinstating:

(a) Any such requirement at the federal or central level that it eliminated pursuant to this Article; or

(b) on notification to the non-complying Party, any such requirement at the state or regional level existing on the date of entry into force of this Agreement.

4. Annex 10-13 sets out procedures for recognizing the education, experience, standards and requirements governing providers of professional services.

Article 10-14

Denial of Benefits

Subject to prior notification and consultation, a Party may deny the benefits of this Chapter to a service supplier of the other Party where the Party establishes that the service is being provided by an enterprise that is owned or controlled by persons of a non-Party and that has no substantial business activities in the territory of either Party.

Article 10-15

Exceptions

Further to the provisions of Article 21-01, no provision in this Chapter shall be construed as preventing a Party from adopting or applying necessary measures to implement the rules and regulations of international agreements for the conservation of the environment of which the Party is a signatory, provided such measures are not applied in such a way as to constitute a measure of arbitrary or unjustifiable discrimination between countries in similar conditions, or a disguised restriction on trade in services between the Parties.

Article 10-16

Future Work Programme

1. The Commission shall determine procedures to establish the necessary disciplines relating to:

(a) Emergency safeguard measures;

(b) subsidies that distort trade in services; and

(c) monopoly service providers.

2. For the purposes of paragraph 1, account shall be taken of the work of relevant international organizations.

Article 10-17

Relation with Multilateral Agreements on Services

1. The Parties shall apply, with respect to each other, the provisions on services contained in the multilateral agreements to which they are signatories.

2. Notwithstanding paragraph 1, in the event of any inconsistency between those agreements and this Agreement, the latter shall prevail to the extent of the inconsistency.

Article 10-18

Technical Cooperation

The Parties shall establish, no later than one year after this Agreement enters into force, a system to provide service providers with information on their markets in relation to:

(a) Commercial and technical aspects of the provision of services;

(b) the possibility of obtaining services technology; and

(c) any aspects that the Commission may identify with respect to services.

ANNEX 10-13

Professional Services

1. Definitions

For the purposes of this Annex, professional practice means the habitual undertaking of any professional act or the provision of any service pertaining to any profession that requires governmental authorization.

2. Objective

This Annex sets out the rules to be observed by the Parties to reduce and gradually eliminate the barriers to the provision of professional services that exist in their territory.

3. Scope and coverage

This Annex shall apply to all measures related to criteria for according mutual recognition of licences and certificates for professional practice.

4. Preparation of professional standards and criteria

(a) The Parties agree that the process of mutual granting and recognition of licences and certificates for the practice of a profession in their territory shall be based on raising the quality of professional services, by establishing standards and criteria for granting certificates and licences, and at the same time protecting consumers and safeguarding the public interest.

(b) Among other things, the Parties shall encourage the relevant organizations, competent government agencies, and professional associations and colleges to:

(i) prepare such criteria and standards; and

(ii) develop and submit recommendations on mutual recognition to the Parties.

(c) The preparation of criteria and standards referred to in paragraphs 1 and 2, may take the following elements into account: education, examinations, experience, conduct and ethics, professional development and re-certification, scope of practice, local knowledge, and consumer protection.

(d) To implement the provisions of paragraph 1 through 3, the Parties shall provide the detailed information necessary for the awarding and mutual recognition professional licences and certificates, including information on academic courses, study guides and materials, payment of fees, dates of examinations, timetables, location and membership in professional societies or colleges. This information includes legislation, administrative guidelines and generally applicable measures of a federal, central, state, regional nature, and those prepared by government and non-governmental organizations.

5. Review

(a) Based on the review of recommendations received by the Parties, and provided they are consistent with the provisions of this Agreement, each Party shall encourage the competent authority to adopt those recommendations.

(b) The Parties shall periodically, and at least once every three years, review the implementation of this Annex.

ANNEX 10-09

Removal of Barriers to Land Transport Flows

The Parties shall undertake a programme of work to remove barriers to land transport flows between their territories. This shall take into account, among other things, the work that both Parties have undertaken on land transport, and the agreements or conventions that the Parties have signed with other countries.

CHAPTER XXI: TELECOMMUNICATIONS

Article 11-01

Definitions

For the purposes of this Chapter:

Intra-corporate communications means the telecommunications through which an enterprise communicates:

(a) Internally, or with or among its subsidiaries, branches or affiliates; or

(b) on a non-commercial basis with other persons that are fundamental to the economic activity of the enterprise and that have a continuing contractual relationship with it,

but does not include telecommunications services provided to persons other than those described herein;

technically qualified entity means an entity defined by the corresponding law of each Party as responsible for performing laboratory tests. Such entities must be accredited by the competent authorities of each Party.

authorized equipment means terminal or other equipment that has been approved for attachment to the public telecommunications network in accordance with a Party's conformity assessment procedures;

terminal equipment means any digital or analog device capable of processing, receiving, switching, signalling or transmitting signals by electromagnetic means and that is connected by radio or wire to a public telecommunications transport at a termination point.

standards-related measure means "standards-related measure" as defined in Chapter XIV (Standards-Related Measures);

conformity assessment procedure means "conformity assessment procedure" as defined in Chapter XIV (Standards-Related Measures);

protocol means a set of rules and formats that govern the exchange of information between two peer entities for the purpose of transferring signalling or data information;

network termination point means the final demarcation of the public telecommunications network at the customer's premises;

private network means a telecommunications transport network that is used exclusively for intra-corporate communications;

public telecommunications network means the public telecommunications infrastructure that permits telecommunications between defined network termination points;

radio broadcasting services means services that broadcast radio and television programmes;

enhanced or value-added services means telecommunications services employing computer processing applications that:

(a) Act on the format, content, code, protocol or similar aspects of a customer's transmitted information;

(b) provide a customer with additional, different or restructured information; or

(c) involve customer interaction with stored information.

public telecommunications service means any telecommunications service required by a Party, explicitly or in effect, to be offered to the public generally, including telegraph, telephone, telex and data transmission, that typically involves the real-time transmission of customer-supplied information between two or more points without any end-to-end change in the form or content of the customer's information

cross subsidy means economic transfer of the production of a service to the expenses of another service.

flat rate pricing means pricing on the basis of a fixed charge per period of time regardless of the amount of use; and

telecommunications means the transmission and reception of signals by any electromagnetic means.

Article 11-02

Scope and Coverage

1. Recognizing the dual role of telecommunications services, as a specific sector of economic activity and as a means of providing services for other economic activities, this Chapter applies to:

(a) Measures adopted or maintained by a Party relating to the provision of public telecommunications services;

(b) measures adopted or maintained by a Party relating to continuous access to and use of public telecommunications networks or services by persons of the other Party, including access and use by such persons operating private networks for the purpose of intra-corporate communications.

(c) measures adopted or maintained by a Party relating to the provision of enhanced or value-added services by persons of the other Party in the territory, or across the borders, of a Party; and

(d) standards-related measures relating to attachment of terminal or other equipment to public telecommunications transport networks.

2. Nothing in this Chapter shall be construed:

(a) To require a Party to authorize a person of the other Party to establish, construct, acquire, lease, operate or provide telecommunications networks or services;

(b) to require a Party, or require a Party to compel any person, to establish, construct, acquire, lease, operate or provide telecommunications transport networks or telecommunications transport services not offered to the public generally;

(c) prevent a Party from prohibiting persons operating private networks from using their networks to provide public telecommunications transport networks or services to third persons; or

(d) require a Party to compel any person engaged in the cable or broadcast distribution of radio or television programming to make available its cable or broadcast facilities as a public telecommunications network.

Article 11-03

Access to and Use of Public Telecommunications Networks and Services

1. Each Party shall ensure that persons of the other Party have access to and use of any public telecommunications transport network or service, including private leased circuits, offered in its territory or across its borders for the conduct of their business, on reasonable and non-discriminatory terms and conditions, including as set out in paragraphs 2 through 8.

2. Subject to Article 11-02 (2)(c) and paragraphs 7 and 8, each Party shall ensure that persons of the other Party are permitted to:

(a) Purchase or lease, and attach terminal or other equipment that interfaces with the public telecommunications network;

(b) interconnect private leased or owned circuits with public telecommunications networks in the territory, or across the borders, of that Party, including for use in providing dial-up access to and from their customers or users, or with circuits leased or owned by another person on terms and conditions mutually agreed by those persons;

(c) perform switching, signalling and processing functions subject to the current laws of each Party; and

(d) use operating protocols of their choice.

3. Each Party shall ensure that:

(a) The pricing of public telecommunications services reflects economic costs directly related to providing the services, as approved by the competent authority; and

(b) private leased circuits are available on an established flat-rate pricing basis.

4. Nothing in this paragraph shall be construed to prevent cross-subsidization between public telecommunications services.

5. Each Party shall ensure that persons of the other Party may use public telecommunications networks or services for the movement of information in its territory or across its borders, including for intra-corporate communications, and for access to information contained in data bases or otherwise stored in machine-readable form in the territory of either Party.

6. Each Party may adopt any measure needed to ensure the confidentiality and security of messages and protection of the privacy of network subscribers or public telecommunication services.

Each Party shall, in accordance with its legislation, ensure that no condition is imposed on access to and use of public telecommunications networks or services, other than that necessary to:

(a) Safeguard the public service responsibilities of providers of public telecommunications networks or services, in particular their ability to make their networks or services available to the public generally; or

(b) protect the technical integrity of public telecommunications networks or services.

8. Provided that conditions for access to and use of public telecommunications networks or services satisfy the criteria set out in paragraph 7, such conditions may include:

(a) Restrictions on resale or shared use of such services;

(b) requirements to use specified technical interfaces, including interface protocols, for interconnection with such networks or services;

(c) restrictions on interconnection of private leased or owned circuits with such networks or services or with circuits leased or owned by another person, where the circuits are used in the provision of public telecommunications transport networks or services; and

(d) licensing, permit, registration or notification procedures which, if adopted or maintained, are transparent and applications filed thereunder are processed expeditiously.

Article 11-04

Conditions for the Provision of Enhanced or Value-Added Services

1. Each Party shall ensure that:

(a) Any licensing, permit, registration or notification procedure that it adopts or maintains relating to the provision of enhanced or value-added services is transparent and non-discriminatory, and that applications filed thereunder are processed expeditiously; and

(b) the information required is consistent with the requirements and procedures requiring technical and financial capacity to provide the service, as established in each Party's respective law and regulations.

2. No Party may require a person providing such services to:

(a) Provide them to the public generally;

(b) cost-justify its rates;

(c) file a tariff;

(d) interconnect its networks with any particular customer or network; or

(e) conform with any particular standard or technical regulation for interconnection other than for interconnection to a public telecommunications transport network.

3. Notwithstanding paragraph 2(c), a Party may require the filing of a tariff by:

(a) Such provider to remedy a practice of that provider that the Party has found in a particular case to be anticompetitive under its law; or

(b) a monopoly to which Article 11-06 applies.

Article 11-05

Standards-Related Measures

1. Each Party shall ensure that its standards-related measures relating to the attachment of terminal or other equipment to the public telecommunications transport networks, including measures relating to the use of testing and measuring equipment for conformity assessment procedures, are adopted or maintained only to the extent necessary to:

(a) Prevent technical damage to public telecommunications transport networks;

(b) prevent technical interference with, or degradation of, public telecommunications transport services

(c) prevent electromagnetic interference, and ensure compatibility, with other uses of the electromagnetic spectrum;

(d) prevent billing equipment malfunction; or

(e) ensure users' safety and access to public telecommunications networks or services.

2. Each Party may require approval for the attachment to the public telecommunications network of terminal or other equipment that is not authorized, provided that the criteria for that approval are consistent with paragraph 1.

3. Each Party shall ensure that the network termination points for its public telecommunications networks are defined on a reasonable and transparent basis.

4. No Party may require separate authorization for equipment that is connected on the customer's side of authorized equipment that serves as a protective device in public telecommunications networks fulfilling the criteria of paragraph 1.

5. Each Party shall:

(a) Ensure that its conformity assessment procedures are transparent and non-discriminatory and that applications filed thereunder are processed expeditiously;

(b) permit any technically qualified entity to perform the testing required under the Party's conformity assessment procedures for terminal or other equipment to be attached to the public telecommunications transport network, subject to the Party's right to review the accuracy and completeness of the test results; and

(c) ensure that any measure that it adopts or maintains requiring persons to be authorized to act as agents for suppliers of telecommunications equipment before the Party's relevant conformity assessment bodies is non-discriminatory.

6. No later than one year after the date of entry into force of this Agreement, each Party shall adopt, as part of its conformity assessment procedures, the provisions necessary to accept the test results performed in laboratories located in the territory of the other Party, based on its standards-related measures and procedures.

7. The Telecommunications Standards Subcommittee established under Article 14-17 (5) shall perform the functions set out in Annex 11-05, in addition to any others assigned by the Committee on Standards Related Measures.

Article 11-06

Monopolies

1. Where a Party maintains or designates a monopoly to provide public telecommunications networks or services, and the monopoly, directly or through an affiliate, competes in the provision of enhanced or value-added services or other telecommunications-related services or telecommunications-related goods, the Party shall ensure that the monopoly does not use its monopoly position to engage in anticompetitive conduct in those markets, either directly or through its dealings with its affiliates, in such a manner as to affect adversely a person of the other Party. Such conduct may include cross-subsidization, predatory conduct and the discriminatory provision of access to public telecommunications networks or services.

2. To prevent such anticompetitive conduct, each Party shall adopt or maintain effective measures, such as:

(a) Accounting requirements;

(b) requirements for structural separation;

(c) rules to ensure that the monopoly accords its competitors access to and use of its public telecommunications networks or services on terms and conditions no less favourable than those it accords to itself or its affiliates; or

(d) rules to ensure the timely disclosure of technical changes to public telecommunications networks and their interfaces.

Article 11-07

Relation to International Organizations and Agreements

1. The Parties shall do their utmost to stimulate the role of regional and subregional organizations and promote them as forums for stimulating telecommunications development in the region.

2. The Parties recognize the importance of international standards for global compatibility and interoperability of telecommunication networks or services, and they undertake to promote those standards through the work of relevant international bodies, including the International Telecommunication Union and the International Organization for Standardization.

Article 11-08

Technical Cooperation and Other Consultations

1. To encourage the development of interoperable telecommunications services infrastructure, the Parties shall cooperate in the exchange of technical information, the development of government-to-government training programmes and other related activities. In implementing this obligation, the Parties shall give special emphasis to existing exchange programmes.

2. The Parties shall consult on the feasibility of further liberalization of trade in all telecommunications services.

Article 11-09

Transparency

Each Party shall publish its measures relating to access to and use of public telecommunications networks or services, including measures relating to:

(a) Tariffs and other terms and conditions of service;

(b) specifications of technical interfaces with those networks or services;

(c) information on bodies responsible for the preparation and adoption of standards-related measures affecting such access and use;

(d) conditions applying to attachment of terminal or other equipment to the public telecommunications network; and

(e) any notification, permit, registration or licensing requirements.

Article 11-10

Relation to Other Chapters

In the event of any inconsistency between this Chapter and another Chapter, this Chapter shall prevail to the extent of the inconsistency.

ANNEX 11-05

Telecommunications Standards Subcommittee

1. The Telecommunications Standards Subcommittee shall, within one year following the date of entry into force of this Agreement, develop a work programme, including a timetable, for making compatible, to the greatest extent practicable, standards-related measures for authorized equipment.

2. The Subcommittee may address other appropriate standards-related matters respecting telecommunications equipment or services and such other matters as it considers appropriate.

3. The Subcommittee shall take into account relevant work carried out by the Parties in other forums, and that of non-governmental standardizing bodies.

CHAPTER XII: TEMPORARY ENTRY FOR BUSINESS PERSONS

Article 12-01

Definitions

For the purposes of this Chapter:

temporary entry means entry into the territory of a Party by a business person of the other Party without the intent to establish permanent residence.

business person means a citizen of a Party who is engaged in trade in goods, the provision of services or the conduct of investment activities;

national means a "national", but does not include permanent residents; and

in force means the compulsory status of legislative precepts of the Parties at the time of entry into force of this Agreement.

Article 12-02

General Principles

This Chapter reflects the preferential trading relationship between the Parties, the desirability of facilitating temporary entry on a reciprocal basis and of establishing transparent criteria and procedures for that purpose, and the need to ensure border security and to protect the domestic labour force and permanent employment in their respective territories.

Article 12-03

General Obligations

1. Each Party shall apply its measures relating to the provisions of this Chapter in accordance with the foregoing Article and, in particular, shall expeditiously apply those measures so as to avoid unduly impairing or delaying trade in goods or services or conduct of investment activities under this Agreement.

2. The Parties shall endeavour to develop and adopt common criteria, definitions and interpretations for the implementation of this Chapter.

Article 12-04

Authorization of Temporary Entry

1. Each Party shall grant temporary entry to business persons who are otherwise qualified for entry under applicable measures relating to public health and safety and national security, in accordance with this Chapter, including the provisions of Annex 12-04.

2. A Party may refuse to issue an immigration document authorizing employment to a business person where the temporary entry of that person might adversely affect:

(a) The settlement of any labour dispute that is in progress at the place or intended place of employment; or

(b) the employment of any person who is involved in such dispute.

3. When, pursuant to paragraph 2, a Party refuses to issue an immigration document authorizing employment, it shall:

(a) Inform the business person in writing of the reasons for the refusal; and

(b) promptly notify in writing the Party whose business person has been refused entry of the reasons for the refusal.

4. Each Party shall limit any fees for processing applications for temporary entry of business persons to the approximate cost of services rendered.

Article 12-05

Provision of Information

1. Further to the provisions of Article 18-02, each Party shall:

(a) Provide to the other Party such materials as will enable them to become acquainted with its measures relating to this Chapter; and

(b) no later than one year after the date of entry into force of this Agreement, prepare, publish and make available in its own territory, and in the territory of the other Party, explanatory material in a consolidated document regarding the requirements for temporary entry under this Chapter in such a manner as will enable business persons of the other Party to become acquainted with them.

2. Each Party shall collect and maintain, and make available to the other Party in accordance with its domestic law, data respecting the granting of temporary entry under this Chapter to business persons of the other Party who have been issued immigration documentation, including data specific to each occupation, profession or activity.

Article 12-06

Committee on Temporary Entry

1. The Parties hereby establish a Committee on Temporary Entry, comprising representatives of each Party, including immigration officials

2. The Committee shall meet at least once each year to consider:

(a) The implementation and administration of this Chapter;

(b) the development of measures to further facilitate temporary entry of business persons on a reciprocal basis;

(c) the waiving of labour certification tests or procedures of similar effect for spouses of business persons who have been granted temporary entry for more than one year under Section B, or C of the Annex 12-04; and

(d) proposed modifications or additions to this Chapter.

Article 12-07

Dispute Settlement

1. The Parties may not initiate proceedings under Article 20-06 regarding a refusal to grant temporary entry under this Chapter or a particular case arising under Article 12-03 (1) unless:

(a) The matter involves a pattern of practice; and

(b) the business person has exhausted the available administrative remedies regarding the particular matter.

2. The remedies referred to in paragraph 1(b) shall be deemed to be exhausted if a final determination in the matter has not been issued by the competent authority within one year of the institution of an administrative proceeding, and the failure to issue a determination is not attributable to delay caused by the business person.

Article 12-08

Relation to Other Chapters

Except as provided in this Chapter and in Chapters I (Initial Provisions), II (General Definitions), XVIII (Transparency), XX (Dispute Settlement) and XXII (Final Provisions), no provision of this Agreement shall impose any obligation on a Party regarding its immigration measures.

ANNEX 12-04

Temporary Entry for Business Persons

Section A - Business Visitors

1. Each Party shall grant temporary entry to a business person who, upon request by an enterprise of the other Party registered in the bilateral registry of enterprises mentioned in paragraph 7, seeks to engage in a business activity set out in Appendix 1 to this Annex, without requiring a person to obtain an employment authorization, provided that, in addition to complying with existing immigration measures applicable to temporary entry, on presentation of:

(a) Proof of citizenship of a Party;

(b) documentation accrediting prior request by an enterprise established in the territory of a Party;

(c) documentation demonstrating that the business person will be so engaged and describing the purpose of entry; and

(d) evidence demonstrating that the proposed business activity is international in scope and that the business person is not seeking to enter the local labour market.

2. Each Party shall provide that a business person may satisfy the requirements of paragraph 1(d) by demonstrating that:

(a) The primary source of remuneration for the proposed business activity is outside the territory of the Party granting temporary entry; and

(b) the business person’s principal place of business and the actual place of accrual of profits, remain outside such territory.

3. A Party shall normally accept an oral declaration as to the principal place of business and accrual of profits. Where the Party requires further proof, it shall normally consider a letter from the employer registered in the bilateral registry of enterprises attesting to these matters as sufficient proof.

4. Each Party shall grant temporary entry to a business person seeking to engage in a business activity other than those set out in Appendix 1 to this Annex, on a basis no less favourable than that provided under the existing provisions of the measures set out in Appendix 2 to this Annex, provided that the business person otherwise complies with existing immigration measures applicable to temporary entry.

5. Neither Party may:

(a) As a condition for temporary entry under paragraph 1 or 3, require prior approval procedures, petitions, labour certification tests or other procedures of similar effect; or

(b) impose or maintain any numerical restriction relating to temporary entry under paragraph 1 or 4.

6. Notwithstanding paragraph 4, a Party may require a business person seeking temporary entry under this Section to obtain a visa or its equivalent prior to entry. Before imposing a visa requirement, the Party shall consult with the other Party with a view to avoiding the imposition of the requirement. With respect to an existing visa requirement, a Party shall consult with the other Party with a view to its removal.

7. For the purposes of this Section, the Parties shall establish and keep up-to-date the Bilateral Register of Enterprises - Visitors.

Section B - Traders and Investors

1. Each Party shall grant temporary entry and provide confirming documentation to a business person seeking to:

(a) Carry on substantial trade in goods or services principally between the territory of the Party of which the business person is a citizen and the territory of the Party into which entry is sought; or

(b) establish, develop, administer or provide advice or key technical services to the operation of an investment to which the business person or the business person's enterprise has committed, or is in the process of committing, a substantial amount of capital, provided that the business person otherwise complies with existing immigration measures applicable to temporary entry.

2. Neither Party may:

(a) As a condition for temporary entry under paragraph 1, require labour certification tests or other procedures of similar effect; or

(b) impose or maintain any numerical restriction relating to temporary entry under paragraph 1.

3. Notwithstanding paragraph 2, a Party may, within an established time frame, review a business person's proposed investment to assess whether the investment complies applicable legal provisions.

4. Notwithstanding paragraph 2, a Party may require a business person seeking temporary entry under this Section to obtain a visa or its equivalent prior to entry.

Section C - Intra-Company Transferees

1. Each Party shall grant temporary entry and provide confirming documentation to a business person employed by an enterprise registered in the Bilateral Registry of Enterprises, referred to in paragraph 4, who seeks to render services to that enterprise or a subsidiary or affiliate thereof, in a capacity that is managerial, executive or involves specialized knowledge, provided that the business person otherwise complies with existing immigration measures applicable to temporary entry. A Party may require the business person to have been employed continuously by the enterprise for one year within the three-year period immediately preceding the date of the application for admission.

2. Neither Party may:

(a) As a condition for temporary entry under paragraph 1, require labour certification tests or other procedures of similar effect; or

(b) impose or maintain any numerical restriction relating to temporary entry under paragraph 1.

3. Notwithstanding paragraph 2, a Party may require a business person seeking temporary entry under this Section to obtain a visa or its equivalent prior to entry. Before imposing a visa requirement, the Party shall consult with a Party with a view to avoiding the imposition of the requirement With respect to an existing visa requirement, a Party shall consult, on request, with the other Party with a view to its removal.

4. For the purposes of this Section, the Party shall establish and keep up-to-date the Bilateral Register of Enterprises-Intra-Company Transferees.

APPENDIX 1 TO ANNEX 12-04

Business Visitors

I. Definitions

For the purposes of the Appendix to Section A:

tour bus operator means a natural person, including relief personnel accompanying or following to join, necessary for the operation of a tour bus for the duration of a trip; and

transportation operator means a natural person, other than a tour bus operator, including relief personnel accompanying or following to join, necessary for the operation of a vehicle for the duration of a trip.

II. Research and design

- Technical, scientific and statistical researchers conducting independent research or research for an enterprise located in the territory of the other Party.

III. Growth, manufacture and production

- Harvester owner supervising a harvesting crew admitted under applicable law.

- Purchasing and production management personnel conducting commercial transactions for an enterprise located in the territory of the other Party.

IV. Marketing

- Market researchers and analysts conducting independent research or analysis or research or analysis for an enterprise located in the territory of the other Party.

- Trade fair and promotional personnel attending a trade convention.

V. Sales [36]

- Sales representatives and agents taking orders or negotiating contracts for goods or services for an enterprise located in the territory of the other Party but not delivering goods or providing services.

- Buyers purchasing for an enterprise located in the territory of the other Party.

VI. Distribution

- Transportation operators transporting goods or passengers to the territory of a Party from the territory of the other Party, or loading and transporting goods or passengers from the territory of a Party, with no unloading in that territory, to the territory of the other Party.

- Customs brokers providing consulting services for the purpose of facilitating the import or export of goods.

VII. After sales service

- Installers, repair and maintenance personnel, and supervisors, possessing specialized knowledge essential to a seller's contractual obligation, performing services or training workers to perform services, pursuant to a warranty or other service contract incidental to the sale of commercial or industrial equipment or machinery, including computer software, purchased from an enterprise located outside the territory of the Party into which temporary entry is sought, during the life of the warranty or service agreement.

VIII. General services

- Management and supervisory personnel engaging in a commercial transaction for an enterprise located in the territory of the other Party.

- Financial services personnel (insurers, bankers or investment brokers) engaging in commercial transactions for an enterprise located in the territory of the other Party.

- Public relations and advertising personnel consulting with business associates, or attending or participating in conventions.

[36] Business visitors in this category for Nicaragua are subject to Article 24 of the Tax and Commercial Justice Law (Ley de Justicia Tributaria y Comercial) published in the Official Gazette (La Gaceta, Diario Oficial) on 6 June 1997.

- Tourism personnel (tour and travel agents, tour guides or tour operators) attending or participating in conventions or conducting a tour that has begun in the territory of the other Party.

- Tour bus operators entering the territory of a Party:

  (a) With a group of passengers on a bus tour that has begun in, and will return to, the territory of the other Party;

  (b) to meet a group of passengers on a bus tour that will end in, and the predominant portion of which will take place in, the territory of the other Party; or

  (c) with a group of passengers on a bus tour to a destination in the territory of the other Party, and either returning with no passengers or reloading with the group.

- Translators or interpreters performing services as employees of an enterprise located in the territory of the other Party.

APPENDIX 2 TO ANNEX 12-04

Current Immigration Provisions

1. In the case of Mexico, Chapter III of the General Demography Law (Ley General de Población), 1974, as amended.

2. In the case of Nicaragua, the Immigration Law, Law 153 published in Gazette 80 of 30 April 1993 (Ley de Migración, Ley Nº 153, La Gaceta Nº 80, 30 abril 1993) and the Law in Respect of Alien Residents published in Gazette 81 of 3 May 1993 (Ley de Extranjería, Ley Nº 154, La Gaceta Nº 81, 3 mayo 1993).

CHAPTER XIII: FINANCIAL SERVICES

Article 13-01

Definitions

For the purposes of this Chapter:

public entity means the central bank or monetary authority of a Party, or any financial institution owned or controlled by a Party;

financial institution means any financial intermediary or other enterprise that is authorized to do business and regulated or supervised as a financial institution under the law of the Party in whose territory it is located

financial institution of the other Party means a financial institution established pursuant to the legislation of each Party, located in the territory of a Party, that is controlled by persons of the other Party;

Investment means

(a) An enterprise;

(b) an equity security of an enterprise;

(c) a debt security of an enterprise:

(i) where the enterprise is an affiliate of the investor; or

(ii) where the original maturity of the debt security is at least three years, but does not include a debt security, regardless of original maturity, of a state enterprise;

(d) a loan to an enterprise:

(i) where the enterprise is an affiliate of the investor; or

(ii) where the original maturity of the loan is at least three years, but does not include a loan, regardless of original maturity, to a state enterprise;

(e) an interest in an enterprise that entitles the owner to share in the income or profits of the enterprise;

(f) an interest in an enterprise that entitles the owner to share in the assets of that enterprise on dissolution, other than a debt security or a loan excluded from subparagraphs (c) or (d);

(g) real estate or other property, tangible or intangible, acquired in the expectation, or used for the purpose, of economic benefit or other business purposes;

(h) interests arising from the commitment of capital or other resources in the territory of the other Party to economic activity in such territory, such as under:

(i) contracts involving the presence of an investor's property in the territory of the other Party, including turnkey or construction contracts, or concessions, or

(ii) contracts where remuneration depends substantially on the production, revenues or profits of an enterprise; and

(i) a loan to or debt security issued by a financial institution is an investment only where it is treated as regulatory capital by the Party in whose territory the financial institution is located;

investment does not mean:

(j) monetary claims that do not involve the kinds of interests set out in the subparagraphs defining investment that arise solely from:

(i) commercial contracts for the sale of goods or services by a national or enterprise in the territory of a Party to an enterprise in the territory of the other Party; or

(ii) the extension of credit in connection with a commercial transaction, such as trade financing, other than a loan covered by subparagraph (d);

(k) any other monetary claims that do not involve the kinds of interests set out in the subparagraphs defining investment;

investment of an investor of a Party means an investment owned or controlled directly or indirectly by an investor of such Party;

investor of a Party means a Party or state enterprise thereof, or a national or an enterprise of such Party, that seeks to make, is making or has made an investment;

disputing investor means an investor that makes a claim under the provisions of Article 13-20;

new financial service means a financial service not provided in the Party's territory that is provided within the territory of the other Party, including any new form of delivery of a financial service or the sale of a financial product that is not sold in the Party's territory;

self-regulatory organization means any non-governmental body, including any securities or futures exchange or market, clearing agency, or other organization or association, that exercises its own or delegated regulatory or supervisory authority over financial service providers or financial institutions;

person of a Party means a national or an enterprise of a Party, and, for greater certainty, does not include a branch of an enterprise of a non-Party;

cross-border provision of a financial service or cross-border trade in financial services means the provision of a financial service:

(a) From the territory of a Party into the territory of the other Party;

(b) in the territory of a Party by a person of that Party to a person of the other Party; or

(c) by a national of a Party in the territory of the other Party;

financial service provider of a Party means a person of a Party that is engaged in the business of providing a financial service within the territory of the other Party;

cross-border financial service provider of a Party means a person of a Party that is engaged in the business of providing a financial service within the territory of that Party and seeks to provide or provides cross-border provision of services; and

financial service means a service of a financial nature, including insurance, reinsurance, and any service incidental or auxiliary to a service of a financial nature.

Article 13-02

Scope and Coverage

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

(a) Financial institutions of the other Party;

(b) investors of a Party, and investments of such investors in financial institutions in the other Party's territory; and

(c) cross-border trade in financial services.

2. Nothing in this Chapter shall be construed to prevent a Party, including its public entities, from exclusively conducting or providing in its territory:

(a) Activities or services forming part of public retirement plans or public social security systems;

(b) use of the financial resources of the Party; or

(c) other activities or services for the account or with the guarantee of the Party, including its public entities;

3. The Parties shall progressively and gradually phase out all their mutual financial restrictions or exclusions, with the aim of furthering economic complementation between them.

4. The provisions of this Chapter shall take precedence over those of other Chapters, except where express reference is made to those Chapters.

Article 13-03

Self-regulatory Organizations

When a Party requires that a financial institution or a provider of cross-border financial services of the other Party be a member, participate in, or have access to a self-regulatory organization in order to offer a financial service in or to its territory, the Party shall do everything within its power to ensure that the organization in question fulfils the obligations of this Chapter.

Article 13-04

Right of Establishment

1. The Parties recognize the principle that the investors of a Party, engaged in the business of providing financial services in its territory, must be allowed to establish a financial institution in the territory of the other Party, through any of the procedures for establishment and operation permitted by that Party's law

2. Each Party may, at the time of establishment of a financial institution, impose such terms and conditions as are compatible with Article 13.06

Article 13-05

Cross-border Trade

1. No Party shall increase the degree of non-conformity of its measures relating to cross-border trade in financial services conducted by the other Party's providers of cross-border financial services, following the entry into force of this Agreement.

2. Each Party shall allow persons located in its territory and its own nationals, wherever located, to purchase financial services from cross-border financial service providers of the other Party who are located in the territory of that other Party. This does not require a Party to permit such providers to do business or advertise in its territory. Subject to the provisions of paragraph 1, each Party may define the terms "do business" and "advertise" for the purpose of this obligation.

3. Without prejudice to other means of prudential regulation of cross-border trade in financial services, either Party may require the registration of cross-border financial service providers of the other Party and of financial instruments.

Article 13-06

National Treatment

1. Each Party shall grant the investors of the other Party treatment no less favourable than that granted to its own investors in respect of the establishment, purchase, expansion, administration, conduct, operation, sale and other forms of disposal of financial institutions and investments in like financial institutions in its territory.

2. Each Party shall grant financial institutions of the other Party and investments of investors of the other Party in financial institutions, treatment no less favourable than that granted to its own like financial institutions and investments of its own investors in like financial institutions in respect of the establishment, purchase, expansion, administration, conduct, operation, sale and other forms of disposal of financial institutions and investments.

3. Pursuant to Article 13.05, when a Party allows cross-border provision of a financial service, it shall grant the other Party's providers of cross-border financial services treatment no less favourable than that granted to its own providers of like financial services in respect of the provision of that service.

4. The treatment granted by a Party to like financial institutions and providers of cross-border financial services of the other Party, whether the same or different from that granted to its own institutions or providers of like services, is consistent with paragraphs 1 through 3, if it affords equality of opportunity in respect of competition

5. Treatment by a Party does not afford equality of opportunity in respect of competition if, in like circumstances, it places the other Party's like financial institutions and providers of like cross-border financial services at a disadvantage in terms of their capacity to provide financial services, as compared to the capacity of the Party's own like financial institutions and providers of like services to provide such services.

Article 13-07

Most-Favoured-Nation Treatment

Each Party shall grant investors of the other Party, financial institutions of the other Party, investments of investors in financial institutions and providers of cross-border financial services of the other Party, treatment no less favourable than that granted, in like circumstances, to investors, financial institutions, investments of investors in like financial institutions and providers of like cross-border financial services of the other Party or of a non-Party.

Article 13-08

Recognition and Harmonization

1. In applying the measures set forth in this Chapter, a Party may recognize the prudential measures of the other Party or of a non-Party. Such recognition may be:

(a) Accorded unilaterally;

(b) achieved through harmonization or other means; or

(c) based on an agreement with the other Party or a non-Party.

2. A Party that accords recognition of prudential measures under paragraph 1 shall afford the other Party adequate opportunity to demonstrate the existence of circumstances in which there are or will be equivalent regulations, supervision and implementation of regulations and, where appropriate, procedures for the sharing of information between the Parties

3. When a Party accords recognition of prudential measures under paragraph 1, and the circumstances referred to in paragraph 2 exist, that Party shall afford the other Party adequate opportunity to negotiate accession to the agreement or arrangement, or to negotiate a similar agreement or arrangement.

Article 13-09

Exceptions

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

(a) Protection of investors, depositors, financial market participants, policy holders or claimants, or persons to whom a fiduciary duty is owed by a financial institution or provider of cross-border financial services;

(b) maintenance of the safety, soundness, integrity or financial liability of financial institutions or providers of cross-border financial services; or

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

2. No provision of this Chapter applies to non-discriminatory measures of general application taken by a public entity in the implementation of monetary policies or related credit policies, or foreign exchange policies. This paragraph shall not effect either Party's obligations under Articles 16-05 and 16-08 in respect of the measures covered by Chapter XVI (Investment) or Article 13-17.

3. Article 13-06 shall not apply to any exclusive rights that a Party may grant to a financial institution to provide one of the financial services referred to in Article 13-02 (2)(a).

4. Notwithstanding the provisions of Article 13-17 (1) through (3), a Party may prevent or limit transfers by a financial institution or provider of cross-border financial services, or for the benefit of an affiliate or person related to such institution or service provider, through proper and non-discriminatory application of measures relating to maintenance of the safety, soundness, integrity or financial responsibility of financial institutions or providers of cross-border financial services. This paragraph shall apply without prejudice to any other provision in this Agreement that allows a Party to limit transfers.

Article 13-10

Transparency

1. Further to Article 18-02, each Party shall ensure that any measure it adopts on matters relating to this Chapter shall be published officially or made known in a timely manner in some other written form to the persons targeted by the measure.

2. The regulatory authorities of each Party shall make available to those interested the requirements for completing and submitting an application to provide financial services.

3. At the request of an applicant, the regulatory authority shall inform the latter as to the status of its application. If that authority requires further information from the applicant, it shall so inform the applicant without undue delay.

4. Each regulatory authority shall issue an administrative decision within 120 days following receipt of a complete application for provision of a financial service from an investor in a financial institution, a financial institution or a provider of cross-border financial services of the other Party. The authority shall notify its decision to the applicant without delay. An application shall not be deemed complete until all the relevant hearings have been held and all the necessary information received. When it is not feasible to issue the decision within 120 days, the regulatory authority shall so inform the applicant without undue delay and shall endeavour to issue the decision within a reasonable period.

5. Nothing in this Chapter requires a Party to disclose or allow access to:

(a) Information about the financial affairs and accounts of individual customers of financial institutions or providers of cross-border financial services; or

(b) any confidential information the disclosure of which may hinder application of the law or in any way conflict with the public interest or harm legitimate business interests of specific enterprises.

6. Each Party shall maintain or establish one or more inquiry points within one year following the entry into force of this Agreement, to respond in writing as soon as practicable to all reasonable inquiries from interested persons regarding measures of general application that may be adopted by that Party under this Chapter.

Article 13-11

Financial Services Committee

1. The Parties hereby establish the Financial Services Committee comprising representatives of the competent authorities indicated in Annex 13-11.

2. The Committee shall:

(a) Supervise the implementation of this Chapter and its subsequent development;

(b) consider issues regarding financial services that are referred to it by a Party;

(c) participate in dispute settlement procedures pursuant to Articles 13-19 and 13-20; and

(d) facilitate the exchange of information between supervisory authorities and provide cooperative assistance in prudential regulation, with the aim of harmonizing regulatory frameworks and other policies, as deemed appropriate.

3. The Committee shall meet at least once a year to review the implementation of this Chapter.

Article 13-12

Consultations

1. Either Party may request consultations with the other Party regarding any matter arising under this Agreement that affects financial services. The other Party shall give sympathetic consideration to any such request. The consulting Party shall report the results of its consultations to the Committee at its meetings.

2. Representatives of the competent authorities listed in Annex 13-11 shall participate in consultations under this Article.

3. A Party may request the regulatory authorities of the other Party to take part in consultations under this Article for the purpose of discussing measures of general application of that other Party which may affect the operations of financial institutions or providers of cross-border financial services in the territory of the Party seeking consultation.

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

5. Where, for supervisory purposes, a Party needs information concerning a financial institution in the other Party's territory, or providers of cross-border financial services in the other Party's territory, the Party may approach the competent regulatory authority in that other Party's territory in order to seek the information.

Article 13-13

New Financial Services and Data Processing

1. Each Party shall permit a financial institution of the other Party to provide any new financial service that is similar in kind to the services the Party permits its own financial institutions to provide under its law in similar circumstances. The Party may determine the institutional and juridical form in which the service may be provided and may require authorization for the provision of the service. Where such authorization is required, a decision shall be made within a reasonable time and the authorization may only be refused for prudential reasons.

2. Each Party shall permit the financial institutions of the other Party to transfer information into or out of its territory for data processing, by any means authorized in the Party, when such processing is required in the ordinary course of business of such institutions.

Article 13-14

Senior Management and Boards of Directors

1. Neither Party may require that a financial institution of the other Party hire staff of a particular nationality to fill senior corporate management positions or other essential offices.

2. Neither Party may require that a board of directors of a financial institution of the other Party be comprised of nationals of the Party, residents in its territory or a combination of the two.

Article 13-15

Reservations and Specific Commitments

1. Within one year from the date of entry into force of this Agreement, the Parties shall negotiate reservations to Articles 13-04, 13-05, 13-06, 13-07, 13-13 and 13-14 and include them in their Schedule of Annex 13-15.

2. In the negotiations referred to in paragraph 1, the Parties shall endeavour to reach agreements aimed at achieving global balance in the concessions granted.

3. The Parties shall progressively and gradually phase out all their mutual financial restrictions or exclusions, included in the Schedules referred to in paragraph 1, with the aim of furthering economic complementation between them.

4. Neither Party shall increase the degree of non-conformity of its reserved measures under paragraph 1, following their registration in those Schedules.

5. A reservation entered in Chapters X (General Principles on Trade in Services) and XVI (Investment) in respect of local presence, cross-border trade, national treatment, most-favoured-nation treatment, new financial services and data processing, or senior management and boards of directors, shall be deemed a reservation on Articles 13-04 through 13-07, 13-13 and 13-14 of this Chapter, as the case may be, to the extent that the measure, sector, subsector or activity specified in the reservation, is covered by this Chapter.

Article 13-16

Denial of Benefits

A Party may deny wholly or in part benefits arising from this Chapter to a provider of financial services of the other Party or to a provider of cross-border financial services of the other Party, after notification and consultation, in accordance with Articles 13-10 and 13-12, where the Party determines that the service is being provided by an enterprise that does not conduct substantial trade activities in the territory of either Party, or is owned or controlled by persons of a non-Party.

Article 13-17

Transfers

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

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

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

(c) payments made under a contract entered into by the investor, or investment thereof;

(d) payments arising from compensation for expropriation pursuant to Article 16-09; or

(e) payments arising from the application of a dispute settlement mechanism under Article 13-20.

2. Without prejudice to Article 13-18, each Party shall permit transfers to be made in a freely usable currency at the market rate of exchange prevailing on the date of transfer with respect to spot transactions in the currency to be transferred.

3. Neither Party may require its investors to transfer, or penalize its investors that fail to transfer, the income, earnings, profits or other amounts derived from, or attributable to, investments in the territory of the other Party.

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

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

(b) issuing, trading or dealing in securities;

(c) criminal or administrative offences;

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

(e) ensuring the satisfaction of judgments in adjudicatory proceedings; or

(f) the establishment of instruments or mechanisms needed to ensure the payment of income taxes, in relation to dividends and other items, through mechanisms such as withholding.

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

Article 13-18

Balance of Payments and Safeguards

1. Each Party may adopt or maintain a measure to suspend, for a reasonable time, some or all of the benefits contained in this Chapter and in Article 16-08, when:

(a) The application of any provision of this Chapter or Article 16-08 causes a serious economic and financial disturbance in the territory of the Party, which it is impossible to resolve adequately through any other alternative measure; or

(b) the balance of payments of a Party, including the state of its monetary reserves, is seriously threatened or faces serious difficulties.

2. A Party that suspends or intends to suspend benefits contained in this Chapter shall inform the competent authority of the other Party as soon as possible:

(a) Of the nature of the serious economic and financial disturbance caused by application of this Chapter or Article 16-08, as the case may be, or the nature and scope of the serious threats to its balance of payments;

(b) the situation of the Party's economy and external trade;

(c) the alternative measures it has available to correct the problem; and

(d) the economic policies it is adopting to address the problems mentioned in paragraph 1, and how such policies will directly contribute to solving those problems.

3. The measure adopted or maintained by the Party at all times shall:

(a) Avoid unnecessary damage to the commercial, economic or financial interests of the other Party;

(b) be no more burdensome than necessary to deal with the difficulties that give rise to the measure being adopted or maintained;

(c) be temporary and be phased out progressively as the balance-of-payments situation improves, or the economic and financial situation of the Party, as the case may be, improves;

(d) at all times ensure its application does not discriminate between the Parties; and

(e) seek to be consistent with internationally accepted criteria.

4. A Party that adopts a measure to suspend benefits contained in this Chapter or in Article 16-08, shall inform the other Party of the evolution of the events that gave rise to the adoption of the measure in question.

5. For the purposes of this Article, reasonable time means that time for which the events described in paragraph 1 persist.

Article 13-19

Dispute Settlement Between the Parties

1. Chapter XX (Dispute Settlement), as modified by this Article, applies to the settlement of disputes between the Parties arising under this Chapter.

2. The Committee on Financial Services shall maintain by consensus a roster of up to ten individuals, including up to five individuals of each Party, who are willing and able to serve as arbitrators in disputes related to this Chapter. In addition to meeting the requirements set in Chapter XX (Dispute Settlement), the roster members shall have specialized knowledge in the area of finance, and broad experience gained from holding responsibilities in the financial sector or financial sector regulation.

3. In constituting an arbitral panel, the roster referred to in paragraph 2 shall be used unless the Parties to the dispute agree that the panel may include individuals who are not included in the roster, provided they meet the requirements set in paragraph 2. The chair shall be selected from the roster.

4. In any dispute in which the arbitral panel finds a measure to be inconsistent with the obligations of this Chapter, and where suspension of benefits under Chapter XX (Dispute Settlement) applies and the measure affects:

(a) Only the financial services sector, the complaining Party may suspend benefits only in this sector;

(b) the financial services sector and any other sector, the complaining Party may suspend benefits in the financial services sector that have an effect equivalent to the effect of the measure in the financial services sector; or

(c) any sector other than the financial services sector, the complaining Party may not suspend benefits in the financial services sector.

Article 13-20

Settlement of Disputes between a Party and an Investor of the Other Party

1. Except as provided for in this Article, the claims lodged by a disputing investor against a Party in relation to the obligations contained in this Chapter, shall be settled in accordance with the provisions established in Section B of Chapter XVI (Investment). For this purpose, the provisions of Section B of Chapter XVI (Investment) are hereby incorporated into this Chapter and made part thereof.

2. Where the Party against which the claim is lodged invokes any of the exceptions listed in Article 13-09, the following procedure shall be observed:

(a) The arbitral panel shall refer the matter to the Financial Services Committee for its decision. The panel shall not proceed until it has received a decision from the Committee pursuant to this Article, or until 60 days have elapsed since the date of referral to the Committee; and

(b) once the matter has been referred, the Committee shall decide whether and to what extent the exception invoked under Article 13-09 is a valid defence against the investor's claim, and shall send a copy of its decision to the arbitral panel and to the Commission. Such decision shall be binding for the panel.

ANNEX 13-11

Competent Authorities

1. The Financial Services Committee shall comprise representatives appointed by:

(a) In the case of Mexico, the Ministry of Finance and Public Credit, or its successor; and

(b) in the case of Nicaragua, the Ministry of Economic Affairs and Development, the Ministry of Finance, the Central Bank and the Banking Superintendency, or their successors.

2. Each Party's principle representative shall be the person so appointed by each Party.

PART FOUR: TECHNICAL BARRIERS TO TRADE

CHAPTER XIV: STANDARDS-RELATED MEASURES

Article 14-01

Definitions

1. For the purposes of this Chapter, the terms set out in the sixth edition of ISO/IEC Guide 2: 1991, "General terms and definitions concerning standardization and related activities," shall have the same meaning when used in this Chapter, unless defined differently herein.

2. For the purposes of this Chapter:

risk assessment means an evaluation of the potential for adverse effects on human, animal and plant health and safety, or on the environment, arising from a product or service that is traded between the Parties;

make compatible means bring different standards-related measures of the same scope approved by different standardizing bodies to a level such that they are either identical, equivalent or have the effect of permitting goods or services to be used in place of one another or fulfil the same purpose, to enable the goods and services to be traded between the Parties;

standards-related measures means standards, technical regulation and conformity assessment procedures;

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

international standard means a standard or other guide or recommendation, adopted by an international standardizing body and made available to the public;

legitimate objective includes the guarantee for safety or protection of human, animal or plant life or health, the environment, or the prevention of practices which may mislead consumers, including issues related to identifying goods or services, considering, among other things, where appropriate, fundamental climatic or other geographical factors, technological or infrastructural factors, or scientific justification;

standardizing body means a body whose activities in standardization are recognized by the government of each Party, respectively

international standardizing body means a standardizing body whose membership is open to the relevant bodies of at least all parties to the WTO Agreement on Technical Barriers to Trade, including the International Organization for Standardization (ISO), the International Electrotechnical Commission (IE(C), the Codex *Alimentarius* Commission, the World Health Organization (WHO), the International Organization of Legal Metrology (IOLM), or any other body that the Parties may designate;

conformity assessment procedure means any procedure used, directly or indirectly, to determine that the relevant requirements established by the technical regulations or standards are fulfilled, including sampling, testing, inspection, evaluation, verification, assurance of conformity, registration, accreditation, used for such purposes, but does not mean an approval procedure;

approval procedure means any registration, notification or other mandatory administrative procedure for granting permission for a good or service to be produced, marketed or used for a stated purpose or under stated conditions;

administrative rejection means action taken by a public administration agency of the importing Party, in the exercise of its powers, to prevent the entry into its territory of a shipment or the provision of a service, for technical reasons;

technical regulation means a document that lays down the characteristics of goods, services, or their related processes and production methods, including the applicable administrative provisions, with which compliance is mandatory. It may also include or deal exclusively with terminology,

symbols, packaging, marking or labelling requirements as they apply to a good, service, related process or production or operating method; and

service means any service within the scope of application of this Agreement, except for financial services.

Article 14-02

Scope and Coverage

1. This Chapter applies to the standards-related and metrology-related measures of the Parties and related measures that may, directly or indirectly, affect trade in goods or services among them. This Chapter does not apply to sanitary and phytosanitary measures.

2. Each Party shall comply with this Chapter and adopt such measures as are necessary to ensure their compliance by state, regional, and municipal governments; and, as far as possible, shall adopt measures to that end with respect to non-governmental standardization organizations that are duly accredited in its territory.

Article 14-03

Reaffirmation of International Rights and Obligations

The Parties reaffirm their current rights and obligations in relation to standards-related measures arising from the WTO Agreement on Technical Barriers to Trade, and all other international agreements on security, protection of human, animal and plant life and the environment, and of practices that avoid misleading consumers, to which the Parties subscribe.

Article 14-04

Basic Rights and Obligations

1. Neither Party may prepare, adopt, maintain or apply any standards-related measure with a view to, or with the effect of creating an unnecessary obstacle to trade between them. To that end, standards-related measures shall not restrict trade more than is necessary to fulfil a legitimate objective, taking into account the risks that not fulfilling it would create.

2. With respect to standards-related measures, an unnecessary obstacle to trade shall not be deemed to be created where:

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

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

3. Notwithstanding any other provision of this Chapter, each Party may, in pursuing its legitimate objectives, establish the levels of protection that it considers appropriate.

4. Pursuant to paragraph 3, each Party may prepare, adopt, maintain and apply any standards-related measures that enables it to ensure its level of protection, as well as measures that guarantee the application and fulfilment of such standards-related measures, including the relevant approval procedures.

5. With respect to standards-related measures, each Party shall accord the goods and service providers of the other Party national treatment and treatment no less favourable than that it accords to similar goods and services from any other country.

Article 14-05

Use of International Standards

1. Each Party shall use existing international standards, or standards whose adoption is imminent, as the basis for its own standards-related measures, unless such standards are not an effective or appropriate means of fulfilling its legitimate objectives; for example, because of fundamental climatic, geographical, technological or infrastructural factors, as provided for in this Chapter.

2. Any standards-related measure of a Party that conforms to an international standard shall be presumed to be consistent with Article 14-04 (1), (2) and (5).

3. In pursuing its legitimate objectives, each Party may adopt, maintain or apply any standards-related measure that achieves a higher level of protection then it would have obtained if the measure was based on an international standard, because of fundamental climatic, geographical, technological, infrastructural or other factors.

Article 14-06

Compatibility and Equivalence

1. Recognizing the crucial role of standards-related measures in promoting and protecting legitimate objectives, the Parties shall, pursuant to this Chapter, collaborate to enhance the level of safety and of protection of human, animal and plant life and health, and the environment, and to prevent practices that could mislead consumers.

2. Without prejudice to the rights conferred under this Chapter, and taking into account international standardization and metrology activities, the Parties shall, to the greatest extent practicable, make their respective standards-related and metrology-related measures compatible without reducing the level of safety or of protection of human, animal or plant life or health, the environment or consumers.

3. A Party shall, on request of the other Party, as far as possible adopt reasonable measures to promote the compatibility of specific standards maintained in its territory with the standards maintained in the territory of the other Party, bearing in mind international standardization activities.

4. Each Party shall treat a technical regulation adopted or maintained by the other Party as equivalent to its own, where the exporting Party, in cooperation with the importing Party, demonstrates to the satisfaction of the importing Party that its technical regulation adequately fulfils the importing Party's legitimate objectives, and, where appropriate will review it. The importing Party shall provide to the exporting Party, on request, its reasons in writing for not treating a technical regulation as equivalent.

5. Each Party shall, wherever possible, accept the results of conformity assessment procedures conducted in the territory of the other Party, even if those procedures differ from its own, provided that it is satisfied that the procedures offer an assurance, equivalent to that provided by the procedures it conducts or procedures conducted in its territory, the results of which it accepts, that the relevant good or service complies with the applicable technical regulations or standards prepared or maintained in the Party's territory, and, where appropriate, will review the standards-related measure in question.

6. Prior to accepting the results of a conformity assessment procedure pursuant to paragraph 5, and to enhance confidence in the continued reliability of each other's conformity assessment results, the Parties may consult on such matters as the technical competence of the conformity assessment bodies involved, including verified compliance with relevant international standards and recommendations.

Article 14-07

Conformity Assessment

1. The Parties recognize the desirability of achieving reciprocal recognition of their conformity assessment systems, including organizations accredited by the corresponding body, for the purpose of facilitating trade in goods and services between them, and they shall endeavour to achieve this objective.

2. Further to paragraph 1, and recognizing the existence of differences between the conformity assessment procedures in their respective territories, the Parties shall as far as practicable make their respective conformity assessment systems and procedures compatible, with the aim of making them mutually recognizable under this Chapter.

3. For the mutual benefit of the Parties, and on a reciprocal basis, each Party shall, through the competent institutions:

(a) Assess and recognize the national accreditation system of the other Party; and

(b) accredit, approve, license or otherwise recognize the conformity assessment bodies in the territory of the other Party on terms no less favourable than those accorded to conformity assessment bodies in its territory.

4. Each Party shall look favourably on requests presented by the other Party to negotiate agreements on mutual recognition of the results of that Party's conformity assessment procedures.

5. When requested to undertake a conformity assessment procedure, each Party shall:

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

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

(c) establish a non-discriminatory order for processing requests;

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

(e) ensure that the competent body:

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

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

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

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

(f) limit the information the applicant is required to supply to that necessary to conduct the procedure and to determine appropriate fees, in accordance with its current legislation;

(g) accord confidential information arising from, or supplied in connection with, the procedure:

(i) the same treatment as that for a national product or service; and

(ii) in any event, treatment that protects the applicant's legitimate commercial interests;

(h) ensure that any fee it imposes for assessing the conformity of a good or service exported from the other Party is no greater than any such fee imposed for assessing the conformity of an identical or similar domestic good or service, taking into account communication, transportation and other related costs;

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

(j) wherever possible ensure that the procedure is carried out at that location, and where appropriate, issue a badge of conformity;

(k) limit the procedure, for a good or service modified as a result of a conformity assessment determination, to that necessary to determine that the good or service continues to conform to the applicable technical regulations or standards; and

(l) limit any requirement regarding samples of a good to that which is reasonable, and ensure that the selection of samples does not cause unnecessary inconvenience to an applicant or its agent, in accordance with internationally used and approved sampling procedures.

6. Each Party shall apply, with such modifications as may be necessary, the relevant provisions of paragraph 5 to its approval procedures.

7. Each Party shall, on request of the other Party, take such reasonable measures as may be available to it to facilitate conformity assessment activities.

Article 14-08

Notification, Publication and Provision of Information

1. Each Party shall notify the other Party of the standards-related measures that it intends to establish pursuant to this Chapter, before they enter into force and no later than its own nationals are informed thereof.

2. Each Party proposing to adopt or modify a standards-related measure, shall:

(a) At least 60 days prior to the adoption or modification of the measure, other than a law, publish a notice and notify in writing the other Party of the proposed measure in such a manner as to enable interested persons to become acquainted with the proposed measure, except in the case of any such measure relating to perishable goods, in which case the Party shall, to the greatest extent practicable, publish the notice and provide the notification at least 30 days prior to the adoption or modification of the measure, at the same time as notification is provided to domestic producers;

(b) identify in the notice and notification the good or service to which the measure would apply, and provide a brief description of the objective of, and reasons for the measure;

(c) provide a copy of the proposed measure to the other Party or any interested person that so requests, and shall, wherever possible, identify any provision that deviates in substance from relevant international standards;

(d) without discrimination, allow the other Party and interested persons to make comments in writing, and shall, on request, discuss the comments and take the comments and the results of the discussions into account; and

(e) ensure that, in adopting the measure, this is published expeditiously or otherwise made available to interested persons in the Party to enable them to become acquainted with it.

3. Where an international standard relevant to the proposed measure does not exist or is not about to be issued, or the standards-related measure in question is not substantially the same as an international standard, and where the measure may have a significant effect on the trade of the other Party, each Party shall:

(a) At an early appropriate stage, publish a notice and provide a notification of the type required in paragraphs 2(a) and (b); and

(b) observe paragraphs 2(c) and (d).

4. With respect to technical regulations of state, regional, and municipal governments, each Party shall:

(a) At an early appropriate stage, publish a notice and provide a notification to the other Party of its intention to adopt or modify the regulation in question;

(b) identify, in the notice and notification, the good or service to which the measure will apply, and provide a brief description of the objective of, and reasons for the measure;

(c) provide a copy of the proposed measure to the other Party or any interested person that so requests; and

(d) take such reasonable measures as may be available to it to ensure that, in adopting the technical regulation, this is published expeditiously or otherwise made available to interested persons in the Party to enable them to become acquainted with it.

5. Each Party shall advise that the other Party every year of its standardization plans and programmes.

6. Where a Party considers it necessary to address an urgent problem relating to the safety or protection of human, animal or plant life or health, or the environment, or practices that could mislead consumers, it may omit any of the steps set out in paragraphs 2 (a) and (b), provided that on adoption of the standards-related measure it shall:

(a) Immediately provide to the other Party a notification of the type required under paragraph 2(b), including a brief description of the urgent problem;

(b) provide a copy of the measure to the other Party or any interested person that so requests;

(c) without discrimination, allow the other Party and interested persons to make comments in writing, and shall, on request, discuss the comments and take the results of such discussions into account; and

(d) ensure that the measure is published expeditiously, or otherwise made available interested persons to enable them to become acquainted with it.

7. Each Party shall, except where necessary to address one of the urgent problems referred to in paragraph 6, allow a reasonable period between the publication of a standards-related measure and the date that it becomes effective to allow time for interested persons to adapt to the measure.

8. Where a Party allows non-governmental persons in its territory to be present during the process of development of standards-related measures, it shall also allow non-governmental persons from the territories of the other Party to be present.

9. Each Party shall designate a government authority responsible for the implementation at the federal or central level of the notification provisions of this Article, and shall notify the other Party thereof no later than three months following the entry into force of this Agreement. Where a Party designates two or more government authorities for this purpose, it shall provide to the other Party complete and unambiguous information on the scope of responsibility of each such authority.

10. Where a Party administratively rejects a shipment or the provision of services because of non-compliance with the standards-relation measure, it shall promptly notify, in writing, the owner of the shipment or the service provider of the technical justification for the rejection.

11. Once the information referred to in paragraph 10 has been prepared, the Party shall immediately forward it to the standards-related inquiry point or points located in the territory of that Party, which, in turn, will forward it to the inquiry point or points of the other Party.

Article 14-09

Inquiry Points

1. Each Party shall ensure that there is at least one inquiry point in its territory capable of responding to all reasonable questions and inquiries from the other Party and interested persons and of providing relevant documentation regarding:

(a) Any standards-related measure, adopted or proposed in its territory by its federal or central, state, regional, or municipal government bodies.

(b) the membership and participation of that Party, and its relevant federal or central, state, regional, or municipal governmental bodies in international and regional standardizing bodies and conformity assessment systems, in bilateral and multilateral arrangements on standards-related measures, and the provisions of such systems and arrangements;

(c) the location of notices published pursuant to this Chapter or where the information can be obtained;

(d) the location of the inquiry points; and

(e) the Party's procedures for assessment of risk, and the factors it considers in conducting the assessment and in establishing, pursuant to Article 14-04(3), the levels of protection that it considers appropriate.

2. Where a Party designates more than one inquiry point, it shall:

(a) Provide to the other Party complete and unambiguous information on the scope of responsibility of each inquiry point; and

(b) ensure that any inquiry addressed to an incorrect inquiry point is promptly conveyed to the correct inquiry point.

3. Each Party shall take such reasonable measures as may be available to it to ensure that there is at least one inquiry point capable of answering all reasonable inquiries from other Parties and interested persons and providing relevant documents, or information on where they can be obtained, regarding:

(a) Any conformity assessment standard or procedure proposed, adopted or maintained by non-governmental standardizing bodies in its territory; and

(b) the membership and participation of relevant non-governmental bodies in its territory in international and regional standardizing bodies and conformity assessment systems.

4. Each Party shall ensure that where copies of the documents referred to paragraph 1 are requested by the other Party or by interested persons pursuant to this Chapter, they are supplied at the same price, apart from the actual cost of delivery, as the price for domestic purchase.

Article 14-10

Limitations on the Provision of Information

Further to Article 21-03, nothing in this Chapter shall be construed to require a Party to furnish any confidential information the disclosure of which would prejudice the legitimate commercial interests of a particular enterprise.

Article 14-11

Metrological Standards

In order to prevent each Party's metrological standards constituting unnecessary barriers to trade, the Parties shall make these compatible, as far as possible, based on current international standards.

Article 14-12

Protection of Health

1. Medicines, medical equipment and instruments, pharmaceutical products and other inputs for human, animal and plant health; foodstuffs; toxic products and substances; radioactive products, materials, sources and equipment; sources and equipment that emit ionizing radiation that are subject to registration in the territory of the Party, shall, where appropriate, be registered, recognized or evaluated by the Party's competent authority, based on a single national system of a federal or central nature of mandatory observance.

2. Certificates of assessment of the conformity of the goods referred to in paragraph 1 shall be accepted only if they have been issued by each Party's competent governmental or non-governmental conformity assessment bodies.

3. The Party shall establish a system of mutual technical cooperation that will operate on the basis of the following work programme:

(a) Identification of specific needs relating to:

(i) application of good manufacturing practices in the preparation and approval of medicines for human, animal or plant use;

(ii) application of good laboratory practices in systems analysis and evaluation set forth in current relevant international standards and guidelines; and

(iii) development of common systems of identification and nomenclature for auxiliary health products and medical instruments;

(b) harmonization of labelling requirements and strengthening of standardization and surveillance systems in relation to advisory labelling;

(c) training programmes, including the organization of a common system for training, continuous education, training and evaluation of the health officials and inspectors;

(d) development of a system of mutual accreditation for verification units and test laboratories;

(e) upgrading of legal regulatory frameworks; and

(f) strengthening of formal communication systems to oversee and regulate trade in products related to human, animal or plant health.

4. For the purpose of undertaking the activities proposed in paragraph 3, the Committee on Standards-Related Measures shall establish a technical subcommittee, pursuant to Article 14-16 (5) and (6), to monitor and organize such activities, issue guidelines and make recommendations to the Parties as and when they request.

Article 14-13

Risk Assessment

1. Pursuant to Article 14-04 (3) and (4), each Party may conduct risk assessments within its territory as and when it deems appropriate. In conducting a risk assessment, it shall take into account risk assessment techniques and methodologies developed by international or standardizing organizations, and ensure that its technical regulations and standards are based on an assessment risks to human, animal or plant safety, and their environment.

2. When conducting a risk assessment, the Party shall take into account all relevant scientific evidence, available technical information, the intended final use, processes or methods of production, operation, inspection, quality, sampling or testing, or environmental conditions.

3. Once it has established the level of protection it considers appropriate, when a Party conducts a risk assessment, pursuant to Article 14-04 (3), it shall avoid distinctions between similar goods and services, in the level of protection it considers appropriate, if such distinctions:

(a) Result in arbitrary or unjustifiable discrimination against goods or services of the other Party;

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

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

4. Where a Party conducting a risk assessment determines that available scientific evidence or other information is insufficient to complete the assessment, it may adopt a provisional technical regulation on the basis of available relevant information. Once information sufficient to complete the risk assessment is presented to it, the Party shall complete its assessment, as quickly as possible, review and, where appropriate, revise the provisional technical regulation in the light of that assessment.

Article 14-14

Environmental Protection and the Handling of Hazardous Substances and Waste

1. For the care and protection of its environment, each Party shall apply, further to the provisions contained in its legislation, the provisions, guidelines or recommendations issued by the United Nations Organization and relevant international agreements to which both Parties subscribe.

2. Each Party shall regulate and control the production, introduction and marketing of pharmaceutical or agrotoxic products, or any other substances that are hazardous to human, animal or plant health or to the environment, in accordance with its legislation and the provisions of this Agreement.

3. Pursuant to its own legislation, each Party shall regulate the introduction, acceptance, deposit, transportation and transit through its territory of hazardous, radioactive or other waste material of domestic or foreign origin, the characteristics of which constitute a hazard for the health of its population, fauna, flora or environment.

Article 14-15

Labelling

1. Labelling requirements for goods and services are subject to the provisions of this Chapter.

2. Each Party shall apply its relevant labelling requirements pursuant to the provisions of this Chapter.

3. The Parties shall develop common labelling requirements. The proposals made by each Party shall be evaluated by the Labelling, Packaging and Packing Standards Subcommittee, pursuant to Article 14-16 (5).

4. The Labelling, Packaging and Packing Standards Subcommittee may study and make recommendations on:

(a) The establishment of a common symbol and pictogram system for the Parties;

(b) definitions and terminology;

(c) presentation of information, including that relating to language, measurement systems, ingredients and sizes; or

(d) other related issues.

Article 14-16

Committee on Standards-Related Measures

1. The Parties hereby establish a Committee on Standards-Related Measures, comprising representatives of each Party.

2. The Committee's functions shall include:

(a) Monitoring the implementation, compliance and administration of this Chapter, including the progress of Subcommittees established pursuant to paragraph 5, the operation of inquiry centres established pursuant to Article 14-09 (1), and on the basis of updating to ISO/IEC Guide 2:1991;

(b) facilitating the process by which the Parties make their standards-related measures and measurement systems compatible;

(c) providing a forum for the Parties to consult on issues relating to standards-related measures and measurement systems

(d) encouraging the relevant competent institutions to take account of events concerning standards-related measures at the governmental, non-governmental, regional and multilateral level, including those of the WTO Agreement on Technical Barriers to Trade;

(e) developing the procedural mechanisms needed to achieve mutual recognition of conformity assessment bodies; and

(f) reporting annually to the Commission on the application of this Chapter;

3. The Committee:

(a) Shall comprise an equal number of representatives from the competent governmental institutions of each Party. Each Party shall establish its own procedures for selecting its representatives;

(b) unless the Parties agree otherwise, the Committee will meet:

(i) at least once a year; and

(ii) when requested by either Party;

(c) shall establish its regulations; and

(d) shall take its decisions by consensus.

4. Each Party shall take the measures needed to enable representatives of state, regional or municipal governments to participate in the work of the Committee as and when it deems necessary.

5. The Committee shall establish:

(a) The Health Standards Subcommittee;

(b) the Subcommittee on Labelling, Packaging and Packing Standards;

(c) the Telecommunications Standards Subcommittee; and

(d) any other Subcommittee that it considers appropriate to analyze the following issues, among others:

(i) identification and nomenclature for goods and services subject to standards-related measures,

(ii) quality and identity standards and technical regulations;

(iii) product approval and post-market surveillance programmes,

(iv) principles for the accreditation and recognition of testing facilities, inspection agencies and conformity assessment bodies;

(v) development and implementation of a uniform chemical hazard classification and communication system;

(vi) enforcement programmes, including training and inspections by regulatory, analytical and enforcement personnel;

(vii) promotion and implementation of good laboratory practices;

(viii) promotion and implementation of good manufacturing practices;

(ix) criteria for assessment of potential environmental hazards of goods or services;

(x) analysis of procedures for simplifying import requirements for specific goods or services;

(xi) methodologies for assessment of risk;

(xii) guidelines for testing of chemicals, including industrial and agricultural chemicals, pharmaceuticals and biologicals;

(xiii) methods by which consumer protection, including matters relating to consumer redress, can be facilitated; and

(xiv) any other issue, pursuant to the mandate determined by the Committee.

6. Each Subcommittee shall be comprised of representatives of each Party, and may:

(a) As it considers necessary, include or consult with:

(i) representatives of non-governmental bodies, including standardizing bodies, or private sector chambers and associations;

(ii) representatives of higher academic, research and scientific centres;

(iii) technical experts;

(iv) representatives of governmental institutions; and

(b) determine its own work programme, taking account of relevant international activities.

Article 14-17

Technical Cooperation

1. At the request of a Party, the other Party may, within its possibilities:

(a) Provide to that Party information and technical assistance on mutually agreed terms and conditions to enhance that Party's standards-related measures, and related activities, processes and systems; and

(b) provide to that Party information on its technical cooperation programmes regarding standards-related measures relating to specific areas of interest.

2. Each Party shall encourage standardizing bodies in its territory to cooperate, where appropriate, with the standardizing bodies in the territory of the other Party, such as through membership in international standardizing bodies.

Article 14-18

Technical Consultations

1. When a Party has questions regarding the interpretation or application of this Chapter the on standardization-related measures and measurement systems of the other Party, or measures related thereto, it may have recourse either to the Committee or to the mechanism established in Chapter XX (Dispute Settlement). A Party may not use both mechanisms simultaneously.

2. When a Party decides to apply to the Committee, it must notify the other Party to enable it to consider the matter and refer it to a subcommittee or to another competent forum, for the purpose of obtaining technical advice or non-binding recommendations.

3. The Committee shall consider any matter referred to it under paragraphs 1 and 2 as expeditiously as possible, and promptly forward to the Parties any technical advice or recommendations that it develops or receives on the matter. The Parties involved shall provide a written response to the Committee concerning the technical advice or recommendations within such time as the Committee may request.

4. Pursuant to paragraphs 2 and 3, if the technical recommendation issued by the Committee fails to resolve the difference between the Parties, these may invoke the mechanism established in Chapter XX (Dispute Settlement). Consultations facilitated by the Committee shall, on the agreement of the Parties involved, constitute consultations under Article 20-05.

5. A Party asserting that a standards-related measure of the other Party is inconsistent with this Chapter shall have the burden of establishing such inconsistency.

PART FIVE: GOVERNMENT PROCUREMENT

CHAPTER XV : GOVERNMENT PROCUREMENT

Section A - Definitions

Article 15-01

Definitions

1. For the purposes of this Chapter:

planned procurement means the procurement in respect of which an entity listed Annexes 15-02(2) and (3) publishes a procurement notice pursuant to Article 15-11 (4), and subsequently invites suppliers that have expressed interest in the procurement to confirm their interest pursuant to Article 15-11 (5):

entity means an entity included in Annex 15-02 (1), (2) or (3);

technical specification means a specification that sets out the characteristics of goods or their related processes and production methods, or the characteristics of services or their related operating methods, including any applicable administrative provisions. It may also include or deal exclusively with terminology, symbols, packaging, marking or labelling requirements as they apply to a product, service, process or production method;

standard means "standard" as defined in Article 14-01

international standard means "international standard" as defined in Article 14-01;

tendering procedures means open tendering procedures, selective tendering procedures and limited tendering procedures.

open tendering procedures means those procedures under which all interested suppliers may submit a tender;

limited tendering procedures means procedures where an entity contacts suppliers individually, only in the circumstances and under the conditions specified in Article 15-16;

selective tendering procedures means procedures under which, pursuant to Article 15-12(3), suppliers invited by an entity to submit a tender may do so;

supplier means a person that has provided or could provide goods or services in response to an entity's call for tender;

locally established supplier includes a natural person resident in the territory of the Party, an enterprise organized or established under the Party's law, and a branch or representative office located in the Party's territory;

services means the services specified in the appendix to Annex 15-02 (5), and those specified in the appendix to Annex 15-02 (6), except where specified otherwise; and

construction services means the services specified in the appendix to Annex 15-02 (6).

Section B - Scope and Coverage

Article 15-02

Scope and Coverage

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

(a) By a federal or central government entity listed in Annex 15-02(1); a government enterprise or autonomous body listed in Annex 15-02(2); or a state, regional or municipal government body indicated in Annex 15-02(3), pursuant to Article 15-24;

(b) of goods, pursuant to Annex 15-02(4); of services, pursuant to Annex 15-02(5); of construction services, pursuant to Annex 15-02(6); and

(c) where the value of the contract to be awarded is estimated to be equal to or greater than a threshold calculated and adjusted in line with the U.S. inflation rate as set out in Annex 15-02(7), for:

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

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

(iii) for state, regional and municipal government entities, the applicable threshold, as set out in Annex 15-02(3), pursuant to Article 15-24.

2. Paragraph 1 is subject to the transitional provisions set out in Annex 15-02(8), and to the general notes set out in Annex 15-02(9).

3. Subject to paragraph 4, where a contract to be awarded by an entity is not covered by this Chapter, this Chapter shall not be construed to cover any good or service component of that contract.

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

5. Procurement includes procurement by such methods as purchase, lease or rental, with or without an option to buy. Procurement does not include:

(a) Non-contractual agreements or any form of government assistance, including cooperative agreements, grants, loans, equity infusions, guarantees, fiscal incentives, and government provision of goods and services to persons or state, regional or municipal governments; or

(b) the acquisition of fiscal agency or depository services, liquidation and management services for regulated financial institutions and sale and distribution services for government debt.

6. The provisions contained in this Chapter establish the general principles to be observed by the entities of each Party in their procurement procedures.

7. The Parties shall ensure that the measures applied by their entities are in accordance with the provisions of this Chapter.

Article 15-03

Valuation of Contracts

1. Each Party shall ensure that, in determining whether a contract is covered by this Chapter, its entities apply paragraphs 2 through 7 when calculating the value of that contract.

2. The value of a contract shall be estimated at the time of publication of a notice pursuant to Article 15-11.

3. In calculating the value of a contract, an entity shall take into account all forms of remuneration, including premiums, fees, commissions and interest.

4. Further to Article 15-02 (4), an entity may not select a valuation method, or divide procurement requirements into separate contracts, to avoid the obligations of this Chapter.

5. Where an individual requirement for a procurement results in the award of more than one contract, or in contracts being awarded in separate parts, the basis for valuation shall be either:

(a) The actual value of similar recurring contracts concluded over the previous fiscal year or 12 months, adjusted, where possible, for anticipated changes in quantity and value over the subsequent 12 months; or

(b) the estimated value of recurring contracts in the fiscal year or 12 months subsequent to the initial contract.

6. In the case of a contract for lease or rental, with or without an option to buy, or in the case of a contract that does not specify a total price, the basis for valuation shall be:

(a) In the case of a fixed-term contract, the total contract value, for its duration; or

(b) in the case of a contract for an indefinite period, the estimated monthly instalment multiplied by 48.

If the entity is uncertain as to whether a contract is for a fixed or an indefinite term, the entity shall calculate the value of the contract using the method set out in subparagraph (b).

7. Where tender documentation includes option clauses allowing quotations for optional or alternative goods or services, the basis for valuation shall be the total value of the maximum permissible procurement, including all possible optional purchases.

Article 15-04

National Treatment and Non-Discrimination

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

(a) Its own goods and suppliers; and

(b) goods and suppliers of the other Party.

2. With respect to measures covered by this Chapter, neither Party may:

(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 the particular procurement are goods or services of the other Party.

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

4. The Parties shall not establish requirements for local representation or presence that discriminate or aim to discriminate in favour of national producers.

Article 15-05

Rules of Origin

For the purposes of government procurement covered by this Chapter, neither Party shall apply rules of origin to goods imported from the other Party that are different from or inconsistent with the rules of origin that the Party applies in the normal course of trade.

Article 15-06

Denial of Benefits

1. Subject to prior notification and consultation, a Party may deny the benefits of this Chapter to a service supplier of the other Party where the Party establishes that the service is being provided by an enterprise that is owned or controlled by persons of a non-Party that has no substantial business activities in the territory of either Party.

Article 15-07

Prohibition of Offsets

Each Party shall ensure that its entities do not, in the qualification and selection of suppliers, goods or services, or in the evaluation of bids or the award of contracts, consider, seek or impose offsets. For the purposes of this Article, offsets means conditions imposed or considered by an entity, prior to or in the course of its procurement process, that encourage local development or improve its Party's balance of payments accounts, by means of requirements of local content, licensing of technology, investment, counter-trade or similar requirements.

Article 15-08

Technical Specifications

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

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

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

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

3. Each Party shall ensure that the technical specifications prescribed by its entities neither require nor refer to a particular trademark or name; patent, design or type; specific origin or producer or supplier; unless there is no sufficiently precise or intelligible way of otherwise describing the procurement requirements, and provided that, in such cases, wording such as "or equivalent" are included in the tender documentation.

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

Section C - Tendering Procedures

Article 15-09

Tendering Procedures

1. Entities shall implement procurement processes through open, selective or limited tenders. Without prejudice to the provisions of Article 15-16, the entities of each Party may choose open or selective tendering procedures, provided the chosen procedure guarantees the maximum possible competition.

2. Each Party shall ensure that the tendering procedures of its entities are:

(a) Applied in a non-discriminatory manner; and

(b) consistent with this Article and Articles 15-10 through 15-16.

3. In this regard, each Party shall ensure that its entities:

(a) Do not provide to any supplier information with regard to a specific procurement in a manner that would have the effect of precluding competition or give an advantage to a specific supplier; and

(b) provide all suppliers equal access to information with respect to a procurement during the period prior to the issuance of any notice or tender documentation.

Article 15-10

Qualification of Suppliers

1. Pursuant to Article 15-04, no entity of a Party may, in the process of qualifying suppliers in a tendering procedure, discriminate between suppliers of the other Party or between domestic suppliers and suppliers of the other Party.

2. The qualification procedures followed by an entity shall be consistent with the following:

(a) Conditions for participation by suppliers in tendering procedures shall be published sufficiently in advance so as to provide the suppliers adequate time to initiate and, to the extent that it is compatible with efficient operation of the procurement process, to complete the qualification procedures;

(b) conditions for participation by suppliers in tendering procedures, including financial guarantees, technical qualifications and information necessary for establishing the financial, commercial and technical capacity of suppliers, as well as the verification of whether a supplier meets those conditions, shall be limited to those that are essential to ensure the fulfilment of the contract in question;

(c) the financial, commercial and technical capacity of a supplier shall be judged both on the basis of that supplier's global business activity, including its activity in the territory of the Party of the suppliers, and its activity, if any, in the territory of the Party of the procuring entity;

(d) an entity shall not misuse the process of, including the time required for, qualification in order to exclude suppliers of the other Party from a suppliers' list or from being considered for a particular procurement;

(e) an entity shall recognize as qualified suppliers those suppliers of the other Party that meet the conditions for participation in a particular procurement;

(f) an entity shall consider for a particular procurement those suppliers of the other Party that request to participate in the procurement and that are not yet qualified, provided there is sufficient time to complete the qualification procedure;

(g) an entity that maintains a permanent list of qualified suppliers shall ensure that suppliers may apply for qualification at any time, that all qualified suppliers so requesting are included in the list within a reasonably short period of time and that all qualified suppliers included in the list are notified of the termination of the list or of their removal from it;

(h) where, after publication of a notice in accordance with Article 15-11, a supplier that is not yet qualified requests to participate in a particular procurement, the entity shall promptly start the qualification procedure;

(i) an entity shall advise any supplier that requests to become a qualified supplier of its decision as to whether that supplier has become qualified; and

(j) where an entity rejects a supplier's application to qualify or ceases to recognize a supplier as qualified, the entity shall, on request of the supplier, promptly provide pertinent information concerning the entity's reasons for doing so.

3. Each Party shall:

(a) Ensure that each of its entities uses a single qualification procedure, although the procedure for evaluating suppliers will vary according to the nature of the aspects to be analysed. Where the entity determines the need for a different procedure and is prepared, on request of the other Party, to demonstrate that need, it may use additional qualification procedures; and

(b) endeavour to minimize differences in the qualification procedures of its entities.

4. Nothing in paragraphs 2 and 3 shall prevent an entity from excluding a supplier on grounds such as bankruptcy or false declarations.

Article 15-11

Invitation to Participate

1. Except as otherwise provided in Article 15-16, an entity shall publish an invitation to participate for all procurements in accordance with paragraphs 2, 3 and 5, in the appropriate publication referred to in Annex 15-19(1).

2. The invitation to participate shall take the form of a notice of proposed procurement that shall contain the following information:

(a) A description of the nature and quantity of the goods or services to be procured, including any options for further procurement and, if possible,

(i) an estimate of when such options may be exercised; and

(ii) in the case of recurring contracts, an estimate of when the subsequent notices will be issued;

(b) a statement as to whether the tender is open or selective;

(c) where relevant, the date for starting or completion of delivery of the goods or services to be procured;

(d) where appropriate, the address to which an application to be invited to tender or to qualify for the suppliers' lists must be submitted, and the final date for receiving the application;

(e) the address to which tenders must be submitted, and the final date for receiving tenders;

(f) the address of the entity that will award the contract and that will provide any information necessary for obtaining specifications and other documents;

(g) a statement of any economic or technical requirements and of any financial guarantees, information and documents required from suppliers;

(h) the amount and terms of payment of any sum payable for the tender documentation; and

(i) a statement as to whether the entity is inviting offers for purchase, lease or rental, with or without an option to buy.

3. In the case of a selective tender, the invitation to participate will contain the following information in addition to that set out in paragraph 2:

(a) The address to which an application to be invited to tender or to qualify for the suppliers' lists must be submitted, and the final date for receiving the application; and

(b) when no suppliers list is involved, the deadlines for submitting applications to be invited to tender.

4. Notwithstanding paragraphs 2 and 3, an entity listed in Annex 15-02(2) or (3) may use as an invitation to participate a notice of planned procurement that shall contain as much of the information referred to in paragraphs 2 and 3 as is available to the entity, but that shall include, at a minimum, the following information:

(a) A description of the subject matter of the procurement;

(b) the time-limits set for the receipt of tenders, or, in the case of selective tenders, applications to be invited to tender;

(c) the address to which requests for documents relating to the procurement should be submitted;

(d) a statement that interested suppliers should express their interest in the procurement to the entity; and

(e) the identification of a contact point within the entity from which further information may be obtained.

5. An entity that uses a notice of planned procurement as an invitation to participate shall subsequently invite suppliers that have expressed an interest in the procurement to confirm their interest on the basis of information provided by the entity, which shall include at least the information referred to in paragraphs 2 and 3.

6. Notwithstanding paragraphs 2 and 3, an entity listed in Annex 15-02(2) or (3) may use as an invitation to participate a notice regarding a qualification system. An entity that uses such a notice shall, subject to the considerations referred to Article 15-15 (8), provide in a timely manner information that allows all suppliers that have expressed an interest in participating in the procurement to have a meaningful opportunity to assess their interest. The information shall normally include the information required for notices referred to in paragraphs 2 and 3. Information provided to any interested supplier shall be provided in a non-discriminatory manner to all other interested suppliers.

7. In the case of selective tendering procedures, an entity that maintains a permanent list of qualified suppliers shall publish annually in the appropriate publication referred to in Annex 15-19(1) a notice containing the following information:

(a) An enumeration of any such lists maintained, including their headings, in relation to the goods or services or categories of goods or services to be procured through the lists;

(b) the conditions to be fulfilled by suppliers with a view to their inscription on those lists and the methods according to which each of those conditions will be verified by the entity concerned; and

(c) the period of validity of the lists and the formalities for their renewal.

8. Where, after publication of an invitation to participate, but before the time set for the opening or receipt of tenders as specified in the notices or the tender documentation, an entity finds that it has become necessary to amend or reissue the notice or tender documentation, the entity shall ensure that the amended or reissued notice or tender documentation is given the same circulation as the original. Any significant information given by an entity to a supplier with respect to a particular procurement shall be given simultaneously to all other interested suppliers and sufficiently in advance so as to provide all suppliers concerned adequate time to consider the information and to respond.

9. An entity shall indicate in the notices referred to in this Article that the procurement is covered by this Chapter.

Article 15-12

Selective Tendering Procedures

1. In selective tendering procedures, the entity shall publish an invitation to participate in accordance with Article 15-11.

2. To ensure optimum effective competition between the suppliers of the Parties under selective tendering procedures, an entity shall, for each procurement, invite tenders from the maximum number of domestic suppliers and suppliers of the other Party, consistent with the efficient operation of the procurement system.

3. An entity may restrict, on the basis of objective criteria and for fully substantiated reasons, the number of bids to be evaluated when analysis of all bids received could significantly impair the efficient functioning of the procurement system, provided suppliers of the other Party are guaranteed fulfilment of Article 15-04.

4. Subject to paragraphs 1 and 5, an entity that maintains a permanent list of qualified suppliers may select suppliers to be invited to tender for a particular procurement from among those listed. In the process of making a selection, the entity shall provide for equitable opportunities for suppliers on the list.

5. Subject to Article 15-10 (2)(f) and (h), an entity shall allow a supplier that requests to participate in a particular procurement to submit a tender and shall consider the tender. The number of additional suppliers permitted to participate shall be limited only by the efficient operation of the procurement system.

6. Where an entity does not invite or admit a supplier to tender, the entity shall, on request of the supplier, promptly provide pertinent information concerning its reasons for not doing so.

Article 15-13

Time-limits for Tendering and Delivery

1. An entity shall:

   (a) In prescribing a time-limit, provide adequate time to allow suppliers of the other Party to prepare and submit tenders before the closing of the tendering procedures;

   (b) in determining a time-limit, consistent with its own reasonable needs, take into account such factors as the complexity of the procurement, the extent of subcontracting anticipated, and the time normally required for transmitting tenders by mail from foreign as well as domestic points; and

   (c) take due account of publication delays when setting the final date for receipt of tenders or applications to be invited to tender.

2. An entity shall provide that:

   (a) In open tendering procedures, the period for the receipt of tenders is no less than 40 days from the date of publication of a notice in accordance with Article 15-11;

   (b) in selective tendering procedures not involving the use of a permanent list of qualified suppliers, the period for submitting an application to be invited to tender is no less than 25 days from the date of publication of a notice in accordance with Article 15-11, and the period for receipt of tenders is no less than 40 days from the date of issuance of the invitation to tender; and

   (c) in selective tendering procedures involving the use of a permanent list of qualified suppliers, the period for receipt of tenders is no less than 40 days from the date of the initial issuance of invitations to tender, but where the date of initial issuance of invitations to tender does not coincide with the date of publication of a notice in accordance with Article 15-11, there shall not be less than 40 days between those two dates.

3. An entity may reduce the periods referred to in paragraph 2 in accordance with the following:

   (a) Where a notice referred to Article 15-11 (4) or (6) has been published for a period of no less than 40 days and no more than 12 months, the 40-day limit for receipt of tenders may be reduced to no less than 24 days;

   (b) in the case of the second or subsequent publications dealing with recurring contracts within the meaning of Article 15-11(2), the 40-day limit for receipt of tenders may be reduced to no less than 24 days;

   (c) where an unforeseeable state of urgency, duly substantiated by the entity, renders impracticable the periods in question, these may be reduced to no less than 10 days from the date of publication of a notice in accordance with Article 15-11; or

   (d) where an entity listed in Annex 15-02(2) or (3) is using as an invitation to participate a notice referred to in Article 15-11 (6), the periods may be fixed by mutual agreement between the entity and all selected suppliers; nonetheless, in the absence of agreement, the entity may fix periods that shall be sufficiently long to allow for responsive bidding and in any event shall be no less than 10 days.

4. An entity shall, in establishing a delivery date for goods or services and consistent with its own reasonable needs, take into account such factors as the complexity of the procurement, the extent of subcontracting anticipated and the time realistically required for production, destocking and transport of goods from the points of supply.

Article 15-14

Tender Documentation

1. Where an entity provides tender documentation to suppliers, the documentation shall contain all information necessary to permit suppliers to submit responsive tenders, including information required to be published in the notice referred to in Article 15-11 (2), except for the information required under Article 15-11 (2)(h). The documentation shall also include:

(a) The address of the entity to which tenders should be sent;

(b) the address to which requests for supplementary information should be submitted;

(c) the closing date and time for receipt of tenders and the length of time during which tenders should be validated;

(d) the persons, other than participating suppliers, authorized to be present at the opening of tenders, and the date, time and place of the opening;

(e) a description of any economic or technical conditions, and of any financial guarantees, information and documents required from suppliers;

(f) a complete description of the goods or services to be procured, and any other requirement, including technical specifications, conformity certification and necessary plans, drawings and instructional materials;

(g) the criteria for awarding the contract, including any factors other than price that are to be considered in the evaluation of tenders; and the cost elements to be considered in evaluating tender prices, such as transportation, insurance and inspection costs, and in the case of goods or services of the other Party, customs duties and other import charges, taxes and the currency of payment;

(h) the terms of payment; and

(j) any other terms or conditions.

2. An entity shall:

(a) Forward tender documentation on the request of a supplier that is participating in open tendering procedures or has requested to participate in selective tendering procedures, and reply promptly to any reasonable request for explanations relating thereto; and

(b) entities shall reply promptly to any reasonable request for relevant information submitted by a supplier participating in the tendering procedure, on condition that such information does not give that supplier an advantage over its competitors in the procedure for the award of the contract.

Article 15-15

Submission, Receipt and Opening of Tenders and Awarding of Contracts

1. An entity shall use procedures for the submission, receipt and opening of tenders and the awarding of contracts that are consistent with the following:

(a) Tenders shall normally be submitted in writing directly or by mail;

(b) where tenders by telex, telegram, fax or other means of electronic transmission are permitted, the tender submitted thereby must include all the information necessary for the evaluation of the tender, in particular the definitive price proposed by the supplier and a statement that the supplier agrees to all the terms and conditions of the invitation to tender;

(c) a tender made by telex, telegram, fax or other means of electronic transmission must be confirmed within the time-limit set out in the tender notice or documents, by sending the original document of the tender or a signed copy of the telex, telegram, fax or electronic message;

(d) the content of the telex, telegram, fax or electronic message shall prevail where there is a difference or conflict between that content and the content of any documentation received after the time-limit for submission of tenders;

(e) tenders presented by telephone shall not be permitted;

(f) requests to participate in selective tendering procedures may be submitted by telex, telegram or fax, and, if permitted, may be submitted by other means of electronic transmission; and

(g) the opportunities that may be given to suppliers to correct unintentional errors of form, such as arithmetical or other errors that do not affect the essence of the tender, between the opening of tenders and the awarding of the contract shall not be used in a manner that would result in discrimination between suppliers.

For the purposes of this paragraph, "means of electronic transmission" consists of means capable of producing for the recipient at the destination of the transmission a printed copy of the tender.

2. No entity may penalize a supplier for reasons exclusively imputable to the entity itself.

3. All tenders solicited by an entity under open or selective tendering procedures shall be received and opened under procedures and conditions guaranteeing the regularity of the opening of tenders. The entity shall retain the information on the opening of tenders. The information shall remain at the disposal of participants with legitimate interest and the competent authorities of the Party, for use, if required, under Article 15-17, Article 15-19 or Chapter XX (Dispute Settlement Procedures).

4. An entity shall award contracts in accordance with the following:

(a) To be considered for award, a tender must, at the time of opening, conform to the essential requirements of the notices or tender documentation and be from a supplier which complies with the conditions for participation;

(b) if the entity has received a tender that is abnormally lower in price than other tenders submitted, the entity may inquire of the supplier to ensure that it can comply with the conditions of participation and is or will be capable of fulfilling the terms of the contract;

(c) unless the entity decides in the public interest not to award the contract, the entity shall make the award to the supplier that has been determined to be fully capable of undertaking the contract and whose tender is either the lowest or the most advantageous in terms of the specific evaluation criteria set out in the notices or tender documentation;

(d) awards shall be made in accordance with the criteria and requirements specified in the tender documentation; and

(e) option clauses shall not be used in a manner that circumvents this Chapter.

5. No entity of a Party may make it a condition of the awarding of a contract that the supplier has previously been awarded one or more contracts by an entity of that Party or that the supplier has prior work experience in the territory of that Party.

6. An entity shall:

(a) On request, promptly inform suppliers participating in tendering procedures of decisions on contract awards and, if so requested, inform them in writing; and

(b) on request of a supplier whose tender was not selected for award, provide pertinent information to that supplier concerning the reasons for not selecting its tender, the relevant characteristics and advantages of the tender selected and the name of the winning supplier.

7. Within a reasonable period of time after the award of a contract, an entity shall publish a notice in the appropriate publication mentioned in Annex 15-19(1) that shall contain the following information:

(a) A description of the nature and quantity of goods or services in the contract award;

(b) the name and address of the entity awarding the contract;

(c) the date of award;

(d) the name and address of the winning tenderer;

(e) the value of the contract; and

(f) the tendering procedure used.

8. Notwithstanding paragraphs 1 through 7, an entity may withhold certain information on the award of a contract where disclosure of the information:

(a) Could impede law enforcement or otherwise be contrary to the public interest;

(b) would prejudice the legitimate commercial interest of a particular person; or

(c) would be prejudicial to fair competition between suppliers. In no circumstances shall subparagraphs (b) and (c) prevail when information is requested on matters of public interest.

Article 15-16

Limited Tendering Procedures

1. An entity of a Party may, in the circumstances and subject to the conditions set out in paragraph 2, use limited tendering procedures and thus derogate from Articles 15-10 through 15-15, provided that such limited tendering procedures are not used with a view to avoiding maximum possible competition or in a manner that would constitute a means of discrimination between suppliers of the other Party or protection of domestic suppliers.

2. An entity may use limited tendering procedures in the following circumstances and subject to the following conditions, as applicable:

(a) In the absence of tenders in response to an open or selective call for tenders; or where the tenders submitted either have resulted from collusion; or do not conform to the essential requirements of the tender documentation; or where the tenders submitted come from suppliers that do not comply with the conditions for participation provided for in accordance with this Chapter, on condition that the requirements of the initial procurement are not substantially modified in the contract as awarded;

(b) where the goods or services can be supplied only by a particular supplier and no reasonable alternative or substitute exists; for works of art; or for reasons connected with the protection of patents, copyrights or other exclusive rights; or proprietary information; or where there is an absence of competition for technical reasons;

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

(d) for additional deliveries by the original supplier that are intended either as replacement parts or continuing services for existing supplies, services or installations, or as the extension of existing supplies, services or installations, where a change of supplier would compel the entity to procure equipment or services not meeting requirements of interchangeability with already existing equipment or services, including software to the extent that the initial procurement of the software was covered by this Chapter;

(e) where an 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. Where such contracts have been fulfilled, subsequent procurement of goods or services shall be subject to Articles 15-10 through 15-15. Original development of a first good may include limited production in order to incorporate the results of field testing and to demonstrate that the good is suitable for production in quantity to acceptable quality standards, but does not include quantity production to establish commercial viability or to recover research and development costs;

(f) for goods purchased on a commodity market, whose prices quoted on an international market;

(g) for purchases made under exceptionally advantageous conditions that only arise in the very short term, but not routine purchases from regular suppliers. Exceptionally advantageous conditions means conditions that are substantially advantageous for the purchasing entity in relation to normal market conditions, such as unusual disposals by enterprises that are not normally suppliers; or the disposal of assets of businesses in liquidation or receivership;

(h) for a contract to be awarded to the winner of an architectural design contest, on condition that the contest is:

(i) organized in a manner consistent with the principles of this Chapter, including regarding publication of an invitation to suitably qualified suppliers to participate in the contest;

(ii) organized with a view to awarding the design contract to the winner; and

(iii) to be judged by an independent jury; and

(i) where an entity needs to procure consulting services regarding matters of a confidential nature, the disclosure of which could reasonably be expected to compromise government confidences, cause economic disruption or similarly be contrary to the public interest.

3. Entities shall justify the reasons for using limited tendering, and prepare a report in writing on each contract awarded by it under paragraph 2. Each report shall contain the name of the procuring entity, indicate the value and kind of goods or services procured, the name of the country of origin, and a statement indicating the circumstances and conditions described in paragraph 2 that justified the use of limited tendering. The entity shall retain each report in a case record along with full documentation on the contract. These shall remain at the disposal of the competent authorities of the Party for use, as required, under Article 15-17, Article 15-19 or Chapter XX (Dispute Settlement Procedures).

Section D - Bid Challenge

Article 15-17

Bid Challenge

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

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

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

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

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

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

(f) a Party may limit the period within which a supplier may initiate a bid challenge[1]; but in no case shall the period be less than ten working days from the time when the basis of the complaint became known or reasonably should have become known to the supplier;

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

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

(i) the reviewing authority shall limit its considerations to the bid challenge itself;

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

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

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

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

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

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

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

[1] Or seek annulment for the case of Nicaragua.

Section E - General Provisions

Article 15-18

Exceptions

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

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

(c) necessary to protect intellectual property; or

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

Article 15-19

Provision of Information

1. In accordance with Article 18-02, each Party shall promptly publish any law, regulation, precedential judicial decision, administrative ruling of general application and any procedure, including standard contract clauses, regarding government procurement covered by this Chapter in the appropriate publications referred to in Annex 15-19(2).

2. Each Party shall:

(a) On request, explain to the other Party its government procurement procedures;

(b) ensure that its entities, on request from a supplier, promptly explain their procurement practices and procedures; and

(c) designate no later than the date on which this Agreement enters into force, one or more contact points to:

(i) facilitate communication between the Parties; and

(ii) answer all reasonable inquiries from the other Party to provide relevant information on matters covered by this Chapter.

3. A Party may seek such additional information on the award of the contract as may be necessary to determine whether the procurement was made in accordance with the provisions of this Chapter regarding unsuccessful tenderers. To this end, the Party of the procuring entity shall provide information on the characteristics and relative advantages of the winning tender and the contract price. Where release of this information would prejudice competition in future tenders, the information shall

not be released by the requesting Party except after consultation with and the agreement of the other Party .

4. Upon request, each Party shall provide to the other Party information available to that Party and its entities concerning covered procurement of its entities and the individual contracts awarded by its entities.

5. No Party may disclose confidential information the disclosure of which could prejudice the legitimate commercial interests of a particular person or might prejudice fair competition between suppliers, without the formal authorization of the person that provided the information to that Party.

6. With a view to ensuring effective monitoring of procurement covered by this Chapter, each Party shall collect statistics and provide to the other Parties an annual report in accordance with the following reporting requirements, unless the Parties otherwise agree:

(a) Statistics on the estimated value of all contracts awarded, both above and below the applicable threshold values, broken down by entities;

(b) statistics on the number and total value of contracts above the applicable threshold values, broken down by entities, by categories of goods and services established in accordance with classification systems developed under this Chapter and by the country of origin of the goods and services procured;

(c) statistics on the number and total value of contracts awarded under Article 15-16, broken down by entities, by categories of goods and services, and by country of origin of the goods and services procured; and

(d) statistics on the number and total value of contracts awarded under derogations to this Chapter set out in Annex 15-02(9) broken down by entities.

7. Each Party may organize by state, municipality or region any portion of the report mentioned in paragraph 6 that pertains to entities listed in Annex 15-02(3).

Article 15-20

Technical Cooperation

1. The Parties shall cooperate, on mutually agreed terms, to increase understanding of their respective government procurement systems, with a view to maximizing access to government procurement opportunities for their suppliers.

2. Each Party shall provide to the other Party and to its suppliers, on a cost recovery basis, information concerning training and orientation programmes regarding its government procurement system, and access on a non-discriminatory basis to any programme it conducts.

3. The training and orientation programmes referred to in paragraph 2 include:

(a) Training of government personnel directly involved in government procurement procedures;

(b) training of suppliers interested in pursuing government procurement opportunities;

(c) an explanation and description of specific elements of each Party’s government procurement system, such as its bid challenge mechanism; and

(d) information about government procurement market opportunities.

4. Each Party shall establish, no later than the date on which this Agreement enters into force, at least one contact point to provide information on the training and orientation programmes referred to in this Article.

Article 15-21

Joint Programmes for Microenterprise and Small and Medium-sized Business

1. Upon entry into force of this Agreement, the Parties shall establish the Committee on Microenterprise, and Small and Medium-sized Business, comprising representatives of each Party. The Committee shall meet as mutually agreed, but not less than once each year, and shall report annually to the Commission on the efforts of the Parties to promote government procurement opportunities for their microenterprises, and small and medium-sized businesses.

2. The Committee shall work to facilitate the following activities of the Parties:

(a) Identification of available opportunities for the training of personnel of microenterprises, and small and medium-sized businesses, in government procurement procedures;

(b) identification of microenterprises, and small and medium-sized businesses interested in becoming trading partners of microenterprises, and small and medium-sized businesses in the territory of the other Party;

(c) development of databases of microenterprises, and small and medium-sized businesses in the territory of each Party for use by entities of the other Party wishing to procure from small businesses;

(d) consultations regarding the factors that each Party uses in establishing its eligibility criteria for programmes for microenterprises, and small and medium-sized businesses; and

(e) activities to address any related matter.

Article 15-22

Rectifications or Modifications

1. A Party may modify its coverage under this Chapter only in exceptional circumstances.

2. Where a Party modifies its coverage under this Chapter, that Party shall:

(a) Notify the other Party and its Section of the Secretariat of the modification;

(b) reflect the change in the appropriate Annex; and

(c) propose to the other Party appropriate compensatory adjustments to its coverage in order to maintain a level of coverage comparable to that existing prior to the modification.

3. Notwithstanding paragraphs 1 and 2, a Party may make rectifications of a purely formal nature and minor amendments to its Schedules to Annexes 15-02(1) through (6), and (9), provided that it notifies such rectifications to the other Parties and its Section of the Secretariat, and the other

Party does not object to such proposed rectification within 30 days. In such cases, compensation need not be proposed.

4. Notwithstanding any other provision of this Chapter, a Party may undertake reorganizations of its government procurement entities covered by this Chapter, including programmes through which the procurement of such entities is decentralized or the corresponding government functions cease to be performed by any government entity whether or not subject to this Chapter. In such cases, compensation need not be proposed. Neither Party may undertake such reorganizations or programmes for the purpose of avoiding their obligations under this Chapter.

5. A Party may have recourse to the procedure established in Chapter XX (Dispute Settlement) when it considers that:

(a) An adjustment proposed under paragraph 2(c) is not adequate to maintain a comparable level of mutually agreed coverage; or

(b) a rectification or a minor amendment under paragraph 3 or a reorganization under paragraph 4 does not meet the applicable requirements of those paragraphs and should require compensation.

Article 15-23

Divestiture of Entities

1. Nothing in this Chapter shall be construed to prevent a Party from divesting an entity covered by this Chapter.

2. If, on the public offering of shares of an entity listed in Annex 15-02(2), or through other methods, the entity is no longer subject to federal or central government control, the Party may delete the entity from its Schedule to that Annex, and withdraw the entity from the coverage of this Chapter, on notification to the other Parties and its Section of the Secretariat

3. Where a Party objects to the withdrawal on the grounds that the entity remains subject to federal or central government control, that Party may have recourse to procedures under Chapter XX (Dispute Settlement).

Article 15-24

Further Negotiations

1. The Parties shall commence negotiations with a view to the further liberalization of their respective government procurement markets when the Commission so decides.

2. In such negotiations, the Parties shall review all aspects of their government procurement practices for the purposes of:

(a) Assessing the functioning of their government procurement systems;

(b) seeking to expand the coverage of this Chapter, by adding:

(i) other government enterprises, autonomous bodies, decentralized entities or other type of public enterprise; and

(ii) procurement otherwise subject to legislated or administrative exceptions; and

(c) reviewing thresholds.

3. Prior to such review, the Parties shall endeavour to consult with their state, regional or municipal governments with a view to obtaining commitments, on a voluntary and reciprocal basis, to include within this Chapter procurement by state and provincial government entities and enterprises.

ANNEX 15-02(1)

Federal and Central Government Entities

Schedule of Mexico

1. Secretaría de Gobernación (Ministry of Government)

- Centro Nacional de Desarrollo Municipal (National Centre for Municipal Studies)
- Comisión Calificadora de Publicaciones y Revistas Ilustradas (Illustrated Periodicals and Publications Classification Commission)
- Consejo Nacional de Población (National Population Council)
- Archivo General de la Nación (General Archives of the Nation)
- Instituto Nacional de Estudios Históricos de la Revolución Mexicana (National Institute of Historical Studies on the Mexican Revolution)
- Patronato de Asistencia para la Reincorporación Social por el Empleo en el Distrito Federal (Social Reintegration Assistance Foundation through Employment in Mexico City)
- Centro Nacional de Prevención de Desastres (National Disaster Prevention Centre)

2. Secretaría de Relaciones Exteriores (Ministry of Foreign Relations)

3. Secretaría de Hacienda y Crédito Público (Ministry of Finance and Public Credit)

- Comisión Nacional Bancaria y de Valores (National Banking and Securities Commission)
- Comisión Nacional de Seguros y Fianzas (National Insurance and Bonds Commission)
- Instituto Nacional de Estadística, Geografía e Informática (National Institute of Statistics, Geography and Informatics)

4. Secretaría de Agricultura, Ganadería y Desarrollo Rural (Ministry of Agriculture, Livestock and Rural Development),

- Apoyos y Servicios a la Comercialización Agropecuaria (ASERCA) (Agricultural Marketing Support Services)

5. Secretaría de Comunicaciones y Transportes (including the Comisión Federal de Telecomunicaciones, the Instituto Mexicano de Comunicaciones and the Instituto Mexicano de Transporte) (Ministry of Communications and Transport, including the Federal Telecommunications Commission, the Mexican Institute of Communications and the Mexican Institute of Transportation)

6. Secretaría de Comercio y Fomento Industrial (Ministry of Commerce and Industrial Development)

7. Secretaría de Educación Pública (Ministry of Public Education)

- Instituto Nacional de Antropología e Historia (National Institute of Anthropology and History)
- Instituto Nacional de Bellas Artes y Literatura (National Institute of National Arts and Literature)
- Radio Educación (Radio Education)
- Centro de Ingeniería y Desarrollo Industrial (Engineering and Industrial Development Centre)
- Consejo Nacional para la Cultura y las Artes (National Council for Culture and the Arts)

8. Secretaría de Salud (Ministry of Health)

- Administración del Patrimonio de la Beneficencia Pública (Public Charity Fund Administration)
- Centro Nacional de la Transfusión Sanguínea (National Blood Transfusion Centre)
- Gerencia General de Biológicos y Reactivos (Office of General Management for Biologicals and Reagents)
- Dirección General de Obras, Conservación y Mantenimiento (Directorate General of Works, Conservation and Maintenance)
- Instituto de la Comunicación Humana Dr. Andrés Bustamante Gurría (Dr. Andrés Bustamante Gurría Institute of Human Communication)
- Instituto Nacional de Medicina de la Rehabilitación (National Rehabilitative Medicine Institute)
- Instituto Nacional de Ortopedia (National Orthopaedics Institute)
- Consejo Nacional para la Prevención y Control del Síndrome de Inmunodeficiencia Adquirida (Conasida). (National Council for the Prevention and Control of the Autoimmune Deficiency Syndrome)

9. Secretaría del Trabajo y Previsión Social (Ministry of Labour and Social Welfare)

- Procuraduría Federal de la Defensa del Trabajo (Office of the Federal Attorney for Labour Defence)

10. Secretaría de la Reforma Agraria (Ministry of Agrarian Reform)

- Instituto Nacional de Desarrollo Agrario (National Institute of Agrarian Development)

11. Secretaría de Medio Ambiente, Recursos Naturales y Pesca (Ministry of Environment, Natural Resources and Fisheries)

- Instituto Nacional de la Pesca (National Institute of Fisheries)
- Instituto Mexicano de Tecnología del Agua

12. Procuraduría General de la República (Office of the Attorney General of the Republic)

13. Secretaría de Energía (Ministry of Energy)

- Comisión Nacional de Seguridad Nuclear y Salvaguardias (National Commission on Nuclear Safety and Safeguards)
- Comisión Nacional para el Ahorro de Energía (National Commission for Energy Conservation)

14. Secretaría de Desarrollo Social (Ministry of Social Development)

15. Secretaría de Turismo (Ministry of Tourism)

16. Secretaría de Contraloría y Desarrollo Administrativo (Ministry of the Comptroller General and Administrative Development)

17. Secretaría de la Defensa Nacional (Ministry of National Defence)

18. Secretaría de Marina (Ministry of the Navy)

Schedule of Nicaragua

1. Asamblea Nacional (National Assembly)

2. Consejo Supremo Electoral (Supreme Electoral Council)

3. Corte Suprema de Justicia (Supreme Court)

4. Contraloría General de la República (Office of the Comptroller General of the Republic)

5. Presidencia de la República (Office of the President of the Republic)

   - Vice-Presidencia (Office of the Vice President)

6. Dirección de Comunicación Social (Social Communication Directorate)

7. Radio Nicaragua

8. Fondo de Inversión Social de Emergencia (Emergency Social Investment Fund)

9. Ministerio de Acción Social (Ministry of Social Action) (does not include procurement of agricultural goods acquired for agricultural support programmes or human consumption)

10. Instituto de Atención a las Víctimas de Guerra (Institute for the Care of War Victims)

11. Instituto Nicaragüense de la Mujer (Nicaraguan Institute for Women)

12. Fondo Nicaragüense de la Niñez y la Familia (Nicaraguan Fund for Children and the Family)

13. Ministerio de Salud (Ministry of Health)

14. Ministerio de Educación (Ministry of Education)

15. Ministerio del Trabajo (Ministry of Labour)

16. Instituto Nacional Tecnológico (INATEC) (National Technological Institute)

17. Ministerio de Finanzas (Ministry of Finance)

18. Instituto Nicaragüense de Administración Pública (Nicaraguan Public Administration Institute)

19. Ministerio de Economía y Desarrollo (Ministry of Economic Affairs and Development)

20. Instituto Nicaragüense de Estadísticas y Censos (Nicaraguan Institute of Statistics and Censuses)

21. MEDE – PESCA

22. . Ministerio de Construcción y Transporte (Ministry of Construction and Transport)

23. Instituto Nicaragüense de Estudios Territoriales (Nicaraguan Institute for Territorial Studies)

24. Ministerio de Turismo (Ministry of Tourism)

25. Teatro Nacional Rubén Darío (Rubén Darío National Theatre)

26. Instituto Nicaragüense de Cultura (Nicaraguan Institute of Culture)

27. Ministerio de Agricultura y Ganadería (Ministry of Agriculture)

28. Instituto Nicaragüense de Tecnología Agropecuaria (Nicaraguan Institute of Agricultural Technology)

29. Instituto Nicaragüense de Reforma Agraria (Nicaragua Institute of Agrarian Reform)

30. Ministerio de Relaciones Exteriores (Ministry of Foreign Relations)

31. Ministerio de Cooperación Externa (Ministry for External Cooperation)

32. Ministerio de Defensa (Ministry of Defence)

33. Ministerio de Gobernación (Ministry of Governance)

34. Ministerio del Ambiente y Recursos Naturales (Ministry of the Environment and Natural Resources)

35. Procuraduría General de Justicia (Office of the Prosecutor General)

36. Instituto Nicaragüense Juventud y Deportes (Nicaraguan Institute of Youth and Sport)

37. Programa Nacional de Desarrollo Rural (National Rural Development Programme)

38. Programa de Apoyo a Micro Empresa (PAMIC) (Microenterprise Support Programme)

39. Consejo Nacional Agropecuaria (CONAGRO) (National Agricultural Council)

40. Casa de la Cultura

ANNEX 15-02(2)

Government Enterprises and Autonomous Bodies

Schedule of Mexico

Printing and editorial

1. Talleres Gráficos de México (National Printers)

2. Productora e Importadora de Papel, S.A. de C.V. (PIPSA) (Producer and Importer of Paper, S.A. de C.V.)

3. Comisión Nacional de los Libros de Texto Gratuitos (National Free Textbook Commission)

Communications and transportation

4. Aeropuertos y Servicios Auxiliares (ASA) (Airports and Auxiliary Services)

5. Caminos y Puentes Federales de Ingresos y Servicios Conexos (CAPUFE) (Federal Toll Roads and Bridges and Related Services)

6. Servicio Postal Mexicano (Mexican Postal Service)

7. Ferrocarriles Nacionales de México (FERRONALES) (National Railways of Mexico)

8. Telecomunicaciones de México (TELECOM) (Telecommunications of Mexico)

Industry

9. Petróleos Mexicanos (Pemex) (Mexican Petroleum) (Not including procurements of fuels or gas)

   - PEMEX Exploración y Producción (PEMEX Exploration and Production)
   - PEMEX Refinación (PEMEX Refining)
   - PEMEX Gas y Petroquímica Básica (PEMEX Gas and Basic Petrochemicals)
   - PEMEX Petroquímica (PEMEX Petrochemicals)

10. Comisión Federal de Electricidad (CFE) (Federal Electricity Commission)

Commerce

11. Consejo de Recursos Minerales (Mineral Resources Council)

12. Procuraduría Federal del Consumidor (Office of the Federal Attorney for Consumers)

Social security

14. Instituto de Seguridad y Servicios Sociales de los Trabajadores del Estado (ISSSTE) (Institute of Social Security and Services for Government Workers)

15. Instituto Mexicano del Seguro Social (IMSS) (Mexican Social Security Institute)

16. Sistema Nacional para el Desarrollo Integral de la Familia (DIF) (National System for Integrated Family Development) (Not including procurements of agricultural goods made in furtherance of agricultural support programmes or goods for human feeding programmes)

17. Instituto de Seguridad Social para las Fuerzas Armadas Mexicanas (Social Security Institute for the Mexican Armed Forces)

18. Instituto Nacional Indigenista (INI) (National Institute of Indian Peoples)

19. Instituto Nacional para la Educación de los Adultos (National Institute for Adult Education)

20. Centros de Integración Juvenil (Youth Integration Centres)

21. Instituto Nacional de la Senectud (National Institute on Old Age)

22. Distribuidora e Impulsora Commercial Conasupo S.A. de C.V. (Conasupo Commercial Distribution and Promotion S.A. de C.V.) (Diconsa)

23. Leche Industrializada Conasupo, S.A. de C.V. (LICONS(A) (Conasupo Industrialized Milk, S.A. de C.V.) (Not including procurements of agricultural goods made in furtherance of agricultural support programmes or goods for human feeding programmes.)

Others

24. Comité Administrador del Programa Federal de Construcción de Escuelas (CAPFCE) (Administrative Committee of the School Construction Federal Programme)

25. Comisión Nacional del Agua (CNA) (National Water Commission)

26. Comisión para la Regularización de la Tenencia de la Tierra (Commission for the Regularization for Land Tenure)

27. Consejo Nacional de Ciencia y Tecnología (CONACYT) (National Science and Technology Council)

28. NOTIMEX, S.A. de C.V.

29. Instituto Mexicano de Cinematografía (Mexican Institute of Cinematography)

30. Lotería Nacional para la Asistencia Pública (National Lottery for Public Assistance)

31. Pronósticos para la Asistencia Pública (Sports Lottery)

32. Comisión Nacional de Zonas Aridas (National Commission on Arid Zones)

33. Comisión Nacional de Derechos Humanos (National Commission on Human Rights)

34. Consejo Nacional de Fomento Educativo (National Educational Development Council).

35. Compañía Nacional de Subsistencia Populares (Conasupo) (Not including procurements of agricultural goods made in furtherance of agricultural support programmes or goods for human feeding programmes.)

36. Bodegas Rurales Conasupo, S.A. de C.V.

Schedule of Nicaragua

1. Empresa Nicaragüense de Telecomunicaciones (ENITEL) (Nicaraguan Telecommunications Company)

2. Instituto Nicaragüense de Telecomunicaciones y Correos (TELCOR) (Nicaraguan Institute of Telecommunications and Postal Services)

3. Empresa Nicaragüense de Electricidad (ENEL) (Nicaraguan Electricity Company)

4. Instituto Nicaragüense de Energía (INE) (Nicaraguan Energy Institute)

5. Empresa Nicaragüense de Importaciones (ENIMPORT) (Nicaraguan Import Company) (Not including procurements of agricultural goods made in furtherance of agricultural support programmes or goods for human feeding programmes.)

6. National Lottery

7. Empresa Nacional de Abastecimientos (ENABAS) (national provisions enterprise) Not including procurements of agricultural goods made in furtherance of agricultural support programmes or goods for human feeding programmes.)

8. Empresa Nacional de Aeropuertos (National Airports Enterprise)

9. Correos de Nicaragua (Postal Services of Nicaragua)

10. Cruz Roja Nicaragüense (Nicaragua and Red Cross)

11. Instituto Nicaragüense de Acueductos y Alcantarillados (INAA) (Nicaraguan Water and Sewerage Institute)

12. Instituto Nicaragüense de Seguridad Social (INSS) (Nicaraguan Social Security Institute)

13. Instituto Nicaragüense de Fomento Municipal (INIFOM) (Nicaraguan Municipal Development Institute)

ANNEX 15-02(3)

State, Regional or Municipal Government Entities

ANNEX 15-02(4)

List of Goods

Section A - General Provisions

1. This Chapter applies to all goods procured by the entities listed in Annexes 15-02 (1) through (3).

2. With respect to Mexico, the strategic goods listed in Section B purchased by the Ministry of National Defence and the Ministry of the Navy are excluded from the coverage of this Chapter, pursuant to Article 15-18.

3. With respect to Nicaragua, the strategic goods listed in Section B purchased by the Ministry of Defence and the Ministry of Governance are excluded from the coverage of this Chapter, pursuant to Article 15-18.

Section B - List of Certain Goods

- Weaponry.
- Nuclear war material.
- Fire control equipment.

- Ammunition and explosives.
- Guided missiles.
- Aircraft and components of aircraft structures.
- Components and accessories for aircraft.
- Equipment for takeoff, landing, and on-ground handling of aircraft.
- Space vehicles.
- Vessels, small structures, rafts and floating piers.
- Maritime vessels and equipment.

ANNEX 15-02(5)

Services

Without prejudice to the coverage provided for in Chapter X (General Principles on Trade in Services), this Chapter shall apply to all services no later than one year after the entry into force of this Agreement. For these purposes, the Parties shall establish a workgroup that will continue to review relevant technical issues, including the common classification system for services.

APPENDIX TO ANNEX 15-02(5)

Common Classification System for Services

Group = 1 digit
Subgroup = 2 digits
Class = 4 digits

A Research and development

Definition of research and development contracts

Procurement of research and development services include the acquisition of specialized expertise for the purposes of increasing knowledge in science; applying increased scientific knowledge or exploiting the potential of scientific discoveries and improvements in technology to advance the state of art; and systematically using increases in scientific knowledge and advances in state of art to design, develop, test, or evaluate new products or services.

R&D codes

The R&D code is composed of two alphabetic digits. The first digit is always the letter "A" to identify R&D, the second digit is alphabetic "A to Z" to identify the major sub-group.

Code	**Descriptions**
AA	Agriculture
AB	Community services and development
AC	Defence systems
AD	Defence - other
AE	Economic growth and productivity
AF	Education
AG	Energy
AH	Environmental protection
AJ	General science and technology
AK	Housing

AL	Income security
AM	International affairs and cooperation
AN	Medical
AP	Natural resources
AQ	Social services
AR	Space
AS	Transportation- Modal
AT	Transportation - general
AV	Mining activities
AZ	Other research and development

B Studies and analysis - (not R&D)

Definition of studies and analysis:

Procurement of special studies and analyses are organized, analytic assessments that provide insights for understanding complex issues or improving policy development or decision making. Output obtained in such acquisitions is a formal, structured document including data or other information that form the basis for conclusions or recommendations.

B0	Natural Sciences	
	B000	Chemical/biological studies and analyses
	B001	Endangered species studies - plant and animal
	B002	Animal and fisheries studies
	B003	Grazing/range studies
	B004	Natural resource studies
	B005	Oceanological studies
	B009	Other natural sciences studies
B1	Environmental Studies	
	B100	Air quality analyses
	B101	Environmental studies development of environmental impact statements and assessments
	B102	Soil studies
	B103	Water quality studies
	B104	Wildlife studies
	B109	Other environmental studies
B2	Engineering Studies	
	B200	Geological studies
	B201	Geophysical studies
	B202	Geotechnical studies
	B203	Scientific data studies
	B204	Seismological studies
	B205	Building technology studies
	B206	Energy studies
	B207	Technology studies
	B208	Housing and community development studies (incl. Urban/town planning studies)
	B219	Other engineering studies
B3	Administrative Support Studies	
	B300	Cost benefit analyses
	B301	Data analyses (other than scientific)
	B302	Feasibility studies (non-construction)

	B303	Mathematical/statistical analyses
	B304	Regulatory studies
	B305	Intelligence studies
	B306	Defence studies
	B307	Security studies (physical and personal)
	B308	Accounting/financial management studies
	B309	Trade issue studies
	B310	Foreign policy/national security policy studies
	B311	Organization/administrative/personnel studies
	B312	Mobilization/preparedness studies
	B313	Manpower studies
	B314	Acquisition policy/procedures studies
	B329	Other administrative support studies
B4	Space studies	
	B400	Aeronautic/space studies
B5	Social studies and humanities	
	B500	Archaeological/palaeontological studies
	B501	Historical studies
	B502	Recreation studies
	B503	Medical and health studies
	B504	Educational studies and analyses
	B505	Elderly/handicapped studies
	B506	Economic studies
	B507	Legal studies
	B509	Other studies and analyses

C Architect and engineering services

C1	Architect and engineering services - related to construction	
C11	Building and Facility Structures	
	C111	Administrative and service buildings
	C112	Airfield, communication and missile facilities
	C113	Educational buildings
	C114	Hospital buildings
	C115	Industrial buildings
	C116	Residential buildings
	C117	Warehouse buildings
	C118	Research and development facilities
	C119	Other buildings
C12	Non-Building Structures	
	C121	Conservation and development
	C122	Highways, roads, streets, bridges and railways
	C123	Electric power generation (EPG)
	C124	Utilities
	C129	Other non-building structures
	C130	Restoration
C2	Architect and engineering services - not related to construction	
	C211	Architect - engineer services (incl. landscaping, interior layout and designing)
	C212	Engineering drafting services

C213	A&E inspection services
C214	A&E management engineering services
C215	A&E production engineering services (incl. design and control and building programming)
C216	Marine architect and engineering services
C219	Other architect and engineering services

D Information processing and related telecommunications services

D301	ADP facility operation and maintenance services
D302	ADP systems development services
D303	ADP data entry services
D304	ADP telecommunications and transmission services
D305	ADP teleprocessing and timesharing services
D306	ADP systems analysis services
D307	Automated information system design and integration Services
D308	Programming services
D309	Information and data broadcasting or data distribution Services
D310	ADP backup and security services
D311	ADP data conversion services
D312	ADP optical scanning services
D313	Computer aided design/computer aided manufacturing (CAD/CAM) services
D314	ADP system acquisition support services (Includes preparation of statement of work, benchmarks, specifications, etc.)
D315	Digitizing services (Includes cartographic and geographic information)
D316	Telecommunications network management services
D317	Automated news services, data services, or other information services. buying data (the electronic equivalent of books, periodicals, newspapers, etc.)
D399	Other ADP and telecommunications services (incl. data storage on tapes, compact disk (CD), etc.

E Environmental services

E101	Air quality support services
E102	Industrial investigation surveys and technical support related to air pollution
E103	Water quality support services
E104	Industrial investigation surveys and technical support related to water pollution
E106	Toxic substances support services
E107	Hazardous substance analysis
E108	Hazardous substance removal, cleanup, and disposal services and operational support
E109	Leaking underground storage tank support services
E110	Industrial investigations, surveys and technical support for multiple pollutants
E111	Oil spill response including cleanup, removal, disposal and Operational support
E199	Other environmental services

F Natural resources services

F0	Agriculture and forestry services	
	F001	Forest/range fire suppression/presuppression services (incl. water bombing)
	F002	Forest/range fire rehabilitation services (non-construction)
	F003	Forest tree planting services
	F004	Land treatment practices Services (ploughing/clearing, etc.)
	F005	Range seeding services (ground equipment)
	F006	Crop services (incl. seed collection and production services)
	F007	Seedling production/transplanting services
	F008	Tree breeding services (incl. ornamental shrub)
	F009	Tree thinning services
	F010	Other range/forest improvements services (non-construction)
	F011	Pesticides/insecticides support services
F02	Animal care / control services	
	F020	Other wildlife management services
	F021	Veterinary/animal care services (incl. livestock services)
	F029	Other animal care/control services
F03	Fisheries and ocean services	
	F030	Fisheries resources management services
	F031	Fish hatchery services
F04	Mining	
	F040	Surface mining reclamation services (non-construction)
	F041	Well drilling
	F042	Other services incidental to mining except those listed in F040 and F041
F05	Other natural resources services	
	F050	Recreation site maintenance services (non-construction)
	F051	Survey line clearing services
	F059	Other natural resources and conservation services

G Health and social services

G0	Health services	
	G001	Health care
	G002	Internal medicine
	G003	Surgery
	G004	Pathology
	G009	Other health services
G 1	Social services	
	G100	Care of remains and/or funeral services
	G101	Chaplain services
	G102	Recreational services (incl. Entertainment Services)
	G103	Social rehabilitation services
	G104	Geriatric services
	G199	Other social services

H Quality control, testing, inspection and technical representative services

HO Technical representative services
- H1 Quality control services
- H2 Equipment and materials testing
- H3 Inspection services (incl. commercial testing and laboratory services, except medical/dental)
- H9 Other quality control, testing, inspection and technical representative services

J Maintenance, repair, modification, rebuilding and installation of goods/equipment

JO Maintenance, repair, modification, rebuilding and installation of goods/equipment; includes as examples:

1. Textile finishing, dying and printing
2. Welding services not related to construction (see CPC 5155 for construction welding)

J998 Non-nuclear ship repair (including overhauls and conversions)

K Custodial operations and related services

K0 Personal care services (incl. services such as barber and beauty shop, shoe repairs and tailoring etc.)

K1 Custodial services
- K100 Custodial - janitorial services
- K101 Fire protection services
- K102 Food services
- K103 Fuelling and other petroleum services - excluding storage
- K104 Trash/garbage collection services - including portable sanitation services
- K105 Guard services
- K106 Insect and rodent control services
- K107 Landscaping/groundskeeping services
- K108 Laundry and dry cleaning services
- K109 Surveillance services
- K110 Solid fuel handling services
- K111 Carpet cleaning
- K112 Interior plantscaping
- K113 Snow removal/salt service (also spreading aggregate or other snow melting material)
- K114 Waste treatment and storage
- K115 Preparation and disposal of excess and surplus property
- K116 Other salvage services
- K199 Other custodial and related services

L Financial and related services

- L000 Government life insurance programmes
- L001 Government health insurance programmes
- L002 Other government insurance programmes
- L003 Non-government insurance programmes
- L004 Other insurance services

L005	Credit reporting services
L006	Banking services
L007	Debt collection services
L008	Coin minting
L009	Banknote printing
L099	Other financial services

M Operation of government-owned facilities

M110	Administrative facilities and service buildings
M120	Airfield, communications, and missile facilities
M130	Educational buildings
M140	Hospital buildings
M150	Industrial buildings
M160	Residential buildings
M170	Warehouse buildings
M180	Research and development facilities
M190	Other buildings
M210	Conservation and development facilities
M220	Highways, roads, streets, bridges and railways
M230	Electric power generation (EPG) facilities
M240	Utilities
M290	Other non-building facilities

R Professional, administrative and management support services

R0 Professional services

R001	Specifications development services
R002	Technology sharing/utilization services
R003	Legal services
R004	Certifications and accreditations for products and institutions other than educational institutions
R005	Technical assistance
R006	Technical writing services
R007	Systems engineering services
R008	Engineering and technical services (incl. mechanical, electrical, chemical, electronic engineering)
R009	Accounting services
R010	Auditing services
R011	Ongoing audit operations support
R012	Patent and trade mark services
R013	Real property appraisals services
R014	Operations research studies / quantitative analysis studies
R015	Simulation
R016	Personal services contracts
R019	Other professional services

R1 Administrative and management support services

R100	Intelligence services
R101	Expert witness
R102	Weather reporting/observation services
R103	Courier and messenger services
R104	Transcription services
R105	Mailing and distribution services (excluding post office services)

	R106	Post office services
	R107	Library services
	R108	Word processing/typing services
	R109	Translation and interpreting services (including sign language)
	R110	Stenographic services
	R111	Personal property management services
	R112	Information retrieval (non-automated)
	R113	Data collection services
	R114	Logistics support services
	R115	Contract, procurement, and acquisition support services
	R116	Court reporting services
	R117	Paper shredding services
	R118	Real estate brokerage services
	R119	Industrial hygienics
	R120	Policy review/development services
	R121	Programme evaluation studies
	R122	Programme management/support services
	R123	Programme review/development services
	R199	Other administrative and management support services
R2	Personnel Recruitment	
	R200	Military personnel recruitment
	R201	Civilian personnel recruitment (incl. services of employment agencies)

S Utilities

S000	Gas services
S001	Electric services
S002	Telephone and/or communications services (incl. telegraph, telex and cablevision service)
S003	Water services
S099	Other utilities

T Communications, photographic, mapping, printing and publication services

T000	Communications studies
T001	Market research and public opinion services (formerly telephone and field interview services incl. focus testing, syndicated and attitude surveys)
T002	Communications services (incl. exhibit services)
T003	Advertising services
T004	Public relations services (incl. writing services, event planning and management, media relations, radio and TV analysis, press services)
T005	Arts/graphics services
T006	Cartography services
T007	Charting services
T008	Film processing services
T009	Film/video tape production services
T010	Microfiche services
T011	Photogrammetry services
T012	Aerial photographic services
T013	General photographic services - still
T014	Print/binding services

T015	Reproduction services
T016	Topography services
T017	General photographic services - motion
T018	Audio/visual services
T019	Land surveys, cadastral services (non-construction)
T099	Other communication, photographic, mapping, printing and publication services

U Educational and Training Services

U001	Lectures for training
U002	Personnel testing
U003	Reserve training (military)
U004	Scientific and management education
U005	Tuition, registration, and membership fees
U006	Vocational/technical
U007	Faculty salaries for schools overseas
U008	Training/curriculum development
U009	Informatics training
U010	Certifications and accreditations for educational institutions
U099	Other education and training services

V Transportation, Travel and Relocation Services

V0 Land transport services

V000	Motor pool operations
V001	Motor freight
V002	Rail freight
V003	Motor charter for things
V004	Rail charter for things
V005	Motor passenger service
V006	Rail passenger service
V007	Passenger motor charter service
V008	Passenger rail charter service
V009	Ambulance service
V010	Taxicab services
V011	Security vehicle service

V1 Water transport services

V100	Vessel freight
V101	Marine charter for things
V102	Marine passenger service
V103	Passenger marine charter service

V2 Air transport services

V200	Air freight
V201	Air charter for things
V202	Air passenger service
V203	Passenger air charter service
V204	Specialty air services including aerial fertilization, spraying and seeding

V3 Space transportation and launch services

V4 Other transport services

	V401	Other transportation travel and relocation services
	V402	Other cargo and freight services
	V403	Other vehicle charter for transportation of things
V5	Supporting and auxiliary transport services	
	V500	Stevedoring
	V501	Vessel towing service
	V502	Relocation services
	V503	Travel agent services
	V504	Packing/crating services
	V505	Warehousing and storage services
	V506	Salvage of marine vessels
	V507	Salvage of aircraft
	V508	Navigational aid and pilotage services

W Lease and rental of equipment

	WO	Lease or rental of equipment

ANNEX 15-02(6)

Construction Services

Without prejudice to the coverage provided for in Chapter X (General Principles on Trade in Services), this Chapter shall apply to all construction services no later than one year after the entry into force of this Agreement. For these purposes, the Parties shall establish a workgroup that will continue reviewing relevant technical issues, including the common classification system for construction services.

APPENDIX TO ANNEX 15-02(6)

Common Classification System for Construction Services

Note: Based on the United Nations Central Product Classification (CPC) Division 51.

For the purposes of this Chapter, construction services mean any pre-erection work; new construction and repair, alteration, restoration and maintenance work on residential buildings, non-residential buildings or civil engineering works. This work can be carried out either by general contractors who do the complete construction work for the owner of the project, or on own account; or by subcontracting parts of the construction work to contractors specializing, e.g., in installation work, where the value of work done by subcontractors becomes part of the main contractor s work. The products classified here are services which are essential in the production process of the different types of constructions, the final output of construction activities.

Code	**Descriptions**
511	Pre-erection work at construction sites
5111	Site investigation work
5112	Demolition work
5113	Site formation and clearance work
5114	Excavating and earthmoving work
5115	Site preparation work for mining (except for mining of oil and gas).
5116	Scaffolding work

512	Construction work for buildings
5121	For one and two dwelling buildings
5122	For multi-dwelling buildings
5123	For warehouses and industrial buildings
5124	For commercial buildings
5125	For public entertainment buildings
5126	For hotel, restaurant and similar buildings
5127	For educational buildings
5128	For health buildings
5129	For other buildings
513	Construction work for civil engineering
5131	For highways (except elevated highways), streets , roads, railways and airfield runways
5132	For bridges, elevated highways, tunnels ,subways and railroads
5133	For waterways, harbours, dams and other water works
5134	For long distance pipelines, communication and power lines (cables)
5135	For local pipelines and cables; ancillary works
5136	For constructions for mining and manufacturing
5137	For constructions for sport and recreation
5138	Dredging services
5139	For engineering works n.e.c.
514	Assembly and erection of prefabricated construction
515	Special trade construction work
5151	Foundation work, including pile driving
5152	Water well drilling
5153	Roofing and water proofing
5154	Concrete work
5155	Steel bending and erection, including welding
5156	Masonry work
5159	Other special trade construction work
516	Installation work
5161	Heating, ventilation and air conditioning work
5162	Water plumbing and drain laying work
5163	Gas fitting construction work
5164	Electrical work
5165	Insulation work (electrical wiring, water, heat, sound)
5166	Fencing and railing construction work
5169	Other installation work
517	Building completion and finishing work
5171	Glazing work and window glass installation work
5172	Plastering work
5173	Painting work
5174	Floor and wall tiling work
5175	Other floor laying, wall covering and wall papering work
5176	Wood and metal joinery and carpentry work
5177	Interior fitting decoration work
5178	Ornamentation fitting work
5179	Other building completion and finishing work
518	Renting services related to equipment for construction

ANNEX 15-02(7)

Indexation and Conversion of Thresholds

1. The calculations referred to in Article 15-02 (1) (c) shall be made in accordance with the following:

(a) The U.S. inflation rate shall be measured by the Producer Price Index for Finished Goods published by the U.S. Bureau of Labour Statistics;

(b) the first adjustment for inflation, to take effect on 1 January 2000, shall be calculated using the period from 1 November 1997 through 31 October 1999;

(c) all subsequent adjustments shall be calculated using two-year periods, each period beginning 1 November and shall take effect on 1 January of the year immediately following the end of the two-year period; and

(d) the inflationary adjustment shall be estimated according to the following formula:

$$T_0 \times (1+p_i) = T_1$$

where:

T_0 = threshold value at base period;

P_i = accumulated U.S. inflation rate for the ith two year-period; and

T_1 = new threshold value.

2. The exchange rate to be used in calculating threshold values for the purposes of this Chapter shall be the current value of the Mexican peso and the Nicaraguan córdoba in relation to the United States dollar as of 1 December and 1 June each year, or the first working day thereafter. The conversion rate as of 1 December shall apply from 1 January to 30 June of the following year, and the conversion rate as of 1 June shall apply from 1 July to 31 December of that year. The Parties shall calculate and convert the value of the thresholds into their own currencies. These calculation shall be based on the official exchange rates of the Banc of Mexico (Banco de México) and the Central Bank of Nicaragua.

ANNEX 15-02(8)

Transitional Provisions

Notwithstanding any other provision of this Chapter, Annexes 15-02 (1) through (6) are subject to the following:

Schedule of Mexico

Petróleos Mexicanos (PEMEX), Federal Electricity Commission (CFE) and non-energy construction

1. Mexico may set aside from the obligations of this Chapter for a calendar year set out in paragraph 2, the percentage specified in that paragraph of:

(a) The total value of procurement contracts for goods and services and any combination thereof and construction services procured by Pemex in the year that are above the thresholds set out in Article 15-02 (1) (c);

(b) the total value of procurement contracts for goods and services and any combination thereof and construction services procured by CFE in the year that are above the thresholds set out in 15-02 (1) (c);

(c) the total value of procurement contracts for construction services procured in the year that are above the thresholds set out in Article 15-02 (1) (c), excluding procurement contracts for construction services procured by Pemex and CFE.

2. The calendar years to which paragraph 1 applies, and the percentages for those calendar years, are as follows:

1998	**1999**	**2000**
40%	35%	35%

2001	**2002**	**2003 and thereafter**
30%	30%	0%

3. The value of procurement contracts that are financed by loans from regional and multilateral financial institutions shall not be included in the calculation of the total value of procurement contracts under paragraphs 1 and 2. Procurement contracts that are financed by such loans shall also not be subject to any restrictions set out in this Chapter.

4. Mexico shall ensure that the total value of procurement contracts under any single class of products that are set aside by Pemex or CFE under paragraphs 1 and 2 for any year does not exceed 10 per cent of the total value of the procurement contracts that may be set aside by Pemex or CFE for that year.

Pharmaceuticals

5. Until 1 January 2002, this Chapter shall not apply to the procurement by the Secretaría de Salud, IMSS, ISSSTE, Secretaría Defensa Nacional and the Secretaría de Marina of drugs that are not currently patented in Mexico or whose Mexican patents have expired. Nothing in this paragraph shall prejudice rights under Chapter XVII (Intellectual Property).

Schedule of Nicaragua

Empresa Nicaragüense de Electricidad (ENEL) and the Instituto Nicaragüense de Acueductos y Alcantarillados (INAA) and non-energy construction

1. Nicaragua may set aside from the obligations of this Chapter for a calendar year set out in paragraph 2, the percentage specified in that paragraph of:

(a) The total value of procurement contracts for goods and services and any combination thereof, construction services procured by ENEL and INAA, and non-energy construction in the year that are above the thresholds set out in Article 15-02 (1)(c); and

(b) the total value of construction services procured in the year that are above the thresholds set out in Article 15-02 (1)(c), excluding construction services procured by ENEL and INAA.

2. The years to which paragraph 1 applies and the percentages for those years are as follows:

1998	**1999**	**2000**
40%	35%	35%

2001	**2002**	**2003 and thereafter**
30%	30%	0%

3. The value of procurement contracts that are financed by loans from regional and multilateral financial institutions shall not be included in the calculation of the total value of procurement contracts under paragraphs 1 and 2. Procurement contracts that are financed by such loans shall also not be subject to any restrictions set out in this Chapter.

4. Nicaragua shall ensure that the total value of procurement contracts in a given product category that are set aside by ENEL and INAA or the non-energy construction sector under paragraphs 1 and 2, for any year, does not exceed 10 per cent of the total value of the procurement contracts that may be set aside by ENEL and INAA or the non-energy construction sector for that year.

Pharmaceuticals

5. Until 1 January 2002, this Chapter shall not apply to the procurement by the Ministerio de Salud, Instituto Nicaragüense de Seguridad Social and Ministerio de Gobernación for drugs that are not currently patented in Nicaragua or whose Nicaraguan patents have expired. Nothing in this paragraph shall prejudice rights under Chapter XVII (Intellectual Property).

Thresholds applicable to the procurement of goods and services by central government entities.

6. Nicaragua shall apply the following thresholds expressed in United States dollars for goods and services purchased by the entities listed in Annex 15-02(1).

Thousands of dollars

1998	**1999**	**2000**	**2001**	**2002**	**2003 and thereafter**
100	90	80	70	60	50

ANNEX 15-02(9)

General Notes

Schedule of Mexico

1. This Chapter does not apply to procurements made:

(a) With a view to commercial resale by government- owned retail stores;

(b) pursuant to loans from regional or multilateral financial institutions to the extent that different procedures are imposed by such institutions (except for national content requirements); or

(c) by one entity from another entity of Mexico.

2. This Chapter does not apply to the procurement of transportation services that form a part of, or are incidental to, a procurement contract.

3. National security exceptions include procurements made in support of safeguarding nuclear materials or technology.

4. Notwithstanding any other provision in this Chapter, Mexico may set aside procurement contracts from the obligations of this Chapter, subject to the following:

(a) The total value of the contracts set aside by Pemex and CFE under this paragraph may not exceed the Mexican peso equivalent of:

(i) US$1 billion in each year up to 31 December 2002; and

(ii) US$1.2 billion in each year beginning 1 January 2003;

(b) no contract may be set aside under this paragraph by Pemex or CFE prior to 1 January 2003;

(c) the total value of the contracts set aside by Pemex and CFE under this paragraph may not exceed the Mexican peso equivalent of US$300 million, in each year beginning 1 January 2003;

(d) the total value of contracts under any single Federal Supply Classification (FSC) class, or other classification system agreed by the Parties, that may be set aside under this paragraph in any year shall not exceed 10 per cent of the total value of contracts that may be set aside under this paragraph for that year; and

(e) no entity subject to subparagraph (a) may set aside contracts in any year of a value of more than 20 per cent of the total value of contracts that may be set aside for that year.

The values indicated in subparagraphs (a) and (c) are for 1994. Accordingly they should be updated pursuant to paragraph 5.

5. Effective 1 January 2000, the dollar values mentioned in paragraph 4 shall be adjusted annually in line with cumulative inflation since November 1, 1997, based on the implicit price deflator for the U.S. Gross Domestic Product (GDP) or any successor index published by the Council of Economic Advisors in "Economic Indicators". The dollar values adjusted for cumulative inflation up to January of each year following 1999 shall be equal to the original dollar values multiplied by the ratio of:

(a) The implicit GDP price deflator or any successor index published by the Council of Economic Advisors in "Economic Indicators", current as of January of that year; to

(b) the implicit GDP price deflator or any successor index published by the Council of Economic Advisors in "Economic Indicators", valid as of November 1, 1997, provided the price deflators indicated in subparagraphs (a) and (b) have the same base year.

The resulting adjusted dollar values shall be rounded to the nearest million dollars.

6. Notwithstanding any other provision of this Chapter, an entity may impose a local content requirement of no more than:

(a) 40 per cent, for labour-intensive turnkey or major integrated projects; or

(b) 25 per cent, for capital-intensive turnkey or major integrated projects.

For the purposes of this paragraph, a 'turnkey or major integrated project' means, in general, a construction, supply or installation project undertaken by a person pursuant to a right granted by an entity, with respect to which:

(a) The prime contractor is vested with the authority to select the general contractors or subcontractors;

(b) neither the Government of Mexico nor its entities fund the project;

(c) the person bears the risks associated with non-performance; and

(d) the facility will be operated by an entity or through a procurement contract of that entity.

7. In the event that Mexico exceeds in any given year the total value of the contracts it may set aside for that year in accordance with paragraph 4 or the reserved procurement under paragraphs 1, 2 or 4 of Annex 15-02(8), Mexico shall consult with the other Parties with a view to agreement on compensation in the form of additional procurement opportunities during the following year. The consultations shall be without prejudice to the rights of either Party under Chapter XX (Dispute Settlement).

Schedule of Nicaragua

1. This Chapter does not apply to procurements made:

(a) With a view to commercial resale by government owned retail stores;

(b) pursuant to loans from regional or multilateral financial institutions to the extent that different procedures are imposed by such institutions (except for national content requirements); or

(c) by one entity from another entity of.

2. This Chapter does not apply to the procurement of transportation services that form a part of, or are incidental to, a procurement contract.

3. National security exceptions include procurements made in support of safeguarding nuclear materials or technology.

4. Notwithstanding any other provision in this Chapter, Nicaragua may set aside procurement contracts from the obligations of this Chapter, for an amount equivalent to 5.5 per cent of its total annual procurements.

5. Notwithstanding any other provision of this Chapter, an entity may impose a local content requirement of no more than:

(a) 40 per cent, for labour-intensive turnkey or major integrated projects; or

(b) 25 per cent, for capital-intensive turnkey or major integrated projects.

For the purposes of this paragraph, a 'turnkey or major integrated project' means, in general, a construction, supply or installation project undertaken by a person pursuant to a right granted by an entity with respect to which:

(a) The prime contractor is vested with the authority to select the general contractors or subcontractors;

(b) neither the Government of Nicaragua nor its entities fund the project;

(c) the person bears the risks associated with non-performance; and

(d) the facility will be operated by an entity or through a procurement contract of that entity.

6. In the event that Nicaragua exceeds in any given year the total value of the contracts it may set aside for that year in accordance with paragraph 3 or the reserved procurement under paragraphs 1, 2 or 4 of the Schedule of Nicaragua in Annex 15-02(8), Nicaragua shall consult with the other Parties with a view to agreement on compensation in the form of additional procurement opportunities during the following year. The consultations shall be without prejudice to the rights of either Party under Chapter XX (Dispute Settlement).

ANNEX 15-19(1)

Publications for Notices of Procurement

Schedule of Mexico

The specialized section the Official Gazette of the Federation (Diario Oficial de la Federación).

List of Nicaragua

1. Two daily newspapers of national circulation

2. Nicaragua shall endeavour to establish a specialized publication for the purposes of notices of procurement, no later than two years following the entry into force of this Agreement. When established, that publication shall substitute for those referred to in paragraph 1.

ANNEX 15-19(2)

Publications for Measures

Schedule of Mexico

1. Official Gazette of the Federation (Diario Oficial de la Federación).

2. Judicial Weekly of the Federation (Semanario Judicial de la Federación) (for precedential judicial decisions only).

Schedule of Nicaragua

1. Official Gazette (La Gaceta, Diario Oficial).

2. Nicaragua shall endeavour to establish a specialized publication for the purposes of the information mentioned in Article 15-19 (1). When established, that publication shall substitute for those referred to in paragraph 1.

PART SIX: INVESTMENT

CHAPTER XVI: INVESTMENT

Section A - Investment

Article 16-01

Definitions

For the purposes of this Chapter:

ICSID means the International Center for the Settlement of Investment Disputes;

ICSID Convention means the Convention on the Settlement of Investment Disputes between States and Nationals of Other States, done at Washington, 18 March 1965;

Inter-American Convention means the Inter-American Convention on International Commercial Arbitration, done at Panama, 30 January 1975;

New York Convention means the United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards, done at New York, 10 June 1958;

claim means the claim made by the disputing investor, based on a presumed violation of the provisions of this Chapter;

enterprise of a Party means an enterprise of a Party and a branch located in the territory of a Party and carrying out business activities there;

investment includes:

(a) An enterprise;

(b) shares in an enterprise;

(c) debt securities of an enterprise :

  (i) where the enterprise is an affiliate of the investor; or

  (ii) where the original maturity of the debt security or loan is at least three years, but does not include a debt security of a state enterprise, regardless of original maturity;

(d) a loan to an enterprise:

  (i) where the enterprise is an affiliate of the investor; or

  (ii) where the original maturity of the loan is at least three years, but does not include a loan to a state enterprise, regardless of original maturity;

(e) an interest in an enterprise that entitles the owner to share in income or profits of the enterprise;

(f) an interest in an enterprise that entitles the owner to share in the assets of that enterprise on dissolution, other than a debt security or a loan excluded from subparagraph (c) or (d);

(g) real estate;

(h) other property, tangible or intangible, acquired in the expectation, or used for the purpose, of economic benefit or other business purposes;

(i) interests arising from the commitment of capital or other resources in the territory of a Party to economic activity in such territory, such as under:

(i) contracts involving the presence of an investor's property in the territory of the Party, including turnkey or construction contracts, or concessions; or

(ii) contracts where remuneration depends substantially on the production, revenues or profits of an enterprise; and

(j) a loan to a financial institution or a debt instrument issued by a financial institution, except in the case of a loan to a financial institution that is treated as regulatory capital by the Party in whose territory the institution is located;

but investment does not mean:

(k) monetary claims that do not involve the kinds of interests set out in the subparagraphs that define investment, arising solely from:

(i) commercial contracts for the sale of goods or services by a national or enterprise in the territory of a Party to an enterprise in the territory of the other Party; or

(ii) the extension of credit in connection with a commercial transaction, such as trade financing, other than a loan covered by subparagraph (d);

(l) any other monetary claim that does not involve the kinds of interests set out in the subparagraphs defining investment;

investment of an investor of a Party means an investment owned or controlled directly or indirectly by an investor of such Party;

investor of a Party means a Party or state enterprise thereof, or a national or an enterprise of such Party, that seeks to make, is making or has made an investment;

disputing investor means an investor that makes a claim under Section B;

disputing Party means the Party against which a claim is made under Section B;

disputing party means the disputing investor or the disputing Party;

disputing parties means the disputing investor and the disputing Party;

UNCITRAL Arbitration Rules means the arbitration rules of the United Nations Commission on International Trade Law, approved by the United Nations General Assembly on 15 December 1976.

Secretary-General means the Secretary-General of ICSID;

transfers means international transfers and payments;

tribunal means an arbitration tribunal established under Article 16-21; and

consolidation tribunal means an arbitration tribunal established under Article 16.27.

Article 16-02

Scope and coverage

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

   (a) The investors of the other Party in all matters relating to their investment;

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

   (c) with respect to Article 16-05, all investments in the territory of the Party.

2. This Chapter does not apply to:

   (a) Economic activities reserved for each Party, pursuant to its current legislation on the date of entry into force of this Agreement, which shall be listed in Annex 16-02 no later than one year after the entry into force of this Agreement;

   (b) any measure on financial services adopted or maintained by a Party pursuant to Chapter XII (Financial Services), to the extent that such measure is covered by that Chapter; or

   (c) measures adopted by a Party to restrict the participation of investments of investors of the other Party in its territory for reasons of public policy or national security.

Article 16-03

National Treatment

1. Each Party shall accord to investors of the other Party, and to the investments of the investors of the other Party, treatment no less favourable than that it accords, in similar circumstances, to its own investors and the investments of those investors.

2. Each Party shall accord to investors of the other Party non-discriminatory treatment with respect to measures it adopts or maintains relating to losses suffered by investments in its territory owing to armed conflict, civil strife, acts of God or *force majeure*.

Article 16-04

Most-Favoured-Nation Treatment

1. Each Party shall accord to investors of the other Party, and to the investments of the investors of the other Party, treatment no less favourable than that it accords, in similar circumstances, to the investors and investments of the investors of the other Party or a non-Party, except as provided in paragraph 2.

2. Where a Party has granted special treatment to the investors and investments of the investors of a non-Party, under agreements establishing free trade zones, customs unions, common markets, economic or monetary unions, and similar institutions, and arrangements to avoid double taxation, the Party shall not be required to provide special treatment to the investors or the investments of the investors of the other Party.

Article 16-05

Performance Requirements

1. Neither Party may impose or enforce any of the following requirements or commitments in connection with an investment in its territory:

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

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

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

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

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

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

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

This paragraph does not apply to any requirement other than those set out herein.

2. Neither Party may condition the receipt or continued receipt of an advantage, in connection with an investment in its territory, on compliance with any of the following requirements:

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

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

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

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

This paragraph does not apply to any requirement other than those set out herein.

3. Nothing in this Article shall be construed to prevent a Party from imposing, in connection with an investment in its territory, a requirement to locate production, train or employ workers, or carry out research and development, in its territory.

Article 16-06

Senior Management and Boards of Directors

A Party may impose restrictions on the number or proportion of foreign nationals that can work in, or fulfil senior management functions in an enterprise, in accordance its laws, provided such restrictions do not impede or obstruct the ability of the investor to exercise control over its investment.

Article 16-07

Reservations and Exceptions

1. Articles 16-03 through 16-06 do not apply to any non-conforming measure maintained or adopted by a Party, at any level of government. Within one year of the date of entry into force of this Agreement, the Parties shall set out such measures in their Schedules to Annex 16-07. Any non-conforming measure adopted by a Party following the entry into force of this Agreement, may not be less conforming than those existing when the measure is introduced.

2. Articles 16-03, 16-04 and 16-06 do not apply to:

(a) Procurement by a Party or a state enterprise; or

(b) subsidies or grants provided by a Party or a state enterprise, including government supported loans, guarantees and insurance, except as provided in Article 16-03 (2).

3. The provisions of:

(a) Articles 16-05 (1)(a), (b) and (c), and (2)(a) and (b) do not apply to qualification requirements for goods or services with respect to export promotion programmes;

(b) Articles 16-05 (1)(b), (c), (f) and (g), and (2)(a) and (b) do not apply to procurement by a Party or a state enterprise; and

(c) Articles 16-05 (2)(a) and (b) do not apply to requirements imposed by an importing Party relating to the content of goods necessary to qualify for preferential tariffs or preferential quotas.

Article 16-08

Transfers

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

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

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

(c) payments made under a contract entered into by the investor or its investment;

(d) payments in compensation for expropriation pursuant to Article 16-09; or

(e) proceeds from a dispute settlement procedure pursuant to section B.

2. Each Party shall permit transfers to be made in a freely convertible currency, at the market exchange rate prevailing on the date of transfer for spot transactions in the currency to be transferred, without prejudice to Article 13-18.

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

4. Notwithstanding paragraphs 1 and 2, a Party may establish mechanisms to prevent transfers, through the fair and non-discriminatory application of its laws, in cases of:

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

(b) issuing, trading or dealing in securities;

(c) criminal or administrative offences;

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

(e) ensuring the execution of judgements and rulings handed down in dispute proceedings; or

(f) establishing the instruments or mechanisms needed to ensure the payment of income tax, through measures such as withholding of the corresponding amount from dividends and other items.

Article 16-09

Expropriation and Compensation

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

(a) For a public purpose;

(b) on a non-discriminatory basis;

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

(d) on payment of compensation in accordance with paragraphs 2 through 4.

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

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

4. The amount paid shall be no less than the equivalent of what would have been paid in a currency that is freely convertible on the international financial market, on the date of expropriation, if such currency had been converted at the market rate of exchange prevailing on that date, plus any interest that would have accrued at a commercially reasonable rate for that currency chosen by the Party, in accordance with international parameters, until the date of payment.

Article 16-10

Special Formalities and Information Requirements

1. Nothing in Article 16-03 shall be construed to prevent a Party from adopting or maintaining a measure that prescribes special formalities in connection with the establishment of investments by investors of the other Party, such as that investments be legally constituted under the laws or regulations of the Party, provided that such formalities do not materially impair the protections afforded by a Party pursuant to this Chapter.

2. Notwithstanding Articles 16-03 or 16-04, a Party may require an investor of the other Party, or its investment in its territory, to provide routine information concerning that investment solely for informational or statistical purposes. The Party shall protect such business information that is confidential from any disclosure that would prejudice the competitive position of the investor or the investment.

Article 16-11

Relation to Other Chapters

In the event of any inconsistency between this Chapter and another Chapter, the other Chapter shall prevail to the extent of the inconsistency.

Article 16-12

Denial of Benefits

Subject to prior notification and consultation with the other Party, a Party may deny the benefits of this Chapter to an investor of the other Party that is an enterprise of such Party and to investments of such investors, where the Party determines that investors of a non-Party own or control the enterprise and the enterprise has no substantial business activities in the territory of the Party under whose law it is constituted or organized.

Article 16-13

Extra-Territorial Application of the Legislation of a Party

1. A Party may not exercise jurisdiction or adopt any measure that results in the extra-territorial application of its legislation, or obstruct trade between the Parties, or between a Party and a non-Party,

in relation to the investments of its investors constituted and organized under the laws and regulations of the other Party.

2. Should either of the Parties fail to comply with paragraph 1, the Party in whose territory the investment has been constituted, may, at its discretion, adopt such measures and take such actions as it considers necessary, to render without effect the legislation or measure in question and any trade barriers arising therefrom.

Article 16-14

Environmental Measures

1. Nothing in this Chapter shall be construed to prevent a Party from adopting, maintaining or enforcing any measure otherwise consistent with this Chapter that it considers appropriate to ensure that investment activity in its territory observes environmental legislation.

2. The Parties recognize that it is inappropriate to encourage investment by relaxing domestic health, safety or environmental measures. Accordingly, a Party should not waive , or offer to waive such measures as an encouragement for the establishment, acquisition, expansion or retention of an investment in its territory. If a Party considers that the other Party has offered such an encouragement, it may request consultations with the other Party.

Article 16-15

Investment Promotion and Exchange of Information

1. With the aim of significantly increasing reciprocal participation in investment, the Parties shall prepare documents to promote investment opportunities and design mechanisms to disseminate them; the Parties shall also maintain and upgrade financial mechanisms to make the investments of a Party viable in the territory of the other Party.

2. The Parties shall publish detailed information on:

(a) Investment opportunities in their territory, which could be developed by investors of the other Party;

(b) opportunities for strategic partnerships between investors of the Parties, through research and compilation of interests and partnership opportunities; and

(c) investment opportunities in specific economic sectors that are of interest to the Parties and their investors, following an explicit request made by either of the Parties.

3. The Parties shall keep each other informed and up-to-date regarding:

(a) The investment opportunities referred to in paragraph 2, including the dissemination of available financial instruments that help to increase investment in the territory of the Parties;

(b) laws, regulations or provisions that directly or indirectly affect foreign investment, including exchange rate and tax regimes; and

(c) the behaviour of foreign investment in their respective territories.

Article 16-16

Double Taxation

In order to promote investments within their respective territories by eliminating fiscal barriers and overseeing tax compliance via the exchange of tax data, the Parties shall enter into negotiations aimed at signing agreements to prevent double taxation, pursuant to a calendar established between the competent authorities of the Parties.

Section B - Settlement of Disputes Between a Party and an Investor of the Other Party

Article 16-17

Purpose

This Section sets out a mechanism for settling legal disputes between a Party and an investor of the other Party arising from the breach of an obligation under Section A of this Chapter. The mechanism applies to events that occurred after this Agreement has entered into force, and assures both equal treatment among investors of the Parties, in accordance with the principle of reciprocity, and proper observance of the safeguards of public hearing and defence as part of a due process of law before an impartial tribunal.

Article 16-18

Claim by an Investor of a Party on Behalf of an Enterprise

1. Pursuant to this section, an investor of a Party, on its own account or on behalf of an enterprise of the other Party that is a juridical person owned or directly or indirectly controlled by the investor, may submit to arbitration under this Section a claim on the grounds that the other Party, or an enterprise controlled directly or indirectly by that Party, has breached an obligation under this Chapter, whenever the enterprise has suffered losses or injury by reason of or arising from that violation.

2. An investor may not make a claim under this Section, if more than three years have elapsed from the date on which the investor first acquired, or should have first acquired, knowledge of the alleged breach and knowledge that the investor has incurred loss or damage.

3. Where an investor makes a claim on behalf of an enterprise that is a juridical person under its ownership or under its direct or indirect control, and a non-controlling investor in the enterprise makes a claim on its own account arising out of the same events, or two or more of the claims are submitted to arbitration with regard to the same measure adopted by a Party, the claims should be heard together by a consolidation tribunal, unless the consolidation tribunal finds that the interests of a disputing Party would be prejudiced thereby.

4. An investment may not submit a claim to arbitration under this Section.

Article 16-19

Settlement of a Claim through Consultation and Negotiation

The disputing parties shall first attempt to settle a claim through consultation or negotiation.

Article 16-20

Notice of Intent to Submit a Claim to Arbitration

The disputing investor shall deliver to the disputing Party written notice of its intention to submit a claim to arbitration at least 90 days before the claim is submitted. Such notice shall specify:

(a) The name and address of the disputing investor and, where a claim is made on behalf of an enterprise, the name and address of that enterprise;

(b) the provisions of this Chapter that are alleged to have been breached and any other relevant provisions;

(c) the factual basis for the claim; and

(d) the relief sought and the approximate amount of damages claimed.

Article 16-21

Submission of a Claim to Arbitration

1. Provided that six months have elapsed since the events giving rise to the claim, a disputing investor may submit the claim to arbitration under:

(a) The ICSID Convention, provided that both the disputing Party and the Party of the investor are parties to that Convention;

(b) the Additional Facility Rules of ICSID, provided that either the disputing Party or the Party of the investor, but not both, is a party to the ICSID Convention; or

(c) the UNCITRAL Arbitration Rules.

2. When an enterprise of a Party that is a juridical person owned or controlled, directly or indirectly, by an investor of the other Party, alleges in proceedings before a judicial or administrative tribunal that the other Party has breached an obligation under section A, the investor or investors of that enterprise may not present the claim in arbitration proceedings under section B.

3. Except as provided by Article 16-27, and provided that both the disputing Party and the disputing investor's Party are States Parties of the ICSID Convention, any dispute between them shall be subject to paragraph 1 (a).

4. The arbitration rules chosen under this Chapter shall be applicable, except as modified by this Section.

Article 16-22

Conditions Precedent to Submission of a Claim to Arbitration

1. A disputing investor, on its own account, and an investor acting on behalf of an enterprise, may submit a claim to arbitration under this section only if:

(a) When acting on its own account, the investor consents to arbitration in accordance with the terms and procedures set out in this section;

(b) when the investor is acting on behalf of an enterprise, both the investor and the enterprise agreed to submit to arbitration under the terms and procedures established in this section; and

(c) both the investor and an enterprise of the other Party waive their right to initiate or continue before any administrative tribunal or court of either Party, any proceedings with respect to the measure that is alleged to be a breach of the provisions of this Chapter, unless administrative remedies before the executing authorities of the measure that is alleged to be a breach are exhausted, as provided for under the disputing Party's law.

2. The consent and waiver required by this Article shall be in writing, shall be delivered to the disputing Party and shall be included in the submission of the claim to arbitration.

Article 16-23

Consent to Arbitration

1. Each Party consents to the submission of a claim to arbitration in accordance with the procedures and requirements set out in this Agreement.

2. The submission by a disputing investor of a claim to arbitration shall satisfy the requirement of:

(a) Chapter II of the ICSID Convention (Jurisdiction of the Centre) and the Additional Facility Rules for written consent of the Parties;

(b) Article II of the New York Convention for an agreement in writing; and

(c) Article I of the Inter-American Convention for an agreement.

Article 16-24

Number of Arbitrators and Method of Appointment

Except as provided by Article 16-27, and unless the disputing parties agree otherwise, the arbitral tribunal shall comprise three arbitrators, one arbitrator appointed by each of the disputing parties and a third, who shall be the presiding arbitrator, appointed by agreement of the disputing parties, but not a national of either Party.

Article 16-25

Constitution of a Tribunal When a Party Fails to Appoint an Arbitrator or the Disputing Parties Are Unable to Agree on a Presiding Arbitrator

1. The Secretary-General shall serve as appointing authority for an arbitration under this Section.

2. If a tribunal, other than a tribunal established under Article 16-27, has not been constituted within 90 days from the date that a claim is submitted to arbitration, the Secretary-General, on the request of any of the disputing parties, shall appoint the arbitrator or arbitrators not yet appointed, at his discretion, except that the presiding arbitrator shall be appointed in accordance with paragraph 3.

3. The Secretary-General shall appoint the presiding arbitrator from the roster of presiding arbitrators referred to in paragraph 4, provided that the presiding arbitrator shall not be a national of the disputing Party or a national of the Party of the disputing investor. In the event that no such presiding arbitrator is available to serve, the Secretary-General shall appoint, from the ICSID Panel of

Arbitrators, a presiding arbitrator who neither a national of the disputing Party nor a national of the Party of the disputing investor.

4. On the date of entry into force of this Agreement, the Parties shall establish, and thereafter maintain, a roster of five presiding arbitrators meeting the qualifications of the Convention and rules mentioned in Article 16-21 and experienced in international law and investment matters. The roster members shall be appointed by consensus and without regard to nationality.

Article 16-26

Agreement to Appointment of Arbitrators

For the purposes of Article 39 of the ICSID Convention and Article 7 of Schedule C to the ICSID Additional Facility Rules, and without prejudice to an objection to an arbitrator based on Article 16-25 (3) or on a ground other than nationality:

(a) The disputing Party agrees to the appointment of each individual member of a tribunal established under the ICSID Convention or the ICSID Additional Facility Rules; and

(b) a disputing investor, either on its own account or on behalf of an enterprise, may submit a claim to arbitration, or continue a claim, under the ICSID Convention or the ICSID Additional Facility Rules, only on condition that the disputing investor, and where appropriate the enterprise that it represents, agree in writing to the appointment of each individual member of the tribunal.

Article 16-27

Consolidation

1. A tribunal established pursuant this Article shall be established under the UNCITRAL Arbitration Rules and shall conduct its proceedings in accordance with those Rules, except as modified by this Section.

2. Where a consolidation tribunal is satisfied that the claims submitted to arbitration under Article 16-22 have a question of law or fact in common, the consolidation tribunal may, in the interests of fair and efficient resolution of the claims, and after hearing the disputing Parties, assume jurisdiction over, and hear and determine:

(a) All or part of the claims together; or

(b) one or more of the claims, the determination of which it believes would assist in the resolution of the others.

3. A disputing Party that seeks a consolidation order under paragraph 2 shall request the Secretary-General to establish a consolidation tribunal and shall specify in the request:

(a) The name and address of the disputing Parties against which the order is sought;

(b) the nature of the order sought; and

(c) the grounds on which the order is sought.

4. Within 60 days of receipt of the request, the Secretary-General shall establish a tribunal comprising three arbitrators. The Secretary-General shall appoint the presiding arbitrator from the roster referred to in Article 16-25 (4), who shall not be a national of the disputing Party or the national

of the Party of the disputing investor. In the event that no such presiding arbitrator is available to serve, the Secretary-General shall appoint, from the ICSID Panel of Arbitrators, a presiding arbitrator, who shall not be a national of the disputing Party or a national of the Party of the disputing investor. The Secretary-General shall appoint the two other members from the roster referred to in Article 16-25 (4), and to the extent not available from that roster, from the ICSID Panel of Arbitrators, and to the extent not available from that Panel, at the discretion of the Secretary-General. One member shall be a national of the disputing Party and the other member shall be a national of a Party of the disputing investors.

5. Where a consolidation tribunal has been established, the disputing investor that has submitted a claim to arbitration and that has not been named in a request made under paragraph 3 may make a written request to the consolidation tribunal that it be included in an order made under paragraph 2, and shall specify in the request:

(a) The name and address of the disputing investor, and, where appropriate, the name or trade name, and address of the enterprise.

(b) the nature of the consolidation order sought; and

(c) the grounds on which the order is sought.

6. The consolidation tribunal shall provide, at the interested investor's expense, a copy of the consolidation request to all disputing investors against which the accumulation agreement is requested.

7. A tribunal established under Article 16-21 shall not have jurisdiction to decide a claim, or a part of a claim, over which a consolidation tribunal has assumed jurisdiction.

8. On application of a disputing Party, a consolidation tribunal may order that the proceedings of a tribunal established under Article 16-21 be stayed, pending its decision under paragraph 2, unless the latter tribunal has already adjourned its proceedings.

Article 16-28

Notice to the Secretariat

1. A disputing Party shall deliver to the Secretariat, within 15 days of receipt from the disputing Party:

(a) A request for arbitration made under Article 36 (1) of the ICSID Convention;

(b) a notice of arbitration made under Article 2 of Schedule C of the ICSID Additional Facility Rules; or

(c) a notice of arbitration given under the UNCITRAL Arbitration Rules.

2. A disputing Party shall deliver to the Secretariat a copy of a request made under Article 16-27 (3):

(a) Within 15 days of receipt of the request, in the case of a request made by a disputing investor; or

(b) within 15 days of making the request, in the case of a request made by the disputing Party.

3. A disputing Party shall deliver to the Secretariat a copy of a request made under Article 16-27 (6) within 15 days of receipt of the request.

4. The Secretariat shall maintain a public register of the documents referred to in this Article.

Article 16-29

Notice to the Other Party

The disputing Party shall deliver to the other Party:

(a) Written notice of a claim that has been submitted to arbitration no later than 30 days after the date on which the claim is submitted; and

(b) copies of all pleadings filed in the arbitration.

Article 16-30

Participation by a Party

On written notice to the disputing parties, a Party may make submissions to any tribunal established under this Section on a question of interpretation of this Agreement.

Article 16-31

Documents

1. A Party shall be entitled, at its own expense, to receive from the disputing Party:

(a) The evidence that has been tendered to any tribunal established under this Section; and

(b) the written argument of the disputing parties.

2. A Party receiving information pursuant to paragraph 1 shall treat the information as if it were a disputing Party.

Article 16-32

Place of Arbitration

The arbitration process shall be held in the territory of the disputing Party, unless the disputing parties agree otherwise, in which case any tribunal established under this section shall hold the arbitration procedure in the territory of a Party that is a State Party to the New York Convention, selected in accordance with:

(a) The ICSID Additional Facility Rules if the arbitration is under those Rules or the ICSID Convention; or

(b) the UNCITRAL Arbitration Rules if the arbitration is under those Rules.

Article 16-33

Governing Law

1. A tribunal established under this Section shall decide the issues in dispute in accordance with this Agreement and applicable rules of international law.

2. An interpretation by the Commission of a provision of this Agreement shall be binding on a tribunal established under this Section.

Article 16-34

Interpretation of Annexes

1. Where a disputing Party asserts as a defence that the measure alleged to be a breach is within the scope of a reservation or exception set out in Annex 16-07, on request of the disputing Party, any tribunal established under this section shall request the interpretation of the Commission on the issue. The Commission shall submit its interpretation to the tribunal in writing, within 60 days of delivery of the request.

2. The Commission interpretation submitted under paragraph 1 shall be binding on any tribunal established under this section. If the Commission fails to submit an interpretation within 60 days, the tribunal shall decide the issue.

Article 16-35

Interim Measures of Protection

A tribunal established under this Section may ask the national courts, or order the disputing parties, to impose interim measures of protection to preserve the rights of a disputing party, or to ensure that the tribunal's jurisdiction is made fully effective. A tribunal may not order attachment or enjoin the application of the measure alleged to constitute a breach referred to in Article 16-18.

Article 16-36

Final Award

1. Where a tribunal established under this section makes a final award against a Party, the tribunal may only award:

(a) Monetary damages and any applicable interest; or

(b) restitution of property, in which case the award shall provide that the disputing Party may pay monetary damages and any applicable interest in lieu of restitution.

2. Where the claim is made by an investor on behalf of an enterprise:

(a) An award of restitution of property shall provide that restitution be made to the enterprise; and

(b) an award of monetary damages and any applicable interest shall provide that the sum be paid to the enterprise.

3. The award shall provide that it is made without prejudice to any right that any person may have in the relief under applicable domestic law.

Article 16-37

Finality and Enforcement of an Award

1. An award made by a tribunal shall have no binding force except between the disputing parties and in respect of the particular case.

2. Subject to paragraph 3 and the applicable review procedure for an interim award, a disputing party shall abide by and comply with an award without delay.

3. A disputing party may seek enforcement of a final, provided that:

(a) In the case of a final award made under the ICSID Convention:

(i) 120 days have elapsed from the date the award was rendered and no disputing party has requested revision or annulment of the award; or

(ii) revision or annulment proceedings have been completed; and

(b) in the case of a final award under the ICSID Additional Facility Rules or the UNCITRAL Arbitration Rules:

(i) three months have elapsed from the date the award was rendered and no disputing party has commenced a proceeding to revise, set aside or annul the award; or

(ii) a court of the disputing Party has dismissed or allowed an application to revise, set aside or annul the award, submitted by one of the disputing parties to the national courts under its legislation, and no further appeal is possible.

4. Each Party shall provide for the enforcement of an award in its territory.

5. If a disputing Party fails to abide by or comply with a final award, the Commission, on delivery of a request by a Party whose investor was a party to the arbitration, shall establish a panel under Chapter XX (Dispute Settlement). The requesting Party may seek in such proceedings:

(a) A determination that the failure to abide by or comply with the final award is inconsistent with the obligations of this Agreement; and

(b) a recommendation that the Party abide by or comply with the final award.

6. A disputing investor may seek enforcement of an arbitration award under the ICSID Convention, the New York Convention or the Inter-American Convention, regardless of whether proceedings have been taken under paragraph 5.

7. A claim that is submitted to arbitration under this Section shall be considered to arise out of a commercial relationship or transaction for the purposes of Article I of the New York Convention and Article I of the Inter-American Convention.

Article 16-38

General Provisions

Time when a claim is submitted to arbitration

1. A claim is submitted to arbitration under this Section when:

(a) The request for arbitration under Article 36 (1) of the ICSID Convention has been received by the Secretary-General;

(b) the notice of arbitration under Article 2 of Schedule C of the ICSID Additional Facility Rules has been received by the Secretary-General; or

(c) the notice of arbitration given under the UNCITRAL Arbitration Rules is received by the disputing Party.

Service of documents

2. Delivery of notice and other documents on a Party shall be made to the place named by each Party in Annex 16-38.

Receipts under insurance or guarantee contracts

3. In an arbitration under this Section, a Party shall not assert, as a defence, counterclaim, right of set-off or otherwise, that the disputing investor has received or will receive, pursuant to an insurance or guarantee contract, indemnification or other compensation for all or part of its alleged damages.

Publication of an award

4. Final awards shall be published only if there is a written agreement between the Parties to do so.

Article 16-39

Exclusions

The dispute settlement provisions set out in this Section and those of Chapter XX (Dispute Settlement) shall not apply in the circumstances set out in Annex 16-39.

ANNEX 16-38

Service of Documents

Delivery of notice and other documents shall be made:

(a) In the case of Mexico, at the Directorate General of Foreign Investment (Dirección General de Inversión Extranjera) of the Ministry of Trade and Industrial Development (Secretaría de Comercio y Fomento Industrial), or any other place designated by the Secretariat by giving notice to the other Party; and

(b) in the case of Nicaragua, at its Section of the Secretariat.

ANNEX 16-39

Exclusions of Mexico

The dispute settlement mechanisms set out in section B of this Chapter, and those contained in Chapter XX (Dispute Settlement), shall not apply to resolutions adopted by a Party under Article 16-02 (2), or to a resolution prohibiting or restricting the acquisition of an investment in its territory that is owned or controlled by nationals of that Party, by an investor of the other Party, under the legislation of each Party.

PART SEVEN: INTELLECTUAL PROPERTY

CHAPTER XVII: INTELLECTUAL PROPERTY

Section A - General Provisions and Basic Principles

Article 17-01

Definitions

For the purposes of this Chapter:

Brussels Convention means the Convention Relating to the Distribution of Programme-Carrying Signals Transmitted by Satellite, 1974;

Rome Convention means the International Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations, 1961;

Berne Convention means the Berne Convention for the Protection of Literary and Artistic Works, 1971;

Geneva Convention means the Convention for the Protection of Producers of Phonograms against Unauthorized Duplication of their Phonograms, 1971;

Paris Convention means the Paris Convention for the Protection of Industrial Property, 1967;

intellectual property right means all categories of intellectual property that are subject protection under this Chapter, under the terms indicated herein;

nationals of the other Party means, in respect of the relevant intellectual property right, persons who would meet the criteria for eligibility for protection provided for in the Berne convention, the Geneva Convention, the Rome Convention, the Brussels Convention and, where appropriate, the Paris Convention;

public includes, with, respect to rights of communication and performance of works provided for under Articles 11, 11bis(1) and 14(1)(ii) of the Berne Convention, with respect to dramatic, dramatico-musical, musical and cinematographic works, at least, any aggregation of individuals intended to be the object of, and capable of perceiving, communications or performances of works, regardless of whether they can do so at the same or different times or in the same or different places, provided that such an aggregation is larger than a family and its immediate circle of acquaintances or is not a group comprising a limited number of individuals having similarly close ties that has not been formed for the principal purpose of receiving such performances and communications of works; and

encrypted programme-carrying satellite signal means a signal that is transmitted in a form whereby the aural or visual characteristics, or both, are modified or altered for the purpose of preventing reception by persons without the authorized equipment that is designed to eliminate the effects of such modification or alteration, of a programme carried in that signal;

Article 17-02

Protection of Intellectual Property Rights

1. Each Party shall provide in its territory to the nationals of the other Party adequate and effective protection and enforcement of intellectual property rights, while ensuring that measures to enforce intellectual property rights do not themselves become barriers to legitimate trade.

2. Each Party may implement in its domestic law more extensive protection of intellectual property rights than is required under this Agreement, provided that such protection is not inconsistent with this Agreement.

3. The Parties shall be free to establish the most suitable method for applying the provisions of this Chapter in the framework of their own legal system and practice.

Article 17-03

Provisions on Intellectual Property Rights

1. To provide adequate and effective protection and enforcement of intellectual property rights, each Party shall, at a minimum, give effect to this Chapter and to the substantive provisions of:

(a) The Berne Convention for the Protection of Literary and Artistic Works, 1971 (Berne Convention);

(b) the Geneva Convention for the Protection of Producers of Phonograms Against Unauthorized Duplication of their Phonograms, 1971 (Geneva Convention);

(c) the International Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations, 1961 (Rome Convention);

(d) the Paris Convention for the Protection of Industrial Property 1967 (Paris Convention); and

(e) the Convention Relating to the Distribution of Programme-Carrying Signals Transmitted by Satellite, 1974 (Brussels Convention).

2. In relation to paragraphs 1(a), (b) and (c), if a Party is not a State Party to the abovementioned conventions and agreements, at the date of entry into force of this Agreement, the substantive provisions of those agreements shall be applied as established in Annex 17-03.

Article 17-04

National Treatment

1. Each Party shall accord to nationals of the other Party treatment no less favourable than that it accords to its own nationals with regard to the protection and enforcement of all intellectual property rights considered in this Chapter, including patents, utility models and industrial designs, and, where

appropriate, plant varieties, subject to the exceptions provided for in the Berne Convention, the Rome Convention, and the Paris Convention.

2. Neither Party may, as a condition of according national treatment under this Article, require right holders of the other Party to comply with any formalities or conditions in order to acquire rights in respect of copyright and related rights.

Article 17-05

Exceptions

Each Party may have recourse to the exceptions set out in Article 17-04 in relation to its judicial and administrative procedures for the protection or enforcement of intellectual property rights, including the requirement to designate an address or appoint an agent in the Party's territory, provided that such exception:

(a) Is necessary to secure compliance with measures that are not inconsistent with this Chapter; and

(b) is not applied in a manner that would constitute a disguised restriction on trade.

Article 17-06

Most-Favoured-Nation Treatment

With regard to the protection of the intellectual property rights referred to in this Chapter, any advantage, favour, privilege or immunity granted by a Party to the nationals of any non-Party country shall be accorded immediately and unconditionally to the nationals of the other Party. Exempted from this obligation are any advantage, favour, privilege or immunity accorded by a Party:

(a) Deriving from international agreements on judicial assistance or law enforcement of a general nature and not particularly confined to the protection of intellectual property;

(b) granted in accordance with the provisions of the Berne Convention or the Rome Convention authorizing that the treatment accorded be a function not of national treatment but of the treatment accorded in another country; and

(c) in respect of the rights of performers, producers of sound recordings and broadcasting organizations not provided for under this Chapter.

Article 17-07

Control of Abusive or Anticompetitive Practices or Conditions

The Parties may apply appropriate measures, provided they are compatible with this Chapter, to prevent the abuse of intellectual property rights by their holders or practices that unjustifiably restrict trade or impede international technology transfer.

Article 17-08

Cooperation to Eliminate Trade in Infringing Goods

The Parties shall cooperate to eliminate trade in goods that infringe intellectual property rights. To that end, the Party shall establish and publicize information centres, for the purpose of exchanging information on trade in such goods.

Section B - Trademarks

Article 17-09

Protection

1. A trademark consists of any sign or combination of signs, capable of distinguishing the goods or services of one person from those of another, because it is considered sufficiently distinctive, or suitable for identifying the goods or services in question, compared to others of the same type or category. Trademarks shall include service marks and collective marks, and may include certification marks. A Party may require, as a condition for registration, that a sign be visually perceptible, or susceptible to graphic representation.

2. Notwithstanding paragraph 1, each Party may, in accordance with its legislation, deny the registration of trademarks which:

(a) Include, among other things, national symbols or symbols of other public national or international bodies, signs, words or expressions that are contrary to morality, public order or decorum;

(b) could be misleading in terms of origin, nature and quality; or

(c) suggest a connection with other trademarks, which risks causing confusion or association.

3. A Party may make registrability depend on use. However, actual use of a trademark shall not be a condition for filing an application for registration. No Party may refuse an application solely on the ground that intended use has not taken place before the expiry of a period of three years from the date of application for registration.

4. The nature of the goods or services to which a trademark is to be applied shall in no case form an obstacle to the registration of the trademark.

5. The Parties shall publish each trademark before its registration or soon afterwards, in accordance with its legislation, giving interested persons a reasonable opportunity to oppose its registration or request cancellation thereof.

Article 17-10

Rights Conferred

The owner of a registered trademark shall have the right to prevent all third Parties not having the owner’s consent from using in the course of trade identical or similar signs for goods or services which are identical or similar to those in respect of which the trademark is registered, where such use would result in a likelihood of confusion. In case of the use of an identical sign for identical goods or services, the likelihood of confusion shall be presumed. The rights described above shall not prejudice any existing prior rights, nor shall they affect the possibility of the Parties making rights available on the basis of use.

Article 17-11

Well-Known Trademarks

1. Each Party shall, on its own initiative if its domestic law so permits, or at the request of an interested person, deny or invalidate registration and prohibit the use of a trademark that represents the reproduction, imitation or translation of a well-known trademark that is used for identical or similar goods and is thus likely to cause confusion. A trademark shall be considered well known in a Party when a given sector of the public or of commercial circles in the Party knows the trademark as a consequence of commercial activities undertaken within or outside that Party by a person using the trademark in relation to its goods or services. To demonstrate that a trademark is well known, all evidence admitted by the Party in which the intention is to show that it is well known may be used.

2. The Parties shall not register as a trademark signs that are identical or similar to a well-known trademark, for application to any good or service, when the use of a trademark by the person applying for its registration could create confusion or risk of association with the person that uses that trademark in relation to its goods or services; constitutes unfair exploitation of the prestige of the trademark; and suggests a connection therewith, and could damage the interests of that person. This provision shall not apply when the applicant for the trademark is the holder of the well-known trademark in a Party.

3. A person who brings an action to cancel the registration of a trademark granted in contravention of paragraph 2, shall be required to provide evidence of having requested in a Party the registration of the well-known trademark, ownership of which is being claimed.

Article 17-12

Exceptions

The Parties may provide limited exceptions to the rights conferred by a trademark, such as fair use of descriptive terms, provided that such exceptions take account of the legitimate interests of the trademark owner and of third parties.

Article 17-13

Duration of Protection

Initial registration of a trademark shall have the duration of ten years counted from the date on which the application was filed or the date on which it was granted, and may be renewed indefinitely for successive 10-year periods, provided the conditions for renewal are satisfied.

Article 17-14

Use of the Trademark

1. Each Party shall require the use of a trademark to maintain its registration. A trademark shall be considered to be in use when the goods or services that it distinguishes have been placed on the market or are available on the market with that trademark, in normal quantity and form, considering the nature of the goods and services in question and the modalities in which they are traded on the market.

2. Registration may be cancelled or declared expired on the grounds of non-use only after an uninterrupted period of no more than five years of non-use has elapsed, unless valid reasons based on the existence of obstacles to such use are shown by the trademark owner. Each Party shall recognize as valid reasons for non-use, circumstances arising independently of the will of the trademark owner

that constitute an obstacle to the use of the trademark, such as import restrictions on, or other government requirements for, goods or services identified by the trademark.

3. When subject to the control of its owner, use of a trademark by another person shall be recognized as use of the trademark for the purpose of maintaining the registration.

Article 17-15

Other Requirements

The use of a trademark in the course of trade shall not be encumbered by special requirements, such as use that diminishes the function of the trademark as an indication of origin, use with another trademark, or use in a manner detrimental to its capability to distinguish the goods or services of one person from those of other persons.

Article 17-16

Licensing and Assignment

Each Party may determine conditions on the licensing and assignment of trademarks. Compulsory licensing of trademarks shall not be permitted, and the owner of a registered trademark shall have the right to assign the trademark with or without the transfer of the enterprise to which the trademark belongs. Nonetheless, each Party may condition the transfer of a trademark when this forms part of the commercial name of the transferor, in which case it may only be transferred with the enterprise or establishment that the name identifies.

Section C - Geographical Indications and Appellations of Origin

Article 17-17

Protection of Geographical Indications and Appellations of Origin

For the purposes of this Chapter, appellation of origin means the geographic name of the country, region or locality that designates a good as originating in the territory of a country, or in a region or locality of such territory, the quality or characteristics of which arise exclusively from the geographic environment in question, including natural and human factors.

2. For the same purposes, geographic indication or origin means the geographic name of a country, region or locality that is used in a good’s presentation to indicate its place of origin, provenance, preparation, collection or extraction.

3. Appellations of origin that are protected in a Party shall not be considered common or generic in distinguishing a good while they are protected in their country of origin.

4. The Parties, on their own motion if their legislation so permits, or at the request of an interested Party, shall deny or invalidate the registration of a trademark that contains or consists of a geographic indication or appellation of origin, with respect to goods that do not originate in the territory so indicated, if the use of that indication in the trademark for those goods, in that country, is such as to mislead the public regarding their true place of origin.

Section D - Protection of Undisclosed Information

Article 17-18

Protection of Undisclosed Information

1. The Parties shall grant protection for industrial or trade secrets, when these contain information of industrial or commercial use, which, while confidential, confer a competitive advantage to their holder in relation to third parties in undertaking economic activities.

2. Each Party shall provide the legal means for the holder of an industrial or trade secret to prevent such secret from being disclosed to, acquired by, or used by others without the consent of the person lawfully in control of the information, in a manner contrary to honest commercial practices, such as breach of contract, abuse of trust, instigation to violation and the acquisition of undisclosed information by persons that knew, or ought to have known, that its acquisition entailed such practices, insofar as:

(a) The information is secret in the sense that it is not, as a body or in the precise configuration and assembly of its components, generally known among or readily accessible to persons that normally deal with the kind of information in question;

(b) the information has actual or potential commercial value because it is secret; and

(c) the person lawfully in control of the information has taken reasonable steps under the circumstances to keep it secret.

3. A Party may require that, to qualify for protection, a trade secret must be evidenced in documents, electronic or magnetic means, optical discs, microfilms, films or other similar instruments.

4. No Party may limit the duration of protection for industrial or trade secrets, so long as the conditions described in paragraphs 2 (a), (b) and (c) persist.

5. No Party may discourage or impede the voluntary licensing of industrial or trade secrets by imposing excessive or discriminatory conditions on such licenses or conditions that dilute the value of the industrial or trade secrets in question.

6. If a Party requires, as a condition for approving the marketing of pharmaceutical or agrochemical products that use new chemical entities, the submission of undisclosed test or other data necessary to determine whether the use of such products is safe and effective, the Party shall protect against disclosure of the data of persons making such submissions, where the origination of such data involves considerable effort, except where the disclosure is necessary to protect the public or unless steps are taken to ensure that the data is protected against unfair commercial use.

Section E - Copyright

Article 17-19

Copyright

1. Each Party shall protect the works covered by Article 2 of the Berne Convention, including any other works that embody original expression within the meaning of that Convention; in particular, compilations of data or other material, which by reason of the selection or arrangement of their contents constitute intellectual creations.

2. The protection a Party provides to compilations of data shall not extend to the data or material itself, or prejudice any copyright subsisting in that data or material.

3. Each Party shall provide to authors and their successors in interest those rights enumerated in the Berne Convention in respect of works covered by paragraphs 1 and 2, including the right to authorize or prohibit:

(a) Graphic editing;

(b) translation into any language or dialect;

(c) adaptation and inclusion in sound recording, videograms, cinematographic films and other audiovisual works;

(d) communication to the public;

(e) reproduction through any medium or in any form;

(f) the first public distribution of the original and each copy of the work by sale, rental or otherwise;

(g) the importation into the Party's territory of copies of the work made without the right holder's authorization; and

(h) any form of use, process or system that is known or becomes known.

4. At least with respect to computer programs, the Parties shall grant the authors and their successors the right to authorize or prohibit commercial rental to the public of the originals or copies of their copyrighted works.

5. In the case of computer programs, authorization by the author or successor thereof shall not be necessary when the copy of the computer program does not in itself constitute the essential purpose of the rental.

6. Each Party shall provide that for copyright and related rights:

(a) Any person acquiring or holding economic rights may freely and separately transfer such rights by contract, for the purpose of their exploitation and enjoyment by the transferee; and

(b) any person acquiring or holding such economic rights by virtue of a contract, including contracts of employment underlying the creation of works and sound recordings, shall be able to exercise those rights in its own name and enjoy fully the benefits derived from those rights.

7. Each Party shall confine limitations or exceptions to the rights provided for in this Article to certain special cases that do not conflict with a normal exploitation of the work and do not unreasonably prejudice the legitimate interests of the right holder.

8. Copyright lasts permanently throughout the author's life. After the author's death, persons that have legitimately acquired the corresponding rights shall enjoy them for at least 50 years. When the term of protection of a work is calculated on a basis of other than the life of a physical person, that term shall be:

(a) Not less than 50 years from the end of the calendar year of publication or authorized dissemination of the work; or

(b) failing such publication or authorized dissemination, 50 years from the end of the year in which the work was completed.

Section F - Related Rights

Article 17-20

Performers

1. Each Party shall grant to performers the right to authorize or prohibit:

(a) The fixation, of their unfixed performances, and reproduction of such fixation;

(b) communication to the public, broadcasting and rebroadcasting through wireless media; and

(c) any other form of use of their performances.

2. Paragraph 1 shall not be applicable when a performer has consented to the performance being included in a visual or audiovisual fixation.

Article 17-21

Producers of Sound Recordings

1. Each Party shall provide to the producer of a sound recording the right to authorize or prohibit:

(a) The direct or indirect reproduction of the sound recording;

(b) the importation into the Party's territory of copies of the sound recording made without the producer's authorization; and

(c) the first public distribution of the original and each copy of the sound recording by sale, rental or otherwise.

2. Each Party shall grant to producers of sound recordings and all other holders of rights over sound recordings, as determined by its legislation, the right to authorize or prohibit commercial rental to the public of the originals or copies of their protected sound recordings. Nonetheless, if on the date of entry into force of this Agreement, a Party is operating a fair system of remuneration for right holders in respect of the rental of sound recordings, it may maintain that system provided such rental does not significantly impair the exclusive reproduction rights of those right holders.

Article 17-22

Broadcasting Organizations

1. Each Party shall grant to broadcasting organizations the right to authorize or prohibit:

(a) The fixation and reproduction of fixations of their broadcasts;

(b) rebroadcasting, subsequent distribution and communication to the public of their broadcasts; and

(c) reception of their broadcasts in connection with commercial activities.

2. Violations of the rights set out in paragraph 1 shall give rise to civil liability, jointly or otherwise with criminal liability, depending on the legislation of each Party.

Article 17-23

Term of Protection of Related Rights

The term of protection granted under this Chapter to performers and producers of sound recordings may not be less than 50 years from the end of the calendar year of the fixation or performance. The term of protection granted to broadcasting organizations may not be less than 20 years from the end of the calendar year in which the first broadcast was made.

Article 17-24

Limitations or Exceptions to Related Rights

1. The protection provided for under this Chapter with regard to the rights of performers, producers of sound recordings and broadcasting organizations shall in no way affect the protection of copyright on literary or artistic works, nor may it be interpreted as detracting from such protection.

2. Each Party shall confine limitations or exceptions to the rights provided for in this Article to certain special cases that do not conflict with a normal exploitation of the work and do not unreasonably prejudice the legitimate interests of the right holder, insofar as permitted by the Rome Convention.

Article 17-25

Miscellaneous Provisions

1. Each Party may grant protection to rights over:

(a) The titles or headlines of a newspaper, magazine, cinematographic news programme and, in general, any periodical publication or broadcast;

(b) fictitious or symbolic personalities in literary works, comic strips or any periodical publication, when these display distinct originality and are habitually or periodically used;

(c) human characterization personalities used in performances, stage names and artistic denominations;

(d) original graphic features that are distinctive of a work or collection in its use;

(e) features of publicity promotions that display distinct originality, excluding commercial advertisements.

2. The term of protection for such rights shall be determined by the legislation of each Party.

Section G - Application of Intellectual Property Rights

Article 17-26

General Obligations

1. The Parties shall ensure that enforcement procedures as provided in this in Articles 17-27 through 17-30, regarding the intellectual property rights referred to in this Chapter, are available under their law so as to permit effective action to be taken against any act of infringement of such rights, including expeditious remedies to prevent infringements and remedies which constitute an effective deterrent to further infringements. These procedures shall be applied in such a manner as to avoid the creation of barriers to legitimate trade and to provide for safeguards against their abuse..

2. Procedures concerning the enforcement of intellectual property rights shall be fair and equitable. They shall not be unnecessarily complicated or costly, or entail unreasonable time-limits or unwarranted delays.

3. Decisions on the merits of a case shall preferably be in writing and state the reasons. They shall be made available at least to the parties to the proceeding without undue delay. Decisions shall be based only on evidence in respect of which parties were offered the opportunity to be heard.

4. Parties to a proceeding shall have an opportunity for review by a judicial authority of final administrative decisions and, subject to jurisdictional provisions in a Party's law concerning the importance of a case, of at least the legal aspects of initial judicial decisions on the merits of a case. However, there shall be no obligation to provide an opportunity for review of acquittals in criminal cases.

5. It is understood that the application of intellectual property rights does not create any obligation to put in place a judicial system for the enforcement of intellectual property rights distinct from that for the enforcement of law in general, nor does it affect the capacity of the Parties to enforce their law in general. Nor does it create any obligation with respect to the distribution of resources as between enforcement of intellectual property rights and the enforcement of law in general.

Article 17-27

Specific Procedural Aspects and Remedies in Civil and Administrative Proceedings

1. The Parties shall make available to right holders civil judicial procedures concerning the enforcement of any intellectual property right covered by this Chapter, and shall provide that:

(a) Defendants shall have the right to written notice which is timely and contains sufficient detail, including the basis of the claim;

(b) parties shall be allowed to be represented by independent legal counsel;

(c) procedures shall not impose overly burdensome requirements concerning mandatory personal appearances;

(d) all parties to such procedures shall be duly entitled to substantiate their claims and to present all relevant evidence; and

(e) the procedure shall provide a means to identify and protect confidential information.

2. Each Party shall ensure that its judicial authorities have authority:

(a) Where a Party has presented reasonably available evidence sufficient to support its claims and has specified evidence relevant to substantiation of its claims which lies in the control of the opposing Party, to order that this evidence be produced by the opposing Party, subject in appropriate cases to conditions which ensure the protection of confidential information.

(b) to make preliminary and final determinations, affirmative or negative, in cases in which a Party to a proceeding voluntarily and without good reason refuses access to, or otherwise does not provide necessary information within a reasonable period, or significantly impedes a procedure relating to a case brought in defence of intellectual property rights. Such determinations shall be issued on the basis of the information presented to them, including the complaint or the allegation presented by the Party adversely affected by the denial of access to information, subject to providing the Parties an opportunity to be heard on the allegations or evidence.

(c) to order a party in a proceeding to desist from the presumed infringement, at least until a final ruling has been issued in the case, inter alia to prevent the entry into the channels of commerce in their jurisdiction of imported goods that involve the infringement of an intellectual property right. Any such order shall be enforceable at least immediately after customs clearance of such goods;

(d) to order the infringer of an intellectual property right to pay the right holder damages adequate to compensate for the injury the right holder has suffered because of the infringement where the infringer knew or had reasonable grounds to know that it was engaged in an infringing activity;

(e) to order an infringer of an intellectual property right to pay the right holder's expenses, which may include appropriate attorney's fees; and

(f) to order a party in a proceeding at whose request measures were taken and who has abused enforcement procedures to provide adequate compensation to any party wrongfully enjoined or restrained in the proceeding for the injury suffered because of such abuse and to pay that party's expenses, which may include appropriate attorney's fees.

3. With respect to the authority referred to in paragraph 2 (c), no Party shall be obliged to provide such authority in respect of protected subject matter that is acquired or ordered by a person before that person knew or had reasonable grounds to know that dealing in that subject matter would entail the infringement of an intellectual property right.

4. With respect to the authority referred to in subparagraph 2 (d), a Party may, at least with respect to copyrighted works and sound recordings, authorize the judicial authorities to order recovery of profits or payment of pre-established damages, or both, even where the infringer did not know or had no reasonable grounds to know that it was engaged in an infringing activity.

5. Each Party shall provide that, in order to create an effective deterrent to infringement, its judicial authorities shall have the authority to order that:

(a) Goods that they have found to be infringing be, without compensation of any sort, disposed of outside the channels of commerce in such a manner as to avoid any injury caused to the right holder or, unless this would be contrary to existing constitutional requirements, destroyed; and

(b) materials and implements the predominant use of which has been in the creation of the infringing goods be, without compensation of any sort, disposed of outside the channels of commerce in such a manner as to minimize the risks of further infringements.

6. In considering whether to issue such an order, the judicial authorities of each Party shall take into account the need for proportionality between the seriousness of the infringement and the remedies ordered as well as the interests of other persons, including those of the right holder. In regard to counterfeit goods, the simple removal of the trademark unlawfully affixed shall not be sufficient to permit customs clearance of the goods, other than in exceptional cases, such as when the authority decides to donate the goods to a charity.

7. In respect of the administration of any law pertaining to the protection or enforcement of intellectual property rights, each Party shall only exempt both public authorities and officials from liability to appropriate remedial measures where actions are taken or intended in good faith in the course of the administration of such laws.

8. Notwithstanding the other provisions of Articles 17-26 through 17-30, where a Party is sued with respect to an infringement of an intellectual property right as a result of its use of that right or use on its behalf, that Party may limit the remedies available against it to the payment to the right holder of adequate remuneration in the circumstances of each case, taking into account the economic value of the use.

9. Each Party shall provide that, where a civil remedy can be ordered as a result of administrative procedures on the merits of a case, such procedures shall conform to principles equivalent in substance to those set out in this Article.

10. The application of paragraphs 2 (a) and (b) and paragraph 9 shall take into account the provisions of Annex 17-27.

Article 17-28

Provisional Measures

1. Each Party shall provide that its judicial authorities shall have the authority to order prompt and effective provisional measures to:

(a) Prevent an infringement of any intellectual property right, and in particular to prevent the entry into the channels of commerce in their jurisdiction of allegedly infringing goods, including measures to prevent the entry of imported goods at least immediately after customs clearance; and

(b) preserve relevant evidence in regard to the alleged infringement.

2. Each Party shall provide that its judicial authorities shall have the authority to require any applicant for provisional measures to provide to the judicial authorities any evidence reasonably available to that applicant that those authorities consider necessary to enable them to determine with a sufficient degree of certainty whether:

(a) The applicant is the right holder;

(b) the applicant's right is being infringed or such infringement is imminent; and

(c) any delay in the issuance of such measures is likely to cause irreparable harm to the right holder, or there is a demonstrable risk of evidence being destroyed.

3. For the purposes of paragraph 2, each Party shall provide that its judicial authorities shall have the authority to require the applicant to provide a security or equivalent assurance sufficient to protect the interests of the defendant and to prevent abuse.

4. Each Party shall provide that its judicial authorities shall have the authority to require an applicant for provisional measures to provide other information necessary for the identification of the relevant goods by the authority that will execute the provisional measures.

5. Each Party shall provide that its judicial authorities shall have the authority to order provisional measures on an ex parte basis, in particular where any delay is likely to cause irreparable harm to the right holder, or where there is a demonstrable risk of evidence being destroyed.

6. Each Party shall provide that where provisional measures are adopted by that Party's judicial authorities on an ex parte basis:

(a) A person affected shall be given notice of those measures without delay but in any event no later than immediately after the execution of the measures; and

(b) a defendant shall, on request, have those measures reviewed by that Party's judicial authorities for the purpose of deciding, within a reasonable period after notice of those measures is given, whether the measures shall be modified, revoked or confirmed.

7. Without prejudice to paragraph 6, each Party shall provide that, on the request of the defendant, the Party's judicial authorities shall revoke or otherwise cease to apply the provisional measures taken on the basis of paragraphs 1 through 5 if proceedings leading to a decision on the merits are not initiated:

(a) Within a reasonable period as determined by the judicial authority ordering the measures where the Party's domestic law so permits; or

(b) in the absence of such a determination, within a period of no more than 20 working days or 31 calendar days, whichever is longer.

8. Each Party shall provide that, where the provisional measures are revoked or where they lapse due to any act or omission by the applicant, or where the judicial authorities subsequently find that there has been no infringement or threat of infringement of an intellectual property right, the judicial authorities shall have the authority to order the applicant, on request of the defendant, to provide the defendant appropriate compensation for any injury caused by these measures.

9. Each Party shall provide that, where a provisional measure can be ordered as a result of administrative procedures, such procedures shall conform to principles equivalent in substance to those set out in this Article.

Article 17-29

Criminal Procedures and Penalties

1. Each Party shall provide criminal procedures and penalties to be applied at least in cases of wilful trademark counterfeiting or copyright piracy on a commercial scale. Each Party shall provide that penalties available include imprisonment or monetary fines, or both, sufficient to provide a deterrent, consistent with the level of penalties applied for crimes of a corresponding gravity.

2. Each Party shall provide that, in appropriate cases, its judicial authorities may order the forfeiture and destruction of infringing goods and of any materials and implements the predominant use of which has been in the commission of the offence.

3. For the purposes of paragraph 2, the judicial authorities shall take into account the need for proportionality between the seriousness of the infringement and the remedies ordered, as well as the interests of other persons, including those of the right holder. In regard to counterfeit goods, the simple removal of the trademark unlawfully affixed shall not be sufficient to permit release of the goods from customs, other than in exceptional cases, such as where the authority decides to donate them to charity.

4. A Party may provide for criminal procedures and penalties to be applied in cases of infringement of intellectual property rights, other than those in paragraph 1, where they are committed wilfully and on a commercial scale.

Article 17-30

Enforcement of Intellectual Property Rights at the Border

1. Each Party shall, in conformity with this Article, adopt procedures to enable a right holder, who has valid grounds for suspecting that the importation of counterfeit trademark goods or pirated copyright goods may take place, to lodge an application in writing with its competent authorities, whether administrative or judicial, for the suspension by the customs administration of the release of such goods into free circulation. Neither Party shall be obliged to apply those procedures to goods in transit. A Party may permit such an application to be made in respect of goods that involve other infringements of intellectual property rights, provided that the requirements of this Article are met. A Party may also provide for corresponding procedures concerning the suspension by the customs administration of the release of infringing goods destined for exportation from its territory

2. Each Party shall provide that its competent authorities shall have the authority to require an applicant who initiates procedures under paragraph 1 to provide adequate evidence:

(a) To satisfy that Party's competent authorities that, under the domestic laws of the country of importation, there is prima facie an infringement of its intellectual property right; and

(b) to supply a sufficiently detailed description of the goods to make them readily recognizable by the customs administration.

3. Each Party shall provide that its competent authorities shall inform the applicant within a reasonable period whether they have accepted the application and, if so, the period for which the customs administration will take action.

4. Each Party shall provide that its competent authorities shall have the authority to require an applicant under paragraph 1 to provide a security or equivalent assurance sufficient to protect the defendant and the competent authorities and to prevent abuse. Such security or equivalent assurance shall not unreasonably deter recourse to these procedures.

5. Each Party shall provide that the owner, importer or consignee of goods involving industrial or trade secrets shall be entitled to their release from customs on the posting of a security or

equivalent assurance in an amount sufficient to protect the right holder against any infringement, provided that:

(a) Pursuant to an application under procedures adopted pursuant to this Article, its customs administration suspends the release of such goods into free circulation, on the basis of a decision other than by a judicial or other independent authority;

(b) the period provided for in paragraphs 8, 9, 10 and 11 has expired without the granting of provisional relief by the duly empowered authority; and

(c) provided that all other conditions for importation have been complied with.

6. Payment of such security shall not prejudice any other remedy available to the right holder, it being understood that the security shall be released if the right holder fails to pursue its right of action within a reasonable period of time.

7. Each Party shall provide that its customs administration shall promptly notify the importer and the applicant when the customs administration suspends the release of goods pursuant to paragraph 1.

8. Each Party shall provide that its customs administration shall release goods from suspension, provided that all other conditions for the importation or exportation had been met, if within a period not exceeding 10 working days after the applicant under paragraph 1 has been served notice of the suspension the customs administration has not been informed that:

(a) A party other than the defendant has initiated proceedings leading to a decision on the merits of the case; or

(b) a competent authority for this purpose has taken provisional measures prolonging the suspension.

9. For the purposes of paragraph 8, each Party shall provide that, in appropriate cases, its customs administration shall have the authority to extend the suspension by another 10 working days.

10. If proceedings leading to a decision on the merits of the case have been initiated, a review, including the defendant's right to be heard, shall take place on request of the defendant, with a view to deciding, within a reasonable period, whether the measures shall be modified, revoked or confirmed.

11. Notwithstanding paragraphs 8, 9 and 10, where the suspension of the release of goods is carried out or continued in accordance with a provisional judicial measure, Article 17-28 (7) shall apply.

12. Each Party shall provide that its competent authorities shall have the authority to order the applicant under paragraph 1 to pay the importer, the consignee and the owner of the goods appropriate compensation for any injury caused to them through the wrongful detention of goods or through the detention of goods released pursuant to paragraphs 8 and 9.

13. Without prejudice to the protection of confidential information, each Party shall provide that its competent authorities shall have the authority to:

(a) Give the right holder sufficient opportunity to have any goods detained by the customs administration inspected in order to substantiate the right holder's claim; and

(b) give the importer an equivalent opportunity to have any such goods inspected.

14. Where the competent authorities have made a positive determination on the merits of a case, a Party may provide the competent authorities the authority to inform the right holder of the names and addresses of the consignor, the importer and the consignee, and of the quantity of the goods in question.

15. Where a Party requires its competent authorities to act on their own initiative and to suspend the release of goods in respect of which they have acquired prima facie evidence that an intellectual property right is being infringed:

(a) The competent authorities may at any time seek from the right holder any information that may assist them to exercise those powers;

(b) the importer and the right holder shall be promptly notified of the suspension by the Party's competent authorities, and where the importer lodges an appeal against the suspension with competent authorities, the suspension shall be subject to the conditions, with such modifications as may be necessary, set out in paragraphs 8, 9, 10 and 11; and

(c) the Party shall only exempt both public authorities and officials from liability to appropriate remedial measures where actions are taken or intended in good faith.

16. Without prejudice to other rights of action open to the right holder and subject to the defendant's right to seek judicial review, each Party shall provide that its competent authorities shall have the authority to order the destruction or disposal of infringing goods in accordance with the principles set out in Article 17-27 (5) and (6). In regard to counterfeit goods, the authorities shall not allow the re-exportation of the infringing goods in an unaltered state or subject them to a different customs procedure, other than in exceptional circumstances.

17. Each Party may exclude from the application of paragraphs 1 through 12 small quantities of goods of a non-commercial nature contained in travellers' personal luggage or sent in small consignments that are not repetitive.

18. This Article shall be applied taking account of the provisions established in Annex 17-30.

Article 17-31

Protection of Programme-Carrying Satellite Signals

Within one year following the date of entry into force of this Agreement, each Party shall make it a civil and/or criminal offence, according to its laws, to manufacture, import, sell, lease or perform any act to make available devices that are primarily of assistance in decoding an encrypted programme-carrying satellite signal without the authorization of the lawful distributor of that signal.

Section H - Technical Cooperation

Article 17-32

Technical Cooperation

The Parties shall provide technical cooperation under the terms of Annex 17-32.

ANNEX 17-03

Intellectual Property Conventions

Nicaragua shall make every effort to comply with the following conventions within a period of 18 months following the date of entry into force of this Agreement:

(a) The Berne Convention;
(b) the Rome Convention; and
(c) the Geneva Convention.

ANNEX 17-04

Plant Varieties

This provision shall not be construed to require either Party to protect plant varieties, if that Party has not legislated on this issue.

ANNEX 17-27

Enforcement of Intellectual Property Rights

Nicaragua shall make every effort to implement the measures set out in Article 17-27 (2)(a) and (b) and Article 17-27 (9), no later than 1 July 2000.

ANNEX 17-30

Enforcement of Intellectual Property Rights at the Border

Nicaragua shall make every effort to implement the measures set out in Article 17-30, no later than 1 July 2000.

ANNEX 17-32

Technical Cooperation

1. In order to facilitate implementation of this Chapter, Mexico, in coordination with other international cooperation programmes, shall provide technical assistance to Nicaragua, on request and under mutually agreed terms and conditions. Such assistance shall include:

(a) Support in adapting procedures and regulations to implement the Paris Convention;

(b) exchange of patent documentation;

(c) training on procedures for granting and registering patents, industrial designs and utility models;

(d) assistance in relation to plant varieties;

(e) assistance and training on automated. search and procedures for trademark registration;

(f) exchange of information on Mexico’s experience in establishing the Instituto Mexicano de la Propiedad Industrial (Mexican Industrial Property Institute);

(g) exchange of information on updating the legal framework governing intellectual property rights;

(h) assistance in relation to copyright and related rights; and

(i) assistance in relation to automation for granting registration and conservation of industrial property rights.

2. The technical assistance referred to in paragraph 1 shall not imply any commitment by Mexico in terms of financial support.

PART EIGHT: ADMINISTRATIVE PROVISIONS

CHAPTER XVIII: TRANSPARENCY

Article 18-01

Contact Points

1. Each Party shall designate a contact point to facilitate communications among the Parties on any matter covered by this Agreement.

2. On the request of the other Party, the contact point shall identify the office or official responsible for the matter and assist, as necessary, in facilitating communication with the requesting Party.

Article 18-02

Publication

1. Each Party shall ensure that its laws, regulations, procedures and administrative rulings of general application, respecting any matter covered by this Agreement, are promptly published or otherwise made available to the other Party and interested persons.

2. To the extent possible, each Party shall:

(a) Publish in advance any such measure that it proposes to adopt; and

(b) provide interested persons and the other Party a reasonable opportunity to comment on such proposed measures.

Article 18-03

Notification and Provision of Information

1. To the extent possible, each Party shall notify the other Party of any proposed or actual measure that the Party considers might affect or substantially affects the other Party's interests under this Agreement.

2. On request of the other Party, a Party shall promptly provide information and respond to questions pertaining to any actual or proposed measure, whether or not that other Party has been previously notified of that measure.

3. Any notification or information provided under this Article shall be without prejudice as to whether the measure is consistent with this Agreement.

Article 18-04

Safeguards of Hearings, Legality and Due Process

1. The Parties reaffirm the safeguards of hearings, legality and due process enshrined in their respective laws.

2. Each Party shall maintain judicial or administrative tribunals and procedures, for the purpose of reviewing and, where warranted, correcting final administrative decisions in relation to this Agreement.

3. Each Party shall ensure that in judicial and administrative procedures relating to the implementation of any measure affecting the functioning of this Agreement, the essential formalities of the procedure are observed, and their legal basis is substantiated.

CHAPTER XIX: ADMINISTRATION OF THE AGREEMENT

Article 19-01

Administrative Commission of the Agreement

1. The Parties hereby establish the Administrative Commission of the Agreement, comprising the officials mentioned in Annex 19.01(1) or their designees.

2. The Commission shall:

(a) Supervise compliance with and proper implementation of this Agreement;

(b) evaluate the results of the implementation of this Agreement and oversee its development;

(c) resolve any dispute that may arise regarding its interpretation or application;

(d) supervise the work of all committees established under this Agreement and included in Annex 19-01 (2); and

(e) consider any other matter that may affect the operation of this Agreement, and any other matter referred to it by the Parties.

3. The Commission may:

(a) Create ad hoc or standing committees and groups of experts;

(b) seek the advice of non-governmental persons or groups; and

(c) take such other action in the exercise of its functions as the Parties may agree.

4. All decisions of the Commission shall be taken by mutual agreement.

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

Article 19-02

Secretariat

1. Each Party shall establish an office to serve as the national Section of its Secretariat, and shall notify the other Party of: the name and position of the official responsible for its Section; and the address of its Section to which communications should be sent.

2. The Commission shall coordinate the functioning of the Parties' national Sections.

3. The national Sections shall:

(a) Provide assistance to the Commission;

(b) provide administrative assistance to arbitral panels;

(c) support the work of the committees established under this Agreement as the Commission may direct;

(d) be responsible for the remuneration and payment of expenses of panellists and experts appointed under this Agreement, as set out in Annex 19-02; and

(e) carry out other functions referred by the Commission.

ANNEX 19-01(1)

Staff of the Administrative Commission

The officials referred to in Article 19-01 are:

(a) For Mexico, the Minister of Trade and Industrial Development, or successor thereof; and

(b) for Nicaragua, the Minister of Economic Affairs and Development, or successor thereof.

ANNEX 19-01(2)

Committees

Committees

- Committee on Agricultural Trade
- Committee on Sanitary and Phytosanitary Measures
- Committee on Rules of Origin
- Committee on Customs Procedures
- Committee on Temporary Imports
- Committee on Financial Services
- Committee on Standards-Related Measures
- Committee on Microenterprise, Small and Medium-sized Business

Subcommittees:

- Health Standards Subcommittee

- Subcommittee on Labelling, Packaging and Packing Standards
- Telecommunications Standards Subcommittee

ANNEX 19-02

Remuneration and Payment of Expenses

1. The Commission shall establish the amounts of remuneration and expenses that will be paid to arbitral panellists and experts.

2. The remuneration of panellists, experts and their assistants, their travel and lodging expenses, and all general expenses of panels shall be borne equally by the Parties.

3. Each panellist and expert shall keep a record and render a final account of the person's time and expenses, and the panel shall keep a similar record and render a final account of all general expenses.

PART NINE: DISPUTE SETTLEMENT

CHAPTER XX: DISPUTE SETTLEMENT

Article 20-01

Cooperation

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

Article 20-02

Scope

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

(a) With respect to the avoidance or settlement of all disputes between the Parties regarding the application or interpretation of this Agreement; and

(b) wherever a Party considers that an actual or proposed measure of the other Party is or would be inconsistent with the obligations of this Agreement or cause nullification or impairment in the sense of Annex 20-02.

Article 20-03

WTO Dispute Settlement

1. Any matter arising under both this Agreement and the WTO Agreement may be settled in either forum at the discretion of the complaining Party.

2. Once dispute settlement proceedings have been initiated under Article 20-06 or under the WTO Agreement, the forum selected shall be used to the exclusion of the other.

3. For the purposes of this Article, dispute settlement proceedings under the WTO Agreement are deemed to be initiated by a Party's request for a panel, such as under Article 6 of the Understanding on Rules and Procedures Governing the Settlement of Disputes, which is part of the WTO Agreement

Article 20-04

Perishable Goods

The Parties, the Commission and the arbitral tribunal shall do their utmost to deal with issues relating to perishable goods as expeditiously as possible. For this purpose, the Parties shall endeavour to reach agreement on reducing the time-limits established in this Chapter.

Article 20-05

Consultations

1. Either Party may request in writing consultations with the other Party regarding any actual or proposed measure or any other matter that it considers might affect the operation of this Agreement, within the terms of Article 20.02.

2. The requesting Party shall deliver the request to its Section of the Secretariat and to the other Party.

3. The Parties shall:

(a) Provide each other with sufficient information to allow for a full examination of how the actual or proposed measure or other matter might affect the operation of this Agreement; and

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

Article 20-06

Intervention of the Commission, Good Offices, Conciliation and Mediation

1. If the Parties fail to resolve a matter pursuant to Article 20-05 within 45 days of the delivery of a request for consultations, either Party may request in writing a meeting of the Commission.

2. A Party may also request in writing a meeting of the Commission when consultations have been held under Articles 5-14 and 14-18.

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

4. The Commission shall convene within 10 days of delivery of the request, for the purpose of reaching a mutually satisfactory settlement of the dispute, and may:

(a) Call on such technical advisers or create such expert groups as it deems necessary;

(b) have recourse to good offices, conciliation, mediation or such other dispute resolution mechanisms; or

(c) make recommendations.

Article 20-07

Request for an Arbitral Panel

1. Where the Commission has convened pursuant to Article 20-06 (4) and the matter has not been resolved within 45 days thereafter, either Party may request in writing the establishment of an arbitral panel. The requesting Party shall deliver the request to its Section of the Secretariat and to the other Party.

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

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

Article 20-08

Roster

1. The Commission shall establish a roster of up to 20 individuals who are willing and able to serve as panellists. The roster members shall be appointed by consensus for terms of three years, and may be reappointed.

2. Roster members shall:

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

(b) be chosen strictly on the basis of objectivity, reliability and sound judgment;

(c) be independent of, and not be affiliated with or take instructions from, either Party; and

(d) comply with a code of conduct to be established by the Commission.

3. The roster shall include experts who are not nationals of the Parties.

Article 20-09

Qualifications of Panellists

1. All panellists shall meet the qualifications set out in Article 20-08 (2).

2. Individuals may not serve as panellists for a dispute in which they have participated pursuant to Article 20-06 (4).

Article 20-10

Panel Selection

1. The panel shall comprise five members.

2. The Parties shall endeavour to agree on the chair of the panel within 15 days of the delivery of the request for the establishment of the panel. If the Parties are unable to agree on the chair within

this period, one of them, chosen by lot, shall select the chair within five days. Should that Party fail to select the chair, the other Party shall do so. The chair of the arbitral panel may not be a citizen of the selecting Party.

3. Within 15 days of selection of the chair, each Party shall select two panellists, who are citizens of the other Party.

4. If a Party fails to select a panellist within such period, such panellist shall be selected by lot from roster members who are citizens of the other Party.

5. Panellists shall normally be selected from the roster. A Party may exercise a peremptory challenge against any individual not on the roster who is proposed as a panellist by a disputing Party within 15 days after the individual has been proposed.

6. If a Party believes that a panellist is in violation of the Code of Conduct, the Parties shall consult and, if they agree, the panellist shall be removed and a new panellist shall be selected in accordance with this Article.

Article 20-11

Model Rules of Procedure

1. The Commission shall establish Model Rules of Procedure, in accordance with the following principles:

(a) The procedures shall assure a right to at least one hearing before the panel as well as the opportunity to provide initial and rebuttal written submissions; and

(b) the panel's hearings, deliberations and initial report, and all written submissions to and communications with the panel shall be confidential.

2. Unless the disputing Parties agree otherwise, the panel shall conduct its proceedings in accordance with the Model Rules of Procedure.

3. The mission of the arbitral panel, set out in its terms of reference, shall be:

"To examine, in the light of the relevant provisions of the Agreement, the matter referred to the Commission (as set out in the request for a Commission meeting) and to make findings, determinations and recommendations as provided in Articles 20-13 and 20-14."

4. If a complaining Party wishes to argue that a matter has nullified or impaired benefits, in the sense of Annex 20-02, the terms of reference shall so indicate.

5. If a Party wishes the panel to make findings as to the degree of adverse trade effects on a Party of any measure found not to conform with the obligations of the Agreement or to have caused nullification or impairment in the sense of Annex 20-02, the terms of reference shall so indicate.

Article 20-12

Role of Experts

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

Article 20-13

Preliminary determination

1. The arbitral panel shall issue an preliminary determination based on the submissions and arguments of the Parties and on any information before it pursuant to Article 20-12.

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

(a) Findings of fact, including any findings pursuant to a request under Article 20-11 (5);

(b) the determination as to whether the measure at issue is or would be inconsistent with the obligations of this Agreement or cause nullification or impairment in the sense of Annex 20-02, and

(c) the draft determination.

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

4. The Parties may submit written comments to the panel on its preliminary determination within 14 days of presentation of the report.

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

(a) Make any further examination that it considers appropriate; and

(b) reconsider its determination.

Article 20-14

Final determination

1. The arbitral panel shall communicate to the Commission its final determination, including any separate opinions on matters not unanimously agreed, within 30 days of presentation of the preliminary determination.

2. Neither the preliminary determination nor the final determination shall disclose which panellists are associated with majority or minority opinions.

3. The final determination shall be published 15 days after it is communicated to the disputing Parties.

Article 20-15

Implementation of the Final Determination

1. The final determination shall be binding on the disputing Parties in the terms and time periods that the determination orders.

2. Where a final determination by an arbitral panel finds that the measure is inconsistent with this Agreement, the Party complained against shall not implement the measure or shall revoke it.

3. Where the final determination of the arbitral panel determines that the measure is cause of nullification or impairment in the sense of Annex 20-02, it shall determine the level of nullification or impairment and may suggest adjustments it considers mutually satisfactory for the Parties.

Article 20-16

Non-Implementation - Suspension of Benefits

1. The complaining Party may suspend application of benefits of equivalent effect to the Party complained against if the panel determines:

(a) That a measure is inconsistent with the obligations of this Agreement and the Party complained against fails to comply with the final determination within the period set by the arbitral panel; or

(b) that a measure is the cause nullification or impairment in the sense of Annex 20-02 and the Parties are unable to reach a mutually satisfactory settlement of the dispute within the time period set by the arbitral panel.

2. Benefits shall be suspended until such time as the Party complained against complies with the final determination of the arbitral panel or until the Parties reach a mutually satisfactory settlement of the dispute.

3. In considering what benefits to suspend pursuant to paragraph 1:

(a) The complaining Party should first seek to suspend benefits in the same sector or sectors as that or those affected by the measure or other matter that the panel has found to be inconsistent with the obligations of this Agreement or to have caused nullification or impairment as set out in Annex 20-02; and

(b) 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.

4. On the written request of a Party delivered to the other Party and its Section of the Secretariat, the Commission shall establish a panel to determine whether the level of benefits suspended by a Party pursuant to paragraph 1 is manifestly excessive.

5. The panel proceedings pursuant to paragraph 3 shall be conducted in accordance with the Model Rules of Procedure. The panel shall present its determination within 60 days after the last panellist is selected or such other period as the Parties may agree.

Article 20-17

Domestic Proceedings and Private Commercial Dispute Settlement

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

2. The Party in whose territory the court or administrative body is located shall submit any agreed interpretation of the Commission to the court or administrative body in accordance with the rules of that forum.

3. If the Commission is unable to agree, either Party may submit its own views to the court or administrative body in accordance with the rules of that forum.

Article 20-18

Alternative Dispute Resolution

1. Each Party shall, to the maximum extent possible, encourage and facilitate the use of arbitration and other means of alternative dispute resolution for the settlement of international commercial disputes between private parties.

2. To this end, each Party shall provide appropriate legal framework to ensure observance of agreements to arbitrate and for the recognition and enforcement by courts of arbitral awards in such disputes.

3. A Party shall be deemed to be in compliance with paragraph 2 if it is a Party to and is in compliance with the 1958 United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards (the New York Convention), or the 1975 Inter-American Convention on International Commercial Arbitration (the Panama Convention).

4. The Commission shall establish an Advisory Committee on Private Commercial Disputes comprising persons with expertise or experience in the resolution of private international commercial disputes. The Committee shall report and provide recommendations to the Commission respecting the availability, use and effectiveness of arbitration and other procedures for the resolution of such disputes.

ANNEX 20-02

Nullification and Impairment

1. A Party may have recourse to dispute settlement under this Chapter if it considers that any benefit it could reasonably have expected to accrue to it under any provision of:

(a) Part Two (Trade in Goods);

(b) Chapter X (General Principles on Trade in Services);

(c) Part Four (Technical Barriers to Trade);

(d) Part Five (Government Procurement); and

(d) Part Seven (Intellectual Property);

is being nullified or impaired as a result of the application of any measure that is not inconsistent with this Agreement.

2. Paragraph 1 shall be applicable even when the Party appealed against invokes one of the general exceptions set out in Article 21-01, except in the case of an exception applicable to cross-border trade in services.

PART TEN: OTHER PROVISIONS

CHAPTER XXI: EXCEPTIONS

Article 21-01

General Exceptions

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

(a) Part Two (Trade in Goods), except to the extent that a provision of that Part applies to services or investment; and

(b) Part Four (Technical Barriers to Trade), except to the extent that a provision of that Part applies to services.

2. Nothing in Part Four (Technical Barriers to Trade), and Chapters X (General Principles on Trade in Services) and XI (Telecommunications), except insofar as a provision of that Part or those Chapters applies to goods, shall be construed to prevent either Party adopting or implementing measures necessary to:

(a) Protect public morals or maintain public order;

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

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

(i) the prevention of deceptive and fraudulent practices or to deal with the effects of a default on services contracts;

(ii) the protection of the privacy of individuals in relation to the processing and dissemination of personal data and the protection of confidentiality of individual records and accounts; and

(iii) safety,

provided that such measures are not applied in a manner that would constitute a means of arbitrary or unjustifiable discrimination between countries where the same conditions prevail or a disguised restriction on trade between the Parties.

Article 21-02

National Security

1. Further to Article 21-01, nothing in this Agreement shall be construed:

(a) To require either Party to furnish or allow access to any information the disclosure of which it determines to be contrary to its essential security interests;

(b) to prevent either Party from taking any actions that it considers necessary for the protection of its essential security interests:

(i) relating to traffic in arms, ammunition and implements of war and to such traffic and transactions in other goods, materials, services and technology undertaken directly or indirectly for the purpose of supplying a military or other security establishment;

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

(iii) relating to the implementation of national policies or international agreements respecting the non-proliferation of nuclear weapons or other nuclear explosive devices; or

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

Article 21-03

Exceptions to the Disclosure of Information

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

CHAPTER XXII: FINAL PROVISIONS

Article 22-01

Annexes

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

Article 22-02

Amendments

1. The Parties may agree on any modification of or addition to this Agreement.

2. When so agreed, and approved in accordance with the applicable legal procedures of each Party, a modification or addition shall constitute an integral part of this Agreement.

Article 22-03

Entry into Force

This Agreement shall enter into force on 1 July 1994, on an exchange of written notifications certifying the completion of necessary legal procedures.

Article 22-04

Reservations

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

Article 22-05

Accession

1. Any country or group of countries may accede to this Agreement subject to such terms and conditions as may be agreed between such country or countries and the Commission, and following approval in accordance with the applicable legal procedures of each country.

2. This Agreement shall not apply as between either Party and any acceding country or group of countries if, at the time of accession, either does not consent to such application.

3. Accession shall take effect on an exchange of written notifications certifying the completion of necessary legal procedures.

Article 22-06

Withdrawal

1. Either Party may withdraw from this Agreement. Withdrawal shall become effective 180 days after the other Parties are notified, unless the Parties agree to a different period.

2. Regardless of whether a Party has withdrawn from the Agreement, in the event of accession by a country or group of countries, pursuant to Article 20-05, it shall remain in force for the other Parties.

Article 22-07

Evaluation of the Agreement

The Parties shall periodically evaluate the development of this Agreement in order to improve it and consolidate the integration process in the region, encouraging active participation from productive sectors.

Done in the city of Managua, on the 18th day of December 1997, in two equally authentic originals.

The President of the United Mexican States,
Ernesto Zedillo Ponce de León

The President of the Republic of Nicaragua,
Arnoldo Alemán