

SUPPORTING DOCUMENTS TO IMPLEMENT THE  
DOMINICAN REPUBLIC-CENTRAL AMERICA-UNITED  
STATES FREE TRADE AGREEMENT

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MESSAGE

FROM

**THE PRESIDENT OF THE UNITED STATES**

TRANSMITTING

CONSISTENT WITH THE TRADE ACT OF 2002, LEGISLATION/AND  
SUPPORTING DOCUMENTS TO IMPLEMENT THE DOMINICAN/  
REPUBLIC-CENTRAL AMERICA-UNITED STATES FREE TRADE  
AGREEMENT

Volume 1 of 2



JUNE 24, 2005.—Message and accompanying papers referred to the  
Committee on Ways and Means and ordered to be printed

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*To the Congress of the United States:*

I am pleased to transmit legislation and supporting documents to implement the Dominican Republic-Central America-United States Free Trade Agreement (the "Agreement"). The Agreement represents an historic development in our relations with Central America and the Dominican Republic and reflects the commitment of the United States to supporting democracy, regional integration, and economic growth and opportunity in a region that has transitioned to peaceful, democratic societies.

In negotiating this Agreement, my Administration was guided by the objectives set out in the Trade Act of 2002. Central America and the Dominican Republic constitute our second largest export market in Latin America and our tenth largest export market in the world. The Agreement will create significant new opportunities for American workers, farmers, ranchers, and businesses by opening new markets and eliminating barriers. United States agricultural exports will obtain better access to the millions of consumers in Central America and the Dominican Republic.

Under the Agreement, tariffs on approximately 80 percent of U.S. exports will be eliminated immediately. The Agreement will help to level the playing field because about 80 percent of Central America's imports already enjoy duty-free access to our market. By providing for the effective enforcement of labor and environmental laws, combined with strong remedies for noncompliance, the Agreement will contribute to improved worker rights and high levels of environmental protection in Central America and the Dominican Republic.

By supporting this Agreement, the United States can stand with those in the region who stand for democracy and freedom, who are fighting corruption and crime, and who support the rule of law. A stable, democratic, and growing Central America and Dominican Republic strengthens the United States economically and provides greater security for our citizens.

The Agreement is in our national interest, and I urge the Congress to approve it expeditiously.

GEORGE W. BUSH.

THE WHITE HOUSE, *June 23, 2005.*



# CAFTA-DR



**The Dominican Republic –  
Central America - United  
States Free Trade Agreement**

**June 2005**



THE DOMINICAN REPUBLIC – CENTRAL AMERICA – UNITED STATES  
FREE TRADE AGREEMENT IMPLEMENTING LEGISLATION AND  
SUPPORTING DOCUMENTATION

Consistent with the provisions of section 2105(a)(1)(A) and (B) of the Trade Act of 2002 (19 U.S.C. § 3805(a)(1)(A) and (B)) (“the Act”):

- On February 20, 2004, the President notified the House of Representatives and the Senate of the President’s intention to enter into a free trade agreement with Costa Rica, El Salvador, Guatemala, Honduras, and Nicaragua (“Central America”)(40 Wkly. Comp. of Pres. Docs. 263 (2004)). On March 24, 2004, the President notified the House of Representatives and the Senate of the President’s intention to enter into a free trade agreement with the Dominican Republic (40 Wkly. Comp. of Pres. Docs. 462 (2004)).
- On February 24, 2004, the President published in the *Federal Register* a notice of the President’s intention to enter into a free trade agreement with Central America (69 Fed. Reg. 8543 (2004)). On March 26, 2004, the President published in the *Federal Register* a notice of the President’s intention to enter into a free trade agreement with the Dominican Republic (69 Fed. Reg. 16161 (2004)).
- On August 5, 2004, the United States Trade Representative entered into a free trade agreement with Central America and the Dominican Republic (“Agreement”).
- On October 4, 2004, the United States Trade Representative transmitted to the Congress a description of changes to existing U.S. laws required to comply with the Agreement.

The following documents are submitted to the Congress under section 2105 of the Act. Submitted herewith or within these documents are:

- a copy of the final legal text of the Agreement (Tab 1);
- a draft of an implementing bill described in section 2103(b)(3) of the Act (Tab 2);
- a statement of any administrative action proposed to implement the Agreement, which includes an explanation as to how the implementing bill and proposed administrative action will change or affect existing law, whether and how the Agreement changes provisions of an agreement previously negotiated, and how the implementing bill meets the standards set forth in section 2103(b)(3) of the Act (Tab 3);
- a statement setting forth the reasons of the President regarding how and to what extent the Agreement makes progress in achieving the applicable purposes, policies, objectives, and priorities of the Act (Tab 4); and
- a statement setting forth the reasons of the President regarding how the Agreement serves the interest of U.S. commerce (Tab 5).

Additionally, a summary of the Agreement (Tab 6), as required by section 162 of the Trade Act of 1974 (19 U.S.C. § 2212), and 30 letters and three Understandings related to the Agreement are submitted herewith to the Congress.

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**Tab 1: The Dominican Republic-Central America-  
United States Free Trade Agreement**

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**THE DOMINICAN REPUBLIC – CENTRAL AMERICA – UNITED STATES  
FREE TRADE AGREEMENT**

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**PREAMBLE**

The Government of the Republic of Costa Rica, the Government of the Dominican Republic, the Government of the Republic of El Salvador, the Government of the Republic of Guatemala, the Government of the Republic of Honduras, the Government of the Republic of Nicaragua, and the Government of the United States of America, resolved to:

**STRENGTHEN** the special bonds of friendship and cooperation among their nations and promote regional economic integration;

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

**CREATE** an expanded and secure market for the goods and services produced in their territories while recognizing the differences in their levels of development and the size of their economies;

**AVOID** distortions to 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* and other multilateral and bilateral instruments of cooperation;

**SEEK** to facilitate regional trade by promoting efficient and transparent customs procedures that reduce costs and ensure predictability for their importers and exporters;

**ENHANCE** the competitiveness of their firms in global markets;

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

**PROMOTE** transparency and eliminate bribery and corruption in international trade and investment;

**CREATE** new opportunities for economic and social development in the region;

**PROTECT**, enhance, and enforce basic workers' rights and strengthen their cooperation on labor matters;

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

**BUILD** on their respective international commitments on labor matters;

**IMPLEMENT** this Agreement in a manner consistent with environmental protection and conservation, promote sustainable development, and strengthen their cooperation on environmental matters;

**PROTECT** and preserve the environment and enhance the means for doing so, including through the conservation of natural resources in their respective territories;

**PRESERVE** their flexibility to safeguard the public welfare;

**RECOGNIZE** the interest of the Central American Parties in strengthening and deepening their regional economic integration; and

**CONTRIBUTE** to hemispheric integration and provide an impetus toward establishing the *Free Trade Area of the Americas*;

**HAVE AGREED** as follows:

**Chapter One****Initial Provisions****Article 1.1: Establishment of a Free Trade Area**

The Parties to this Agreement, consistent with Article XXIV of the *General Agreement on Tariffs and Trade 1994* and Article V of the *General Agreement on Trade in Services*, hereby establish a free trade area.

**Article 1.2: Objectives**

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

- (a) encourage expansion and diversification of trade between the Parties;
- (b) eliminate barriers to trade in, and facilitate the cross-border movement of, goods and services between the territories of the Parties;
- (c) promote conditions of fair competition in the free trade area;
- (d) substantially increase 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) create effective procedures for the implementation and application of this Agreement, for its joint administration, and for the resolution of disputes; and
- (g) establish a framework for further bilateral, regional, and multilateral cooperation to expand and enhance the benefits of this Agreement.

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

**Article 1.3: Relation to Other Agreements**

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

2. For greater certainty, nothing in this Agreement shall prevent the Central American Parties from maintaining their existing legal instruments of Central American integration, adopting new legal instruments of integration, or adopting measures to strengthen and deepen these instruments, provided that such instruments and measures are not inconsistent with this Agreement.

**Article 1.4: Extent of Obligations**

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

**Chapter Two**  
**General Definitions**

**Article 2.1: Definitions of General Application**

For purposes of this Agreement, unless otherwise specified:

**Central America** means the Republics of Costa Rica, El Salvador, Guatemala, Honduras, and Nicaragua;

**central level of government** means:

- (a) for Costa Rica, the Dominican Republic, El Salvador, Guatemala, Honduras, and Nicaragua, the national level of government; and
- (b) for the United States, the federal level of government;

**Commission** means the Free Trade Commission established under Article 19.1 (The Free Trade Commission);

**covered investment** means, with respect to a Party, an investment, as defined in Article 10.28 (Definitions), in its territory of an investor of another Party in existence as of the date of entry into force of this Agreement or established, acquired, or expanded thereafter;

**customs authority** means the competent authority that is responsible under the law of a Party for the administration of customs laws and regulations;

**customs duty** includes any customs or import duty and a 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 1994, in respect of like, 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) antidumping or countervailing duty that is applied pursuant to a Party's domestic law; or
- (c) fee or other charge in connection with importation commensurate with the cost of services rendered;

**Customs Valuation Agreement** means the *WTO Agreement on Implementation of Article VII of the General Agreement on Tariffs and Trade 1994*;

**days** means calendar days;

**enterprise** means any entity constituted or organized under applicable law, whether or not for profit, and whether privately-owned or governmentally-owned, including any corporation, trust, partnership, sole proprietorship, joint venture, or other association;

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

**existing** means in effect on the date of entry into force of this Agreement;

**GATS** means the *WTO General Agreement on Trade in Services*;

**GATT 1994** means the WTO *General Agreement on Tariffs and Trade 1994*;

**goods of a Party** means domestic products as these are understood in the GATT 1994 or such goods as the Parties may agree, and includes originating goods of that Party;

**Harmonized System (HS)** means the *Harmonized Commodity Description and Coding System*, including its General Rules of Interpretation, Section Notes, and Chapter Notes, as adopted and implemented by the Parties in their respective tariff laws;

**heading** means the first four digits in the tariff classification number under the Harmonized System;

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

**national** means a natural person who has the nationality of a Party according to Annex 2.1 or a permanent resident of a Party;

**originating** means qualifying under the rules of origin set out in Chapter Four (Rules of Origin and Origin Procedures);

**Party** means any State for which this Agreement is in force;

**person** means a natural person or an enterprise;

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

**preferential tariff treatment** means the duty rate applicable under this Agreement to an originating good;

**procurement** means the process by which a government obtains the use of or acquires goods or services, or any combination thereof, for governmental purposes and not with a view to commercial sale or resale or with a view to use in the production or supply of goods or services for commercial sale or resale;

**regional level of government** means, for the United States, a state of the United States, the District of Columbia, or Puerto Rico. For Costa Rica, the Dominican Republic, El Salvador, Guatemala, Honduras, and Nicaragua, "regional level of government" is not applicable;

**Safeguards Agreement** means the WTO *Agreement on Safeguards*;

**sanitary or phytosanitary measure** means any measure referred to in Annex A, paragraph 1 of the SPS Agreement;

**SPS Agreement** means the WTO *Agreement on the Application of Sanitary and Phytosanitary Measures*;

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

**subheading** means the first six digits in the tariff classification number under the Harmonized System;

**territory** means for a Party the territory of that Party as set out in Annex 2.1;

**TRIPS Agreement** means the WTO *Agreement on Trade-Related Aspects of Intellectual Property Rights*;

**WTO** means the World Trade Organization; and

**WTO Agreement** means the *Marrakesh Agreement Establishing the World Trade Organization*, done on April 15, 1994.

## Annex 2.1

## Country-Specific Definitions

For purposes of this Agreement, unless otherwise specified:

**natural person who has the nationality of a Party means:**

- (a) with respect to Costa Rica, a *costarricense* as defined in Articles 13 and 14 of the *Constitución Política de la República de Costa Rica*;
- (b) with respect to the Dominican Republic, a *dominicano* as defined in Article 11 of the *Constitución de la República Dominicana*;
- (c) with respect to El Salvador, a *salvadoreño* as defined in Articles 90 and 92 of the *Constitución de la República de El Salvador*;
- (d) with respect to Guatemala, a *guatemalteco* as defined in Articles 144, 145 and 146 of the *Constitución de la República de Guatemala*;
- (e) with respect to Honduras, a *hondureño* as defined in Articles 23 and 24 of the *Constitución de la República de Honduras*;
- (f) with respect to Nicaragua, a *nicaragüense* as defined in Article 15 of the *Constitución Política de la República de Nicaragua*; and
- (g) with respect to the United States, "national of the United States" as defined in the existing provisions of the *Immigration and Nationality Act*; and

**territory means:**

- (a) with respect to Costa Rica, the land, maritime, and air space under its sovereignty<sup>1</sup> and the exclusive economic zone and the continental shelf within which it exercises sovereign rights and jurisdiction in accordance with international law and its domestic law;
- (b) with respect to the Dominican Republic, the land, maritime, and air space under its sovereignty and the exclusive economic zone and the continental shelf within which it exercises sovereign rights and jurisdiction in accordance with international law and its domestic law;
- (c) with respect to El Salvador, the land, maritime, and air space under its sovereignty and the exclusive economic zone and the continental shelf within which it exercises sovereign rights and jurisdiction in accordance with international law and its domestic law;
- (d) with respect to Guatemala, the land, maritime, and air space under its sovereignty and the exclusive economic zone and the continental shelf within which it exercises sovereign rights and jurisdiction in accordance with international law and its domestic law;
- (e) with respect to Honduras, the land, maritime, and air space under its sovereignty and the exclusive economic zone and the continental shelf within which it exercises sovereign rights and jurisdiction in accordance with international law and its domestic law;

<sup>1</sup> For greater certainty, the territory of Costa Rica includes Coco Island.

- (f) with respect to Nicaragua, the land, maritime, and air space under its sovereignty and the exclusive economic zone and the continental shelf within which it exercises sovereign rights and jurisdiction in accordance with international law and its domestic law; and
- (g) with respect to the United States,
  - (i) the customs territory of the United States, which includes the 50 states, the District of Columbia, and Puerto Rico,
  - (ii) the foreign trade zones located in the United States and Puerto Rico, and
  - (iii) any areas beyond the territorial seas of the United States within which, in accordance with international law and its domestic law, the United States may exercise rights with respect to the seabed and subsoil and their natural resources.

**Chapter Three**

**National Treatment and Market Access for Goods**

**Article 3.1: Scope and Coverage**

Except as otherwise provided, this Chapter applies to trade in goods of a Party.

**Section A: National Treatment**

**Article 3.2: National Treatment**

1. Each Party shall accord national treatment to the goods of another Party in accordance with Article III of the GATT 1994, including its interpretive notes, and to this end Article III of the GATT 1994 and its interpretive notes are incorporated into and made part of this Agreement, *mutatis mutandis*.
2. The provisions of paragraph 1 regarding national treatment shall mean, with respect to a regional level of government, treatment no less favorable than the most favorable treatment that regional level of government accords to any like, directly competitive, or substitutable goods, as the case may be, of the Party of which it forms a part.
3. Paragraphs 1 and 2 shall not apply to the measures set out in Annex 3.2.

**Section B: Tariff Elimination**

**Article 3.3: Tariff Elimination**

1. Except as otherwise provided in this Agreement, no Party may increase any existing customs duty, or adopt any new customs duty, on an originating good.
2. Except as otherwise provided in this Agreement, each Party shall progressively eliminate its customs duties on originating goods, in accordance with Annex 3.3.<sup>1</sup>
3. For greater certainty, paragraph 2 shall not prevent a Central American Party from providing identical or more favorable tariff treatment to a good as provided for under the legal instruments of Central American integration, provided that the good meets the rules of origin under those instruments.
4. On the request of any Party, the Parties shall consult to consider accelerating the elimination of customs duties set out in their Schedules to Annex 3.3. Notwithstanding Article 19.1.3(b) (The Free Trade Commission), an agreement between two or more Parties to accelerate the elimination of a customs duty on a good shall supercede any duty rate or staging category determined pursuant to their Schedules to Annex 3.3 for such good when approved by each such Party in accordance with its applicable legal procedures. Promptly after two or more Parties conclude an agreement under this paragraph they shall notify the other Parties of the terms of that agreement.

<sup>1</sup> For greater certainty, except as otherwise provided in this Agreement, each Central American Party and the Dominican Republic shall provide that any originating good is entitled to the tariff treatment for the good set out in its Schedule to Annex 3.3, regardless of whether the good is imported into its territory from the territory of the United States or any other Party. An originating good may include a good produced in a Central American Party or the Dominican Republic with materials from the United States.

5. For greater certainty, a Party may:
  - (a) raise a customs duty back to the level established in its Schedule to Annex 3.3 following a unilateral reduction; or
  - (b) maintain or increase a customs duty as authorized by the Dispute Settlement Body of the WTO.
6. Annex 3.3.6 applies to the Parties specified in that Annex.

#### **Section C: Special Regimes**

##### **Article 3.4: Waiver of Customs Duties**

1. No Party may adopt any new waiver of customs duties, or expand with respect to existing recipients or extend to any new recipient the application of an existing waiver of customs duties, where the waiver is conditioned, explicitly or implicitly, on the fulfillment of a performance requirement.
2. No Party may, explicitly or implicitly, condition on the fulfillment of a performance requirement the continuation of any existing waiver of customs duties.
3. Costa Rica, the Dominican Republic, El Salvador, and Guatemala may each maintain existing measures inconsistent with paragraphs 1 and 2, provided it maintains such measures in accordance with Article 27.4 of the SCM Agreement. Costa Rica, the Dominican Republic, El Salvador, and Guatemala may not maintain any such measures after December 31, 2009.
4. Nicaragua and Honduras may each maintain measures inconsistent with paragraphs 1 and 2 for such time as it is an Annex VII country for purposes of the SCM Agreement. Thereafter, Nicaragua and Honduras shall maintain any such measures in accordance with Article 27.4 of the SCM Agreement.

##### **Article 3.5: Temporary Admission of Goods**

1. Each Party shall grant duty-free temporary admission for the following goods, regardless of their origin:
  - (a) professional equipment, including equipment for the press or television, software and broadcasting and cinematographic equipment, necessary for carrying out the business activity, trade, or profession of a business person who qualifies for temporary entry pursuant to the laws of the importing Party;
  - (b) goods intended for display or demonstration;
  - (c) commercial samples and advertising films and recordings; and
  - (d) goods admitted for sports purposes.
2. Each Party shall, at the request of the person concerned and for reasons its customs authority considers valid, extend the time limit for temporary admission beyond the period initially fixed.

3. No Party may condition the duty-free temporary admission of a good referred to in paragraph 1, other than to require that such good:

- (a) be used solely by or under the personal supervision of a national or resident of another Party in the exercise of the business activity, trade, profession, or sport of that person;
- (b) not be sold or leased while in its territory;
- (c) be accompanied by a security in an amount no greater than the charges that would otherwise be owed on entry or final importation, releasable on exportation of the good;
- (d) be capable of identification when exported;
- (e) be exported on the departure of the person referenced in subparagraph (a), or within such other period related to the purpose of the temporary admission as the Party may establish, or within one year, unless extended;
- (f) be admitted in no greater quantity than is reasonable for its intended use; and
- (g) be otherwise admissible into the Party's territory under its law.

4. If any condition that a Party imposes under paragraph 3 has not been fulfilled, the Party may apply the customs duty and any other charge that would normally be owed on the good plus any other charges or penalties provided for under its law.

5. Each Party, through its customs authority, shall adopt procedures providing for the expeditious release of goods admitted under this Article. To the extent possible, such procedures shall provide that when such a good accompanies a national or resident of another Party who is seeking temporary entry, the good shall be released simultaneously with the entry of that national or resident.

6. Each Party shall permit a good temporarily admitted under this Article to be exported through a customs port other than that through which it was admitted.

7. Each Party shall provide that its customs authority or other competent authority shall relieve the importer or other person responsible for a good admitted under this Article from any liability for failure to export the good on presentation of satisfactory proof to the importing Party's customs authority that the good has been destroyed within the original period fixed for temporary admission or any lawful extension.

8. Subject to Chapters Ten (Investment) and Eleven (Cross-Border Trade in Services):

- (a) each Party shall allow a vehicle or container used in international traffic that enters its territory from the territory of another Party to exit its territory on any route that is reasonably related to the economic and prompt departure of such vehicle or container;
- (b) no Party may require any bond or impose any penalty or charge solely by reason of any difference between the port of entry and the port of departure of a vehicle or container;
- (c) no Party may condition the release of any obligation, including any bond, that it imposes in respect of the entry of a vehicle or container into its territory on its exit through any particular port of departure; and

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

9. For purposes of paragraph 8, **vehicle** means a truck, a truck tractor, tractor, trailer unit or trailer, a locomotive, or a railway car or other railroad equipment.

**Article 3.6: Goods Re-entered after Repair or Alteration**

1. No Party may apply a customs duty to a good, regardless of its origin, that re-enters its territory after that good has been temporarily exported from its territory to the territory of another Party for repair or alteration, regardless of whether such repair or alteration could be performed in the territory of the Party from which the good was exported for repair or alteration.

2. No Party may apply a customs duty to a good, regardless of its origin, admitted temporarily from the territory of another Party for repair or alteration.

3. For purposes of this Article, **repair or alteration** does not include an operation or process that:

- (a) destroys a good's essential characteristics or creates a new or commercially different good; or
- (b) transforms an unfinished good into a finished good.

**Article 3.7: Duty-Free Entry of Commercial Samples of Negligible Value and Printed Advertising Materials**

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

- (a) such samples be imported solely for the solicitation of orders for goods, or services provided from the territory, of another Party or a non-Party; or
- (b) such advertising materials be imported in packets that each contain no more than one copy of each such material and that neither such materials nor packets form part of a larger consignment.

**Section D: Non-Tariff Measures**

**Article 3.8: Import and Export Restrictions**

1. Except as otherwise provided in this Agreement, no Party may adopt or maintain any prohibition or restriction on the importation of any good of another Party or on the exportation or sale for export of any good destined for the territory of another Party, except in accordance with Article XI of the GATT 1994 and its interpretative notes, and to this end Article XI of the GATT 1994 and its interpretative notes are incorporated into and made a part of this Agreement, *mutatis mutandis*.<sup>2</sup>

<sup>2</sup> For greater certainty, this paragraph applies, *inter alia*, to prohibitions or restrictions on the importation of remanufactured goods.

2. The Parties understand that the GATT 1994 rights and obligations incorporated by paragraph 1 prohibit, in any circumstances in which any other form of restriction is prohibited, a Party from adopting or maintaining:

- (a) export and import price requirements, except as permitted in enforcement of countervailing and antidumping duty orders and undertakings;
- (b) import licensing conditioned on the fulfillment of a performance requirement, except as provided in a Party's Schedule to Annex 3.3; or
- (c) voluntary export restraints inconsistent with Article VI of the GATT 1994, as implemented under Article 18 of the SCM Agreement and Article 8.1 of the AD Agreement.

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

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

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

5. Paragraphs 1 through 4 shall not apply to the measures set out in Annex 3.2.

6. Neither a Central American Party nor the Dominican Republic may, as a condition for engaging in importation or for the import of a good, require a person of another Party to establish or maintain a contractual or other relationship with a dealer in its territory.

7. Neither a Central American Party nor the Dominican Republic may remedy a violation or alleged violation of any law, regulation, or other measure regulating or otherwise relating to the relationship between any dealer in its territory and any person of another Party, by prohibiting or restricting the importation of any good of another Party.

8. For purposes of this Article:

**dealer** means a person of a Party who is responsible for the distribution, agency, concession, or representation in the territory of that Party of goods of another Party; and

**remedy** means to obtain redress or impose a penalty, including through a provisional, precautionary, or permanent measure.

**Article 3.9: Import Licensing**

1. No Party may adopt or maintain a measure that is inconsistent with the Import Licensing Agreement.

2. Promptly after entry into force of this Agreement, each Party shall notify the other Parties of any existing import licensing procedures, and thereafter shall notify the other Parties of any new import licensing procedure and any modification to its existing import licensing procedures, within 60 days before it takes effect. A notification provided under this Article shall:

- (a) include the information specified in Article 5 of the Import Licensing Agreement; and
- (b) be without prejudice as to whether the import licensing procedure is consistent with this Agreement.

3. No Party may apply an import licensing procedure to a good of another Party unless it has provided notification in accordance with paragraph 2.

**Article 3.10: Administrative Fees and Formalities**

1. Each Party shall ensure, in accordance with Article VIII:1 of the GATT 1994 and its interpretive notes, that all fees and charges of whatever character (other than customs duties, charges equivalent to an internal tax or other internal charge applied consistently with Article III:2 of the GATT 1994, and antidumping and countervailing duties) imposed on or in connection with importation or exportation are limited in amount to the approximate cost of services rendered and do not represent an indirect protection to domestic products or a taxation of imports or exports for fiscal purposes.

2. No Party may require consular transactions, including related fees and charges, in connection with the importation of any good of another Party.

3. Each Party shall make available and maintain through the Internet a current list of the fees and charges it imposes in connection with importation or exportation.

4. The United States shall eliminate its merchandise processing fee on originating goods.

**Article 3.11: Export Taxes**

Except as provided in Annex 3.11, no Party may adopt or maintain any duty, tax, or other charge on the export of any good to the territory of another Party, unless such duty, tax, or charge is adopted or maintained on any such good:

- (a) when exported to the territories of all other Parties; and
- (b) when destined for domestic consumption.

**Section E: Other Measures**

**Article 3.12: Distinctive Products**

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

2. At the request of a Party, the Committee on Trade in Goods shall consider whether to recommend that the Parties amend the Agreement to designate a good as a distinctive product for purposes of this Article.

#### Section F: Agriculture

##### Article 3.13: Administration and Implementation of Tariff-Rate Quotas

1. Each Party shall implement and administer the tariff-rate quotas for agricultural goods set out in Appendix I or, if applicable, Appendix II or III to its Schedule to Annex 3.3 (hereafter "TRQs") in accordance with Article XIII of the GATT 1994, including its interpretive notes, and the Import Licensing Agreement.
2. Each Party shall ensure that:
  - (a) its procedures for administering its TRQs are transparent, made available to the public, timely, nondiscriminatory, responsive to market conditions, minimally burdensome to trade, and reflect end user preferences;
  - (b) any person of a Party that fulfills the Party's legal and administrative requirements shall be eligible to apply and to be considered for an import license or quota allocation under the Party's TRQs;
  - (c) it does not allocate any portion of a quota to an industry association or non-governmental organization, except as otherwise provided in this Agreement;
  - (d) solely government authorities administer its TRQs, except as otherwise provided in this Agreement; and
  - (e) it allocates quotas under its TRQs in commercially viable shipping quantities and, to the maximum extent possible, in the amounts that importers request.
3. Each Party shall strive to administer its TRQs in a manner that allows importers to fully utilize import quotas.
4. No Party may condition application for, or utilization of, import licenses or quota allocations under its TRQs on the re-export of an agricultural good.
5. No Party may count food aid or other non-commercial shipments in determining whether an import quota under its TRQs has been filled.
6. On request of any Party, an importing Party shall consult with the requesting Party regarding the administration of its TRQs.

##### Article 3.14: Agricultural Export Subsidies

1. The Parties share the objective of the multilateral elimination of export subsidies for agricultural goods and shall work together toward an agreement in the WTO to eliminate those subsidies and prevent their reintroduction in any form.
2. Except as provided in paragraph 3, no Party may introduce or maintain any export subsidy on any agricultural good destined for the territory of another Party.
3. Where an exporting Party considers that a non-Party is exporting an agricultural good to the territory of another Party with the benefit of export subsidies, the importing Party shall,

on written request of the exporting Party, consult with the exporting Party with a view to agreeing on specific measures that the importing Party may adopt to counter the effect of such subsidized imports. If the importing Party adopts the agreed-on measures, the exporting Party shall refrain from applying any subsidy to its exports of the good to the territory of the importing Party. If the importing Party does not adopt the agreed-on measures, the exporting Party may apply an export subsidy on its exports of the good to the territory of the importing Party only to the extent necessary to counter the trade-distorting effect of subsidized exports of the good from the non-Party to the importing Party's territory.

**Article 3.15: Agricultural Safeguard Measures**

1. Notwithstanding Article 3.3, each Party may apply a measure in the form of an additional import duty on an agricultural good listed in that Party's Schedule to Annex 3.15, provided that the conditions in paragraphs 2 through 7 are met. The sum of any such additional import duty and any other customs duty on such good shall not exceed the lesser of:
  - (a) the prevailing most-favored-nation (MFN) applied rate of duty; or
  - (b) the MFN applied rate of duty in effect on the day immediately preceding the date of entry into force of this Agreement.
2. A Party may apply an agricultural safeguard measure during any calendar year if the quantity of imports of the good during such year exceeds the trigger level for that good set out in its Schedule to Annex 3.15.
3. The additional duty under paragraph 1 shall be set according to each Party's Schedule to Annex 3.15.
4. No Party may apply an agricultural safeguard measure and at the same time apply or maintain:
  - (a) a safeguard measure under Chapter Eight (Trade Remedies); or
  - (b) a measure under Article XIX of the GATT 1994 and the Safeguards Agreement;
 with respect to the same good.
5. No Party may apply or maintain an agricultural safeguard measure:
  - (a) on or after the date that a good is subject to duty-free treatment under the Party's Schedule to Annex 3.3; or
  - (b) that increases the in-quota duty on a good subject to a TRQ.
6. Each Party shall implement an agricultural safeguard measure in a transparent manner. Within 60 days after applying a measure, a Party shall notify any Party whose good is subject to the measure, in writing, and shall provide it relevant data concerning the measure. On request, the Party applying the measure shall consult with any Party whose good is subject to the measure regarding application of the measure.
7. A Party may maintain an agricultural safeguard measure only until the end of the calendar year in which the Party applies the measure.

8. The Commission and the Committee on Agricultural Trade may review the implementation and operation of this Article.

9. For purposes of this Article and Annex 3.15, **agricultural safeguard measure** means a measure described in paragraph 1.

**Article 3.16: Sugar Compensation Mechanism**

1. In any year, the United States may, at its option, apply a mechanism that results in compensation to a Party's exporters of sugar goods in lieu of according duty-free treatment to some or all of the duty-free quantity of sugar goods established for that Party in Appendix I to the Schedule of the United States to Annex 3.3. Such compensation shall be equivalent to the estimated economic rents that the Party's exporters would have obtained on exports to the United States of any such amounts of sugar goods and shall be provided within 30 days after the United States exercises this option. The United States shall notify the Party at least 90 days before it exercises this option and, on request, shall enter into consultations with the Party regarding application of the mechanism.

2. For purposes of this Article, **sugar good** means a good provided for in the subheadings listed in subparagraph 3(c) of Appendix I to the Schedule of the United States to Annex 3.3.

**Article 3.17: Consultations on Trade in Chicken**

The Parties shall consult on, and review the implementation and operation of the Agreement as it relates to, trade in chicken in the ninth year after the date of entry into force of this Agreement.

**Article 3.18: Agriculture Review Commission**

The Parties shall establish an Agriculture Review Commission in the 14th year after the date of entry into force of this Agreement to review the implementation and operation of the Agreement as it relates to trade in agricultural goods. The Agriculture Review Commission shall evaluate the effects of trade liberalization under the Agreement, the operation of Article 3.15 and possible extension of agricultural safeguard measures under that Article, progress toward global agricultural trade reform in the WTO, and developments in world agricultural markets. The Agriculture Review Commission shall report its findings and any recommendations to the Commission.

**Article 3.19: Committee on Agricultural Trade**

1. Not later than 90 days after the date of entry into force of this Agreement, the Parties shall establish a Committee on Agricultural Trade, comprising representatives of each Party.

2. The Committee shall provide a forum for:

- (a) monitoring and promoting cooperation on the implementation and administration of this Section;
- (b) consultation between the Parties on matters related to this Section in coordination with other committees, subcommittees, working groups, or other bodies established under this Agreement; and
- (c) undertaking any additional work that the Commission may assign.

3. The Committee shall meet at least once a year unless it decides otherwise. Meetings of the Committee shall be chaired by the representatives of the Party hosting the meeting.

4. All decisions of the Committee shall be taken by consensus, unless the Committee otherwise decides.

### **Section G: Textiles and Apparel**

#### **Article 3.20: Refund of Customs Duties**

1. On request of an importer, a Party shall refund any excess customs duties paid in connection with the importation into its territory of an originating textile or apparel good between January 1, 2004 and the date of entry into force of this Agreement for that Party. For purposes of applying this Article, the importing Party shall consider a good to be originating if the Party would have considered the good to be originating had it been imported into its territory on the date of entry into force of this Agreement for that Party.

2. Paragraph 1 shall not apply with respect to textile or apparel goods imported into, or imported from, the territory of a Party if it provides written notice to the other Parties by no later than 90 days before the date of entry into force of this Agreement for that Party that it will not comply with paragraph 1.

3. Notwithstanding paragraph 2, paragraph 1 shall apply with respect to textile or apparel goods imported from the territory of a Party if it provides written notice to the other Parties by no later than 90 days before the date of entry into force of this Agreement for that Party that it shall provide a benefit for textile or apparel goods imported into its territory that the importing and exporting Parties have agreed is equivalent to the benefit provided in paragraph 1.

4. This Article shall not apply to a textile or apparel good that qualifies for preferential tariff treatment under Article 3.21, 3.27, or 3.28.

#### **Article 3.21: Duty-Free Treatment for Certain Goods**

1. An importing and an exporting Party may identify at any time particular textile or apparel goods of the exporting Party that they mutually agree fall within:

- (a) hand-loomed fabrics of a cottage industry;
- (b) hand-made cottage industry goods made of such hand-loomed fabrics; or
- (c) traditional folklore handicraft goods.

2. The importing Party shall grant duty-free treatment to goods so identified, if certified by the competent authority of the exporting Party.

#### **Article 3.22: Elimination of Existing Quantitative Restrictions**

Not later than the date of entry into force of this Agreement, the United States shall eliminate the existing quantitative restrictions it maintains under the Agreement on Textiles and Clothing as set out in Annex 3.22.

**Article 3.23: Textile Safeguard Measures**

1. Subject to the following paragraphs, and during the transition period only, if, as a result of the reduction or elimination of a duty provided for in this Agreement, a textile or apparel good of another Party is being imported into the territory of a Party in such increased quantities, in absolute terms or relative to the domestic market for that good, and under such conditions as to cause serious damage, or actual threat thereof, to a domestic industry producing a like or directly competitive good, the importing Party may, to the extent necessary to prevent or remedy such damage and to facilitate adjustment, apply a textile safeguard measure to that good, consisting of an increase in the rate of duty on the good to a level not to exceed the lesser of:

- (a) the most-favored-nation (MFN) applied rate of duty in effect at the time the measure is applied; and
- (b) the MFN applied rate of duty in effect on the date of entry into force of this Agreement.

2. In determining serious damage, or actual threat thereof, the importing Party:

- (a) shall examine the effect of increased imports of the good of the other Party on the particular industry, as reflected in changes in such relevant economic variables as output, productivity, utilization of capacity, inventories, market share, exports, wages, employment, domestic prices, profits, and investment, none of which, either alone or combined with other factors, shall necessarily be decisive; and
- (b) shall not consider changes in technology or consumer preference as factors supporting a determination of serious damage or actual threat thereof.

3. The importing Party may apply a textile safeguard measure only following an investigation by its competent authority.

4. If, on the basis of the results of the investigation under paragraph 3, the importing Party intends to apply a textile safeguard measure, the importing Party shall promptly provide written notice to the exporting Party of its intent to apply a textile safeguard measure, and on request shall enter into consultations with that Party. The importing Party and the exporting Party shall begin the consultations without delay and shall complete them within 60 days of the date of receipt of the request. The importing Party shall make a decision on whether to apply a safeguard measure within 30 days of completion of the consultations.

5. The following conditions and limitations apply to any textile safeguard measure:

- (a) no Party may maintain a textile safeguard measure for a period exceeding three years;
- (b) no Party may apply a textile safeguard measure to the same good of another Party more than once;
- (c) on termination of the textile safeguard measure, the Party applying the measure shall apply the rate of duty set out in its Schedule to Annex 3.3, as if the measure had never been applied; and
- (d) no Party may maintain a textile safeguard measure beyond the transition period.

6. The Party applying a textile safeguard measure shall provide to the Party against whose good the measure is taken mutually agreed trade liberalizing compensation in the form of concessions having substantially equivalent trade effects or equivalent to the value of the additional duties expected to result from the textile safeguard measure. Such concessions shall be limited to textile or apparel goods, unless the consulting Parties otherwise agree. If the consulting Parties are unable to agree on compensation within 30 days of application of a textile safeguard measure, the Party against whose good the measure is taken may take tariff action having trade effects substantially equivalent to the trade effects of the textile safeguard measure. Such tariff action may be taken against any goods of the Party applying the measure. The Party taking the tariff action shall apply such action only for the minimum period necessary to achieve the substantially equivalent trade effects. The importing Party's obligation to provide trade compensation and the exporting Party's right to take tariff action shall terminate when the textile safeguard measure terminates.

7. (a) Each Party retains its rights and obligations under Article XIX of the GATT 1994 and the Safeguards Agreement.
- (b) No Party may apply, with respect to the same good at the same time, a textile safeguard measure and:
- (i) a safeguard measure under Chapter Eight (Trade Remedies); or
  - (ii) a measure under Article XIX of the GATT 1994 and the Safeguards Agreement.

**Article 3.24: Customs Cooperation<sup>3</sup>**

1. The customs authorities of the Parties shall cooperate for purposes of:
- (a) enforcing or assisting in the enforcement of their respective laws, regulations, and procedures affecting trade in textile or apparel goods;
  - (b) ensuring the accuracy of claims of origin for textile or apparel goods; and
  - (c) deterring circumvention of laws, regulations, and procedures of any Party or international agreements affecting trade in textile or apparel goods.
2. (a) On the written request of an importing Party, an exporting Party shall conduct a verification for purposes of enabling the importing Party to determine:
- (i) that a claim of origin for a textile or apparel good is accurate, or
  - (ii) that the exporter or producer is complying with applicable customs laws, regulations, and procedures regarding trade in textile or apparel goods, including:
    - (A) laws, regulations, and procedures that the exporting Party adopts and maintains pursuant to this Agreement; and
    - (B) laws, regulations, and procedures of the importing Party and the exporting Party implementing other international agreements regarding trade in textile or apparel goods.

<sup>3</sup> Paragraphs 2, 3, 4, 6, and 7 of this Article shall not apply between the Central American Parties or between any Central American Party and the Dominican Republic.

- (b) A request under subparagraph (a) shall include specific information regarding the reason the importing Party is requesting the verification and the determination the importing Party is seeking to make.
- (c) The exporting Party shall conduct a verification under subparagraph (a)(i), regardless of whether an importer claims preferential tariff treatment for the textile or apparel good for which a claim of origin has been made.

3. The importing Party, through its competent authority, may assist in a verification conducted under paragraph 2(a), or, at the request of the exporting Party, undertake such a verification, including by conducting, along with the competent authority of the exporting Party, visits in the territory of the exporting Party to the premises of an exporter, producer, or any other enterprise involved in the movement of textile or apparel goods from the territory of the exporting Party to the territory of the importing Party.

- 4. (a) The competent authority of the importing Party shall provide a written request to the competent authority of the exporting Party 20 days before the proposed date of a visit under paragraph 3. The request shall identify the competent authority making the request, the names and titles of the authorized personnel that will conduct the visit, the reason for the visit, including a description of the type of goods that are the subject of the verification, and the proposed dates of the visit.
- (b) The competent authority of the exporting Party shall respond within 10 days of receipt of the request, and shall indicate the date on which authorized personnel of the importing Party may perform the visit. The exporting Party shall seek, in accordance with its laws, regulations, and procedures, permission from the enterprise to conduct the visit. If consent is not provided, the importing Party may deny preferential tariff treatment to the type of goods of the enterprise that would have been the subject of the verification, except that the importing Party may not deny preferential tariff treatment to such goods based solely on a postponement of the visit, if there is adequate reason for such postponement.
- (c) Authorized personnel of the importing and exporting Parties shall conduct the visit in accordance with the laws, regulations, and procedures of the exporting Party.
- (d) On completion of a visit, the importing Party shall provide the exporting Party with an oral summary of the results of the visit and provide it with a written report of the results of the visit within approximately 45 days of the visit. The written report shall include:
  - (i) the name of the enterprise visited;
  - (ii) particulars of the shipments that were checked;
  - (iii) observations made at the enterprise relating to circumvention, and
  - (iv) an assessment of whether the enterprise's production records and other documents support its claims for preferential tariff treatment for:
    - (A) a textile or apparel good subject to a verification conducted under paragraph 2(a)(i); or

- (B) in the case of a verification conducted under paragraph 2(a)(ii), any textile or apparel good exported or produced by the enterprise.

5. On request of a Party conducting a verification under paragraph 2(a), a Party shall provide, consistent with its laws, regulations, and procedures, production, trade, and transit documents and other information necessary to conduct the verification. Where the providing Party designates the information as confidential, Article 5.6 (Confidentiality) shall apply. Notwithstanding the foregoing, a Party may publish the name of an enterprise that:

- (a) the Party has determined to be engaged in intentional circumvention of laws, regulations, and procedures of any Party or international agreements affecting trade in textile or apparel goods; or
- (b) has failed to demonstrate that it produces, or is capable of producing, textile or apparel goods.

6. (a) (i) During a verification conducted under paragraph 2(a), if there is insufficient information to support a claim for preferential tariff treatment, the importing Party may take appropriate action, which may include suspending the application of such treatment to:
- (A) in the case of a verification conducted under paragraph 2(a)(i), the textile or apparel good for which a claim for preferential tariff treatment has been made; and
  - (B) in the case of a verification conducted under paragraph 2(a)(ii), any textile or apparel good exported or produced by the enterprise subject to that verification for which a claim for preferential tariff treatment has been made.
- (ii) On completion of a verification conducted under paragraph 2(a), if there is insufficient information to support a claim for preferential tariff treatment, the importing Party may take appropriate action, which may include denying the application of such treatment to any textile or apparel good described in clauses (i)(A) and (B).
- (iii) During or on completion of a verification conducted under paragraph 2(a), if the importing Party discovers that an enterprise has provided incorrect information to support a claim for preferential tariff treatment, the importing Party may take appropriate action, which may include denying the application of such treatment to any textile or apparel good described in clauses (i)(A) and (B).
- (b) (i) During a verification conducted under paragraph 2(a), if there is insufficient information to determine the country of origin, the importing Party may take appropriate action, which may include detention of any textile or apparel good exported or produced by the enterprise subject to the verification, but for no longer than the period permitted under its law.
- (ii) On completion of a verification conducted under paragraph 2(a), if there is insufficient information to determine the country of origin, the importing Party may take appropriate action, which may include denying entry to any textile or apparel good exported or produced by the enterprise subject to the verification.

(iii) During or on completion of a verification conducted under paragraph 2(a), if the importing Party discovers that an enterprise has provided incorrect information as to the country of origin, the importing Party may take appropriate action, which may include denying entry to any textile or apparel good exported or produced by the enterprise subject to the verification.

(c) The importing Party may continue to take appropriate action under any provision of this paragraph only until it receives information sufficient to enable it to make the determination in paragraph 2(a)(i) or (ii), as the case may be, but in any event for no longer than the period permitted under its law.

(d) The importing Party may deny preferential tariff treatment or entry under this paragraph only after providing a written determination to the importer of the reason for the denial.

7. Not later than 45 days after it completes a verification conducted under paragraph 2(a), the exporting Party shall provide the importing Party a written report on the results of the verification. The report shall include all documents and facts supporting any conclusion that the exporting Party reaches. After receiving the report, the importing Party shall notify the exporting Party of any action it will take under paragraph 6(a)(ii) or (iii) or 6(b)(ii) or (iii), based on the information provided in the report.

8. On the written request of a Party, two or more Parties shall enter into consultations to resolve any technical or interpretive difficulties that may arise, or to discuss ways to improve customs cooperation, regarding the application of this Article. Unless the consulting Parties otherwise agree, consultations shall begin within 30 days after delivery of the request, and conclude within 90 days after delivery.

9. A Party may request technical or other assistance from any other Party in implementing this Article. The Party receiving such a request shall make every effort to respond favorably and promptly to it.

#### **Article 3.25: Rules of Origin and Related Matters**

##### *Consultations on Rules of Origin*

1. On request of a Party, the Parties shall, within 30 days after the request is delivered, consult on whether the rules of origin applicable to a particular textile or apparel good should be modified.

2. In the consultations referred to in paragraph 1, each Party shall consider all data that a Party presents demonstrating substantial production in its territory of the good. The Parties shall consider that there is substantial production if a Party demonstrates that its domestic producers are capable of supplying commercial quantities of the good in a timely manner.

3. The Parties shall endeavor to conclude the consultations within 90 days after delivery of the request. If the Parties reach an agreement to modify a rule of origin for a particular good, the agreement shall supersede that rule of origin when approved by the Parties in accordance with Article 19.1.3(b) (The Free Trade Commission).

##### *Fabrics, Yarns, and Fibers Not Available in Commercial Quantities*

4. (a) At the request of an interested entity, the United States shall, within 30 business days of receiving the request, add a fabric, fiber, or yarn in an

unrestricted or restricted quantity to the list in Annex 3.25, if the United States determines, based on information supplied by interested entities, that the fabric, fiber, or yarn is not available in commercial quantities in a timely manner in the territory of any Party, or if no interested entity objects to the request.

- (b) If there is insufficient information to make the determination in subparagraph (a), the United States may extend the period within which it must make that determination by no more than 14 business days, in order to meet with interested entities to substantiate the information.
- (c) If the United States does not make the determination in subparagraph (a) within 15 business days of the expiration of the period within which it must make that determination, as specified in subparagraph (a) or (b), the United States shall grant the request.
- (d) The United States may, within six months after adding a restricted quantity of a fabric, fiber, or yarn to the list in Annex 3.25 pursuant to subparagraph (a), eliminate the restriction.
- (e) If the United States determines before the date of entry into force of this Agreement that any fabrics or yarns not listed in Annex 3.25 are not available in commercial quantities in the United States pursuant to section 112(b)(5)(B) of the *African Growth and Opportunity Act* (19 U.S.C. § 3721(b)), section 204(b)(3)(B)(ii) of the *Andean Trade Preference Act* (19 U.S.C. § 3203(b)(3)(B)(ii)), or section 213(b)(2)(A)(v)(II) of the *Caribbean Basin Economic Recovery Act* (19 U.S.C. § 2703(b)(2)(A)(v)(II)), the United States shall add such fabrics or yarns in an unrestricted quantity to the list in Annex 3.25.

5. At the request of an interested entity made no earlier than six months after the United States has added a fabric, yarn, or fiber in an unrestricted quantity to Annex 3.25 pursuant to paragraph 4, the United States may, within 30 business days after it receives the request:

- (a) delete the fabric, yarn, or fiber from the list in Annex 3.25; or
- (b) introduce a restriction on the quantity of the fabric, yarn, or fiber added to Annex 3.25,

if the United States determines, based on the information supplied by interested entities, that the fabric, yarn, or fiber is available in commercial quantities in a timely manner in the territory of any Party. Such deletion or restriction shall not take effect until six months after the United States publishes its determination.

6. Promptly after the date of entry into force of this Agreement, the United States shall publish the procedures it will follow in considering requests under paragraphs 4 and 5.

*De Minimis*

7. A textile or apparel good that is not an originating good because certain fibers or yarns used in the production of the component of the good that determines the tariff classification of the good do not undergo an applicable change in tariff classification set out in Annex 4.1 (Specific Rules of Origin), shall nonetheless be considered to be an originating good if the

total weight of all such fibers or yarns in that component is not more than ten percent of the total weight of that component.<sup>4</sup>

8. Notwithstanding paragraph 7, a good containing elastomeric yarns<sup>5</sup> in the component of the good that determines the tariff classification of the good shall originate only if such yarns are wholly formed in the territory of a Party.<sup>6</sup>

*Treatment of Sets*

9. Notwithstanding the specific rules of origin in Annex 4.1 (Specific Rules of Origin), textile or apparel goods classifiable as goods put up in sets for retail sale as provided for in General Rule of Interpretation 3 of the Harmonized System, shall not be regarded as originating goods unless each of the products in the set is an originating good or the total value of the non-originating goods in the set does not exceed ten percent of the adjusted value of the set.

*Treatment of Nylon Filament Yarn*

10. A textile or apparel good that is not an originating good because certain yarns used in the production of the component of the good that determines the tariff classification of the good do not undergo an applicable change in tariff classification set out in Annex 4.1 (Specific Rules of Origin), shall nonetheless be considered to be an originating good if the yarns are those described in section 204(b)(3)(B)(vi)(IV) of the *Andean Trade Preference Act* (19 U.S.C. § 3203(b)(3)(B)(vi)(IV)).

**Article 3.26: Most-Favored-Nation Rates of Duty on Certain Goods**

For a textile or apparel good provided for in chapters 61 through 63 of the Harmonized System that is not an originating good, the United States shall apply its MFN rate of duty only on the value of the assembled good minus the value of fabrics formed in the United States, components knit-to-shape in the United States, and any other materials of U.S. origin used in the production of such a good, provided that the good is sewn or otherwise assembled in the territory of another Party or Parties with thread wholly formed in the United States, from fabrics wholly formed in the United States and cut in one or more Parties, or from components knit-to-shape in the United States, or both.<sup>7</sup>

**Article 3.27: Preferential Tariff Treatment for Wool Apparel Goods Assembled in Costa Rica**

Annex 3.27 sets out provisions applicable to certain apparel goods of Costa Rica.

<sup>4</sup> For greater certainty, when the good is a fiber, yarn, or fabric, the "component of the good that determines the tariff classification of the good" is all of the fibers in the yarn, fabric, or group of fibers.

<sup>5</sup> For greater certainty, the term "elastomeric yarns" does not include latex.

<sup>6</sup> For purposes of this paragraph, "wholly formed" means that all the production processes and finishing operations, starting with the extrusion of filaments, strips, film, or sheet, and including slitting a film or sheet into strip, or the spinning of all fibers into yarn, or both, and ending with a finished yarn or plied yarn, took place in the territory of a Party.

<sup>7</sup> For purposes of this paragraph, "wholly formed," when used in reference to fabrics, means that all the production processes and finishing operations, starting with the weaving, knitting, needling, tufting, felting, entangling, or other process, and ending with a fabric ready for cutting or assembly without further processing, took place in the United States. The term "wholly formed," when used in reference to thread, means that all the production processes, starting with the extrusion of filaments, strips, film, or sheet, and including slitting a film or sheet into strip, or the spinning of all fibers into thread, or both, and ending with thread, took place in the United States.

**Article 3.28: Preferential Tariff Treatment for Non-Originating Apparel Goods of Nicaragua**

Annex 3.28 sets out provisions applicable to certain apparel goods of Nicaragua.

**Article 3.29: Definitions**

For purposes of this Section:

**claim of origin** means a claim that a textile or apparel good is an originating good or a good of a Party;

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

**importing Party** means the Party into whose territory a textile or apparel good is imported;

**interested entity** means a Party, a potential or actual purchaser of a textile or apparel good, or a potential or actual supplier of a textile or apparel good;

**textile or apparel good** means a good listed in the Annex to the Agreement on Textiles and Clothing, except for those goods listed in Annex 3.29;

**textile safeguard measure** means a measure applied under Article 3.23.1; and

**transition period** means the five-year period beginning on the date of entry into force of this Agreement.

**Section H: Institutional Provisions**

**Article 3.30: Committee on Trade in Goods**

1. The Parties hereby establish a Committee on Trade in Goods, comprising representatives of each Party.
2. The Committee shall meet on the request of a Party or the Commission to consider any matter arising under this Chapter, Chapter Four (Rules of Origin and Origin Procedures), or Chapter Five (Customs Administration and Trade Facilitation).
3. The Committee's functions shall include:
  - (a) promoting trade in goods between the Parties, including through consultations on accelerating tariff elimination under this Agreement and other issues as appropriate;
  - (b) addressing barriers to trade in goods between the Parties, especially those related to the application of non-tariff measures, and, if appropriate, referring such matters to the Commission for its consideration, and
  - (c) providing to the Committee on Trade Capacity Building advice and recommendations on technical assistance needs regarding matters relating to this Chapter, Chapter Four (Rules of Origin and Origin Procedures), or Chapter Five (Customs Administration and Trade Facilitation).

**Section I: Definitions**

**Article 3.31: Definitions**

For purposes of this Chapter:

**AD Agreement** means the *WTO Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994*;

**advertising films and recordings** means recorded visual media or audio materials, consisting essentially of images and/or sound, showing the nature or operation of goods or services offered for sale or lease by a person established or resident in the territory of a Party, provided that such materials are of a kind suitable for exhibition to prospective customers, but not for broadcast to the general public;

**Agreement on Textiles and Clothing** means the *WTO Agreement on Textiles and Clothing*;

**agricultural goods** means those goods referred to in Article 2 of the *WTO Agreement on Agriculture*;

**commercial samples of negligible value** means commercial samples having a value, individually or in the aggregate as shipped, of not more than one U.S. dollar, or the equivalent amount in the currency of another Party, or so marked, torn, perforated, or otherwise treated that they are unsuitable for sale or for use except as commercial samples;

**consular transactions** means requirements that goods of a Party intended for export to the territory of another Party must first be submitted to the supervision of the consul of the importing Party in the territory of the exporting Party for the purpose of obtaining consular invoices or consular visas for commercial invoices, certificates of origin, manifests, shippers' export declarations, or any other customs documentation required on or in connection with importation;

**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 the good or in the production of another good;

**duty-free** means free of customs duty;

**export subsidies** shall have the meaning assigned to that term in Article 1(e) of the *WTO Agreement on Agriculture*, including any amendment of that article;

**goods intended for display or demonstration** includes their component parts, ancillary apparatus, and accessories;

**goods temporarily admitted for sports purposes** means sports requisites for use in sports contests, demonstrations, or training in the territory of the Party into whose territory such goods are admitted;

**import licensing** means an administrative procedure requiring the submission of an application or other documentation (other than that generally required for customs clearance purposes) to the relevant administrative body as a prior condition for importation into the territory of the importing Party;

**Import Licensing Agreement** means the *WTO Agreement on Import Licensing Procedures*;

**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 or import license be substituted for imported goods;
- (c) a person benefiting from a waiver of customs duties or an import license purchase other goods or services in the territory of the Party granting the waiver of customs duties or the import license, or accord a preference to domestically produced goods;
- (d) a person benefiting from a waiver of customs duties or an import license produce goods or supply services, in the territory of the Party granting the waiver of customs duties or the import license, with a given level or percentage of domestic content; or
- (e) relates in any way the volume or value of imports to the volume or value of exports or to the amount of foreign exchange inflows,

but does not include a requirement that:

- (f) an imported good be subsequently exported;
- (g) an imported good be used as a material in the production of another good that is subsequently exported;
- (h) an imported good be substituted by an identical or similar good used as a material in the production of another good that is subsequently exported; or
- (i) an imported good be substituted by an identical or similar good that is subsequently exported;

**printed advertising materials** means those goods classified in Chapter 49 of the Harmonized System, including brochures, pamphlets, leaflets, trade catalogues, yearbooks published by trade associations, tourist promotional materials, and posters, that are used to promote, publicize, or advertise a good or service, are essentially intended to advertise a good or service, and are supplied free of charge; and

**SCM Agreement** means the *WTO Agreement on Subsidies and Countervailing Measures*.

**Annex 3.2**

**National Treatment and Import and Export Restrictions**

**Section A: Measures of Costa Rica**

Articles 3.2 and 3.8 shall not apply to:

- (a) controls on the import of crude oil, its fuel, derivatives, asphalt, and gasoline pursuant to Law No. 7356 of September 6, 1993;
- (b) controls on the export of wood in logs and boards from forests pursuant to Law No. 7575 of April 16, 1996;
- (c) controls on the export of hydrocarbons pursuant to Law No. 7399 of May 3, 1994;
- (d) controls on the export of coffee pursuant to Law No. 2762 of June 21, 1961;
- (e) controls on the import and export of ethanol and crude rums pursuant to Law No. 8 of October 31, 1885;
- (f) controls to establish a minimum export price for bananas, pursuant to Law No. 7472 of January 19, 1995; and
- (g) actions authorized by the Dispute Settlement Body of the WTO.

**Section B: Measures of the Dominican Republic**

Articles 3.2 and 3.8 shall not apply to:

- (a) controls on the importation of motor vehicles and motorcycles older than five years, and vehicles greater or equal to five tons older than 15 years, pursuant to Law No. 147 of December 27, 2000, and Law No. 12-01 of January 17, 2001;<sup>8</sup>
- (b) controls on the importation of used household appliances, pursuant to Law No. 147 of December 27, 2000;<sup>9</sup>
- (c) controls on the importation of used clothes, pursuant to Law No. 458 of January 3, 1973;
- (d) controls on the importation of motor vehicles not suitable for operation, pursuant to Decree No. 671-02 of August 27, 2002;<sup>10</sup> and
- (e) actions by the Dominican Republic authorized by the Dispute Settlement Body of the WTO.

<sup>8</sup> The controls identified in this subparagraph do not apply to remanufactured goods.

<sup>9</sup> The controls identified in this subparagraph do not apply to remanufactured goods.

<sup>10</sup> The controls identified in this subparagraph do not apply to remanufactured goods.

**Section C: Measures of El Salvador**

Articles 3.2 and 3.8 shall not apply to:

- (a) controls on the importation of arms and ammunition, parts, and accessories included in HS Chapter 93, pursuant to Decree No. 655 of July 26, 1999 and its amendment pursuant to Decree No. 1035 of November 13, 2002;
- (b) controls on the importation of motor vehicles older than eight years, and on buses and trucks older than 15 years, pursuant to Article 1 of Decree No. 357 of April 6, 2001;<sup>11</sup>
- (c) controls on the importation of sacks and bags made out of jute and other similar textile fibers in subheading 6305.10 pursuant to Article 1 of Decree No. 1097 of July 10, 1953. El Salvador shall eliminate the controls identified in this subparagraph ten years after the date of entry into force of this Agreement; and
- (d) actions authorized by the Dispute Settlement Body of the WTO.

**Section D: Measures of Guatemala**

Articles 3.2 and 3.8 shall not apply to:

- (a) controls on the exportation of timber in round logs or worked logs and sawn timber measuring more than 11 centimeters in thickness, pursuant to the *Ley de Bosques* Legislative Decree No. 101-96 of October 31, 1996;
- (b) controls on the exportation of coffee pursuant to the *Ley del Café*, Legislative Decree No. 19-69 of April 22, 1969;
- (c) controls on the importation of weapons pursuant to the *Ley de Armas y Municiones*, Legislative Decree No. 39-89 of June 29, 1989; and
- (d) actions authorized by the Dispute Settlement Body of the WTO.

**Section E: Measures of Honduras**

Articles 3.2 and 3.8 shall not apply to:

- (a) controls on the exportation of wood from broadleaved forests pursuant to Decree No. 323-98 of December 29, 1998;
- (b) controls on the importation of arms and ammunitions pursuant to Article 292 of Decree No. 131 of January 11, 1982;
- (c) controls on the importation of motor vehicles older than seven years and buses older than ten years pursuant to Article 7 of Decree No. 194-2002 of May 15, 2002;<sup>12</sup> and

<sup>11</sup> The controls identified in this subparagraph do not apply to remanufactured goods.

- (d) actions authorized by the Dispute Settlement Body of the WTO.

**Section F: Measures of Nicaragua**

1. Articles 3.2 and 3.8 shall not apply to:
- (a) controls on the exportation of basic foodstuffs provided that these controls are used to temporarily alleviate a critical shortage of that particular food item. For the purposes of this subparagraph, "temporarily" means up to one year, or such longer period as the United States and Nicaragua may agree;
  - (b) controls on the importation of motor vehicles older than seven years pursuant to Article 112 of Decree No. 453 of May 6, 2003;<sup>13</sup> and
  - (c) actions authorized by the Dispute Settlement Body of the WTO.
2. For purposes of paragraph 1, "basic foodstuffs" include the following:

Beans  
Brown sugar  
Chicken meat  
Coffee  
Corn  
Corn flour  
Corn tortillas  
Powdered milk  
Rice  
Salt  
Vegetable oil

3. Notwithstanding Articles 3.2 and 3.8, for the first ten years after the date of entry into force of this Agreement, Nicaragua may maintain its existing prohibitions or restrictions on the importation of the used goods set out below:

<u>Tariff Classification</u>	<u>Description</u>
Subheading 4012.10	Used retreaded tires <sup>14</sup>
Subheading 4012.20	Used pneumatic tires <sup>15</sup>
Heading 63.09	Used clothing
Heading 63.10	Rags, scrap twine, cordage, rope, and cable, and worn out or unusable articles of twine, cordage, rope, or cables, of textile materials

<sup>12</sup> The controls identified in this subparagraph do not apply to remanufactured goods.

<sup>13</sup> The controls identified in this subparagraph do not apply to remanufactured goods.

<sup>14</sup> The controls identified in this subparagraph do not apply to remanufactured goods.

<sup>15</sup> The controls identified in this subparagraph do not apply to remanufactured goods.

(Note: Descriptions are provided for reference purposes only. To the extent of a conflict between the tariff classification and the description, the tariff classification governs.)

**Section G: Measures of the United States**

Articles 3.2 and 3.8 shall not apply to:

- (a) controls on the export of logs of all species;
- (b) (i) measures under existing provisions of the *Merchant Marine Act of 1920*, 46 App. U.S.C. § 883; the *Passenger Vessel Act*, 46 App. U.S.C. §§ 289, 292, and 316; and 46 U.S.C. § 12108, to the extent that such measures were mandatory legislation at the time of the accession of the United States to the General Agreement on Tariffs and Trade 1947 (GATT 1947) and have not been amended so as to decrease their conformity with Part II of the GATT 1947;
- (ii) the continuation or prompt renewal of a non-conforming provision of any statute referred to in clause (i); and
- (iii) the amendment to a non-conforming provision of any statute referred to in clause (i) to the extent that the amendment does not decrease the conformity of the provision with Articles 3.2 and 3.8;
- (c) actions authorized by the Dispute Settlement Body of the WTO; and
- (d) actions authorized by the Agreement on Textiles and Clothing.

**Annex 3.3**

**Tariff Elimination**

1. Except as otherwise provided in a Party's Schedule to this Annex, the following staging categories apply to the elimination of customs duties by each Party pursuant to Article 3.3.2:

- (a) duties on goods provided for in the items in staging category A in a Party's Schedule shall be eliminated entirely and such goods shall be duty-free:
  - (i) for textile or apparel goods:
    - (A) as of January 1, 2004, with respect to those goods to which Article 3.20.1 applies; or
    - (B) with respect to any other such goods, on the date this Agreement enters into force; and
  - (ii) for all other goods, on the date this Agreement enters into force;
- (b) duties on goods provided for in the items in staging category B in a Party's Schedule shall be removed in five equal annual stages beginning on the date this Agreement enters into force, and such goods shall be duty-free, effective January 1 of year five;
- (c) duties on goods provided for in the items in staging category C in a Party's Schedule shall be removed in ten equal annual stages beginning on the date this Agreement enters into force, and such goods shall be duty-free, effective January 1 of year ten;
- (d) duties on goods provided for in the items in staging category D in a Party's Schedule shall be removed in 15 equal annual stages beginning on the date this Agreement enters into force, and such goods shall be duty-free, effective January 1 of year 15;
- (e) duties on goods provided for in the items in staging category E in a Party's Schedule shall remain at base rates for years one through six. Duties on these goods shall be reduced by 8.25 percent of the base rate on January 1 of year seven, and by an additional 8.25 percent of the base rate each year thereafter through year ten. Beginning on January 1 of year 11, duties shall be reduced by an additional 13.4 percent of the base rate annually through year 15, and such goods shall be duty-free effective January 1 of year 15;
- (f) duties on goods provided for in the items in staging category F in a Party's Schedule shall remain at base rates for years one through ten. Beginning January 1 of year 11, duties shall be reduced in ten equal annual stages, and such goods shall be duty-free effective January 1 of year 20;
- (g) goods provided for in the items in staging category G in a Party's Schedule shall continue to receive duty-free treatment; and
- (h) goods provided for in the items in staging category H in a Party's Schedule shall continue to receive most-favored-nation treatment.

2. The base rate of customs duty and staging category for determining the interim rate of customs duty at each stage of reduction for an item are indicated for the item in each Party's Schedule.

3. For the purpose of the elimination of customs duties in accordance with Article 3.3, interim staged rates shall be rounded down, at least to the nearest tenth of a percentage point or, if the rate of duty is expressed in monetary units, at least to the nearest 0.001 of the official monetary unit of the Party.

4. If this Agreement enters into force for a Central American Party or the Dominican Republic as provided in Article 22.5.2 (Entry into Force), the Party shall apply the rates of duty set out in its Schedule as if the Agreement had entered into force for that Party on the date the Agreement entered into force as provided in Article 22.5.1 (Entry into Force).

5. For purposes of this Annex and a Party's Schedule, **year one** means the year the Agreement enters into force as provided in Article 22.5.1 (Entry into Force).

6. Notwithstanding paragraph 5, for purposes of the tariff treatment of textile or apparel goods to which Article 3.20.1 applies, **year one** shall be the year beginning January 1, 2004. Any Party that provides written notice under Article 3.20.2 shall apply the rates of duty set out in its Schedule for textile or apparel goods as if the Agreement had entered into force for that Party on January 1, 2004.

7. For purposes of this Annex and a Party's Schedule, beginning in year two, each annual stage of tariff reduction shall take effect on January 1 of the relevant year.

**Annex 3.3.4**

**Implementation of Modifications Approved by the Parties  
to Accelerate the Elimination of Customs Duties**

In the case of Costa Rica, agreements of the Parties under Article 3.3.4 will be equivalent to the instrument referred to in Article 121.4, third paragraph (*protocolo de menor rango*) of the *Constitución Política de la República de Costa Rica*.

Annex 3.3.6<sup>16</sup>

1. Except as otherwise provided in this Annex:
  - (a) each Central American Party shall provide duty-free treatment to any good imported directly from the territory of the Dominican Republic that meets the rules of origin for the good set out in Chapter Four (Rules of Origin and Origin Procedures); and
  - (b) the Dominican Republic shall provide duty-free treatment to any good imported directly from the territory of a Central American Party that meets the rules of origin for the good set out in Chapter Four (Rules of Origin and Origin Procedures).
2. Notwithstanding paragraph 1:
  - (a) each Central American Party may assess a duty of up to 15 percent *ad valorem* on any good classified under tariff items 1507.90.00, 1508.90.00, 1509.90.00, 1510.00.00, 1511.90.90 (except palm stearin), 1512.19.00, 1512.29.00, 1513.19.00, 1513.29.00, 1514.19.00, 1514.99.00, 1515.19.00, 1515.29.00, 1515.30.00, 1515.40.00, 1515.50.00, 1515.90.10, 1515.90.20, 1515.90.90, 1516.10.00, 1516.20.10, 1516.20.90, 1517.10.00, 1517.90.10, 1517.90.20, 1517.90.90, or 1518.00.00 that is imported directly from the territory of the Dominican Republic and that meets the rules of origin for the good set out in Chapter Four (Rules of Origin and Origin Procedures); and
  - (b) the Dominican Republic may assess a duty of up to 15 percent *ad valorem* on any good classified under tariff items 1507.90.00, 1508.90.00, 1509.90.00, 1510.00.00, 1511.90.00 (except palm stearin), 1512.19.00, 1512.29.00, 1513.19.00, 1513.29.10, 1513.29.20, 1514.91.00, 1514.99.00, 1515.19.00, 1515.29.00, 1515.30.00, 1515.40.00, 1515.50.00, 1515.90.90, 1516.10.00, 1516.20.00, 1517.10.00, 1517.90.00, 1518.00.10, or 1518.00.90 that is imported directly from the territory of a Central American Party and that meets the rules of origin for the good set out in Chapter Four (Rules of Origin and Origin Procedures).
3. Notwithstanding paragraph 1, for any good classified under heading 2710, except mineral solvents, 2712, 2713, except subheading 2713.20, or 2715 that meets the rules of origin for the good set out in Chapter Four (Rules of Origin and Origin Procedures):
  - (a) each Central American Party shall eliminate duties on any such good imported directly from the territory of the Dominican Republic as follows: Duties on such goods shall remain at base rates for years one through five. Beginning on January 1 of year six, duties shall be reduced by eight percent of the base rate annually through year ten. Beginning on January 1 of year 11, duties shall be reduced by an additional 12 percent of the base rate annually through year 14, and such goods shall be duty-free effective January 1 of year 15; and
  - (b) the Dominican Republic shall eliminate duties on any such good imported directly from the territory of a Central American Party as follows: Duties on such goods shall remain at base rates for years one through five. Beginning on

<sup>16</sup> For greater certainty, an importer may elect to make a claim for preferential tariff treatment either under this Annex or under a Party's Schedule to Annex 3.3, provided that the good meets the applicable rules of origin.

January 1 of year six, duties shall be reduced by eight percent of the base rate annually through year ten. Beginning on January 1 of year 11, duties shall be reduced by an additional 12 percent of the base rate annually through year 14, and such goods shall be duty-free effective January 1 of year 15.

4. Paragraph 1 shall not apply to any good listed in Appendix 3.3.6.4 that meets the rules of origin for the good set out in Chapter Four (Rules of Origin and Origin Procedures).<sup>17</sup>

5. An importing Party may deny the preferential tariff treatment provided for in paragraphs 1 through 3 of this Annex if the good is produced in a duty-free zone or under another special tax or customs regime in the territory of a Central American Party or the Dominican Republic, as the case may be, provided however that the importing Party shall provide to any such good tariff treatment that is no less favorable than the tariff treatment it applies to the good when produced in its own duty-free zones or other special tax or customs regimes and entered into its territory.

6. The Central American Parties and the Dominican Republic may agree to modify the rules of origin set out in Appendix 3.3.6 (Special Rules of Origin), provided that they notify the United States and provide an opportunity for consultations regarding the proposed modifications at least 60 days before concluding any such agreement.

7. For purposes of this Annex:

- (a) any reference in Chapter Four (Rules of Origin and Origin Procedures) to:
  - (i) a "Party" shall be understood to mean a Central American Party or the Dominican Republic; and
  - (ii) "Annex 4.1" shall be understood to mean Appendix 3.3.6;
- (b) each Central American Party shall provide that a good shall not be considered to be imported directly from the territory of the Dominican Republic if the good:
  - (i) undergoes subsequent production or any other operation outside the territory of the Dominican Republic, other than unloading, reloading, or any other operation necessary to preserve the good in good condition or to transport the good to its territory; or
  - (ii) does not remain under the control of customs authorities in the territory of the United States or a non-Party; and
- (c) The Dominican Republic shall provide that a good shall not be considered to be imported directly from the territory of a Central American Party if the good:
  - (i) undergoes subsequent production or any other operation outside the territory of the Central American Party, other than unloading, reloading, or any other operation necessary to preserve the good in good condition or to transport the good to its territory, or

<sup>17</sup> Notwithstanding paragraph 4, a good classified under heading 2208, except tariff item 2208.90.10, that meets the rules of origin for the good set out in Chapter Four (Rules of Origin and Origin Procedures) that is imported directly from the territory of El Salvador into the territory of the Dominican Republic or from the territory of the Dominican Republic into the territory of El Salvador shall not be subject to duties.

- (ii) does not remain under the control of customs authorities in the territory of the United States or a non-Party.

## Appendix 3.3.6.4

## Exceptions from Preferential Tariff Treatment

HS No.	Description
0207.11	Chicken
0207.12	Chicken
0207.13	Chicken
0207.14	Chicken
0402.10	Milk powder
0402.21	Milk powder
0402.29	Milk powder
0703.10	Onions
0703.20	Garlic
0713.31	Beans
0713.32	Beans
0713.33	Beans
0901.11	Coffee
0901.12	Coffee
0901.21	Coffee
0901.22	Coffee
1006.10	Rice
1006.20	Rice
1006.30	Rice
1006.40	Rice
1101.00	Wheat flour
1701.11	Sugar
1701.91	Sugar
1701.99	Sugar
2203	Beer
2207	Alcohol
2208	Alcohol
2401.20	Tobacco
2402.20	Tobacco (only goods containing <i>rubio</i> )
2403.10	Tobacco

**Note:** The descriptions provided in this Appendix are for reference purposes only.

**Annex 3.11**

**Export Taxes**

Costa Rica may maintain its existing taxes on the export of the following goods:

- (a) bananas, pursuant to Law No. 5515 of April 19, 1974 and its amendment (Law No. 5538 of June 18, 1974), and Law No. 4895 of November 16, 1971 and its amendments (Law No. 7147 of April 30, 1990 and Law No. 7277 of December 17, 1991);
- (b) coffee, pursuant to Law No. 2762 of June 21, 1961 and its amendment (Law No. 7551 of September 22, 1995); and
- (c) meat, pursuant to Law No. 6247 of May 2, 1978 and Law No. 7837 of October 5, 1998.

## Annex 3.15

## Agricultural Safeguard Measures

## General Notes

1. For each good listed in a Party's Schedule to this Annex for which the agricultural safeguard trigger level is set out in that Schedule as a percentage of the applicable tariff-rate quota (TRQ), the trigger level in any year shall be determined by multiplying the in-quota quantity for that good for that year, as set out in Appendix I or, if applicable, Appendix II or III to the Party's Schedule to Annex 3.3, by the applicable percentage. For each good listed in a Party's Schedule to this Annex for which the trigger level is set out as a fixed initial amount in the Party's Schedule, the trigger level set out in the Schedule shall be the trigger level in year one. The trigger level in any subsequent year shall be determined by adding to that amount the quantity derived by applying the applicable simple annual trigger growth rate to that amount. For purposes of this Annex, the term "year one" shall have the meaning given to that term in Annex 3.3.
2. For purposes of this Annex, **prime and choice beef** shall mean prime and choice grades of beef as defined in the United States Standards for Grades of Carcass Beef, promulgated pursuant to the *Agricultural Marketing Act of 1946* (7 U.S.C. §§ 1621-1627), as amended.
3. (a) Costa Rica and the Dominican Republic shall conclude negotiations on the agricultural safeguard trigger levels to be applied to originating goods classified under tariff items 0207.13.91 and 0207.14.91 and subheadings 0402.10, 0402.21, and 0402.29 that are imported directly into the territory of Costa Rica from the territory of the Dominican Republic no later than one year after the date on which this Agreement enters into force with respect to Costa Rica and the Dominican Republic and any agreed trigger levels shall form part of this Annex.<sup>18</sup>
  - (b) At the expiration of the one-year period, if Costa Rica and the Dominican Republic have not reached an agreement with respect to the agricultural safeguard trigger levels for goods classified under the tariff items and subheadings listed in subparagraph (a), Costa Rica may apply an agricultural safeguard trigger level for such goods in an amount equivalent to 130 percent of the in-quota quantity of the applicable tariff-rate quota set out in Appendix II of Costa Rica's General Notes to Annex 3.3.
4. (a) Costa Rica and the Dominican Republic shall conclude negotiations on the agricultural safeguard trigger levels to be applied to originating goods classified under tariff items 0207.13.91 and 0207.14.91 and subheadings 0402.10, 0402.21, and 0402.29 that are imported directly into the territory of the Dominican Republic from the territory of Costa Rica no later than one year after the date on which this Agreement enters into force with respect to Costa Rica and the Dominican Republic and any agreed trigger levels shall form part of this Annex.<sup>19</sup>

<sup>18</sup> For greater certainty, Costa Rica shall apply note 7(b) of Costa Rica's General Notes to Annex 3.3 to such goods.

<sup>19</sup> For greater certainty, the Dominican Republic shall apply note 7(b) of the Dominican Republic's General Notes to Annex 3.3 to such goods.

- (b) At the expiration of the one-year period, if Costa Rica and the Dominican Republic have not reached an agreement with respect to the agricultural safeguard trigger levels for goods classified under the tariff items and subheadings listed in subparagraph (a), the Dominican Republic may apply an agricultural safeguard trigger level for such goods in an amount equivalent to 130 percent of the in-quota quantity of the applicable tariff-rate quota set out in Appendix II of the Dominican Republic's General Notes to Annex 3.3.
5. (a) The Dominican Republic and Nicaragua shall conclude negotiations on the agricultural safeguard trigger levels to be applied to originating goods classified under tariff items 0207.13.91 and 0207.14.91 that are imported directly into the territory of Nicaragua from the territory of the Dominican Republic no later than one year after the date on which this Agreement enters into force with respect to the Dominican Republic and Nicaragua and any agreed trigger levels shall form part of this Annex.<sup>20</sup>
- (b) At the expiration of the one-year period, if the Dominican Republic and Nicaragua have not reached an agreement with respect to the agricultural safeguard trigger levels for goods classified under the tariff items listed in subparagraph (a), Nicaragua may apply an agricultural safeguard trigger level for such goods in an amount equivalent to 130 percent of the in-quota quantity of the applicable tariff-rate quota set out in Appendix II of Nicaragua's General Notes to Annex 3.3.
6. (a) The Dominican Republic and Nicaragua shall conclude negotiations on the agricultural safeguard trigger levels to be applied to originating goods classified under tariff items 0207.13.91 and 0207.14.91 that are imported directly into the territory of the Dominican Republic from the territory of Nicaragua no later than one year after the date on which this Agreement enters into force with respect to the Dominican Republic and Nicaragua and any agreed trigger levels shall form part of this Annex.<sup>21</sup>
- (b) At the expiration of the one-year period, if the Dominican Republic and Nicaragua have not reached an agreement with respect to the agricultural safeguard trigger levels for goods classified under the tariff items listed in subparagraph (a), the Dominican Republic may apply an agricultural safeguard trigger level for such goods in an amount equivalent to 130 percent of the in-quota quantity of the applicable tariff-rate quota set out in Appendix III of the Dominican Republic's General Notes to Annex 3.3.

7. For purposes of this Annex:

**Central America or Dominican Republic good** shall mean a good that satisfies the requirements of Chapter Four (Rules of Origin and Origin Procedures), except that operations performed in or material obtained from the United States shall be considered as if the operations were performed in a non-Party and the material was obtained from a non-Party; and

**United States good** shall mean a good that satisfies the requirements of Chapter Four (Rules of Origin and Origin Procedures), except a good produced entirely in and exclusively of

<sup>20</sup> For greater certainty, Nicaragua shall apply note 7(b) of Nicaragua's General Notes to Annex 3.3 to such goods.

<sup>21</sup> For greater certainty, the Dominican Republic shall apply note 11(b) of the Dominican Republic's General Notes to Annex 3.3 to such goods.

materials obtained from the territory of a Central American Party, the Dominican Republic, or a non-Party.

**Schedule of Costa Rica**

*Subject Goods and Trigger Levels*

1. For purposes of paragraphs 1 and 2 of Article 3.15, United States goods that may be subject to an agricultural safeguard measure and the trigger level for each such good are set out below:

Good	Tariff Classification	Trigger Level	Annual Trigger Growth Rate
Beef	02011000, 02012000, 02013000, 02021000, 02022000, 02023000	150 MT	10%
Pork	02031100, 02031200, 02031900, 02032100, 02032200, 02032900	140% of TRQ	
Chicken Leg Quarters	02071399, 02071499	130% of TRQ	
Liquid Dairy	04011000, 04012000, 04013000	50 MT	10%
Milk Powder	04021000, 04022111, 04022112, 04022121, 04022122, 04022900	130% of TRQ	
Butter and Dairy Spreads	04051000, 04052000	130% of TRQ	
Cheese	04061000, 04062090, 04063000, 04069010, 04069020, 04069090	130% of TRQ	
Ice Cream	21050000	130% of TRQ	
Others Dairy Products	04029990, 22029090	130% of TRQ	
Tomatoes	07020000	50 MT	10%
Carrots	07061000	50 MT	10%
Sweet Peppers	07096010	50 MT	10%
Potatoes	07101000	50 MT	10%
Beans	07133200, 07133310, 07133390, 07133990	1,200 MT	10%
White Corn	10059030	9,000 MT	10%
Rough Rice	10061090	110% of TRQ	
Milled Rice	10062000, 10063010, 10063090, 10064000	110% of TRQ	
Vegetable Oil	15079000, 15121900, 15122900, 15152900, 15162090, 15171000, 15179010, 15179090	1,178 MT	5%
High Fructose Corn Syrup	17023020, 17024000, 17026000, 17029090	50 MT	10%

*Additional Import Duty*

2. For purposes of paragraph 3 of Article 3.15, the additional import duty shall be:

- (a) For sweet peppers as listed in this Schedule:
  - (i) in years one through four, less than or equal to 100 percent of the difference between the appropriate MFN rate of duty as determined under Article 3.15.1 and the applicable tariff rate in the Schedule of Costa Rica to Annex 3.3;

- (ii) in years five through eight, less than or equal to 75 percent of the difference between the appropriate MFN rate of duty as determined under Article 3.15.1 and the applicable tariff rate in the Schedule of Costa Rica to Annex 3.3; and
  - (iii) in years nine through 11, less than or equal to 50 percent of the difference between the appropriate MFN rate of duty as determined under Article 3.15.1 and the applicable tariff rate in the Schedule of Costa Rica to Annex 3.3.
- (b) For vegetable oil and pork as listed in this Schedule:
- (i) in years one through nine, less than or equal to 100 percent of the difference between the appropriate MFN rate of duty as determined under Article 3.15.1 and the applicable tariff rate in the Schedule of Costa Rica to Annex 3.3;
  - (ii) in years ten through 12, less than or equal to 75 percent of the difference between the appropriate MFN rate of duty as determined under Article 3.15.1 and the applicable tariff rate in the Schedule of Costa Rica to Annex 3.3; and
  - (iii) in years 13 and 14, less than or equal to 50 percent of the difference between the appropriate MFN rate of duty as determined under Article 3.15.1 and the applicable tariff rate in the Schedule of Costa Rica to Annex 3.3.
- (c) For beef other than prime and choice beef as listed in this Schedule:
- (i) in years one through eight, less than or equal to 100 percent of the difference between the appropriate MFN rate of duty as determined under Article 3.15.1 and the applicable tariff rate in the Schedule of Costa Rica to Annex 3.3;
  - (ii) in years nine through 11, less than or equal to 75 percent of the difference between the appropriate MFN rate of duty as determined under Article 3.15.1 and the applicable tariff rate in the Schedule of Costa Rica to Annex 3.3; and
  - (iii) in years 12 through 14, less than or equal to 50 percent of the difference between the appropriate MFN rate of duty as determined under Article 3.15.1 and the applicable tariff rate in the Schedule of Costa Rica to Annex 3.3.
- (d) For chicken leg quarters as listed in this Schedule:
- (i) in years one through 13, less than or equal to 100 percent of the difference between the appropriate MFN rate of duty as determined under Article 3.15.1 and the applicable tariff rate in the Schedule of Costa Rica to Annex 3.3;
  - (ii) in years 14 and 15, less than or equal to 75 percent of the difference between the appropriate MFN rate of duty as determined under Article 3.15.1 and the applicable tariff rate in the Schedule of Costa Rica to Annex 3.3; and

- (iii) in year 16, less than or equal to 50 percent of the difference between the appropriate MFN rate of duty as determined under Article 3.15.1 and the applicable tariff rate in the Schedule of Costa Rica to Annex 3.3.
- (e) For rice as listed in this Schedule:
- (i) in years one through 13, less than or equal to 100 percent of the difference between the appropriate MFN rate of duty as determined under Article 3.15.1 and the applicable tariff rate in the Schedule of Costa Rica to Annex 3.3;
  - (ii) in years 14 through 16, less than or equal to 75 percent of the difference between the appropriate MFN rate of duty as determined under Article 3.15.1 and the applicable tariff rate in the Schedule of Costa Rica to Annex 3.3; and
  - (iii) in years 17 through 19, less than or equal to 50 percent of the difference between the appropriate MFN rate of duty as determined under Article 3.15.1 and the applicable tariff rate in the Schedule of Costa Rica to Annex 3.3.
- (f) For liquid dairy, cheese, butter, milk powder, ice cream, and other dairy goods as listed in this Schedule:
- (i) in years one through 14, less than or equal to 100 percent of the difference between the appropriate MFN rate of duty as determined under Article 3.15.1 and the applicable tariff rate in the Schedule of Costa Rica to Annex 3.3;
  - (ii) in years 15 through 17, less than or equal to 75 percent of the difference between the appropriate MFN rate of duty as determined under Article 3.15.1 and the applicable tariff rate in the Schedule of Costa Rica to Annex 3.3; and
  - (iii) in years 18 and 19, less than or equal to 50 percent of the difference between the appropriate MFN rate of duty as determined under Article 3.15.1 and the applicable tariff rate in the Schedule of Costa Rica to Annex 3.3.
- (g) For goods listed in this Schedule and not specified in subparagraphs (a) through (f):
- (i) in years one through five, less than or equal to 100 percent of the difference between the appropriate MFN rate of duty as determined under Article 3.15.1 and the applicable tariff rate in the Schedule of Costa Rica to Annex 3.3;
  - (ii) in years six through ten, less than or equal to 75 percent of the difference between the appropriate MFN rate of duty as determined under Article 3.15.1 and the applicable tariff rate in the Schedule of Costa Rica to Annex 3.3; and
  - (iii) in years 11 through 14, less than or equal to 50 percent of the difference between the appropriate MFN rate as determined under Article 3.15.1

and the applicable tariff rate in the Schedule of Costa Rica to Annex  
3.3.

**Schedule of the Dominican Republic**

*Subject Goods and Trigger Levels*

1. For purposes of paragraphs 1 and 2 of Article 3.15, United States goods that may be subject to an agricultural safeguard measure and the trigger level for each such good are set out below:

Good	Tariff Classification	Trigger Level	Annual Trigger Growth Rate
Pork Cuts	02031100, 02031200, 02031900, 02032100, 02032200, 02032910, 02032990	130% of TRQ	
Chicken Leg Quarters	02071492	130% of TRQ	
Turkey	02072612, 02072710, 02072792, 02072793	130% of TRQ	
Milk Powder	04021000, 04021090, 04022110, 04022190, 04022910, 04022990	130% of TRQ	
Mozzarella Cheese	04061010	130% of TRQ	
Cheddar Cheese	04069020	130% of TRQ	
Other Cheeses	04061090, 04062000, 04063000, 04064000, 04069010, 04069030, 04069090	130% of TRQ	
Beans	07133100, 07133200, 07133300	130% of TRQ	
Fresh Potatoes	07019000	300 MT	10%
Onions	07031000	750 MT	10%
Garlic	07032000	50 MT	10%
Rough & Broken Rice	10061000, 10064000	700 MT	10%
Brown Rice	10062000	130% of TRQ	
Milled Rice	10063000	130% of TRQ	
Glucose	17023021	130% of TRQ	
Vegetable Oil	15079000, 15122900, 15152900, 15171000	3,200 MT	10%
High Fructose Corn Syrup	17025000, 17026010, 17026021, 17026029	50 MT	10%

*Additional Import Duty*

2. For purposes of paragraph 3 of Article 3.15, the additional import duty shall be:

- (a) For cheddar cheese, beans, onions, garlic, high fructose corn syrup, and vegetable oil as listed in this Schedule:
- (i) in years one through five, less than or equal to 100 percent of the difference between the appropriate MFN rate as determined under Article 3.15.1 and the applicable tariff rate in the Schedule of the Dominican Republic to Annex 3.3;
- (ii) in years six through ten, less than or equal to 75 percent of the difference between the appropriate MFN rate as determined under

Article 3.15.1 and the applicable tariff rate in the Schedule of the Dominican Republic to Annex 3.3; and

- (iii) in years 11 through 14, less than or equal to 50 percent of the difference between the appropriate MFN rate as determined under Article 3.15.1 and the applicable tariff rate in the Schedule of the Dominican Republic to Annex 3.3.
- (b) For turkey meat, fresh potatoes, and glucose as listed in this Schedule:
- (i) for years one through four, less than or equal to 100 percent of the difference between the appropriate MFN rate as determined under Article 3.15.1 and the applicable tariff rate in the Schedule of the Dominican Republic to Annex 3.3;
  - (ii) for years five through eight, less than or equal to 75 percent of the difference between the appropriate MFN rate as determined under Article 3.15.1 and the applicable tariff rate in the Schedule of the Dominican Republic to Annex 3.3; and
  - (iii) for years nine through 11, less than or equal to 50 percent of the difference between the appropriate MFN rate as determined under Article 3.15.1 and the applicable tariff rate in the Schedule of the Dominican Republic to Annex 3.3.
- (c) For pork cuts as listed in this Schedule:
- (i) for years one through nine, less than or equal to 100 percent of the difference between the appropriate MFN rate as determined under Article 3.15.1 and the applicable tariff rate in the Schedule of the Dominican Republic to Annex 3.3;
  - (ii) for years ten through 12, less than or equal to 75 percent of the difference between the appropriate MFN rate as determined under Article 3.15.1 and the applicable tariff rate in the Schedule of the Dominican Republic to Annex 3.3; and
  - (iii) for years 13 and 14, less than or equal to 50 percent of the difference between the appropriate MFN rate as determined under Article 3.15.1 and the applicable tariff rate in the Schedule of the Dominican Republic to Annex 3.3.
- (d) For chicken leg quarters, mozzarella cheese, milk powder, and rice as listed in this Schedule:
- (i) for years one through 14, less than or equal to 100 percent of the difference between the appropriate MFN rate as determined under Article 3.15.1 and the applicable tariff rate in the Schedule of the Dominican Republic to Annex 3.3;
  - (ii) for years 15 through 17, less than or equal to 75 percent of the difference between the appropriate MFN rate as determined under Article 3.15.1 and the applicable tariff rate in the Schedule of the Dominican Republic to Annex 3.3; and

(iii) for years 18 and 19, less than or equal to 50 percent of the difference between the appropriate MFN rate as determined under Article 3.15.1 and the applicable tariff rate in the Schedule of the Dominican Republic to Annex 3.3.

(e) For other cheese as listed in this Schedule:

(i) for years one through four, less than or equal to 100 percent of the difference between the appropriate MFN rate as determined under Article 3.15.1 and the applicable tariff rate in the Schedule of the Dominican Republic to Annex 3.3;

(ii) for years five through seven, less than or equal to 75 percent of the difference between the appropriate MFN rate as determined under Article 3.15.1 and the applicable tariff rate in the Schedule of the Dominican Republic to Annex 3.3; and

(ii) for years eight and nine, less than or equal to 50 percent of the difference between the appropriate MFN rate as determined under Article 3.15.1 and the applicable tariff rate in the Schedule of the Dominican Republic to Annex 3.3.

**Schedule of El Salvador**

*Subject Goods and Trigger Levels*

1. For purposes of paragraphs 1 and 2 of Article 3.15, United States goods that may be subject to an agricultural safeguard measure and the trigger level for each such good are set out below:

Good	Tariff Classification	Trigger Level	Annual Trigger Growth Rate
Chicken Leg Quarters	02071399, 02071499, 16023200	130% of TRQ	
Liquid Dairy	04011000, 04012000, 04013000	130% of TRQ	
Milk Powder	04021000, 04022111, 04022112, 04022121, 04022122, 04022900	130% of TRQ	
Buttermilk, Curdled Cream and Yogurt	04031000, 04039010, 04039090	130% of TRQ	
Butter	04051000, 04052000, 04059090	130% of TRQ	
Cheese	04061000, 04062090, 04063000, 04069010, 04069020, 04069090	130% of TRQ	
Ice Cream	21050000	130% of TRQ	
Other Dairy Products	21069020	130% of TRQ	
Pork	02031100, 02031200, 02031900, 02032100, 02032200, 02032900	130% of TRQ	
Rough Rice	10061090	110% of TRQ	
Milled Rice	10062000, 10063010, 10063090, 10064000	110% of TRQ	
Parboiled Rice	1006	110% of TRQ	
Beans	07133200, 07133390, 07133310	60 MT	10%
Sorghum	10070090	110% of TRQ	
Vegetable Oil	15079000, 15122900, 15152900, 15162090, 15121900	8,000 MT	5%
Canned Meat	16010010, 16010030, 16010080, 16010090, 16024990	400 MT	10%
High Fructose Corn Syrup	17023020, 17024000, 17025000, 17026000	75 MT	10%

*Additional Import Duty*

2. For purposes of paragraph 3 of Article 3.15, the additional import duty shall be:
- (a) For liquid dairy, milk powder, butter, cheese, ice cream, other dairy products, buttermilk, curdled cream and yogurt goods as listed in this Schedule:
    - (i) in years one through 14, less than or equal to 100 percent of the difference between the appropriate MFN rate of duty as determined under Article 3.15.1 and the applicable tariff rate in the Schedule of El Salvador to Annex 3.3;
    - (ii) in years 15 through 17, less than or equal to 75 percent of the difference between the appropriate MFN rate of duty as determined under Article 3.15.1 and the applicable tariff rate in the Schedule of El Salvador to Annex 3.3; and
    - (iii) in years 18 and 19, less than or equal to 50 percent of the difference between the appropriate MFN rate as determined under Article 3.15.1 and the applicable tariff rate in the Schedule of El Salvador to Annex 3.3.
  - (b) For rough rice, milled rice, parboiled rice and chicken leg quarters as listed in this Schedule:
    - (i) in years one through 13, less than or equal to 100 percent of the difference between the appropriate MFN rate of duty as determined under Article 3.15.1 and the applicable tariff rate in the Schedule of El Salvador to Annex 3.3;
    - (ii) in years 14 and 15, less than or equal to 75 percent of the difference between the appropriate MFN rate of duty as determined under Article 3.15.1 and the applicable tariff rate in the Schedule of El Salvador to Annex 3.3; and
    - (iii) in years 16 and 17, less than or equal to 50 percent of the difference between the appropriate MFN rate of duty as determined under Article 3.15.1 and the applicable tariff rate in the Schedule of El Salvador to Annex 3.3;
  - (c) For pork as listed in this Schedule:
    - (i) in years one through nine, less than or equal to 100 percent of the difference between the appropriate MFN rate of duty as determined under Article 3.15.1 and the applicable tariff rate in the Schedule of El Salvador to Annex 3.3;
    - (ii) in years ten through 12, less than or equal to 75 percent of the difference between the appropriate MFN rate of duty as determined under Article 3.15.1 and the applicable tariff rate in the Schedule of El Salvador to Annex 3.3; and
    - (iii) in years 13 and 14, less than or equal to 50 percent of the difference between the appropriate MFN rate of duty as determined under Article 3.15.1 and the applicable tariff rate in the Schedule of El Salvador to Annex 3.3.

- (d) For vegetable oil and canned meat as listed in this Schedule that are subject to duty elimination under staging category N:
  - (i) in years one through four, less than or equal to 100 percent of the difference between the appropriate MFN rate of duty as determined under Article 3.15.1 and the applicable tariff rate in the Schedule of El Salvador to Annex 3.3;
  - (ii) in years five through eight, less than or equal to 75 percent of the difference between the appropriate MFN rate of duty as determined under Article 3.15.1 and the applicable tariff rate in the Schedule of El Salvador to Annex 3.3; and
  - (iii) in years nine through 11, less than or equal to 50 percent of the difference between the appropriate MFN rate of duty as determined under Article 3.15.1 and the applicable tariff rate in the Schedule of El Salvador to Annex 3.3.
- (e) For goods listed in this Schedule and not specified in subparagraphs (a) through (d):
  - (i) in years one through five, less than or equal to 100 percent of the difference between the appropriate MFN rate of duty as determined under Article 3.15.1 and the applicable tariff rate in the Schedule of El Salvador to Annex 3.3;
  - (ii) in years six through ten, less than or equal to 75 percent of the difference between the appropriate MFN rate of duty as determined under Article 3.15.1 and the applicable tariff rate in the Schedule of El Salvador to Annex 3.3; and
  - (iii) in years 11 through 14, less than or equal to 50 percent of the difference between the appropriate MFN rate as determined under Article 3.15.1 and the applicable tariff rate in the Schedule of El Salvador to Annex 3.3.

**Schedule of Guatemala**

*Subject Goods and Trigger Levels*

1. For purposes of paragraphs 1 and 2 of Article 3.15, United States goods that may be subject to an agricultural safeguard measure and the trigger level for each such good are set out below:

<b>Good</b>	<b>Tariff Classification</b>	<b>Trigger Level</b>	<b>Annual Trigger Growth Rate</b>
Chicken Leg Quarters	02071399, 02071499, 16023200	130% of TRQ	
Liquid Dairy	04011000, 04012000	50 MT	10%
Cheese	04061000, 04062090, 04063000, 04069010, 04069020, 04069090	130% of TRQ	
Milk Powder	04021000, 04022111, 04022112, 04022121, 04022122, 04022900, 04039010, 04039090	130% of TRQ	
Butter	04051000, 0405200, 04059090, 04013000	130% of TRQ	
Ice Cream	21050000	130% of TRQ	
Other Dairy Products	22029090	130% of TRQ	
Pork	02031100, 02031200, 02031900, 02032100, 02032200, 02032900	130% of TRQ	
Rough Rice	10061090	110% of TRQ	
Milled Rice	10062000, 10063010, 10063090, 10064000	110% of TRQ	
Whole Beans	07133310	50 MT	5%
Vegetable Oil	15162090, 15162010, 15152900, 15122900, 15121900, 15079000	2,600 MT	5%
Pimientos	07096010	25MT	10%
Fresh Tomatoes	07020000	150MT	10%
High Fructose Corn Syrup	17026000	50MT	10%
Fresh Potatoes	07019000	350MT	10%
Onions	07031012	64 MT	10%

*Additional Import Duty*

2. For purposes of paragraph 3 of Article 3.15, the additional import duty shall be:

- (a) For liquid dairy, cheese, milk powder, butter and ice cream goods as listed in this Schedule:
  - (i) in years one through 14, less than or equal to 100 percent of the difference between the appropriate MFN rate of duty as determined

- under Article 3.15.1 and the applicable tariff rate in the Schedule of Guatemala to Annex 3.3;
- (ii) in years 15 through 17, less than or equal to 75 percent of the difference between the appropriate MFN rate of duty as determined under Article 3.15.1 and the applicable tariff rate in the Schedule of Guatemala to Annex 3.3; and
  - (iii) in years 18 and 19, less than or equal to 50 percent of the difference between the appropriate MFN rate of duty as determined under Article 3.15.1 and the applicable tariff rate in the Schedule of Guatemala to Annex 3.3.
- (b) For chicken leg quarters, rough rice, and milled rice as listed in this Schedule:
- (i) in years one through 13, less than or equal to 100 percent of the difference between the appropriate MFN rate of duty as determined under Article 3.15.1 and the applicable tariff rate in the Schedule of Guatemala to Annex 3.3;
  - (ii) in years 14 and 15, less than or equal to 75 percent of the difference between the appropriate MFN rate of duty as determined under Article 3.15.1 and the applicable tariff rate in the Schedule of Guatemala to Annex 3.3; and
  - (iii) in years 16 and 17, less than or equal to 50 percent of the difference between the appropriate MFN rate of duty as determined under Article 3.15.1 and the applicable tariff rate in the Schedule of Guatemala to Annex 3.3.
- (c) For pork, fresh potatoes, high fructose corn syrup and vegetable oil as listed in this Schedule that are subject to duty elimination under staging category D:
- (i) in years one through five, less than or equal to 100 percent of the difference between the appropriate MFN rate of duty as determined under Article 3.15.1 and the applicable tariff rate in the Schedule of Guatemala to Annex 3.3;
  - (ii) in years six through ten, less than or equal to 75 percent of the difference between the appropriate MFN rate of duty as determined under Article 3.15.1 and the applicable tariff rate in the Schedule of Guatemala to Annex 3.3; and
  - (iii) in years 11 through 14, less than or equal to 50 percent of the difference between the appropriate MFN rate of duty as determined under Article 3.15.1 and the applicable tariff rate in the Schedule of Guatemala to Annex 3.3.
- (d) For whole beans as listed in this Schedule:
- (i) in years one through nine, less than or equal to 100 percent of the difference between the appropriate MFN rate of duty as determined under Article 3.15.1 and the applicable tariff rate in the Schedule of Guatemala to Annex 3.3;

- (ii) for years ten through 12, less than or equal to 75 percent of the difference between the appropriate MFN rate of duty as determined under Article 3.15.1 and the applicable tariff rate in the Schedule of Guatemala to Annex 3.3; and
  - (iii) for years 13 and 14, less than or equal to 50 percent of the difference between the appropriate MFN rate of duty as determined under Article 3.15.1 and the applicable tariff rate in the Schedule of Guatemala to Annex 3.3.
- (e) For pimientos, onions, tomatoes, vegetable oil, and other dairy goods as listed in this Schedule that are subject to duty elimination under staging category C:
- (i) in years one through four, less than or equal to 100 percent of the difference between the appropriate MFN rate of duty as determined under Article 3.15.1 and the applicable tariff rate in the Schedule of Guatemala to Annex 3.3;
  - (ii) in years five through seven, less than or equal to 75 percent of the difference between the appropriate MFN rate of duty as determined under Article 3.15.1 and the applicable tariff rate in the Schedule of Guatemala to Annex 3.3; and
  - (iii) in years eight and nine, less than or equal to 50 percent of the difference between the appropriate MFN rate of duty as determined under Article 3.15.1 and the applicable tariff rate in the Schedule of Guatemala to Annex 3.3.

**Schedule of Honduras**

*Subject Goods and Trigger Levels*

1. For purposes of paragraphs 1 and 2 of Article 3.15, United States goods that may be subject to an agricultural safeguard measure and the trigger level for each such good are set out below:

Good	Tariff Classification	Trigger Level	Annual Trigger Growth Rate
Pork	02031100, 02031200, 02031900, 02032100, 02032200, 02032900	130% of TRQ	
Chicken Leg Quarters	02071399, 02071499, 16023200	130% of TRQ	
Liquid Dairy	04011000, 04012000, 04013000	50 MT	10%
Milk Powder	04021000, 04022111, 04022112, 04022121, 04022122, 04022900	130% of TRQ	
Butter	04051000, 04052000, 04059090	130% of TRQ	
Cheese	04061000, 04062090, 04063000, 04069010, 04069020, 04069090	130% of TRQ	
Ice Cream	21050000	130% of TRQ	
Other Dairy Products	22029090	130% of TRQ	
Rough rice	10061090	110% of TRQ	
Milled rice	10061020, 10063010, 10063090, 10064010, 10064090	110% of TRQ	
Onions	07031011, 07031012	480 MT	10%
Wheat Flour	11010000	210 MT	10%
Vegetable Oil	15079000, 15121900, 15122900, 15152900, 15162090, 15171000, 15179010, 15179090	3,500 MT	5%
Processed Meat	16010090	140 MT	10%
High Fructose Corn Syrup	17023020, 17024000, 17026000	214 MT	10%

*Additional Import Duty*

2. For purposes of paragraph 3 of Article 3.15, the additional import duty shall be:

- (a) For pork as listed in this Schedule:
- (i) in years one through nine, less than or equal to 100 percent of the difference between the appropriate MFN rate of duty as determined under Article 3.15.1 and the applicable tariff rate in the Schedule of Honduras to Annex 3.3;
  - (ii) in years ten through 12, less than or equal to 75 percent of the difference between the appropriate MFN rate of duty as determined under Article 3.15.1 and the applicable tariff rate in the Schedule of Honduras to Annex 3.3; and

- (iii) in years 13 and 14, less than or equal to 50 percent of the difference between the appropriate MFN rate of duty as determined under Article 3.15.1 and the applicable tariff rate in the Schedule of Honduras to Annex 3.3.
- (b) For chicken leg quarters, rough rice, and milled rice as listed in this Schedule:
  - (i) in years one through 13, less than or equal to 100 percent of the difference between the appropriate MFN rate of duty as determined under Article 3.15.1 and the applicable tariff rate in the Schedule of Honduras to Annex 3.3;
  - (ii) in years 14 and 15, less than or equal to 75 percent of the difference between the appropriate MFN rate of duty as determined under Article 3.15.1 and the applicable tariff rate in the Schedule of Honduras to Annex 3.3; and
  - (iii) in years 16 and 17, less than or equal to 50 percent of the difference between the appropriate MFN rate of duty as determined under Article 3.15.1 and the applicable tariff rate in the Schedule of Honduras to Annex 3.3.
- (c) For liquid dairy, milk powder, butter, cheese, other dairy goods, and ice cream as listed in this Schedule:
  - (i) in years one through 14, less than or equal to 100 percent of the difference between the appropriate MFN rate of duty as determined under Article 3.15.1 and the applicable tariff rate in the Schedule of Honduras to Annex 3.3;
  - (ii) in years 15 through 17, less than or equal to 75 percent of the difference between the appropriate MFN rate of duty as determined under Article 3.15.1 and the applicable tariff rate in the Schedule of Honduras to Annex 3.3; and
  - (iii) in years 18 and 19, less than or equal to 50 percent of the difference between the appropriate MFN rate of duty as determined under Article 3.15.1 and the applicable tariff rate in the Schedule of Honduras to Annex 3.3.
- (d) For onions, wheat flour, vegetable oil, processed meat, and high fructose corn syrup goods as listed in this Schedule:
  - (i) in years one through five, less than or equal to 100 percent of the difference between the appropriate MFN rate of duty as determined under Article 3.15.1 and the applicable tariff rate in the Schedule of Honduras to Annex 3.3;
  - (ii) in years six through ten, less than or equal to 75 percent of the difference between the appropriate MFN rate of duty as determined under Article 3.15.1 and the applicable tariff rate in the Schedule of Honduras to Annex 3.3; and
  - (iii) in years 11 through 14, less than or equal to 50 percent of the difference between the appropriate MFN rate of duty as determined under Article

3.15.1 and the applicable tariff rate in the Schedule of Honduras to Annex 3.3.

### Schedule of Nicaragua

#### Subject Goods and Trigger Levels

1. For purposes of paragraphs 1 and 2 of Article 3.15, United States goods that may be subject to an agricultural safeguard measure and the trigger level for each such good are set out below:

Good	Tariff Classification	Trigger Level	Annual Trigger Growth Rate
Beef	02011000, 02012000, 02013000, 02021000, 02022000, 02023000	300 MT	10%
Chicken Leg Quarters	02071399, 02071499, 16023200	130% of TRQ	
Liquid Dairy	0401100011, 0401100019, 0401100020, 0401200011, 0401200019, 0401200020, 0401300011, 0401300019, 0401300020	50 MT	10%
Milk Powder	04021000, 04022111, 04022112, 04022121, 04022122, 04022900	130% of TRQ	
Butter	04051000, 04052000	130% of TRQ	
Cheese	04061000, 04062090, 04063000, 04064000, 04069010, 04069020, 04069090	130% of TRQ	
Ice Cream	21050000	130% of TRQ	
Other Dairy Products	1901909091, 1901909099, 22029090	130% of TRQ	
Onions	07031011, 07031012	450 MT	10%
Beans	07133200	700 MT	10%
Yellow corn	10059020	115% of TRQ	
Rough rice	10061090	110% of TRQ	
Milled rice	10062000, 10063010, 10063090, 10064000	110% of TRQ	
Sorghum	10070090	1,000 MT	10%
High Fructose Corn Syrup	17023020, 17024000, 17025000, 17026000	75 MT	10%

#### Additional Import Duty

2. For purposes of paragraph 3 of Article 3.15, the additional import duty shall be:

- (a) For beef other than prime and choice beef as listed in this Schedule:
- (i) in years one through seven, less than or equal to 100 percent of the difference between the appropriate MFN rate of duty as determined under Article 3.15.1 and the applicable tariff rate in the Schedule of Nicaragua to Annex 3.3;
  - (ii) in years eight through 11, less than or equal to 75 percent of the difference between the appropriate MFN rate of duty as determined under Article 3.15.1 and the applicable tariff rate in the Schedule of Nicaragua to Annex 3.3; and
  - (iii) in years 12 through 14, less than or equal to 50 percent of the difference between the appropriate MFN rate of duty as determined under Article

3.15.1 and the applicable tariff rate in the Schedule of Nicaragua to Annex 3.3.

- (b) For chicken leg quarters, rough rice, and milled rice as listed in this Schedule:
  - (i) in years one through 13, less than or equal to 100 percent of the difference between the appropriate MFN rate of duty as determined under Article 3.15.1 and the applicable tariff rate in the Schedule of Nicaragua to Annex 3.3;
  - (ii) in years 14 and 15, less than or equal to 75 percent of the difference between the appropriate MFN rate of duty as determined under Article 3.15.1 and the applicable tariff rate in the Schedule of Nicaragua to Annex 3.3; and
  - (iii) in years 16 and 17, less than or equal to 50 percent of the difference between the appropriate MFN rate of duty as determined under Article 3.15.1 and the applicable tariff rate in the Schedule of Nicaragua to Annex 3.3.
- (c) For liquid dairy, milk powder, butter, cheese, other dairy goods, and ice cream as listed in this Schedule:
  - (i) in years one through 14, less than or equal to 100 percent of the difference between the appropriate MFN rate of duty as determined under Article 3.15.1 and the applicable tariff rate in the Schedule of Nicaragua to Annex 3.3;
  - (ii) in years 15 through 17, less than or equal to 75 percent of the difference between the appropriate MFN rate of duty as determined under Article 3.15.1 and the applicable tariff rate in the Schedule of Nicaragua to Annex 3.3; and
  - (iii) in years 18 and 19, less than or equal to 50 percent of the difference between the appropriate MFN rate of duty as determined under Article 3.15.1 and the applicable tariff rate in the Schedule of Nicaragua to Annex 3.3.
- (d) For onions, beans, and high fructose corn syrup goods as listed in this Schedule:
  - (i) in years one through five, less than or equal to 100 percent of the difference between the appropriate MFN rate of duty as determined under Article 3.15.1 and the applicable tariff rate in the Schedule of Nicaragua to Annex 3.3;
  - (ii) in years six through ten, less than or equal to 75 percent of the difference between the appropriate MFN rate of duty as determined under Article 3.15.1 and the applicable tariff rate in the Schedule of Nicaragua to Annex 3.3; and
  - (iii) in years 11 through 14, less than or equal to 50 percent of the difference between the appropriate MFN rate of duty as determined under Article 3.15.1 and the applicable tariff rate in the Schedule of Nicaragua to Annex 3.3.

- (e) For yellow corn and sorghum as listed in this Schedule:
- (i) in years one through nine, less than or equal to 100 percent of the difference between the appropriate MFN rate of duty as determined under Article 3.15.1 and the applicable tariff rate in the Schedule of Nicaragua to Annex 3.3;
  - (ii) in years ten through 12, less than or equal to 75 percent of the difference between the appropriate MFN rate of duty as determined under Article 3.15.1 and the applicable tariff rate in the Schedule of Nicaragua to Annex 3.3; and
  - (iii) in years 13 and 14, less than or equal to 50 percent of the difference between the appropriate MFN rate of duty as determined under Article 3.15.1 and the applicable tariff rate in the Schedule of Nicaragua to Annex 3.3.

**Schedule of the United States**

*Subject Goods and Trigger Levels*

1. For purposes of paragraphs 1 and 2 of Article 3.15, Central America or Dominican Republic goods that may be subject to an agricultural safeguard measure and the trigger level for each such good are set out below.<sup>22</sup>

<b>Good</b>	<b>Tariff Classification</b>	<b>Trigger Level</b>
Cheese	04061008, 04061018, 04061028, 04061038, 04061048, 04061058, 04061068, 04061078, 04061088, 04062028, 04062033, 04062039, 04062048, 04062053, 04062063, 04062067, 04062071, 04062075, 04062079, 04062083, 04062087, 04062091, 04063018, 04063028, 04063038, 04063048, 04063053, 04063063, 04063067, 04063071, 04063075, 04063079, 04063083, 04063087, 04063091, 04064070, 04069012, 04069018, 04069032, 04069037, 04069042, 04069048, 04069054, 04069068, 04069074, 04069078, 04069084, 04069088, 04069092, 04069094, 04069097, 19019036	130% of TRQ
Butter	04013075, 04022190, 04039065, 04039078, 04051020, 04052030, 04059020, 21069026, 21069036	130% of TRQ
Ice Cream	21050020	130% of TRQ
Fluid Fresh and Sour Cream	04013025, 04039016	130% of TRQ
Other Dairy	04022950, 04029170, 04029190, 04029945, 04029955, 04029990, 04031050, 04039095, 04041015, 04049050, 04052070, 15179060, 17049058, 18062026, 18062028, 18062036, 18062038, 18062082, 18062083, 18062087, 18062089, 18063206, 18063208, 18063216, 18063218, 18063270, 18063280, 18069008, 18069010, 18069018, 18069020, 18069028, 18069030, 19011030, 19011040, 19011075, 19011085, 19012015, 19012050, 19019043, 19019047, 21050040, 21069009, 21069066, 21069087, 22029028	130% of TRQ
Peanut Butter	20081115	130% of TRQ
Peanuts	12021080, 12022080, 20081135, 20081160	130% of TRQ

*Additional Import Duty*

2. For purposes of paragraph 3 of Article 3.15, the additional import duty shall be:

- (a) For cheese, butter, ice cream, fluid fresh and sour cream, and other dairy goods as listed in this Schedule:

<sup>22</sup> For purposes of determining the country-specific application of agricultural safeguard measures, the United States shall apply the non-preferential rules of origin that it applies in the normal course of trade.

- (i) in years one through 14, less than or equal to 100 percent of the difference between the appropriate MFN rate of duty as determined under Article 3.15.1 and the applicable tariff rate in the Schedule of the United States to Annex 3.3;
  - (ii) in years 15 through 17, less than or equal to 75 percent of the difference between the appropriate MFN rate of duty as determined under Article 3.15.1 and the applicable tariff rate in the Schedule of the United States to Annex 3.3; and
  - (iii) in years 18 and 19, less than or equal to 50 percent of the difference between the appropriate MFN rate of duty as determined under Article 3.15.1 and the applicable tariff rate in the Schedule of the United States to Annex 3.3.
- (b) For peanuts and peanut butter goods as listed in this Schedule:
- (i) in years one through five, less than or equal to 100 percent of the difference between the appropriate MFN rate of duty as determined under Article 3.15.1 and the applicable tariff rate in the Schedule of the United States to Annex 3.3;
  - (ii) in years six through ten, less than or equal to 75 percent of the difference between the appropriate MFN rate of duty as determined under Article 3.15.1 and the applicable tariff rate in the Schedule of the United States to Annex 3.3; and
  - (iii) in years 11 through 14, less than or equal to 50 percent of the difference between the appropriate MFN rate of duty as determined under Article 3.15.1 and the applicable tariff rate in the Schedule of the United States to Annex 3.3.

## Annex 3.22

## Elimination of Existing Quantitative Restrictions

## 1. For Costa Rica:

Category 340/640:	Cotton and man-made fiber shirts, for men and boys
Category 342/642:	Cotton and man-made fiber skirts
Category 347/348:	Cotton trousers, breeches, and shorts
Category 443:	Wool suits, for men and boys
Category 447:	Wool trousers, for men and boys

## 2. For the Dominican Republic:

Category 338/638:	Knit fabric, cotton, and man-made fiber shirts, for men and boys
Category 339/639:	Knit fabric, cotton, and man-made fiber shirts, for women and girls
Category 340/640:	Cotton and man-made fiber shirts, for men and boys
Category 342/642:	Cotton and man-made fiber skirts
Category 347/348:	Cotton trousers, breeches, and shorts
Category 351/651:	Cotton and man-made fiber nightwear
Category 433:	Wool suits, for men and boys
Category 442:	Wool skirts
Category 443:	Wool suits, for men and boys
Category 444:	Wool suits, for women and girls
Category 448:	Wool trousers, for women and girls
Category 633:	Man-made fiber suits, for men and boys
Category 647/648:	Man-made fiber trousers, breeches, and shorts

## 3. For El Salvador:

Category 340/640:	Cotton and man-made fiber shirts, for men and boys
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## 4. For Guatemala:

Category 340/640:	Cotton and man-made fiber shirts, for men and boys
Category 347/348:	Cotton trousers, breeches, and shorts
Category 351/651:	Cotton and man-made fiber nightwear
Category 443:	Wool suits, for men and boys
Category 448:	Wool trousers, for women and girls

## Annex 3.25

## Short Supply List

1	Velveteen fabrics classified in subheading 5801.23.
2	Corduroy fabrics classified in subheading 5801.22, containing 85 percent or more by weight of cotton and containing more than 7.5 wales per centimeter.
3	Fabrics classified in subheading 5111.11 or 5111.19, if hand-woven, with a loom width of less than 76 centimeter, woven in the United Kingdom in accordance with the rules and regulations of the Harris Tweed Association, Ltd., and so certified by the Association.
4	Fabrics classified in subheading 5112.30, weighing not more than 340 grams per square meter, containing wool, not less than 20 percent by weight of fine animal hair and not less than 15 percent by weight of man-made staple fibers.
5	Batiste fabrics classified in subheading 5513.11 or 5513.21, of square construction, of single yarns exceeding 76 metric count, containing between 60 and 70 warp ends and filling picks per square centimeter, of a weight not exceeding 110 grams per square meter.
6	Fabrics classified in subheading 5208.21, 5208.22, 5208.29, 5208.31, 5208.32, 5208.39, 5208.41, 5208.42, 5208.49, 5208.51, 5208.52, or 5208.59, of average yarn number exceeding 135 metric.
7	Fabrics classified in subheading 5513.11 or 5513.21, not of square construction, containing more than 70 warp ends and filling picks per square centimeter, of average yarn number exceeding 70 metric.
8	Fabrics classified in subheading 5210.21 or 5210.31, not of square construction, containing more than 70 warp ends and filling picks per square centimeter, of average yarn number exceeding 70 metric.
9	Fabrics classified in subheading 5208.22 or 5208.32, not of square construction, containing more than 75 warp ends and filling picks per square centimeter, of average yarn number exceeding 65 metric.
10	Fabrics classified in subheading 5407.81, 5407.82, or 5407.83, weighing less than 170 grams per square meter, having a dobby weave created by a dobby attachment.
11	Fabrics classified in subheading 5208.42 or 5208.49, not of square construction, containing more than 85 warp ends and filling picks per square centimeter, of average yarn number exceeding 85 metric.
12	Fabrics classified in subheading 5208.51, of square construction, containing more than 75 warp ends and filling picks per square centimeter, made with single yarns, of average yarn number equal to or exceeding 95 metric.
13	Fabrics classified in subheading 5208.41, of square construction, with a gingham pattern, containing more than 85 warp ends and filling picks per square centimeter, made with single yarns, of average yarn number equal to or exceeding 95 metric, and characterized by a check effect produced by the variation in color of the yarns in the warp and filling.
14	Fabrics classified in subheading 5208.41, with the warp colored with vegetable dyes, and the filling yarns white or colored with vegetable dyes, of average yarn number exceeding 65 metric.
15	Circular knit fabric, wholly of cotton yarns, exceeding 100 metric number per single yarn, classified in tariff item 6006.21.aa, 6006.22.aa, 6006.23.aa, or 6006.24.aa.
16	100% polyester crushed panne velour fabric of circular knit construction classified in tariff item 6001.92.aa.
17	Viscose rayon yarns classified in subheading 5403.31 or 5403.32.
18	Yarn of combed cashmere, combed cashmere blends, or combed camel hair classified in tariff item 5108.20.aa.

19	Two elastomeric fabrics used in waistbands, classified in tariff item 5903.90.bb: (1) a knitted outer-fusible material with a fold line that is knitted into the fabric. The fabric is a 45 millimeter wide base substrate, knitted in narrow width, synthetic fiber based (made of 49% polyester/43% elastomeric filament/8% nylon with a weight of 4.4 ounces, a 110/110 stretch, and a dull yarn), stretch elastomeric material with an adhesive (thermoplastic resin) coating. The 45 millimeter width is divided as follows: 34 millimeter solid, followed by a 3 millimeter seam allowing it to fold over, followed by 8 millimeter of solid; (2) a knitted inner-fusible material with an adhesive (thermoplastic resin) coating that is applied after going through a finishing process to remove all shrinkage from the product. The fabric is a 40 millimeter synthetic fiber based, stretch elastomeric fusible consisting of 80% nylon type 6 and 20% elastomeric filament with a weight of 4.4 ounces, a 110/110 stretch, and a dull yarn.
20	Fabrics classified in subheading 5210.21 or 5210.31, not of square construction, containing more than 70 warp ends and filling picks per square centimeter, of average yarn number exceeding 135 metric.
21	Fabrics classified in subheading 5208.22 or 5208.32, not of square construction, containing more than 75 warp ends and filling picks per square centimeter, of average yarn number exceeding 135 metric.
22	Fabrics classified in subheading 5407.81, 5407.82, or 5407.83, weighing less than 170 grams per square meter, having a dobby weave created by a dobby attachment of average yarn number exceeding 135 metric.
23	Cuprammonium rayon filament yarn classified in subheading 5403.39.
24	Fabrics classified in subheading 5208.42 or 5208.49, not of square construction, containing more than 85 warp ends and filling picks per square centimeter, of average yarn number exceeding 85 metric, of average yarn number exceeding 135 metric if the fabric is Oxford construction.
25	Single ring-spun yarn of yarn numbers 51 and 85 metric, containing 50 percent or more, but less than 85 percent, by weight of 0.9 denier or finer micro modal fiber, mixed solely with U.S. origin extra long pima cotton, classified in subheading 5510.30.
26	Tow of viscose rayon classified in heading 55.02.
27	100 percent cotton woven flannel fabrics, single ring-spun yarns of different colors, of yarn numbers 21 through 36 metric, classified in tariff item 5208.43.aa, of 2 x 2 twill weave construction, weighing not more than 200 grams per square meter.
28	Fabrics classified in the following tariff items of average yarn number exceeding 93 metric: 5208.21.aa, 5208.22.aa, 5208.29.aa, 5208.31.aa, 5208.32.aa, 5208.39.aa, 5208.41.aa, 5208.42.aa, 5208.49.aa, 5208.51.aa, 5208.52.aa, 5208.59.aa, 5210.21.aa, 5210.29.aa, 5210.31.aa, 5210.39.aa, 5210.41.aa, 5210.49.aa, 5210.51.aa, or 5210.59.aa.
29	Certain yarns of carded cashmere or of carded camel hair, classified in tariff item 5108.10.aa, used to produce woven fabrics classified in subheading 5111.11 or 5111.19.
30	Acid-dyeable acrylic tow classified in subheading 5501.30, for production of yarn classified in subheading 5509.31.
31	Untextured flat yarns of nylon classified in tariff item 5402.41.aa. The yarns are described as: (1) of nylon, 7 denier/5 filament nylon 66 untextured (flat) semi-dull yarn; multifilament, untwisted or with a twist not exceeding 50 turns/meter; (2) of nylon, 10 denier/7 filament nylon 66 untextured (flat) semi-dull yarn; multifilament, untwisted or with a twist not exceeding 50 turns/meter; or (3) of nylon, 12 denier/5 filament nylon 66 untextured (flat) semi-dull yarn; multifilament, untwisted or with a twist not exceeding 50 turns/meter.
32	Woven fabric classified in tariff item 5515.13.aa, combed of polyester staple fibers mixed with wool, and containing less than 36% by weight of wool.

33	Knitted fabric of 85% spun silk/15% wool (210 grams per square meter), classified in tariff item 6006.90.aa.
34	Woven fabrics classified in subheading 5512.99, containing 100% by weight of synthetic staple fibers, not of square construction, of average yarn number exceeding 55 metric.
35	Woven fabrics classified in subheadings 5512.21 or 5512.29, of 100% acrylic fibers, of average yarn number exceeding 55 metric.
36	Rayon filament sewing thread, classified in subheading 5401.20.
37	Poplin, ring spun, woven fabric of 97% cotton, 3% Lycra, classified in tariff item 5208.32.bb.
38	Polyester/Nylon/Spandex Synthetic Tri-blend (74/22/4%) woven fabric, classified in tariff item 5512.99.aa.
39	Two-way stretch woven fabric of polyester/rayon/spandex (62/32/6%), classified in tariff item 5515.19.aa.
40	Two-way stretch woven fabric of polyester/rayon/spandex (71/23/6%), classified in tariff item 5515.19.aa.
41	Dyed rayon blend (70% rayon/30% polyester) herringbone twill fabric, classified in subheading 5516.92, weighing more than 200 grams per square meter.
42	Printed 100% rayon herringbone fabric, classified in subheading 5516.14, weighing more than 200 grams per square meter.
43	Leaver's Lace classified in subheading 5804.21 or 5804.29.

Note: This list shall remain in effect until the United States publishes a replacement list that makes changes to the list pursuant to Article 3.25.4 or 3.25.5. Any replacement list shall supersede this list and any prior replacement list, and the United States shall publish the replacement list at the same time that the United States makes a determination pursuant to Article 3.25.4, and six months after the United States makes a determination pursuant to Article 3.25.5. The United States shall transmit a copy of any replacement list to the other Parties at the time it publishes the list.

## Annex 3.27

**Preferential Tariff Treatment  
for Wool Apparel Goods Assembled in Costa Rica**

1. Subject to paragraph 4, the United States shall apply a rate of duty that is 50 percent of the MFN rate of duty to men's, boys', women's, and girls' tailored wool apparel goods in textile categories 433, 435 (suit-type jackets only), 442, 443, 444, 447, and 448, all within headings 6203 and 6204, if they meet all applicable conditions for preferential tariff treatment,<sup>23</sup> and are both cut and sewn or otherwise assembled in the territory of Costa Rica, regardless of the origin of the fabric used to make the goods.

2. For purposes of determining the quantity of square meter equivalents (SME) charged against the limits set out in paragraph 4, the conversion factors listed in *Correlation: U.S. Textile and Apparel Category System with the Harmonized Tariff Schedule of the United States of America 2003*, U.S. Department of Commerce, Office of Textiles and Apparel, or successor publication, and reproduced in paragraph 3, shall apply.

3. The treatment described in paragraph 1 shall apply to the following goods:<sup>24</sup>

CAT	SMEF	Description	Unit of Measure
433	30.10	M&B SUIT-TYPE JACKETS	DZ
435	45.10	W&G SUIT-TYPE JACKETS <sup>25</sup>	DZ
442	15.00	W&G SKIRTS	DZ
443	3.76	M&B SUITS	NO
444	3.76	W&G SUITS	NO
447	15.00	M&B SHORTS, TROUSERS, BREECHES	DZ
448	15.00	W&G SHORTS, TROUSERS, BREECHES	DZ

4. The treatment described in paragraph 1 shall be limited to goods imported into the territory of the United States up to a quantity of 500,000 SME in each of the first two years after the date of entry into force of this Agreement.

5. Costa Rica and the United States shall consult 18 months after the date of entry into force of this Agreement regarding the operation of this Annex and the availability of wool fabric in the region.

<sup>23</sup> For greater certainty, the applicable conditions for preferential tariff treatment include Chapter Rules 1, 3, and 4 for Chapter 62 of the specific rules of origin in Annex 4.1 (Specific Rules of Origin).

<sup>24</sup> For purposes of this paragraph:

**DZ** means dozen;

**M&B** means men's and boys';

**NO** means number;

**SMEF** means SME factor; and

**W&G** means women's and girls'.

<sup>25</sup> For category 435, preferential tariff treatment is available only for suit-type jackets classified in subheading 6204.31 and tariff items 6204.33.aa, 6204.39.aa, and 6204.39.dd.

## Annex 3.28

**Preferential Tariff Treatment  
for Non-Originating Apparel Goods of Nicaragua**

1. Subject to paragraph 4, the United States shall apply the applicable rate of duty set out in its Schedule to Annex 3.3 to the cotton and man-made fiber apparel goods listed in paragraph 3 and provided for in chapters 61 and 62 of the Harmonized System, if they meet the applicable conditions for preferential tariff treatment other than the condition that they be originating goods, and are both cut or knit to shape, and sewn or otherwise assembled, in the territory of Nicaragua.
2. For purposes of determining the quantity of square meter equivalents (SME) that is charged against the annual quantity, the conversion factors listed in *Correlation: U.S. Textile and Apparel Category System with the Harmonized Tariff Schedule of the United States of America 2003*, U.S. Department of Commerce, Office of Textiles and Apparel, or successor publication, and reproduced in paragraph 3, shall apply.
3. The treatment described in paragraph 1 shall apply to the following goods:<sup>26</sup>

CAT	SMEF	Description	Unit of Measure
237	19.20	PLAYSUITS, SUNSUITS, ETC	DZ
239	6.30	BABIES' GARMENTS & CLOTHING ACCESS	KG
330	1.40	COTTON HANDKERCHIEFS	DZ
331	2.90	COTTON GLOVES AND MITTENS	DPR
332	3.80	COTTON HOSIERY	DPR
333	30.30	M&B SUIT-TYPE COATS, COTTON	DZ
334	34.50	OTHER M&B COATS, COTTON	DZ
335	34.50	W&G COTTON COATS	DZ
336	37.90	COTTON DRESSES	DZ
338	6.00	M&B COTTON KNIT SHIRTS	DZ
339	6.00	W&G COTTON KNIT SHIRTS/BLOUSES	DZ
340	20.10	M&B COTTON SHIRTS, NOT KNIT	DZ
341	12.10	W&G COTTON SHIRTS/BLOUSES, NOT KNIT	DZ
342	14.90	COTTON SKIRTS	DZ
345	30.80	COTTON SWEATERS	DZ
347	14.90	M&B COTTON TROUSERS/BREECHES/SHORTS	DZ
348	14.90	W&G COTTON TROUSERS/BREECHES/SHORTS	DZ
349	4.00	BRASSIERES, OTHER BODY SUPPORT GARMENTS	DZ

<sup>26</sup> For purposes of this paragraph:

**DZ** means dozen;

**KG** means kilogram;

**DPR** means dozen pairs;

**M&B** means men's and boys';

**MMF** means man-made fiber;

**NO** means number;

**SMEF** means SME factor; and

**W&G** means women's and girls'.

350	42.60	COTTON DRESSING GOWNS, ROBES, ETC.	DZ
351	43.50	COTTON NIGHTWEAR/PAJAMAS	DZ
352	9.20	COTTON UNDERWEAR	DZ
353	34.50	M&B COTTON DOWNFILLED COATS	DZ
354	34.50	W&G COTTON DOWNFILLED COATS	DZ
359	8.50	OTHER COTTON APPAREL	KG
630	1.40	MMF HANDKERCHIEFS	DZ
631	2.90	MMF GLOVES AND MITTENS	DPR
632	3.80	MMF HOSIERY	DPR
633	30.30	M&B MMF SUIT-TYPE COATS	DZ
634	34.50	OTHER M&B MMF COATS	DZ
635	34.50	W&G MMF COATS	DZ
636	37.90	MMF DRESSES	DZ
638	15.00	M&B MMF KNIT SHIRTS	DZ
639	12.50	W&G MMF KNIT SHIRTS & BLOUSES	DZ
640	20.10	M&B NOT-KNIT MMF SHIRTS	DZ
641	12.10	W&G NOT-KNIT MMF SHIRTS & BLOUSES	DZ
642	14.90	MMF SKIRTS	DZ
643	3.76	M&B MMF SUITS	NO
644	3.76	W&G MMF SUITS	NO
645	30.80	M&B MMF SWEATERS	DZ
646	30.80	W&G MMF SWEATERS	DZ
647	14.90	M&B MMF TROUSERS/BREECHES/SHORTS	DZ
648	14.90	W&G MMF TROUSERS/BREECHES/SHORTS	DZ
649	4.00	MMF BRAS & OTHER BODY SUPPORT GARMENTS	DZ
650	42.60	MMF ROBES, DRESSING GOWNS, ETC.	DZ
651	43.50	MMF NIGHTWEAR & PAJAMAS	DZ
652	13.40	MMF UNDERWEAR	DZ
653	34.50	M&B MMF DOWNFILLED COATS	DZ
654	34.50	W&G MMF DOWNFILLED COATS	DZ
659	14.40	OTHER MMF APPAREL	KG

4. The treatment described in paragraph 1 shall be limited as follows:

- (a) in each of the first five years after the date of entry into force of this Agreement, to goods imported into the territory of the United States up to a quantity of 100,000,000 SME;
- (b) in the sixth year, to goods imported into the territory of the United States up to a quantity of 80,000,000 SME;
- (c) in the seventh year, to goods imported into the territory of the United States up to a quantity of 60,000,000 SME;
- (d) in the eighth year, to goods imported into the territory of the United States up to a quantity of 40,000,000 SME; and
- (e) in the ninth year, to goods imported into the territory of the United States up to a quantity of 20,000,000 SME.

Beginning the tenth year after the date of entry into force of this Agreement, this Annex shall cease to apply.

## Annex 3.29

## Textile or Apparel Goods Not Covered by Section G

HS No.	Description
3005.90	Wadding, gauze, bandages, and the like
ex 3921.12 ex 3921.13 Ex 3921.90	Woven, knitted, or non-woven fabrics coated, covered, or laminated with plastics
Ex 6405.20	Footwear with soles and uppers of wool felt
Ex 6406.10	Footwear uppers of which 50% or more of the external surface area is textile material
Ex 6406.99	Leg warmers and gaiters of textile material
6501.00	Hat forms, hat bodies, and hoods of felt; plateaux and manchons of felt
6502.00	Hat shapes, plaited or made by assembling strips of any material
6503.00	Felt hats and other felt headgear
6504.00	Hats and other headgear, plaited or made by assembling strips of any material
6505.90	Hats and other headgear, knitted or made up from lace or other textile material
8708.21	Safety seat belts for motor vehicles
8804.00	Parachutes; their parts and accessories
9113.90	Watch straps, bands, and bracelets of textile materials
9502.91	Garments for dolls
Ex 9612.10	Woven ribbons of man-made fibers, other than those measuring less than 30 millimeters in width and permanently put up in cartridges

**Note:** Whether or not a textile or apparel good is covered by this Section shall be determined in accordance with the Harmonized System. The descriptions provided in this Annex are for reference purposes only.

**Chapter Four**

**Rules of Origin and Origin Procedures**

**Section A: Rules of Origin**

**Article 4.1: Originating Goods**

Except as otherwise provided in this Chapter, each Party shall provide that a good is originating where:

- (a) it is a good wholly obtained or produced entirely in the territory of one or more of the Parties;
- (b) it is produced entirely in the territory of one or more of the Parties and
  - (i) each of the non-originating materials used in the production of the good undergoes an applicable change in tariff classification specified in Annex 4.1, or
  - (ii) the good otherwise satisfies any applicable regional value content or other requirements specified in Annex 4.1,
 and the good satisfies all other applicable requirements of this Chapter; or
- (c) it is produced entirely in the territory of one or more of the Parties exclusively from originating materials.

**Article 4.2: Regional Value Content**

1. Where Annex 4.1 specifies a regional value content test to determine whether a good is originating, each Party shall provide that the importer, exporter, or producer may use a calculation of regional value content based on one or the other of the following methods:

- (a) Method Based on Value of Non-Originating Materials ("Build-down Method")

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

- (b) Method Based on Value of Originating Materials ("Build-up Method")

$$RVC = \frac{VOM}{AV} \times 100$$

where,

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

AV is the adjusted value;

VNM is the value of non-originating materials that are acquired and used by the producer in the production of the good; VNM does not include the value of a material that is self-produced; and

VOM is the value of originating materials acquired or self-produced, and used by the producer in the production of the good.

2. Each Party shall provide that all costs considered for the calculation of regional value content shall be recorded and maintained in conformity with the Generally Accepted Accounting Principles applicable in the territory of the Party where the good is produced.

3. Where Annex 4.1 specifies a regional value content test to determine if an automotive good<sup>1</sup> is originating, each Party shall provide that the importer, exporter, or producer may use a calculation of the regional value content of that good as provided in paragraph 1 or based on the following method:

Method for Automotive Products ("Net Cost Method")

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

where,

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

NC is the net cost of the good; and

VNM is the value of non-originating materials acquired and used by the producer in the production of the good; VNM does not include the value of a material that is self-produced.

4. Each Party shall provide that, for purposes of the regional value content method in paragraph 3, the importer, exporter, or producer may use a calculation averaged over the producer's fiscal year, using any one of the following categories, on the basis of all motor vehicles in the category or only those motor vehicles in the category that are exported to the territory of one or more of the other Parties:

- (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. Each Party shall provide that, for purposes of calculating regional value content under paragraph 3 for automotive materials<sup>2</sup> produced in the same plant, an importer, exporter, or producer may use a calculation:

- (a) averaged:

<sup>1</sup> Paragraph 5 applies solely to goods classified under the following headings and subheadings: 8407.31 through 8407.34 (engines), 8408.20 (diesel engines for vehicles), 84.09 (parts of engines), 87.01 through 87.05 (motor vehicles), 87.06 (chassis), 87.07 (bodies), and 87.08 (motor vehicle parts).

<sup>2</sup> Paragraph 5 applies solely to automotive materials classified under the following headings and subheadings: 8407.31 through 8407.34 (engines), 8408.20 (diesel engines for vehicles), 84.09 (parts of engines), 87.06 (chassis), 87.07 (bodies), and 87.08 (motor vehicle parts).

- (i) over the fiscal year of the motor vehicle producer to whom the good is sold;
- (ii) over any quarter or month; or
- (iii) over its fiscal year,

provided that the good was produced during the fiscal year, quarter, or month forming the basis for the calculation;

- (b) in which the average in subparagraph (a) is calculated separately for such goods sold to one or more motor vehicle producers; or
- (c) in which the average in subparagraph (a) or (b) is calculated separately for those goods that are exported to the territory of one or more of the Parties.

**Article 4.3: Value of Materials**

Each Party shall provide that, for purposes of Articles 4.2 and 4.6, the value of a material shall be:

- (a) for a material imported by the producer of the good, the adjusted value of the material;
- (b) for a material acquired in the territory where the good is produced, the value, determined in accordance with Articles 1 through 8, Article 15, and the corresponding interpretative notes of the Customs Valuation Agreement in the same manner as for imported goods, with such reasonable modifications as may be required due to the absence of an importation; or
- (c) for a material that is self-produced,
  - (i) all the expenses incurred in the production of the material, including general expenses, and
  - (ii) an amount for profit equivalent to the profit added in the normal course of trade.

**Article 4.4: Further Adjustments to the Value of Materials**

1. Each Party shall provide that, for originating materials, the following expenses, where not included under Article 4.3, may be added to the value of the material:

- (a) the costs of freight, insurance, packing, and all other costs incurred in transporting the material within a Party's territory or between the territories of two or more Parties to the location of the producer;
- (b) duties, taxes, and customs brokerage fees on the material paid in the territory of one or more of the Parties, other than duties and taxes that are waived, refunded, refundable, or otherwise recoverable, including credit against duty or tax paid or payable; and
- (c) the cost of waste and spoilage resulting from the use of the material in the production of the good, less the value of renewable scrap or by-product.

2. Each Party shall provide that, for non-originating materials, the following expenses, where included under Article 4.3, may be deducted from the value of the material:

- (a) the costs of freight, insurance, packing, and all other costs incurred in transporting the material within a Party's territory or between the territories of two or more Parties to the location of the producer;
- (b) duties, taxes and customs brokerage fees on the material paid in the territory of one or more of the Parties, other than duties and taxes that are waived, refunded, refundable, or otherwise recoverable, including credit against duty or tax paid or payable;
- (c) the cost of waste and spoilage resulting from the use of the material in the production of the good, less the value of renewable scrap or by-product; and
- (d) the cost of originating materials used in the production of the non-originating material in the territory of a Party.

**Article 4.5: Accumulation**

1. Each Party shall provide that originating goods or materials of one or more of the Parties, incorporated into a good in the territory of another Party, shall be considered to originate in the territory of that other Party.

2. Each Party shall provide that a good is originating where the good is produced in the territory of one or more of the Parties by one or more producers, provided that the good satisfies the requirements in Article 4.1 and all other applicable requirements in this Chapter.

**Article 4.6: De Minimis**

1. Except as provided in Annex 4.6, each Party shall provide that a good that does not undergo a change in tariff classification pursuant to Annex 4.1 is nonetheless originating if the value of all non-originating materials used in the production of the good and that do not undergo the applicable change in tariff classification does not exceed ten percent of the adjusted value of the good, provided that the value of such non-originating materials shall be included in the value of non-originating materials for any applicable regional value content requirement and that the good meets all other applicable requirements in this Chapter.

2. With respect to a textile or apparel good, Article 3.25.7 (Rules of Origin and Related Matters) applies in place of paragraph 1.

**Article 4.7: Fungible Goods and Materials**

1. Each Party shall provide that an importer may claim that a fungible good or material is originating where the importer, exporter, or producer has:

- (a) physically segregated each fungible good or material; or
- (b) used any inventory management method, such as averaging, last-in-first-out (LIFO) or first-in-first-out (FIFO), recognized in the Generally Accepted Accounting Principles of the Party in which the production is performed or otherwise accepted by the Party in which the production is performed.

2. Each Party shall provide that the inventory management method selected under paragraph 1 for a particular fungible good or material shall continue to be used for that good or material throughout the fiscal year of the person that selected the inventory management method.

**Article 4.8: Accessories, Spare Parts, and Tools**

1. Each Party shall provide that a good's standard accessories, spare parts, or tools delivered with the good shall be treated as originating goods if the good is an originating good and 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, provided that:

- (a) the accessories, spare parts, or tools are classified with and not invoiced separately from the good, regardless of whether they appear specified or separately identified in the invoice itself; and
- (b) the quantities and value of the accessories, spare parts, or tools are customary for the good.

2. If a good is subject to a regional value content requirement, the value of 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 4.9: Packaging Materials and Containers for Retail Sale**

Each Party shall provide that 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 set out in Annex 4.1 and, 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 4.10: Packing Materials and Containers for Shipment**

Each Party shall provide that packing materials and containers for shipment shall be disregarded in determining whether a good is originating.

**Article 4.11: Indirect Materials Used in Production**

Each Party shall provide that an indirect material shall be considered to be an originating material without regard to where it is produced.

**Article 4.12: Transit and Transshipment**

Each Party shall provide that a good shall not be considered to be an originating good if the good:

- (a) undergoes subsequent production or any other operation outside the territories of the Parties, other than unloading, reloading, or any other operation necessary to preserve the good in good condition or to transport the good to the territory of a Party; or

- (b) does not remain under the control of customs authorities in the territory of a non-Party.

**Article 4.13: Sets of Goods**

1. Each Party shall provide that if goods are classified as a set as a result of the application of rule 3 of the General Rules of Interpretation of the Harmonized System, the set is originating only if each good in the set is originating and both the set and the goods meet all other applicable requirements in this Chapter.
2. Notwithstanding paragraph 1, a set of goods is originating if the value of all the non-originating goods in the set does not exceed 15 percent of the adjusted value of the set.
3. With respect to a textile or apparel good, Article 3.25.9 (Rules of Origin and Related Matters) applies in place of paragraphs 1 and 2.

**Article 4.14: Consultation and Modifications**

1. The Parties shall consult regularly to ensure that this Chapter is administered effectively, uniformly, and consistently with the spirit and objectives of this Agreement, and shall cooperate in the administration of this Chapter.
2. A Party that considers that a specific rule of origin set out in Annex 4.1 requires modification to take into account developments in production processes, lack of supply of originating materials, or other relevant factors may submit a proposed modification along with supporting rationale and any studies to the Commission for consideration.
3. On submission by a Party of a proposed modification under paragraph 2, the Commission may refer the matter to an *ad hoc* working group within 60 days or on such other date as the Commission may decide. The working group shall meet to consider the proposed modification within 60 days of the date of referral or on such other date as the Commission may decide.
4. Within such period as the Commission may direct, the working group shall provide a report to the Commission, setting out its conclusions and recommendations, if any.
5. On receipt of the report, the Commission may take appropriate action under Article 19.1.3(b) (The Free Trade Commission).
6. With respect to a textile or apparel good, paragraphs 1 through 3 of Article 3.25 (Rules of Origin and Related Matters) apply in place of paragraphs 2 through 5.

**Section B: Origin Procedures**

**Article 4.15: Obligations Relating to Importations**

1. Each Party shall grant any claim for preferential tariff treatment made in accordance with this Chapter, unless the Party issues a written determination that the claim is invalid as a matter of law or fact.
2. A Party may deny preferential tariff treatment to a good if the importer fails to comply with any requirement in this Chapter.

3. No Party may subject an importer to any penalty for making an invalid claim for preferential tariff treatment if the importer:

- (a) did not engage in negligence, gross negligence, or fraud in making the claim and pays any customs duty owing; or
- (b) on becoming aware that such a claim is not valid, promptly and voluntarily corrects the claim and pays any customs duty owing.

4. Each Party may require that an importer who claims preferential tariff treatment for a good imported into its territory:

- (a) declare in the importation document that the good is originating;
- (b) have in its possession at the time the declaration referred to in subparagraph (a) is made a written or electronic certification as described in Article 4.16, if the certification forms the basis for the claim;
- (c) provide a copy of the certification, on request, to the importing Party's customs authority, if the certification forms the basis for the claim;
- (d) when the importer has reason to believe that the declaration in subparagraph (a) is based on inaccurate information, correct the importation document and pay any customs duty owing;
- (e) when a certification by a producer or exporter forms the basis for the claim, either provide or have in place, at the importer's option, an arrangement to have the producer or exporter provide, on request of the importing Party's customs authority, all information relied on by such producer or exporter in making such certification; and
- (f) demonstrate, on request of the importing Party's customs authority, that the good is originating under Article 4.1, including that the good satisfies the requirements of Article 4.12.

5. Each Party shall provide that, where a good was originating when it was imported into its territory, but the importer of the good did not make a claim for preferential tariff treatment at the time of importation, that importer may, no later than one year after the date of importation, make a claim for preferential tariff treatment and apply for a refund of any excess duties paid as the result of the good not having been accorded preferential tariff treatment on presentation to its customs authority of:

- (a) a written declaration, stating that the good was originating at the time of importation;
- (b) on request of its customs authority, a copy of a written or electronic certification if a certification forms the basis for the claim, or other information demonstrating that the good was originating; and
- (c) such other documentation relating to the importation of the good as its customs authority may require.

6. Each Party may provide that the importer is responsible for complying with the requirements of paragraph 4, notwithstanding that the importer may have based its claim for

preferential tariff treatment on a certification or information that an exporter or producer provided.

7. Nothing in this Article shall prevent a Party from taking action under Article 3.24.6 (Customs Cooperation).

**Article 4.16: Claims of Origin**

1. Each Party shall provide that an importer may make a claim for preferential tariff treatment based on either:

- (a) a written or electronic<sup>3</sup> certification by the importer, exporter, or producer; or
- (b) the importer's knowledge that the good is an originating good, including reasonable reliance on information in the importer's possession that the good is an originating good.<sup>4</sup>

2. Each Party shall provide that a certification need not be made in a prescribed format, provided that the certification is in written or electronic form, including but not limited to the following elements:

- (a) the name of the certifying person, including as necessary contact or other identifying information;
- (b) tariff classification under the Harmonized System and a description of the good;
- (c) information demonstrating that the good is originating;
- (d) date of the certification; and
- (e) in the case of blanket certification issued as set out in paragraph 4(b), the period that the certification covers.

3. Each Party shall provide that a certification by the producer or exporter of the good may be completed on the basis of:

- (a) the producer's or exporter's knowledge that the good is originating; or
- (b) in the case of an exporter, reasonable reliance on the producer's written or electronic certification that the good is originating.

No Party may require an exporter or producer to provide a written or electronic certification to another person.

4. Each Party shall provide that a certification may apply to:

- (a) a single shipment of a good into the territory of a Party; or

<sup>3</sup> Each Central American Party and the Dominican Republic shall authorize importers to provide electronic certifications beginning no later than three years after the date of entry into force of this Agreement.

<sup>4</sup> Each Central American Party and the Dominican Republic shall implement subparagraph (b) no later than three years after the date of entry into force of this Agreement.

- (b) multiple shipments of identical goods within any period specified in the written or electronic certification, not exceeding 12 months from the date of the certification.

5. Each Party shall provide that a certification shall be valid for four years after the date it was issued.

6. Each Party shall allow an importer to submit a certification in the language of the importing Party or the exporting Party. In the latter case, the customs authority of the importing Party may require the importer to submit a translation of the certification in the language of the importing Party.

**Article 4.17: Exceptions**

No Party may require a certification or information demonstrating that the good is originating where:

- (a) the customs value of the importation does not exceed 1,500 U.S. dollars or the equivalent amount in the currency of the importing Party, or such higher amount as may be established by the importing Party, unless the importing Party considers the importation to be part of a series of importations carried out or planned for the purpose of evading compliance with the certification requirements; or
- (b) it is a good for which the importing Party does not require the importer to present a certification or information demonstrating origin.

**Article 4.18: Obligations Relating to Exportations**

1. Each Party shall provide that:

- (a) an exporter or a producer in its territory that has provided a written or electronic certification in accordance with Article 4.16 shall, on request, provide a copy to the appropriate authority of the Party;
- (b) a false certification by an exporter or a producer in its territory that a good to be exported to the territory of another Party is originating shall be subject to penalties equivalent to those that would apply to an importer in its territory that makes a false statement or representation in connection with an importation, with appropriate modifications; and
- (c) when an exporter or a producer in its territory has provided a certification and has reason to believe that the certification contains or is based on incorrect information, the exporter or producer shall promptly notify in writing every person to whom the exporter or producer provided the certification of any change that could affect the accuracy or validity of the certification.

2. No Party may impose penalties on an exporter or a producer for providing an incorrect certification if the exporter or producer voluntarily notifies in writing all persons to whom it has provided the certification that it was incorrect.

**Article 4.19: Record Keeping Requirements**

1. Each Party shall provide that an exporter or a producer in its territory that provides a certification in accordance with Article 4.16 shall maintain, for a minimum of five years from the date the certification was issued, all records and documents necessary to demonstrate that a good for which the producer or exporter provided a certification was an originating good, including records and documents concerning:

- (a) the purchase of, cost of, value of, and payment for, the exported good;
- (b) the purchase of, cost of, value of, and payment for, all materials, including indirect materials, used in the production of the exported good; and
- (c) the production of the good in the form in which it was exported.

2. Each Party shall provide that an importer claiming preferential tariff treatment for a good imported into the Party's territory shall maintain, for a minimum of five years from the date of importation of the good, all records and documents necessary to demonstrate the good qualified for the preferential tariff treatment.

**Article 4.20: Verification**

1. For purposes of determining whether a good imported into its territory from the territory of another Party is an originating good, each Party shall ensure that its customs authority or other competent authority may conduct a verification by means of:

- (a) written requests for information from the importer, exporter, or producer;
- (b) written questionnaires to the importer, exporter, or producer;
- (c) visits to the premises of an exporter or producer in the territory of the other Party, to review the records referred to in Article 4.19 or observe the facilities used in the production of the good, in accordance with the framework that the Parties develop pursuant to Article 4.21.2;
- (d) for a textile or apparel good, the procedures set out in Article 3.24 (Customs Cooperation); or
- (e) such other procedures to which the importing and exporting Parties may agree.

2. A Party may deny preferential tariff treatment to an imported good where:

- (a) the exporter, producer, or importer fails to respond to a written request for information or questionnaire within a reasonable period, as established in the importing Party's law;
- (b) after receipt of a written notification for a verification visit to which the importing and exporting Parties have agreed, the exporter or producer does not provide its written consent within a reasonable period, as established by the importing Party's law; or
- (c) the Party finds a pattern of conduct indicating that an importer, exporter, or producer has provided false or unsupported declarations that a good imported into its territory is an originating good.

3. Except as provided in Article 3.24.6(d) (Customs Cooperation), a Party conducting a verification shall provide the importer a determination, in writing, of whether the good is originating. The Party's determination shall include factual findings and the legal basis for the determination.

4. If an importing Party makes a determination under paragraph 3 that a good is not originating, the Party shall not apply that determination to an importation made before the date of the determination where:

- (a) the customs authority of the exporting Party issued an advance ruling regarding the tariff classification or valuation of one or more materials used in the good under Article 5.10 (Advance Rulings);
- (b) the importing Party's determination is based on a tariff classification or valuation for such materials that is different than that provided for in the advance ruling referred to in subparagraph (a); and
- (c) the customs authority issued the advance ruling before the importing Party's determination.

5. Where an importing Party determines through verification that an importer, exporter, or producer has engaged in a pattern of conduct in providing false or unsupported statements, declarations, or certifications that a good imported into its territory is originating the Party may suspend preferential tariff treatment to identical goods covered by subsequent statements, declarations, or certifications by that importer, exporter, or producer until the importing Party determines that the importer, exporter, or producer is in compliance with this Chapter.

**Article 4.21: Common Guidelines**

1. The Parties shall agree on and publish common guidelines for the interpretation, application, and administration of this Chapter and the relevant provisions of Chapter Three (National Treatment and Market Access for Goods) and shall endeavor to do so by the date of entry into force of this Agreement. The Parties may agree to modify the common guidelines.

2. The Parties shall endeavor to develop a framework for conducting verifications pursuant to Article 4.20.1(c).

**Article 4.22: Definitions**

For purposes of this Chapter:

**adjusted value** means the value determined in accordance with Articles 1 through 8, Article 15, and the corresponding interpretative notes of the Customs Valuation Agreement, adjusted, if necessary, to exclude any costs, charges, or expenses incurred for transportation, insurance, and related services incident to the international shipment of the merchandise from the country of exportation to the place of importation;

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

- (a) motor vehicles provided for in subheading 8701.20, motor vehicles for the transport of 16 or more persons provided for in subheading 8702.10 or 8702.90, and motor vehicles of subheading 8704.10, 8704.22, 8704.23, 8704.32, or 8704.90, or heading 87.05 or 87.06;

- (b) motor vehicles provided for in subheading 8701.10 or subheadings 8701.30 through 8701.90;
- (c) motor vehicles for the transport of 15 or fewer persons provided for in subheading 8702.10 or 8702.90, and motor vehicles of subheading 8704.21 or 8704.31; or
- (d) motor vehicles provided for in subheadings 8703.21 through 8703.90;

**fungible goods or materials** means goods or materials that are interchangeable for commercial purposes and whose properties are essentially identical;

**Generally Accepted Accounting Principles** means recognized consensus or substantial authoritative support given in the territory of a Party with respect to the recording of revenues, expenses, costs, assets, and liabilities, the disclosure of information, and the preparation of financial statements. Generally Accepted Accounting Principles may encompass broad guidelines for general application, as well as detailed standards, practices, and procedures;

**good** means any merchandise, product, article, or material;

**goods wholly obtained or produced entirely in the territory of one or more of the Parties** means:

- (a) plants and plant products harvested or gathered in the territory of one or more of the Parties;
- (b) live animals born and raised in the territory of one or more of the Parties;
- (c) goods obtained in the territory of one or more of the Parties from live animals;
- (d) goods obtained from hunting, trapping, fishing, or aquaculture conducted in the territory of one or more of the Parties;
- (e) minerals and other natural resources not included in subparagraphs (a) through (d) extracted or taken from the territory of one or more of the Parties;
- (f) fish, shellfish, and other marine life taken from the sea, seabed, or subsoil outside the territory of one or more of the Parties by vessels registered or recorded with a Party and flying its flag;
- (g) goods produced on board factory ships from the goods referred to in subparagraph (f), provided such factory ships are registered or recorded with that Party and fly its flag;
- (h) goods taken by a Party or a person of a Party from the seabed or subsoil outside territorial waters, provided that a Party has rights to exploit such seabed or subsoil;
- (i) goods taken from outer space, provided they are obtained by a Party or a person of a Party and not processed in the territory of a non-Party;
- (j) waste and scrap derived from

- (i) manufacturing or processing operations in the territory of one or more of the Parties, or
- (ii) used goods collected in the territory of one or more of the Parties, provided such goods are fit only for the recovery of raw materials;
- (k) recovered goods derived in the territory of one or more of the Parties from used goods, and utilized in the territory of one or more of the Parties in the production of remanufactured goods; and
- (l) goods produced in the territory of one or more of the Parties exclusively from goods referred to in subparagraphs (a) through (j), or from their derivatives, at any stage of production;

**identical goods** means "identical goods" as defined in the Customs Valuation Agreement;

**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 materials, and other materials used in production or used 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 good;
- (g) catalysts and solvents; and
- (h) any other goods that are not incorporated into the good but whose use in the production of the good can reasonably be demonstrated to be a part of that production;

**material** means a good that is used in the production of another good, including a part or an ingredient;

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

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

**net cost** means total cost minus sales promotion, marketing, and after-sales service costs, royalties, shipping and packing costs, and non-allowable interest costs that are included in the total cost;

**net cost of the good** means the net cost that can be reasonably allocated to the good under one of the following methods:

- (a) by calculating the total cost incurred with respect to all goods produced by that producer, subtracting any sales promotion, marketing and after-sales service costs, royalties, shipping and packing costs, and non-allowable interest costs that are included in the total cost of all such goods, and then reasonably allocating the resulting net cost of those goods to the good;
- (b) calculating the total cost incurred with respect to all goods produced by that producer, reasonably allocating the total cost to the good, and then subtracting any sales promotion, marketing and after-sales service costs, royalties, shipping and packing costs, and non-allowable interest costs that are included in the portion of the total cost allocated to the good; or
- (c) reasonably allocating each cost that forms part of the total cost incurred with respect to the good so that the aggregate of these costs does not include any sales promotion, marketing, and after-sales service costs, royalties, shipping and packing costs, and non-allowable interest costs,

provided that the allocation of all such costs is consistent with the provisions regarding the reasonable allocation of costs set out in Generally Accepted Accounting Principles;

**non-allowable interest costs** means interest costs incurred by a producer that exceed 700 basis points above the yield on debt obligations of comparable maturities issued by the central level of government of the Party in which the producer is located;

**non-originating good or non-originating material** means a good or material that is not originating under this Chapter;

**packing materials and containers for shipment** means the goods used to protect a good during its transportation and does not include the packaging materials and containers in which a good is packaged for retail sale;

**producer** means a person who engages in the production of a good in the territory of a Party;

**production** means growing, mining, harvesting, fishing, raising, trapping, hunting, manufacturing, processing, assembling, or disassembling a good;

**reasonably allocate** means to apportion in a manner appropriate under Generally Accepted Accounting Principles;

**recovered goods** means materials in the form of individual parts that are the result of: (a) the disassembly of used goods into individual parts; and (b) cleaning, inspecting, testing, or other processes as necessary for improvement to sound working condition;

**remanufactured goods** means goods classified under Harmonized System chapter 84, 85, or 87 or heading 90.26, 90.31, or 90.32, except goods classified under heading 84.18 or 85.16, that:

- (a) are entirely or partially comprised of recovered goods; and
- (b) have a similar life expectancy and enjoy a factory warranty similar to such a new good;

**total cost** means all product costs, period costs, and other costs for a good incurred in the territory of one or more of the Parties;

**used** means used or consumed in the production of goods; and

**value** means the value of a good or material for purposes of calculating customs duties or for purposes of applying this Chapter.

**Annex 4.6****Exceptions to Article 4.6**

Article 4.6 shall not apply to:

- (a) a non-originating material classified under chapter 4 of the Harmonized System, or a non-originating dairy preparation containing over ten percent by weight of milk solids classified under subheading 1901.90 or 2106.90, that is used in the production of a good classified under chapter 4 of the Harmonized System;
- (b) a non-originating material classified under chapter 4 of the Harmonized System, or a non-originating dairy preparation containing over ten percent by weight of milk solids classified under subheading 1901.90, that is used in the production of the following goods: infant preparations containing over ten percent in weight of milk solids classified under subheading 1901.10; mixes and doughs, containing over 25 percent by weight of butterfat, not put up for retail sale, classified under subheading 1901.20; dairy preparations containing over ten percent by weight of milk solids, classified under subheading 1901.90 or 2106.90; heading 21.05; beverages containing milk classified under subheading 2202.90; or animal feeds containing over ten percent by weight of milk solids classified under subheading 2309.90;
- (c) a non-originating material classified under heading 08.05 or subheadings 2009.11 through 2009.30 that is used in the production of a good classified under subheadings 2009.11 through 2009.30, or in fruit or vegetable juice of any single fruit or vegetable, fortified with minerals or vitamins, concentrated or unconcentrated, classified under subheading 2106.90 or 2202.90;
- (d) a non-originating material classified under heading 09.01 or 21.01, that is used in the production of a good classified under heading 09.01 or 21.01;
- (e) a non-originating material classified under heading 10.06 that is used in the production of a good classified under heading 11.02 or 11.03 or subheading 1904.90;
- (f) a non-originating material classified under chapter 15 of the Harmonized System that is used in the production of a good classified under chapter 15 of the Harmonized System;
- (g) a non-originating material classified under heading 17.01 that is used in the production of a good classified under heading 17.01 through 17.03;
- (h) a non-originating material classified under chapter 17 of the Harmonized System that is used in the production of a good classified under subheading 1806.10; or
- (i) except as provided under subparagraph (a) through (h) and in the specific rules of origin under Annex 4.1, a non-originating material used in the production of a good classified under chapter 1 through 24 of the Harmonized System unless the non-originating material is classified under a different subheading than the good for which origin is being determined.

**Chapter Five****Customs Administration and Trade Facilitation****Article 5.1: Publication**

1. Each Party shall publish, including on the Internet, its customs laws, regulations, and general administrative procedures.
2. Each Party shall designate or maintain one or more inquiry points to address inquiries by interested persons concerning customs matters and shall make available on the Internet information concerning the procedures for making such inquiries.
3. To the extent possible, each Party shall publish in advance any regulations of general application governing customs matters that it proposes to adopt and provide interested persons the opportunity to comment prior to their adoption.

**Article 5.2: Release of Goods**

1. Each Party shall adopt or maintain simplified customs procedures for the efficient release of goods in order to facilitate trade between the Parties.
2. Pursuant to paragraph 1, each Party shall ensure that its customs authority or other competent authority shall adopt or maintain procedures that:
  - (a) provide for the release of goods within a period no greater than that required to ensure compliance with its customs laws and, to the extent possible, within 48 hours of arrival;
  - (b) allow goods to be released at the point of arrival, without temporary transfer to warehouses or other facilities; and
  - (c) allow importers to withdraw goods from customs before and without prejudice to the final determination by its customs authority of the applicable customs duties, taxes, and fees.<sup>1</sup>

**Article 5.3: Automation**

Each Party's customs authority shall endeavor to use information technology that expedites procedures for the release of goods. When deciding on the information technology to be used for this purpose, each Party shall:

- (a) use, to the extent possible, international standards;
- (b) make electronic systems accessible to the trading community;
- (c) provide for electronic submission and processing of information and data before arrival of the shipment to allow for the release of goods on arrival;
- (d) employ electronic or automated systems for risk analysis and targeting;

<sup>1</sup> A Party may require an importer to provide sufficient guarantee in the form of a surety, a deposit, or some other appropriate instrument, covering the ultimate payment of the customs duties, taxes, and fees in connection with the importation of the good.

- (e) work towards developing compatible electronic systems among the Parties' customs authorities, to facilitate government to government exchange of international trade data; and
- (f) work towards developing a set of common data elements and processes in accordance with World Customs Organization (WCO) Customs Data Model and related WCO recommendations and guidelines.

**Article 5.4: Risk Management**

Each Party shall endeavor to adopt or maintain risk management systems that enable its customs authority to focus its inspection activities on high-risk goods and that simplify the clearance and movement of low-risk goods, while respecting the confidential nature of the information it obtains through such activities.

**Article 5.5: Cooperation**

1. With a view to facilitating the effective operation of this Agreement, each Party shall endeavor to provide the other Parties with advance notice of any significant modification of administrative policy or other similar development related to its laws or regulations governing importations that is likely to substantially affect the operation of this Agreement.
2. The Parties shall cooperate in achieving compliance with their respective laws and regulations pertaining to:
  - (a) the implementation and operation of the provisions of this Agreement governing importations or exportations, including claims of origin and origin procedures;
  - (b) the implementation and operation of the Customs Valuation Agreement;
  - (c) restrictions or prohibitions on imports or exports; and
  - (d) other customs matters as the Parties may agree.
3. Where a Party has a reasonable suspicion of unlawful activity related to its laws or regulations governing importations, the Party may request another Party to provide specific confidential information normally collected in connection with the importation of goods.
4. For purposes of paragraph 3, "a reasonable suspicion of unlawful activity" means a suspicion based on relevant factual information obtained from public or private sources, comprising one or more of the following:
  - (a) historical evidence of non-compliance with laws or regulations governing importations by an importer or exporter;
  - (b) historical evidence of non-compliance with laws or regulations governing importations by a manufacturer, producer, or other person involved in the movement of goods from the territory of one Party to the territory of another Party;
  - (c) historical evidence that some or all of the persons involved in the movement from the territory of the other Party to the territory of another Party of goods within a specific product sector have not complied with a Party's laws or regulations governing importations; or

(d) other information that the requesting Party and the Party from whom the information is requested agree is sufficient in the context of a particular request.

5. A Party's request under paragraph 3 shall be in writing, shall specify the purpose for which the information is sought, and shall identify the requested information with sufficient specificity for the other Party to locate and provide the information.

6. The Party from whom the information is requested shall, in accordance with its law and any relevant international agreements to which it is a party, provide a written response containing such information.

7. Each Party shall endeavor to provide another Party with any other information that would assist that Party in determining whether imports from or exports to that Party are in compliance with the other Party's laws or regulations governing importations, in particular those related to the prevention of smuggling and similar infractions.

8. For purposes of facilitating regional trade, each Party shall endeavor to provide the other Parties with technical advice and assistance for the purpose of improving risk assessment techniques, simplifying and expediting customs procedures, advancing the technical skill of personnel, and enhancing the use of technologies that can lead to improved compliance with regard to laws or regulations governing importations.

9. Building on the mechanisms established in this Article, the Parties shall strive to explore additional avenues of cooperation to enhance each Party's ability to enforce its laws and regulations governing importations, including by concluding a mutual assistance agreement between their respective customs authorities within six months after this Agreement is signed. The Parties shall examine whether to establish other channels of communication to facilitate the secure and rapid exchange of information and to improve coordination on importation issues.

**Article 5.6: Confidentiality**

1. Where a Party providing information to another Party in accordance with this Chapter designates the information as confidential, the other Party shall maintain the confidentiality of the information. The Party providing the information may require written assurances from the other Party that the information will be held in confidence, will be used only for the purposes specified in the other Party's request for information, and will not be disclosed without the Party's specific permission.

2. A Party may decline to provide information requested by another Party where that Party has failed to act in conformity with assurances provided under paragraph 1.

3. Each Party shall adopt or maintain procedures in which confidential information, including information the disclosure of which could prejudice the competitive position of the person providing the information, submitted in accordance with the administration of the Party's customs laws, shall be protected from unauthorized disclosure.

**Article 5.7: Express Shipments**

Each Party shall adopt or maintain expedited customs procedures for express shipments while maintaining appropriate customs control and selection. These procedures shall:

(a) provide a separate, expedited customs procedure for express shipments;

- (b) provide for the submission and processing of information necessary for the release of an express shipment before the express shipment arrives;
- (c) allow submission of a single manifest covering all goods contained in a shipment transported by an express shipment service, through, if possible, electronic means;
- (d) to the extent possible, provide for clearance of certain goods with a minimum of documentation; and
- (e) under normal circumstances, provide for clearance of express shipments within six hours after submission of the necessary customs documents, provided the shipment has arrived.

**Article 5.8: Review and Appeal**

Each Party shall ensure that with respect to its determinations on customs matters, importers in its territory have access to:

- (a) a level of administrative review independent of the employee or office that issued the determination; and
- (b) judicial review of the determination.

**Article 5.9: Penalties**

Each Party shall adopt or maintain measures that allow for the imposition of civil or administrative penalties and, where appropriate, criminal sanctions for violations of its customs laws and regulations, including those governing tariff classification, customs valuation, country of origin, and claims for preferential treatment under this Agreement.

**Article 5.10: Advance Rulings**

1. Each Party, through its customs authority or other competent authority shall issue, before a good is imported into its territory, a written advance ruling at the written request of an importer in its territory, or an exporter or producer<sup>2</sup> in the territory of another Party with regard to:

- (a) tariff classification;
- (b) the application of customs valuation criteria for a particular case, in accordance with the application of the provisions set out in the Customs Valuation Agreement;
- (c) the application of duty drawback, deferral, or other relief from customs duties;
- (d) whether a good is originating in accordance with Chapter Four (Rules of Origin and Origin Procedures);
- (e) whether a good re-entered into the territory of a Party after being exported to the territory of another Party for repair or alteration is eligible for duty free

<sup>2</sup> For greater certainty, an importer, exporter, or producer may submit a request for an advance ruling through a duly authorized representative.

treatment in accordance with Article 3.6 (Goods Re-entered after Repair or Alteration);

- (f) country of origin marking;
- (g) the application of quotas; and
- (h) such other matters as the Parties may agree.

2. Each Party shall provide that its customs authority or other competent authority shall issue an advance ruling within 150 days after a request, provided that the requester has submitted all information that the Party requires, including, if the authority requests, a sample of the good for which the requester is seeking an advance ruling. In issuing an advance ruling, the authority shall take into account facts and circumstances the requester has provided.

3. Each Party shall provide that advance rulings shall be in force from their date of issuance, or another date specified in the ruling, provided that the facts or circumstances on which the ruling is based remain unchanged.

4. The issuing Party may modify or revoke an advance ruling after the Party notifies the requester. The issuing Party may modify or revoke a ruling retroactively only if the ruling was based on inaccurate or false information.

5. Subject to any confidentiality requirements in its law, each Party shall make its advance rulings publicly available.

6. If a requester provides false information or omits relevant facts or circumstances relating to the advance ruling, or does not act in accordance with the ruling's terms and conditions, the importing Party may apply appropriate measures, including civil, criminal, and administrative actions, monetary penalties, or other sanctions.

**Article 5.11: Implementation**

For each Central American Party and the Dominican Republic:

- (a) Articles 5.2.2(b) and (c) and 5.7 shall apply one year after the date of entry into force of this Agreement;
- (b) Articles 5.1.1, 5.1.2, 5.4, and 5.10 shall apply two years after the date of entry into force of this Agreement; and
- (c) Article 5.3 shall apply three years after the date of entry into force of this Agreement.

**Article 5.12: Capacity Building**

The Parties recognize the importance of trade capacity building activities in facilitating the implementation of this Chapter. Accordingly, the initial capacity building priorities of the working group on customs administration and trade facilitation under the Committee on Trade Capacity Building should be related to implementation of this Chapter and any other priorities that the Committee designates.

**Chapter Six****Sanitary and Phytosanitary Measures***Objectives*

The objectives of this Chapter are to protect human, animal, or plant life or health in the Parties' territories, enhance the Parties' implementation of the SPS Agreement, provide a forum for addressing sanitary and phytosanitary matters, resolve trade issues, and thereby expand trade opportunities.

**Article 6.1: Affirmation of the SPS Agreement**

Further to Article 1.3 (Relation to Other Agreements), the Parties affirm their existing rights and obligations with respect to each other under the SPS Agreement.

**Article 6.2: Scope and Coverage**

1. This Chapter applies to all sanitary and phytosanitary measures of a Party that may, directly or indirectly, affect trade between the Parties.
2. No Party may have recourse to dispute settlement under this Agreement for any matter arising under this Chapter.

**Article 6.3: Committee on Sanitary and Phytosanitary Matters**

1. Not later than 30 days after the date of entry into force of this Agreement, the Parties shall establish a Committee on Sanitary and Phytosanitary Matters, comprising representatives of each Party who have responsibility for sanitary and phytosanitary matters, as set out in Annex 6.3.
2. The Parties shall establish the Committee through an exchange of letters identifying the primary representative of each Party to the Committee and establishing the Committee's terms of reference.
3. The objectives of the Committee shall be to help each Party implement the SPS Agreement, assist each Party to protect human, animal, or plant life or health, enhance consultation and cooperation between the Parties on sanitary and phytosanitary matters, and facilitate trade between the Parties.
4. The Committee shall seek to promote communication and otherwise enhance present or future relationships between the Parties' agencies and ministries with responsibility for sanitary and phytosanitary matters.
5. To the extent possible, the Committee shall seek to facilitate a Party's response to a written request for information from another Party with minimal delay. The Committee shall endeavor to ensure that at the earliest opportunity the responding Party communicates to the requesting Party the steps involved in responding to the request.
6. The Committee shall provide a forum for:
  - (a) enhancing mutual understanding of each Party's sanitary and phytosanitary measures and the regulatory processes that relate to those measures;

- (b) consulting on matters related to the development or application of sanitary and phytosanitary measures that affect, or may affect, trade between the Parties;
- (c) addressing bilateral or plurilateral sanitary and phytosanitary matters with a view to facilitating trade between the Parties;
- (d) consulting on issues, positions, and agendas for meetings of the *WTO SPS Committee*, the various *Codex* committees (including the *Codex Alimentarius Commission*), the *International Plant Protection Convention*, the *International Office of Epizootics*, and other international and regional fora on food safety and human, animal, and plant health;
- (e) making recommendations on technical cooperation programs on sanitary and phytosanitary matters to the Committee on Trade Capacity Building;
- (f) improving the Parties' understanding of specific issues relating to the implementation of the SPS Agreement; and
- (g) reviewing progress in addressing sanitary and phytosanitary matters that may arise between the Parties' agencies and ministries with responsibility for such matters.

7. Each Party shall ensure that appropriate representatives with responsibility for the development, implementation, and enforcement of sanitary and phytosanitary measures from its relevant trade and regulatory agencies or ministries participate in meetings of the Committee.

8. The Committee shall meet at least once a year unless the Parties otherwise agree.

9. The Committee shall perform its work in accordance with its terms of reference. The Committee may revise its terms of reference and may establish procedures to guide its operation.

10. The Committee may establish *ad hoc* working groups in accordance with its terms of reference.

11. All decisions of the Committee shall be taken by consensus, unless the Committee otherwise decides.

## Annex 6.3

## Committee on Sanitary and Phytosanitary Matters

The Committee on Sanitary and Phytosanitary Matters shall comprise representatives of the following agencies and ministries:

- (a) in the case of Costa Rica, the *Dirección de Aplicación de Acuerdos Comerciales Internacionales del Ministerio de Comercio Exterior*, the *Dirección de Salud Animal y el Servicio de Protección Fitosanitaria del Estado del Ministerio de Agricultura y Ganadería*, and the *Ministerio de Salud*;
- (b) in the case of the Dominican Republic, the *Dirección de Sanidad Vegetal de la Secretaría de Estado de Agricultura*, the *Dirección de Sanidad Animal de la Dirección General de Ganadería*, the *Departamento de Control de Riesgo de Alimentos y Bebidas de la Secretaría de Estado de Salud Pública y Asistencia Social*, the *Dirección de Comercio Exterior y Administración de Tratados Comerciales Internacionales de la Secretaría de Estado de Industria y Comercio*, the *Dirección General de Normas y Sistemas de Calidad de la Secretaría de Estado de Industria y Comercio*, the *Secretaría de Estado de Medio Ambiente y Recursos Naturales*, and the *Secretaría de Estado de Relaciones Exteriores*;
- (c) in the case of El Salvador, the *Ministerio de Economía*, the *Ministerio de Agricultura y Ganadería*, and the *Ministerio de Salud Pública y Asistencia Social*;
- (d) in the case of Guatemala, the *Unidad de Normas y Regulaciones del Ministerio de Agricultura Ganadería y Alimentación*, the *Departamento de Regulación y Control de Alimentos del Ministerio de Salud Pública y Asistencia Social*, and the *Ministerio de Economía*;
- (e) in the case of Honduras, the *Dirección General de Integración Económica y Política Comercial de la Secretaría de Estado en los Despachos de Industria y Comercio* and the *Dirección General del Servicio Nacional de Sanidad Agropecuaria de la Secretaría de Estado en los Despachos de Agricultura y Ganadería*;
- (f) in the case of Nicaragua, the *Ministerio de Fomento, Industria y Comercio*, the *Ministerio Agropecuario y Forestal*, and the *Ministerio de Salud*; and
- (g) in the case of the United States, the Office of the United States Trade Representative, the Department of State, the Department of Commerce, the Food Safety and Inspection Service of the United States Department of Agriculture (USDA), the Foreign Agricultural Service of the USDA, the Animal and Plant Health Inspection Service of the USDA, the Environmental Protection Agency, and the Food and Drug Administration of the Department of Health and Human Services,

or their successors.

**Chapter Seven****Technical Barriers to Trade***Objectives*

The objectives of this Chapter are to increase and facilitate trade through the improvement of the implementation of the TBT Agreement, the elimination of unnecessary technical barriers to trade, and the enhancement of bilateral cooperation.

**Article 7.1: Affirmation of the TBT Agreement**

Further to Article 1.3 (Relation to Other Agreements), the Parties affirm their existing rights and obligations with respect to each other under the TBT Agreement.

**Article 7.2: Scope and Coverage**

1. This Chapter applies to all standards, technical regulations, and conformity assessment procedures of central government bodies that may, directly or indirectly, affect trade in goods between the Parties.<sup>1</sup>

2. Notwithstanding paragraph 1, this Chapter does not apply to:

- (a) technical specifications prepared by governmental bodies for production or consumption requirements of such bodies; and
- (b) sanitary and phytosanitary measures.

**Article 7.3: International Standards**

In determining whether an international standard, guide, or recommendation within the meaning of Articles 2 and 5, and Annex 3 of the TBT Agreement exists, each Party shall apply the principles set out in *Decisions and Recommendations adopted by the Committee since 1 January 1995*, G/TBT/1/Rev.8, 23 May 2002, Section IX (*Decision of the Committee on Principles for the Development of International Standards, Guides and Recommendations with relation to Articles 2, 5 and Annex 3 of the Agreement*) issued by the WTO Committee on Technical Barriers to Trade.

**Article 7.4: Trade Facilitation**

1. The Parties shall intensify their joint work in the field of standards, technical regulations, and conformity assessment procedures with a view to facilitating trade between the Parties. In particular, the Parties shall seek to identify trade facilitating initiatives regarding standards, technical regulations, and conformity assessment procedures that are appropriate for particular issues or sectors. Such initiatives may include cooperation on regulatory issues, such as convergence, alignment with international standards, reliance on a supplier's declaration of conformity, and use of accreditation to qualify conformity assessment bodies.

2. On request of another Party, a Party shall give favorable consideration to any sector-specific proposal the Party makes for further cooperation under this Chapter.

<sup>1</sup> For greater certainty, the Parties understand that any reference in this Chapter to a standard, technical regulation, or conformity assessment procedure includes those related to metrology.

**Article 7.5: Conformity Assessment**

1. The Parties recognize that a broad range of mechanisms exists to facilitate the acceptance in a Party's territory of the results of conformity assessment procedures conducted in another Party's territory. For example:

- (a) the importing Party may rely on a supplier's declaration of conformity;
- (b) conformity assessment bodies located in the territory of two or more Parties may enter into voluntary arrangements to accept the results of each other's assessment procedures;
- (c) a Party may agree with another Party to accept the results of conformity assessment procedures that bodies located in the other Party's territory conduct with respect to specific technical regulations;
- (d) a Party may adopt accreditation procedures for qualifying conformity assessment bodies located in the territory of another Party;
- (e) a Party may designate conformity assessment bodies located in the territory of another Party; and
- (f) a Party may recognize the results of conformity assessment procedures conducted in the territory of another Party.

The Parties shall intensify their exchange of information on these and other similar mechanisms.

2. Where a Party does not accept the results of a conformity assessment procedure conducted in the territory of another Party, it shall, on request of that other Party, explain its reasons.

3. Each Party shall accredit, approve, license, or otherwise recognize conformity assessment bodies in the territories of the other Parties on terms no less favorable than those it accords to conformity assessment bodies in its territory. Where a Party accredits, approves, licenses, or otherwise recognizes a body assessing conformity with a specific technical regulation or standard in its territory and refuses to accredit, approve, license, or otherwise recognize a body assessing conformity with that technical regulation or standard in the territory of another Party, it shall, on request of that other Party, explain the reasons for its decision.

4. Where a Party declines a request from another Party to engage in negotiations or conclude an agreement on facilitating recognition in its territory of the results of conformity assessment procedures conducted by bodies in the other Party's territory, it shall, on request of that other Party, explain the reasons for its decision.

**Article 7.6: Technical Regulations**

1. Where a Party provides that foreign technical regulations may be accepted as equivalent to a specific technical regulation of its own, and the Party does not accept a technical regulation of another Party as equivalent to that technical regulation, it shall, at the request of that other Party, explain the reasons for its decision.

2. Where a Party does not provide that foreign technical regulations may be accepted as equivalent to its own, it may, at the request of another Party, explain its reasons for not accepting that other Party's technical regulations as equivalent.

**Article 7.7: Transparency**

1. Each Party shall allow persons of the other Parties to participate in the development of its standards, technical regulations, and conformity assessment procedures. Each Party shall permit persons of the other Parties to participate in the development of such measures on terms no less favorable than those accorded to its own persons and to persons of any other Party.
2. Each Party shall recommend that non-governmental standardizing bodies in its territory observe paragraph 1.
3. In order to enhance the opportunity for persons to provide meaningful comments on proposed technical regulations and conformity assessment procedures, a Party publishing a notice under Article 2.9 or 5.6 of the TBT Agreement shall:
  - (a) include in the notice a statement describing the objective of the proposed technical regulation or conformity assessment procedure and the rationale for the approach the Party is proposing; and
  - (b) transmit the proposal electronically to the other Parties through the inquiry points each Party has established under Article 10 of the TBT Agreement at the same time as it notifies WTO Members of the proposal pursuant to the TBT Agreement.

Each Party should allow at least 60 days after it transmits a proposal under subparagraph (b) for persons and other Parties to make comments in writing on the proposal.

4. Each Party shall publish or otherwise make available to the public, in print or electronically, its responses to significant comments it receives from persons or other Parties under paragraph 3 no later than the date it publishes the final technical regulation or conformity assessment procedure.
5. Where a Party makes a notification under Article 2.10 or 5.7 of the TBT Agreement, it shall at the same time transmit the notification electronically to the other Parties through the inquiry points referenced in paragraph 3(b).
6. Each Party shall, on request of another Party, provide information regarding the objective of, and rationale for, a standard, technical regulation, or conformity assessment procedure that the Party has adopted or is proposing to adopt.
7. Where a Party detains at a port of entry a good originating in the territory of another Party due to a perceived failure to comply with a technical regulation, it shall immediately notify the importer of the reasons for the detention.
8. Each Party shall implement this Article as soon as is practicable and in no event later than five years from the date of entry into force of this Agreement.

**Article 7.8: Committee on Technical Barriers to Trade**

1. The Parties hereby establish the Committee on Technical Barriers to Trade, comprising representatives of each Party, as set out in Annex 7.8.
2. The Committee's functions shall include:
  - (a) monitoring the implementation and administration of this Chapter;

- (b) promptly addressing any issue that a Party raises related to the development, adoption, application, or enforcement of standards, technical regulations, or conformity assessment procedures;
- (c) enhancing cooperation in the development and improvement of standards, technical regulations, and conformity assessment procedures and, as appropriate, designing and proposing mechanisms for technical assistance of the type described in Article 11 of the TBT Agreement, in coordination with the Committee on Trade Capacity Building, as appropriate;
- (d) where appropriate, facilitating sectoral cooperation between governmental and non-governmental conformity assessment bodies in the territories of two or more Parties;
- (e) exchanging information on developments in non-governmental, regional, and multilateral fora engaged in activities related to standards, technical regulations, and conformity assessment procedures;
- (f) at a Party's request, consulting on any matter arising under this Chapter;
- (g) reviewing this Chapter in light of any developments under the TBT Agreement, and developing recommendations for amendments to this Chapter in light of those developments;
- (h) taking any other steps the Parties consider will assist them in implementing the TBT Agreement and in facilitating trade; and
- (i) as it considers appropriate, reporting to the Commission on the implementation of this Chapter.

3. Where two or more Parties have had recourse to consultations under paragraph 2(f) such consultations shall, on the agreement of those Parties, constitute consultations under Article 20.4 (Consultations).

4. The Committee shall meet at least once a year unless the Parties otherwise agree.

5. All decisions of the Committee shall be taken by consensus unless, the Committee otherwise decides.

**Article 7.9: Information Exchange**

Any information or explanation that is provided on request of a Party pursuant to the provisions of this Chapter shall be provided in print or electronically within a reasonable time. A Party shall endeavor to respond to each such request within 60 days.

**Article 7.10: Definitions**

For purposes of this Chapter,

**central government body, conformity assessment procedures, standard, and technical regulation** shall have the meanings assigned to those terms in Annex 1 of the TBT Agreement; and

**TBT Agreement** means the *WTO Agreement on Technical Barriers to Trade*.

**Annex 7.8****Committee on Technical Barriers to Trade**

The Committee on Technical Barriers to Trade shall be coordinated by:

- (a) in the case of Costa Rica, the *Dirección de Aplicación de Acuerdos Comerciales Internacionales del Ministerio de Comercio Exterior* with the collaboration of the *Ministerio de Economía, Industria y Comercio* and the *Ministerio de Salud*;
- (b) in the case of the Dominican Republic, the *Dirección de Comercio Exterior y Administración de Tratados Comerciales Internacionales de la Secretaría de Estado de Industria y Comercio*;
- (c) in the case of El Salvador, the *Ministerio de Economía* through the *Dirección de Administración de Tratados Comerciales*;
- (d) in the case of Guatemala, the *Ministerio de Economía*;
- (e) in the case of Honduras, the *Dirección General de Integración Económica y Política Comercial de la Secretaría de Estado en los Despachos de Industria y Comercio* and the *Secretaría de Estado en el Despacho de Salud*;
- (f) in the case of Nicaragua, the *Ministerio de Fomento, Industria y Comercio*; and
- (g) in the case of the United States, the Office of the United States Trade Representative,

or their successors.

**Chapter Eight****Trade Remedies****Section A: Safeguards****Article 8.1: Imposition of a Safeguard Measure**

1. A Party may apply a measure described in paragraph 2, during the transition period only, if as a result of the reduction or elimination of a duty pursuant to this Agreement, an originating good is being imported into the Party's territory in such increased quantities, in absolute terms or relative to domestic production, and under such conditions as to constitute a substantial cause of serious injury, or threat thereof, to a domestic industry producing a like or directly competitive good.

2. If the conditions in paragraph 1 are met, a Party may to the extent necessary to prevent or remedy serious injury, or threat thereof, and facilitate adjustment:

- (a) suspend the further reduction of any rate of duty provided for under this Agreement on the good; or
- (b) increase the rate of duty on the good to a level not to exceed the lesser of
  - (i) the most-favored-nation (MFN) applied rate of duty in effect at the time the measure is applied, and
  - (ii) the MFN applied rate of duty in effect on the day immediately preceding the date of entry into force of this Agreement.<sup>1</sup>

3. (a) Except as provided in subparagraph (b), a Party shall apply a safeguard measure to imports of an originating good that are subject to a determination under paragraph 1 irrespective of their source.

- (b) A Party may exclude imports of an originating good of another Party from application of a safeguard measure if the Party accorded duty-free treatment to imports of the good from such other Party, pursuant to an agreement between those Parties, for the three-year period preceding the date of entry into force of this Agreement.

4. No Party may apply a safeguard measure against an originating good of another Party as long as the exporting Party's share of imports of the originating good in the importing Party does not exceed three percent, provided that Parties with less than three percent import share collectively account for not more than nine percent of total imports of such originating good.

**Article 8.2: Standards for a Safeguard Measure**

1. A Party may apply a safeguard measure, including any extension thereof, for no longer than four years. Regardless of its duration, such measure shall terminate at the end of the transition period.

2. Subject to paragraph 1, a Party may extend the period of a safeguard measure if the competent investigating authority determines, in conformity with the procedures set out in

<sup>1</sup> The Parties understand that neither tariff rate quotas nor quantitative restrictions would be a permissible form of safeguard measure.

Article 8.3, that the measure continues to be necessary to prevent or remedy serious injury and to facilitate adjustment and that there is evidence that the domestic industry is adjusting.

3. In order to facilitate adjustment in a situation where the expected duration of a safeguard measure is over one year, the Party applying the measure shall progressively liberalize it at regular intervals during the period of application.
4. A Party may not apply a safeguard measure more than once on the same good.
5. On the termination of a safeguard measure, the rate of duty shall be no higher than the rate that, according to the Party's Schedule to Annex 3.3 (Tariff Elimination), would have been in effect one year after the imposition of the measure. Beginning on January 1 of the year following the termination of the measure, the Party that has applied the measure shall:
  - (a) apply the rate of duty set out in the Party's Schedule to Annex 3.3 (Tariff Elimination) as if the safeguard measure had never been applied; or
  - (b) eliminate the tariff in equal annual stages ending on the date set out in the Party's Schedule to Annex 3.3 (Tariff Elimination) for the elimination of the tariff.

**Article 8.3: Administration of Safeguard Proceedings**

1. Each Party shall ensure the consistent, impartial, and reasonable administration of its laws, regulations, decisions, and rulings governing safeguard proceedings under this Chapter.
2. Each Party shall entrust determinations of serious injury, or threat thereof, in safeguard proceedings under this Chapter to a competent investigating authority, subject to review by judicial or administrative tribunals, to the extent provided by domestic law. Negative injury determinations shall not be subject to modification, except by such review. The competent investigating authority empowered under domestic law to conduct such proceedings should be provided with the necessary resources to enable it to fulfill its duties.
3. Each Party shall adopt or maintain equitable, timely, transparent, and effective procedures for safeguard proceedings under this Chapter, in accordance with the requirements set out in Annex 8.3.

**Article 8.4: Notification and Consultation**

1. A Party shall promptly notify the other Parties, in writing, on:
  - (a) initiating a safeguard proceeding under this Chapter;
  - (b) making a finding of serious injury, or threat thereof, caused by increased imports under Article 8.1; and
  - (c) taking a decision to apply or extend a safeguard measure.
2. A Party shall provide to the other Parties a copy of the public version of the report of its competent investigating authority required under Annex 8.3.
3. On request of a Party whose good is subject to a safeguard proceeding under this Chapter, the Party conducting that proceeding shall enter into consultations with the requesting Party to review a notification under paragraph 1 or any public notice or report that the competent investigating authority has issued in connection with the proceeding.

**Article 8.5: Compensation**

1. A Party applying a safeguard measure shall, after consultations with each Party against whose good the measure is applied, provide to such Party or Parties mutually agreed trade liberalizing compensation in the form of concessions having substantially equivalent trade effects or equivalent to the value of the additional duties expected to result from the measure. The Party shall provide an opportunity for such consultations no later than 30 days after the application of the safeguard measure.
2. If the consultations under paragraph 1 do not result in an agreement on trade liberalizing compensation within 30 days, any Party against whose good the measure is applied may suspend the application of substantially equivalent concessions to the trade of the Party applying the safeguard measure.
3. A Party shall notify the Party applying the safeguard measure in writing at least 30 days before suspending concessions under paragraph 2.
4. The obligation to provide compensation under paragraph 1 and the right to suspend concessions under paragraph 2 shall terminate on the later of: (a) the termination of the safeguard measure, or (b) the date on which the rate of duty returns to the rate of duty set out in the Party's Schedule to Annex 3.3 (Tariff Elimination).

**Article 8.6: Global Actions**

1. Each Party retains its rights and obligations under Article XIX of the GATT 1994 and the Safeguards Agreement.
2. This Agreement does not confer any additional rights or obligations on the Parties with regard to actions taken pursuant to Article XIX of the GATT 1994 and the Safeguards Agreement, except that a Party taking such an action may exclude imports of an originating good of another Party if such imports are not a substantial cause of serious injury or threat thereof.
3. No Party may apply, with respect to the same good, at the same time:
  - (a) a safeguard measure; and
  - (b) a measure under Article XIX of the GATT 1994 and the Safeguards Agreement.

**Article 8.7: Definitions**

For purposes of this Section:

**competent investigating authority** means the "competent investigating authority" of a Party as defined in Annex 8.7;

**domestic industry** means, with respect to an imported good, the producers as a whole of the like or directly competitive good or those producers whose collective production of the like or directly competitive good constitutes a major proportion of the total domestic production of such good;

**safeguard measure** means a measure described in Article 8.1.2;

**serious injury** means a significant overall impairment in the position of a domestic industry;

**substantial cause** means a cause which is important and not less than any other cause;

**threat of serious injury** means serious injury that, on the basis of facts and not merely on allegation, conjecture, or remote possibility, is clearly imminent; and

**transition period** means the ten-year period beginning on the date of entry into force of this Agreement, except that for any good for which the Schedule to Annex 3.3 (Tariff Elimination) of the Party applying the measure provides for the Party to eliminate its tariffs on the good over a period of more than ten years, **transition period** means the tariff elimination period for the good set out in that Schedule.

#### **Section B: Antidumping and Countervailing Duties**

##### **Article 8.8: Antidumping and Countervailing Duties**

1. The United States shall continue to treat each other Party as a "beneficiary country" for purposes of 19 U.S.C. §§ 1677(7)(G)(ii)(III) and 1677(7)(H) and any successor provisions. No Party may have recourse to dispute settlement under this Agreement for any matter arising under this paragraph.
2. Except for paragraph 1, no provision of this Agreement, including the provisions of Chapter Twenty (Dispute Settlement), shall be construed as imposing any rights or obligations on the Parties with respect to antidumping or countervailing duty measures.
3. Each Party retains its rights and obligations under the WTO Agreement with regard to the application of antidumping and countervailing duties.

**Annex 8.3****Administration of Safeguard Proceedings***Institution of a Proceeding*

1. A safeguard proceeding under this Chapter may be instituted by a petition or complaint by entities specified in domestic law. The entity filing the petition or complaint shall demonstrate that it is representative of the domestic industry producing a good like or directly competitive with the imported good.
2. A Party may direct its competent investigating authority to institute a proceeding or the authority may institute a proceeding on its own motion.

*Contents of a Petition or Complaint*

3. Where the basis for an investigation is a petition or complaint filed by an entity representative of a domestic industry, the petitioning entity shall, in its petition or complaint, provide the following information to the extent that such information is publicly available from governmental or other sources, or best estimates and the basis therefor if such information is not available:
  - (a) product description: the name and description of the imported good concerned, the tariff subheading under which that good is classified, its current tariff treatment and the name and description of the like or directly competitive domestic good concerned;
  - (b) representativeness:
    - (i) the names and addresses of the entities filing the petition or complaint, and the locations of the establishments in which they produce the domestic good;
    - (ii) the percentage of domestic production of the like or directly competitive good that such entities account for and the basis for claiming that they are representative of an industry; and
    - (iii) the names and locations of all other domestic establishments in which the like or directly competitive good is produced;
  - (c) import data: import data for each of the five most recent full years that form the basis of the claim that the good concerned is being imported in increased quantities, either in absolute terms or relative to domestic production as appropriate;
  - (d) domestic production data: data on total domestic production of the like or directly competitive good for each of the five most recent full years;
  - (e) data showing injury: quantitative and objective data indicating the nature and extent of injury to the concerned industry, such as data showing changes in the level of sales, prices, production, productivity, capacity utilization, market share, profits and losses, and employment; and
  - (f) cause of injury: an enumeration and description of the alleged causes of the injury, or threat thereof, and a summary of the basis for the assertion that

increased imports, either actual or relative to domestic production, of the imported good are causing or threatening to cause serious injury, supported by pertinent data.

4. Petitions or complaints, except to the extent that they contain confidential business information, shall promptly be made available for public inspection on being filed.

*Notice Requirement*

5. On instituting a safeguard proceeding under this Chapter, the competent investigating authority shall publish notice of the institution of the proceeding in the official journal of the Party. The notice shall identify the petitioner or other requester, the imported good that is the subject of the proceeding and its tariff subheading, the nature and timing of the determination to be made, dates of deadlines for filing briefs, statements, and other documents, the place at which the petition and any other documents filed in the course of the proceeding may be inspected, and the name, address, and telephone number of the office to be contacted for more information.

6. With respect to a safeguard proceeding instituted on the basis of a petition or complaint filed by an entity asserting that it is representative of the domestic industry, the competent investigating authority shall not publish the notice required by paragraph 5 without first assessing carefully whether the petition or complaint meets the requirements of paragraph 3, including representativeness.

*Public Hearing*

7. In the course of each proceeding, the competent investigating authority shall:

- (a) hold a public hearing, after providing reasonable notice, including notice of the time and place of the hearing, to allow all interested parties, and any association whose purpose is to represent the interests of consumers in the territory of the Party instituting the proceeding, to appear in person or by counsel, to present evidence and to be heard on the questions of serious injury, or threat thereof, and the appropriate remedy; and
- (b) provide an opportunity to all interested parties and any such association appearing at the hearing to cross-question interested parties making presentations at that hearing.

*Confidential Information*

8. The competent investigating authority shall adopt or maintain procedures for the treatment of confidential information, protected under domestic law, that is provided in the course of a proceeding, including a requirement that interested parties and consumer associations providing such information furnish non-confidential written summaries thereof, or where they indicate that the information cannot be summarized, the reasons why a summary cannot be provided.

*Evidence of Injury and Causation*

9. In conducting its proceeding the competent investigating authority shall gather, to the best of its ability, all relevant information appropriate to the determination it must make. It shall evaluate all relevant factors of an objective and quantifiable nature having a bearing on the situation of that industry, including the rate and amount of the increase in imports of the good concerned, in absolute terms or relative to domestic production as appropriate, the share of the domestic market taken by increased imports, and changes in the level of sales,

production, productivity, capacity utilization, profits and losses, and employment. In making its determination, the competent investigating authority may also consider other economic factors, such as changes in prices and inventories, and the ability of firms in the industry to generate capital.

10. The competent investigating authority shall not make an affirmative injury determination unless its investigation demonstrates, on the basis of objective evidence, the existence of a clear causal link between increased imports of the good concerned and serious injury, or threat thereof. Where factors other than increased imports are causing injury to the domestic industry at the same time, such injury shall not be attributed to increased imports.

*Deliberation and Report*

11. The competent investigating authority, before making an affirmative determination in a safeguard proceeding under this Chapter, shall allow sufficient time to gather and consider the relevant information, hold a public hearing, and provide an opportunity for all interested parties and consumer associations to prepare and submit their views.

12. The competent investigating authority shall publish promptly a report, including a summary thereof in the official journal of the Party, setting out its findings and reasoned conclusions on all pertinent issues of law and fact. The report shall describe the imported good and its tariff item number, the standard applied and the finding made. The statement of reasons shall set out the basis for the determination, including a description of:

- (a) the domestic industry seriously injured or threatened with serious injury;
- (b) information supporting a finding that imports are increasing, the domestic industry is seriously injured or threatened with serious injury, and increasing imports are causing or threatening serious injury; and
- (c) if provided for by domestic law, any finding or recommendation regarding the appropriate remedy and the basis therefor.

13. In its report, the competent investigating authority shall not disclose any confidential information provided pursuant to any undertaking concerning confidential information that may have been made in the course of the proceedings.

## Annex 8.7

## Country-Specific Definitions

For purposes of this Chapter:

**competent investigating authority** means:

- (a) in the case of Costa Rica, the *Oficina de Prácticas de Comercio Desleal y de Medidas de Salvaguardia del Ministerio de Economía, Industria y Comercio* in coordination with the *Dirección de Aplicación de Acuerdos Comerciales Internacionales del Ministerio de Comercio Exterior*;
- (b) in the case of the Dominican Republic, the *Comisión Reguladora de Prácticas Desleales de Comercio y Medidas de Salvaguardas*;
- (c) in the case of El Salvador, the *Dirección de Administración de Tratados Comerciales del Ministerio de Economía*;
- (d) in the case of Guatemala, the *Ministerio de Economía*;
- (e) in the case of Honduras, the *Dirección General de Integración Económica y Política Comercial de la Secretaría de Estado en los Despachos de Industria y Comercio*;
- (f) in the case of Nicaragua; the *Dirección de Integración y Administración de Tratados del Ministerio de Fomento, Industria y Comercio*; and
- (g) in the case of the United States, the U.S. International Trade Commission,

or their successors.

**Chapter Nine****Government Procurement****Article 9.1: Scope and Coverage**

1. This Chapter applies to any measure, including any act or guideline of a Party, regarding covered procurement.
2. For purposes of this Chapter, **covered procurement** means a procurement of goods, services, or both:
  - (a) by any contractual means, including purchase, rental, or lease, with or without an option to buy, build-operate-transfer contracts, and public works concession contracts;
  - (b) listed and subject to the conditions specified in:
    - (i) Annex 9.1.2(b)(i), which shall apply between the United States and each other Party;
    - (ii) Annex 9.1.2(b)(ii), which shall apply between the Central American Parties; and
    - (iii) Annex 9.1.2(b)(iii), which shall apply between each Central American Party and the Dominican Republic;
  - (c) that is conducted by a procuring entity; and
  - (d) that is not excluded from coverage.
3. This Chapter does not apply to:
  - (a) non-contractual agreements or any form of assistance that a Party or a state enterprise provides, including grants, loans, equity infusions, fiscal incentives, subsidies, guarantees, cooperative agreements, government provision of goods and services to persons or to state, regional, or local governments, and purchases for the direct purpose of providing foreign assistance;
  - (b) purchases funded by loans or grants made to a Party, including an entity of a Party by a person, international entities, associations, or another Party or a non-Party, to the extent that the conditions of such assistance are inconsistent with this Chapter;
  - (c) acquisition of fiscal agency or depository services, liquidation, and management services for regulated financial institutions, and sale and distribution services for government debt;
  - (d) hiring of government employees and related employment measures;
  - (e) any good or service component of any contract that is awarded by a procuring entity that is not listed in Sections A through C of Annexes 9.1.2(b)(i), 9.1.2(b)(ii), and 9.1.2(b)(iii); and

- (f) purchases made under exceptionally advantageous conditions that only arise in the very short term, such as unusual disposals by companies that normally are not suppliers, or disposals of assets of businesses in liquidation or receivership.

4. Each Party shall ensure that its procuring entities comply with this Chapter in conducting any covered procurement.

5. Where a procuring entity awards a contract in a procurement that is not covered by this Chapter, nothing in this Chapter shall be construed to cover any good or service component of that contract.

6. No procuring entity may prepare, design, or otherwise structure or divide any procurement in order to avoid the obligations of this Chapter.

7. Nothing in this Chapter shall prevent a Party from developing new procurement policies, procedures, or contractual means, provided they are not inconsistent with this Chapter.

**Article 9.2: General Principles**

1. With respect to any measure covered by this Chapter, each Party shall accord to the goods and services of another Party, and to the suppliers of another Party of such goods and services, treatment no less favorable than the most favorable treatment the Party or procuring entity accords to its own goods, services, and suppliers.

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

- (a) treat a locally established supplier less favorably than another locally established supplier on the basis of degree of foreign affiliation or ownership; or
- (b) discriminate against a locally established supplier on the basis that the goods or services offered by that supplier for a particular procurement are goods or services of another Party.

3. For purposes of paragraphs 1 and 2, determination of the origin of goods shall be made in a manner consistent with Chapter Four (Rules of Origin and Origin Procedures).

4. With respect to covered procurement, a procuring entity shall not seek, take account of, or impose offsets in any stage of a procurement.

5. Paragraphs 1 and 2 do not apply to measures respecting customs duties or other charges of any kind imposed on or in connection with importation, the method of levying such duties or charges, other import regulations, including restrictions and formalities, or measures affecting trade in services other than measures specifically governing procurement covered by this Chapter.

**Article 9.3: Publication of Procurement Measures**

Each Party shall promptly:

- (a) publish any law or regulation, and any modification thereof, relating to procurement;

- (b) make publicly available any procedure, judicial decision, or administrative ruling of general application, relating to procurement; and
- (c) on request of a Party, provide to that Party a copy of a procedure, judicial decision, or administrative ruling of general application, relating to procurement.

**Article 9.4: Publication of Notice of Intended Procurement**

1. Subject to Article 9.9.2, a procuring entity shall publish in advance a notice inviting interested suppliers to submit tenders for each covered procurement.
2. The information in each such notice shall include, at a minimum, an indication that the procurement is covered by this Chapter, a description of the intended procurement, any conditions that suppliers must fulfill to participate in the procurement, the name of the procuring entity, the address where all documents relating to the procurement may be obtained, if applicable, any sum payable for the tender documentation, the time limits and address for submission of tenders, and the time for delivery of the goods or services being procured.
3. Each Party shall encourage its procuring entities to publish information regarding their future procurement plans as early as possible in each Party's fiscal year.

**Article 9.5: Time Limits for the Tendering Process**

1. A procuring entity shall provide suppliers sufficient time to prepare and submit responsive tenders, taking into account the nature and complexity of the procurement. In no case shall a procuring entity provide less than 40 days from the date of publication of a notice of intended procurement to the final date for submission of tenders.
2. Notwithstanding paragraph 1, where there are no qualification requirements for suppliers, a procuring entity may establish a period for tendering that is less than 40 days, but in no case less than 10 days, in the following circumstances:
  - (a) where the procuring entity published a separate notice containing a description of the procurement, the approximate time limits for the submission of tenders or, where appropriate, conditions for participation in a procurement, and the address from which documents relating to the procurement may be obtained, at least 40 days and not more than 12 months before the final date for the submission of tenders;
  - (b) where an entity procures commercial goods and services that are sold or offered for sale to, and customarily purchased and used by, non-governmental buyers for non-governmental purposes; or
  - (c) where an unforeseen state of urgency that is duly substantiated by the procuring entity renders impracticable the time provided in paragraph 1.

**Article 9.6: Tender Documentation**

1. A procuring entity shall provide to interested suppliers tender documentation that includes all information necessary to permit suppliers to prepare and submit responsive tenders. The documentation shall include all criteria that the procuring entity will consider in

awarding the contract, including all cost factors, and the weights or, where appropriate, the relative values, that the entity will assign to these criteria in evaluating tenders.

2. A procuring entity may satisfy paragraph 1 by publishing the documentation by electronic means accessible to all interested suppliers. Where a procuring entity does not publish tender documentation by electronic means accessible to all interested suppliers, the entity shall, on request of any supplier, promptly make the documentation available in written form to the supplier.

3. Where a procuring entity, in the course of a procurement, modifies the criteria referred to in paragraph 1,<sup>1</sup> it shall transmit all such modifications in writing:

- (a) to all suppliers that are participating in the procurement at the time the criteria are modified, if the identities of such suppliers are known, and in cases where the identities of suppliers participating are not known, in the same manner as the original information was transmitted; and
- (b) in adequate time to allow the suppliers to modify and re-submit their tenders, as appropriate.

**Article 9.7: Technical Specifications**

1. A procuring entity shall not prepare, adopt, or apply any technical specification with the purpose or the effect of creating unnecessary obstacles to trade between the Parties.

2. A procuring entity shall prescribe any technical specifications, where appropriate:

- (a) in terms of performance requirements rather than design or descriptive characteristics; and
- (b) based on international standards, where applicable, otherwise on recognized national standards.

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

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

5. For greater certainty, this Article is not intended to preclude a procuring entity from preparing, adopting, or applying technical specifications to promote the conservation of natural resources.

**Article 9.8: Requirements and Conditions for Participating in Procurement**

1. Where a procuring entity requires suppliers to satisfy registration, qualification, or any other requirements or conditions for participation ("conditions for participation") in order to

<sup>1</sup> Each Central American Party and the Dominican Republic may make such modifications before tenders are opened. The United States may make such modifications before awarding the contract.

participate in a procurement, the procuring entity shall publish a notice inviting suppliers to apply for registration or qualification, or to satisfy any other conditions for participation. The procuring entity shall publish the notice sufficiently in advance to provide interested suppliers sufficient time to prepare and submit applications and for the entity to evaluate and make its determinations based on such applications.

2. Each procuring entity shall:

- (a) limit any conditions for participation in a procurement to those that are essential to ensure that the supplier has the legal, technical, and financial abilities to fulfill the requirements and technical specifications of the procurement;
- (b) recognize as qualified all suppliers of another Party that have met the requisite conditions for participation, and
- (c) base qualification determinations solely on the conditions for participation that have been specified in advance in notices or tender documentation.

3. Procuring entities may establish publicly available lists of suppliers qualified to participate in procurements. Where a procuring entity requires suppliers to qualify for such a list as a condition for participation in a procurement, and a supplier that has not yet qualified applies for inclusion in the list, the procuring entity shall promptly start the qualification procedures and shall allow the supplier to submit a tender, if it is determined to be a qualifying supplier, provided there is sufficient time to fulfill the conditions for participation within the time period established for tendering.

4. No procuring entity may make it a condition for participation in a procurement that a supplier has previously been awarded one or more contracts by a procuring entity or that the supplier has prior work experience in the territory of a Party. A procuring entity shall evaluate the financial and technical abilities of a supplier on the basis of that supplier's business activity outside the territory of the Party of the procuring entity, as well as activity, if any, in the territory of the Party of the procuring entity.

5. A procuring entity shall promptly communicate to any supplier that has applied for qualification its decision on whether that supplier is qualified. Where a procuring entity rejects an application for qualification or ceases to recognize a supplier as qualified, that entity shall, on request of the supplier, promptly provide a written explanation of the reasons for its action.

6. Nothing in this Article shall preclude a procuring entity from prohibiting a supplier from participating in a procurement on grounds such as bankruptcy or false declarations.

#### **Article 9.9: Tendering Procedures**

1. Subject to paragraph 2, a procuring entity shall award contracts by means of open tendering procedures.

2. Provided that the tendering procedure is not used to avoid competition or to protect domestic suppliers, a procuring entity may award contracts by means other than an open tendering procedure in the following circumstances:

- (a) in the absence of tenders that conform to the essential requirements in the tender documentation provided in a prior notice of intended procurement or

invitation to participate, including any conditions for participation, provided that the requirements of the initial notice or invitation are not substantially modified;

- (b) where, for works of art, or for reasons connected with the protection of exclusive intellectual property rights, such as patents or copyrights, or proprietary information, or where there is an absence of competition for technical reasons, the goods or services can be supplied only by a particular supplier and no reasonable alternative or substitute exists;
- (c) for additional deliveries by the original supplier that are intended either as replacement parts, extensions, or continuing services for existing equipment, software, services, or installations, where a change of supplier would compel the entity to procure goods or services not meeting requirements of interchangeability with existing equipment, software, services, or installations;
- (d) for goods purchased on a commodity market;
- (e) where a procuring entity procures a prototype or a first good or service that is developed at its request in the course of, and for, a particular contract for research, experiment, study, or original development. When such contracts have been fulfilled, subsequent procurements of goods or services shall be subject to this Chapter;
- (f) where additional construction services that were not included in the initial contract but that were within the objectives of the original tender documentation have, due to unforeseeable circumstances, become necessary to complete the construction services described therein. However, the total value of contracts awarded for additional construction services may not exceed 50 percent of the amount of the initial contract; or
- (g) in so far as is strictly necessary where, for reasons of urgency brought about by events unforeseeable by the procuring entity, the goods or services could not be obtained in time by means of an open tendering procedure and the use of an open tendering procedure would result in serious injury to the procuring entity, the entity's program responsibilities, or the Party.

3. A procuring entity shall maintain records or prepare written reports providing specific justification for any contract awarded under paragraph 2, in a manner consistent with Article 9.11.3.

**Article 9.10: Awarding of Contracts**

1. A procuring entity shall require that, in order to be considered for award, a tender must be submitted in writing and must, at the time it is submitted, conform to the essential requirements of the tender documentation that the procuring entity provided in advance to all participating suppliers, and be from a supplier that has complied with any conditions for participation that the procuring entity has communicated in advance to all participating suppliers.

2. Unless a procuring entity determines that it is not in the public interest to award a contract, the procuring entity shall award the contract to a supplier that the procuring entity has determined to be fully capable of undertaking the contract and whose tender is determined to be the most advantageous in terms of the requirements and evaluation criteria set out in the

tender documentation.

3. No procuring entity may cancel a procurement, or terminate or modify a contract it has awarded, in order to avoid the obligations of this Chapter.

**Article 9.11: Information on Contract Awards**

1. A procuring entity shall promptly inform participating suppliers of decisions on contract awards. A procuring entity shall, on request, provide a supplier whose tender was not selected for award the reasons for not selecting its tender and the relative advantages of the tender selected.

2. Promptly after awarding a contract in a covered procurement, a procuring entity shall publish a notice that includes at least the following information about the contract award:

- (a) the name of the entity;
- (b) a description of the goods or services included in the contract;
- (c) the name of the supplier awarded the contract;
- (d) the value of the contract award; and
- (e) where the entity did not use an open tendering procedure, an indication of the circumstances justifying the procedure used.

3. A procuring entity shall maintain records and reports relating to tendering procedures and contract awards in procurements covered by this Chapter, including the records and reports provided for in Article 9.9.3, for at least three years after the date a contract is awarded.

**Article 9.12: Non-Disclosure of Information**

1. A Party, its procuring entities, and its review authorities shall not disclose confidential information the disclosure of which would prejudice 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 the Party.

2. Nothing in this Chapter shall prevent a Party or its procuring entities from withholding the release of information where release might:

- (a) impede law enforcement;
- (b) prejudice fair competition between suppliers;
- (c) prejudice the legitimate commercial interests of particular suppliers or entities, including the protection of intellectual property; or
- (d) otherwise be contrary to the public interest.

**Article 9.13: Ensuring Integrity in Procurement Practices**

Further to Article 18.8 (Anti-Corruption Measures), each Party shall adopt or maintain procedures to declare ineligible for participation in the Party's procurements, either

indefinitely or for a specified time, suppliers that the Party has determined to have engaged in fraudulent or other illegal actions in relation to procurement. On request of another Party, a Party shall identify the suppliers determined to be ineligible under these procedures, and, where appropriate, exchange information regarding those suppliers or the fraudulent or illegal action.

**Article 9.14: Exceptions**

1. Provided that such measures are not applied in a manner that would constitute a means of arbitrary or unjustifiable discrimination between Parties where the same conditions prevail or a disguised restriction on trade between the Parties, nothing in this Chapter shall be construed to prevent a Party from adopting or maintaining 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 labor.

2. The Parties understand that paragraph 1(b) includes environmental measures necessary to protect human, animal, or plant life or health.

**Article 9.15: Domestic Review of Supplier Challenges**

1. Each Party shall establish or designate at least one impartial administrative or judicial authority, which shall be independent from its procuring entities, to receive and review challenges that suppliers submit relating to the obligations of the Party and its entities under this Chapter and to make appropriate findings and recommendations. In the event that a body other than such an impartial authority initially reviews a supplier's challenge, the Party shall ensure that the supplier may appeal the initial decision to an impartial administrative or judicial authority that is independent from the procuring entity that is the subject of the challenge.

2. Each Party shall provide that an authority established or designated under paragraph 1 may take prompt interim measures, pending the resolution of a challenge, to preserve the opportunity to correct potential breaches of this Chapter, including the suspension of the award of a contract or the performance of a contract already awarded.

3. Each Party shall ensure that its review procedures are publicly available in writing, and are timely, transparent, effective, and consistent with the principle of due process.

4. Each Party shall ensure that all documents related to a challenge to a procurement are available to any impartial authority established or designated under paragraph 1.

5. A procuring entity shall respond in writing to a supplier's complaint.

6. Each Party shall ensure that an impartial authority it establishes or designates under paragraph 1 provides to suppliers the following:

- (a) a sufficient period to prepare and submit written challenges, which in no case shall be less than 10 days from the time when the basis of the complaint

became known or reasonably should have become known to the supplier;

- (b) an opportunity to review relevant documents and to be heard by the authority in a timely manner;
- (c) an opportunity to reply to the procuring entity's response to the supplier's complaint; and
- (d) prompt delivery in writing of its findings and recommendations relating to the challenge, with an explanation of the grounds for each decision.

7. Each Party shall ensure that a supplier's submission of a challenge does not prejudice the supplier's participation in ongoing or future procurements.

**Article 9.16: Modifications and Rectifications to Coverage**

1. A Party may make technical rectifications of a purely formal nature to its coverage under this Chapter, or minor amendments to its Schedules to Sections A through C of Annexes 9.1.2(b)(i), 9.1.2(b)(ii), and 9.1.2(b)(iii), provided that it notifies the other Parties in writing and no other Party objects in writing within 30 days after the notification. A Party that makes such a rectification or minor amendment shall not be required to provide compensatory adjustments to the other Parties.

2. A Party may modify its coverage under this Chapter provided that it:

- (a) notifies the other Parties in writing and no other Party objects in writing within 30 days after the notification; and
- (b) except as provided in paragraph 3, offers within 30 days after notifying the other Parties acceptable compensatory adjustments to the other Parties to maintain a level of coverage comparable to that existing before the modification.

3. A Party need not provide compensatory adjustments in those circumstances where the proposed modification covers one or more procuring entities on which the Parties agree that government control or influence has been effectively eliminated. Where the Parties do not agree that such government control or influence has been effectively eliminated, the objecting Party or Parties may request further information or consultations with a view to clarifying the nature of any government control or influence and reaching agreement on the procuring entity's continued coverage under this Chapter.

4. The Commission shall modify the relevant section of Annexes 9.1.2(b)(i), 9.1.2(b)(ii), and 9.1.2(b)(iii) to reflect any agreed modification, technical rectification, or minor amendment.

**Article 9.17: Definitions**

For purposes of this Chapter:

**build-operate-transfer contract** and **public works concession contract** mean any contractual arrangements, the primary purpose of which is to provide for the construction or rehabilitation of physical infrastructure, plants, buildings, facilities, or other government-owned works and under which, as consideration for a supplier's execution of a contract, a procuring entity grants to the supplier, for a specified period, temporary ownership, if the

Party permits such ownership, or a right to control and operate, and demand payment for the use of, such works for the duration of the contract;

**in writing or written** means any worded or numbered expression that can be read, reproduced, and later communicated, and includes electronically transmitted and stored information;

**offsets** means conditions or undertakings imposed or considered by a procuring entity that encourage local development or improve a Party's balance of payments accounts by means of requirements of local content, licensing of technology, investment, counter-trade, or similar requirements;

**open tendering procedure** means any type of procurement method of a Party, except direct purchasing methods as specified in Article 9.9.2, provided these methods are consistent with this Chapter;

**procuring entity** means an entity listed in Annexes 9.1.2(b)(i), 9.1.2(b)(ii), and 9.1.2(b)(iii);

**publish** means to disseminate information in an electronic or paper medium that is distributed widely and is readily accessible to the general public;

**services** includes construction services, unless otherwise specified;

**supplier** means a person that has provided, provides, or could provide goods or services to a procuring entity; and

**technical specification** means a specification that sets out the characteristics of goods to be procured or their related processes and production methods, or the characteristics of services to be procured or their related operating methods, including the applicable administrative provisions, and requirements relating to conformity assessment procedures that an entity prescribes. A technical specification may also include or deal exclusively with terminology, symbols, packaging, or marking or labeling requirements, as they apply to a good, process, service, or production or operating method.

**Annex 9.1.2(b)(i)**

**Section A: Central Level of Government Entities**

1. This Chapter applies to the entities of the central level of government listed in each Party's Schedule to this Section where the value of the procurement is estimated, in accordance with paragraph 1 of Section H, to equal or exceed:

- (a) for procurement of goods and services:
  - (i) US\$58,550; or
  - (ii) in the case of the Central American Parties and the Dominican Republic, for the three-year period following the date of entry into force of this Agreement, US\$117,100; and
- (b) for procurement of construction services:
  - (i) US\$6,725,000; or
  - (ii) in the case of the Central American Parties and the Dominican Republic, for the three-year period following the date of entry into force of this Agreement, US\$8,000,000.

The monetary thresholds set out in subparagraphs (a)(i) and (b)(i) shall be adjusted in accordance with Section H of this Annex.

2. Unless otherwise specified, this Chapter covers all agencies subordinate to the entities listed in each Party's Schedule in this Section.

**Schedule of Costa Rica**

1. *Contraloría General de la República*
2. *Defensoría de los Habitantes de la República*
3. *Presidencia de la República*
4. *Ministerio de la Presidencia*
5. *Ministerio de Gobernación y Policía y Seguridad Pública<sup>1</sup>*
6. *Ministerio de Relaciones Exteriores y Culto*
7. *Ministerio de Hacienda<sup>2</sup>*
8. *Ministerio de Agricultura y Ganadería*
9. *Ministerio de Economía, Industria y Comercio*
10. *Ministerio de Obras Públicas y Transportes*
11. *Ministerio de Educación Pública<sup>3</sup>*
12. *Ministerio de Salud*
13. *Ministerio de Trabajo y Seguridad Social*
14. *Ministerio de Cultura, Juventud y Deportes*
15. *Ministerio de Justicia y Gracia*
16. *Ministerio de Vivienda y Asentamientos Humanos*
17. *Ministerio de Comercio Exterior*
18. *Ministerio de Planificación Nacional y Política Económica*
19. *Ministerio de Ciencia y Tecnología*
20. *Ministerio de Ambiente y Energía*
21. *Ministerio de Condición de la Mujer*
22. *Instituto Costarricense de Turismo*

**Notes to Costa Rica Schedule**

1. Ministerio de Gobernación y Policía y Seguridad Pública: This Chapter does not cover the procurement of goods classified under Section 2 (food products, beverages and tobacco; textiles, apparel and leather products) of the United Nations Central Product Classification 1.0 (CPC, version 1.0), for the *Fuerza Pública*.
2. Ministerio de Hacienda: This Chapter does not cover the issuance of tax stamps.
3. Ministerio de Educación Pública: This Chapter does not cover procurement made in furtherance of school feeding programs.

**Schedule of the Dominican Republic**

1. *Contraloría General de la República*
2. *Secretaría de Estado de Interior y Policía*<sup>1, 2</sup>
3. *Secretaría de Estado de las Fuerzas Armadas*<sup>2, 3</sup>
4. *Secretaría de Estado de Relaciones Exteriores*<sup>4</sup>
5. *Secretaría de Estado de Agricultura*<sup>5</sup>
6. *Secretaría de Estado de Finanzas*<sup>6</sup>
7. *Secretaría de Estado de Educación*<sup>7</sup>
8. *Secretaría de Estado de Salud Pública y Asistencia Social*
9. *Secretaría de Estado de Deportes, Educación Física y Recreación*
10. *Secretaría de Estado de Trabajo*
11. *Secretaría de Estado de Industria y Comercio*
12. *Secretaría de Estado de Turismo*
13. *Secretaría de Estado de la Mujer*
14. *Secretaría de Estado de la Juventud*
15. *Secretaría de Estado de Educación Superior, Ciencia y Tecnología*
16. *Secretaría de Estado de Obras Públicas y Comunicaciones*
17. *Secretaría de Estado de Medio Ambiente y Recursos Naturales*
18. *Secretaría de Estado de Cultura*
19. *La Presidencia de la República Dominicana*
20. *Secretariado Técnico de la Presidencia*<sup>8</sup>
21. *Secretaría de Estado de la Presidencia*
22. *Secretariado Administrativo de la Presidencia*

**Notes to the Dominican Republic Schedule**

1. Secretaría de Estado de Interior y Policía: This Chapter does not cover:
  - (a) procurement by the *Dirección General de Migración*; or
  - (b) procurement by the *Policía Nacional* of: (i) goods classified under Group 447 (weapons and ammunition and parts thereof) of the United Nations Central Product Classification 1.0 (CPC, version 1.0), or (ii) combat, assault and tactical vehicles.
2. Policía Nacional in the Secretaría de Estado de Interior y Policía and Secretaría de Estado de las Fuerzas Armadas: This Chapter does not cover procurement of goods classified under Section 2 (food products, beverages and tobacco; textiles, apparel and leather products) of the CPC.
3. Secretaría de Estado de las Fuerzas Armadas: This Chapter does not cover:

(a) procurement by the *Departamento Nacional de Investigación*, and the *Instituto de Altos Estudios para la Defensa y Seguridad Nacional*; or

(b) procurement of: (i) goods classified under Group 447 (weapons and ammunition and parts thereof) of the CPC; (ii) aircraft, airframe structural components, aircraft components, parts and accessories; (iii) landing and ground handling equipment; (iv) docks; (v) ships and ship components, parts and accessories; (vi) marine equipment; or (vii) combat, assault and tactical vehicles.

4. *Secretaría de Estado de Relaciones Exteriores*: This Chapter does not cover procurement by the *Dirección General de Pasaportes* for the production of passports.
5. *Secretaría de Estado de Agricultura*: This Chapter does not cover procurement made in furtherance of agricultural support programs.
6. *Secretaría de Estado de Finanzas*: This Chapter does not cover procurement by the *Tesorería Nacional* with regard to the issuance of tax stamps or postage stamps, or the production of checks and treasury bonds.
7. *Secretaría de Estado de Educación*: This Chapter does not cover procurement made in furtherance of school feeding programs (*Desayuno Escolar*) or programs to support the dissemination of education, the well-being of students, or the accessibility of education, including at the border with Haiti (*Zona Fronteriza*) and in other rural or impoverished areas.
8. *Secretariado Técnico de la Presidencia*: This Chapter does not cover procurement by the *Comisión Nacional de Asuntos Nucleares*.

#### Schedule of El Salvador

1. *Ministerio de Defensa*<sup>1</sup>
2. *Ministerio de Hacienda*
3. *Ministerio de Relaciones Exteriores*
4. *Ministerio de Gobernación*<sup>2</sup>
5. *Ministerio de Educación*<sup>1</sup>
6. *Ministerio de Salud Pública y Asistencia Social*<sup>1</sup>
7. *Ministerio de Trabajo y Previsión Social*
8. *Ministerio de Economía*
9. *Ministerio del Medio Ambiente y Recursos Naturales*
10. *Ministerio de Obras Públicas*
11. *Ministerio de Agricultura y Ganadería*

#### Notes to El Salvador Schedule

1. *Ministerio de Defensa, Ministerio de Educación, and Ministerio de Salud Pública y Asistencia Social*: This Chapter does not cover the procurement of goods classified under Section 2 (food products, beverages and tobacco, textiles, apparel and leather products) of the United Nations Central Product Classification 1.1 (CPC, version 1.1).
2. *Ministerio de Gobernación*: This Chapter does not cover the procurement of goods classified under Section 2 (food products, beverages and tobacco; textiles, apparel and leather products) of CPC, version 1.1, for the *Policía Nacional Civil*.

#### Schedule of Guatemala

1. *Ministerio de Agricultura, Ganadería y Alimentación*<sup>1</sup>
2. *Ministerio de la Defensa Nacional*<sup>2</sup>
3. *Ministerio de Economía*
4. *Ministerio de Educación*<sup>3</sup>
5. *Ministerio de Cultura y Deportes*
6. *Ministerio de Trabajo y Previsión Social*<sup>4</sup>
7. *Ministerio de Finanzas Públicas*
8. *Ministerio de Salud Pública y Asistencia Social*<sup>4</sup>
9. *Ministerio de Relaciones Exteriores*
10. *Ministerio de Gobernación*<sup>3</sup>
11. *Ministerio de Comunicaciones, Infraestructura y Vivienda*
12. *Ministerio de Energía y Minas*
13. *Ministerio de Ambiente y Recursos Naturales*
14. *Secretaría General*
15. *Secretaría de Coordinación Ejecutiva*
16. *Secretaría de Planificación y Programación*
17. *Secretaría de Análisis Estratégico*
18. *Secretaría de la Paz*
19. *Secretaría de Asuntos Administrativos y de Seguridad*
20. *Secretaría de Asuntos Agrarios*
21. *Secretaría Presidencial de la Mujer*
22. *Secretaría de Bienestar Social*
23. *Secretaría de Comunicación Social*
24. *Secretaría Ejecutiva de la Comisión contra el Consumo, Adicción y Tráfico Ilícito de Drogas*
25. *Secretaría de Obras Sociales de la Esposa del Presidente*
26. *Comisión Presidencial de Derechos Humanos*
27. *Comisión Presidencial para la Reforma del Estado, la Descentralización y la Participación Ciudadana*
28. *Consejo Nacional de Ciencia y Tecnología*
29. *Coordinadora Nacional para la Reducción de Desastres*
30. *Junta Nacional del Servicio Civil*
31. *Oficina Nacional del Servicio Civil*
32. *Fondo de Desarrollo Indígena Guatemalteco*
33. *Fondo Nacional de Ciencia y Tecnología*
34. *Fondo Nacional para la Paz*
35. *Consejo Nacional de la Juventud*

#### Notes to Guatemala Schedule

1. *Ministerio de Agricultura, Ganadería y Alimentación*: This Chapter does not cover the procurement of agricultural goods made in furtherance of agricultural support programs, or procurement made in furtherance of school feeding programs.
2. *Ministerio de Defensa Nacional*: This Chapter does not cover the procurement of the following goods and services: arms, munitions, equipment, construction materials, aircraft, vessels and other vehicles, fuel, lubricants, provisions, and the contracting for services or supply by or on behalf of the *Ejército de Guatemala* and its institutions.
3. *Ministerio de Educación*: This Chapter does not cover procurement made in furtherance of school feeding programs.
4. *Ministerio de Trabajo y Previsión Social* and *Ministerio de Salud Pública y Asistencia Social*: This Chapter does not cover the procurement of goods classified under Section 2

(food products, beverages and tobacco; textiles, apparel and leather products) of the CPC, version 1.0.

5. *Ministerio de Gobernación*: This Chapter does not cover the procurement of goods classified under Section 2 (food products, beverages and tobacco; textiles, apparel and leather products) of the CPC, version 1.0, for the *Policia Nacional Civil y Sistema Penitenciario*.

#### Schedule of Honduras

1. *Secretaría de Estado en los Despachos de Gobernación y Justicia*
2. *Secretaría de Estado en el Despacho de Educación*<sup>1</sup>
3. *Secretaría de Estado en el Despacho de Salud*
4. *Secretaría de Estado en el Despacho de Seguridad*<sup>2</sup>
5. *Secretaría de Estado en el Despacho Presidencial*<sup>1</sup>
6. *Secretaría de Estado en el Despacho de Relaciones Exteriores*
7. *Secretaría de Estado en el Despacho de Defensa Nacional*<sup>3</sup>
8. *Secretaría de Estado en el Despacho de Finanzas*
9. *Secretaría de Estado en los Despachos de Industria y Comercio*
10. *Secretaría de Estado en los Despachos de Obras Públicas, Transporte y Vivienda*
11. *Secretaría de Estado en los Despachos de Trabajo y Seguridad Social*
12. *Secretaría de Estado en los Despachos de Agricultura y Ganadería*
13. *Secretaría de Estado en los Despachos de Recursos Naturales y Ambiente*
14. *Secretaría de Estado en los Despachos de Cultura, Artes y Deportes*
15. *Secretaría de Estado en el Despacho de Turismo*
16. *Secretaría Técnica y de Cooperación Internacional*

#### Notes to Honduras Schedule

1. *Secretaría de Estado en el Despacho de Educación* and *Secretaría de Estado en el Despacho Presidencial*: This Chapter does not cover procurement made in furtherance of school feeding programs.
2. *Secretaría de Estado en el Despacho de Seguridad*: This Chapter does not cover procurement of uniforms, shoes, food, or tobacco for the *Policia Nacional*.
3. *Secretaría de Estado en el Despacho de Defensa Nacional*: This Chapter does not cover the procurement of goods classified under Section 2 (food products, beverages and tobacco; textiles, apparel and leather products) of the CPC, version 1.0, for the *Fuerzas Armadas de Honduras*. This Chapter does not cover the procurement of the following goods, or the procurement of uniforms for the *Fuerzas Armadas de Honduras* and the *Policia Nacional*:

1. Ammunition
2. War airplanes
3. Military rifles
4. Pistol and guns of any kind, 41 caliber or more
5. Honduran army regulation pistols
6. Silencers for all kinds of firearms
7. Firearms
8. Accessories and ammunition
9. Cartridges for firearms
10. Equipment and other accessories essential for cartridge loading

11. Gunpowder, explosives, primers and fuses
12. Mask for protection against asphyxiating gases
13. Air guns

#### Schedule of Nicaragua

1. *Ministerio de Gobernación*<sup>1</sup>
2. *Ministerio de la Familia*
3. *Ministerio de Relaciones Exteriores*
4. *Ministerio Agropecuario y Forestal*
5. *Ministerio de Educación, Cultura y Deportes*<sup>2</sup>
6. *Ministerio de Fomento, Industria y Comercio*
7. *Ministerio de Salud*
8. *Ministerio del Trabajo*
9. *Ministerio de Hacienda y Crédito Público*
10. *Ministerio del Ambiente y de los Recursos Naturales*
11. *Procuraduría General de la República*
12. *Presidencia de la República*
13. *Vicepresidencia de la República*
14. *Ministerio de Defensa*<sup>3</sup>
15. *Ministerio de Transporte e Infraestructura*<sup>4</sup>

#### Notes to Nicaragua Schedule

1. *Ministerio de Gobernación*: This Chapter does not cover procurement made by the *Policía Nacional*.
2. *Ministerio de Educación, Cultura y Deportes*: This Chapter does not cover procurement made in furtherance of school feeding programs.
3. *Ministerio de Defensa*: This Chapter will not cover procurement by the *Ministerio de Defensa* until the beginning of the fourth year after the date of entry into force of this Agreement. This Chapter does not cover procurement made by the *Ejército de Nicaragua*.
4. *Ministerio de Transporte e Infraestructura*: This Chapter will not cover procurement by the *Ministerio de Transporte e Infraestructura* until the beginning of the fourth year after the date of entry into force of this Agreement.

#### Schedule of the United States

1. Advisory Commission on Intergovernmental Relations
2. African Development Foundation
3. Alaska Natural Gas Transportation System
4. American Battle Monuments Commission
5. Appalachian Regional Commission
6. Commission on Civil Rights
7. Commission of Fine Arts
8. Commodity Futures Trading Commission
9. Consumer Product Safety Commission
10. Broadcasting Board of Governors
11. Corporation for National and Community Service
12. Delaware River Basin Commission
13. Department of Agriculture<sup>1</sup>
14. Department of Commerce<sup>2</sup>

15. Department of Defense<sup>3</sup>
16. Department of Education
17. Department of Energy<sup>4</sup>
18. Department of Health and Human Services
19. Department of Homeland Security<sup>5</sup>
20. Department of Housing and Urban Development
21. Department of the Interior, including the Bureau of Reclamation
22. Department of Justice
23. Department of Labor
24. Department of State
25. Department of Transportation<sup>6</sup>
26. Department of the Treasury
27. Department of Veterans Affairs
28. Environmental Protection Agency
29. Equal Employment Opportunity Commission
30. Executive Office of the President
31. Export-Import Bank of the United States
32. Farm Credit Administration
33. Federal Communications Commission
34. Federal Crop Insurance Corporation
35. Federal Deposit Insurance Corporation
36. Federal Election Commission
37. Federal Home Loan Mortgage Corporation
38. Federal Housing Finance Board
39. Federal Maritime Commission
40. Federal Mediation and Conciliation Service
41. Federal Mine Safety and Health Review Commission
42. Federal Prison Industries, Inc.
43. Federal Reserve System
44. Federal Retirement Thrift Investment Board
45. Federal Trade Commission
46. General Services Administration<sup>7</sup>
47. Government National Mortgage Association
48. Holocaust Memorial Council
49. Inter-American Foundation
50. Merit Systems Protection Board
51. National Aeronautics and Space Administration (NASA)
52. National Archives and Records Administration
53. National Capital Planning Commission
54. National Commission on Libraries and Information Science
55. National Council on Disability
56. National Credit Union Administration
57. National Foundation on the Arts and the Humanities
58. National Labor Relations Board
59. National Mediation Board
60. National Science Foundation
61. National Transportation Safety Board
62. Nuclear Regulatory Commission
63. Occupational Safety and Health Review Commission
64. Office of Government Ethics
65. Office of the Nuclear Waste Negotiator
66. Office of Personnel Management
67. Office of the Special Counsel
68. Office of Thrift Supervision
69. Overseas Private Investment Corporation
70. Pennsylvania Avenue Development Corporation

71. Peace Corps
72. Railroad Retirement Board
73. Securities and Exchange Commission
74. Selective Service System
75. Small Business Administration
76. Smithsonian Institution
77. Susquehanna River Basin Commission
78. United States Agency for International Development
79. United States International Trade Commission

**Notes to United States Schedule**

1. **Department of Agriculture:** This Chapter does not cover the procurement of agricultural goods made in furtherance of agricultural support programs or human feeding programs.
2. **Department of Commerce:** This Chapter does not cover shipbuilding activities of the U.S. National Oceanic and Atmospheric Administration (NOAA).
3. **Department of Defense:** This Chapter does not cover the procurement of the goods listed below. *(For complete listing of U.S. Federal Supply Classification, see [www.scrantonrtg.com/secr/fsc-codes/fsc.html](http://www.scrantonrtg.com/secr/fsc-codes/fsc.html)):*
  - (a) FSC 11 Nuclear Ordnance
  - FSC 18 Space Vehicles
  - FSC 19 Ships, Small Craft, Pontoons, and Floating Docks (the part of this classification defined as naval vessels or major components of the hull or superstructure thereof)
  - FSC 20 Ship and Marine Equipment (the part of this classification defined as naval vessels or major components of the hull or superstructure thereof)
  - FSC 2310 Passenger Motor Vehicles (only Buses)
  - FSC 2350 Combat, Assault & Tactical Vehicles, Tracked
  - FSC 51 Hand Tools
  - FSC 52 Measuring Tools
  - FSC 60 Fiber Optics Materials, Components, Assemblies, and Accessories
  - FSC 8140 Ammunition & Nuclear Ordnance Boxes, Packages & Special Containers
  - FSC 83 Textiles, Leather, Furs, Apparel, Shoes, Tents, and Flags (all elements other than pins, needles, sewing kits, flagstuffs, flagpoles and flagstaff trucks)
  - FSC 84 Clothing, Individual Equipment, and Insignia (all elements other than sub-class 8460 - luggage)
  - FSC 89 Subsistence (all elements other than sub-class 8975 -- tobacco products)
- (b) "Specialty metals," defined as steels melted in steel manufacturing facilities located in the United States or its possessions, where the maximum alloy content exceeds one or more of the following limits, must be used in products purchased by the Department of Defense: (1) manganese, 1.65 percent; silicon, 0.60 percent; or copper, 0.60 percent; or which contains more than 0.25 percent of any of the following elements: aluminum, chromium, cobalt, columbium, molybdenum, nickel, titanium, tungsten or vanadium; (2) metal alloys consisting of nickel, iron-nickel and cobalt base alloys containing a total of other alloying metals (except iron) in excess of 10 per cent; (3) titanium and titanium alloys; or (4) zirconium base alloys; and

- (c) The goods in the following FSC categories are not generally covered by this Chapter due to application of Article 21.2 (Essential Security):

FSC 10	Weapons
FSC 12	Fire Control Equipment
FSC 13	Ammunitions and Explosives
FSC 14	Guided Missiles
FSC 15	Aircraft and Airframe Structural Components
FSC 16	Aircraft Components and Accessories
FSC 17	Aircraft Launching, Landing, and Ground Handling Equipment
FSC 19	Ships, Small Craft, Pontoons, and Floating Docks
FSC 20	Ship and Marine Equipment
FSC 28	Engines, Turbines, and Components
FSC 31	Bearings
FSC 58	Communications, Detection, and Coherent Radiation
FSC 59	Electrical and Electronic Equipment Components
FSC 95	Metal Bars, Sheets, and Shapes

4. Department of Energy: This Chapter does not cover national security procurements made in support of safeguarding nuclear materials or technology and entered into under the authority of the *Atomic Energy Act*, or oil purchases related to the Strategic Petroleum Reserve.

5. Department of Homeland Security:

- (a) This Chapter does not cover procurement by the Transportation Security Administration.
- (b) The national security considerations applicable to the Department of Defense are equally applicable to the U.S. Coast Guard.

6. Department of Transportation: This Chapter does not cover procurement by the Federal Aviation Administration.

7. General Services Administration: This Chapter does not cover the procurement of the goods in the following FSC categories:

FSC 51	Hand Tools
FSC 52	Measuring Tools
FSC 7340	Cutlery and Flatware

**Section B: Sub-Central Level of Government Entities**

1. This Chapter applies to the entities of the sub-central level of government listed in each Party's Schedule to this Section where the value of the procurement is estimated, in accordance with paragraph 1 of Section H, to equal or exceed:

- (a) for procurement of goods and services:
  - (i) US\$477,000; or
  - (ii) in the case of the Central American Parties and the Dominican Republic, for the three-year period following the date of entry into force of this Agreement, US\$650,000; and
- (b) for procurement of construction services:
  - (i) US\$6,725,000; or
  - (ii) in the case of the Central American Parties and the Dominican Republic, for the three-year period following the date of entry into force of this Agreement, US\$8,000,000.

The monetary thresholds set out in subparagraphs (a)(i) and (b)(i) shall be adjusted in accordance with Section H of this Annex.

2. This Chapter only applies to the entities listed in each Party's Schedule in this Section.

**Schedule of Costa Rica**

1. *Municipalidad de Abangares*
2. *Municipalidad de Acosta*
3. *Municipalidad de Aguirre*
4. *Municipalidad de Alajuela*
5. *Municipalidad de Alajuelita*
6. *Municipalidad de Alvaro Ruiz*
7. *Municipalidad de Alvarado*
8. *Municipalidad de Aserri*
9. *Municipalidad de Atenas*
10. *Municipalidad de Bagaces*
11. *Municipalidad de Barba*
12. *Municipalidad de Belén*
13. *Municipalidad de Buenos Aires*
14. *Municipalidad de Cañas*
15. *Municipalidad de Carrillo*
16. *Municipalidad de Cartago*
17. *Municipalidad de Corredores*
18. *Municipalidad de Curú*
19. *Municipalidad de Curridabat*
20. *Municipalidad de Desamparados*
21. *Municipalidad de Dota*
22. *Municipalidad de El Guareo*
23. *Municipalidad de Escazú*
24. *Municipalidad de Esparza*
25. *Municipalidad de Flores*

26. *Municipalidad de Garabito*
27. *Municipalidad de Golcochea*
28. *Municipalidad de Golfo*
29. *Municipalidad de Grecia*
30. *Municipalidad de Guácimo*
31. *Municipalidad de Guatuso*
32. *Municipalidad de Heredia*
33. *Municipalidad de Hojancha*
34. *Municipalidad de Jiménez*
35. *Municipalidad de La Cruz*
36. *Municipalidad de La Unión*
37. *Municipalidad de León Cortés*
38. *Municipalidad de Liberia*
39. *Municipalidad de Limón*
40. *Municipalidad de Los Chiles*
41. *Municipalidad de Matina*
42. *Municipalidad de Montes de Oca*
43. *Municipalidad de Montes de Oro*
44. *Municipalidad de Mora*
45. *Municipalidad de Moravia*
46. *Municipalidad de Nandayure*
47. *Municipalidad de Naranjo*
48. *Municipalidad de Nicoya*
49. *Municipalidad de Oreamuno*
50. *Municipalidad de Orotina*
51. *Municipalidad de Osa*
52. *Municipalidad de Palmares*
53. *Municipalidad de Paraiso*
54. *Municipalidad de Parrita*
55. *Municipalidad de Pérez Zeledón*
56. *Municipalidad de Poás*
57. *Municipalidad de Pococi*
58. *Municipalidad de Puntarenas*
59. *Municipalidad de Puriscal*
60. *Municipalidad de San Carlos*
61. *Municipalidad de San Isidro*
62. *Municipalidad de San José*
63. *Municipalidad de San Mateo*
64. *Municipalidad de San Pablo*
65. *Municipalidad de San Rafael*
66. *Municipalidad de San Ramón*
67. *Municipalidad de Santa Ana*
68. *Municipalidad de Santa Bárbara*
69. *Municipalidad de Santa Cruz*
70. *Municipalidad de Santo Domingo*
71. *Municipalidad de Sarapiquí*
72. *Municipalidad de Siquirres*
73. *Municipalidad de Talamanca*
74. *Municipalidad de Tarrazú*
75. *Municipalidad de Tibás*
76. *Municipalidad de Tilarán*
77. *Municipalidad de Turrialba*
78. *Municipalidad de Turrubares*
79. *Municipalidad de Upala*
80. *Municipalidad de Valverde Vega*
81. *Municipalidad de Vásquez de Coronado*

**Schedule of the Dominican Republic**

1. *Gobernación de la Provincia de Azua*
2. *Gobernación de la Provincia de Bahoruco*
3. *Gobernación de la Provincia de Barahona*
4. *Gobernación de la Provincia de Dajabón*
5. *Gobernación de la Provincia de Duarte*
6. *Gobernación de la Provincia de Elías Piña*
7. *Gobernación de la Provincia de El Seybo*
8. *Gobernación de la Provincia de Espaillat*
9. *Gobernación de la Provincia de Hato Mayor*
10. *Gobernación de la Provincia de Independencia*
11. *Gobernación de la Provincia de La Altagracia*
12. *Gobernación de la Provincia de La Romana*
13. *Gobernación de la Provincia de La Vega*
14. *Gobernación de la Provincia de María Trinidad Sánchez*
15. *Gobernación de la Provincia de Monseñor Nouel*
16. *Gobernación de la Provincia de Montecristi*
17. *Gobernación de la Provincia de Monte Plata*
18. *Gobernación de la Provincia de Ocoa*
19. *Gobernación de la Provincia de Pedernales*
20. *Gobernación de la Provincia de Peravia*
21. *Gobernación de la Provincia de Puerto Plata*
22. *Gobernación de la Provincia de Salcedo*
23. *Gobernación de la Provincia de Samaná*
24. *Gobernación de la Provincia de Sánchez Ramírez*
25. *Gobernación de la Provincia de San Cristóbal*
26. *Gobernación de la Provincia de San Juan*
27. *Gobernación de la Provincia de San Pedro de Macorís*
28. *Gobernación de la Provincia de Santiago*
29. *Gobernación de la Provincia de Santiago Rodríguez*
30. *Gobernación de la Provincia de Santo Domingo*
31. *Gobernación de la Provincia de Valverde*

**Schedule of El Salvador**

1. *Municipalidad de San Salvador*
2. *Municipalidad de Mejicanos*
3. *Municipalidad de Ilopango*
4. *Municipalidad de Santiago Texacuangos*
5. *Municipalidad de Santa Ana*
6. *Municipalidad de Sesori*
7. *Municipalidad de Nueva Guadalupe*
8. *Municipalidad de Santa Tecla*
9. *Municipalidad de Ciudad Arce*
10. *Municipalidad de Santa Elena*
11. *Municipalidad de San Agustín*
12. *Municipalidad de Esquipulas*
13. *Municipalidad de Mercedes Umaña*
14. *Municipalidad de Alegria*
15. *Municipalidad de Nueva Granada*
16. *Municipalidad de Sonsonate*
17. *Municipalidad de Acajutla*
18. *Municipalidad de San Julián*
19. *Municipalidad de La Unión*

20. *Municipalidad de San Alejo*
21. *Municipalidad de Conchagua*
22. *Municipalidad de Bolívar*
23. *Municipalidad de San Rafael Obrajuelo*
24. *Municipalidad de Tejutla*
25. *Municipalidad de La Reina*

**Schedule of Guatemala**

*Municipalidades Departamento de Guatemala*

1. Fraijanes
2. San Juan Sacatepéquez
3. San Pedro Sacatepéquez
4. San Raymundo
5. San Pedro Ayampuc
6. Chinautla
7. Santa Catarina Pinula
8. Guatemala
9. Mixco
10. Villa Nueva

This Chapter does not cover procurement of construction services by entities of *Departamento de Guatemala*.

*Municipalidades Departamento de Quetzaltenango*

11. Quetzaltenango
12. Coatepeque

*Municipalidades Departamento de Escuintla*

13. Chiquimulilla
14. Santa Lucía Cotzumalguapa
15. Escuintla
16. Puerto de San José

*Municipalidades Departamento de Zacapa*

17. Zacapa
18. Río Hondo
19. Teculután

*Municipalidades Departamento de Chiquimula*

20. Chiquimula

*Municipalidades Departamento de El Quiché*

21. Santa Cruz del Quiché

*Municipalidades Departamento de El Petén*

22. Flores
23. San Benito

Municipalidades Departamento de El Progreso

24. Guastatoya

Municipalidades Departamento de Izabal

25. Puerto Barrios

Municipalidades Departamento de Huehuetenango

26. Huehuetenango

Municipalidades Departamento de Jalapa

27. Jalapa

Municipalidades Departamento de Jutiapa

28. Jutiapa

Municipalidades Departamento de Alta Verapaz

29. Cobán

Municipalidades Departamento de Baja Verapaz

30. Salamá

**Schedule of Honduras**

1. *Municipalidad de La Ceiba, Atlántida*
2. *Municipalidad de El Porvenir, Atlántida*
3. *Municipalidad de Esparta, Atlántida*
4. *Municipalidad de Jutiapa, Atlántida*
5. *Municipalidad de La Masica, Atlántida*
6. *Municipalidad de San Francisco, Atlántida*
7. *Municipalidad de Tela, Atlántida*
8. *Municipalidad de Arizona, Atlántida*
9. *Municipalidad de Balfate, Colón*
10. *Municipalidad de Iriona, Colón*
11. *Municipalidad de Limón, Colón*
12. *Municipalidad de Sabá, Colón*
13. *Municipalidad de Santa Fe, Colón*
14. *Municipalidad de Santa Rosa de Aguán, Colón*
15. *Municipalidad de Sonaguera, Colón*
16. *Municipalidad de Tocoa, Colón*
17. *Municipalidad de Donito Oriental, Colón*
18. *Municipalidad de Comayagua, Comayagua*
19. *Municipalidad de Ajuterique, Comayagua*
20. *Municipalidad de El Rosario, Comayagua*
21. *Municipalidad de Esquías, Comayagua*
22. *Municipalidad de Humuya, Comayagua*
23. *Municipalidad de La Libertad, Comayagua*
24. *Municipalidad de Lamani, Comayagua*

25. *Municipalidad de Lejamani, Comayagua*
26. *Municipalidad de La Trinidad, Comayagua*
27. *Municipalidad de Meámbar, Comayagua*
28. *Municipalidad de Minas de Oro, Comayagua*
29. *Municipalidad de Ojos de Agua, Comayagua*
30. *Municipalidad de San Jerónimo, Comayagua*
31. *Municipalidad de San José de Comayagua, Comayagua*
32. *Municipalidad de San José del Potrero, Comayagua*
33. *Municipalidad de San Luis, Comayagua*
34. *Municipalidad de San Sebastián, Comayagua*
35. *Municipalidad de Siguatepeque, Comayagua*
36. *Municipalidad de Villa de San Antonio, Comayagua*
37. *Municipalidad de Las Lajas, Comayagua*
38. *Municipalidad de Taulabé, Comayagua*
39. *Municipalidad de Santa Rosa de Copán, Copán*
40. *Municipalidad de Cabañas, Copán*
41. *Municipalidad de Concepción, Copán*
42. *Municipalidad de Corquín, Copán*
43. *Municipalidad de Cucuyagua, Copán*
44. *Municipalidad de Dolores, Copán*
45. *Municipalidad de Dulce Nombre, Copán*
46. *Municipalidad de El Paraíso, Copán*
47. *Municipalidad de Florida, Copán*
48. *Municipalidad de La Jigua, Copán*
49. *Municipalidad de La Unión, Copán*
50. *Municipalidad de Nueva Arcadia (La Entrada), Copán*
51. *Municipalidad de San Agustín, Copán*
52. *Municipalidad de San Antonio de Copán, Copán*
53. *Municipalidad de San Jerónimo, Copán*
54. *Municipalidad de San José, Copán*
55. *Municipalidad de San Juan de Opoa, Copán*
56. *Municipalidad de San Nicolás, Copán*
57. *Municipalidad de San Pedro, Copán*
58. *Municipalidad de Santa Rita, Copán*
59. *Municipalidad de Trinidad, Copán*
60. *Municipalidad de Veracruz, Copán*
61. *Municipalidad de Choloma, Cortés*
62. *Municipalidad de Omoa, Cortés*
63. *Municipalidad de Pimienta, Cortés*
64. *Municipalidad de Potrerillos, Cortés*
65. *Municipalidad de Puerto Cortés, Cortés*
66. *Municipalidad de San Antonio de Cortés, Cortés*
67. *Municipalidad de San Francisco de Yojoa, Cortés*
68. *Municipalidad de San Manuel, Cortés*
69. *Municipalidad de Santa Cruz de Yojoa, Cortés*
70. *Municipalidad de Villanueva, Cortés*
71. *Municipalidad de La Lima, Cortés*
72. *Municipalidad de Choluteca, Choluteca*
73. *Municipalidad de Apacitagua, Choluteca*
74. *Municipalidad de Concepción de María, Choluteca*
75. *Municipalidad de Duyure, Choluteca*
76. *Municipalidad de El Corpus, Choluteca*
77. *Municipalidad de El Triunfo, Choluteca*
78. *Municipalidad de Marcovia, Choluteca*
79. *Municipalidad de Morolica, Choluteca*
80. *Municipalidad de Namasigue, Choluteca*

81. *Municipalidad de Orocuina, Choluteca*
82. *Municipalidad de Pespire, Choluteca*
83. *Municipalidad de San Antonio de Flores, Choluteca*
84. *Municipalidad de San Isidro, Choluteca*
85. *Municipalidad de San José, Choluteca*
86. *Municipalidad de San Marcos de Colón, Choluteca*
87. *Municipalidad de Santa Ana de Yusguare, Choluteca*
88. *Municipalidad de Alauca, El Paraíso*
89. *Municipalidad de Danlí, El Paraíso*
90. *Municipalidad de El Paraíso, El Paraíso*
91. *Municipalidad de Guinope, El Paraíso*
92. *Municipalidad de Jacaleapa, El Paraíso*
93. *Municipalidad de Liure, El Paraíso*
94. *Municipalidad de Moroceli, El Paraíso*
95. *Municipalidad de Oropoli, El Paraíso*
96. *Municipalidad de Potrerillos, El Paraíso*
97. *Municipalidad de San Antonio de Flores, El Paraíso*
98. *Municipalidad de San Lucas, El Paraíso*
99. *Municipalidad de San Matías, El Paraíso*
100. *Municipalidad de Soledad, El Paraíso*
101. *Municipalidad de Teupasenti, El Paraíso*
102. *Municipalidad de Texiguat, El Paraíso*
103. *Municipalidad de Vado Ancho, El Paraíso*
104. *Municipalidad de Yauyupe, El Paraíso*
105. *Municipalidad de Trojes, El Paraíso*
106. *Municipalidad de Alubarén, Francisco Morazán*
107. *Municipalidad de Cedros, Francisco Morazán*
108. *Municipalidad de Curarén, Francisco Morazán*
109. *Municipalidad de El Porvenir, Francisco Morazán*
110. *Municipalidad de Guaimaca, Francisco Morazán*
111. *Municipalidad de La Libertad, Francisco Morazán*
112. *Municipalidad de La Venta, Francisco Morazán*
113. *Municipalidad de Lepaterique, Francisco Morazán*
114. *Municipalidad de Maraita, Francisco Morazán*
115. *Municipalidad de Maralé, Francisco Morazán*
116. *Municipalidad de Nueva Armenia, Francisco Morazán*
117. *Municipalidad de Ojojona, Francisco Morazán*
118. *Municipalidad de Orica, Francisco Morazán*
119. *Municipalidad de Reitoca, Francisco Morazán*
120. *Municipalidad de Sabanagrande, Francisco Morazán*
121. *Municipalidad de San Antonio de Oriente, Francisco Morazán*
122. *Municipalidad de San Buenaventura, Francisco Morazán*
123. *Municipalidad de San Ignacio, Francisco Morazán*
124. *Municipalidad de San Juan de Flores, Francisco Morazán*
125. *Municipalidad de San Miguelito, Francisco Morazán*
126. *Municipalidad de Santa Ana, Francisco Morazán*
127. *Municipalidad de Santa Lucía, Francisco Morazán*
128. *Municipalidad de Talanga, Francisco Morazán*
129. *Municipalidad de Tatumbla, Francisco Morazán*
130. *Municipalidad de Valle de Angeles, Francisco Morazán*
131. *Municipalidad de Villa de San Francisco, Francisco Morazán*
132. *Municipalidad de Vallecillo, Francisco Morazán*
133. *Municipalidad de Puerto Lempira, Gracias a Dios*
134. *Municipalidad de Brus Laguna, Gracias a Dios*
135. *Municipalidad de Ahuás, Gracias a Dios*
136. *Municipalidad de Juan Francisco Bulnes, Gracias a Dios*

137. *Municipalidad de Villeda Morales, Gracias a Dios*
138. *Municipalidad de Wampusirpi, Gracias a Dios*
139. *Municipalidad de La Esperanza, Intibucá*
140. *Municipalidad de Camasca, Intibucá*
141. *Municipalidad de Colomoncagua, Intibucá*
142. *Municipalidad de Concepción, Intibucá*

**Schedule of Nicaragua**

1. *Municipalidad de Atagracia*
2. *Municipalidad de Belén*
3. *Municipalidad de Boaco*
4. *Municipalidad de Buenos Aires*
5. *Municipalidad de Cárdenas*
6. *Municipalidad de Catarina*
7. *Municipalidad de Ciudad Antigua*
8. *Municipalidad de Ciudad Darío*
9. *Municipalidad de Ciudad Sandino*
10. *Municipalidad de Dipilto*
11. *Municipalidad de Dolores*
12. *Municipalidad de El Jicaral*
13. *Municipalidad de El Jicaro*
14. *Municipalidad de El Rosario*
15. *Municipalidad de Esquipulas*
16. *Municipalidad de Jalapa*
17. *Municipalidad de Jinotega*
18. *Municipalidad de La Concepción*
19. *Municipalidad de La Concordia*
20. *Municipalidad de La Conquista*
21. *Municipalidad de La Paz de Carazo*
22. *Municipalidad de Macuelizo*
23. *Municipalidad de Matiguás*
24. *Municipalidad de Moyogalpa*
25. *Municipalidad de Mozonte*
26. *Municipalidad de Murra*
27. *Municipalidad de Muy Muy*
28. *Municipalidad de Nandasmo*
29. *Municipalidad de Nindirí*
30. *Municipalidad de Niquinohomo*
31. *Municipalidad de Ocotal*
32. *Municipalidad de Palacaguina*
33. *Municipalidad de Rancho Grande*
34. *Municipalidad de San Carlos*
35. *Municipalidad de San Dionisio*
36. *Municipalidad de San Fernando*
37. *Municipalidad de San Francisco del Norte*
38. *Municipalidad de San Isidro*
39. *Municipalidad de San Jorge*
40. *Municipalidad de San José de Cusmapa*
41. *Municipalidad de San José de los Remates*
42. *Municipalidad de San Lorenzo*
43. *Municipalidad de San Lucas*
44. *Municipalidad de San Ramón*
45. *Municipalidad de Santa Lucía*
46. *Municipalidad de Santa María*

47. *Municipalidad de Santa Rosa del Peñón*
48. *Municipalidad de Sébaco*
49. *Municipalidad de Telpaneca*
50. *Municipalidad de Terrabona*
51. *Municipalidad de Teustepe*
52. *Municipalidad de Ticuantepe*
53. *Municipalidad de Tisma*
54. *Municipalidad de Tola*
55. *Municipalidad de Totogalpa*
56. *Municipalidad de Tuma – La Dalia*
57. *Municipalidad de Wiwili*
58. *Municipalidad de Yalagüina*
59. *Municipalidad de Camoapa*
60. *Municipalidad de Diriamba*
61. *Municipalidad de El Castillo*
62. *Municipalidad de El Crucero*
63. *Municipalidad de El Sauce*
64. *Municipalidad de El Viejo*
65. *Municipalidad de Jinotepe*
66. *Municipalidad de La Paz Centro*
67. *Municipalidad de Larreynaga*
68. *Municipalidad de León*
69. *Municipalidad de Managua*
70. *Municipalidad de Masatepe*
71. *Municipalidad de Masaya*
72. *Municipalidad de Matagalpa*
73. *Municipalidad de Mateare*
74. *Municipalidad de Nagarote*
75. *Municipalidad de Potosí*
76. *Municipalidad de Río Blanco*
77. *Municipalidad de San Francisco Libre*
78. *Municipalidad de San José de Achuapa*
79. *Municipalidad de San Juan de Oriente*
80. *Municipalidad de San Juan de Río Coco*
81. *Municipalidad de San Juan del Norte*
82. *Municipalidad de San Marcos*
83. *Municipalidad de San Rafael del Sur*
84. *Municipalidad de Santa Teresa*
85. *Municipalidad de Somoto*
86. *Municipalidad de Telica*
87. *Municipalidad de Tipitapa*
88. *Municipalidad de Villa Carlos Fonseca*

**Schedule of the United States**

Unless otherwise specified, this Chapter covers procurement only by those entities listed in this schedule.

**List A:**

Costa Rica, the Dominican Republic, El Salvador, Guatemala, and Nicaragua shall have access to procurement by the following sub-central level of government entities:

Arkansas

Executive branch agencies, including universities

This Chapter does not cover procurement by the Office of Fish and Game or construction services.

Colorado

Executive branch agencies

Connecticut

Department of Administrative Services  
Connecticut Department of Transportation  
Connecticut Department of Public Works  
Constituent Units of Higher Education

Delaware\*

Administrative Services (Central Procurement Agency)  
State Universities  
State Colleges

Florida\*

Executive branch agencies

Hawaii

Department of Accounting and General Services

This Chapter does not cover procurement of software developed in the state or construction services.

Idaho

Idaho Central Procurement Agency (including all colleges and universities subject to central purchasing oversight)

Kentucky

Division of Purchases, Finance and Administration Cabinet

This Chapter does not cover procurement for construction projects.

Louisiana

Executive branch agencies

Maryland\*

Office of the Treasury  
Department of the Environment  
Department of General Services  
Department of Housing and Community Development  
Department of Human Resources  
Department of Licensing and Regulation  
Department of Natural Resources  
Department of Personnel  
Department of Public Safety and Correctional Services  
Department of Transportation

Mississippi

Department of Finance and Administration  
This Chapter does not cover the procurement of services.

Nebraska

Central Procurement Agency

New Hampshire\*

Central Procurement Agency

New York\*

State agencies

State university system

Public authorities and public benefit corporations

1. This Chapter does not cover public authorities and public benefit corporations with multi-state mandates.

2. This Chapter does not cover the procurement of transit cars, buses, or related equipment.

Oregon

Department of Administrative Services

Puerto Rico

Department of State

Department of Justice

Department of the Treasury

Department of Economic Development and Commerce

Department of Labor and Human Resources

Department of Natural and Environmental Resources

Department of Consumer Affairs

Department of Sports and Recreation

This Chapter does not cover the procurement of construction services.

Rhode Island

Executive branch agencies

This Chapter does not cover the procurement of boats, automobiles, buses, or related equipment.

South Dakota

Central Procuring Agency (including universities and penal institutions)

This Chapter does not cover the procurement of beef.

Texas

Texas Building and Procurement Commission

This Chapter does not apply to preferences for: (1) motor vehicles; (2) travel agents located in Texas; and (3) rubberized asphalt paving made from scrap tires by a Texas facility.

Utah

Executive branch agencies

Vermont

Executive branch agencies

Washington

Washington State executive branch agencies, including:  
General Administration  
Department of Transportation  
State Universities

This Chapter does not cover the procurement of fuel, paper products, boats, ships, or vessels.

Wyoming\*

Procurement Services Division  
Wyoming Department of Transportation  
University of Wyoming

This Chapter does not cover the procurement of construction services.

**List B:**

Honduras shall have access to procurement by the following sub-central level of government entities:

Arkansas

Executive branch agencies, including universities

Colorado

Executive branch agencies

Connecticut

Department of Administrative Services  
Connecticut Department of Transportation  
Connecticut Department of Public Works  
Constituent Units of Higher Education

Florida\*

Executive branch agencies

Kentucky

Division of Purchases, Finance and Administration Cabinet

This Chapter does not cover procurement for construction projects.

Louisiana

Executive branch agencies

Maryland\*

Office of the Treasury  
Department of the Environment  
Department of General Services  
Department of Housing and Community Development  
Department of Human Resources  
Department of Licensing and Regulation  
Department of Natural Resources  
Department of Personnel  
Department of Public Safety and Correctional Services  
Department of Transportation

Mississippi

Department of Finance and Administration

This Chapter does not cover the procurement of services.

Nebraska

Central Procurement Agency

New Hampshire\*

Central Procurement Agency

New York\*

State agencies

State university system

Public authorities and public benefit corporations

1. This Chapter does not cover public authorities and public benefit corporations with multi-state mandates.

2. This Chapter does not cover the procurement of transit cars, buses, or related equipment.

Puerto Rico

Department of State

Department of Justice

Department of the Treasury

Department of Economic Development and Commerce

Department of Labor and Human Resources

Department of Natural and Environmental Resources

Department of Consumer Affairs

Department of Sports and Recreation

This Chapter does not cover the procurement of construction services.

South Dakota

Central Procuring Agency (including universities and penal institutions)

This Chapter does not cover the procurement of beef.

Texas

Texas Building and Procurement Commission

This Chapter does not apply to preferences for: (1) motor vehicles; (2) travel agents located in Texas; and (3) rubberized asphalt paving made from scrap tires by a Texas facility.

Vermont

Executive branch agencies

Washington

Washington State executive branch agencies, including:

General Administration

Department of Transportation

State Universities

This Chapter does not cover the procurement of fuel, paper products, boats, ships, or vessels.

Wyoming\*  
Procurement Services Division  
Wyoming Department of Transportation  
University of Wyoming

This Chapter does not cover the procurement of construction services.

**Notes to the Schedule of the United States**

1. For the states marked by an asterisk (\*), indicating pre-existing restrictions, this Chapter does not cover the procurement of construction-grade steel (including requirements on subcontracts), motor vehicles, or coal.
2. This Chapter does not apply to preferences or restrictions associated with programs promoting the development of distressed areas, or businesses owned by minorities, disabled veterans, or women.
3. Nothing in this Annex shall be construed to prevent any state entity from applying restrictions that promote the general environmental quality in that state, as long as such restrictions are not disguised barriers to international trade.
4. This Chapter does not cover any procurement made by a covered entity on behalf of non-covered entities at a different level of government.
5. This Chapter does not apply to restrictions attached to Federal funds for mass transit and highway projects.
6. This Chapter does not apply to the procurement of printing services.

**Section C: Other Covered Entities**

1. This Chapter applies to the other covered entities listed in each Party's Schedule to this Section where the value of the procurement is estimated, in accordance with paragraph 1 of Section H, to equal or exceed:

- (a) for procurement of goods and services:
  - (i) of List A entities, US\$250,000; or
  - (ii) of List B entities, US\$538,000; and
- (b) for procurement of construction services for List A and List B entities:
  - (i) US\$6,725,000; or
  - (ii) in the case of the Central American Parties and the Dominican Republic, for the three-year period following the date of entry into force of this Agreement, US\$8,000,000.

The monetary thresholds set out in subparagraphs (a)(ii) and (b)(i) shall be adjusted in accordance with Section H of this Annex.

2. Unless otherwise specified, this Chapter covers only the entities listed in each Party's Schedule in this Section.

**Schedule of Costa Rica**

**List A:**

1. *Instituto Costarricense de Ferrocarriles – INCOFER*
2. *Instituto Costarricense de Puertos del Pacífico – INCOP*
3. *Junta Administrativa de la Imprenta Nacional*
4. *Programa Integral de Mercadeo Agropecuario – PIMA*
5. *Autoridad Reguladora de los Servicios Públicos – ARESEP*
6. *Banco Hipotecario de la Vivienda – BANHVI*
7. *Consejo de Transporte Público*
8. *Instituto Costarricense del Deporte y la Recreación*
9. *Instituto Nacional de Fomento Cooperativo – INFOCOOP*
10. *Servicio Nacional de Aguas Subterráneas, Riego y Avenamiento*
11. *Banco Central de Costa Rica*<sup>1</sup>

**List B:**

1. *Caja Costarricense de Seguro Social*<sup>2</sup>
2. *Instituto Costarricense de Electricidad*<sup>3</sup>

**Notes to Costa Rica Schedule**

1. *Banco Central de Costa Rica*: This Chapter does not cover the issuance of bills, coins, or tax stamps.
2. *Caja Costarricense de Seguro Social*: This Chapter does not cover procurement by goods classified under Section 2 (food products, beverages and tobacco, textiles, apparel, and leather products) of the CPC, version 1.0.

3. *Instituto Costarricense de Electricidad* ("ICE"):
- (a) The 40-day time limit set out in Article 9.5.1 shall not apply to the ICE. ICE shall provide suppliers sufficient time to prepare and submit responsive tenders.
  - (b) Notwithstanding Article 9.15.6(a), ICE shall provide no less than three business days for suppliers to prepare and submit written challenges.
  - (c) On request of the United States, Costa Rica shall consult with regard to the implementation of time periods referred to in subparagraphs (a) and (b).

#### **Schedule of the Dominican Republic**

##### **List A:**

1. *Instituto Nacional de Formación y Capacitación Magisterial*
2. *Corporación de Fomento Industrial*
3. *Instituto Nacional de la Uva*
4. *Instituto Agrario Dominicano*
5. *Instituto Dominicano del Azúcar (INAZUCAR)*
6. *Centro de Exportación e Inversión de la República Dominicana*
7. *Instituto de Auxilios y Vivienda (INAVI)*
8. *Corporación Dominicana de Empresas Eléctricas Estatales (CDEE)*
9. *Autoridad Portuaria Dominicana*
10. *Cámara de Cuentas de la República Dominicana*
11. *Consejo Nacional de Zonas Francas de Exportación*
12. *Instituto Dominicano de las Telecomunicaciones (INDOTEL)*<sup>1</sup>
13. *Junta Central Electoral*
14. *Superintendencia de Bancos*
15. *Banco Central de la República Dominicana*<sup>2</sup>

##### **Notes to the Dominican Republic Schedule**

1. *Instituto Dominicano de las Telecomunicaciones (INDOTEL)*: This Chapter does not apply to procurements of goods and services required for the implementation of special projects executed by the *Fondo de Desarrollo de las Telecomunicaciones* to implement the *Política Social sobre Servicio Universal* of the Dominican Republic pursuant to the *Ley General de Telecomunicaciones* No.153-98 and *Reglamento del Fondo de Desarrollo de las Telecomunicaciones*.
2. *Banco Central de la República Dominicana*: This Chapter does not cover the issuance of currency and coins.

#### **Schedule of El Salvador**

##### **List A:**

1. *Consejo de Vigilancia de la Contaduría Pública*
2. *Consejo Nacional de Ciencia y Tecnología*
3. *Consejo Salvadoreño del Café*
4. *Consejo Superior de Salud Pública*
5. *Corporación Salvadoreña de Turismo*

6. *Federación Salvadoreña de Fútbol*
7. *Feria Internacional de El Salvador*
8. *Fondo de Inversión Social de Desarrollo Local*
9. *Hogar de Ancianos "Narcisca Castillo," Santa Ana*
10. *Hospital Nacional "Benjamin Bloom"*
11. *Hospital Nacional "Dr. Luis Edmundo Vásquez," Chalatenango*
12. *Hospital Nacional "Francisco Menéndez," Ahuachapán*
13. *Hospital Nacional "Juan José Fernández" Zacamil*
14. *Hospital Nacional "San Juan de Dios," San Miguel*
15. *Hospital Nacional "San Juan de Dios," Santa Ana*
16. *Hospital Nacional "San Juan de Dios," Sonsonate*
17. *Hospital Nacional "San Pedro," Usulután*
18. *Hospital Nacional "San Rafael" Nueva San Salvador*
19. *Hospital Nacional "Santa Gertrudis," San Vicente*
20. *Hospital Nacional "Santa Teresa" Zacatecoluca*
21. *Hospital Nacional de Ciudad Barrios*
22. *Hospital Nacional de Cojutepeque*
23. *Hospital Nacional de Ilobasco*
24. *Hospital Nacional de Jiquilisco*
25. *Hospital Nacional de La Unión*
26. *Hospital Nacional de Maternidad "Dr. Raúl Argüello Escolán"*
27. *Hospital Nacional de Metapán*
28. *Hospital Nacional de Nueva Concepción*
29. *Hospital Nacional de Nueva Guadalupe*
30. *Hospital Nacional de San Francisco Gotera*
31. *Hospital Nacional de Santa Rosa de Lima*
32. *Hospital Nacional de Santiago de María*
33. *Hospital Nacional de Sensuntepeque*
34. *Hospital Nacional de Suchitoto*
35. *Hospital Nacional Neumológico "Dr. José Antonio Saldaña"*
36. *Hospital Nacional Psiquiátrico "Dr. José Molina Martínez"*
37. *Hospital Nacional San Bartolo*
38. *Instituto Nacional de los Deportes de El Salvador*
39. *Instituto Nacional de Pensiones de los Empleados Públicos*
40. *Instituto Salvadoreño de Desarrollo de la Mujer*
41. *Instituto Salvadoreño de Desarrollo Municipal*
42. *Instituto Salvadoreño de Fomento Cooperativo*
43. *Instituto Salvadoreño de Formación Profesional*
44. *Instituto Salvadoreño de Protección al Menor*
45. *Instituto Salvadoreño de Rehabilitación de Inválidos*
46. *Instituto Salvadoreño de Transformación Agraria*
47. *Instituto Salvadoreño de Turismo*
48. *Registro Nacional de las Personas Naturales*
49. *Superintendencia de Pensiones*
50. *Superintendencia de Valores*
51. *Unidad Técnica Ejecutiva*
52. *Comisión Ejecutiva Portuaria Autónoma*
53. *Comisión Ejecutiva Hidroeléctrica del Río Lempa*
54. *Complejo Tesquero*
55. *Corporación Salvadoreña de Inversiones*

**List B:**

1. *Centro Nacional de Registros*
2. *Hospital Nacional Rosales*
3. *Superintendencia General de Energía y Telecomunicaciones (SIGET)*

**Note to El Salvador Schedule**

This Chapter does not cover procurement by the entities listed in List A items 10 through 37 and in List B item 2 of goods classified under Section 2 (food products, beverages and tobacco; textiles, apparel, and leather products) of the CPC, version 1.1.

**Schedule of Guatemala****List A:**

1. *Academia de Lenguas Mayas de Guatemala*
2. *Confederación Deportiva Autónoma de Guatemala*
3. *Comisión Institucional para el Desarrollo y Fortalecimiento de la Propiedad de la Tierra*
4. *Comité Olímpico Guatemalteco*
5. *Comité Permanente de Exposiciones*
6. *Consejo Nacional para la Protección de la Antigua Guatemala*
7. *Empresa Guatemalteca de Telecomunicaciones*
8. *Escuela Nacional Central de Agricultura*
9. *Instituto de Ciencia y Tecnología Agrícolas*
10. *Instituto de Fomento Municipal*
11. *Instituto Guatemalteco de Turismo*
12. *Instituto Nacional de Administración Pública*
13. *Instituto Nacional de Bosques*
14. *Instituto Nacional de Comercialización Agrícola*
15. *Instituto Nacional de Cooperativas*
16. *Instituto Nacional de Estadística*
17. *Instituto Técnico de Capacitación y Productividad*
18. *Superintendencia de Administración Tributaria*
19. *Fondo de Solidaridad para el Desarrollo Comunitario*

**Schedule of Honduras****List A:**

1. *Administración Forestal del Estado, Corporación Hondureña de Desarrollo Forestal (AFE-COHDEFOR)*
2. *Instituto Hondureño de Mercadeo Agrícola (IHMA)*
3. *Instituto Hondureño para la prevención del Alcoholismo, Drogadicción y Farmacodependencia (IHADFA)*
4. *Instituto Hondureño de Turismo (IHT)*
5. *Instituto Nacional de Jubilaciones y Pensiones de los Funcionarios y Empleados del Poder Ejecutivo (INJUPEMP)*
6. *Comisión Nacional Pro-Instalaciones Deportivas y Mejoramiento del Deporte (CONAPID)*
7. *Comité Permanente de Contingencias (COPECO)*
8. *Instituto Nacional Agrario (INA)*
9. *Empresa Nacional Portuaria (ENP)*
10. *Banco Central de Honduras (BCH)<sup>1</sup>*

**Note to Honduras Schedule**

*Banco Central de Honduras (BCH)*: This Chapter does not cover the issuance or the circulation of currency.

**Schedule of Nicaragua****List A:**

1. *Banco Central de Nicaragua*
2. *Comisión Nacional de Energía*
3. *Consejo Nacional de Planificación Económica y Social*
4. *Correos de Nicaragua*
5. *Dirección General de Ingresos*
6. *Dirección General de Servicios Aduaneros*
7. *Empresa Administradora de Aeropuertos Internacionales*
8. *Empresa Portuaria Nacional*
9. *Fondo de Inversión Social de Emergencia (FISE)*
10. *Fondo Nicaragüense de la Niñez y la Familia*
11. *Instituto de Desarrollo Rural (IDR)*
12. *Instituto de Seguridad Social y Desarrollo Humano*
13. *Instituto de Vivienda Urbana y Rural*
14. *Instituto Nacional de Estadísticas y Censos*
15. *Instituto Nacional Forestal*
16. *Instituto Nacional Tecnológico*
17. *Instituto Nicaragüense de Apoyo a la Pequeña y Mediana Empresa*
18. *Instituto Nicaragüense de Cultura*
19. *Instituto Nicaragüense de Estudios Territoriales*
20. *Instituto Nicaragüense de Juventud y Deportes*
21. *Instituto Nicaragüense de la Mujer*
22. *Instituto Nicaragüense de Seguridad Social*
23. *Instituto Nicaragüense de Tecnología Agropecuaria*
24. *Instituto Nicaragüense de Turismo*
25. *Instituto Tecnológico Nacional*
26. *Ministerio Público*
27. *Procuraduría para la Defensa de los Derechos Humanos*
28. *Radio Nicaragua*
29. *Sistema Nacional de Prevención, Mitigación y Atención de Desastres*
30. *Superintendencia de Bancos y de otras Instituciones Financieras*
31. *Teatro Nacional Rubén Darío*
32. *Universidades y Centros de Educación Técnica Superior (with respect to purchases made with funds from the State)*

**Notes to Nicaragua Schedule**

1. *Banco Central de Nicaragua*: This Chapter does not cover the issuance of bills or coins.
2. *Dirección General de Ingresos*: This Chapter does not cover the production or issuance of passports (including its security elements, such as security paper or security plastic) or tax stamps.

**Schedule of the United States****List A:**

1. Tennessee Valley Authority
2. Bonneville Power Administration
3. Western Area Power Administration
4. Southeastern Power Administration
5. Southwestern Power Administration
6. St. Lawrence Seaway Development Corporation

**List B:**

Rural Utilities Service<sup>1</sup>

**Notes to United States Schedule**

1. The Rural Utilities Service agrees:
  - (a) to waive federal buy national requirements imposed as conditions of funding for all power generation projects; and
  - (b) to apply procurement procedures equivalent to the procedures in the WTO Agreement on Government Procurement and national treatment to funded projects exceeding the thresholds specified above.

For greater certainty, this Chapter does not apply to any other aspect of procurement by the Rural Utilities Service, including any restrictions the Rural Utilities Service places on financing for telecommunications projects.

2. With respect to procurement by entities listed in this Section, this Chapter does not apply to restrictions attached to Federal funds for airport projects.

**Section D**

**Goods**

This Chapter applies to all goods procured by the entities listed in Sections A through C, subject to the Notes to the respective Sections and the General Notes.

**Section E**

**Services**

This Chapter applies to all services procured by the entities listed in Sections A through C, subject to the Notes to the respective Sections, the General Notes, and the Notes to this Section, except for the services excluded in the Schedules of each Party. All services covered by this Section are subject to the existing measures listed in each Party's Schedule to Annex I.

**Schedule of Costa Rica**

This Chapter does not cover procurement of the following services:

1. Research and Development
  - Division 81 Research and Development Services
2. Management of Government-Owned Facilities (Administrative Facilities and Service Buildings, Airfield, Communications, and Missile Facilities, Educational Buildings, Hospital Buildings, Industrial Buildings, Residential Buildings, Warehouse Buildings, Research and Development Facilities, Other Buildings, Conservation and Development Facilities, Highways, Roads, Streets, Bridges and Railways, Electric Power Generation (EPG) Facilities, Utilities, Other Non-Building Facilities).
3. Management and Distribution of Lotteries
  - Class 9692 Gambling and Betting services
4. Public Services
  - Division 69 Electricity Distribution Services; Gas and Water Distribution Services through mains
  - Division 91 Public Administration and other services to the community as a whole; Compulsory Social Security Services
  - Division 92 Education Services (public education)
  - Division 93 Health and Social Services
  - Division 94 Sewage and Refuse Disposal, Sanitation and other Environmental Protection Services

**Schedule of the Dominican Republic**

This Chapter does not cover procurement of the following services:

1. Business and Production Services
  - Division 81 Research and Development Services
  - Group: 836 Advertising Services
2. Management of Government-Owned Facilities (Administrative Facilities and Service Buildings, Airfield, Communications, Missile Facilities, Educational Buildings, Hospital Buildings, Industrial Buildings, Residential Buildings, Warehouse Buildings, Research and Development Facilities, Other Buildings, Conservation and Development Facilities, Highways, Roads, Streets, Bridges, Dams, Railways, Electric

Power Generation (EPG) Facilities, Public Utilities, Other Non-Building Facilities).

3. Public Services

Division 69 Electricity Distribution Services; Gas and Water Distribution Services through mains  
 Division 913 Administrative Services of Compulsory Social Security Schemes  
 Division 92 Education Services (public education)

4. Transport Services

Division 64 Land Transport Services  
 Division 65 Water Transport Services  
 Division 66 Air Transport Services

5. Printing Services

**Schedule of El Salvador**

No services are excluded.

**Schedule of Guatemala**

This Chapter does not cover the following services, as elaborated in CPC, version 1.0:

1. Public Services

Division 69 Electricity Distribution Services; Gas and Water Distribution Services through mains  
 Division 91 Public Administration and other services to the community as a whole; Compulsory Social Security Services  
 Division 92 Education Services (public education)  
 Division 93 Health and Social Services  
 Division 94 Sewage and Refuse Disposal, Sanitation and other Environmental Protection Services

2. Individual Professional Services (This Chapter does not cover the contracting of individuals, for defined periods, who provide a professional service, where such contracting is not used to avoid the obligations of this Chapter.)

**Schedule of Honduras**

This Chapter does not cover the following services, as elaborated in CPC, version 1.0.

1. CPC 64 Land Transport Services  
 2. CPC 66 Air Transport Services  
 3. CPC 69 Electricity Distribution Services; Gas and Water Distribution Services through mains

**Schedule of Nicaragua**

This Chapter does not cover procurement of the following services, as elaborated in the

Common Classification System (*for a complete listing of the Common Classification System see [www.sice.oas.org/trade/nafta/chap-105.asp](http://www.sice.oas.org/trade/nafta/chap-105.asp)*):

1. M. Operation of Government-Owned Facilities

All classes

This Chapter does not cover the procurement of the following services, as elaborated in CPC, version 1.0.

2. Public Services

Division 69	Electricity Distribution Services; Gas and Water Distribution Services through mains
Division 91	Public Administration and other services to the community as a whole; Compulsory Social Security Services
Division 92	Education Services (public education)
Division 93	Health and Social Services
Division 94	Sewage and Refuse Disposal, Sanitation and other Environmental Protection Services

**Schedule of the United States**

This Chapter does not cover the procurement of the following services, as elaborated in the Common Classification System (*for a complete listing of the Common Classification System see <http://www.tcc.mac.doc.gov/cgi-bin/doiit.cgi?204:66:601961876:49#An1001.1b-2-B.>*):

1. A. Research and Development

All classes

2. D. Information Processing and Related Telecommunications Services

D304 ADP Telecommunications and Transmission Services, except for those services classified as "enhanced or value-added services." For the purposes of this provision, the procurement of "ADP Telecommunications and Transmission Services" does not include the ownership or furnishing of facilities for the transmission of voice or data services.

D305 ADP Teleprocessing and Timesharing Services

D316 Telecommunications Network Management Services

D317 Automated News Services, Data Services or Other Information Services

D399 Other ADP and Telecommunications Services

3. J. Maintenance, Repair, Modification, Rebuilding, and Installation of Goods/Equipment

J019 Maintenance, Repair, Modification, Rebuilding and Installation of Equipment Related to Ships

J998 Non-nuclear Ship Repair

4. M. Operation of Government-Owned Facilities

All facilities operated by the Department of Defense, Department of Energy, and the National Aeronautics and Space Administration; and for all entities:

M180 Research and Development facilities

5. S. Utilities

All Classes

6. V. Transportation, Travel and Relocation Services

All Classes except V503 Travel Agent Services

**Notes to the United States Schedule**

This Chapter does not cover the procurement of any service in support of military forces overseas.

**Section F**

**Construction Services**

This Chapter applies to all construction services for all Parties procured by the entities listed in Sections A through C, subject to the Notes to the respective Sections and the General Notes. All construction services covered by this Section are subject to the existing measures listed in each Party's Schedule to Annex I.

**Schedule of the Dominican Republic**

This Chapter does not cover the procurement of construction services with respect to suppliers of Puerto Rico, until such time as the Dominican Republic and Puerto Rico provide reciprocal access to procurement of construction services for each other's suppliers.

**Schedule of the United States**

This Chapter does not cover the procurement of dredging services.

**Section G****General Notes**

Unless otherwise specified herein, the following General Notes to each Party's Schedule apply without exception to this Chapter, including to all sections of this Annex.

**Schedule of Costa Rica**

1. This Chapter does not apply to procurement by one Costa Rican entity of a good or service obtained or acquired from another Costa Rican entity.
2. This Chapter does not apply to government procurement programs on behalf of small, medium and micro enterprises (SME).

**Schedule of the Dominican Republic**

1. This Chapter does not apply to government procurement programs on behalf of small, medium and micro enterprises, including any form of preference, such as the exclusive right to provide a good or a service.
2. This Chapter does not apply to the procurement of construction-grade steel (including requirements on subcontracts).
3. This Chapter does not apply to government procurement programs to promote the alleviation of poverty, or to protect women, the disabled, or children and adolescents, including at the border with Haiti (*Zona Fronteriza*) or in other rural or impoverished areas.
4. This Chapter does not apply to procurement of goods and services related to the disposal of toxic, dangerous, or radioactive waste.
5. This Chapter does not apply to procurement by one Dominican entity of a good or service obtained or acquired from another Dominican entity.
6. This Chapter does not cover procurement made in furtherance of public health protection programs, including treatment of HIV/AIDS, tuberculosis, paludism, malaria, or other epidemics.
7. This Chapter does not apply to procurements made in support of human feeding programs.

**Schedule of El Salvador**

This Chapter does not apply to procurement by one Salvadoran entity of a good or service obtained or acquired from another Salvadoran entity.

**Schedule of Guatemala**

1. This Chapter does not apply to procurement by one Guatemalan entity of a good or service obtained or acquired from another Guatemalan entity.

2. This Chapter does not apply to procurement of unrefined minerals naturally occurring in Guatemala for the construction of public works.

3. If, following the entry into force of this Agreement between the United States and Guatemala, Guatemala proposes to implement a procurement measure that is intended to promote the development of its minority-owned or small, medium and micro enterprises, but that would not be consistent with this Chapter, Guatemala shall consult with the United States. If the United States and Guatemala agree on the need and terms and conditions for such a measure, Guatemala shall be permitted to implement the measure.

#### **Schedule of Honduras**

This Chapter does not apply to procurement by one Honduran entity of a good or service obtained or acquired from another Honduran entity.

#### **Schedule of Nicaragua**

1. This Chapter does not apply to procurement by one Nicaraguan entity of a good or service obtained or acquired from another Nicaraguan entity.

2. (a) Notwithstanding Articles 9.2.1 and 9.2.2, for five years following the date of the entry into force of this Agreement between the United States and Nicaragua, Nicaragua may maintain a price preference program for its small, medium, and micro enterprises, in accordance with the following:
- (i) A "small, medium, and micro enterprise" is defined, for purposes of this note, as a business that has 100 or fewer employees and total annual sales of no more than US\$1.2 million;
  - (ii) Nicaragua may award its small, medium, and micro enterprises up to a ten percent price preference in tenders for procurement covered by this Chapter; and
  - (iii) The price preference shall be clearly described in the notice of intended procurement or notice inviting suppliers to participate in the procurement and relevant tender documentation.
- (b) Before the end of the five-year period, the United States and Nicaragua shall consult to determine whether there is a need to extend the price preference program and, if they agree that there is such a need, to determine the scope of the extension.
- (c) If, following the entry into force of this Agreement between the United States and Nicaragua, Nicaragua proposes to implement a procurement measure that is intended to promote the development of its small, medium and micro enterprises, but that would not be consistent with this Chapter, Nicaragua shall consult with the United States. If the United States and Nicaragua agree on the need and terms and conditions for such a measure, Nicaragua shall be permitted to implement the measure.

**Schedule of the United States**

1. This Chapter does not apply to set asides on behalf of small or minority businesses. Set-asides include any form of preference, such as the exclusive right to provide a good or service and price preferences.

2. This Chapter does not apply to the procurement of transportation services that form a part of, or are incidental to, a procurement contract.

## Section H

### Threshold Adjustment Formula

1. In calculating the value of a contract for the purpose of ascertaining whether a procurement is covered by this Chapter, a procuring entity shall include the maximum total estimated value of the procurement over its entire duration, taking into account all options, premiums, fees, commissions, interest, and other revenue streams, or other forms of remuneration provided for in such contracts.
2. The thresholds in Sections A through C shall be adjusted at two-year intervals with each adjustment taking effect on January 1, beginning on January 1, 2006.
3. With regard to the thresholds for goods and services in Section A, the United States shall calculate the U.S. dollar value for the threshold every two years, based on the U.S. inflation rate measured by the Producer Price Index for Finished Goods published by the U.S. Bureau of Labor Statistics, using the two-year period that ends on October 31 in the year prior to the adjustment taking effect, and using the following formula:

$$T_0 \times (1 + f_i) = T_1$$

$T_0$  = threshold value at base period

$f_i$  = accumulated U.S. inflation rate for the  $i^{\text{th}}$  two-year period

$T_1$  = new threshold value.

4. The thresholds for construction services in Section A and the thresholds in Sections B and C are conversions into U.S. dollars of the thresholds listed in the U.S. Appendix 1 to the WTO Agreement on Government Procurement, which are set out in Special Drawing Rights (SDRs) and listed below. The United States shall calculate adjustments of these thresholds based on an average of the daily conversion rates of the U.S. dollar in terms of SDRs, published by the IMF in its monthly "International Financial Statistics," for the two-year period preceding October 1 or November 1 of the year before the adjusted thresholds are to take effect:
  - (a) 5 million SDRs for construction services;
  - (b) 355,000 SDRs for goods and services for Section B entities; and
  - (c) 400,000 SDRs for goods and services for Section C, List B entities.
5. The United States shall notify the other Parties of the adjusted threshold values by December 15 of the year before the adjusted thresholds take effect.
6. Except for El Salvador, which shall use the value expressed by the United States in U.S. dollars, each Party shall:
  - (a) convert the adjusted thresholds values notified by the United States under paragraph 4 into its national currency based on the official conversion rate or its central bank, using the average of the daily values of its currency in terms of the U.S. dollar over the two-year period ending September 30 of the year in which the United States notifies the adjusted thresholds; and
  - (b) promptly notify the other Parties of the value in its currency of the adjusted thresholds.

7. The Parties shall consult bilaterally if a major change in a national currency vis-à-vis the other currency were to create a significant problem with regard to the application of the Chapter.

## Section I

### Transition Mechanisms

1. Each Party shall make best efforts to comply with the obligations listed in each Party's Schedule to this Section during the two years following the date of entry into force of this Agreement. The Notes to each Party's Schedule shall apply during this two-year period. Thereafter, each Party shall fully comply with these obligations.

#### Schedule of Costa Rica

1. Article 9.4.2 (inclusion of an indication that the procurement is covered by this Chapter in the notice of intended procurement)
2. Article 9.5.1 (40-days time limit for the tendering process)<sup>1</sup>
3. Article 9.6.3 (written communication of modification to tender documentation)
4. Article 9.11.2 (publication of a notice regarding the contract award)
5. Article 9.15.6(a) (period provided to suppliers to prepare and submit written challenges)<sup>2</sup>

#### Notes to Costa Rica Schedule

1. Article 9.5.1: For the tendering process set out in Article 9.5.1, Costa Rica shall provide at least 30 days for procurement made through the *Licitación Pública* and at least ten days for procurement made through the *Licitación por Registro*.
2. Article 9.15.6(a): Costa Rica shall provide at least three days for suppliers to prepare and submit written challenges under Article 9.15.6(a).

#### Schedule of the Dominican Republic

1. Article 9.3 (make publicly available judicial decisions and administrative rulings of general application governing procurement)<sup>3</sup>
2. Article 9.4.2 (inclusion of an indication that the procurement is covered by this Chapter in the notice of intended procurement)
3. Article 9.5.1 (40-days time limit for the tendering process)<sup>2</sup>
4. Article 9.9.3 (only for preparation of written reports for the awarding of contracts using direct purchasing)
5. Article 9.11.2 (publication of a notice regarding the contract award)
6. Article 9.13 (establishment and maintenance of procedures that declare a supplier ineligible for participation)

#### Notes to the Dominican Republic Schedule

1. Article 9.3: The Dominican Republic shall provide to the other Parties any judicial decision and administrative ruling of general application governing procurement.

2. Article 9.5.1: The Dominican Republic shall provide at least 30 days for the tendering process set out in Article 9.5.1.

**Schedule of Guatemala**

1. Article 9.4.2 (inclusion of an indication that the procurement is covered by this Chapter in the notice of intended procurement)
2. Article 9.5.1 (40-days time limit for the tendering process)<sup>1</sup>
3. Article 9.6.3 (written communication of modification to tender documentation)
4. Article 9.11.2 (publication of a notice regarding the contract award)
5. Article 9.13 (establishment and maintenance of procedures that declare a supplier ineligible for participation)<sup>2</sup>
6. Article 9.15.6 (period provided to suppliers to prepare and submit written challenges)

**Notes to Guatemala Schedule**

1. Article 9.5.1: For the tendering process set out in Article 9.5.1, Guatemala shall provide at least eight days for suppliers to submit tenders following the publication of the notice of intended procurement.
2. Article 9.13: Guatemala shall not adopt any measure that weakens its current practice with respect to Article 9.13.

**Schedule of Honduras**

1. Article 9.4.2 (inclusion of an indication that the procurement is covered by this Chapter in the notice of intended procurement)
2. Article 9.5.1 (40-days time limit for the tendering process)<sup>1</sup>
3. Article 9.6.3 (written communication of modification to tender documentation)
4. Article 9.11.2 (publication of a notice regarding the contract award)
5. Article 9.15.6(a) (period provided to suppliers to prepare and submit written challenges)<sup>2</sup>

**Notes to Honduras Schedule**

1. Article 9.5.1: Honduras shall provide at least 15 days for the tendering process set out in Article 9.5.1, except for build-operate-transfer or public works concession contracts, in which case Honduras shall provide at least 30 days for the tendering process.
2. Article 9.15.6(a): Honduras shall provide at least five days for the period provided to suppliers to prepare and submit written challenges set out in Article 9.15.6(a).

**Schedule of Nicaragua**

1. Article 9.4.2 (inclusion of an indication that the procurement is covered by this Chapter in the notice of intended procurement)
2. Article 9.5.1 (40-days time limit for the tendering process)<sup>1</sup>
3. Article 9.6.3 (written communication of modification to tender documentation)
4. Article 9.11.2 (publication of a notice regarding the contract award)
5. Article 9.13 (establishment and maintenance of procedures that declare a supplier ineligible for participation)<sup>2</sup>
6. Article 9.15.6 (period provided to suppliers to prepare and submit written challenges)<sup>3</sup>

**Notes to Nicaragua Schedule**

1. Article 9.5.1: For the tendering process set out in Article 9.5.1, Nicaragua shall provide at least 30 days for a *Licitación Pública* procurement and at least 15 days for a *Licitación por Registro* procurement.
2. Article 9.13: Nicaragua shall not adopt any measure that weakens its current practice with respect to Article 9.13.
3. Article 9.15.6: Nicaragua shall provide at least five days for suppliers to prepare and submit written challenges set out in Article 9.15.6.

## Section J

**Transition Mechanisms for Coverage of Construction Services – the Dominican Republic**

1. Notwithstanding Article 9.2.4, the Dominican Republic may, subject to paragraphs 2 through 5, maintain the following offsets, as provided for in Law No. 322 of 2 June 1981, and its Regulation No. 578-86 with respect to procurement covered by Section F of this Chapter:
  - (a) a requirement that a foreign supplier seeking to participate in a procurement covered by this Chapter must be associated with an enterprise established under the laws of the Dominican Republic, that is capitalized with Dominican or mixed Dominican and foreign capital, and where the share held by the foreign supplier in the association is limited to no more than 50 percent, which may be increased to 70 percent depending on the availability of Dominican capital; and
  - (b) a requirement that 50 percent of the management of a procurement covered by this Chapter be comprised of Dominican nationals.
2. Where a procuring entity seeks, takes account of, or imposes an offset under paragraph 1, the entity:
  - (a) shall clearly describe the offset in the notice of intended procurement or notice inviting suppliers to participate in the procurement and in relevant tender documentation;
  - (b) shall conduct the procurement in accordance with the procedures in this Chapter;
  - (c) shall apply the offset in a non-discriminatory manner that does not provide U.S. suppliers with treatment that is less favorable than the treatment given to suppliers of any other foreign country; and
  - (d) may not require suppliers to purchase goods or services on non-competitive terms or of substandard quality, or to take any action that is not justified from a commercial standpoint.
3. The limitations permitted under paragraph 1 shall be reduced over a period of 15 years as follows:
  - (a) 40 percent for any procurement initiated after the beginning of the sixth year after the date of entry into force of this Agreement and until the end of the tenth year after the date of entry into force of this Agreement;
  - (b) 30 percent for any procurement initiated after the beginning of the 11th year after the date of entry into force of this Agreement and until the end of 12th year after the date of entry into force of this Agreement; and
  - (c) 20 percent for any procurement initiated after the beginning of 13th year after the entry into force of this Agreement.
4. During the 13th year after the date of entry into force of this Agreement, the Dominican Republic and the United States shall enter into consultations with regard to the treatment of the offsets described in paragraph 1, following the end of the 15-year period referred to in paragraph 3, with a view to the elimination of the offsets. The consultations shall take into consideration, *inter alia*, the general and economic developments in the Dominican Republic, its implementation of this Chapter, and the need to maintain the offsets. If, by the end of the 15th year after the date of entry into

force of this Agreement, the Dominican Republic and the United States are unable to reach agreement on the treatment of the offsets from the end of the 15th year, the United States may reduce the access that it accords to the Dominican Republic, as set out in the Schedules of the United States to this Annex.

5. At the end of each period specified in paragraph 3, the Dominican Republic shall provide written reports to the United States on the implementation of the transitional mechanism provided for in this Section.

**Annex 9.1.2(b)(ii)****Section A: Entities**

For Costa Rica, El Salvador, Honduras, Guatemala, and Nicaragua:

- (a) this Chapter applies to covered procurement by central, sub-central, and other government entities, subject to Section 1 (Transition Mechanisms) of Annex 9.1.2(b)(i), and the General Notes to this Annex; and
- (b) notwithstanding subparagraph (a), and subject to Articles 9.2 and 9.3, each Party's law shall apply to procurement by entities:
  - (i) listed in Annex 9.1.2(b)(i) where the estimated value of the procurement is less than the applicable threshold provided in Sections A, B, or C of that Annex; and
  - (ii) not listed in Annex 9.1.2(b)(i).

**Section B: Goods**

For Costa Rica, El Salvador, Honduras, Guatemala, and Nicaragua, this Chapter applies to all goods procured by the entities listed in Section A, subject to the General Notes, and except as otherwise provided in Section A.

**Section C: Services**

For Costa Rica, El Salvador, Honduras, Guatemala, and Nicaragua, this Chapter applies to all services procured by the entities listed in Section A, subject to the existing measures listed in each Party's Schedule to Annex I and the General Notes, and except as otherwise provided in Section A.

**Section D: Construction Services**

For Costa Rica, El Salvador, Honduras, Guatemala, and Nicaragua, this Chapter applies to all construction services procured by the entities listed in Section A, subject to the existing measures listed in each Party's Schedule to Annex I and the General Notes, and except as otherwise provided in Section A.

**Section E: General Notes****Schedule of Costa Rica**

1. This Chapter does not apply to procurement by one Costa Rican entity of a good or service obtained or acquired from another Costa Rican entity.
2. This Chapter does not apply to government procurement programs on behalf of small, medium, and micro enterprises.
3. The 40-day time limit set out in Article 9.5.1 shall not apply to the *Instituto Costarricense de Electricidad* ("ICE"). ICE shall provide suppliers sufficient time to prepare

and submit responsive tenders. Notwithstanding Article 9.15.6(a), ICE shall provide no less than three business days for suppliers to prepare and submit written challenges.

**Schedule of El Salvador**

This Chapter does not apply to procurement by one Salvadoran entity of a good or service obtained or acquired from another Salvadoran entity.

**Schedule of Guatemala**

1. This Chapter does not apply to procurement by one Guatemalan entity of a good or service obtained or acquired from another Guatemalan entity.
2. This Chapter does not apply to the exceptions established in Article 44 of the *Ley de Contrataciones del Estado, Decreto 57-92 del Congreso de la República*.
3. Guatemala shall be permitted to implement a procurement measure that is intended to promote the development of its minority-owned or small, medium, and micro enterprises to the same extent that any such program is permitted under Guatemala's Schedule to Section G of Annex 9.1.2(b)(i).

**Schedule of Honduras**

This Chapter does not apply to procurement by one Honduran entity of a good or service obtained or acquired from another Honduran entity.

**Schedule of Nicaragua**

1. This Chapter does not apply to procurement by one Nicaraguan entity of a good or service obtained or acquired from another Nicaraguan entity.
2. This Chapter does not apply to the acquisition of weapons, ammunitions, warfare materials, or any other procurement required for national security, public security, or national defense purposes.

**Annex 9.1.2(b)(iii)****Section A: Entities**

For each Central American Party and the Dominican Republic:

- (a) this Chapter applies to covered procurements by Central, sub-central and other government entities, subject to Sections G (General Notes)<sup>1 2 3</sup> and I (Transition Mechanisms) of Annex 9.1.2(b)(i), except those listed in each Party's Schedule to this Section; and
- (b) notwithstanding subparagraph (a) and according to Articles 9.2, 9.3, and 9.15, and subject to the General Notes of this Annex, each Party shall apply its law to procurement by entities:
  - (i) listed in Annex 9.1.2(b)(i) where the estimated value of the procurement is less than the applicable threshold provided in Sections A, B or C of that Annex;
  - (ii) not listed in Annex 9.1.2(b)(i).

**I. Costa Rica – Dominican Republic****Schedule of Costa Rica**

1. Non-state owned public entities where more than fifty percent (50%) of the financial resources come from the entities' own resources or contributions of its union members;
2. Public entities for which the majority of the capital stock belongs to individuals rather than the public sector;
3. *Banco Central de Costa Rica*
4. *Banco de Costa Rica*
5. *Banco Nacional de Costa Rica*
6. *Banco Popular y de Desarrollo Comunal*
7. *Banco Crédito Agrícola de Cartago*
8. *Banco Hipotecario de la Vivienda*
9. Those entities excluded by domestic law from the application of the procurement procedures contained in Costa Rica's *Ley de Contratación Administrativa*, No. 7494 of May 2, 1995.

**Schedule of the Dominican Republic**

1. Public entities for which the majority of its capital stock belongs to individuals rather than the public sector;
2. *Banco Central de la República Dominicana*
3. *Banco Agrícola*
4. *Corporación de Fomento Industrial*
5. *Banco Nacional de Fomento a la Vivienda y la Producción*

<sup>1</sup> General Note No. 1 of the Dominican Republic's Schedule is of reciprocal application with El Salvador

<sup>2</sup> General Note No. 2 of the Dominican Republic's Schedule does not apply to each Central American Party.

<sup>3</sup> General Notes No. 3 and 6 of the Dominican Republic's Schedule do not apply to Guatemala, except in relation to the border with Haiti.

**II. El Salvador–Dominican Republic**

El Salvador and the Dominican Republic shall not exclude any institution from the scope of application of this Chapter.

**III. Guatemala–Dominican Republic****Schedule of Guatemala**

1. *Ministerio de la Defensa Nacional*
2. *Tribunal Supremo Electoral*
3. *Banco de Guatemala*

**Schedule of the Dominican Republic**

1. *Secretaría de Estado de las Fuerzas Armadas*
2. *Junta Central Electoral*
3. *Banco Central de la República Dominicana*

**IV. Honduras–Dominican Republic****Schedule of Honduras**

1. *Banco Central de Honduras*
2. Public enterprises where capital stock is shared with individuals
3. *Secretaría de Estado en el Despacho de Defensa Nacional and Secretaría de Estado en el Despacho de Seguridad*
4. *Tribunal Nacional de Elecciones*
5. Entities excluded by domestic law from the application of government procurement procedures.

**Schedule of the Dominican Republic**

1. *Banco Central de la República Dominicana*
2. Public enterprises where capital stock is shared with individuals
3. *Secretaría de Estado de las Fuerzas Armadas and the Policía Nacional*
4. *Junta Central Electoral*
5. Entities excluded by domestic law from the application of government procurement procedures.

**V. Nicaragua – Dominican Republic****Schedule of Nicaragua**

1. *Ministerio de Defensa (Army)*
2. Public Financial Sector

**Schedule of the Dominican Republic**

1. *Secretaría de Estado de las Fuerzas Armadas*, with respect to any matter exclusively dedicated to safeguard national security;
2. *Banco de Reservas*
3. *Banco Agrícola*
4. *Corporación de Fomento Industria*
5. *Banco Nacional de Fomento a la Vivienda y la Producción*

#### Section B: Goods

For each Central American Party and the Dominican Republic, this Chapter applies to all goods procured by covered entities in accordance with Section A, subject to the General Notes, and except as otherwise provided in Section A.

For each Central American Party and the Dominican Republic, this Chapter does not apply to the acquisition of weapons, ammunitions, warfare materials, or any other procurement of goods necessary to protect national security, public security, or for national defense purposes.

#### Section C: Services

For each Central American Party and the Dominican Republic, this Chapter applies to all services procured by covered entities in accordance with Section A, subject to the existing measures listed in each Parties' Schedule to Annex I, and the General Notes, and except as otherwise provided in Section A.

#### Section D: Construction Services

For each Central American Party and the Dominican Republic, this Chapter does not cover construction of public works or public works concession contracts; however each Central American Party and the Dominican Republic shall initiate consultations in order to determine the viability and desirability of including in the coverage of this Chapter construction of public works and public works concession contracts.

#### Section E: General Notes

##### I. Costa Rica –Dominican Republic

##### Schedule of Costa Rica

1. This Chapter does not apply to:
  - (a) activities excluded from public tendering procedures explicitly listed in Article 2 of the *Ley de Contratación Administrativa N. 7494 del 2 de mayo de 1995*;
  - (b) employment relations;
  - (c) public loans;
  - (d) public works contracts, concession for public facilities, public works concession and work concessions for public service, transfers of real estate generally or any other type of contracting that is not a procurement of goods or services;
  - (e) other activities and public procurements that, according to domestic law, are subject to a special procurement regime, different than what is established in the *Ley de Contratación Administrativa No. 7494 del 2 de mayo de 1995* and its regulation, without prejudice to paragraph 2 to this list.

2. The procurements by the *Caja Costarricense del Seguro Social* under the procedures established in *Ley 6914 del 15 de noviembre de 1983*, shall be covered by the scope and other provisions of this Chapter with the only exception that these procurements shall not be subject to Articles 9.6 and 9.15.

3. The 40-day time limit set out in Article 9.5.1 shall not apply to the *Instituto Costarricense de Electricidad* ("ICE"). ICE shall provide suppliers sufficient time to prepare and submit responsive tenders. Without prejudice to Article 9.15.6(a), ICE shall provide no less than three business days for suppliers to prepare and submit written challenges.

#### **Schedule of the Dominican Republic**

This Chapter does not apply to:

- (a) procurement and acquisition of goods, supplies, works and services necessary for the resolution of situations arising from an exception status declared by law;
- (b) the sell of special services conducted by public sector institutions;
- (c) negotiations and agreements with other States or with international public law entities, or the contractual activities between public entities;
- (d) procurement activities that by their nature, low value or other circumstances, cannot be subject or would not be convenient to be subject to a public tender, either because there is only one supplier, or because of special security reasons, extreme urgency or other exceptional circumstances, according to the domestic law;
- (e) procurement financed by loans and donations made by persons, entities, associations or other international organisms or foreign governments for the benefit of any Party, its entities, institutions or municipal governments. These procurements shall be governed by the terms of such special loans and donations.
- (f) procurement of goods, services and supplies between State agencies, and between those and decentralized, autonomous and municipal entities;
- (g) procurement of goods and services by delegations, embassies and consulates in a foreign territory;
- (h) employment relations;
- (i) public works contracts, public works concession contracts and work concessions for public service, transfer of real estate and any other type of procurement that is not a procurement of goods or services.

#### **II. El Salvador – Dominican Republic**

##### **Schedule of El Salvador- Dominican Republic**

1. This Chapter does not apply to the procurement by public entities of strategic goods, services and supplies:

- (a) to safeguard the borders, natural resources subject to international regimes, or the national territory;

- (b) for the procurement and acquisition of goods, supplies, works and services necessary for the resolution of situations arising from an exception status declared by law; and
- (c) for the procurement of goods, supplies, works and services that are necessary and urgent for the resolution of situations of national interest or social benefit.

2. This Chapter does not apply to procurement financed by loans and donations made by persons, entities, associations or other international organisms or foreign governments for the benefit of any Party, its entities, institutions or municipal governments. These procurements shall be governed by the terms of such special loans and donations, given that such financing is governed by contracts with special provisions.

3. This Chapter does not apply to procurement of goods, services and supplies between State agencies, and between those and the decentralized, autonomous and municipal entities.

4. This Chapter does not apply to procurement of goods, services and supplies that are made or manufactured by public agencies, autonomous or municipal entities.

5. This Chapter does not apply to:

- (a) articles procured for official parties or receptions; and
- (b) articles procured in foreign territories to be used in offices located in foreign territories;
- (c) subscriptions to or publication in newspapers, films, television editorial and television advertisement; and
- (d) procurement of individual professional services in general.

### **III. Guatemala –Dominican Republic**

#### **Schedule of Guatemala**

This Chapter does not apply to:

- (a) the procurement by public entities of strategic goods, public works concessions, services and supplies to safeguard the borders, bridges, natural resources subject to international regimes, or the national territory;
- (b) the procurement and acquisition of goods, supplies, public works, and services necessary for the resolution of situations arising from an exception status declared by law;
- (c) the procurement of goods, supplies, works and services that are necessary and urgent for the resolution of situations of national interest or social benefit;
- (d) procurement financed by loans and donations made by persons, entities, associations or other international organisms or foreign governments for the benefit of any Party, its entities, institutions or municipal governments. These procurements shall be governed by the terms of such special loans and donations;
- (e) the procurement of goods, services and supplies between State agencies, and between those and the decentralized, autonomous and municipal entities.

- (f) goods, work concessions, services and supplies, considered as specific exceptions procured by public entities including:
  - (i) goods, services or construction services procured by Guatemalan offices in a foreign territory, such as embassies, delegations and consulates or missions;
  - (ii) individual professional services in general; and
  - (iii) goods, supplies and services with sole suppliers.

**Schedule of the Dominican Republic**

This Chapter does not apply to:

- (a) procurement by public entities of strategic goods, public works concessions, services, and supplies to safeguard the borders, bridges, natural resources subject to international regimes, or the national territory;
- (b) procurement and acquisition of goods, supplies, works and services necessary for the resolution of situations arising from an exception status declared by the applicable Dominican Republic law;
- (c) procurement of goods, supplies, works and services that are necessary and urgent for the resolution of situations of national interest according to the domestic law;
- (d) procurement financed by loans and donations made by persons, entities, associations or other international organisms or foreign governments for the benefit of any Party, its entities, institutions or municipal governments. These procurements shall be governed by the terms of such special loans and donations;
- (e) procurement of goods, services and supplies between State agencies, and between those and the decentralized, autonomous and municipal entities; as well as goods, work concessions, services and supplies, considered as specific exceptions procured by public entities including:
  - (i) goods, services and contracts by delegations, Embassies and consulates in a foreign territory;
  - (ii) individual professional services in general.

**IV. Honduras – Dominican Republic**

**Schedule of Honduras – Dominican Republic**

1. This Chapter does not apply to the procurement and acquisition of goods, supplies, works and services necessary for the resolution of situations arising from an exception status declared by law;
2. This Chapter does not apply to the procurement by public entities of strategic goods, services and supplies:
  - (a) to safeguard the borders, bridges, natural resources subject to international regimes or the national territory;
  - (b) the procurement and acquisition of goods, supplies, works and services necessary for the resolution of situations derived from an exception status declared by law;

(c) the procurement of goods, supplies, works and services that are necessary and urgent for the resolution of situations of national interest or social benefit.

3. This Chapter does not apply to the procurement of goods, services and supplies between State agencies, and between those and the decentralized, autonomous and municipal entities;

4. Those that are made or manufactured by public agencies, autonomous or municipal entities.

5. This Chapter does not apply to the procurement financed by loans and donations made by persons, entities, associations or other international organisms or foreign governments for the benefit of any Party, its entities, institutions or municipal governments. These procurements shall be governed by the terms of such special loans and donations, given that such financing is governed by contracts with special provisions.

6. This Chapter does not apply to government procurement programs on behalf of small, medium, and micro enterprises.

7. This Chapter does not apply to:

- (a) procurement of goods, services and contracts by delegations, embassies and consulates in a foreign territory;
- (b) procurement of individual professional services in general; and
- (c) the acquisition and procurement of goods, supplies and services with sole suppliers.

#### V. Nicaragua –Dominican Republic

##### **Schedule of Nicaragua**

1. This Chapter does not apply to the exceptions included in Article 3 of Law No. 323, *Ley de Contrataciones del Estado*, published in *La Gaceta* 1 and 2 on January 3 and 4, 2000, and its amendments.

2. This Chapter does not apply to the procurement financed by loans and donations made by persons, entities, associations or other international organisms or foreign governments for the benefit of any Party, its entities, institutions or municipal governments. These procurements shall be governed by the terms of such special loans and donations.

##### **Schedule of the Dominican Republic**

With respect to the Dominican Republic and Nicaragua this Chapter does not apply to the:

- (a) procurement and acquisition of goods, supplies, works and services necessary for the resolution of situations arising from an exception status declared by the applicable Dominican Republic law;
- (b) procurement of goods, supplies, works and services that are necessary and urgent for the resolution of situations of national interest according to the domestic law;
- (c) procurement financed by loans and donations made by persons, entities, associations or other international organisms or foreign governments for the benefit of any Party, its

entities, institutions or municipal governments. These procurements shall be governed by the terms of such special loans and donations;

- (d) procurement of goods, services and supplies between State agencies, and between those and the decentralized, autonomous and municipal entities; as well as, goods, work concessions, services and supplies, considered as specific exceptions procured by public entities including:
  - (i) goods, services contracts or construction services by in delegations, embassies, and consulates a foreign territory;
  - (ii) individual professional services in general;
- (e) procurements or contracts to repair vehicles, engines, machinery and other similar items.

**Chapter Ten****Investment****Section A: Investment****Article 10.1: Scope and Coverage**

1. This Chapter applies to measures adopted or maintained by a Party relating to:
  - (a) investors of another Party;
  - (b) covered investments; and
  - (c) with respect to Articles 10.9 and 10.11, all investments in the territory of the Party.
2. A Party's obligations under this Section shall apply to a state enterprise or other person when it exercises any regulatory, administrative, or other governmental authority delegated to it by that Party.
3. For greater certainty, this Chapter does not bind any Party in relation to any act or fact that took place or any situation that ceased to exist before the date of entry into force of this Agreement.

**Article 10.2: Relation to Other Chapters**

1. In the event of any inconsistency between this Chapter and another Chapter, the other Chapter shall prevail to the extent of the inconsistency.
2. A requirement by a Party that a service supplier of another Party post a bond or other form of financial security as a condition of the cross-border supply of a service does not of itself make this Chapter applicable to measures adopted or maintained by the Party relating to such cross-border supply of the service. This Chapter applies to measures adopted or maintained by the Party relating to the posted bond or financial security, to the extent that such bond or financial security is a covered investment.
3. This Chapter does not apply to measures adopted or maintained by a Party to the extent that they are covered by Chapter Twelve (Financial Services).

**Article 10.3: National Treatment**

1. Each Party shall accord to investors of another Party treatment no less favorable than that it accords, in like circumstances, to its own investors with respect to the establishment, acquisition, expansion, management, conduct, operation, and sale or other disposition of investments in its territory.
2. Each Party shall accord to covered investments treatment no less favorable than that it accords, in like circumstances, to investments in its territory of its own investors with respect to the establishment, acquisition, expansion, management, conduct, operation, and sale or other disposition of investments.
3. The treatment to be accorded by a Party under paragraphs 1 and 2 means, with respect to a regional level of government, treatment no less favorable than the most favorable

treatment accorded, in like circumstances, by that regional level of government to investors, and to investments of investors, of the Party of which it forms a part.

**Article 10.4: Most-Favored-Nation Treatment**

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

**Article 10.5: Minimum Standard of Treatment<sup>1</sup>**

1. Each Party shall accord to covered investments treatment in accordance with customary international law, including fair and equitable treatment and full protection and security.
2. For greater certainty, paragraph 1 prescribes the customary international law minimum standard of treatment of aliens as the minimum standard of treatment to be afforded to covered investments. The concepts of "fair and equitable treatment" and "full protection and security" do not require treatment in addition to or beyond that which is required by that standard, and do not create additional substantive rights. The obligation in paragraph 1 to provide:
  - (a) "fair and equitable treatment" includes the obligation not to deny justice in criminal, civil, or administrative adjudicatory proceedings in accordance with the principle of due process embodied in the principal legal systems of the world; and
  - (b) "full protection and security" requires each Party to provide the level of police protection required under customary international law.
3. A determination that there has been a breach of another provision of this Agreement, or of a separate international agreement, does not establish that there has been a breach of this Article.

**Article 10.6: Treatment in Case of Strife**

1. Notwithstanding Article 10.13.5(b), each Party shall accord to investors of another Party, and to covered investments, non-discriminatory treatment with respect to measures it adopts or maintains relating to losses suffered by investments in its territory owing to armed conflict or civil strife.
2. Notwithstanding paragraph 1, if an investor of a Party, in the situations referred to in paragraph 1, suffers a loss in the territory of another Party resulting from:
  - (a) requisitioning of its covered investment or part thereof by the latter's forces or authorities; or

<sup>1</sup> Article 10.5 shall be interpreted in accordance with Annex 10-B.

- (b) destruction of its covered investment or part thereof by the latter's forces or authorities, which was not required by the necessity of the situation,

the latter Party shall provide the investor restitution or compensation, which in either case shall be in accordance with customary international law and, with respect to compensation, shall be in accordance with Article 10.7.2 through 10.7.4.<sup>2</sup>

- 3. Paragraph 1 does not apply to existing measures relating to subsidies or grants that would be inconsistent with Article 10.3 but for Article 10.13.5(b).

**Article 10.7: Expropriation and Compensation<sup>3</sup>**

- 1. No Party may expropriate or nationalize a covered investment either directly or indirectly through measures equivalent to expropriation or nationalization ("expropriation"), except:

- (a) for a public purpose;
- (b) in a non-discriminatory manner;
- (c) on payment of prompt, adequate, and effective compensation in accordance with paragraphs 2 through 4; and
- (d) in accordance with due process of law and Article 10.5.

- 2. Compensation shall:

- (a) be paid without delay;
- (b) be equivalent to the fair market value of the expropriated investment immediately before the expropriation took place ("the date of expropriation");
- (c) not reflect any change in value occurring because the intended expropriation had become known earlier; and
- (d) be fully realizable and freely transferable.

- 3. If the fair market value is denominated in a freely usable currency, the compensation paid shall be no less than the fair market value on the date of expropriation, plus interest at a commercially reasonable rate for that currency, accrued from the date of expropriation until the date of payment.

- 4. If the fair market value is denominated in a currency that is not freely usable, the compensation paid – converted into the currency of payment at the market rate of exchange prevailing on the date of payment – shall be no less than:

- (a) the fair market value on the date of expropriation, converted into a freely usable currency at the market rate of exchange prevailing on that date, plus

<sup>2</sup> The limitations set out in Annex 10-D apply to the submission to arbitration under Section B of a claim alleging a breach of this paragraph.

<sup>3</sup> Article 10.7 shall be interpreted in accordance with Annexes 10-B and 10-C.

- (b) interest, at a commercially reasonable rate for that freely usable currency, accrued from the date of expropriation until the date of payment.

5. This Article does not apply to the issuance of compulsory licenses granted in relation to intellectual property rights in accordance with the TRIPS Agreement, or to the revocation, limitation, or creation of intellectual property rights, to the extent that such issuance, revocation, limitation, or creation is consistent with Chapter Fifteen (Intellectual Property Rights).<sup>4</sup>

**Article 10.8: Transfers**

1. Each Party shall permit all transfers relating to a covered investment to be made freely and without delay into and out of its territory. Such transfers include:
  - (a) contributions to capital;
  - (b) profits, dividends, capital gains, and proceeds from the sale of all or any part of the covered investment or from the partial or complete liquidation of the covered investment;
  - (c) interest, royalty payments, management fees, and technical assistance and other fees;
  - (d) payments made under a contract, including a loan agreement;
  - (e) payments made pursuant to Article 10.6.1 and 10.6.2 and Article 10.7; and
  - (f) payments arising out of a dispute.
2. Each Party shall permit transfers relating to a covered investment to be made in a freely usable currency at the market rate of exchange prevailing at the time of transfer.
3. Each Party shall permit returns in kind relating to a covered investment to be made as authorized or specified in a written agreement between the Party and a covered investment or an investor of another Party.
4. Notwithstanding paragraphs 1 through 3, a Party may prevent a transfer through the equitable, nondiscriminatory, 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, futures, options, or derivatives;
  - (c) criminal or penal offenses;
  - (d) financial reporting or record keeping of transfers when necessary to assist law enforcement or financial regulatory authorities; or
  - (e) ensuring compliance with orders or judgments in judicial or administrative proceedings.

<sup>4</sup> For greater certainty, the reference to "the TRIPS Agreement" in paragraph 5 includes any waiver in force between the Parties of any provision of that Agreement granted by WTO Members in accordance with the WTO Agreement.

**Article 10.9: Performance Requirements**

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

- (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 in its territory, or to purchase goods 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 supplies by relating such sales in any way to the volume or value of its exports or foreign exchange earnings;
- (f) to transfer a particular technology, a production process, or other proprietary knowledge to a person in its territory; or
- (g) to supply exclusively from the territory of the Party the goods that such investment produces or the services that it supplies to a specific regional market or to the world market.

2. No Party may condition the receipt or continued receipt of an advantage, in connection with the establishment, acquisition, expansion, management, conduct, operation, or sale or other disposition of an investment in its territory of an investor of a Party or of a non-Party, on compliance with any of the following requirements:

- (a) to achieve a given level or percentage of domestic content;
- (b) to purchase, use, or accord a preference to goods produced in its territory, or to purchase goods from persons in its territory;
- (c) to relate in any way the volume or value of imports to the volume or value of exports or to the amount of foreign exchange inflows associated with such investment; or
- (d) to restrict sales of goods or services in its territory that such investment produces or supplies by relating such sales in any way to the volume or value of its exports or foreign exchange earnings.

3. (a) Nothing in paragraph 2 shall be construed to prevent a Party from conditioning the receipt or continued receipt of an advantage, in connection with an investment in its territory of an investor of a Party or of a non-Party, on compliance with a requirement to locate production, supply a service, train or employ workers, construct or expand particular facilities, or carry out research and development, in its territory.

- (b) Paragraph 1(f) does not apply;

- (i) when a Party authorizes use of an intellectual property right in accordance with Article 31 of the TRIPS Agreement, or to measures requiring the disclosure of proprietary information that fall within the scope of, and are consistent with, Article 39 of the TRIPS Agreement;<sup>5</sup> or
  - (ii) when the requirement is imposed or the commitment or undertaking is enforced by a court, administrative tribunal, or competition authority to remedy a practice determined after judicial or administrative process to be anticompetitive under the Party's competition laws.<sup>6</sup>
- (c) Provided that such measures are not applied in an arbitrary or unjustifiable manner, and provided that such measures do not constitute a disguised restriction on international trade or investment, paragraphs 1(b), (c), and (f), and 2(a) and (b), shall not be construed to prevent a Party from adopting or maintaining measures, including environmental measures:
- (i) necessary to secure compliance with laws and regulations that are not inconsistent with this Agreement;
  - (ii) necessary to protect human, animal, or plant life or health; or
  - (iii) related to the conservation of living or non-living exhaustible natural resources.
- (d) Paragraphs 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 and foreign aid programs.
- (e) Paragraphs 1(b), (c), (f), and (g), and 2(a) and (b), do not apply to procurement.
- (f) Paragraphs 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.
4. For greater certainty, paragraphs 1 and 2 do not apply to any requirement other than the requirements set out in those paragraphs.

5. This Article does not preclude enforcement of any commitment, undertaking, or requirement between private parties, where a Party did not impose or require the commitment, undertaking, or requirement.

**Article 10.10: Senior Management and Boards of Directors**

1. No Party may require that an enterprise of that Party that is a covered investment appoint to senior management positions natural persons of any particular nationality.

2. A Party may require that a majority of the board of directors, or any committee thereof, of an enterprise of that Party that is a covered investment, be of a particular

<sup>5</sup> For greater certainty, the references to "the TRIPS Agreement" in paragraph 3(b)(i) include any waiver in force between the Parties of any provision of that Agreement granted by WTO Members in accordance with the WTO Agreement.

<sup>6</sup> The Parties recognize that a patent does not necessarily confer market power.

nationality, or resident in the territory of the Party, provided that the requirement does not materially impair the ability of the investor to exercise control over its investment.

**Article 10.11: Investment and Environment**

Nothing in this Chapter shall be construed to prevent a Party from adopting, maintaining, or enforcing any measure otherwise consistent with this Chapter that it considers appropriate to ensure that investment activity in its territory is undertaken in a manner sensitive to environmental concerns.

**Article 10.12: Denial of Benefits**

1. A Party may deny the benefits of this Chapter to an investor of another Party that is an enterprise of such other Party and to investments of that investor if persons of a non-Party own or control the enterprise and the denying Party:

- (a) does not maintain diplomatic relations with the non-Party; or
- (b) adopts or maintains measures with respect to the non-Party or a person of the non-Party that prohibit transactions with the enterprise or that would be violated or circumvented if the benefits of this Chapter were accorded to the enterprise or to its investments.

2. Subject to Articles 18.3 (Notification and Provision of Information) and 20.4 (Consultations), a Party may deny the benefits of this Chapter to an investor of another Party that is an enterprise of such other Party and to investments of that investor if the enterprise has no substantial business activities in the territory of any Party, other than the denying Party, and persons of a non-Party, or of the denying Party, own or control the enterprise.

**Article 10.13: Non-Conforming Measures**

1. Articles 10.3, 10.4, 10.9, and 10.10 do not apply to:

- (a) any existing non-conforming measure that is maintained by a Party at:
  - (i) the central level of government, as set out by that Party in its Schedule to Annex I,
  - (ii) a regional level of government, as set out by that Party in its Schedule to Annex I, or
  - (iii) a local level of government;
- (b) the continuation or prompt renewal of any non-conforming measure referred to in subparagraph (a); or
- (c) an amendment to any non-conforming measure referred to in subparagraph (a) to the extent that the amendment does not decrease the conformity of the measure, as it existed immediately before the amendment, with Article 10.3, 10.4, 10.9, or 10.10.

2. Articles 10.3, 10.4, 10.9, and 10.10 do not apply to any measure that a Party adopts or maintains with respect to sectors, subsectors, or activities, as set out in its Schedule to Annex II.

3. No Party may, under any measure adopted after the date of entry into force of this Agreement and covered by its Schedule to Annex II, require an investor of another Party, by reason of its nationality, to sell or otherwise dispose of an investment existing at the time the measure becomes effective.

4. Articles 10.3 and 10.4 do not apply to any measure that is an exception to, or derogation from, the obligations under Article 15.1.8 (General Provisions) as specifically provided in that Article.

5. Articles 10.3, 10.4, and 10.10 do not apply to:

- (a) procurement; or
- (b) subsidies or grants provided by a Party, including government-supported loans, guarantees, and insurance.

**Article 10.14: Special Formalities and Information Requirements**

1. Nothing in Article 10.3 shall be construed to prevent a Party from adopting or maintaining a measure that prescribes special formalities in connection with covered investments, such as a requirement that investors be residents of the Party or that covered 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 to investors of another Party and covered investments pursuant to this Chapter.

2. Notwithstanding Articles 10.3 and 10.4, a Party may require an investor of another Party, or a covered investment, to provide information concerning that investment solely for informational or statistical purposes. The Party shall protect any confidential business information from any disclosure that would prejudice the competitive position of the investor or the covered investment. Nothing in this paragraph shall be construed to prevent a Party from otherwise obtaining or disclosing information in connection with the equitable and good faith application of its law.

**Section B: Investor-State Dispute Settlement**

**Article 10.15: Consultation and Negotiation**

In the event of an investment dispute, the claimant and the respondent should initially seek to resolve the dispute through consultation and negotiation, which may include the use of non-binding, third-party procedures such as conciliation and mediation.

**Article 10.16: Submission of a Claim to Arbitration**

1. In the event that a disputing party considers that an investment dispute cannot be settled by consultation and negotiation:

- (a) the claimant, on its own behalf, may submit to arbitration under this Section a claim
  - (i) that the respondent has breached
    - (A) an obligation under Section A,
    - (B) an investment authorization, or
    - (C) an investment agreement;

and

(ii) that the claimant has incurred loss or damage by reason of, or arising out of, that breach; and

(b) the claimant, on behalf of an enterprise of the respondent that is a juridical person that the claimant owns or controls directly or indirectly, may submit to arbitration under this Section a claim

(i) that the respondent has breached

(A) an obligation under Section A,

(B) an investment authorization, or

(C) an investment agreement;

and

(ii) that the enterprise has incurred loss or damage by reason of, or arising out of, that breach.

2. At least 90 days before submitting any claim to arbitration under this Section, a claimant shall deliver to the respondent a written notice of its intention to submit the claim to arbitration ("notice of intent"). The notice shall specify:

(a) the name and address of the claimant and, where a claim is submitted on behalf of an enterprise, the name, address, and place of incorporation of the enterprise;

(b) for each claim, the provision of this Agreement, investment authorization, or investment agreement alleged to have been breached and any other relevant provisions;

(c) the legal and factual basis for each claim; and

(d) the relief sought and the approximate amount of damages claimed.

3. Provided that six months have elapsed since the events giving rise to the claim, a claimant may submit a claim referred to in paragraph 1:

(a) under the ICSID Convention and the ICSID Rules of Procedures for Arbitration Proceedings, provided that both the respondent and the Party of the claimant are parties to the ICSID Convention;

(b) under the ICSID Additional Facility Rules, provided that either the respondent or the Party of the claimant is a party to the ICSID Convention; or

(c) under the UNCITRAL Arbitration Rules.

4. A claim shall be deemed submitted to arbitration under this Section when the claimant's notice of or request for arbitration ("notice of arbitration"):

(a) referred to in paragraph 1 of Article 36 of the ICSID Convention is received by the Secretary-General;

- (b) referred to in Article 2 of Schedule C of the ICSID Additional Facility Rules is received by the Secretary-General; or
- (c) referred to in Article 3 of the UNCITRAL Arbitration Rules, together with the statement of claim referred to in Article 18 of the UNCITRAL Arbitration Rules, are received by the respondent.

A claim asserted for the first time after such notice of arbitration is submitted shall be deemed submitted to arbitration under this Section on the date of its receipt under the applicable arbitral rules.

5. The arbitration rules applicable under paragraph 3, and in effect on the date the claim or claims were submitted to arbitration under this Section, shall govern the arbitration except to the extent modified by this Agreement.

6. The claimant shall provide with the notice of arbitration:

- (a) the name of the arbitrator that the claimant appoints; or
- (b) the claimant's written consent for the Secretary-General to appoint such arbitrator.

**Article 10.17: Consent of Each Party to Arbitration**

1. Each Party consents to the submission of a claim to arbitration under this Section in accordance with this Agreement.

2. The consent under paragraph 1 and the submission of a claim to arbitration under this Section shall satisfy the requirements of:

- (a) Chapter II of the ICSID Convention (Jurisdiction of the Centre) and the ICSID Additional Facility Rules for written consent of the parties to the dispute;
- (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 10.18: Conditions and Limitations on Consent of Each Party**

1. No claim may be submitted to arbitration under this Section if more than three years have elapsed from the date on which the claimant first acquired, or should have first acquired, knowledge of the breach alleged under Article 10.16.1 and knowledge that the claimant (for claims brought under Article 10.16.1(a)) or the enterprise (for claims brought under Article 10.16.1(b)) has incurred loss or damage.

2. No claim may be submitted to arbitration under this Section unless:

- (a) the claimant consents in writing to arbitration in accordance with the procedures set out in this Agreement; and
- (b) the notice of arbitration is accompanied,
  - (i) for claims submitted to arbitration under Article 10.16.1(a), by the claimant's written waiver, and

- (ii) for claims submitted to arbitration under Article 10.16.1(b), by the claimant's and the enterprise's written waivers

of any right to initiate or continue before any administrative tribunal or court under the law of any Party, or other dispute settlement procedures, any proceeding with respect to any measure alleged to constitute a breach referred to in Article 10.16.

3. Notwithstanding paragraph 2(b), the claimant (for claims brought under Article 10.16.1(a)) and the claimant or the enterprise (for claims brought under Article 10.16.1(b)) may initiate or continue an action that seeks interim injunctive relief and does not involve the payment of monetary damages before a judicial or administrative tribunal of the respondent, provided that the action is brought for the sole purpose of preserving the claimant's or the enterprise's rights and interests during the pendency of the arbitration.

4. No claim may be submitted to arbitration:

- (a) for breach of an investment authorization under Article 10.16.1(a)(i)(B) or Article 10.16.1(b)(i)(B), or
- (b) for breach of an investment agreement under Article 10.16.1(a)(i)(C) or Article 10.16.1(b)(i)(C),

if the claimant (for claims brought under Article 10.16.1(a)) or the claimant or the enterprise (for claims brought under Article 10.16.1(b)) has previously submitted the same alleged breach to an administrative tribunal or court of the respondent, or to any other binding dispute settlement procedure, for adjudication or resolution.

#### **Article 10.19: Selection of Arbitrators**

1. Unless the disputing parties otherwise agree, the tribunal shall comprise three arbitrators, one arbitrator appointed by each of the disputing parties and the third, who shall be the presiding arbitrator, appointed by agreement of the disputing parties.

2. The Secretary-General shall serve as appointing authority for an arbitration under this Section.

3. If a tribunal has not been constituted within 75 days from the date that a claim is submitted to arbitration under this Section, the Secretary-General, on the request of a disputing party, shall appoint, in his or her discretion, the arbitrator or arbitrators not yet appointed.

4. For purposes of Article 39 of the ICSID Convention and Article 7 of Schedule C to the ICSID Additional Facility Rules, and without prejudice to an objection to an arbitrator on a ground other than nationality:

- (a) the respondent agrees to the appointment of each individual member of a tribunal established under the ICSID Convention or the ICSID Additional Facility Rules;
- (b) a claimant referred to in Article 10.16.1(a) may submit a claim to arbitration under this Section, or continue a claim, under the ICSID Convention or the ICSID Additional Facility Rules, only on condition that the claimant agrees in writing to the appointment of each individual member of the tribunal; and

- (c) a claimant referred to in Article 10.16.1(b) may submit a claim to arbitration under this Section, or continue a claim, under the ICSID Convention or the ICSID Additional Facility Rules, only on condition that the claimant and the enterprise agree in writing to the appointment of each individual member of the tribunal.

**Article 10.20: Conduct of the Arbitration**

1. The disputing parties may agree on the legal place of any arbitration under the arbitral rules applicable under Article 10.16.3. If the disputing parties fail to reach agreement, the tribunal shall determine the place in accordance with the applicable arbitral rules, provided that the place shall be in the territory of a State that is a party to the New York Convention.
2. A non-disputing Party may make oral and written submissions to the tribunal regarding the interpretation of this Agreement.
3. The tribunal shall have the authority to accept and consider *amicus curiae* submissions from a person or entity that is not a disputing party.
4. Without prejudice to a tribunal's authority to address other objections as a preliminary question, a tribunal shall address and decide as a preliminary question any objection by the respondent that, as a matter of law, a claim submitted is not a claim for which an award in favor of the claimant may be made under Article 10.26.
  - (a) Such objection shall be submitted to the tribunal as soon as possible after the tribunal is constituted, and in no event later than the date the tribunal fixes for the respondent to submit its counter-memorial (or, in the case of an amendment to the notice of arbitration, the date the tribunal fixes for the respondent to submit its response to the amendment).
  - (b) On receipt of an objection under this paragraph, the tribunal shall suspend any proceedings on the merits, establish a schedule for considering the objection consistent with any schedule it has established for considering any other preliminary question, and issue a decision or award on the objection, stating the grounds therefor.
  - (c) In deciding an objection under this paragraph, the tribunal shall assume to be true claimant's factual allegations in support of any claim in the notice of arbitration (or any amendment thereof) and, in disputes brought under the UNCITRAL Arbitration Rules, the statement of claim referred to in Article 18 of the UNCITRAL Arbitration Rules. The tribunal may also consider any relevant facts not in dispute.
  - (d) The respondent does not waive any objection as to competence or any argument on the merits merely because the respondent did or did not raise an objection under this paragraph or make use of the expedited procedure set out in paragraph 5.
5. In the event that the respondent so requests within 45 days after the tribunal is constituted, the tribunal shall decide on an expedited basis an objection under paragraph 4 and any objection that the dispute is not within the tribunal's competence. The tribunal shall suspend any proceedings on the merits and issue a decision or award on the objection(s), stating the grounds therefor, no later than 150 days after the date of the request. However, if a disputing party requests a hearing, the tribunal may take an additional 30 days to issue the decision or award. Regardless of whether a hearing is requested, a tribunal may, on a

showing of extraordinary cause, delay issuing its decision or award by an additional brief period, which may not exceed 30 days.

6. When it decides a respondent's objection under paragraph 4 or 5, the tribunal may, if warranted, award to the prevailing disputing party reasonable costs and attorney's fees incurred in submitting or opposing the objection. In determining whether such an award is warranted, the tribunal shall consider whether either the claimant's claim or the respondent's objection was frivolous, and shall provide the disputing parties a reasonable opportunity to comment.

7. A respondent may not assert as a defense, counterclaim, right of set-off, or for any other reason that the claimant has received or will receive indemnification or other compensation for all or part of the alleged damages pursuant to an insurance or guarantee contract.

8. A tribunal may order an interim measure of protection to preserve the rights of a disputing party, or to ensure that the tribunal's jurisdiction is made fully effective, including an order to preserve evidence in the possession or control of a disputing party or to protect the tribunal's jurisdiction. A tribunal may not order attachment or enjoin the application of a measure alleged to constitute a breach referred to in Article 10.16. For purposes of this paragraph, an order includes a recommendation.

9. (a) In any arbitration conducted under this Section, at the request of a disputing party, a tribunal shall, before issuing a decision or award on liability, transmit its proposed decision or award to the disputing parties and to the non-disputing Parties. Within 60 days after the tribunal transmits its proposed decision or award, the disputing parties may submit written comments to the tribunal concerning any aspect of its proposed decision or award. The tribunal shall consider any such comments and issue its decision or award not later than 45 days after the expiration of the 60-day comment period.

(b) Subparagraph (a) shall not apply in any arbitration conducted pursuant to this Section for which an appeal has been made available pursuant to paragraph 10 or Annex 10-F.

10. If a separate multilateral agreement enters into force as between the Parties that establishes an appellate body for purposes of reviewing awards rendered by tribunals constituted pursuant to international trade or investment arrangements to hear investment disputes, the Parties shall strive to reach an agreement that would have such appellate body review awards rendered under Article 10.26 in arbitrations commenced after the multilateral agreement enters into force as between the Parties.

**Article 10.21: Transparency of Arbitral Proceedings**

1. Subject to paragraphs 2 and 4, the respondent shall, after receiving the following documents, promptly transmit them to the non-disputing Parties and make them available to the public:

- (a) the notice of intent;
- (b) the notice of arbitration;
- (c) pleadings, memorials, and briefs submitted to the tribunal by a disputing party and any written submissions submitted pursuant to Article 10.20.2 and 10.20.3 and Article 10.25;

- (d) minutes or transcripts of hearings of the tribunal, where available; and
- (e) orders, awards, and decisions of the tribunal.

2. The tribunal shall conduct hearings open to the public and shall determine, in consultation with the disputing parties, the appropriate logistical arrangements. However, any disputing party that intends to use information designated as protected information in a hearing shall so advise the tribunal. The tribunal shall make appropriate arrangements to protect the information from disclosure.

3. Nothing in this Section requires a respondent to disclose protected information or to furnish or allow access to information that it may withhold in accordance with Article 21.2 (Essential Security) or Article 21.5 (Disclosure of Information).

4. Any protected information that is submitted to the tribunal shall be protected from disclosure in accordance with the following procedures:

- (a) Subject to subparagraph (d), neither the disputing parties nor the tribunal shall disclose to any non-disputing Party or to the public any protected information where the disputing party that provided the information clearly designates it in accordance with subparagraph (b);
- (b) Any disputing party claiming that certain information constitutes protected information shall clearly designate the information at the time it is submitted to the tribunal;
- (c) A disputing party shall, at the same time that it submits a document containing information claimed to be protected information, submit a redacted version of the document that does not contain the information. Only the redacted version shall be provided to the non-disputing Parties and made public in accordance with paragraph 1; and
- (d) The tribunal shall decide any objection regarding the designation of information claimed to be protected information. If the tribunal determines that such information was not properly designated, the disputing party that submitted the information may (i) withdraw all or part of its submission containing such information, or (ii) agree to resubmit complete and redacted documents with corrected designations in accordance with the tribunal's determination and subparagraph (c). In either case, the other disputing party shall, whenever necessary, resubmit complete and redacted documents which either remove the information withdrawn under (i) by the disputing party that first submitted the information or redesignate the information consistent with the designation under (ii) of the disputing party that first submitted the information.

5. Nothing in this Section requires a respondent to withhold from the public information required to be disclosed by its laws.

**Article 10.22: Governing Law**

1. Subject to paragraph 3, when a claim is submitted under Article 10.16.1(a)(i)(A) or Article 10.16.1(b)(i)(A), the tribunal shall decide the issues in dispute in accordance with this Agreement and applicable rules of international law.
2. Subject to paragraph 3 and the other terms of this Section, when a claim is submitted under Article 10.16.1(a)(i)(B) or (C), or Article 10.16.1(b)(i)(B) or (C), the tribunal shall apply:
  - (a) the rules of law specified in the pertinent investment agreement or investment authorization, or as the disputing parties may otherwise agree; or
  - (b) if the rules of law have not been specified or otherwise agreed:
    - (i) the law of the respondent, including its rules on the conflict of laws;<sup>7</sup> and
    - (ii) such rules of international law as may be applicable.
3. A decision of the Commission declaring its interpretation of a provision of this Agreement under Article 19.1.3(c) (The Free Trade Commission) shall be binding on a tribunal established under this Section, and any decision or award issued by the tribunal must be consistent with that decision.

**Article 10.23: Interpretation of Annexes**

1. Where a respondent asserts as a defense that the measure alleged to be a breach is within the scope of Annex I or Annex II, the tribunal shall, on request of the respondent, request the interpretation of the Commission on the issue. The Commission shall submit in writing any decision declaring its interpretation under Article 19.1.3(c) (The Free Trade Commission) to the tribunal within 60 days of delivery of the request.
2. A decision issued by the Commission under paragraph 1 shall be binding on the tribunal, and any decision or award issued by the tribunal must be consistent with that decision. If the Commission fails to issue such a decision within 60 days, the tribunal shall decide the issue.

**Article 10.24: Expert Reports**

Without prejudice to the appointment of other kinds of experts where authorized by the applicable arbitration rules, a tribunal, at the request of a disputing party or, unless the disputing parties disapprove, on its own initiative, may appoint one or more experts to report to it in writing on any factual issue concerning environmental, health, safety, or other scientific matters raised by a disputing party in a proceeding, subject to such terms and conditions as the disputing parties may agree.

**Article 10.25: Consolidation**

1. Where two or more claims have been submitted separately to arbitration under Article 10.16.1 and the claims have a question of law or fact in common and arise out of the same events or circumstances, any disputing party may seek a consolidation order in accordance

<sup>7</sup> The "law of the respondent" means the law that a domestic court or tribunal of proper jurisdiction would apply in the same case.

with the agreement of all the disputing parties sought to be covered by the order or the terms of paragraphs 2 through 10.

2. A disputing party that seeks a consolidation order under this Article shall deliver, in writing, a request to the Secretary-General and to all the disputing parties sought to be covered by the order and shall specify in the request:

- (a) the names and addresses of all the disputing parties sought to be covered by the order;
- (b) the nature of the order sought; and
- (c) the grounds on which the order is sought.

3. Unless the Secretary-General finds within 30 days after receiving a request under paragraph 2 that the request is manifestly unfounded, a tribunal shall be established under this Article.

4. Unless all the disputing parties sought to be covered by the order otherwise agree, a tribunal established under this Article shall comprise three arbitrators:

- (a) one arbitrator appointed by agreement of the claimants;
- (b) one arbitrator appointed by the respondent; and
- (c) the presiding arbitrator appointed by the Secretary-General, provided, however, that the presiding arbitrator shall not be a national of any Party.

5. If, within 60 days after the Secretary-General receives a request made under paragraph 2, the respondent fails or the claimants fail to appoint an arbitrator in accordance with paragraph 4, the Secretary-General, on the request of any disputing party sought to be covered by the order, shall appoint the arbitrator or arbitrators not yet appointed. If the respondent fails to appoint an arbitrator, the Secretary-General shall appoint a national of the disputing Party, and if the claimants fail to appoint an arbitrator, the Secretary-General shall appoint a national of a Party of the claimants.

6. Where a tribunal established under this Article is satisfied that two or more claims that have been submitted to arbitration under Article 10.16.1 have a question of law or fact in common, and arise out of the same events or circumstances, the tribunal may, in the interest of fair and efficient resolution of the claims, and after hearing the disputing parties, by order:

- (a) assume jurisdiction over, and hear and determine together, all or part of the claims;
- (b) assume jurisdiction over, and hear and determine one or more of the claims, the determination of which it believes would assist in the resolution of the others; or
- (c) instruct a tribunal previously established under Article 10.19 to assume jurisdiction over, and hear and determine together, all or part of the claims, provided that
  - (i) that tribunal, at the request of any claimant not previously a disputing party before that tribunal, shall be reconstituted with its original members, except that the arbitrator for the claimants shall be appointed pursuant to paragraphs 4(a) and 5; and

(ii) that tribunal shall decide whether any prior hearing shall be repeated.

7. Where a tribunal has been established under this Article, a claimant that has submitted a claim to arbitration under Article 10.16.1 and that has not been named in a request made under paragraph 2 may make a written request to the tribunal that it be included in any order made under paragraph 6, and shall specify in the request:

- (a) the name and address of the claimant;
- (b) the nature of the order sought; and
- (c) the grounds on which the order is sought.

The claimant shall deliver a copy of its request to the Secretary-General.

8. A tribunal established under this Article shall conduct its proceedings in accordance with the UNCITRAL Arbitration Rules, except as modified by this Section.

9. A tribunal established under Article 10.19 shall not have jurisdiction to decide a claim, or a part of a claim, over which a tribunal established or instructed under this Article has assumed jurisdiction.

10. On application of a disputing party, a tribunal established under this Article, pending its decision under paragraph 6, may order that the proceedings of a tribunal established under Article 10.19 be stayed, unless the latter tribunal has already adjourned its proceedings.

**Article 10.26: Awards**

1. Where a tribunal makes a final award against a respondent, the tribunal may award, separately or in combination, only:

- (a) monetary damages and any applicable interest;
- (b) restitution of property, in which case the award shall provide that the respondent may pay monetary damages and any applicable interest in lieu of restitution.

A tribunal may also award costs and attorney's fees in accordance with this Section and the applicable arbitration rules.

2. Subject to paragraph 1, where a claim is submitted to arbitration under Article 10.16.1(b):

- (a) an award of restitution of property shall provide that restitution be made to the enterprise;
- (b) an award of monetary damages and any applicable interest shall provide that the sum be paid to the enterprise; and
- (c) the award shall provide that it is made without prejudice to any right that any person may have in the relief under applicable domestic law.

3. A tribunal is not authorized to award punitive damages.

4. An award made by a tribunal shall have no binding force except between the disputing parties and in respect of the particular case.
5. Subject to paragraph 6 and the applicable review procedure for an interim award, a disputing party shall abide by and comply with an award without delay.
6. A disputing party may not seek enforcement of a final award until:
- (a) in the case of a final award made under the ICSID Convention
    - (i) 120 days have elapsed from the date the award was rendered and no disputing party has requested revision or annulment of the award; or
    - (ii) revision or annulment proceedings have been completed; and
  - (b) in the case of a final award under the ICSID Additional Facility Rules or the UNCITRAL Arbitration Rules
    - (i) 90 days have elapsed from the date the award was rendered and no disputing party has commenced a proceeding to revise, set aside, or annul the award; or
    - (ii) a court has dismissed or allowed an application to revise, set aside, or annul the award and there is no further appeal.
7. Each Party shall provide for the enforcement of an award in its territory.
8. If the respondent fails to abide by or comply with a final award, on delivery of a request by the Party of the claimant, a panel shall be established under Article 20.6 (Request for an Arbitral Panel). The requesting Party may seek in such proceedings:
- (a) a determination that the failure to abide by or comply with the final award is inconsistent with the obligations of this Agreement; and
  - (b) in accordance with Article 20.13 (Initial Report), a recommendation that the respondent abide by or comply with the final award.
9. A disputing party 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 8.
10. A claim that is submitted to arbitration under this Section shall be considered to arise out of a commercial relationship or transaction for purposes of Article I of the New York Convention and Article I of the Inter-American Convention.

**Article 10.27: Service of Documents**

Delivery of notice and other documents on a Party shall be made to the place named for that Party in Annex 10-G.

**Section C: Definitions**

**Article 10.28: Definitions**

For purposes of this Chapter:

**Centre** means the International Centre for Settlement of Investment Disputes ("ICSID") established by the ICSID Convention;

**claimant** means an investor of a Party that is a party to an investment dispute with another Party;

**disputing parties** means the claimant and the respondent;

**disputing party** means either the claimant or the respondent;

**enterprise** means an enterprise as defined in Article 2.1 (Definitions of General Application), and a branch of an enterprise;

**enterprise of a Party** means an enterprise constituted or organized under the law of a Party, and a branch located in the territory of a Party and carrying out business activities there;

**freely usable currency** means "freely usable currency" as determined by the International Monetary Fund under its *Articles of Agreement*;

**ICSID Additional Facility Rules** means the *Rules Governing the Additional Facility for the Administration of Proceedings by the Secretariat of the International Centre for Settlement of Investment Disputes*;

**ICSID Convention** means the *Convention on the Settlement of Investment Disputes between States and Nationals of Other States*, done at Washington, March 18, 1965;

**Inter-American Convention** means the *Inter-American Convention on International Commercial Arbitration*, done at Panama, January 30, 1975;

**investment** means every asset that an investor owns or controls, directly or indirectly, that has the characteristics of an investment, including such characteristics as the commitment of capital or other resources, the expectation of gain or profit, or the assumption of risk. Forms that an investment may take include:

- (a) an enterprise;
- (b) shares, stock, and other forms of equity participation in an enterprise;
- (c) bonds, debentures, other debt instruments, and loans;<sup>8 9</sup>
- (d) futures, options, and other derivatives;
- (e) turnkey, construction, management, production, concession, revenue-sharing, and other similar contracts;
- (f) intellectual property rights;
- (g) licenses, authorizations, permits, and similar rights conferred pursuant to domestic law,<sup>10 11</sup> and

<sup>8</sup> Some forms of debt, such as bonds, debentures, and long-term notes, are more likely to have the characteristics of an investment, while other forms of debt are less likely to have such characteristics.

<sup>9</sup> For purposes of this Agreement, claims to payment that are immediately due and result from the sale of goods or services are not investments.

- (h) other tangible or intangible, movable or immovable property, and related property rights, such as leases, mortgages, liens, and pledges;

**investment agreement** means a written agreement<sup>12</sup> that takes effect on or after the date of entry into force of this Agreement between a national authority<sup>13</sup> of a Party and a covered investment or an investor of another Party that grants the covered investment or investor rights:

- (a) with respect to natural resources or other assets that a national authority controls; and
- (b) upon which the covered investment or the investor relies in establishing or acquiring a covered investment other than the written agreement itself;

**investment authorization**<sup>14</sup> means an authorization that the foreign investment authority of a Party grants to a covered investment or an investor of another Party;

**investor of a non-Party** means, with respect to a Party, an investor that attempts to make, is making, or has made an investment in the territory of that Party, that is not an investor of a Party;

**investor of a Party** means a Party or state enterprise thereof, or a national or an enterprise of a Party, that attempts to make, is making, or has made an investment in the territory of another Party; provided, however, that a natural person who is a dual national shall be deemed to be exclusively a national of the State of his or her dominant and effective nationality;

**national** means a natural person who has the nationality of a Party according to Annex 2.1 (Country-Specific Definitions);

**New York Convention** means the *United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards*, done at New York, June 10, 1958;

**non-disputing Party** means a Party that is not a party to an investment dispute;

**protected information** means confidential business information or information that is privileged or otherwise protected from disclosure under a Party's law;

<sup>10</sup> Whether a particular type of license, authorization, permit, or similar instrument (including a concession, to the extent that it has the nature of such an instrument) has the characteristics of an investment depends on such factors as the nature and extent of the rights that the holder has under the law of the Party. Among the licenses, authorizations, permits, and similar instruments that do not have the characteristics of an investment are those that do not create any rights protected under domestic law. For greater certainty, the foregoing is without prejudice to whether any asset associated with the license, authorization, permit, or similar instrument has the characteristics of an investment.

<sup>11</sup> The term "investment" does not include an order or judgment entered in a judicial or administrative action.

<sup>12</sup> "Written agreement" refers to an agreement in writing, executed by both parties, that creates an exchange of rights and obligations, binding on both parties under the law applicable under Article 10.22.2. For greater certainty, (a) a unilateral act of an administrative or judicial authority, such as a permit, license, or authorization issued by a Party solely in its regulatory capacity or a decree, order, or judgment; and (b) an administrative or judicial consent decree or order, shall not be considered a written agreement.

<sup>13</sup> For purposes of this definition, "national authority" means an authority at the central level of government.

<sup>14</sup> For greater certainty, actions taken by a Party to enforce laws of general application, such as competition laws, are not encompassed within this definition.

**respondent** means the Party that is a party to an investment dispute;

**Secretary-General** means the Secretary-General of ICSID;

**tribunal** means an arbitration tribunal established under Article 10.19 or 10.25; and

**UNCITRAL Arbitration Rules** means the arbitration rules of the United Nations Commission on International Trade Law.

**Annex 10-A**

**Public Debt**

The rescheduling of the debts of a Central American Party or the Dominican Republic, or of such Party's institutions owned or controlled through ownership interests by such Party, owed to the United States and the rescheduling of any of such Party's debts owed to creditors in general are not subject to any provision of Section A other than Articles 10.3 and 10.4.

**Annex 10-B**

**Customary International Law**

The Parties confirm their shared understanding that “customary international law” generally and as specifically referenced in Articles 10.5, 10.6, and Annex 10-C results from a general and consistent practice of States that they follow from a sense of legal obligation. With regard to Article 10.5, the customary international law minimum standard of treatment of aliens refers to all customary international law principles that protect the economic rights and interests of aliens.

**Annex 10-C****Expropriation**

The Parties confirm their shared understanding that:

1. Article 10.7.1 is intended to reflect customary international law concerning the obligation of States with respect to expropriation.
2. An action or a series of actions by a Party cannot constitute an expropriation unless it interferes with a tangible or intangible property right or property interest in an investment.
3. Article 10.7.1 addresses two situations. The first is direct expropriation, where an investment is nationalized or otherwise directly expropriated through formal transfer of title or outright seizure.
4. The second situation addressed by Article 10.7.1 is indirect expropriation, where an action or series of actions by a Party has an effect equivalent to direct expropriation without formal transfer of title or outright seizure.
  - (a) The determination of whether an action or series of actions by a Party, in a specific fact situation, constitutes an indirect expropriation, requires a case-by-case, fact-based inquiry that considers, among other factors:
    - (i) the economic impact of the government action, although the fact that an action or series of actions by a Party has an adverse effect on the economic value of an investment, standing alone, does not establish that an indirect expropriation has occurred;
    - (ii) the extent to which the government action interferes with distinct, reasonable investment-backed expectations; and
    - (iii) the character of the government action.
  - (b) Except in rare circumstances, nondiscriminatory regulatory actions by a Party that are designed and applied to protect legitimate public welfare objectives, such as public health, safety, and the environment, do not constitute indirect expropriations.

**Annex 10-D**

**Treatment in Case of Strife**

1. No investor may submit to arbitration under Section B a claim alleging that Guatemala has breached Article 10.6.2 as a result of an armed movement or civil disturbance and that the investor or the investor's enterprise has incurred loss or damage by reason of or arising out of such movement or disturbance.
2. No investor of Guatemala may submit to arbitration under Section B a claim alleging that any other Party has breached Article 10.6.2(b).
3. The limitation set out in paragraph 1 is without prejudice to other limitations existing in Guatemala's law with respect to an investor's claim that Guatemala has breached Article 10.6.2.

**Annex 10-E**

**Submission of a Claim to Arbitration**

1. An investor of the United States may not submit to arbitration under Section B a claim that a Central American Party or the Dominican Republic has breached an obligation under Section A either:

- (a) on its own behalf under Article 10.16.1(a), or
- (b) on behalf of an enterprise of a Central American Party or the Dominican Republic that is a juridical person that the investor owns or controls directly or indirectly under Article 10.16.1(b),

if the investor or the enterprise, respectively, has alleged that breach of an obligation under Section A in proceedings before a court or administrative tribunal of a Central American Party or the Dominican Republic.

2. For greater certainty, if an investor of the United States elects to submit a claim of the type described in paragraph 1 to a court or administrative tribunal of a Central American Party or the Dominican Republic, that election shall be definitive, and the investor may not thereafter submit the claim to arbitration under Section B.

3. Notwithstanding Article 10.18, an investor of the United States may not submit to arbitration under Section B a claim relating to an investment in sovereign debt instruments with a maturity of less than one year unless one year has elapsed from the date of the events giving rise to the claim.

**Annex 10-F****Appellate Body or Similar Mechanism**

1. Within three months of the date of entry into force of this Agreement, the Commission shall establish a Negotiating Group to develop an appellate body or similar mechanism to review awards rendered by tribunals under this Chapter. Such appellate body or similar mechanism shall be designed to provide coherence to the interpretation of investment provisions in the Agreement. The Commission shall direct the Negotiating Group to take into account the following issues, among others:

- (a) the nature and composition of an appellate body or similar mechanism;
- (b) the applicable scope and standard of review;
- (c) transparency of proceedings of an appellate body or similar mechanism;
- (d) the effect of decisions by an appellate body or similar mechanism;
- (e) the relationship of review by an appellate body or similar mechanism to the arbitral rules that may be selected under Articles 10.16 and 10.25; and
- (f) the relationship of review by an appellate body or similar mechanism to existing domestic laws and international law on the enforcement of arbitral awards.

2. The Commission shall direct the Negotiating Group to provide to the Commission, within one year of establishment of the Negotiating Group, a draft amendment to the Agreement that establishes an appellate body or similar mechanism. On approval of the draft amendment by the Parties, in accordance with Article 22.2 (Amendments), the Agreement shall be so amended.

**Annex 10-G**

**Service of Documents on a Party Under Section B**

**Costa Rica**

Notices and other documents in disputes under Section B shall be served on Costa Rica by delivery to:

Dirección de Aplicación de Acuerdos  
Comerciales Internacionales  
Ministerio de Comercio Exterior  
San José, Costa Rica

**The Dominican Republic**

Notices and other documents in disputes under Section B shall be served on the Dominican Republic by delivery to:

Dirección de Comercio Exterior y Administración de Tratados Comerciales Internacionales  
Secretaría de Estado de Industria y Comercio  
Santo Domingo, República Dominicana

**El Salvador**

Notices and other documents in disputes under Section B shall be served on El Salvador by delivery to:

Dirección de Administración de Tratados Comerciales  
Ministerio de Economía  
Alameda Juan Pablo II y Calle Guadalupe  
Edificio C1-C2, Plan Maestro Centro de Gobierno  
San Salvador, El Salvador

**Guatemala**

Notices and other documents in disputes under Section B shall be served on Guatemala by delivery to:

Ministerio de Economía  
Ciudad de Guatemala, Guatemala

**Honduras**

Notices and other documents in disputes under Section B shall be served on Honduras by delivery to:

Dirección General de Integración Económica y Política Comercial  
Secretaría de Estado en los Despachos de Industria y Comercio  
Boulevard José Cecilio del Valle  
Edificio San José, antiguo edificio de Fenaduanah  
Tegucigalpa, Honduras

**Nicaragua**

Notices and other documents in disputes under Section B shall be served on Nicaragua by delivery to:

Dirección de Integración y Administración de Tratados, or its successor  
Ministerio de Fomento, Industria y Comercio  
Managua, Nicaragua

**United States**

Notices and other documents in disputes under Section B shall be served on the United States by delivery to:

Executive Director (L/EX)  
Office of the Legal Adviser  
Department of State  
Washington, D.C. 20520  
United States of America

**Chapter Eleven****Cross-Border Trade in Services****Article 11.1: Scope and Coverage**

1. This Chapter applies to measures adopted or maintained by a Party affecting cross-border trade in services by service suppliers of another Party. Such measures include measures affecting:
  - (a) the production, distribution, marketing, sale, and delivery of a service;
  - (b) the purchase or use of, or payment for, a service;
  - (c) the access to and use of distribution, transport, or telecommunications networks and services in connection with the supply of a service;
  - (d) the presence in its territory of a service supplier of another Party; and
  - (e) the provision of a bond or other form of financial security as a condition for the supply of a service.
2. For purposes of this Chapter, "measures adopted or maintained by a Party" means measures adopted or maintained by:
  - (a) central, regional, or local governments and authorities; and
  - (b) non-governmental bodies in the exercise of powers delegated by central, regional, or local governments or authorities.
3. Articles 11.4, 11.7, and 11.8 also apply to measures by a Party affecting the supply of a service in its territory by an investor of another Party as defined in Article 10.28 (Definitions) or a covered investment.<sup>1</sup>
4. This Chapter does not apply to:
  - (a) financial services, as defined in Article 12.20 (Definitions), except as provided in paragraph 3;
  - (b) air services, including domestic and international air transportation services, whether scheduled or non-scheduled, and related services in support of air services, other than:
    - (i) aircraft repair and maintenance services during which an aircraft is withdrawn from service, and
    - (ii) specialty air services;
  - (c) procurement; or
  - (d) subsidies or grants provided by a Party, including government-supported loans, guarantees and insurance.

<sup>1</sup> The Parties understand that nothing in this Chapter, including this paragraph, is subject to investor-state dispute settlement pursuant to Section B of Chapter Ten (Investment).

5. This Chapter does not impose any obligation on a Party with respect to a national of another Party seeking access to its employment market, or employed on a permanent basis in its territory, and does not confer any right on that national with respect to that access or employment.

6. This Chapter does not apply to services supplied in the exercise of governmental authority. A "service supplied in the exercise of governmental authority" means any service that is supplied neither on a commercial basis, nor in competition with one or more service suppliers.

**Article 11.2: National Treatment**

1. Each Party shall accord to service suppliers of another Party treatment no less favorable than that it accords, in like circumstances, to its own service suppliers.

2. The treatment to be accorded by a Party under paragraph 1 means, with respect to a regional level of government, treatment no less favorable than the most favorable treatment accorded, in like circumstances, by that regional level of government to service suppliers of the Party of which it forms a part.

**Article 11.3: Most-Favored-Nation Treatment**

Each Party shall accord to service suppliers of another Party treatment no less favorable than that it accords, in like circumstances, to service suppliers of any other Party or a non-Party.

**Article 11.4: Market Access**

No Party may adopt or maintain, either on the basis of a regional subdivision or on the basis of its entire territory, measures that:

- (a) impose limitations on:
  - (i) the number of service suppliers whether in the form of numerical quotas, monopolies, exclusive service suppliers, or the requirement of an economic needs test,
  - (ii) the total value of service transactions or assets in form of numerical quotas or the requirement of an economic needs test,
  - (iii) the total number of service operations or on the total quantity of services output expressed in terms of designated numerical units in the form of quotas or the requirement of an economic needs test,<sup>2</sup> or
  - (iv) the total number of natural persons that may be employed in a particular service sector or that a service supplier may employ and who are necessary for, and directly related to, the supply of a specific service in the form of numerical quotas or the requirement of an economic needs test; or
- (b) restrict or require specific types of legal entity or joint venture through which a service supplier may supply a service.

<sup>2</sup> This clause does not cover measures of a Party that limit inputs for the supply of services.

**Article 11.5: Local Presence**

No Party may require a service supplier of another Party to establish or maintain a representative office or any form of enterprise, or to be resident, in its territory as a condition for the cross-border supply of a service.

**Article 11.6: Non-conforming Measures**

1. Articles 11.2, 11.3, 11.4, and 11.5 do not apply to:
  - (a) any existing non-conforming measure that is maintained by a Party at:
    - (i) the central level of government, as set out by that Party in its Schedule to Annex I;
    - (ii) a regional level of government, as set out by that Party in its Schedule to Annex I; or
    - (iii) a local level of government;
  - (b) the continuation or prompt renewal of any non-conforming measure referred to in subparagraph (a); or
  - (c) an amendment to any non-conforming measure referred to in subparagraph (a) to the extent that the amendment does not decrease the conformity of the measure, as it existed immediately before the amendment, with Articles 11.2, 11.3, 11.4, and 11.5.
2. Articles 11.2, 11.3, 11.4, and 11.5 do not apply to any measure that a Party adopts or maintains with respect to sectors, sub-sectors or activities as set out in its Schedule to Annex II.

**Article 11.7: Transparency in Developing and Applying Regulations<sup>3</sup>**

Further to Chapter Eighteen (Transparency):

- (a) each Party shall maintain or establish appropriate mechanisms for responding to inquiries from interested persons regarding its regulations relating to the subject matter of this Chapter;
- (b) at the time it adopts final regulations relating to the subject matter of this Chapter, each Party shall, to the extent possible, including on request, address in writing substantive comments received from interested persons with respect to the proposed regulations; and
- (c) to the extent possible, each Party shall allow a reasonable time between publication of final regulations and their effective date.

**Article 11.8: Domestic Regulation**

<sup>1</sup> Where a Party requires authorization for the supply of a service, the Party's competent authorities shall, within a reasonable time after the submission of an application considered complete under its laws and regulations, inform the applicant of the decision concerning the application. At the request of the applicant, the Party's competent authorities shall provide,

<sup>3</sup> For greater certainty, "regulations" includes regulations establishing or applying to licensing authorization or criteria.

without undue delay, information concerning the status of the application. This obligation shall not apply to authorization requirements that are within the scope of Article 11.6.2.

2. With a view to ensuring that measures relating to qualification requirements and procedures, technical standards, and licensing requirements do not constitute unnecessary barriers to trade in services, each Party shall endeavor to ensure, as appropriate for individual sectors, that any such measures that it adopts or maintains are:

- (a) based on objective and transparent criteria, such as competence and the ability to supply the service;
- (b) not more burdensome than necessary to ensure the quality of the service; and
- (c) in the case of licensing procedures, not in themselves a restriction on the supply of the service.

3. If the results of the negotiations related to Article VI:4 of the GATS (or the results of any similar negotiations undertaken in other multilateral fora in which the Parties participate) enter into effect for each Party, this Article shall be amended, as appropriate, after consultations between the Parties, to bring those results into effect under this Agreement. The Parties will coordinate on such negotiations as appropriate.

**Article 11.9: Mutual Recognition**

1. For the purposes of the fulfillment, in whole or in part, of its standards or criteria for the authorization, licensing, or certification of services suppliers, and subject to the requirements of paragraph 4, a Party may recognize the education or experience obtained, requirements met, or licenses or certifications granted in a particular country, including another Party and a non-Party. Such recognition, which may be achieved through harmonization or otherwise, may be based upon an agreement or arrangement with the country concerned or may be accorded autonomously.

2. Where a Party recognizes, autonomously or by agreement or arrangement, the education or experience obtained, requirements met, or licenses or certifications granted in the territory of another Party or a non-Party, nothing in Article 11.3 shall be construed to require the Party to accord such recognition to the education or experience obtained, requirements met, or licenses or certifications granted in the territory of any other Party.

3. A Party that is a party to an agreement or arrangement of the type referred to in paragraph 1, whether existing or future, shall afford adequate opportunity for another Party, if that other Party is interested, to negotiate its accession to such an agreement or arrangement or to negotiate a comparable one with it. Where a Party accords recognition autonomously, it shall afford adequate opportunity for another Party to demonstrate that education, experience, licenses, or certifications obtained or requirements met in that other Party's territory should be recognized.

4. No Party may accord recognition in a manner that would constitute a means of discrimination between countries in the application of its standards or criteria for the authorization, licensing, or certification of services suppliers, or a disguised restriction on trade in services.

5. Annex 11.9 applies to measures adopted or maintained by a Party relating to the licensing or certification of professional service suppliers as set out in that Annex.

**Article 11.10: Transfers and Payments**

1. Each Party shall permit all transfers and payments relating to the cross-border supply of services to be made freely and without delay into and out of its territory.

2. Each Party shall permit such transfers and payments relating to the cross-border supply of services to be made in a freely usable currency at the market rate of exchange prevailing at the time of transfer.
3. Notwithstanding paragraphs 1 and 2, a Party may prevent a transfer or payment 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, futures, options, or derivatives;
  - (c) financial reporting or record keeping of transfers when necessary to assist law enforcement or financial regulatory authorities;
  - (d) criminal or penal offenses; or
  - (e) ensuring compliance with orders or judgments in judicial or administrative proceedings.

**Article 11.11: Implementation**

The Parties shall consult annually, or as otherwise agreed, to review the implementation of this Chapter and consider other issues of mutual interest.

**Article 11.12: Denial of Benefits**

1. A Party may deny the benefits of this Chapter to a service supplier of another Party if the service is being supplied by an enterprise owned or controlled by persons of a non-Party, and the denying Party:
  - (a) does not maintain diplomatic relations with the non-Party; or
  - (b) adopts or maintains measures with respect to the non-Party that prohibit transactions with the enterprise or that would be violated or circumvented if the benefits of this Chapter were accorded to the enterprise.
2. Subject to Articles 18.3 (Notification and Provision of Information) and 20.4 (Consultations), a Party may deny the benefits of this Chapter to a service supplier of another Party that is an enterprise of such other Party if the enterprise has no substantial business activities in the territory of any Party, other than the denying Party, and persons of a non-Party, or the denying Party, own or control the enterprise.

**Article 11.13: Specific Commitments**

1. Express Delivery Services:
  - (a) The Parties affirm that measures affecting express delivery services are subject to this Agreement.
  - (b) For purposes of this Agreement, express delivery services means the collection, transport, and delivery, of documents, printed matter, parcels, goods, or other items on an expedited basis, while tracking and maintaining control of these items throughout the supply of the service. Express delivery services do not include (i) air transport services, (ii) services supplied in the exercise of governmental authority, or (iii) maritime transport services.<sup>4</sup>

<sup>4</sup> For greater certainty, for the United States, express delivery services do not include delivery of letters subject to the *Private Express Statutes* (18 U.S.C. § 1693 *et seq.*, 39 U.S.C. § 601 *et seq.*), but do include delivery of

- (c) The Parties express their desire to maintain at least the level of market openness they provided for express delivery services existing on the date this Agreement is signed.
- (d) Neither a Central American Party nor the Dominican Republic may adopt or maintain any restriction on express delivery services that is not in existence on the date this Agreement is signed. Each such Party confirms that it does not intend to direct revenues from its postal monopoly to benefit express delivery services as defined in subparagraph (b). Under title 39 of the United States Code, an independent government agency determines whether postal rates meet the requirement that each class of mail or type of mail service bear the direct and indirect postal costs attributable to that class or type plus that portion of all other costs of the U.S. Postal Service reasonably assignable to such class or type.
- (e) Each Party shall ensure that, where its monopoly supplier of postal services competes, either directly or through an affiliated company, in the supply of express delivery services outside the scope of its monopoly rights, such a supplier does not abuse its monopoly position to act in its territory in a manner inconsistent with the Party's obligations under Articles 11.2, 11.3, 11.4, 10.3 (National Treatment), or 10.4 (Most-Favored-Nation Treatment). The Parties also reaffirm their obligations under Article VIII of the GATS.<sup>5</sup>

2. A Party's Section of Annex 11.13 sets out specific commitments by that Party.

**Article 11.14: Definitions**

For purposes of this Chapter:

**cross-border trade in services** or **cross-border supply of services** means the supply of a service:

- (a) from the territory of one Party into the territory of another Party;
- (b) in the territory of one Party by a person of that Party to a person of another Party; or
- (c) by a national of a Party in the territory of another Party;

but does not include the supply of a service in the territory of a Party by an investor of another Party as defined in Article 10.28 (Definitions) or a covered investment;

**enterprise** means an "enterprise" as defined in Article 2.1 (Definitions of General Application), and a branch of an enterprise;

**enterprise of a Party** means an enterprise constituted or organized under the laws of that Party, and a branch located in the territory of that Party and carrying out business activities there;

**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

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letters subject to the exceptions to, or suspensions promulgated under, those statutes, which permit private delivery of extremely urgent letters.

<sup>5</sup> For greater certainty, the Parties reaffirm that nothing in this Article is subject to investor-state dispute settlement pursuant to Section B of Chapter Ten (Investment).

is granted or restricted by a Party, but does not include services provided by trades-persons or vessel and aircraft crew members;

**service supplier of a Party** means a person of a Party that seeks to supply or supplies a service;<sup>6</sup> and

**specialty air services** means any non-transportation air services, such as aerial fire-fighting, sightseeing, spraying, surveying, mapping, photography, parachute jumping, glider towing, and helicopter-lift for logging and construction, and other airborne agricultural, industrial, and inspection services.

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<sup>6</sup> The Parties understand that for purposes of Articles 11.2 and 11.3, "service suppliers" has the same meaning as "services and service suppliers" in the GATS.

**Annex 11.9****Professional Services***Development of Professional Standards*

1. The Parties shall encourage the relevant bodies in their respective territories to develop mutually acceptable standards and criteria for licensing and certification of professional service suppliers and to provide recommendations on mutual recognition to the Commission.

2. The standards and criteria referred to in paragraph 1 may be developed with regard to the following matters:

- (a) education – accreditation of schools or academic programs;
- (b) examinations – qualifying examinations for licensing, including alternative methods of assessment such as oral examinations and interviews;
- (c) experience – length and nature of experience required for licensing;
- (d) conduct and ethics – standards of professional conduct and the nature of disciplinary action for non-conformity with those standards;
- (e) professional development and re-certification – continuing education and ongoing requirements to maintain professional certification;
- (f) scope of practice – extent of, or limitations on, permissible activities;
- (g) local knowledge – requirements for knowledge of such matters as local laws, regulations, language, geography, or climate; and
- (h) consumer protection – alternatives to residency requirements, including bonding, professional liability insurance, and client restitution funds, to provide for the protection of consumers.

3. On receipt of a recommendation referred to in paragraph 1, the Commission shall review the recommendation within a reasonable time to determine whether it is consistent with this Agreement. Based on the Commission's review, each Party shall encourage its respective competent authorities, where appropriate, to implement the recommendation within a mutually agreed time.

*Temporary licensing*

4. Where the Parties agree, each Party shall encourage the relevant bodies in its territory to develop procedures for the temporary licensing of professional service suppliers of another Party.

*Review*

5. The Commission shall review the implementation of this Annex at least once every three years.

## Annex 11.13

## Specific Commitments

## Section A: Costa Rica

1. Costa Rica shall repeal articles 2 and 9 of Law No. 6209, entitled *Ley de Protección al Representante de Casas Extranjeras*, dated 9 March 1978, and its regulation, and item b) of article 361 of the *Código de Comercio*, Law No. 3284 of 24 April 1964, effective on the date of entry into force of this Agreement.
2. Subject to paragraph 1, Costa Rica shall enact a new legal regime that shall become applicable to contracts of representation, distribution, or production, and:
  - (a) shall apply principles of general contract law to such contracts;
  - (b) shall be consistent with the obligations of this Agreement and the principle of freedom of contract;
  - (c) shall treat such contracts as establishing an exclusive relationship only if the contract explicitly states that the relationship is exclusive;
  - (d) shall provide that the termination of such contracts either on their termination dates or in the circumstances described in subparagraph (e) is just cause for a goods or service supplier of another Party to terminate the contract or allow the contract to expire without renewal; and
  - (e) will allow contracts with no termination date to be terminated by any of the parties by giving ten months advance termination notice.
3. The absence of an express provision for settlement of disputes in a contract of representation, distribution, or production shall give rise to a presumption that the parties intended to settle any disputes through binding arbitration. Such arbitration may take place in Costa Rica. However, the presumption of an intent to submit to arbitration shall not apply where any of the parties objects to arbitration.
4. The United States and Costa Rica shall encourage parties to existing contracts of representation, distribution, or production to renegotiate such contracts so as to make them subject to the new legal regime enacted in accordance with paragraph 2.
5. In any case, the repeal of articles 2 and 9 of Law No. 6209 shall not impair any vested right, when applicable, derived from that legislation and recognized under Article 34 of the *Constitución Política de la República de Costa Rica*.
6. Costa Rica shall, to the maximum extent possible, encourage and facilitate the use of arbitration for the settlement of disputes in contracts of representation, distribution, or production. To this end, Costa Rica shall endeavor to facilitate the operation of arbitration centers and other effective means of alternative resolution of claims arising pursuant to Law No. 6209 or the new legal regime enacted in accordance with paragraph 2, and shall encourage the development of rules for such arbitrations that provide, to the greatest extent possible, for the prompt, low-cost, and fair resolution of such claims.
7. For purposes of this Section:
  - (a) **contract of representation, distribution, or production** has the same meaning as under Law No. 6209; and

- (b) **termination date** means the date provided in the contract for the contract to end, or the end of a contract extension period agreed upon by the parties to the contract.

**Section B: The Dominican Republic**

1. The Dominican Republic shall not apply Law No. 173 to any covered contract signed after the date of entry into force of this Agreement unless the contract explicitly provides for the application of Law No. 173 and in place of Law No. 173 shall:

- (a) apply principles of the *Código Civil* of the Dominican Republic to the covered contract;
- (b) treat the covered contract in a manner consistent with the obligations of this Agreement and the principle of freedom of contract;
- (c) treat the termination of the covered contract, either on its termination date or pursuant to subparagraph (d), as just cause for a goods or service supplier to terminate the contract or allow the contract to expire without renewal;
- (d) if the covered contract has no termination date, allow it to be terminated by any of the parties by giving six months advance termination notice;
- (e) provide that after the termination of the covered contract or the decision not to renew it:
  - (i) if the covered contract contains an indemnification provision, including a provision providing for no indemnification, the indemnification shall be based on such provision;
  - (ii) if the covered contract contains no such provision, any indemnification shall be based on actual economic damages and not on a statutory formula;
  - (iii) the principal shall honor any pending warranties; and
  - (iv) the principal shall compensate the distributor for the value of any inventory that the distributor is unable to sell by reason of the termination or decision not to renew the contract. The value of inventory shall include any customs duties, surcharges, freight expenses, internal movement costs, and inventory carrying costs paid by the distributor;
- (f) allow disputes arising from the covered contract to be resolved through binding arbitration; and
- (g) allow the parties to the covered contract to establish in the contract the mechanisms and forums that will be available in the case of disputes.

Nothing in subparagraph (c) shall prevent parties from demanding indemnification, when appropriate, in the form, type, and amount agreed in the contract.

2. If Law No. 173 applies to a covered contract, either because the contract was signed before the entry into force of this Agreement or the contract explicitly provides for the application of Law No. 173, and the contract is registered with the *Banco Central* in accordance with Article 10 of Law No. 173, the Dominican Republic shall provide, consistent with articles 46 and 47 of the *Constitución de la República Dominicana*, that:

- (a) the amount of an indemnity for termination of a covered contract based on the factors listed in Article 3 of Law No. 173 shall be no greater than would be available to the claimant under the *Código Civil* of the Dominican Republic;
  - (b) during or after the conciliation process under Article 7 of Law No. 173, the parties to a contract may agree to resolve the dispute through binding arbitration; and
  - (c) the Government of the Dominican Republic and the conciliation authorities shall take all appropriate steps to encourage the resolution of disputes arising under covered contracts through binding arbitration.
3. For all covered contracts,
- (a) a goods or service supplier shall not be required to pay damages or an indemnity for terminating a covered contract for just cause or allowing such a contract to expire without renewal for just cause; and
  - (b) a contract shall be interpreted as establishing an exclusive distributorship only to the extent that the terms of the contract explicitly state that the distributor has exclusive rights to distribute a product or service.
4. The requirement that the parties to a contract seek a negotiated settlement of any dispute through conciliation, and all other provisions of Law No. 173, shall retain all their validity and force for all contractual relations not subject to paragraph 1.
5. For purposes of this Section:
- (a) **covered contract** means a concession contract, as defined in Law No. 173, to which a goods or service supplier of the United States or any enterprise controlled by such supplier is a party;
  - (b) **Law No. 173** means Law No. 173, entitled "*Ley sobre Protección a los Agentes Importadores de Mercancías y Productos*," dated April 6, 1966, and its modifications; and
  - (c) **termination date** means the date provided in the contract, or the end of a period of extension of a contract agreed upon by the parties to the contract.

#### Section C: El Salvador

1. Articles 394 through 399-B of the *Código de Comercio* shall apply only to contracts that were entered into after such Articles entered into force.
2. Articles 394 through 399-B of the *Código de Comercio* shall not apply to any distribution contract that a person of the United States enters into after the date of entry into force of this Agreement, as long as the contract so provides.
3. Parties to a distribution contract shall be permitted to establish in the contract the mechanisms and forums that will be available in the case of disputes.
4. If a distribution contract makes specific provision for indemnification, including a provision providing for no indemnification, Article 397 of the *Código de Comercio* shall not apply to that contract.

5. Under Salvadoran law, a distribution contract shall be treated as exclusive only if the contract states so expressly.

6. El Salvador shall encourage parties to distribution contracts made after the date of entry into force of this Agreement to include provisions providing for binding arbitration of disputes and specifying methods for determining any indemnity.

7. For purposes of this Section, **distribution contract** has the same meaning as under Articles 394 through 399-B of the *Código de Comercio*.

#### Section D: Guatemala

1. The Parties recognize that Guatemala, through Decree 8-98 of the *Congreso de la República*, which reformed the *Código de Comercio de Guatemala*, repealed Decree 78-71, which regulated contracts of agency, distribution, or representation, and created a new regime for agents of commerce, distributors, and representatives.

2. During the year following the date of entry into force of this Agreement, the United States and Guatemala shall encourage parties to contracts without a fixed termination date that remain subject to Decree 78-71 to renegotiate such contracts. The new contracts shall be based on the terms and conditions established by mutual agreement of the parties and on the provisions of the *Código de Comercio de Guatemala*, which shall regulate the activities of agents of commerce, distributors, and representatives. The United States and Guatemala shall also encourage parties to other contracts of agency, distribution, or representation that remain subject to Decree 78-71 to renegotiate such contracts so as to make them subject to the new regime referenced in paragraph 1.

3. The absence of an express provision for settlement of disputes in a contract of agency, distribution, or representation shall, to the extent consistent with the *Constitución Política de la República de Guatemala*, give rise to a rebuttable presumption that the parties intended to settle any disputes through binding arbitration.

4. The United States and Guatemala shall encourage the parties to contracts of agency, distribution, or representation to settle any disputes through binding arbitration. In particular, if the amount and form of any indemnification payment is not established in the contract and a party wishes to terminate the contract, the parties may agree to arbitration to establish the amount, if any, of the indemnity.

5. For purposes of this Section:

- (a) **termination date** means the date provided in the contract for the contract to end, or the end of a contract extension period agreed upon by the parties to the contract; and
- (b) **contract of agency, distribution, or representation** has the same meaning as under Decree 78-71.

#### Section E: Honduras

1. The obligations set out in paragraphs 2, 3, and 4 shall not apply to:

- (a) express conditions included in a contract of representation, distribution, or agency; or

- (b) to contractual relations entered into before the date of entry into force of this Agreement.
2. Honduras may not require a goods or service supplier of another Party:
- (a) to supply such goods or services in Honduras by means of a representative, agent, or distributor, except as otherwise provided by law for reasons of health, safety, or consumer protection;
  - (b) to offer or introduce goods or services in the territory of Honduras through existing concessionaires for such goods or services unless a contract between them requires an exclusive relationship; or
  - (d) to pay damages or an indemnity for terminating a contract of representation, or agency for just cause or allowing such a contract to expire without renewal for just cause.
3. Honduras may not require that a representative, agent, or distributor be a national of Honduras or an enterprise controlled by nationals of Honduras;
4. Honduras shall provide that:
- (a) the fact that a contract of representation, distribution, or agency has reached its termination date shall be considered just cause for a goods or service supplier of another Party to terminate the contract or allow the contract to expire without renewal; and
  - (b) any damages or indemnity for terminating a contract of representation, distribution, or agency, or allowing it to expire without renewal, without just cause shall be based on the general law of contracts.
- Nothing in subparagraph (b) shall be construed to require Honduras to adopt any measure that affects the right of the parties to demand indemnification, when appropriate, in the form, type, and amount agreed in the contract.
5. Honduras shall provide that:
- (a) if the amount and form of any indemnification payment is not established in a contract of representation, distribution, or agency and a party wishes to terminate the contract;
    - (i) the parties may agree to resolve any dispute regarding such payment in the Center for Conciliation and Arbitration of Honduras, or if the parties agree otherwise, to another arbitration center; and
    - (ii) in such proceeding general principles of contract law will be applied;
  - (b) Decree Law No. 549 shall apply to a contract only if:
    - (i) the representative, distributor, or agent has registered with the *Secretaría de Estado en los Despachos de Industria y Comercio*, which shall be possible only if it is party to a written contract of representation, distribution, or agency; and
    - (ii) the contract was entered into while such law was in effect; and
  - (c) in any decision awarding an indemnity calculated under Article 14 of Decree Law No. 549, the amount shall be calculated as of the date of entry into force

of this Agreement, expressed in terms of Honduran lempiras as of that date, and converted into U.S. dollars at the exchange rate in effect on the date of the decision.

6. Under Honduran law, a contract of representation, distribution, or agency is exclusive only if the contract states so expressly.

7. For purposes of this Section:

- (a) **termination date** means the date provided in the contract for the contract to end, at 12:00 p.m. on that day, or the end of a contract extension period agreed upon by the parties to the contract; and
- (b) **contract of representation, distribution, or agency** has the same meaning as under Decree Law No. 549.

**Chapter Twelve**  
**Financial Services**

**Article 12.1: Scope and Coverage**

1. This Chapter applies to measures adopted or maintained by a Party relating to:
  - (a) financial institutions of another Party;
  - (b) investors of another Party, and investments of such investors, in financial institutions in the Party's territory; and
  - (c) cross-border trade in financial services.
2. Chapters Ten (Investment) and Eleven (Cross-Border Trade in Services) apply to measures described in paragraph 1 only to the extent that such Chapters or Articles of such Chapters are incorporated into this Chapter.
  - (a) Articles 10.7 (Expropriation and Compensation), 10.8 (Transfers), 10.11 (Investment and Environment), 10.12 (Denial of Benefits), 10.14 (Special Formalities and Information Requirements), and 11.12 (Denial of Benefits) are hereby incorporated into and made a part of this Chapter.
  - (b) Section B of Chapter Ten (Investor-State Dispute Settlement) is hereby incorporated into and made a part of this Chapter solely for claims that a Party has breached Article 10.7, 10.8, 10.12, or 10.14, as incorporated into this Chapter.
  - (c) Article 11.10 (Transfers and Payments) is incorporated into and made a part of this Chapter to the extent that cross-border trade in financial services is subject to obligations pursuant to Article 12.5.
3. This Chapter does not apply to measures adopted or maintained by a Party relating to:
  - (a) activities or services forming part of a public retirement plan or statutory system of social security; or
  - (b) activities or services conducted for the account or with the guarantee or using the financial resources of the Party, including its public entities,

except that this Chapter shall apply if a Party allows any of the activities or services referred to in subparagraph (a) or (b) to be conducted by its financial institutions in competition with a public entity or a financial institution.
4.
  - (a) Subject to subparagraph (c), for two years beginning on the date of entry into force of this Agreement, this Chapter shall not apply to:
    - (i) measures adopted or maintained by the Dominican Republic relating to financial institutions of Costa Rica, El Salvador, Honduras, or Nicaragua to the extent they supply banking services; investors of Costa Rica, El Salvador, Honduras, or Nicaragua, and investments of such investors, in such financial institutions in the territory of the Dominican Republic; or cross-border trade in banking services between the Dominican Republic and Costa Rica, El Salvador, Honduras, or Nicaragua; or

- (ii) measures adopted or maintained by Costa Rica, El Salvador, Honduras, or Nicaragua relating to financial institutions of the Dominican Republic to the extent they supply banking services; investors of the Dominican Republic, and investments of such investors, in such financial institutions in the territory of Costa Rica, El Salvador, Honduras, or Nicaragua; or cross-border trade in banking services between Costa Rica, El Salvador, Honduras, or Nicaragua and the Dominican Republic;
  - (iii) measures adopted or maintained by the Dominican Republic relating to financial institutions of Guatemala; investors of Guatemala, and investments of such investors, in such financial institutions in the territory of the Dominican Republic; or cross-border trade in financial services between the Dominican Republic and Guatemala; or
  - (iv) measures adopted or maintained by Guatemala relating to financial institutions of the Dominican Republic; investors of the Dominican Republic, and investments of such investors, in such financial institutions in the territory of Guatemala; or cross-border trade in financial services between Guatemala and the Dominican Republic.
- (b) During the two-year period referred to in subparagraph (a), the Dominican Republic and each Central American Party shall seek to agree on those measures described in subparagraph (a) that shall be considered non-conforming measures pursuant to Article 12.9 and that shall be reflected in their respective Schedules to Annex III for purposes of modifying their rights and obligations with respect to each other under this Chapter.
  - (c) If the Commission approves any such agreement during this period, each relevant Party's schedule shall be modified accordingly. Subparagraph (a) shall cease to apply as between the Dominican Republic and the relevant Central American Party on the date the modification takes effect.

**Article 12.2: National Treatment**

1. Each Party shall accord to investors of another Party treatment no less favorable than that it accords to its own investors, in like circumstances, with respect to the establishment, acquisition, expansion, management, conduct, operation, and sale or other disposition of financial institutions and investments in financial institutions in its territory.
2. Each Party shall accord to financial institutions of another Party and to investments of investors of another Party in financial institutions treatment no less favorable than that it accords to its own financial institutions, and to investments of its own investors in financial institutions, in like circumstances, with respect to the establishment, acquisition, expansion, management, conduct, operation, and sale or other disposition of financial institutions and investments.
3. For purposes of the national treatment obligations in Article 12.5.1, a Party shall accord to cross-border financial service suppliers of another Party treatment no less favorable than that it accords to its own financial service suppliers, in like circumstances, with respect to the supply of the relevant service.

**Article 12.3: Most-Favored-Nation Treatment**

1. Each Party shall accord to investors of another Party, financial institutions of another Party, investments of investors in financial institutions, and cross-border financial service

suppliers of another Party treatment no less favorable than that it accords to the investors, financial institutions, investments of investors in financial institutions, and cross-border financial service suppliers of any other Party or of a non-Party, in like circumstances.

2. A Party may recognize prudential measures of another Party or of a non-Party in the application of measures covered by this Chapter. Such recognition may be:

- (a) accorded unilaterally;
- (b) achieved through harmonization or other means; or
- (c) based upon an agreement or arrangement with another Party or a non-Party.

3. A Party according recognition of prudential measures under paragraph 2 shall provide adequate opportunity to another Party to demonstrate that circumstances exist in which there are or would be equivalent regulation, oversight, implementation of regulation, and, if appropriate, procedures concerning the sharing of information between the relevant Parties.

4. Where a Party accords recognition of prudential measures under paragraph 2(c) and the circumstances set out in paragraph 3 exist, the Party shall provide adequate opportunity to another Party to negotiate accession to the agreement or arrangement, or to negotiate a comparable agreement or arrangement.

**Article 12.4: Market Access for Financial Institutions**

No Party may adopt or maintain, with respect to financial institutions of another Party, either on the basis of a regional subdivision or on the basis of its entire territory, measures that:

- (a) impose limitations on:
  - (i) the number of financial institutions whether in the form of numerical quotas, monopolies, exclusive service suppliers, or the requirements of an economic needs test;
  - (ii) the total value of financial service transactions or assets in the form of numerical quotas or the requirement of an economic needs test;
  - (iii) the total number of financial service operations or on the total quantity of financial services output expressed in terms of designated numerical units in the form of quotas or the requirement of an economic needs test; or
  - (iv) the total number of natural persons that may be employed in a particular financial service sector or that a financial institution may employ and who are necessary for, and directly related to, the supply of a specific financial service in the form of numerical quotas or the requirement of an economic needs test; or
- (b) restrict or require specific types of legal entity or joint venture through which a financial institution may supply a service.

For purposes of this Article, "financial institutions of another Party" includes financial institutions that investors of another Party seek to establish in the territory of the Party.

**Article 12.5: Cross-Border Trade**

1. Each Party shall permit, under terms and conditions that accord national treatment, cross-border financial service suppliers of another Party to supply the services specified in Annex 12.5.1.
2. Each Party shall permit persons located in its territory, and its nationals wherever located, to purchase financial services from cross-border financial service suppliers of another Party located in the territory of that other Party or of any other Party. This obligation does not require a Party to permit such suppliers to do business or solicit in its territory. Each Party may define "doing business" and "solicitation" for purposes of this obligation, provided that those definitions are not inconsistent with paragraph 1.
3. Without prejudice to other means of prudential regulation of cross-border trade in financial services, a Party may require the registration of cross-border financial service suppliers of another Party and of financial instruments.

**Article 12.6: New Financial Services<sup>1</sup>**

Each Party shall permit a financial institution of another Party to supply any new financial service that the Party would permit its own financial institutions, in like circumstances, to supply without additional legislative action by the Party. Notwithstanding Article 12.4(b), a Party may determine the institutional and juridical form through which the new financial service may be supplied and may require authorization for the supply of the service. Where a Party requires authorization to supply a new financial service, a decision shall be made within a reasonable time and the authorization may only be refused for prudential reasons.

**Article 12.7: Treatment of Certain Information**

Nothing in this Chapter requires a Party to furnish or allow access to:

- (a) information related to the financial affairs and accounts of individual customers of financial institutions or cross-border financial service suppliers; or
- (b) any confidential information the disclosure of which would impede law enforcement or otherwise be contrary to the public interest or prejudice legitimate commercial interests of particular enterprises.

**Article 12.8: Senior Management and Boards of Directors**

1. No Party may require financial institutions of another Party to engage individuals of any particular nationality as senior managerial or other essential personnel.
2. No Party may require that more than a minority of the board of directors of a financial institution of another Party be composed of nationals of the Party, persons residing in the territory of the Party, or a combination thereof.

<sup>1</sup> The Parties understand that nothing in Article 12.6 prevents a financial institution of a Party from applying to another Party to request it to consider authorizing the supply of a financial service that is not supplied in the territory of any Party. The application shall be subject to the law of the Party to which the application is made and, for greater certainty, shall not be subject to the obligations of Article 12.6.

**Article 12.9: Non-Conforming Measures**

1. Articles 12.2 through 12.5 and 12.8 do not apply to:
  - (a) any existing non-conforming measure that is maintained by a Party at
    - (i) the central level of government, as set out by that Party in its Schedule to Annex III,
    - (ii) a regional level of government, as set out by that Party in its Schedule to Annex III, or
    - (iii) a local level of government;
  - (b) the continuation or prompt renewal of any non-conforming measure referred to in subparagraph (a); or
  - (c) an amendment to any non-conforming measure referred to in subparagraph (a) to the extent that the amendment does not decrease the conformity of the measure, as it existed immediately before the amendment, with Article 12.2, 12.3, 12.4, or 12.8.<sup>2</sup>
2. Annex 12.9.2 sets out certain specific commitments by each Party.
3. Annex 12.9.3 sets out, solely for purposes of transparency, supplementary information regarding certain aspects of financial services measures of a Party that the Party considers are not inconsistent with its obligations under this Chapter.
4. Articles 12.2 through 12.5 and 12.8 do not apply to any measure that a Party adopts or maintains with respect to sectors, subsectors, or activities, as set out in its Schedule to Annex III.
5. A non-conforming measure set out in a Party's Schedule to Annex I or II as a measure to which Article 10.3 (National Treatment), 10.4 (Most-Favored-Nation Treatment), 11.2 (National Treatment), 11.3 (Most-Favored-Nation Treatment), or 11.4 (Market Access) does not apply shall be treated as a non-conforming measure to which Article 12.2, 12.3, or 12.4, as the case may be, does not apply, to the extent that the measure, sector, subsector, or activity set out in the Schedule is covered by this Chapter.

**Article 12.10: Exceptions**

1. Notwithstanding any other provision of this Chapter or Chapters Ten (Investment), Thirteen (Telecommunications), including specifically Article 13.16 (Relationship to Other Chapters), or Fourteen (Electronic Commerce), and Article 11.1.3 (Scope and Coverage) with respect to the supply of financial services in the territory of a Party by an investor of another Party or a covered investment, a Party shall not be prevented from adopting or maintaining measures for prudential reasons,<sup>3</sup> including for the protection of investors, depositors, policy holders, or persons to whom a fiduciary duty is owed by a financial institution or cross-border financial service supplier, or to ensure the integrity and stability of the financial system. Where such measures do not conform with the provisions of this Agreement referred to in this

<sup>2</sup> For greater certainty, Article 12.5 does not apply to an amendment to any non-conforming measure referred to in subparagraph (a) to the extent that the amendment does not decrease the conformity of the measure, as it existed on the date of entry into force of this Agreement, with Article 12.5.

<sup>3</sup> It is understood that the term "prudential reasons" includes the maintenance of the safety, soundness, integrity, or financial responsibility of individual financial institutions or cross-border financial service suppliers.

paragraph, they shall not be used as a means of avoiding the Party's commitments or obligations under such provisions.

2. Nothing in this Chapter or Chapters Ten (Investment), Thirteen (Telecommunications), including specifically Article 13.16 (Relationship to Other Chapters), or Fourteen (Electronic Commerce), and Article 11.1.3 (Scope and Coverage) with respect to the supply of financial services in the territory of a Party by an investor of another Party or a covered investment, applies to non-discriminatory measures of general application taken by any public entity in pursuit of monetary and related credit policies or exchange rate policies. This paragraph shall not affect a Party's obligations under Article 10.9 (Performance Requirements) with respect to measures covered by Chapter Ten (Investment) or under Article 10.8 (Transfers) or 11.10 (Transfers and Payments).

3. Notwithstanding Articles 10.8 (Transfers) and 11.10 (Transfers and Payments), as incorporated into this Chapter, a Party may prevent or limit transfers by a financial institution or cross-border financial service supplier to, or for the benefit of, an affiliate of or person related to such institution or supplier, through the equitable, non-discriminatory, and good faith application of measures relating to maintenance of the safety, soundness, integrity, or financial responsibility of financial institutions or cross-border financial service suppliers. This paragraph does not prejudice any other provision of this Agreement that permits a Party to restrict transfers.

4. For greater certainty, nothing in this Chapter shall be construed to prevent the adoption or enforcement by any Party of measures necessary to secure compliance with laws or regulations that are not inconsistent with this Chapter, including those relating to the prevention of deceptive and fraudulent practices or to deal with the effects of a default on financial services contracts, subject to the requirement that such measures are not applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination between countries where like conditions prevail, or a disguised restriction on investment in financial institutions or cross-border trade in financial services.

#### **Article 12.11: Transparency**

1. The Parties recognize that transparent regulations and policies governing the activities of financial institutions and cross-border financial service suppliers are important in facilitating both access of foreign financial institutions and foreign cross-border financial service suppliers to, and their operations in, each other's markets. Each Party commits to promote regulatory transparency in financial services.

2. In lieu of Article 18.2.2 (Publication), each Party shall, to the extent practicable:

- (a) publish in advance any regulations of general application relating to the subject matter of this Chapter that it proposes to adopt; and
- (b) provide interested persons and Parties a reasonable opportunity to comment on the proposed regulations.

3. At the time it adopts final regulations, a Party should, to the extent practicable, address in writing substantive comments received from interested persons with respect to the proposed regulations.

4. To the extent practicable, each Party should allow reasonable time between publication of final regulations and their effective date.

5. Each Party shall ensure that the rules of general application adopted or maintained by self-regulatory organizations of the Party are promptly published or otherwise made available in such a manner as to enable interested persons to become acquainted with them.

6. Each Party shall maintain or establish appropriate mechanisms that will respond to inquiries from interested persons regarding measures of general application covered by this Chapter.

7. Each Party's regulatory authorities shall make available to interested persons the requirements, including any documentation required, for completing applications relating to the supply of financial services.

8. On the request of an applicant, a Party's regulatory authority shall inform the applicant of the status of its application. If the authority requires additional information from the applicant, it shall notify the applicant without undue delay.

9. A Party's regulatory authority shall make an administrative decision on a completed application of an investor in a financial institution, a financial institution, or a cross-border financial service supplier of another Party relating to the supply of a financial service within 120 days, and shall promptly notify the applicant of the decision. An application shall not be considered complete until all relevant hearings are held and all necessary information is received. Where it is not practicable for a decision to be made within 120 days, the regulatory authority shall notify the applicant without undue delay and shall endeavor to make the decision within a reasonable time thereafter.

**Article 12.12: Self-Regulatory Organizations**

Where a Party requires a financial institution or a cross-border financial service supplier of another Party to be a member of, participate in, or have access to, a self-regulatory organization to provide a financial service in or into the territory of that Party, the Party shall ensure observance of the obligations of Articles 12.2 and 12.3 by such self-regulatory organization.

**Article 12.13: Payment and Clearing Systems**

Under terms and conditions that accord national treatment, each Party shall grant financial institutions of another Party established in its territory access to payment and clearing systems operated by public entities, and to official funding and refinancing facilities available in the normal course of ordinary business. This paragraph is not intended to confer access to the Party's lender of last resort facilities.

**Article 12.14: Domestic Regulation**

Except with respect to non-conforming measures listed in its Schedule to Annex III, each Party shall ensure that all measures of general application to which this Chapter applies are administered in a reasonable, objective, and impartial manner.

**Article 12.15: Expedited Availability of Insurance Services**

The Parties recognize the importance of maintaining and developing regulatory procedures to expedite the offering of insurance services by licensed suppliers.

**Article 12.16: Financial Services Committee**

1. The Parties hereby establish a Financial Services Committee. The principal representative of each Party shall be an official of the Party's authority responsible for financial services set out in Annex 12.16.1.

2. The Committee shall:

(a) supervise the implementation of this Chapter and its further elaboration;

- (b) consider issues regarding financial services that are referred to it by a Party; and
- (c) participate in the dispute settlement procedures in accordance with Article 12.19.

All decisions of the Committee shall be taken by consensus, unless the Committee otherwise decides.

3. The Committee shall meet annually, or as otherwise agreed, to assess the functioning of this Agreement as it applies to financial services. The Committee shall inform the Commission of the results of each meeting.

**Article 12.17: Consultations**

1. A Party may request consultations with another Party regarding any matter arising under this Agreement that affects financial services. The other Party shall give sympathetic consideration to the request. The consulting Parties shall report the results of their consultations to the Committee.

2. Consultations under this Article shall include officials of the authorities specified in Annex 12.16.1.

3. Nothing in this Article shall be construed to require regulatory authorities participating in consultations under paragraph 1 to disclose information or take any action that would interfere with specific regulatory, supervisory, administrative, or enforcement matters.

4. Nothing in this Article shall be construed to require a Party to derogate from its relevant law regarding sharing of information among financial regulators or the requirements of an agreement or arrangement between financial authorities of two or more Parties.

**Article 12.18: Dispute Settlement**

1. Section A of Chapter Twenty (Dispute Settlement) applies as modified by this Article to the settlement of disputes arising under this Chapter.

2. The Parties shall establish within six months after the date of entry into force of this Agreement and maintain a roster of up to 28 individuals who are willing and able to serve as financial services panelists. Unless the Parties otherwise agree, the roster shall include up to three individuals who are nationals of each Party and up to seven individuals who are not nationals of any Party. The roster members shall be appointed by consensus and may be reappointed. Once established, a roster shall remain in effect for a minimum of three years, and shall remain in effect thereafter until the Parties constitute a new roster. The Parties may appoint a replacement where a roster member is no longer available to serve.

3. Financial services roster members, as well as financial services panelists, shall:

- (a) have expertise or experience in financial services law or practice, which may include the regulation of financial institutions;
- (b) be chosen strictly on the basis of objectivity, reliability, and sound judgment;
- (c) be independent of, and not be affiliated with or take instructions from, any Party; and
- (d) comply with a code of conduct to be established by the Commission.

4. When a Party claims that a dispute arises under this Chapter, Article 20.9 (Panel Selection) shall apply, except that:

- (a) where the disputing Parties so agree, the panel shall be composed entirely of panelists meeting the qualifications in paragraph 3; and
- (b) in any other case,
  - (i) each disputing Party may select panelists meeting the qualifications set out in paragraph 3 or in Article 20.8 (Qualifications of Panelists), and
  - (ii) if the Party complained against invokes Article 12.10, the chair of the panel shall meet the qualifications set out in paragraph 3, unless the disputing Parties otherwise agree.

5. Notwithstanding Article 20.16 (Non-Implementation – Suspension of Benefits), where a panel finds a measure to be inconsistent with this Agreement and the measure under dispute affects:

- (a) only the financial services sector, the complaining Party may suspend benefits only in the financial services sector;
- (b) the financial services sector and any other sector, the complaining Party may suspend benefits in the financial services sector that have an effect equivalent to the effect of the measure in the Party's financial services sector; or
- (c) only a sector other than the financial services sector, the complaining Party may not suspend benefits in the financial services sector.

**Article 12.19: Investment Disputes in Financial Services**

1. Where an investor of a Party submits a claim under Section B of Chapter Ten (Investment) against another Party and the respondent invokes Article 12.10, on request of the respondent, the tribunal shall refer the matter in writing to the Financial Services Committee for a decision. The tribunal may not proceed pending receipt of a decision or report under this Article.

2. In a referral pursuant to paragraph 1, the Financial Services Committee shall decide the issue of whether and to what extent Article 12.10 is a valid defense to the claim of the investor. The Committee shall transmit a copy of its decision to the tribunal and to the Commission. The decision shall be binding on the tribunal.

3. Where the Financial Services Committee has not decided the issue within 60 days of the receipt of the referral under paragraph 1, the respondent or the Party of the claimant may request the establishment of an arbitral panel under Article 20.6 (Request for an Arbitral Panel). The panel shall be constituted in accordance with Article 12.18. The panel shall transmit its final report to the Committee and to the tribunal. The report shall be binding on the tribunal.

4. The Financial Services Committee may decide that, for purposes of a referral pursuant to paragraph 1, the financial services authorities of the relevant Parties shall make the decision described in paragraph 2 and transmit that decision to the tribunal and the Commission. In that case, a request may be made under paragraph 3 if the relevant Parties have not made the decision described in paragraph 2 within 60 days of their receipt of the referral under paragraph 1.

5. Where no request for the establishment of a panel pursuant to paragraph 3 has been made within ten days of the expiration of the 60-day period referred to in paragraph 3, the tribunal may proceed to decide the matter.

6. For purposes of this Article, **tribunal** means a tribunal established under Article 10.19 (Selection of Arbitrators).

**Article 12.20: Definitions**

For purposes of this Chapter:

**cross-border financial service supplier of a Party** means a person of a Party that is engaged in the business of supplying a financial service within the territory of the Party and that seeks to supply or supplies a financial service through the cross-border supply of such services;

**cross-border trade in financial services** or **cross-border supply of financial services** means the supply of a financial service:

- (a) from the territory of one Party into the territory of another Party,
- (b) in the territory of one Party by a person of that Party to a person of another Party, or
- (c) by a national of one Party in the territory of another Party,

but does not include the supply of a financial service in the territory of a Party by an investment in that territory;

**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 another Party** means a financial institution, including a branch, located in the territory of a Party that is controlled by persons of another Party;

**financial service** means any service of a financial nature. Financial services include all insurance and insurance-related services, and all banking and other financial services (excluding insurance), as well as services incidental or auxiliary to a service of a financial nature. Financial services include the following activities:

*Insurance and insurance-related services*

- (a) Direct insurance (including co-insurance):
  - (i) life,
  - (ii) non-life;
- (b) Reinsurance and retrocession;
- (c) Insurance intermediation, such as brokerage and agency; and
- (d) Services auxiliary to insurance, such as consultancy, actuarial, risk assessment, and claim settlement services.

*Banking and other financial services (excluding insurance)*

- (e) Acceptance of deposits and other repayable funds from the public;

- (f) Lending of all types, including consumer credit, mortgage credit, factoring and financing of commercial transactions;
- (g) Financial leasing;
- (h) All payment and money transmission services, including credit, charge, and debit cards, travelers checks, and bankers drafts;
- (i) Guarantees and commitments;
- (j) Trading for own account or for account of customers, whether on an exchange, in an over-the-counter market, or otherwise, the following:
  - (i) money market instruments (including checks, bills, and certificates of deposits);
  - (ii) foreign exchange;
  - (iii) derivative products including, but not limited to, futures and options;
  - (iv) exchange rate and interest rate instruments, including products such as swaps, forward rate agreements;
  - (v) transferable securities,
  - (vi) other negotiable instruments and financial assets, including bullion;
- (k) Participation in issues of all kinds of securities, including underwriting and placement as agent (whether publicly or privately) and provision of services related to such issues;
- (l) Money broking;
- (m) Asset management, such as cash or portfolio management, all forms of collective investment management, pension fund management, custodial, depository, and trust services;
- (n) Settlement and clearing services for financial assets, including securities, derivative products, and other negotiable instruments;
- (o) Provision and transfer of financial information, and financial data processing and related software by suppliers of other financial services; and
- (p) Advisory, intermediation, and other auxiliary financial services on all the activities listed in subparagraphs (e) through (o), including credit reference and analysis, investment and portfolio research and advice, advice on acquisitions and on corporate restructuring and strategy;

**financial service supplier of a Party** means a person of a Party that is engaged in the business of supplying a financial service within the territory of that Party;

**investment** means "investment" as defined in Article 10.28 (Definitions), except that, with respect to "loans" and "debt instruments" referred to in that Article:

- (a) a loan to or debt instrument 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; and

- (b) a loan granted by or debt instrument owned by a financial institution, other than a loan to or debt instrument of a financial institution referred to in subparagraph (a), is not an investment;

for greater certainty, a loan granted by or debt instrument owned by a cross-border financial service supplier, other than a loan to or debt instrument issued by a financial institution, is an investment if such loan or debt instrument meets the criteria for investments set out in Article 10.28;

**investor of a Party** means a Party or state enterprise thereof, or a person of a Party, that attempts to make, is making, or has made an investment in the territory of another Party; provided, however, that a natural person who is a dual national shall be deemed to be exclusively a national of the State of his or her dominant and effective nationality;

**new financial service** means a financial service not supplied in the Party's territory that is supplied within the territory of another Party, and includes 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;

**person of a Party** means "person of a Party" as defined in Article 2.1 (Definitions of General Application) and, for greater certainty, does not include a branch of an enterprise of a non-Party;

**public entity** means a central bank or monetary authority of a Party, or any financial institution owned or controlled by a Party; and

**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 suppliers or financial institutions.

**Annex 12.5.1**

**Cross-Border Trade**

**Section A: Costa Rica**

*Banking and Other Financial Services (Excluding Insurance)*

1. For Costa Rica, Article 12.5.1 applies with respect to the provision and transfer of financial information and financial data processing and related software as referred to in subparagraph (o) of the definition of financial service, and advisory and other auxiliary services, excluding intermediation, relating to banking and other financial services as referred to in subparagraph (p) of the definition of financial service.<sup>4</sup>

**Section B: The Dominican Republic**

*Insurance and Insurance-Related Services*

1. For the Dominican Republic, Article 12.5.1 applies to the cross-border supply of or trade in financial services as defined in subparagraph (a) of the definition of cross-border supply of financial services with respect to:

- (a) insurance of risk relating to:
  - (i) maritime shipping and commercial aviation and space launching and freight (including satellites), with such insurance to cover any or all of the following: the goods being transported, the vehicle transporting the goods and any liability arising therefrom; and
  - (ii) goods in international transit;
- (b) reinsurance and retrocession;
- (c) brokerage of insurance risks relating to paragraphs (a) and (b); and
- (d) consultancy, risk assessment, actuarial, and claims settlement services.

2. For the Dominican Republic, Article 12.5.1 applies to the cross-border supply of or trade in financial services as defined in subparagraph (c) of the definition of cross-border supply of financial services with respect to insurance services.<sup>5</sup>

*Banking and Other Financial Services (Excluding Insurance)*

3. For the Dominican Republic, Article 12.5.1 applies with respect to the provision and transfer of financial information and financial data processing and related software as referred to in subparagraph (o) of the definition of financial service, and advisory and other auxiliary

<sup>4</sup> It is understood that advisory services includes portfolio management advice but not other services related to portfolio management, and that auxiliary services does not include those services referred to in subparagraphs (e) through (o) of the definition of financial service.

<sup>5</sup> It is understood that the commitment for cross-border movement of persons is limited to those insurance and insurance-related services listed in paragraph 1.

services, excluding intermediation, relating to banking and other financial services as referred to in subparagraph (p) of the definition of financial service.<sup>6</sup>

### Section C: El Salvador

#### *Insurance and Insurance-Related Services*

1. For El Salvador, Article 12.5.1 applies to the cross-border supply of or trade in financial services as defined in subparagraph (a) of the definition of cross-border supply of financial services with respect to:

- (a) insurance of risk relating to:
  - (i) maritime shipping and commercial aviation and space launching and freight (including satellites), with such insurance to cover any or all of the following: the goods being transported, the vehicle transporting the goods, and any liability arising therefrom, and
  - (ii) goods in international transit;
- (b) reinsurance and retrocession;
- (c) brokerage of insurance risks relating to paragraphs (a) and (b); and
- (d) consultancy, risk assessment, actuarial, and claims settlement services.

2. For El Salvador, Article 12.5.1 applies to the cross-border supply of or trade in financial services as defined in subparagraph (c) of the definition of cross-border supply of financial services with respect to insurance services.<sup>7</sup>

#### *Banking and Other Financial Services (Excluding Insurance)*

3. For El Salvador, Article 12.5.1 applies with respect to:

- (a) provision and transfer of financial information as described in subparagraph (o) of the definition of financial service;
- (b) financial data processing as described in subparagraph (o) of the definition of financial service, subject to prior authorization from the relevant regulator, when it is required;<sup>8</sup> and
- (c) advisory and other auxiliary financial services, excluding intermediation, relating to banking and other financial services as described in subparagraph (p) of the definition of financial service.<sup>9</sup>

<sup>6</sup> It is understood that advisory services includes portfolio management advice but not other services related to portfolio management, and that auxiliary services does not include those services referred to in subparagraphs (e) through (o) of the definition of financial service.

<sup>7</sup> It is understood that the commitment for cross-border movement of persons is limited to those insurance and insurance-related services listed in paragraph 1.

<sup>8</sup> It is understood that where the financial information or financial data referred to in subparagraphs (a) and (b) involve personal data, the treatment of such personal data shall be in accordance with El Salvador's law regulating the protection of such data.

**Section D: Guatemala**

*Insurance and Insurance-Related Services*

1. For Guatemala, Article 12.5.1 applies to the cross-border supply of or trade in financial services as defined in subparagraph (a) of the definition of cross-border supply of financial services with respect to:

- (a) insurance of risk relating to:
  - (i) maritime shipping and commercial aviation and space launching and freight (including satellites), with such insurance to cover any or all of the following: the goods being transported, the vehicle transporting the goods, and any liability arising therefrom, and
  - (ii) goods in international transit;
- (b) reinsurance and retrocession;
- (c) insurance intermediation such as brokerage and agency only for the services indicated in paragraphs (a) and (b); and
- (d) services auxiliary to insurance as referred to in subparagraph (d) of the definition of financial service.

2. For Guatemala, Article 12.5.1 applies to the cross-border supply of or trade in financial services as defined in subparagraph (c) of the definition of cross-border supply of financial services with respect to insurance services.<sup>10</sup>

*Banking and Other Financial Services (Excluding Insurance)*

3. For Guatemala, Article 12.5.1 applies with respect to the provision and transfer of financial information and financial data processing and related software as referred to in subparagraph (o) of the definition of financial service, and advisory and other auxiliary services, excluding intermediation, relating to banking and other financial services as referred to in subparagraph (p) of the definition of financial service.<sup>11</sup>

<sup>9</sup> It is understood that advisory services includes portfolio management advice but not other services related to portfolio management, and that auxiliary services does not include those services referred to in subparagraphs (e) through (o) of the definition of financial service.

<sup>10</sup> It is understood that the commitment for cross-border movement of persons is limited to those insurance and insurance-related services listed in paragraph 1.

<sup>11</sup> It is understood that advisory services includes portfolio management advice but not other services related to portfolio management, and that auxiliary services does not include those services referred to in subparagraphs (e) through (o) of the definition of financial service.

### Section E: Honduras

#### *Insurance and Insurance-Related Services*

1. For Honduras, Article 12.5.1 applies to the cross-border supply of or trade in financial services as defined in subparagraph (a) of the definition of cross-border supply of financial services with respect to:

- (a) insurance of risk relating to:
  - (i) maritime shipping and commercial aviation and space launching and freight (including satellites), with such insurance to cover any or all of the following: the goods being transported, the vehicle transporting the goods, and any liability arising therefrom, and
  - (ii) goods in international transit;
- (b) reinsurance and retrocession;
- (c) insurance intermediation such as brokerage and agency only for the services indicated in paragraphs (a) and (b); and
- (d) services auxiliary to insurance as referred to in subparagraph (d) of the definition of financial service.

2. For Honduras, Article 12.5.1 applies to the cross-border supply of or trade in financial services as defined in subparagraph (c) of the definition of cross-border supply of financial services with respect to insurance services.<sup>12</sup>

#### *Banking and Other Financial Services (Excluding Insurance)*

3. For Honduras, Article 12.5.1 applies with respect to the provision and transfer of financial information and financial data processing and related software as referred to in subparagraph (o) of the definition of financial service, and advisory and other auxiliary services, excluding intermediation, relating to banking and other financial services as referred to in subparagraph (p) of the definition of financial service.<sup>13</sup>

### Section F: Nicaragua

#### *Insurance and Insurance-Related Services*

1. For Nicaragua, Article 12.5.1 applies to the cross-border supply of or trade in financial services as defined in subparagraph (a) of the definition of cross-border supply of financial services with respect to:

- (a) insurance of risk relating to:
  - (i) maritime shipping and commercial aviation and space launching and freight (including satellites), with such insurance to cover any or all of

<sup>12</sup> It is understood that the commitment for cross-border movement of persons is limited to those insurance and insurance-related services listed in paragraph 1.

<sup>13</sup> It is understood that advisory services includes portfolio management advice but not other services related to portfolio management, and that auxiliary services does not include those services referred to in subparagraphs (e) through (o) of the definition of financial service.

the following: the goods being transported, the vehicle transporting the goods, and any liability arising therefrom, and

- (ii) goods in international transit;
- (b) reinsurance and retrocession;
- (c) brokerage of insurance risks relating to paragraphs (a)(i) and (a)(ii); and
- (d) services auxiliary to insurance as referred to in subparagraph (d) of the definition of financial services.<sup>14</sup>

2. For Nicaragua, Article 12.5.1 applies to the cross-border supply of or trade in financial services as defined in subparagraph (c) of the definition of cross-border supply of financial services with respect to insurance services.<sup>15</sup>

*Banking and Other Financial Services (Excluding Insurance)*

3. For Nicaragua, Article 12.5.1 applies with respect to:

- (a) the provision and transfer of financial information as described in subparagraph (o) of the definition of financial service;
- (b) financial data processing as described in subparagraph (o) of the definition of financial service, subject to prior authorization from the relevant regulator, as required;<sup>16</sup> and
- (c) advisory and other auxiliary financial services, excluding intermediation and credit reference and analysis, relating to banking and other financial services as described in subparagraph (p) of the definition of financial service.<sup>17</sup>

**Section G: United States**

*Insurance and Insurance-Related Services*

1. For the United States, Article 12.5.1 applies to the cross-border supply of or trade in financial services as defined in subparagraph (a) of the definition of cross-border supply of financial services with respect to:

- (a) insurance of risks relating to:
  - (i) maritime shipping and commercial aviation and space launching and freight (including satellites), with such insurance to cover any or all of

<sup>14</sup> For greater certainty, it is understood that these auxiliary services will only be provided to an insurance supplier.

<sup>15</sup> It is understood that the commitment for cross-border movement of persons is limited to those insurance and insurance-related services listed in paragraph 1.

<sup>16</sup> It is understood that Nicaragua's law regulating protection of information applies where the financial information or financial data processing referred to in subparagraphs (a) and (b) involves such protected information. Protected information includes, but is not limited to, information regulated under the concept of banking secrecy and personal information.

<sup>17</sup> It is understood that advisory services includes portfolio management advice but not other services related to portfolio management, and that auxiliary services does not include those services referred to in subparagraphs (e) through (o) of the definition of financial service.

the following: the goods being transported, the vehicle transporting the goods, and any liability arising therefrom, and

- (ii) goods in international transit; and
- (b) reinsurance and retrocession, services auxiliary to insurance as referred to in subparagraph (d) of the definition of financial service, and insurance intermediation such as brokerage and agency as referred to in subparagraph (c) of the definition of financial service.

2. For the United States, Article 12.5.1 applies to the cross-border supply of or trade in financial services as defined in subparagraph (c) of the definition of cross-border supply of financial services with respect to insurance services.

*Banking and Other Financial Services (Excluding Insurance)*

3. For the United States, Article 12.5.1 applies with respect to the provision and transfer of financial information and financial data processing and related software as referred to in subparagraph (o) of the definition of financial service, and advisory and other auxiliary services, excluding intermediation, relating to banking and other financial services as referred to in subparagraph (p) of the definition of financial service.<sup>18</sup>

<sup>18</sup> It is understood that advisory services includes portfolio management advice but not other services related to portfolio management, and that auxiliary services does not include those services referred to in subparagraphs (e) through (o) of the definition of financial service.

## Annex 12.9.2

## Specific Commitments

## Section A: Costa Rica

*Portfolio Management*

1. Costa Rica shall allow a financial institution (other than a trust company) organized outside its territory to provide investment advice and portfolio management services, excluding (a) custodial services, (b) trustee services, and (c) execution services that are not related to managing a collective investment scheme, to a collective investment scheme located in its territory. This commitment is subject to Article 12.1 and to Article 12.5.3.

2. Notwithstanding paragraph 1, Costa Rica may require that the ultimate responsibility for the management of a collective investment scheme be borne by a "*sociedad administradora de fondos de inversión*" constituted according to the *Ley Reguladora del Mercado de Valores*, No. 7732 of December 17, 1997 in the case of investment funds or an "*operadora de pensiones*" constituted according to the *Ley de Protección al Trabajador*, No. 7983 of February 18, 2000 in the case of pension funds and complementary pension funds.

3. For purposes of paragraphs 1 and 2, **collective investment scheme** means an investment fund constituted according to the *Ley Reguladora del Mercado de Valores*, No. 7732 of December 17, 1997, or a pension fund or a complementary pension fund constituted according to the *Ley de Protección al Trabajador*, No. 7983 of February 18, 2000.

*Expedited Availability of Insurance*

4. Costa Rica should endeavor to consider policies or procedures such as: not requiring product approval for insurance other than insurance sold to individuals or compulsory insurance; allowing introduction of products unless those products are disapproved within a reasonable period of time; and not imposing limitations on the number or frequency of product introductions.

## Section B: The Dominican Republic

*Portfolio Management*

1. The Dominican Republic shall allow a financial institution (other than a trust company), organized outside its territory, to provide investment advice and portfolio management services, excluding (a) custodial services, (b) trustee services, and (c) execution services that are not related to managing a collective investment scheme, to a collective investment scheme located in its territory. This commitment is subject to Articles 12.1 and 12.5.3.

2. The Parties recognize that the Dominican Republic does not currently have legislation regulating collective investment schemes. Notwithstanding paragraph 1, and no later than four years after the date of entry into force of this Agreement, the Dominican Republic shall implement paragraph 1 by adopting a Special Law regulating collective investment schemes, which shall contain a definition of collective investment scheme as specified in paragraph 3.

3. For purposes of paragraphs 1 and 2, **collective investment scheme** will have the meaning provided under the Special Law that the Dominican Republic adopts pursuant to paragraph 2.

*Expedited Availability of Insurance*

4. It is understood that the Dominican Republic requires prior product approval before the introduction of a new insurance product. The Dominican Republic shall provide that once an enterprise seeking approval for such a product files information with the Dominican Republic's regulatory authority, the regulator shall grant approval or issue disapproval in accordance with the Dominican Republic's law for the sale of the new product within 30 days. It is understood that the Dominican Republic does not maintain any limitations on the number or frequency of new product introductions.

**Section C: El Salvador***Portfolio Management*

1. El Salvador shall allow a financial institution (other than a trust company), organized outside its territory, to provide investment advice and portfolio management services, excluding (a) custodial services, (b) trustee services, and (c) execution services that are not related to managing a collective investment scheme, to a collective investment scheme located in the territory of El Salvador. This commitment is subject to Article 12.1 and to Article 12.5.3.

2. The Parties recognize that El Salvador does not currently have legislation regulating collective investment schemes. Notwithstanding paragraph 1, and no later than four years after the date of entry into force of this Agreement, El Salvador will implement paragraph 1 by adopting a Special Law regulating collective investment schemes, which shall contain a definition of collective investment scheme as specified in paragraph 3.

3. For purposes of paragraphs 1 and 2, **collective investment scheme** will have the meaning provided under the Special Law that El Salvador adopts pursuant to paragraph 2.

*Foreign Banking*

4. El Salvador shall allow banks organized under the laws of El Salvador to establish branches in the United States, subject to their compliance with relevant U.S. law. The Salvadoran regulatory agency will develop and issue prudential and other requirements that such banks must meet in order for them to obtain authorization to apply for the establishment of branches in the United States.

*Expedited Availability of Insurance*

5. It is understood that El Salvador requires prior product approval before the introduction of a new insurance product. El Salvador shall provide that once an enterprise seeking approval for such a product files information with El Salvador's supervisory authority, the regulator shall grant approval or issue disapproval in accordance with El Salvador's law for the sale of the new product within 60 days. It is understood that El Salvador does not maintain any limitations on the number or frequency of new product introductions.

**Section D: Guatemala***Portfolio Management*

1. Guatemala shall allow a financial institution (other than a trust company), organized outside its territory, to provide investment advice and portfolio management services, excluding (a) custodial services, (b) trustee services, and (c) execution services not related to

managing a collective investment scheme, to a collective investment scheme located in its territory. This commitment is subject to Article 12.1 and to Article 12.5.3.

2. The Parties recognize that Guatemala does not currently allow insurance companies to manage collective investment schemes. At such time as Guatemala allows insurance companies to manage collective investment schemes, Guatemala shall comply with paragraph 1 with regard to management of such schemes by insurance companies.

3. For purposes of paragraphs 1 and 2, **collective investment scheme** means an investment made in accordance with Articles 74, 75, 76, 77, and 79 of the *Ley del Mercado de Valores y Mercancías*, Decree No. 34-96 of the *Congreso de la República*.

*Expedited Availability of Insurance*

4. It is understood that Guatemala requires prior product approval before the introduction of a new insurance product. Guatemala shall provide that once an enterprise seeking approval for such a product files the information with Guatemala's supervisory authority, the authority shall grant approval or issue disapproval in accordance with Guatemala's law for the sale of the new product within 60 days. It is understood that Guatemala does not maintain any limitations on the number or frequency of product introductions.

**Section E: Honduras**

*Portfolio Management*

1. Honduras shall allow a financial institution (other than a trust company), organized outside its territory, to provide investment advice and portfolio management services, excluding (a) custodial services, (b) trustee services, and (c) execution services that are not related to managing a collective investment scheme, to a collective investment scheme located in its territory. This commitment is subject to Article 12.1 and to Article 12.5.3.

2. Notwithstanding paragraph 1, Honduras may require a collective investment scheme located in its territory to retain ultimate responsibility for the management of such collective investment scheme or the funds that it manages.

3. For purposes of paragraphs 1 and 2, **collective investment scheme** will have the meaning set out in any future laws, regulations, or guidance defining "collective investment scheme."

*Expedited Availability of Insurance*

4. It is understood that Honduras requires prior product approval before the introduction of a new insurance product. Honduras shall provide that once an enterprise seeking approval for such a product files the information with the *Comisión Nacional de Bancos y Seguros*, the Commission shall grant approval according to its law or issue disapproval for the sale of the new product within 30 days. It is understood that Honduras does not maintain any limitations on the number or frequency of product introductions.

**Section F: Nicaragua**

*Portfolio Management*

1. Nicaragua shall allow a financial institution (other than a trust company), organized outside its territory, to provide investment advice and portfolio management services, excluding (a) custodial services, (b) trustee services, and (c) execution services that are not related to managing a collective investment scheme or pension fund, to managers of a

collective investment scheme or pension fund located in its territory. This commitment is subject to Article 12.1 and to Article 12.5.3.

2. Notwithstanding paragraph 1, Nicaragua may require that the ultimate responsibility for the management of collective investment schemes and pension funds be borne, respectively, by the managers of such schemes and funds established in its territory.

3. The Parties recognize that Nicaragua does not currently have legislation establishing collective investment schemes and that its legislation relating to pension funds is not fully implemented. Notwithstanding paragraph 1, at such time as Nicaragua adopts legislation, regulations, or administrative guidance establishing collective investment schemes, Nicaragua shall comply with paragraph 1 with respect to collective investment schemes and provide a definition of collective investment scheme to be added to paragraph 5. Notwithstanding paragraph 1, at such time as Nicaragua undertakes further implementation relating to pension funds, Nicaragua shall comply with the obligations of paragraph 1 of this provision with respect to pension funds.

4. The Parties recognize that Nicaragua does not currently allow insurance companies to manage collective investment schemes. Notwithstanding paragraph 1, at such time as Nicaragua allows insurance companies to manage a collective investment scheme, Nicaragua shall comply with paragraph 1 with regard to management of collective investment schemes by insurance companies.

5. For purposes of paragraphs 1 through 3, **pension fund** has the meaning established in the *Ley del Sistema de Ahorro para Pensiones*, Law No. 340 (published in *La Gaceta, Diario Oficial*, No. 72 of 11 April 2000) and its implementing regulations.

*Expedited Availability of Insurance*

6. Nicaragua should endeavor to maintain existing opportunities or may wish to consider policies or procedures such as: not requiring product approval for insurance other than sold to individuals or compulsory insurance; allowing introduction of products unless those products are disapproved within a reasonable period of time; and not imposing limitations on the number or frequency of product introductions.

*Insurance Branching*

7. Notwithstanding the nonconforming measures of Nicaragua in Annex III, Section B, referring to insurance market access, excluding any portion of those non-conforming measures referring to financial conglomerates and social services, no later than four years after the date of entry into force of this Agreement, Nicaragua shall allow U.S. insurance suppliers to establish in its territory through branches. Nicaragua may choose how to regulate branches, including their characteristics, structure, relationship to their parent company, capital requirements, technical reserves, and obligations regarding risk capital and their investments.

**Section G: United States**

*Portfolio Management*

1. The United States shall allow a financial institution (other than a trust company), organized outside its territory, to provide investment advice and portfolio management services, excluding (a) custodial services, (b) trustee services, and (c) execution services that are not related to managing a collective investment scheme, to a collective investment scheme located in its territory. This commitment is subject to Article 12.1 and to Article 12.5.3.

2. For purposes of paragraph 1, **collective investment scheme** means an investment company registered with the Securities and Exchange Commission under the *Investment Company Act of 1940*.

*Expedited Availability of Insurance*

3. The United States should endeavor to maintain existing opportunities or may wish to consider policies or procedures such as: not requiring product approval for insurance other than insurance sold to individuals or compulsory insurance; allowing introduction of products unless those products are disapproved within a reasonable period of time; and not imposing limitations on the number or frequency of product introductions.

**Section H: Specific Commitments of Costa Rica on Insurance Services**

**I. Preamble**

The Government of the Republic of Costa Rica:

reaffirming its decision to ensure that the process of opening its insurance services sector must be based on its Constitution;

emphasizing that such process shall be to the benefit of the consumer and shall be accomplished gradually and based on prudential regulation;

recognizing its commitment to modernize the *Instituto Nacional de Seguros* (INS) and the Costa Rican legal framework in the insurance sector;

undertakes through this Annex the following specific commitments on insurance services.

**II. Modernization of INS and the Costa Rican Legal Framework in the Insurance Sector**

By no later than January 1, 2007, Costa Rica shall establish an independent insurance regulatory authority which shall be separate from and not accountable to any supplier of insurance services. The decisions and the procedures used by the regulatory authority shall be impartial with respect to all market participants. The insurance regulatory authority shall have adequate powers, legal protection, and financial resources to exercise its functions and powers,<sup>19</sup> and treat confidential information appropriately.

**III. Gradual Market Access Opening Commitments**

**1. Cross-Border Commitments**

Costa Rica shall allow insurance service providers of any Party, on a non-discriminatory basis, to effectively compete to supply directly to the consumer insurance services on a cross-border basis as provided below:

A. By no later than the date of entry into force of this Agreement, Costa Rica shall permit the following:

(i) pursuant to Article 12.5.2, persons located in its territory, and its nationals wherever located, to purchase any and all lines of insurance

<sup>19</sup> The regulatory authority shall act consistently with the core principles of the International Association of Insurance Supervisors.

(except compulsory automobile insurance<sup>20</sup> and occupational risk insurance<sup>21,22</sup> from cross-border insurance service suppliers of another Party located in the territory of that other Party or of another Party. This obligation will not require Costa Rica to permit such suppliers to do business or solicit in its territory. Costa Rica may define “doing business” and “solicitation” for purposes of this obligation, as long as such definitions are not inconsistent with Article 12.5.1; and

- (ii) pursuant to Article 12.5.1, the cross-border supply of or trade in financial services as defined in subparagraph (a) of the definition of cross-border supply of financial services in Article 12.20 with respect to:
  - (a) insurance risk relating to:
    - (i) space launching of freight (including satellite), maritime shipping and commercial aviation, with such insurance to cover any or all of the following: the goods being transported, the vehicle transporting the goods and any liability arising therefrom; and
    - (ii) goods in international transit;
  - (b) retrocession and reinsurance;
  - (c) services necessary to support global accounts;<sup>23</sup>
  - (d) services auxiliary to insurance as referred to in subparagraph (d) of the definition of financial service;<sup>24</sup> and
  - (e) insurance intermediation, provided by brokers and agents outside Costa Rica, such as brokerage and agency as referred to in subparagraph (c) of the definition of financial services.<sup>25</sup>

<sup>20</sup> For purposes of this commitment, “compulsory automobile insurance” has the meaning given to that term in Article 48 of the *Ley de Tránsito por Vías Públicas Terrestres*, Law No. 7331 of 13 April 1993.

<sup>21</sup> As referred to in the last paragraph of Article 73 of the *Constitución Política de la República de Costa Rica*. Occupational risk insurance is a compulsory insurance that covers workers under a subordinate labor relationship for accidents or illnesses occurring as a consequence of their occupation, as well as the direct, immediate, and evident effects of such accidents and illnesses.

<sup>22</sup> For greater certainty, Costa Rica is not required to modify its regulation of compulsory automobile insurance and occupational risk insurance, provided that such regulation is consistent with the obligations undertaken in this Agreement, including this Annex.

<sup>23</sup> For purposes of this subclause,

- (a) **services necessary to support global accounts** means that the coverage of a master (global) insurance policy written in a territory other than Costa Rica for a multinational client by an insurer of a Party extends to the operations of the multinational client in Costa Rica; and
- (b) a multinational client is any foreign enterprise majority owned by a foreign manufacturer or service provider doing business in Costa Rica.

<sup>24</sup> This clause applies only to the lines of insurance set out in III.1.A.(ii)(a), (b), and (c).

<sup>25</sup> This clause applies only to the lines of insurance set out in III.1.A.(ii)(a), (b), and (c).

## B. By July 1, 2007:

- (a) Costa Rica shall permit the establishment of representative offices; and
- (b) Article 12.5.1 shall apply to the cross-border supply of or trade in financial services as defined in subparagraph (a) of the definition of cross-border supply of financial services in Article 12.20 with respect to:
  - (i) services auxiliary to insurance as referred to in subparagraph (d) of the definition of financial service;<sup>26</sup>
  - (ii) insurance intermediation such as brokerage and agency as referred to in subparagraph (c) of the definition of financial services;<sup>27</sup> and
  - (iii) surplus lines.<sup>28</sup>

## C. For Costa Rica, Article 12.5.1 applies to the cross-border supply of or trade in financial services as defined in subparagraph (c) of the definition of cross-border supply of financial services in Article 12.20 with respect to insurance services.

2. Right of Establishment for Insurance Providers

Costa Rica shall, on a non-discriminatory basis, allow insurance service suppliers of any Party, to establish and effectively compete to supply directly to the consumer insurance services in its territory as provided below:

- (a) any and all lines of insurance<sup>29</sup> (except compulsory automobile and occupational risk insurance), no later than January 1, 2008; and
- (b) any and all lines of insurance, no later than January 1, 2011.

For purposes of this commitment Costa Rica shall allow insurance service suppliers to be established through any juridical form, as provided in Article 12.4(b). It is understood that Costa Rica may establish prudential solvency and integrity requirements, which shall be in line with comparable international regulatory practice.

<sup>26</sup> This clause applies to all lines of insurance.

<sup>27</sup> This clause applies to all lines of insurance.

<sup>28</sup> Surplus lines of insurance means lines of insurance (products covering specific sets of risks with specific characteristics, features, and services) that meet the following criteria:

- (a) lines of insurance other than those that INS supplies as of the date of signature of this Agreement, or lines of insurance that are substantially the same as such lines; and
- (b) that are sold either (i) to customers with premiums in excess of 10,000 U.S. dollars per year, or (ii) to enterprises, or (iii) to customers with a particular net worth or revenues of a particular size or number of employees.

As of January 1, 2008, surplus lines shall be defined as insurance coverage not available from an admitted company in the regular market.

<sup>29</sup> For greater certainty, social security services referred to in the first, second, and third paragraphs of article 73 of the *Constitución Política de la República de Costa Rica* and provided by the *Caja Costarricense de Seguro Social* as of the date of signature of this Agreement are not subject to any commitment included in this Annex.

**Annex 12.9.3**

**Additional Information Regarding Financial Services Measures**

Each Party indicated below has provided the following descriptive and explanatory information regarding certain aspects of its financial services measures solely for purposes of transparency.

**Section A: Costa Rica**

Administrators of pension funds can invest up to 25 per cent of the equity of the fund in securities issued by foreign financial institutions. This limit can be increased up to 50 per cent, provided that real yields of investments of the complementary pension regime are equivalent or lower than international yields.

**Section B: The Dominican Republic**

*Banking Services and Other Financial Services (Insurance Excluded)*

1. Multipurpose Banks and Credit Entities
  - (a) In conformity with the *Ley Monetaria y Financiera*, No. 183-02, November 21, 2002, authorization for the operation of multipurpose banks (commercial banks) and credit entities (savings and credit banks and credit corporations) requires the presentation before the *Junta Monetaria* of an opinion of the *Superintendencia de Bancos* based on documents presented by the applicant entity. The *Junta Monetaria* may authorize the establishment of subsidiaries as well as branch offices, provided there is adequate coordination and exchange of information with the supervising authorities of the country of origin.
  - (b) Under no circumstances shall preferred shares grant their holders a greater voting right than common shares, nor shall holders of preferred shares collect dividends in advance of or independently from the results of the business year.
  - (c) For the purposes of opening a new entity, documentation establishing the existence and origin of the amount contributed shall be presented before the *Superintendencia de Bancos*. Such amount shall be temporarily deposited in the *Banco Central* for the execution of the initial investment plan and may be used to pay for the acquisition of fixed assets and the necessary expenses of facilities and initiation of operations.
  - (d) Multipurpose banks (commercial banks) and credit entities are not allowed to decrease their paid-up capital without previous authorization of the *Superintendencia de Bancos*. The payment of dividends is subject to compliance with the requirements established by the *Junta Monetaria*.
  - (e) Savings and Credit Banks may only contract obligations abroad and grant loans in foreign currency with the prior authorization of the *Junta Monetaria*.
  - (f) Representative offices of foreign banks not located in the territory of the Dominican Republic may not perform financial intermediation activities.

2. Exchange Agents

A prior authorization from the *Junta Monetaria* is needed to act as an Exchange Agent.

3. Securities and Goods Exchanges

- (a) All commodities exchanges must receive prior approval from the *Consejo Nacional de Valores*.
- (b) Securities intermediaries must be authorized to operate by the *Superintendencia de Valores*.
- (c) Securities Exchanges shall be represented in securities negotiations by natural persons known as securities brokers who are holders of a credential granted by the corresponding exchange and registered in the securities market. To register in the *Registro del Mercado de Valores*, securities and individuals must comply with Law No. 19-00. Exchanges shall be allowed to sell or rent the right to operate in an exchange, with the previous approval of the corresponding exchange and the *Superintendencia de Valores*.
- (d) Securities intermediaries existing before Law No. 19-00 went into effect, that are members of commodities exchanges and engage solely in the trading of commodities (securities representatives for commodities), must comply with the requirements of the law no later than five years from the date it went into effect.

*Services of Insurance and Reinsurance*

4. According to *Ley sobre Seguros y Fianzas en la República Dominicana*, No.146-02, July 22, 2001, a foreign enterprise that wishes to or has the intention of operating in the insurance business, the reinsurance business, or both, within the Dominican Republic must formulate its request to the *Superintendencia de Seguros*, expressing the fields in which it intends to operate in the Dominican Republic, attaching the following documents:

- (a) certification regarding the enterprise's domiciles, that of its head office, and the domicile in the Dominican Republic, which must be previously established;
- (b) the profit and loss general statement of its operations during the past five years, duly approved according to the insurance legislation of the country of origin;
- (c) certification of the names and nationalities of the senior managers or directors;
- (d) copy of the proxy given to the legal representative in the Dominican Republic;
- (e) certification of the State or Government entity in charge of the operations performed by the insurance enterprise or enterprises in which their head office or head offices are located; and
- (f) certification of the agreement or agreements taken by the competent authority of the enterprise stating the decision to extend its business to the Dominican Republic, and that it shall be responsible for its obligations, whether derived from its operations in the Dominican Republic or from the law, with both the goods it owns in the territory of the Dominican Republic, and also with the goods it has in other countries as far as the laws of such countries allow; and that it will submit to the laws and courts of the Dominican Republic, expressly renouncing all rights that might oppose them. This certification must be

translated into Spanish and be duly processed so that it is fully valid in the Dominican Republic.

5. Applications for insurance, policies, certificates, provisional warrants, modifications or endorsements, renewal certificates, and other documents related to insurance contracts, as well as performance bonds, should be written in plain and simple Spanish for ease of understanding.

*Reinsurance Located in the Territory of Another Party*

6. The *Superintendencia de Seguros* will communicate to the applicant within a period not to exceed 30 days, its decision with regard to the required authorization. If, after this period, the *Superintendencia de Seguros* has not reached a decision to this effect, it will be understood that no objection exists to consider the applicant entity as an accepted reinsurer.

*Pensions*

7. In conformity with *Ley que Crea el Sistema Dominicano de Seguridad Social*, No. 87-01 May 9, 2001, the resources of the pension funds must be invested exclusively in the territory of the Dominican Republic. Foreign investments in this sector are subject to special rules issued by the *Consejo Nacional de Seguridad Social*.

**Section C: El Salvador**

With regard to banking:

- (a) Holding companies and other foreign financial institutions are subject to consolidated supervision in accordance with relevant international practice. The *Superintendencia del Sistema Financiero*, subject to the opinion of the *Banco Central*, shall issue instructions for determining eligible institutions.
- (b) Banks and other foreign financial institutions must satisfy requirements of prudential regulation and supervision in their countries of origin in accordance with relevant international practice.
- (c) To be authorized to establish a branch in El Salvador, a foreign bank must meet the following criteria:
  - (i) *Establishment*: To obtain the authorization to establish a branch, a foreign bank must:
    - (A) prove that its head office is legally established in accordance with the laws of the country where it is constituted, that such country subjects the bank to prudential regulation and surveillance in accordance with international usage on the issue, and that it is classified as a first-rate bank by an internationally recognized risk rating company;
    - (B) prove that under the laws of the country where it is constituted and its own regulations, it can approve the establishment of branches, agencies, and offices that satisfy the requirements established by the *Ley de Bancos* and that both the head office and the government authority in charge of oversight of this entity in such country have appropriately authorized the entity's operation in El Salvador;

- (C) agree to maintain permanently in El Salvador at least one representative with full powers to perform all activities and contracts to be entered into and executed in El Salvador. The power must be granted clearly and precisely so as to bind the represented entity, so that it is wholly responsible in the country and internationally for all actions taken and contracts signed in El Salvador and so that it satisfies all the requirements established under the laws of El Salvador and the laws of the country where the foreign entity is constituted;
  - (D) agree to locate and maintain in El Salvador the amount of capital and capital reserves that the *Ley de Bancos* requires of El Salvador banks;
  - (E) certify that it has been in operation for at least five years and that the results of its operations have been satisfactory, based on reports of the oversight entity in the country where the foreign bank is constituted and of internationally recognized risk rating companies; and
  - (F) expressly submit to the laws, courts, and authorities of El Salvador, with regard to the acts it performs and the contracts it signs, or those that have effect in El Salvador.
- (ii) In such cases, the *Superintendencia del Sistema Financiero* shall sign cooperation memoranda with the regulatory agency of the country where the investing entity is established.
  - (iii) Foreign banks authorized to operate in El Salvador shall be subject to inspection and oversight by the *Superintendencia del Sistema Financiero*, shall enjoy the same rights and privileges, and will be subject to the same laws and standards that apply to domestic banks.

#### Section D: Honduras

1. Banking and savings and loan associations may not provide credits to natural persons or juridical persons domiciled abroad unless the *Banco Central de Honduras* authorizes the credits.
2. A branch of a foreign bank is not required to have its own Board of Directors or Administrative Council, but must have at least two representatives domiciled in Honduras. Such representatives are responsible for the general direction and administration of the business and have the legal authority to act in Honduras and to execute and to be responsible for the branch's own operations.
3. The founding members of financial institutions organized under the laws of Honduras must be natural persons.
4. The operation, function, servicing, and issuance of any new financial product with a direct and immediate relation to banking or lending must have the approval of the *Comisión Nacional de Bancos y Seguros*.
5. Shares in a foreign investment fund may be marketed in the territory of Honduras only if there is a reciprocity agreement at the government level or at the level of the relevant supervisory authorities of the country of origin of the investment fund and the country in which its shares are marketed.

6. Corporations that classify risk and choose to organize under Honduran law must be constituted as *sociedades anónimas* and must have in Honduras a permanent legal representative with a power of attorney sufficiently broad to undertake any legal act needed for the supply of risk classification services in Honduras.

#### Section E: Nicaragua

1. Nicaragua reserves the right to deny an operating license to a financial institution or group (other than an insurance financial institution or group) in the event that another Party has denied or cancelled an operating license to such financial institution or group.

2. To maintain a branch in Nicaragua, a bank constituted and organized in a foreign country must:

- (a) be legally authorized and allowed by its bylaws to operate in that foreign country and to establish branches in other foreign countries;
- (b) prior to establishing such branch, present a certification issued by the supervising authority of the country in which the bank is constituted and organized, indicating that authority's concurrence that the bank may establish a branch in Nicaragua; and
- (c) assign the branch capital that meets minimum requirements.

Such a branch must have its domicile in Nicaragua.

3. To maintain a branch in Nicaragua, a non-banking financial institution organized and constituted under the laws of a foreign country must:

- (a) be legally authorized and allowed by its bylaws to operate in the country in which it is organized and constituted and to establish branches abroad;
- (b) prior to establishing such branch, present a certification issued by the supervising authority of the country in which such institution is constituted and organized, indicating that authority's concurrence with the establishment of a branch in Nicaragua by such institution;
- (c) assign such branch capital meeting the minimum requirements; and
- (d) in the case of a FONCITUR, the capital and all of the funds of the FONCITUR must be invested in Nicaragua, in projects registered with the *Instituto Nicaragüense de Turismo*.

Such a branch must have its domicile in Nicaragua.

4. For purposes of this paragraph and paragraph 3:

- (a) **non-banking financial institution** means an institution that operates as a recipient of deposits from the public, as a stock exchange or institution related to a stock exchange; as *Almacenes Generales de Depósitos con carácter financiero*; as leasing entities; and as FONCITURs; and
- (b) **FONCITUR** means a *Fondo de Capital de Inversión Turística*.

5. A representative office of a foreign bank may place funds in Nicaragua in the form of loans and investments, and act as information centers for their clients, but is prohibited from accepting deposits from the public in Nicaragua.

6. The administrator of a pension fund may invest abroad a maximum of 30 percent of the assets of the fund. However, the *Superintendencia de Pensiones* reserves the right to vary the investment limits applicable to pension funds administrators at the foreign and national level.

**Annex 12.16.1****Financial Services Committee**

The authority of each Party responsible for financial services is:

- (a) in the case of Costa Rica, the *Consejo Nacional de Supervisión del Sistema Financiero* (CONASSIF) and the *Ministerio de Comercio Exterior* for banking and other financial services and for insurance;
- (b) in the case of the Dominican Republic, the *Banco Central de la República Dominicana* in consultation with the *Superintendencia de Bancos*, the *Superintendencia de Seguros*, the *Superintendencia de Valores*, and the *Superintendencia de Pensiones*, as appropriate,
- (c) in the case of El Salvador, the *Ministerio de Economía*, in consultation with the corresponding competent authority (*Superintendencia del Sistema Financiero*, *Superintendencia de Valores*, *Superintendencia de Pensiones* and the *Banco Central de Reserva*);
- (d) in the case of Guatemala, the *Superintendencia de Bancos* for banking and other financial services, the *Ministerio de Economía* for insurance and securities, and any other institutions approved by those authorities to participate within the Financial Services Committee;
- (e) in the case of Honduras, the *Banco Central de Honduras*, the *Comisión Nacional de Bancos y Seguros*, and the *Secretaría de Estado en los Despachos de Industria y Comercio*;
- (f) in the case of Nicaragua, the *Ministerio de Fomento, Industria y Comercio*, the *Superintendencia de Bancos y otras Instituciones Financieras*, the *Superintendencia de Pensiones*, and the *Ministerio de Hacienda y Crédito Público*, for banking and other financial services and for insurance; and
- (g) in the case of the United States, the Department of Treasury for banking and other financial services and the Office of the United States Trade Representative, in coordination with the Department of Commerce and other agencies, for insurance,

or their successors.

**Chapter Thirteen**  
**Telecommunications<sup>1</sup>**

**Article 13.1: Scope and Coverage**

1. This Chapter applies to:
  - (a) measures adopted or maintained by a Party relating to access to and use of public telecommunications services;
  - (b) measures adopted or maintained by a Party relating to obligations of suppliers of public telecommunications services;
  - (c) other measures relating to public telecommunications networks or services; and
  - (d) measures adopted or maintained by a Party relating to the supply of information services.
2. Except to ensure that enterprises operating broadcast stations and cable systems have continued access to and use of public telecommunications services, this Chapter does not apply to any measure adopted or maintained by a Party relating to broadcast or cable distribution of radio or television programming.
3. Nothing in this Chapter shall be construed to:
  - (a) require a Party or require a Party to compel any enterprise to establish, construct, acquire, lease, operate, or provide telecommunications networks or services where such networks or services are not offered to the public generally;
  - (b) require a Party to compel any enterprise exclusively engaged in the broadcast or cable distribution of radio or television programming to make available its broadcast or cable facilities as a public telecommunications network; or
  - (c) prevent a Party from prohibiting persons operating private networks from using their networks to supply public telecommunications networks or services to third parties.

**Article 13.2: Access to and Use of Public Telecommunications Services**

1. Each Party shall ensure that enterprises of another Party have access to and use of any public telecommunications service, including leased circuits, offered in its territory or across its borders, on reasonable and non-discriminatory terms and conditions, including as set out in paragraphs 2 through 6.
2. Each Party shall ensure that such enterprises are permitted to:
  - (a) purchase or lease, and attach terminal or other equipment that interfaces with a public telecommunications network;

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<sup>1</sup> In place of the obligations established in this Chapter, Costa Rica shall undertake the specific commitments set out in Annex 13.

- (b) provide services to individual or multiple end-users over leased or owned circuits;
- (c) connect owned or leased circuits with public telecommunications networks and services in the territory, or across the borders, of that Party or with circuits leased or owned by another person;
- (d) perform switching, signaling, processing, and conversion functions; and
- (e) use operating protocols of their choice.

3. Each Party shall ensure that enterprises of another Party may use public telecommunications services for the movement of information in its territory or across its borders and for access to information contained in databases or otherwise stored in machine-readable form in the territory of any Party.

4. Notwithstanding paragraph 3, a Party may take such measures as are necessary to:

- (a) ensure the security and confidentiality of messages; or
- (b) protect the privacy of non-public personal data of subscribers to public telecommunications services,

subject to the requirement that such measures are not applied in a manner that would constitute a means of arbitrary or unjustifiable discrimination or disguised restriction on trade in services.

5. Each Party shall 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 suppliers 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.

6. Provided that conditions for access to and use of public telecommunications networks or services satisfy the criteria set out in paragraph 5, such conditions may include:

- (a) a requirement to use specified technical interfaces, including interface protocols, for interconnection with such networks or services; and
- (b) a licensing, permit, registration, or notification procedure which, if adopted or maintained, is transparent and provides for the processing of applications filed thereunder in accordance with the Party's national law or regulation.

**Article 13.3: Obligations Relating to Suppliers of Public Telecommunications Services<sup>2</sup>***Interconnection*

1. (a) Each Party shall ensure that suppliers of public telecommunications services in its territory provide, directly or indirectly, interconnection with the suppliers of public telecommunications services of another Party.
- (b) In carrying out subparagraph (a), each Party shall ensure that suppliers of public telecommunications services in its territory take reasonable steps to protect the confidentiality of commercially sensitive information of, or relating to, suppliers and end-users of public telecommunications services and only use such information for the purpose of providing those services.
- (c) Each Party shall provide its telecommunications regulatory body the authority to require public telecommunications suppliers to file their interconnection contracts.

*Resale*

2. Each Party shall ensure that suppliers of public telecommunications services do not impose unreasonable or discriminatory conditions or limitations on the resale of those services.

*Number Portability*

3. Each Party shall ensure that suppliers of public telecommunications services in its territory provide number portability to the extent technically feasible, on a timely basis, and on reasonable terms and conditions.<sup>3</sup>

*Dialing Parity*

4. Each Party shall ensure that suppliers of public telecommunications services in its territory provide dialing parity to suppliers of public telecommunications services of another Party, and afford suppliers of public telecommunications services of another Party non-discriminatory access to telephone numbers and related services with no unreasonable dialing delays.

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<sup>2</sup> This Article is subject to Annex 13.3. Paragraphs 2 through 4 of this Article do not apply with respect to suppliers of commercial mobile services. Nothing in this Article shall be construed to preclude a Party from imposing the requirements set out in this Article on suppliers of commercial mobile services.

<sup>3</sup> In complying with this paragraph, the Dominican Republic, El Salvador, Guatemala, Honduras, and Nicaragua may take into account the economic feasibility of providing number portability.

**Article 13.4: Additional Obligations Relating to Major Suppliers of Public Telecommunications Services<sup>4</sup>**

*Treatment by Major Suppliers*

1. Each Party shall ensure that major suppliers in its territory accord suppliers of public telecommunications services of another Party treatment no less favorable than such major suppliers accord to their subsidiaries, their affiliates, or non-affiliated service suppliers regarding:

- (a) the availability, provisioning, rates, or quality of like public telecommunications services; and
- (b) the availability of technical interfaces necessary for interconnection.

*Competitive Safeguards*

- 2. (a) Each Party shall maintain<sup>5</sup> appropriate measures for the purpose of preventing suppliers who, alone or together, are a major supplier in its territory from engaging in or continuing anti-competitive practices.
- (b) The anti-competitive practices referred to in subparagraph (a) include in particular:
  - (i) engaging in anti-competitive cross-subsidization;
  - (ii) using information obtained from competitors with anti-competitive results; and
  - (iii) not making available, on a timely basis, to suppliers of public telecommunications services, technical information about essential facilities and commercially relevant information which are necessary for them to provide public telecommunications services.

*Resale*

- 3. Each Party shall ensure that major suppliers in its territory:
  - (a) offer for resale, at reasonable rates,<sup>6</sup> to suppliers of public telecommunications services of another Party, public telecommunications services that such major suppliers provide at retail to end-users that are not suppliers of public telecommunications services; and

<sup>4</sup> This Article is subject to Annex 13.3. This Article does not apply with respect to suppliers of commercial mobile services. This Article is without prejudice to any rights or obligations that a Party may have under the GATS, and nothing in this Article shall be construed to preclude a Party from imposing the requirements set out in this Article on suppliers of commercial mobile services.

<sup>5</sup> For purposes of paragraph 2, "maintain" a measure includes the actual implementation of such measure, as appropriate.

<sup>6</sup> For purposes of subparagraph (a), wholesale rates set pursuant to a Party's law and regulations satisfy the standard of reasonableness.

- (b) do not impose unreasonable or discriminatory conditions or limitations on the resale of such services.<sup>7</sup>

*Unbundling of Network Elements*

4. (a) Each Party shall provide its telecommunications regulatory body the authority to require major suppliers in its territory to offer access to network elements on an unbundled basis on terms, conditions, and at cost-oriented rates that are reasonable, non-discriminatory, and transparent for the supply of public telecommunications services.
- (b) Each Party may determine the network elements required to be made available in its territory, and the suppliers that may obtain such elements, in accordance with its law and regulations.

*Interconnection*

5. (a) General Terms and Conditions

Each Party shall ensure that major suppliers in its territory provide interconnection for the facilities and equipment of suppliers of public telecommunications services of another Party:

- (i) at any technically feasible point in the major supplier's network;
- (ii) under non-discriminatory terms, conditions (including technical standards and specifications), and rates;
- (iii) of a quality no less favorable than that provided by such major suppliers for their own like services, for like services of non-affiliated service suppliers, or for their subsidiaries or other affiliates;
- (iv) in a timely fashion, on terms, conditions (including technical standards and specifications), and, subject to Annex 13.4.5, cost-oriented rates that are transparent, reasonable, having regard to economic feasibility, and sufficiently unbundled so that the suppliers need not pay for network components or facilities that they do not require for the service to be provided; and
- (v) on request, at points in addition to the network termination points offered to the majority of users, subject to charges that reflect the cost of construction of necessary additional facilities.
- (b) Options for Interconnecting with Major Suppliers

Each Party shall ensure that suppliers of public telecommunications services of another Party may interconnect their facilities and equipment with those of major suppliers in its territory pursuant to at least one of the following options:

<sup>7</sup> Where provided in its law or regulations, a Party may prohibit a reseller that obtains, at wholesale rates, a public telecommunications service available at retail to only a limited category of subscribers from offering the service to a different category of subscribers.

- (i) a reference interconnection offer or another standard interconnection offer containing the rates, terms, and conditions that the major suppliers offer generally to suppliers of public telecommunications services; or
  - (ii) the terms and conditions of an interconnection agreement in force or through negotiation of a new interconnection agreement.
- (c) **Public Availability of Interconnection Offers**
- Each Party shall require major suppliers in its territory to make publicly available reference interconnection offers or other standard interconnection offers containing the rates, terms, and conditions that the major suppliers offer generally to suppliers of public telecommunications services.
- (d) **Public Availability of the Procedures for Interconnection Negotiations**
- Each Party shall make publicly available the applicable procedures for interconnection negotiations with major suppliers in its territory.
- (e) **Public Availability of Interconnection Agreements Concluded with Major Suppliers**
- (i) Each Party shall require major suppliers in its territory to file all interconnection agreements to which they are party with its telecommunications regulatory body or other relevant body.
  - (ii) Each Party shall make publicly available interconnection agreements in force between major suppliers in its territory and other suppliers of public telecommunications services in its territory.

*Provisioning and Pricing of Leased Circuits Services*

6. (a) Each Party shall ensure that major suppliers in its territory provide enterprises of another Party leased circuits services that are public telecommunications services on terms, conditions, and at rates that are reasonable and non-discriminatory.
- (b) In carrying out subparagraph (a), each Party shall provide its telecommunications regulatory body the authority to require major suppliers in its territory to offer leased circuits services that are public telecommunications services to enterprises of another Party at flat-rate, cost-oriented prices.

*Co-location*

7. (a) Subject to subparagraphs (b) and (c), each Party shall ensure that major suppliers in its territory provide to suppliers of public telecommunications services of another Party physical co-location of equipment necessary for interconnection on terms, conditions, and at cost-oriented rates that are reasonable, non-discriminatory, and transparent.
- (b) Where physical co-location is not practical for technical reasons or because of space limitations, each Party shall ensure that major suppliers in its territory:
- (i) provide an alternative solution, or

- (ii) facilitate virtual co-location in its territory,

on terms, conditions, and at cost-oriented rates that are reasonable, non-discriminatory, and transparent.

- (c) Each Party may specify in its law or regulations which premises are subject to subparagraphs (a) and (b).

*Access to Rights-of-Way*

8. Subject to Annex 13.4.8, each Party shall ensure that major suppliers in its territory afford access to their poles, ducts, conduits, and rights-of-way to suppliers of public telecommunications services of another Party on terms, conditions, and at rates that are reasonable and non-discriminatory.

**Article 13.5: Submarine Cable Systems**

Each Party shall ensure reasonable and non-discriminatory treatment for access to submarine cable systems (including landing facilities) in its territory, where a supplier is authorized to operate a submarine cable system as a public telecommunications service.

**Article 13.6: Conditions for the Supply of Information Services**

1. No Party may require an enterprise in its territory that it classifies<sup>8</sup> as a supplier of information services and that supplies such services over facilities that it does not own to:

- (a) supply such services to the public generally;
- (b) cost-justify its rates for such services;
- (c) file a tariff for such services;
- (d) interconnect its networks with any particular customer for the supply of such services; or
- (e) conform with any particular standard or technical regulation for interconnection other than for interconnection to a public telecommunications network.

2. Notwithstanding paragraph 1, a Party may take the actions described in subparagraphs (a) through (e) to remedy a practice of a supplier of information services that the Party has found in a particular case to be anti-competitive under its law or regulations, or to otherwise promote competition or safeguard the interests of consumers.

<sup>8</sup> For purposes of applying this provision, each Party may, through its telecommunications regulatory body, classify which services in its territory are information services.

**Article 13.7: Independent Regulatory Bodies<sup>9</sup> and Government-Owned Telecommunications Suppliers**

1. Each Party shall ensure that its telecommunications regulatory body is separate from, and not accountable to, any supplier of public telecommunications services. To this end, each Party shall ensure that its telecommunications regulatory body does not hold a financial interest or maintain an operating role in any such supplier.
2. Each Party shall ensure that the decisions and procedures of its telecommunications regulatory body are impartial with respect to all interested persons. To this end, each Party shall ensure that any financial interest that it holds in a supplier of public telecommunications services does not influence the decisions and procedures of its telecommunications regulatory body.
3. No Party may accord more favorable treatment to a supplier of public telecommunications services or to a supplier of information services than that accorded to a like supplier of another Party on the ground that the supplier receiving more favorable treatment is owned, wholly or in part, by the national government of the Party.

**Article 13.8: Universal Service**

Each Party shall administer any universal service obligation that it maintains in a transparent, non-discriminatory, and competitively neutral manner and shall ensure that its universal service obligation is not more burdensome than necessary for the kind of universal service that it has defined.

**Article 13.9: Licenses and Other Authorizations**

1. Where a Party requires a supplier of public telecommunications services to have a license, concession, permit, registration, or other type of authorization, the Party shall make publicly available:
  - (a) all applicable licensing or authorization criteria and procedures it applies;
  - (b) the time it normally requires to reach a decision concerning an application for a license, concession, permit, registration, or other type of authorization; and
  - (c) the terms and conditions of all licenses or authorizations it has issued.
2. Each Party shall ensure that, on request, an applicant receives the reasons for the denial of a license, concession, permit, registration, or other type of authorization.

**Article 13.10: Allocation and Use of Scarce Resources**

1. Each Party shall administer its procedures for the allocation and use of scarce telecommunications resources, including frequencies, numbers, and rights-of-way, in an objective, timely, transparent, and non-discriminatory manner.
2. Each Party shall make publicly available the current state of allocated frequency bands but shall not be required to provide detailed identification of frequencies allocated for specific government uses.

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<sup>9</sup> Each Party shall endeavor to ensure that its telecommunications regulatory body has adequate resources to carry out its functions.

3. For greater certainty, a Party's measures regarding the allocation and assignment of spectrum and regarding frequency management are not measures that are *per se* inconsistent with Article 11.4 (Market Access), which is applied to Chapter Ten (Investment) through Article 11.1.3 (Scope and Coverage). Accordingly, each Party retains the right to establish and apply its spectrum and frequency management policies, which may limit the number of suppliers of public telecommunications services, provided that it does so in a manner that is consistent with this Agreement. Each Party also retains the right to allocate frequency bands taking into account present and future needs.

**Article 13.11: Enforcement**

Each Party shall provide its competent authority with the authority to establish and enforce the Party's measures relating to the obligations set out in Articles 13.2 through 13.5. Such authority shall include the ability to impose effective sanctions, which may include financial penalties, injunctive relief (on an interim or final basis), or the modification, suspension, and revocation of licenses or other authorizations.

**Article 13.12: Resolution of Domestic Telecommunications Disputes**

Further to Articles 18.4 (Administrative Proceedings) and 18.5 (Review and Appeal), each Party shall ensure the following:

*Recourse to Telecommunications Regulatory Bodies*

- (a) (i) Each Party shall ensure that enterprises of another Party may seek review by a telecommunications regulatory body or other relevant body to resolve disputes regarding the Party's measures relating to a matter set out in Articles 13.2 through 13.5.
- (ii) Each Party shall ensure that suppliers of public telecommunications services of another Party that have requested interconnection with a major supplier in the Party's territory may seek review, within a reasonable and publicly available period of time after the supplier requests interconnection, by a telecommunications regulatory body<sup>10</sup> to resolve disputes regarding the terms, conditions, and rates for interconnection with such major supplier.

*Reconsideration*

- (b) Each Party shall ensure that any enterprise that is aggrieved or whose interests are adversely affected by a determination or decision of the Party's telecommunications regulatory body may petition the body to reconsider that determination or decision. No Party may permit such a petition to constitute grounds for non-compliance with the determination or decision of the telecommunications regulatory body unless an appropriate authority stays such determination or decision.

*Judicial Review*

- (c) Each Party shall ensure that any enterprise that is aggrieved or whose interests are adversely affected by a determination or decision of the Party's

<sup>10</sup> In the United States, this body may be a state regulatory authority.

telecommunications regulatory body may obtain judicial review of such determination or decision by an independent judicial authority.

**Article 13.13: Transparency**

Further to Articles 18.2 (Publication) and 18.3 (Notification and Provision of Information), each Party shall ensure that:

- (a) rulemakings, including the basis for such rulemakings, of its telecommunications regulatory body and end-user tariffs filed with its telecommunications regulatory body are promptly published or otherwise made publicly available;
- (b) interested persons are provided with adequate advance public notice of, and the opportunity to comment on, any rulemaking that its telecommunications regulatory body proposes; and
- (c) its measures relating to public telecommunications services are made publicly available, including measures relating to:
  - (i) tariffs and other terms and conditions of service;
  - (ii) procedures relating to judicial and other adjudicatory proceedings;
  - (iii) specifications of technical interfaces;
  - (iv) bodies responsible for preparing, amending, and adopting standards-related measures affecting access and use;
  - (v) conditions for attaching terminal or other equipment to the public telecommunications network; and
  - (vi) notification, permit, registration, or licensing requirements, if any.

**Article 13.14: Flexibility in the Choice of Technologies**

No Party may prevent suppliers of public telecommunications services from having the flexibility to choose the technologies that they use to supply their services, including commercial mobile wireless services, subject to requirements necessary to satisfy legitimate public policy interests.

**Article 13.15: Forbearance**

The Parties recognize the importance of relying on market forces to achieve wide choices in the supply of telecommunications services. To this end, each Party may forbear from applying a regulation to a service that the Party classifies as a public telecommunications service, if its telecommunications regulatory body determines that:

- (a) enforcement of such regulation is not necessary to prevent unreasonable or discriminatory practices;
- (b) enforcement of such regulation is not necessary for the protection of consumers; and

- (c) forbearance is consistent with the public interest, including promoting and enhancing competition between suppliers of public telecommunications services.

**Article 13.16: Relationship 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.

**Article 13.17: Definitions**

For purposes of this Chapter:

**commercial mobile services** means public telecommunications services supplied through mobile wireless means;

**cost-oriented** means based on cost, and may include a reasonable profit, and may involve different cost methodologies for different facilities or services;

**dialing parity** means the ability of an end-user to use an equal number of digits to access a like public telecommunications service, regardless of the public telecommunications service supplier chosen by such end-user;

**end-user** means a final consumer of or subscriber to a public telecommunications service, including a service supplier other than a supplier of public telecommunications services;

**enterprise** means an "enterprise" as defined in Article 2.1 (Definitions of General Application), and includes a branch of an enterprise;

**essential facilities** means facilities of a public telecommunications network or service that:

- (a) are exclusively or predominantly supplied by a single or limited number of suppliers; and
- (b) cannot feasibly be economically or technically substituted in order to supply a service;

**information service** means the offering of a capability for generating, acquiring, storing, transforming, processing, retrieving, utilizing, or making available information via telecommunications, and includes electronic publishing, but does not include any use of any such capability for the management, control, or operation of a telecommunications system or the management of a telecommunications service;

**interconnection** means linking with suppliers providing public telecommunications services in order to allow the users of one supplier to communicate with users of another supplier and to access services provided by another supplier;

**leased circuits** means telecommunications facilities between two or more designated points that are set aside for the dedicated use of or availability to a particular customer or other users of the customer's choosing;

**major supplier** means a supplier of public telecommunications services that has the ability to materially affect the terms of participation (having regard to price and supply) in the relevant market for public telecommunications services as a result of:

- (a) control over essential facilities; or
- (b) use of its position in the market;

**network element** means a facility or equipment used in supplying a public telecommunications service, including features, functions, and capabilities provided by means of such facility or equipment;

**non-discriminatory** means treatment no less favorable than that accorded to any other user of like public telecommunications services in like circumstances;

**number portability** means the ability of end-users of public telecommunications services to retain, at the same location, telephone numbers without impairment of quality, reliability, or convenience when switching between like suppliers of public telecommunications services;

**physical co-location** means physical access to and control over space in order to install, maintain, or repair equipment, at premises owned or controlled and used by a supplier to supply public telecommunications services;

**public telecommunications service** means any telecommunications service that a Party requires, explicitly or in effect, to be offered to the public generally. Such services may include, *inter alia*, telephone and data transmission typically involving customer-supplied information between two or more points without any end-to-end change in the form or content of the customer's information, but does not include information services;

**reference interconnection offer** means an interconnection offer extended by a major supplier and filed with or approved by a telecommunications regulatory body that is sufficiently detailed to enable a supplier of public telecommunications services that is willing to accept its rates, terms, and conditions to obtain interconnection without having to engage in negotiations with the major supplier;

**telecommunications** means the transmission and reception of signals by any electromagnetic means, including by photonic means;

**telecommunications regulatory body** means a national body responsible for the regulation of telecommunications; and

**user** means an end-user or a supplier of public telecommunications services.

**Annex 13**

**Specific Commitments of Costa Rica on Telecommunications Services**

**I. Preamble**

The Government of the Republic of Costa Rica:

acknowledging the unique nature of the Costa Rican social policy on telecommunications, and reaffirming its decision to ensure that the process of opening its telecommunications services sector must be based on its Constitution;

emphasizing that such process shall be to the benefit of the user and shall be based on the principles of graduality, selectivity, and regulation, and in strict conformity with the social objectives of universality and solidarity in the supply of telecommunications services; and

recognizing its commitment to strengthen and modernize the *Instituto Costarricense de Electricidad* (ICE) as a market participant in a competitive telecommunications marketplace while ensuring that the use of its infrastructure shall be remunerated and to develop a regulatory body to oversee market development;

undertakes through this Annex the following specific commitments on telecommunications services.

**II. Modernization of ICE**

Costa Rica shall enact a new legal framework to strengthen ICE, through its appropriate modernization, no later than December 31, 2004.

**III. Selective and Gradual Market Opening Commitments**

1. Market Access Standstill

Costa Rica shall allow service providers of another Party to supply telecommunications services on terms and conditions that are no less favorable than those established by or granted pursuant to its legislation in force on January 27, 2003.

2. Gradual and Selective Opening of Certain Telecommunications Services

(a) As provided in Annex I, Costa Rica shall allow telecommunications services providers of another Party, on a non-discriminatory basis, to effectively compete to supply directly to the customer, through the technology of their choice, the following telecommunications services in its territory:<sup>1</sup>

- (i) private network services,<sup>2</sup> no later than January 1, 2006;
- (ii) Internet services,<sup>3</sup> no later than January 1, 2006; and

<sup>1</sup> If Costa Rica requires a license for the provision of a listed service, Costa Rica shall make licenses available within the timeframes specified in this subparagraph.

<sup>2</sup> **Private network services** (closed-user group services) mean networks provided for communications with no interconnection to the public switched telecommunications network at either end. Nothing in this Annex shall be construed to prevent Costa Rica from prohibiting persons operating private networks from using their networks to supply public telecommunications networks or services to third parties.

(iii) mobile wireless services,<sup>4</sup> no later than January 1, 2007.

(b) Subparagraph (a) shall also apply to any other telecommunications service that Costa Rica may decide to allow in the future.

#### IV. Regulatory Principles<sup>5</sup>

The regulatory framework on telecommunications services that the Government of Costa Rica shall have in force as of January 1, 2006, shall conform, among others, to the following provisions:

##### 1. Universal Service

Costa Rica has the right to define the kind of universal service obligations it wishes to maintain. Such obligations will not be regarded as anti-competitive *per se*, provided they are administered in a transparent, non-discriminatory, and competitively neutral manner and are not more burdensome than necessary for the kind of universal service defined.

##### 2. Independence of the Regulatory Authority

Costa Rica shall establish or maintain a regulatory authority for telecommunications services, which shall be separate from and not accountable to any supplier of telecommunications services. Costa Rica shall ensure that its telecommunications regulatory authority is authorized to impose effective sanctions to enforce domestic measures relating to the obligations set out in this Annex. This regulatory authority may include jurisdiction over spectrum management, universal service, tariffing, and licensing of new market entrants. The decisions and the procedures of the regulatory authority shall be impartial with respect to all market participants.

##### 3. Transparency

Costa Rica shall ensure that applicable procedures for interconnection to a major supplier and either its interconnection agreements or referenced interconnection offers are made publicly available. Costa Rica shall also make publicly available all licensing or authorization criteria and procedures required for telecommunications service suppliers, and the terms and conditions of all licenses or authorizations issued.

##### 4. Allocation and Use of Scarce Resources

Costa Rica shall ensure that procedures for the allocation and use of limited resources, including frequencies, numbers, and rights of way, are administered in an objective, timely, transparent, and non-discriminatory manner by a competent domestic authority.<sup>6</sup> The Republic of Costa

<sup>3</sup> Internet services shall include electronic mail, retrieval and processing of on-line information and databases and electronic data exchange services, and offering the ability to access the Internet.

<sup>4</sup> Mobile wireless services mean voice, data, and/or broadband services provided by radio electric means in specifically allocated bands, using mobile or fixed terminal equipment, using cellular, PCS (Personal Communications Service), satellite, or any other similar technology that may be developed in the future for these services.

<sup>5</sup> For greater certainty, this section does not create market access rights or obligations.

<sup>6</sup> The competent domestic authority shall be separate from and not accountable to any supplier of telecommunications services.

Rica shall issue licenses for use of spectrum directly to the service providers, in accordance with article 121, item 14 of the *Constitución Política de la República de Costa Rica*.

5. Regulated Interconnection

- (a) Costa Rica shall ensure that public telecommunications services suppliers of another Party are provided interconnection with a major supplier in a timely fashion, under non-discriminatory terms, conditions,<sup>7</sup> and cost-oriented rates that are transparent, reasonable, and having regard to economic feasibility.
- (b) Costa Rica shall also ensure that a service supplier requesting interconnection with a major supplier has recourse to an independent domestic body,<sup>8</sup> which may be the regulatory authority referred to in paragraph 2, to resolve disputes regarding appropriate terms, conditions, and rates for interconnection within a reasonable time.

6. Access to and Use of the Network

- (a) Costa Rica shall ensure that enterprises of another Party have access to and use of any public telecommunications services, including leased circuits, offered in its territory or across its borders, on reasonable and non-discriminatory terms and conditions and are permitted to:
  - (i) purchase or lease and attach terminal or other equipment that interfaces with a public telecommunications network;
  - (ii) provide services to individual or multiple end-users over leased or owned circuits;
  - (iii) connect owned or leased circuits with public telecommunications networks and services in its territory, or across Costa Rica's borders or with circuits leased or owned by another person;
  - (iv) perform switching, signaling, processing, and conversion functions, and use operating protocols of their choice; and
  - (v) use public telecommunications services for the movement of information contained in databases or otherwise stored in machine-readable form in the territory of any Party.
- (b) Notwithstanding subparagraph (a), Costa Rica may take such measures as are necessary to ensure the security and confidentiality of messages or to protect the privacy of non-public personal data of subscribers to public telecommunications services, subject to the requirement that such measures are not applied in a manner that would constitute a means of arbitrary or unjustifiable discrimination or disguised restriction on trade in services.
- (c) Costa Rica shall also ensure that no condition is imposed on access to and use of public telecommunications networks or services, other than that necessary to

<sup>7</sup> For purposes of subparagraph (a), conditions include technical regulations and specifications, as well as the quality of interconnection.

<sup>8</sup> The independent domestic body shall be separate from and not accountable to any supplier of telecommunications services.

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 protect the technical integrity of public telecommunications networks or services.

7. Provision of Information Services

- (a) Costa Rica may not require an enterprise of another Party in its territory that it classifies<sup>9</sup> as a supplier of information services and that supplies such services over facilities that it does not own to:
- (i) supply such services to the public generally;
  - (ii) cost-justify rates for such services;
  - (iii) file tariffs for such services;
  - (iv) interconnect its networks with any particular customer for the supply of such services; or
  - (v) conform to any particular standard or technical regulation for interconnection other than that for interconnection to a public telecommunications network.
- (b) Notwithstanding subparagraph (a), Costa Rica may take any action referred to in clauses (i) through (v) to remedy a practice of a supplier of information services that it has found in a particular case to be anti-competitive under its law or regulations, or to otherwise promote competition or safeguard the interests of consumers.

8. Competition

Costa Rica shall maintain appropriate measures for the purpose of preventing suppliers who, alone or together, are a major supplier from engaging in anti-competitive practices, such as not making available, on a timely basis, to suppliers of public telecommunications services, technical information about essential facilities and commercially relevant information that is necessary for them to provide public telecommunications services.

9. Submarine Cable Systems

Costa Rica shall ensure reasonable and non-discriminatory treatment for access to submarine cable systems (including landing facilities) in its territory, where a supplier is authorized to operate such submarine cable system as a public telecommunications service.

10. Flexibility in the Choice of Technologies

Costa Rica may not prevent suppliers of public telecommunications services from having the flexibility to choose the technologies that they use to supply their services, subject to requirements necessary to satisfy legitimate public policy interests.

<sup>9</sup> The telecommunications regulatory authority will have the competence within its territory to classify the services included in the information services category.

**Annex 13.3****Rural Telephone Suppliers**

1. A state regulatory authority in the United States may exempt a rural local exchange carrier, as defined in section 251(f)(2) of the *Communications Act of 1934*, as amended, from the obligations contained in paragraphs 2 through 4 of Article 13.3 and from the obligations contained in Article 13.4.
2. Article 13.4 does not apply to rural telephone companies in the United States, as defined in section 3(37) of the *Communications Act of 1934*, as amended, unless a state regulatory authority orders otherwise.
3. El Salvador, Guatemala, Honduras, and Nicaragua may designate and exempt a rural telephone company in its territory from paragraphs 2 through 4 of Article 13.3 and from Article 13.4, provided that the rural telephone company supplies public telecommunications services to fewer than two percent of the subscriber lines installed in the Party's territory. The number of subscriber lines supplied by a rural telephone company includes all subscriber lines supplied by the company, and by its owners, subsidiaries, and affiliates.
4. Nothing in this Annex shall be construed to preclude a Party from imposing the requirements set out in Article 13.4 on rural telephone companies.

**Annex 13.4.5****Interconnection**

1. For any Party that does not have an existing commitment under the GATS to ensure that a major supplier in its territory provides interconnection at cost-oriented rates, the obligation under Article 13.4.5 to ensure the provision of cost-oriented interconnection shall become effective:

- (a) two years after the date of entry into force of this Agreement; or
- (b) January 1, 2007,

whichever is earlier.

2. During the transition period, each such Party shall ensure that major suppliers of public telecommunications services in its territory:

- (a) do not charge interconnection rates above the rates charged on December 31, 2003; and
- (b) proportionally reduce interconnection rates as necessary to ensure that a cost-oriented interconnection rate has been achieved by the end of the transition period.

**Annex 13.4.8**

**Access to Rights-of-Way**

Article 13.4.8 shall apply with respect to El Salvador beginning when its law provides that poles, ducts, conducts, and rights-of-way constitute essential resources.

**Chapter Fourteen**  
**Electronic Commerce**

**Article 14.1: General**

1. The Parties recognize the economic growth and opportunity that electronic commerce provides, the importance of avoiding barriers to its use and development, and the applicability of WTO rules to measures affecting electronic commerce.
2. For greater certainty, nothing in this Chapter shall be construed to prevent a Party from imposing internal taxes, directly or indirectly, on digital products, provided they are imposed in a manner consistent with this Agreement.

**Article 14.2: Electronic Supply of Services**

For greater certainty, the Parties affirm that measures affecting the supply of a service using electronic means fall within the scope of the obligations contained in the relevant provisions of Chapters Ten (Investment), Eleven (Cross-Border Trade in Services), and Twelve (Financial Services), subject to any exceptions or non-conforming measures set out in this Agreement, which are applicable to such obligations.

**Article 14.3: Digital Products**

1. No Party may impose customs duties, fees, or other charges on or in connection with the importation or exportation of digital products by electronic transmission.
2. For purposes of determining applicable customs duties, each Party shall determine the customs value of an imported carrier medium bearing a digital product based on the cost or value of the carrier medium alone, without regard to the cost or value of the digital product stored on the carrier medium.
3. No Party may accord less favorable treatment to some digital products transmitted electronically than it accords to other like digital products transmitted electronically:
  - (a) on the basis that
    - (i) the digital products receiving less favorable treatment are created, produced, published, stored, transmitted, contracted for, commissioned, or first made available on commercial terms outside its territory; or
    - (ii) the author, performer, producer, developer, or distributor of such digital products is a person of another Party or non-Party,
  - or
  - (b) so as otherwise to afford protection to the other like digital products that are created, produced, published, stored, transmitted, contracted for, commissioned, or first made available on commercial terms in its territory.<sup>1</sup>
4. No Party may accord less favorable treatment to digital products transmitted electronically:

<sup>1</sup> For greater certainty, this paragraph does not provide any right to a non-Party or a person of a non-Party.

- (a) that are created, produced, published, stored, transmitted, contracted for, commissioned, or first made available on commercial terms in the territory of another Party than it accords to like digital products transmitted electronically that are created, produced, published, stored, transmitted, contracted for, commissioned, or first made available on commercial terms in the territory of a non-Party; or
- (b) whose author, performer, producer, developer, or distributor is a person of another Party than it accords to like digital products transmitted electronically whose author, performer, producer, developer, or distributor is a person of a non-Party.

5. Paragraphs 3 and 4 do not apply to any non-conforming measure described in Articles 10.13 (Non-Conforming Measures), 11.6 (Non-Conforming Measures), or 12.9 (Non-Conforming Measures).

**Article 14.4: Transparency**

Each Party shall publish or otherwise make available to the public its laws, regulations, and other measures of general application that pertain to electronic commerce.

**Article 14.5: Cooperation**

Recognizing the global nature of electronic commerce, the Parties affirm the importance of:

- (a) working together to overcome obstacles encountered by small and medium enterprises in using electronic commerce;
- (b) sharing information and experiences on laws, regulations, and programs in the sphere of electronic commerce, including those related to data privacy, consumer confidence in electronic commerce, cyber-security, electronic signatures, intellectual property rights, and electronic government;
- (c) working to maintain cross-border flows of information as an essential element in fostering a vibrant environment for electronic commerce;
- (d) encouraging the private sector to adopt self-regulation, including through codes of conduct, model contracts, guidelines, and enforcement mechanisms that foster electronic commerce; and
- (e) actively participating in hemispheric and multilateral fora to promote the development of electronic commerce.

**Article 14.6: Definitions**

For purposes of this Chapter:

**carrier medium** means any physical object capable of storing the digital codes that form a digital product by any method now known or later developed, and from which a digital product can be perceived, reproduced, or communicated, directly or indirectly, and includes an optical medium, a floppy disk, and a magnetic tape;

**digital products** means computer programs, text, video, images, sound recordings, and other products that are digitally encoded;<sup>2</sup>

**electronic means** means employing computer processing; and

**electronic transmission or transmitted electronically** means the transfer of digital products using any electromagnetic or photonic means.

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<sup>2</sup> For greater certainty, digital products do not include digitized representations of financial instruments.

**Chapter Fifteen**  
**Intellectual Property Rights**

**Article 15.1: General Provisions**

1. Each Party shall, at a minimum, give effect to this Chapter. A Party may, but shall not be obliged to, implement in its domestic law more extensive protection and enforcement of intellectual property rights than is required under this Chapter, provided that such protection and enforcement does not contravene this Chapter.
2. Each Party shall ratify or accede to the following agreements by the date of entry into force of this Agreement:
  - (a) the *WIPO Copyright Treaty* (1996), and
  - (b) the *WIPO Performances and Phonograms Treaty* (1996).
3. Each Party shall ratify or accede to the following agreements by January 1, 2006:
  - (a) the *Patent Cooperation Treaty*, as revised and amended (1970); and
  - (b) the *Budapest Treaty on the International Recognition of the Deposit of Microorganisms for the Purposes of Patent Procedure* (1980).
4. Each Party shall ratify or accede to the following agreements by January 1, 2008:
  - (a) the *Convention Relating to the Distribution of Programme-Carrying Signals Transmitted by Satellite* (1974); and
  - (b) the *Trademark Law Treaty* (1994).
5.
  - (a) Each Party shall ratify or accede to the *International Convention for the Protection of New Varieties of Plants* (1991) (UPOV Convention 1991).<sup>1</sup> Nicaragua shall do so by January 1, 2010. Costa Rica shall do so by June 1, 2007. All other Parties shall do so by January 1, 2006.
  - (b) Subparagraph (a) shall not apply to any Party that provides effective patent protection for plants by the date of entry into force of this Agreement. Such Parties shall make all reasonable efforts to ratify or accede to the UPOV Convention 1991.
6. Each Party shall make all reasonable efforts to ratify or accede to the following agreements:
  - (a) the *Patent Law Treaty* (2000);

<sup>1</sup> The Parties recognize that the UPOV Convention 1991 contains exceptions to the breeder's right, including for acts done privately and for non-commercial purposes, such as private and non-commercial acts of farmers. Further, the Parties recognize that the UPOV Convention 1991 provides for restrictions to the exercise of a breeder's right for reasons of public interest, provided that the Parties take all measures necessary to ensure that the breeder receives equitable remuneration. The Parties also understand that each Party may avail itself of these exceptions and restrictions. Finally, the Parties understand that there is no conflict between the UPOV Convention 1991 and a Party's ability to protect and conserve its genetic resources.

- (b) the *Hague Agreement Concerning the International Registration of Industrial Designs* (1999); and
- (c) the *Protocol Relating to the Madrid Agreement Concerning the International Registration of Marks* (1989).

7. Further to Article 1.3 (Relation to Other Agreements), the Parties affirm their existing rights and obligations under the TRIPS Agreement and intellectual property agreements concluded or administered under the auspices of the World Intellectual Property Organization (WIPO) and to which they are party.

8. In respect of all categories of intellectual property covered in this Chapter, each Party shall accord to nationals<sup>2</sup> of the other Parties treatment no less favorable than it accords to its own nationals with regard to the protection<sup>3</sup> and enjoyment of such intellectual property rights and any benefits derived from such rights.

9. A Party may derogate from paragraph 8 in relation to its judicial and administrative procedures, including any procedure requiring a national of another Party to designate for service of process an address in its territory or to appoint an agent in its territory, provided that such derogation:

- (a) is necessary to secure compliance with laws and regulations that are not inconsistent with this Chapter; and
- (b) is not applied in a manner that would constitute a disguised restriction on trade.

10. Paragraph 8 does not apply to procedures provided in multilateral agreements to which the Parties are party concluded under the auspices of WIPO in relation to the acquisition or maintenance of intellectual property rights.

11. Except as it provides otherwise, this Chapter gives rise to obligations in respect of all subject matter existing on the date of entry into force of this Agreement that is protected on that date in the Party where protection is claimed, or that meets or comes subsequently to meet the criteria for protection under this Chapter.

12. Except as otherwise provided in this Chapter, a Party shall not be required to restore protection to subject matter that on the date of entry into force of this Agreement has fallen into the public domain in the Party where the protection is claimed.

13. This Chapter does not give rise to obligations in respect of acts that occurred before the date of entry into force of this Agreement.

14. Each Party shall ensure that all laws, regulations, and procedures concerning the protection or enforcement of intellectual property rights shall be in writing and shall be

<sup>2</sup> For purposes of Articles 15.1.8, 15.1.9, 15.4.2, and 15.7.1, a national of a Party shall also mean, in respect of the relevant right, an entity located in that Party that would meet the criteria for eligibility for protection provided for in the agreements listed in Article 15.1.2 through 15.1.6 and the TRIPS Agreement.

<sup>3</sup> For purposes of this paragraph, "protection" shall include matters affecting the availability, acquisition, scope, maintenance, and enforcement of intellectual property rights as well as matters affecting the use of intellectual property rights specifically covered by this Chapter. Further, for purposes of this paragraph, "protection" shall also include the prohibition on circumvention of effective technological measures set out in Article 15.5.7 and the rights and obligations concerning rights management information set out in Article 15.5.8.

published,<sup>4</sup> or where such publication is not practicable, made publicly available, in a national language in such a manner as to enable governments and right holders to become acquainted with them, with the object of making the protection and enforcement of intellectual property rights transparent.

15. Nothing in this Chapter shall be construed to prevent a Party from adopting measures necessary to prevent anticompetitive practices that may result from the abuse of the intellectual property rights set out in this Chapter, provided that such measures are consistent with this Chapter.

16. Recognizing the Parties' commitment to trade capacity building as reflected in the establishment of the Committee on Trade Capacity Building under Article 19.4 (Committee on Trade Capacity Building) and the importance of trade capacity building activities, the Parties shall cooperate through that Committee in the following initial capacity-building priority activities, on mutually agreed terms and conditions, and subject to the availability of appropriated funds:

- (a) educational and dissemination projects on the use of intellectual property as a research and innovation tool, as well as on the enforcement of intellectual property rights;
- (b) appropriate coordination, training, specialization courses, and exchange of information between the intellectual property offices and other institutions of the Parties; and
- (c) enhancing the knowledge, development, and implementation of the electronic systems used for the management of intellectual property.

#### Article 15.2: Trademarks

1. Each Party shall provide that trademarks shall include collective, certification, and sound marks, and may include geographical indications and scent marks. A geographical indication is capable of constituting a mark to the extent that the geographical indication consists of any sign, or any combination of signs, capable of identifying a good or service as originating<sup>5</sup> in the territory of a Party, or a region or locality in that territory, where a given quality, reputation, or other characteristic of the good or service is essentially attributable to its geographical origin.

2. In view of the obligations of Article 20 of the TRIPS Agreement, each Party shall ensure that measures mandating the use of the term customary in common language as the common name for a good or service ("common name") including, *inter alia*, requirements concerning the relative size, placement, or style of use of the trademark in relation to the common name, do not impair the use or effectiveness of trademarks used in relation to such goods.

3. Each Party shall provide that the owner of a registered trademark shall have the exclusive right to prevent all third parties not having the owner's consent from using in the course of trade identical or similar signs, including geographical indications, for goods or services that are related to those goods or services in respect of which the owner's trademark is registered, where such use would result in a likelihood of confusion. In case of the use of

<sup>4</sup> A Party may satisfy the requirement for publication by making the measure available to the public on the Internet.

<sup>5</sup> For purposes of this Chapter, "originating" does not have the meaning ascribed to that term in Article 2.1 (Definitions of General Application).

an identical sign, including a geographical indication, for identical goods or services, a likelihood of confusion shall be presumed.

4. Each Party 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 interest of the owner of the trademark and of third parties.

5. Article 6bis of the *Paris Convention for the Protection of Industrial Property* (1967) (Paris Convention) shall apply, *mutatis mutandis*, to goods or services that are not identical or similar to those identified by a well-known trademark,<sup>6</sup> whether registered or not, provided that use of that trademark in relation to those goods or services would indicate a connection between those goods or services and the owner of the trademark, and provided that the interests of the owner of the trademark are likely to be damaged by such use.

6. Each Party shall provide a system for the registration of trademarks, which shall include:

- (a) providing to the applicant a communication in writing, which may be electronic, of the reasons for any refusal to register a trademark;
- (b) an opportunity for the applicant to respond to communications from the trademark authorities, to contest an initial refusal, and to appeal judicially a final refusal to register;
- (c) an opportunity for interested parties to petition to oppose a trademark application or to seek cancellation of a trademark after it has been registered; and
- (d) a requirement that decisions in opposition or cancellation proceedings be reasoned and in writing.

7. Each Party shall provide, to the maximum degree practical, a system for the electronic application, processing, registration, and maintenance of trademarks, and work to provide, to the maximum degree practical, a publicly available electronic database – including an on-line database – of trademark applications and registrations.

8. (a) Each Party shall provide that each registration or publication that concerns a trademark application or registration and that indicates goods or services shall indicate the goods or services by their common names, grouped according to the classes of the classification established by the *Nice Agreement Concerning the International Classification of Goods and Services for the Purposes of the Registration of Marks* (1979), as revised and amended (Nice Classification).
- (b) Each Party shall provide that goods or services may not be considered as being similar to each other solely on the ground that, in any registration or publication, they appear in the same class of the Nice Classification. Conversely, each Party shall provide that goods or services may not be considered as being dissimilar from each other solely on the ground that, in any registration or publication, they appear in different classes of the Nice Classification.

<sup>6</sup> In determining whether a trademark is well known, the reputation of the trademark need not extend beyond the sector of the public that normally deals with the relevant goods or services.

9. Each Party shall provide that initial registration and each renewal of registration of a trademark shall be for a term of no less than ten years.

10. No Party may require recordal of trademark licenses to establish the validity of the license, to assert any rights in a trademark, or for other purposes.<sup>7</sup>

### **Article 15.3: Geographical Indications**

#### *Definition*

1. For purposes of this Article, geographical indications are indications that identify a good as originating in the territory of a Party, or a region or locality in that territory, where a given quality, reputation, or other characteristic of the good is essentially attributable to its geographical origin. Any sign or combination of signs, in any form whatsoever, shall be eligible to be a geographical indication.

#### *Procedures with Respect to Geographical Indications*

2. Each Party shall provide the legal means to identify<sup>8</sup> and protect geographical indications of the other Parties that meet the criteria of paragraph 1. Each Party shall provide the means for persons of another Party to apply for protection or petition for recognition of geographical indications. Each Party shall accept applications and petitions from persons of another Party without the requirement for intercession by that Party on behalf of its persons.

3. Each Party shall process applications or petitions, as the case may be, for geographical indications with a minimum of formalities.

4. Each Party shall make its regulations governing filing of such applications or petitions, as the case may be, readily available to the public.

5. Each Party shall ensure that applications or petitions, as the case may be, for geographical indications are published for opposition, and shall provide procedures for opposing geographical indications that are the subject of applications or petitions. Each Party shall also provide procedures to cancel any registration resulting from an application or a petition.

6. Each Party shall ensure that measures governing the filing of applications or petitions, as the case may be, for geographical indications set out clearly the procedures for these actions. Each Party shall make available contact information sufficient to allow (a) the general public to obtain guidance concerning the procedures for filing applications or petitions and the processing of those applications or petitions in general; and (b) applicants, petitioners, or their representatives to ascertain the status of, and to obtain procedural guidance concerning, specific applications and petitions.

#### *Relationship between Trademarks and Geographical Indications*

7. Each Party shall ensure that grounds for refusing protection or recognition of a geographical indication include the following:

<sup>7</sup> A Party may establish a means to allow licensees to record licenses for the purpose of providing notice to the public as to the existence of the license. However, no Party may make notice to the public a requirement for asserting any rights under the license.

<sup>8</sup> For purposes of this paragraph, **legal means to identify** means a system that permits applicants to provide information on the quality, reputation, or other characteristics of the asserted geographical indication.

- (a) the geographical indication is likely to be confusingly similar to a trademark that is the subject of a good-faith pending application or registration; and
- (b) the geographical indication is likely to be confusingly similar to a pre-existing trademark, the rights to which have been acquired in accordance with the Party's law.<sup>9</sup>

**Article 15.4: Domain Names on the Internet**

1. In order to address trademark cyber-piracy, each Party shall require that the management of its country-code top-level domain (ccTLD) provides an appropriate procedure for the settlement of disputes based on the principles established in the *Uniform Domain-Name Dispute-Resolution Policy*.
2. Each Party shall require that the management of its ccTLD provides on-line public access to a reliable and accurate database of contact information for domain-name registrants. In determining the appropriate contact information, the management of a Party's ccTLD may give due regard to the Party's laws protecting the privacy of its nationals.

**Article 15.5: Obligations Pertaining to Copyright and Related Rights**

1. Each Party shall provide that authors, performers, and producers of phonograms<sup>10</sup> have the right<sup>11</sup> to authorize or prohibit all reproductions of their works, performances, or phonograms, in any manner or form, permanent or temporary (including temporary storage in electronic form).<sup>12</sup>
2. Each Party shall provide to authors, performers, and producers of phonograms the right to authorize the making available to the public of the original and copies of their works, performances, and phonograms<sup>13</sup> through sale or other transfer of ownership.
3. In order to ensure that no hierarchy is established between rights of authors, on the one hand, and rights of performers and producers of phonograms, on the other hand, each Party shall establish that in cases where authorization is needed from both the author of a work embodied in a phonogram and a performer or producer owning rights in the phonogram, the need for the authorization of the author does not cease to exist because the authorization of the performer or producer is also required. Likewise, each Party shall establish that in cases where authorization is needed from both the author of a work embodied in a phonogram and of a performer or producer owning rights in the phonogram, the need for the authorization of

<sup>9</sup> For purposes of this paragraph, the Parties understand that each Party has already established grounds for refusing protection of a trademark under its law, including that (a) the trademark is likely to be confusingly similar to a geographical indication that is the subject of a registration; and (b) the trademark is likely to be confusingly similar to a pre-existing geographical indication, the rights to which have been acquired in accordance with the Party's law.

<sup>10</sup> References in this Chapter to "authors, performers, and producers of phonograms" include any successors in interest.

<sup>11</sup> With respect to copyrights and related rights in this Chapter, a right to authorize or prohibit or a right to authorize means an exclusive right.

<sup>12</sup> The Parties understand that the reproduction right as set out in this paragraph and in Article 9 of the *Berne Convention for the Protection of Literary and Artistic Works (1971)* (Berne Convention) and the exceptions permitted under the Berne Convention and Article 15.5.10(a) fully apply in the digital environment, in particular to the use of works in digital form.

<sup>13</sup> With respect to copyright and related rights in this Chapter, a "performance" refers to a performance fixed in a phonogram, unless otherwise specified.

the performer or producer does not cease to exist because the authorization of the author is also required.

4. Each Party shall provide that, where the term of protection of a work (including a photographic work), performance, or phonogram is to be calculated:
- (a) on the basis of the life of a natural person, the term shall be not less than the life of the author and 70 years after the author's death; and
  - (b) on a basis other than the life of a natural person, the term shall be:
    - (i) not less than 70 years from the end of the calendar year of the first authorized publication of the work, performance, or phonogram, or
    - (ii) failing such authorized publication within 50 years from the creation of the work, performance, or phonogram, not less than 70 years from the end of the calendar year of the creation of the work, performance, or phonogram.
5. Each Party shall apply the provisions of Article 18 of the Berne Convention and Article 14.6 of the TRIPS Agreement, *mutatis mutandis*, to the subject matter, rights, and obligations provided for in this Article and Articles 15.6 and 15.7.
6. Each Party shall provide that for copyright and related rights:
- (a) any person acquiring or holding any economic right in a work, performance, or phonogram may freely and separately transfer such right by contract; and
  - (b) any person acquiring or holding any such economic right by virtue of a contract, including contracts of employment underlying the creation of works and performances, and production of phonograms, shall be able to exercise such right in that person's own name and enjoy fully the benefits derived from such right.
7. (a) In order to provide adequate legal protection and effective legal remedies against the circumvention of effective technological measures that authors, performers, and producers of phonograms use in connection with the exercise of their rights and that restrict unauthorized acts in respect of their works, performances, and phonograms, each Party shall provide that any person who:
- (i) circumvents without authority any effective technological measure that controls access to a protected work, performance, phonogram, or other subject matter; or
  - (ii) manufactures, imports, distributes, offers to the public, provides, or otherwise traffics in devices, products, or components, or offers to the public or provides services, that:
    - (A) are promoted, advertised, or marketed for the purpose of circumvention of any effective technological measure; or
    - (B) have only a limited commercially significant purpose or use other than to circumvent any effective technological measure; or

- (C) are primarily designed, produced, or performed for the purpose of enabling or facilitating the circumvention of any effective technological measure,

shall be liable and subject to the remedies provided for in Article 15.11.14. Each Party shall provide for criminal procedures and penalties to be applied when any person, other than a nonprofit library, archive, educational institution, or public non-commercial broadcasting entity, is found to have engaged willfully and for purposes of commercial advantage or private financial gain in any of the foregoing activities.

- (b) In implementing subparagraph (a), no Party shall be obligated to require that the design of, or the design and selection of parts and components for, a consumer electronics, telecommunications, or computing product provide for a response to any particular technological measure, so long as the product does not otherwise violate any measures implementing subparagraph (a).
- (c) Each Party shall provide that a violation of a measure implementing this paragraph is a separate civil cause of action or criminal offense, independent of any infringement that might occur under the Party's law on copyright and related rights.
- (d) Each Party shall confine exceptions to any measures implementing the prohibition in subparagraph (a)(ii) on technology, products, services, or devices that circumvent effective technological measures that control access to, and, in the case of clause (i), that protect any of the exclusive rights of copyright or related rights in, a protected work, performance, or phonogram referred to in subparagraph (a)(ii), to the following activities, provided that they do not impair the adequacy of legal protection or the effectiveness of legal remedies against the circumvention of effective technological measures:
- (i) noninfringing reverse engineering activities with regard to a lawfully obtained copy of a computer program, carried out in good faith with respect to particular elements of that computer program that have not been readily available to the person engaged in those activities, for the sole purpose of achieving interoperability of an independently created computer program with other programs;
  - (ii) noninfringing good faith activities, carried out by an appropriately qualified researcher who has lawfully obtained a copy, unfixed performance or display of a work, performance, or phonogram, and who has made a good faith effort to obtain authorization for such activities, to the extent necessary for the sole purpose of identifying and analyzing flaws and vulnerabilities of technologies for scrambling and descrambling of information;
  - (iii) the inclusion of a component or part for the sole purpose of preventing the access of minors to inappropriate on-line content in a technology, product, service, or device that itself is not prohibited under the measures implementing subparagraph (a)(ii); and
  - (iv) noninfringing good faith activities that are authorized by the owner of a computer, computer system, or computer network for the sole purpose of testing, investigating, or correcting the security of that computer, computer system, or computer network.

- (e) Each Party shall confine exceptions to any measures implementing the prohibition referred to in subparagraph (a)(i) to the activities listed in subparagraph (d) and the following activities, provided that they do not impair the adequacy of legal protection or the effectiveness of legal remedies against the circumvention of effective technological measures:
  - (i) access by a nonprofit library, archive, or educational institution to a work, performance, or phonogram, not otherwise available to it, for the sole purpose of making acquisition decisions;
  - (ii) noninfringing activities for the sole purpose of identifying and disabling a capability to carry out undisclosed collection or dissemination of personally identifying information reflecting the on-line activities of a natural person in a way that has no other effect on the ability of any person to gain access to any work; and
  - (iii) noninfringing uses of a work, performance, or phonogram, in a particular class of works, performances, or phonograms, when an actual or likely adverse impact on those noninfringing uses is demonstrated in a legislative or administrative proceeding by substantial evidence; provided that in order for any such exception to remain in effect for more than four years, a Party must conduct a review before the expiration of the four-year period and at intervals of at least every four years thereafter, pursuant to which it is demonstrated in such a proceeding by substantial evidence that there is a continuing actual or likely adverse impact on the particular noninfringing use.
- (f) Each Party may provide exceptions to any measures implementing the prohibitions referred to in subparagraph (a) for lawfully authorized activities carried out by government employees, agents, or contractors for law enforcement, intelligence, essential security, or similar governmental purposes.
- (g) **Effective technological measure** means any technology, device, or component that, in the normal course of its operation, controls access to a protected work, performance, phonogram, or other protected subject matter, or protects any copyright or any rights related to copyright.

8. In order to provide adequate legal protection and effective legal remedies to protect rights management information:

- (a) Each Party shall provide that any person who, without authority, and knowing, or, with respect to civil remedies, having reasonable grounds to know, that it would induce, enable, facilitate, or conceal an infringement of any copyright or related right,
  - (i) knowingly removes or alters any rights management information;
  - (ii) distributes or imports for distribution rights management information knowing that the rights management information has been removed or altered without authority; or
  - (iii) distributes, imports for distribution, broadcasts, communicates or makes available to the public copies of works, performances, or phonograms, knowing that rights management information has been removed or altered without authority,

shall be liable and subject to the remedies provided for in Article 15.11.14. Each Party shall provide for criminal procedures and penalties to be applied when any person, other than a nonprofit library, archive, educational institution, or public non-commercial broadcasting entity, is found to have engaged willfully and for purposes of commercial advantage or private financial gain in any of the foregoing activities.

- (b) Each Party shall confine exceptions to measures implementing subparagraph (a) to lawfully authorized activities carried out by government employees, agents, or contractors for law enforcement, intelligence, national defense, essential security, or similar governmental purposes.
- (c) **Rights management information** means:
  - (i) information that identifies a work, performance, or phonogram, the author of the work, the performer of the performance, or the producer of the phonogram, or the owner of any right in the work, performance, or phonogram; or
  - (ii) information about the terms and conditions of the use of the work, performance, or phonogram; or
  - (iii) any numbers or codes that represent such information,

when any of these items is attached to a copy of the work, performance, or phonogram or appears in connection with the communication or making available of a work, performance, or phonogram to the public. Nothing in this paragraph shall obligate a Party to require the owner of any right in the work, performance, or phonogram to attach rights management information to copies of the work, performance, or phonogram, or to cause rights management information to appear in connection with a communication of the work, performance, or phonogram to the public.

9. In order to confirm that all agencies at the central level of government use computer software only as authorized, each Party shall issue appropriate laws, orders, regulations, or decrees to actively regulate the acquisition and management of software for such use. These measures may take the form of procedures such as preparing and maintaining inventories of software on agency computers and inventories of software licenses.

- 10. (a) With respect to Articles 15.5, 15.6, and 15.7, each Party shall confine limitations or exceptions to exclusive rights to certain special cases that do not conflict with a normal exploitation of the work, performance, or phonogram, and do not unreasonably prejudice the legitimate interests of the right holder.
- (b) Notwithstanding subparagraph (a) and Article 15.7.3(b), no Party may permit the retransmission of television signals (whether terrestrial, cable, or satellite) on the Internet without the authorization of the right holder or right holders of the content of the signal and, if any, of the signal.

**Article 15.6: Obligations Pertaining Specifically to Copyright**

Without prejudice to Articles 11(1)(ii), 11*bis*(1)(i) and (ii), 11*ter*(1)(ii), 14(1)(ii), and 14*bis*(1) of the Berne Convention, each Party shall provide to authors the exclusive right to authorize or prohibit the communication to the public of their works, directly or indirectly, by wire or wireless means, including the making available to the public of their works in such a

way that members of the public may access these works from a place and at a time individually chosen by them.

**Article 15.7: Obligations Pertaining Specifically to Related Rights**

1. Each Party shall accord the rights provided for in this Chapter with respect to performers and producers of phonograms to the performers and producers of phonograms who are nationals of another Party and to performances or phonograms first published or fixed in the territory of a Party. A performance or phonogram shall be considered first published in the territory of a Party in which it is published within 30 days of its original publication.<sup>14</sup>
2. Each Party shall provide to performers the right to authorize or prohibit:
  - (a) the broadcasting and communication to the public of their unfixed performances except where the performance is already a broadcast performance; and
  - (b) the fixation of their unfixed performances.
3.
  - (a) Each Party shall provide to performers and producers of phonograms the right to authorize or prohibit the broadcasting or any communication to the public of their performances or phonograms, by wire or wireless means, including the making available to the public of those performances and phonograms in such a way that members of the public may access them from a place and at a time individually chosen by them.
  - (b) Notwithstanding subparagraph (a) and Article 15.5.10, the application of this right to traditional free over-the-air noninteractive broadcasting, and exceptions or limitations to this right for such broadcasting, shall be a matter of domestic law.
  - (c) Each Party may adopt limitations to this right in respect of other noninteractive transmissions in accordance with Article 15.5.10, provided that the limitations do not prejudice the right of the performer or producer of phonograms to obtain equitable remuneration.
4. No Party may subject the enjoyment and exercise of the rights of performers and producers of phonograms provided for in this Chapter to any formality.
5. For purposes of this Article and Article 15.5, the following definitions apply with respect to performers and producers of phonograms:
  - (a) **performers** means actors, singers, musicians, dancers, and other persons who act, sing, deliver, declaim, play in, interpret, or otherwise perform literary or artistic works or expressions of folklore;
  - (b) **phonogram** means the fixation of the sounds of a performance or of other sounds, or of a representation of sounds, other than in the form of a fixation incorporated in a cinematographic or other audiovisual work;

<sup>14</sup> For purposes of this Article, fixation includes the finalization of the master tape or its equivalent.

- (c) **fixation** means the embodiment of sounds, or of the representations thereof, from which they can be perceived, reproduced, or communicated through a device;
- (d) **producer of a phonogram** means the person, or the legal entity, who or which takes the initiative and has the responsibility for the first fixation of the sounds of a performance or other sounds, or the representations of sounds;
- (e) **publication** of a performance or a phonogram means the offering of copies of the fixed performance or the phonogram to the public, with the consent of the right holder, and provided that copies are offered to the public in reasonable quantity;
- (f) **broadcasting** means the transmission by wireless means or satellite to the public of sounds or sounds and images, or of the representations thereof, including wireless transmission of encrypted signals where the means for decrypting are provided to the public by the broadcasting organization or with its consent; and
- (g) **communication to the public** of a performance or a phonogram means the transmission to the public by any medium, otherwise than by broadcasting, of sounds of a performance or the sounds or the representations of sounds fixed in a phonogram. For purposes of paragraph 3, "communication to the public" includes making the sounds or representations of sounds fixed in a phonogram audible to the public.

**Article 15.8: Protection of Encrypted Program-Carrying Satellite Signals**

1. Each Party shall make it a criminal offense:
  - (a) to manufacture, assemble, modify, import, export, sell, lease, or otherwise distribute a tangible or intangible device or system, knowing or having reason to know that the device or system is primarily of assistance in decoding an encrypted program-carrying satellite signal without the authorization of the lawful distributor of such signal; and
  - (b) willfully to receive and further distribute a program-carrying signal that originated as an encrypted satellite signal knowing that it has been decoded without the authorization of the lawful distributor of the signal.
2. Each Party shall provide for civil remedies, including compensatory damages, for any person injured by any activity described in paragraph 1, including any person that holds an interest in the encrypted programming signal or its content.

**Article 15.9: Patents**

1. Each Party shall make patents available for any invention, whether a product or a process, in all fields of technology, provided that the invention is new, involves an inventive step, and is capable of industrial application. For purposes of this Article, a Party may treat the terms "inventive step" and "capable of industrial application" as being synonymous with the terms "non-obvious" and "useful," respectively.
2. Nothing in this Chapter shall be construed to prevent a Party from excluding inventions from patentability as set out in Articles 27.2 and 27.3 of the TRIPS Agreement. Notwithstanding the foregoing, any Party that does not provide patent protection for plants by the date of entry into force of this Agreement shall undertake all reasonable efforts to make

such patent protection available. Any Party that provides patent protection for plants or animals on or after the date of entry into force of this Agreement shall maintain such protection.

3. A Party may provide limited exceptions to the exclusive rights conferred by a patent, provided that such exceptions do not unreasonably conflict with a normal exploitation of the patent and do not unreasonably prejudice the legitimate interests of the patent owner, taking account of the legitimate interests of third parties.

4. Without prejudice to Article 5.A(3) of the Paris Convention, each Party shall provide that a patent may be revoked or cancelled only on grounds that would have justified a refusal to grant the patent. However, a Party may also provide that fraud, misrepresentation, or inequitable conduct may be the basis for revoking, canceling, or holding a patent unenforceable.

5. Consistent with paragraph 3, if a Party permits a third person to use the subject matter of a subsisting patent to generate information necessary to support an application for marketing approval of a pharmaceutical or agricultural chemical product, that Party shall provide that any product produced under such authority shall not be made, used, or sold in the territory of that Party other than for purposes related to generating information to meet requirements for approval to market the product once the patent expires, and if the Party permits exportation, the product shall only be exported outside the territory of that Party for purposes of meeting marketing approval requirements of that Party.

6. (a) Each Party, at the request of the patent owner, shall adjust the term of a patent to compensate for unreasonable delays that occur in granting the patent. For purposes of this paragraph, an unreasonable delay shall at least include a delay in the issuance of the patent of more than five years from the date of filing of the application in the territory of the Party, or three years after a request for examination of the application has been made, whichever is later, provided that periods attributable to actions of the patent applicant need not be included in the determination of such delays.

(b) With respect to any pharmaceutical product that is covered by a patent, each Party shall make available a restoration of the patent term to compensate the patent owner for unreasonable curtailment of the effective patent term resulting from the marketing approval process related to the first commercial marketing of the product in that Party.

7. Each Party shall disregard information contained in public disclosures used to determine if an invention is novel or has an inventive step if the public disclosure (a) was made or authorized by, or derived from, the patent applicant, and (b) occurred within 12 months prior to the date of filing of the application in the territory of the Party.

8. Each Party shall provide patent applicants with at least one opportunity to submit amendments, corrections, and observations in connection with their applications.

9. Each Party shall provide that a disclosure of a claimed invention shall be considered to be sufficiently clear and complete if it provides information that allows the invention to be made and used by a person skilled in the art, without undue experimentation, as of the filing date.

10. Each Party shall provide that a claimed invention is sufficiently supported by its disclosure if the disclosure reasonably conveys to a person skilled in the art that the applicant was in possession of the claimed invention as of the filing date.

11. Each Party shall provide that a claimed invention is industrially applicable if it has a specific, substantial, and credible utility.

**Article 15.10: Measures Related to Certain Regulated Products**

1. (a) If a Party requires, as a condition of approving the marketing of a new pharmaceutical or agricultural chemical product, the submission of undisclosed data concerning safety or efficacy, the Party shall not permit third persons, without the consent of the person who provided the information, to market a product on the basis of (1) the information, or (2) the approval granted to the person who submitted the information for at least five years for pharmaceutical products and ten years for agricultural chemical products from the date of approval in the Party.<sup>15</sup>
  - (b) If a Party permits, as a condition of approving the marketing of a new pharmaceutical or agricultural chemical product, third persons to submit evidence concerning the safety or efficacy of a product that was previously approved in another territory, such as evidence of prior marketing approval, the Party shall not permit third persons, without the consent of the person who previously obtained such approval in the other territory, to obtain authorization or to market a product on the basis of (1) evidence of prior marketing approval in the other territory, or (2) information concerning safety or efficacy that was previously submitted to obtain marketing approval in the other territory, for at least five years for pharmaceutical products and ten years for agricultural chemical products from the date approval was granted in the Party's territory to the person who received approval in the other territory. In order to receive protection under this subparagraph, a Party may require that the person providing the information in the other territory seek approval in the territory of the Party within five years after obtaining marketing approval in the other territory.
  - (c) For purposes of this paragraph, a new product is one that does not contain a chemical entity that has been previously approved in the territory of the Party.
  - (d) For purposes of this paragraph, each Party shall protect such undisclosed information against disclosure except where necessary to protect the public, and no Party may consider information accessible within the public domain as undisclosed data. Notwithstanding the foregoing, if any undisclosed information concerning safety and efficacy submitted to a Party, or an entity acting on behalf of a Party, for purposes of obtaining marketing approval is disclosed by such entity, the Party is still required to protect such information from unfair commercial use in the manner set forth in this Article.
2. Where a Party permits, as a condition of approving the marketing of a pharmaceutical product, persons, other than the person originally submitting safety or efficacy information, to rely on evidence or information concerning the safety and efficacy of a product that was previously approved, such as evidence of prior marketing approval in the territory of a Party or in another country, that Party:
    - (a) shall implement measures in its marketing approval process to prevent such other persons from marketing a product covered by a patent claiming the

<sup>15</sup> Where a Party, on the date it implemented the TRIPS Agreement, had in place a system for protecting pharmaceutical or agricultural chemical products not involving new chemical entities from unfair commercial use that conferred a period of protection shorter than that specified in paragraph 1, that Party may retain such system notwithstanding the obligations of paragraph 1.

previously approved product or its approved use during the term of that patent, unless by consent or acquiescence of the patent owner; and

- (b) shall provide that the patent owner shall be informed of the request and the identity of any such other person who requests approval to enter the market during the term of a patent identified as claiming the approved product or its approved use.

**Article 15.11: Enforcement of Intellectual Property Rights**

*General Obligations*

1. Each Party understands that procedures and remedies required under this Article for enforcement of intellectual property rights are established in accordance with:
  - (a) the principles of due process that each Party recognizes; and
  - (b) the foundations of its own legal system.
2. This Article does not create any obligation:
  - (a) to put in place a judicial system for the enforcement of intellectual property rights distinct from that for the enforcement of law in general; or
  - (b) with respect to the distribution of resources for the enforcement of intellectual property rights and the enforcement of law in general.

The Parties understand that the decisions that a Party makes on the distribution of enforcement resources shall not excuse that Party from complying with this Chapter.

3. Each Party shall provide that final judicial decisions or administrative rulings of general applicability pertaining to the enforcement of intellectual property rights shall be in writing and shall state any relevant findings of fact and the reasoning or the legal basis on which the decisions and rulings are based. Each Party shall provide that such decisions or rulings shall be published,<sup>16</sup> or where such publication is not practicable, otherwise made publicly available, in a national language in such a manner as to enable governments and right holders to become acquainted with them.

4. Each Party shall publicize information that it may collect on its efforts to provide effective enforcement of intellectual property rights in its civil, administrative, and criminal system, including any statistical information.

5. In civil, administrative, and criminal proceedings involving copyright or related rights, each Party shall provide that:

- (a) the person whose name is indicated as the author, producer, performer, or publisher of the work, performance, or phonogram in the usual manner, shall, in the absence of proof to the contrary, be presumed to be the designated right holder in such work, performance, or phonogram; and
- (b) it shall be presumed, in the absence of proof to the contrary, that the copyright or related right subsists in such subject matter.

<sup>16</sup> A Party may satisfy the requirement for publication by making the document available to the public on the Internet.

*Civil and Administrative Procedures and Remedies*

6. Each Party shall make available to right holders<sup>17</sup> civil judicial procedures concerning the enforcement of any intellectual property right.

7. Each Party shall provide that:

- (a) in civil judicial proceedings concerning the enforcement of intellectual property rights, its judicial authorities shall have the authority to order the infringer to pay the right holder:
  - (i) damages adequate to compensate for the injury the right holder has suffered as a result of the infringement; and
  - (ii) at least in the case of copyright or related rights infringement and trademark counterfeiting, the profits of the infringer that are attributable to the infringement and are not taken into account in computing the amount of the damages referred to in clause (i); and
- (b) in determining damages for infringement of intellectual property rights, its judicial authorities shall consider, *inter alia*, the value of the infringed-upon good or service based on the suggested retail price or other legitimate measure of value that the right holder presents.

8. In civil judicial proceedings, each Party shall, at least with respect to civil judicial proceedings concerning copyright or related rights infringement and trademark counterfeiting, establish or maintain pre-established damages as an alternative to actual damages. Such pre-established damages shall be set out in domestic law and determined by the judicial authorities in an amount sufficient to compensate the right holder for the harm caused by the infringement and constitute a deterrent to future infringements.

9. Each Party shall provide that its judicial authorities, except in exceptional circumstances, shall have the authority to order, at the conclusion of civil judicial proceedings concerning copyright or related rights infringement and trademark counterfeiting, that the prevailing party shall be awarded payment of court costs or fees and reasonable attorney's fees by the losing party. Further, each Party shall provide that its judicial authorities, at least in exceptional circumstances, shall have the authority to order, at the conclusion of civil judicial proceedings concerning patent infringement, that the prevailing party be awarded payment of reasonable attorney's fees by the losing party.

10. In civil judicial proceedings concerning copyright or related right infringement and trademark counterfeiting, each Party shall provide that its judicial authorities shall have the authority to order the seizure of suspected infringing goods, any related materials and implements, and, at least for trademark counterfeiting, documentary evidence relevant to the infringement.

11. Each Party shall provide that:

- (a) its judicial authorities shall have the authority to order, at their discretion, the destruction of the goods that have been found to be pirated or counterfeit;

<sup>17</sup> For the purpose of this Article, the term "right holder" shall include federations and associations as well as exclusive licensees and other duly authorized licensees, as appropriate, having the legal standing and authority to assert such rights. The term "licensee" shall include the licensee of any one or more of the exclusive intellectual property rights encompassed in a given intellectual property.

- (b) its judicial authorities shall have the authority to order that materials and implements that have been used in the manufacture or creation of such pirated or counterfeit goods be, without compensation of any sort, promptly destroyed or, in exceptional circumstances, without compensation of any sort, disposed of outside the channels of commerce in such a manner as to minimize the risks of further infringements. In considering requests for such destruction, the Party's judicial authorities may take into account, *inter alia*, the gravity of the infringement, as well as the interests of third parties holding ownership, possessory, contractual, or secured interests;
- (c) the charitable donation of counterfeit trademark goods and goods that infringe copyright and related rights shall not be ordered by the judicial authorities without the authorization of the right holder, except that counterfeit trademark goods may in appropriate cases be donated to charity for use outside the channels of commerce when the removal of the trademark eliminates the infringing characteristic of the good and the good is no longer identifiable with the removed trademark. In no case shall the simple removal of the trademark unlawfully affixed be sufficient to permit the release of goods into the channels of commerce.

12. Each Party shall provide that in civil judicial proceedings concerning the enforcement of intellectual property rights, its judicial authorities shall have the authority to order the infringer to provide any information that the infringer possesses regarding any person involved in any aspect of the infringement and regarding the means of production or distribution channel for the infringing goods or services, including the identification of third persons that are involved in their production and distribution and their distribution channels, and to provide this information to the right holder. Each Party shall provide that its judicial authorities shall have the authority to impose sanctions, in appropriate cases, on a party to a proceeding that fails to abide by valid orders issued by such authorities.

13. To the extent that any civil remedy can be ordered as a result of administrative procedures on the merits of a case, each Party shall provide that such procedures conform to principles equivalent in substance to those provided for in this Chapter.

14. Each Party shall provide for civil remedies against the acts described in Article 15.5.7 and 15.5.8. Available civil remedies shall include at least:

- (a) provisional measures, including seizure of devices and products suspected of being involved in the prohibited activity;
- (b) actual damages (plus any profits attributable to the prohibited activity not taken into account in computing the actual damages) or pre-established damages as provided in paragraph 8;
- (c) payment to the prevailing right holder, at the conclusion of civil judicial proceedings, of court costs and fees and reasonable attorney's fees by the party engaged in the prohibited conduct; and
- (d) destruction of devices and products found to be involved in the prohibited activity, at the discretion of the judicial authorities, as provided in subparagraphs (a) and (b) of paragraph 11.

No Party may make damages available against a nonprofit library, archives, educational institution, or public broadcasting entity that sustains the burden of proving that it was not aware and had no reason to believe that its acts constituted a prohibited activity.

15. In civil judicial proceedings concerning the enforcement of intellectual property rights, each Party shall provide that its judicial authorities shall have the authority to order a party to desist from an infringement, *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, immediately after customs clearance of such goods or to prevent their exportation.

16. In the event that a Party's judicial or other authorities appoint technical or other experts in civil proceedings concerning the enforcement of intellectual property rights and require that the parties bear the costs of such experts, the Party should seek to ensure that such costs are closely related, *inter alia*, to the quantity and nature of work to be performed and do not unreasonably deter recourse to such proceedings.

*Provisional Measures*

17. Each Party shall act on requests for relief *inaudita altera parte* and execute such requests expeditiously, in accordance with its rules of judicial procedure.

18. Each Party shall provide that its judicial authorities shall have the authority to require the plaintiff to provide any reasonably available evidence in order to satisfy themselves with a sufficient degree of certainty that the plaintiff's right is being infringed or that such infringement is imminent, and to order the plaintiff to provide a reasonable security or equivalent assurance set at a level sufficient to protect the defendant and to prevent abuse, and so as not to unreasonably deter recourse to such procedures.

19. In proceedings concerning the grant of provisional measures in relation to enforcement of a patent, each Party shall provide for a rebuttable presumption that the patent is valid.

*Special Requirements Related to Border Measures*

20. Each Party shall provide that any right holder initiating procedures for its competent authorities to suspend the release of suspected counterfeit or confusingly similar trademark goods, or pirated copyright goods<sup>18</sup> into free circulation is required to provide adequate evidence to satisfy the competent authorities that, under the laws of the country of importation, there is *prima facie* an infringement of the right holder's intellectual property right and to supply sufficient information that may reasonably be expected to be within the right holder's knowledge to make the suspected goods reasonably recognizable by the competent authorities. The requirement to provide sufficient information shall not unreasonably deter recourse to these procedures.

21. Each Party shall provide that its competent authorities shall have the authority to require a right holder initiating procedures for suspension to provide a reasonable 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. Each Party shall provide that such security may take a form of an instrument issued by a financial services provider to hold the importer or owner of the

<sup>18</sup> For purposes of paragraphs 20 through 25:

**counterfeit trademark goods** means any goods, including packaging, bearing without authorization a trademark which is identical to the trademark validly registered in respect of such goods, or which cannot be distinguished in its essential aspects from such a trademark, and which thereby infringes the rights of the owner of the trademark in question under the law of the country of importation; and

**pirated copyright goods** means any goods which are copies made without the consent of the right holder or person duly authorized by the right holder in the country of production and which are made directly or indirectly from an article where the making of that copy would have constituted an infringement of a copyright or a related right under the law of the country of importation.

imported merchandise harmless from any loss or damage resulting from any suspension of the release of goods in the event the competent authorities determine that the article is not an infringing good.

22. Where its competent authorities have made a determination that goods are counterfeit or pirated, a Party shall grant its 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.

23. Each Party shall provide that its competent authorities may initiate border measures *ex officio*, with respect to imported, exported, or in-transit merchandise suspected of infringing an intellectual property right, without the need for a formal complaint from a private party or right holder.

24. Each Party shall provide that goods that have been determined to be pirated or counterfeit by its competent authorities shall be destroyed, pursuant as appropriate to judicial order, unless the right holder consents to an alternate disposition, except that counterfeit trademark goods may in appropriate cases be donated to charity for use outside the channels of commerce, when the removal of the trademark eliminates the infringing characteristic of the good and the good is no longer identifiable with the removed trademark. In regard to counterfeit trademark goods, the simple removal of the trademark unlawfully affixed shall not be sufficient to permit the release of the goods into the channels of commerce. In no event shall the competent authorities be authorized to permit the exportation of counterfeit or pirated goods or to permit such goods to be subject to other customs procedures, except in exceptional circumstances.

25. Each Party shall provide that where an application fee or merchandise storage fee is assessed in connection with border measures to enforce an intellectual property right, the fee shall not be set at an amount that unreasonably deters recourse to such measures.

#### *Criminal Procedures and Remedies*

26. (a) Each Party shall provide for criminal procedures and penalties to be applied at least in cases of willful trademark counterfeiting or copyright or related rights piracy on a commercial scale. Willful copyright or related rights piracy on a commercial scale includes significant willful infringements of copyright or related rights, for purposes of commercial advantage or private financial gain, as well as willful infringements that have no direct or indirect motivation of financial gain, provided that there is more than a *de minimis* financial harm. Each Party shall treat willful importation or exportation of counterfeit or pirated goods as unlawful activities and provide for criminal penalties to the same extent as the trafficking or distribution of such goods in domestic commerce.<sup>19</sup>

(b) Specifically, each Party shall provide:

(i) remedies that include sentences of imprisonment or monetary fines, or both, sufficient to provide a deterrent to future acts of infringement. Each Party shall establish policies or guidelines that encourage penalties to be imposed by judicial authorities at levels sufficient to provide a deterrent to future infringements;

<sup>19</sup> A Party may comply with this subparagraph in relation to exportation through its measures concerning distribution or trafficking.

- (ii) that its judicial authorities shall have the authority to order the seizure of suspected counterfeit or pirated goods, any related materials and implements that have been used in the commission of the offense, any assets traceable to the infringing activity, and any documentary evidence relevant to the offense. Each Party shall provide that items that are subject to seizure pursuant to any such judicial order need not be individually identified so long as they fall within general categories specified in the order;
- (iii) that its judicial authorities shall have the authority to order, among other measures, (1) the forfeiture of any assets traceable to the infringing activity, (2) the forfeiture and destruction of all counterfeit or pirated goods, without compensation of any kind to the defendant, in order to prevent the re-entry of counterfeit and pirated goods into channels of commerce, and (3) with respect to willful copyright or related rights piracy, the forfeiture and destruction of materials and implements that have been used in the creation of the infringing goods; and
- (iv) that its authorities may, at least in cases of suspected trademark counterfeiting or copyright piracy, conduct investigations or exercise other enforcement measures *ex officio*, without the need for a formal complaint by a private party or right holder, at least for the purpose of preserving evidence or preventing the continuation of the infringing activity.

*Limitations on Liability for Service Providers*

27. For the purpose of providing enforcement procedures that permit effective action against any act of infringement of copyright<sup>20</sup> covered under this Chapter, including expeditious remedies to prevent infringements, and criminal and civil remedies that constitute a deterrent to further infringements, each Party shall provide, consistent with the framework set out in this Article:

- (a) legal incentives for service providers to cooperate with copyright owners in deterring the unauthorized storage and transmission of copyrighted materials; and
- (b) limitations in its law regarding the scope of remedies available against service providers for copyright infringements that they do not control, initiate or direct, and that take place through systems or networks controlled or operated by them or on their behalf, as set out in this subparagraph.<sup>21</sup>
  - (i) These limitations shall preclude monetary relief and provide reasonable restrictions on court-ordered relief to compel or restrain certain actions for the following functions and shall be confined to those functions:
    - (A) transmitting, routing, or providing connections for material without modification of its content, or the intermediate and transient storage of such material in the course thereof;

<sup>20</sup> For purposes of this paragraph, "copyright" shall also include related rights.

<sup>21</sup> The Parties understand that this subparagraph is without prejudice to the availability of defenses to copyright infringement that are of general applicability.

- (B) caching carried out through an automatic process;
  - (C) storage at the direction of a user of material residing on a system or network controlled or operated by or for the service provider; and
  - (D) referring or linking users to an on-line location by using information location tools, including hyperlinks and directories.
- (ii) These limitations shall apply only where the service provider does not initiate the chain of transmission of the material and does not select the material or its recipients (except to the extent that a function described in clause (i)(D) in itself entails some form of selection).
- (iii) Qualification by a service provider for the limitations as to each function in clauses (i)(A) through (D) shall be considered separately from qualification for the limitations as to each other function, in accordance with the conditions for qualification set forth in clauses (iv) through (vii).
- (iv) With respect to the function referred to in clause (i)(B), the limitations shall be conditioned on the service provider:
- (A) permitting access to cached material in significant part only to users of its system or network who have met conditions on user access to that material;
  - (B) complying with rules concerning the refreshing, reloading, or other updating of the cached material when specified by the person making the material available on-line in accordance with a generally accepted industry standard data communications protocol for the system or network through which that person makes the material available;
  - (C) not interfering with technology consistent with industry standards accepted in the Party's territory used at the originating site to obtain information about the use of the material, and not modifying its content in transmission to subsequent users; and
  - (D) expeditiously removing or disabling access, on receipt of an effective notification of claimed infringement, to cached material that has been removed or access to which has been disabled at the originating site.
- (v) With respect to functions referred to in clauses (i)(C) and (D), the limitations shall be conditioned on the service provider:
- (A) not receiving a financial benefit directly attributable to the infringing activity, in circumstances where it has the right and ability to control such activity;
  - (B) expeditiously removing or disabling access to the material residing on its system or network on obtaining actual knowledge of the infringement or becoming aware of facts or circumstances from which the infringement was apparent, such

as through effective notifications of claimed infringement in accordance with clause (ix); and

- (C) publicly designating a representative to receive such notifications.
- (vi) Eligibility for the limitations in this subparagraph shall be conditioned on the service provider:
- (A) adopting and reasonably implementing a policy that provides for termination in appropriate circumstances of the accounts of repeat infringers; and
  - (B) accommodating and not interfering with standard technical measures accepted in the Party's territory that protect and identify copyrighted material, that are developed through an open, voluntary process by a broad consensus of copyright owners and service providers, that are available on reasonable and nondiscriminatory terms, and that do not impose substantial costs on service providers or substantial burdens on their systems or networks.
- (vii) Eligibility for the limitations in this subparagraph may not be conditioned on the service provider monitoring its service, or affirmatively seeking facts indicating infringing activity, except to the extent consistent with such technical measures.
- (viii) If the service provider qualifies for the limitations with respect to the function referred to in clause (i)(A), court-ordered relief to compel or restrain certain actions shall be limited to terminating specified accounts, or to taking reasonable steps to block access to a specific, non-domestic on-line location. If the service provider qualifies for the limitations with respect to any other function in clause (i), court-ordered relief to compel or restrain certain actions shall be limited to removing or disabling access to the infringing material, terminating specified accounts, and other remedies that a court may find necessary provided that such other remedies are the least burdensome to the service provider among comparably effective forms of relief. Each Party shall provide that any such relief shall be issued with due regard for the relative burden to the service provider and harm to the copyright owner, the technical feasibility and effectiveness of the remedy and whether less burdensome, comparably effective enforcement methods are available. Except for orders ensuring the preservation of evidence, or other orders having no material adverse effect on the operation of the service provider's communications network, each Party shall provide that such relief shall be available only where the service provider has received notice and an opportunity to appear before the Party's judicial authority.
- (ix) For purposes of the notice and take down process for the functions referred to in clauses (i)(C) and (D), each Party shall establish appropriate procedures for effective notifications of claimed infringement, and effective counter-notifications by those whose material is removed or disabled through mistake or misidentification. At a minimum, each Party shall require that an effective notification of claimed infringement be a written communication, physically or

electronically signed by a person who represents, under penalty of perjury or other criminal penalty, that he is an authorized representative of a right holder in the material that is claimed to have been infringed, and containing information that is reasonably sufficient to enable the service provider to identify and locate material that the complaining party claims in good faith to be infringing and to contact that complaining party. At a minimum, each Party shall require that an effective counter-notification contain the same information, *mutatis mutandis*, as a notification of claimed infringement, and contain a statement that the subscriber making the counter-notification consents to the jurisdiction of the courts of the Party. Each Party shall also provide for monetary remedies against any person who makes a knowing material misrepresentation in a notification or counter-notification that causes injury to any interested party as a result of a service provider relying on the misrepresentation.

- (x) If the service provider removes or disables access to material in good faith based on claimed or apparent infringement, each Party shall provide that the service provider shall be exempted from liability for any resulting claims, provided that, in the case of material residing on its system or network, it takes reasonable steps promptly to notify the person making the material available on its system or network that it has done so and, if such person makes an effective counter-notification and is subject to jurisdiction in an infringement suit, to restore the material on-line unless the person giving the original effective notification seeks judicial relief within a reasonable time.
- (xi) Each Party shall establish an administrative or judicial procedure enabling copyright owners who have given effective notification of claimed infringement to obtain expeditiously from a service provider information in its possession identifying the alleged infringer.
- (xii) **Service provider** means:
  - (A) for purposes of the function referred to in clause (i)(A), a provider of transmission, routing, or connections for digital on-line communications without modification of their content between or among points specified by the user of material of the user's choosing; and
  - (B) for purposes of the functions referred to in clause (i)(B) through (D), a provider or operator of facilities for on-line services or network access.

*Additional Procedures and Remedies*

28. Annex 15.11 applies between the Dominican Republic and the United States.

**Article 15.12: Final Provisions:**

1. Except as otherwise provided in paragraph 2 and Article 15.1, each Party shall give effect to this Chapter on the date of entry into force of this Agreement.
2. As specified below, a Party may delay giving effect to certain provisions of this Chapter for no longer than the periods in this paragraph, beginning on the date of entry into force of the Agreement:

- (a) in the case of Costa Rica:
  - (i) with respect to Articles 15.4.1 and 15.9.6, one year;
  - (ii) with respect to Article 15.8.1(b), 18 months;
  - (iii) with respect to Articles 15.3.7 and 15.5.8(a)(ii), two years;
  - (iv) with respect to Article 15.11.27, 30 months;  
and
  - (v) with respect to Articles 15.5.7(a)(ii), 15.5.7(e), 15.5.7(f), 15.11.8, and 15.11.14, three years;
- (b) in the case of the Dominican Republic:
  - (i) with respect to Article 15.5.4, six months;
  - (ii) with respect to Articles 15.5.9 and 15.9.6, one year;
  - (iii) with respect to Article 15.2.1, 18 months;
  - (iv) with respect to Articles 15.3.7, and 15.11.27, two years; and
  - (v) with respect to Article 15.5.7(a)(ii), 15.5.7(e), and 15.5.7(f), three years.
- (c) in the case of El Salvador:
  - (i) with respect to Article 15.11.27, one year;
  - (ii) with respect to Article 15.8.1(b), 18 months;
  - (iii) with respect to Article 15.11.23, two years;
  - (iv) with respect to Article 15.5.8(a)(ii), 30 months; and
  - (v) with respect to Articles 15.5.7(a)(ii), 15.5.7(e), 15.5.7(f), 15.11.8, and 15.11.14, three years;
- (d) in the case of Guatemala:
  - (i) with respect to Article 15.5.4, six months;
  - (ii) with respect to Articles 15.5.9 and 15.9.6, one year;
  - (iii) with respect to Article 15.8, 18 months;
  - (iv) with respect to Articles 15.2.1, 15.3.7, 15.4, 15.5.8(a)(ii), 15.11.20, 15.11.21, 15.11.22, and 15.11.25, two years;
  - (v) with respect to Article 15.11.27, 30 months;
  - (vi) with respect to Articles 15.5.7(a)(ii), 15.5.7(e), 15.5.7(f), 15.11.8, 15.11.14, and 15.11.24, three years; and

- (vii) with respect to Article 15.11.23, four years;
- (e) in the case of Honduras:
  - (i) with respect to Articles 15.5.9 and 15.9.6, one year;
  - (ii) with respect to Article 15.8, 18 months;
  - (iii) with respect to Articles 15.2.1, 15.3.7, 15.4, 15.5.8(a)(ii), 15.11.20, 15.11.21, 15.11.22, and 15.11.25, two years;
  - (iv) with respect to Article 15.11.27, 30 months;
  - (v) with respect to Articles 15.5.7(a)(ii), 15.5.7(e), 15.5.7(f), 15.11.8, 15.11.14, and 15.11.24, three years; and
  - (vi) with respect to Article 15.11.23, four years; and
- (f) in the case of Nicaragua:
  - (i) with respect to Articles 15.5.9 and 15.9.6, one year;
  - (ii) with respect to Article 15.8.1(b), 18 months;
  - (iii) with respect to Articles 15.3.7, 15.4, 15.5.8(a)(ii), 15.11.20, 15.11.21, 15.11.22, and 15.11.25, two years;
  - (iv) with respect to Articles 15.5.7(a)(ii), 15.5.7(e), 15.5.7(f), 15.11.8, 15.11.14, 15.11.24, and 15.11.27, three years; and
  - (v) with respect to Article 15.11.23, four years.

## Annex 15.11

**Procedures and Remedies Concerning  
Broadcast or Cable Transmissions or Retransmissions  
in the Dominican Republic**

1. The Dominican Republic reaffirms its commitments under Chapter 15 to the application of administrative, civil, and criminal procedures and remedies in the case of broadcast or cable transmissions or retransmissions that are made without the authorization of the right holder or right holders of the content of the signal and, if any, of the signal.

2. The Dominican Republic shall provide that procedures and remedies are set out in its law for the temporary suspension of concessions or operating licenses, or both, for broadcast or cable transmissions or retransmissions in cases where the *Oficina Nacional de Derecho de Autor* (ONDA) or its other competent authorities determine that transmissions or retransmissions that are the subject of the concession or operating license have been made without the permission of the right holder or right holders of the content of the signal and, if any, of the signal. Such procedures shall conform to the requirements of Article 15.11 applicable to administrative enforcement, and shall include:

- (a) an opportunity for right holders to make written requests to ONDA or other competent authorities for the temporary or permanent closure of establishments transmitting the unauthorized broadcast or cable transmissions (pursuant to Article 187 of the *Ley sobre Derecho de Autor*, No. 65-00, August 21, 2000, as implemented by Articles 116.4 and 116.5 of the *Reglamento de Aplicación*, No. 362-01, March 14, 2001), and for other sanctions available under its law, and to submit evidence in support of such requests;
- (b) a requirement that holders of such concessions or operating licenses cooperate with ONDA or other competent authorities so that investigations and inspections concerning such a request can take place without delay, including by providing access to all documents relating to the transmissions or retransmissions; and
- (c) a requirement that an administrative decision concerning such a request be rendered expeditiously and not later than 60 days after the date of the request. Such decisions shall be in writing and shall state the reasons on which they are based. Any closure shall become effective immediately following a decision requiring such closure. Temporary closure shall continue in effect for up to 30 days. Failure to cease transmission or retransmission following closure shall be considered a violation classified under Article 105(d) of the *Ley General de Telecomunicaciones*, No. 153-98, May 27, 1998, and shall be subject to all available sanctions authorized by that law.

The Dominican Republic shall further provide that ONDA or other competent authorities may initiate procedures for the temporary or permanent closure of establishments transmitting the unauthorized broadcast or cable transmissions and other sanctions available under national law *ex officio*, without the need for a written request from a private party or right holder.

3. The Dominican Republic shall provide that ONDA and its other competent authorities shall have sufficient resources to carry out the actions described in paragraph 2, and hereby reaffirms its obligations under Article 15.11.2(b).

4. INDOTEL shall exercise the powers conferred on it by the *Ley General de Telecomunicaciones No. 153-98* to address copyright infringement in appropriate cases,

consistent with the INDOTEL Resolution of January 30, 2004, sanctioning holders of cable transmission service authorizations who transmitted signals containing protected works or retransmitted signals issued by the entity originating the transmission without authorization. If the level of sanctions imposed in the INDOTEL Resolution of January 30, 2004 is not effective in eliminating the problem, then INDOTEL shall increase sanctions to an effective level.

5. The Dominican Republic shall provide quarterly reporting of progress made in all judicial actions concerning television broadcasting piracy consistent with the understanding set out in an exchange of letters between the Dominican Republic and the United States on the date of signature of this Agreement.

## Chapter Sixteen

### Labor

#### Article 16.1: Statement of Shared Commitment

1. The Parties reaffirm their obligations as members of the International Labor Organization (ILO) and their commitments under the *ILO Declaration on Fundamental Principles and Rights at Work and its Follow-Up (1998)* (ILO Declaration).<sup>1</sup> Each Party shall strive to ensure that such labor principles and the internationally recognized labor rights set forth in Article 16.8 are recognized and protected by its law.
2. The Parties affirm their full respect for their Constitutions. Recognizing the right of each Party to establish its own domestic labor standards, and to adopt or modify accordingly its labor laws, each Party shall strive to ensure that its laws provide for labor standards consistent with the internationally recognized labor rights set forth in Article 16.8 and shall strive to improve those standards in that light.

#### Article 16.2: Enforcement of Labor Laws

1.
  - (a) A Party shall not fail to effectively enforce its labor laws, through a sustained or recurring course of action or inaction, in a manner affecting trade between the Parties, after the date of entry into force of this Agreement.
  - (b) Each Party retains the right to exercise discretion with respect to investigatory, prosecutorial, regulatory, and compliance matters and to make decisions regarding the allocation of resources to enforcement with respect to other labor matters determined to have higher priorities. Accordingly, the Parties understand that a Party is in compliance with subparagraph (a) where a course of action or inaction reflects a reasonable exercise of such discretion, or results from a *bona fide* decision regarding the allocation of resources.
2. The Parties recognize that it is inappropriate to encourage trade or investment by weakening or reducing the protections afforded in domestic labor laws. Accordingly, each Party shall strive to ensure that it does not waive or otherwise derogate from, or offer to waive or otherwise derogate from, such laws in a manner that weakens or reduces adherence to the internationally recognized labor rights referred to in Article 16.8 as an encouragement for trade with another Party, or as an encouragement for the establishment, acquisition, expansion, or retention of an investment in its territory.
3. Nothing in this Chapter shall be construed to empower a Party's authorities to undertake labor law enforcement activities in the territory of another Party.

#### Article 16.3: Procedural Guarantees and Public Awareness

1. Each Party shall ensure that persons with a legally recognized interest under its law in a particular matter have appropriate access to tribunals for the enforcement of the Party's labor laws. Such tribunals may include administrative, quasi-judicial, judicial, or labor tribunals, as provided in the Party's domestic law.

<sup>1</sup> The Parties recall that paragraph 5 of the ILO Declaration states that labor standards should not be used for protectionist trade purposes.

2. Each Party shall ensure that proceedings before such tribunals for the enforcement of its labor laws are fair, equitable, and transparent and, to this end, each Party shall ensure that:

- (a) such proceedings comply with due process of law;
- (b) any hearings in such proceedings are open to the public, except where the administration of justice otherwise requires;
- (c) the parties to such proceedings are entitled to support or defend their respective positions, including by presenting information or evidence; and
- (d) such proceedings do not entail unreasonable charges or time limits or unwarranted delays.

3. Each Party shall provide that final decisions on the merits of the case in such proceedings are:

- (a) in writing and state the reasons on which the decisions are based;
- (b) made available without undue delay to the parties to the proceedings and, consistent with its law, to the public; and
- (c) based on information or evidence in respect of which the parties were offered the opportunity to be heard.

4. Each Party shall provide, as appropriate, that parties to such proceedings have the right to seek review and, where warranted, correction of final decisions issued in such proceedings.

5. Each Party shall ensure that tribunals that conduct or review such proceedings are impartial and independent and do not have any substantial interest in the outcome of the matter.

6. Each Party shall provide that the parties to such proceedings may seek remedies to ensure the enforcement of their rights under its labor laws. Such remedies may include measures such as orders, fines, penalties, or temporary workplace closures, as provided in the Party's laws.

7. Each Party shall promote public awareness of its labor laws, including by:

- (a) ensuring the availability of public information related to its labor laws and enforcement and compliance procedures; and
- (b) encouraging education of the public regarding its labor laws.

8. For greater certainty, decisions or pending decisions by each Party's administrative, quasi-judicial, judicial, or labor tribunals, as well as related proceedings, shall not be subject to revision or be reopened under the provisions of this Chapter.

**Article 16.4: Institutional Arrangements**

1. The Parties hereby establish a Labor Affairs Council, comprising cabinet-level or equivalent representatives of the Parties, or their designees.

2. The Council shall meet within the first year after the date of entry into force of this Agreement and thereafter as often as it considers necessary to oversee the implementation of

and review progress under this Chapter, including the activities of the Labor Cooperation and Capacity Building Mechanism established under Article 16.5, and to pursue the labor objectives of this Agreement. Unless the Parties otherwise agree, each meeting of the Council shall include a session at which members of the Council have an opportunity to meet with the public to discuss matters relating to the implementation of this Chapter.

3. Each Party shall designate an office within its labor ministry that shall serve as a contact point with the other Parties, and with the public, for purposes of carrying out the work of the Council, including coordination of the Labor Cooperation and Capacity Building Mechanism. Each Party's contact point shall provide for the submission, receipt, and consideration of communications from persons of a Party on matters related to the provisions of this Chapter, and shall make such communications available to the other Parties and, as appropriate, to the public. Each Party shall review such communications, as appropriate, in accordance with domestic procedures. The Council shall develop general guidelines for considering such communications.

4. Each Party may convene a new, or consult an existing, national labor advisory or consultative committee, comprising members of its public, including representatives of its labor and business organizations, to provide views on any issues related to this Chapter.

5. All decisions of the Council shall be taken by consensus. All decisions of the Council shall be made public, unless otherwise provided in this Agreement, or unless the Council otherwise decides.

6. The Council may prepare reports on matters related to the implementation of this Chapter, and shall make such reports public.

#### **Article 16.5: Labor Cooperation and Capacity Building Mechanism**

1. Recognizing that cooperation on labor issues can play an important role in advancing development in the territory of the Parties and in providing opportunities to improve labor standards, and to further advance common commitments regarding labor matters, including the principles embodied in the ILO Declaration and *ILO Convention No. 182 Concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour (1999)* (ILO Convention 182), the Parties hereby establish a Labor Cooperation and Capacity Building Mechanism, as set out in Annex 16.5. The Mechanism shall operate in a manner that respects each Party's law and sovereignty.

2. While endeavoring to strengthen each Party's institutional capacity to fulfill the common goals of the Agreement, the Parties shall strive to ensure that the objectives of the Labor Cooperation and Capacity Building Mechanism, and the activities undertaken through that Mechanism:

- (a) are consistent with each Party's national programs, development strategies, and priorities;
- (b) provide opportunities for public participation in the development and implementation of such objectives and activities; and
- (c) take into account each Party's economy, culture, and legal system.

**Article 16.6: Cooperative Labor Consultations**

1. A Party may request consultations with another Party regarding any matter arising under this Chapter by delivering a written request to the contact point that the other Party has designated under Article 16.4.3.
2. The consultations shall begin promptly after delivery of the request. The request shall contain information that is specific and sufficient to enable the Party receiving the request to respond.
3. The consulting Parties shall make every attempt to arrive at a mutually satisfactory resolution of the matter, taking into account opportunities for cooperation relating to the matter, and may seek advice or assistance from any person or body they deem appropriate in order to fully examine the matter at issue.
4. If the consulting Parties fail to resolve the matter pursuant to paragraph 3, a consulting Party may request that the Council be convened to consider the matter by delivering a written request to the contact point of each of the other Parties.<sup>2</sup>
5. The Council shall promptly convene and shall endeavor to resolve the matter, including, where appropriate, by consulting outside experts and having recourse to such procedures as good offices, conciliation, or mediation.
6. If the matter concerns whether a Party is conforming to its obligations under Article 16.2.1(a), and the consulting Parties have failed to resolve the matter within 60 days of a request under paragraph 1, the complaining Party may request consultations under Article 20.4 (Consultations) or a meeting of the Commission under Article 20.5 (Commission – Good Offices, Conciliation, and Mediation) and, as provided in Chapter Twenty (Dispute Settlement), thereafter have recourse to the other provisions of that Chapter. The Council may, as appropriate, provide information to the Commission on consultations held on the matter.
7. No Party may have recourse to dispute settlement under this Agreement for any matter arising under any provision of this Chapter other than Article 16.2.1(a).
8. No Party may have recourse to dispute settlement under this Agreement for a matter arising under Article 16.2.1(a) without first pursuing resolution of the matter in accordance with this Article.
9. In cases where the consulting Parties agree that a matter arising under this Chapter would be more appropriately addressed under another agreement to which the consulting Parties are party, they shall refer the matter for appropriate action in accordance with that agreement.

**Article 16.7: Labor Roster**

1. The Parties shall establish within six months after the date of entry into force of this Agreement and maintain a roster of up to 28 individuals who are willing and able to serve as panelists in disputes arising under Article 16.2.1(a). Unless the Parties otherwise agree, up to three members of the roster shall be nationals of each Party, and up to seven members of the roster shall be selected from among individuals who are not nationals of any Party. Labor roster members shall be appointed by consensus, and may be reappointed. Once established, a roster shall remain in effect for a minimum of three years, and shall remain in effect thereafter

<sup>2</sup> For purposes of paragraphs 4, 5, and 6, the Council shall consist of the cabinet-level representatives of the consulting Parties or their high-level designees.

until the Parties constitute a new roster. The Parties may appoint a replacement where a roster member is no longer available to serve.

2. Labor roster members shall:

- (a) have expertise or experience in labor law or its enforcement, international trade, or the resolution of disputes arising under international agreements;
- (b) be chosen strictly on the basis of objectivity, reliability, and sound judgment;
- (c) be independent of, and not affiliated with or take instructions from, any Party; and
- (d) comply with a code of conduct to be established by the Commission.

3. Where a Party claims that a dispute arises under Article 16.2.1(a), Article 20.9 (Panel Selection) shall apply, except that the panel shall be composed entirely of panelists meeting the qualifications in paragraph 2.

**Article 16.8: Definitions**

For purposes of this Chapter:

**labor laws** means a Party's statutes or regulations, or provisions thereof, that are directly related to the following internationally recognized labor rights:

- (a) the right of association;
- (b) the right to organize and bargain collectively;
- (c) a prohibition on the use of any form of forced or compulsory labor;
- (d) a minimum age for the employment of children and the prohibition and elimination of the worst forms of child labor; and
- (e) acceptable conditions of work with respect to minimum wages, hours of work, and occupational safety and health.

For greater certainty, the setting of standards and levels in respect of minimum wages by each Party shall not be subject to obligations under this Chapter. Each Party's obligations under this Chapter pertain to enforcing the level of the general minimum wage established by that Party.

**statutes or regulations** means:

- (a) for Costa Rica, the Dominican Republic, El Salvador, Guatemala, Honduras, and Nicaragua, laws of its legislative body or regulations promulgated pursuant to an act of its legislative body that are enforceable by action of the executive body; and
- (b) for the United States, acts of Congress or regulations promulgated pursuant to an act of Congress that are enforceable by action of the federal government.

**Annex 16.5****Labor Cooperation and Capacity Building Mechanism***Organization and Principal Functions*

1. The Labor Affairs Council working through each Party's contact point shall coordinate the activities of the Labor Cooperation and Capacity Building Mechanism. The contact points shall meet within six months after the date of entry into force of this Agreement and thereafter as often as they consider necessary.

2. The contact points, together with representatives of other appropriate agencies and ministries, shall cooperate to:

- (a) establish priorities, with particular emphasis on those subjects identified in paragraph 3 of this Annex, for cooperation and capacity building activities on labor issues;
- (b) develop specific cooperative and capacity building activities in accordance with such priorities;
- (c) exchange information regarding each Party's labor laws and practices, including best practices, as well as ways to strengthen them; and
- (d) seek support, as appropriate, from international organizations such as the International Labor Organization, the Inter-American Development Bank, the World Bank, and the Organization of American States, to advance common commitments regarding labor matters.

*Cooperation and Capacity Building Priorities*

3. The Mechanism may initiate bilateral or regional cooperative activities on labor issues, which may include, but need not be limited to:

- (a) *fundamental rights and their effective application*: legislation and practice related to the core elements of the ILO Declaration (freedom of association and the effective recognition of the right to collective bargaining, elimination of all forms of forced or compulsory labor, the effective abolition of child labor, and the elimination of discrimination in respect of employment and occupation);
- (b) *worst forms of child labor*: legislation and practice related to compliance with ILO Convention 182;
- (c) *labor administration*: institutional capacity of labor administrations and tribunals, especially training and professionalization of human resources, including career civil service;
- (d) *labor inspectorates and inspection systems*: methods and training to improve the level and efficiency of labor law enforcement, strengthen labor inspection systems, and help ensure compliance with labor laws;
- (e) *alternative dispute resolution*: initiatives aimed at establishing alternative dispute resolution mechanisms for labor disputes;

- (f) *labor relations*: forms of cooperation and dispute resolution to ensure productive labor relations among workers, employers, and governments;
- (g) *working conditions*: mechanisms for supervising compliance with statutes and regulations pertaining to hours of work, minimum wages and overtime, occupational safety and health, and employment conditions;
- (h) *migrant workers*: dissemination of information regarding labor rights of migrant workers in each Party's territory;
- (i) *social assistance programs*: human resource development and employee training, among other programs;
- (j) *labor statistics*: development of methods for the Parties to generate comparable labor market statistics in a timely manner;
- (k) *employment opportunities*: promotion of new employment opportunities and workforce modernization;
- (l) *gender*: gender issues, including the elimination of discrimination in respect of employment and occupation; and
- (m) *technical issues*: programs, methodologies, and experiences regarding productivity improvement, encouragement of best labor practices, and the effective use of technologies, including those that are Internet-based.

*Implementation of Cooperative Activities*

4. Pursuant to the Mechanism, the Parties may cooperate on labor issues using any means they deem appropriate, including, but not limited to:

- (a) technical assistance programs, including by providing human, technical, and material resources, as appropriate;
- (b) exchange of official delegations, professionals, and specialists, including through study visits and other technical exchanges;
- (c) exchange of information on standards, regulations, and procedures, and best practices, including pertinent publications and monographs;
- (d) joint conferences, seminars, workshops, meetings, training sessions, and outreach and education programs;
- (e) collaborative projects or demonstrations; and
- (f) joint research projects, studies, and reports, including by engaging independent specialists with recognized expertise.

*Public Participation*

5. In identifying areas for labor cooperation and capacity building, and in carrying out cooperative activities, each Party shall consider the views of its worker and employer representatives, as well as those of other members of the public.

## Chapter Seventeen

### Environment

#### Article 17.1: Levels of Protection

Recognizing the right of each Party to establish its own levels of domestic environmental protection and environmental development policies and priorities, and to adopt or modify accordingly its environmental laws and policies, each Party shall ensure that its laws and policies provide for and encourage high levels of environmental protection, and shall strive to continue to improve those laws and policies.

#### Article 17.2: Enforcement of Environmental Laws

1. (a) A Party shall not fail to effectively enforce its environmental laws, through a sustained or recurring course of action or inaction, in a manner affecting trade between the Parties, after the date of entry into force of this Agreement.
- (b) The Parties recognize that each Party retains the right to exercise discretion with respect to investigatory, prosecutorial, regulatory, and compliance matters and to make decisions regarding the allocation of resources to enforcement with respect to other environmental matters determined to have higher priorities. Accordingly, the Parties understand that a Party is in compliance with subparagraph (a) where a course of action or inaction reflects a reasonable exercise of such discretion, or results from a *bona fide* decision regarding the allocation of resources.
2. The Parties recognize that it is inappropriate to encourage trade or investment by weakening or reducing the protections afforded in domestic environmental laws. Accordingly, each Party shall strive to ensure that it does not waive or otherwise derogate from, or offer to waive or otherwise derogate from, such laws in a manner that weakens or reduces the protections afforded in those laws as an encouragement for trade with another Party, or as an encouragement for the establishment, acquisition, expansion, or retention of an investment in its territory.
3. Nothing in this Chapter shall be construed to empower a Party's authorities to undertake environmental law enforcement activities in the territory of another Party.

#### Article 17.3: Procedural Matters

1. Each Party shall ensure that judicial, quasi-judicial, or administrative proceedings, in accordance with its law, are available to sanction or remedy violations of its environmental laws.
  - (a) Such proceedings shall be fair, equitable, and transparent and, to this end, shall comply with due process of law and be open to the public, except where the administration of justice otherwise requires.
  - (b) The parties to such proceedings shall be entitled to support or defend their respective positions, including by presenting information or evidence.
  - (c) Each Party shall provide appropriate and effective remedies or sanctions for a violation of its environmental laws that:
    - (i) take into consideration, as appropriate, the nature and gravity of the violation, any economic benefit the violator has derived from the

violation, the economic condition of the violator, and other relevant factors; and

- (ii) may include criminal and civil remedies and sanctions such as compliance agreements, penalties, fines, injunctions, suspension of activities, and requirements to take remedial action or pay for damage to the environment.

2. Each Party shall ensure that interested persons may request the Party's competent authorities to investigate alleged violations of its environmental laws, and that each Party's competent authorities shall give such requests due consideration in accordance with its law.
3. Each Party shall ensure that persons with a legally recognized interest under its law in a particular matter have appropriate access to proceedings referred to in paragraph 1.
4. Each Party shall provide appropriate and effective access to remedies, in accordance with its law, which may include rights such as:
  - (a) to sue another person under that Party's jurisdiction for damages under that Party's laws;
  - (b) to seek sanctions or remedies such as monetary penalties, emergency closures or temporary suspension of activities, or orders to mitigate the consequences of violations of its environmental laws;
  - (c) to request that Party's competent authorities to take appropriate action to enforce its environmental laws in order to protect the environment or to avoid environmental harm; or
  - (d) to seek injunctions where a person suffers, or may suffer, loss, damage, or injury as a result of conduct by another person subject to that Party's jurisdiction that is contrary to that Party's environmental laws or that violates a legal duty under that Party's law relating to human health or the environment.
5. Each Party shall ensure that tribunals that conduct or review proceedings referred to in paragraph 1 are impartial and independent and do not have any substantial interest in the outcome of the matter.
6. For greater certainty, nothing in this Chapter shall be construed to call for the examination under this Agreement of whether a Party's judicial, quasi-judicial, or administrative tribunals have appropriately applied that Party's environmental laws.

**Article 17.4: Voluntary Mechanisms to Enhance Environmental Performance**

1. The Parties recognize that incentives and other flexible and voluntary mechanisms can contribute to the achievement and maintenance of environmental protection, complementing the procedures set out in Article 17.3. As appropriate and in accordance with its law, each Party shall encourage the development and use of such mechanisms, which may include:
  - (a) mechanisms that facilitate voluntary action to protect or enhance the environment, such as:
    - (i) partnerships involving businesses, local communities, non-governmental organizations, government agencies, or scientific organizations;

- (ii) voluntary guidelines for environmental performance; or
- (iii) sharing of information and expertise among authorities, interested parties, and the public concerning methods for achieving high levels of environmental protection, voluntary environmental auditing and reporting, ways to use resources more efficiently or reduce environmental impacts, environmental monitoring, and collection of baseline data; or
- (b) incentives, including market-based incentives where appropriate, to encourage conservation, restoration, and protection of natural resources and the environment, such as public recognition of facilities or enterprises that are superior environmental performers, or programs for exchanging permits or other instruments to help achieve environmental goals.

2. As appropriate and feasible and in accordance with its law, each Party shall encourage:

- (a) the maintenance, development, or improvement of performance goals and indicators used in measuring environmental performance; and
- (b) flexibility in the means to achieve such goals and meet such standards, including through mechanisms identified in paragraph 1.

**Article 17.5: Environmental Affairs Council**

1. The Parties hereby establish an Environmental Affairs Council comprising cabinet-level or equivalent representatives of the Parties, or their designees. Each Party shall designate an office in its appropriate ministry that shall serve as a contact point for carrying out the work of the Council.

2. The Council shall meet within the first year after the date of entry into force of this Agreement, and annually thereafter unless the Parties otherwise agree, to oversee the implementation of and review progress under this Chapter and to consider the status of cooperation activities developed under the Dominican Republic – Central America – United States – Environmental Cooperation Agreement (“ECA”). Unless the Parties otherwise agree, each meeting of the Council shall include a session in which members of the Council have an opportunity to meet with the public to discuss matters relating to the implementation of this Chapter.

3. The Council shall set its own agenda. In setting the agenda, each Party shall seek views from its public concerning possible issues for discussion.

4. In order to share innovative approaches for addressing environmental issues of interest to the public, the Council shall ensure a process for promoting public participation in its work, including by engaging in a dialogue with the public on those issues.

5. The Council shall seek appropriate opportunities for the public to participate in the development and implementation of cooperative environmental activities, including through the ECA.

6. All decisions of the Council shall be taken by consensus, except as provided in Article 17.8. All decisions of the Council shall be made public, unless otherwise provided in this Agreement, or unless the Council otherwise decides.

**Article 17.6: Opportunities for Public Participation**

1. Each Party shall provide for the receipt and consideration of public communications on matters related to this Chapter. Each Party shall promptly make available to the other Parties and to its public all communications it receives and shall review and respond to them in accordance with its domestic procedures.
2. Each Party shall make best efforts to accommodate requests by persons of that Party to exchange views with that Party regarding that Party's implementation of this Chapter.
3. Each Party shall convene a new, or consult an existing, national consultative or advisory committee, comprising members of its public, including representatives of business and environmental organizations, to provide views on matters related to the implementation of this Chapter.
4. The Parties shall take into account public comments and recommendations regarding cooperative environmental activities undertaken pursuant to Article 17.9 and the ECA.

**Article 17.7: Submissions on Enforcement Matters**

1. Any person of a Party may file a submission asserting that a Party is failing to effectively enforce its environmental laws. Such submissions shall be filed with a secretariat or other appropriate body ("secretariat") that the Parties designate.<sup>1</sup>
2. The secretariat may consider a submission under this Article if the secretariat finds that the submission:
  - (a) is in writing in either English or Spanish;
  - (b) clearly identifies the person making the submission;
  - (c) provides sufficient information to allow the secretariat to review the submission, including any documentary evidence on which the submission may be based;
  - (d) appears to be aimed at promoting enforcement rather than at harassing industry;
  - (e) indicates that the matter has been communicated in writing to the relevant authorities of the Party and indicates the Party's response, if any; and
  - (f) is filed by a person of a Party.
3. The Parties recognize that the *North American Agreement on Environmental Cooperation* ("NAAEC") provides that a person or organization residing or established in the territory of the United States may file a submission under that agreement with the Secretariat of the NAAEC Commission for Environmental Cooperation asserting that the United States is failing to effectively enforce its environmental laws.<sup>2</sup> In light of the availability of that procedure, a person of the United States who considers that the United States is failing to effectively enforce its environmental laws may not file a submission under this Article. For

<sup>1</sup> The Parties shall designate the secretariat and provide for related arrangements through an exchange of letters or other form of agreement between the Parties.

<sup>2</sup> Arrangements will be made for the United States to make available in a timely manner to the other Parties all such submissions, U.S. written responses, and factual records developed in connection with those submissions. At the request of any Party, the Council shall discuss such documents.

greater certainty, a person of a Party other than the United States who considers that the United States is failing to effectively enforce its environmental laws may file a submission with the secretariat.

4. Where the secretariat determines that a submission meets the criteria set out in paragraph 2, the secretariat shall determine whether the submission merits requesting a response from the Party. In deciding whether to request a response, the secretariat shall be guided by whether:

- (a) the submission is not frivolous and alleges harm to the person making the submission;
- (b) the submission, alone or in combination with other submissions, raises matters whose further study in this process would advance the goals of this Chapter and the ECA, taking into account guidance regarding those goals provided by the Council and the Environmental Cooperation Commission established under the ECA;
- (c) private remedies available under the Party's law have been pursued; and
- (d) the submission is drawn exclusively from mass media reports.

Where the secretariat makes such a request, it shall forward to the Party a copy of the submission and any supporting information provided with the submission.

5. The Party shall advise the secretariat within 45 days or, in exceptional circumstances and on notification to the secretariat, within 60 days of delivery of the request:

- (a) whether the precise matter at issue is the subject of a pending judicial or administrative proceeding, in which case the secretariat shall proceed no further; and
- (b) of any other information the Party wishes to submit, such as:
  - (i) whether the matter was previously the subject of a judicial or administrative proceeding;
  - (ii) whether private remedies in connection with the matter are available to the person making the submission and whether they have been pursued; or
  - (iii) information concerning relevant capacity-building activities under the ECA.

**Article 17.8: Factual Records and Related Cooperation**

1. If the secretariat considers that the submission, in light of any response provided by the Party, warrants developing a factual record, the secretariat shall so inform the Council and provide its reasons.

2. The secretariat shall prepare a factual record if the Council, by a vote of any Party, instructs it to do so.

3. The preparation of a factual record by the secretariat pursuant to this Article shall be without prejudice to any further steps that may be taken with respect to any submission.

4. In preparing a factual record, the secretariat shall consider any information furnished by a Party and may consider any relevant technical, scientific, or other information:

- (a) that is publicly available;
- (b) submitted by interested persons;
- (c) submitted by national advisory or consultative committees;
- (d) developed by independent experts; or
- (e) developed under the ECA.

5. The secretariat shall submit a draft factual record to the Council. Any Party may provide comments on the accuracy of the draft within 45 days thereafter.

6. The secretariat shall incorporate, as appropriate, any such comments in the final factual record and submit it to the Council.

7. The Council may, by a vote of any Party, make the final factual record publicly available, normally within 60 days following its submission.

8. The Council shall consider the final factual record in light of the objectives of this Chapter and the ECA. The Council shall, as appropriate, provide recommendations to the Environmental Cooperation Commission related to matters addressed in the factual record, including recommendations related to the further development of the Party's mechanisms for monitoring its environmental enforcement.

#### **Article 17.9: Environmental Cooperation**

1. The Parties recognize the importance of strengthening capacity to protect the environment and to promote sustainable development in concert with strengthening trade and investment relations.

2. The Parties are committed to expanding their cooperative relationship, recognizing that cooperation is important for achieving their shared environmental goals and objectives, including the development and improvement of environmental protection, as set out in this Chapter.

3. The Parties recognize that strengthening their cooperative relationship on environmental matters can enhance environmental protection in their territories and may encourage increased trade and investment in environmental goods and services.

4. The Parties have negotiated an ECA. The Parties have identified certain priority areas of cooperation for environmental activities as reflected in Annex 17.9 and as set out in the ECA. The Parties also have established an Environmental Cooperation Commission through the ECA that is responsible for developing, and periodically revising and updating, a work program that reflects each Party's priorities for cooperative environmental programs, projects, and activities.

5. The Parties also recognize the continuing importance of current and future environmental cooperation activities in other fora.

**Article 17.10: Collaborative Environmental Consultations**

1. A Party may request consultations with another Party regarding any matter arising under this Chapter by delivering a written request to the contact point that the other Party has designated under Article 17.5.1.
2. The consultations shall begin promptly after delivery of the request. The request shall contain information that is specific and sufficient to enable the Party receiving the request to respond.
3. The consulting Parties shall make every attempt to arrive at a mutually satisfactory resolution of the matter, taking into account opportunities for cooperation relating to the matter and information exchanged by the consulting Parties, and may seek advice or assistance from any person or body they deem appropriate in order to fully examine the matter at issue.
4. If the consulting Parties fail to resolve the matter pursuant to paragraph 3, a consulting Party may request that the Council be convened to consider the matter by delivering a written request to the contact point of each of the other Parties.<sup>3</sup>
5. The Council shall promptly convene and shall endeavor to resolve the matter, including, where appropriate, by consulting outside experts and having recourse to such procedures as good offices, conciliation, or mediation.
6. If the matter concerns whether a Party is conforming to its obligations under Article 17.2.1(a), and the consulting Parties have failed to resolve the matter within 60 days of a request under paragraph 1, the complaining Party may request consultations under Article 20.4 (Consultations) or a meeting of the Commission under Article 20.5 (Commission – Good Offices, Conciliation, and Mediation) and, as provided in Chapter Twenty (Dispute Settlement), thereafter have recourse to the other provisions of that Chapter. The Council may, as appropriate, provide information to the Commission regarding any consultations held on the matter.
7. No Party may have recourse to dispute settlement under this Agreement for any matter arising under any provision of this Chapter other than Article 17.2.1(a).
8. No Party may have recourse to dispute settlement under this Agreement for a matter arising under Article 17.2.1(a) without first pursuing resolution of the matter in accordance with this Article.
9. In cases where the consulting Parties agree that a matter arising under this Chapter would be more appropriately addressed under another agreement to which the consulting Parties are party, they shall refer the matter for appropriate action in accordance with that agreement.

**Article 17.11: Environmental Roster**

1. The Parties shall establish within six months after the date of entry into force of this Agreement and maintain a roster of up to 28 individuals who are willing and able to serve as panelists in disputes arising under Article 17.2.1(a). Unless the Parties otherwise agree, up to three members of the roster shall be nationals of each Party, and up to seven members of the roster shall be selected from among individuals who are not nationals of any Party. Environment roster members shall be appointed by consensus, and may be reappointed. Once

<sup>3</sup> For purposes of paragraphs 4, 5, and 6, the Council shall consist of cabinet-level representatives of the consulting Parties or their designees.

established, a roster shall remain in effect for a minimum of three years, and shall remain in effect thereafter until the Parties constitute a new roster. The Parties may appoint a replacement where a roster member is no longer available to serve.

2. Environment roster members shall:

- (a) have expertise or experience in environmental law or its enforcement, international trade, or the resolution of disputes arising under international trade or environmental agreements;
- (b) be chosen strictly on the basis of objectivity, reliability, and sound judgment;
- (c) be independent of, and not affiliated with or take instructions from, any Party; and
- (d) comply with a code of conduct to be established by the Commission.

3. Where a Party claims that a dispute arises under Article 17.2.1(a), Article 20.9 (Panel Selection) shall apply, except that the panel shall be composed entirely of panelists meeting the qualifications in paragraph 2.

#### **Article 17.12: Relationship to Environmental Agreements**

1. The Parties recognize that multilateral environmental agreements to which they are all party play an important role in protecting the environment globally and domestically and that their respective implementation of these agreements is critical to achieving the environmental objectives of these agreements. The Parties further recognize that this Chapter and the ECA can contribute to realizing the goals of those agreements. Accordingly, the Parties shall continue to seek means to enhance the mutual supportiveness of multilateral environmental agreements to which they are all party and trade agreements to which they are all party.

2. The Parties may consult, as appropriate, with respect to ongoing negotiations in the WTO regarding multilateral environmental agreements.

#### **Article 17.13: Definitions**

1. For purposes of this Chapter:

**environmental law** means any statute or regulation of a Party, or provision thereof, the primary purpose of which is the protection of the environment, or the prevention of a danger to human, animal, or plant life or health, through:

- (a) the prevention, abatement, or control of the release, discharge, or emission of pollutants or environmental contaminants;
- (b) the control of environmentally hazardous or toxic chemicals, substances, materials, and wastes, and the dissemination of information related thereto; or
- (c) the protection or conservation of wild flora and fauna, including endangered species, their habitat, and specially protected natural areas,

in areas with respect to which a Party exercises sovereignty, sovereign rights, or jurisdiction, but does not include any statute or regulation, or provision thereof, directly related to worker safety or health.

For greater certainty, **environmental law** does not include any statute or regulation, or provision thereof, the primary purpose of which is managing the commercial harvest or exploitation, or subsistence or aboriginal harvesting, of natural resources.

For purposes of the definition of "environmental law," the primary purpose of a particular statutory or regulatory provision shall be determined by reference to its primary purpose, rather than to the primary purpose of the statute or regulation of which it is part.

**statute or regulation** means:

- (a) for Costa Rica, the Dominican Republic, El Salvador, Guatemala, Honduras, and Nicaragua, a law of its legislative body or a regulation promulgated pursuant to an act of its legislative body that is enforceable by the executive body; and
- (b) for the United States, an act of Congress or regulation promulgated pursuant to an act of Congress that is enforceable by action of the federal government.

2. For purposes of Article 17.7.5, **judicial or administrative proceeding** means:

- (a) a domestic judicial, quasi-judicial, or administrative action pursued by the Party in a timely fashion and in accordance with its law. Such actions comprise: mediation; arbitration; the process of issuing a license, permit, or authorization; seeking an assurance of voluntary compliance or a compliance agreement; seeking sanctions or remedies in an administrative or judicial forum; and the process of issuing an administrative order; and
- (b) an international dispute resolution proceeding to which the Party is a party.

**Annex 17.9****Environmental Cooperation**

1. The Parties recognize the importance of protecting, improving, and conserving the environment, including natural resources, in their territories. The Parties underscore the importance of promoting all possible forms of cooperation and reaffirm that cooperation on environmental matters provides enhanced opportunities to advance common commitments to achieve sustainable development for the well-being of present and future generations.

2. Recognizing the benefits that would be derived from a framework to facilitate effective cooperation, the Parties negotiated the ECA. The Parties expect that the ECA will enhance their cooperative relationship, noting the existence of differences in the Parties' respective natural endowments, climatic and geographical conditions, and economic, technological, and infrastructure capabilities.

3. As set forth in Article V of the ECA, the Parties have identified the following priorities for environmental cooperation activities:

- (a) strengthening each Party's environmental management systems, including reinforcing institutional and legal frameworks and the capacity to develop, implement, administer, and enforce environmental laws, regulations, standards, and policies;
- (b) developing and promoting incentives and other flexible and voluntary mechanisms in order to encourage environmental protection, including the development of market-based initiatives and economic incentives for environmental management;
- (c) fostering partnerships to address current or emerging conservation and management issues, including personnel training and capacity building;
- (d) conserving and managing shared, migratory, and endangered species in international trade and management of marine parks and other protected areas;
- (e) exchanging information on domestic implementation of multilateral environmental agreements that all the Parties have ratified;
- (f) promoting best practices leading to sustainable management of the environment;
- (g) facilitating technology development and transfer and training to promote the use, proper operation, and maintenance of clean production technologies;
- (h) developing and promoting environmentally beneficial goods and services;
- (i) building capacity to promote public participation in the process of environmental decision-making;
- (j) exchanging information and experiences between Parties wishing to perform environmental reviews, including reviews of trade agreements, at the national level; and
- (k) other areas for environmental cooperation on which the Parties may agree.

4. Funding mechanisms for environmental cooperation activities under the ECA are addressed in Article VIII of the ECA.

**Chapter Eighteen****Transparency****Section A: Transparency****Article 18.1: Contact Points**

1. Each Party shall designate, within 60 days of the date of entry into force of this Agreement, a contact point to facilitate communications between the Parties on any matter covered by this Agreement.
2. On the request of another 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 18.2: Publication**

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

**Article 18.3: Notification and Provision of Information**

1. To the maximum extent possible, each Party shall notify any other Party with an interest in the matter of any proposed or actual measure that the Party considers might materially affect the operation of this Agreement or otherwise substantially affect that other Party's interests under this Agreement.
2. On request of another 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 18.4: Administrative Proceedings**

With a view to administering in a consistent, impartial, and reasonable manner all measures of general application affecting matters covered by this Agreement, each Party shall ensure that in its administrative proceedings applying measures referred to in Article 18.2 to particular persons, goods, or services of another Party in specific cases that:

- (a) wherever possible, persons of another Party that are directly affected by a proceeding are provided reasonable notice, in accordance with domestic procedures, when a proceeding is initiated, including a description of the nature of the proceeding, a statement of the legal authority under which the proceeding is initiated, and a general description of any issues in controversy;

- (b) such persons are afforded a reasonable opportunity to present facts and arguments in support of their positions prior to any final administrative action, when time, the nature of the proceeding, and the public interest permit; and
- (c) its procedures are in accordance with domestic law.

**Article 18.5: Review and Appeal**

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

**Article 18.6: Definitions**

For purposes of this Section:

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

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

**Section B: Anti-Corruption**

**Article 18.7: Statement of Principle**

The Parties affirm their resolve to eliminate bribery and corruption in international trade and investment.

**Article 18.8: Anti-Corruption Measures**

1. Each Party shall adopt or maintain the necessary legislative or other measures to establish that it is a criminal offense under its law, in matters affecting international trade or investment, for:
  - (a) a public official of that Party or a person who performs public functions for that Party intentionally to solicit or accept, directly or indirectly, any article of monetary value or other benefit, such as a favor, promise, or advantage, for

himself or for another person, in exchange for any act or omission in the performance of his public functions;

- (b) any person subject to the jurisdiction of that Party intentionally to offer or grant, directly or indirectly, to a public official of that Party or a person who performs public functions for that Party any article of monetary value or other benefit, such as a favor, promise, or advantage, for himself or for another person, in exchange for any act or omission in the performance of his public functions;
- (c) any person subject to the jurisdiction of that Party intentionally to offer, promise, or give any undue pecuniary or other advantage, directly or indirectly, to a foreign official, for that official or for another person, in order that the official act or refrain from acting in relation to the performance of official duties, in order to obtain or retain business or other improper advantage in the conduct of international business; and
- (d) any person subject to the jurisdiction of that Party to aid or abet, or to conspire in, the commission of any of the offenses described in subparagraphs (a) through (c).

2. Each Party shall adopt or maintain appropriate penalties and procedures to enforce the criminal measures that it adopts or maintains in conformity with paragraph 1.

3. In the event that, under the legal system of a Party, criminal responsibility is not applicable to enterprises, that Party shall ensure that enterprises shall be subject to effective, proportionate, and dissuasive non-criminal sanctions, including monetary sanctions, for any of the offenses described in paragraph 1.

4. Each Party shall endeavor to adopt or maintain appropriate measures to protect persons who, in good faith, report acts of bribery or corruption described in paragraph 1.

#### **Article 18.9: Cooperation in International Fora**

The Parties recognize the importance of regional and multilateral initiatives to eliminate bribery and corruption in international trade and investment. The Parties shall work jointly to encourage and support appropriate initiatives in relevant international fora.

#### **Article 18.10: Definitions**

For purposes of this Section:

**act or refrain from acting in relation to the performance of official duties** includes any use of the official's position, whether or not within the official's authorized competence;

**foreign official** means any person holding a legislative, administrative, or judicial office of a foreign country, at any level of government, whether appointed or elected; any person exercising a public function for a foreign country at any level of government, including for a public agency or public enterprise; and any official or agent of a public international organization;

**public function** means any temporary or permanent, paid or honorary activity, performed by a natural person in the name of a Party or in the service of a Party, such as procurement, at the central level of government; and

**public official** means any official or employee of a Party at the central level of government, whether appointed or elected.

**Chapter Nineteen**

**Administration of the Agreement and Trade Capacity Building**

**Section A: Administration of the Agreement**

**Article 19.1: The Free Trade Commission**

1. The Parties hereby establish the Free Trade Commission, comprising cabinet-level representatives of the Parties, as set out in Annex 19.1, or their designees.
2. The Commission shall:
  - (a) supervise the implementation of this Agreement;
  - (b) oversee the further elaboration of this Agreement;
  - (c) seek to resolve disputes that may arise regarding the interpretation or application of this Agreement;
  - (d) supervise the work of all committees and working groups established under this Agreement; and
  - (e) consider any other matter that may affect the operation of this Agreement.
3. The Commission may:
  - (a) establish and delegate responsibilities to committees and working groups;
  - (b) modify in fulfillment of the Agreement's objectives:
    - (i) the Schedules attached to Annex 3.3 (Tariff Elimination), by accelerating tariff elimination;
    - (ii) the rules of origin established in Annex 4.1 (Specific Rules of Origin);
    - (iii) the Common Guidelines referenced in Article 4.21 (Common Guidelines); and
    - (iv) Annexes 9.1.2(b)(i), 9.1.2(b)(ii), and 9.1.2(b)(iii) (Government Procurement);
  - (c) issue interpretations of the provisions of this Agreement;
  - (d) seek the advice of non-governmental persons or groups; and
  - (e) take such other action in the exercise of its functions as the Parties may agree.
4. Each Party shall implement, in accordance with its applicable legal procedures, any modification referred to in subparagraph 3(b) within such period as the Parties may agree.
5. The Commission shall establish its rules and procedures. All decisions of the Commission shall be taken by consensus, unless the Commission otherwise decides.
6. The Commission shall convene at least once a year in regular session, unless the Commission otherwise decides. Regular sessions of the Commission shall be chaired successively by each Party.

**Article 19.2: Free Trade Agreement Coordinators**

1. Each Party shall appoint a free trade agreement coordinator, as set out in Annex 19.2.
2. The coordinators shall work jointly to develop agendas and make other preparations for Commission meetings and shall follow-up on Commission decisions, as appropriate.

**Article 19.3: Administration of Dispute Settlement Proceedings**

1. Each Party shall:
  - (a) designate an office that shall provide administrative assistance to the panels established under Chapter Twenty (Dispute Settlement) and perform such other functions as the Commission may direct; and
  - (b) notify the Commission of the location of its designated office.
2. Each Party shall be responsible for:
  - (a) the operation and costs of its designated office; and
  - (b) the remuneration and payment of expenses of panelists and experts, as set out in Annex 19.3.

**Section B: Trade Capacity Building****Article 19.4: Committee on Trade Capacity Building**

1. Recognizing that trade capacity building assistance is a catalyst for the reforms and investments necessary to foster trade-driven economic growth, poverty reduction, and adjustment to liberalized trade, the Parties hereby establish a Committee on Trade Capacity Building, comprising representatives of each Party.
2. In furtherance of the Parties' ongoing trade capacity building efforts and in order to assist each Central American Party and the Dominican Republic to implement this Agreement and adjust to liberalized trade, each such Party should periodically update and provide to the Committee its national trade capacity building strategy.
3. The Committee shall:
  - (a) seek the prioritization of trade capacity building projects at the national or regional level, or both;
  - (b) invite appropriate international donor institutions, private sector entities, and non-governmental organizations to assist in the development and implementation of trade capacity building projects in accordance with the priorities set out in each national trade capacity building strategy;
  - (c) work with other committees or working groups established under this Agreement, including through joint meetings, in support of the development and implementation of trade capacity building projects in accordance with the priorities set out in each national trade capacity building strategy;
  - (d) monitor and assess progress in implementing trade capacity building projects; and

(e) provide a report annually to the Commission describing the Committee's activities, unless the Committee otherwise decides.

4. During the transition period, the Committee shall meet at least twice a year, unless the Committee otherwise decides.

5. The Committee may establish terms of reference for the conduct of its work.

6. The Committee may establish *ad hoc* working groups, which may comprise government or non-government representatives, or both.

7. All decisions of the Committee shall be taken by consensus, unless the Committee otherwise decides.

8. The Parties hereby establish an initial working group on customs administration and trade facilitation, which shall work under and report to the Committee.

**Annex 19.1****The Free Trade Commission**

The Free Trade Commission shall be composed of:

- (a) in the case of Costa Rica, the *Ministro de Comercio Exterior*;
- (b) in the case of the Dominican Republic, the *Secretario de Estado de Industria y Comercio*;
- (c) in the case of El Salvador, the *Ministro de Economía*;
- (d) in the case of Guatemala, the *Ministro de Economía*;
- (e) in the case of Honduras, the *Secretario de Estado en los Despachos de Industria y Comercio*;
- (f) in the case of Nicaragua, the *Ministro de Fomento, Industria y Comercio*; and
- (g) in the case of the United States, the United States Trade Representative,

or their successors.

**Annex 19.1.4**

**Implementation of Modifications Approved by the Commission**

1. In the case of Costa Rica, decisions of the Commission under Article 19.1.3(b) will be equivalent to the instrument referred to in article 121.4, third paragraph (*protocolo de menor rango*) of the *Constitución Política de la República de Costa Rica*.
2. In the case of Honduras, decisions of the Commission under Article 19.1.3(b) will be equivalent to the instrument referred to in article 21 of the *Constitución Política de la República de Honduras*.

**Annex 19.2****Free Trade Agreement Coordinators**

The free trade agreement coordinators shall consist of:

- (a) in the case of Costa Rica, the *Director General de Comercio Exterior*;
- (b) in the case of the Dominican Republic, the *Subsecretario de Estado de Industria y Comercio Encargado de Comercio Exterior*;
- (c) in the case of El Salvador, the *Director de la Dirección de Administración de Tratados Comerciales del Ministerio de Economía*;
- (d) in the case of Guatemala, the *Director de Administración de Comercio Exterior del Ministerio de Economía*;
- (e) in the case of Honduras, the *Director General de Política Comercial e Integración Económica de la Secretaría de Estado en los Despachos de Industria y Comercio*;
- (f) in the case of Nicaragua, the *Director General de Comercio Exterior del Ministerio de Fomento, Industria y Comercio*; and
- (g) in the case of the United States, the Assistant United States Trade Representative for the Americas,

or their successors.

**Annex 19.3**

**Remuneration and Payment of Expenses**

1. The Commission shall establish the amounts of remuneration and expenses that will be paid to panelists and experts.
2. The remuneration of panelists and their assistants, experts, their travel and lodging expenses, and all general expenses of panels shall be borne equally by the disputing Parties.
3. Each panelist and expert shall keep a record and render a final account of the person's time and expenses, and the panel shall keep a record and render a final account of all general expenses.

**Chapter Twenty****Dispute Settlement****Section A: Dispute Settlement****Article 20.1: Cooperation**

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

**Article 20.2: Scope of Application**

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

- (a) with respect to the avoidance or settlement of all disputes between the Parties regarding the interpretation or application of this Agreement;
- (b) wherever a Party considers that an actual or proposed measure of another Party is or would be inconsistent with the obligations of this Agreement or that another Party has otherwise failed to carry out its obligations under this Agreement; and
- (c) wherever a Party considers that an actual or proposed measure of another Party causes or would cause nullification or impairment in the sense of Annex 20.2.

**Article 20.3: Choice of Forum**

1. Where a dispute regarding any matter arises under this Agreement and under another free trade agreement to which the disputing Parties are party or the WTO Agreement, the complaining Party may select the forum in which to settle the dispute.

2. Once the complaining Party has requested a panel under an agreement referred to in paragraph 1, the forum selected shall be used to the exclusion of the others.

**Article 20.4: Consultations**

1. Any Party may request in writing consultations with any other Party with respect to any actual or proposed measure or any other matter that it considers might affect the operation of this Agreement.

2. The requesting Party shall deliver the request to the other Parties, and shall set out the reasons for the request, including identification of the actual or proposed measure or other matter at issue and an indication of the legal basis for the complaint.

3. A Party that considers it has a substantial trade interest in the matter may participate in the consultations on delivery of written notice to the other Parties within seven days of the date of delivery of the request for consultations. The Party shall include in its notice an explanation of its substantial trade interest in the matter.

4. Consultations on matters regarding perishable goods<sup>1</sup> shall commence within 15 days of the date of delivery of the request.

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

- (a) provide sufficient information to enable a full examination of how the actual or proposed measure or other matter might affect the operation and application of this Agreement; and
- (b) treat any confidential information exchanged in the course of consultations on the same basis as the Party providing the information.

6. In consultations under this Article, a consulting Party may request another consulting Party to make available personnel of its government agencies or other regulatory bodies who have expertise in the matter subject to consultations.<sup>2</sup>

**Article 20.5: Commission – Good Offices, Conciliation, and Mediation**

1. If the consulting Parties fail to resolve a matter pursuant to Article 20.4 within:

- (a) 60 days of delivery of a request for consultations;
- (b) 15 days of delivery of a request for consultations in matters regarding perishable goods; or
- (c) such other period as they may agree,

any such Party may request in writing a meeting of the Commission.<sup>3</sup>

2. A consulting Party may also request in writing a meeting of the Commission where consultations have been held pursuant to Article 16.6 (Cooperative Labor Consultations), Article 17.10 (Collaborative Environmental Consultations), or Article 7.8 (Committee on Technical Barriers to Trade).

3. The requesting Party shall deliver the request to the other Parties, and shall set out the reasons for the request, including identification of the actual or proposed measure or other matter at issue and an indication of the legal basis for the complaint.

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

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

<sup>1</sup> For greater certainty, the term "perishable goods" means perishable agricultural and fish goods classified in chapters 1 through 24 of the Harmonized System.

<sup>2</sup> A consulting Party receiving such a request shall strive to accommodate it.

<sup>3</sup> For purposes of this paragraph and paragraphs 2 and 4, the Commission shall consist of the cabinet-level representatives of the consulting Parties, as set out in Annex 19.1 (The Free Trade Commission), or their designees.

- (c) make recommendations,

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

5. Unless it decides otherwise, the Commission shall consolidate two or more proceedings before it pursuant to this Article regarding the same measure or matter. The Commission may consolidate two or more proceedings regarding other matters before it pursuant to this Article that it determines are appropriate to be considered jointly.<sup>4</sup>

**Article 20.6: Request for an Arbitral Panel**

1. If the consulting Parties fail to resolve a matter within:
  - (a) 30 days after the Commission has convened pursuant to Article 20.5;
  - (b) 30 days after the Commission has convened in respect of the matter most recently referred to it, where proceedings have been consolidated pursuant to Article 20.5.5;
  - (c) 30 days after a Party has delivered a request for consultations under Article 20.4 in a matter regarding perishable goods, if the Commission has not convened pursuant to Article 20.5.4;
  - (d) 75 days after a Party has delivered a request for consultations under Article 20.4, if the Commission has not convened pursuant to Article 20.5.4; or
  - (e) such other period as the consulting Parties may agree,

any consulting Party that requested a meeting of the Commission with regard to the measure or other matter in accordance with Article 20.5 may request in writing the establishment of an arbitral panel to consider the matter. The requesting Party shall deliver the request to the other Parties, and shall set out the reasons for the request, including identification of the measure or other matter at issue and an indication of the legal basis for the complaint.

2. An arbitral panel shall be established upon delivery of a request.
3. A Party that is eligible under paragraph 1 to request the establishment of a panel and considers it has a substantial interest in the matter may join the arbitral panel proceedings as a complaining Party on delivery of written notice to the other Parties. The notice shall be delivered at the earliest possible time, and in any event no later than seven days after the date of delivery of the request by the Party for the establishment of a panel.
4. If a Party does not join as a complaining Party in accordance with paragraph 3, it normally shall refrain thereafter from initiating or continuing:
  - (a) a dispute settlement procedure under this Agreement; or
  - (b) a dispute settlement proceeding under the WTO Agreement or under another free trade agreement to which it and the Party complained against are party, on grounds that are substantially equivalent to those available to it under this Agreement,

regarding the same matter in the absence of a significant change in economic or commercial circumstances.

<sup>4</sup> For purposes of this paragraph, the Commission shall consist of the cabinet-level representatives of the consulting Parties in the relevant proceedings, as set out in Annex 19.1 (The Free Trade Commission), or their designees.

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

6. An arbitral panel may not be established to review a proposed measure.

**Article 20.7: Roster**

1. The Parties shall establish within six months of the date of entry into force of this Agreement and maintain a roster of up to 70 individuals who are willing and able to serve as panelists. Unless the Parties otherwise agree, up to eight members of the roster shall be nationals of each Party, and up to 14 members of the roster shall be selected from among individuals who are not nationals of any Party. The roster members shall be appointed by consensus, and may be reappointed. Once established, a roster shall remain in effect for a minimum of three years, and shall remain in effect thereafter until the Parties constitute a new roster. The Parties may appoint a replacement where a roster member is no longer available to serve.

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, any Party; and
- (d) comply with a code of conduct to be established by the Commission.

**Article 20.8: Qualifications of Panelists**

All panelists shall meet the qualifications set out in Article 20.7.2. Individuals may not serve as panelists for a dispute in which they have participated pursuant to Article 20.5.4.

**Article 20.9: Panel Selection**

1. The Parties shall apply the following procedures in selecting a panel:

- (a) the panel shall comprise three members;
- (b) the disputing Parties shall endeavor to agree on the chair of the panel within 15 days of the delivery of the request for the establishment of the panel. If the disputing Parties are unable to agree on the chair within this period, the chair shall be selected by lot within three days from among the roster members who are not nationals of a disputing Party;
- (c) within 15 days of selection of the chair, the complaining Party or Parties shall select one panelist and the Party complained against shall select one panelist;
- (d) if the complaining Party or Parties or the Party complained against fail to select a panelist within this period, the panelist shall be selected by lot within three days from among the roster members who are nationals of such Party or Parties, as the case may be; and
- (e) each disputing Party shall endeavor to select panelists who have expertise or experience relevant to the subject matter of the dispute, as appropriate.

2. Panelists shall normally be selected from the roster. Any disputing Party may exercise a peremptory challenge against any individual not on the roster who is proposed as a panelist by a disputing Party within 15 days after the individual has been proposed.

3. If a disputing Party believes that a panelist is in violation of the code of conduct, the disputing Parties shall consult and if they agree, the panelist shall be removed and a new panelist shall be selected in accordance with this Article.

**Article 20.10: Rules of Procedure**

1. The Commission shall establish by the date of entry into force of this Agreement Model Rules of Procedure, which shall ensure:

- (a) a right to at least one hearing before the panel, which, subject to subparagraph (e), shall be open to the public;
- (b) an opportunity for each disputing Party to provide initial and rebuttal written submissions;
- (c) that each participating Party's written submissions, written versions of its oral statement, and written responses to a request or questions from the panel shall be public, subject to subparagraph (e);
- (d) that the panel will consider requests from non-governmental entities in the disputing Parties' territories to provide written views regarding the dispute that may assist the panel in evaluating the submissions and arguments of the disputing Parties; and
- (e) the protection of confidential information.

2. Unless the disputing Parties otherwise agree, the panel shall conduct its proceedings in accordance with the Model Rules of Procedure.

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

4. Unless the disputing Parties otherwise agree within 20 days from the date of the delivery of the request for the establishment of the panel, the terms of reference shall be:

"To examine, in the light of the relevant provisions of this Agreement, the matter referenced in the panel request and to make findings, determinations, and recommendations as provided in Articles 20.10.6 and 20.13.3 and to deliver the written reports referred to in Articles 20.13 and 20.14."

5. If a complaining Party in its panel request has identified that a measure has nullified or impaired benefits, in the sense of Annex 20.2, the terms of reference shall so indicate.

6. If a disputing Party wishes the panel to make findings as to the degree of adverse trade effects on any Party of a Party's failure to conform with the obligations of this Agreement or of a Party's measure found to have caused nullification or impairment in the sense of Annex 20.2, the terms of reference shall so indicate.

**Article 20.11: Third Party Participation**

A Party that is not a disputing Party, on delivery of a written notice to the disputing Parties, shall be entitled to attend all hearings, to make written and oral submissions to the panel, and to receive written submissions of the disputing Parties in accordance with the Model Rules of Procedure. Those submissions shall be reflected in the final report of the panel.

**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, provided that the disputing Parties so agree and subject to such terms and conditions as such Parties may agree.

**Article 20.13: Initial Report**

1. Unless the disputing Parties otherwise agree, the panel shall base its report on the relevant provisions of this Agreement, the submissions and arguments of the disputing Parties, and on any information before it pursuant to Article 20.12.
2. If the disputing Parties request, the panel may make recommendations for resolution of the dispute.
3. Unless the disputing Parties otherwise agree, the panel shall, within 120 days after the last panelist is selected or such other period as the Model Rules of Procedure established pursuant to Article 20.10 may provide, present to the disputing Parties an initial report containing:
  - (a) findings of fact, including any findings pursuant to a request under Article 20.10.6;
  - (b) its determination as to whether a disputing Party has not conformed with its obligations under this Agreement or that a Party's measure is causing nullification or impairment in the sense of Annex 20.2, or any other determination requested in the terms of reference; and
  - (c) its recommendations, if the disputing Parties have requested them, for resolution of the dispute.
4. When the panel considers that it cannot provide its report within 120 days, it shall inform the disputing Parties in writing of the reasons for the delay together with an estimate of the period within which it will provide its report. In no case should the period to provide the report exceed 180 days. The panel shall inform the disputing Parties of any determination under this paragraph no later than seven days after the initial written submission of the complaining Party or Parties and shall adjust the remainder of the schedule accordingly.
5. Panelists may furnish separate opinions on matters not unanimously agreed.
6. A disputing Party may submit written comments to the panel on its initial report within 14 days of presentation of the report or within such other period as the disputing Parties may agree.
7. After considering any written comments on the initial report, the panel may reconsider its report and make any further examination it considers appropriate.

**Article 20.14: Final Report**

- i. The panel shall present a final report to the disputing Parties, including any separate opinions on matters not unanimously agreed, within 30 days of presentation of the initial report, unless the disputing Parties otherwise agree. The disputing Parties shall release the final report to the public within 15 days thereafter, subject to the protection of confidential information.
2. No panel may, either in its initial report or its final report, disclose which panelists are associated with majority or minority opinions.

**Article 20.15: Implementation of Final Report**

1. On receipt of the final report of a panel, the disputing Parties shall agree on the resolution of the dispute, which normally shall conform with the determinations and recommendations, if any, of the panel.
2. If, in its final report, the panel determines that a disputing Party has not conformed with its obligations under this Agreement or that a disputing Party's measure is causing nullification or impairment in the sense of Annex 20.2, the resolution, whenever possible, shall be to eliminate the non-conformity or the nullification or impairment.<sup>5</sup>
3. Where appropriate, the disputing Parties may agree on a mutually satisfactory action plan to resolve the dispute, which normally shall conform with the determinations and recommendations, if any, of the panel. If the disputing Parties agree on such an action plan, a complaining Party may have recourse to Article 20.16.2 or Article 20.17.1, as the case may be, only if it considers that the Party complained against has failed to carry out the action plan.<sup>6</sup>

**Article 20.16: Non-Implementation – Suspension of Benefits**

1. If a panel has made a determination of the type described in Article 20.15.2, and the disputing Parties are unable to reach agreement on a resolution pursuant to Article 20.15 within 45 days of receiving the final report, or such other period as the disputing Parties agree, the Party complained against shall enter into negotiations with the complaining Party or Parties with a view to developing mutually acceptable compensation.
2. If the disputing Parties:
  - (a) are unable to agree on compensation within 30 days after the period for developing such compensation has begun; or
  - (b) have agreed on compensation or on a resolution pursuant to Article 20.15 and a complaining Party considers that the Party complained against has failed to observe the terms of the agreement,

any such complaining Party may at any time thereafter provide written notice to the Party complained against that it intends to suspend the application to the Party complained against of benefits of equivalent effect. The notice shall specify the level of benefits that the Party proposes to suspend. Subject to paragraph 6, the complaining Party may begin suspending benefits 30 days after the later of the date on which it provides notice under this paragraph or the panel issues its determination under paragraph 3, as the case may be.

3. If the Party complained against considers that:
  - (a) the level of benefits proposed to be suspended is manifestly excessive; or
  - (b) it has eliminated the non-conformity or the nullification or impairment that the panel has found,

it may, within 30 days after the complaining Party provides notice under paragraph 2, request that the panel be reconvened to consider the matter. The Party complained against shall

<sup>5</sup> Compensation, the payment of monetary assessments, and the suspension of benefits are intended as temporary measures pending the elimination of any non-conformity or nullification or impairment that the panel has found.

<sup>6</sup> For greater certainty, as part of an action plan the disputing Parties may undertake, modify, or enhance cooperation activities.

deliver its request in writing to the complaining Party. The panel shall reconvene as soon as possible after delivery of the request and shall present its determination to the disputing Parties within 90 days after it reconvenes to review a request under subparagraph (a) or (b), or within 120 days for a request under subparagraphs (a) and (b). If the panel determines that the level of benefits proposed to be suspended is manifestly excessive, it shall determine the level of benefits it considers to be of equivalent effect.

4. The complaining Party may suspend benefits up to the level the panel has determined under paragraph 3 or, if the panel has not determined the level, the level the complaining Party has proposed to suspend under paragraph 2, unless the panel has determined that the Party complained against has eliminated the non-conformity or the nullification or impairment.

5. In considering what benefits to suspend pursuant to paragraph 2:

- (a) the complaining Party should first seek to suspend benefits in the same sector or sectors as that affected by the measure or other matter that the panel has found to be inconsistent with the obligations of this Agreement or to have caused nullification or impairment in the sense of Annex 20.2; and
- (b) if the complaining Party considers that it is not practicable or effective to suspend benefits in the same sector or sectors, it may suspend benefits in other sectors.

6. The complaining Party may not suspend benefits if, within 30 days after it provides written notice of intent to suspend benefits or, if the panel is reconvened under paragraph 3, within 20 days after the panel provides its determination, the Party complained against provides written notice to the complaining Party that it will pay an annual monetary assessment. The disputing Parties shall consult, beginning no later than ten days after the Party complained against provides notice, with a view to reaching agreement on the amount of the assessment. If the disputing Parties are unable to reach an agreement within 30 days after consultations begin, the amount of the assessment shall be set at a level, in U.S. dollars, equal to 50 percent of the level of the benefits the panel has determined under paragraph 3 to be of equivalent effect or, if the panel has not determined the level, 50 percent of the level that the complaining Party has proposed to suspend under paragraph 2.

7. Unless the Commission otherwise decides, a monetary assessment shall be paid to the complaining Party in U.S. dollars, or in an equivalent amount of the currency of the Party complained against, in equal, quarterly installments beginning 60 days after the Party complained against gives notice that it intends to pay an assessment. Where the circumstances warrant, the Commission may decide that an assessment shall be paid into a fund established by the Commission and expended at the direction of the Commission for appropriate initiatives to facilitate trade between the disputing Parties, including by further reducing unreasonable trade barriers or by assisting a disputing Party in carrying out its obligations under this Agreement.<sup>7</sup>

8. If the Party complained against fails to pay a monetary assessment, the complaining Party may suspend the application to the Party complained against of benefits in accordance with paragraph 4.

9. This Article shall not apply with respect to a matter described in Article 20.17.1.

<sup>7</sup> For purposes of this paragraph, the Commission shall consist of the cabinet-level representatives of the disputing Parties, as set out in Annex 19.1 (The Free Trade Commission), or their designees.

**Article 20.17: Non-Implementation In Certain Disputes**

1. If, in its final report, a panel determines that a Party has not conformed with its obligations under Article 16.2.1(a) (Enforcement of Labor Laws) or Article 17.2.1(a) (Enforcement of Environmental Laws), and the disputing Parties:

- (a) are unable to reach agreement on a resolution pursuant to Article 20.15 within 45 days of receiving the final report; or
- (b) have agreed on a resolution pursuant to Article 20.15 and a complaining Party considers that the Party complained against has failed to observe the terms of the agreement,

any such complaining Party may at any time thereafter request that the panel be reconvened to impose an annual monetary assessment on the Party complained against. The complaining Party shall deliver its request in writing to the Party complained against. The panel shall reconvene as soon as possible after delivery of the request.

2. The panel shall determine the amount of the monetary assessment in U.S. dollars within 90 days after it reconvenes under paragraph 1. In determining the amount of the assessment, the panel shall take into account:

- (a) the bilateral trade effects of the Party's failure to effectively enforce the relevant law;
- (b) the pervasiveness and duration of the Party's failure to effectively enforce the relevant law;
- (c) the reasons for the Party's failure to effectively enforce the relevant law, including, where relevant, its failure to observe the terms of an action plan;
- (d) the level of enforcement that could reasonably be expected of the Party given its resource constraints;
- (e) the efforts made by the Party to begin remedying the non-enforcement after the final report of the panel, including through the implementation of any mutually agreed action plan; and
- (f) any other relevant factors.

The amount of the assessment shall not exceed 15 million U.S. dollars annually, adjusted for inflation as specified in Annex 20.17.

3. On the date on which the panel determines the amount of the monetary assessment under paragraph 2, or at any time thereafter, the complaining Party may provide notice in writing to the Party complained against demanding payment of the monetary assessment. The monetary assessment shall be payable in U.S. dollars, or in an equivalent amount of the currency of the Party complained against, in equal, quarterly installments beginning 60 days after the complaining Party provides such notice.

4. Assessments shall be paid into a fund established by the Commission and shall be expended at the direction of the Commission for appropriate labor or environmental initiatives, including efforts to improve or enhance labor or environmental law enforcement, as the case may be, in the territory of the Party complained against, consistent with its law. In

deciding how to expend monies paid into the fund, the Commission shall consider the views of interested persons in the disputing Parties' territories.<sup>8</sup>

5. If the Party complained against fails to pay a monetary assessment, the complaining Party may take other appropriate steps to collect the assessment or otherwise secure compliance. These steps may include suspending tariff benefits under the Agreement as necessary to collect the assessment, while bearing in mind the Agreement's objective of eliminating barriers to trade and while seeking to avoid unduly affecting parties or interests not party to the dispute.

**Article 20.18: Compliance Review**

1. Without prejudice to the procedures set out in Article 20.16.3, if the Party complained against considers that it has eliminated the non-conformity or the nullification or impairment that the panel has found, it may refer the matter to the panel by providing written notice to the complaining Party or Parties. The panel shall issue its report on the matter within 90 days after the Party complained against provides notice.

2. If the panel decides that the Party complained against has eliminated the non-conformity or the nullification or impairment, the complaining Party or Parties shall promptly reinstate any benefits that Party has or those Parties have suspended under Article 20.16 or Article 20.17 and the Party complained against shall no longer be required to pay any monetary assessment it has agreed to pay under Article 20.16.6 or that has been imposed on it under Article 20.17.1.

**Article 20.19: Five-Year Review**

The Commission shall review the operation and effectiveness of Articles 20.16 and 20.17 not later than five years after the Agreement enters into force, or within six months after benefits have been suspended or monetary assessments have been imposed in five proceedings initiated under this Chapter, whichever occurs first.

**Section B: Domestic Proceedings and Private Commercial Dispute Settlement**

**Article 20.20: Referral of Matters from Judicial or Administrative Proceedings**

1. If an issue of interpretation or application of this Agreement arises in any domestic judicial or administrative proceeding of a Party that any Party considers would merit its intervention, or if a court or administrative body solicits the views of a Party, that Party shall notify the other Parties. The Commission shall endeavor to agree on an appropriate response as expeditiously as possible.

2. The Party in whose territory the court or administrative body is located shall submit any agreed interpretation of the Commission to the court or administrative body in accordance with the rules of that forum.

3. If the Commission is unable to agree, any Party may submit its own views to the court or administrative body in accordance with the rules of that forum.

**Article 20.21: Private Rights**

No Party may provide for a right of action under its law against any other Party on the ground that the other Party has failed to conform with its obligations under this Agreement.

<sup>8</sup> For purposes of this paragraph, the Commission shall consist of the cabinet-level representatives of the disputing Parties, as set out in Annex 19.1 (The Free Trade Commission), or their designees.

**Article 20.22: Alternative Dispute Resolution**

1. Each Party shall, to the maximum extent possible, encourage and facilitate the use of arbitration and other means of alternative dispute resolution for the settlement of international commercial disputes between private parties in the free trade area.
2. To this end, each Party shall provide appropriate procedures to ensure observance of agreements to arbitrate and for the recognition and enforcement of arbitral awards in such disputes.
3. A Party shall be deemed to be in compliance with paragraph 2 if it is a party to and is in compliance with the 1958 *United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards* or the 1975 *Inter-American Convention on International Commercial Arbitration*.
4. The Commission may establish an Advisory Committee on Private Commercial Disputes comprising persons with expertise or experience in the resolution of private international commercial disputes.
5. This committee shall:
  - (a) report and provide recommendations to the Commission on general issues referred to it by the Commission respecting the availability, use, and effectiveness of arbitration and other procedures for the resolution of such disputes in the free trade area; and
  - (b) when the committee considers appropriate, promote technical cooperation between the Parties, in furtherance of the objectives identified in paragraph 1.

**Annex 20.2**

**Nullification or Impairment**

1. If any Party considers that any benefit it could reasonably have expected to accrue to it under any provision of:

- (a) Chapters Three through Five (National Treatment and Market Access for Goods, Rules of Origin and Origin Procedures, and Customs Administration and Trade Facilitation);
- (b) Chapter Seven (Technical Barriers to Trade);
- (c) Chapter Nine (Government Procurement);
- (d) Chapter Eleven (Cross-Border Trade in Services); or
- (e) Chapter Fifteen (Intellectual Property Rights),

is being nullified or impaired as a result of the application of any measure that is not inconsistent with this Agreement, the Party may have recourse to dispute settlement under this Chapter.

2. A Party may not invoke paragraph 1(d) or (e) with respect to any measure subject to an exception under Article 21.1 (General Exceptions).

**Annex 20.17****Inflation Adjustment Formula for Monetary Assessments**

1. An annual monetary assessment imposed before December 31, 2005 shall not exceed 15 million dollars (U.S.).
2. Beginning January 1, 2006, the 15 million dollar (U.S.) annual cap shall be adjusted for inflation in accordance with paragraphs 3 through 5.
3. The period used for the accumulated inflation adjustment shall be calendar year 2004 through the most recent calendar year preceding the one in which the assessment is owed.
4. The relevant inflation rate shall be the U.S. inflation rate as measured by the Producer Price Index for Finished Goods published by the U.S. Bureau of Labor Statistics.
5. The inflation adjustment shall be estimated according to the following formula:

$$\text{\$15 million} \times (1 + \pi_t) = A$$

$\pi_t$  = accumulated U.S. inflation rate from calendar year 2004 through the most recent calendar year preceding the one in which the assessment is owed.

A = cap for the assessment for the year in question.

**Chapter Twenty-One****Exceptions****Article 21.1: General Exceptions**

1. For purposes of Chapters Three through Seven (National Treatment and Market Access for Goods, Rules of Origin and Origin Procedures, Customs Administration and Trade Facilitation, Sanitary and Phytosanitary Measures, and Technical Barriers to Trade), Article XX of the GATT 1994 and its interpretive notes are incorporated into and made part of this Agreement, *mutatis mutandis*. The Parties understand that the measures referred to in Article XX(b) of the GATT 1994 include environmental measures necessary to protect human, animal, or plant life or health, and that Article XX(g) of the GATT 1994 applies to measures relating to the conservation of living and non-living exhaustible natural resources.

2. For purposes of Chapters Eleven, Thirteen, and Fourteen<sup>1</sup> (Cross-Border Trade in Services, Telecommunications, and Electronic Commerce), Article XIV of the GATS (including its footnotes) is incorporated into and made part of this Agreement, *mutatis mutandis*. The Parties understand that the measures referred to in Article XIV(b) of the GATS include environmental measures necessary to protect human, animal, or plant life or health.

**Article 21.2: Essential Security**

Nothing in this Agreement shall be construed:

- (a) to require a Party to furnish or allow access to any information the disclosure of which it determines to be contrary to its essential security interests; or
- (b) to preclude a Party from applying measures that it considers necessary for the fulfillment of its obligations with respect to the maintenance or restoration of international peace or security, or the protection of its own essential security interests.

**Article 21.3: Taxation**

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

2. Nothing in this Agreement shall affect the rights and obligations of any Party under any tax convention. In the event of any inconsistency between this Agreement and any such convention, that convention shall prevail to the extent of the inconsistency. In the case of a tax convention between two or more Parties, the competent authorities under that convention shall have sole responsibility for determining whether any inconsistency exists between this Agreement and that convention.

3. Notwithstanding paragraph 2:

- (a) Article 3.2 (National Treatment) and such other provisions of this Agreement as are necessary to give effect to that Article shall apply to taxation measures to the same extent as does Article III of the GATT 1994; and
- (b) Article 3.10 (Export Taxes) shall apply to taxation measures.

<sup>1</sup> This Article is without prejudice to whether digital products should be classified as goods or services.

4. Subject to paragraph 2:

- (a) Article 11.2 (National Treatment) and Article 12.2 (National Treatment) shall apply to taxation measures on income, capital gains, or on the taxable capital of corporations that relate to the purchase or consumption of particular services, except that nothing in this subparagraph shall prevent a Party from conditioning the receipt or continued receipt of an advantage relating to the purchase or consumption of particular services on requirements to provide the service in its territory; and
- (b) Articles 10.3 (National Treatment) and 10.4 (Most-Favored-Nation Treatment), Articles 11.2 (National Treatment) and 11.3 (Most-Favored-Nation Treatment) and Articles 12.2 (National Treatment) and 12.3 (Most-Favored-Nation Treatment) shall apply to all taxation measures, other than those on income, capital gains, or on the taxable capital of corporations, taxes on estates, inheritances, gifts, and generation-skipping transfers,

except that nothing in those Articles shall apply:

- (c) any most-favored-nation obligation with respect to an advantage accorded by a Party pursuant to any tax convention;
- (d) to a non-conforming provision of any existing taxation measure;
- (e) to the continuation or prompt renewal of a non-conforming provision of any existing taxation measure;
- (f) to an amendment to a non-conforming provision of any existing taxation measure to the extent that the amendment does not decrease its conformity, at the time of the amendment, with any of those Articles;
- (g) to the adoption or enforcement of any taxation measure aimed at ensuring the equitable or effective imposition or collection of taxes (as permitted by Article XIV(d) of the GATS); or
- (h) to a provision that conditions the receipt, or continued receipt, of an advantage relating to the contributions to, or income of, pension trusts or pension plans on a requirement that the Party maintain continuous jurisdiction over the pension trust or pension plan.

5. Subject to paragraph 2 and without prejudice to the rights and obligations of the Parties under paragraph 3, Article 10.9.2, 10.9.3, and 10.9.4 (Performance Requirements) shall apply to taxation measures.

6. Article 10.7 (Expropriation and Compensation) and Article 10.16 (Submission of a Claim to Arbitration) shall apply to a taxation measure alleged to be an expropriation or a breach of an investment agreement or investment authorization. However, no investor may invoke Article 10.7 as the basis of a claim where it has been determined pursuant to this paragraph that the measure is not an expropriation. An investor that seeks to invoke Article 10.7 with respect to a taxation measure must first refer to the competent authorities of the Parties of the claimant and the respondent set out in Annex 21.3 at the time that it gives its notice of intent under Article 10.16.2 the issue of whether that taxation measure involves an expropriation. If the competent authorities do not agree to consider the issue or, having agreed to consider it, fail to agree that the measure is not an expropriation within a period of six months of such referral, the investor may submit its claim to arbitration under Article 10.16.

**Article 21.4: Balance of Payments Measures on Trade in Goods**

Should a Party decide to impose measures for balance of payments purposes, it shall do so only in accordance with that Party's rights and obligations under the GATT 1994, including the *Declaration on Trade Measures Taken for Balance of Payments Purposes* (1979 Declaration) and the *Understanding on the Balance of Payments Provisions of the GATT 1994* (BOP Understanding). In adopting such measures, the Party shall immediately consult with the other Parties and shall not impair the relative benefits accorded to the other Parties under this Agreement.<sup>2</sup>

**Article 21.5: Disclosure of Information**

Nothing in this Agreement shall be construed to require a Party to furnish or allow access to confidential information the disclosure of which would impede law enforcement, or otherwise be contrary to the public interest, or which would prejudice the legitimate commercial interests of particular enterprises, public or private.

**Article 21.6: Definitions**

For purposes of this Chapter:

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

**taxes and taxation measures** do not include:

- (a) a customs duty; or
- (b) the measures listed in exceptions (b) and (c) of the definition of customs duty.

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<sup>2</sup> For greater certainty, this Article applies to balance of payments measures imposed on trade in goods.

**Annex 21.3****Competent Authorities**

For purposes of this Chapter:

**competent authorities** means

- (a) in the case of Costa Rica, the *Viceministro de Hacienda*;
- (b) in the case of the Dominican Republic, the *Subsecretario de Estado de Finanzas*;
- (c) in the case of El Salvador, the *Viceministro de Hacienda*;
- (d) in the case of Guatemala, the *Viceministro de Finanzas Públicas*;
- (e) in the case of Honduras, the *Subsecretario en el Despacho de Finanzas*;
- (f) in the case of Nicaragua, the *Viceministro de Hacienda y Crédito Público*; and
- (g) in the case of the United States, the Assistant Secretary of the Treasury (Tax Policy), Department of the Treasury,

or their successors.

**Chapter Twenty-Two****Final Provisions****Article 22.1: Annexes, Appendices, and Footnotes**

The Annexes, Appendices, and footnotes to this Agreement constitute an integral part of this Agreement.

**Article 22.2: Amendments**

1. The Parties may agree on any amendment of this Agreement. The original English and Spanish texts of any amendment shall be deposited with the Depositary, which shall promptly provide a certified copy to each Party.
2. When so agreed, and approved in accordance with the applicable legal procedures of each Party, an amendment shall constitute an integral part of this Agreement to take effect on the date on which all Parties have notified the Depositary in writing that they have approved the amendment or on such other date as the Parties may agree.

**Article 22.3: Amendment of the WTO Agreement**

If any provision of the WTO Agreement that the Parties have incorporated into this Agreement is amended, the Parties shall consult with a view to amending the relevant provision of this Agreement, as appropriate, in accordance with Article 22.2.

**Article 22.4: Reservations**

No Party may enter a reservation in respect of any provision of this Agreement without the written consent of the other Parties.

**Article 22.5: Entry into Force**

1.
  - (a) This Agreement shall enter into force on January 1, 2005, provided that the United States and one or more other signatories notify the Depositary in writing by that date that they have completed their applicable legal procedures.
  - (b) If this Agreement does not enter into force on January 1, 2005, this Agreement shall enter into force after the United States and one or more other signatories make such a notification, on such later date as they may agree.
2. Thereafter, this Agreement shall enter into force for any other signatory 90 days after the date on which that signatory notifies the Depositary in writing that it has completed its applicable legal procedures. Unless the Parties otherwise agree, a signatory may not provide a notification under this paragraph later than two years after the date of entry into force of this Agreement.
3. The Depositary shall promptly inform the Parties and non-Party signatories of any notification under paragraph 1 or 2.

**Article 22.6: 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 Party and acceding country.

2. The instrument of accession shall be deposited with the Depositary, which shall promptly inform each Party of the accession.

**Article 22.7: Withdrawal**

1. Any Party may withdraw from this Agreement by providing written notice of withdrawal to the Depositary. The Depositary shall promptly inform the Parties of such notification.

2. A withdrawal shall take effect six months after a Party provides written notice under paragraph 1, unless the Parties agree on a different period. If a Party withdraws, the Agreement shall remain in force for the remaining Parties.

**Article 22.8: Depositary**

The original English and Spanish texts of this Agreement shall be deposited with the General Secretariat of the Organization of American States, which shall serve as depositary. The Depositary shall promptly provide a certified copy of the original texts to each signatory.

**Article 22.9: Authentic Texts**

The English and Spanish texts of this Agreement are equally authentic.

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

DONE, at Washington in English and Spanish, on this 5<sup>th</sup> day of August, 2004.

FOR THE GOVERNMENT OF THE REPUBLIC OF COSTA RICA:



FOR THE GOVERNMENT OF THE DOMINICAN REPUBLIC:



FOR THE GOVERNMENT OF THE REPUBLIC OF EL SALVADOR:



FOR THE GOVERNMENT OF THE REPUBLIC OF GUATEMALA:



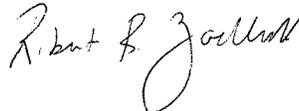
FOR THE GOVERNMENT OF THE REPUBLIC OF HONDURAS:



FOR THE GOVERNMENT OF THE REPUBLIC OF NICARAGUA:



FOR THE GOVERNMENT OF THE UNITED STATES OF AMERICA:



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**Appendix 3.3.6, Special Rules of Origin**

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**APPENDIX 3.3.6  
SPECIAL RULES OF ORIGIN**

**PART I  
GENERAL INTERPRETIVE NOTES**

1. For purposes of interpreting the rules of origin set out in this Appendix:
  - (a) the specific rule, or specific set of rules, that applies to a particular heading or subheading is set out immediately adjacent to the heading or subheading;
  - (b) the requirement of a change in tariff classification applies only to non-originating materials;
  - (c) where a specific rule of origin is defined using the criterion of a change in tariff classification, and the rule is written to exclude tariff provisions at the level of a chapter, heading, or subheading, each Party shall construe the rule of origin to require that materials classified in those excluded provisions be originating for the good to be originating;
  - (d) when a heading or subheading is subject to alternative specific rules of origin, each Party shall consider the rule to be met if a good satisfies one of the alternatives;
  - (e) when a single rule of origin is applicable to a group of headings or subheadings and that rule of origin specifies a change of heading or subheading, each Party shall interpret the rule such that the change of heading or subheading may occur within a single heading or subheading or between headings or subheadings of the group. When, however, a rule refers to a change in heading or subheading “outside that group,” each Party shall interpret the rule to require that the change in heading or subheading must occur from a heading or subheading that is outside the group of headings or subheadings set out in the rule;
  - (f) reference to weight in the rules for goods provided for in chapter 1 through 24 means dry weight unless otherwise specified in the Harmonized System;

2. For purposes of this Appendix:

**chapter** means a chapter of the Harmonized System; and

**section** means a section of the Harmonized System.

**PART II  
SPECIAL RULES OF ORIGIN**

**Section I  
(Chapter 1 through 5)  
Live animals; animal products**

**Chapter 1  
Live animals**

01.01 – 01.04  
Animals under this heading shall be originating from the country where born and raised.

01.05  
Animals under this heading shall be originating from the country where born and raised.

01.06  
Animals under this heading shall be originating from the country where born and/or raised or captured.

**Chapter 2  
Meat and edible meat offal**

02.01 – 02.06  
Products under this heading shall be originating from the country where born and raised of the animal.

02.07  
Products under this heading shall be originating from the country where born, raised and slaughtered, except for the turkey of subheading 0105.12, for which the raise and slaughter is permitted.

02.08 – 02.10  
Products under this heading shall be originating from the country where the animal was born and raised.

**Chapter 3  
Fish and crustaceans, molluscs and other aquatic invertebrates**

03.01 – 03.05  
Products under this heading shall be originating from the country where the fish were captured or the “fry” raised.

03.06 – 03.07  
Products under this heading shall be originating from the country where the crustacean, molluscs and other aquatic invertebrates were captured or the larvae raised.

**Chapter 4**

**Dairy produce; birds eggs; natural honey; edible products of animal origin, not elsewhere specified or included**

04.01 – 04.06

Products under this heading shall be originating from the country where the milk is obtained in its natural state or unprocessed.

04.07 – 04.08

Products under this heading shall be originating from the country where the animal eggs are obtained.

04.09

Products under this heading shall be originating from the country where the honey is obtained in its natural state or unprocessed.

04.10

Products under this heading shall be originating from the country where the animal products are obtained.

**Chapter 5**

**Products of animal origin, not elsewhere specified or included**

05.01 – 05.11

A change to this heading from any other chapter.

**Section II**

**(Chapter 6 through 14)**

**Vegetable products**

**Note to Section**

**II-1** Agricultural and horticultural goods shall be originating of the Parties, even if grown from seeds, bulbs, rootstock, cuttings, grafts, shoots, buds, or other live parts of plants imported from a country non-Party to the Agreement.

**Chapter 6**

**Live trees and other plants; bulbs, roots and the like; cut flowers and ornamental foliage**

0601.10

Products under this subheading shall be originating from the country where grown.

0601.20

Products under this subheading shall be originating from the country where grown.

0602.10

Products under this subheading shall be originating from the country where grown.

0602.20 – 0602.90

Products under this heading shall be originating from the country where grown.

06.03 – 06.04

Products under this heading shall be originating from the country where grown or reproduced.

**Chapter 7**

**Edible vegetables and certain roots and tubers**

07.01 – 07.14

Products under this heading shall be originating from the country where grown in its natural state or unprocessed.

**Chapter 8**

**Edible fruit and nuts; peel of citrus fruit or melons**

08.01 – 08.14

Products under this heading shall be originating from the country where grown.

**Chapter 9**

**Coffee, tea, maté and spices**

09.01 – 09.10

Products under this heading shall be originating from the country where the plant was grown and the product obtained.

**Chapter 10**

**Cereals**

10.01 – 10.08

Products under this heading shall be originating from the country where grown.

**Chapter 11**

**Products of the milling industry; malt; starches; inulin; wheat gluten**

11.01 – 11.03

A change to this heading from any other heading.

1104.12

A change to this subheading from any other subheading.

1104.19

A change to this subheading from any other heading. Exclusively for rolled or flaked grains of barley under this subheading, a change from any other subheading

1104.22 – 1104.30

A change to this subheading from any other heading.

11.05 – 11.06

A change to this heading from plants grown in the region.

11.07

A change to this heading from any other heading.

1108.11

A change to this subheading from any other heading.

1108.12 – 1108.14

A change to this subheading from any other heading from plants grown in the region.

1108.19 – 1109.00

A change to this subheading from any other heading.

**Chapter 12**

**Oil seeds and oleaginous fruits; miscellaneous grains, seeds and fruits; industrial or medicinal plants; straw and fodder**

12.01 – 12.07

Products under this heading shall be originating from the country where grown.

12.08

A change to this heading from any other heading, except from subheading 1207.10.

12.09 – 12.14

Products under this heading shall be originating from the country where grown.

**Chapter 13**

**Lac; gums, resins and other vegetable saps and extracts**

13.01 – 13.02

Products under this heading shall be originating from the country where they are obtained by means of extraction, exudation and incision.

**Chapter 14**  
**Vegetable plaiting materials; vegetable products not elsewhere specified or included**

14.01 – 14.04

Products under this heading shall be originating from the country where grown.

**Section III**  
**(Chapter 15)**

**Animal or vegetable fats and oils and their cleavage products; prepared edible fats; animal or vegetable waxes**

**Chapter 15**  
**Animal or vegetable fats and oils and their cleavage products prepared edible fats; animal or vegetable waxes**

15.01 – 15.06

A change to this heading from any other chapter, except from heading 0209.

1507.10

A change to this subheading from any other chapter.

1507.90

A change to this subheading from any other chapter.

1508.10

A change to this subheading from any other chapter.

1508.90

A change to this subheading from any other chapter.

15.09 – 15.10

A change to this heading from any other chapter.

1511.10

A change to this subheading from any other chapter.

1511.90

A change to this subheading from any other chapter.

1512.11

A change to this subheading from any other chapter.

1512.19

A change to this subheading from any other chapter.

1512.21

A change to this subheading from any other chapter.

1512.29

A change to this subheading from any other chapter.

1513.11

A change to this subheading from any other chapter.

1513.19

A change to this subheading from any other chapter.

1513.21

A change to this subheading from any other chapter, except from subheading 1207.10.

1513.29

A change to this subheading from any other chapter.

1514.11

A change to this subheading from any other chapter.

1514.19

A change to this subheading from any other chapter.

1514.91

A change to this subheading from any other chapter.

1514.99

A change to this subheading from any other chapter.

1515.11

A change to this subheading from any other chapter.

1515.19

A change to this subheading from any other chapter.

1515.21

A change to this subheading from any other chapter.

1515.29

A change to this subheading from any other chapter.

1515.30 – 1515.90

A change to this subheading from any other chapter.

1516.10  
A change to this subheading from any other chapter.

1516.20  
A change to this subheading from any other chapter.

1517.10  
A change to this subheading from any other chapter.

1517.90  
A change to this subheading from any other chapter.

15.18  
A change to this heading from any other chapter.

15.20 – 15.22  
A change to this heading from any other heading.

**Section IV**  
**(Chapter 16 through 24)**  
**Prepared foodstuffs; beverages, spirits, and vinegar; tobacco and manufactured tobacco substitutes**

**Chapter 16**  
**Preparations of meat, of fish or of crustaceans, molluscs or other aquatic invertebrates**

16.01 – 16.02  
A change to this heading from any other chapter, except from heading 02.01, 02.02 and 02.07, allowing the importation of mechanically de-boned fowl and meat in irregular pieces of subheading 0202.30.

16.03 – 16.05  
A change to this heading from any other chapter.

**Chapter 17**  
**Sugars and sugar confectionery**

17.01 – 17.03  
Products under this heading shall be originating from the country where grown.

17.04  
A change to this heading from any other heading.

**Chapter 18**  
**Cocoa and cocoa preparations**

18.01 – 18.02

Products shall be originating from the country where the cocoa beans of this heading were grown in their natural state or unprocessed.

18.03

A change to this heading from any other heading.

18.04 – 18.05

A change to this heading from any other heading, except from heading 1803.

18.06

A change to this heading from any other heading, except from 18.03, 18.04 and 18.05.

**Chapter 19**  
**Preparations of cereals, flour, starch or milk; bakers' wares**

1901.10

A change to this subheading from any other heading, except from heading 04.02.

1901.20

A change to this subheading from any other heading, except from heading 11.01, from subheading 1103.11 and from pellets of wheat under subheading 1103.20.

1901.90

A change to this subheading from any other heading, except from heading 04.02.

19.02

A change to this heading from any other heading, except from heading 10.06, 11.01, from subheading 1103.11 and from pellets of wheat under subheading 1103.20.

19.03

A change to this heading from any other heading.

1904.10 - 1904.20

A change to this subheading from any other heading.

1904.30

A change to this subheading from any other heading.

1904.90

A change to this subheading from any other heading, except from heading 1006.

19.05

A change to this heading from any other chapter, except from heading 11.01, from subheading 1103.11 and from pellets of wheat under subheading 1103.20.

**Chapter 20**

**Preparations of vegetables, fruit, nuts or other parts of plants**

20.01 – 20.08

A change to this heading from any other heading.

2009.11 - 2009.80

A change to this subheading from any other subheading, including from its concentrate.

2009.90

A change to this subheading from any other subheading.

**Chapter 21**

**Miscellaneous edible preparations**

2101.11 - 2101.12

Products under this subheading shall be originating from the country where the coffee beans were grown.

2101.20 - 2101.30

A change to this subheading from any other heading.

2102.10

A change to this subheading from any other subheading, even produced from mother yeast for growth.

2102.20 - 2102.30

A change to this subheading from any other heading.

2103.10

A change to this subheading from any other heading.

2103.20

A change to this subheading from any other heading.

2103.30

A change to this subheading from any other subheading, including the change from mustard flour to prepared mustard.

2103.90

A change to this subheading from any other heading.

21.04

A change to this heading from any other heading.

21.05

A change to this heading from any other chapter, except from heading 04.01, 04.02, 04.03 and subheading 1901.90.

21.06

A change to this heading from any other heading.

**Chapter 22**

**Beverages, spirits and vinegar**

22.01

Products shall be originating from the country where the water, ice and snow classified under this heading are obtained in their natural state.

2202.10

Products shall be originating from the country where the sugar and water are obtained in its natural state.

2202.90

A change to this subheading from any other heading, except from chapter 04.

22.03 – 22.06

A change to this heading from any other chapter.

22.07

A change to this heading from any other chapter.

2208.20 - 2208.30

A change to this subheading from any other subheading, including from its concentrate.

2208.40

A change to this subheading from any other chapter, except from heading 17.01, 17.03 and 22.07, and preparations for the manufacture of beverages from subheading 2106.90 and 3302.10.

2208.50 - 2208.90

A change to this subheading from any other heading, except from heading 22.07.

22.09

A change to this heading from any other heading, except from subheading 2915.21.

**Chapter 23**

**Residues and waste from the food industries; prepared animal feed**

23.01 – 23.08

A change to this heading from any other chapter.

23.09

A change to this heading from any other chapter.

**Chapter 24**

**Tobacco and manufactured tobacco substitutes**

24.01

A change to this heading from any other chapter.

24.02

A change to this heading from any other heading, except cut tobacco from subheading 2403.10.

24.03

A change to this heading from any other chapter.

**Section V**

**(Chapter 25 through 27)**

**Mineral products**

**Chapter 25**

**Salt; sulfur; earths and stone; plastering materials, lime and cement**

25.01 – 25.30

Products under this heading shall be originating from the country where they are obtained by means of a mining operation, in their natural state.

**Chapter 26**

**Ores, slag and ash**

26.01 – 26.17

Products under this heading shall be originating from the country where the mineral products are obtained in their natural state.

26.18 – 26.21

Products under this heading shall be originating from the country where the slag and ash are obtained.

**Chapter 27**  
**Mineral fuels, mineral oils and products of their distillation; bituminous substances;**  
**mineral waxes**

**Note to Heading**

27.15-1

For heading 27.15, the mixture of materials deliberately and proportionally controlled (different from the simple dissolution in water), in accordance to predetermined specifications resulting in the production of a good having physical or chemical characteristics which are relevant for a purpose or use different from the initial materials, it is considered to constitute a substantial transformation.

27.01 – 27.09

A change to this heading from any other chapter.

27.10

A change to this heading from any other subheading.

27.11

A change to this heading from any other heading.

27.12 – 27.13

A change to this heading from any other subheading.

27.14

Products shall be originating from the country where they are obtained in their natural state.

27.15

A change to this heading from any other subheading.

27.16

This product shall be originating from the country where the electrical energy is generated.

**Section VI**  
**(Chapter 28 through 38)**  
**Products of the chemical or allied industries**

**Notes to Section:**

**VI-1 Chemical Reaction:**

A “Chemical Reaction” is a process (including a biochemical process) that results in a molecule with a new structure by breaking intramolecular bonds and by forming new intramolecular bonds, or by altering the spatial arrangement of atoms in a molecule.

The following operations are not considered to be chemical reactions for the purposes of this definition:

- 1) dissolution in water or in another solvents;
- 2) the elimination of solvents, including solvent water;
- 3) the addition or elimination of water of crystallization.

**VI-2 Purification:**

The purification that results in the elimination of 80% of the content of existing impurities or the reduction or elimination rendering a chemical substance with a minimum grade of purity rendering a product suitable for uses such as:

- 1) Pharmaceutical substances or foodstuffs in compliance with national regulations or the international pharmacopeias.
- 2) Chemical reactive products for the chemical analysis or for use in laboratories;
- 3) Elements or components for use in microelements;
- 4) Various optical uses;
- 5) Human or veterinarian use.

**Chapter 28**

**Inorganic chemicals; organic or inorganic compounds of precious metals, of rare earth metals, of radioactive elements or of isotopes**

**Notes to chapter:**

**28-1 Standard solutions:**

The standard solutions are preparations suitable for analytical, calibrating or reference use, having degrees of purity or proportions, which are certified by the manufacturer. The preparation of standard solutions confers origin.

**28-2 Isomer separations:**

The isolation or separation of isomers from mixtures of isomers confers origin.

**2801.10 – 2841.90**

A change to this subheading from any other subheading. (The application of Notes to Section (VI-1) Chemical Reaction (VI-2) Purification, and notes to Chapter (28-1) Standard solutions, (28-2) Isomer separations, even in conjunction, confers origin to the respective good).

**2842.10**

A change to this subheading from any other subheading, allowing the use of non originating aluminosilicates not chemically defined under this subheading. (The application of Notes to Section (VI-1) Chemical Reaction (VI-2) Purification, and notes to Chapter (28-1) Standard solutions, (28-2) Isomer separations, even in conjunction, confers origin to the respective good).

**2842.90**

A change to this subheading from any other subheading. (The application of Notes to Section (VI-1) Chemical Reaction (VI-2) Purification, and notes to Chapter (28-1) Standard solutions, (28-2) Isomer separations, even in conjunction, confers origin to the respective good).

2843.10 – 2851.00

A change to this subheading from any other subheading. (The application of Notes to Section (VI-1) Chemical Reaction (VI-2) Purification, and notes to Chapter (28-1) Standard solutions, (28-2) Isomer separations, even in conjunction, confers origin to the respective good).

**Chapter 29**  
**Organic chemicals**

**Notes to Chapter:**

**29-1** Standard solutions:

The standard solutions are preparations suitable for analytical, calibrating or reference use, having degrees of purity or proportions, which are certified by the manufacturer. The preparation of standard solutions confers origin.

**29-2** Isomer separations:

The isolation or separation of isomers from mixtures of isomers confers origin.

2901.10 – 2938.90

A change to this subheading from any other subheading. (The application of Notes to Section (VI-1) Chemical Reaction (VI-2) Purification, and notes to Chapter (29-1) Standard solutions, (29-2) Isomer separations, even in conjunction, confers origin to the respective good).

2939.11

A change to this subheading from any other subheading. (The application of Notes to Section (VI-1) Chemical Reaction (VI-2) Purification, and notes to Chapter (29-1) Standard solutions, (29-2) Isomer separations, even in conjunction, confers origin to the respective good). Exclusively for concentrates of poppy straw; the change shall be from any other chapter, except from subheading 1302.11.

2939.19 – 2939.99

A change to this subheading from any other subheading. (The application of Notes to Section (VI-1) Chemical Reaction (VI-2) Purification, and notes to Chapter (29-1) Standard solutions, (29-2) Isomer separations, even in conjunction, confers origin to the respective good).

2940.00 – 2942.00

A change to this subheading from any other subheading. (The application of Notes to Section (VI-1) Chemical Reaction (VI-2) Purification, and notes to Chapter (29-1) Standard solutions, (29-2) Isomer separations, even in conjunction, confers origin to the respective good).

**Chapter 30**  
**Pharmaceutical products**

30.01

A change to this heading from any other heading.

3002.10

A change to this subheading from any other subheading or a change to products under this subheading by means of biochemical operations.

3002.20 – 3002.90

A change to this subheading from any other heading.

30.03

A change to this heading from any other heading.

30.04

A change to this heading from any other heading, or when the change is the result of putting up in measured doses unmixed products or packing for retail sale for therapeutic or prophylactic uses, except from heading 3003.

30.05

A change to this heading from any other heading.

3006.10 – 3006.40

A change to this subheading from any other heading.

3006.50

A change to this subheading from any other subheading, provided that all components are originating from the region.

3006.60

A change to this subheading from any other heading.

3006.70

A change to this subheading from any other subheading.

3006.80

A change to this subheading from any other chapter, except from chapter 38.

**Chapter 31**

**Fertilizers**

31.01

A change to this heading from any other heading.

3102.10 – 3102.29

A change to this subheading from any other subheading.

3102.30 – 3102.40

A change to this subheading from any other heading.

3102.50 – 3102.90

A change to this subheading from any other subheading.

3103.10 – 3103.90

A change to this subheading from any other subheading.

3104.10 – 3104.90

A change to this subheading from any other subheading.

3105.10 – 3105.20

A change to this subheading from any other subheading, except the putting up for retail sale.

3105.30 – 3105.59

A change to this subheading from any other heading.

3105.60 – 3105.90

A change to this subheading from any other heading.

### **Chapter 32**

**Tanning or dyeing extracts; tannins and their derivatives; dyes, pigments and other coloring matter; paints and varnishes; putty and other mastics; inks**

#### **Notes to Chapter:**

##### **32-1** Standard solutions:

The standard solutions are preparations suitable for analytical, calibrating or reference use, having degrees of purity or proportions, which are certified by the manufacturer. The preparation of standard solutions confers origin.

##### **32-2** Isomer separations:

The isolation or separation of isomers from mixtures of isomers confers origin.

32.01 – 32.02

A change to this heading from any other heading.

32.03 – 32.04

A change to this heading from any other heading, outside the group.

32.05 – 32.07

A change to this heading from any other heading.

32.08

A change to this heading from any other heading, including the internal change from plastic material dissolutions in organic solvents.

32.09 – 32.10

A change to this heading from any other heading, outside the group.

32.11 – 32.12

A change to this heading from any other heading.

3213.10

A change to this subheading from any other subheading, provided that each component article is originating from the region.

3213.90

A change to this subheading from any other heading.

32.14 – 32.15

A change to this heading from any other heading.

### **Chapter 33**

#### **Essential oils and resinoids; perfumery, cosmetic or toilet preparations**

##### **Notes to Chapter:**

##### **33-1 Isomer separations:**

The isolation or separation of isomers from mixtures of isomers confers origin.

##### **33-2 Mixtures and blends:**

The deliberate and proportionally controlled mixing or blending (different from the simple dissolution in water), of materials to conform to predetermined specifications, resulting in the production of a product having physical or chemical characteristics which are relevant to a purpose or different use from the initial materials, is considered to constitute a substantial transformation

33.01

A change to this heading from any other heading. The application of one or more of the Notes to Section VI-1 and VI-2 (Chemical Reaction and Purification) and the Notes to Chapter 33-1 (Isomer Separation), confers origin to the respective good.

33.02

A change to this heading from any other heading. Note: The application of Note to Chapter 33-2 (Mixtures and blends), confers origin to the respective good.

33.03 – 33.07

A change to this heading from any other heading.

Note: The application of Note to Chapter 33-2 (Mixtures and blends), confers origin to the respective good.

**Chapter 34**

**Soap, organic surface-active agents, washing preparations, lubricating preparations, artificial waxes, prepared waxes, polishing or scouring preparations, candles and similar articles, modeling pastes, "dental waxes" and dental preparations with a basis of plaster**

**Note to Chapter:****34-1** Isomer separations:

The isolation or separation of isomers from mixtures of isomers confers origin.

3401.11 – 3401.20

A change to this subheading from any other heading.

3401.30

A change to this subheading from any other subheading, except from heading 34.02.

3402.11 – 3402.19

A change to this subheading from any other subheading, except the putting up for retail sale.

3402.20

A change to this subheading from any other subheading, including the change from anionic sulfate agents (as established in Note to Section VI-1), except the putting up for retail sale.

3402.90

A change to this subheading from any other chapter.

34.03 – 34.04

A change to this heading from any other heading.

3405.10 – 3405.90

A change to this subheading from any other subheading.

34.06 – 34.07

A change to this heading from any other heading.

**Chapter 35**

**Albuminoidal substances; modified starches; glues; enzymes**

35.01 – 35.05

A change to this heading from any other heading.

35.06

A change to this heading from any other heading, except the putting up for retail sale.

35.07

A change to this heading from any other heading.

**Chapter 36**  
**Explosives; pyrotechnic products; matches; pyrophoric alloys; certain combustible preparations**

36.01 – 36.06

A change to this heading from any other heading.

**Chapter 37**  
**Photographic or cinematographic goods**

37.01 – 37.03

A change to this heading from any other heading, outside the group.

37.04 – 37.06

A change to this heading from any other heading.

37.07

A change to this heading from any other chapter, except the putting up for retail sale.

**Chapter 38**  
**Miscellaneous chemical products**

**Notes to Chapter**

**38-1** Standard solutions

The standard solutions are preparations suitable for analytical, calibrating or reference use, having degrees of purity or proportions, which are certified by the manufacturer. The preparation of standard solutions confers origin.

**38-2** Isomer separations:

The isolation or separation of isomers from mixtures of isomers confers origin.

38.01 – 38.07

A change to this heading from any other heading.

3808.10-3808.90

A change to this subheading from any other subheading.

38.09 – 38.13

A change to this heading from any other heading.

38.14

A change to this heading from any other heading.

38.15 – 38.22

A change to this heading from any other heading.

3823.11 – 3823.70

A change to this subheading from any other subheading.

3824.10 – 3824.90

A change to this subheading from any other subheading.

38.25

A change to this heading from any other chapter, except from chapter 28 through 37, 40 and 90.

#### **Section VII**

#### **(Chapter 39 through 40)**

#### **Plastics and articles thereof rubber and articles thereof**

##### **Notes to Section:**

##### **VII-1 Chemical Reaction:**

A “Chemical Reaction” is a process (including a biochemical process) that results in a molecule with a new structure by breaking intramolecular bonds and by forming new intramolecular bonds, or by altering the spatial arrangement of atoms in a molecule.

The following operations are not considered to be chemical reactions for the purposes of this definition:

- 1) Dissolution in water or in another solvents;
- 2) The elimination of solvents, including solvent water;
- 3) The addition or elimination of water of crystallization.

##### **VII-2 Purification:**

The purification that results in the elimination of 80% of the content of existing impurities or the reduction or elimination of the impurities rendering a chemical substance with a minimum grade of purity rendering a product suitable for uses such as:

- 1) Pharmaceutical substances or foodstuffs in compliance with national regulations or the international pharmacopeias.
- 2) Chemical reactive products for the chemical analysis or for use in laboratories;
- 3) Elements or components for use in microelements;
- 4) Various optical uses;
- 5) Human or veterinarian use.

##### **VII-3 Isomer separations:**

The isolation or separation of isomers from mixtures of isomers confers origin.

#### **Chapter 39**

#### **Plastics and articles thereof**

39.01 – 39.03

A change to this heading from any other heading.

3904.10

A change to this subheading from any other heading.

3904.21-3904.22

A change to this subheading from any other subheading, including the change from polyvinyl chloride to obtain "polyvinyl chloride compounds".

3904.30-3904.90

A change to this subheading from any other heading.

39.05-39.14

A change to this heading from any other heading.

39.15

The country of origin of the goods shall be the country where the waste and scrap are obtained by means of manufacture, operations of transformation or consumption.

3916-3919

A change to this heading from any other heading.

39.20

A change to this heading from any other heading. The manufacture of plates, sheets, film, foil and strips of plastics laminated with plastic materials under this heading confers origin.

39.21

A change to this heading from any other heading.

39.22-39.26

A change to this heading from any other heading.

**Chapter 40**

**Rubber and articles thereof**

40.01

Products under this heading shall be originating from the country where obtained in their natural state.

40.02-40.03

A change to this heading from any other heading.

40.04

Products under this heading shall be originating from the country where the waste and scrap are obtained.

40.05 – 40.10

A change to this heading from any other heading.

40.11

A change to this heading from any other heading, except from heading 40.01 and from subheading 8708.70.

4012.11 – 4012.19

A change to this subheading from any other heading, except from subheading 4012.20 and 8708.70.

4012.20

A change to this subheading from any other heading, except from subheading 8708.70.

4012.90

A change to this subheading from any other heading.

40.13 – 40.16

A change to this heading from any other heading.

40.17

a) Waste and Scrap: The origin of goods under this split heading shall be the country where the waste and scrap are obtained (by means of manufacture, operations of transformation or consumption).

b) Hard rubber and articles of hard rubber: A change to this split heading from any other subheading.

### **Section VIII**

#### **(Chapter 41 through 43)**

**Raw hides and skins, leather, furskins and articles thereof; saddlery and harness; travel goods, handbags and similar containers; articles of animal gut (other than silkworm gut)**

#### **Chapter 41**

**Raw hides and skins (other than furskins) and leather**

#### **Note to Chapter:**

##### **41-1 Chemical Reaction:**

A “Chemical Reaction” is a process (including a biochemical process) that results in a molecule with a new structure by breaking intramolecular bonds and by forming new intramolecular bonds, or by altering the spatial arrangement of atoms in a molecule.

The following operations are not considered to be chemical reactions for the purposes of this definition:

- 1) Dissolution in water or other solvents;
- 2) The elimination of solvents, including solvent water;
- 3) The addition or elimination of water of crystallization.

41.01 – 41.03

A change to this heading from any other chapter.

41.04 – 41.06

A change to this heading from any other heading, allowing the use of non originating hides in wet blue.

41.07 – 41.14

A change to this heading from any other heading.

4115.10

A change to this subheading from any other subheading.

4115.20

a) Waste: Goods under this split subheading shall be originating from the country where the waste and scrap are obtained (by means of manufacture, of operations, transformation or consumption)

b) leather dust, powder and flour: A change to this split subheading from any other subheading.

#### **Chapter 42**

**Articles of leather; saddlery and harness; travel goods, handbags and similar containers; articles of animal gut (other than silkworm gut)**

##### **Note to Chapter**

**42-1** For the purpose of determining the country of origin of the goods under this chapter that are not wholly obtained from one or more of the Parties, the following operations individually, do not confer origin, even if they produce changes in tariff classification:

- a)** Work or finish of one or more edges by means of hemming, purl, sewing or similar methods or by sticking them through knotted fringes;
- b)** Cutting skins or other materials; separating finished products by directly cutting the dividing yarns;
- c)** Unite goods by means of sewing or stitching to facilitate the transportation or other occasional motives;
- d)** To finish existing goods with zippers, buttonholes, pockets, clasps, necks, wristbands, labels, ornamental articles or trimmings (including -but not limited to- laces, non functional sewing, beads, badges, puffs, pompons, fringes, laces or feathers) or similar articles.
- e)** Putting up goods for retail sale as sets or assortments.

42.01 – 42.05

A change to this heading from any other heading, provided that the goods are woven or knit to shape or otherwise entirely assembled in the in one of the Parties.

42.06

A change to this heading from any other heading.

**Chapter 43**  
**Furskins and artificial fur; manufactures thereof**

**Note to Chapter**

**43-1**

For the purpose of determining the country of origin of the goods under this chapter that are not wholly obtained from one or more of the Parties, the following operations individually, do not confer origin, even if they produce changes in tariff classification:

- a) Work or finish of one or more edges by means of hemming, purl, sewing or similar methods or by sticking them through knotted fringes;
- b) Cutting skins or other materials; separating finished products by directly cutting the dividing yarns;
- c) Unite goods by means of sewing or stitching to facilitate the transportation or other occasional motives;
- d) To finish existing goods with zippers, buttonholes, pockets, clasps, necks, wristbands, labels, ornamental articles or trimmings (including -but not limited to- laces, non functional sewing, beads, badges, puffs, pompons, fringes, laces or feathers) or similar articles.
- e) Putting up goods for retail sale as sets or assortments.

43.01

A change to this heading from any other chapter.

43.02 – 43.04

A change to this heading from any other heading, provided that the goods are assembled in the region.

**Section IX**

**(Chapter 44 through 46)**

**Wood and articles of wood; wood charcoal; cork and articles of cork; manufactures of straw, of esparto or of other plaiting materials; basketware and wickerwork**

**Chapter 44**

**Wood and articles of wood; wood charcoal**

44.01

Goods under this heading shall be originating from the country where the wood is obtained.

44.02 – 44.07

A change to this heading from any other heading.

44.08

A change to this heading from any other heading, allowing for sheets for veneering obtained by means of cut of laminated wood, a change within this heading.

44.09 – 44.21

A change to this heading from any other heading.

**Chapter 45**  
**Cork and articles of cork**

45.01 – 45.02  
A change to this heading from any other heading.

4503.10 - 4504.90  
A change to this subheading from any other subheading.

**Chapter 46**  
**Manufactures of straw, of esparto or of other plaiting materials; basketware and wickerwork**

46.01 – 46.02  
A change to this heading from any other heading.

**Section X**  
**(Chapter 47 through 49)**  
**Pulp of wood or of other fibrous cellulosic material; waste and scrap of paper or paperboard; paper and paperboard and articles thereof**

**Chapter 47**  
**Pulp of wood or of other fibrous cellulosic material; waste and scrap of paper or paperboard**

47.01 – 47.06  
A change to this heading from any other heading.

4707.10 - 4707.90  
Goods under this heading shall be originating from the country where they are obtained (by means of manufacture, operations of transformation or consumption).

**Chapter 48**  
**Paper and paperboard; articles of paper pulp, of paper or of paperboard**

48.01  
A change to this heading from any other heading.

48.02  
A change to this heading from any other heading, allowing the internal change within this heading for paper and paperboard in rolls of a width not exceeding 150 mm or rectangular or square sheets for which one side does not exceed 360 mm and the other does not exceed 150 mm.

48.03 – 48.05

A change to this heading from any other heading.

48.06 – 48.09

A change to this heading from any other heading.

48.10

A change to this heading from any other heading, allowing the internal change within this heading for paper and paperboard in rolls of a width not exceeding 150 mm or rectangular or square sheets for which one side does not exceed 360 mm and the other does not exceed 150 mm. The laminating process, whether or not with other materials confers origin.

48.11

A change to this heading from any other heading, allowing the internal change within this heading for paper and paperboard in rolls of a width not exceeding 150 mm or rectangular or square sheets for which one side does not exceed 360 mm and the other does not exceed 150 mm. The laminating process, whether or not with other materials confers origin.

48.12 – 48.15

A change to this heading from any other heading.

4816.10 - 4816.90

A change to this subheading from any other heading, except from heading 4809.

48.17

A change to this heading from any other heading.

4818.10 - 4818.30

A change to this subheading from any other heading, except from heading 4803.

4818.40 - 4818.90

A change to this subheading from any other heading.

48.19

A change to this heading from any other heading.

4820.10 - 4820.30

A change to this subheading from any other heading.

4820.40

A change to this subheading from any other heading, except from subheading 4811.90.

4820.50 - 4822.90

A change to this subheading from any other heading.

4823.12 - 4823.40

A change to this subheading from any other heading.

4823.60 - 4823.90

A change to this subheading from any other heading.

**Chapter 49**

**Printed books, newspapers, pictures and other products of the printing industry; manuscripts, typescripts and plans**

49.01 – 49.11

A change to this heading from any other chapter.

**Section XI**

**Textile and textile articles**

**(Chapter 50 through 63)**

**Chapter 50**

**Silk**

50.01 – 50.03

A change to this heading from any other chapter.

50.04 – 50.05

A change to this heading from any other heading.

50.06

A change to this heading from any other heading except from heading 50.04 and 50.05.

50.07

A change to this heading from any other heading.

**Chapter 51**

**Wool, fine or coarse animal hair; horsehair yarn and woven fabric**

51.01 – 51.05

A change to this heading from any other chapter.

51.06 – 51.08

A change to this heading from any other heading.

51.09 – 51.10

A change to this heading from any other heading, except from heading 51.06, 51.07 and 51.08.

51.11 – 51.13

A change to this heading from any other heading, except from heading 51.06 through 51.08.

**Chapter 52**  
**Cotton**

52.01 – 52.03

A change to this heading from any other chapter.

52.04 – 52.06

A change to this heading from any other heading.

52.07

A change to this heading from any other heading, except from heading 52.05 through 52.06.

52.08 – 52.12

Bilateral rules of origin apply.

**Chapter 53****Other vegetable textile fibers; paper yarn and woven fabric of paper yarn**

53.01 – 53.05

A change to this heading from any other chapter.

53.06 – 53.09

A change to this heading from any other heading.

53.10

A change to this heading from any other heading, except from heading 53.07 and 53.08.

53.11

A change to this heading from any other heading.

**Chapter 54****Man-made filaments**

54.01 – 54.05

A change to this heading from any other heading.

54.06

A change to this heading from any other heading, except from heading 54.02 through 54.05.

54.07 – 54.08

A change to this heading from any other heading.

**Chapter 55**  
**Man-made staple fibers**

55.01 – 55.02  
A change to this heading from any other chapter.

55.03 – 55.10  
A change to this heading from any other heading.

55.11  
A change to this heading from any other heading, except from heading 55.09 and 55.10.

55.12 – 55.16  
A change to this heading from any other heading.

**Chapter 56**  
**Wadding, felt and nonwovens; special yarns, twine, cordage, ropes and cables and articles thereof**

56.01 – 56.03  
A change to this heading from any other heading.

56.04 – 56.06  
A change to this heading from any other chapter.

56.07 – 56.09  
A change to this heading from any other heading.

**Chapter 57**  
**Carpets and other textile floor coverings**

57.01 – 57.05  
A change to this heading from any other chapter.

**Chapter 58**  
**Special woven fabrics; tufted textile fabrics; lace, tapestries; trimmings; embroidery**

58.01 – 58.05  
A change to this heading from any other chapter, except from heading 51.12 through 51.13, 52.05 through 52.07, subheading 5401.10, 5402.39, 5402.43 and 5407.42.

58.06  
A change to this heading from any other chapter.

58.07  
A change to this heading from any other heading.

58.08 – 58.09

A change to this heading from any other chapter.

58.10

A change to this heading from any other heading.

58.11

A change to this heading from any other chapter.

**Chapter 59**

**Impregnated, coated, covered or laminated textile fabrics; textile articles of a kind suitable for industrial use**

59.01 – 59.02

A change to this heading from any other heading.

59.03 – 59.07

A change to this heading from any other heading, outside the group.

59.08 – 59.11

A change to this heading from any other heading.

**Chapter 60**

**Knitted or crocheted fabrics**

60.01 – 60.06

A change to this heading from any other chapter, except from heading 51.12 through 51.13, 52.05 through 52.07, subheading 5401.10, 5402.39, 5402.43 and 5407.42.

**Chapter 61**

**Articles of apparel and clothing accessories, knitted or crocheted**

**Note to Chapter**

**61-1** Bilateral note apply.

61.01– 61.17

Bilateral rules of origin apply.

**Chapter 62**  
**Articles of apparel and clothing accessories, not knitted or crocheted**

**Note to Chapter:**

62-1 Bilateral note apply

62.01 – 62.17  
Bilateral rules of origin apply.

**Chapter 63**  
**Other made up textile articles; sets; worn clothing and worn textile articles; rags**

6301.10 – 6305.32  
Bilateral rules of origin apply.

6305.33  
A change to this subheading from any other chapter, except from chapter 54.

6305.39-6310.90  
Bilateral rules of origin apply.

**Section XII**  
**(Chapter 64 through 67)**  
**Footwear, headgear, umbrellas, sun umbrellas, walking sticks, seatsticks, whips, riding-crops and parts thereof; prepared feathers and articles made therewith; artificial flowers; articles of human hair**

**Chapter 64**  
**Footwear, gaiters and the like; parts of such articles**

64.01 – 64.05  
A change to this heading from any other heading outside the group, except from subheading 6406.10, produced outside the region.

6406.10  
A change to this subheading from any other chapter, except from heading 41.04 through 41.11.

6406.20 – 6406.99  
A change to this subheading from any other chapter

**Chapter 65**  
**Headgear and parts thereof**

65.01 – 65.02  
A change to this heading from any other chapter, except from rushes or straw from subheading 1401.90.

65.03 – 65.06

A change to this heading from any other heading.

65.07

A change to this heading from any other chapter.

**Chapter 66**

**Umbrellas, sun umbrellas, walking sticks, seatsticks, whips, riding-crops and parts thereof**

66.01 – 66.02

A change to this heading from any other heading.

66.03

A change to this heading from any other chapter.

**Chapter 67**

**Prepared feathers and down and articles made of feathers or of down;  
artificial flowers; articles of human hair**

67.01 – 67.03

A change to this heading from any other chapter.

67.04

A change to this heading from any other heading.

**Section XIII**

**(Chapter 68 through 70)**

**Articles of stone, plaster, cement, asbestos, mica or similar materials; ceramic products;  
glass and glassware**

**Chapter 68**

**Articles of stone, plaster, cement, asbestos, mica or similar materials**

68.01 – 68.11

A change to this heading from any other chapter.

6812.50 – 6812.70

A change to this subheading from any other subheading.

6812.90

A change to this subheading from any other subheading, allowing the change within this subheading. Exclusively for fabricated asbestos fibers; mixtures with a basis of asbestos or with a basis of asbestos and magnesium carbonate under this subheading, a change from any other heading.

68.13  
A change to this heading from any other heading.

68.14 – 68.15  
A change to this heading from any other chapter.

**Chapter 69**  
**Ceramic products**

69.01 – 69.14  
A change to this heading from any other chapter.

**Chapter 70**  
**Glass and glassware**

70.01 – 70.18  
A change to this heading from any other heading.

7019.11 - 7019.90  
A change to this subheading from any other subheading.

70.20  
A change to this heading from any other heading.

**Section XIV**  
**(Chapter 71)**  
**Natural or cultured pearls, precious or semi-precious stones, precious metals, metals clad with precious metal and articles thereof; imitation jewelry; coin**

**Chapter 71**  
**Natural or cultured pearls, precious or semi-precious stones, precious metals, metals clad with precious metal and articles thereof; imitation jewelry; coin**

71.01 – 71.04  
A change to this heading from any other heading.

71.05 – 71.18  
A change to this heading from any other heading.

**Section XV**  
**(Chapter 72 through 83)**  
**Base metals and articles of base metal**

**Chapter 72**  
**Iron and steel**

72.01 – 72.03

A change to this heading from any other heading.

72.04 – 72.05

A change to this heading from any other heading, outside the group.

72.06 – 72.07

A change to this heading from any other heading, outside the group.

72.08 – 72.12

A change to this heading from any other heading, outside the group.

72.13 – 72.16

A change to this heading from any other heading, except from heading 72.07 and subheading 7204.50.

72.17 – 72.19

A change to this heading from any other heading.

72.20

A change to this heading from any other heading, except from heading 72.19.

72.21 – 72.22

A change to this heading from any other heading.

72.23 – 72.25

A change to this heading from any other heading.

72.26

A change to this heading from any other heading, except from heading 72.25.

72.27 – 72.29

A change to this heading from any other heading.

**Chapter 73**  
**Articles of iron or steel**

73.01 – 73.06

A change to this heading from any other heading.

73.07 – 73.12  
A change to this heading from any other heading.

73.13 – 73.26  
A change to this heading from any other heading.

**Chapter 74**  
**Copper and articles thereof**

74.01 – 74.19  
A change to this heading from any other heading.

**Chapter 75**  
**Nickel and articles thereof**

75.01 – 75.02  
A change to this heading from any other heading.

75.03 – 75.06  
A change to this heading from any other heading.

7507.11 - 7507.12  
A change to this subheading from any other heading.

7507.20  
A change to this subheading from any other subheading.

75.08  
A change to this heading from any other heading.

**Chapter 76**  
**Aluminum and articles thereof**

76.01  
A change to this heading from any other heading.

76.02 – 76.16  
A change to this heading from any other heading.

**Chapter 78**  
**Lead and articles thereof**

78.01  
A change to this heading from any other heading.

78.02 – 78.06

A change to this heading from any other heading.

**Chapter 79**

**Zinc and articles thereof**

79.01

A change to this heading from any other heading.

79.02 – 79.07

A change to this heading from any other heading.

**Chapter 80**

**Tin and articles thereof**

80.01

A change to this heading from any other heading.

80.02 – 80.07

A change to this heading from any other heading.

**Chapter 81**

**Other base metals; cermets; articles thereof**

8101.10

A change to this subheading from any other subheading.

8101.94

A change to this subheading from any other subheading, except from subheading 8101.97.

8101.95-8101.96

A change to this subheading from any other subheading.

8101.97

A change to this subheading from any other subheading, except from subheading 8101.94.

8101.99

A change to this subheading from any other subheading.

8102.10

A change to this subheading from any other subheading.

8102.94

A change to this subheading from any other subheading, except from subheading 8102.97.

8102.95-8102.96

A change to this subheading from any other subheading.

8102.97

A change to this subheading from any other subheading, except from subheading 8102.94.

8102.99

A change to this subheading from any other subheading.

8103.20

A change to this subheading from any other subheading, except from subheading 8103.30.

8103.30

A change to this subheading from any other subheading, except from subheading 8103.20.

8103.90

A change to this subheading from any other subheading.

81.04

A change to this heading from any other subheading.

8105.20

A change to this subheading from any other subheading, except from subheading 8105.30.

8105.30

A change to this subheading from any other subheading, except from subheading 8105.20.

8105.90

A change to this subheading from any other subheading.

81.06

A change to this heading from any other subheading.

8107.20

A change to this subheading from any other subheading, except from subheading 8107.30.

8107.30

A change to this subheading from any other subheading, except from subheading 8107.20.

8107.90

A change to this subheading from any other subheading.

8108.20

A change to this subheading from any other subheading, except from subheading 8108.30.

- 8108.30  
A change to this subheading from any other subheading, except from subheading 8108.20.
- 8108.90  
A change to this subheading from any other subheading.
- 8109.20  
A change to this subheading from any other subheading, except from subheading 8109.30.
- 8109.30  
A change to this subheading from any other subheading, except from subheading 8109.20.
- 8109.90  
A change to this subheading from any other subheading.
- 8110.10  
A change to this subheading from any other subheading, except from subheading 8110.20.
- 8110.20  
A change to this subheading from any other subheading, except from subheading 8110.10.
- 8110.90  
A change to this subheading from any other subheading.
- 81.11  
A change to this heading from any other subheading.
- 8112.12  
A change to this subheading from any other subheading, except from subheading 8112.13.
- 8112.13  
A change to this subheading from any other subheading, except from subheading 8112.12.
- 8112.19  
A change to this subheading from any other subheading.
- 8112.21  
A change to this subheading from any other subheading, except from subheading 8112.22.
- 8112.22  
A change to this subheading from any other subheading, except from subheading 8112.21.
- 8112.29  
A change to this subheading from any other subheading.

8112.30  
A change to this subheading from any other subheading.

8112.40  
A change to this subheading from any other subheading.

8112.51  
A change to this subheading from any other subheading, except from subheading 8112.52.

8112.52  
A change to this subheading from any other subheading, except from subheading 8112.51.

8112.59  
A change to this subheading from any other subheading.

8112.92  
A change to this subheading from any other subheading.

8112.99  
A change to this subheading from any other subheading.

81.13  
A change to this heading from any other heading.

**Chapter 82**

**Tools, implements, cutlery, spoons and forks, of base metal; parts thereof of base metal**

**Note to Chapter:**

**82-1** Goods under heading 82.06 and from subheading 8205.90, 8214.20, 8215.10 and 8215.20 shall be originating as established in Article 4.13.

82.01 – 82.10  
A change to this heading from any other heading.

82.11 – 82.12  
A change to this heading from any other heading, whether or not from its blanks

82.13 – 82.15  
A change to this heading from any other heading.

**Chapter 83**  
**Miscellaneous articles of base metal**

8301.10 - 8301.70  
A change to this subheading from any other subheading.

83.02 – 83.11  
A change to this heading from any other heading.

**Section XVI**  
**(Chapter 84 through 85)**  
**Machinery and mechanical appliances; electrical equipment; parts thereof; sound recorders and reproducers, television image and sound recorders and reproducers, and parts and accessories of such articles**

**Chapter 84**  
**Nuclear reactors, boilers, machinery and mechanical appliances; parts thereof**

**Notes to Chapter:**

**84-1** For the purposes of this chapter, parts must be originating of the country of manufacture.

**84-2** The assembly of appliances under this chapter shall be governed by Part IV of this Appendix, including individual components.

84.01 – 84.85  
A change to this heading from any other heading.

**Chapter 85**

**Electrical machinery and equipment and parts thereof; sound recorders and reproducers, television image and sound recorders and reproducers, and parts and accessories of such articles**

**Notes to Chapter:**

**85-1** For the purposes of this chapter, parts must be originating of the country of manufacture.

**85-2** The assembly of appliances under this chapter shall be governed by Part IV of this Appendix, including individual components.

85.01 – 85.48

A change to this heading from any other heading.

**Section XVII**

**(Chapter 86 through 89)**

**Vehicles, aircraft, vessels and associated transport equipment**

**Chapter 86**

**Railway or tramway locomotives, rolling-stock and parts thereof; railway or tramway track fixtures and fittings and parts thereof; mechanical (including electro-mechanical) traffic signalling equipment of all kinds.**

86.01 – 86.09

A change to this heading from any other heading.

**Chapter 87**

**Vehicles other than railway or tramway rolling stock, and parts and accessories thereof**

87.01 – 87.07

A change to this heading from any other heading.

87.08

A change to this heading from any other heading, except from heading 40.11 and subheading 4012.10 and 4012.20.

87.09 – 87.10

A change to this heading from any other heading.

87.11

A change to this heading from any other heading, except from subheading 8714.11 and 8714.19.

87.12

A change to this heading from any other heading, except from subheading 8714.91, wheel rims from subheading 8714.92 and handlebars, mudguards, chain covers and grills of base metal from subheading 8714.99.

87.13  
A change to this heading from any other heading.

87.14  
A change to this heading from any other heading.

87.15 – 87.16  
A change to this heading from any other heading, whether or not from its parts.

**Chapter 88**  
**Aircraft, spacecraft, and parts thereof**

88.01 – 88.05  
A change to this heading from any other heading.

**Chapter 89**  
**Ships, boats and floating structures**

89.01 – 89.08  
A change to this heading from any other heading.

**Section XVIII**  
**(Chapter 90 through 92)**  
**Optical, photographic, cinematographic, measuring, checking, precision, medical or surgical instruments and apparatus; clocks and watches; musical instruments; parts and accessories thereof**

**Chapter 90**  
**Optical, photographic, cinematographic, measuring, checking, precision, medical or surgical instruments and apparatus; parts and accessories thereof.**

**Notes to Chapter:**

**90-1** For the purposes of this chapter, the parts must be originating of the country of manufacture.

**90-2** The assembly of appliances under this chapter shall be governed Part IV of this Appendix, including individual components.

90.01 – 90.33  
A change to this heading from any other heading.

**Chapter 91**  
**Clocks and watches and parts thereof**

**Notes to Chapter:**

**91-1** For the purposes of this chapter, the parts must be originating of the country of manufacture.

**91-2** The assembly of appliances under this chapter shall be governed by Part IV of this Appendix, including individual components.

91.01 – 91.14  
 A change to this heading from any other heading.

**Chapter 92**  
**Instruments; parts and accessories of such articles.**

92.01 – 92.09  
 A change to this heading from any other heading.

**Section XIX**  
**(Chapter 93)**  
**Arms and ammunition; parts and accessories thereof**

**Chapter 93**  
**Arms and ammunition; parts and accessories thereof.**

93.01 – 93.07  
 A change to this heading from any other heading.

**Section XX**  
**(Chapter 94 through 96)**  
**Miscellaneous manufactured articles**

**Chapter 94**  
**Furniture; bedding, mattresses, mattress supports, cushions and similar stuffed furnishings; lamps and lighting fittings, not elsewhere specified or included; illuminated sign illuminated nameplates and the like; prefabricated buildings**

9401.10 - 9401.80  
 A change to this subheading from any other subheading.

9401.90  
 A change to this subheading from any other heading.

94.02 – 94.03  
 A change to this heading from any other heading.

9404.10 – 9405.60

A change to this subheading from any other subheading.

9405.91 – 9405.99

A change to this subheading from any other heading.

94.06

A change to this heading from any other heading.

**Chapter 95**

**Toys, games and sports requisites; parts and accessories thereof**

**Notes to Chapter:**

**95-1** For the purposes of this chapter, the parts must be originating of the country of manufacture.

**95-2** The assembly of appliances under this chapter shall be governed by Part IV of this Appendix, including individual components.

95.01

A change to this heading from any other heading.

9502.10

A change to this subheading from any other heading.

9502.91 – 9502.99

A change to this subheading from any other heading.

9503.10 – 9503.60

A change to this subheading from any other subheading. The components of the set must be originating from the region.

9503.70

A change to this subheading from any other subheading. The components of the set must be originating from the region.

9503.80

A change to this subheading from any other subheading.

9503.90

A change to this subheading from any other heading.

95.04 – 95.05

A change to this heading from any other subheading.

9506.11 - 9506.39

A change to this subheading from any other subheading.

9506.40

A change to this subheading from any other heading.

9506.51 - 9506.61

A change to this subheading from any other subheading.

9506.62

A change to this subheading from any other heading.

9506.69 - 9506.99

A change to this subheading from any other subheading.

95.07 – 95.08

A change to this heading from any other heading.

**Chapter 96**

**Miscellaneous manufactured articles**

**Note to Chapter:**

**96-1** Goods under headings 96.06 and 96.08 shall be originating as established in Article 4.13.

96.01 – 96.02

A change to this heading from any other heading.

9603.10 - 9603.90

A change to this subheading from any other subheading.

96.04

A change to this heading from any other heading.

96.05

A change to this heading from any other heading, provided that each component of the set is originating from the region.

9606.10 - 9606.30

A change to this subheading from any other subheading.

9607.11 - 9607.19

A change to this subheading from any other subheading, except from subheading 9607.20.

9607.20

A change to this subheading from any other heading.

9608.10 - 9608.40

A change to this subheading from any other subheading, except from subheading 9608.60.

9608.50

A change to this subheading from any other subheading, provided that each component of the set is originating of the parties.

9608.60 - 9609.90

A change to this subheading from any other subheading.

96.10 – 96.12

A change to this heading from any other heading.

9613.10 - 9613.80

A change to this subheading from any other subheading.

9613.90

A change to this subheading from any other heading.

96.14 – 96.15

A change to this heading from any other heading.

96.16 – 96.18

A change to this heading from any other heading, whether or not from its respective parts.

**Section XXI**

**Chapter 97**

**Works of art, collectors' pieces and antiques**

97.01 – 97.05

Goods under this heading shall be originating from the country where they have been obtained.

97.06

Goods under this heading shall be originating when they have remained more than one hundred years in the region.

**PART III  
BILATERAL RULES OF ORIGIN**

**Bilateral Rules of Origin  
Costa Rica and the Dominican Republic**

**Chapter 52  
Cotton**

52.08 – 52.12

A change to heading 52.08 through 52.12 from any other heading.

**Chapter 61  
Articles of apparel and clothing accessories, knitted or crocheted**

61.01– 61.17

A change to heading 61.01 through 61.17 from any other heading, except from chapter 60.

**Chapter 62  
Articles of apparel and clothing accessories, not knitted or crocheted**

62.01 – 62.17

A change to heading 62.01 through 62.17 from any other heading.

**Chapter 63  
Other made up textile articles; sets; worn clothing and worn textile articles; rags**

6301.10 – 6305.32

A change to subheading 6301.10 through 6305.32 from any other heading

6305.39-6310.90

A change to subheading 6305.39 through 6310.90 from any other heading.

**Bilateral Rules of Origin  
Guatemala and the Dominican Republic**

**Chapter 52  
Cotton**

52.08 – 52.12

A change to heading 52.08 through 52.12 from any other heading outside the group, except from heading 52.04 through 52.07.

**Chapter 61**  
**Articles of apparel and clothing accessories, knitted or crocheted**

**Note to Chapter:**

With the purpose of determining the origin of a good under this chapter, the applicable rule for such good shall be fulfilled only by the material which confers the essential character for the tariff classification of such good and that material shall satisfy the requirements of change in tariff classification set out for the good for which the origin is determined.

61.01– 61.17

A change to heading 61.01 through 61.17 from any other chapter, except from heading 51.11 through 51.12, 52.08 through 52.12, 53.09 through 53.11, 54.07 through 54.08, 55.12 through 55.16, 56.02 through 56.03, 58.02 through 58.04, 58.10 through 58.11 or chapter 60.

**Chapter 62**  
**Articles of apparel and clothing accessories, not knitted or crocheted**

**Note to Chapter:**

With the purpose of determining the origin of a good under this chapter, the applicable rule for such good shall be fulfilled only by the material which confers the essential character for the tariff classification of such good and that material shall satisfy the requirements of change in tariff classification set out for the good for which the origin is determined.

62.01 – 62.17

A change to heading 62.01 through 62.17 from any other chapter, except from heading 51.11 through 51.12, 52.08 through 52.12, 53.09 through 53.11, 54.07 through 54.08, 55.12 through 55.16, 56.02 through 56.03, 58.02 through 58.04, 58.10 through 58.11 or chapter 60.

**Chapter 63**  
**Other made up textile articles; sets; worn clothing and worn textile articles; rags**

6301.10 – 6305.32

A change to subheading 6301.10 through 6305.32 from any other chapter, except heading 51.11 through 51.12, 52.08 through 52.12, 53.09 through 53.11, 54.07 through 54.08, 55.12 through 55.16, 56.02 through 56.03, 58.02 through 58.04, 58.10 through 58.11 or chapter 60.

6305.39-6310.90

A change to subheading 6305.39 through 6310.90 from any other chapter, except heading 51.11 through 51.12, 52.08 through 52.12, 53.09 through 53.11, 54.07 through 54.08, 55.12 through 55.16, 56.02 through 56.03, 58.02 through 58.04, 58.10 through 58.11 or chapter 60.

**Bilateral Rules of Origin  
Honduras and the Dominican Republic**

**Chapter 52  
Cotton**

52.08 – 52.12

A change to heading 52.08 through 52.12 from any other heading outside the group.

**Chapter 61  
Articles of apparel and clothing accessories, knitted or crocheted**

**Note to Chapter 61, 62 and 63:**

With the purpose of determining the origin of a good under chapter **61, 62 and 63**, the applicable rule for such good shall be fulfilled only by the material which confers the essential character for the tariff classification of such good and that material shall satisfy the requirements of change in tariff classification set out for the good for which the origin is determined.

61.01– 61.17

A change to heading 61.01 through 61.17 from any other chapter, except from heading 51.11 through 51.12, 52.08 through 52.12, 53.09 through 53.11, 54.07 through 54.08, 55.12 through 55.16, 56.02 through 56.03, 58.02 through 58.04, 58.10 through 58.11 or chapter 60.

**Chapter 62  
Articles of apparel and clothing accessories, not knitted or crocheted**

62.01 – 62.17

A change to heading 62.01 through 62.17 from any other chapter, except from heading 51.11 through 51.12, 52.08 through 52.12, 53.09 through 53.11, 54.07 through 54.08, 55.12 through 55.16, 56.02 through 56.03, 58.02 through 58.04 or 58.10 through 58.11 or chapter 60.

**Chapter 63  
Other made up textile articles; sets; worn clothing and worn textile articles; rags**

6301.10 – 6305.32

A change to subheading 6301.10 through 6305.32 from any other chapter, except heading 51.11 through 51.12, 52.08 through 52.12, 53.09 through 53.11, 54.07 through 54.08, 55.12 through 55.16, 56.01 through 56.03, 58.02 through 58.04, 58.10 through 58.11 or chapter 60.

6305.39-6310.90

A change to subheading 6305.39 through 6310.90 from any other chapter, except heading 51.11 through 51.12, 52.08 through 52.12, 53.09 through 53.11, 54.07 through 54.08, 55.12 through 55.16, 56.01 through 56.03, 58.02 through 58.04, 58.10 through 58.11 or chapter 60.

**Bilateral Rules of Origin  
Nicaragua and the Dominican Republic**

**Chapter 52  
Cotton**

52.08 – 52.12  
A change to heading 52.08 through 52.12 from any other heading.

**Chapter 61  
Articles of apparel and clothing accessories, knitted or crocheted**

61.01 – 61.17  
A change to heading 61.01 through 61.17 from any other heading.

**Chapter 62  
Articles of apparel and clothing accessories, not knitted or crocheted**

62.01 – 62.17  
A change to heading 62.01 through 62.17 from any other heading.

**Chapter 63  
Other made up textile articles; sets;  
worn clothing and worn textile articles; rags**

6301.10 – 6305.32  
A change to subheading 6301.10 through 6305.32 from any other heading.

6305.39-6310.90  
A change to subheading 6305.39 through 6310.90 from any other heading.

**Bilateral Rules of Origin  
El Salvador and the Dominican Republic**

**Chapter 52  
Cotton**

52.08 – 52.12  
A change to heading 52.08 through 52.12 from any other heading outside the group.

**Note to Chapters 61, 62 and 63:**

With the purpose of determining the origin of a good under the chapters 61, 62 and 63 (Apparel), the applicable rule for such good shall be fulfilled only by the material which confers the essential character for the tariff classification of such good and that material shall satisfy the requirements of change in tariff classification set out in the rule for the good for which the origin is determined.

**Chapter 61**

**Articles of apparel and clothing accessories, knitted or crocheted**

61.01– 61.17

A change to heading 61.01 through 61.17 from any other chapter, except from heading 51.11 through 51.12, 52.08 through 52.12, 53.09 through 53.11, 54.07 through 54.08, 55.12 through 55.16, 56.02 through 56.03, 58.02 through 58.04, 58.10 through 58.11 or chapter 60.

**Chapter 62**

**Articles of apparel and clothing accessories, not knitted or crocheted**

62.01 – 62.17

A change to heading 62.01 through 62.17 from any other chapter, except from heading 51.11 through 51.12, 52.08 through 52.12, 53.09 through 53.11, 54.07 through 54.08, 55.12 through 55.16, 56.02 through 56.03, 58.02 through 58.04, 58.10 through 58.11 or chapter 60.

**Chapter 63**

**Other made up textile articles; sets; worn clothing and worn textile articles; rags**

6301.10 – 6305.32

A change to subheading 6301.10 through 6305.32 from any other chapter, except from heading 51.11 through 51.12, 52.08 through 52.12, 53.09 through 53.11, 54.07 through 54.08, 55.12 through 55.16, 56.01 through 56.03, 58.02 through 58.04, 58.10 through 58.11 or chapter 60.

6305.39-6310.90

A change to subheading 6305.39 through 6310.90 from any other chapter, except from heading 51.11 through 51.12, 52.08 through 52.12, 53.09 through 53.11, 54.07 through 54.08, 55.12 through 55.16, 56.01 through 56.03, 58.02 through 58.04, 58.10 through 58.11 or chapter 60.

**PART IV  
ASSEMBLY**

Goods which according to the Harmonized System, incorporate in their production process, non-originating parts and pieces, will be considered as originating goods, given that:

- (a) in accordance with General Rule 2, an unassembled good is classified as an assembled good, in the same heading or subheading; or
- (b) the goods and their parts are classified under the same heading or subheading; and
- (b) the assembly also confers origin when it incorporates unit components classified in a different heading than the one of the final good.



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**Annex 4.1, Special Rules of Origin**

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## Annex 4.1

### Specific Rules of Origin

#### Part I – General Interpretative Notes

1. For purposes of interpreting the rules of origin set forth in this Annex:
  - (a) the specific rule, or specific set of rules, that applies to a particular heading or subheading is set out immediately adjacent to the heading or subheading;
  - (b) the requirement of a change in tariff classification applies only to non-originating materials;
  - (c) where a specific rule of origin is defined using the criterion of a change in tariff classification, and the rule is written to exclude tariff provisions at the level of a chapter, heading, or subheading, each Party shall construe the rule of origin to require that materials classified in those excluded provisions be originating for the good to be originating;
  - (d) when a heading or subheading is subject to alternative specific rules of origin, each Party shall consider the rule to be met if a good satisfies one of the alternatives;
  - (e) when a single rule of origin is applicable to a group of headings or subheadings and that rule of origin specifies a change of heading or subheading, each Party shall interpret the rule such that the change of heading or subheading may occur within a single heading or subheading or between headings or subheadings of the group. When, however, a rule refers to a change in heading or subheading “outside that group,” each Party shall interpret the rule to require that the change in heading or subheading must occur from a heading or subheading that is outside the group of headings or subheadings set out in the rule;
  - (f) reference to weight in the rules for goods provided for in chapter 1 through 24 means dry weight unless otherwise specified in the Harmonized System;

2. The following definitions apply:

**chapter** means a chapter of the Harmonized System; and

**section** means a section of the Harmonized System.

**Part II – Specific Rules of Origin****Section I****Live Animals; Animal Products (Chapter 1-5)****Chapter 1****Live Animals**

01.01 – 01.06

A change to heading 01.01 through 01.06 from any other chapter.

**Chapter 2****Meat and Edible Meat Offal**

02.01 – 02.06

A change to heading 02.01 through 02.06 from any other chapter.

02.07

A change to heading 02.07 from any other chapter, except from heading 01.05.

02.08 – 02.09

A change to heading 02.08 through 02.09 from any other chapter.

02.10

A change to heading 02.10 from any other chapter, except from heading 01.05.

**Chapter 3****Fish and Crustaceans, Molluscs, and Other Aquatic Invertebrates****Note to Chapter 3:**

The fish, crustaceans, molluscs, and other aquatic invertebrates shall be deemed originating even if they were cultivated from non originating fry<sup>1</sup> or larvae.

03.01 – 03.07

A change to heading 03.01 through 03.07 from any other chapter.

**Chapter 4****Dairy Produce; Birds Eggs; Natural Honey; Edible Products of Animal Origin, Not Elsewhere Specified or Included**

04.01 – 04.04

A change to heading 04.01 through 04.04 from any other chapter, except from subheading 1901.90.

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<sup>1</sup> “Fry” means immature fish at a post-larval stage, including fingerlings, parr, smolts, and elvers.

04.05

A change to heading 04.05 from any other chapter, except from subheading 1901.90 or 2106.90.

04.06

A change to heading 04.06 from any other chapter, except from subheading 1901.90.

04.07 – 04.10

A change to heading 04.07 through 04.10 from any other chapter.

**Chapter 5**

**Products of Animal Origin, Not Elsewhere Specified or Included**

05.01 – 05.11

A change to heading 05.01 through 05.11 from any other chapter.

**Section II**

**Vegetable Products (Chapter 6-14)**

**Note to Section II**

Agricultural and horticultural goods grown in the territory of a Party shall be treated as originating in the territory of that Party even if grown from seeds, bulbs, rootstock, cuttings, grafts, shoots, buds, or other live parts of plants imported from a non-Party.

**Chapter 6**

**Live Trees and Other Plants; Bulbs, Roots, and the Like; Cut Flowers and Ornamental Foliage**

06.01 – 06.04

A change to heading 06.01 through 06.04 from any other chapter.

**Chapter 7**

**Edible Vegetables and Certain Roots and Tubers**

07.01 – 07.14

A change to heading 07.01 through 07.14 from any other chapter.

**Chapter 8**

**Edible Fruit and Nuts; Peel of Citrus Fruit or Melons**

08.01 – 08.14

A change to heading 08.01 through 08.14 from any other chapter.

**Chapter 9  
Coffee, Tea, Maté, and Spices**

09.01

A change to heading 09.01 from any other chapter.

0902.10 – 0902.40

A change to subheading 0902.10 through 0902.40 from any other subheading.

09.03

A change to heading 09.03 from any other chapter.

0904.11 – 0910.99

A change to crushed, ground, or powdered spices put up for retail sale of subheading 0904.11 through 0910.99 from spices that are not crushed, ground, or powdered of subheading 0904.11 through 0910.99, or from any other subheading, except from subheading 0910.10; or

A change to mixtures of spices or any good of subheading 0904.11 through 0910.99 other than crushed, ground, or powdered spices put up for retail sale from any other subheading, except from subheading 0910.10.

**Chapter 10  
Cereals**

10.01 – 10.08

A change to heading 10.01 through 10.08 from any other chapter.

**Chapter 11  
Products of the Milling Industry; Malt; Starches; Inulin; Wheat Gluten**

11.01

A change to heading 11.01 from any other chapter.

11.02

A change to heading 11.02 from any other chapter, except from heading 10.06.

11.03

A change to heading 11.03 from any other chapter, except from heading 10.06.

1104.12

A change to subheading 1104.12 from any other subheading.

1104.19 – 1104.30

A change to subheading 1104.19 through 1104.30 from any other chapter.

11.05

A change to heading 11.05 from any other chapter except from heading 07.01.

11.06

A change to heading 11.06 from any other chapter, except from subheading 0714.10.

11.07

A change to heading 11.07 from any other chapter.

1108.11 – 1108.13

A change to subheading 1108.11 through 1108.13 from any other chapter.

1108.14

A change to subheading 1108.14 from any other chapter, except from subheading 0714.10.

1108.19 – 1108.20

A change to subheading 1108.19 through 1108.20 from any other chapter.

11.09

A change to heading 11.09 from any other chapter.

**Chapter 12**

**Oil Seeds and Oleaginous Fruits; Miscellaneous Grains, Seeds, and Fruit; Industrial or Medicinal Plants; Straw and Fodder**

12.01 – 12.14

A change to heading 12.01 through 12.14 from any other chapter.

**Chapter 13**

**Lac; Gums, Resins and Other Vegetable Saps and Extracts**

13.01 – 13.02

A change to heading 13.01 through 13.02 from any other chapter.

**Chapter 14**

**Vegetable Plaiting Materials; Vegetable Products Not Elsewhere Specified or Included**

14.01 – 14.04

A change to heading 14.01 through 14.04 from any other chapter.

**Section III**  
**Animal or Vegetable Fats and Oils and Their Cleavage Products; Prepared Edible Fats;**  
**Animal or Vegetable Waxes (Chapter 15)**

**Chapter 15**  
**Animal or Vegetable Fats and Oils and Their Cleavage Products; Prepared Edible Fats;**  
**Animal or Vegetable Waxes**

15.01 – 15.18  
A change to heading 15.01 through 15.18 from any other chapter.

15.20  
A change to heading 15.20 from any other heading.

15.21 – 15.22  
A change to heading 15.21 through 15.22 from any other chapter.

**Section IV**  
**Prepared Foodstuffs; Beverages, Spirits and Vinegar; Tobacco and Manufactured Tobacco**  
**Substitutes (Chapter 16-24)**

**Chapter 16**  
**Preparations of Meat, of Fish, or of Crustaceans, Molluscs, or Other Aquatic Invertebrates**

16.01 – 16.02  
A change to heading 16.01 through 16.02 from any other chapter or from mechanically de-boned fowl of heading 02.07, except from any other good of heading 02.07.

16.03 – 16.05  
A change to heading 16.03 through 16.05 from any other chapter.

**Chapter 17**  
**Sugars and Sugar Confectionery**

17.01 – 17.03  
A change to heading 17.01 through 17.03 from any other chapter.

17.04  
A change to heading 17.04 from any other heading.

**Chapter 18**  
**Cocoa and Cocoa Preparations**

18.01 – 18.02  
A change to heading 18.01 through 18.02 from any other chapter.

18.03

A change to heading 18.03 from any other heading.

18.04 – 18.05

A change to heading 18.04 through 18.05 from any other heading, except from heading 18.03.

1806.10

A change to subheading 1806.10 from any other heading provided that such good of subheading 1806.10 containing 90 percent or more by dry weight of sugar does not contain non-originating sugar of chapter 17 and that a good of subheading 1806.10 containing less than 90 percent by dry weight of sugar does not contain more than 35 percent by weight of non-originating sugar of chapter 17.

1806.20

A change to subheading 1806.20 from any other heading.

1806.31

A change to subheading 1806.31 from any other subheading.

1806.32

A change to subheading 1806.32 from any other subheading.

1806.90

A change to subheading 1806.90 from any other subheading.

**Chapter 19**

**Preparations of Cereals, Flour, Starch, or Milk; Pastry Cooks' Products**

1901.10

A change to subheading 1901.10 from any other chapter provided that a good of subheading 1901.10 containing over 10 percent by weight of milk solids does not contain a non-originating dairy good of chapter 4.

1901.20

A change to subheading 1901.20 from any other chapter provided that a good of subheading 1901.20 containing over 25 percent by weight of butterfat, not put up for retail sale, does not contain a non-originating dairy good of chapter 4.

1901.90

A change to subheading 1901.90 from any other chapter provided that a good of subheading 1901.90 containing over 10 percent by weight of milk solids does not contain a non-originating dairy good of chapter 4.

19.02

A change to heading 19.02 from any other chapter.

19.03

A change to heading 19.03 from any other chapter.

1904.10 – 1904.30

A change to subheading 1904.10 through 1904.30 from any other chapter.

1904.90

A change to subheading 1904.90 from any other heading, except from heading 10.06.

19.05

A change to heading 19.05 from any other chapter.

**Chapter 20**

**Preparations of Vegetables, Fruit, Nuts, or Other Parts of Plants**

20.01

A change to heading 20.01 from any other chapter, except from subheading 0703.10.

20.02

A change to heading 20.02 from any other chapter, except that a good that has been prepared by packing (including canning) in water, brine, or natural juices (including processing incidental to packing) shall be treated as originating only if the fresh good was wholly obtained or produced entirely in the territory of one or more of the Parties.

20.03

A change to heading 20.03 from any other chapter except that a good that has been prepared by packing (including canning) in water, brine, or natural juices (including processing incidental to packing) shall be treated as originating only if the fresh good was wholly obtained or produced entirely in the territory of one or more of the Parties.

20.04

A change to heading 20.04 from any other chapter, except from heading 07.01, and that a good that has been prepared by freezing (including processing incidental to freezing) shall be treated as originating only if the fresh good was wholly obtained or produced entirely in the territory of one or more of the Parties.

2005.10

A change to subheading 2005.10 from any other chapter.

2005.20

A change to subheading 2005.20 from any other chapter, except from heading 07.01.

## 2005.40 – 2005.60

A change to subheading 2005.40 through 2005.60 from any other chapter, except that a good that has been prepared by packing (including canning) in water, brine, or natural juices (including processing incidental to packing) shall be treated as originating only if the fresh good was wholly obtained or produced entirely in the territory of one or more of the Parties.

## 2005.70 – 2005.90

A change to subheading 2005.70 through 2005.90 from any other chapter, except that a good that has have been prepared by packing (including canning) in water, brine, or natural juices (including processing incidental to packing) shall be treated as originating only if the fresh good was wholly obtained or produced entirely in the territory of one or more of the Parties.

## 20.06

A change to heading 20.06 from any other chapter, except from heading 12.02 or subheading 0804.30.

## 20.07

A change to heading 20.07 from any other chapter, except from heading 08.03 or subheading 0804.50.

## 2008.11

A change to subheading 2008.11 from any other chapter except from heading 12.02.

## 2008.19

A change to subheading 2008.19 from any other chapter, except that nuts and seeds that have been prepared by roasting, either dry or in oil (including processing incidental to roasting) shall be treated as originating only if the fresh good was wholly obtained or produced entirely in the territory of one or more of the Parties.

## 2008.20

A change to subheading 2008.20 from any other chapter, except that pineapples that have been prepared by packing (including canning) in water, brine, or natural juices (including processing incidental to packing) shall be treated as originating only if the fresh good was wholly obtained or produced entirely in the territory of one or more of the Parties.

## 2008.30

A change to subheading 2008.30 from any other chapter, except that citrus fruit that has been prepared by packing (including canning) in water, brine, or natural juices (including processing incidental to packing) shall be treated as originating only if the fresh good was wholly obtained or produced entirely in the territory of one or more of the Parties.

## 2008.40

A change to subheading 2008.40 from any other chapter, except that pears that have been prepared by packing (including canning) in water, brine, or natural juices (including processing

incidental to packing) shall be treated as originating only if the fresh good was wholly obtained or produced entirely in the territory of one or more of the Parties.

2008.50

A change to subheading 2008.50 from any other chapter, except that apricots that have been prepared by packing (including canning) in water, brine, or natural juices (including processing incidental to packing) shall be treated as originating only if the fresh good was wholly obtained or produced entirely in the territory of one or more of the Parties.

2008.60

A change to subheading 2008.60 from any other chapter, except that cherries that have been prepared by packing (including canning) in water, brine, or natural juices (including processing incidental to packing) shall be treated as originating only if the fresh good was wholly obtained or produced entirely in the territory of one or more of the Parties.

2008.70

A change to subheading 2008.70 from any other chapter, except that peaches, including nectarines, that have been prepared by packing (including canning) in water, brine, or natural juices (including processing incidental to packing) shall be treated as originating only if the fresh good was wholly obtained or produced entirely in the territory of one or more of the Parties.

2008.80

A change to subheading 2008.80 from any other chapter, except that strawberries that have been prepared by packing (including canning) in water, brine, or natural juices (including processing incidental to packing) shall be treated as originating only if the fresh good was wholly obtained or produced entirely in the territory of one or more of the Parties.

2008.91

A change to subheading 2008.91 from any other chapter, except that palm hearts that have been prepared by packing (including canning) in water, brine, or natural juices (including processing incidental to packing) shall be treated as originating only if the fresh good was wholly obtained or produced entirely in the territory of one or more of the Parties.

2008.92

A change to subheading 2008.92 from any other chapter, except that a mixture that has been prepared by packing (including canning) in water, brine, or natural juices (including processing incidental to packing) shall be treated as originating only if the fresh good was wholly obtained or produced entirely in the territory of one or more of the Parties.

2008.99

A change to subheading 2008.99 from any other chapter, except that a good that has been prepared by packing (including canning) in water, brine, or natural juices (including processing incidental to packing) shall be treated as originating only if the fresh good was wholly obtained or produced entirely in the territory of one or more of the Parties.

2009.11 – 2009.39

A change to subheading 2009.11 through 2009.39 from any other chapter, except from heading 08.05.

2009.41 – 2009.50

A change to subheading 2009.41 through 2009.50 from any other chapter.

2009.61 – 2009.80

A change to guava, apple, pear, peach, mango, grape, or soursop juice of subheading 2009.61 through 2009.80 from guava, apple, pear, peach, mango, grape, or soursop juice concentrate of subheading 2009.61 through 2009.80 or from any other chapter; or

A change to any other good under subheading 2009.61 through 2009.80 from any other chapter.

2009.90

A change to subheading 2009.90 from any other chapter; or

A change to subheading 2009.90 from any other subheading within chapter 20, whether or not there is also a change from any other chapter, provided that a single juice ingredient, or juice ingredients from a single non-Party, constitute in single strength form no more than 60 percent by volume of the good.

## **Chapter 21**

### **Miscellaneous Edible Preparations**

2101.11 – 2101.12

A change to subheading 2101.11 through 2101.12 from any other chapter, except from chapter 9.

2101.20 – 2101.30

A change to subheading 2101.20 through 2101.30 from any other chapter.

21.02

A change to heading 21.02 from any other chapter.

2103.10

A change to subheading 2103.10 from any other chapter.

2103.20

A change to subheading 2103.20 from any other chapter, provided that tomato ketchup of subheading 2103.20 does not contain a non-originating good of subheading 2002.90.

2103.30

A change to prepared mustard of subheading 2103.30 from mustard flour or meal of subheading 2103.30 or any other subheading; or

A change to any other good of subheading 2103.30 from any other chapter.

2103.90

A change to subheading 2103.90 from any other heading.

21.04

A change to heading 21.04 from any other heading.

21.05

A change to heading 21.05 from any other heading, except from chapter 4 and from dairy preparations containing over 10 percent by weight of milk solids of subheading 1901.90.

21.06

A change to concentrated juice of any single fruit or vegetable fortified with vitamins or minerals of subheading 2106.90 from any other chapter except from heading 08.05 or 20.09 or subheading 2202.90.

A change to mixtures of juices fortified with vitamins or minerals of subheading 2106.90:

- (a) from any other chapter, except from heading 08.05 or 20.09 or from mixtures of juices of subheading 2202.90; or
- (b) from any other subheading within chapter 21, heading 20.09, or from mixtures of juices of subheading 2202.90, whether or not there is also a change from any other chapter, provided that a single juice ingredient, or juice ingredients from a single non-Party, constitute in single strength form no more than 60 percent by volume of the good;

A change to a compound alcoholic preparation of subheading 2106.90 from any other subheading except from heading 22.03 through 22.09;

A change to sugar syrup of subheading 2106.90 from any other chapter, except from chapter 17;

A change to a good containing over 10 percent by weight of milk solids of subheading 2106.90 from any other chapter, except from chapter 4, or from a dairy preparations containing over 10 percent by weight of milk solids of subheading 1901.90; or

A change to any other good of heading 21.06 from any other chapter.

**Chapter 22**  
**Beverages, Spirits, and Vinegar**

22.01

A change to heading 22.01 from any other chapter.

## 2202.10

A change to subheading 2202.10 from any other chapter.

## 2202.90

A change to guava, apple, pear, peach, mango, grape, or soursop juice fortified with vitamins or minerals of subheading 2202.90 from guava, apple, pear, peach, mango, grape or soursop juice concentrate of heading 20.09 or from any other heading;

A change to juice of any single fruit or vegetable fortified with vitamins or minerals of subheading 2202.90 from any other chapter, except from heading 08.05 or 20.09, or from juice concentrate of subheading 2106.90;

A change to mixtures of juices fortified with vitamins or minerals of subheading 2202.90:

- (a) from any other chapter, except from heading 08.05 or 20.09 or from mixtures of juices of subheading 2106.90; or
- (b) from any other subheading within chapter 22, heading 20.09 or from mixtures of juices of subheading 2106.90, whether or not there is also a change from any other chapter, provided that a single juice ingredient, or juice ingredients from a single non-Party, constitute in single-strength form no more than 60 percent by volume of the good;

A change to a beverage containing milk, from any other chapter, except from chapter 4 or from a dairy preparation containing over 10 percent by weight of milk solids of subheading 1901.90; or

A change to any other good of subheading 2202.90 from any other chapter.

## 22.03 – 22.06

A change to heading 22.03 through 22.06 from any other chapter except from compound alcoholic preparations of subheading 2106.90.

## 22.07

**Within quota:**

A change to dehydrated ethyl alcohol (carburant ethanol) under heading 22.07 from not dehydrated ethyl alcohol under heading 22.07 or from any other heading.

**Outside quota:**

A change to heading 22.07 from any other chapter, except from heading 10.05, 10.07 or 17.03.

## 2208.20 – 2208.60

A change to subheading 2208.20 or 2208.60 from any other chapter.

2208.70

A change to subheading 2208.70 from any other heading, except from chapter 4, 9, 21 or from heading 19.01.

2208.90

A change to subheading 2208.90 from any other chapter.

22.09

A change to heading 22.09 from any other heading.

**Chapter 23**

**Residues and Waste from the Food Industries; Prepared Animal Fodder**

23.01 – 23.08

A change to heading 23.01 through 23.08 from any other chapter.

23.09

A change to heading 23.09 from any other heading, except from chapter 4, heading 23.04, subheading 1901.90, 2306.10 through 2306.30, or 2306.50 through 2306.90.

**Chapter 24**

**Tobacco and Manufactured Tobacco Substitutes**

24.01

A change to heading 24.01 from any other chapter.

2402.10

A change to subheading 2402.10 from any other heading.

2402.20 – 2402.90

A change to subheading 2402.20 through 2402.90 from any other chapter.

24.03

A change to homogenized or reconstituted tobacco for use as cigar wrapper of subheading 2403.91 from any other heading; or

A change to any other good of heading 24.03 from any other chapter.

**Section V**

**Mineral Products (Chapter 25-27)**

**Chapter 25**

**Salt; Sulphur; Earths and Stone; Plastering Materials, Lime and Cement**

25.01 – 25.16

A change to heading 25.01 through 25.16 from any other heading.

2517.10 – 2517.20

A change to subheading 2517.10 through 2517.20 from any other heading.

2517.30

A change to subheading 2517.30 from any other subheading.

2517.41 – 2517.49

A change to subheading 2517.41 through 2517.49 from any other heading.

25.18 – 25.22

A change to heading 25.18 through 25.22 from any other heading.

25.23

A change to heading 25.23 from any other chapter.

25.24 – 25.30

A change to heading 25.24 through 25.30 from any other heading.

#### **Chapter 26**

##### **Ores, Slag and Ash**

26.01 – 26.21

A change to heading 26.01 through 26.21 from any other heading.

#### **Chapter 27**

##### **Mineral Fuels, Mineral Oils and Products of their Distillation; Bituminous Substances; Mineral Waxes**

###### **Note**

For purposes of this chapter, a “chemical reaction” is a process (including a biochemical process) which results in a molecule with a new structure by breaking intramolecular bonds and by forming new intramolecular bonds, or by altering the spatial arrangement of atoms in a molecule.

The following are not considered to be chemical reactions for the purposes of this definition:

- (a) dissolving in water or other solvents;
- (b) the elimination of solvents, including solvent water; or
- (c) the addition or elimination of water of crystallization.

For purposes of heading 27.10, the following processes confer origin:

- (a) Atmospheric distillation: A separation process in which petroleum oils are converted, in a distillation tower, into fractions according to boiling point and the vapor then condensed into different liquefied fractions.
- (b) Vacuum distillation: Distillation at a pressure below atmospheric but not so low that it would be classed as molecular distillation.

27.01 – 27.06

A change to heading 27.01 through 27.06 from any other heading.

2707.10 – 2707.99

A change to subheading 2707.10 through 2707.99 from any other heading; or

A change to subheading 2707.10 through 2707.99 from any other subheading provided that the good resulting from such change results from a chemical reaction.

27.08 – 27.09

A change to heading 27.08 through 27.09 from any other heading.

27.10

A change to any good of heading 27.10 from any other good of heading 27.10 provided that the good resulting from such change results from a chemical reaction, atmospheric distillation, or vacuum distillation; or

A change to heading 27.10 from any other heading except from heading 22.07.

2711.11

A change to subheading 2711.11 from any other subheading, except from subheading 2711.21.

2711.12 – 2711.19

A change to subheading 2711.12 through 2711.19 from any other subheading except from subheading 2711.29.

2711.21

A change to subheading 2711.21 from any other subheading except from subheading 2711.11.

2711.29

A change to subheading 2711.29 from any other subheading except from subheading 2711.12 through 2711.21.

27.12 – 27.14

A change to heading 27.12 through 27.14 from any other heading.

27.15

A change to heading 27.15 from any other heading except from heading 27.14 or subheading 2713.20.

27.16

A change to heading 27.16 from any other heading.

**Section VI**  
**Products of the Chemical or Allied Industries (Chapter 28-38)**

**Notes to Section VI:**

**Note 1**

Rules 1 through 7 of this Section confer origin to a good of any chapter or heading in this Section, except as otherwise specified in those rules.

**Note 2**

Notwithstanding Note 1, a good is originating if it meets the applicable change in tariff classification specified in the rules of origin in this Section.

**Rule 1: Chemical Reaction**

A good, except a good of heading 38.23, that results from a chemical reaction in the territory of one or more of the Parties shall be treated as originating

Note: For purposes of this Section, a "chemical reaction" is a process (including a biochemical process) that results in a molecule with a new structure by breaking intramolecular bonds and by forming new intramolecular bonds, or by altering the spatial arrangement of atoms in a molecule.

The following are not considered to be chemical reactions for the purposes of determining whether a good is originating:

- (a) dissolution in water or in another solvent;
- (b) the elimination of solvents, including solvent water; or
- (c) the addition or elimination of water of crystallization.

**Rule 2: Purification**

For a good of chapters 28 through 35 or 38, a good that is subject to purification shall be treated as originating provided that one of the following occurs in the territory of one or more of the Parties:

- (a) the purification results in the elimination of 80 percent of the impurities; or

- (b) the purification results in the reduction or elimination of impurities, rendering the good suitable:
  - (i) as a pharmaceutical, medicinal, cosmetic, veterinary, or food grade substance;
  - (ii) as a chemical good or reagent for analytical, diagnostic, or laboratory uses;
  - (iii) as an element or component for use in micro-elements;
  - (iv) for specialized optical uses;
  - (v) for non toxic uses for health and safety;
  - (vi) for biotechnical use;
  - (vii) as a carrier used in a separation process; or
  - (viii) for nuclear grade uses.

**Rule 3: Mixtures and Blends**

A good of chapters 30 or 31, heading 33.02, subheading 3502.20, heading 35.06 through 35.07, or 37.07 shall be treated as originating if the deliberate and proportionally controlled mixing or blending (including dispersing) of materials to conform to predetermined specifications, resulting in the production of a good having physical or chemical characteristics which are relevant to the purposes or uses of the good and are different from the input materials, occurs in the territory of one or more of the Parties.

**Rule 4: Change in Particle Size**

A good of chapter 30 or 31 shall be treated as originating if the following occurs in the territory of one or more of the Parties:

- (a) the deliberate and controlled reduction in particle size of a good, other than by merely crushing (or pressing), resulting in a good having a defined particle size, defined particle size distribution, or defined surface area, which are relevant to the purposes of the resulting good and have different physical or chemical characteristics from the input materials; or
- (b) the deliberate and controlled modification in particle size of a good, other than by merely pressing, resulting in a good having a defined particle size, defined particle size distribution, or defined surface area, which are relevant to the purposes of the resulting good and have different physical or chemical characteristics from the input materials is considered to be origin conferring.

**Rule 5: Standards Materials**

A good of chapters 28 through 32, 35 or 38, shall be treated as originating if the production of these materials occurs in the territory of one or more of the Parties.

For purposes of this rule, "standards materials" (including standards solutions) are preparations suitable for analytical, calibrating, or referencing uses, having precise degrees of purity or proportions which are certified by the manufacturer.

**Rule 6: Isomer Separation**

A good of chapters 28 through 32 or 35 shall be treated as originating if the isolation or separation of isomers from mixtures of isomers occurs in the territory of one or more of the Parties.

**Rule 7: Separation Prohibition**

A good that undergoes a change from one classification to another in the territory of one or more of the Parties as the result of the separation of one or more materials from a man-made mixture shall not be treated as originating unless the isolated material underwent a chemical reaction in the territory of one or more of the Parties

**Chapter 28****Inorganic Chemicals; Organic or Inorganic Compounds of Precious Metals, of Rare-Earth Metals, of Radioactive Elements, or of Isotopes**

2801.10 – 2801.30

A change to subheading 2801.10 through 2801.30 from any other subheading.

28.02

A change to heading 28.02 from any other heading, except from heading 25.03.

28.03

A change to heading 28.03 from any other heading.

2804.10 – 2804.50

A change to subheading 2804.10 through 2804.50 from any other subheading.

2804.61 – 2804.69

A change to subheading 2804.61 through 2804.69 from any other subheading outside that group.

2804.70 – 2804.90

A change to subheading 2804.70 through 2804.90 from any other subheading.

28.05

A change to heading 28.05 from any other heading.

2806.10 – 2806.20

A change to subheading 2806.10 through 2806.20 from any other subheading.

28.07 – 28.08

A change to heading 28.07 through 28.08 from any other heading.

2809.10 – 2809.20

A change to subheading 2809.10 through 2809.20 from any other subheading.

28.10

A change to heading 28.10 from any other heading.

2811.11

A change to subheading 2811.11 from any other subheading.

2811.19

A change to subheading 2811.19 from any other subheading except from subheading 2811.22.

2811.21

A change to subheading 2811.21 from any other subheading.

2811.22

A change to subheading 2811.22 from any other subheading, except from subheading 2505.10, 2506.10, or 2811.19.

2811.23 – 2813.90

A change to subheading 2811.23 through 2813.90 from any other subheading.

28.14

A change to heading 28.14 from any other heading.

2815.11 – 2815.12

A change to subheading 2815.11 through 2815.12 from any other subheading outside that group.

2815.20 – 2816.10

A change to subheading 2815.20 through 2816.10 from any other subheading.

2816.40

A change to subheading 2816.40 from any other subheading, except a change to oxide, hydroxide, or peroxide of strontium from subheading 2530.90.

28.17

A change to heading 28.17 from any other heading except from heading 26.08.

2818.10 – 2818.30

A change to subheading 2818.10 through 2818.30 from any other subheading, except from heading 26.06 or subheading 2620.40.

2819.10 – 2819.90

A change to subheading 2819.10 through 2819.90 from any other subheading.

2820.10 – 2820.90

A change to subheading 2820.10 through 2820.90 from any other subheading, except from subheading 2530.90 or heading 26.02.

2821.10

A change to subheading 2821.10 from any other subheading.

2821.20

A change to subheading 2821.20 from any other subheading, except from subheading 2530.30 or 2601.11 through 2601.20.

28.22

A change to heading 28.22 from any other heading except from heading 26.05.

28.23

A change to heading 28.23 from any other heading.

2824.10 – 2824.90

A change to subheading 2824.10 through 2824.90 from any other subheading except from heading 26.07.

2825.10 – 2825.40

A change to subheading 2825.10 through 2825.40 from any other subheading.

2825.50

A change to subheading 2825.50 from any other subheading except from heading 26.03.

2825.60

A change to subheading 2825.60 from any other subheading except from subheading 2615.10.

2825.70

A change to subheading 2825.70 from any other subheading except from subheading 2613.10.

2825.80

A change to subheading 2825.80 from any other subheading except from subheading 2617.10.

2825.90

A change to subheading 2825.90 from any other subheading provided that the good classified in subheading 2825.90 results from a chemical reaction.

2826.11 – 2833.19

A change to subheading 2826.11 through 2833.19 from any other subheading.

2833.21

A change to subheading 2833.21 from any other subheading except from subheading 2530.20.

2833.22 – 2833.26

A change to subheading 2833.22 through 2833.26 from any other subheading.

2833.27

A change to subheading 2833.27 from any other subheading except from subheading 2511.10.

2833.29

A change to subheading 2833.29 from any other subheading except from heading 25.20.

2833.30 – 2833.40

A change to subheading 2833.30 through 2833.40 from any other subheading.

2834.10 – 2834.29

A change to subheading 2834.10 through 2834.29 from any other subheading.

2835.10 – 2835.25

A change to subheading 2835.10 through 2835.25 from any other subheading.

2835.26

A change to subheading 2835.26 from any other subheading except from heading 25.10.

2835.29 – 2835.39

A change to subheading 2835.29 through 2835.39 from any other subheading.

2836.10

A change to subheading 2836.10 from any other subheading.

2836.20

A change to subheading 2836.20 from any other subheading except from subheading 2530.90.

2836.30 – 2836.40

A change to subheading 2836.30 through 2836.40 from any other subheading.

2836.50

A change to subheading 2836.50 from any other subheading, except from heading 25.09, subheading 2517.41 or 2517.49, heading 25.21, or subheading 2530.90.

2836.60

A change to subheading 2836.60 from any other subheading except from subheading 2511.20.

2836.70

A change to subheading 2836.70 from any other subheading except from heading 26.07.

2836.91

A change to subheading 2836.91 from any other subheading.

2836.92

A change to subheading 2836.92 from any other subheading except from subheading 2530.90.

2836.99

A change to bismuth carbonate of subheading 2836.99 from any other subheading except from subheading 2617.90; or

A change to any other good of subheading 2836.99 from any other subheading provided that the good classified in subheading 2836.99 results from a chemical reaction.

2837.11 – 2837.20

A change to subheading 2837.11 through 2837.20 from any other subheading.

28.38

A change to heading 28.38 from any other heading.

2839.11 – 2839.19

A change to subheading 2839.11 through 2839.19 from any other subheading outside that group.

2839.20 – 2839.90

A change to subheading 2839.20 through 2839.90 from any other subheading.

2840.11 – 2840.20

A change to subheading 2840.11 through 2840.20 from any other subheading outside that group except from subheading 2528.10.

2840.30

A change to subheading 2840.30 from any other subheading.

2841.10 – 2841.30

A change to subheading 2841.10 through 2841.30 from any other subheading.

2841.50

A change to subheading 2841.50 from any other subheading except from heading 26.10.

2841.61 – 2841.69

A change to subheading 2841.61 through 2841.69 from any other subheading outside that group.

2841.70

A change to subheading 2841.70 from any other subheading except from subheading 2613.90.

2841.80

A change to subheading 2841.80 from any other subheading except from heading 26.11.

2841.90

A change to subheading 2841.90 from any other subheading provided that the good classified in subheading 2841.90 results from a chemical reaction.

2842.10

A change to subheading 2842.10 from any other subheading.

2842.90

A change to subheading 2842.90 from any other subheading provided that the good classified in subheading 2842.90 results from a chemical reaction.

2843.10

A change to subheading 2843.10 from any other subheading, except from heading 71.06, 71.08, 71.10, or 71.12.

2843.21 – 2843.29

A change to subheading 2843.21 through 2843.29 from any other subheading.

2843.30 – 2843.90

A change to subheading 2843.30 through 2843.90 from any other subheading except from subheading 2616.90.

2844.10

A change to subheading 2844.10 from any other subheading except from subheading 2612.10.

2844.20

A change to subheading 2844.20 from any other subheading.

2844.30

A change to subheading 2844.30 from any other subheading except from subheading 2844.20.

2844.40 – 2844.50

A change to subheading 2844.40 through 2844.50 from any other subheading.

28.45

A change to heading 28.45 from any other heading.

28.46

A change to heading 28.46 from any other heading except from subheading 2530.90.

28.47 – 28.48

A change to heading 28.47 through 28.48 from any other heading.

2849.10 – 2849.90

A change to subheading 2849.10 through 2849.90 from any other subheading.

28.50 – 28.51

A change to heading 28.50 through 28.51 from any other heading.

## **Chapter 29**

### **Organic Chemicals**

2901.10 – 2901.29

A change to subheading 2901.10 through 2901.29 from any other subheading, except from acyclic petroleum oils of heading 27.10 or from subheading 2711.13, 2711.14, 2711.19, or 2711.29.

2902.11

A change to subheading 2902.11 from any other subheading.

2902.19

A change to subheading 2902.19 from any other subheading, except from non-aromatic cyclic petroleum oils of subheading 2707.50, 2707.99, or heading 27.10.

2902.20

A change to subheading 2902.20 from any other subheading, except from subheading 2707.10, 2707.50, or 2707.99.

2902.30

A change to subheading 2902.30 from any other subheading, except from subheading 2707.20, 2707.50, or 2707.99.

2902.41 – 2902.44

A change to subheading 2902.41 through 2902.44 from any other subheading, except from subheading 2707.30, 2707.50, or 2707.99.

2902.50

A change to subheading 2902.50 from any other subheading.

2902.60

A change to subheading 2902.60 from any other subheading, except from subheading 2707.30, 2707.50, 2707.99, or heading 27.10.

2902.70 – 2902.90

A change to subheading 2902.70 through 2902.90 from any other subheading, except from subheading 2707.50, 2707.99, or heading 27.10.

2903.11 – 2903.30

A change to subheading 2903.11 through 2903.30 from any other subheading.

2903.41 – 2903.49

A change to subheading 2903.41 through 2903.49 from any other subheading outside that group.

2903.51 – 2904.90

A change to subheading 2903.51 through 2904.90 from any other subheading.

2905.11 – 2905.19

A change to subheading 2905.11 through 2905.19 from any other subheading.

2905.22 – 2905.29

A change to subheading 2905.22 through 2905.29 from any other subheading, except from subheading 1301.90, 3301.90, or 3805.90.

2905.31 – 2905.44

A change to subheading 2905.31 through 2905.44 from any other subheading.

2905.45

A change to subheading 2905.45 from any other subheading except from heading 15.20.

2905.49 – 2905.59

A change to subheading 2905.49 through 2905.59 from any other subheading.

2906.11

A change to subheading 2906.11 from any other subheading, except from subheading 3301.24 or 3301.25.

2906.12 – 2906.13

A change to subheading 2906.12 through 2906.13 from any other subheading.

2906.14

A change to subheading 2906.14 from any other subheading except from heading 38.05.

2906.19

A change to subheading 2906.19 from any other subheading except from subheading 3301.90 or 3805.90.

2906.21

A change to subheading 2906.21 from any other subheading.

2906.29

A change to subheading 2906.29 from any other subheading except from subheading 2707.60 or 3301.90.

2907.11

A change to subheading 2907.11 from any other subheading except from subheading 2707.60.

2907.12 – 2907.22

A change to subheading 2907.12 through 2907.22 from any other subheading, except from subheading 2707.99.

2907.23

A change to subheading 2907.23 from any other subheading.

2907.29

A change to subheading 2907.29 from any other subheading except from subheading 2707.99; or

A change to phenol-alcohols of subheading 2907.29 from any other good of subheading 2907.29; or

A change to any other good of subheading 2907.29 from phenol-alcohols of subheading 2907.29.

29.08

A change to heading 29.08 from any other heading.

2909.11 – 2909.49

A change to subheading 2909.11 through 2909.49 from any other subheading.

2909.50

A change to subheading 2909.50 from any other subheading except from subheading 3301.90.

2909.60

A change to subheading 2909.60 from any other subheading.

2910.10 – 2910.90

A change to subheading 2910.10 through 2910.90 from any other subheading.

29.11

A change to heading 29.11 from any other heading.

2912.11 – 2912.13

A change to subheading 2912.11 through 2812.13 from any other subheading.

2912.19 – 2912.49

A change to subheading 2912.19 through 2912.49 from any other subheading except from subheading 3301.90.

2912.50 – 2912.60

A change to subheading 2912.50 through 2912.60 from any other subheading.

29.13

A change to heading 29.13 from any other heading.

2914.11 – 2914.19

A change to subheading 2914.11 through 2914.19 from any other subheading except from subheading 3301.90.

2914.21 – 2914.22

A change to subheading 2914.21 through 2914.22 from any other subheading.

2914.23

A change to subheading 2914.23 from any other subheading except from subheading 3301.90.

2914.29

A change to subheading 2914.29 from any other subheading, except from subheading 3301.90 or 3805.90.

2914.31 – 2914.39

A change to subheading 2914.31 through 2914.39 from any other subheading outside that group, except from subheading 3301.90.

2914.40 – 2914.70

A change to subheading 2914.40 through 2914.70 from any other subheading except from subheading 3301.90.

2915.11 – 2915.35

A change to subheading 2915.11 through 2915.35 from any other subheading.

2915.39

A change to subheading 2915.39 from any other subheading except from subheading 3301.90.

2915.40 – 2915.90

A change to subheading 2915.40 through 2915.90 from any other subheading.

2916.11 – 2916.20

A change to subheading 2916.11 through 2916.20 from any other subheading.

2916.31 – 2916.39

A change to subheading 2916.31 through 2916.39 from any other subheading except from subheading 3301.90.

2917.11 – 2917.39

A change to subheading 2917.11 through 2917.39 from any other subheading.

2918.11 – 2918.22

A change to subheading 2918.11 through 2918.22 from any other subheading.

2918.23

A change to subheading 2918.23 from any other subheading, except from subheading 3301.90.

2918.29 – 2918.30

A change to subheading 2918.29 through 2918.30 from any other subheading.

2918.90

A change to subheading 2918.90 from any other subheading, except from subheading 3301.90.

29.19

A change to heading 29.19 from any other heading.

2920.10 – 2926.90

A change to subheading 2920.10 through 2926.90 from any other subheading.

29.27 – 29.28

A change to heading 29.27 through 29.28 from any other heading.

2929.10 – 2930.90

A change to subheading 2929.10 through 2930.90 from any other subheading.

29.31

A change to heading 29.31 from any other heading.

2932.11 – 2932.99

A change to subheading 2932.11 through 2932.99 from any other subheading except from subheading 3301.90.

2933.11 – 2934.99

A change to subheading 2933.11 through 2934.99 from any other subheading.

29.35

A change to heading 29.35 from any other heading.

2936.10 – 2936.29

A change to subheading 2936.10 through 2936.29 from any other subheading.

2936.90

A change to subheading 2936.90 from any other subheading, except from subheading 2936.10 through 2936.29.

29.37 – 29.41

A change to heading 29.37 through 29.41 from any other heading.

29.42

A change to heading 29.42 from any other chapter.

**Chapter 30**

**Pharmaceutical Products**

3001.10 – 3003.90

A change to subheading 3001.10 through 3003.90 from any other subheading.

30.04

A change to heading 30.04 from any other heading except from heading 30.03.

3005.10 – 3006.70

A change to subheading 3005.10 through 3006.70 from any other subheading.

3006.80

A change to subheading 3006.80 from any other subheading.

**Chapter 31**

**Fertilizers**

31.01

A change to heading 31.01 from any other heading.

3102.10 – 3105.90

A change to subheading 3102.10 through 3105.90 from any other subheading.

**Chapter 32****Tanning or Dyeing Extracts; Tannins and Their Derivatives; Dyes, Pigments and Other Coloring Matter; Paints and Varnishes; Putty and Other Mastics; Inks**

3201.10 – 3202.90

A change to subheading 3201.10 through 3202.90 from any other subheading.

32.03

A change to heading 32.03 from any other heading.

3204.11 – 3204.17

A change to subheading 3204.11 through 3204.17 from any other subheading.

3204.19

A change to subheading 3204.19 from any other subheading, except from subheading 3204.11 through 3204.17.

3204.20 – 3204.90

A change to subheading 3204.20 through 3204.90 from any other subheading.

32.05

A change to heading 32.05 from any other chapter.

3206.11 – 3206.43

A change to subheading 3206.11 through 3206.43 from any other subheading outside that group.

3206.49

A change to concentrated dispersions of pigments in plastics materials of subheading 3206.49 from any other chapter; or

A change to any other good of subheading 3206.49 from any other subheading.

3206.50

A change to subheading 3206.50 from any other subheading.

32.07

A change to heading 32.07 from any other chapter.

32.08 – 32.11

A change to heading 32.08 through 32.11 from any other heading.

32.12

A change to heading 32.12 from any other chapter.

32.13 – 32.14

A change to heading 32.13 through 32.14 from any other heading.

32.15

A change to heading 32.15 from any other chapter.

### **Chapter 33**

#### **Essential Oils and Resinoids; Perfumery, Cosmetic or Toilet Preparations**

3301.11 – 3301.90

A change to subheading 3301.11 through 3301.90 from any other subheading.

33.02

A change to heading 33.02 from any other heading, except from heading 22.07 or 22.08.

33.03

A change to heading 33.03 from any other heading.

3304.10 – 3306.10

A change to subheading 3304.10 through 3306.10 from any other subheading.

3306.20

A change to subheading 3306.20 from any other subheading except from chapter 54.

3306.90 – 3307.90

A change to subheading 3306.90 through 3307.90 from any other subheading.

### **Chapter 34**

#### **Soap, Organic Surface-active Agents, Washing Preparations, Lubricating Preparations, Artificial Waxes, Prepared Waxes, Polishing or Scouring Preparations, Candles and Similar Articles, Modeling Pastes, Dental Waxes and Dental Preparations with a Basis of Plaster**

34.01

A change to heading 34.01 from any other heading.

3402.11

A change to subheading 3402.11 from any other subheading.

3402.12 – 3402.19

A change to subheading 3402.12 through 3402.19 from any other subheading.

3402.20

A change to subheading 3402.20 from any other subheading except from subheading 3402.90.

3402.90

A change to subheading 3402.90 from any other subheading.

3403.11 – 3403.19

A change to subheading 3403.11 through 3403.19 from any other subheading, except from heading 27.10 or 27.12.

3403.91 – 3403.99

A change to subheading 3403.91 through 3403.99 from any other subheading.

3404.10 – 3405.90

A change to subheading 3404.10 through 3405.90 from any other subheading.

34.06 – 34.07

A change to heading 34.06 through 34.07 from any other heading.

### **Chapter 35**

#### **Albuminoidal Substances; Modified Starches; Glues, Enzymes**

3501.10 – 3501.90

A change to subheading 3501.10 through 3501.90 from any other subheading.

3502.11 – 3502.19

A change to subheading 3502.11 through 3502.19 from any other subheading outside that group, except from heading 04.07.

3502.20 – 3502.90

A change to subheading 3502.20 through 3502.90 from any other subheading.

35.03 – 35.04

A change to heading 35.03 through 35.04 from any other heading.

3505.10 – 3505.20

A change to subheading 3505.10 through 3505.20 from any other subheading.

35.06

A change to heading 35.06 from any other heading.

3507.10 – 3507.90

A change to subheading 3507.10 through 3507.90 from any other subheading.

**Chapter 36**  
**Explosives; Pyrotechnic Products; Matches; Pyrophoric Alloys; Certain Combustible Preparations**

36.01 – 36.06

A change to heading 36.01 through 36.06 from any other heading.

**Chapter 37**  
**Photographic or Cinematographic Goods**

37.01 – 37.03

A change to heading 37.01 through 37.03 from any other heading outside that group.

37.04 – 37.06

A change to heading 37.04 through 37.06 from any other heading.

3707.10 – 3707.90

A change to subheading 3707.10 through 3707.90 from any other subheading.

**Chapter 38**  
**Miscellaneous Chemical Products**

3801.10

A change to subheading 3801.10 from any other subheading.

3801.20

A change to subheading 3801.20 from any other subheading, except from heading 25.04 or subheading 3801.10.

3801.30

A change to subheading 3801.30 from any other subheading.

3801.90

A change to subheading 3801.90 from any other subheading, except from heading 25.04.

38.02 – 38.04

A change to heading 38.02 through 38.04 from any other heading.

38.05

A change to heading 38.05 from any other heading.

3806.10 – 3806.90

A change to subheading 3806.10 through 3806.90 from any other subheading.

38.07

A change to heading 38.07 from any other heading.

3808.10 – 3808.90

A change to subheading 3808.10 through 3808.90 from any other subheading provided that 50 percent by weight of the active ingredient or ingredients is originating.

3809.10

A change to subheading 3809.10 from any other subheading except from subheading 3505.10.

3809.91 – 3809.93

A change to subheading 3809.91 through 3809.93 from any other subheading.

38.10 – 38.16

A change to heading 38.10 through 38.16 from any other heading.

38.17

A change to heading 38.17 from any other heading except from subheading 2902.90; or

A change to mixed alkybenzenes of heading 38.17 from mixed alkylnaphthalenes of heading 38.17; or

A change to mixed alkylnaphthalenes of heading 38.17 to mixed alkybenzenes of heading 38.17.

38.18

A change to heading 38.18 from any other heading.

38.19

A change to heading 38.19 from any other heading except from heading 27.10.

38.20

A change to heading 38.20 from any other heading except from subheading 2905.31.

38.21

A change to heading 38.21 from any other heading.

38.22

A change to heading 38.22 from any other heading, except from subheading 3002.10 or 3502.90 or heading 35.04.

3823.11 – 3823.13

A change to subheading 3823.11 through 3823.13 from any other subheading except from heading 15.20.

3823.19

A change to subheading 3823.19 from any other subheading.

3823.70

A change to subheading 3823.70 from any other subheading except from heading 15.20.

3824.10 – 3824.20

A change to subheading 3824.10 through 3824.20 from any other subheading.

3824.30

A change to subheading 3824.30 from any other subheading except from heading 28.49.

3824.40 – 3824.60

A change to subheading 3824.40 through 3824.60 from any other subheading.

3824.71 – 3824.90

A change to subheading 3824.71 through 3824.90 from any other subheading.

38.25

A change to heading 38.25 from any other chapter, except from chapter 28 through 37, 40 or 90.

**Section VII**

**Plastics and Articles Thereof; Rubber and Articles Thereof (Chapter 39-40)**

**Notes to Section VII:**

**Note 1**

Rules 1 through 5 of this Section confer origin to a good of any chapter or heading in this Section, except as otherwise specified in those rules.

**Note 2**

Notwithstanding Note 1, a good is originating if it meets the applicable change in tariff classification or satisfies the applicable regional value content specified in the rules of origin in this Section.

**Rule 1: Chemical Reaction**

A good of chapter 39 or 40 that results from a chemical reaction in the territory of one or more of the Parties shall be treated as originating.

For purposes of this Section, a “chemical reaction” is a process (including a biochemical process) that results in a molecule with a new structure by breaking intramolecular bonds and by forming new intramolecular bonds, or by altering the spatial arrangement of atoms in a molecule.

The following are not considered to be chemical reactions for the purposes of determining whether a good is originating:

- (a) dissolution in water or another solvent;
- (b) the elimination of solvents including solvent water; or
- (c) the addition or elimination of water of crystallization.

**Rule 2: Purification**

A good of chapter 39 shall be treated as originating provided that one of the following occurs in the territory of one or more of the Parties:

- (a) the purification of a good results in the elimination of 80 percent of existing impurities; or
- (b) the purification results in the reduction or elimination of impurities, rendering the good suitable:
  - (i) as a pharmaceutical, medicinal, cosmetic, veterinary, or food grade substance;
  - (ii) as a chemical good or reagent for analytical, diagnostic or laboratory use;
  - (iii) as an element or component for use in micro-elements;
  - (iv) for specialized optical use;
  - (v) for non toxic use for health and safety;
  - (vi) for biotechnical use;
  - (vii) as a carrier used in a separation process; or
  - (viii) for nuclear grade use.

**Rule 3: Mixtures and Blends**

A good of chapters 39 or 40 shall be treated as originating if the deliberate and proportionally controlled mixing or blending (including dispersing) of materials to conform to predetermined specifications which results in the production of a good having physical or chemical characteristics which are relevant to the purposes or uses of the good and are different from the input materials occurs in the territory of one or more of the Parties.

**Rule 4: Change in Particle Size**

A good of chapter 39 shall be treated as originating if the following occurs in the territory of one or more of the Parties:

- (a) the deliberate and controlled reduction in particle size of a good, other than by merely crushing or pressing resulting in a good having a defined particle size, defined particle size distribution or defined surface area, which are relevant to the purposes of the resulting good and have different physical or chemical characteristics from the input materials is considered to be origin conferring; or
- (b) the deliberate and controlled modification in particle size of a good, other than by merely pressing, resulting in a good having a defined particle size, defined particle size distribution or defined surface area, which are relevant to the purposes of the resulting good and have different physical or chemical characteristics from the input materials is considered to be origin conferring.

**Rule 5: Isomer Separation**

A good of chapter 39 is originating if the isolation or separation of isomers from mixtures of isomers occurs in the territory of one or more of the Parties.

**Chapter 39****Plastics and Articles Thereof**

39.01 – 39.15

A change to heading 39.01 through 39.15 from any other heading provided that the originating polymer content is no less than 50 percent by weight of the total polymer content.

3916.10 – 3918.90

A change to subheading 3916.10 through 3918.90 from any other subheading.

3919.10 – 3919.90

A change to subheading 3919.10 through 3919.90 from any other subheading outside that group.

3920.10 – 3920.99

A change to subheading 3920.10 through 3920.99 from any other subheading; or

No change in tariff classification is required provided there is a regional value content of not less than:

- (a) 25 percent when the build-up method is used, or
- (b) 30 percent when the build-down method is used.

3921.11 – 3921.90

A change to subheading 3921.11 through 3921.90 from any other subheading.

39.22 – 39.26

A change to heading 39.22 through 39.26 from any other heading.

**Chapter 40**  
**Rubber and Articles Thereof**

4001.10 – 4001.30

A change to subheading 4001.10 through 4001.30 from any other chapter; or

A change to subheading 4001.10 through 4001.30 from any other subheading provided there is a regional value content of not less than 30 percent when the build-down method is used.

40.02 – 40.06

A change to heading 40.02 through 40.06 from any other heading except from heading 40.01; or

A change to heading 40.02 through 40.06 from heading 40.01 or from any other heading provided there is a regional value content of not less than 30 percent when the build-down method is used.

40.07 – 40.17

A change to heading 40.07 through 40.17 from any other heading.

**Section VIII**  
**Raw Hides and Skins, Leather, Furskins, and Articles Thereof; Saddlery and Harness;**  
**Travel Goods, Handbags and Similar Containers; Articles of Animal Gut (Other Than**  
**Silk-Worm Gut) (Chapter 41-43)**

**Chapter 41**  
**Raw Hides and Skins (Other Than Furskins) and Leather**

41.01

A change to hides or skins of heading 41.01 that have undergone a reversible tanning (including a pre-tanning) process, from any other good of heading 41.01 or from any other chapter; or

A change to any other good of heading 41.01 from any other chapter.

41.02

A change to hides or skins of heading 41.02 that have undergone a reversible tanning (including a pre-tanning) process, from any other good of heading 41.02 or from any other chapter; or

A change to any other good of heading 41.02 from any other chapter.

41.03

A change to hides or skins of heading 41.03 that have undergone a reversible tanning (including a pre-tanning) process, from any other good of heading 41.03 or from any other chapter; or

A change to any other good of heading 41.03 from any other chapter.

4104.11 – 4104.49

A change to subheading 4104.11 through 4104.49 from any other subheading.

41.05

A change to heading 41.05 from any other heading except from hides or skins of heading 41.02 that have undergone a reversible tanning (including a pre-tanning) process, or from heading 41.12; or

A change to heading 41.05 from wet blues of subheading 4105.10.

41.06

A change to heading 41.06 from any other heading except from hides or skins of heading 41.03 that have undergone a reversible tanning (including a pre-tanning) process, or from heading 41.13; or

A change to heading 41.06 from wet blues of subheading 4106.21, 4106.31, or 4106.91.

41.07

A change to heading 41.07 from any other heading.

41.12

A change to heading 41.12 from any other heading except from hides or skins of heading 41.02 that have undergone a reversible tanning (including a pre-tanning) process, or from heading 41.05; or

A change to heading 41.12 from wet blues of subheading 4105.10.

41.13

A change to heading 41.13 from any other heading except from hides or skins of heading 41.03 that have undergone a reversible tanning (including a pre-tanning) process, or from heading 41.06; or

A change to heading 41.13 from wet blues of subheading 4106.21, 4106.31, or 4106.90.

4114.10 – 4115.20

A change to subheading 4114.10 through 4115.20 from any other subheading.

**Chapter 42**

**Articles of Leather; Saddlery and Harness; Travel Goods, Handbags and Similar Containers; Articles of Animal Gut (Other Than Silk-Worm Gut)**

42.01

A change to heading 42.01 from any other heading.

4202.11

A change to subheading 4202.11 from any other chapter.

4202.12

A change to subheading 4202.12 from any other chapter, provided that the good is cut or knit to shape, or both, and sewn or otherwise assembled in the territory of one or more of the Parties.

Note 1 for chapters 50 through 63 applies to this subheading.

4202.19 – 4202.21

A change to subheading 4202.19 through 4202.21 from any other chapter.

4202.22

A change to subheading 4202.22 from any other chapter, provided that the good is cut or knit to shape, or both, and sewn or otherwise assembled in the territory of one or more of the Parties.

Note 1 for chapters 50 through 63 applies to this subheading.

4202.29 – 4202.31

A change to subheading 4202.29 through 4202.31 from any other chapter.

4202.32

A change to subheading 4202.32 from any other chapter, provided that the good is cut or knit to shape, or both, and sewn or otherwise assembled in the territory of one or more of the Parties.

Note 1 for chapters 50 through 63 applies to this subheading.

4202.39 – 4202.91

A change to subheading 4202.39 through 4202.91 from any other chapter.

4202.92

A change to subheading 4202.92 from any other chapter, provided that the good is cut or knit to shape, or both, and sewn or otherwise assembled in the territory of one or more of the Parties.

Note 1 for chapters 50 through 63 applies to this subheading.

4202.99

A change to subheading 4202.99 from any other chapter.

4203.10 – 4203.29

A change to subheading 4203.10 through 4203.29 from any other chapter.

4203.30 – 4203.40

A change to subheading 4203.30 through 4203.40 from any other heading.

42.04 – 42.06

A change to heading 42.04 through 42.06 from any other heading.

**Chapter 43  
Furskins and Artificial Fur; Manufactures Thereof**

43.01

A change to heading 43.01 from any other chapter.

43.02 – 43.04

A change to heading 43.02 through 43.04 from any other heading.

**Section IX**

**Wood and Articles of Wood; Wood Charcoal; Cork and Articles of Cork; Manufactures of Straw, of Esparto or of Other Plaiting Materials; Basketware and Wickerwork (Chapter 44-46)**

**Chapter 44  
Wood and Articles of Wood; Wood Charcoal**

44.01 – 44.21

A change to heading 44.01 through 44.21 from any other heading.

**Chapter 45  
Cork and Articles of Cork**

45.01 – 45.04

A change to heading 45.01 through 45.04 from any other heading.

**Chapter 46 Manufactures of Straw, of Esparto or of Other Plaiting Materials; Basketware and Wickerwork**

46.01

A change to heading 46.01 from any other chapter.

46.02

A change to heading 46.02 from any other heading.

**Section X**

**Pulp of Wood or of Other Fibrous Cellulosic Material; Waste and Scrap of Paper or Paperboard; Paper and Paperboard and Articles Thereof (Chapter 47-49)**

**Chapter 47**

**Pulp of Wood or Other Fibrous Cellulosic Material; Waste and Scrap of Paper or Paperboard**

47.01 – 47.07

A change to heading 47.01 through 47.07 from any other heading.

**Chapter 48**

**Paper and Paperboard; Articles of Paper Pulp, of Paper, or of Paperboard**

48.01 – 48.07

A change to heading 48.01 through 48.07 from any other chapter.

48.08

A change to heading 48.08 from any other heading.

48.09

A change to heading 48.09 from any other chapter.

48.10 – 48.11

A change to heading 48.10 through 48.11 from any other heading.

48.12 – 48.17

A change to heading 48.12 through 48.17 from any other heading outside that group.

4818.10 – 4818.30

A change to subheading 4818.10 through 4818.30 from any other heading, except from heading 48.03.

4818.40 – 4818.90

A change to subheading 4818.40 through 4818.90 from any other heading.

48.19 – 48.22

A change to heading 48.19 through 48.22 from any heading outside that group.

48.23

A change to heading 48.23 from any other heading.

**Chapter 49**  
**Printed Books, Newspapers, Pictures and Other Products of the Printing Industry;**  
**Manuscripts, Typescripts and Plans**

49.01 – 49.11

A change to heading 49.01 through 49.11 from any other chapter.

**Section XI**  
**Textile and Textile Articles (Chapters 50 through 63)**

**Notes for Chapters 50 through 63**

**Note 1**

The textile and apparel rules should be read in conjunction with Chapter Four (Rules of Origin and Origin Procedures). For purposes of these rules, the term **wholly** means that the good is entirely of the named material.

**Note 2**

A textile good of chapters 50 through 60 of the Harmonized System shall be considered originating if it is wholly formed in the territory of one or more of the Parties from:

- (a) one or more fibers and yarns listed in Annex 3.25 (Short Supply List); or
- (b) a combination of the fibers and yarns referred to in subparagraph (a) and one or more fibers and yarns originating under this Annex.

The originating fibers and yarns referred to in subparagraph (b) may contain up to ten percent by weight of fibers and yarns that do not undergo an applicable change in tariff classification set out in this Annex. Any elastomeric yarn contained in a textile good of chapters 50 through 60 of the Harmonized System must be formed in the territory of one or more of the Parties.

**Note 3**

An apparel good of chapter 61 or 62 of the Harmonized System shall be considered originating if it is cut or knit to shape, or both, and sewn or otherwise assembled in the territory of one or more of the Parties, and if the fabric of the outer shell, exclusive of collars and cuffs where applicable, is wholly of:

- (a) one or more fabrics listed in Annex 3.25 (Short Supply List); or
- (b) one or more fabrics formed in the territory of one or more of the Parties from one or more of the yarns listed in Annex 3.25 (Short Supply List); or
- (c) any combination of the fabrics referred to in subparagraph (a), the fabrics referred to in subparagraph (b), or one or more fabrics originating under this Annex.

The originating fabrics referred to in subparagraph (c) may contain up to ten percent by weight of fibers or yarns that do not undergo an applicable change in tariff classification set out in this Annex. Any elastomeric yarn contained in a fabric referred to in subparagraph (a), (b), or (c) must be formed in the territory of one or more of the Parties.

**Note 4**

A textile good of chapter 63 or 94 of the Harmonized System shall be considered originating if it is cut or knit to shape, or both, and sewn or otherwise assembled in the territory of one or more of the Parties, and if the component that determines the tariff classification of the good is wholly of:

- (a) one or more fabrics listed in Annex 3.25 (Short Supply List); or
- (b) one or more fabrics formed in the territory of one or more of the Parties from one or more of the yarns listed in Annex 3.25 (Short Supply List); or
- (c) any combination of the fabrics referred to in subparagraph (a), the fabrics referred to in subparagraph (b), or one or more fabrics originating under this Annex.

The originating fabrics referred to in subparagraph (c) may contain up to ten percent by weight of fibers or yarns that do not undergo an applicable change in tariff classification set out in this Annex. Any elastomeric yarn contained in a fabric referred to in subparagraph (a), (b), or (c) must be formed in the territory of one or more of the Parties.

**Chapter 50**

**Silk**

50.01 – 50.03

A change to heading 50.01 through 50.03 from any other chapter.

50.04 – 50.06

A change to heading 50.04 through 50.06 from any heading outside that group.

50.07

A change to heading 50.07 from any other heading.

**Chapter 51**

**Wool, Fine or Coarse Animal Hair; Horsehair Yarn and Woven Fabric**

51.01 – 51.05

A change to heading 51.01 through 51.05 from any other chapter.

51.06 – 51.10

A change to heading 51.06 through 51.10 from any heading outside that group.

51.11 – 51.13

A change to heading 51.11 through 51.13 from any heading.

**Chapter 52**

**Cotton**

52.01 – 52.07

A change to heading 52.01 through 52.07 from any other chapter, except from heading 54.01 through 54.05 or 55.01 through 55.07.

52.08 – 52.12

A change to heading 52.08 through 52.12 from any heading outside that group, except from heading 51.06 through 51.10, 52.05 through 52.06, 54.01 through 54.04, or 55.09 through 55.10.

**Chapter 53**

**Other Vegetable Textile Fibers; Paper Yarn and Woven Fabrics of Paper Yarn**

53.01 – 53.05

A change to heading 53.01 through 53.05 from any other chapter.

53.06 – 53.08

A change to heading 53.06 through 53.08 from any heading outside that group.

53.09 – 53.11

A change to heading 53.09 through 53.11 from any heading outside that group.

**Chapter 54**

**Man-Made Filaments**

54.01 – 54.06

A change to heading 54.01 through 54.06 from any other chapter, except from heading 52.01 through 52.03 or 55.01 through 55.07.

54.07

A change to tariff items 5407.61.aa, 5407.61.bb or 5407.61.cc from tariff items 5402.43.aa or 5402.52.aa, or from any other chapter, except from heading 51.06 through 51.10, 52.05 through 52.06, or 55.09 through 55.10.

A change to any other tariff item of heading 54.07 from any other chapter, except from heading 51.06 through 51.10, 52.05 through 52.06, or 55.09 through 55.10.

54.08

A change to heading 54.08 from any other chapter, except from heading 51.06 through 51.10, 52.05 through 52.06, or 55.09 through 55.10.

**Chapter 55  
Man-Made Staple Fibers**

55.01 – 55.11

A change to heading 55.01 through 55.11 from any other chapter, except from heading 52.01 through 52.03 or 54.01 through 54.05.

55.12 – 55.16

A change to heading 55.12 through 55.16 from any heading outside that group, except from heading 51.06 through 51.10, 52.05 through 52.06, 54.01 through 54.04, or 55.09 through 55.10.

**Chapter 56  
Wadding, Felt and Non-Wovens; Special Yarns; Twine, Cordage, Ropes and Cables and Articles Thereof**

56.01 – 56.09

A change to heading 56.01 through 56.09 from any other chapter, except from heading 51.11 through 51.13, 52.04 through 52.12, 53.10 through 53.11, or chapter 54 through 55.

**Chapter 57  
Carpets and Other Textile Floor Coverings**

57.01 – 57.05

A change to heading 57.01 through 57.05 from any other chapter, except from heading 51.11 through 51.13, 52.04 through 52.12, chapter 54, or heading 55.08 through 55.16.

**Chapter 58  
Special Woven Fabrics; Tufted Textile Fabrics; Lace; Tapestries; Trimmings; Embroidery**

5801.10 – 5806.10

A change to subheading 5801.10 through 5806.10 from any other chapter, except from heading 51.11 through 51.13, 52.04 through 52.12, 53.10 through 53.11, or chapter 54 through 55.

5806.20

A change to subheading 5806.20 from any other chapter except from heading 52.08 through 52.12, 54.07 through 54.08, or 55.12 through 55.16.

5806.31 – 5811.00

A change to subheading 5806.31 through 5811.00 from any other chapter, except from heading 51.11 through 51.13, 52.04 through 52.12, 53.10 through 53.11, or chapter 54 through 55.

**Chapter 59**  
**Impregnated, Coated, Covered, or Laminated Textile Fabrics; Textile Articles of a Kind Suitable For Industrial Use**

59.01

A change to heading 59.01 from any other chapter, except from heading 51.11 through 51.13, 52.08 through 52.12, 53.10 through 53.11, 54.07 through 54.08, or 55.12 through 55.16.

59.02

A change to heading 59.02 from any other heading, except from heading 51.11 through 51.13, 52.04 through 52.12, 53.10 through 53.11, or chapter 54 through 55.

59.03 – 59.08

A change to heading 59.03 through 59.08 from any other chapter, except from heading 51.11 through 51.13, 52.08 through 52.12, 53.10 through 53.11, 54.07 through 54.08, or 55.12 through 55.16.

59.09

A change to heading 59.09 from any other chapter, except from heading 51.11 through 51.13, 52.08 through 52.12, 53.10 through 53.11, chapter 54, or heading 55.12 through 55.16.

59.10

A change to heading 59.10 from any other heading, except from heading 51.11 through 51.13, 52.04 through 52.12, 53.10 through 53.11, or chapter 54 through 55.

59.11

A change to heading 59.11 from any other chapter, except from heading 51.11 through 51.13, 52.08 through 52.12, 53.10 through 53.11, 54.07 through 54.08, or 55.12 through 55.16.

**Chapter 60**  
**Knitted or Crocheted Fabrics**

60.01

A change to heading 60.01 from any other chapter, except from heading 51.11 through 51.13, chapter 52, heading 53.10 through 53.11, or chapter 54 through 55.

60.02

A change to heading 60.02 from any other chapter.

60.03 – 60.06

A change to heading 60.03 through 60.06 from any other chapter, except from heading 51.11 through 51.13, chapter 52, heading 53.10 through 53.11, or chapter 54 through 55.

**Chapter 61**  
**Articles of Apparel and Clothing Accessories, Knitted or Crocheted**

**Chapter Rule 1**

Except for fabrics classified in tariff item 5408.22.aa, 5408.23.aa, 5408.23.bb, or 5408.24.aa, the fabrics identified in the following headings and subheadings, when used as visible lining material in certain men's and women's suits, suit-type jackets, skirts, overcoats, carcoats, anoraks, windbreakers, and similar articles, must be both formed from yarn and finished in the territory of one or more of the Parties:

51.11 through 51.12, 5208.31 through 5208.59, 5209.31 through 5209.59, 5210.31 through 5210.59, 5211.31 through 5211.59, 5212.13 through 5212.15, 5212.23 through 5212.25, 5407.42 through 5407.44, 5407.52 through 5407.54, 5407.61, 5407.72 through 5407.74, 5407.82 through 5407.84, 5407.92 through 5407.94, 5408.22 through 5408.24, 5408.32 through 5408.34, 5512.19, 5512.29, 5512.99, 5513.21 through 5513.49, 5514.21 through 5515.99, 5516.12 through 5516.14, 5516.22 through 5516.24, 5516.32 through 5516.34, 5516.42 through 5516.44, 5516.92 through 5516.94, 6001.10, 6001.92, 6005.31 through 6005.44, or 6006.10 through 6006.44.

**Chapter Rule 2**

For purposes of determining whether a good of this Chapter is originating, the rule applicable to that good shall only apply to the component that determines the tariff classification of the good and such component must satisfy the tariff change requirements set out in the rule for that good. If the rule requires that the good must also satisfy the tariff change requirements for visible lining fabrics listed in Chapter Rule 1, such requirement shall only apply to the visible lining fabric in the main body of the garment, excluding sleeves, which covers the largest surface area, and shall not apply to removable linings.

**Chapter Rule 3**

Notwithstanding Chapter Rule 2, a good of this chapter containing fabrics of subheading 5806.20 or heading 60.02 shall be considered originating only if such fabrics are both formed from yarn and finished in the territory of one or more of the Parties.

**Chapter Rule 4**

Notwithstanding Chapter Rule 2, a good of this chapter containing sewing thread of heading 52.04, 54.01, or 55.08 shall be considered originating only if such sewing thread is both formed and finished in the territory of one or more of the Parties.

6101.10 – 6101.30

A change to subheading 6101.10 through 6101.30 from any other chapter, except from heading 51.11 through 51.13, 52.04 through 52.12, 53.10 through 53.11, chapter 54, heading 55.08 through 55.16, or 60.01 through 60.06, provided that:

- (a) the good is cut or knit to shape, or both, and sewn or otherwise assembled in the territory of one or more of the Parties, and

- (b) any visible lining material contained in the apparel article must satisfy the requirements of Chapter Rule 1 for chapter 61.

## 6101.90

A change to subheading 6101.90 from any other chapter, except from heading 51.11 through 51.13, 52.04 through 52.12, 53.10 through 53.11, chapter 54, heading 55.08 through 55.16, or 60.01 through 60.06, provided that the good is cut or knit to shape, or both, and sewn or otherwise assembled in the territory of one or more of the Parties.

## 6102.10 – 6102.30

A change to subheading 6102.10 through 6102.30 from any other chapter, except from heading 51.11 through 51.13, 52.04 through 52.12, 53.10 through 53.11, chapter 54, heading 55.08 through 55.16, or 60.01 through 60.06, provided that:

- (a) the good is cut or knit to shape, or both, and sewn or otherwise assembled in the territory of one or more of the Parties, and
- (b) any visible lining material contained in the apparel article must satisfy the requirements of Chapter Rule 1 for chapter 61.

## 6102.90

A change to subheading 6102.90 from any other chapter, except from heading 51.11 through 51.13, 52.04 through 52.12, 53.10 through 53.11, chapter 54, heading 55.08 through 55.16, or 60.01 through 60.06, provided that the good is cut or knit to shape, or both, and sewn or otherwise assembled in the territory of one or more of the Parties.

## 6103.11 – 6103.12

A change to subheading 6103.11 through 6103.12 from any other chapter, except from heading 51.11 through 51.13, 52.04 through 52.12, 53.10 through 53.11, chapter 54, heading 55.08 through 55.16, or 60.01 through 60.06, provided that:

- (a) the good is cut or knit to shape, or both, and sewn or otherwise assembled in the territory of one or more of the Parties, and
- (b) any visible lining material contained in the apparel article must satisfy the requirements of Chapter Rule 1 for chapter 61.

## 6103.19

A change to tariff items 6103.19.aa or 6103.19.bb from any other chapter, except from heading 51.11 through 51.13, 52.04 through 52.12, 53.10 through 53.11, chapter 54, heading 55.08 through 55.16, or 60.01 through 60.06, provided that the good is cut or knit to shape, or both, and sewn or otherwise assembled in the territory of one or more of the Parties.

A change to any other tariff item of subheading 6103.19 from any other chapter, except from heading 51.11 through 51.13, 52.04 through 52.12, 53.10 through 53.11, chapter 54, heading 55.08 through 55.16, or 60.01 through 60.06, provided that:

- (a) the good is cut or knit to shape, or both, and sewn or otherwise assembled in the territory of one or more of the Parties, and
- (b) any visible lining material contained in the apparel article must satisfy the requirements of Chapter Rule 1 for chapter 61.

6103.21 – 6103.29

A change to subheading 6103.21 through 6103.29 from any other chapter, except from heading 51.11 through 51.13, 52.04 through 52.12, 53.10 through 53.11, chapter 54, or heading 55.08 through 55.16, or 60.01 through 60.06, provided that:

- (a) the good is cut or knit to shape, or both, and sewn or otherwise assembled in the territory of one or more of the Parties, and
- (b) with respect to a garment described in heading 61.01 or a jacket or a blazer described in heading 61.03, of wool, fine animal hair, cotton, or man-made fibers, imported as part of an ensemble of these subheadings, any visible lining material contained in the apparel article must satisfy the requirements of Chapter Rule 1 for chapter 61.

6103.31 – 6103.33

A change to subheading 6103.31 through 6103.33 from any other chapter, except from heading 51.11 through 51.13, 52.04 through 52.12, 53.10 through 53.11, chapter 54, heading 55.08 through 55.16, or 60.01 through 60.06, provided that:

- (a) the good is cut or knit to shape, or both, and sewn or otherwise assembled in the territory of one or more of the Parties, and
- (b) any visible lining material contained in the apparel article must satisfy the requirements of Chapter Rule 1 for chapter 61.

6103.39

A change to tariff items 6103.39.aa or 6103.39.bb from any other chapter, except from heading 51.11 through 51.13, 52.04 through 52.12, 53.10 through 53.11, chapter 54, heading 55.08 through 55.16, or 60.01 through 60.06, provided that the good is cut or knit to shape, or both, and sewn or otherwise assembled in the territory of one or more of the Parties.

A change to any other tariff item of subheading 6103.39 from any other chapter, except from heading 51.11 through 51.13, 52.04 through 52.12, 53.10 through 53.11, chapter 54, heading 55.08 through 55.16, or 60.01 through 60.06, provided that:

- (a) the good is cut or knit to shape, or both, and sewn or otherwise assembled in the territory of one or more of the Parties, and
- (b) any visible lining material contained in the apparel article must satisfy the requirements of Chapter Rule 1 for chapter 61.

## 6103.41 – 6103.49

A change to subheading 6103.41 through 6103.49 from any other chapter, except from heading 51.11 through 51.13, 52.04 through 52.12, 53.10 through 53.11, chapter 54, heading 55.08 through 55.16, or 60.01 through 60.06, provided that the good is cut or knit to shape, or both, and sewn or otherwise assembled in the territory of one or more of the Parties.

## 6104.11 – 6104.13

A change to subheading 6104.11 through 6104.13 from any other chapter, except from heading 51.11 through 51.13, 52.04 through 52.12, 53.10 through 53.11, chapter 54, heading 55.08 through 55.16 or 60.01 through 60.06, provided that:

- (a) the good is cut or knit to shape, or both, and sewn or otherwise assembled in the territory of one or more of the Parties, and
- (b) any visible lining material contained in the apparel article must satisfy the requirements of Chapter Rule 1 for chapter 61.

## 6104.19

A change to tariff item 6104.19.aa or 6104.19.bb from any other chapter, except from heading 51.11 through 51.13, 52.04 through 52.12, 53.10 through 53.11, chapter 54, heading 55.08 through 55.16, or 60.01 through 60.06, provided that the good is cut or knit to shape, or both, and sewn or otherwise assembled in the territory of one or more of the Parties.

A change to any other tariff item of subheading 6104.19 from any other chapter, except from heading 51.11 through 51.13, 52.04 through 52.12, 53.10 through 53.11, chapter 54, heading 55.08 through 55.16, or 60.01 through 60.06, provided that:

- (a) the good is cut or knit to shape, or both, and sewn or otherwise assembled in the territory of one or more of the Parties, and
- (b) any visible lining material contained in the apparel article must satisfy the requirements of Chapter Rule 1 for chapter 61.

## 6104.21 – 6104.29

A change to subheading 6104.21 through 6104.29 from any other chapter, except from heading 51.11 through 51.13, 52.04 through 52.12, 53.10 through 53.11, chapter 54, heading 55.08 through 55.16, or 60.01 through 60.06, provided that:

- (a) the good is cut or knit to shape, or both, and sewn or otherwise assembled in the territory of one or more of the Parties, and
- (b) with respect to a garment described in heading 61.02, a jacket or a blazer described in heading 61.04, or a skirt described in heading 61.04, of wool, fine animal hair, cotton or man-made fibers, imported as part of an ensemble of these subheadings, any visible lining material contained in the apparel article must satisfy the requirements of Chapter Rule 1 for chapter 61.

## 6104.31 – 6104.33

A change to subheading 6104.31 through 6104.33 from any other chapter, except from heading 51.11 through 51.13, 52.04 through 52.12, 53.10 through 53.11, chapter 54, heading 55.08 through 55.16, or 60.01 through 60.06, provided that:

- (a) the good is cut or knit to shape, or both, and sewn or otherwise assembled in the territory of one or more of the Parties, and
- (b) any visible lining material contained in the apparel article must satisfy the requirements of Chapter Rule 1 for chapter 61.

## 6104.39

A change to tariff item 6104.39.aa from any other chapter, except from heading 51.11 through 51.13, 52.04 through 52.12, 53.10 through 53.11, chapter 54, heading 55.08 through 55.16, or 60.01 through 60.06, provided that the good is cut or knit to shape, or both, and sewn or otherwise assembled in the territory of one or more of the Parties.

A change to any other tariff item of subheading 6104.39 from any other chapter, except from heading 51.11 through 51.13, 52.04 through 52.12, 53.10 through 53.11, chapter 54, heading 55.08 through 55.16, or 60.01 through 60.06, provided that:

- (a) the good is cut or knit to shape, or both, and sewn or otherwise assembled in the territory of one or more of the Parties, and
- (b) any visible lining material contained in the apparel article must satisfy the requirements of Chapter Rule 1 for chapter 61.

## 6104.41 – 6104.49

A change to subheading 6104.41 through 6104.49 from any other chapter, except from heading 51.11 through 51.13, 52.04 through 52.12, 53.10 through 53.11, chapter 54, heading 55.08 through 55.16, or 60.01 through 60.06, provided that the good is cut or knit to shape, or both, and sewn or otherwise assembled in the territory of one or more of the Parties.

## 6104.51 – 6104.53

A change to subheading 6104.51 through 6104.53 from any other chapter, except from heading 51.11 through 51.13, 52.04 through 52.12, 53.10 through 53.11, chapter 54, heading 55.08 through 55.16, or 60.01 through 60.06, provided that:

- (a) the good is cut or knit to shape, or both, and sewn or otherwise assembled in the territory of one or more of the Parties, and
- (b) any visible lining material contained in the apparel article must satisfy the requirements of Chapter Rule 1 for chapter 61.

## 6104.59

A change to tariff item 6104.59.aa or 6104.59.bb from any other chapter, except from heading 51.11 through 51.13, 52.04 through 52.12, 53.10 through 53.11, chapter 54, heading 55.08 through 55.16, or 60.01 through 60.06, provided that the good is cut or knit to shape, or both, and sewn or otherwise assembled in the territory of one or more of the Parties.

A change to any other tariff item of subheading 6104.59 from any other chapter, except from heading 51.11 through 51.13, 52.04 through 52.12, 53.10 through 53.11, chapter 54, heading 55.08 through 55.16, or 60.01 through 60.06, provided that:

- (a) the good is cut or knit to shape, or both, and sewn or otherwise assembled in the territory of one or more of the Parties, and
- (b) any visible lining material contained in the apparel article must satisfy the requirements of Chapter Rule 1 for chapter 61.

## 6104.61 – 6104.69

A change to subheading 6104.61 through 6104.69 from any other chapter, except from heading 51.11 through 51.13, 52.04 through 52.12, 53.10 through 53.11, chapter 54, heading 55.08 through 55.16, or 60.01 through 60.06, provided that the good is cut or knit to shape, or both, and sewn or otherwise assembled in the territory of one or more of the Parties.

## 61.05 – 61.06

A change to heading 61.05 through 61.06 from any other chapter, except from heading 51.11 through 51.13, 52.04 through 52.12, 53.10 through 53.11, chapter 54, heading 55.08 through 55.16, or 60.01 through 60.06, provided that the good is cut or knit to shape, or both, and sewn or otherwise assembled in the territory of one or more of the Parties.

## 6107.11 – 6107.19

A change to subheading 6107.11 through 6107.19 from any other chapter, except from heading 51.11 through 51.13, 52.04 through 52.12, 53.10 through 53.11, chapter 54, heading 55.08 through 55.16, or 60.01 through 60.06, provided that the good is cut or knit to shape, or both, and sewn or otherwise assembled in the territory of one or more of the Parties.

## 6107.21 – 6107.99

A change to subheading 6107.21 through 6107.99 from any other chapter, except from heading 51.11 through 51.13, 52.04 through 52.12, 53.10 through 53.11, chapter 54, heading 55.08 through 55.16, or 60.01 through 60.06, provided that the good is cut or knit to shape, or both, and sewn or otherwise assembled in the territory of one or more of the Parties.

## 6108.11 – 6108.19

A change to subheading 6108.11 through 6108.19 from any other chapter, except from heading 51.11 through 51.13, 52.04 through 52.12, 53.10 through 53.11, chapter 54, heading 55.08 through 55.16, or 60.01 through 60.06, provided that the good is cut or knit to shape, or both, and sewn or otherwise assembled in the territory of one or more of the Parties.

## 6108.21 – 6108.29

A change to subheading 6108.21 through 6108.29 from any other chapter, except from heading 51.11 through 51.13, 52.04 through 52.12, 53.10 through 53.11, chapter 54, heading 55.08 through 55.16, or 60.01 through 60.06, provided that the good is cut or knit to shape, or both, and sewn or otherwise assembled in the territory of one or more of the Parties.

## 6108.31 – 6108.39

A change to subheading 6108.31 through 6108.39 from any other chapter, except from heading 51.11 through 51.13, 52.04 through 52.12, 53.10 through 53.11, chapter 54, heading 55.08 through 55.16, or 60.01 through 60.06, provided that the good is cut or knit to shape, or both, and sewn or otherwise assembled in the territory of one or more of the Parties.

## 6108.91 – 6108.99

A change to subheading 6108.91 through 6108.99 from any other chapter, except from heading 51.11 through 51.13, 52.04 through 52.12, 53.10 through 53.11, chapter 54, heading 55.08 through 55.16, or 60.01 through 60.06, provided that the good is cut or knit to shape, or both, and sewn or otherwise assembled in the territory of one or more of the Parties.

## 61.09 – 61.11

A change to heading 61.09 through 61.11 from any other chapter, except from heading 51.11 through 51.13, 52.04 through 52.12, 53.10 through 53.11, chapter 54, heading 55.08 through 55.16, or 60.01 through 60.06, provided that the good is cut or knit to shape, or both, and sewn or otherwise assembled in the territory of one or more of the Parties.

## 6112.11 – 6112.19

A change to subheading 6112.11 through 6112.19 from any other chapter, except from heading 51.11 through 51.13, 52.04 through 52.12, 53.10 through 53.11, chapter 54, heading 55.08 through 55.16, or 60.01 through 60.06, provided that the good is cut or knit to shape, or both, and sewn or otherwise assembled in the territory of one or more of the Parties.

6112.20

A change to subheading 6112.20 from any other chapter, except from heading 51.11 through 51.13, 52.04 through 52.12, 53.10 through 53.11, chapter 54, heading 55.08 through 55.16, or 60.01 through 60.06, provided that:

- (a) the good is cut or knit to shape, or both, and sewn or otherwise assembled in the territory of one or more of the Parties, and
- (b) with respect to a garment described in heading 61.01, 61.02, 62.01, or 62.02, of wool, fine animal hair, cotton or man-made fibers, imported as part of a ski-suit of this subheading, any visible lining material contained in the apparel article must satisfy the requirements of Chapter Rule 1 for chapter 61.

6112.31 – 6112.49

A change to subheading 6112.31 through 6112.49 from any other chapter, except from heading 51.11 through 51.13, 52.04 through 52.12, 53.10 through 53.11, chapter 54, heading 55.08 through 55.16, or 60.01 through 60.06, provided that the good is cut or knit to shape, or both, and sewn or otherwise assembled in the territory of one or more of the Parties.

61.13 – 61.17

A change to heading 61.13 through 61.17 from any other chapter, except from heading 51.11 through 51.13, 52.04 through 52.12, 53.10 through 53.11, chapter 54, heading 55.08 through 55.16, or 60.01 through 60.06, provided that the good is cut or knit to shape, or both, and sewn or otherwise assembled in the territory of one or more of the Parties.

## **Chapter 62**

### **Articles of Apparel and Clothing Accessories, Not Knitted or Crocheted**

#### **Chapter Rule 1**

Except for fabrics classified in tariff item 5408.22.aa, 5408.23.aa, 5408.23.bb, or 5408.24.aa, the fabrics identified in the following headings and subheadings, when used as visible lining material in certain men's and women's suits, suit-type jackets, skirts, overcoats, carcoats, anoraks, windbreakers, and similar articles, must be both formed from yarn and finished in the territory of one or more of the Parties:

51.11 through 51.12, 5208.31 through 5208.59, 5209.31 through 5209.59, 5210.31 through 5210.59, 5211.31 through 5211.59, 5212.13 through 5212.15, 5212.23 through 5212.25, 5407.42 through 5407.44, 5407.52 through 5407.54, 5407.61, 5407.72 through 5407.74, 5407.82 through 5407.84, 5407.92 through 5407.94, 5408.22 through 5408.24, 5408.32 through 5408.34, 5512.19, 5512.29, 5512.99, 5513.21 through 5513.49, 5514.21 through 5515.99, 5516.12 through 5516.14, 5516.22 through 5516.24, 5516.32 through 5516.34, 5516.42 through 5516.44, 5516.92 through 5516.94, 6001.10, 6001.92, 6005.31 through 6005.44, or 6006.10 through 6006.44.

**Chapter Rule 2**

For purposes of determining whether a good of this Chapter is originating, the rule applicable to that good shall only apply to the component that determines the tariff classification of the good and such component must satisfy the tariff change requirements set out in the rule for that good. If the rule requires that the good must also satisfy the tariff change requirements for visible lining fabrics listed in Chapter Rule 1, such requirement shall only apply to the visible lining fabric in the main body of the garment, excluding sleeves, which covers the largest surface area, and shall not apply to removable linings.

**Chapter Rule 3**

Notwithstanding Chapter Rule 2, a good of this chapter, other than a good of heading 62.07 – 62.08 (for boxers, pajamas, and nightwear only), subheading 6212.10, tariff item 6204.42.aa, 6204.42.bb, 6204.43.aa, 6204.43.bb, or 6204.44.aa, containing fabrics of heading 60.02 or subheading 5806.20 shall be considered originating only if such fabrics are both formed from yarn and finished in the territory of one or more of the Parties.

**Chapter Rule 4**

Notwithstanding Chapter Rule 2, a good of this chapter, other than a good of heading 62.07 – 62.08 (for boxers, pajamas, and nightwear only), subheading 6212.10, tariff item 6204.42.aa, 6204.42.bb, 6204.43.aa, 6204.43.bb, or 6204.44.aa, containing sewing thread of heading 52.04, 54.01, or 55.08, shall be considered originating only if such sewing thread is both formed and finished in the territory of one or more of the Parties.

**Chapter Rule 5**

See Appendix 4.1-B (Cumulation in Chapter 62)

## 6201.11 – 6201.13

A change to subheading 6201.11 through 6201.13 from any other chapter, except from heading 51.11 through 51.13, 52.04 through 52.12, 53.10 through 53.11, chapter 54, heading 55.08 through 55.16, 58.01 through 58.02, or 60.01 through 60.06, provided that:

- (a) the good is cut or knit to shape, or both, and sewn or otherwise assembled in the territory of one or more of the Parties, and
- (b) any visible lining material contained in the apparel article must satisfy the requirements of Chapter Rule 1 for chapter 62.

## 6201.19

A change to subheading 6201.19 from any other chapter, except from heading 51.11 through 51.13, 52.04 through 52.12, 53.10 through 53.11, chapter 54, heading 55.08 through 55.16, 58.01 through 58.02, or 60.01 through 60.06, provided that the good is cut or knit to shape, or both, and sewn or otherwise assembled in the territory of one or more of the Parties.

## 6201.91 – 6201.93

A change to subheading 6201.91 through 6201.93 from any other chapter, except from heading 51.11 through 51.13, 52.04 through 52.12, 53.10 through 53.11, chapter 54, heading 55.08 through 55.16, 58.01 through 58.02, or 60.01 through 60.06, provided that:

- (a) the good is cut or knit to shape, or both, and sewn or otherwise assembled in the territory of one or more of the Parties, and
- (b) any visible lining material contained in the apparel article must satisfy the requirements of Chapter Rule 1 for chapter 62.

## 6201.99

A change to subheading 6201.99 from any other chapter, except from heading 51.11 through 51.13, 52.04 through 52.12, 53.10 through 53.11, chapter 54, heading 55.08 through 55.16, 58.01 through 58.02, or 60.01 through 60.06, provided that the good is cut or knit to shape, or both, and sewn or otherwise assembled in the territory of one or more of the Parties.

## 6202.11 – 6202.13

A change to subheading 6202.11 through 6202.13 from any other chapter, except from heading 51.11 through 51.13, 52.04 through 52.12, 53.10 through 53.11, chapter 54, heading 55.08 through 55.16, 58.01 through 58.02, or 60.01 through 60.06, provided that:

- (a) the good is cut or knit to shape, or both, and sewn or otherwise assembled in the territory of one or more of the Parties, and
- (b) any visible lining material contained in the apparel article must satisfy the requirements of Chapter Rule 1 for chapter 62.

## 6202.19

A change to subheading 6202.19 from any other chapter, except from heading 51.11 through 51.13, 52.04 through 52.12, 53.10 through 53.11, chapter 54, heading 55.08 through 55.16, 58.01 through 58.02, or 60.01 through 60.06, provided that the good is cut or knit to shape, or both, and sewn or otherwise assembled in the territory of one or more of the Parties.

## 6202.91 – 6202.93

A change to subheading 6202.91 through 6202.93 from any other chapter, except from heading 51.11 through 51.13, 52.04 through 52.12, 53.10 through 53.11, chapter 54, heading 55.08 through 55.16, 58.01 through 58.02, or 60.01 through 60.06, provided that:

- (a) the good is cut or knit to shape, or both, and sewn or otherwise assembled in the territory of one or more of the Parties, and
- (b) any visible lining material contained in the apparel article must satisfy the requirements of Chapter Rule 1 for chapter 62.

## 6202.99

A change to subheading 6202.99 from any other chapter, except from heading 51.11 through 51.13, 52.04 through 52.12, 53.10 through 53.11, chapter 54, heading 55.08 through 55.16, 58.01 through 58.02, or 60.01 through 60.06, provided that the good is cut or knit to shape, or both, and sewn or otherwise assembled in the territory of one or more of the Parties.

## 6203.11 – 6203.12

A change to subheading 6203.11 through 6203.12 from any other chapter, except from heading 51.11 through 51.13, 52.04 through 52.12, 53.10 through 53.11, chapter 54, heading 55.08 through 55.16, 58.01 through 58.02, or 60.01 through 60.06, provided that:

- (a) the good is cut or knit to shape, or both, and sewn or otherwise assembled in the territory of one or more of the Parties, and
- (b) any visible lining material contained in the apparel article must satisfy the requirements of Chapter Rule 1 for chapter 62.

## 6203.19

A change to tariff item 6203.19.aa or 6203.19.bb from any other chapter, except from heading 51.11 through 51.13, 52.04 through 52.12, 53.10 through 53.11, chapter 54, heading 55.08 through 55.16, 58.01 through 58.02, or 60.01 through 60.06, provided that the good is cut or knit to shape, or both, and sewn or otherwise assembled in the territory of one or more of the Parties.

A change to any other tariff item of subheading 6203.19 from any other chapter, except from heading 51.11 through 51.13, 52.04 through 52.12, 53.10 through 53.11, chapter 54, heading 55.08 through 55.16, 58.01 through 58.02, or 60.01 through 60.06, provided that:

- (a) the good is cut or knit to shape, or both, and sewn or otherwise assembled in the territory of one or more of the Parties, and
- (b) any visible lining material contained in the apparel article must satisfy the requirements of Chapter Rule 1 for chapter 62.

## 6203.21 – 6203.29

A change to subheading 6203.21 through 6203.29 from any other chapter, except from heading 51.11 through 51.13, 52.04 through 52.12, 53.10 through 53.11, chapter 54, heading 55.08 through 55.16, 58.01 through 58.02, or 60.01 through 60.06, provided that:

- (a) the good is cut or knit to shape, or both, and sewn or otherwise assembled in the territory of one or more of the Parties, and
- (b) with respect to a garment described in heading 62.01 or a jacket or a blazer described in heading 62.03, of wool, fine animal hair, cotton, or man-made fibers, imported as part of an ensemble of these subheadings, any visible lining material

contained in the apparel article must satisfy the requirements of Chapter Rule 1 for chapter 62.

6203.31 – 6203.33

A change to subheading 6203.31 through 6203.33 from any other chapter, except from heading 51.11 through 51.13, 52.04 through 52.12, 53.10 through 53.11, chapter 54, heading 55.08 through 55.16, 58.01 through 58.02, or 60.01 through 60.06, provided that:

- (a) the good is cut or knit to shape, or both, and sewn or otherwise assembled in the territory of one or more of the Parties, and
- (b) any visible lining material contained in the apparel article must satisfy the requirements of Chapter Rule 1 for chapter 62.

6203.39

A change to tariff item 6203.39.aa or 6203.39.bb from any other chapter, except from heading 51.11 through 51.13, 52.04 through 52.12, 53.10 through 53.11, chapter 54, heading 55.08 through 55.16, 58.01 through 58.02, or 60.01 through 60.06, provided that the good is cut or knit to shape, or both, and sewn or otherwise assembled in the territory of one or more of the Parties.

A change to any other tariff item of subheading 6203.39 from any other chapter, except from heading 51.11 through 51.13, 52.04 through 52.12, 53.10 through 53.11, chapter 54, heading 55.08 through 55.16, 58.01 through 58.02, or 60.01 through 60.06, provided that:

- (a) the good is cut or knit to shape, or both, and sewn or otherwise assembled in the territory of one or more of the Parties, and
- (b) any visible lining material contained in the apparel article must satisfy the requirements of Chapter Rule 1 for chapter 62.

6203.41 – 6203.49

A change to subheading 6203.41 through 6203.49 from any other chapter, except from heading 51.11 through 51.13, 52.04 through 52.12, 53.10 through 53.11, chapter 54, heading 55.08 through 55.16, 58.01 through 58.02, or 60.01 through 60.06, provided that the good is cut or knit to shape, or both, and sewn or otherwise assembled in the territory of one or more of the Parties.

6204.11 – 6204.13

A change to subheading 6204.11 through 6204.13 from any other chapter, except from heading 51.11 through 51.13, 52.04 through 52.12, 53.10 through 53.11, chapter 54, heading 55.08 through 55.16, 58.01 through 58.02, or 60.01 through 60.06, provided that:

- (a) the good is cut or knit to shape, or both, and sewn or otherwise assembled in the territory of one or more of the Parties, and

- (b) any visible lining material contained in the apparel article must satisfy the requirements of Chapter Rule 1 for chapter 62.

## 6204.19

A change to tariff item 6204.19.aa or 6204.19.bb from any other chapter, except from heading 51.11 through 51.13, 52.04 through 52.12, 53.10 through 53.11, chapter 54, heading 55.08 through 55.16, 58.01 through 58.02, or 60.01 through 60.06, provided that the good is cut or knit to shape, or both, and sewn or otherwise assembled in the territory of one or more of the Parties.

A change to any other tariff item of subheading 6204.19 from any other chapter, except from heading 51.11 through 51.13, 52.04 through 52.12, 53.10 through 53.11, chapter 54, heading 55.08 through 55.16, 58.01 through 58.02, or 60.01 through 60.06, provided that:

- (a) the good is cut or knit to shape, or both, and sewn or otherwise assembled in the territory of one or more of the Parties, and
- (b) any visible lining material contained in the apparel article must satisfy the requirements of Chapter Rule 1 for chapter 62.

## 6204.21 – 6204.29

A change to subheading 6204.21 through 6204.29 from any other chapter, except from heading 51.11 through 51.13, 52.04 through 52.12, 53.10 through 53.11, chapter 54, heading 55.08 through 55.16, 58.01 through 58.02, or 60.01 through 60.06, provided that:

- (a) the good is cut or knit to shape, or both, and sewn or otherwise assembled in the territory of one or more of the Parties, and
- (b) with respect to a garment described in heading 62.02, a jacket or a blazer described in heading 62.04, or a skirt described in heading 62.04, of wool, fine animal hair, cotton, or man-made fibers, imported as part of an ensemble of these subheadings, any visible lining material contained in the apparel article must satisfy the requirements of Chapter Rule 1 for chapter 62.

## 6204.31 – 6204.33

A change to subheading 6204.31 through 6204.33 from any other chapter, except from heading 51.11 through 51.13, 52.04 through 52.12, 53.10 through 53.11, chapter 54, heading 55.08 through 55.16, 58.01 through 58.02, or 60.01 through 60.06, provided that:

- (a) the good is cut or knit to shape, or both, and sewn or otherwise assembled in the territory of one or more of the Parties, and
- (b) any visible lining material contained in the apparel article must satisfy the requirements of Chapter Rule 1 for chapter 62.

## 6204.39

A change to tariff item 6204.39.bb or 6204.39.cc from any other chapter, except from heading 51.11 through 51.13, 52.04 through 52.12, 53.10 through 53.11, chapter 54, heading 55.08 through 55.16, 58.01 through 58.02, or 60.01 through 60.06, provided that the good is cut or knit to shape, or both, and sewn or otherwise assembled in the territory of one or more of the Parties.

A change to any other tariff item of subheading 6204.39 from any other chapter, except from heading 51.11 through 51.13, 52.04 through 52.12, 53.10 through 53.11, chapter 54, heading 55.08 through 55.16, 58.01 through 58.02, or 60.01 through 60.06, provided that:

- (a) the good is cut or knit to shape, or both, and sewn or otherwise assembled in the territory of one or more of the Parties, and
- (b) any visible lining material contained in the apparel article must satisfy the requirements of Chapter Rule 1 for chapter 62.

## 6204.41

A change to subheading 6204.41 from any other chapter, except from heading 51.11 through 51.13, 52.04 through 52.12, 53.10 through 53.11, chapter 54, heading 55.08 through 55.16, 58.01 through 58.02, or 60.01 through 60.06, provided that the good is cut or knit to shape, or both, and sewn or otherwise assembled in the territory of one or more of the Parties.

## 6204.42 – 6204.44

A change to tariff item 6204.42.aa, 6204.42.bb, 6204.43.aa, 6204.43.bb, or 6204.44.aa from any other chapter, provided that the good is cut or knit to shape, or both, and sewn or otherwise assembled in the territory of one or more of the Parties.

## 6204.42 – 6204.49

A change to subheading 6204.42 through 6204.49 from any other chapter, except from heading 51.11 through 51.13, 52.04 through 52.12, 53.10 through 53.11, chapter 54, heading 55.08 through 55.16, 58.01 through 58.02, or 60.01 through 60.06, provided that the good is cut or knit to shape, or both, and sewn or otherwise assembled in the territory of one or more of the Parties.

## 6204.51 – 6204.53

A change to subheading 6204.51 through 6204.53 from any other chapter, except from heading 51.11 through 51.13, 52.04 through 52.12, 53.10 through 53.11, chapter 54, heading 55.08 through 55.16, 58.01 through 58.02, or 60.01 through 60.06, provided that:

- (a) the good is cut or knit to shape, or both, and sewn or otherwise assembled in the territory of one or more of the Parties, and
- (b) any visible lining material contained in the apparel article must satisfy the requirements of Chapter Rule 1 for chapter 62.

## 6204.59

A change to tariff item 6204.59.aa from any other chapter, except from heading 51.11 through 51.13, 52.04 through 52.12, 53.10 through 53.11, chapter 54, heading 55.08 through 55.16, 58.01 through 58.02, or 60.01 through 60.06, provided that the good is cut or knit to shape, or both, and sewn or otherwise assembled in the territory of one or more of the Parties.

A change to any other tariff item of subheading 6204.59 from any other chapter, except from heading 51.11 through 51.13, 52.04 through 52.12, 53.10 through 53.11, chapter 54, heading 55.08 through 55.16, 58.01 through 58.02, or 60.01 through 60.06, provided that:

- (a) the good is cut or knit to shape, or both, and sewn or otherwise assembled in the territory of one or more of the Parties, and
- (b) any visible lining material contained in the apparel article must satisfy the requirements of Chapter Rule 1 for chapter 62.

## 6204.61 – 6204.69

A change to subheading 6204.61 through 6204.69 from any other chapter, except from heading 51.11 through 51.13, 52.04 through 52.12, 53.10 through 53.11, chapter 54, heading 55.08 through 55.16, 58.01 through 58.02, or 60.01 through 60.06, provided that the good is cut or knit to shape, or both, and sewn or otherwise assembled in the territory of one or more of the Parties.

## 6205.10 – 6205.90

A change to subheading 6205.10 through 6205.90 from any other chapter, except from heading 51.11 through 51.13, 52.04 through 52.12, 53.10 through 53.11, chapter 54, heading 55.08 through 55.16, 58.01 through 58.02, or 60.01 through 60.06, provided that the good is cut or knit to shape, or both, and sewn or otherwise assembled in the territory of one or more of the Parties.

## 62.06

A change to heading 62.06 from any other chapter, except from heading 51.11 through 51.13, 52.04 through 52.12, 53.10 through 53.11, chapter 54, heading 55.08 through 55.16, 58.01 through 58.02, or 60.01 through 60.06, provided that the good is cut or knit to shape, or both, and sewn or otherwise assembled in the territory of one or more of the Parties.

## 62.07 – 62.08

A change to boxer shorts in subheading 6207.11, tariff item 6207.19.aa, 6208.91.aa, 6208.92.aa, or 6208.92.bb from any other chapter, provided that the good is cut or knit to shape, or both, and sewn or otherwise assembled in the territory of one or more of the Parties.

A change to pajamas and nightwear in subheading 6207.21, 6207.22, tariff item 6207.91.aa, 6207.92.aa, subheading 6208.21, or 6208.22 from any other chapter, provided that the good is cut or knit to shape, or both, and sewn or otherwise assembled in the territory of one or more of the Parties.

A change to any other tariff item of heading 62.07 through 62.08 from any other chapter, except from heading 51.11 through 51.13, 52.04 through 52.12, 53.10 through 53.11, chapter 54, heading 55.08 through 55.16, 58.01 through 58.02, or 60.01 through 60.06, provided that the good is cut or knit to shape, or both, and sewn or otherwise assembled in the territory of one or more of the Parties.

62.09 – 62.10

A change to heading 62.09 through 62.10 from any other chapter, except from heading 51.11 through 51.13, 52.04 through 52.12, 53.10 through 53.11, chapter 54, heading 55.08 through 55.16, 58.01 through 58.02, or 60.01 through 60.06, provided that the good is cut or knit to shape, or both, and sewn or otherwise assembled in the territory of one or more of the Parties.

6211.11 – 6211.12

A change to subheading 6211.11 through 6211.12 from any other chapter, except from heading 51.11 through 51.13, 52.04 through 52.12, 53.10 through 53.11, chapter 54, heading 55.08 through 55.16, 58.01 through 58.02, or 60.01 through 60.06, provided that the good is cut or knit to shape, or both, and sewn or otherwise assembled in the territory of one or more of the Parties.

6211.20

A change to subheading 6211.20 from any other chapter, except from heading 51.11 through 51.13, 52.04 through 52.12, 53.10 through 53.11, chapter 54, heading 55.08 through 55.16, 58.01 through 58.02, or 60.01 through 60.06, provided that:

- (a) the good is cut or knit to shape, or both, and sewn or otherwise assembled in the territory of one or more of the Parties, and
- (b) with respect to a garment described in heading 61.01, 61.02, 62.01, or 62.02, of wool, fine animal hair, cotton, or man-made fibers, imported as part of a ski-suit of this subheading, any visible lining material contained in the apparel article must satisfy the requirements of Chapter Rule 1 for chapter 62.

6211.31 – 6211.49

A change to subheading 6211.31 through 6211.49 from any other chapter, except from heading 51.11 through 51.13, 52.04 through 52.12, 53.10 through 53.11, chapter 54, heading 55.08 through 55.16, 58.01 through 58.02, or 60.01 through 60.06, provided that the good is cut or knit to shape, or both, and sewn or otherwise assembled in the territory of one or more of the Parties.

6212.10

A change to subheading 6212.10 from any other chapter, provided that the good is cut or knit to shape, or both, and sewn or otherwise assembled in the territory of one or more of the Parties.

6212.20 – 6212.90

A change to subheading 6212.20 through 6212.90 from any other chapter, except from heading 51.11 through 51.13, 52.04 through 52.12, 53.10 through 53.11, chapter 54, heading 55.08 through 55.16, 58.01 through 58.02, or 60.01 through 60.06, provided that the good is cut and

knit to shape, or both, and sewn or otherwise assembled in the territory of one or more of the Parties.

62.13 – 62.17

A change to heading 62.13 through 62.17 from any other chapter, except from heading 51.11 through 51.13, 52.04 through 52.12, 53.10 through 53.11, chapter 54, heading 55.08 through 55.16, 58.01 through 58.02, or 60.01 through 60.06, provided that the good is cut and knit to shape, or both, and sewn or otherwise assembled in the territory of one or more of the Parties.

### **Chapter 63**

#### **Other Made Up Textile Articles; Sets; Worn Clothing and Worn Textile Articles; Rags**

##### **Chapter Rule 1**

For purposes of determining whether a good of this Chapter is originating, the rule applicable to that good shall only apply to the component that determines the tariff classification of the good and such component must satisfy the tariff change requirements set out in the rule for that good.

##### **Chapter Rule 2**

Notwithstanding Chapter Rule 1, a good of this chapter containing sewing thread of heading 52.04, 54.01, or 55.08 shall be considered originating only if such sewing thread is wholly formed in the territory of one or more of the Parties.

63.01 – 63.02

A change to heading 63.01 through 63.02 from any other chapter, except from heading 51.11 through 51.13, 52.04 through 52.12, 53.10 through 53.11, chapter 54, heading 55.08 through 55.16, 58.01 through 58.02, or 60.01 through 60.06, provided that the good is cut or knit to shape, or both, and sewn or otherwise assembled in the territory of one or more of the Parties.

63.03

A change to tariff item 6303.92.aa from tariff item 5402.43.aa, 5402.52.aa, or any other chapter, except from heading 51.11 through 51.13, 52.04 through 52.12, 53.10 through 53.11, chapter 54, heading 55.08 through 55.16, 58.01 through 58.02, or 60.01 through 60.06, provided that the good is cut or knit to shape, or both, and sewn or otherwise assembled in the territory of one or more of the Parties.

A change to any other tariff item of heading 63.03 from any other chapter, except from heading 51.11 through 51.13, 52.04 through 52.12, 53.10 through 53.11, chapter 54, heading 55.08 through 55.16, 58.01 through 58.02, or 60.01 through 60.06, provided that the good is cut or knit to shape, or both, and sewn or otherwise assembled in the territory of one or more of the Parties.

63.04 – 63.08

A change to heading 63.04 through 63.08 from any other chapter, except from heading 51.11 through 51.13, 52.04 through 52.12, 53.10 through 53.11, chapter 54, heading 55.08 through 55.16, 58.01 through 58.02, or 60.01 through 60.06, provided that the good is cut or knit to shape, or both, and sewn or otherwise assembled in the territory of one or more of the Parties.

63.09

A change to 63.09 from any other heading.

63.10

A change to heading 63.10 from any other chapter, except from heading 51.11 through 51.13, 52.04 through 52.12, 53.10 through 53.11, chapter 54, heading 55.08 through 55.16, 58.01 through 58.02, or 60.01 through 60.06, provided that the good is cut or knit to shape, or both, and sewn or otherwise assembled in the territory of one or more of the Parties.

## **Section XII**

**Footwear, Headgear, Umbrellas, Sun Umbrellas, Walking-Sticks, Seat-Sticks, Whips, Riding-Crops, and Parts Thereof; Prepared Feathers and Articles Made Therewith; Artificial Flowers; Articles of Human Hair (Chapter 64-67)**

### **Chapter 64**

**Footwear, Gaiters, and the Like; Parts of Such Articles**

#### **Note 1**

One year after the date of entry into force of this Agreement, the Parties shall consult pursuant to Article 4.14 (Consultation and Modifications) to evaluate whether to modify the specific rules of origin set out in this Annex for subheadings 6401.10 or 6401.91, or tariff item 6401.92.aa, 6401.99.aa, 6401.99.bb, 6401.99.cc, 6402.30.aa, 6402.30.bb, 6402.30.cc, 6402.91.aa, 6402.91.bb, 6402.91.cc, 6402.99.aa, 6402.99.bb, 6402.99.cc, 6404.11.aa, or 6404.19.aa.

#### **Note 2**

Notwithstanding the specific rules of origin for goods of chapter 64 in this Annex:

With respect to goods of chapter 64 subject to subparagraph (a) or (g) of paragraph 1 of Annex 3.3. (Tariff Elimination), each Party shall provide that an importer may claim preferential tariff treatment under this Agreement for a good in chapter 64 that meets any preferential rule of origin that is a specific rule of origin for such good applied by the importing Party.

Each Party shall provide that an importer may claim preferential tariff treatment under this Agreement for a good of chapter 64 that meets any preferential rule of origin that is a specific rule of origin for such good adopted by the United States after the date of signature of this Agreement.

For purposes of this Note, **preferential rule of origin** means a rule of origin applied by any Party to determine whether goods are eligible for preferential treatment under contractual or autonomous trade regimes leading to the granting of tariff preferences going beyond the application of paragraph 1 of Article I of the GATT 1994.

A change to subheadings 6401.10 or 6401.91, or tariff items 6401.92.aa, 6401.99.aa, 6401.99.bb, 6401.99.cc, 6402.30.aa, 6402.30.bb, 6402.30.cc, 6402.91.aa, 6402.91.bb, 6402.91.cc, 6402.99.aa, 6402.99.bb, 6402.99.cc, 6404.11.aa, or 6404.19.aa from any other heading outside heading 64.01 through 64.05, except from subheading 6406.10, provided that there is a regional value content of not less than 55 percent under the build-up method.

A change to any other tariff item of chapter 64 from any other subheading.

**Chapter 65**  
**Headgear and Parts Thereof**

65.01 – 65.02

A change to heading 65.01 through 65.02 from any other chapter.

65.03 – 65.06

A change to heading 65.03 through 65.06 from any other heading, except from heading 65.03 through 65.07.

65.07

A change to heading 65.07 from any other heading.

**Chapter 66**  
**Umbrellas, Sun Umbrellas, Walking Sticks, Seat-Sticks, Whips, Riding-Crops, and Parts Thereof**

66.01

A change to heading 66.01 from any other heading.

Note 1 for chapters 50 through 63 applies to this heading.

66.02

A change to heading 66.02 from any other heading.

66.03

A change to heading 66.03 from any other chapter.

**Chapter 67**  
**Prepared Feathers and Down and Articles Made of Feathers or of Down; Artificial Flowers; Articles of Human Hair**

67.01

A change to heading 67.01 from any other heading; or

A change to a good of feather or down of heading 67.01 from any other good, including a good in that heading.

67.02 – 67.04

A change to heading 67.02 through 67.04 from any other heading.

**Section XIII**

**Articles of Stone, Plaster, Cement, Asbestos, Mica or Similar Materials; Ceramic Products; Glass and Glassware (Chapter 68-70)**

**Chapter 68**

**Articles of Stone, Plaster, Cement, Asbestos, Mica or Similar Materials**

68.01 – 68.11

A change to heading 68.01 through 68.11 from any other heading.

6812.50

A change to subheading 6812.50 from any other subheading.

6812.60 – 6812.70

A change to subheading 6812.60 through 6812.70 from any other subheading outside that group.

6812.90

A change to subheading 6812.90 from any other heading.

68.13 – 68.14

A change to heading 68.13 through 68.14 from any other heading.

6815.10 – 6815.99

A change to subheading 6815.10 through 6815.99 from any other subheading.

**Chapter 69**

**Ceramic Products**

69.01 – 69.14

A change to heading 69.01 through 69.14 from any other chapter.

**Chapter 70**

**Glass and Glassware**

70.01

A change to heading 70.01 from any other heading.

7002.10

A change to subheading 7002.10 from any other heading.

7002.20

A change to subheading 7002.20 from any other chapter.

7002.31

A change to subheading 7002.31 from any other heading.

7002.32 – 7002.39

A change to subheading 7002.32 through 7002.39 from any other chapter.

70.03 – 70.07

A change to heading 70.03 through 70.07 from any other heading outside that group.

70.08

A change to heading 70.08 from any other heading.

70.09 – 70.18

A change to heading 70.09 through 70.18 from any other heading outside that group, except from heading 70.07 through 70.08.

70.19

A change to heading 70.19 from any other heading, except from heading 70.07 through 70.20.

Note 1 for chapters 50 through 63 applies to this heading.

70.20

A change to heading 70.20 from any other heading.

**Section XIV**

**Natural or Cultured Pearls, Precious or Semi-Precious Stones, Precious Metals, Metals Clad with Precious Metal and Articles Thereof; Imitation Jewelry; Coin (Chapter 71)**

**Chapter 71**

**Natural or Cultured Pearls, Precious or Semi-Precious Stones, Precious Metals, Metals Clad with Precious Metal and Articles Thereof, Imitation Jewelry; Coin**

71.01

A change to heading 71.01 from any other heading.

71.02 – 71.03

A change to heading 71.02 through 71.03 from any other chapter.

71.04 – 71.05

A change to heading 71.04 through 71.05 from any other heading.

71.06 – 71.08

A change to heading 71.06 through 71.08 from any other chapter.

71.09

A change to heading 71.09 from any other heading.

71.10 – 71.11

A change to heading 71.10 through 71.11 from any other chapter.

71.12

A change to heading 71.12 from any other heading.

71.13

A change to heading 71.13 from any other heading, except from heading 71.16.

71.14 – 71.15

A change to heading 71.14 through 71.15 from any other heading.

71.16

A change to heading 71.16 from any other heading, except from heading 71.13.

71.17 – 71.18

A change to heading 71.17 through 71.18 from any other heading.

**Section XV**

**Base Metals and Articles of Base Metal (Chapter 72-83)**

**Chapter 72**

**Iron and Steel**

72.01 – 72.05

A change to heading 72.01 through 72.05 from any other chapter.

72.06 – 72.07

A change to heading 72.06 through 72.07 from any heading outside that group.

72.08 – 72.29

A change to heading 72.08 through 72.29 from any other heading.

**Chapter 73**

**Articles of Iron or Steel**

73.01 – 73.07

A change to heading 73.01 through 73.07 from any other chapter; or

A change to a good of subheading 7304.41 having an external diameter of less than 19 mm from subheading 7304.49.

## 73.08

A change to heading 73.08 from any other heading, except for changes resulting from the following processes performed on angles, shapes, or sections classified in heading 72.16:

- (a) drilling, punching, notching, cutting, cambering, or sweeping, whether performed individually or in combination;
- (b) adding attachments or weldments for composite construction;
- (c) adding attachments for handling purposes;
- (d) adding weldments, connectors, or attachments to H-sections or I-sections; provided that the maximum dimension of the weldments, connectors, or attachments is not greater than the dimension between the inner surfaces of the flanges of the H-sections or I-sections;
- (e) painting, galvanizing, or otherwise coating; or
- (f) adding a simple base plate without stiffening elements, individually or in combination with drilling, punching, notching, or cutting, to create a good suitable as a column.

## 73.09 – 73.11

A change to heading 73.09 through 73.11 from any other heading outside that group.

## 73.12 – 73.14

A change to heading 73.12 through 73.14 from any other heading.

## 7315.11 – 7315.12

A change to subheading 7315.11 through 7315.12 from any other heading; or

A change to subheading 7315.11 through 7315.12 from subheading 7315.19, whether or not there is also a change from any other heading provided there is a regional value content of not less than:

- (a) 35 percent when the build-up method is used, or
- (b) 45 percent when the build-down method is used.

## 7315.19

A change to subheading 7315.19 from any other heading.

## 7315.20 – 7315.89

A change to subheading 7315.20 through 7315.89 from any other heading; or

A change to subheading 7315.20 through 7315.89 from subheading 7315.90, whether or not there is also a change from any other heading provided there is a regional value content of not less than:

- (a) 35 percent when the build-up method is used, or
- (b) 45 percent when the build-down method is used.

## 7315.90

A change to subheading 7315.90 from any other heading.

## 73.16

A change to heading 73.16 from any other heading, except from heading 73.12 or 73.15.

## 73.17 – 73.18

A change to heading 73.17 through 73.18 from any heading outside that group.

## 73.19 – 73.20

A change to heading 73.19 through 73.20 from any other heading.

## 7321.11

A change to subheading 7321.11 from any other subheading, except cooking chambers, whether or not assembled, the upper panel, whether or not with controls or burners, or door assembly, which includes more than one of the following components: inside panel, external panel, window, or isolation of subheading 7321.90; or

A change to subheading 7321.11 from subheading 7321.90, whether or not there is also a change from any other heading provided there is a regional value content of not less than:

- (a) 35 percent when the build-up method is used, or
- (b) 45 percent when the build-down method is used.

## 7321.12 – 7321.83

A change to subheading 7321.12 through 7321.83 from any other heading; or

A change to subheading 7321.12 through 7321.83 from subheading 7321.90, whether or not there is also a change from any other heading provided there is a regional value content of not less than:

- (a) 35 percent when the build-up method is used, or

- (b) 45 percent when the build-down method is used.

7321.90

A change to subheading 7321.90 from any other heading, or

No change in tariff classification is required provided there is regional value content of not less than:

- (a) 35 percent when the build-up method is used, or
- (b) 45 percent when the build-down method is used.

73.22 – 73.23

A change to heading 73.22 through 73.23 from any heading outside that group.

7324.10 – 7324.29

A change to subheading 7324.10 through 7324.29 from any other heading; or

No change in tariff classification is required provided that there is a regional value content of not less than:

- (a) 35 percent when the build-up method is used, or
- (b) 45 percent when the build-down method is used.

7324.90

A change to subheading 7324.90 from any other heading.

7325.10 – 7326.20

A change to subheading 7325.10 through 7326.20 from any subheading outside that group.

7326.90

A change to subheading 7326.90 from any other heading, except from heading 73.25.

**Chapter 74  
Copper and Articles Thereof**

74.01 – 74.03

A change to heading 74.01 through 74.03 from any other heading.

74.04

No change in tariff classification is required provided there is regional value content of not less than:

- (a) 35 percent when the build-up method is used, or

(b) 45 percent when the build-down method is used.

74.05 – 74.07

A change to heading 74.05 through 74.07 from any other heading.

74.08

A change to heading 74.08 from any other heading except from heading 74.07.

74.09

A change to heading 74.09 from any other heading.

74.10

A change to heading 74.10 from any other heading, except from plate, sheet, or strip classified in heading 74.09 of a thickness less than 5mm.

74.11 – 74.19

A change to heading 74.11 through 74.19 from any other heading.

**Chapter 75**

**Nickel and Articles Thereof**

75.01 – 75.05

A change to heading 75.01 through 75.05 from any other heading.

75.06

A change to heading 75.06 from any other heading; or

A change to foil, not exceeding 0.15 mm in thickness, from any other good of heading 75.06 provided that there has been a reduction in thickness of no less than 50 percent.

7507.11 – 7508.90

A change to subheading 7507.11 through 7508.90 from any other subheading.

**Chapter 76**

**Aluminum and Articles Thereof**

76.01

A change to heading 76.01 from any other chapter.

76.02

A change to heading 76.02 from any other heading.

76.03

A change to heading 76.03 from any other chapter.

76.04

A change to heading 76.04 from any other heading, except from heading 76.05 through 76.06.

76.05

A change to heading 76.05 from any other heading except from heading 76.04.

7606.11

A change to subheading 7606.11 from any other heading.

7606.12

A change to subheading 7606.12 from any other heading, except from heading 76.04 through 76.06.

7606.91

A change to subheading 7606.91 from any other heading.

7606.92

A change to subheading 7606.92 from any other heading, except from heading 76.04 through 76.06.

7607.11

A change to subheading 7607.11 from any other heading.

7607.19 – 7607.20

A change to subheading 7607.19 through 7607.20 from any other heading; or

No change in tariff classification is required provided that there is a regional value content of not less than:

(a) 30 percent when the build-up method is used, or

(b) 35 percent when the build-down method is used.

76.08 – 76.09

A change to heading 76.08 through 76.09 from any other heading outside that group.

76.10 – 76.13

A change to heading 76.10 through 76.13 from any other heading.

76.14

A change to subheading 76.14 from any other heading.

76.15

A change to heading 76.15 from any other heading.

7616.10

A change to subheading 7616.10 from any other heading.

7616.91 – 7616.99

A change to subheading 7616.91 through 7616.99 from any other subheading.

**Chapter 78**

**Lead and Articles Thereof**

78.01 – 78.02

A change to heading 78.01 through 78.02 from any other chapter.

78.03 – 78.06

A change to heading 78.03 through 78.06 from any other heading.

**Chapter 79**

**Zinc and Articles Thereof**

79.01 – 79.02

A change to heading 79.01 through 79.02 from any other chapter.

7903.10

A change to subheading 7903.10 from any other chapter.

7903.90

A change to subheading 7903.90 from any other heading.

79.04 – 79.07

A change to heading 79.04 through 79.07 from any other heading.

**Chapter 80**

**Tin and Articles Thereof**

80.01 – 80.02

A change to heading 80.01 through 80.02 from any other chapter.

80.03 – 80.04

A change to heading 80.03 through 80.04 from any other heading.

80.05

A change to heading 80.05 from any other heading except from heading 80.04.

80.06 – 80.07

A change to heading 80.06 through 80.07 from any other heading.

**Chapter 81**  
**Other Base Metals; Cermets; Articles Thereof**

8101.10 – 8101.94

A change to subheading 8101.10 through 8101.94 from any other chapter.

8101.95

A change to subheading 8101.95 from any other subheading.

8101.96

A change to subheading 8101.96 from any other subheading, except from subheading 8101.95.

8101.97

A change to subheading 8101.97 from any other chapter.

8101.99

A change to subheading 8101.99 from any other subheading.

8102.10 – 8102.94

A change to subheading 8102.10 through 8102.94 from any other chapter.

8102.95

A change to subheading 8102.95 from any other subheading.

8102.96

A change to subheading 8102.96 from any other subheading, except from subheading 8102.95.

8102.97

A change to subheading 8102.97 from any other chapter.

8102.99

A change to subheading 8102.99 from any other subheading.

8103.20

A change to subheading 8103.20 from any other chapter.

8103.30

A change to subheading 8103.30 from any other chapter.

8103.90

A change to subheading 8103.90 from any other subheading.

8104.11 – 8104.20

A change to subheading 8104.11 through 8104.20 from any other chapter.

8104.30 – 8104.90

A change to subheading 8104.30 through 8104.90 from any other subheading.

8105.20

A change to subheading 8105.20 from any other chapter.

8105.30

A change to subheading 8105.30 from any other chapter.

8105.90

A change to subheading 8105.90 from any other subheading.

81.06

A change to heading 81.06 from any other chapter, or

No change in tariff classification is required provided that there is a regional value content of not less than:

(a) 35 percent when the build-up method is used, or

(b) 45 percent when the build-down method is used.

8107.20

A change to subheading 8107.20 from any other chapter.

8107.30

A change to subheading 8107.30 from any other chapter.

8107.90

A change to subheading 8107.90 from any other subheading.

8108.20

A change to subheading 8108.20 from any other chapter.

8108.30

A change to subheading 8108.30 from any other chapter.

8108.90

A change to subheading 8108.90 from any other subheading.

8109.20

A change to subheading 8109.20 from any other chapter.

8109.30

A change to subheading 8109.30 from any other chapter.

8109.90

A change to subheading 8109.90 from any other subheading.

81.10

A change to heading 81.10 from any other chapter, or

No change in tariff classification is required provided that there is a regional value content of not less than:

- (a) 35 percent when the build-up method is used, or
- (b) 45 percent when the build-down method is used.

81.11

A change to heading 81.11 from any other chapter, or

No change in tariff classification is required provided that there is a regional value content of not less than:

- (a) 35 percent when the build-up method is used, or
- (b) 45 percent when the build-down method is used.

8112.12

A change to subheading 8112.12 from any other chapter.

8112.13

A change to subheading 8112.13 from any other chapter.

8112.19

A change to subheading 8112.19 from any other subheading provided that there is a regional value content of not less than:

- (a) 35 percent when the build-up method is used, or
- (b) 45 percent when the build-down method is used.

8112.21 – 8112.59

A change to subheading 8112.21 through 8112.59 from any other chapter, or

No change in tariff classification is required provided that there is a regional value content of not less than:

- (a) 35 percent when the build-up method is used, or
- (b) 45 percent when the build-down method is used.

8112.92

A change to subheading 8112.92 from any other chapter.

8112.99

A change to subheading 8112.99 from any other subheading.

81.13

A change to heading 81.13 from any other chapter, or

No change in tariff classification is required provided that there is a regional value content of not less than:

- (a) 35 percent when the build-up method is used, or
- (b) 45 percent when the build-down method is used.

**Chapter 82**

**Tools, Implements, Cutlery, Spoons and Forks, of Base Metal; Parts Thereof of Base Metal**

82.01 – 82.06

A change to heading 82.01 through 82.06 from any other chapter.

8207.13

A change to subheading 8207.13 from any other chapter; or

A change to subheading 8207.13 from heading 82.09 or subheading 8207.19 provided that there is a regional value content of not less than:

- (a) 35 percent when the build-up method is used, or
- (b) 45 percent when the build-down method is used.

8207.19 – 8207.90

A change to subheading 8207.19 through 8207.90 from any other chapter.

82.08 – 82.15

A change to heading 82.08 through 82.15 from any other chapter; or

A change to subheading 8211.91 through 8211.93 from subheading 8211.95, whether or not there is also a change from another chapter provided there is a regional value content of not less than:

- (a) 35 percent when the build-up method is used, or
- (b) 45 percent when the build-down method is used.

**Chapter 83**  
**Miscellaneous Articles of Base Metal**

8301.10 – 8301.40

A change to subheading 8301.10 through 8301.40 from any other chapter; or

A change to subheading 8301.10 through 8301.40 from subheading 8301.60, whether or not there is also a change from any other chapter, provided that there is a regional value content of not less than:

- (a) 35 percent when the build-up method is used, or
- (b) 45 percent when the build-down method is used.

8301.50

A change to subheading 8301.50 from any other chapter; or

A change to subheading 8301.50 from any other subheading provided there is a regional value content of not less than:

- (a) 35 percent when the build-up method is used, or
- (b) 45 percent when the build-down method is used.

8301.60 – 8301.70

A change to subheading 8301.60 through 8301.70 from any other chapter.

83.02 – 83.04

A change to heading 83.02 through 83.04 from any other heading.

8305.10 – 8305.20

A change to subheading 8305.10 through 8305.20 from any other chapter; or

A change to subheading 8305.10 through 8305.20 from any other subheading provided that there is a regional value content of not less than:

- (a) 35 percent when the build-up method is used, or

- (b) 45 percent when the build-down method is used.

8305.90

A change to subheading 8305.90 from any other heading.

8306.10

A change to subheading 8306.10 from any other chapter.

8306.21 – 8306.30

A change to subheading 8306.21 through 8306.30 from any other heading.

83.07

A change to heading 83.07 from any other heading.

8308.10 – 8308.20

A change to subheading 8308.10 through 8308.20 from any other chapter; or

A change to subheading 8308.10 through 8308.20 from any other subheading provided that there is a regional value content of not less than:

- (a) 35 percent when the build-up method is used, or
- (b) 45 percent when the build-down method is used.

8308.90

A change to subheading 8308.90 from any other heading.

83.09 – 83.10

A change to heading 83.09 through 83.10 from any other heading.

8311.10 – 8311.30

A change to subheading 8311.10 through 8311.30 from any other chapter; or

A change to subheading 8311.10 through 8311.30 from any other subheading provided that there is a regional value content of not less than:

- (a) 35 percent when the build-up method is used, or
- (b) 45 percent when the build-down method is used.

8311.90

A change to subheading 8311.90 from any other heading.

**Section XVI  
Machinery and Mechanical Appliances; Electrical Equipment; Parts Thereof; Sound  
Recorders and Reproducers, Television Image and Sound Recorders and Reproducers, and  
Parts and Accessories of Such Articles (Chapter 84-85)**

**Chapter 84  
Nuclear Reactors, Boilers, Machinery and Mechanical Appliances; Parts Thereof**

8401.10 – 8401.30

A change to subheading 8401.10 through 8401.30 from any other subheading.

8401.40

A change to subheading 8401.40 from any other heading.

8402.11

A change to subheading 8402.11 from any other heading; or

A change to subheading 8402.11 from subheading 8402.90, whether or not there is also a change from any other heading provided that there is a regional value content of not less than:

- (a) 35 percent when the build-up method is used, or
- (b) 45 percent when the build-down method is used.

8402.12

A change to subheading 8402.12 from any other heading; or

A change to subheading 8402.12 from any other subheading provided that there is a regional value content of not less than:

- (a) 35 percent when the build-up method is used, or
- (b) 45 percent when the build-down method is used.

8402.19

A change to subheading 8402.19 from any other heading; or

A change to subheading 8402.19 from subheading 8402.90, whether or not there is also a change from any other heading provided that there is a regional value content of not less than:

- (a) 35 percent when the build-up method is used, or
- (b) 45 percent when the build-down method is used.

8402.20

A change to subheading 8402.20 from any other heading; or

A change to subheading 8402.20 from any other subheading provided that there is a regional value content of not less than:

- (a) 35 percent when the build-up method is used, or
- (b) 45 percent when the build-down method is used.

8402.90

A change to subheading 8402.90 from any other heading, or

No change in tariff classification is required provided there is a regional value content of not less than:

- (a) 35 percent when the build-up method is used, or
- (b) 45 percent when the build-down method is used.

8403.10

A change to subheading 8403.10 from any other subheading.

8403.90

A change to subheading 8403.90 from any other heading.

8404.10

A change to subheading 8404.10 from any other subheading.

8404.20

A change to subheading 8404.20 from any other heading; or

A change to subheading 8404.20 from subheading 8404.90, whether or not there is also a change from any other heading provided that there is a regional value content of not less than:

- (a) 35 percent when the build-up method is used, or
- (b) 45 percent when the build-down method is used.

8404.90

A change to subheading 8404.90 from any other heading.

8405.10

A change to subheading 8405.10 from any other subheading.

8405.90

A change to subheading 8405.90 from any other heading.

8406.10

A change to subheading 8406.10 from any other subheading.

8406.81 – 8406.82

A change to subheading 8406.81 through 8406.82 from any other subheading outside that group.

8406.90

A change to subheading 8406.90 from any other heading; or,

A change to rotors, finished for final assembly, from rotors, not further advanced than cleaned or machined for removal of fins, gates, sprues, and risers, or to permit location in finishing machinery of subheading 8406.90, from any other good, whether or not a change in tariff classification occurs; or

A change to blades, rotating or stationary of subheading 8406.90 from any other good, including a good in that subheading, whether or not a change in tariff classification occurs.

8407.10

A change to subheading 8407.10 from any other heading.

8407.21 – 8407.29

A change to subheading 8407.21 through 8407.29 from any other heading.

8407.31 – 8407.34

A change to subheading 8407.31 through 8407.34 from any other heading; or

No change in tariff classification is required provided there is a regional value content of not less than:

- (a) 35 percent when the net cost method is used,
- (b) 35 percent when the build-up method is used, or
- (c) 50 percent when the build-down method is used.

8407.90

A change to subheading 8407.90 from any other heading.

8408.10

A change to subheading 8408.10 from any other heading.

500

8408.20

A change to subheading 8408.20 from any other heading; or

No change in tariff classification is required provided there is a regional value content of not less than:

- (a) 35 percent when the net cost method is used,
- (b) 35 percent when the build-up method is used, or
- (c) 50 percent when the build-down method is used.

8408.90

A change to subheading 8408.90 from any other heading.

84.09

No change in tariff classification is required provided there is a regional value content of not less than:

- (a) 35 percent when the net cost method is used,
- (b) 35 percent when the build-up method is used, or
- (c) 50 percent when the build-down method is used.

8410.11– 8410.13

A change to subheading 8410.11 through 8410.13 from any other subheading outside that group.

8410.90

A change to subheading 8410.90 from any other heading.

8411.11 – 8411.82

A change to subheading 8411.11 through 8411.82 from any other subheading outside that group.

8411.91 – 8411.99

A change to subheading 8411.91 through 8411.99 from any other heading.

8412.10 – 8412.80

A change to subheading 8412.10 through 8412.80 from any other subheading.

8412.90

A change to subheading 8412.90 from any other heading.

8413.11 – 8413.82

A change to subheading 8413.11 through 8413.82 from any other subheading.

501

8413.91 – 8413.92

A change to subheading 8413.91 through 8413.92 from any other heading; or

No change in tariff classification is required for subheading 8413.92 provided there is a regional value content of not less than:

- (a) 35 percent when the build-up method is used, or
- (b) 45 percent when the build-down method is used.

8414.10 – 8414.80

A change to subheading 8414.10 through 8414.80 from any other heading; or

A change to subheading 8414.10 through 8414.80 from subheading 8414.90, whether or not there is also a change from any other heading provided that there is a regional value content of not less than:

- (a) 35 percent when the build-up method is used, or
- (b) 45 percent when the build-down method is used.

8414.90

A change to subheading 8414.90 from any other heading, or

No change in tariff classification is required provided there is a regional value content of not less than:

- (a) 35 percent when the build-up method is used, or
- (b) 45 percent when the build-down method is used.

8415.10 – 8415.83

A change to subheading 8415.10 through 8415.83 from any other subheading.

8415.90

A change to subheading 8415.90 from any other heading; or

A change to chassis, chassis bases and outer cabinets of subheading 8415.90 from any other good, including a good in that subheading.

8416.10 – 8416.90

A change to subheading 8416.10 through 8416.90 from any other subheading

8417.10 – 8417.80

A change to subheading 8417.10 through 8417.80 from any other subheading.

8417.90

A change to subheading 8417.90 from any other heading.

8418.10 – 8418.69

A change to subheading 8418.10 through 8418.69 from any other subheading outside that group, except from subheading 8418.91.

8418.91 – 8418.99

A change to subheading 8418.91 through 8418.99 from any other heading.

8419.11 – 8419.89

A change to subheading 8419.11 through 8419.89 from any other subheading.

8419.90

A change to subheading 8419.90 any other heading; or

No change in tariff classification is required provided there is a regional value content of not less than:

- (a) 35 percent when the build-up method is used, or
- (b) 45 percent when the build-down method is used.

8420.10

A change to subheading 8420.10 from any other subheading.

8420.91 – 8420.99

A change to subheading 8420.91 through 8420.99 from any other heading.

8421.11 – 8421.39

A change to subheading 8421.11 through 8421.39 from any other subheading.

8421.91

A change to subheading 8421.91 from any other heading, or

No change in tariff classification is required provided there is a regional value content of not less than:

- (a) 35 percent when the build-up method is used, or
- (b) 45 percent when the build-down method is used.

8421.99

A change to subheading 8421.99 from any other heading, or

No change in tariff classification is required provided there is regional value content of not less than:

- (a) 35 percent when the build-up method is used, or
- (b) 45 percent when the build-down method is used.

8422.11 – 8422.40

A change to subheading 8422.11 through 8422.40 from any other subheading.

8422.90

A change to subheading 8422.90 from any other heading, or

No change in tariff classification is required provided there is a regional value content of not less than:

- (a) 35 percent when the build-up method is used, or
- (b) 45 percent when the build-down method is used.

8423.10 – 8423.89

A change to subheading 8423.10 through 8423.89 from any other subheading.

8423.90

A change to subheading 8423.90 from any other heading.

8424.10 – 8424.90

A change to subheading 8424.10 through 8424.90 from any other subheading.

8425.11 – 8430.69

A change to subheading 8425.11 through 8430.69 from any other subheading.

84.31

A change to heading 84.31 from any other heading; or

No change in tariff classification to subheading 8431.10, 8431.31, 8431.39, 8431.43 or 8431.49 is required provided there is a regional value content of not less than:

- (a) 35 percent when the build-up method is used, or
- (b) 45 percent when the build-down method is used.

8432.10 – 8432.90

A change to subheading 8432.10 through 8432.90 from any other subheading.

8433.11 – 8433.90

A change to subheading 8433.11 through 8433.90 from any other subheading.

8434.10 – 8434.90

A change to subheading 8434.10 through 8434.90 from any other subheading.

8435.10 – 8435.90

A change to subheading 8435.10 through 8435.90 from any other subheading.

8436.10 – 8436.99

A change to subheading 8436.10 through 8436.99 from any other subheading.

8437.10 – 8437.90

A change to subheading 8437.10 through 8437.90 from any other subheading.

8438.10 – 8438.80

A change to subheading 8438.10 through 8438.80 from any other subheading.

8438.90

A change to subheading 8438.90 from any other heading.

8439.10 – 8439.99

A change to subheading 8439.10 through 8439.99 from any other subheading.

8440.10 – 8440.90

A change to subheading 8440.10 through 8440.90 from any other subheading.

8441.10 – 8441.80

A change to subheading 8441.10 through 8441.80 from any other subheading.

8441.90

A change to subheading 8441.90 from any other heading, or

No change in tariff classification is required provided there is a regional value content of not less than:

(a) 35 percent when the build-up method is used, or

(b) 45 percent when the build-down method is used.

8442.10 – 8442.30

A change to subheading 8442.10 through 8442.30 from any other subheading outside that group.

8442.40 – 8442.50

A change to subheading 8442.40 through 8442.50 from any other heading.

8443.11 – 8443.59

A change to subheading 8443.11 through 8443.59 from any other subheading outside that group, except from subheading 8443.60, or

A change to subheading 8443.11 through 8443.59 from subheading 8443.60, provided there is a regional value content of not less than:

- (a) 35 percent when the build-up method is used, or
- (b) 45 percent when the build-down method is used.

8443.60

A change to subheading 8443.60 from any other subheading, except from subheading 8443.11 through 8443.59.

8443.90

A change to subheading 8443.90 from any other heading.

84.44

A change to heading 84.44 from any other heading.

84.45 – 84.47

A change to heading 84.45 through 84.47 from any other heading outside that group.

8448.11 – 8448.19

A change to subheading 8448.11 through 8448.19 from any other subheading.

8448.20 – 8448.59

A change to subheading 8448.20 through 8448.59 from any other heading.

84.49

A change to heading 84.49 from any other heading.

8450.11 – 8450.20

A change to subheading 8450.11 through 8450.20 from any other subheading.

8450.90

A change to subheading 8450.90 from any other heading.

8451.10 – 8451.80

A change to subheading 8451.10 through 8451.80 from any other subheading.

8451.90

A change to subheading 8451.90 from any other heading.

8452.10 – 8452.29

A change to subheading 8452.10 through 8452.29 from any other subheading outside that group.

8452.30 – 8452.40

A change to subheading 8452.30 through 8452.40 from any other subheading.

8452.90

A change to subheading 8452.90 from any other heading.

8453.10 – 8453.80

A change to subheading 8453.10 through 8453.80 from any other subheading.

8453.90

A change to subheading 8453.90 from any other heading.

8454.10 – 8454.30

A change to subheading 8454.10 through 8454.30 from any other subheading.

8454.90

A change to subheading 8454.90 from any other heading.

8455.10 – 8455.90

A change to subheading 8455.10 through 8455.90 from any other subheading.

84.56 – 84.63

A change to heading 84.56 through 84.63 from any other heading provided there is a regional value content of not less than 65 percent when the build down method is used.

84.64 – 84.65

A change to heading 84.64 through 84.65 from any other heading.

84.66

A change to heading 84.66 from any other heading provided there is a regional value content of not less than:

(a) 35 percent when the build-up method is used, or

(b) 45 percent when the build-down method is used.

8467.11 – 8467.89

A change to subheading 8467.11 through 8467.89 from any other subheading.

8467.91

A change to subheading 8467.91 from any other heading.

8467.92 – 8467.99

A change to subheading 8467.92 through 8467.99 from any other heading, except from heading 84.07.

8468.10 – 8468.80

A change to subheading 8468.10 through 8468.80 from any other subheading.

8468.90

A change to subheading 8468.90 from any other heading.

8469.11 – 8469.12

A change to subheading 8469.11 through 8469.12 from any other subheading outside that group.

8469.20 – 8469.30

A change to subheading 8469.20 through 8469.30 from any other subheading outside that group.

8470.10 – 8471.90

A change to subheading 8470.10 through 8471.90 from any other subheading.

8472.10 – 8472.90

A change to subheading 8472.10 through 8472.90 from any other subheading.

8473.10 – 8473.50

A change to subheading 8473.10 through 8473.50 from any other subheading; or

No change in tariff classification is required provided there is a regional value content of not less than:

- (a) 30 percent when the build-up method is used, or
- (b) 35 percent when the build-down method is used.

8474.10 – 8474.80

A change to subheading 8474.10 through 8474.80 from any other subheading outside that group.

8474.90

A change to subheading 8474.90 from any other heading, or

No change in tariff classification is required provided there is a regional value content of not less than:

- (a) 35 percent when the build-up method is used, or
- (b) 45 percent when the build-down method is used.

8475.10

A change to subheading 8475.10 from any other subheading.

8475.21 – 8475.29

A change to subheading 8475.21 through 8475.29 from any other subheading outside that group.

8475.90

A change to subheading 8475.90 from any other heading.

8476.21 – 8476.89

A change to subheading 8476.21 through 8476.89 from any other subheading outside that group.

8476.90

A change to subheading 8476.90 from any other heading.

84.77

A change to heading 84.77 from any other heading provided there is a regional value content of not less than:

- (a) 35 percent when the build-up method is used, or
- (b) 45 percent when the build-down method is used; or

A change to subheadings 8477.10 through 8477.80 from subheading 8477.90 provided there is a regional value content of not less than:

- (a) 35 percent when the build-up method is used, or
- (b) 45 percent when the build-down method is used.

8478.10

A change to subheading 8478.10 from any other subheading.

8478.90

A change to subheading 8478.90 from any other heading.

8479.10 – 8479.89

A change to subheading 8479.10 through 8479.89 from any other subheading.

8479.90

A change to subheading 8479.90 from any other subheading.

84.80

A change to heading 84.80 from any other heading.

84.81

A change to heading 84.81 from any other heading.

8482.10 – 8482.80

A change to subheading 8482.10 through 8482.80 from any subheading outside that group, except from inner or outer rings or races of subheading 8482.99; or

A change to subheading 8482.10 through 8482.80 from inner or outer rings or races of subheading 8482.99, whether or not there is also a change from any subheading outside that group, provided there is a regional value content of not less than 40 percent when the build-up method is used.

8482.91 – 8482.99

A change to subheading 8482.91 through 8482.99 from any other heading.

8483.10

A change to subheading 8483.10 from any other subheading.

8483.20

A change to subheading 8483.20 from any other subheading, except from subheading 8482.10 through 8482.80.

8483.30

A change to subheading 8483.30 from any other heading, or

A change to subheading 8483.30 from any other subheading provided there is a regional value content of not less than 40 percent when the build up method is used.

8483.40 – 8483.50

A change to subheading 8483.40 through 8483.50 from any subheading, except from subheading 8482.10 through 8482.80, 8482.99, 8483.10 through 8483.40, 8483.60 or 8483.90; or

A change to subheading 8483.40 through 8483.50 from subheading 8482.10 through 8482.80, 8482.99, 8483.10 through 8483.40, 8483.60 or 8483.90 provided there is a regional value content of not less than 40 percent when the build up method is used.

8483.60

A change to subheading 8483.60 from any other subheading.

8483.90

A change to subheading 8483.90 from any other heading.

8484.10 – 8484.90

A change to subheading 8484.10 through 8484.90 from any other subheading.

84.85

A change to heading 84.85 from any other heading.

**Chapter 85**

**Electrical Machinery and Equipment and Parts Thereof; Sound Recorders and Reproducers, Television Image and Sound Recorders and Reproducers, and Parts and Accessories of Such Articles**

8501.10

A change to subheading 8501.10 from any other heading, except from stators or rotors of heading 85.03; or

A change to subheading 8501.10 from stators or rotors of heading 85.03, whether or not there is also a change from any other heading provided there is a regional value content of not less than:

- (a) 35 percent when the build-up method is used, or
- (b) 45 percent when the build-down method is used.

8501.20 – 8501.64

A change to subheading 8501.20 through 8501.64 from any other heading.

85.02 – 85.03

A change to heading 85.02 through 85.03 from any other heading.

8504.10 – 8504.23

A change to subheading 8504.10 through 8504.23 from any subheading outside subheading 8504.10 through 8504.50.

8504.31

A change to subheading 8504.31 from any other heading; or

A change to subheading 8504.31 from subheading 8504.90, whether or not there is also a change from any other heading provided there is a regional value content of not less than:

- (a) 35 percent when the build-up method is used, or
- (b) 45 percent when the build-down method is used.

8504.32 – 8504.50

A change to subheading 8504.32 through 8504.50 from any subheading outside subheading 8504.10 through 8504.50.

8504.90

A change to subheading 8504.90 from any other heading.

8505.11 – 8505.30

A change to subheading 8505.11 through 8505.30 from any other subheading.

8505.90

A change to subheading 8505.90 from any other heading.

8506.10 – 8506.40

A change to subheading 8506.10 through 8506.40 from any other subheading.

8506.50 – 8506.80

A change to subheading 8506.50 through 8506.80 from any other subheading outside that group.

8506.90

A change to subheading 8506.90 from any other heading.

8507.10

A change to subheading 8507.10 from any other heading; or

A change to subheading 8507.10 from any other subheading, whether or not there is also a change from any other heading provided there is a regional value content of not less than:

- (a) 35 percent when the build-up method is used, or
- (b) 45 percent when the build-down method is used.

8507.20 – 8507.80

A change to subheading 8507.20 through 8507.80 from any other subheading.

8507.90

A change to subheading 8507.90 from any other heading.

8509.10 – 8509.80

A change to subheading 8509.10 through 8509.80 from any other heading; or

A change to subheading 8509.10 through 8509.80 from any other subheading, whether or not there is also a change from any other heading provided there is a regional value content of not less than:

- (a) 35 percent when the build-up method is used, or
- (b) 45 percent when the build-down method is used.

8509.90

A change to subheading 8509.90 from any other heading.

8510.10 – 8510.30

A change to subheading 8510.10 through 8510.30 from any other subheading.

8510.90

A change to subheading 8510.90 from any other heading.

8511.10 – 8511.80

A change to subheading 8511.10 through 8511.80 from any other subheading.

8511.90

A change to subheading 8511.90 from any other heading.

8512.10 – 8512.30

A change to subheading 8512.10 through 8512.30 from any other subheading outside that group.

8512.40

A change to subheading 8512.40 from any other heading; or

A change to subheading 8512.40 from subheading 8512.90, whether or not there is also a change from any other heading provided there is also a regional value content of not less than:

- (a) 35 percent when the build-up method is used, or
- (b) 45 percent when the build-down method is used.

8512.90

A change to subheading 8512.90 from any other heading.

8513.10

A change to subheading 8513.10 from any other heading; or

A change to subheading 8513.10 from subheading 8513.90, whether or not there is also a change from any other heading provided there is a regional value content of not less than:

- (a) 35 percent when the build-up method is used, or
- (b) 45 percent when the build-down method is used.

8513.90

A change to subheading 8513.90 from any other heading.

8514.10 – 8514.40

A change to subheading 8514.10 through 8514.40 from any other subheading.

8514.90

A change to subheading 8514.90 from any other heading.

8515.11 – 8515.80

A change to subheading 8515.11 through 8515.80 from any other subheading outside that group.

8515.90

A change to subheading 8515.90 from any other heading.

8516.10 – 8516.50

A change to subheading 8516.10 through 8516.50 from any other subheading.

8516.60

A change to subheading 8516.60 from any other subheading, except furnitures, whether or not assembled, cooking chambers, whether assembled or not and the upper panel, whether or not with heating or control elements, classified in subheading 8516.90; or

A change to subheading 8516.60 from subheading 8516.90, whether or not there is also a change from any other heading provided there is a regional value content of not less than:

- (a) 35 percent when the build-up method is used, or
- (b) 45 percent when the build-down method is used.

8516.71

A change to subheading 8516.71 from any other subheading.

8516.72

A change to subheading 8516.72 from any other subheading, except from housings for toasters of subheading 8516.90 or 9032.10; or

A change to subheading 8516.72 from housings for toasters of subheading 8516.90 or 9032.10, whether or not there is also a change from any other subheading, provided there is a regional value content of not less than:

- (a) 35 percent when the build-up method is used, or
- (b) 45 percent when the build-down method is used.

8516.79

A change to subheading 8516.79 from any other subheading.

8516.80

A change to subheading 8516.80 from any other heading; or

A change to subheading 8516.80 from 8516.90, whether or not there is also a change from any other heading provided there is a regional value content of not less than:

- (a) 35 percent when the build-up method is used, or
- (b) 45 percent when the build-down method is used.

8516.90

A change to subheading 8516.90 from any other heading, or

No change in tariff classification is required provided there is a regional value content of not less than:

- (a) 35 percent when the build-up method is used, or
- (b) 45 percent when the build-down method is used.

8517.11 – 8517.80

A change to subheading 8517.11 through 8517.80 from any other subheading.

8517.90

A change to subheading 8517.90 from any other subheading, or

No change in tariff classification is required provided there is a regional value content of not less than:

- (a) 35 percent when the build-up method is used, or
- (b) 45 percent when the build-down method is used.

8518.10 – 8518.21

A change to subheading 8518.10 through 8518.21 from any other heading; or

A change to subheading 8518.10 through 8518.21 from subheading 8518.90, whether or not there is also a change from any other heading provided there is a regional value content of not less than:

- (a) 35 percent when the build-up method is used, or

- (b) 45 percent when the build-down method is used.

8518.22

A change to subheading 8518.22 from any other heading; or

A change to subheading 8518.22 from subheading 8518.29 or 8518.90, whether or not there is also a change from any other heading provided there is a regional value content of not less than:

- (a) 35 percent when the build-up method is used, or
- (b) 45 percent when the build-down method is used.

8518.29 – 8518.50

A change to subheading 8518.29 through 8518.50 from any other heading; or

A change to subheading 8518.29 through 8518.50 from subheading 8518.90, whether or not there is also a change from any other heading provided there is a regional value content of not less than:

- (a) 35 percent when the build-up method is used, or
- (b) 45 percent when the build-down method is used.

8518.90

A change to subheading 8518.90 from any other heading.

8519.10 – 8519.40

A change to subheading 8519.10 through 8519.40 from any other subheading.

8519.92 – 8519.93

A change to subheading 8519.92 through 8519.93 from any other subheading outside that group.

8519.99

A change to subheading 8519.99 from any other subheading.

8520.10 – 8520.20

A change to subheading 8520.10 through 8520.20 from any other subheading.

8520.32 – 8520.33

A change to subheading 8520.32 through 8520.33 from any other subheading outside that group.

8520.39 – 8520.90

A change to subheading 8520.39 through 8520.90 from any other subheading.

8521.10 – 8521.90

A change to subheading 8521.10 through 8521.90 from any other subheading.

8522.10 – 8524.99

A change to subheading 8522.10 through 8524.99 from any other subheading.

8525.10 – 8525.20

A change to subheading 8525.10 through 8525.20 from any other subheading outside that group.

8525.30 – 8525.40

A change to subheading 8525.30 through 8525.40 from any other subheading.

8526.10 – 8526.92

A change to subheading 8526.10 through 8526.92 from any other subheading.

8527.12 – 8527.90

A change to subheading 8527.12 through 8527.90 from any other subheading.

8528.12

A change to subheading 8528.12 from any other subheading, except from subheading 7011.20, 8540.11, or 8540.91.

8528.13

A change to subheading 8528.13 from any other subheading.

8528.21

A change to subheading 8528.21 from any other subheading, except from subheading 7011.20, 8540.11, or 8540.91.

8528.22 – 8528.30

A change to subheading 8528.22 through 8528.30 from any other subheading.

85.29

A change to heading 85.29 from any other heading; or

A change to subheading 8529.10 from any other heading; or

No change in tariff classification is required for subheading 8529.90 provided there is a regional value content of not less than:

- (a) 35 percent when the build-up method is used, or
- (b) 45 percent when the build-down method is used.

8530.10 – 8530.80

A change to subheading 8530.10 through 8530.80 from any other subheading.

8530.90

A change to subheading 8530.90 from any other heading.

8531.10 – 8531.80

A change to subheading 8531.10 through 8531.80 from any other subheading.

8531.90

A change to subheading 8531.90 from any other heading.

8532.10 – 8532.30

A change to subheading 8532.10 through 8532.30 from any other subheading.

8532.90

A change to subheading 8532.90 from any other heading.

8533.10 – 8533.40

A change to subheading 8533.10 through 8533.40 from any other subheading.

8533.90

A change to subheading 8533.90 from any other heading.

85.34

A change to heading 85.34 from any other heading; or

No change in tariff classification is required provided there is a regional value content of not less than:

- (a) 30 percent when the build-up method is used, or
- (b) 35 percent when the build-down method is used.

8535.10 – 8536.90

A change to subheading 8535.10 through 8536.90 from any other subheading.

85.37 – 85.38

A change to heading 85.37 through 85.38 from any other heading.

8539.10 – 8539.49

A change to subheading 8539.10 through 8539.49 from any other subheading.

8539.90

A change to subheading 8539.90 from any other heading.

8540.11

A change to subheading 8540.11 from any other subheading, except from subheading 7011.20 or 8540.91

8540.12

A change to subheading 8540.12 from any other subheading.

8540.20

A change to subheading 8540.20 from any other heading; or

A change to subheading 8540.20 from subheading 8540.91 through 8540.99, whether or not there is also a change from any other heading provided there is a regional value content of not less than:

- (a) 35 percent when the build-up method is used, or
- (b) 45 percent when the build-down method is used.

8540.40 – 8540.60

A change to subheading 8540.40 through 8540.60 from any other subheading outside that group.

8540.71 – 8540.89

A change to subheading 8540.71 through 8540.89 from any other subheading.

8540.91

A change to subheading 8540.91 from any other heading; or

A change to a front panel assembly of subheading 8540.91 from any other good including a good in that heading.

8540.99

A change to subheading 8540.99 from any other subheading, or

No change in tariff classification is required provided that there is a regional value content of not less than:

- (a) 35 percent when the build-up method is used, or
- (b) 45 percent when the build-down method is used.

8541.10 – 8542.90

A change to assembled semiconductor devices, integrated circuits, or microassemblies of subheading 8541.10 through 8542.90 from unmounted chips, wafers, or dice of subheading 8541.10 through 8542.90 or from any other subheading; or

A change to any other good of subheading 8541.10 through 8542.90 from any other subheading; or

No change in tariff classification is required provided that there is a regional value content of not less than:

- (a) 30 percent when the build-up method is used, or
- (b) 35 percent when the build-down method is used.

8543.11 – 8543.19

A change to subheading 8543.11 through 8543.19 from any other subheading outside that group.

8543.20 – 8543.30

A change to subheading 8543.20 through 8543.30 from any other subheading.

8543.40 – 8543.89

A change to subheading 8543.40 through 8543.89 from any other subheading outside that group.

8543.90

A change to subheading 8543.90 from any other heading.

8544.11

A change to subheading 8544.11 from any other subheading provided there is a regional value content of not less than:

- (a) 35 percent when the build-up method is used, or
- (b) 45 percent when the build-down method is used.

8544.19

A change to subheading 8544.19 from any other subheading provided there is a regional value content of not less than:

- (a) 35 percent when the build-up method is used, or
- (b) 45 percent when the build-down method is used.

8544.20

A change to subheading 8544.20 from any subheading outside subheading 8544.11 through 8544.60, except from heading 74.08, 74.13, 76.05 or 76.14; or

A change to subheading 8544.20 from heading 74.08, 74.13, 76.05 or 76.14, whether or not there is also a change from any other subheading provided there is also a regional value content of not less than:

- (a) 35 percent when the build-up method is used, or
- (b) 45 percent when the build-down method is used.

8544.30

A change to subheading 8544.30 from any other subheading.

8544.41 – 8544.49

A change to subheading 8544.41 through 8544.49 from any other subheading provided there is also a regional value content of not less than:

- (a) 35 percent when the build-up method is used, or
- (b) 45 percent when the build-down method is used.

8544.51 – 8544.59

A change to subheading 8544.51 through 8544.59 from any heading.

8544.60 – 8544.70

A change to subheading 8544.60 through 8544.70 from any other subheading provided there is a regional value content of not less than:

- (a) 35 percent when the build-up method is used, or
- (b) 45 percent when the build-down method is used.

8545.11 – 8545.90

A change to subheading 8545.11 through 8545.90 from any other subheading.

85.46

A change to heading 85.46 from any other heading.

8547.10 – 8547.90

A change to subheading 8547.10 through 8547.90 from any other subheading.

85.48

A change to heading 85.48 from any other heading.

**Section XVII**  
**Vehicles, Aircraft, Vessels and Associated Transport Equipment (Chapter 86-89)**

**Chapter 86**  
**Railway or Tramway Locomotives, Rolling-Stock and Parts Thereof; Railway or Tramway Track Fixtures and Fittings and Parts Thereof; Mechanical (Including Electro-Mechanical) Traffic Signaling Equipment of all Kinds**

86.01 – 86.02

A change to heading 86.01 through 86.02 from any other heading.

86.03 – 86.06

A change to heading 86.03 through 86.06 from any other heading except from heading 86.07; or

A change to heading 86.03 through 86.06 from heading 86.07, whether or not there is also a change from any other heading provided there is a regional value content of not less than:

- (a) 35 percent when the build-up method is used, or
- (b) 45 percent when the build-down method is used.

8607.11 – 8607.12

A change to subheading 8607.11 through 8607.12 from any subheading outside that group.

8607.19

A change to axles of subheading 8607.19 from parts of axles of subheading 8607.19 and a change to wheels, whether or not fitted with axles, of subheading 8607.19 from parts of axles or parts of wheels of subheading 8607.19.

8607.21 – 8607.99

A change to subheading 8607.21 through 8607.99 from any other heading.

86.08 – 86.09

A change to heading 86.08 through 86.09 from any other heading.

**Chapter 87**  
**Vehicles Other Than Railway or Tramway Rolling-Stock, and Parts and Accessories Thereof**

87.01 – 87.06

No change in tariff classification is required provided there is a regional value content of not less than:

- (a) 35 percent when the net cost method is used,

- (b) 35 percent when the build-up method is used, or
- (c) 50 percent when the build-down method is used.

87.07

A change to heading 87.07 from any other heading; or

No change in tariff classification is required provided there is a regional value content of not less than:

- (a) 35 percent when the net cost method is used,
- (b) 35 percent when the build-up method is used, or
- (c) 50 percent when the build-down method is used.

8708.10 – 8708.99

A change to subheading 8708.10 through 8708.99 from any other subheading; or

No change in tariff classification is required provided there is a regional value content of not less than

- (a) 35 percent when the net cost method is used,
- (b) 35 percent when the build-up method is used, or
- (c) 50 percent when the build-down method is used.

8709.11 – 8709.19

A change to subheading 8709.11 through 8709.19 from any other heading; or

A change to subheading 8709.11 through 8709.19 from subheading 8709.90, whether or not there is also a change from any other heading, provided there is a regional value content of not less than:

- (a) 35 percent when the build-up method is used, or
- (b) 45 percent when the build-down method is used.

8709.90

A change to subheading 8709.90 from any other heading.

87.10

A change to heading 87.10 from any other heading.

## 87.11

A change to heading 87.11 from any other heading, except from heading 87.14; or

A change to heading 87.11 from heading 87.14, whether or not there is also a change from any other heading, provided there is a regional value content of not less than:

- (a) 35 percent when the build-up method is used, or
- (b) 45 percent when the build-down method is used.

## 87.12

A change to heading 87.12 from any other heading except from heading 87.14; or

A change to heading 87.12 from heading 87.14, whether or not there is also a change from any other heading provided there is a regional value content of not less than:

- (a) 30 percent when the build-up method is used, or
- (b) 35 percent when the build-down method is used.

## 87.13

A change to heading 87.13 from heading 87.14, whether or not there is also a change from any other heading provided there is a regional value content of not less than:

- (a) 35 percent when the build-up method is used, or
- (b) 45 percent when the build-down method is used.

## 87.14 – 87.15

A change to heading 87.14 through 87.15 from any other heading.

## 8716.10 – 8716.80

A change to subheading 8716.10 through 8716.80 from any other heading; or

A change to subheading 8716.10 through 8716.80 from subheading 8716.90, whether or not there is also a change from any other heading, provided there is a regional value content of not less than:

- (a) 35 percent when the build-up method is used, or
- (b) 45 percent when the build-down method is used.

8716.90

A change to subheading 8716.90 from any other heading.

**Chapter 88  
Aircraft, Spacecraft, and Parts Thereof**

8801.10 – 8803.90

A change to subheading 8801.10 through 8803.90 from any other subheading.

88.04 – 88.05

A change to heading 88.04 through 88.05 from any other heading.

**Chapter 89  
Ships, Boats and Floating Structures**

89.01 – 89.02

A change to heading 89.01 through 89.02 from any other chapter; or

A change to heading 89.01 through 89.02 from any other heading within chapter 89, whether or not there is also a change from any other chapter, provided there is a regional value content of not less than:

- (a) 35 percent when the build-up method is used, or
- (b) 45 percent when the build-down method is used.

89.03

A change to heading 89.03 from any other heading.

89.04 – 89.05

A change to heading 89.04 through 89.05 from any other chapter; or

A change to heading 89.04 through 89.05 from any other heading within chapter 89, whether or not there is also a change from any other chapter, provided there is a regional value content of not less than:

- (a) 35 percent when the build-up method is used, or
- (b) 45 percent when the build-down method is used.

89.06– 89.08

A change to heading 89.06 through 89.08 from any other heading.

**Section XVIII**

**Optical, Photographic, Cinematographic, Measuring, Checking, Precision, Medical or Surgical Instruments and Apparatus; Clocks and Watches; Musical Instruments; Parts and Accessories Thereof (Chapter 90-92)**

**Chapter 90**

**Optical, Photographic, Cinematographic, Measuring, Checking, Precision, Medical or Surgical Instruments and Apparatus; Parts and Accessories Thereof**

9001.10

A change to subheading 9001.10 from any other chapter, except from heading 70.02; or

A change to subheading 9001.10 from heading 70.02, whether or not there is also a change from any other chapter, provided there is a regional value content of not less than:

- (a) 35 percent when the build-up method is used, or
- (b) 45 percent when the build-down method is used.

9001.20 – 9001.30

A change to subheading 9001.20 through 9001.30 from any other heading.

9001.40

A change to subheading 9001.40 from any other heading.

9001.50 – 9001.90

A change to subheading 9001.50 through 9001.90 from any other heading.

9002.11 – 9002.90

A change to subheading 9002.11 through 9002.90 from any other heading except from heading 90.01.

9003.11 – 9003.19

A change to subheading 9003.11 through 9003.19 from any other subheading except from subheading 9003.90; or

A change to subheading 9003.11 through 9003.19 from subheading 9003.90, whether or not there is also a change from any other heading, provided there is a regional value content of not less than:

- (a) 35 percent when the build-up method is used, or

- (b) 45 percent when the build-down method is used.

9003.90

A change to subheading 9003.90 from any other heading.

9004.10

A change to subheading 9004.10 from any other chapter; or

A change to subheading 9004.10 from any other heading within chapter 90, whether or not there is also a change from any other chapter, provided there is a regional value content of not less than:

- (a) 35 percent when the build-up method is used, or
- (b) 45 percent when the build-down method is used.

9004.90

A change to heading 9004.90 from any other heading, except from subheading 9001.40 or 9001.50.

9005.10

A change to subheading 9005.10 from any other subheading.

9005.80

A change to subheading 9005.80 from any subheading, except from heading 90.01 through 90.02 or subheading 9005.90; or

A change to subheading 9005.80 from subheading 9005.90 provided there is a regional value content of not less than:

- (a) 35 percent when the build-up method is used, or
- (b) 45 percent when the build-down method is used.

9005.90

A change to subheading 9005.90 from any other heading.

9006.10 – 9006.30

A change to subheading 9006.10 through 9006.30 from any other heading; or

A change to subheading 9006.10 through 9006.30 from any other subheading provided there is a regional value content of not less than:

- (a) 35 percent when the build-up method is used, or

- (b) 45 percent when the build-down method is used.

9006.40

A change to subheading 9006.40 from any other heading; or

A change to subheading 9006.40 from any other subheading provided there is a regional value content of not less than:

- (a) 35 percent when the build-up method is used, or
- (b) 45 percent when the build-down method is used.

9006.51

A change to subheading 9006.51 from any other heading; or

A change to subheading 9006.51 from any other subheading provided there is a regional value content of not less than:

- (a) 35 percent when the build-up method is used, or
- (b) 45 percent when the build-down method is used.

9006.52

A change to subheading 9006.52 from any other heading; or

A change to subheading 9006.52 from any other subheading provided there is a regional value content of not less than:

- (a) 35 percent when the build-up method is used, or
- (b) 45 percent when the build-down method is used.

9006.53

A change to subheading 9006.53 from any other heading; or

A change to subheading 9006.53 from any other subheading provided there is a regional value content of not less than:

- (a) 35 percent when the build-up method is used, or
- (b) 45 percent when the build-down method is used.

9006.59

A change to subheading 9006.59 from any other heading; or

A change to subheading 9006.59 from any other subheading provided there is a regional value content of not less than:

- (a) 35 percent when the build-up method is used, or
- (b) 45 percent when the build-down method is used.

9006.61 – 9006.69

A change to subheading 9006.61 through 9006.69 from any other heading; or

A change to subheading 9006.61 through 9006.69 from any other subheading provided there is a regional value content of not less than:

- (a) 35 percent when the build-up method is used, or
- (b) 45 percent when the build-down method is used.

9006.91 – 9006.99

A change to subheading 9006.91 through 9006.99 from any other heading.

9007.11 – 9007.20

A change to subheading 9007.11 through 9007.20 from any other heading; or

A change to subheading 9007.11 through 9007.20 from any other subheading provided there is a regional value content of not less than:

- (a) 35 percent when the build-up method is used, or
- (b) 45 percent when the build-down method is used.

9007.91 – 9007.92

A change to subheading 9007.91 through 9007.92 from any other heading; or

No change in tariff classification is required for subheading 9007.92 provided there is a regional value content of not less than:

- (a) 35 percent when the build-up method is used, or
- (b) 45 percent when the build-down method is used.

9008.10

A change to subheading 9008.10 from any other heading, or

A change to subheading 9008.10 from any other subheading provided there is a regional value content of not less than:

- (a) 35 percent when the build-up method is used, or
- (b) 45 percent when the build-down method is used.

9008.20 – 9008.40

A change to subheading 9008.20 through 9008.40 from any other heading; or

A change to subheading 9008.20 through 9008.40 from any other subheading provided there is a regional value content of not less than:

- (a) 35 percent when the build-up method is used, or
- (b) 45 percent when the build-down method is used.

9008.90

A change to subheading 9008.90 from any other heading.

9009.11

A change to subheading 9009.11 from any other subheading.

9009.12

A change to subheading 9009.12 from any other subheading except from subheading 9009.90; or

A change to subheading 9009.12 from subheading 9009.90, whether or not there is also a change from any other subheading, provided there is a regional value content of not less than:

- (a) 35 percent when the build-up method is used, or
- (b) 45 percent when the build-down method is used.

9009.21 – 9009.30

A change to subheading 9009.21 through 9009.30 from any other subheading.

9009.91 – 9009.93

A change to subheading 9009.91 through 9009.93 from any subheading outside that group.

9009.99

A change to subheading 9009.99 from any other subheading; or

No change of tariff classification is required provided there is a regional value content of not less than:

- (a) 35 percent when the build-up method is used, or

- (b) 45 percent when the build-down method is used.

9010.10

A change to subheading 9010.10 from any other heading; or

A change to subheading 9010.10 from any other subheading provided there is a regional value content of not less than:

- (a) 35 percent when the build-up method is used, or
- (b) 45 percent when the build-down method is used.

9010.41 – 9010.50

A change to subheading 9010.41 through 9010.50 from any other heading; or

A change to subheading 9010.41 through 9010.50 from any other subheading provided there is a regional value content of not less than:

- (a) 35 percent when the build-up method is used, or
- (b) 45 percent when the build-down method is used.

9010.60

A change to subheading 9010.60 from any other heading; or

A change to subheading 9010.60 from any other subheading provided there is a regional value content of not less than:

- (a) 35 percent when the build-up method is used, or
- (b) 45 percent when the build-down method is used.

9010.90

A change to subheading 9010.90 from any other heading.

9011.10 – 9011.80

A change to subheading 9011.10 through 9011.80 from any other heading; or

A change to subheading 9011.10 through 9011.80 from any other subheading provided there is a regional value content of not less than:

- (a) 35 percent when the build-up method is used, or
- (b) 45 percent when the build-down method is used.

9011.90

A change to subheading 9011.90 from any other heading.

9012.10

A change to subheading 9012.10 from any other heading; or

A change to subheading 9012.10 from any other subheading provided there is a regional value content of not less than:

- (a) 35 percent when the build-up method is used, or
- (b) 45 percent when the build-down method is used.

9012.90

A change to subheading 9012.90 from any other heading.

9013.10 – 9013.80

A change to subheading 9013.10 through 9013.80 from any other heading; or

A change to subheading 9013.10 through 9013.80 from any other subheading provided there is a regional value content of not less than:

- (a) 35 percent when the build-up method is used, or
- (b) 45 percent when the build-down method is used.

9013.90

A change to subheading 9013.90 from any other heading.

9014.10 – 9014.80

A change to subheading 9014.10 through 9014.80 from any other heading; or

A change to subheading 9014.10 through 9014.80 from any other subheading provided there is a regional value content of not less than:

- (a) 35 percent when the build-up method is used, or
- (b) 45 percent when the build-down method is used.

9014.90

A change to subheading 9014.90 from any other heading.

9015.10 – 9015.80

A change to subheading 9015.10 through 9015.80 from any other heading; or

A change to subheading 9015.10 through 9015.80 from any other subheading provided there is a regional value content of not less than:

- (a) 35 percent when the build-up method is used, or
- (b) 45 percent when the build-down method is used.

9015.90

A change to subheading 9015.90 from any other heading; or

No change in tariff classification is required provided there is a regional value content of not less than:

- (a) 35 percent when the build-up method is used, or
- (b) 45 percent when the build-down method is used.

90.16

A change to heading 90.16 from any other heading.

9017.10 – 9022.90

A change to subheading 9017.10 through 9022.90 from any other subheading; or

No change in tariff classification is required provided there is a regional value content of not less than:

- (a) 30 percent when the build-up method is used, or
- (b) 35 percent when the build-down method is used.

90.23

A change to heading 90.23 from any other heading.

9024.10 – 9024.80

A change to subheading 9024.10 through 9024.80 from any other heading; or

A change to subheading 9024.10 through 9024.80 from any other subheading provided there is a regional value content of not less than:

- (a) 35 percent when the build-up method is used, or
- (b) 45 percent when the build-down method is used.

9024.90

A change to subheading 9024.90 from any other heading.

## 9025.11 – 9025.80

A change to subheading 9025.11 through 9025.80 from any other heading or

A change to subheading 9025.11 through 9025.80 from any other subheading provided there is a regional value content of not less than:

- (a) 35 percent when the build-up method is used, or
- (b) 45 percent when the build-down method is used.

## 9025.90

A change to subheading 9025.90 from any other heading.

## 9026.10 – 9026.80

A change to subheading 9026.10 through 9026.80 from any other heading; or

A change to subheading 9026.10 through 9026.80 from any other subheading provided there is a regional value content of not less than:

- (a) 35 percent when the build-up method is used, or
- (b) 45 percent when the build-down method is used.

## 9026.90

A change to subheading 9026.90 from any other heading

## 9027.10 – 9027.80

A change to subheading 9027.10 through 9027.80 from any other heading; or

A change to subheading 9027.10 through 9027.80 from any other subheading provided there is a regional value content of not less than:

- (a) 35 percent when the build-up method is used, or
- (b) 45 percent when the build-down method is used.

## 9027.90

A change to subheading 9027.90 from any other heading.

## 9028.10 – 9028.30

A change to subheading 9028.10 through 9028.30 from any other heading; or

A change to subheading 9028.10 through 9028.30 from any other subheading provided there is a regional value content of not less than:

- (a) 35 percent when the build-up method is used, or
- (b) 45 percent when the build-down method is used.

9028.90

A change to subheading 9028.90 from any other heading.

9029.10 – 9029.20

A change to subheading 9029.10 through 9029.20 from any other heading; or

A change to subheading 9029.10 through 9029.20 from any other subheading provided there is a regional value content of not less than:

- (a) 35 percent when the build-up method is used, or
- (b) 45 percent when the build-down method is used.

9029.90

A change to subheading 9029.90 from any other heading.

9030.10 – 9030.89

A change to subheading 9030.10 through 9030.89 from any other subheading.

9030.90

A change to subheading 9030.90 from any other heading.

9031.10 – 9031.80

A change to subheading 9031.10 through 9031.80 from any other heading; or

A change to a coordinate measuring machine of subheading 9031.49 from any other good except from a base or frame for a good of the same subheading; or

A change to subheading 9031.10 through 9031.80 from any other subheading provided there is a regional value content of not less than:

- (a) 35 percent when the build-up method is used, or
- (b) 45 percent when the build-down method is used.

9031.90

A change to subheading 9031.90 from any other heading.

9032.10 – 9032.89

A change to subheading 9032.10 through 9032.89 from any other heading; or

A change to subheading 9032.10 through 9032.89 from any other subheading provided there is a regional value content of not less than:

- (a) 35 percent when the build-up method is used, or
- (b) 45 percent when the build-down method is used.

9032.90

A change to subheading 9032.90 from any other heading.

90.33

A change to heading 90.33 from any other heading.

**Chapter 91**  
**Clocks and Watches and Parts Thereof**

9101.11

A change to subheading 9101.11 from any other chapter; or

A change to subheading 9101.11 from heading 91.14 provided there is a regional value content of not less than:

- (a) 35 percent when the build-up method is used, or
- (b) 45 percent when the build-down method is used.

9101.12

A change to subheading 9101.12 from any other chapter; or

A change to subheading 9101.12 from any other heading provided that there is a regional value content of not less than:

- (a) 35 percent when the build-up method is used, or
- (b) 45 percent when the build-down method is used.

9101.19

A change to subheading 9101.19 from any other chapter; or

A change to subheading 9101.19 from heading 91.14 provided there is a regional value content of not less than:

- (a) 35 percent when the build-up method is used, or

- (b) 45 percent when the build-down method is used.

9101.21

A change to subheading 9101.21 from any other chapter; or

A change to subheading 9101.21 from any other heading provided that there is a regional value content of not less than:

- (a) 35 percent when the build-up method is used, or
- (b) 45 percent when the build-down method is used.

9101.29

A change to subheading 9101.29 from any other chapter; or

A change to subheading 9101.29 from heading 91.14 provided there is a regional value content of not less than:

- (a) 35 percent when the build-up method is used, or
- (b) 45 percent when the build-down method is used.

9101.91

A change to subheading 9101.91 from any other chapter; or

A change to subheading 9101.91 from any other heading provided that there is a regional value content of not less than:

- (a) 35 percent when the build-up method is used, or
- (b) 45 percent when the build-down method is used.

9101.99

A change to subheading 9101.99 from any other chapter; or

A change to subheading 9101.99 from heading 91.14 provided there is a regional value content of not less than:

- (a) 35 percent when the build-up method is used, or
- (b) 45 percent when the build-down method is used.

91.02 – 91.07

A change to heading 91.02 through 91.07 from any other chapter; or

A change to heading 91.02 through 91.07 from heading 91.14 provided there is a regional value content of not less than:

- (a) 35 percent when the build-up method is used, or
- (b) 45 percent when the build-down method is used.

91.08 – 91.10

A change to heading 91.08 through 91.10 from any other chapter; or

A change to heading 91.08 through 91.10 from any other heading provided that there is a regional value content of not less than:

- (a) 35 percent when the build-up method is used, or
- (b) 45 percent when the build-down method is used.

9111.10 – 9111.80

A change to subheading 9111.10 through 9111.80 from any other chapter; or

A change to subheading 9111.10 through 9111.80 from subheading 9111.90 or any other heading provided there is a regional value content of not less than:

- (a) 35 percent when the build-up method is used, or
- (b) 45 percent when the build-down method is used.

9111.90

A change to subheading 9111.90 from any other chapter; or

A change to subheading 9111.90 from any other heading provided there is a regional value content of not less than:

- (a) 35 percent when the build-up method is used, or
- (b) 45 percent when the build-down method is used.

9112.20

A change to subheading 9112.20 from subheading 9112.90 or any other heading provided there is regional value content of not less than:

- (a) 35 percent when the build-up method is used, or
- (b) 45 percent when the build-down method is used.

9112.90

A change to subheading 9112.90 from any other chapter; or

A change to subheading 9112.90 from any other heading provided there is a regional value content of not less than:

- (a) 35 percent when the build-up method is used, or
- (b) 45 percent when the build-down method is used.

91.13

A change to heading 91.13 from any other chapter; or

A change to heading 91.13 from any other heading provided there is a regional value content of not less than:

- (a) 35 percent when the build-up method is used, or
- (b) 45 percent when the build-down method is used.

91.14

A change to heading 91.14 from any other heading.

**Chapter 92**  
**Musical Instruments; Parts and Accessories of Such Articles**

92.01

A change to heading 92.01 from any other chapter; or

A change to heading 92.01 from any other heading provided there is a regional value content of not less than:

- (a) 35 percent when the build-up method is used, or
- (b) 45 percent when the build-down method is used.

92.02

A change to heading 92.02 from any other chapter; or

A change to heading 92.02 from any other heading provided that there is a regional value content of not less than:

- (a) 30 percent when the build-up method is used, or
- (b) 35 percent when the build-down method is used.

92.03 – 92.08

A change to heading 92.03 through 92.08 from any other chapter; or

A change to heading 92.03 through 92.08 from any other heading provided that there is a regional value content of not less than:

- (a) 35 percent when the build-up method is used, or
- (b) 45 percent when the build-down method is used.

92.09

A change to heading 92.09 from any other heading.

**Section XIX**

**Arms and Ammunition; Parts and Accessories Thereof (Chapter 93)**

**Chapter 93**

**Arms and Ammunition; Parts and Accessories Thereof**

93.01 – 93.04

A change to heading 93.01 through 93.04 from any other chapter; or

A change to heading 93.01 through 93.04 from any other heading provided there is a regional value content of not less than:

- (a) 35 percent when the build-up method is used, or
- (b) 45 percent when the build-down method is used.

93.05

A change to heading 93.05 from any other heading.

93.06 – 93.07

A change to heading 93.06 through 93.07 from any other chapter.

**Section XX**  
**Miscellaneous Manufactured Articles (Chapter 94-96)**

**Chapter 94**  
**Furniture; Bedding, Mattresses, Mattress Supports, Cushions and Similar Stuffed**  
**Furnishings; Lamps and Lighting Fittings, Not Elsewhere Specified or Included;**  
**Illuminated Signs, Illuminated Name-Plates and the Like; Prefabricated Buildings**

94.01

A change to heading 94.01 from any other heading.

9402.10 -- 9402.90

A change to subheading 9402.10 through 9402.90 from any other subheading provided there is a regional value content of not less than:

- (a) 35 percent when the build-up method is used, or
- (b) 45 percent when the build-down method is used.

94.03

A change to heading 94.03 from any other heading.

9404.10 -- 9404.30

A change to subheading 9404.10 through 9404.30 from any other chapter.

9404.90

A change to subheading 9404.90 from any other chapter, except from heading 50.07, 51.11 through 51.13, 52.08 through 52.12, 53.09 through 53.11, 54.07 through 54.08, 55.12 through 55.16, or subheading 6307.90.

Note 4 for chapters 50 through 63 applies to this subheading.

9405.10 -- 9405.60

A change to subheading 9405.10 through 9405.60 from any other chapter; or

A change to subheading 9405.10 through 9405.60 from subheading 9405.91 through 9405.99, whether or not there is also a change from any other chapter, provided there is a regional value content of not less than:

- (a) 35 percent when the build-up method is used, or
- (b) 45 percent when the build-down method is used.

9405.91 -- 9405.99

A change to subheading 9405.91 through 9405.99 from any other heading.

94.06

A change to heading 94.06 from any other chapter.

**Chapter 95**

**Toys, Games and Sport Requisites; Parts and Accessories Thereof**

95.01

A change to heading 95.01 from any other chapter.

95.02

A change to heading 95.02 from any other heading.

95.03 – 95.08

A change to heading 95.03 through 95.08 from any other chapter; or

A change to subheading 9506.31 from subheading 9506.39, whether or not there is a change from another chapter, provided there is a regional value content of not less than:

(a) 35 percent when the build-up method is used, or

(b) 45 percent when the build-down method is used.

**Chapter 96**

**Miscellaneous Manufactured Articles**

96.01 – 96.05

A change to heading 96.01 through 96.05 from any other chapter.

9606.10

A change to subheading 9606.10 from any other heading; or

No change in tariff classification is required provided there is a regional value content of not less than:

(a) 35 percent when the build-up method is used, or

(b) 45 percent when the build-down method is used.

9606.21 – 9606.29

A change to subheading 9606.21 through 9606.29 from any other chapter; or

A change to subheading 9606.21 through 9606.29 from subheading 9606.30, whether or not there is also a change to from any other chapter, provided there is a regional value content of not less than:

- (a) 35 percent when the build-up method is used, or
- (b) 45 percent when the build-down method is used.

9606.30

A change to subheading 9606.30 from any other heading.

9607.11 – 9607.19

A change to subheading 9607.11 through 9607.19 from any other chapter; or

A change to subheading 9607.11 through 9607.19 from subheading 9607.20 provided there is a regional value content of not less than:

- (a) 35 percent when the build-up method is used, or
- (b) 45 percent when the build-down method is used.

9607.20

A change to subheading 9607.20 from any other heading.

9608.10 – 9608.20

A change to subheading 9608.10 through 9608.20 from any other chapter; or

A change to subheading 9608.10 through 9608.20 from subheading 9608.60 through 9608.99 provided there is a regional value content of not less than 30 percent when the build-down method is used.

9608.31 – 9608.50

A change to subheading 9608.31 through 9608.50 from any other chapter; or

A change to subheading 9608.31 through 9608.50 from subheading 9608.60 through 9608.99 provided there is a regional value content of not less than:

- (a) 35 percent when the build-up method is used, or
- (b) 45 percent when the build-down method is used.

9608.60

A change to subheading 9608.60 from any other heading.

9608.91

A change to subheading 9608.91 from any other subheading.

9608.99

A change to subheading 9608.99 from any other heading.

9609.10 – 9609.90

A change to subheading 9609.10 through 9609.90 from any other heading; or

A change to subheading 9609.10 through 9609.90 from subheading 9609.20 or any other heading provided there is a region value content of not less than:

- (a) 35 percent when the build-up method is used, or
- (b) 45 percent when the build-down method is used.

96.10 – 96.11

A change to heading 96.10 through 96.11 from any other heading.

9612.10

A change to subheading 9612.10 from any other chapter.

9612.20

A change to subheading 9612.20 from any other heading.

9613.10 – 9613.80

A change to subheading 9613.10 through 9613.80 from any other chapter; or

A change to subheading 9613.10 through 9613.80 from subheading 9613.90 provided there is a regional value content of not less than:

- (a) 35 percent when the build-up method is used, or
- (b) 45 percent when the build-down method is used.

9613.90

A change to subheading 9613.90 from any other heading.

9614.20

A change to subheading 9614.20 from any other subheading except from subheading 9614.90.

9614.90

A change to subheading 9614.90 from any other heading.

9615.11 – 9615.19

A change to subheading 9615.11 through 9615.19 from any other chapter; or

A change to subheading 9615.11 through 9615.19 from subheading 9615.90 provided there is a regional value content of not less than:

- (a) 35 percent when the build-up method is used, or
- (b) 45 percent when the build-down method is used.

9615.90

A change to subheading 9615.90 from any other heading.

96.16

A change to heading 96.16 from any other heading.

96.17

A change to heading 96.17 from any other chapter.

96.18

A change in heading 96.18 from any other heading.

**Section XXI**

**Works of Art, Collectors Pieces and Antiques (Chapter 97)**

**Chapter 97**

**Works of Art, Collectors Pieces and Antiques**

9701.10 – 9701.90

A change to subheading 9701.10 through 9701.90 from any other subheading.

97.02 – 97.06

A change to heading 97.02 through 97.06 from any other heading.

## Appendix 4.1-A

Correlation Table for Textile and Apparel Goods

TARIFF ITEM	UNITED STATES	CENTRAL AMERICA	DOMINICAN REPUBLIC	DESCRIPTION
5108.10.aa	5108.10.60	5108.10.00	5108.10.60	Other than of Angora rabbit hair
5108.20.aa	5108.20.60	5108.20.00	5108.20.60	Other than of Angora rabbit hair
5208.21.aa	5208.21.60	5208.21.00	5208.21.60	Of metric number 69 or higher
5208.22.aa	5208.22.80	5208.22.00	5208.22.80	Of metric number 69 or higher
5208.29.aa	5208.29.80	5208.29.00	5208.29.80	Of metric number 69 or higher
5208.31.aa	5208.31.80	5208.31.00	5208.31.80	Of metric number 69 or higher
5208.32.aa	5208.32.50	5208.32.00	5208.32.50	Of metric number 69 or higher
5208.32.bb	5208.32.3020	5208.32.00	5208.32.3020	Of metric number 42 or lower of poplin or broadcloth
5208.39.aa	5208.39.80	5208.39.00	5208.39.80	Of metric number 69 or higher
5208.41.aa	5208.41.80	5208.41.00	5208.41.80	Of metric number 69 or higher
5208.42.aa	5208.42.50	5208.42.00	5208.42.50	Of metric number 69 or higher
5208.43.aa	5208.43.00	5208.43.00	5208.43.00	3-thread or 4-thread twill, including cross twill
5208.49.aa	5208.49.80	5208.49.00	5208.49.80	Of metric number 69 or higher
5208.51.aa	5208.51.80	5208.51.00	5208.51.80	Of metric number 69 or higher
5208.52.aa	5208.52.50	5208.52.00	5208.52.50	Of metric number 69 or higher
5208.59.aa	5208.59.80	5208.59.00	5208.59.80	Of metric number 69 or higher
5210.21.aa	5210.21.80	5210.21.00	5210.21.80	Of metric number 69 or higher
5210.29.aa	5210.29.80	5210.29.00	5210.29.80	Of metric number 69 or higher
5210.31.aa	5210.31.80	5210.31.00	5210.31.80	Of metric number 69 or higher
5210.39.aa	5210.39.80	5210.39.00	5210.39.80	Of metric number 69 or higher
5210.41.aa	5210.41.80	5210.41.00	5210.41.80	Of metric number 69 or higher
5210.49.aa	5210.49.80	5210.49.00	5210.49.80	Of metric number 69 or higher
5210.51.aa	5210.51.80	5210.51.00	5210.51.80	Of metric number 69 or higher
5210.59.aa	5210.59.80	5210.59.00	5210.59.80	Of metric number 69 or higher
5402.41.aa	5402.41.90	5402.41.00	5402.41.90	Of nylon or other polyamides other than colored multifilament, untwisted or with a twist of less than 5 turns per meter, measuring not less than 22 decitex per filament, certified by the importer to be used in the manufacture of wigs for dolls

TARIFF ITEM	UNITED STATES	CENTRAL AMERICA	DOMINICAN REPUBLIC	DESCRIPTION
5402.43.aa	5402.43.10	5402.43.00	5402.43.10	Wholly of polyester, measuring not less than 75 decitex but not more than 80 decitex, and having 24 filaments per yarn
5402.52.aa	5402.52.10	5402.52.00	5402.52.10	Wholly of polyester, measuring not less than 75 decitex but not more than 80 decitex, and having 24 filaments per yarn
5407.61.aa	5407.61.11	5407.61.00	5407.61.11	Wholly of polyester, of single yarns measuring not less than 75 decitex but not more than 80 decitex, and having 24 filaments per yarn and with a twist of 900 or more turns per meter
5407.61.bb	5407.61.21	5407.61.00	5407.61.21	Wholly of polyester, of single yarns measuring not less than 75 decitex but not more than 80 decitex, and having 24 filaments per yarn and with a twist of 900 or more turns per meter
5407.61.cc	5407.61.91	5407.61.00	5407.61.91	Wholly of polyester, of single yarns measuring not less than 75 decitex but not more than 80 decitex, and having 24 filaments per yarn and with a twist of 900 or more turns per meter
5408.22.aa	5408.22.10	5408.22.00	5408.22.10	Of cuprammonium rayon
5408.23.aa	5408.23.11	5408.23.00	5408.23.11	Of cuprammonium rayon
5408.23.bb	5408.23.21	5408.23.00	5408.23.21	Of cuprammonium rayon
5408.24.aa	5408.24.10	5408.24.00	5408.24.10	Of cuprammonium rayon
5512.99.aa	5512.99.0005	5512.99.00	5512.99.0005	Of yarns of different colors, except blue denim or jacquard weave
5515.13.aa	5515.13.10	5515.13.00	5515.13.10	Other than containing 36 percent or more by weight of wool or fine animal hair
5515.19.aa	5515.19.0090	5515.19.00	5515.19.0090	Other than of yarns of different colors, jacquard weave, poplin, broadcloth, sheeting, printcloth, cheesecloth, lawns, voiles, batistes, duck, satin weave, twill weave, or Oxford cloth

TARIFF ITEM	UNITED STATES	CENTRAL AMERICA	DOMINICAN REPUBLIC	DESCRIPTION
5903.90.aa	5903.90.15	5903.90.90	5903.90.15	Of man-made fibers; fabrics specified in note 9 to section XI that are over 60 percent by weight of plastics
5903.90.bb	5903.90.25	5903.90.90	5903.90.25	Of man-made fibers; fabrics specified in note 9 to section XI that are 70 percent by weight of rubber or plastics
6001.92.aa	6001.92.0030	6001.92.10, 6001.92.90	6001.92.0030	Velour, not over 271 grams per square meter
6006.21.aa	6006.21.10	6006.21.00	6006.21.10	Circular knit, wholly of cotton yarns exceeding 100 metric number per single yarn
6006.22.aa	6006.22.10	6006.22.00	6006.22.10	Circular knit, wholly of cotton yarns exceeding 100 metric number per single yarn
6006.23.aa	6006.23.10	6006.23.00	6006.23.10	Circular knit, wholly of cotton yarns exceeding 100 metric number per single yarn
6006.24.aa	6006.24.10	6006.24.00	6006.24.10	Circular knit, wholly of cotton yarns exceeding 100 metric number per single yarn
6006.90.aa	6006.90.10	6006.90.00	6006.90.00	Other than of synthetic or artificial fibers; containing 85 percent or more by weight of silk or silk waste
6103.19.aa	6103.19.60	6103.19.00	6103.19.60	Containing 70 percent or more by weight of silk or silk waste
6103.19.bb	6103.19.90	6103.19.00	6103.19.90	Other (not of wool or fine animal hair, cotton, or man-made fibers; not containing 70 percent or more by weight of silk or silk waste)
6103.39.aa	6103.39.40	6103.39.00	6103.39.40	Containing 70 percent or more by weight of silk or silk waste
6103.39.bb	6103.39.80	6103.39.00	6103.39.80	Other (not of wool or fine animal hair, cotton, or man-made fibers; not containing 70 percent or more by weight of silk or silk waste)

TARIFF ITEM	UNITED STATES	CENTRAL AMERICA	DOMINICAN REPUBLIC	DESCRIPTION
6104.19.aa	6104.19.40	6104.19.00	6104.19.40	Containing 70 percent or more by weight of silk or silk waste
6104.19.bb	6104.19.80	6104.19.00	6104.19.80	Other (not of wool or fine animal hair, cotton, or man-made fibers; not containing 70 percent or more by weight of silk or silk waste)
6104.39.aa	6104.39.20	6104.39.00	6104.39.20	Other than of wool or fine animal hair, cotton, or man-made fibers
6104.59.aa	6104.59.40	6104.59.00	6104.59.40	Containing 70 percent or more by weight of silk or silk waste
6104.59.bb	6104.59.80	6104.59.00	6104.59.80	Other (not of wool or fine animal hair, cotton, or man-made fibers; not containing 70 percent or more by weight of silk or silk waste)
6203.19.aa	6203.19.50	6203.19.00	6203.19.50	Containing 70 percent or more by weight of silk or silk waste
6203.19.bb	6203.19.90	6203.19.00	6203.19.90	Other (not of wool or fine animal hair, cotton, or man-made fibers; not containing 70 percent or more by weight of silk or silk waste)
6203.39.aa	6203.39.50	6203.39.00	6203.39.50	Containing 70 percent or more by weight of silk or silk waste
6203.39.bb	6203.39.90	6203.39.00	6203.39.90	Other (not of wool or fine animal hair, cotton, or man-made fibers; not containing 70 percent or more by weight of silk or silk waste)
6203.42.aa	6203.42.40	6203.42.00	6203.42.40	Bib and brace overalls of cotton
6204.19.aa	6204.19.40	6204.19.00	6204.19.40	Containing 70 percent or more by weight of silk or silk waste
6204.19.bb	6204.19.80	6204.19.00	6204.19.80	Other (not of wool or fine animal hair, cotton, or man-made fibers; not containing 70 percent or more by weight of silk or silk waste)
6204.33.aa	6204.33.40	6204.33.00	6204.33.40	Containing 36 percent or more by weight of wool or fine animal hair

TARIFF ITEM	UNITED STATES	CENTRAL AMERICA	DOMINICAN REPUBLIC	DESCRIPTION
6204.39.aa	6204.39.20	6204.39.00	6204.39.20	Containing 36 percent or more by weight of wool or fine animal hair
6204.39.bb	6204.39.60	6204.39.00	6204.39.60	Containing 70 percent or more by weight of silk or silk waste
6204.39.cc	6204.39.80	6204.39.00	6204.39.80	Other (not of wool or fine animal hair, cotton, or man-made fibers; not containing 70 percent or more by weight of silk or silk waste)
6204.39.dd	6204.39.8020	6204.39.00	6204.39.8020	Other than of artificial fibers; other than 36 percent or more by weight of wool or fine animal hair; other than containing 70 percent or more by weight of silk or silk waste; subject to wool restraints
6204.42.aa	6204.42.3040	6204.42.00	6204.42.3040	Girls'; of cotton; other than containing 36 percent or more by weight of flax fibers; other than corduroy; with two or more colors in the warp and/or the filling
6204.42.bb	6204.42.3060	6204.42.00	6204.42.3060	Girls'; of cotton; other than containing 36 percent or more by weight of flax fibers; other than corduroy; other than with two or more colors in the warp and/or the filling
6204.43.aa	6204.43.4020	6204.43.00	6204.43.4020	Girls'; other than 30 percent or more by weight of silk or silk waste; other than 36 percent or more by weight of wool or fine animal hair; with 2 or more colors in the warp and/or filling
6204.43.bb	6204.43.4040	6204.43.00	6204.43.4040	Girls'; other than of 30 percent or more by weight silk or silk waste; other than 36 percent or more by weight of wool or fine animal hair; other than with 2 or more colors in the warp and/or filling

TARIFF ITEM	UNITED STATES	CENTRAL AMERICA	DOMINICAN REPUBLIC	DESCRIPTION
6204.44.aa	6204.44.4020	6204.44.00	6204.44.4020	Girls'; other than 36 percent or more by weight of wool or fine animal hair
6204.52.aa	6204.52.20	6204.52.00	6204.52.20	Other than certified hand-loomed and folklore products
6204.59.aa	6204.59.40	6204.59.00	6204.59.40	Other than wool or fine animal hair, cotton, or man-made fibers
6204.62.aa	6204.62.40	6204.62.00	6204.62.40	Other than containing 15 percent or more by weight of down; other than bib and brace overalls; other than certified hand-loomed and folklore products
6207.19.aa	6207.19.9010	6207.19.00	6207.19.9010	Of man-made fibers
6207.91.aa	6207.91.3010	6207.91.00	6207.91.00	Sleepwear
6207.92.aa	6207.92.4010	6207.92.00	6207.92.00	Sleepwear
6208.91.aa	6208.91.30	6208.91.00	6208.91.30	Women's and girls' boxer shorts
6208.92.aa	6208.92.0030	6208.92.00	6208.92.0030	Women's boxer shorts
6208.92.bb	6208.92.0040	6208.92.00	6208.92.0040	Girls' boxer shorts
6303.92.aa	6303.92.10	6303.92.00	6303.92.10	Made up from fabrics described in tariff items 5407.61.aa, 5407.61.bb, or 5407.61.cc

**Note:** The descriptions in this table are in summary form and are for reference purposes only. In case of any inconsistency between this Appendix and Annex 3.25 (Short Supply List), the descriptions in Annex 3.25 (Short Supply List) shall prevail.

## Appendix 4.1-B

## Cumulation in Chapter 62 of the Harmonized System

1. For purposes of determining whether a good of chapter 62 of the Harmonized System is originating, materials used in the production of such a good that are produced in Canada or Mexico and that would be originating under this Agreement if produced in the territory of a Party shall be considered as having been produced in the territory of a Party.<sup>1</sup>

- 
- <sup>1</sup> (a) This Rule shall enter into force for materials described in paragraph 1 produced in Mexico on the date on which:
- (i) the Central American Parties and the United States have exchanged written notifications that they have amended their laws, as necessary, and tariff schedules to implement this Rule, and have provided copies of the notifications to Mexico; and
  - (ii) (A) each free trade agreement between Mexico, on the one hand, and the Central American Parties, on the other, has been amended; and
    - (B) the Central American Parties and Mexico have exchanged written notifications, and provided copies of the notifications to the United States, that they have amended their laws, as necessary, and tariff schedules
 to provide for the reciprocal application of this Rule; and
  - (iii) the United States has entered into an agreement with Mexico to provide for textile verifications substantially similar to those set forth in Article 3.24 (Customs Cooperation), including document review and on-site visits, for materials produced in the territory of Mexico used to produce a good claimed to be originating under this Rule.
- (b) This Rule shall enter into force for materials described in paragraph 1 produced in Canada on the date on which:
- (i) the Central American Parties and the United States have exchanged written notifications that they have amended their laws, as necessary, and tariff schedules to implement this Rule, and have provided copies of the notifications to Canada; and
  - (ii) (A) each free trade agreement between Canada, on the one hand, and the Central American Parties, on the other, has been amended; and
    - (B) the Central American Parties and Canada have exchanged written notifications, and provided copies of the notifications to the United States, that they have amended their laws, as necessary, and tariff schedules
 to provide for the reciprocal application of this Rule; and
  - (iii) the United States has entered into an agreement with Canada to provide for textile verifications substantially similar to those set forth in Article 3.24 (Customs Cooperation), including document review and on-site visits, for materials produced in the territory of Canada used to produce a good claimed to be originating under this Rule.
  - (c) For purposes of this Rule, operations performed in the Dominican Republic shall be considered as if the operations were performed in the territory of a non-Party until the

2. Such treatment shall be limited to goods imported into the territory of the United States from another Party or Parties up to the overall limit specified in paragraph 3. For purposes of determining the quantity of square meter equivalents (SME) charged against the overall limit, the conversion factors listed in *Correlation: U.S. Textile and Apparel Category System with the Harmonized Tariff Schedule of the United States of America 2003*, U.S. Department of Commerce, Office of Textiles and Apparel, or successor publication, shall apply.

3. Subject to the sublimits set out below, the overall limit shall not exceed 100 million SME in the first calendar year that goods qualify for entry under this provision. If this provision enters into force after January 1 of that year, these limits shall be reduced in proportion to the number of full months of that year that have expired. Thereafter, during the term of this Agreement, the overall limit may increase up to a maximum of 200 million SME in a calendar year, and the sublimits may increase so that they represent the same proportion of the overall limit as in the first calendar year. Each percentage increase of the limits shall correspond to the percentage

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date on which the Dominican Republic has provided written notifications to the Central American Parties and the United States that it has amended its law, as necessary, and tariff schedule to implement this Rule, and has provided copies of the notifications to Canada or Mexico, as the case may be. Further, operations performed in the Dominican Republic shall be considered as if the operations were performed in the territory of a non-Party beginning five years after the date this Agreement enters into force, unless:

- (i) with respect to materials described in paragraph 1 produced in Mexico:
  - (A) the Dominican Republic has concluded a free trade agreement with Mexico; and
  - (B) the Dominican Republic and Mexico have exchanged written notifications, and provided copies of the notifications to the Central American Parties and the United States, that they have amended their laws, as necessary, and tariff schedules to provide for the reciprocal application of this Rule; or
- (ii) with respect to materials described in paragraph 1 produced in Canada:
  - (A) the Dominican Republic has concluded a free trade agreement with Canada; and
  - (B) the Dominican Republic and Canada have exchanged written notifications, and provided copies of the notifications to the Central American Parties and the United States, that they have amended their laws, as necessary, and tariff schedules to provide for the reciprocal application of this Rule.
- (d) The Parties may consult to consider whether this Rule should be extended to materials produced in a country other than Canada and Mexico, subject to application of the conditions of this note with respect to that country, as appropriate.

increase in imports into the territory of the United States from the other Parties of originating goods of chapter 62 of the Harmonized System.<sup>2</sup>

- (a) Not more than 45 million SME may be cotton or man-made fiber trousers and skirts in textile categories 342, 347, 348, 642, 647, or 648, excluding items identified in subparagraph (b).
- (b) Not more than 20 million SME may be cotton blue denim trousers within tariff item 6203.42.aa or 6204.62.aa and blue denim skirts within tariff item 6204.52.aa.
- (c) Not more than one million SME may be wool apparel in textile category 433, 435 (suit-type jackets only: subheading 6204.31 or tariff item 6204.33.aa, 6204.39.aa, or 6204.39.dd), 442, 443, 444, 447, or 448, and within heading 62.03 or 62.04.

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<sup>2</sup> No later than three months after the date of entry into force of this Agreement, the Parties shall consult to increase the limits specified in this paragraph to take into account the ability of the Dominican Republic to participate in such limits. The Parties shall seek to reach agreement within 60 days after such consultations begin. Any such increase shall take effect at such time as the Parties may agree, but no sooner than such time as the Dominican Republic has satisfied the applicable conditions set out in footnote 1.

## Appendix 4.1-C

Correlation Table for Footwear

TARIFF ITEM	UNITED STATES	CENTRAL AMERICA	DOMINICAN REPUBLIC	DESCRIPTION
6401.92.aa	6401.92.90	6401.92.00	6401.92.10	Waterproof footwear, not mechanically assembled, with outer soles and uppers of rubber or plastics, nesoi, covering ankle but not knee.
6401.99.aa	6401.99.30	6401.99.00	6401.99.10	Waterproof protective footwear, not mechanically assembled with outer soles and uppers of rubber or plastics, not covering ankle, without closures.
6401.99.bb	6401.99.60	6401.99.00	6401.99.20	Waterproof protective footwear, not mechanically assembled with outer soles and uppers of rubber or plastics, not covering ankle, with closures.
6401.99.cc	6401.99.90	6401.99.00	6401.99.90	Waterproof footwear, not mechanically assembled, with outer soles and uppers of rubber or plastics, nesoi, not covering ankle.
6402.30.aa	6402.30.50	6402.30.00	6402.30.10	Footwear with outer soles & uppers of rubber or plastics, nesoi, with metal toe-cap, designed as a protection against liquids, chemicals, weather.
6402.30.bb	6402.30.70	6402.30.00	6402.30.10	Footwear with outer soles & uppers of rubber or plastics, nesoi, with metal toe-cap, not protective, valued over US\$3 but not over US\$6.50/pair.
6402.30.cc	6402.30.80	6402.30.00	6402.30.90	Footwear with outer soles & uppers of rubber or plastics, nesoi, with metal toe-cap, not protective, valued over US\$6.50 but not over US\$12/pair.
6402.91.aa	6402.91.50	6402.91.00	6402.91.10	Footwear with outer soles & uppers of rubber or plastics, nesoi, covering ankle, designed as protection against liquids, chemicals, weather.
6402.91.bb	6402.91.80	6402.91.00	6402.91.20	Footwear with outer soles & uppers of rubber or plastics, nesoi, covering ankle, nesoi, valued over US\$6.50 but not over US\$12/pair.
6402.91.cc	6402.91.90	6402.91.00	6402.91.90	Footwear with outer soles & uppers of rubber or plastics, nesoi, covering ankle,

TARIFF ITEM	UNITED STATES	CENTRAL AMERICA	DOMINICAN REPUBLIC	DESCRIPTION
				nesoi, valued over US\$12/pair.
6402.99.aa	6402.99.20	6402.99.00	6402.99.10	Footwear with outer soles & uppers of rubber or plastics, nesoi, not covering ankle, nesoi, designed as protection against liquids, chemicals, weather.
6402.99.bb	6402.99.80	6402.99.00	6402.99.20	Footwear with outer soles & uppers of rubber or plastics, nesoi, not covering ankle, nesoi, valued over US\$6.50 but not over US\$12/pair.
6402.99.cc	6402.99.90	6402.99.00	6402.99.90	Footwear with outer soles & uppers of rubber or plastics, nesoi, not covering ankle, nesoi, valued over US\$12/pair
6404.11.aa	6404.11.90	6404.11.00	6404.11.00	Sports & athletic footwear w/outer soles of rubber/plastics & uppers of textile, valued over US\$12/pair.
6404.19.aa	6404.19.20	6404.19.00	6404.19.10	Footwear with outer soles of rubber or plastics & uppers of textile for protection against water, oil, grease or chemicals, or cold or inclement weather.

**Appendix 4.1-D****Transitional Rules of Origin for the Dominican Republic and the United States****Part I – General Interpretative Notes**

The Dominican Republic and the United States shall apply this Appendix for a period of two years after the date of entry into force of this Agreement as between the Dominican Republic and the United States.

**Part II – Supplemental Rules of Origin****Section A**

For purposes of the rules in this Section, the United States shall treat a good as originating if the good satisfies the applicable change in tariff classification or regional value content requirement as a result of production in the territory of the Dominican Republic.<sup>3</sup>

**Chapter 27****Mineral Fuels, Mineral Oils and Products of their Distillation; Bituminous Substances; Mineral Waxes**

2710.11 – 2710.19<sup>4</sup>

A change to any good of heading 27.10 from any other good of heading 27.10, provided that the good resulting from such change results from a chemical reaction, atmospheric distillation, or vacuum distillation, or from a process that alters the viscosity of the good.

**Chapter 39****Plastics and Articles Thereof**

3903.20 – 3903.90

A change to subheading 3903.20 through 3903.90 from any other heading, provided there is a regional value content of not less than 35 percent when the build-down method is used.

3904.21 – 3904.40

A change to subheading 3904.21 through 3904.40 from any other heading, provided there is a regional value content of not less than 35 percent when the build-down method is used.

3905.12 – 3905.29

A change to subheading 3905.12 through 3905.29 from any other heading, provided there is a regional value content of not less than 35 percent when the build-down method is used.

<sup>3</sup> For greater certainty, the rules of origin provided in Section A are in addition to, rather than in lieu of, the rules of origin provided in Annex 4.1.

<sup>4</sup> The quantity of goods treated as originating as a result of the application of this rule shall not exceed an annual amount of 24 million gallons.

3906.90

A change to subheading 3906.90 from any other heading, provided there is a regional value content of not less than 35 percent when the build-down method is used.

3907.50 – 3907.99

A change to subheading 3907.50 through 3907.99 from any other heading, provided there is a regional value content of not less than 35 percent when the build-down method is used.

**Section B**

Notwithstanding the rule for heading 72.14 provided for in Annex 4.1, the Dominican Republic shall not be required to treat a good as originating as a result of production in the territory of the United States unless the following change in tariff classification has occurred:

**Chapter 72**

**Iron and Steel**

72.14

A change to heading 72.14 from any other heading, except heading 72.13.



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**Annex I**

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## ANNEX I

### Explanatory Notes

1. The Schedule of a Party to this Annex sets out, pursuant to Articles 10.13 (Non-Conforming Measures) and 11.6 (Non-Conforming Measures), a Party's existing measures that are not subject to some or all of the obligations imposed by:
  - (a) Articles 10.3 (National Treatment) or 11.2 (National Treatment);
  - (b) Articles 10.4 (Most-Favored-Nation Treatment) or 11.3 (Most-Favored-Nation Treatment);
  - (c) Article 11.5 (Local Presence);
  - (d) Article 10.9 (Performance Requirements);
  - (e) Article 10.10 (Senior Management and Boards of Directors); or
  - (f) Article 11.4 (Market Access).
2. Each Schedule entry sets out the following elements:
  - (a) **Sector** refers to the sector for which the entry is made;
  - (b) **Obligations Concerned** specifies the obligation(s) referred to in paragraph 1 that, pursuant to Articles 10.13 (Non-Conforming Measures) and 11.6 (Non-Conforming Measures), do not apply to the listed measure(s);
  - (c) **Level of Government** indicates the level of government maintaining the listed measure(s);
  - (d) **Measures** identifies the laws, regulations, or other measures for which the entry is made. A measure cited in the **Measures** element:
    - (i) means the measure as amended, continued, or renewed as of the date of entry into force of this Agreement, and
    - (ii) includes any subordinate measure adopted or maintained under the authority of and consistent with the measure; and
  - (e) **Description** sets out commitments, if any, for liberalization on the date of entry into force of the Agreement, and the remaining non-conforming aspects of the existing measures for which the entry is made.
3. In the interpretation of a Schedule entry, all elements of the entry shall be considered. An entry shall be interpreted in light of the relevant provisions of the Chapters against which the entry is made. To the extent that:

- (a) the **Measures** element is qualified by a liberalization commitment from the **Description** element, the **Measures** element as so qualified shall prevail over all other elements; and
  - (b) the **Measures** element is not so qualified, the **Measures** element shall prevail over all other elements, unless any discrepancy between the **Measures** element and the other elements considered in their totality is so substantial and material that it would be unreasonable to conclude that the **Measures** element should prevail, in which case the other elements shall prevail to the extent of that discrepancy.
4. In accordance with Article 10.13 (Non-Conforming Measures) and 11.6 (Non-Conforming Measures), the articles of this Agreement specified in the **Obligations Concerned** element of an entry do not apply to the law, regulation, or other measure identified in the **Measures** element of that entry.
5. Where a Party maintains a measure that requires that a service provider be a citizen, permanent resident, or resident of its territory as a condition to the provision of a service in its territory, a Schedule entry for that measure taken with respect to Article 11.2 (National Treatment), 11.3 (Most-Favored-Nation Treatment), or 11.5 (Local Presence) shall operate as a Schedule entry with respect to Article 10.3 (National Treatment), 10.4 (Most-Favored-Nation Treatment), or 10.9 (Performance Requirements) to the extent of that measure.
6. For greater certainty, Article 11.4 (Market Access) refers to non-discriminatory measures.

## ANNEX I

## Schedule of Costa Rica

<b>Sector:</b>	Irrigation Services
<b>Obligations Concerned:</b>	Market Access (Article 11.4)
<b>Level of Government:</b>	Central
<b>Measures:</b>	Law No. 7593 of 9 August 1996 – <i>Ley de la Autoridad Reguladora de los Servicios Públicos</i> – Arts. 5, 9, and 13
<b>Description:</b>	<u>Cross-Border Services</u>  Costa Rica reserves the right to limit the number of concessions to supply irrigation services based on demand for those services. Priority will be given to concessionaires already supplying the service.

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<b>Sector:</b>	Solid Waste Treatment Services
<b>Obligations Concerned:</b>	Market Access (Article 11.4)
<b>Level of Government:</b>	Central
<b>Measures:</b>	Law No. 7593 of 9 August 1996 – <i>Ley de la Autoridad Reguladora de los Servicios Públicos</i> – Arts. 5, 9, and 13
<b>Description:</b>	<u>Cross-Border Services</u> Costa Rica reserves the right to limit the number of concessions to supply solid waste treatment services based on demand for those services. Priority will be given to concessionaires already supplying the service.

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<b>Sector:</b>	Maritime and Specialty Air Services
<b>Obligations Concerned:</b>	Market Access (Article 11.4)
<b>Level of Government:</b>	Central
<b>Measures:</b>	Law No. 7593 of 9 August 1996 – <i>Ley de la Autoridad Reguladora de los Servicios Públicos</i> – Arts. 5, 9, and 13
<b>Description:</b>	<u>Cross-Border Services</u>  Costa Rica reserves the right to limit the number of concessions to supply maritime and specialty air services in national ports based on demand for those services. Priority will be given to concessionaires already supplying the service.

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<b>Sector:</b>	Professional Services
<b>Obligations Concerned:</b>	National Treatment (Article 11.2) Most-Favored-Nation Treatment (Article 11.3) Local Presence (Article 11.5)
<b>Level of Government:</b>	Central
<b>Measures:</b>	<p>Law No. 7221 of 6 April 1991 – <i>Ley Orgánica del Colegio de Ingenieros Agrónomos</i> – Arts. 5, 6, 8, 10, 15, 16, 18, 19, 20, 23, 24, and 25</p> <p>Executive Decree No. 22688-MAG-MIRENEM of 22 November 1993 – <i>Reglamento General de la Ley Orgánica del Colegio de Ingenieros Agrónomos de Costa Rica</i> – Arts. 6, 7, and 9</p> <p>Executive Decree No. 29410 of 2 March 2001 – <i>Reglamento del Registro de Peritos-Tasadores del Colegio de Ingenieros Agrónomos</i> – Arts. 6, 20, and 22</p> <p>Law No. 5230 of 2 July 1973 – <i>Ley Orgánica del Colegio de Geólogos de Costa Rica</i> – Arts. 3, and 9</p> <p>Executive Decree No. 6419-MEIC of 18 October 1976 – <i>Reglamento del Colegio de Geólogos de Costa Rica</i> – Arts. 4, 5, and 37</p> <p>Law No. 5142 of 30 November 1972 – <i>Ley Orgánica del Colegio de Farmacéuticos de Costa Rica</i> – Arts. 2, 9, and 10</p> <p>Executive Decree No. 3503-S of 6 February 1974 – <i>Reglamento General Orgánico o Reglamento Interno del Colegio de Farmacéuticos de Costa Rica</i> – Art. 2 and 6</p> <p>Law No. 5784 of 19 August 1975 – <i>Ley Orgánica del Colegio de Cirujanos Dentistas de Costa Rica</i> – Arts. 2, 6, 9, 10, 14, and 15</p> <p>Law No. 4925 of 17 December 1971 – <i>Reforma Integral a la Ley Orgánica del Colegio Federado de Ingenieros y Arquitectos</i> – Arts. 5, 9, 11, 13, 14, and 52</p> <p>Executive Decree No. 3414-T of 3 December 1973 – <i>Reglamento Interior General del Colegio Federado de Ingenieros y Arquitectos de Costa Rica</i> – Arts. 1, 3, 7, 9, and 54</p>

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*Reglamento Especial de Incorporación al Colegio Federado de Ingenieros y Arquitectos de Costa Rica*, approved in Session 4-82-A.E.R., 6 December 1982 – Arts. 7 and 8

*Reglamento Especial para Determinar Inopia de Profesionales para los Efectos de Miembro Temporal o Incorporación de Extranjeros al Colegio Federado de Ingenieros y de Arquitectos de Costa Rica*, approved in Session 45-82-GE of December 1982 – Arts. 1, 2, 3, 4, 5, 6, 7, and 8

Law No. 1038 of 19 August 1947 – *Ley de Creación del Colegio de Contadores Públicos* – Arts. 3, 4, 12, and 15

Law No. 3455 of 14 November 1964 – *Ley Orgánica del Colegio de Médicos Veterinarios* – Arts. 2, 4, 5, 7, and 27

Executive Decree No. 19184-MAG of 10 July 1989 – *Reglamento a la Ley Orgánica del Colegio de Médicos Veterinarios* – Arts. 6, 7, 10, 11, 19, and 24

Law No. 2343 of 4 May 1959 – *Ley Orgánica del Colegio de Enfermeras de Costa Rica* – Arts. 2, 22, 23, 24, and 28

Executive Decree No. 11 of 10 August 1961 – *Reglamento de la Ley Número 2343 del 4 de mayo de 1959 que Crea el Colegio de Enfermeras de Costa Rica* – Arts. 9, 10, 53, 54, and 67

Law No. 7764 of 17 April 1998 – *Código Notarial* – Arts. 3 and 10

Law No. 1269 of 2 March 1951 – *Ley Orgánica del Colegio de Contadores Privados de Costa Rica* – Arts. 2 and 4

Law No. 6038 of 13 January 1977 – *Ley Orgánica del Colegio de Químicos e Ingenieros Químicos de Costa Rica* – Arts. 5, 10, 14, 15, 16, 17, 18, 19, 20, and 71

Executive Decree No. 11275-P of 27 February 1980 – *Reglamento a la Ley Orgánica de Químicos e Ingenieros Químicos de Costa Rica* – Arts. 1, 2, 3, 8, 9, and 83

Law No. 3019 of 9 August 1962 – *Ley Orgánica del Colegio de Médicos y Cirujanos* – Arts. 4, 5, and 7

Executive Decree No. 23110-S of 22 March 1991 – *Reglamento a la Ley Orgánica del Colegio de Médicos y Cirujanos* – Art. 10

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Executive Decree No. 2613-SPSS of 3 November 1972 – *Reglamento General para Autorizar el Ejercicio a Profesionales de Ramas Dependientes de las Ciencias Médicas y a Técnicos en Materias Médico Quirúrgicas* – Arts. 1 and 4

Law No. 3838 of 19 December 1966 – *Ley Orgánica del Colegio de Optometristas de Costa Rica* – Arts. 6 and 7

Law No. 4420 of 18 September 1969 – *Ley Orgánica del Colegio de Periodistas de Costa Rica* – Arts. 2, 24, 25, and 27

Executive Decree No. 14931 of 20 October 1983 – *Reforma al Reglamento de la Ley Orgánica del Colegio de Periodistas de Costa Rica* – Arts. 5, 6, and 26

Law No. 7106 of 4 November 1988 – *Ley Orgánica del Colegio de Profesionales en Ciencias Políticas* – Arts. 6, 26, and 29

Executive Decree No. 19026-P of 31 May 1989 – *Reglamento a la Ley Orgánica del Colegio de Profesionales en Ciencias Políticas y de Relaciones Internacionales* – Arts. 1, 10, 12, 19, 21, and 22

Law No. 8356 of 12 June 2002 – *Reforma Ley Orgánica del Colegio de Profesionales en Ciencias Políticas* – Art. 1

Law No. 4288 of 12 December 1968 – *Ley Orgánica del Colegio de Biólogos* – Arts. 6 and 7

Executive Decree No. 39 of 6 March 1970 – *Reglamento de la Ley Orgánica del Colegio de Biólogos de Costa Rica* – Arts. 10, 11, 16, 17, 18, and 19

*Reglamento a la Ley Orgánica al Colegio de Bibliotecarios de Costa Rica*, approved in the ordinary General Assembly of 2 October 1991 – Arts. 12 and 17

Law No. 7537 of 22 August 1995 – *Ley Orgánica del Colegio de Profesionales en Informática y Computación* – Arts. 6 and 8

Law No. 8142 of 17 October 2001 – *Ley de Traducciones e Interpretaciones Oficiales* – Art. 6

Executive Decree No. 30167-RE of 25 January 2002 – *Reglamento a la Ley de Traducciones e Interpretaciones Oficiales* – Art. 10

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Law No. 7105 of 31 October 1988 – *Ley Orgánica del Colegio de Licenciados en Ciencias Económicas de Costa Rica* – Arts. 4, 6, 15, 19, and 20

Executive Decree No. 20014-MEIC of 19 September 1990 – *Reglamento General de Profesionales en Ciencias Económicas de Costa Rica* – Arts. 10, 14, and 17

Law No. 7503 of 3 May 1995 – *Ley Orgánica del Colegio de Físicos* – Arts. 6 and 10

Executive Decree No. 28035-MINAE-MICIT of 14 April 1999 – *Reglamento a la Ley Orgánica del Colegio de Físicos* – Arts. 6, 7, 10, 11, 18, and 21

Law No. 6144 of 28 November 1977 – *Ley Orgánica del Colegio Profesional de Psicólogos de Costa Rica* – Arts. 4, 5, and 6

*Reglamento General del Colegio Profesional de Psicólogos de Costa Rica*, approved in Session No. 3 of the Ordinary General Assembly of 09 March 1979 – Arts. 9, 10, and 11

Executive Decree No. 28595-S of 23 March 2000 – *Reglamento de la Ley Orgánica del Colegio de Profesionales en Quiropráctica* – Art. 15

**Description:****Cross-Border Services and Investment**

To join the Professional Associations of Public Accountants, Pharmacists, Geologists, Physicians and Surgeons, Veterinarians, Lawyers (i.e., Notaries), Dental Surgeons, Optometrists, Journalists, Nurses, Medical and Surgical Technicians and Medical Sciences Branches, all foreign professionals must prove that, in their home jurisdiction where they are allowed to practice, Costa Rican nationals can exercise their profession under like circumstances.

To join the Professional Associations of Public Accountants, Pharmacists, Geologists, Agronomical Engineers (Forestry or Agriculture/Livestock Appraisers-Surveyors), Physicians and Surgeons, Veterinarians, Dental Surgeons, Journalists, Medical and Surgical Technicians and Medical Sciences Branches, Computer and Information Technology, Nurses and Official Translators and Interpreters, foreign professionals must have the migratory status of residents in Costa Rica at the time of applying for membership, as well as have a certain minimum number of years of residence.

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The number of years varies from one Professional Association to another, but usually ranges between two to five years.

To join the Professional Associations of Lawyers (i.e., Notaries), Chemists and Chemical Engineers, Political Scientists and International Relations Specialists and Physicists, foreign professionals must have the migratory status of residents in Costa Rica at the time of applying for membership.

Only Costa Rican professionals duly registered in the *Colegio de Ingenieros Agrónomos* can supply their services for consulting enterprises in agronomical sciences operating in Costa Rica to comply with the 50 percent legal requirement of total professional consulting advisory time.

Consulting or advisory work in the field of agronomical sciences carried out in Costa Rica under the auspices of foreign governments or international institutions shall be jointly conducted by Costa Rican nationals registered in the Colegio, along with foreign nationals.

Foreign professionals in political sciences and international relations specialists may only be hired by public or private entities when they are active members of the Professional Association and insufficiency of Costa Rican professionals has been declared.

For greater certainty, subject to the conditions and terms included in the applicable legislation, the following professional associations may provide temporary licenses to allow temporary professional practice in Costa Rica: Biologists, Economists and Social Scientists, Political Scientists and International Relations Specialists, Dental Surgeons, Pharmacists, Physicists, Computer and Information Technology Professionals, Agronomical Engineers, Architects and Engineers, Physicians and Surgeons, Veterinarians, Journalists, Psychologists, Chemists and Chemical Engineers and Chiropractors.

For greater certainty, none of the measures listed in this Annex entry restricts enterprises in Costa Rica from otherwise employing foreign professionals in accordance with Costa Rican law in order to carry out contracts.

## ANNEX I, Schedule of Costa Rica

<b>Sector:</b>	Maritime-Land Zone
<b>Obligations Concerned:</b>	National Treatment (Articles 10.3 and 11.2) Local Presence (Article 11.5) Market Access (Article 11.4)
<b>Level of Government:</b>	Central
<b>Measures:</b>	Law No. 6043 of 2 March 1977 – <i>Ley sobre la Zona Marítimo Terrestre</i> – Arts. 9, 10, 11, and 12, and Chapters 3 and 6
<b>Description:</b>	<u>Cross-Border Services and Investment</u>

A concession is required to perform any type of development or activity in the maritime-terrestrial zone.<sup>1</sup> Such a concession shall not be granted to or held by: (a) foreign nationals that have not resided in the country for at least five years; (b) enterprises with bearer shares; (c) enterprises domiciled abroad; (d) enterprises incorporated in the country solely by foreign nationals; or (e) enterprises where more than 50 percent of the capital shares or stocks are owned by foreigners.

Within the maritime-terrestrial zone, no concession may be granted within the first 50 meters counted from the high tide line nor in the area comprised between the high tide line and the low tide line.

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<sup>1</sup> The maritime-terrestrial zone is the 200-meter strip located along the entire length of the Atlantic and Pacific coast lines of Costa Rica, measured horizontally from the ordinary high tide line. The maritime-terrestrial zone also covers all islands located within the Costa Rican territorial waters.

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<b>Sector:</b>	Land Transportation Services – Transportation of Passengers
<b>Obligations Concerned:</b>	National Treatment (Articles 10.3 and 11.2) Most-Favored-Nation Treatment (Articles 10.4 and 11.3) Market Access (Article 11.4)
<b>Level of Government:</b>	Central
<b>Measures:</b>	<p>Executive Decree No. 26 of 10 November 1965 – <i>Reglamento del Transporte Internacional de Personas</i> – Arts. 1, 3, 4, 5, 9, 15, and 16 as amended by Executive Decree No. 20785-MOPT of 4 October 1991 – Art. 1</p> <p>Law No. 3503 of 10 May 1965 – <i>Ley Reguladora del Transporte Remunerado de Personas en Vehículos Automotores</i> – Arts. 1, 3, 4, 6, 10, 11, and 25</p> <p>Executive Decree No. 31180-MOPT of 24 April 2003 – <i>Regula el Servicio Público de Transporte Remunerado de Personas en Modalidad de Taxi</i> – Art. 1</p> <p>Law No. 7969 of 22 December 1999 – <i>Ley Reguladora del Servicio Público de Transporte Remunerado de Personas en Vehículos en la Modalidad de Taxis</i> – Arts. 1, 2, 3, 29, 30, and 33</p> <p>Executive Decree No. 5743-T of 12 February 1976 – <i>Reglamento a la Ley Reguladora del Transporte Remunerado de Personas en Vehículos Taxis</i> – Arts. 1, 2, 5, and 14</p> <p>Executive Decree No. 28913-MOPT of 13 September 2000 – <i>Reglamento del Primer Procedimiento Especial Abreviado para el Transporte Remunerado de Personas en Vehículos en la Modalidad de Taxi</i> – Arts. 1, 3, and 16</p> <p>Law No. 5066 of 30 August 1972 – <i>Ley General de Ferrocarriles</i> – Arts. 1, 4, 5, and 41</p> <p>Executive Decree No. 28337-MOPT of 16 December 1999 – <i>Reglamento sobre Políticas y Estrategias para la Modernización del Transporte Colectivo Remunerado de Personas por Autobuses Urbanos para el Área Metropolitana de San José y Zonas Aledañas que la Afecta Directa o Indirectamente</i> – Art. 1</p>

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Executive Decree No 15203-MOPT of 22 February 1984  
*Reglamento para la Explotación de Servicios Especiales de Transporte Automotor Remunerado de Personas* – Arts. 2, 3, 4, and 5

Law No. 7593 of 9 August 1996 – *Ley de la Autoridad Reguladora de los Servicios Públicos* – Arts. 5, 9, 10, and 13

**Description:**Cross-Border Services and Investment

Costa Rica reserves the right to limit the number of concessions to operate domestic remunerated passenger transportation routes in automotive vehicles (including special passenger transportation services as defined in Articles 2 and 3 of Executive Decree No. 15203-MOPT of 22 February 1984 – *Reglamento para la Explotación de Servicios Especiales de Transporte Automotor Remunerado de Personas*). Such concessions shall be awarded through bidding, which shall only be opened if the *Ministerio de Obras Públicas y Transportes* has previously determined the need to supply the service according to the proper technical studies.

Where there are multiple bids, including one by a Costa Rican supplier, that satisfy the requirements to the same extent, the Costa Rican bid shall be preferred over the foreign bid, whether by natural persons or enterprises.

A permit to operate an international remunerated passenger transportation service shall be granted only to enterprises organized under Costa Rican law or those that are at least 60 percent owned by Central American nationals.

In addition to the restriction set out above, when granting permits to supply international services for remunerated passenger transportation, the principle of reciprocity shall apply.

A permit is required in order to supply international remunerated passenger land transportation services. New concessions may be granted if justified by demand for the service. Priority will be given to concessionaires already supplying the service.

Costa Rica reserves the right to limit the number of permits or concessions to supply domestic remunerated passenger land transportation services based on demand for the service. Priority will be given to concessionaires already supplying the service.

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The *Ministerio de Obras Públicas y Transportes* reserves the right to set annual limits on the number of concessions for taxi cab services to be granted in each district, county (*cantón*), and province. Only one taxi cab concession may be granted to each natural person, and each concession grants the right to operate only one vehicle. Bids for taxi concessions are awarded based on a point system that gives an advantage to existing suppliers.

Each concession to supply regular public remunerated passenger transportation services in automotive vehicles, excluding taxi cabs, may be granted only to one person, unless an economic needs test evidences the need to have additional suppliers. In addition, one natural person may not own more than two enterprises nor be a majority shareholder in more than three enterprises operating different routes.

Permission to supply non-tour bus passenger transportation services in the greater metropolitan area of the Central Valley of Costa Rica shall only be granted once it has been demonstrated that regular public bus services cannot satisfy the demand.

Costa Rica reserves the right to maintain a monopoly over the supply of railroad transportation. However the State can grant concessions to private persons. Concessions may be granted if justified by demand for the service. Priority will be given to concessionaires already supplying the service.

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<b>Sector:</b>	Land Transportation Services – Freight Transportation
<b>Obligations Concerned:</b>	National Treatment (Articles 10.3 and 11.2) Most-Favored-Nation Treatment (Articles 10.4 and 11.3) Senior Management and Boards of Directors (Article 10.10) Market Access (Article 11.4)
<b>Level of Government:</b>	Central
<b>Measures:</b>	Executive Decree No. 31363 of 02 June 2003 – <i>Reglamento de Circulación por Carretera con base en el Peso y las Dimensiones de los Vehículos de Carga</i> – Art. 69  Executive Decree No. 15624-MOPT of 28 August 1984 – <i>Reglamento del Transporte Automotor de Carga Local</i> – Arts. 8, 9, 10, and 12  Law No. 7593 of 9 August 1996 – <i>Ley de la Autoridad Reguladora de los Servicios Públicos</i> – Arts. 5, 9, and 13
<b>Description:</b>	<u>Cross-Border Services and Investment</u>  Only Costa Rican nationals or enterprises may supply motorized transportation services between two points within the territory of Costa Rica. Such an enterprise must meet the following requirements: (a) at least 51 percent of its capital must be owned by Costa Rican nationals; and (b) Costa Rican nationals must have effective control and management of the enterprise.  No motor vehicle, trailer, or tractor-trailer with foreign license plates may transport goods within the territory of Costa Rica. This prohibition does not apply to vehicles, trailers, or tractor-trailers registered in one of the Central American countries.  Foreign enterprises involved in international multi-modal freight transportation must contract enterprises organized under the laws of Costa Rica to transport containers and tractor-trailers within Costa Rica.  Costa Rica reserves the right to grant concessions to supply railroad freight transportation services based on demand for the service. Priority will be given to concessionaires already supplying the service.

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<b>Sector:</b>	Water Transportation Services
<b>Obligations Concerned:</b>	National Treatment (Articles 10.3 and 11.2) Market Access (Article 11.4) Local Presence (Article 11.5)
<b>Level of Government:</b>	Central
<b>Measures:</b>	<p>Law No. 7593 of 9 August 1996 – <i>Ley de la Autoridad Reguladora de los Servicios Públicos</i> – Arts. 5, 9, and 13</p> <p>Law No. 104 of 06 June 1853 – <i>Código de Comercio de 1853-Libro III Del Comercio Marítimo</i> – Arts. 537 and 580</p> <p>Law No. 12 of 22 October 1941 – <i>Ley de Abanderamiento de Barcos</i> – Arts. 41 and 43</p> <p>Law No. 2220 of 20 June 1958 – <i>Ley de Servicio de Cabotaje de la República</i> – Arts. 5, 7, 8, 9, 11, and 12</p> <p>Executive Decree No. 66 of 4 November 1960 – <i>Reglamento de la Ley de Servicios de Cabotaje de la República</i> – Arts. 10, 11, 12, 15, and 16</p> <p>Executive Decree No. 12568-T-S-H of 30 April 1981 – <i>Reglamento del Registro Naval Costarricense</i> – Arts. 8, 10, 11, 12, and 13</p> <p>Executive Decree No. 23178-J-MOPT of 18 April 1994 – <i>Traslada Registro Nacional Buques al Registro Público Propiedad Mueble</i> – Art. 5</p>
<b>Description:</b>	<p><u>Cross-Border Services and Investment</u></p> <p>Costa Rica reserves the right to limit the number of concessions to water transportation services based on demand for those services. Priority will be given to concessionaires already supplying the service.</p> <p>A concession to supply cabotage services shall only be granted to Costa Rican nationals or enterprises organized under Costa Rican law of which at least 60 percent of the shares are owned by Costa Rican nationals.</p>

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Only Costa Rican nationals, national public entities, enterprises constituted and domiciled in Costa Rica, and shipping company representatives can register vessels in Costa Rica. This rule may not apply to foreign nationals or foreign enterprises registering vessels smaller than 50 tons for non-commercial use only.

All natural persons or enterprises established abroad that own one or more foreign registered vessels located in Costa Rica shall appoint and maintain an agent or legal representative in Costa Rica to act as liaison with the official authorities in all vessel-related matters.

Trade and tourist cabotage activities between Costa Rican ports must be conducted by vessels registered in Costa Rica.

Foreign nationals who wish to act as captain of a vessel with Costa Rican registry and flag must post a bond equivalent to at least half of the value of the vessel under his/her command.

At least ten percent of the crew on Costa Rican registered vessels used for international traffic that call on Costa Rican ports shall be Costa Rican nationals, provided that such trained personnel are available domestically.

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<b>Sector:</b>	Specialty Air Services
<b>Obligations Concerned:</b>	National Treatment (Article 11.2) Most-Favored-Nation Treatment (Article 11.3) Local Presence (Article 11.5)
<b>Level of Government:</b>	Central
<b>Measures:</b>	<p>Law No. 5150 of 14 May 1973 – <i>Ley General de Aviación Civil</i> – Arts. 143, 156, paragraphs 3 and 4, and 179</p> <p>Executive Decree No. 3326-T of 25 October 1973 – <i>Reglamento para el Otorgamiento de Certificados de Explotación</i> – Arts. 5 and 6</p> <p>Executive Decree No. 4440-T of 3 January 1975 – <i>Reglamento para la Operación del Registro Aeronáutico Costarricense</i> – Art. 20 and 38</p> <p>Executive Decree No. 4637- T of 18 February 1975 – <i>Reglamento de Licencias para Personal Técnico Aeronáutico</i> – Art. 23</p> <p>Executive Decree No. 31520-MS-MAG-MINAE-MOPT-MGPSP of 16 October 2003 – <i>Reglamento para las Actividades de Aviación Agrícola</i> – Arts. 10, 11, 13, 24, and 41</p> <p>Executive Decree No. 28262-MOPT of 1 November 1999 – <i>Reglamento de Certificados de Operador Aéreo (COA), Certificados Operativos y Autorizaciones de Operación (RAC 119)</i> – Sections 119.33 and 119.47</p>
<b>Description:</b>	<p><u>Cross-Border Services</u></p> <p>Costa Rican enterprises interested in obtaining a provider certificate for any aeronautical service, including specialty air services, must demonstrate that effective control and management of the enterprise, and at least 51 percent of the capital, are in the hands of Costa Rican nationals.</p> <p>Certificates for the supply of any aeronautical service shall be issued to enterprises constituted under foreign law, based on the principle of reciprocity.</p>

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Every holder of a provider certificate must maintain an operation and maintenance base in Costa Rica.

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<b>Sector:</b>	Air Transportation Services
<b>Obligations Concerned:</b>	National Treatment (Article 10.3) Most-Favored-Nation Treatment (Article 10.4) Senior Management and Boards of Directors (Article 10.10)
<b>Level of Government:</b>	Central
<b>Measures:</b>	Law No. 5150 of 14 May 1973 – <i>Ley General de Aviación Civil</i> – Arts. 36, 37, 42, 149, 156, and 179  Executive Decree No. 3326-T of 25 October 1973 – <i>Reglamento para el Otorgamiento de Certificados de Explotación</i> – Arts. 5 and 6  Executive Decree No. 4440-T of 3 January 1975 – <i>Reglamento para la Operación del Registro Aeronáutico Costarricense</i> – Arts. 20 and 38  Executive Decree No. 4637-T of 18 February 1975 – <i>Reglamento de Licencias para Personal Técnico Aeronáutico</i> – Art. 23
<b>Description:</b>	<u>Investment</u>  Only Costa Rican nationals or enterprises may supply domestic air transport services, whether regular or non-regular.  In order to supply these services, the Costa Rican enterprise must meet the following requirements: (a) at least 51 percent of its capital must be owned by Costa Rican nationals; and (b) effective control and management of the enterprise must be in the hands of Costa Rican nationals. Foreign nationals cannot be members of the Board of Directors of such enterprises.  Only Costa Rican nationals or enterprises may register aircraft in the <i>Registro Aeronáutico Costarricense</i> to be used for remunerated airborne activities.  Foreign nationals that legally reside in the country may also register aircraft used exclusively for non-commercial purposes.  In the absence of agreements or conventions, certificates for the supply of international air transportation shall be issued based on the principle of reciprocity.

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<b>Sector:</b>	Tourist Guides
<b>Obligations Concerned:</b>	National Treatment (Article 11.2)
<b>Level of Government:</b>	Central
<b>Measures:</b>	Executive Decree No. 31030-MEIC-TUR of 17 January 2003 – <i>Reglamento de los Guías de Turismo</i> – Art. 11
<b>Description:</b>	<u>Cross-Border Services</u> Only Costa Rican nationals may apply for tour guide licenses.

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<b>Sector:</b>	Travel Agencies and Tourism
<b>Obligations Concerned:</b>	Market Access (Article 11.4)
<b>Level of Government:</b>	Central
<b>Measures:</b>	Law No. 5339 of 24 August 1973 – <i>Ley Reguladora de las Agencias de Viajes</i> – Art. 8  Executive Decree No. 24863-H-TUR of 5 December 1995 – <i>Reglamento de la Ley de Incentivos para el Desarrollo Turístico</i> – Art. 16
<b>Description:</b>	<u>Cross-Border Services</u>  Costa Rica reserves the right to limit the number of travel agencies authorized to operate in Costa Rica based on demand for that service.

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<b>Sector:</b>	Transportation Services – Custom Brokers - Assistant Custom Brokers – Custom Transportation Agents
<b>Obligations Concerned:</b>	National Treatment (Article 11.2) Local Presence (Article 11.5)
<b>Level of Government:</b>	Central
<b>Measures:</b>	Law No. 7557 of 20 October 1995 – <i>Ley General de Aduanas y sus reformas</i> – Arts. 28, 29, 33, 35, 40, 41, 44, 46, and 49  Executive Decree No. 25270-H of 14 June 1996 – <i>Reglamento a la Ley General de Aduanas</i> – Arts. 77, 78, and 113
<b>Description:</b>	<u>Cross-Border Services</u>  Only persons or enterprises that have a legal representative and corporate headquarters in Costa Rica may act as a customs transportation agent, international freight agent, customs depositary, or other public function customs auxiliary.  Only Costa Rican nationals may act as customs brokers.

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<b>Sector:</b>	Telecommunications Related Services – Radio and Television
<b>Obligations Concerned:</b>	National Treatment (Articles 10.3 and 11.2) Most-Favored-Nation Treatment (Articles 10.4 and 11.3) Senior Management and Boards of Directors (Article 10.10) Market Access (Article 11.4)
<b>Level of Government:</b>	Central
<b>Measures:</b>	<i>Constitución Política de la República de Costa Rica</i> – Art.121 paragraph 14  Law No. 1758 of 19 June 1954 – <i>Ley de Radio y Televisión</i> – Arts. 1, 2, 3, and 7  <i>Executive Decree No. 21 of 29 September 1958 – Reglamento para la Operación de Radiodifusoras de Televisión</i> – Art. 4  <i>Executive Decree No. 63 of 11 December 1956 – Reglamento de Estaciones Inalámbricas</i> – Arts. 7, 13, 15, and 30
<b>Description:</b>	<u>Cross-Border Services and Investment</u>  In Costa Rica, wireless services may not be permanently removed from State ownership and may be supplied only by the public administration or by private parties, in accordance with the law or under a special concession granted for a limited period of time and on the basis of conditions and stipulations to be established by the Legislative Assembly.  Only a Costa Rican national or enterprise with at least 65 percent of its capital owned by Costa Rican nationals may establish or manage an enterprise that supplies wireless services. This restriction does not apply to the establishment and operation of ham radio stations, but rights shall not be granted to a foreign national residing in Costa Rica when the country of origin of the foreign national does not grant that same right to Costa Rican nationals.  Only a Costa Rican national or enterprise that has nominal capital stock and is owned by Costa Rican nationals may obtain a license for Ultra High Frequency (UHF) radio broadcasting services.  Only a Costa Rican national or enterprise with at least 65 percent of its capital owned by Costa Rican nationals may obtain a license

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or be awarded a free over the air broadcast television channel for signals that originate in Costa Rica.

Only a Costa Rican national or enterprise with at least 65 percent of its capital owned by Costa Rican nationals may obtain a license to operate radio; ham radio; radio-television; and maritime, aeronautical, meteorological, and private broadcasting stations.

Directors and administrators of enterprises supplying radio and television services must be Costa Rican by birth or must have been naturalized Costa Ricans for at least ten years.

The right to establish radiographic stations in Costa Rica for transmission or reception of official messages is permanently reserved to the State, and is not subject to concession.

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<b>Sector:</b>	Wholesale and Retail Distribution – Crude Oil and Its Derivatives
<b>Obligations Concerned:</b>	Market Access (Article 11.4)
<b>Level of Government:</b>	Central
<b>Measures:</b>	<p>Law No. 7356 of 24 August 1993 – <i>Ley del Monopolio Estatal de Hidrocarburos Administrado por Recope “Establece Monopolio a favor del Estado para la Importación, Refinación y Distribución de Petróleo, Combustibles, Asfaltos y Naftas”</i> – Art.1</p> <p>Law No. 7593 of 9 August 1996 – <i>Ley de la Autoridad Reguladora de los Servicios Públicos</i> – Arts. 5, 9, and 13</p>
<b>Description:</b>	<p><u>Cross-Border Services</u></p> <p>Wholesale distribution of crude oil and its derivatives – including fuel, asphalt, and naphtha – is subject to a State monopoly.</p> <p>Costa Rica reserves the right to limit the number of concessions for retail distributors of crude oil and its derivatives – including fuel, asphalt, and naphtha – based on demand for the service. Priority will be given to concessionaires already supplying the service.</p>

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<b>Sector:</b>	Services Incidental to Mining – Hydrocarbon Exploration
<b>Obligations Concerned:</b>	Local Presence (Article 11.5)
<b>Level of Government:</b>	Central
<b>Measures:</b>	<i>Constitución Política de la República de Costa Rica</i> – Art. 121 Law No. 7399 of 3 May 1994 – <i>Ley de Hidrocarburos</i> – Arts. 1 and 22 Executive Decree No. 24735-MIRENEM of 29 September 1995 – <i>Reglamento a la Ley de Hidrocarburos</i> – Art. 17 Executive Decree No. 28148-MINAE of 30 August 1999 – <i>Reglamento de Cesión de Derechos y Obligaciones de Contratos de Exploración y Explotación de Hidrocarburos</i> – Art. 3
<b>Description:</b>	<u>Cross-Border Services</u> If the recipient of a concession for hydrocarbon exploration and other services incidental to the mining of hydrocarbons that is organized under the law of a foreign country, it must have a branch office and legal representative in Costa Rica.

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<b>Sector:</b>	Mining and Services Incidental to Mining – Ores Other than Hydrocarbons
<b>Obligations Concerned:</b>	Market Access (Article 11.4) National Treatment (Articles 10.3 and 11.2) Local Presence (Article 11.5)
<b>Level of Government:</b>	Central
<b>Measures:</b>	<i>Constitución Política de la República de Costa Rica</i> – Art. 121, paragraph 14  Law No. 6797 of 4 October 1982 – <i>Código de Minería</i> – Arts. 1, 4, 6, 7, 9, 11, 66, 67, 69, 70, 71, and 74
<b>Description:</b>	<u>Cross-Border Services and Investment</u>  Exploration and other services incidental to the mining of any radioactive minerals in Costa Rica may be supplied only by the State or by private parties under a concession, in accordance with the Constitution.  Concessions for mining or exploration of ores other than hydrocarbons may not be granted to foreign governments or their representatives. Concessionaires that are enterprises organized under foreign law or natural persons not resident in Costa Rica must appoint a legal representative with full powers of attorney to acquire rights and enter into obligations on behalf of the represented natural persons or enterprise, and must also maintain an office in Costa Rica.  Banks of the Costa Rican Banking System shall not grant funds in an amount greater than ten percent of the total investment to enterprises with more than 50 percent foreign ownership.  Only individuals can constitute mining cooperatives, and 75 percent of the members must be Costa Rican nationals.

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<b>Sector:</b>	Scientific and Research Services
<b>Obligations Concerned:</b>	Local Presence (Article 11.5)
<b>Level of Government:</b>	Central
<b>Measures:</b>	Law No. 7788 of 30 April 1998 – <i>Ley de Biodiversidad</i> – Art. 63
<b>Description:</b>	<u>Cross-Border Services</u> Foreign nationals or enterprises domiciled abroad that supply scientific research and bioprospecting <sup>2</sup> services with regard to biodiversity <sup>3</sup> in Costa Rica shall designate a legal representative that resides in Costa Rica.

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<sup>2</sup> Bioprospecting includes the systematic search, classification, and investigation, for commercial purposes, of new sources of chemical compounds, genes, proteins, microorganisms, and other products with real or potential economic value found in biodiversity.

<sup>3</sup> Biodiversity includes the variability of live organisms of any source, found in land, air, marine, aquatic, or other ecological ecosystems, as well as the diversity within each species and between species and the ecosystems of which they are a part. Biodiversity also includes intangible elements such as: the knowledge, innovation, and individual or collective traditional practice, with real or potential economic value, associated with genetic and bio-chemical resources protected or not by intellectual property rights or *sui generis* registry systems.

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<b>Sector:</b>	Free Zones
<b>Obligations Concerned:</b>	Performance Requirements (Article 10.9)
<b>Level of Government:</b>	Central
<b>Measures:</b>	Law No. 7210 of 23 November 1990 – <i>Ley de Régimen de Zonas Francas</i> – Art. 22  Executive Decree No. 29606-H-COMEX of 18 June 2001 – <i>Reglamento a la Ley de Régimen de Zonas Francas</i> – Arts. 55 and 57
<b>Description:</b>	<u>Investment</u>  An enterprise established in the Free Zone in Costa Rica may not introduce more than 25 percent of its total sales in goods or 50 percent of its total sales in services into Costa Rica's customs territory. An enterprise established in the Free Zone in Costa Rica that only repackages or redistributes goods but does not alter them may not introduce any such goods into Costa Rica's customs territory.

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<b>Sector:</b>	Services Incidental to Agriculture and Forestry
<b>Obligations Concerned:</b>	National Treatment (Article 11.2)
<b>Level of Government:</b>	Central
<b>Measures:</b>	Law No. 7317 of 30 October 1992 – <i>Ley de Conservación de la Vida Silvestre</i> – Arts. 28, 29, 31, 38, 39, 64, and 66  Executive Decree No. 26435-MINAE of 1 October 1997 – <i>Reglamento a la Ley de Conservación de la Vida Silvestre</i> – Art. 32
<b>Description:</b>	<u>Cross-Border Services</u>  A license for scientific or cultural collection of species shall be issued for a maximum of one year for nationals or residents, and six months or less for all other foreigners.  Nationals and residents shall pay a lower fee than non-resident foreigners to obtain the license referred to above.

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<b>Sector:</b>	Fisheries and Services Incidental to Fishing
<b>Obligations Concerned:</b>	National Treatment (Article 10.3) Performance Requirements (Article 10.9)
<b>Level of Government:</b>	Central
<b>Measures:</b>	<p><i>Constitución Política de la República de Costa Rica – Art. 6</i></p> <p>Law 190 of 28 September 1948 – <i>Ley de Pesca y Caza Marítimas</i> – Art. 7</p> <p>Law No. 6267 of 29 August 1978 – <i>Reforma a la Ley de Pesca y Barcos de Bandera Extranjera en Mar Patrimonial</i> – Arts. 3, 5, and 14</p> <p>Executive Decree No. 23943-MOPT-MAG of 5 January 1995 – <i>Reglamento Regulator del Procedimiento para Otorgar Licencias de Pesca a Buques Extranjeros que Deseen Ejercer la Actividad de Pesca en Aguas Jurisdiccionales Costarricenses</i> – Art. 6</p> <p>Executive Decree No. 12737-A of 23 June 1981 – <i>Reserva con Exclusividad la Pesca para Fines Comerciales a Costarricenses</i> – Art. 1</p> <p>Executive Decree No. 17658-MAG of 17 July 1987 – <i>Clasifica Permisos para Pesca de Camarones en el Litoral Pacífico</i> – Arts. 1, 2, and 3</p>
<b>Description:</b>	<p><u>Investment</u></p> <p>The State exercises complete and exclusive sovereignty over its territorial waters within a distance of 12 miles measured from the low-tide mark along its shores, over its continental shelf, and its insular undersea base, in accordance with principles of international law. It also exercises special jurisdiction over the seas adjacent to its territory within a distance of two hundred miles measured from the same mark, in order to protect, preserve, and exploit exclusively all the natural resources and wealth existing in the waters, soil, and subsoil of those zones, in accordance with those principles.</p> <p>Catch of shrimp and fish with scales may only be allowed in Costa Rica with vessels built in the country with wood obtained in Costa Rica and made by Costa Rican nationals.</p>

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Foreign flag fishing vessels may pay lower fees and benefit from automatic renewal of fishing permits if they supply their catch to national enterprises. National enterprises are those with at least 51 percent of their capital belonging to Costa Rican nationals.

Commercial fishing within the 12 miles of Costa Rican territorial waters is exclusively reserved to Costa Rican nationals and Costa Rican enterprises with at least 51 percent of their capital belonging to Costa Rican nationals that fish with vessels flying the Costa Rican flag.

The commercial catch of shrimp in Costa Rican territorial waters of the Pacific Ocean is reserved to vessels with Costa Rican registry and flag owned by Costa Rican nationals.

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<b>Sector:</b>	Electric Energy
<b>Obligations Concerned:</b>	Market Access (Article 11.4) Local Presence (Article 11.5) National Treatment (Articles 10.3 and 11.2)
<b>Level of Government:</b>	Central
<b>Measures:</b>	<p><i>Constitución Política de la República de Costa Rica</i> – Art. 121</p> <p>Law No. 7200 of 28 April 1990 – <i>Ley que Autoriza la Generación Eléctrica Autónoma o Paralela</i> – Arts. 1, 2, 3, 5, 7, and 26 as amended by Law No. 7508 of 09 May 1995 – <i>Ley sobre Reforma a la Ley que Autoriza la Generación Autónoma o Paralela</i> – Arts. 2 and 3</p> <p>Law No. 7789 of 30 April 1998 – <i>Transformación de la Empresa de Servicios Públicos de Heredia</i> – Art. 15</p> <p>Executive Decree No. 20346 MIRENEM of 21 March 1991 – <i>Reglamento a la Ley que Autoriza la Generación Eléctrica Autónoma o Paralela</i> – Arts. 4, 5, 6, and 8</p> <p>Executive Decree No. 24866-MINAE of 12 December 1995 – <i>Reglamento al Capítulo II de la Ley de Generación Paralela: Régimen de Competencia</i> – Art. 34</p> <p>Law No. 7593 of 9 August 1996 – <i>Ley de la Autoridad Reguladora de los Servicios Públicos</i> – Arts. 5, 9, and 13</p> <p>Law No. 8345 of 20 February 2003 – <i>Ley de Participación de las Cooperativas de Electrificación Rural y de las Empresas de Servicios Públicos Municipales en el Desarrollo Nacional</i> – Arts. 1, 2, 3, 6, 7, 9, 11, 12, and 13</p>
<b>Description:</b>	<p><u>Cross-Border Services and Investment</u></p> <p>Costa Rica reserves the right to grant concessions for the transmission, distribution, and trade of electric energy by legislation based on demand for the service. Priority will be given to concessionaires already supplying the service.</p> <p>For greater certainty, some of the enterprises that currently have concessions to supply these services include: <i>Instituto Costarricense de Electricidad (ICE)</i>; <i>Empresa de Servicios Públicos de Heredia</i>; <i>Junta Administrativa del Servicio Eléctrico</i></p>

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*Municipal de Cartago (JASEC); Compañía Nacional de Fuerza y Luz;* and cooperative associations, cooperative consortiums, and public municipal service enterprises in accordance with the provisions of Law No. 8345.

All of these enterprises may enter into joint ventures with public or private enterprises to supply their services, subject to the provisions stipulated by law. In the case of *Empresa de Servicios Públicos de Heredia*, no less than 51 percent of the capital of the private enterprise may be owned by Costa Rican nationals.

Private persons may invest in activities for the operation of limited capacity power plants<sup>4</sup> not exceeding 20,000 kW, provided they meet the following requirements:

- (a) *ICE* may purchase electricity from enterprises in which no less than 35 percent of the capital is owned by Costa Rican nationals.
- (b) Enterprises organized under foreign law that sign a power purchase contract with *ICE* must establish a branch office in Costa Rica.

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<sup>4</sup> For greater certainty, *ICE* may authorize the operation of a limited capacity plant, provided that the power generated by all such private plants in Costa Rica does not represent more than 15 percent of the total power produced by all public and private plants in the national electric system. Also for greater certainty, any power generated using water in the public domain may be provided only by the State or by private parties, under a concession, in accordance with the Constitution.

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<b>Sector:</b>	Higher Education Services
<b>Obligations Concerned:</b>	National Treatment (Articles 10.3 and 11.2) Senior Management and Boards of Directors (Article 10.10)
<b>Level of Government:</b>	Central
<b>Measures:</b>	Executive Decree No. 30431 of 23 April 2002 – <i>Reglamento de la Educación Superior Parauniversitaria</i> – Arts. 6 and 61, paragraph (d)
<b>Description:</b>	<u>Cross-Border Services and Investment</u> No less than 85 percent of the faculty, administrative faculty, and administrative staff of a private institute of higher education must be Costa Rican nationals.

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<b>Sector:</b>	Human Health Service Professionals – Physicians and Surgeons, Dental Surgeons, Microbiologists, Pharmacists, Nurses, and Nutritionists
<b>Obligations Concerned:</b>	National Treatment (Article 11.2)
<b>Level of Government:</b>	Central
<b>Measures:</b>	<p>Law No. 7559 of 9 November 1995 – <i>Ley de Servicio Social Obligatorio para los Profesionales en las Ciencias de la Salud</i> – Arts. 2, 3, 5, 6, and 7</p> <p>Executive Decree No. 25068 of 21 March 1996 – <i>Reglamento de Servicio Social Obligatorio para los Profesionales en Ciencias de la Salud</i> – Arts.7, 13, 14, 17, 18, 21, and 22</p> <p>Executive Decree No. 25841-S of 5 February 1997 – <i>Reforma al Reglamento de Servicio Social Obligatorio para los Profesionales en Ciencias de la Salud</i> – Art. 1</p>
<b>Description:</b>	<p><u>Cross-Border Services</u></p> <p>All Physicians and Surgeons, Dental Surgeons, Microbiologists, Pharmacists, Nurses, and Nutritionists must perform the equivalent of a one-year continuous, remunerated mandatory social services requirement.</p> <p>The assignment of the slots to perform mandatory social services is made through a drawing. If there are enough slots to perform mandatory social services for all applicants, applicants who are Costa Rican nationals are given priority over applicants who are foreign nationals with respect to assignment of the specific slots.</p> <p>If the number of slots offered in the drawing is less than the number of applicants, applicants who are Costa Rican nationals shall have the priority to freely choose if they want to participate or not in the drawing. Such choice shall be respected as long as the number of applicants who do not wish to choose a slot is equal to or less than the number of shortage of slots. When the number of applicants who are Costa Rican nationals that do not wish to participate in the drawing exceeds the number of shortage of slots, a lottery shall be made among them to determine who shall participate in the drawing of slots.</p>

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If there is still a shortage of slots when the applicants who are Costa Rican nationals have already made their choice, the same procedure shall be applied for the drawing of slots among applicants who are foreign nationals.

Subject to the conditions and terms included in the legislation and regulations applicable to each professional category listed above, the mandatory social service requirement may be waived for temporary professional practice.

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<b>Sector:</b>	Audiovisuals – Advertising – Services of Cinema, Radio, Television, and Other Shows
<b>Obligations Concerned:</b>	Performance Requirements (Article 10.9) Local Presence (Article 11.5) National Treatment (Articles 10.3 and 11.2) Most-Favored-Nation Treatment (Articles 10.4 and 11.3) Market Access (Article 11.4)
<b>Level of Government:</b>	Central
<b>Measures:</b>	Law No. 6220 of 20 April 1978 – <i>Regula Medios de Difusión y Agencias de Publicidad</i> – Art. 3  Law No. 1758 of 19 June 1954 – <i>Ley de Radio y Televisión</i> – Art. 11  Executive Decree No. 12764-G of 22 June 1981 – <i>Reglamenta Ley de Publicidad</i> – Arts. 1 and 5
<b>Description:</b>	<u>Cross-Border Services and Investment</u>  Mass media and advertising services may only be provided by enterprises incorporated in Costa Rica with nominative stock or established as “ <i>sociedades personales</i> ” under Costa Rican law.  Radio and television programs must observe the following rules: <ul style="list-style-type: none"> <li>• If the commercials consist of jingles recorded abroad, a lump sum must be paid every time the commercial is aired on domestically transmitted television. Only 30 percent of the commercials aired on each domestic television station or projected in each cinema may originate from abroad.</li> <li>• Commercials imported in a physical medium from outside the Central American region and aired on domestically transmitted television must pay a tax equivalent to 100 percent of the declared value of the production of the commercial. Radio, movie, or television commercials are considered national when they are produced in any of the Central American countries with which there is reciprocity in the matter.</li> <li>• The number of radio programs and radio soap operas recorded abroad may not exceed 50 percent of the total number aired per domestically transmitted radio station per day.</li> </ul>

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- The number of programs filmed or videotaped abroad may be limited to 60 percent of the total number of programs aired on domestically transmitted television per day.

Radio, movie, or television commercials are considered national when at least 90 percent of the jingle has been composed or arranged by Costa Rican nationals, at least 90 percent of the image has been drawn, photographed, printed, filmed, or videotaped by Costa Rican nationals, and when at least 90 percent of the technical personnel participating in the overall production are Costa Rican nationals.

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<b>Sector:</b>	News Agency Services
<b>Obligations Concerned:</b>	National Treatment (Article 11.2) Local Presence (Article 11.5)
<b>Level of Government:</b>	Central
<b>Measures:</b>	Executive Decree No. 14931-C of 20 October 1983 – <i>Reforma Reglamento Ley Orgánica Colegio Periodistas</i> – Arts. 6 and 26  Executive Decree No. 15294-C of 27 February 1984
<b>Description:</b>	<p><u>Cross-Border Services</u></p> <p>Except as authorized, a journalist who is a foreign national may cover events in Costa Rica only if he or she is a resident of Costa Rica.</p> <p>The Board of Directors of the <i>Colegio de Periodistas</i> may grant non-resident foreign nationals a special permit to cover events in Costa Rica for up to one year and may extend that period, provided that doing so does not harm or conflict with the interests of members of the <i>Colegio de Periodistas</i>.</p> <p>If the <i>Colegio de Periodistas</i> decides that an event of international importance will or has occurred in Costa Rica, the <i>Colegio de Periodistas</i> may grant a non-resident foreign national with appropriate professional credentials a temporary permit to cover the event for the foreign media the journalist represents. Such permit may be valid for up to one month after the event.</p>

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<b>Sector:</b>	Sports Services and Other Entertainment Services
<b>Obligations Concerned:</b>	Market Access (Article 11.4) National Treatment (Articles 10.3 and 11.2) Local Presence (Article 11.5)
<b>Level of Government:</b>	Central
<b>Measures:</b>	Law No. 7744 of 19 December 1997 – <i>Ley de Concesión y Operación de Marinas Turísticas</i> – Arts. 1, 12, and 21  Executive Decree No. 27030-TUR-MINAE-MOPT of 20 May 1998 – <i>Reglamento a la Ley de Concesión y Funcionamiento de Marinas Turísticas</i> – Art. 52
<b>Description:</b>	<u>Cross-Border Services and Investment</u>  To obtain concessions to develop tourism marinas or docking facilities, enterprises with their principal place of business abroad must be established in Costa Rica.  Foreign nationals shall appoint a representative with sufficient legal authority and with permanent residence in Costa Rica.  All foreign flag vessels using marina services may remain in the Costa Rican exclusive economic zone for a maximum period of two years, extendable for like periods. While in Costa Rica, foreign flag vessels and their crew cannot supply water transportation services or fishing, diving, or other sports or tourism-related activities, except tourism cruises.

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<b>Sector:</b>	Railroads, Ports, and Airports
<b>Obligations Concerned:</b>	Market Access (Article 11.4) Local Presence (Article 11.5)
<b>Level of Government:</b>	Central
<b>Measures:</b>	<i>Constitución Política de la República de Costa Rica</i> – Art.121, paragraph 14  <i>Law No. 7762 of 14 April 1998 – Ley General de Concesión de Obras Públicas con Servicios Públicos</i> – Arts. 2, 3, 4, 5, and 31
<b>Description:</b>	<u>Cross-Border Services</u>  National railroads, docks, and airports – the latter while in use – may not be sold, leased or encumbered, directly or indirectly, or be otherwise removed from State ownership and control.  The Executive Branch may grant concessions for railroads, railways, docks, and international airports. In the case of Limon, Moin, Caldera, and Puntarenas docks, concessions may only be granted for future works or expansions.  All enterprises holding railroad, port or airport concession must be organized under Costa Rican law and domiciled in Costa Rica.

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<b>Sector:</b>	Wireless Services
<b>Obligations Concerned:</b>	Market Access (Article 11.4) National Treatment (Articles 10.3 and 11.2) Most-Favored-Nation Treatment (Articles 10.4 and 11.3)
<b>Level of Government:</b>	Central
<b>Measures:</b>	<i>Constitución Política de la República de Costa Rica</i> – Art. 121, paragraph 14  Law No. 1758 of 19 June 1954 – <i>Ley de Radio y Televisión</i> – Arts. 1, 2, 3, and 25
<b>Description:</b>	<p><u>Cross Border Services and Investment</u></p> <p>In Costa Rica, wireless services may not be permanently removed from State ownership and may be supplied only by the public administration or by private parties, in accordance with the law or under a special concession granted for a limited period of time and on the basis of conditions and stipulations to be established by the Legislative Assembly.</p> <p>The right to establish radiographic stations in Costa Rica for transmission or reception of official messages, is permanently reserved to the State, and is not subject to concession.</p> <p>Only a Costa Rican national or enterprise with at least 65 percent of its capital owned by Costa Rican nationals may establish or manage an enterprise that supplies wireless services. This restriction does not apply to the establishment and operation of ham radio stations, but rights shall not be granted to a foreign national residing in Costa Rica when the country of origin of the foreign national does not grant that same right to Costa Rican nationals.</p> <p>Notwithstanding the measures listed above, including any requirements regarding ownership of capital by Costa Rican nationals, Costa Rica shall allow telecommunications services providers of another Party, on a non-discriminatory basis, to effectively compete to supply directly to the customer, through the</p>

**ANNEX I, Schedule of Costa Rica**

technology of their choice, the following telecommunications services in its territory:<sup>5</sup>

- (i) private network services,<sup>6</sup> no later than January 1, 2006;
- (ii) Internet services,<sup>7</sup> no later than January 1, 2006; and
- (iii) mobile wireless services,<sup>8</sup> no later than January 1, 2007.

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<sup>5</sup> If Costa Rica requires a license for the provision of a listed service, Costa Rica shall make licenses available within the timeframes specified in this subparagraph.

<sup>6</sup> **Private network services** (closed-user group services) mean networks provided for communications with no interconnection to the public switched telecommunications network at either end. Nothing in this Annex shall be construed to prevent Costa Rica from prohibiting persons operating private networks from using their networks to supply public telecommunications networks or services to third parties.

<sup>7</sup> **Internet services** shall include electronic mail; retrieval and processing on-line information and databases and electronic data exchange services, and offering the ability to access the Internet.

<sup>8</sup> **Mobile wireless services** mean voice, data, and/or broadband services provided by radio electric means in specifically allocated bands, using mobile or fixed terminal equipment, using cellular, PCS (Personal Communications Service), satellite, or any other similar technology that may be developed in the future for these services.

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<b>Sector:</b>	On Premise Supply of Liquors for Consumption
<b>Obligations Concerned:</b>	Market Access (Article 11.4)
<b>Level of Government:</b>	Central
<b>Measures:</b>	Law No. 10 of 7 October 1936 – <i>Ley sobre la Venta de Licores</i> – Arts. 8, 11, and 16
<b>Description:</b>	<p><u>Cross-Border Services</u></p> <p>Municipalities decide the number of establishments selling liquor that can be authorized in each one of the areas under their jurisdiction. In no case can this number exceed the following proportion:</p> <ul style="list-style-type: none"> <li>(a) in province capitals, one establishment selling foreign liquor and one establishment selling domestic liquor per three hundred residents;</li> <li>(b) in all other cities with over one thousand inhabitants, one establishment selling foreign liquor per five hundred residents and one establishment selling domestic liquor per three hundred residents;</li> <li>(c) cities under one thousand residents but over five hundred residents may have two establishments selling foreign liquor and two selling domestic liquor; and</li> <li>(d) any other cities with five hundred residents or less may have one establishment selling foreign liquor and one establishment selling domestic liquor.</li> </ul> <p>No establishment for on-premise supply of liquors for consumption will be allowed outside the perimeter of cities or where no permanent police authority exists.</p> <p>In a public auction, no person may receive authorization for more than one establishment selling foreign liquor and one establishment selling domestic liquor in the same city.</p>

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<b>Sector:</b>	Lottery Sale Services
<b>Obligations Concerned:</b>	Market Access (Article 11.4)
<b>Level of Government:</b>	Central
<b>Measures:</b>	Law No. 7395 of 3 May 1994 – <i>Ley de Loterías</i> – Art. 2 Law No. 1387 of 21 November 1951 – <i>Ley de Rifas y Loterías</i> – Art. 1
<b>Description:</b>	<u>Cross-Border Services</u>  The <i>Junta de Protección Social de San José</i> shall be the sole manager and distributor of lottery, except for the “ <i>Juego Crea</i> ”.  All lottery, “ <i>tiempos</i> ”, raffles, and clubs that award prizes consisting of payments in cash are prohibited, except for the “ <i>Juego Crea</i> ” and those issued by the <i>Junta de Protección Social de San José</i> .

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<b>Sector:</b>	All Sectors
<b>Obligations Concerned:</b>	National Treatment (Article 10.3)
<b>Measures:</b>	- <i>Ley sobre Inversión Extranjera</i> , No. 16-95, November 20, 1995, Art. 5 - <i>Ley General sobre Medio Ambiente y Recursos Naturales</i> , No. 64-00, August 18, 2000, Art. 101
<b>Description:</b>	<u>Investment</u>  Only Dominican nationals may perform activities related to the disposal of toxic, hazardous, or dangerous or radioactive waste produced outside the Dominican Republic.

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<b>Sector:</b>	Professional Services – Legal Services
<b>Obligations Concerned:</b>	National Treatment (Article 11.2) Market Access (Article 11.4)
<b>Measures:</b>	- <i>Ley del Notariado</i> , No. 301, June 18, 1964, Arts. 4, 5, and 10 - <i>Ley de Organización Judicial, y sus modificaciones</i> , No. 821, November 21, 1927, Chapter XI, Art. 73 - <i>Ley que crea el Colegio de Abogados</i> , No. 91, February 3, 1983, Art. 4
<b>Description:</b>	<p><u>Cross-Border Services</u></p> <p>To practice law before the courts in the Dominican Republic or to render public notary services a lawyer must be a Dominican national and a member of the <i>Colegio de Abogados</i>.</p> <p>A foreign lawyer may render legal services other than those related to the judicial function or appearing in court provided the foreign lawyer is a member of the <i>Colegio de Abogados</i>.</p> <p>A foreign lawyer who is not a member of the <i>Colegio de Abogados</i> may supply foreign legal consulting services provided that the foreign lawyer is licensed to practice law in a jurisdiction that permits Dominican nationals to supply foreign legal consulting services. The Dominican Republic shall permit foreign lawyers who are supplying foreign legal consulting services from the territory of a Party into the territory of the Dominican Republic in the period preceding the date of signature of this Agreement to continue supplying such services.</p> <p>The authorization of new notaries public is subject to quotas, proportional to the number of inhabitants in each municipality and the national district.</p>

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A foreign lawyer may become a member of the *Colegio de Abogados*:

- (a) by obtaining a law degree in the Dominican Republic;
- (b) by obtaining revalidation of a law degree issued in a foreign country; or
- (c) if the government of a jurisdiction in which the foreign national has a license to practice law has an agreement with the Dominican Republic establishing reciprocal treatment for Dominican lawyers.

For purposes of this entry:

- (a) **lawyer** means in general all persons who, in the exercise of a function and by reason of special knowledge regarding the law, render legal advice, and includes professors and researchers working in universities, all the judges of the Dominican Republic, court-appointed lawyers (*abogados de oficio*), public prosecutors, public notaries, legal advisors and consultants to natural or corporate persons, public or private; and
- (b) **foreign legal consulting service** means providing advice by a lawyer regarding matters with respect to which the lawyer or law firm is authorized to render legal services in his, her, or its home market.

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<b>Sector:</b>	Professional Services – Architectural and Engineering Services
<b>Obligations Concerned:</b>	National Treatment (Article 11.2) Most-Favored-Nation Treatment (Article 11.3) Local Presence (Article 11.5)
<b>Measures:</b>	- <i>Ley sobre el Ejercicio de Ingeniería, la Arquitectura, la Agrimensura y Profesiones Afines</i> , No. 6200, February 22, 1962, Arts. 17, 18, and 19 - <i>Decreto que Reglamenta el Ejercicio Profesional del Ingeniero Químico</i> , No.511-86, June 26, 1986, Arts. 8, 9, and 10 - <i>Ley sobre la Promoción del Desarrollo Turístico en Destinos Subdesarrollados y en Nuevos Destinos en Provincias y Localidades con Potencial Extraordinario, que Crea el Fondo Oficial para la Promoción del Turismo</i> , No. 158-01, October 9, 2001, Art. 14
<b>Description:</b>	<u>Cross-Border Services</u>  Only members of the <i>Colegio Dominicano de Ingenieros, Arquitectos y Agrimensores de la Republica Dominicana</i> (“CODIA”) may practice as engineers, architects, and land surveyors. A foreign professional who meets the relevant qualifications may join CODIA as long as Dominican nationals are not prohibited from practicing in the jurisdiction in which the foreign professional is licensed.  However, professionals who graduated from foreign universities who are not members of CODIA may practice in the Dominican Republic when:  (a) the Executive Branch, in special and justified cases, contracts their services to perform specialized jobs or technical consulting in those fields of the profession in which such services are necessary; or  (b) an enterprise or institution contracts the professional to supply a specific service for a specified time and sufficiently demonstrates the necessity for this to CODIA, which will then authorize the professional to supply the service.  A Dominican chemical engineer must review the plans for and installation of any production facility constructed in the Dominican Republic by foreign technicians or enterprises. In addition, if

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foreign technicians whose activities are related to the chemical engineering field are used in the installation or start up of a production facility, at least one Dominican chemical engineer must have a role in their supervision.

After the installation and start-up of a production facility, the facility may not employ foreign technicians related to the field of chemical engineering if Dominican engineers with the relevant expertise are available. If no qualified Dominican engineer is available, an enterprise may employ foreign technicians, but only as long as their number is proportionate to the number of Dominican technicians.<sup>1</sup> However, this requirement does not apply to enterprises that employ at least one Dominican engineer.

To provide architectural and engineering services related to construction, persons who are not members of CODIA must associate with a CODIA member.

A Dominican professional must prepare any projects and preliminary plans that are submitted to qualify for benefits from the *Fondo Oficial de Promoción Turística*.

Foreign nationals and enterprises organized under foreign law must associate with an enterprise organized under Dominican law in order to provide services related to urban and architectural studies for a tourism-related project.

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<sup>1</sup> In practice, an enterprise may meet this requirement at any time by employing three Dominican technicians for every seven foreign technicians.

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<b>Sector:</b>	Professional Services Accounting, Auditing, and Bookkeeping Services.
<b>Obligations Concerned:</b>	National Treatment (Article 11.2) Local Presence (Article 11.5) Market Access (Article 11.4)
<b>Measures:</b>	- <i>Decreto que aprueba el Reglamento Interno del Instituto de Contadores Públicos Autorizados de la República Dominicana</i> , No. 2032, June 1, 1984, Art. 6 - <i>Código de Ética Profesional del Instituto de Contadores Públicos Autorizados de la República Dominicana (ICPARD)</i> , October 9, 2001, Art. 3.2.13
<b>Description:</b>	<u>Cross-Border Services</u>  Only Dominican nationals may practice as Certified Public Accountants in the Dominican Republic. Foreign public accountants, auditors, or bookkeepers, as individuals or enterprises, may practice their profession only in association with a Dominican accountant.

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<b>Sector:</b>	Professional Services – Health Services and Related Professions
<b>Obligations Concerned:</b>	National Treatment (Article 11.2) Most-Favored-Nation Treatment (Article 11.3) Local Presence (Article 11.5)
<b>Measures:</b>	- <i>Ley General de Salud</i> , No.42-01, March 8, 2001, Arts. 92 and 93 - <i>Ley que crea el Colegio Dominicano de Psicólogos/as</i> , No. 22-01, February 1, 2001, Art. 4-c - <i>Ley que Establece un Impuesto sobre los Honorarios Cobrados por Médicos Extranjeros que Ejerzan en la República Dominicana</i> , No. 3491, March 6, 1953, Art. 1 <sup>2</sup>
<b>Description:</b>	<p><u>Cross-Border Services</u></p> <p>Foreign nationals graduated from foreign universities may practice health-related professions in the Dominican Republic provided that:</p> <ul style="list-style-type: none"> <li>(a) there is an agreement between governments allowing professionals to practice in both countries;</li> <li>(b) the service is not offered or is insufficient in the Dominican Republic; and</li> <li>(c) the foreigner has the degree certified for equivalency and obtains an <i>exequátur</i> from the Executive Branch.</li> </ul> <p>However, health professionals authorized by the <i>Secretaría de Estado de Salud Pública y Asistencia Social</i> (SESPAS) may practice their profession provided they are visiting the country to render public health services on a non-profit basis.</p> <p>Other health professionals may practice medicine or surgery on a temporary basis if requested or contracted by a clinic or hospital of the Dominican Republic and authorized by SESPAS and by the <i>Asociación Médica Dominicana</i>. For greater certainty, such temporary practice may include training, demonstration, lecturing, or research through a health-related facility, including a university or laboratory. Before leaving the country, the facility or the foreign health professional must present a declaration to SESPAS</p>

<sup>2</sup> The reference in Article 1 of Law No. 3491 to Law No. 289 does not signify that Article 1, 2, or 3 of Law No. 289 is a measure within the scope of this entry.

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stating in detail the amounts, if any, the professional has charged to private patients.

To offer psychology services in the Dominican Republic a professional must be permanent resident.

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<b>Sector:</b>	Energy Related Services
<b>Obligations Concerned:</b>	National Treatment (Article 10.3) Market Access (Article 11.4)
<b>Measures:</b>	- <i>Ley General de Electricidad</i> , No. 125-01, July 26, 2001, Art. 53 - <i>Ley General de Reforma de la Empresa Pública</i> , No. 141-97, June 24, 1997, Arts. 13 and 14
<b>Description:</b>	<u>Cross-Border Services</u>  Three joint ventures currently distribute electricity on an exclusive basis within specified regions of the Dominican Republic pursuant to concessions granted by the Government of the Dominican Republic.

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Sector:	Mining
Obligations Concerned:	National Treatment (Article 10.3)
Measures:	- <i>Ley de Minería de la República Dominicana</i> , No.146, June 4, 1971, Art. 9
Description:	<u>Investment</u>  Mining concessions may not be granted to any foreign government either directly or through the intermediation of a natural person or an enterprise. In duly justified cases, and with the prior approval of the National Congress, the Executive Branch may enter into special agreements with foreign mining enterprises that are partially or wholly state-owned.

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<b>Sector:</b>	Communications – Audio-Visual Services
<b>Obligations Concerned:</b>	Performance Requirements (Article 10.9) National Treatment (Article 11.2) Most-Favored-Nation Treatment (Article 11.3)
<b>Measures:</b>	- <i>Decreto que introduce modificaciones en el Reglamento No. 824, del 25 de marzo de 1971, sobre la Operación de la Comisión Nacional de Espectáculos Públicos y Radiodifusión</i> , No. 4306, February 22, 1974, Arts. 101 and 109
<b>Description:</b>	<p><u>Cross-Border Services and Investment</u></p> <p>Only Dominican nationals may work as announcers for a radio or television broadcast to a national audience in the territory of the Dominican Republic. However, the <i>Comisión Nacional de Espectáculos Públicos y Radiofonía</i> may authorize enterprises that make such broadcasts, in special cases and for a period of six months, to hire foreign nationals to serve as announcers. This authorization may be extended at the discretion of the National Commission for Public Entertainment and Radio.</p> <p>Only Dominican nationals may serve as sports narrators, including commercial announcers and commentators, in transmitting sporting events for a national audience in the Dominican Republic. However, foreign nationals may serve as sports narrators as long as in their country of origin Dominican sportscasters may also do so.</p> <p>In all radio programming that originates in the Dominican Republic, 50 percent of the music played shall be by Dominican authors, composers, and singers.</p> <p>For every three soap operas that are broadcast for a national audience in the Dominican Republic, one must be by Dominican authors and must have been made in the Dominican Republic.</p>

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<b>Sector:</b>	Communications – Advertising Services
<b>Obligations Concerned:</b>	National Treatment (Article 11.2)
<b>Measures:</b>	- <i>Reglamento sobre la Operación de la Comisión Nacional de Espectáculos Públicos y Radiodifusión</i> , No. 824, March 25, 1971, Art. 74.
<b>Description:</b>	<p><u>Cross-Border Services</u></p> <p>Seventy-five percent of all artists, announcers, singers and other participants in the production of any jingle, video, tape, script, advertisement for use in cinemas (<i>cintas cinematográficas</i>), or commercial that is transmitted and presented on radio and television must be Dominican nationals. For greater certainty, this requirement applies only to such advertisements that are produced in the Dominican Republic.</p> <p>However, if a commercial for Dominican goods and services to be sold in the Dominican Republic needs to be produced abroad, 25 percent of the artists and production personnel in charge of production must be Dominican nationals.</p>

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**Sector:** Communications – News Agency Services

**Obligations Concerned:** Senior Management and Boards of Directors (Article 10.10)

**Measures:** - *Ley sobre Expresión y Difusión del Pensamiento*, No. 6132, December 15, 1972, Art. 5

**Description:** Investment

The senior manager of every newspaper or periodical produced in the Dominican Republic must be a Dominican national.

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<b>Sector:</b>	Communications – Broadcasting
<b>Obligations Concerned:</b>	National Treatment (Articles 10.3 and 11.2) Market Access (Article 11.4) Local Presence (Article 11.5)
<b>Measures:</b>	- <i>Ley General de Telecomunicaciones</i> , No. 153-98, May 27, 1998, Chapters V, X and XI
<b>Description:</b>	<u>Cross-Border Services and Investment</u>  In order to obtain a corresponding authorization to install and operate broadcast networks and to provide broadcast services in the Dominican Republic it is required to have a legal domicile in the Dominican Republic and be a stock company ( <i>compañía por acciones</i> ) or a non-profit organization incorporated under the laws of the Dominican Republic.  Only Dominican nationals may own and control an enterprise that provides public radio broadcasting services that originate in the Dominican Republic.  For greater certainty, this entry does not apply to content providers.

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<b>Sector:</b>	Communications
<b>Obligations Concerned:</b>	Market Access (Article 11.4) Local Presence (Article 11.5)
<b>Measures:</b>	- <i>Ley General de Telecomunicaciones</i> , No. 153-98, May 27, 1998, Chapter V
<b>Description:</b>	<u>Cross-Border Services</u>  In order to obtain the corresponding authorization to install and operate telecommunications networks in the Dominican Republic, in order to provide telecommunications services to users in the Dominican Republic, it is required to have a legal domicile in the Dominican Republic and be a stock company ( <i>compañía por acciones</i> ) incorporated under the laws of the Dominican Republic.

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<b>Sector:</b>	Distribution, Trade, and Commission Agent Services
<b>Obligations Concerned:</b>	Market Access (Article 11.4) Local Presence (Article 11.5) Performance Requirements (Article 10.9)
<b>Measures:</b>	- <i>Ley de Promoción Agrícola y Ganadera</i> , No. 532, December 12, 1969, Art. 41 - <i>Reglamento sobre Preparación, Clasificación y Transporte del Café</i> , No. 7107, September 18, 1961, Art. 15 - <i>Ley que Establece que el Instituto de Estabilización de Precios será el Distribuidor Único del Azúcar de Producción Nacional para el Consumo Interno</i> , No. 80, November 28, 1974, Art. 1 - <i>Ley que Crea e Integra el Consejo de Administración Salinera, como Distribuidor Exclusivo de toda la Sal en Grano de Origen Marino Producido en el País</i> , No. 286-98, July 29, 1998, Art. 1, y su <i>Reglamento de Aplicación</i> , No. 1294-00, December 13, 2001
<b>Description:</b>	<u>Cross-Border Services and Investment</u>  Only enterprises organized as stock companies ( <i>compañías por acciones</i> ) under Dominican law may operate as deposit warehouses for the care and conservation of imported goods.  Coffee for export must be packed in locally manufactured sacks.  Only the <i>Instituto de Estabilización de Precios</i> (INESPRE) may distribute domestically produced sugar in the Dominican Republic.  Only the <i>Consejo de Administración Salinera</i> may distribute marine unrefined salt produced in the Dominican Republic.

## ANNEX I, Schedule of the Dominican Republic

<b>Sector:</b>	Tourism and Services Related to Travel
<b>Obligations Concerned:</b>	National Treatment (Article 11.2) Local Presence (Article 11.5)
<b>Measures:</b>	- <i>Ley Orgánica de Turismo</i> , No. 541, December 31, 1969, Arts. 18 and 23 - <i>Reglamento para el Transporte Terrestre Turístico de Pasajeros</i> , No. 817-03, August 20, 2003, Art. 11 - <i>Decreto que Autoriza el Establecimiento de Casinos, Juegos de Bingo y Tragamonedas</i> , No. 6273, December 8, 1960, Art. 2
<b>Description:</b>	<u>Cross-Border Services</u>  To operate in the Dominican Republic, foreign travel agencies and tour operators must be duly authorized in their country of origin and represented by a local agency.  Tour guide licenses may be granted to foreign nationals only in exceptional circumstances, such as when no Dominican tour guide can satisfy the needs of a particular tour group, including the need to speak a particular language.  All casino and game employees must be Dominican nationals.  Drivers for land transport of tourists must be Dominican nationals or foreign nationals resident in the Dominican Republic.

## ANNEX I, Schedule of the Dominican Republic

<b>Sector:</b>	Recreational and Cultural Services
<b>Obligations Concerned:</b>	National Treatment (Article 11.2)
<b>Measures:</b>	- <i>Ley sobre Expresión y Difusión del Pensamiento</i> , No. 6132, December 15, 1972, Art. 33 - <i>Reglamento sobre la Operación de la Comisión Nacional de Espectáculos Públicos y Radiodifusión</i> , No. 824, March 25, 1971, Art. 122
<b>Description:</b>	<u>Cross-Border Services</u>  Variety shows offered to audiences in theaters, nightclubs, and other entertainment venues that are performed by foreign artists must include the performance of one Dominican artist for each foreign artist.

## ANNEX I, Schedule of the Dominican Republic

<b>Sector:</b>	Transportation – Maritime Transportation
<b>Obligations Concerned:</b>	National Treatment (Articles 10.3 and 11.2) Senior Management and Boards of Directors (Article 10.10) Local Presence (Article 11.5)
<b>Measures:</b>	- <i>Ley sobre Policia de Puertos y Costas</i> , No. 3003, May 17, 1951 Art. 56 and its paragraph - <i>Ley sobre Protección y Desarrollo de la Marina Mercante</i> , No. 180, May 30, 1975, Arts. 1 and 4 - <i>Decreto que Establece el Reglamento Tarifario de la Autoridad Portuaria Dominicana</i> , No. 572-99, December 30, 1999, Art. 3, para. I, subparas. a and b, note 2
<b>Description:</b>	<u>Cross-Border Services and Investment</u>  Vessels used for towing, passenger or freight transportation, or loading or unloading in Dominican ports, as well as vessels used to navigate inland waterways in the Dominican Republic, must be Dominican flagged vessels.  Cabotage in the Dominican Republic is exclusively reserved for national flagged vessels. When a Dominican flag vessel cannot perform this service, a temporary permit may be granted to a national shipowner for a foreign flag vessel to offer this service.  All Dominican Republic flag ships of more than 50 tons, providing cabotage are exempt from the requirement to have a harbor pilot on board and to pay pilotage fees provided they do not transport cargo abroad.  When loading and unloading merchandise or passengers, Dominican Republic flag vessels pay 50 percent of the amount set for foreign-flag vessels. The fees for foreign flag vessels range from 1.00 U.S. dollars per foot of beam per day in port to 1.15 U.S. dollars per foot of beam per day in port.  Tariffs applied to foreign tourist yachts <sup>3</sup> will be 0.50 U.S. dollars per foot of beam per day or its equivalent in Dominican pesos (RD\$). The fees for national tourist yachts range from RD\$ 300.00 for 25 passengers to RD\$ 800.00 for up to 99 passengers, and for 100 or more passengers, the fee increases by RD\$ 10.00 for each passenger.

<sup>3</sup> For greater certainty, this tariff does not apply to cruise vessels.

**ANNEX I, Schedule of the Dominican Republic**

For purposes of this entry, **national shipowner** means a shipowner who is a Dominican national and resides in the Dominican Republic. If the ship is co-owned or is community property, 70 percent of its value must belong to Dominicans residing in the Dominican Republic.

Enterprises organized under Dominican law, whose main purpose is the administration of Dominican flag vessels and maritime commercial passenger and/or freight transportation, must comply with the following requirements:

- (a) 70 percent of the shares and participations, as well as 70 percent of the subscribed and paid-in capital, must belong to Dominican nationals that reside in the Dominican Republic or enterprises organized under Dominican law.
- (b) 75 percent of the Board of Directors must be Dominican nationals residing in the Dominican Republic; and
- (c) it must be organized as a stock company (*compañía por acciones*) under Dominican law and have its main headquarters and official domicile in the Dominican Republic.

## ANNEX I, Schedule of the Dominican Republic

<b>Sector:</b>	Air Transportation
<b>Obligations Concerned:</b>	National Treatment (Article 10.3) – Senior Management and Boards of Directors (Article 10.9)
<b>Measures:</b>	<p>- <i>Ley sobre Aeronáutica Civil</i>, No. 505, November 10, 1969, Arts. 128, 130 and 140</p> <p>- <i>Decreto que Reglamenta u Regula los Operadores, Agentes y Consignatarios de Vuelos no Regulares</i>, No.751-02, September 19,2002, Arts. 1 and 2</p>
<b>Description:</b>	<p><u>Investment</u></p> <p>Air transportation of passengers, cargo or correspondence between destinations within the Dominican Republic (cabotage) is reserved for aircraft owned by Dominican persons.</p> <p>For puposes of the preceding paragraph, enterprises shall be deemed to be Dominican enterprises when at least 51 percent of their capital is owned by Dominican nationals and at least 51 percent of their administrators are Dominican nationals as well.</p> <p>All enterprises performing the functions of operator, agent, or non-regular (charter) flight consignee, must be organized under Dominican law, must be at least 51 percent owned by Dominican nationals, and must employ Dominican nationals in senior management.</p>

## ANNEX I, Schedule of the Dominican Republic

<b>Sector:</b>	Air Transportation – Specialty Air Services and Maintenance and Repair of Aircraft
<b>Obligations Concerned:</b>	National Treatment (Article 11.2) Most-Favored-Nation Treatment (Article 11.3)
<b>Measures:</b>	- <i>Ley sobre Aeronáutica Civil</i> , No. 505, November 10, 1969, Arts. 79, 82, and 128
<b>Description:</b>	<p><u>Cross-Border Services</u></p> <p>Aerial advertising and publicity, agricultural works, fumigation, fishing prospects, air taxis, filming, photography, and surveyance shall be reserved for Dominican persons.</p> <p>The <i>Dirección General de Aeronáutica Civil</i> may issue temporary permits to foreign pilots that come to the country to perform air transport services on a temporary basis, provided that it is demonstrated that there is no available Dominican personnel to provide the service.</p> <p>Foreign nationals may engage in remunerated aeronautical activities only if they hold licenses or certificates either issued in the Dominican Republic, or issued in a foreign country in which Dominican nationals holding licenses or certificates issued in the Dominican Republic are able to engage in such remunerated aeronautical activities.</p>

**ANNEX I, Schedule of the Dominican Republic**

<b>Sector:</b>	Free Zones
<b>Obligations Concerned:</b>	Performance Requirements (Article 10.9)
<b>Measures:</b>	- <i>Ley sobre Fomento de Zonas Francas</i> , No. 8-90, January 15, 1990, Art. 17
<b>Description:</b>	<u>Investment</u>  An enterprise established in the Free Zone of the Dominican Republic may not introduce more than 20 percent of its total sales in goods or services into the Dominican Republic's customs territory.  This non-comforming measure shall cease to exist no later than December 31, 2009 in accordance Article 3.4 (Waiver of Customs Duties), paragraph 3.

**ANNEX I, Schedule of the Dominican Republic**

<b>Sector:</b>	Oil Exploitation and Exploration Services
<b>Obligations Concerned:</b>	National Treatment (Article 10.3)
<b>Measures:</b>	- <i>Ley sobre la Exploración, Explotación y Beneficios por Particulares de los Yacimientos de Petróleo y sus Derivados, los Hidrocarburos y demás Combustibles Similares</i> , No. 4532, August 30, 1956, Art. 4
<b>Description:</b>	<u>Investment</u>  Sovereign foreign governments may not be granted the right to explore, exploit, or benefit from oil and other hydrocarbon substances, nor shall any natural person or enterprise enjoying these rights allow a sovereign foreign government as a partner, associate, or shareholder.

## ANNEX I, Schedule of the Dominican Republic

<b>Sector:</b>	Fishing
<b>Obligations Concerned:</b>	National Treatment (Article 10.3)
<b>Measures:</b>	- <i>Ley de Pesca</i> , No. 5914, May 22, 1962, Arts. 15 (para. 1), and 19 (paras. a and b) - <i>Proyecto de Ley que crea el Consejo Dominicano de Pesca y Acuicultura</i> , Art. 41
<b>Description:</b>	<p><u>Investment</u></p> <p>Only natural persons residing in the Dominican Republic or enterprises organized under Dominican law may obtain fishing permits or fishing licenses.</p> <p>To engage in maritime or fluvial fishing and hunting, an enterprise must be organized under Dominican law and 50 percent of its capital must be owned by Dominican nationals.</p> <p>In order to obtain fishing permits, foreign-flag vessels must be previously authorized by the <i>Marina de Guerra</i> and the <i>Dirección Nacional de Drogas</i>.</p> <p>Only Dominican nationals may engage in artisanal fishing within 54 nautical miles of the coast.</p>

## ANNEX I, Schedule of the Dominican Republic

<b>Sector:</b>	Educational Services
<b>Obligations Concerned:</b>	Market Access (Article 11.4) Local Presence (Article 11.5)
<b>Measures:</b>	- <i>Ley sobre Educación Superior, Ciencia y Tecnología</i> , No. 139-01, August 13, 2001, Art. 44 - <i>Reglamento Orgánico para las Instituciones Educativas</i> , No. 66,97, May 28, 1999, Art. 19.2
<b>Description:</b>	<p><u>Cross-Border Services</u></p> <p>To teach at any Education Center in the kindergarten, pre-school, elementary, intermediate, high school, technical, or university level, a foreign national must reside in the Dominican Republic.</p> <p>The <i>Secretaría de Estado de Educación Superior, Ciencia y Tecnología</i> (SEESCYT) may deny a request to create a new institution of higher learning or professional or technical institute if there is no economic need of such institution or institute.</p> <p>For greater certainty, this entry does not apply to the supply of foreign language training, corporate, business, and industrial training programs, skill development programs, or educational consulting services, including technical support and development of curriculums and programs. It also does not apply to foreign educational institutions that offer their programs through institutions already established in the Dominican Republic.</p>

**ANNEX I, Schedule of the Dominican Republic**

<b>Sector:</b>	Cooperative Associations
<b>Obligations Concerned:</b>	National Treatment (Article 10.3)
<b>Measures:</b>	- <i>Ley sobre Asociaciones Cooperativas</i> , No. 127-64, January 27, 1964, Arts. 1, 50, and 51
<b>Description:</b>	<p><u>Investment</u></p> <p>Cooperatives are non-profit associations constituted by natural persons residing in the Dominican Republic or enterprises organized under the laws of the Dominican Republic.</p> <p>They may accept foreign nationals residing in the Dominican Republic as associates in a proportion not larger than 50 percent of the total membership and shares.</p>

## ANNEX I, Schedule of the Dominican Republic

<b>Sector:</b>	Lotteries
<b>Obligations Concerned:</b>	Market Access (Article 11.4)
<b>Measures:</b>	- <i>Ley que Estable una Renta Pública bajo la Denominación de Lotería Nacional</i> , No. 5158, June 25, 1959, Arts. 1, 2, and 3
<b>Description:</b>	<p><u>Cross-Border Services</u></p> <p>The <i>Lotería Nacional</i> is the state enterprise that operates and manages the lottery of the Dominican Republic. A private enterprise currently holds an exclusive concession to provide electronic lottery services in the Dominican Republic.</p> <p>Under Dominican law, a lottery is any system used to distribute prizes in money through raffles among people buying tickets for that purpose.</p>

**ANNEX I, Schedule of the Dominican Republic**

<b>Sector:</b>	Retail Distribution of Pharmaceutical Products
<b>Obligations Concerned:</b>	Market Access (Article 11.4)
<b>Measures:</b>	- <i>Ley General de Salud</i> , No. 42-01, March 8, 2001, Art. 103
<b>Description:</b>	<u>Cross-Border Services</u>  Pharmaceutical establishments shall be at a distance of at least 500 meters from each other. For purposes of this entry, pharmaceutical establishment means a pharmacy, drug store, or industrial pharmaceutical laboratory.

## ANNEX I, Schedule of the Dominican Republic

<b>Sector:</b>	Services Incidental to Mining, Hydro-Electric Plant Construction and Management; Electricity Transmission, Marketing and Distribution Services; Public Irrigation Services; Management and Operation of Water Distribution and Waste Management Services; Airport and Port Construction, Operation and Management Services; and Operation of Lotteries
<b>Obligations Concerned:</b>	Market Access (Article 11.4)
<b>Existing Measures:</b>	<ul style="list-style-type: none"> <li>- <i>Ley Minera de la República Dominicana</i>, No. 146, June 4, 1971, Art. 3</li> <li>- <i>Ley General de Electricidad</i>, No. 125-01, July 26, 2001, Art. 41</li> <li>- <i>Ley sobre el Dominio de Aguas Terrestre y Distribución de Aguas Publicas</i>, No. 5852, March 29, 1962, Arts. 17 and 18</li> <li>- <i>Ley que Crea el Instituto Nacional de Recursos Hidráulicos (INDRHI)</i>, No. 6, September 8, 1964, Art. 4</li> <li>- <i>Ley que Estable una Renta Pública bajo la Denominación de Lotería Nacional</i>, No. 5158, June 25, 1959, Arts. 1 and 3</li> </ul>
<b>Description:</b>	<p><u>Cross-Border Services</u></p> <p>In granting concessions to supply the following services:</p> <ul style="list-style-type: none"> <li>• construction or temporary management of a hydro-electric power plant;</li> <li>• construction or temporary management of an electric transmission project;</li> <li>• distribution or marketing of electricity;</li> <li>• irrigation services or construction, management, operation, or maintenance of water distribution or waste management services;</li> <li>• construction, operation, or management of a port or airport;</li> <li>• services incidental to mining; or</li> <li>• operation of lotteries;</li> </ul> <p>the Dominican Republic reserves the right to impose limitations on the number of service suppliers in the form of numerical quotas, monopolies, or exclusive service suppliers; or require supply of these services through a joint venture.</p>

**ANNEX I, Schedule of the Dominican Republic**

For greater certainty, any other conditions on the grant of such concession shall be otherwise consistent with the Agreement and services suppliers of the other Parties will be permitted to obtain such concessions.

## ANNEX I

## Schedule of El Salvador

<b>Sector:</b>	All Sectors
<b>Obligations Concerned:</b>	National Treatment (Article 10.3) Most-Favored-Nation Treatment (Article 10.4)
<b>Level of Government:</b>	Central
<b>Measures:</b>	<i>Constitución de la República de El Salvador</i> , Arts. 95 and 109
<b>Description:</b>	<u>Investment</u>  Rural land may not be owned by a foreign person, including a branch of a foreign person, if the person is a national of a country or is organized under the law of a country that does not permit Salvadoran persons to own rural land, except in the case of land to be used for industrial plants.  An enterprise organized under Salvadoran law, a majority of whose capital is owned by foreign persons, or a majority of whose partners are foreign persons, is subject to the preceding paragraph.

**ANNEX I, Schedule of El Salvador**

<b>Sector:</b>	All Sectors
<b>Obligations Concerned:</b>	National Treatment (Article 10.3) Most-Favored-Nation Treatment (Article 10.4)
<b>Level of Government:</b>	Central
<b>Measures:</b>	<i>Constitución de la República de El Salvador</i> , Arts. 95 and 115 <i>Ley de Inversiones</i> , Legislative Decree No. 732, Art. 7 <i>Código de Comercio</i> , Art. 6
<b>Description:</b>	<u>Investment</u>  Only the following persons may engage in small scale commerce, industry, and the supply of services in El Salvador:  (a) Salvadoran nationals born in El Salvador; and  (b) nationals of Central American Parties.  An enterprise organized under Salvadoran law, a majority of whose capital is owned by foreign persons, or a majority of whose partners are foreign persons, may not establish a small scale enterprise to engage in small scale commerce, industry, and the supply of services ("small scale enterprise"). For purposes of this entry, a small scale enterprise is an enterprise with a capitalization not greater than 200,000 U.S. dollars.

## ANNEX I, Schedule of El Salvador

<b>Sector:</b>	Cooperative Production Societies
<b>Obligations Concerned:</b>	National Treatment (Article 10.3)
<b>Level of Government:</b>	Central
<b>Measures:</b>	<i>Reglamento de la Ley General de Asociaciones Cooperativas</i> , Title VI, Chapter 1, Art. 84
<b>Description:</b>	<p><u>Investment</u></p> <p>In cooperative production societies, at least 75 percent of the total number of partners must be Salvadoran persons.</p> <p>For purposes of this non-conforming measure, a branch of an enterprise that is not organized under Salvadoran law is not a Salvadoran person.</p> <p>For greater certainty, a cooperative production society exists to provide certain benefits to its members including with respect to distribution, sales, management, and technical assistance. Its functions are not only economic but also social.</p>

## ANNEX I, Schedule of El Salvador

<b>Sector:</b>	Duty-Free Commercial Centers and Establishments
<b>Obligations Concerned:</b>	National Treatment (Article 10.3)
<b>Level of Government:</b>	Central
<b>Measures:</b>	<i>Constitución de la República de El Salvador, Art. 95</i> <i>Ley para el Establecimiento de Tiendas Libres en los Puertos Marítimos de El Salvador, Art. 5</i>
<b>Description:</b>	<u>Investment</u>  Only Salvadoran nationals born in El Salvador and enterprises organized under Salvadoran law may apply for a permit to establish duty-free commercial centers or establishments in El Salvador's seaports.  However, an enterprise organized under Salvadoran law, a majority of whose capital is owned by foreign persons, or a majority of whose partners are foreign persons, may not establish duty free commercial centers or establishments in El Salvador's seaports.

**ANNEX I, Schedule of El Salvador**

<b>Sector:</b>	Air Services – Specialty Air Services
<b>Obligations Concerned:</b>	Most-Favored-Nation Treatment (Article 11.3) National Treatment (Article 11.2)
<b>Level of Government:</b>	Central
<b>Measures:</b>	<i>Ley Orgánica de Aviación Civil</i> , Arts. 5, 89, and 92
<b>Description:</b>	<u>Cross-Border Services</u>  The supply of specialty air services requires prior authorization from the <i>Autoridad de Aviación Civil</i> . Authorization from the civil aviation authority is subject to reciprocity and must take into account national air transport policy.

**ANNEX I, Schedule of El Salvador**

<b>Sector:</b>	Air Services – Aircraft Repair and Maintenance Services During which an Aircraft is Withdrawn from Service and Pilots of Specialty Air Services
<b>Obligations Concerned:</b>	National Treatment (Article 11.2) Most-Favored-Nation Treatment (Article 11.3)
<b>Level of Government:</b>	Central
<b>Measures:</b>	<i>Ley Orgánica de Aviación Civil</i> , Arts. 39 and 40
<b>Description:</b>	<u>Cross-Border Services</u>  El Salvador applies reciprocity requirements when determining whether to recognize or validate licenses, certificates, and permits issued by foreign air transport authorities to:  (a) technical staff supplying aircraft repair and maintenance services while an aircraft is withdrawn from service; and  (b) pilots and other technical staff supplying specialty air services.

**ANNEX I, Schedule of El Salvador**

<b>Sector:</b>	Communications Services – Advertising and Promotional Services for Radio and Television
<b>Obligations Concerned:</b>	Most-Favored-Nation Treatment (Article 11.3) National Treatment (Article 11.2)
<b>Level of Government:</b>	Central
<b>Measures:</b>	<p><i>Decreto de las disposiciones para regular la explotación de obras de naturaleza intelectual por medios de comunicación pública y la participación de artistas salvadoreños en espectáculos públicos</i>, Legislative Decree No. 239, June 9, 1983, published in <i>Diario Oficial</i> No. 111, Vol. 279, June 15, 1983, Art. 4</p> <p>Decree No. 18, <i>Sustitución de los artículos 1 y 4 del Decreto Legislativo No. 239</i>, June 9, 1983, published in <i>Diario Oficial</i> No. 7, Vol. 282, January 10, 1984</p>
<b>Description:</b>	<p><u>Cross-Border Services</u></p> <p>At least 90 percent of the production and recording of any commercial advertisement for use in El Salvador's public communications media, meaning over-the-air television and radio broadcasts and printed material that originate in El Salvador, must be carried out by enterprises organized under Salvadoran law.</p> <p>A commercial advertisement produced or recorded by an enterprise organized under the law of another Central American Party may be used in the Salvadoran media, as long as similar treatment is extended by that Party to commercial advertisements produced or recorded in El Salvador.</p> <p>The broadcast in El Salvador's public media of a commercial advertisement for an international product, brand, or service that has been imported into El Salvador or produced in El Salvador under license and does not satisfy the requirements referenced above will be permitted and may be subject to a one-time-fee.</p>

## ANNEX I, Schedule of El Salvador

<b>Sector:</b>	Communications Services – Television and Radio Broadcasting Services
<b>Obligations Concerned:</b>	National Treatment (Article 10.3)
<b>Level of Government:</b>	Central
<b>Measures:</b>	<i>Ley de Telecomunicaciones</i> , Art. 123
<b>Description:</b>	<u>Investment</u> Concessions and licenses for free reception broadcasting services shall only be granted to Salvadoran nationals born in El Salvador or enterprises organized under Salvadoran law whose equity capital is at least 51 percent owned by Salvadoran persons.

## ANNEX I, Schedule of El Salvador

<b>Sector:</b>	Performing Arts
<b>Obligations Concerned:</b>	National Treatment (Article 11.2)
<b>Level of Government:</b>	Central
<b>Measures:</b>	<p><i>Ley de Migración</i>, Arts. 62-A and 62-B</p> <p>Legislative Decree No. 382, May 29, 1970, published in <i>Diario Oficial</i> No. 64, Vol. 227, April 10, 1970</p> <p>Executive Decree No. 16, May 12, 1970, published in <i>Diario Oficial</i> No. 87, Vol. 227, May 18, 1970, Art. 1</p>
<b>Description:</b>	<p><u>Cross-Border Services</u></p> <p>No foreign artist may give paid performances of any kind without the prior express authorization of the <i>Ministerio de Gobernación</i>, which shall first seek, within 15 days, the advisory opinion of the legally established craft union of the artistic field in which the artist is involved. Foreign artists shall pay, to the relevant union, a performance fee deposit of 10 percent of the gross income likely to be earned in the country. Where it is not possible to make the advance payment, the artist shall pay an adequate amount as a "security deposit" to the relevant union.</p> <p>No foreign artist or group of artists may perform in the country for more than 30 days consecutively or intermittently within a year from the date of the first performance.</p> <p>An artist is any person acting in El Salvador, individually or in a company consisting of one or more persons, to give performances in music, song, dance or readings, or to present shows, whether in person (i.e., live) or before a large or small audience or on radio or television.</p>

## ANNEX I, Schedule of El Salvador

<b>Sector:</b>	Circuses
<b>Obligations Concerned:</b>	National Treatment (Article 11.2)
<b>Level of Government:</b>	Central
<b>Measures:</b>	<p><i>Ley de Migración</i>, Art. 62-C</p> <p>Decree No. 122, November 4, 1988, published in <i>Diario Oficial</i> No. 219, Vol. 301, November 25, 1988, Art. 3</p> <p>Legislative Decree No. 382, May 29, 1970, published in <i>Diario Oficial</i> No. 64, Vol. 227, April 10, 1970</p> <p>Decree No. 193, March 8, 1989, published in <i>Diario Oficial</i> No. 54, Vol. 302, March 17, 1989, Arts. 1 and 2</p> <p><i>Reglamento para la Aplicación de los Decretos Legislativos 122 and 193 Relativos a Empresas Circenses</i>, Arts. 1 and 2</p>
<b>Description:</b>	<p><u>Cross-Border Services</u></p> <p>Foreign circuses or other similar shows must pay to the relevant circus union a performance fee equal to 2.5 percent of the gross income likely to be earned daily from ticket sales. The fee must be paid in full through the withholding system.</p> <p>All foreign circuses must be authorized by the appropriate Ministry and once authorized, notify the <i>Asociación Salvadoreña de Empresarios Circenses</i> (ASEC) and pay ASEC 3 percent of the gross income earned from ticket sales for each performance, as well as 10 percent of total earnings from sales to the audience, inside the circus, of flags, caps, tee shirts, balloons, photographs and other paraphernalia. The foreign circus shall pay an adequate amount as a security deposit to ASEC.</p> <p>A foreign circus entering El Salvador may only work in the city of San Salvador for 15 days, which may be extended for a further 15 days.</p> <p>A foreign circus that has performed in El Salvador can only return to the country after at least one year has elapsed since the date on which the circus left the country.</p>

## ANNEX I, Schedule of El Salvador

<b>Sector:</b>	Performing Arts
<b>Obligations Concerned:</b>	National Treatment (Article 11.2)
<b>Level of Government:</b>	Central
<b>Measures:</b>	<p><i>Decreto de las disposiciones para regular la explotación de obras de naturaleza intelectual por medios de comunicación pública y la participación de artistas salvadoreños en espectáculos públicos, Legislative Decree No. 239, June 9, 1983, published in Diario Oficial No. 111, Vol. 279, June 15, 1983, Art. 3</i></p> <p>Decree No. 18, <i>Sustitución de los artículos 1 y 4 del Decreto Legislativo No. 239</i>, June 9, 1983, published in <i>Diario Oficial</i> No. 7, Vol. 282, January 10, 1984</p>
<b>Description:</b>	<p><u>Cross-Border Services</u></p> <p>In the case of public performances involving the live participation of artists of any kind, the participation of Salvadoran nationals shall be equivalent to 20 percent of the number of participating foreigners.</p>

**ANNEX I, Schedule of El Salvador**

<b>Sector:</b>	Construction and Related Engineering Services
<b>Obligations Concerned:</b>	Most-Favored-Nation Treatment (Articles 10.4 and 11.3) National Treatment (Articles 10.3 and 11.2) Local Presence (Article 11.5)
<b>Level of Government:</b>	Central
<b>Measures:</b>	<i>Ley de Incentivos a las Empresas Nacionales de la Industria de la Construcción</i> , Legislative Decree No. 504, published in <i>Diario Oficial</i> No. 167, Vol. 308, July 9, 1990, as amended by  Legislative Decree No. 733, published in <i>Diario Oficial</i> No. 80, Vol. 311, April 23, 1991
<b>Description:</b>	<p><u>Cross-Border Services and Investment</u></p> <p>To participate in design activities, consulting, consulting and management of engineering or architectural projects, or any type of work or study relating to such projects' construction, whether before, during, or after construction, an enterprise a majority of whose capital is owned by foreign nationals ("foreign enterprise") must be contractually associated with an enterprise established in El Salvador ("Salvadoran enterprise") that is legally registered and qualified with the <i>Ministerio de Obras Públicas</i>, unless the foreign enterprise determines that such Salvadoran enterprise is not available.</p> <p>The foreign enterprise must have a resident representative in El Salvador.</p> <p>Further, an engineering or architectural project is subject to the following requirements:</p> <ul style="list-style-type: none"> <li>(a) enterprises organized under Salvadoran law must have an investment in the project equal to at least 20 percent of the value of the project; and</li> <li>(b) such enterprises must supply at least 30 percent of the technical staff and 90 percent of the administrative staff on the project.</li> </ul> <p>The requirements of subparagraph (b) do not apply if the foreign enterprise determines that Salvadoran enterprises are not able to provide the necessary resources.</p>

**ANNEX I, Schedule of El Salvador**

For greater certainty, technical staff and administrative staff do not include senior management. The requirements of subparagraphs (a) and (b) do not apply:

- (i) when the funds for the project come partially or entirely from foreign governments or international organizations; or
- (ii) to specific projects or grants for specialized technical cooperation.

**ANNEX I, Schedule of El Salvador**

<b>Sector:</b>	Public Accounting and Public Auditing
<b>Obligations Concerned:</b>	Most-Favored-Nation Treatment (Articles 10.4 and 11.3) National Treatment (Articles 10.3 and 11.2)
<b>Level of Government:</b>	Central
<b>Measures:</b>	<i>Ley Reguladora del Ejercicio de la Contaduría</i> , Arts. 2, 3, and 4
<b>Description:</b>	<u>Cross-Border Services and Investment</u>  Only a Salvadoran national may be authorized as a public accountant. Only a person authorized as a public accountant may be authorized as an external auditor.  For an enterprise to be authorized to supply public accounting services, the principal partners, shareholders, or associates must be Salvadoran nationals, and at least one person among the partners, shareholders, associates, or administrators must be authorized as a public accountant in El Salvador.

## ANNEX I, Schedule of El Salvador

<b>Sector:</b>	Professional Services: - Architectural Services - Engineering Services - Integrated Engineering Services - Urban Planning and Landscaping Services
<b>Obligations Concerned:</b>	National Treatment (Article 11.2) Local Presence (Article 11.5)
<b>Level of Government:</b>	Central
<b>Measures:</b>	<i>Ley de Urbanismo y Construcción</i> , Arts. 4 and 8  <i>Registro Nacional de Arquitectos, Ingenieros, Proyectistas y Constructores</i> , Executive Decree No. 34, published in <i>Diario Oficial</i> No. 4, Vol. 306, January 8, 1990  <i>Reglamento Interno del Consejo Nacional de Arquitectos, Ingenieros, Proyectistas y Constructores</i> , Executive Decree No. 75, published in <i>Diario Oficial</i> No. 11, Vol. 310, January 17, 1991, Arts. 25, 26, and 27
<b>Description:</b>	<u>Cross-Border Services</u>  Only architects and engineers who are inscribed in the <i>Registro Nacional de Arquitectos, Ingenieros, Proyectistas y Constructores</i> (" <i>Registro Nacional</i> ") may supervise architectural and engineering work on construction projects and sign and seal architectural or engineering plans for such projects.  An architect or engineer must be resident in El Salvador to be inscribed in the <i>Registro Nacional</i> .  Draftsmen, builders, and electrical installation technicians must be Salvadoran nationals in order to be inscribed in the <i>Registro Nacional</i> .

**ANNEX I, Schedule of El Salvador**

<b>Sector:</b>	Professional Services: Health Services (Including but not limited to: General and Specialist Medical Services, Dental Services, Veterinary Services, Paramedical Services, Services rendered by Psychologists, Midwives, Nurses, Physiotherapists, Chemists and Qualified Clinical Laboratory Technicians, and Technical and Auxiliary Staff)
<b>Obligations Concerned:</b>	Most-Favored-Nation Treatment (Article 11.3) National Treatment (Article 11.2) Local Presence (Article 11.5)
<b>Level of Government:</b>	Central
<b>Measures:</b>	<i>Código de Salud</i> , Arts. 4, 5, 17, 23, 30, 31, 32, and 306
<b>Description:</b>	<p><u>Cross-Border Services</u></p> <p>A permit is necessary for the exercise of the health services professions and their specialized, technical, and auxiliary activities. Permits are issued by the appropriate <i>Junta de Vigilancia</i>. The <i>Junta de Vigilancia</i> may grant permanent, temporary, or provisional permits. A permanent permit is available only for private professional activity. Other permits are subject to restrictions and limitations in accordance with the law for specified reasons.</p> <p>To grant a permanent permit the <i>Junta de Vigilancia</i> shall require that persons be Salvadoran nationals by birth or authorized to permanently reside in the country.</p> <p>In addition to fulfilling the requirements under the law, foreigners must provide proof that the jurisdiction in which they earned their qualification allows Salvadoran nationals or graduates to practice their profession in analogous circumstances.</p>

## ANNEX I, Schedule of El Salvador

<b>Sector:</b>	Professional Services – Legal Services (Notary Public)
<b>Obligations Concerned:</b>	Most-Favored-Nation Treatment (Article 11.3) National Treatment (Article 11.2) Local Presence (Article 11.5)
<b>Level of Government:</b>	Central
<b>Measures:</b>	<i>Ley de Notariado</i> , Art. 4
<b>Description:</b>	<u>Cross-Border Services</u>  Only persons authorized by the Supreme Court of Justice may exercise the profession of notary public. Only Salvadoran nationals who are attorneys may obtain such authorization.  Central American nationals who have been authorized to practice law in El Salvador and who have resided in the country for at least two years may also obtain such authorization, provided that:  (a) they have not been barred from practicing the profession of notary public in their own country; and  (b) Salvadoran nationals may practice the same profession in their country without any additional requirements than those laid down in Salvadoran law.

**ANNEX I, Schedule of El Salvador**

<b>Sector:</b>	Professional Services – Teachers
<b>Obligations Concerned:</b>	National Treatment (Article 11.2)
<b>Level of Government:</b>	Central
<b>Measures:</b>	<i>Constitución de la República</i> , Art. 60
<b>Description:</b>	<u>Cross-Border Services</u> Only Salvadoran nationals may teach national history and the Constitution.

**ANNEX I, Schedule of El Salvador**

<b>Sector:</b>	Professional Services: Customs Agents
<b>Obligations Concerned:</b>	Most-Favored-Nation Treatment (Articles 10.4 and 11.3) National Treatment (Articles 10.3 and 11.2)
<b>Level of Government:</b>	Central
<b>Measures:</b>	<i>Reglamento del Código Aduanero Uniforme Centroamericano,</i> Art. 18
<b>Description:</b>	<u>Cross-Border Services and Investment</u>  Only nationals of the Central American Parties may work as customs agents.

**ANNEX I, Schedule of El Salvador**

<b>Sector:</b>	Transport Services – Road Transport Services
<b>Obligations Concerned:</b>	National Treatment (Articles 10.3 and 11.2)
<b>Measures:</b>	<i>Constitución de la República de El Salvador</i> , Art. 95  <i>Ley de Transporte Terrestre, Tránsito y Seguridad Vial</i> , Arts. 38-A and 38-B  <i>Reglamento General de Transporte Terrestre</i> , Arts. 1 and 2
<b>Level of Government:</b>	Central
<b>Description:</b>	<u>Cross-Border Services and Investment</u>  Permits for the supply of services in passenger transport, regular and non-regular, within El Salvador may only be granted to Salvadoran nationals or their partners.  Only vehicles with Salvadoran license plates may transport goods from points in El Salvador to other points in El Salvador.  At least 51 percent of the equity capital of an enterprise engaged in such goods transport in El Salvador must be owned by Salvadoran persons. If such capital is owned by an enterprise, at least 51 percent of the stock of that enterprise must be owned by Salvadoran nationals.

## ANNEX I, Schedule of El Salvador

<b>Sector:</b>	Energy
<b>Obligations Concerned:</b>	Market Access (Article 11.4)
<b>Measures:</b>	<i>Ley reguladora del deposito, transporte y distribución de productos de petróleo, Art. 8</i>
<b>Description:</b>	<u>Cross-Border Services</u> <p>The construction of a gas service station will not be authorized if it is not a prudent distance from another gas station, in order to avoid excessive concentration. A prudent distance is considered one of not less than 600 meters in an urban area and 10 kilometers in a rural area. The 10 kilometer requirement also applies to one-way roads. For two-way roads containing medians, the distance will be measured on each side of the road independently.</p>

**ANNEX I, Schedule of El Salvador**

<b>Sector:</b>	Land Transport
<b>Obligations Concerned:</b>	Market Access (Article 11.4)
<b>Measures:</b>	<i>Reglamento General de Transporte Terrestre</i> , Title III, Art. 11 and Title V, Arts. 29 and 30
<b>Description:</b>	<u>Cross-Border Services</u> Public passenger land transportation concessions for a specific route will be limited, subject to technical studies of existing demand. A free public passenger land transportation concession is limited to one vehicle.

ANNEX I

**Schedule of Guatemala**

<b>Sector:</b>	All Sectors
<b>Obligations Concerned:</b>	National Treatment (Article 10.3)
<b>Level of Government:</b>	Central
<b>Measures:</b>	Decree No. 118-96 that amends Decree Nos. 38-71 and 48-72, Arts. 1 and 2
<b>Description:</b>	<p><u>Investment</u></p> <p>Only the following persons may be granted title to, rent, or use state-owned lands in the Department of El Petén:</p> <ol style="list-style-type: none"><li>(1) Guatemalans by birth who do not own rural real estate anywhere in the country that exceeds 45 hectares; and</li><li>(2) Guatemalans by birth who do not own industrial, mining or commercial enterprises.</li></ol> <p>Enterprises owned 100 percent by Guatemalans by birth that meet the requirements set out in the preceding paragraph may be granted title to, rent, or use state-owned lands in the Department of El Petén.</p>

**ANNEX I, Schedule of Guatemala**

<b>Sector:</b>	All Sectors
<b>Obligations Concerned:</b>	National Treatment (Article 10.3)
<b>Level of Government:</b>	Central
<b>Measures:</b>	<i>Ley de Titulación Supletoria</i> , Decree 49-79, Art. 2
<b>Description:</b>	<u>Investment</u> Only Guatemalans by birth and enterprises that are majority owned by Guatemalans by birth may take adverse possession of real estate.

## ANNEX I, Schedule of Guatemala

<b>Sector:</b>	All Sectors
<b>Obligations Concerned:</b>	National Treatment (Article 10.3)
<b>Level of Government:</b>	Central
<b>Measures:</b>	<i>Constitución Política de la República de Guatemala</i> , Art. 122 <i>Ley Reguladora de las Áreas de Reservas Territoriales del Estado de Guatemala</i> , Decree No. 126-97, Art. 5
<b>Description:</b>	<p><u>Investment</u></p> <p>Foreign nationals require an authorization from the <i>Oficina de Control de Areas de Reserva del Estado</i> to acquire ownership of the following state-owned land:</p> <ul style="list-style-type: none"> <li>(a) real estate located in urban zones; and</li> <li>(b) real estate for which rights were registered in the General Property Registry before March 1, 1956 in the following locations: <ul style="list-style-type: none"> <li>(i) a 3-kilometer-long strip of land along the ocean;</li> <li>(ii) 200 meters around the lakeshores;</li> <li>(iii) 100 meters on either side of the navigable rivers; and</li> <li>(iv) 50 meters around any spring that serves as a source of water for the population.</li> </ul> </li> </ul> <p>Only the Government may rent state-owned land described above to enterprises organized under Guatemalan law.</p>

**ANNEX I, Schedule of Guatemala**

<b>Sector:</b>	All Sectors
<b>Obligations Concerned:</b>	National Treatment (Article 10.3)
<b>Level of Government:</b>	Central
<b>Measures:</b>	<i>Constitución Política de la República de Guatemala</i> , Art. 123
<b>Description:</b>	<u>Investment</u>  Only Guatemalans by birth and enterprises 100 percent owned by Guatemalans by birth may own or possess real property located within 15 kilometers of the borders.  Foreign nationals may, however, own or possess urban real estate and real estate for which rights were registered in the General Property Registry before March 1, 1956 within the 15 kilometer area.

**ANNEX I, Schedule of Guatemala**

<b>Sector:</b>	All Sectors
<b>Obligations Concerned:</b>	National Treatment (Article 10.3)
<b>Level of Government:</b>	Central
<b>Measures:</b>	<i>Código de Comercio</i> , Decree No. 2-70, and its amendments contained in Decree No. 62-95, Art. 2
<b>Description:</b>	<p><u>Investment</u></p> <p>For an enterprise organized under foreign law to be established in Guatemala, in any form, it must allocate an assigned amount of capital for its operations in Guatemala, and execute a guarantee in favor of third parties in an amount not less than the equivalent in quetzales of US\$ 50,000, which must remain in effect for the duration of the enterprise's operations in Guatemala.</p> <p>The exact amount of the guarantee shall be determined by the <i>Registro Mercantil</i>, based on, among other factors, the amount of the investment.</p> <p>For greater certainty, the requirement of a bond is not to be construed to prevent an enterprise organized under the laws of a foreign country from establishing in Guatemala.</p>

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**ANNEX I, Schedule of Guatemala**

**Sector:** Forestry

**Obligations Concerned:** National Treatment (Article 10.3)

**Level of Government:** Central

**Measures:** *Constitución Política de la República de Guatemala*, Art. 126

**Description:** Investment  
Only Guatemalans by birth or enterprises organized under Guatemalan law may exploit and renew forestry resources.

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**ANNEX I, Schedule of Guatemala**

<b>Sector:</b>	Professional Services – Notaries
<b>Obligations Concerned:</b>	National Treatment (Article 11.2) Local Presence (Article 11.5)
<b>Level of Government:</b>	Central
<b>Measures:</b>	<i>Código de Notariado</i> , Decree No. 314, Art. 2
<b>Description:</b>	<u>Cross-Border Services</u>  To practice as a notary public, an individual must be a Guatemalan by birth domiciled in Guatemala.

**ANNEX I, Schedule of Guatemala**

<b>Sector:</b>	Professional Services
<b>Obligations Concerned:</b>	National Treatment (Article 10.3)
<b>Level of Government:</b>	Central
<b>Measures:</b>	<i>Código de Comercio</i> , Decree No. 2-70, Art. 213
<b>Description:</b>	<u>Investment</u>  An enterprise organized under the laws of a foreign country that supplies a professional service that requires a legally recognized university degree, certificate, or diploma may not be established in Guatemala.  However, such an enterprise may supply its services in Guatemala through a contract or other relationship with an enterprise established in Guatemala.

**ANNEX I, Schedule of Guatemala**

<b>Sector:</b>	Performing Arts
<b>Obligations Concerned:</b>	National Treatment (Article 11.2) Local Presence (Article 11.5)
<b>Level of Government:</b>	Central
<b>Measures:</b>	<i>Ley de Espectáculos Públicos</i> , Decree No. 574, Arts. 36, 37, and 49 <i>Acuerdo Ministerial No. 592-99 del Ministerio de Cultura y Deportes</i> , Art. 1
<b>Description:</b>	<u>Cross-Border Services</u>  Prior authorization from the <i>Dirección de Espectáculos</i> is required to contract with foreign groups, enterprises, or artists.  In order for foreign artists or artist groups to perform in Guatemala, they must have a consent letter from any of the legally recognized non-governmental artist unions in the country.  In mixed performances, made up of one or more films and variety shows, preference will be given to Guatemalans if the circumstances of the cast, schedule, and contract so allow.

**ANNEX I, Schedule of Guatemala**

<b>Sector:</b>	Tour Guides
<b>Obligations Concerned:</b>	National Treatment (Article 11.2) Local Presence (Article 11.5)
<b>Level of Government:</b>	Central
<b>Measures:</b>	<i>Acuerdo No. 219-87 del Instituto Guatemalteco de Turismo - INGUAT- Funcionamiento de Guías de Turismo, Art. 6</i>
<b>Description:</b>	<u>Cross-Border Services</u>  Only Guatemalans by birth or nationals of a foreign country that are residents in Guatemala may provide tour guide services in Guatemala.

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**ANNEX I, Schedule of Guatemala**

**Sector:** Specialty Air Services

**Obligations Concerned:** Most-Favored-Nation Treatment (Article 11.3)

**Level of Government:** Central

**Measures:** *Ley de Aviación Civil, Decreto del Congreso 93-2000, Art. 24*

**Description:** Cross-Border Services

In order to perform aeronautical duties on board foreign aircraft, individuals are required to have a certificate, license, or the equivalent, accepted by the *Dirección General de Aeronáutica Civil*, or issued pursuant to an international agreement to which Guatemala is a party, under conditions of reciprocity.

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**ANNEX I, Schedule of Guatemala**

<b>Sector:</b>	Specialty Air Services
<b>Obligations Concerned:</b>	National Treatment (Article 11.2)
<b>Level of Government:</b>	Central
<b>Measures:</b>	<i>Ley de Aviación Civil</i> , Decree No. 93-2000, Art. 62
<b>Description:</b>	<u>Cross-Border Services</u>  In the operation of specialty air services by Guatemalan operators, all personnel performing aeronautical duties on board the aircraft must be Guatemalans by birth. However, the <i>Dirección General de Aeronáutica Civil</i> may authorize foreign nationals to perform such duties for a period not to exceed three months, counting from the date of authorization.  The <i>Dirección General de Aeronáutica Civil</i> may extend this period if it determines that there are no such trained personnel in Guatemala.

**ANNEX I, Schedule of Guatemala**

<b>Sector:</b>	Air Transportation
<b>Obligations Concerned:</b>	National Treatment (Article 10.3) Senior Management and Boards of Directors (Article 10.10)
<b>Level of Government:</b>	Central
<b>Measures:</b>	<i>Ley de Aviación Civil</i> , Decree No. 93-2000, Art. 71
<b>Description:</b>	<p><u>Investment</u></p> <p>Only Guatemalans by birth or enterprises organized under Guatemalan law may operate commercial air transportation services in Guatemala.</p> <p>For greater certainty, commercial air transportation services includes all domestic air transport, including of passengers, mail or cargo.</p> <p>In order to supply such services, an enterprise must also meet the following requirements:</p> <ul style="list-style-type: none"><li>(a) the enterprise must have its principal place of business in Guatemala; and</li><li>(b) at least one-half, plus 1, of the directors, managers and individuals who have responsibility for management and control of the enterprise must be Guatemalans by birth or be a permanent resident of Guatemala.</li></ul>

## ANNEX I

## Schedule of Honduras

<b>Sector:</b>	All Sectors
<b>Obligations Concerned:</b>	National Treatment (Article 10.3)
<b>Level of Government:</b>	Central
<b>Measures:</b>	Decree No. 131, <i>Constitución de la República</i> , Title III, Chapter II, Art. 107  Decree No. 90-1990, <i>Ley para la Adquisición de Bienes Urbanos en las Áreas que delimita el Artículo 107 de la Constitución de la República</i> , Arts. 1 and 4  Decree No. 968, <i>Ley para la Declaratoria, Planeamiento y Desarrollo de las Zonas de Turismo</i> , Title V, Chapter V, Art. 16
<b>Description:</b>	<u>Investment</u>  State land, common land, and private land within 40 kilometers of the borders and coastlines, and such land on islands, keys, coral reefs, breakwaters, rocks, and sand shoals in Honduras, can only be acquired, possessed, or held under any title by Honduran nationals by birth, by enterprises fully owned by Honduran nationals, and by state institutions.  Notwithstanding the preceding paragraph, any person may acquire, possess, hold, or lease for up to 40 years (which may be renewed) urban lands in such areas provided that it is certified and approved for tourist purposes, economic or social development, or for the public interest by the <i>Secretaría de Estado en el Despacho de Turismo</i> .  Any person that acquires, possesses, or holds such urban land may transfer that land only after prior authorization by the <i>Secretaría de Estado en el Despacho de Turismo</i> .

## ANNEX I, Schedule of Honduras

<b>Sector:</b>	All Sectors
<b>Obligations Concerned:</b>	National Treatment (Article 10.3) Most-Favored-Nation Treatment (Article 10.4)
<b>Level of Government:</b>	Central
<b>Measures:</b>	Decree No. 131, <i>Constitución de la República de Honduras</i> , Title VI, Chapter I, Art. 337  Agreement No. 345-92, <i>Reglamento de la Ley de Inversiones</i> , Chapters I and VI, Arts. 3 and 49
<b>Description:</b>	<u>Investment</u>  Small-scale industry and trade are reserved to Honduran persons.  Foreign investors cannot engage in small-scale industry or trade unless they are naturalized citizens and their country of origin grants reciprocity.  “Small-scale industry and trade” means an enterprise with capital, excluding land, buildings, and vehicles, of less than 150,000 Lempiras.

## ANNEX I, Schedule of Honduras

<b>Sector:</b>	All Sectors
<b>Obligations Concerned:</b>	National Treatment (Article 10.3) Most-Favored-Nation Treatment (Article 10.4)
<b>Level of Government:</b>	Central
<b>Measures:</b>	Decree No. 65-87, May 20, 1987, <i>Ley de Cooperativas de Honduras</i> , Title II, Chapter I, Arts. 18 and 19  Agreement No. 191-88, May 30, 1988, <i>Reglamento de la Ley de Cooperativas de Honduras</i> , Art. 34(c) and (d)
<b>Description:</b>	<u>Investment</u>  Non-Honduran cooperatives may establish in Honduras if they receive authorization from the <i>Instituto Hondureño de Cooperativas</i> . Authorization will be granted if:  (a) reciprocity exists in the country of origin; and  (b) the non-Honduran cooperative has at least one permanent legal representative in Honduras.

**ANNEX I, Schedule of Honduras**

<b>Sector:</b>	Customs Agents and Customs Agencies
<b>Obligations Concerned:</b>	National Treatment (Article 10.3 and 11.2)
<b>Level of Government:</b>	Central
<b>Measures:</b>	Decree No. 212-87, <i>Ley de Aduanas</i> , Title IX, Chapter I, First and Third Sections, Arts. 177 and 182
<b>Description:</b>	<u>Cross-Border Services and Investment</u>  Licensed customs agents must be Honduran nationals by birth.  Employees of the customs agent, who act on behalf of the customs agent, also must be Honduran nationals by birth.

**ANNEX I, Schedule of Honduras**

<b>Sector:</b>	Agricultural
<b>Obligations Concerned:</b>	National Treatment (Article 10.3)
<b>Level of Government:</b>	Central
<b>Measures:</b>	Agreement No. 2124-92, <i>Reglamento de Adjudicación de Tierras en la Reforma Agraria</i> , Arts. 1 and 2
<b>Description:</b>	<u>Investment</u>  Agrarian reform beneficiaries must be Honduran nationals by birth, individually or organized in peasant cooperatives or other peasant enterprises.

**ANNEX I, Schedule of Honduras**

<b>Sector:</b>	Communications Services – Mail
<b>Obligations Concerned:</b>	Market Access (11.4)
<b>Level of Government:</b>	Central
<b>Measures:</b>	Decree No. 120-93, <i>Ley Orgánica de la Empresa de Correos de Honduras</i> , Arts. 3 and 4
<b>Description:</b>	<u>Cross-Border Services</u>  The operation of the mail system in Honduras is reserved exclusively to the <i>Empresa Hondureña de Correos</i> (HONDUCOR). <sup>1</sup>

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<sup>1</sup> However, this exclusivity does not apply to the supply of express delivery services.

## ANNEX I, Schedule of Honduras

<b>Sector:</b>	Radio, Television, and Newspaper Services
<b>Obligations Concerned:</b>	Senior Management and Boards of Directors (Article 10.10)
<b>Level of Government:</b>	Central
<b>Measures:</b>	Decree No. 131, <i>Constitución de la República de Honduras</i> , Chapter II, Art. 73, third paragraph  Decree No. 6, <i>Ley de Emisión del Pensamiento</i> , Chapter IV, Art. 30  Decree No. 759, <i>Ley del Colegio de Periodistas de Honduras</i> , Art. 8, amended by Decree No. 79, January 1, 1981
<b>Description:</b>	<u>Investment</u>  Only Honduran nationals by birth may exercise senior management of newspapers or free over the air broadcast (radio and television) news media, including its intellectual, political, and administrative orientation. <sup>2</sup>

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<sup>2</sup> This does not apply to newspapers or news media that are established outside Honduras.

## ANNEX I, Schedule of Honduras

<b>Sector:</b>	Telecommunications
<b>Obligations Concerned:</b>	National Treatment (Article 11.2)
<b>Level of Government:</b>	Central
<b>Measures:</b>	Decree No.185-95, <i>Ley Marco del Sector Telecomunicaciones</i> , Chapter I, Art. 26  Agreement No. 141-2002, <i>Reglamento General de la Ley Marco del Sector de Telecomunicaciones</i> , December 26, 2002, Title III, Chapter I, Art. 93
<b>Description:</b>	<u>Cross-Border Services</u>  Foreign governments may not directly participate in the provision of public telecommunications services.

## ANNEX I, Schedule of Honduras

<b>Sector:</b>	Telecommunications
<b>Obligations Concerned:</b>	Market Access (Article 11.4)
<b>Level of Government:</b>	Central
<b>Measures:</b>	Decree No. 244-98, October 2, 1998, Art. 1
<b>Description:</b>	<u>Cross-Border Services</u>  The <i>Empresa Hondureña de Telecomunicaciones</i> (HONDUTEL) has the exclusive right to provide national and international telecommunications services throughout the territory of Honduras, such as: carrier, telex, telephone and telegraph services, including telegraph services in places where there is no other means of communication with the rest of the country. HONDUTEL shall benefit from the exclusive right to provide such services until December 24, 2005.
<b>Timetable for reduction:</b>	Starting on December 25, 2005, HONDUTEL shall no longer have the exclusive right to provide national and international telecommunications services throughout the territory of Honduras, such as: carrier, telex, telephone and telegraph services, including telegraph services in places where there is no other means of communication with the rest of the country.

## ANNEX I, Schedule of Honduras

<b>Sector:</b>	Construction or Consulting Services and Related Engineering Services – Civil Engineering
<b>Obligations Concerned:</b>	National Treatment (Articles 10.3 and 11.2) Most-Favored-Nation Treatment (Article 11.3) Market Access (Article 11.4) Local Presence (Article 11.5)
<b>Level of Government:</b>	Central
<b>Measures:</b>	Decree No. 47-1987, <i>Ley Orgánica del Colegio de Ingenieros Civiles de Honduras</i> , Art. 67  <i>Reglamento de Ley Orgánica del Colegio de Ingenieros Civiles de Honduras</i> , Arts. 100 (A) – (D) and 101  Decree No. 753, <i>Ley Orgánica del Colegio de Arquitectos de Honduras</i> , Art. 37(b), (c), (d), (g), and (h)  <i>Reglamento de Ley Orgánica del Colegio de Arquitectos de Honduras</i> , Arts. 4(h), 7(a), (c), (d) and (h), 13, 68, and 69  Decree No. 902, <i>Ley Orgánica del Colegio de Ingenieros Mecánicos, Electricistas y Químicos de Honduras</i> , Art. 40 (c), (d), and (h)
<b>Description:</b>	<u>Cross-Border Services and Investment</u>  Consulting and construction enterprises must be organized under Honduran law in order to be members of the <i>Colegio de Ingenieros Civiles de Honduras</i> (CICH) and to perform civil engineering projects in Honduras. For greater certainty, consulting and construction enterprises organized under foreign law may register provisionally with the CICH to perform specific civil engineering projects. Higher membership fees apply to foreign-owned enterprises. In addition, foreign workers must be authorized by the CICH in order to work on such projects.

**ANNEX I, Schedule of Honduras**

<b>Sector:</b>	Distribution Services – Petroleum Products (Liquid Fuel, Automotive Oil, Diesel, Kerosene, and LPG)
<b>Obligations Concerned:</b>	National Treatment (Article 10.3) Local Presence (Article 11. 5)
<b>Level of Government:</b>	Central
<b>Measures:</b>	Decree No. 549, <i>Ley de Representantes, Distribuidores y Agentes de Empresas Nacionales y Extranjeras</i> , Chapter I and VI, Arts. 4 and 25  Decree No. 804, amending Art. 4 of the <i>Ley de Representantes, Distribuidores y Agentes de Empresas Nacionales y Extranjera</i>
<b>Description:</b>	<u>Cross-Border Services and Investment</u>  Only Honduran nationals and enterprises organized under Honduran law may be authorized to sell petroleum products. Enterprises must be at least 51 percent owned by Honduran nationals.

## ANNEX I, Schedule of Honduras

<b>Sector:</b>	Electricity
<b>Obligations Concerned:</b>	Market Access (Article 11.4)
<b>Level of Government:</b>	Central
<b>Measures:</b>	Decree No. 158-94, <i>Ley Marco del Sub Sector Eléctrico</i> , November 26, 1994, Chapter V, Art. 15
<b>Description:</b>	<u>Cross-Border Services</u>  Only the Honduran Government, through the <i>Empresa Nacional de Energía Eléctrica</i> , may transmit electricity or operate the electricity transmission system and dispatch center.

## ANNEX I, Schedule of Honduras

<b>Sector:</b>	Lotteries
<b>Obligations Concerned:</b>	Market Access (Article 11.4)
<b>Level of Government:</b>	Central
<b>Measures:</b>	<i>Ley Orgánica de la Lotería Nacional</i> , Decree No. 438, April 23, 1977, Art. 5(c)
<b>Description:</b>	<u>Cross-Border Services</u>  The <i>Patronato Nacional de la Infancia</i> (PANI) exclusively administers the national lottery.

## ANNEX I, Schedule of Honduras

<b>Sector:</b>	Education Services – Private Preschool, Primary, and Secondary Educational Services
<b>Obligations Concerned:</b>	National Treatment (Article 11.2) Most-Favored-Nation Treatment (Article 11.3) Local Presence (Article 11.5) Senior Management and Boards of Directors (Article 10.10)
<b>Level of Government:</b>	Central
<b>Measures:</b>	Decree No. 131, <i>Constitución de la República</i> , Title III, Chapter VIII, Arts. 34, 166, and 168  Decree No. 79, <i>Ley Orgánica de Educación</i> , Arts. 64 and 65  Decree No. 136-97, <i>Ley del Estatuto del Docente</i> , Arts. 7 and 8  Executive Agreement No. 0760-5E-99, <i>Reglamento General del Estatuto del Docente</i> , Art. 6
<b>Description:</b>	<u>Cross-Border Services and Investment</u>  A school director or supervisor must be a Honduran national by birth.  Teachers at all levels of the education system must be Honduran nationals by birth. Foreign nationals may, however, teach particular subjects at the middle and high school levels if there are no such Honduran nationals available to teach such subjects. Notwithstanding the preceding sentence, foreign nationals may teach the Constitution, civic education, geography, and the history of Honduras only if there is reciprocity for Honduran nationals in their country of origin.  Private schools at all levels must be organized under Honduran law. For greater certainty, there are no restrictions on foreign ownership of such schools.

## ANNEX I, Schedule of Honduras

<b>Sector:</b>	Entertainment Services – Music Entertainers
<b>Obligations Concerned:</b>	National Treatment (Articles 10.3 and 11.2)
<b>Level of Government:</b>	Central
<b>Measures:</b>	Decree No. 123, October 23, 1968, <i>Ley de Protección a los Artistas Musicales</i> , Arts. 1 – 4
<b>Description:</b>	<u>Cross-Border Services and Investment</u>

Notwithstanding the measure listed above, Honduras agrees that foreign music artists who wish to perform individually or as a group in Honduras must pay five percent of the contracted fee to the Artist Union of Honduras and the manager or leaser shall, if possible, contract local artists to perform during the same performance.

For greater certainty, foreign music artists must register with the Artist Union of Honduras for each performance in Honduras.

**ANNEX I, Schedule of Honduras**

<b>Sector:</b>	Championships and Soccer Games Services
<b>Obligations Concerned:</b>	National Treatment (Article 11.2) Most-Favored-Nation Treatment (Article 11.3) Local Presence (Article 11.5)
<b>Level of Government:</b>	Central
<b>Measures:</b>	<i>Reglamento de Campeonatos y Competencias Liga Nacional de Fútbol No Aficionado de Primera División, Arts. 9 and 10</i>
<b>Description:</b>	<u>Cross-Border Services</u>  Foreign nationals that are players in the Honduran national soccer league must be temporarily resident in Honduras. Each team in such league may register a maximum of four foreign players, one of whom must be a national from a Central American country.

**ANNEX I, Schedule of Honduras**

<b>Sector:</b>	Amusement, Cultural, and Sports Services – Casinos and Gambling (Encompasses Roulette, Cards, Punter, Baccarat, Slot Machines, and the Like)
<b>Obligations Concerned:</b>	National Treatment (Article 10.3) Local Presence (Article 11.5)
<b>Level of Government:</b>	Central
<b>Measures:</b>	Decree No. 488, February 16, 1977, <i>Ley de Casinos de Juegos de Envite o Azar</i> , Art. 3
<b>Description</b>	<u>Cross-Border Services and Investment</u>  Only Hondurans nationals by birth and enterprises organized under Honduran law may operate a casino.

## ANNEX I, Schedule of Honduras

<b>Sector:</b>	Environmental Services
<b>Obligations Concerned:</b>	Market Access (Article 11.4)
<b>Level of Government:</b>	Central
<b>Measures:</b>	Decree No. 134-90, <i>Ley de Municipalidades</i> , Art. 13(3) and (4) Decree No. 104-93, <i>Ley General del Ambiente</i> , Arts. 29 and 67
<b>Description:</b>	<u>Cross-Border Services</u> Only the State, through its municipalities, may provide public water distribution, waste disposal, and sanitation and hygiene services. For greater certainty, municipalities are responsible for the construction of aqueducts, the maintenance and administration of potable water, sanitary sewerage, and drainage, and the promotion and development of related projects.

## ANNEX I, Schedule of Honduras

<b>Sector:</b>	Distribution, Wholesale and Retail – Weapons, Munitions, and Other Related Items
<b>Obligations Concerned:</b>	Market Access (Article 11.4)
<b>Level of Government:</b>	Central
<b>Measures:</b>	Decree No. 131, <i>Constitución de la República</i> , Title V, Chapter X, Art. 292  Decree No. 80-92, <i>Ley de Inversiones</i> , Chapter VI, Art.16
<b>Description:</b>	<u>Cross-Border Services</u>

The wholesale and retail distribution of the following items are reserved solely for the *Fuerzas Armadas de Honduras*:

- munitions;
- warplanes,
- military rifles,
- all classes of pistols and revolvers, 41 caliber or higher;
- Honduran Army standard-issue pistols;
- silencers for all classes of firearms;
- firearms;
- accessories and munitions;
- cartridges for firearms;
- apparatus and other accessories required to load cartridges;
- gunpowder, explosives, caps, and fuses;
- gas masks; and
- air rifles.

For greater certainty, use of explosives for commercial purposes may be permitted by the appropriate Honduran authority.

## ANNEX I, Schedule of Honduras

<b>Sector:</b>	Investigation and Security Services
<b>Obligations Concerned:</b>	National Treatment (Article 10.3) Senior Management and Boards of Directors (Article 10.10)
<b>Level of Government:</b>	Central
<b>Measures:</b>	Decree No. 156-98, <i>Ley Orgánica de la Policía Nacional</i> , Art.91
<b>Description:</b>	<u>Investment</u>  In order to be established in Honduras, foreign private security enterprises must partner with Honduran enterprises working in the same field and appoint a Honduran national by birth as a senior manager.

## ANNEX I, Schedule of Honduras

<b>Sector:</b>	Fisheries
<b>Obligations Concerned:</b>	National Treatment (Article 10.3)
<b>Level of Government:</b>	Central
<b>Measures:</b>	Decree No. 154, <i>Ley de Pesca</i> , Chapter IV, Arts. 20, 26, and 29
<b>Description :</b>	<u>Investment</u>

Only Honduran nationals resident in Honduras and enterprises organized under Honduran law at least 51 percent owned by Honduran nationals can engage in commercial fishing in the territorial waters, rivers, and lakes in Honduras. For greater certainty, only Honduran flag vessels can perform commercial fishing activities in territorial waters in Honduras.

For greater certainty, only Honduran nationals by birth can be captains of commercial fishing vessels.

## ANNEX I, Schedule of Honduras

<b>Sector:</b>	Professional Services
<b>Obligations Concerned:</b>	National Treatment (Article 11.2) Most-Favored-Nation Treatment (Article 11.3) Local Presence (Article 11.5)
<b>Level of Government:</b>	Central
<b>Measures:</b>	Decree No. 131, <i>Constitución de la República de Honduras</i> , Chapter VIII, Art. 177  <i>Reglamento para el Reconocimiento de Estudios Universitarios e Incorporación de Profesionales</i> , Arts. 2, 11, and 18
<b>Description:</b>	<p><u>Cross-Border Services</u></p> <p>Notwithstanding existing measures relating to requirements for the practice of professions, including the measures listed above, Honduras agrees that authorization for professional practice will be granted based on principles of reciprocity.</p> <p>Honduras agrees that if a jurisdiction in the United States recognizes professional degrees awarded by Honduran educational institutions, then Honduras will recognize equivalent professional degrees awarded by U.S. educational institutions.</p> <p>Likewise, Honduras agrees that if a jurisdiction in the United States allows Honduran nationals to apply for and receive a license or certificate for the provision of a professional service, then Honduras will allow U.S. nationals to apply for and receive an equivalent license or certificate.</p> <p>For greater certainty, the preceding paragraphs do not grant the automatic recognition of professional degrees or right to practice a profession, nor do they eliminate the nationality requirement for certain professions reserved exclusively for Honduran nationals, as provided for in Annexes I or II.</p> <p>In addition, the relevant professional association in Honduras will recognize a license granted by a jurisdiction in the United States, and allow the holder of that license to register with the association and practice the profession in Honduras on a temporary basis based on the license issued in a jurisdiction in the United States, in the following cases:</p>

**ANNEX I, Schedule of Honduras**

- (a) no educational institution in Honduras offers a course of study that would allow the practice of the profession in Honduras;
- (b) the holder of the license is a recognized expert in the profession; or
- (c) allowing the professional to practice in Honduras will, through training, demonstration, or other such opportunity, further the development of the profession in Honduras.

**ANNEX I, Schedule of Honduras**

Sector:	Air Transportation
Obligations Concerned:	National Treatment (Article 10.3) Senior Management and Boards of Directors (Article 10.10)
Level of Government:	Central
Measures:	Decree No. 146, <i>Ley de Aeronáutica Civil</i> , Chapter X, Second, Third, and Fourth Sections, Art.80
Description:	<u>Investment</u>  Only Honduran nationals and enterprises organized under Honduran law may supply domestic and international commercial public air transportation services by means of a Honduran flag aircraft.  Such enterprises must be controlled and at least 51 percent owned by Honduran nationals.

**ANNEX I, Schedule of Honduras**

Sector:	Air Transportation
<b>Obligations Concerned:</b>	National Treatment (Article 11.2) Most-Favored-Nation Treatment (Article 11.3) Local Presence (Article 11.5)
<b>Level of Government:</b>	Central
Measures:	Decree No. 146, <i>Ley de Aeronáutica Civil</i> , Chapter X, Second, Third, and Fourth Sections, Arts. 37, 125, and 126
Description:	<u>Cross-Border Services</u>  Private specialty air transportation services for remuneration can only be provided by Honduran nationals or enterprises organized under Honduran law and must be authorized by the <i>Secretaría de Obras Públicas, Transporte y Vivienda</i> .  When Honduran personnel are not available to perform such activities, foreign pilots or other technical personnel may be allowed to exercise such activities, with preference given to qualified personnel from any Central American country.

## ANNEX I, Schedule of Honduras

<b>Sector:</b>	Maritime Transportation - Coastal Navigation
<b>Obligations Concerned:</b>	National Treatment (Articles 10.3 and 11.2) Most-Favored-Nation Treatment (Articles 10.4 and 11.3) Local Presence (Article 11.5)
<b>Level of Government:</b>	Central
<b>Measures:</b>	Decree No. 167-94, January 2, 1995, <i>Ley Orgánica de la Marina Mercante Nacional</i> , Title II, III, Chapter VII, Art. 40  Agreement No. 000764, December 13, 1997, <i>Reglamento de Transporte Marítimo</i> , Art. 6
<b>Description:</b>	<u>Cross-Border Services and Investment</u>  Coastal navigation for commercial purposes is reserved for Honduran merchant vessels. If there are no Honduran merchant vessels, or if they are not available, and for the time period that such circumstances exist, the <i>Dirección General de la Marina Mercante</i> may authorize foreign merchant vessels to provide coastal navigation in Honduras. In such circumstances, preference shall be given to Central American flag vessels.  Honduran merchant vessels must be organized under Honduran law, at least 51 percent of its subscribed and paid-in share capital must be owned by Honduran nationals, and the company must be domiciled in Honduras.

## ANNEX I, Schedule of Honduras

<b>Sector:</b>	Land Transportation
<b>Obligations Concerned:</b>	National Treatment (Articles 10.3 and 11.2) Most-Favored-Nation Treatment (Article 11.3) Market Access (Article 11.4) Local Presence (Article 11.5)
<b>Level of Government:</b>	Central
<b>Measures:</b>	Decree No. 319-1976, <i>Ley de Transporte Terrestre</i> , Arts. 3, 5, 17, 18, 27, and 28  Agreement No. 200, <i>Reglamento de la Ley de Transporte Terrestre</i> , Arts. 1, 7, 32, 33, and 34
<b>Description:</b>	<u>Cross-Border Services and Investment</u>  Public domestic land passenger and cargo transportation services may be supplied only by Honduran nationals and enterprises that are organized under Honduran law and at least 51 percent owned by Honduran nationals. It is necessary to obtain a certificate of operation from the <i>Dirección General de Transporte de la Secretaría de Obras Públicas, Transporte y Vivienda (SOPTRAVI)</i> , which is subject to an economic needs test.  Public international land passenger and cargo transportation services may be supplied by foreign nationals and enterprises organized under foreign law based on reciprocity, but authorization for particular routes will be granted on a preferential basis to Honduran nationals and to enterprises organized under Honduran law.

## ANNEX I, Schedule of Honduras

<b>Sector:</b>	Transportation – Railways
<b>Obligations Concerned</b>	National Treatment (Article 10.3) Senior Management and Boards of Directors (Article 10.10)
<b>Level of Government:</b>	Central
<b>Measures:</b>	Decree No. 48, <i>Ley Constitutiva del Ferrocarril Nacional de Honduras</i> , Chapters I and VIII, Arts. 32 and 12 (amended by Decree No. 54)
<b>Description:</b>	<u>Investment</u>  The <i>Ferrocarril Nacional de Honduras</i> may only sell its subsidiaries to Honduran nationals and enterprises organized under Honduran law.  The senior manager of the <i>Ferrocarril Nacional de Honduras</i> must be a Honduran national by birth.

**ANNEX I, Schedule of Honduras**

<b>Sector:</b>	Other Business Services – Warehousing
<b>Obligations Concerned:</b>	Market Access (Article 11.4)
<b>Level of Government:</b>	Central
<b>Measures:</b>	Agreement No. 1055, <i>Reglamento de los Almacenes Generales de Depositos</i> , Art. 3
<b>Description:</b>	<u>Cross-Border Services</u>  Only enterprises organized under Honduran law with fixed capital and the sole purpose of providing warehousing services shall be authorized to provide such services.

## ANNEX I, Schedule of Honduras

<b>Sector:</b>	Business Consulting Services
<b>Obligations Concerned:</b>	National Treatment (Article 11.2) Most-Favored-Nation Treatment (Article 11.3) Market Access (Article 11.4)
<b>Level of Government:</b>	Central
<b>Measures:</b>	Decree No. 900, <i>Ley Orgánica del Colegio de Administradores de Empresas de Honduras</i> , Arts. 61-E and 61-F  <i>Reglamento de Ley Orgánica del Colegio de Administradores de Empresas de Honduras</i> , Arts. 96, 111, 113, and 114
<b>Description:</b>	<u>Cross-Border Services</u>  Foreign nationals may enter into contracts to provide business administration consulting services after confirmation of the contract by the <i>Colegio de Administradores de Empresas de Honduras</i> .  Enterprises organized under foreign law may enter into contracts to provide business administration consulting services after confirmation of the contract by the <i>Colegio de Administradores de Empresas de Honduras</i> if such services are not otherwise available in Honduras or because of contractual needs. In order to provide such services, such enterprises must form a partnership with Honduran firms that are duly registered with the <i>Colegio de Administradores de Empresas de Honduras</i> .  Foreign nationals and enterprises organized under foreign law must pay registration fees that are higher than those imposed on Honduran nationals and enterprises organized under Honduran law.

## ANNEX I, Schedule of Honduras

<b>Sector:</b>	Economic Consulting Services
<b>Obligations Concerned:</b>	Local Presence (Article 11.5)
<b>Level of Government:</b>	Central
<b>Measures:</b>	Decree No. 1002, <i>Ley Orgánica del Colegio Hondureño de Economistas</i> , Art. 58
<b>Description:</b>	<u>Cross-Border Services</u>  In order to provide economic consulting services into the territory of Honduras, economic consulting enterprises organized under foreign law must be represented by a member of the <i>Colegio Hondureño de Economistas</i> .

**ANNEX I, Schedule of Honduras**

Sector:	Agricultural Engineering and Agronomy
Obligations Concerned:	National Treatment (Article 11.2) Most-Favored-Nation Treatment (Article 11.3)
Level of Government:	Central
Measures:	Decree No. 148-95, <i>Ley Orgánica del Colegio de Profesionales en Ciencias Agrícolas de Honduras</i> , Art. 5  <i>Reglamento de la Ley Orgánica del Colegio de Profesionales en Ciencias Agrícolas de Honduras</i> , Art. 9 and <i>Tabla de Pagos al COLPROCAH</i>
Description:	<u>Cross-Border Services</u>  Foreign agricultural engineers and agronomists may be subject to higher professional association registration fees than those imposed on Honduran agricultural engineers and agronomists.

**ANNEX I, Schedule of Honduras**

<b>Sector:</b>	Forestry Engineers
<b>Obligations Concerned:</b>	National Treatment (Article 11.2) Local Presence (Article 11.5)
<b>Level of Government:</b>	Central
<b>Measures:</b>	<i>Ley Orgánica del Colegio de Ingenieros Forestales de Honduras,</i> Art. 66
<b>Description:</b>	<u>Cross-Border Services</u>  Forestry engineering consulting enterprises organized under foreign law must hire Honduran nationals that are members of the Association of Forestry Engineers of Honduras in a proportion meaningful to the size of the project.

**ANNEX I, Schedule of Honduras**

<b>Sector:</b>	Veterinarians
<b>Obligations Concerned:</b>	National Treatment (Article 11.2) Most-Favored-Nation Treatment (Article 11.3) Local Presence (Article 11.5)
<b>Level of Government:</b>	Central
<b>Measures:</b>	<i>Ley Orgánica del Colegio de Veterinarios de Honduras, Art. 12</i>  <i>Reglamento de la Ley Orgánica del Colegio de Médicos Veterinarios de Honduras, Art. 5</i>
<b>Description:</b>	<u>Cross-Border Services</u>  Foreign enterprises wishing to supply veterinary services in Honduras must be organized under Honduran law. Foreign veterinarians may be subject to higher professional association fees than those imposed on Central American veterinarians.

**ANNEX I, Schedule of Honduras**

<b>Sector:</b>	Microbiologists and Clinicians
<b>Obligations Concerned:</b>	National Treatment (Article 11.2)
<b>Level of Government:</b>	Central
<b>Measures:</b>	<i>Reglamento de Inscripción del Colegio de Microbiólogos y Químicos Clínicos, Arts. 5, 6, and 8</i>
<b>Description:</b>	<u>Cross-Border Services</u>  Foreign microbiologists and clinicians must pay a higher registration fee than those paid by Honduran microbiologists and clinicians.

**ANNEX I, Schedule of Honduras**

**Sector:** Notaries

**Obligations Concerned:** National Treatment (Article 11.2)

**Level of Government:** *Central*

**Measures:** Decree No. 277-2002, August 16, 2002, *Ley del Notariado*, Art. 4

**Description:** Cross-Border Services  
Notaries must be Honduran nationals.

**ANNEX I, Schedule of Honduras**

<b>Sector:</b>	Electrical Energy Services
<b>Obligations Concerned:</b>	Market Access (Article 11.4)
<b>Level of Government:</b>	Central
<b>Measures:</b>	Decree No. 158-94, <i>Ley Marco del Sub-sector Eléctrico</i> , Art. 23
<b>Description:</b>	<u>Cross-Border Services</u>  In order to be established in Honduras and supply electrical energy distribution services, an enterprise must be organized as a commercial corporation with nominative stock.

## ANNEX I, Schedule of Honduras

<b>Sector:</b>	Telecommunications
<b>Obligations Concerned:</b>	Market Access (Article 11.4)
<b>Level of Government:</b>	Central
<b>Measures:</b>	Decree No. 80-2003, Art. 1(3.5) Executive Decree No. PCM-018-2003, October 2, 2003, Art. 1, No. IV (a) Decree No. 109-2003, October 24, 2003, Art. 1, No. IV (a)
<b>Description:</b>	<u>Cross-Border Services</u>  The <i>Comisión Nacional de Telecomunicaciones</i> (CONATEL) will not authorize additional mobile telephony operators until December 2005. CONATEL will authorize at least one additional operator after that date.

## ANNEX I, Schedule of Honduras

<b>Sector:</b>	Public Accountants
<b>Obligations Concerned:</b>	Local Presence (Article 11.5)
<b>Level of Government:</b>	Central
<b>Measures:</b>	Decree No. 19-93, <i>Ley Orgánica del Colegio de Profesionales Universitarios en Contaduría Pública</i> , Art. 23
<b>Description:</b>	<u>Cross-Border Services</u>  Any person wishing to supply public accountancy services in the territory of Honduras must be organized under Honduran law.

## ANNEX I, Schedule of Honduras

<b>Sector:</b>	Architects
<b>Obligations Concerned:</b>	Local Presence (Article 11.5)
<b>Level of Government:</b>	Central
<b>Measures:</b>	<i>Reglamento Interno Colegio de Arquitectos de Honduras</i> , Art. 7(c) and (d)
<b>Description:</b>	<u>Cross-Border Services</u>  Enterprises organized under foreign law must designate a member of the <i>Colegio de Arquitectos de Honduras</i> (CAH) as their representative prior to registering with the CAH to supply architectural services in Honduras. For greater certainty, enterprises organized under foreign law may only register for specific projects.

## ANNEX I

## Schedule of Nicaragua

<b>Sector:</b>	Musicians and Artists
<b>Obligations Concerned:</b>	National Treatment (Article 11.2) Most-Favored-Nation Treatment (Article 11.3)
<b>Measures:</b>	<i>Ley de Promoción a las Expresiones Artísticas Nacionales y de Protección a los Artistas Nicaragüenses</i> , Law No. 215, published in <i>La Gaceta</i> No. 134, July 17, 1996, Arts. 14, 23, 24, 25, and 31
<b>Description:</b>	<u>Cross-Border Services</u>  Foreign artists or musical bands may perform in Nicaragua solely by means of a prior contract.  Foreign artists performing shows or reviews of a commercial nature shall include in their program a Nicaraguan artist or group that performs similar shows.  Foreign artists or artistic groups not wishing to include a national artist in their program must pay one percent of the show's net receipts to the <i>Instituto Nicaragüense de Cultura</i> unless the foreign artists' or groups' country of origin does not levy such tax on Nicaraguan artists or artistic groups.  Foreigners selected for the design and construction of public, pictorial, or sculptural monuments erected in Nicaragua, shall do so in association with Nicaraguan artists.

## ANNEX I, Schedule of Nicaragua

<b>Sector:</b>	Tourism – Hotels, Restaurants, Tour Guides, Car Rental, and Other Tourism Related Activities.
<b>Obligations Concerned:</b>	National Treatment (Article 11.2) Local Presence (Article 11.5)
<b>Measures:</b>	<p><i>Ley de Incentivos a la Industria Turística de la República de Nicaragua</i>, Law No. 306, published in <i>La Gaceta</i> No. 117, June 21, 1999, Arts. 16.1 and 16.2</p> <p><i>Reglamento de Empresas y Actividades Turísticas de Nicaragua</i>, published in <i>La Gaceta</i> No. 99, May 28, 2001, Arts. 16 and 17</p> <p><i>Reglamento de los Operadores de Viajes de Nicaragua</i>, published in <i>La Gaceta</i> No. 100, May 29, 2001, Art. 8</p> <p><i>Reglamento que Regula las Actividades de las Empresas Arrendadoras de Vehículos Automotrices y Acuáticos (Rent a Car)</i>, published in <i>La Gaceta</i> No. 108, June 8, 2001, Art. 9</p> <p><i>Reglamento de Guías de Turistas</i>, published in <i>La Gaceta</i> No. 40, February 26, 2001, Art. 9</p> <p><i>Reglamento de Agencias de Viajes de Nicaragua</i>, published in <i>La Gaceta</i> No. 96, May 21, 2001, Art. 5</p>
<b>Description:</b>	<p><u>Cross-Border Services</u></p> <p>In order to supply tourism services in Nicaragua an enterprise must be organized under Nicaraguan law; and a foreign national must reside in Nicaragua or appoint a legal representative in Nicaragua.</p> <p>This paragraph does not apply to the supply of tourism services during a cruise.</p> <p>Tour Guides must be Nicaraguan nationals.</p>

**ANNEX I, Schedule of Nicaragua**

<b>Sector:</b>	Services Related to Construction
<b>Obligations Concerned:</b>	National Treatment (Article 11.2) Local Presence (Article 11.5)
<b>Measures:</b>	<i>Ley Reguladora de la Actividad de Diseño y Construcción</i> , Decree No. 237, December 1, 1986, Arts. 2, 4, and 6
<b>Description:</b>	<u>Cross-Border Services</u>  In order to supply construction services in Nicaragua an enterprise must be organized under Nicaraguan law; and a foreign national must reside in Nicaragua or appoint a legal representative in Nicaragua.

**ANNEX I, Schedule of Nicaragua**

<b>Sector:</b>	Distribution of Fireworks, Firearms, and Munitions
<b>Affected Obligation:</b>	National Treatment (Article 11.2) Local Presence (Article 11.5)
<b>Measures:</b>	<i>Reglamento de la Ley de la Policía Nacional</i> , Decree No. 26-96, published in <i>La Gaceta</i> No. 32, February 14, 1996, Arts. 76 and 77
<b>Description:</b>	<u>Cross-Border Services</u>  In order to engage in the distribution of fireworks, firearms, and munitions in Nicaragua an enterprise must be organized under Nicaraguan law; and a foreign national must reside in Nicaragua.

**ANNEX I, Schedule of Nicaragua**

<b>Sector:</b>	Private Security Services
<b>Obligations Concerned:</b>	National Treatment (Article 11.2) Local Presence (Article 11.5)
<b>Measures:</b>	<i>Manual de la Vigilancia Civil</i> , No. 001, July 6, 1998, Art. 6
<b>Description:</b>	<u>Cross-Border Services</u>  An enterprise must be established in Nicaragua to operate a private security guard company. Natural persons serving as armed guards must be Nicaraguan nationals.

**ANNEX I, Schedule of Nicaragua**

<b>Sector:</b>	Radio Broadcast, Free Television Reception
<b>Affected Obligation:</b>	National Treatment (Articles 10.3 and 11.2)
<b>Measures:</b>	<i>Ley de Reforma a la Ley No. 200, "Ley General de Telecomunicaciones y Servicios Postales", Law No. 326, published in La Gaceta No. 244, December 22, 1999, Art. 1</i>  <i>Reglamento del Servicio de Radiodifusión Televisiva, Administrative Agreement No. 07-97, published in La Gaceta No. 228, November 28, 1997, Art. 12</i>
<b>Description:</b>	<u>Cross-Border Services and Investment</u>  A license for operating free over the air television and radio broadcast services (known under Nicaraguan law as " <i>medios de comunicación social</i> ") may only be granted to Nicaraguan persons. In the case of enterprises, Nicaraguan nationals must own 51 percent of the capital.

**ANNEX I, Schedule of Nicaragua**

<b>Sector:</b>	Communications – Professional Radio and Television Broadcast Services
<b>Obligations Concerned:</b>	National Treatment (Article 11.2) Most-Favored-Nation Treatment (Article 11.3)
<b>Measures:</b>	<i>En Radiodifusoras y Televisiones del País, Únicamente Locutores Nicaragüenses Podrán ser Utilizados para las Narraciones de Programas Deportivos</i> , Decree No. 66, published in <i>La Gaceta</i> No. 256, November 10, 1972, Arts. 1 and 3
<b>Description:</b>	<p><u>Cross-Border Services</u></p> <p>Enterprises that supply radio and television broadcast services in Nicaragua shall only use the professional services of announcers who are Nicaraguan nationals for narration, commentary, and live broadcast in sports or similar commercial programs.</p> <p>Notwithstanding the foregoing, foreign nationals will be allowed to serve as announcers if the laws of their own countries allow Nicaraguan nationals to supply such services.</p> <p>The provisions of this measure shall not apply to the broadcast of programs by foreign announcers when the transmission of such programs is aimed exclusively at other countries.</p>

**ANNEX I, Schedule of Nicaragua**

<b>Sector:</b>	Electricity Distribution
<b>Obligations Concerned:</b>	Local Presence (Article 11.5)
<b>Measures:</b>	<i>Ley de la Industria Eléctrica</i> , Law No. 272, published in <i>La Gaceta</i> No.74, April 23, 1998, Arts. 4 and 76
<b>Description:</b>	<u>Cross-Border Services</u> In order to engage in the distribution of electricity an enterprise must be organized under Nicaraguan law.

## ANNEX I, Schedule of Nicaragua

<b>Sector:</b>	Services Incidental to Mining – Hydrocarbons
<b>Obligations Concerned:</b>	Local Presence (Article 11.5)
<b>Measures:</b>	<i>Ley Especial de Exploración y Explotación de Hidrocarburos</i> , Law No. 286, published in <i>La Gaceta</i> No. 109, June 12, 1998, Art. 11  <i>Reglamento a la Ley Especial de Exploración y Explotación de Hidrocarburos</i> , Decree No. 43-98, published in <i>La Gaceta</i> No. 117, June 24, 1998, Arts. 5 and 6
<b>Description:</b>	<u>Cross-Border Services</u>  An enterprise that supplies hydrocarbon exploration and testing services must be organized under Nicaraguan law.  To conduct studies of hydrocarbons such as geological or geophysical studies, drafting topographic maps, seismic, or geochemical studies, a foreign national must designate a legal representative permanently domiciled in Nicaragua.

**ANNEX I, Schedule of Nicaragua**

<b>Sector:</b>	Services Incidental to Mining – Metallic and Non-Metallic Minerals
<b>Obligations Concerned:</b>	Local Presence (Article 11.5)
<b>Measures:</b>	<i>Reglamento de la Ley No. 387, Ley Especial de Exploración y Explotación de Minas</i> , Decree No. 119 –2001, published in <i>La Gaceta</i> No. 4, January 7, 2002, Art. 31
<b>Description:</b>	<u>Cross-Border Services</u>  In order to obtain a concession for exploration for metallic and nonmetallic minerals in Nicaragua an enterprise must be organized under Nicaraguan law. A foreign national not resident in Nicaragua must appoint a legal representative domiciled in Managua, Nicaragua.

**ANNEX I, Schedule of Nicaragua**

<b>Sector:</b>	Fisheries and Services Incidental to Fishing
<b>Obligations Concerned:</b>	National Treatment (Articles 10.4 and 11.2) Performance Requirements (Article 10.9) Local presence (Article 11.5)
<b>Measures:</b>	<i>Ley de Licitación Pública de Licencias y Concesiones Pesqueras</i> , Law No.165, February 22, 1994, Art. 6  <i>Ley Especial sobre Explotación de la Pesca</i> , Decree No. 557, published in <i>La Gaceta</i> No. 32, February 7, 1961, Arts. 2 and 9  <i>Normativa para la Pesca y Acuicultura en Nicaragua</i> , Acuerdo Ministerial Agreement DGRN-PA. No. 359-2004, Arts. 11 and 78
<b>Description:</b>	<u>Cross-Border Services and Investment</u>  Processing, packing, and other services related to fishing products must be carried out by enterprises organized under Nicaraguan law and licensed in Nicaragua.  Processing and packing for export of fishing products captured in Nicaraguan territorial waters shall be carried out in enterprises in Nicaragua.  Only Nicaraguan nationals may engage in artisanal fishing as a family enterprise for subsistence.

## ANNEX I, Schedule of Nicaragua

<b>Sector:</b>	Land Transportation
<b>Obligations Concerned:</b>	National Treatment (Article 11.2) Most-Favored-Nation Treatment (Article 11.3) Local Presence (Article 11.5)
<b>Measures:</b>	<i>Ley General de Transporte</i> , Decree No. 164, published in <i>La Gaceta</i> No. 34, February 17, 1986, Art. 2  <i>Ley Reglamentaria para la Emisión y Obtención de las Licencias de Funcionamiento en el Transporte Terrestre</i> , Decree No. 1140, published in <i>La Gaceta</i> No. 280, November 30, 1982, Art. 7  <i>Comunicado del Ministerio de Construcción y Transporte</i> , November 12, 1990
<b>Description:</b>	<u>Cross-Border Services</u>  To supply point-to-point land transportation of cargo or passengers within Nicaragua, an enterprise must be established in Nicaragua.  An enterprise organized under the laws of a foreign country may supply international land transportation of cargo or passengers to the extent that a specific agreement between such country and Nicaragua provides for reciprocal treatment of enterprises organized under the laws of Nicaragua. Notwithstanding the foregoing, only Nicaraguan persons may supply collective land transportation services in the interior of Nicaragua.

## ANNEX I, Schedule of Nicaragua

<b>Sector:</b>	Maritime Transportation
<b>Obligations Concerned:</b>	National Treatment (Article 11.2)
<b>Measures:</b>	<p><i>Ley de Transporte Acuático</i>, Law No. 399, published in <i>La Gaceta</i> No. 166, September 3, 2001, Arts. 44, 45, and 48</p> <p><i>Ley Reguladora para el Servicio de Practicaje</i>, Decree No. 15-49, published in <i>La Gaceta</i> No. 4, January 5, 1985, Art. 64</p>
<b>Description:</b>	<p><u>Cross-Border Services</u></p> <p>In order to operate as a shipowner or shipping enterprise in Nicaragua, a natural person must be a Nicaraguan national and an enterprise must be organized under Nicaraguan law.</p> <p>To operate as a shipping agent, general shipping agent, or shipping consignment agent, a natural person must be a Nicaraguan national, and an enterprise must be organized under Nicaraguan law.</p> <p>Only a Nicaraguan nationals or an enterprise established in Nicaragua may obtain a route concession to engage in maritime transportation.</p> <p>Cabotage is reserved exclusively for enterprises established in Nicaragua.</p> <p>Only Nicaraguan nationals may be named as official pilots for any port in Nicaragua.</p>

## ANNEX I, Schedule of Nicaragua

<b>Sector:</b>	Ports
<b>Obligations Concerned:</b>	Market Access (Article 11.4)
<b>Measures:</b>	<i>Creación de la Empresa Portuaria Nacional</i> , Decree No. 35-95, published in <i>La Gaceta</i> No. 119, June 27, 1995, Arts. 6 and 7
<b>Description:</b>	<u>Cross-Border Services</u> The administration and operation of the existing ports of national interest (Corinto, Sandino, San Juan del Sur, Cabezas, El Rama and El Bluff) is reserved to the <i>Empresa Portuaria Nacional</i> (EPN).

**ANNEX I, Schedule of Nicaragua**

<b>Sector:</b>	Air Transportation – Repair and Maintenance Services, Specialty Air Services
<b>Obligations Concerned:</b>	National Treatment (Article 11.2) Most-Favored-Nation Treatment (Article 11.3) Local Presence (Article 11.5)
<b>Measures:</b>	<i>Código de Aviación Civil</i> , Decree No. 176, published November 22, 1956, with corrections on September 3, 1957, Arts. 32, 120, and 121  <i>Reglamento para la Aviación Agrícola</i> , Decree No. 36-Á, published in <i>La Gaceta</i> No. 136, June 19, 1962, Arts. 11 and 13
<b>Description:</b>	<u>Cross-Border Services</u>  The authorization of the <i>Dirección General de Aeronáutica Civil</i> is required to supply specialty air services and aircraft repair services in the territory of Nicaragua.  Only Nicaraguan nationals or enterprises organized under Nicaraguan law may supply private, for profit air services. For greater certainty, private air services include:  (a) air-related tasks such as aero-topography, aero-photography, commercial advertising, and other similar tasks;  (b) agricultural fumigation services;  (c) industrial activities other than public transportation; and  (d) scientific civil aviation applications, such as educational flights, the determination of hurricane trajectories and migratory birds, and other similar applications.  Flight personnel who participate in aviation activities for agricultural purposes within the national territory must be Nicaraguan nationals. Similarly, aircraft used for such purposes must be licensed in Nicaragua.  Only Nicaraguan technical personnel may engage in remunerated repair and maintenance services or specialty air services in Nicaragua. In the absence of such personnel, the <i>Dirección General de Aeronáutica Civil</i> may allow foreign pilots or other technical personnel to engage in such activities, in which case the <i>Dirección</i>

**ANNEX I, Schedule of Nicaragua**

*General de Aeronáutica Civil* must give preference to nationals of other Central American Parties.

## ANNEX I, Schedule of Nicaragua

<b>Sector:</b>	Air Transportation
<b>Obligations Concerned:</b>	National Treatment (Article 10.4) Senior Management and Boards of Directors (Article 10.10)
<b>Measures:</b>	<i>Código de Aviación Civil</i> , Decree No. 176, published November 22, 1956, with corrections on September 3, 1957, Arts. 75, 120, and 121

Investment

Only an enterprise organized under Nicaraguan law may be granted a license to engage in public air transportation services. Nicaraguan nationals must own at least 51 percent of the capital, have effective control, and be in the senior management positions of such enterprises.

Only Nicaraguan nationals and enterprises organized under Nicaraguan law may engage in remunerated private air transportation services.

## ANNEX I, Schedule of Nicaragua

<b>Sector:</b>	Professional Services
<b>Obligations Concerned:</b>	National Treatment (Article 11.2) Most-Favored-Nation Treatment (Article 11.3) Local Presence (Article 11.5)
<b>Measures:</b>	<i>Ley de Incorporación de Profesionales en Nicaragua</i> , Decree No. 132, published in <i>La Gaceta</i> No. 47, November 2, 1979, Art. 5
<b>Description:</b>	<p><u>Cross-Border Services</u></p> <p>A foreign professional may practice in Nicaragua in a form and subject to the same conditions that are permitted for Nicaraguans in the country of origin of such professional.</p> <p>Nicaragua agrees that if a jurisdiction in a foreign country allows Nicaraguan nationals to apply for and receive the licenses or certificates necessary to practice a profession in such jurisdiction, a foreign national with a license or certificate to practice the profession in such jurisdiction shall also be allowed to apply for and receive any license or certificate necessary to practice in Nicaragua.</p> <p>In addition, the relevant professional association in Nicaragua will recognize a license granted by a foreign jurisdiction, and allow the holder of that license to register with the association and practice the profession in Nicaragua based on the foreign license, in the following cases:</p> <ul style="list-style-type: none"> <li>(a) no academic institution in Nicaragua offers a course of study that would allow the practice of the profession in Nicaragua;</li> <li>(b) the holder of the license is a recognized expert in the profession; or</li> <li>(c) allowing the professional to practice in Nicaragua will, through training, demonstration, or other such opportunity, further the development of the profession in Nicaragua.</li> </ul>

**ANNEX I, Schedule of Nicaragua**

<b>Sector:</b>	Public Accounting and Auditing
<b>Obligations Concerned:</b>	National Treatment (Article 11.2) Local Presence (Article 11.5)
<b>Measures:</b>	<i>Ley para el Ejercicio de Contador Público</i> , Law No. 6 published in <i>La Gaceta</i> , April 30, 1959, Art. 19
<b>Description:</b>	<u>Cross-Border Services</u>  Foreign public accounting firms, auditors, and accountants, either as individuals or enterprises, may exercise their profession in Nicaragua, or other related activity, through an authorized Nicaraguan public accounting firm or association.

## ANNEX I, Schedule of Nicaragua

<b>Sector:</b>	Professional Services – Notary Publics
<b>Obligations Concerned:</b>	National Treatment (Article 11.2) Most-Favored-Nation Treatment (Article 11.3)
<b>Measures:</b>	<i>Ley del 19 de noviembre de 1938</i> , published in <i>La Gaceta</i> No. 267, December 10, 1938, Art.1  <i>Ley del Notariado</i> , Annex to <i>Código de Procedimiento Civil de Nicaragua</i> , Art. 10
<b>Description:</b>	<u>Cross-Border Services</u>  Public notaries must be Nicaraguan nationals by birth authorized by the Supreme Court of Justice in order to practice their profession.  Central American nationals by birth authorized to act as attorneys in the Republic may also obtain this authorization after residing in Nicaragua at least five years, provided they are allowed to exercise their profession as public notaries in their own countries, and that Nicaraguans are authorized to act as public notaries in their respective countries.

**ANNEX I, Schedule of Nicaragua**

<b>Sector:</b>	Customs Brokers
<b>Obligations Concerned:</b>	National Treatment (Article 11.2) Most-Favored-Nation Treatment (Article 11.3) Local Presence (Article 11.5)
<b>Measure:</b>	<i>Ley que Establece el Autodespacho para la Importación, Exportación y otros Regímenes</i> , Law No. 265, published in <i>La Gaceta</i> No. 219, November 17, 1997, Arts. 49, 50, and 52
<b>Description:</b>	<u>Cross Border Services</u>  A customs broker must be a Nicaraguan national or a national of a country that permits Nicaraguan nationals to serve as customs brokers.  An enterprise operating as a customs broker in Nicaragua must be organized under Nicaraguan law and at least one official of the customs enterprise must have a valid license.

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<b>Sector:</b>	Scientific Research Services
<b>Obligations Concerned:</b>	Local Presence (Article 11.5)
<b>Measures:</b>	<i>Ley General sobre Explotación de Nuestras Riquezas</i> , Decree No. 316, published in <i>La Gaceta</i> , April 17, 1958, Art. 83
<b>Description:</b>	<u>Cross-Border Services</u> To engage in scientific research activities related to natural resources a foreign national must have a legal representative in Nicaragua during the entire time the research is being conducted.

## ANNEX I, Schedule of Nicaragua

<b>Sector:</b>	Regime on Free Zones and Regime on Active Improvement
<b>Obligations Concerned:</b>	Performance Requirements (Article 10.9)
<b>Measures:</b>	<i>Reglamento del Decreto de Zonas Francas Industriales de Exportación</i> , Decree No. 31-92, published in <i>La Gaceta</i> No.112, June 12, 1992, Arts. 22 and 67
<b>Description:</b>	<p><u>Investment</u></p> <p>An enterprise authorized to operate in a free zone may introduce up to 40 percent of its production by volume into the territory of Nicaragua after payment of duties and taxes, depending on whether it falls under category A (or "primera categoría"), B (or "segunda categoría"), or C (or "tercera categoría").</p> <p>Nicaragua will apply this measure consistent with its obligations under the WTO Agreement on Subsidies and Countervailing Measures.</p>

## ANNEX I, Schedule of Nicaragua

<b>Sector:</b>	Telecommunications
<b>Obligations Concerned:</b>	Market Access (Article 11.4) National Treatment (Article 11.2)
<b>Measures:</b>	<i>Contrato de Concesión del Instituto Nicaragüense de Telecomunicaciones y Correos</i> published in <i>La Gaceta</i> No. 67, April 12, 2002, clause 8.1
<b>Description:</b>	<u>Cross-Border Services</u>  The <i>Empresa Nicaragüense de Telecomunicaciones</i> (ENITEL) has an exclusive regime for providing basic telephone services, including local telephone service, national and international long distance, and supply of television and telegraph links, pursuant to its concession contract. ENITEL exclusivity will end according to Nicaraguan law or concession but in any event no later than April 13, 2005.

## ANNEX I, Schedule of Nicaragua

<b>Sector:</b>	Development of Maps
<b>Obligations Concerned:</b>	Market Access (Article 11.4)
<b>Measures:</b>	<i>Ley Orgánica del Instituto Nicaragüense de Estudios Territoriales (INETER)</i> , Law No. 311, published in <i>La Gaceta</i> No. 103, July 28, 1999, Art. 4
<b>Description:</b>	<u>Cross-Border Services</u>  The developing, drafting, editing, and publishing of official regional, property, urban, and rural maps, as well as thematic maps and hydrographical, nautical, and aeronautical charts of Nicaragua in different scales is reserved to the <i>Instituto Nicaragüense de Estudios Territoriales</i> .

**ANNEX I, Schedule of Nicaragua**

<b>Sector:</b>	Potable Water, Sanitary Sewer Systems, and Sewage Collection and Disposal.
<b>Affected Obligation:</b>	Market Access (Article 11.4)
<b>Measures:</b>	<p><i>Ley de Creación de la Empresa Nicaragüense de Acueductos y Alcantarillados Sanitarios (ENACAL)</i>, Law No. 276, published in <i>La Gaceta</i> No. 12, January 20, 1998, Art. 3</p> <p><i>Ley de Suspensión de Concesiones de Uso de Aguas</i>, Law No. 440, Arts. 2 and 3</p>
<b>Description:</b>	<p><u>Cross-Border Services</u></p> <p>The establishment, construction, and development of public works for the supply and distribution of drinking water, and collecting and disposing of wastewater, may only be performed by the <i>Empresa Nicaragüense de Acueductos y Alcantarillados Sanitarios</i> (ENACAL).</p> <p>ENACAL is the State entity responsible for providing potable water and collecting and disposing of wastewater, and has the following functions:</p> <ul style="list-style-type: none"> <li>(a) to capture, treat, conduct, store, distribute, and sell potable water; and to gather, treat and finally dispose of wastewater;</li> <li>(b) to purchase natural water, purchase and sell potable water, as well as to commercialize the services of collection, treatment and final disposal of wastewater;</li> <li>(c) take all necessary measures so that the release of treated wastewater minimizes the environmental impact;</li> <li>(d) develop the Company's Expansion Plan for the short, medium and long terms;</li> <li>(e) investigate, explore, develop, and exploit the water resources; and</li> <li>(f) any other activity required for its development.</li> </ul>

**ANNEX I, Schedule of Nicaragua**

<b>Sector:</b>	Airports
<b>Affected Obligation:</b>	Market Access (Article 11.4)
<b>Measures:</b>	<i>Ley de la Empresa Administradora de Aeropuertos Internacionales</i> , Decree No. 1292, published in <i>La Gaceta</i> No. 186, August 16, 1983, Art. 3
<b>Description:</b>	<u>Cross-Border Services</u>  The <i>Empresa Administradora de Aeropuertos Internacionales</i> (EAAI) is responsible for establishing, operating, administering, carrying out works, and providing services in international airports.

**ANNEX I, Schedule of Nicaragua**

<b>Sector:</b>	Energy Services
<b>Obligations Concerned:</b>	Market Access (Article 11.4)
<b>Measures:</b>	<i>Ley de la Industria Eléctrica</i> , Law No. 272, published in <i>La Gaceta</i> No. 74, April 23, 1998, Arts. 27 and 58
<b>Description:</b>	<u>Cross-Border Services</u> Electricity transmission services may only be provided by the <i>Centro Nacional de Despacho de Carga</i> .

**ANNEX I, Schedule of Nicaragua**

<b>Sector:</b>	Administration of Lotteries
<b>Obligations Concerned:</b>	Market Access (Article 11.4)
<b>Measures:</b>	<i>Reglamento Interno de la Lotería Nacional</i> , published in <i>La Gaceta</i> No. 229, December 3, 1996, Arts. 4 and 5
<b>Description:</b>	<u>Cross-Border Services</u>  Only the <i>Lotería Nacional</i> , a State-owned enterprise, may administer lotteries, drawings, raffles, promotions, and games of chance for money or prizes. Notwithstanding the preceding sentence, commercial promotions are allowed through the prior authorization of the <i>Lotería Nacional</i> , which shall be freely granted.

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<b>Sector:</b>	Public Communications Services
<b>Obligations Concerned:</b>	Market Access (Article 11.4)
<b>Measures:</b>	<i>Ley General de Telecomunicaciones y Servicios Postales</i> , Law No. 200, published in <i>La Gaceta</i> No. 154, August 18, 1995, Art. 118
<b>Description:</b>	<u>Cross-Border Services</u> The issuance, finance, and marketing of postal stamps, as well as the usage of franking machines and other analogous systems, is reserved to the <i>Correos de Nicaragua</i> .

## ANNEX I

## Schedule of the United States

<b>Sector:</b>	Atomic Energy
<b>Obligations Concerned:</b>	National Treatment (Article 10.3)
<b>Level of Government:</b>	Central
<b>Measures:</b>	<i>Atomic Energy Act of 1954, 42 U.S.C. §§ 2011 et seq.</i>
<b>Description:</b>	<u>Investment</u>  A license issued by the United States Nuclear Regulatory Commission is required for any person in the United States to transfer or receive in interstate commerce, manufacture, produce, transfer, use, import, or export any nuclear "utilization or production facilities" for commercial or industrial purposes. Such a license may not be issued to any entity known or believed to be owned, controlled, or dominated by an alien, a foreign corporation, or a foreign government (42 U.S.C. § 2133(d)). A license issued by the United States Nuclear Regulatory Commission is also required for nuclear "utilization and production facilities," for use in medical therapy, or for research and development activities. The issuance of such a license to any entity known or believed to be owned, controlled, or dominated by an alien, a foreign corporation, or a foreign government is also prohibited (42 U.S.C. § 2134(d)).

## ANNEX I, Schedule of United States

<b>Sector:</b>	Business Services
<b>Obligations Concerned:</b>	National Treatment (Article 11.2) Local Presence (Article 11.5)
<b>Level of Government:</b>	Central
<b>Measures:</b>	<i>Export Trading Company Act of 1982</i> , 15 U.S.C. §§ 4011-4021  15 C.F.R. Part 325
<b>Description:</b>	<p><u>Cross-Border Services</u></p> <p>Title III of the <i>Export Trading Company Act of 1982</i> authorizes the Secretary of Commerce to issue “certificates of review” with respect to export conduct. The Act provides for the issuance of a certificate of review where the Secretary determines, and the Attorney General concurs, that the export conduct specified in an application will not have the anticompetitive effects proscribed by the Act. A certificate of review limits the liability under federal and state antitrust laws in engaging in the export conduct certified.</p> <p>Only a “person” as defined by the Act can apply for a certificate of review. “Person” means “an individual who is a resident of the United States; a partnership that is created under and exists pursuant to the laws of any State or of the United States; a State or local government entity; a corporation, whether organized as a profit or nonprofit corporation, that is created under and exists pursuant to the laws of any State or of the United States; or any association or combination, by contract or other arrangement, between such persons.”</p> <p>A foreign national or enterprise may receive the protection provided by a certificate of review by becoming a “member” of a qualified applicant. The regulations define “member” to mean “an entity (U.S. or foreign) that is seeking protection under the certificate with the applicant. A member may be a partner in a partnership or a joint venture; a shareholder of a corporation; or a participant in an association, cooperative, or other form of profit or nonprofit organization or relationship, by contract or other arrangement.”</p>

**ANNEX I, Schedule of United States**

<b>Sector:</b>	Business Services
<b>Obligations Concerned:</b>	National Treatment (Article 11.2) Local Presence (Article 11.5)
<b>Level of Government:</b>	Central
<b>Measures:</b>	<i>Export Administration Act of 1979</i> , as amended, 50 U.S.C. app. §§ 2401-2420  <i>International Emergency Economic Powers Act</i> , 50 U.S.C. §§ 1701-1706  <i>Export Administration Regulations</i> , 15 C.F.R. Parts 730 - 774
<b>Description:</b>	<u>Cross-Border Services</u>  With some limited exceptions, exports and reexports of commodities, software, and technology subject to the Export Administration Regulations require a license from the Bureau of Industry and Security, U.S. Department of Commerce (BIS). Certain activities of U.S. persons, wherever located, also require a license from BIS. An application for a license must be made by a person in the United States.  In addition, release of controlled technology to a foreign national in the United States is deemed to be an export to the home country of the foreign national and requires the same written authorization from BIS as an export from the territory of the United States.

## ANNEX I, Schedule of United States

<b>Sector:</b>	Mining
<b>Obligations Concerned:</b>	National Treatment (Article 10.3) Most-Favored-Nation Treatment (Article 10.4)
<b>Level of Government:</b>	Central
<b>Measures:</b>	<i>Mineral Lands Leasing Act of 1920</i> , 30 U.S.C. Chapter 3A  10 U.S.C. § 7435
<b>Description:</b>	<p><u>Investment</u></p> <p>Under the Mineral Lands Leasing Act of 1920, aliens and foreign corporations may not acquire rights-of-way for oil or gas pipelines, or pipelines carrying products refined from oil and gas, across on-shore federal lands or acquire leases or interests in certain minerals on on-shore federal lands, such as coal or oil. Non-U.S. citizens may own a 100 percent interest in a domestic corporation that acquires a right-of-way for oil or gas pipelines across on-shore federal lands, or that acquires a lease to develop mineral resources on on-shore federal lands, unless the foreign investor's home country denies similar or like privileges for the mineral or access in question to U.S. citizens or corporations, as compared with the privileges it accords to its own citizens or corporations or to the citizens or corporations of other countries (30 U.S.C. §§ 181, 185(a)).</p> <p>Nationalization is not considered to be denial of similar or like privileges.</p> <p>Foreign citizens, or corporations controlled by them, are restricted from obtaining access to federal leases on Naval Petroleum Reserves if the laws, customs, or regulations of their country deny the privilege of leasing public lands to citizens or corporations of the United States (10 U.S.C. § 7435).</p>

**ANNEX I, Schedule of United States**

<b>Sector:</b>	All Sectors
<b>Obligations Concerned:</b>	National Treatment (Article 10.3) Most-Favored-Nation Treatment (Article 10.4)
<b>Level of Government:</b>	Central
<b>Measures:</b>	22 U.S.C. §§ 2194 and 2198(c)
<b>Description:</b>	<u>Investment</u>  The Overseas Private Investment Corporation insurance and loan guarantees are not available to certain aliens, foreign enterprises, or foreign-controlled domestic enterprises.

**ANNEX I, Schedule of United States**

<b>Sector:</b>	Air Transportation
<b>Obligations Concerned:</b>	National Treatment (Article 10.3) Most-Favored-Nation Treatment (Article 10.4) Senior Management and Boards of Directors (Article 10.10)
<b>Level of Government:</b>	Central
<b>Measures:</b>	49 U.S.C. Subtitle VII, Aviation Programs  14 C.F.R. Part 297 (foreign freight forwarders); 14 C.F.R. Part 380, Subpart E (registration of foreign (passenger) charter operators)
<b>Description:</b>	<p><u>Investment</u></p> <p>Only air carriers that are “citizens of the United States” may operate aircraft in domestic air service (cabotage) and may provide international scheduled and non-scheduled air service as U.S. air carriers.</p> <p>U.S. citizens also have blanket authority to engage in indirect air transportation activities (air freight forwarding and passenger charter activities other than as actual operators of the aircraft). In order to conduct such activities, non-U.S. citizens must obtain authority from the Department of Transportation. Applications for such authority may be rejected for reasons relating to the failure of effective reciprocity, or if the Department of Transportation finds that it is in the public interest to do so.</p> <p>Under 49 U.S.C. § 40102(a)(15), a “citizen of the United States” means:</p> <ul style="list-style-type: none"> <li>(a) an individual who is a U.S. citizen;</li> <li>(b) a partnership in which each member is a U.S. citizen; or</li> <li>(c) a U.S. corporation of which the president and at least two-thirds of the board of directors and other managing officers are U.S. citizens, and at least 75 percent of the voting interest in the corporation is owned or controlled by U.S. citizens.</li> </ul>

**ANNEX I, Schedule of United States**

In addition, this statutory requirement has historically been interpreted by the Department of Transportation (and the Civil Aeronautics Board before it) to require that an air carrier in fact be under the actual control of U.S. citizens. The Department of Transportation makes this determination on a case-by-case basis, and has provided guidance as to certain lines of demarcation. For example, total foreign equity investment of up to 49 percent (with a maximum of 25 percent being voting stock), by itself, is not construed as indicative of foreign control. See Department of Transportation Order 91-1-41, January 23, 1991.

## ANNEX I, Schedule of United States

<b>Sector:</b>	Air Transportation
<b>Obligations Concerned:</b>	National Treatment (Articles 10.3 and 11.2) Most-Favored-Nation Treatment (Articles 10.4 and 11.3) Local Presence (Article 11.5) Senior Management and Boards of Directors (Article 10.10)
<b>Level of Government:</b>	Central
<b>Measures:</b>	49 U.S.C., Subtitle VII, Aviation Programs  49 U.S.C. § 41703  14 C.F.R. Part 375  As qualified by paragraph 2 of the <b>Description</b> element
<b>Description:</b>	<p><u>Cross-Border Services</u></p> <p>1. Authorization from the Department of Transportation is required for the provision of specialty air services in the territory of the United States.*</p> <p><u>Investment</u></p> <p>2. "Foreign civil aircraft" require authority from the Department of Transportation to conduct specialty air services in the territory of the United States. "Foreign civil aircraft" are aircraft of foreign registry or aircraft of U.S. registry that are owned, controlled, or operated by persons who are not citizens or permanent residents of the United States (14 C.F.R. § 375.1). Under 49 U.S.C. § 40102(a)(15), a "citizen of the United States" means:</p> <ul style="list-style-type: none"> <li>(a) an individual who is a U.S. citizen;</li> <li>(b) a partnership in which each member is a U.S. citizen; or</li> <li>(c) a U.S. corporation of which the president and at least two-thirds of the board of directors and other managing officers are U.S. citizens, and at least seventy-five percent of the voting interest in the corporation is owned or controlled by U.S. citizens.</li> </ul>

**ANNEX I, Schedule of United States**

In addition, this statutory requirement has historically been interpreted by the Department of Transportation (and the Civil Aeronautics Board before it) to require that an air carrier in fact be under the actual control of U.S. citizens. The Department of Transportation makes this determination on a case-by-case basis, and has provided guidance as to certain lines of demarcation. For example, total foreign equity investment of up to 49 percent (with a maximum of 25 percent being voting stock), by itself, is not construed as indicative of foreign control. See Department of Transportation Order 91-1-41, January 23, 1991.

\*A person of Costa Rica, the Dominican Republic, El Salvador, Guatemala, Honduras, and Nicaragua will be able to obtain such an authorization given their governments' acceptance of the U.S. definition of specialty air services in Chapter Eleven (Cross-Border Trade in Services).

**ANNEX I, Schedule of United States**

<b>Sector:</b>	Transportation Services – Customs Brokers
<b>Obligations Concerned:</b>	National Treatment (Articles 10.3 and 11.2) Local Presence (Article 11.5)
<b>Level of Government:</b>	Central
<b>Measures:</b>	19 U.S.C. § 1641(b)
<b>Description:</b>	<u>Cross-Border Services and Investment</u>

A customs broker's license is required to conduct customs business on behalf of another person. Only U.S. citizens may obtain such a license. A corporation, association, or partnership established under the law of any state may receive a customs broker's license if at least one officer of the corporation or association, or one member of the partnership, holds a valid customs broker's license.

**ANNEX I, Schedule of United States**

<b>Sector:</b>	All Sectors
<b>Obligations Concerned:</b>	National Treatment (Article 10.3) Most-Favored-Nation Treatment (Article 10.4)
<b>Level of Government:</b>	Central
<b>Measures:</b>	<i>Securities Act of 1933</i> , 15 U.S.C. §§ 77c(b), 77f, 77g, 77h, 77j, and 77s(a)  17 C.F.R. §§ 230.251 and 230.405  <i>Securities Exchange Act of 1934</i> , 15 U.S.C. §§ 78l, 78m, 78o(d), and 78w(a)  17 C.F.R. § 240.12b-2
<b>Description:</b>	<u>Investment</u>  Foreign firms, except for certain Canadian issuers, may not use the small business registration forms under the Securities Act of 1933 to register public offerings of securities or the small business registration forms under the Securities Exchange Act of 1934 to register a class of securities or file annual reports.

**ANNEX I, Schedule of United States**

<b>Sector:</b>	Communications – Radiocommunications
<b>Obligations Concerned:</b>	National Treatment (Article 10.3)
<b>Level of Government:</b>	Central
<b>Measures:</b>	47 U.S.C. § 310 Foreign Participation Order 12 FCC Red 23891 (1997)
<b>Description:</b>	<u>Investment</u> The United States reserves the right to restrict ownership of radio licenses in accordance with the above statutory and regulatory provisions. Radiocommunications consists of all communications by radio, including broadcasting.

**ANNEX I, Schedule of United States**

<b>Sector:</b>	Professional Services – Patent Attorneys, Patent Agents, and Other Practice before the Patent and Trademark Office
<b>Obligations Concerned:</b>	National Treatment (Article 11.2) Most-Favored-Nation Treatment (Article 11.3) Local Presence (Article 11.5)
<b>Level of Government:</b>	Central
<b>Measures:</b>	35 U.S.C. Chapter 3 (practice before the U.S. Patent and Trademark Office)  37 C.F.R. Part 10 (representation of others before the U.S. Patent and Trademark Office)
<b>Description:</b>	<u>Cross-Border Services</u>  As a condition to be registered to practice for others before the U.S. Patent and Trademark Office (USPTO): <ul style="list-style-type: none"> <li>(a) a patent attorney must be a U.S. citizen or an alien lawfully residing in the United States (37 C.F.R. § 10.6(a));</li> <li>(b) a patent agent must be a U.S. citizen, an alien lawfully residing in the United States, or a non-resident who is registered to practice in a country that permits patent agents registered to practice before the USPTO to practice in that country; the latter is permitted to practice for the limited purpose of presenting and prosecuting patent applications of applicants located in the country in which he or she resides (37 C.F.R. §10.6(c)); and</li> <li>(c) a practitioner in trademark and non-patent cases must be an attorney licensed in the United States, a “grandfathered” agent, an attorney licensed to practice in a country that accords equivalent treatment to attorneys licensed in the United States, or an agent registered to practice in such a country; the latter two are permitted to practice for the limited purpose of representing parties located in the country in which he or she resides (37 C.F.R. § 10.14(a)-(c)).</li> </ul>

**ANNEX I, Schedule of United States**

<b>Sector:</b>	All Sectors
<b>Obligations Concerned:</b>	National Treatment (Articles 10.3 and 11.2) Most-Favored-Nation Treatment (Articles 10.4 and 11.3) Local Presence (Article 11.5) Performance Requirements (Article 10.9) Senior Management and Boards of Directors (Article 10.10)
<b>Level of Government:</b>	Regional
<b>Measures:</b>	All existing non-conforming measures of all states of the United States, the District of Columbia, and Puerto Rico
<b>Description:</b>	<u>Cross-Border Services and Investment</u>



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**Annex II**

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## ANNEX II

### Explanatory Note

1. The Schedule of a Party of this Annex sets out, pursuant to Articles 10.13 (Non-Conforming Measures) and 11.6 (Non-Conforming Measures), the specific sectors, sub-sectors, or activities for which that Party may maintain existing, or adopt new or more restrictive, measures that do not conform with obligations imposed by:
  - (a) Articles 10.3 (National Treatment) or 11.2 (National Treatment);
  - (b) Articles 10.4 (Most-Favored-Nation Treatment) or 11.3 (Most-Favored-Nation Treatment);
  - (c) Article 11.5 (Local Presence)
  - (d) Article 10.9 (Performance Requirements);
  - (e) Article 10.10 (Senior Management and Boards of Directors); or
  - (f) Article 11.4 (Market Access).
2. Each Schedule entry sets out the following elements:
  - (a) **Sector** refers to the sector for which the entry is made;
  - (b) **Obligations Concerned** specifies the obligation(s) referred to in paragraph 1 that, pursuant to Articles 10.13 (Non-Conforming Measures) and 11.6 (Non-Conforming Measures), do not apply to the sectors, subsectors, or activities listed in the entry;
  - (c) **Description** sets out the scope of the sectors, subsectors, or activities covered by the entry; and
  - (d) **Existing Measures** identifies, for transparency purposes, existing measures that apply to the sectors, subsectors, or activities covered by the entry.
3. In accordance with Article 10.13 (Non-Conforming Measures) and 11.6 (Non-Conforming Measures), the articles of this Agreement specified in the Obligations Concerned element of an entry do not apply to the sectors, subsectors, and activities identified in the Description element of that entry.

ANNEX II

Schedule of Costa Rica

<b>Sector:</b>	All Sectors
<b>Obligations Concerned:</b>	Most-Favored-Nation Treatment (Articles 10.4 and 11.3)
<b>Description:</b>	<p><u>Cross-Border Services and Investment</u></p> <p>Costa Rica reserves, vis-à-vis the United States and the Dominican Republic, the right to adopt or maintain any measure that accords differential treatment to countries under any bilateral or multilateral international agreement in force or signed prior to the date of entry into force of this Agreement.</p> <p>Costa Rica reserves the right to adopt or maintain any measure that accords differential treatment to countries under any bilateral or multilateral international agreement in force or signed after the date of entry into force of this Agreement involving:</p> <ul style="list-style-type: none"><li>(a) aviation;</li><li>(b) fisheries; or</li><li>(c) maritime matters, including salvage.</li></ul>

**ANNEX II, Schedule of Costa Rica**

<b>Sector:</b>	Cultural Industries
<b>Obligations Concerned:</b>	Most-Favored-Nation Treatment (Articles 10.4 and 11.3)
<b>Description:</b>	<p><u>Cross-Border Services and Investment</u></p> <p>Costa Rica reserves the right to adopt or maintain any measure that accords differential treatment to countries under any existing or future bilateral or multilateral international agreement with respect to cultural industries, such as audiovisual cooperation agreements. For greater certainty, government supported subsidy programs for the promotion of cultural activities are not subject to the limitations or obligations of this Agreement.</p> <p>Cultural industries means persons engaged in any of the following activities:</p> <ul style="list-style-type: none"><li>(a) Publication, distribution, or sale of books, magazines, periodical publications, or printed or electronic newspapers, excluding the printing and typesetting of any of the foregoing;</li><li>(b) Production, distribution, sale, or display of recordings of movies or videos;</li><li>(c) Production, distribution, sale, or display of music recordings in audio or video format;</li><li>(d) Production, distribution, or sale of printed music scores or scores readable by machines; or</li><li>(e) Radiobroadcasts aimed at the public in general, as well as all radio, television, and cable television-related activities, satellite programming services, and broadcasting networks.</li></ul>

**ANNEX II, Schedule of Costa Rica**

<b>Sector:</b>	Social Services
<b>Obligations Concerned:</b>	National Treatment (Articles 10.3 and 11.2) Most-Favored-Nation Treatment (Articles 10.4 and 11.3) Local Presence (Article 11.5) Performance Requirements (Article 10.9) Senior Management and Boards of Directors (Article 10.10) Market Access (Article 11.4)
<b>Description:</b>	<u>Cross-Border Services and Investment</u>  Costa Rica reserves the right to adopt or maintain any measure with respect to the provision of law enforcement and correctional services, and the following services to the extent they are social services established or maintained for a public purpose: income security or insurance, social security or insurance, social welfare, public education, public training, health, child care, public sewage services, and water supply services.

ANNEX II

**Schedule of the Dominican Republic**

**Sector:** All Sectors

**Obligations Concerned:** National Treatment (Article 10.3)

**Description:** Investment

The Dominican Republic reserves the right to adopt or maintain any measure relating to the ownership or control of land within 20 kilometers of the Dominican border.

**ANNEX II, Schedule of the Dominican Republic**

<b>Sector:</b>	All Sectors
<b>Obligations Concerned:</b>	National Treatment (Article 10.3) Senior Management and Boards of Directors (Article 10.10)
<b>Description:</b>	<p><u>Investment</u></p> <p>The Dominican Republic reserves the right to limit the transfer or disposal of any interest held in an existing state enterprise, such that only a Dominican national may receive such interest. However, the preceding sentence pertains only to the initial transfer or disposal of such interest. The Dominican Republic does not reserve this right with respect to subsequent transfers or disposals of such interest.</p> <p>The Dominican Republic reserves the right to limit control of any new enterprise created by the transfer or disposal of any interest as described in the preceding paragraph, but not through limitations on the ownership of the interest. The Dominican Republic also reserves the right to adopt or maintain any measure related to the nationality of senior management and members of the board of directors in such new enterprise.</p>

**ANNEX II, Schedule of the Dominican Republic**

<b>Sector:</b>	All Sectors
<b>Obligations Concerned:</b>	Most-Favored-Nation Treatment (Articles 10.4 and 11.3)
<b>Description:</b>	<p><u>Cross-Border Services and Investment</u></p> <p>The Dominican Republic reserves the right to adopt or maintain any measure that accords differential treatment to countries under any bilateral or multilateral international agreement in force or signed prior to the date of entry into force of this Agreement.</p> <p>The Dominican Republic reserves the right to adopt or maintain any measure that accords differential treatment to countries under any bilateral or multilateral international agreement in force or signed after the date of entry into force of this Agreement involving:</p> <ul style="list-style-type: none"><li>(a) aviation;</li><li>(b) fishing; or</li><li>(c) maritime affairs, including salvage.</li></ul>

**ANNEX II, Schedule of the Dominican Republic**

<b>Sector:</b>	Communications
<b>Obligations Concerned:</b>	Most-Favored-Nation Treatment (Articles 10.4 and 11.3)
<b>Description:</b>	<u>Cross-Border Services and Investment</u>  The Dominican Republic reserves the right to adopt or maintain any measure that accords differential treatment to persons of other countries due to application of reciprocity measures or through international agreements involving sharing of the radio spectrum, guaranteeing market access, or national treatment with respect to the one-way satellite transmission of direct-to-home and direct broadcasting satellite television services and digital audio services.

**ANNEX II, Schedule of the Dominican Republic**

**Sector:** Governmental Finances

**Obligations Concerned:** National Treatment (Article 10.3)

**Description:** Investment

The Dominican Republic reserves the right to adopt or maintain any measure relating to the restriction of the acquisition by foreign nationals of bonds, treasury securities, fixed-term instruments, or other instruments of public debt issued for particular sectors by the Central Bank or the Government of the Dominican Republic. This non-conforming measure is not intended to affect the rights of United States financial institutions (banks) established in the Dominican Republic, to acquire, sell, or dispose of such instruments when required for purposes of regulatory capital.

**ANNEX II, Schedule of the Dominican Republic**

<b>Sector:</b>	Services Related to Craft Industry
<b>Obligations Concerned:</b>	National Treatment (Article 11.2) Market Access (Article 11.4)
<b>Description:</b>	<u>Cross-Border Services</u>  The Dominican Republic reserves the right to adopt or maintain any measure relating to the distribution, retailing, or exhibition of handicrafts that are identified as handicrafts of the Dominican Republic.

**ANNEX II, Schedule of the Dominican Republic**

<b>Sector:</b>	Social Services
<b>Obligations Concerned:</b>	National Treatment (Articles 10.3 and 11.2) Most-Favored-Nation Treatment (Articles 10.4 and 11.3) Local Presence (Article 11.5) Performance Requirements (Article 10.9) Senior Management and Boards of Directors (Article 10.10)
<b>Description:</b>	<u>Cross-Border Services and Investment</u>  The Dominican Republic reserves the right to adopt or maintain any measure with respect to the provision of law enforcement and correctional services, and the following services to the extent they are social services established or maintained for a public purpose: income security or insurance, social security or insurance, social welfare, public education, public training, health, and child care.

**ANNEX II, Schedule of the Dominican Republic**

<b>Sector:</b>	Socially and Economically Disadvantaged Groups
<b>Obligations Concerned:</b>	National Treatment (Articles 10.3 and 11.2) Local Presence (Article 11.5) Performance Requirement (Article 10.9) Senior Management and Boards of Directors (Article 10.10)
<b>Description:</b>	<u>Cross-Border Services and Investment</u>  The Dominican Republic reserves the right to adopt or maintain any measure according rights or preferences to socially or economically disadvantaged groups.

**ANNEX II**

**Schedule of El Salvador**

<b>Sector:</b>	All Sectors
<b>Obligations Concerned:</b>	Most-Favored-Nation Treatment (Articles 10.4 and 11.3)
<b>Description:</b>	<p><u>Cross Border Services and Investment</u></p> <p>El Salvador reserves, vis-à-vis the United States and the Dominican Republic, the right to adopt or maintain any measure that accords differential treatment to countries under any bilateral or multilateral international agreement in force or signed prior to the date of entry into force of this Agreement.</p> <p>El Salvador reserves the right to adopt or maintain any measure that accords differential treatment to countries under any bilateral or multilateral international agreement in force or signed after the date of entry into force of this Agreement involving:</p> <ul style="list-style-type: none"><li>(a) aviation;</li><li>(b) fisheries; or</li><li>(c) maritime matters, including salvage.</li></ul>

**ANNEX II, Schedule of El Salvador**

<b>Sector:</b>	Social Services
<b>Obligations Concerned:</b>	National Treatment (Articles 10.3 and 11.2) Most-Favored-Nation Treatment (Articles 10.4 and 11.3) Market Access (Article 11.4) Local Presence (Article 11.5) Performance Requirements (Article 10.9) Senior Management and Boards of Directors (Article 10.10)
<b>Description:</b>	<u>Cross-Border Services and Investment</u>  El Salvador reserves the right to adopt or maintain any measure with respect to the provision of law enforcement and correctional services, and the following services to the extent they are social services established or maintained for a public purpose: income security or insurance, social security or insurance, social welfare, public education, public training, health, and child care.

**ANNEX II, Schedule of El Salvador**

<b>Sector:</b>	Minority Affairs
<b>Obligations Concerned:</b>	National Treatment (Articles 10.3 and 11.2) Local Presence (Article 11.5) Performance Requirements (Article 10.9) Senior Management and Boards of Directors (Article 10.10)
<b>Description:</b>	<u>Cross-Border Services and Investment</u>  El Salvador reserves the right to adopt or maintain any measure according rights or preferences to socially or economically disadvantaged minorities.

**ANNEX II, Schedule of El Salvador**

<b>Sector:</b>	Transport Services: Road Transport Services
<b>Obligations Concerned:</b>	National Treatment (Article 11.2) Most-Favored-Nation Treatment (Article 11.3) Local Presence (Article 11.5)
<b>Description:</b>	<u>Cross-Border Services</u>  El Salvador reserves, vis-à-vis the United States and the Dominican Republic, the right to adopt or maintain any measure restricting the transportation of goods by road.

## ANNEX II

## Schedule of Guatemala

<b>Sector:</b>	All Sectors
<b>Obligations Concerned:</b>	Most-Favored-Nation Treatment (Articles 11.3 and 10.4)
<b>Level of Government:</b>	Central
<b>Description:</b>	<p><u>Cross-Border Services and Investment</u></p> <p>Guatemala reserves, vis-à-vis the United States and the Dominican Republic, the right to adopt or maintain any measure that accords differential treatment to countries under any bilateral or multilateral international agreement in force or signed prior to the date of entry into force of this Agreement.</p> <p>Guatemala reserves the right to adopt or maintain any measure that accords differential treatment to countries under any bilateral or multilateral international agreement in force or signed after the date of entry into force of this Agreement involving:</p> <ul style="list-style-type: none"><li>(a) aviation,</li><li>(b) fisheries, or</li><li>(c) maritime matters, including salvage.</li></ul>

**ANNEX II, Schedule of Guatemala**

<b>Sector:</b>	Maritime Transportation
<b>Obligations Concerned:</b>	National Treatment (Articles 11.2 and 10.3) Most-Favored-Nation Treatment (Articles 11.3 and 10.4) Local Presence (Article 11.5) Performance Requirements (Article 10.9) Senior Management and Boards of Directors (Article 10.10)
<b>Level of Government:</b>	Central
<b>Description:</b>	<u>Cross-Border Services and Investment</u>  Guatemala reserves the right to adopt or maintain any measure related to the provision of maritime transportation services.

**ANNEX II, Schedule of Guatemala**

<b>Sector:</b>	Matters Related to Disadvantaged Minorities and Indigenous Peoples
<b>Obligations Concerned:</b>	National Treatment (Articles 11.2 and 10.3) Local Presence (Article 11.5) Performance Requirements (Article 10.9) Senior Management and Boards of Directors (Article 10.10)
<b>Level of Government:</b>	Central
<b>Description:</b>	<u>Cross-Border Services and Investment</u>  Guatemala reserves the right to adopt or maintain any measure that grants rights or preferences to socially or economically disadvantaged minorities and indigenous peoples.

ANNEX II

**Schedule of Honduras**

**Sector:** Communications Services - Telecommunications

**Obligations Concerned:** National Treatment (Article 10.3)  
Market Access (Article 11.4)

**Description:** Cross-Border Services and Investment

Honduras reserves the right to adopt, maintain, or modify the level of participation in the ownership of the *Empresa Hondureña de Telecomunicaciones* (HONDUTEL), as well as its affiliates or subsidiaries.

**ANNEX II, Schedule of Honduras**

<b>Sector:</b>	All Sectors
<b>Obligations Concerned:</b>	Most-Favored-Nation Treatment (Articles 10.4 and 11.3)
<b>Description:</b>	<p><u>Cross-Border Services and Investment</u></p> <p>Honduras reserves, vis-à-vis the United States and the Dominican Republic, the right to adopt or maintain any measure that accords differential treatment to countries under any bilateral or multilateral international agreement in force or signed prior to the date of entry into force of this Agreement.</p> <p>Honduras reserves the right to adopt or maintain any measure that accords differential treatment to countries under any bilateral or multilateral international agreement in force or signed after the date of entry into force of this Agreement involving:</p> <ul style="list-style-type: none"><li>(a) aviation;</li><li>(b) fisheries; or</li><li>(c) maritime matters, including salvage.</li></ul>

**ANNEX II, Schedule of Honduras**

<b>Sector:</b>	Agronomists
<b>Obligations Concerned:</b>	National Treatment (Article 11.2) Most-Favored-Nation Treatment (Article 11.3) Local Presence (Article 11.5)
<b>Description:</b>	<u>Cross-Border Services</u>  Honduras reserves the right to adopt or maintain any measure that pertains to obligatory membership in a professional association of agronomists.

**ANNEX II, Schedule of Honduras**

**Sector:** Social Workers

**Obligations Concerned:** National Treatment (Article 11.2)

**Description:** Cross-Border Services

Honduras reserves the right to adopt or maintain any measure that pertains to obligatory membership in a professional association of social workers.

**ANNEX II, Schedule of Honduras**

<b>Sector:</b>	Chemists and Pharmacists
<b>Obligations Concerned:</b>	National Treatment (Article 11.2) Most-Favored-Nation Treatment (Article 11.3) Local Presence (Article 11.5)
<b>Description:</b>	<u>Cross-Border Services</u>  Honduras reserves the right to adopt or maintain any measure that pertains to obligatory membership in a professional association of chemists or pharmacists.

**ANNEX II, Schedule of Honduras**

<b>Sector:</b>	Social Services
<b>Obligations Concerned:</b>	National Treatment (Article 11.2) Most-Favored-Nation Treatment (Article 11.3) Market Access (Article 11.4) Local Presence (Article 11.5) Senior Management and Boards of Directors (Article 10.10)
<b>Description:</b>	<u>Cross-Border Services and Investment</u>  Honduras reserves the right to adopt or maintain any measure with respect to the provision of law enforcement and correctional services, and the following services to the extent they are social services established or maintained for a public purpose: income security or insurance, social security or insurance, social welfare, public education, public training, health, and child care.

**ANNEX II, Schedule of Honduras**

<b>Sector:</b>	Minority Affairs
<b>Obligations Concerned:</b>	National Treatment (Articles 10.3 and 11.2) Local Presence (Article 11.5) Performance Requirements (Article 10.9) Senior Management and Boards of Directors (Article 10.10)
<b>Description:</b>	<u>Cross-Border Services and Investment</u>  Honduras reserves the right to adopt or maintain any measure according rights or preferences to socially or economically disadvantaged minorities.

## ANNEX II

## Schedule of Nicaragua

<b>Sector:</b>	All Sectors
<b>Obligations Concerned:</b>	National Treatment (Article 10.3) Senior Management and Boards of Directors (Article 10.10)
<b>Description:</b>	<u>Investment</u>  Nicaragua reserves the right to limit the transfer or disposal of any interest held in an existing state enterprise, such that only a Nicaraguan national may receive such interest. However, the preceding sentence pertains only to the initial transfer or disposal of such interest. Nicaragua does not reserve this right with respect to subsequent transfers or disposals of such interest.  Nicaragua reserves the right to limit control of any new enterprise created by the transfer or disposal of any interest as described in the preceding paragraph through means other than limitations on the ownership of the interest. Nicaragua also reserves the right to adopt or maintain any measure related to the nationality of senior management and members of the board of directors in such new enterprise.

**ANNEX II, Schedule of Nicaragua**

<b>Sector:</b>	Minority Affairs and Indigenous Peoples
<b>Obligations Concerned:</b>	National Treatment (Articles 10.3 and 11.2) Most-Favored-Nation Treatment (Articles 10.4 and 11.3) Local Presence (Article 11.5) Performance Requirements (Article 10.9) Senior Management and Boards of Directors (Article 10.10)
<b>Description:</b>	<u>Cross-Border Services and Investment</u> Nicaragua reserves the right to adopt or maintain any measure granting rights or preferences to socially or economically disadvantaged minorities and indigenous peoples.

**ANNEX II, Schedule of Nicaragua**

<b>Sector:</b>	Communications
<b>Obligations Concerned:</b>	Most-Favored-Nation Treatment (Articles 10.4 and 11.3)
<b>Description:</b>	<u>Cross-Border Services and Investment</u> Nicaragua reserves the right to adopt or maintain any measure that accords differential treatment to persons of other countries due to application of reciprocity measures or through international agreements involving sharing of the radio spectrum, guaranteeing market access, or national treatment with respect to the one-way satellite transmission of direct-to-home (DTH) and direct broadcasting satellite (DBS) television services and digital audio services.

**ANNEX II, Schedule of Nicaragua**

<b>Sector:</b>	All Sectors
<b>Obligations Concerned:</b>	Most-Favored-Nation Treatment (Articles 10.4 and 11.3)
<b>Description:</b>	<p><u>Cross-Border Services and Investment</u></p> <p>Nicaragua reserves, vis-à-vis the United States and the Dominican Republic, the right to adopt or maintain any measure that accords differential treatment to countries under any bilateral or multilateral international agreement in force or signed prior to the date of entry into force of this Agreement.</p> <p>Nicaragua reserves the right to adopt or maintain any measure that accords differential treatment to countries under any bilateral or multilateral international agreement in force or signed after the date of entry into force of this Agreement involving:</p> <ul style="list-style-type: none"><li>(a) aviation;</li><li>(b) fisheries; or</li><li>(c) maritime matters, including salvage.</li></ul>

**ANNEX II, Schedule of Nicaragua**

**Sector:** Coastal Lands, Islands, and River Banks

**Obligations Concerned:** National Treatment (Article 10.3)

**Description:** Investment

Nicaragua reserves the right to adopt or maintain any measure with respect to coastal lands, islands, and river banks under the possession of Nicaragua.

**ANNEX II, Schedule of Nicaragua**

<b>Sector:</b>	Social Services
<b>Obligations Concerned:</b>	National Treatment (Articles 10.3 and 11.2) Most-Favored-Nation Treatment (Articles 10.4 and 11.3) Local Presence (Article 11.5) Performance Requirements (Article 10.9) Senior Management and Boards of Directors (Article 10.10)
<b>Description:</b>	<u>Cross-Border Services and Investment</u>  Nicaragua reserves the right to adopt or maintain any measure with respect to the provision of law enforcement and correctional services, and the following services to the extent they are social services established or maintained for a public purpose: income security or insurance, social security or insurance, social welfare, public education, public training, health, and child care.

ANNEX II

**Schedule of the United States**

<b>Sector:</b>	Communications
<b>Obligations Concerned:</b>	Most-Favored-Nation Treatment (Articles 10.3 and 11.2)
<b>Description:</b>	<u>Cross-Border Services and Investment</u>  The United States reserves the right to adopt or maintain any measure that accords differential treatment to persons of other countries due to application of reciprocity measures or through international agreements involving sharing of the radio spectrum, guaranteeing market access, or national treatment with respect to the one-way satellite transmission of direct-to-home (DTH) and direct broadcasting satellite (DBS) television services and digital audio services.

**ANNEX II, Schedule of the United States**

**Sector:** Communications - Cable Television

**Obligations Concerned:** National Treatment (Article 10.3)  
Most-Favored-Nation Treatment (Article 10.4)  
Senior Management and Boards of Directors (Article 10.10)

**Description:** Investment

The United States reserves the right to adopt or maintain any measure that accords equivalent treatment to persons of any country that limits ownership by persons of the United States in an enterprise engaged in the operation of a cable television system in that country.

**ANNEX II, Schedule of the United States**

<b>Sector:</b>	Social Services
<b>Obligations Concerned:</b>	National Treatment (Articles 10.3 and 11.2) Most-Favored-Nation Treatment (Articles 10.4 and 11.3) Local Presence (Article 11.5) Performance Requirements (Article 10.9) Senior Management and Boards of Directors (Article 10.10) Market Access (Article 10.4)
<b>Description:</b>	<u>Cross-Border Services and Investment</u>  The United States reserves the right to adopt or maintain any measure with respect to the provision of law enforcement and correctional services, and the following services to the extent they are social services established or maintained for a public purpose: income security or insurance, social security or insurance, social welfare, public education, public training, health, and child care.

**ANNEX II, Schedule of the United States**

<b>Sector:</b>	Minority Affairs
<b>Obligations Concerned:</b>	National Treatment (Articles 10.3 and 11.2) Local Presence (Article 11.5) Performance Requirements (Article 10.9) Senior Management and Boards of Directors (Article 10.10)
<b>Description:</b>	<u>Cross-Border Services and Investment</u>  The United States reserves the right to adopt or maintain any measure according rights or preferences to socially or economically disadvantaged minorities, including corporations organized under the laws of the State of Alaska in accordance with the <i>Alaska Native Claims Settlement Act</i> .
<b>Existing Measures:</b>	<i>Alaska Native Claims Settlement Act</i> , 43 U.S.C. §§ 1601 <i>et seq.</i>

## ANNEX II, Schedule of the United States

<b>Sector:</b>	Transportation
<b>Obligations Concerned:</b>	National Treatment (Articles 10.3 and 11.2) Most-Favored-Nation Treatment (Articles 10.4 and 11.3) Local Presence (Article 11.5) Performance Requirements (Article 10.9) Senior Management and Boards of Directors (Article 10.10)
<b>Description:</b>	<p><u>Cross-Border Services and Investment</u></p> <p>The United States reserves the right to adopt or maintain any measure relating to the provision of maritime transportation services and the operation of U.S.-flagged vessels, including the following:</p> <ul style="list-style-type: none"> <li>(a) requirements for investment in, ownership and control of, and operation of vessels and other marine structures, including drill rigs, in maritime cabotage services, including maritime cabotage services performed in the domestic offshore trades, the coastwise trades, U.S. territorial waters, waters above the continental shelf, and in the inland waterways;</li> <li>(b) requirements for investment in, ownership and control of, and operation of U.S.-flagged vessels in foreign trades;</li> <li>(c) requirements for investment in, ownership or control of, and operation of vessels engaged in fishing and related activities in U.S. territorial waters and the Exclusive Economic Zone;</li> <li>(d) requirements related to documenting a vessel under the U.S. flag;</li> <li>(e) promotional programs, including tax benefits, available for shipowners, operators, and vessels meeting certain requirements;</li> <li>(f) certification, licensing, and citizenship requirements for crew members on U.S.-flagged vessels;</li> <li>(g) manning requirements for U.S.-flagged vessels;</li> <li>(h) all matters under the jurisdiction of the Federal Maritime Commission;</li> </ul>

## ANNEX II, Schedule of the United States

- (i) negotiation and implementation of bilateral and other international maritime agreements and understandings;
- (j) limitations on longshore work performed by crew members;
- (k) tonnage duties and light money assessments for entering U.S. waters; and
- (l) certification, licensing, and citizenship requirements for pilots performing pilotage services in U.S. territorial waters.

The following activities are not included in this reservation. However, the treatment provided to a Party under (b) is conditional upon obtaining comparable market access in these sectors from that Party:

- (a) vessel construction and repair; and
- (b) landside aspects of port activities, including operation and maintenance of docks; loading and unloading of vessels directly to or from land; marine cargo handling; operation and maintenance of piers; ship cleaning; stevedoring; transfer of cargo between vessels and trucks, trains, pipelines, and wharves; waterfront terminal operations; boat cleaning; canal operation; dismantling of vessels; operation of marine railways for drydocking; marine surveyors, except cargo; marine wrecking of vessels for scrap; and ship classification societies.

**Existing Measures:**

*Merchant Marine Act of 1920*, §§ 19 and 27, 46 U.S.C. App. § 876 and § 883 *et seq.*  
*Jones Act Waiver Statute*, 64 Stat 1120, 46 U.S.C. App., note preceding Section 1  
*Shipping Act of 1916*, 46 U.S.C. App. §§ 802 and 808  
*Merchant Marine Act of 1936*, 46 U.S.C. App. §§ 1151 *et seq.*, 1160-61, 1171 *et seq.*, 1241(b), 1241-1, 1244, and 1271 *et seq.*  
*Merchant Ship Sales Act of 1946*, 50 U.S.C. App. § 1738  
 46 U.S.C. App. §§ 121, 292, and 316  
 46 U.S.C. §§ 12101 *et seq.* and 31301 *et seq.*  
 46 U.S.C. §§ 8904 and 31328(2)  
*Passenger Vessel Act*, 46 U.S.C. App. § 289

**ANNEX II, Schedule of the United States**

42 U.S.C. §§ 9601 *et seq.*; 33 U.S.C. §§ 2701 *et seq.*; 33 U.S.C. §§ 1251 *et seq.*  
46 U.S.C. §§ 3301 *et seq.*, 3701 *et seq.*, 8103, and 12107(b)  
*Shipping Act of 1984*, 46 U.S.C. App. §§ 1708 and 1712  
*The Foreign Shipping Practices Act of 1988*, 46 U.S.C. App. § 1710a  
*Merchant Marine Act, 1920*, 46 U.S.C. App. §§ 861 *et seq.*  
*Shipping Act of 1984*, 46 U.S.C. App. §§ 1701 *et seq.*  
*Alaska North Slope*, 104 Pub. L. 58; 109 Stat. 557  
Longshore restrictions and reciprocity, 8 U.S.C. §§ 1101 *et seq.*  
Vessel escort provisions, Section 1119 of Pub. L. 106-554, as amended  
*Nicholson Act*, 46 U.S.C. App. § 251  
*Commercial Fishing Industry Vessel Anti-Reflagging Act of 1987*, 46 U.S.C. § 2101 and 46 U.S.C. § 12108  
43 U.S.C. § 1841  
22 U.S.C. § 1980  
*Intercoastal Shipping Act*, 46 U.S.C. App. § 843  
46 U.S.C. § 9302, 46 U.S.C. § 8502; *Agreement Governing the Operation of Pilotage on the Great Lakes*, Exchange of Notes at Ottawa, August 23, 1978, and March 29, 1979, TIAS 9445  
*Magnuson Fishery Conservation and Management Act*, 16 U.S.C. §§ 1801 *et seq.*  
19 U.S.C. § 1466  
*North Pacific Anadromous Stocks Convention Act of 1972*, P.L. 102-587; *Oceans Act of 1992, Title VII*  
*Tuna Convention Act*, 16 U.S.C. §§ 951 *et seq.*  
*South Pacific Tuna Act of 1988*, 16 U.S.C. §§ 973 *et seq.*  
*Northern Pacific Halibut Act of 1982*, 16 U.S.C. §§ 773 *et seq.*  
*Atlantic Tunas Convention Act*, 16 U.S.C. §§ 971 *et seq.*  
*Antarctic Marine Living Resources Convention Act of 1984*, 16 U.S.C. §§ 2431 *et seq.*  
*Pacific Salmon Treaty Act of 1985*, 16 U.S.C. §§ 3631 *et seq.*  
*American Fisheries Act*, 46 U.S.C. § 12102(c) and 46 U.S.C. § 31322(a)

**ANNEX II, Schedule of the United States**

**Sector:** All  
**Obligations Concerned:** Market Access (Article 11.4)  
**Description:** Cross-Border Services

The United States reserves the right to adopt or maintain any measure that is not inconsistent with the United States' obligations under Article XVI of the General Agreement on Trade in Services.

**ANNEX II, Schedule of the United States**

**Sector:** All

**Obligations Concerned:** Most-Favored-Nation Treatment (Articles 10.4 and 11.3)

**Description:** Cross-Border Services and Investment

The United States reserves the right to adopt or maintain any measure that accords differential treatment to countries under any bilateral or multilateral international agreement in force or signed prior to the date of entry into force of this Agreement.

The United States reserves the right to adopt or maintain any measure that accords differential treatment to countries under any bilateral or multilateral international agreement in force or signed after the date of entry into force of this Agreement involving:

- (a) aviation;
- (b) fisheries; or
- (c) maritime matters, including salvage.



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**Annex III**

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## ANNEX III: FINANCIAL SERVICES NON-CONFORMING MEASURES

### Schedule of Costa Rica

#### Explanatory Note

1. The Schedule of Costa Rica to Annex III sets out:
  - (a) headnotes that limit or clarify the commitments of Costa Rica with respect to the obligations described in clauses (i)-(v) of subparagraph (b), and in subparagraph (c);
  - (b) in Section A, pursuant to Article 12.9 (Non-Conforming Measures), the existing measures of Costa Rica that do not conform to some or all of the obligations imposed by:
    - (i) Article 12.2 (National Treatment);
    - (ii) Article 12.3 (Most-Favored-Nation Treatment);
    - (iii) Article 12.4 (Market Access for Financial Institutions);
    - (iv) Article 12.5 (Cross-Border Trade); or
    - (v) Article 12.8 (Senior Management and Boards of Directors); and
  - (c) in Section B, pursuant to Article 12.9 (Non-Conforming Measures), the specific sectors, subsectors, or activities for which Costa Rica may maintain existing, or adopt new or more restrictive, measures that do not conform with the obligations imposed by Article 12.2, 12.3, 12.4, 12.5, or 12.8.
2. Each entry in Section A sets out the following elements:
  - (a) Sector refers to the general sector for which the entry is made;
  - (b) Subsector refers to the specific sector for which the entry is made;
  - (c) Obligations Concerned specifies the obligation(s) referred to in subparagraph 1(b) that, pursuant to Article 12.9, do not apply to the listed measure(s);
  - (d) Level of Government indicates the level of government maintaining the listed measure(s);
  - (e) Measures identifies the laws, regulations or other measures for which the entry is made. A measure cited in the Measures element:
    - (i) means the measure as amended, continued, or renewed as of the date of entry into force of this Agreement, and

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**ANNEX III, Schedule of Costa Rica**

- (ii) includes any subordinate measure adopted or maintained under the authority of and consistent with the measure;
  - (f) Description provides a general, nonbinding description of the Measures.
3. Each entry in Section B sets out the following elements:
- (a) Sector refers to the general sector for which the entry is made;
  - (b) Subsector refers to the specific sector for which the entry is made;
  - (c) Obligations Concerned specifies the obligation(s) referred to in subparagraph 1(c) that, pursuant to Article 12.9, do not apply to the sectors, subsectors, or activities listed in the entry;
  - (d) Level of Government indicates the level of government maintaining the listed measure(s); and
  - (e) Description sets out the scope of the sectors, subsectors, or activities covered by the entry.
4. In the interpretation of a non-conforming measure in Section A, all elements of the non-conforming measures listing shall be considered. A non-conforming measure shall be interpreted in the light of the relevant provisions of the Financial Services Chapter with respect to which the non-conforming measure is taken. To the extent that:
- (a) the Measures element is qualified by a liberalization commitment from the Description element, if any, or a Specific Commitment from an Annex to the Financial Services Chapter, the Measures element as so qualified shall prevail over all other elements; and
  - (b) the Measures element is not so qualified, the Measures element shall prevail over all other elements, unless any discrepancy between the Measures element and the other elements considered in their totality is so substantial and material that it would be unreasonable to conclude that the Measures element should prevail, in which case the other elements shall prevail to the extent of the discrepancy.
5. For entries in Section B, in accordance with Article 12.9.4, the articles of this Agreement specified in the Obligations Concerned element of an entry do not apply to the sectors, subsectors, and activities identified in the Description element of that entry.
6. Where Costa Rica maintains a measure that requires that a service supplier be a citizen, permanent resident or resident of its territory as a condition to the provision of a service in its territory, a listing for that measure taken in Annex III with respect to Articles 12.2, 12.3, 12.4, or 12.5 shall operate as a non-conforming measure with respect to Articles 10.3 (National

**ANNEX III, Schedule of Costa Rica**

Treatment), 10.4 (Most-Favored-Nation Treatment) and 10.9 (Performance Requirements), to the extent of that measure.

**ANNEX III, Schedule of Costa Rica**

*Headnotes*

1. Commitments in these subsectors under the Agreement are undertaken subject to the limitations and conditions set forth in these headnotes and in Sections A and B below.
2. To clarify the Costa Rican commitment with respect to Article 12.4, juridical persons supplying banking or other financial services and constituted under the laws of Costa Rica are subject to non-discriminatory limitations on juridical form.<sup>1</sup>

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<sup>1</sup> For example, sole proprietorships are generally not acceptable juridical forms for depository financial institutions in Costa Rica. This headnote is not itself intended to affect, or otherwise limit, a choice by a financial institution of another Party between branches or subsidiaries.

## ANNEX III, Schedule of Costa Rica, Section A

<b>Sector:</b>	Financial Services
<b>Subsector:</b>	Banking
<b>Obligation Concerned:</b>	National Treatment (Article 12.2)
<b>Level of Government:</b>	Central
<b>Measures:</b>	<p>Law No. 1644 of 26 September 1953, <i>Ley Orgánica del Sistema Bancario Nacional</i></p> <p>Law No. 4646 of 20 October 1970</p> <p>Law No. 7558 of 3 November 1995, <i>Ley Orgánica del Banco Central de Costa Rica</i></p> <p>Law No. 7732 of 17 December 1997, <i>Ley de Regulación y Supervisión del Mercado de Valores</i></p> <p>Executive Decree No. 28985-H of 20 September 2000, <i>Reglamento al Artículo 59 de la Ley Orgánica del Sistema Bancario Nacional</i></p> <p>Law No. 8187 of 18 December 2001, <i>Reforma del Artículo 117 de la Ley Orgánica del Sistema Bancario Nacional, No. 1644</i></p> <p>Law No. 7107 of 4 November 1988, <i>Ley de Modernización del Sistema Financiero de la República</i></p> <p>Law No. 4351 of 11 July 1969, <i>Ley Orgánica del Banco Popular y Desarrollo Comunal</i></p>
<b>Description:</b>	<p>The State guarantees the liabilities of the State Banks.</p> <p>Private banks that operate current accounts and saving sections have to meet the following requirements:</p> <p>(a) To maintain a minimum loan balance with the state banking system of 17 percent of total short-term deposits (30 days or less), once the corresponding reserve is deducted, both in domestic and foreign currencies. Such funds will be placed at a rate equivalent to 50 percent of either the basic passive rate calculated by the <i>Banco Central</i>, or the LIBOR rate at a one-month term.</p>

**ANNEX III, Schedule of Costa Rica, Section A**

- (b) Alternatively, to establish at least four agencies or branches to provide basic banking services – both passive and active – in the following regions: Chorotega, Central Pacific, Brunca, Atlantic Huetar, and North Huetar, dedicating at least ten percent, once the corresponding reserve has been deducted, of total short-term deposits (30 days or less), in domestic or foreign currency, to credits for programs designated by the Executive Branch, with such funds to be placed at a rate not higher than the basic passive rate calculated by the *Banco Central*, in its placements in colones, and the LIBOR rate at a one-month term, for resources in foreign currency.

The State and public institutions with state character, as well as the public institutions the equity of which belongs mainly to the State or its institutions, may only make deposits and operations in current and savings accounts through State commercial banks.

## ANNEX III, Schedule of Costa Rica, Section A

<b>Sector:</b>	Financial Services
<b>Subsector:</b>	Banking
<b>Obligation Concerned:</b>	National Treatment (Article 12.2)
<b>Level of Government:</b>	Central
<b>Measures:</b>	Law No. 1644 of 26 September 1953, <i>Ley Orgánica del Sistema Bancario Nacional</i>  Law No. 7107 of 4 November 1988, <i>Ley de Modernización del Sistema Financiero de la República</i>
<b>Description:</b>	At least ten Costa Rican cooperative organizations are required to establish and operate a cooperative bank.

**ANNEX III, Schedule of Costa Rica, Section A**

<b>Sector:</b>	Financial Services
<b>Subsector:</b>	Banking
<b>Obligation Concerned:</b>	National Treatment (Article 12.2)
<b>Level of Government:</b>	Central
<b>Measure:</b>	Law No. 7107 of 4 November 1988, <i>Ley de Modernización del Sistema Financiero de la República</i>
<b>Description:</b>	At least 25 Costa Rican solidarity associations are required to establish and operate a solidarity bank.

## ANNEX III, Schedule of Costa Rica, Section A

<b>Sector:</b>	Financial Services
<b>Subsector:</b>	Banking
<b>Obligations Concerned:</b>	National Treatment (Article 12.2) Market Access (Article 12.4)
<b>Level of Government:</b>	Central
<b>Measure:</b>	Law No. 4351 of 11 July 1969, <i>Ley Orgánica del Banco Popular y de Desarrollo Comunal</i>
<b>Description:</b>	Only <i>Banco Popular y de Desarrollo Comunal</i> will manage the funds of the mandatory contributions made by employers and employees pursuant to Law No. 4351.

**ANNEX III, Schedule of Costa Rica, Section A**

<b>Sector:</b>	Financial Services
<b>Subsector:</b>	Banking
<b>Obligation Concerned:</b>	Market Access (Article 12.4)
<b>Level of Government:</b>	Central
<b>Measures:</b>	Law No. 1644 of 26 September 1953, <i>Ley Orgánica del Sistema Bancario Nacional</i>  Law No. 7107 of 4 November 1988, <i>Ley de Modernización del Sistema Financiero de la República</i>
<b>Description:</b>	Private banks in Costa Rica are required to be constituted or organized under Costa Rican law.

## ANNEX III, Schedule of Costa Rica, Section A

<b>Sector:</b>	Financial Services
<b>Subsector:</b>	Insurance
<b>Obligation Concerned:</b>	Market Access (Article 12.4)
<b>Level of Government:</b>	Central
<b>Measures:</b>	<p>Law No. 12 of 30 October 1924, <i>Ley Monopolios del Instituto Nacional de Seguros</i></p> <p>Law No. 33 of 23 December 1936, <i>Ley de Reorganización del Instituto Nacional de Seguros</i></p> <p>Law No. 6082 of 30 August 1977, <i>Ley de Monopolio de Reaseguros</i></p> <p>Law No. 7331 of 13 April 1993, <i>Ley de Tránsito</i>, Chapter Two</p>
<b>Description:</b>	<p>Insurance and reinsurance services in Costa Rica are reserved to a state monopoly, the <i>Instituto Nacional de Seguros</i> (INS).</p> <p>Notwithstanding the measures listed above, Costa Rica shall allow insurance service providers of any Party, on a non-discriminatory basis, to effectively compete to supply to the consumer insurance services as provided in the commitments and schedule set out in the “Specific Commitments of Costa Rica on Insurance Services” in Annex 12.9.2. Upon completion of the liberalization schedule on January 1, 2011, this non-conforming measure shall cease to exist.</p>

**ANNEX III, Schedule of Costa Rica, Section B**

<b>Sector:</b>	Financial Services
<b>Subsector:</b>	All Subsectors Other Than Banking and Insurance
<b>Obligation Concerned:</b>	Market Access (Article 12.4)
<b>Level of Government:</b>	Central
<b>Description:</b>	Costa Rica reserves the right to adopt or maintain measures requiring the incorporation in Costa Rica of foreign financial institutions, other than those seeking to operate as banks or insurance companies within Costa Rica.

**ANNEX III: FINANCIAL SERVICES NON-CONFORMING MEASURES****Schedule of the Dominican Republic****Explanatory Note**

1. The Schedule of the Dominican Republic to Annex III sets out:
  - (a) headnotes that limit or clarify the commitments of the Dominican Republic with respect to the obligations described in clauses (i)-(v) of subparagraph (b), and in subparagraph (c);
  - (b) in Section A, pursuant to Article 12.9 (Non-Conforming Measures), the existing measures of the Dominican Republic that do not conform to some or all of the obligations imposed by:
    - (i) Article 12.2 (National Treatment);
    - (ii) Article 12.3 (Most-Favored-Nation Treatment);
    - (iii) Article 12.4 (Market Access for Financial Institutions);
    - (iv) Article 12.5 (Cross-Border Trade); or
    - (v) Article 12.8 (Senior Management and Boards of Directors); and
  - (c) in Section B, pursuant to Article 12.9 (Non-Conforming Measures), the specific sectors, subsectors, or activities for which the Dominican Republic may maintain existing, or adopt new or more restrictive, measures that do not conform with the obligations imposed by Article 12.2, 12.3, 12.4, 12.5, or 12.8.
2. Each entry in Section A sets out the following elements:
  - (a) Sector refers to the general sector for which the entry is made;
  - (b) Subsector refers to the specific sector for which the entry is made;
  - (c) Obligations Concerned specifies the obligation(s) referred to in subparagraph 1(b) that, pursuant to Article 12.9, do not apply to the listed measure(s);
  - (d) Level of Government indicates the level of government maintaining the listed measure(s);
  - (e) Measures identifies the laws, regulations or other measures for which the entry is made. A measure cited in the Measures element:
    - (i) means the measure as amended, continued, or renewed as of the date of entry into force of this Agreement, and

**ANNEX III, Schedule of the Dominican Republic**

- (ii) includes any subordinate measure adopted or maintained under the authority of and consistent with the measure;
  - (f) Description provides a general, nonbinding description of the Measures.
3. Each entry in Section B sets out the following elements:
- (a) Sector refers to the general sector for which the entry is made;
  - (b) Sub-Sector refers to the specific sector for which the entry is made;
  - (c) Obligations Concerned specifies the obligation(s) referred to in subparagraph 1(c) that, pursuant to Article 12.9, do not apply to the sectors, subsectors, or activities listed in the entry;
  - (d) Level of Government indicates the level of government maintaining the listed measure(s); and
  - (e) Description sets out the scope of the sectors, subsectors, or activities covered by the entry.
4. In the interpretation of a non-conforming measure in Section A, all elements of the non-conforming measures listing shall be considered. A non-conforming measure shall be interpreted in the light of the relevant provisions of the Financial Services Chapter with respect to which the non-conforming measure is taken. To the extent that:
- (a) the Measures element is qualified by a liberalization commitment from the Description element, if any, or a Specific Commitment from an Annex to the Financial Services Chapter, the Measures element as so qualified shall prevail over all other elements; and
  - (b) the Measures element is not so qualified, the Measures element shall prevail over all other elements, unless any discrepancy between the Measures element and the other elements considered in their totality is so substantial and material that it would be unreasonable to conclude that the Measures element should prevail, in which case the other elements shall prevail to the extent of the discrepancy.
5. For entries in Section B, in accordance with Article 12.9.4, the articles of this Agreement specified in the Obligations Concerned element of an entry do not apply to the sectors, subsectors, and activities identified in the Description element of that entry.
6. Where the Dominican Republic maintains a measure that requires that a service supplier be a citizen, permanent resident or resident of its territory as a condition to the provision of a service in its territory, a listing for that measure taken in Annex III with respect to Articles 12.2, 12.3, 12.4, or 12.5 shall operate as a non-conforming measure with respect to Articles 10.3

**ANNEX III, Schedule of the Dominican Republic**

(National Treatment), 10.5 (Most-Favored-Nation Treatment) and 10.9 (Performance Requirements), to the extent of that measure.

**ANNEX III, Schedule of the Dominican Republic**

*Headnotes*

1. Commitments in these subsectors under the Agreement are undertaken subject to the limitations and conditions set forth in these headnotes and in Sections A and B below.
2. To clarify the Dominican Republic's commitment with respect to Article 12.4, juridical persons supplying financial services and constituted under the laws of the Dominican Republic are subject to non-discriminatory limitations on juridical form.<sup>2</sup>

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<sup>2</sup> For example, partnerships, sole proprietorships, *sociedades de responsabilidad limitada*, *sociedades en comandita simple*, *sociedades en comandita por acciones*, and *sociedades colectivas* are not acceptable juridical forms for financial institutions in the Dominican Republic. This headnote is not itself intended to affect, or otherwise limit, a choice by a financial institution of another Party between branches or subsidiaries.

**ANNEX III, Schedule of the Dominican Republic, Section A**

<b>Sector:</b>	Financial Services
<b>Subsector:</b>	Banking Services and Other Financial Services (Excluding Insurance)
<b>Type of Reservation:</b>	Market Access (Article 12.4)
<b>Measures:</b>	<i>Ley Monetaria y Financiera</i> , No. 183-02, November 21, 2002, Art. 30
<b>Description</b>	A Currency Exchange Bureau must be organized as a share company ( <i>compañía por acciones</i> ) under the laws of the Dominican Republic, and must have the exclusive purpose of foreign currency exchange intermediation within the national territory.

## ANNEX III, Schedule of the Dominican Republic, Section A

<b>Sector:</b>	Financial Services
<b>Subsector:</b>	Banking Services and Other Financial Services (Excluding Insurance)
<b>Type of Reservation:</b>	Market Access (Article 12.4)
<b>Measures:</b>	<i>Ley Monetaria y Financiera</i> , No. 183-02, November 21, 2002, Arts. 34, 38, and 39
<b>Description:</b>	The capital and reserves that foreign banks assign to their branch offices must be effectively brought into the Dominican Republic. The operations of branch offices of foreign banks are limited to the capital brought into the Dominican Republic. All financial intermediation entities, except commercial banks, must be organized under the laws of the Dominican Republic.

**ANNEX III, Schedule of the Dominican Republic, Section A**

<b>Sector:</b>	Financial Services
<b>Subsector:</b>	Banking and Other Financial Services (Excluding Insurance)
<b>Obligations Concerned:</b>	Market Access (Article 12.4)
<b>Measures:</b>	<i>Ley que Crea el Sistema Dominicano de Seguridad Social</i> , No. 87-01, May 9, 2001, Book II, Chapter VI, Art. 80
<b>Description:</b>	Pensions Funds Managers ( <i>Administradoras de Fondos de Pensiones</i> ) must be established as financial companies ( <i>sociedades financieras</i> ) under the laws of the Dominican Republic.

**ANNEX III, Schedule of the Dominican Republic, Section A**

<b>Sector:</b>	Financial Services
<b>Subsector:</b>	Securities
<b>Obligations Concerned:</b>	Market Access (Article 12.4)
<b>Measures:</b>	<i>Ley de Mercado de Valores</i> , No. 19-00, May 8, 2000, Arts. 46, 57, 62, 71, 76, 103, and 108
<b>Description:</b>	<p>The following entities must be incorporated under the laws of the Dominican Republic:</p> <ul style="list-style-type: none"><li>(a) stock exchanges,</li><li>(b) commodities exchanges,</li><li>(c) brokers,</li><li>(d) dealers,</li><li>(e) clearing houses,</li><li>(f) centralized depositories of securities,</li><li>(g) investment fund managers, and</li><li>(h) securities underwriters.</li></ul>

## ANNEX III, Schedule of the Dominican Republic, Section A

<b>Sector:</b>	Financial Services
<b>Subsector:</b>	Insurance
<b>Obligations Concerned:</b>	National Treatment (Article 12.2) Market Access (Article 12.4) Most-Favored-Nation Treatment (Article 12.3)
<b>Level of Government:</b>	Central
<b>Measures:</b>	<i>Ley sobre Seguros y Fianzas de la Republica Dominicana</i> , No. 146-02, July 26, 2002, Arts. 6, 13(a), 21, and 201
<b>Description:</b>	<p>To supply insurance and services related to insurance in the Dominican Republic foreign insurance companies must be organized under the laws of the Dominican Republic as a corporation. Not later than four years after the date of entry into force of this Agreement, the Dominican Republic shall permit foreign insurance companies to establish branches.<sup>3</sup></p> <p>Unless otherwise provided in a treaty, agreement, or international agreement to which the Dominican Republic is a party, personal life and health insurance contracts sold in the Dominican Republic and all types of bonds on obligations in the Dominican Republic must be underwritten, either directly or through intermediaries, with insurers authorized to operate in the Dominican Republic.</p> <p>An insurance or reinsurance company owned by a company organized under the laws of a foreign country may not operate in the Dominican Republic if that country does not allow Dominican insurance companies to operate in its territory.<sup>4</sup></p> <p>To obtain an intermediary or adjustor license to perform insurance or reinsurance operations, a natural person must: (a) be a Dominican national; or (b) reside in the Dominican Republic for six years prior to requesting the license, and after obtaining definitive residence in the country.</p>

<sup>3</sup> For greater certainty, the Dominican Republic may require that the branch owners or shareholders meet the solvency and integrity requirements established in the Dominican Republic's insurance legislation.

<sup>4</sup> For greater certainty, U.S. insurance and reinsurance companies may operate in the Dominican Republic if the jurisdiction in which they are authorized to operate in the United States allows Dominican companies to operate.

**ANNEX III, Schedule of the Dominican Republic, Section B**

<b>Sector:</b>	Financial Services
<b>Subsector:</b>	All Subsectors Other Than Banking and Insurance
<b>Obligations Concerned:</b>	Market Access (Article 12.4)
<b>Description:</b>	The Dominican Republic reserves the right to adopt or maintain measures requiring the incorporation in the Dominican Republic of foreign financial institutions, other than those seeking to operate as banks or insurance companies within the Dominican Republic.

**ANNEX III: FINANCIAL SERVICES NON-CONFORMING MEASURES****Schedule of El Salvador****Explanatory Note**

1. The Schedule of El Salvador to Annex III sets out:
  - (a) headnotes that limit or clarify the commitments of El Salvador with respect to the obligations described in clauses (i)-(v) of subparagraph (b), and in subparagraph (c);
  - (b) in Section A, pursuant to Article 12.9 (Non-Conforming Measures), the existing measures of El Salvador that do not conform to some or all of the obligations imposed by:
    - (i) Article 12.2 (National Treatment);
    - (ii) Article 12.3 (Most-Favored-Nation Treatment);
    - (iii) Article 12.4 (Market Access for Financial Institutions);
    - (iv) Article 12.5 (Cross-Border Trade); or
    - (v) Article 12.8 (Senior Management and Boards of Directors); and
  - (c) in Section B, pursuant to Article 12.9 (Non-Conforming Measures), the specific sectors, subsectors, or activities for which El Salvador may maintain existing, or adopt new or more restrictive, measures that do not conform with the obligations imposed by Article 12.2, 12.3, 12.4, 12.5, or 12.8.
2. Each entry in Section A sets out the following elements:
  - (a) Sector refers to the general sector for which the entry is made;
  - (b) Subsector refers to the specific sector for which the entry is made;
  - (c) Obligations Concerned specifies the obligation(s) referred to in subparagraph 1(b) that, pursuant to Article 12.9, do not apply to the listed measure(s);
  - (d) Level of Government indicates the level of government maintaining the listed measure(s);
  - (e) Measures identifies the laws, regulations or other measures for which the entry is made. A measure cited in the Measures element:
    - (i) means the measure as amended, continued, or renewed as of the date of entry into force of this Agreement, and

**ANNEX III, Schedule of El Salvador**

- (ii) includes any subordinate measure adopted or maintained under the authority of and consistent with the measure;
  - (f) Description provides a general, nonbinding description of the Measures.
3. Each entry in Section B sets out the following elements:
- (a) Sector refers to the general sector for which the entry is made;
  - (b) Subsector refers to the specific sector for which the entry is made;
  - (c) Obligations Concerned specifies the obligation(s) referred to in subparagraph 1(c) that, pursuant to Article 12.9, do not apply to the sectors, subsectors, or activities listed in the entry;
  - (d) Level of Government indicates the level of government maintaining the listed measure(s); and
  - (e) Description sets out the scope of the sectors, subsectors, or activities covered by the entry.
4. In the interpretation of a non-conforming measure in Section A, all elements of the non-conforming measures listing shall be considered. A non-conforming measure shall be interpreted in the light of the relevant provisions of the Financial Services Chapter with respect to which the non-conforming measure is taken. To the extent that:
- (a) the Measures element is qualified by a liberalization commitment from the Description element, if any, or a Specific Commitment from an Annex to the Financial Services Chapter, the Measures element as so qualified shall prevail over all other elements; and
  - (b) the Measures element is not so qualified, the Measures element shall prevail over all other elements, unless any discrepancy between the Measures element and the other elements considered in their totality is so substantial and material that it would be unreasonable to conclude that the Measures element should prevail, in which case the other elements shall prevail to the extent of the discrepancy.
5. For entries in Section B, in accordance with Article 12.9.4, the articles of this Agreement specified in the Obligations Concerned element of an entry do not apply to the sectors, subsectors, and activities identified in the Description element of that entry.
6. Where El Salvador maintains a measure that requires that a service supplier be a citizen, permanent resident or resident of its territory as a condition to the provision of a service in its territory, a listing for that measure taken in Annex III with respect to Articles 12.2, 12.3, 12.4, or 12.5 shall operate as a non-conforming measure with respect to Articles 10.3 (National

**ANNEX III, Schedule of El Salvador**

Treatment), 10.4 (Most-Favored-Nation Treatment) and 10.9 (Performance Requirements), to the extent of that measure.

**ANNEX III, Schedule of El Salvador**

*Headnotes*

1. Commitments in these subsectors under the Agreement are undertaken subject to the limitations and conditions set forth in these headnotes and in Sections A and B below.
2. To clarify El Salvador's commitment with respect to Article 12.4, juridical persons supplying financial services and constituted under the laws of El Salvador are subject to non-discriminatory limitations on juridical form.<sup>5</sup>

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<sup>5</sup> For example, partnerships and sole proprietorships are not acceptable juridical forms for depositary financial institutions in El Salvador. This headnote is not itself intended to affect, or otherwise limit, a choice by a financial institution of another Party between branches or subsidiaries.

## ANNEX III, Schedule of El Salvador, Section A

<b>Sector:</b>	Financial Services
<b>Subsector:</b>	All Insurance and Insurance-Related Services
<b>Obligations Concerned :</b>	National Treatment (Article 12.2) Most-Favored-Nation Treatment (Article 12.3) Market Access (Article 12.4)
<b>Measures :</b>	<i>Ley de Sociedades de Seguros</i> , Arts. 1, 6, 41, and 111 <i>Reglamento de la Ley de Sociedades de Seguros</i> , Art. 29
<b>Description :</b>	<p>Insurance companies must be legally incorporated in El Salvador. Not later than three years after the date of entry into force of the Agreement, El Salvador shall permit foreign insurance companies to establish branches.<sup>6</sup></p> <p>For an enterprise to be established under Salvadoran law, at least 75 percent of its shares must be owned jointly or severally by:</p> <ul style="list-style-type: none"> <li>(a) Salvadoran natural persons or natural persons of Guatemala, Nicaragua, Honduras or Costa Rica;</li> <li>(b) legal persons organized under Salvadoran law whose majority, shareholders or partners are Salvadoran natural persons or natural persons of Guatemala, Nicaragua, Honduras or Costa Rica;</li> <li>(c) Guatemalan, Nicaraguan, Honduran, Costa Rican insurance or reinsurance companies; or</li> <li>(d) foreign insurance and reinsurance companies with a first rate Classification by an internationally recognized classification Institution (e.g. Moody's, A.M. Best or S&amp;P.)</li> </ul>

<sup>6</sup> El Salvador may require that the branch owners or shareholders meet the solvency and integrity requirements established in El Salvador's insurance legislation.

## ANNEX III, Schedule of El Salvador, Section A

<b>Sector:</b>	Financial Services
<b>Subsector:</b>	Banking Services
<b>Obligations Concerned:</b>	National Treatment (Article 12.2) Most-Favored-Nation Treatment (Article 12.3) Market Access (Article 12.4)
<b>Measures :</b>	<i>Ley de Bancos</i> , Arts. 5, 10, 26, 27, and 150
<b>Description :</b>	<p>Banks incorporated in El Salvador must be organized and operate as corporations with fixed capital broken down into registered shares and with no fewer than ten partners.</p> <p>At least 51 percent of the shares in banks legally incorporated in El Salvador must be owned by any of the following types of investor:</p> <ul style="list-style-type: none"> <li>(a) nationals of El Salvador or another Central American country;</li> <li>(b) legal persons organized under the laws of El Salvador whose majority shareholders or partners are: <ul style="list-style-type: none"> <li>(i) nationals of El Salvador or a Central American country or</li> <li>(ii) other legal persons organized under the laws of El Salvador whose majority shareholders or partners are nationals of El Salvador or another Central American country;</li> </ul> </li> <li>(c) banks established under the laws of a Central American country that <ul style="list-style-type: none"> <li>(i) are subject to prudential regulation and supervision in that country, in accordance with relevant international practice,</li> <li>(ii) have been approved by internationally recognized risk classification entities; and</li> <li>(iii) that fully comply with the legal provisions and guidelines in force in those countries; or</li> </ul> </li> </ul>

**ANNEX III, Schedule of El Salvador, Section A**

- (d) banks and other foreign financial institutions that have been approved by internationally recognized risk classification entities as first-rate institutions and which meet other applicable requirements. Holding companies and other foreign financial institutions that fulfill these requirements are also covered by this subparagraph.

To operate in El Salvador, a foreign bank branches must be part of a bank meeting the requirements of subparagraph (c) or (d).

The operations of foreign branches in El Salvador are limited by their capital in El Salvador.

A bank organized under the laws of El Salvador in which over 50 percent of the shares are owned by foreign banks or financial conglomerates shall only share names, assets or infrastructure or offer joint services to the public with other companies of the same foreign conglomerate as laid down in the *Ley de Bancos*.

## ANNEX III, Schedule of El Salvador, Section A

<b>Sector:</b>	Financial Services
<b>Subsector:</b>	Savings and Credit Institutions and Cooperatives
<b>Obligation Concerned:</b>	National Treatment (Article 12.2) Most-Favored-Nation Treatment (Article 12.3) Market Access (Article 12.4)
<b>Measures :</b>	<i>Ley de Intermediarios Financieros no Bancarios</i> , Art. 155 and 157 <i>Ley de Bancos</i> , Art. 10 <i>Ley General de Asociaciones Cooperativas</i> , Art. 1 and 16 <i>Código de Comercio</i> , Art. 17
<b>Description :</b>	Savings and credit institutions shall be subject to the same ownership requirements as set forth for banks in the preceding entry regarding the Financial Services sector, Banking Services subsector.  Savings and credit institutions and cooperatives must be incorporated in El Salvador.  The share ownership limit set forth in Article 10 of the <i>Ley de Bancos</i> shall not apply to foreign not-for-profit foundations and associations with legal personality extended, according to the laws of their countries of origin, and duly inscribed in the <i>Registro de Fundaciones y Asociaciones</i> of the <i>Ministerio de Gobernación</i> , pursuant to the <i>Ley de Fundaciones y Asociaciones de El Salvador</i> .

## ANNEX III, Schedule of El Salvador, Section A

<b>Sector:</b>	Financial Services
<b>Subsector:</b>	Bureaux de change
<b>Obligations Concerned:</b>	National Treatment (Article 12.2) Market Access (Article 12.4)
<b>Measures:</b>	<i>Ley de Casas de Cambio de Moneda Extranjera</i> , Art. 4
<b>Description:</b>	Bureaux de change must be incorporated in El Salvador. The shares of the bureaux de change shall be the property of national financial institutions or nationals of El Salvador or legal persons comprising exclusively Salvadorans.

## ANNEX III, Schedule of El Salvador, Section A

<b>Sector:</b>	Financial Services
<b>Subsector:</b>	Pension Funds Services
<b>Obligations Concerned:</b>	National Treatment (Article 12.2) Most-Favored-Nation Treatment (Article 12.3) Market Access (Article 12.4)
<b>Measures:</b>	<i>Ley del Sistema de Ahorro para Pensiones</i> , Art. 23 and 29
<b>Description:</b>	<p>Institutions that manage pension funds must be incorporated in El Salvador.</p> <p>The shares of such institutions, must be owned by the following persons who, severally or jointly, shall account for at least 50 percent of the capital:</p> <ul style="list-style-type: none"><li>(a) nationals of El Salvador or a Central American country;</li><li>(b) legal persons organized under the laws of El Salvador whose majority shareholders are natural persons described in subparagraph (a);</li><li>(c) foreign pension fund managers with three years experience in the field; and</li><li>(d) international financial entities and related investment institutions in which the <i>Banco Central de Reserva</i> has holdings.</li></ul>

## ANNEX III, Schedule of El Salvador, Section A

<b>Sector:</b>	Financial Services
<b>Subsector:</b>	Securities Market Services
<b>Obligations Concerned:</b>	National Treatment (Article 12.2) Most-Favored-Nation Treatment (Article 12.3) Market Access (Article 12.4) Senior Management and Boards of Directors (Article 12.8)
<b>Measures:</b>	<i>Ley del Mercado de Valores</i> , Arts. 21, 30, 56 and 58
<b>Description:</b>	<p>The directors or administrators of stock exchanges and the members of the boards of directors of brokerage firms must, in addition to satisfying prudential requirements, be nationals of El Salvador or a Central American country or in the case of other foreigners, have resided in the country for at least three years.</p> <p>Stock exchanges and brokerage firms must be incorporated in El Salvador.</p>

**ANNEX III, Schedule of El Salvador, Section A**

<b>Sector:</b>	Financial Services
<b>Subsector:</b>	All Subsectors
<b>Obligations Concerned:</b>	National Treatment (Article 12.2)
<b>Measures:</b>	<i>Ley del Bancos</i> , Art. 156 <i>Ley del Banco de Fomento Agropecuario</i> , Art. 14
<b>Description:</b>	The <i>Banco de Fomento Agropecuario</i> will not be member of the <i>Instituto de Garantía de Depósitos</i> .

**ANNEX III, Schedule of El Salvador, Section A**

<b>Sector:</b>	Financial Services
<b>Subsector:</b>	All Subsectors
<b>Obligations Concerned:</b>	Most-Favored-Nation Treatment (Article 12.3)
<b>Measures:</b>	<i>Tratado de Libre Comercio entre Costa Rica, El Salvador, Guatemala, Honduras, Nicaragua y Panamá</i> (As set out in the Description element.)
<b>Description:</b>	Panama may be treated as a Central American Party for the purposes of the Financial Services Chapter.

**ANNEX III, Schedule of El Salvador, Section B**

<b>Sector:</b>	Financial Services
<b>Subsector:</b>	All Subsectors Other Than Banking and Insurance
<b>Obligations Concerned:</b>	Market Access (Article 12.4)
<b>Description:</b>	El Salvador reserves the right to adopt or maintain measures requiring the incorporation in El Salvador of foreign financial institutions, other than those seeking to operate as banks or insurance companies within El Salvador.

**ANNEX III: FINANCIAL SERVICES NON-CONFORMING MEASURES****Schedule of Guatemala****Explanatory Note**

1. The Schedule of Guatemala to Annex III sets out:
  - (a) headnotes that limit or clarify the commitments of Guatemala with respect to the obligations described in clauses (i)-(v) of subparagraph (b), and in subparagraph (c);
  - (b) in Section A, pursuant to Article 12.9 (Non-Conforming Measures), the existing measures of Guatemala that do not conform to some or all of the obligations imposed by:
    - (i) Article 12.2 (National Treatment);
    - (ii) Article 12.3 (Most-Favored-Nation Treatment);
    - (iii) Article 12.4 (Market Access for Financial Institutions);
    - (iv) Article 12.5 (Cross-Border Trade); or
    - (v) Article 12.8 (Senior Management and Boards of Directors); and
  - (c) in Section B, pursuant to Article 12.9 (Non-Conforming Measures), the specific sectors, subsectors, or activities for which Guatemala may maintain existing, or adopt new or more restrictive, measures that do not conform with the obligations imposed by Article 12.2, 12.3, 12.4, 12.5, or 12.8.
2. Each entry in Section A sets out the following elements:
  - (a) Sector refers to the general sector for which the entry is made;
  - (b) Subsector refers to the specific sector for which the entry is made;
  - (c) Obligations Concerned specifies the obligation(s) referred to in subparagraph 1(b) that, pursuant to Article 12.9, do not apply to the listed measure(s);
  - (d) Level of Government indicates the level of government maintaining the listed measure(s);
  - (e) Measures identifies the laws, regulations or other measures for which the entry is made. A measure cited in the Measures element:
    - (i) means the measure as amended, continued, or renewed as of the date of entry into force of this Agreement, and

**ANNEX III, Schedule of Guatemala**

- (ii) includes any subordinate measure adopted or maintained under the authority of and consistent with the measure;
  - (f) Description provides a general, nonbinding description of the Measures.
3. Each entry in Section B sets out the following elements:
- (a) Sector refers to the general sector for which the entry is made;
  - (b) Subsector refers to the specific sector for which the entry is made;
  - (c) Obligations Concerned specifies the obligation(s) referred to in subparagraph 1(c) that, pursuant to Article 12.9, do not apply to the sectors, subsectors, or activities listed in the entry;
  - (d) Level of Government indicates the level of government maintaining the listed measure(s); and
  - (e) Description sets out the scope of the sectors, subsectors, or activities covered by the entry.
4. In the interpretation of a non-conforming measure in Section A, all elements of the non-conforming measures listing shall be considered. A non-conforming measure shall be interpreted in the light of the relevant provisions of the Financial Services Chapter with respect to which the non-conforming measure is taken. To the extent that:
- (a) the Measures element is qualified by a liberalization commitment from the Description element, if any, or a Specific Commitment from an Annex to the Financial Services Chapter, the Measures element as so qualified shall prevail over all other elements; and
  - (b) the Measures element is not so qualified, the Measures element shall prevail over all other elements, unless any discrepancy between the Measures element and the other elements considered in their totality is so substantial and material that it would be unreasonable to conclude that the Measures element should prevail, in which case the other elements shall prevail to the extent of the discrepancy.
5. For entries in Section B, in accordance with Article 12.9.4, the articles of this Agreement specified in the Obligations Concerned element of an entry do not apply to the sectors, subsectors, and activities identified in the Description element of that entry.
6. Where Guatemala maintains a measure that requires that a service supplier be a citizen, permanent resident or resident of its territory as a condition to the provision of a service in its territory, a listing for that measure taken in Annex III with respect to Articles 12.2, 12.3, 12.4, or 12.5 shall operate as a non-conforming measure with respect to Articles 10.3 (National

**ANNEX III, Schedule of Guatemala**

Treatment), 10.4 (Most-Favored-Nation Treatment) and 10.9 (Performance Requirements), to the extent of that measure.

**ANNEX III, Schedule of Guatemala***Headnotes:*

1. Commitments in these subsectors under the Agreement are undertaken subject to the limitations and conditions set forth in these headnotes and in Sections A and B below.
2. To clarify Guatemala's commitment with respect to Article 12.4, juridical persons supplying financial services and constituted under the laws of Guatemala are subject to non-discriminatory limitations on juridical form.<sup>7</sup>

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<sup>7</sup> For example, in Guatemala, the *sociedades de responsabilidad limitada*, *sociedades en comandita simple*, *sociedades en comandita por acciones* and *sociedad colectiva* are not acceptable juridical forms for financial institutions. Subsidiaries must be established as *Sociedades Anónimas*. This headnote is not itself intended to affect, or otherwise limit, a choice by a financial institution of another Party between branches, representative offices and subsidiaries.

## ANNEX III, Schedule of Guatemala, Section A

<b>Sector:</b>	Financial Services
<b>Subsector:</b>	Banking
<b>Obligations Concerned:</b>	Market Access (Article 12.4)
<b>Level of Government:</b>	Central
<b>Measures:</b>	Decree No. 19-2002 of the <i>Congreso de la República</i> , 29 April 2002, <i>Ley de Bancos y Grupos Financieros</i> , Arts. 6, 7, 18, 64, and 65 and its regulations
<b>Description:</b>	<p>A foreign bank may operate in Guatemala through:</p> <ul style="list-style-type: none"><li>(a) the establishment of branches in the Republic, and</li><li>(b) the registry of a representative office only for the promotion of business and granting of financing in the national territory.</li></ul> <p>Foreign nationals and enterprises organized under the laws of foreign countries (including banks) may also establish a bank in Guatemala in the form of a <i>Sociedad Anonima</i>.</p> <p>Operations of foreign bank branches are limited to the amount of net worth capital (shareholders' equity) related to their exposure to credit, market, and other risks. This amount may not be less than ten percent of assets and contingencies, weighted in accordance with their risk, pursuant to general regulations issued by the <i>Junta Monetaria</i>.</p>

## ANNEX III, Schedule of Guatemala, Section A

<b>Sector:</b>	Financial Services
<b>Subsector:</b>	Banking
<b>Obligations Concerned:</b>	National Treatment (Article 12.2)
<b>Level of Government:</b>	Central
<b>Measures:</b>	Decree No. 19-2002 of the <i>Congreso de la República</i> , of 29 April 2002, <i>Ley de Bancos y Grupos Financieros</i> , Art. 70
<b>Description:</b>	A capital shortfall of a branch of a foreign bank must be made up for by its head office within 30 days after it receives notice from the <i>Superintendencia de Bancos</i> . In contrast, national banks have a longer period and may take other measures to remedy the shortfall in question.

## ANNEX III, Schedule of Guatemala, Section A

<b>Sector:</b>	Financial Services
<b>Subsector:</b>	Banking
<b>Obligations Concerned:</b>	National Treatment (Article 12.2)
<b>Level of Government:</b>	Central
<b>Measures:</b>	Decree No. 25-79 of the <i>Congreso de la República, Ley Orgánica de El Crédito Hipotecario Nacional de Guatemala</i> Decree No. 46-72 of the <i>Congreso de la República, Ley Orgánica de la Corporación Financiera Nacional</i> Decree No. 1448 of the <i>Congreso de la República, Ley del Instituto de Fomento de Hipotecas Aseguradas</i>
<b>Description:</b>	The government may grant certain guarantees and advantages only to above-cited state-owned financial institutions, in accordance with the specific laws that regulate the operations of these institutions.

## ANNEX III, Schedule of Guatemala, Section A

<b>Sector:</b>	Financial Services
<b>Subsector:</b>	Banking
<b>Obligations Concerned:</b>	Market Access (Article 12.4)
<b>Level of Government:</b>	Central
<b>Measures:</b>	Decree-Law No. 208, <i>Ley de Sociedades Financieras Privadas</i> , Arts. 1o., 2o.
<b>Description:</b>	To operate in Guatemala, Private Financial Companies that are banking institutions and act as specialized financial intermediaries in investment banking operations must be established as <i>sociedades anonimas</i> .

## ANNEX III, Schedule of Guatemala, Section A

<b>Sector:</b>	Financial Services
<b>Subsector:</b>	Insurance
<b>Obligations Concerned:</b>	National Treatment (Article 12.2) Market Access (Article 12.4) Cross-Border Trade (Article 12.5)
<b>Level of Government:</b>	Central
<b>Measures:</b>	Decree-Law 473 of May 4 1966. Arts. 1, 17
<b>Description:</b>	<p>Private national insurance companies must be constituted and organized as <i>sociedades anonimas</i> and their original capital can be national or international.</p> <p>The functioning and operation of agencies and branches of foreign insurance companies is prohibited. Within four years of entry into force of this Agreement, Guatemala shall allow insurance companies to establish as branches.</p> <p>For greater certainty, only individuals and enterprises authorized by law may solicit, promote, or sell insurance, or perform any other insurance activity within the territory of Guatemala.</p> <p>Consumption abroad of insurance services not listed in Annex 12.5.1 by natural persons resident in Guatemala or juridical persons established in Guatemala is not permitted.</p>

**ANNEX III, Schedule of Guatemala, Section B**

<b>Sector:</b>	Financial Services
<b>Subsectors:</b>	All Subsectors Other Than Banking and Insurance
<b>Obligations Concerned:</b>	Market Access (Article 12.4)
<b>Description:</b>	Guatemala reserves the right to adopt or maintain measures requiring the incorporation in Guatemala of foreign financial institutions, other than those seeking to operate as banks or insurance companies within Guatemala.

**ANNEX III: FINANCIAL SERVICES NON-CONFORMING MEASURES****Schedule of Honduras****Explanatory Note**

1. The Schedule of Honduras to Annex III sets out:
  - (a) headnotes that limit or clarify the commitments of Honduras with respect to the obligations described in clauses (i)-(v) of subparagraph (b), and in subparagraph (c);
  - (b) in Section A, pursuant to Article 12.9 (Non-Conforming Measures), the existing measures of Honduras that do not conform to some or all of the obligations imposed by:
    - (i) Article 12.2 (National Treatment);
    - (ii) Article 12.3 (Most-Favored-Nation Treatment);
    - (iii) Article 12.4 (Market Access for Financial Institutions);
    - (iv) Article 12.5 (Cross-Border Trade); or
    - (v) Article 12.8 (Senior Management and Boards of Directors); and
  - (c) in Section B, pursuant to Article 12.9 (Non-Conforming Measures), the specific sectors, subsectors, or activities for which Honduras may maintain existing, or adopt new or more restrictive, measures that do not conform with the obligations imposed by Article 12.2, 12.3, 12.4, 12.5, or 12.8.
2. Each entry in Section A sets out the following elements:
  - (a) Sector refers to the general sector for which the entry is made;
  - (b) Subsector refers to the specific sector for which the entry is made;
  - (c) Obligations Concerned specifies the obligation(s) referred to in subparagraph 1(b) that, pursuant to Article 12.9, do not apply to the listed measure(s);
  - (d) Level of Government indicates the level of government maintaining the listed measure(s);

## ANNEX III, Schedule of Honduras

- (e) Measures identifies the laws, regulations or other measures for which the entry is made. A measure cited in the Measures element:
    - (i) means the measure as amended, continued, or renewed as of the date of entry into force of this Agreement, and
    - (ii) includes any subordinate measure adopted or maintained under the authority of and consistent with the measure;
  - (f) Description provides a general, nonbinding description of the Measures.
3. Each entry in Section B sets out the following elements:
- (a) Sector refers to the general sector for which the entry is made;
  - (b) Subsector refers to the specific sector for which the entry is made;
  - (c) Obligations Concerned specifies the obligation(s) referred to in subparagraph 1(c) that, pursuant to Article 12.9, do not apply to the sectors, subsectors, or activities listed in the entry;
  - (d) Level of Government indicates the level of government maintaining the listed measure(s); and
  - (e) Description sets out the scope of the sectors, subsectors, or activities covered by the entry.
4. In the interpretation of a non-conforming measure in Section A, all elements of the non-conforming measures listing shall be considered. A non-conforming measure shall be interpreted in the light of the relevant provisions of the Financial Services Chapter with respect to which the non-conforming measure is taken. To the extent that:
- (a) the Measures element is qualified by a liberalization commitment from the Description element, if any, or a Specific Commitment from an Annex to the Financial Services Chapter, the Measures element as so qualified shall prevail over all other elements; and
  - (b) the Measures element is not so qualified, the Measures element shall prevail over all other elements, unless any discrepancy between the Measures element and the other elements considered in their totality is so substantial and material that it would be unreasonable to conclude that the Measures element should prevail, in which case the other elements shall prevail to the extent of the discrepancy.

**ANNEX III, Schedule of Honduras**

5. For entries in Section B, in accordance with Article 12.9.4, the articles of this Agreement specified in the Obligations Concerned element of an entry do not apply to the sectors, subsectors, and activities identified in the Description element of that entry.
6. Where Honduras maintains a measure that requires that a service supplier be a citizen, permanent resident or resident of its territory as a condition to the provision of a service in its territory, a listing for that measure taken in Annex III with respect to Articles 12.2, 12.3, 12.4, or 12.5 shall operate as a non-conforming measure with respect to Articles 10.3 (National Treatment), 10.4 (Most-Favored-Nation Treatment) and 10.9 (Performance Requirements), to the extent of that measure.

**ANNEX III, Schedule of Honduras**

*Headnotes*

1. Commitments in these subsectors under the Agreement are undertaken subject to the limitations and conditions set forth in these headnotes and in Sections A and B below.
2. To clarify the Honduran commitment with respect to Article 12.4, juridical persons supplying financial services and constituted under the laws of the Honduras are subject to non-discriminatory limitations on juridical form.<sup>1</sup>

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<sup>1</sup> This headnote is not itself intended to affect, or otherwise limit, a choice by a financial institution of another Party between branches or subsidiaries.

## ANNEX III, Schedule of Honduras, Section A

<b>Sector:</b>	Financial Services
<b>Subsector:</b>	Banking and Other Financial Services, Banks, and Loan Associations, Financial Companies
<b>Obligations Concerned:</b>	National Treatment (Article 12.2) Most Favored Nation Treatment (Article 12.3) Market Access (Article 12.4)
<b>Level of Government:</b>	Central
<b>Measures:</b>	<i>Ley de Instituciones del Sistema Financiero</i> , Decree No. 170-95, Arts. 5, 17, 18 (a) and (b), and 38  Decree No. 60-99 of 3 June 1999
<b>Description:</b>	Foreign financial institutions must establish as corporations ( <i>sociedades anonimas</i> ), as branches, or as representative offices in conformity with the above-cited measures.  Operations of branches or agencies of foreign banks is limited to the amount of capital assigned to the offices operating in Honduras. Branches or agencies of foreign banks may only publish the amount of capital effectively assigned to the offices operating in the country and their respective capital reserves.  The <i>Banco Central de Honduras</i> shall not permit the opening of branches or agencies of foreign banks when there is no reciprocity in their country of origin. <sup>2</sup>

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<sup>2</sup> In this context, a lack of reciprocity means that the law of another country completely excludes the possibility of establishing as a foreign branch.

**ANNEX III, Schedule of Honduras, Section A**

<b>Sector:</b>	Financial Services
<b>Subsector:</b>	Bureaus of Exchange
<b>Obligations Concerned:</b>	National Treatment (Article 12.2) Market Access (Article 12.4)
<b>Level of Government:</b>	Central
<b>Measures:</b>	<i>Ley de Casas de Cambio</i> , Decree No. 16-92, Art. 4
<b>Description:</b>	Currency exchange bureaus in Honduras must be constituted as public corporations.  The shareholders of currency exchange bureaus must be natural persons with Honduran nationality.

**ANNEX III, Schedule of Honduras, Section A**

<b>Sector:</b>	Financial Services
<b>Subsector:</b>	Securities Exchanges
<b>Obligations Concerned:</b>	Market Access (Article 12.4)
<b>Level of Government:</b>	Central
<b>Measures:</b>	Decree No. 8- 2001, <i>Ley de Mercado de Valores</i> , Art. 21
<b>Description:</b>	A securities exchange operating in Honduras must be constituted as a public corporation.

**ANNEX III, Schedule of Honduras, Section A**

<b>Sector:</b>	Financial Services
<b>Subsector:</b>	Securities Firms
<b>Obligations Concerned:</b>	Market Access (Article 12.4)
<b>Level of Government:</b>	Central
<b>Measures:</b>	Decree No. 8-2001, <i>Ley de Mercado de Valores</i> , Art. 49
<b>Description:</b>	Securities firms in Honduras must be constituted as public corporations.

## ANNEX III, Schedule of Honduras, Section A

<b>Sector:</b>	Financial Services
<b>Subsector:</b>	Fund Administration Companies
<b>Obligations Concerned:</b>	Market Access (Article 12.4)
<b>Level of Government:</b>	Central
<b>Measures:</b>	Decree No. 8-21, <i>Ley de Mercado de Valores</i> , Art. 82. Art. 3 of the <i>Reglamento de las Sociedades Administradoras de Fondos</i> , approved under Resolution No. 171/11-02-2003
<b>Description:</b>	Fund Administration Companies in Honduras must be constituted as public corporations with the exclusive social purpose of administering one or more mutual funds and/or investment funds in accordance with the laws on that matter.

**ANNEX III, Schedule of Honduras, Section A**

<b>Sector:</b>	Financial Services
<b>Subsector:</b>	Centralized Depositories for the Custody, Compensation and Liquidation of Shares
<b>Obligations Concerned:</b>	Market Access (Article 12.4)
<b>Level of Government:</b>	Central
<b>Measures:</b>	Decree No. 8-2001, <i>Ley de Mercado de Valores</i> , Art. 139
<b>Description:</b>	Depositories for the custody, compensation and liquidation of shares in Honduras must be constituted as public corporations.

## ANNEX III, Schedule of Honduras, Section A

<b>Sector:</b>	Financial Services
<b>Subsector:</b>	Insurance and Reinsurance
<b>Obligations Concerned:</b>	National Treatment (Article 12.2)
<b>Level of Government:</b>	Central
<b>Measures:</b>	Decree No. 22-2001, <i>Ley de Instituciones de Seguros y Reaseguros</i> , Arts. 9, 21, 47, 58, 96, 97  <i>Reglamento de Establecimientos de Sucursales de Instituciones de Seguros Extranjeras, de la Comisión Nacional de Bancos y Seguros</i> , approved under Resolution No. 948/05-08-2003, Arts. 4 and 7, published in the <i>Diario Oficial "La Gaceta,"</i> 15 August 2003.  <i>Reglamento de Ajustadores de pérdidas y Auxiliadores de Seguros</i> , approved under Resolution No. 947/05-08-2003 of the <i>Comisión Nacional de Bancos y Seguros</i> on 8 August 2003, Art. 3, published in the <i>Diario Oficial "La Gaceta,"</i> 15 August 2003  Resolution No. 443 of 11 December 2003, Art. 7, subparagraph (k)
<b>Description:</b>	Foreign insurance institutions seeking to establish in Honduras must deposit at least ten percent of the minimum capital of the proposed company in either the <i>Banco Central de Honduras</i> or invest the above amount in State securities. This deposit will be refunded once the application is approved or resolved.  To act as an insurance agent or broker, a natural person must be a Honduran national or a resident of Honduras for at least three consecutive years.  To serve as an adjuster or claim liquidator, accident investigator, or damage inspector, a natural person must be a Honduran national or legal resident in Honduras.

**ANNEX III, Schedule of Honduras, Section B**

<b>Sector:</b>	Financial Services
<b>Subsector:</b>	Savings and Loan Cooperatives
<b>Obligations Concerned:</b>	National Treatment (Article 12.2) Most-Favored-Nation Treatment (Article 12.3) Market Access (Article 12.4) Senior Management and Boards of Directors (Article 12.8)
<b>Level of Government:</b>	Central
<b>Description:</b>	Honduras reserves the right to adopt or maintain non-conforming measures with respect to the supply of services by Savings and Loan Cooperatives.

**ANNEX III, Schedule of Honduras, Section B**

<b>Sector:</b>	Financial Services
<b>Subsector:</b>	All Subsectors Other Than Banking and Insurance
<b>Obligations Concerned:</b>	Market Access (Article 12.4)
<b>Level of Government:</b>	Central
<b>Description:</b>	Honduras reserves the right to adopt or maintain measures requiring the incorporation in Honduras of foreign financial institutions, other than those seeking to operate as banks or insurance companies within Honduras.

**ANNEX III: FINANCIAL SERVICES NON-CONFORMING MEASURES****Schedule of Nicaragua****Explanatory Note**

1. The Schedule of Nicaragua to Annex III sets out:
  - (a) headnotes that limit or clarify the commitments of Nicaragua with respect to the obligations described in clauses (i)-(v) of subparagraph (b), and in subparagraph (c);
  - (b) in Section A, pursuant to Article 12.9 (Non-Conforming Measures), the existing measures of Nicaragua that do not conform to some or all of the obligations imposed by:
    - (i) Article 12.2 (National Treatment);
    - (ii) Article 12.3 (Most-Favored-Nation Treatment);
    - (iii) Article 12.4 (Market Access for Financial Institutions);
    - (iv) Article 12.5 (Cross-Border Trade); or
    - (v) Article 12.8 (Senior Management and Boards of Directors); and
  - (c) in Section B, pursuant to Article 12.9 (Non-Conforming Measures), the specific sectors, subsectors, or activities for which Nicaragua may maintain existing, or adopt new or more restrictive, measures that do not conform with the obligations imposed by Article 12.2, 12.3, 12.4, 12.5, or 12.8.
2. Each entry in Section A sets out the following elements:
  - (a) Sector refers to the general sector for which the entry is made;
  - (b) Subsector refers to the specific sector for which the entry is made;
  - (c) Obligations Concerned specifies the obligation(s) referred to in subparagraph 1(b) that, pursuant to Article 12.9, do not apply to the listed measure(s);
  - (d) Level of Government indicates the level of government maintaining the listed measure(s);
  - (e) Measures identifies the laws, regulations or other measures for which the entry is made. A measure cited in the Measures element:
    - (i) means the measure as amended, continued, or renewed as of the date of entry into force of this Agreement, and

**ANNEX III, Schedule of Nicaragua**

- (ii) includes any subordinate measure adopted or maintained under the authority of and consistent with the measure;
  - (f) Description provides a general, nonbinding description of the Measures.
3. Each entry in Section B sets out the following elements:
- (a) Sector refers to the general sector for which the entry is made;
  - (b) Subsector refers to the specific sector for which the entry is made;
  - (c) Obligations Concerned specifies the obligation(s) referred to in subparagraph 1(c) that, pursuant to Article 12.9, do not apply to the sectors, subsectors, or activities listed in the entry;
  - (d) Level of Government indicates the level of government maintaining the listed measure(s); and
  - (e) Description sets out the scope of the sectors, subsectors, or activities covered by the entry.
4. In the interpretation of a non-conforming measure in Section A, all elements of the non-conforming measures listing shall be considered. A non-conforming measure shall be interpreted in the light of the relevant provisions of the Financial Services Chapter with respect to which the non-conforming measure is taken. To the extent that:
- (a) the Measures element is qualified by a liberalization commitment from the Description element, if any, or a Specific Commitment from an Annex to the Financial Services Chapter, the Measures element as so qualified shall prevail over all other elements; and
  - (b) the Measures element is not so qualified, the Measures element shall prevail over all other elements, unless any discrepancy between the Measures element and the other elements considered in their totality is so substantial and material that it would be unreasonable to conclude that the Measures element should prevail, in which case the other elements shall prevail to the extent of the discrepancy.
5. For entries in Section B, in accordance with Article 12.9.4, the articles of this Agreement specified in the Obligations Concerned element of an entry do not apply to the sectors, subsectors, and activities identified in the Description element of that entry.
6. Where Nicaragua maintains a measure that requires that a service supplier be a citizen, permanent resident or resident of its territory as a condition to the provision of a service in its territory, a listing for that measure taken in Annex III with respect to Articles 12.2, 12.3, 12.4, or 12.5 shall operate as a non-conforming measure with respect to Articles 10.3 (National

**ANNEX III, Schedule of Nicaragua**

Treatment), 10.4 (Most-Favored-Nation Treatment) and 10.9 (Performance Requirements), to the extent of that measure.

**ANNEX III, Schedule of Nicaragua**

*Headnotes*

1. Commitments in these subsectors under the Agreement, are undertaken subject to the limitations and conditions set forth in these headnotes and in Sections A and B below.
2. In order to clarify the Nicaraguan commitment with respect to Article 12.4, juridical persons supplying financial services and organized under the laws of Nicaragua are subject to non-discriminatory limitations on juridical form.

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<sup>1</sup> For example, partnerships and sole proprietorships are generally not acceptable juridical forms for depository financial institutions in Nicaragua. This headnote is not itself intended to affect, or otherwise limit, a choice by a financial institution of another Party between branches or subsidiaries.

## ANNEX III, Schedule of Nicaragua, Section A

<b>Sector:</b>	Financial Services
<b>Subsector:</b>	Banking
<b>Obligations Concerned:</b>	National Treatment (Article 12.2) Market Access (Article 12.4)
<b>Measures:</b>	<i>Ley General de Bancos, Instituciones Financieras no Bancarias y Grupos Financieros. Ley No. 314 de 1999 (publicada en La Gaceta, Diario Oficial, Nos. 198, 199 y 200 del 18, 19 y 20 de octubre de 1999)</i>
<b>Description:</b>	<b>Bank Branches:</b> The capital that foreign banks assign to their branches in Nicaragua must be effectively paid and deposited in Nicaragua. Based on such capital, the branch will be able to grant loans. A branch of a bank established under the laws of a foreign country is not allowed to grant loans based on the capital and reserves of its headquarters.

## ANNEX III, Schedule of Nicaragua, Section A

<b>Sector:</b>	Financial Services
<b>Subsector:</b>	Non-Banking Financial Institutions and Other Financial Services (Excluding Insurance).
<b>Obligations Concerned:</b>	National Treatment (Article 12.2) Market Access (Article 12.4)
<b>Measures:</b>	<i>Ley Especial sobre Sociedades Financieras, de Inversiones y Otras. Decreto No. 15-L, (publicada en La Gaceta, Diario Oficial, No. 77 del 10 de abril de 1970, y modificada por Decreto No. 1698, publicado en La Gaceta, Diario Oficial, No. 138 del 22 de junio de 1970)</i>  <i>Ley General de Bancos, Instituciones Financieras no Bancarias y Grupos Financieros. Ley No. 314 de 1999 (publicada en La Gaceta, Diario Oficial, Nos. 198, 199 y 200 del 18, 19 y 20 de octubre de 1999)</i>
<b>Description:</b>	The capital that foreign non-banking financial institutions assign to their branches in Nicaragua must be effectively paid and deposited in Nicaragua. Branches of such non-banking financial institutions that accept deposits from the public are not allowed to grant loans based on the capital and reserves of their headquarters.

## ANNEX III, Schedule of Nicaragua, Section A

<b>Sector:</b>	Financial Services
<b>Subsector:</b>	Insurance
<b>Obligations Concerned:</b>	Market Access (Article 12.4) Cross-Border Trade (Article 12.5) Senior Management and Board of Directors (Article 12.8)
<b>Measures:</b>	<p><i>Ley General de Instituciones de Seguros. Decreto No. 1727 de 1970 (publicada en La Gaceta, Diario Oficial No. 270 del 26 de noviembre de 1970) y sus Reformas por Ley No. 227 de 1996 (publicada en La Gaceta, Diario Oficial No. 150 del 12 de agosto de 1996)</i></p> <p><i>Ley General de Bancos, Instituciones Financieras no Bancarias y Grupos Financieros. Ley No. 314 de 1999 (publicada en La Gaceta, Diario Oficial, Nos. 198, 199 y 200 del 18, 19 y 20 de octubre de 1999)</i></p> <p><i>Normas Regulatorias para la autorización de intermediarios de Seguros y el ejercicio de sus funciones de intermediación. Resolución: SIB-OIF-IV-26-96 (publicado en La Gaceta, Diario Oficial No. 13 del 20 de enero de 1997)</i></p>
<b>Description:</b>	<p>Insurance and reinsurance activities may only be practiced by juridical persons constituted and domiciled in Nicaragua in the form of public corporations (<i>sociedades anónimas</i>) or by an autonomous state entity authorized by its constitutive law.</p> <p>Natural or legal persons domiciled in Nicaragua are prohibited from contracting for insurance with institutions not duly authorized to operate in the country.</p> <p>Agencies or branches of insurance companies established in foreign countries are prohibited to operate in Nicaragua.</p> <p>Members of the Board of Directors of an insurance company must be residents of Nicaragua.</p> <p>An insurance company cannot retain net premiums issued for an amount three times superior than its capital.</p>

## ANNEX III, Schedule of Nicaragua, Section A

<b>Sector:</b>	Financial Services
<b>Subsector:</b>	Pension Funds
<b>Obligations Concerned:</b>	Market Access (Article 12.4)
<b>Measures:</b>	<i>Ley Orgánica de la Superintendencia de Pensiones. Ley No. 388 (publicada en La Gaceta, Diario Oficial del 8 de mayo del 2001)</i>  <i>Reglamento de la Ley Orgánica de la Superintendencia de Pensiones. Decreto No. 64-2001</i>  <i>Ley del Sistema de Ahorro para Pensiones. Ley No-340 (La Gaceta, Diario Oficial, No. 72 del 11 de abril del 2000)</i>  <i>Reglamento General de la Ley del Sistema de Ahorro para Pensiones. Decreto No. 55-22</i>
<b>Description:</b>	Only juridical persons constituted and domiciled in Nicaragua in the form of public corporations ( <i>sociedades anónimas</i> ) may administer pension funds.

**ANNEX III, Schedule of Nicaragua, Section B**

<b>Sector:</b>	Financial Services
<b>Subsector:</b>	All Subsectors Other Than Banking and Insurance
<b>Obligations Concerned:</b>	Market Access (Article 12.4)
<b>Description:</b>	Nicaragua reserves the right to adopt or maintain measures requiring the incorporation in Nicaragua of foreign financial institutions, excluding those seeking to operate as banks or insurance companies within Nicaragua.

**ANNEX III, Schedule of Nicaragua, Section B**

<b>Sector:</b>	Financial Services
<b>Obligations Concerned:</b>	National Treatment (Article 12.2)
<b>Description:</b>	<p>Nicaragua reserves the right to accord benefits to financial institutions or public entities wholly or majority owned by the State that supply financial services and are established with a public interest purpose, including but not limited to agriculture production finance, housing credits for low income families, and credits for small and midsize enterprises.</p> <p>Such benefits shall not disadvantage the core operations of commercial competitors and include, but are not limited to: extension of State guarantees, tax exemptions, exceptions to the usual juridical form requirements, and the legal requirements to begin operations.</p>

**ANNEX III: FINANCIAL SERVICES NON-CONFORMING MEASURES****Schedule of the United States****Explanatory Note**

1. The Schedule of the United States to Annex III sets out:
  - (a) headnotes that limit or clarify the commitments of the United States with respect to the obligations described in clauses (i)-(v) of subparagraph (b), and in subparagraph (c);
  - (b) in Section A, pursuant to Article 12.9, the existing measures of the United States that do not conform to some or all of the obligations imposed by:
    - (i) Article 12.2 (National Treatment);
    - (ii) Article 12.3 (Most-Favored-Nation Treatment);
    - (iii) Article 12.4 (Market Access for Financial Institutions);
    - (iv) Article 12.5 (Cross-Border Trade); or
    - (v) Article 12.8 (Senior Management and Boards of Directors); and
  - (c) in Section B, pursuant to Article 12.9, the specific sectors, subsectors, or activities for which the United States may maintain existing, or adopt new or more restrictive, measures that do not conform with the obligations imposed by Article 12.2, 12.3, 12.4, 12.5, or 12.8.
2. Each entry in Section A sets out the following elements:
  - (a) Sector refers to the general sector for which the entry is made;
  - (b) Subsector refers to the specific sector for which the entry is made;
  - (c) Obligations Concerned specifies the obligation(s) referred to in subparagraph 1(b) that, pursuant to Article 12.9, do not apply to the listed measure(s);
  - (d) Level of Government indicates the level of government maintaining the listed measure(s);
  - (e) Measures identifies the laws, regulations, or other measures for which the entry is made. A measure cited in the Measures element:
    - (i) means the measure as amended, continued, or renewed as of the date of entry into force of this Agreement, and

## ANNEX III, Schedule of the United States

- (ii) includes any subordinate measure adopted or maintained under the authority of and consistent with the measure;
- (f) **Description**
- (i) for entries related to banking and other non-insurance financial services, sets out the non-conforming aspects of the entry and the subsector, financial institution, or activities covered by the entry; and
  - (ii) for entries related to insurance, provides a general, nonbinding description of the **Measures**.
3. Each entry in Section B sets out the following elements:
- (a) **Sector** refers to the general sector for which the entry is made;
  - (b) **Subsector** refers to the specific sector for which the entry is made;
  - (c) **Obligations Concerned** specifies the obligation(s) referred to in subparagraph 1(c) that, pursuant to Article 12.9, do not apply to the sectors, subsectors, or activities listed in the entry;
  - (d) **Level of Government** indicates the level of government maintaining the listed measure(s); and
  - (e) **Description** sets out the scope of the sectors, subsectors, or activities covered by the entry.
4. For entries in Section A, in accordance with Article 12.9.1(a), the articles of this Agreement specified in the **Obligations Concerned** element of an entry do not apply to the law, regulation or other measure identified in the **Measures** element or in the **Description** element of that entry, except to the extent the measure identified in the **Measures** or the **Description** element has been modified by a Specific Commitment in an Annex to the Financial Services Chapter.
5. For entries in Section B, in accordance with Article 12.9.4, the articles of this Agreement specified in the **Obligations Concerned** element of an entry do not apply to the sectors, subsectors, and activities identified in the **Description** element of that entry.
6. Where the United States maintains a measure that requires that a service supplier be a citizen, permanent resident, or resident of its territory as a condition to the provision of a service in its territory, a listing for that measure taken in Annex III with respect to Articles 12.2, 12.3, 12.4, or 12.5 shall operate as a non-conforming measure with respect to Articles 10.3 (National Treatment), 10.4 (Most-Favored-Nation Treatment), and 10.9 (Performance Requirements), to the extent of that measure.

**ANNEX III, Schedule of the United States***Headnotes*

1. Commitments in these subsectors under the Agreement are undertaken subject to the limitations and conditions set forth in these headnotes and in Sections A and B below.
2. National treatment commitments in these subsectors are subject to the following limitations:
  - (a) National treatment with respect to banking will be provided based upon the foreign bank's "home state" in the United States, as that term is defined under the International Banking Act, where that Act is applicable. A domestic bank subsidiary of a foreign firm will have its own "home state," and national treatment will be provided based upon the subsidiary's home state, as determined under applicable law.<sup>1</sup>
  - (b) National treatment with respect to insurance financial institutions will be provided according to a non-U.S. insurance financial institution's state of domicile, where applicable, in the United States. State of domicile is defined by individual states, and is generally the state in which an insurer either is incorporated, is organized or maintains its principal office in the United States.
3. To clarify the U.S. commitment with respect to Article 12.4, juridical persons supplying banking or other financial services (excluding insurance) and constituted under the laws of the United States are subject to non-discriminatory limitations on juridical form.<sup>2</sup>
4. The United States limits its commitments under Article 12.9.1(c) with respect to Article 12.4 (Market Access) in the following manner:
  - (a) With regard to banking and other financial services (excluding insurance), Article 12.9.1(c) shall apply only to non-conforming measures relating to Article 12.4(a) and not to those non-conforming measures relating to Article 12.4(b); and
  - (b) With regard to insurance, Article 12.9.1(c) shall not apply to non-conforming measures relating to Article 12.4.

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<sup>1</sup> Foreign banking organizations are generally subject to geographic and other limitations in the United States on a national treatment basis. Where such limitations do not conform to national treatment, they have been listed as non-conforming measures. For purposes of illustration, under this approach, the following situation does not accord national treatment and would therefore be listed as a non-conforming measure: a foreign bank from a particular home state is accorded less favorable treatment than that accorded to a domestic bank from that state with respect to expansion by branching.

<sup>2</sup> For example, partnerships and sole proprietorships are generally not acceptable juridical forms for depository financial institutions in the United States. This headnote is not itself intended to affect, or otherwise limit, a choice by a financial institution of another Party between branches or subsidiaries.

**ANNEX III, Schedule of the United States, Section A**

<b>Sector:</b>	Financial Services
<b>Subsector:</b>	Banking and Other Financial Services (Excluding Insurance)
<b>Obligations Concerned:</b>	Senior Management & Boards of Directors (Article 12.8)
<b>Level of Government:</b>	Central
<b>Measures:</b>	12 U.S.C. § 72
<b>Description:</b>	All directors of a national bank must be U.S. citizens, except that the Comptroller of the Currency may waive the citizenship requirement for not more than a minority of the total number of directors.

## ANNEX III, Schedule of the United States, Section A

<b>Sector:</b>	Financial Services
<b>Subsector:</b>	Banking and Other Financial Services (Excluding Insurance)
<b>Obligations Concerned:</b>	National Treatment (Article 12.2) Market Access (Article 12.4)
<b>Level of Government:</b>	Central
<b>Measures:</b>	12 U.S.C. § 619
<b>Description:</b>	Foreign ownership of Edge corporations is limited to foreign banks and U.S. subsidiaries of foreign banks, while domestic non-bank firms may own such corporations.

**ANNEX III, Schedule of the United States, Section A**

<b>Sector:</b>	Financial Services
<b>Subsector:</b>	Banking and Other Financial Services (Excluding Insurance)
<b>Obligations Concerned:</b>	National Treatment (Article 12.2) Market Access (Article 12.4)
<b>Level of Government:</b>	Central
<b>Measures:</b>	12 U.S.C. § 1463 <i>et seq.</i> & 12 U.S.C. § 1751 <i>et seq.</i>
<b>Description:</b>	Federal and state laws do not permit a credit union, savings bank, or savings association (both of the latter two entities may be also called thrift institutions) in the United States to be established through branches of corporations organized under a foreign country's law.

**ANNEX III, Schedule of the United States, Section A**

<b>Sector:</b>	Financial Services
<b>Subsector:</b>	Banking and Other Financial Services (Excluding Insurance)
<b>Obligations Concerned:</b>	National Treatment (Article 12.2) Market Access (Article 12.4)
<b>Level of Government:</b>	Central
<b>Measures:</b>	12 U.S.C. § 3104(d)
<b>Description:</b>	In order to accept or maintain domestic retail deposits of less than \$100,000, a foreign bank must establish an insured banking subsidiary. This requirement does not apply to a foreign bank branch that was engaged in insured deposit-taking activities on December 19, 1991.

## ANNEX III, Schedule of the United States, Section A

<b>Sector:</b>	Financial Services
<b>Subsector:</b>	Banking and Other Financial Services (Excluding Insurance)
<b>Obligations Concerned:</b>	National Treatment (Article 12.2)
<b>Level of Government:</b>	Central
<b>Measures:</b>	15 U.S.C. §§ 80b-2, 80b-3
<b>Description:</b>	Foreign banks are required to register as investment advisers under the Investment Advisers Act of 1940 to engage in securities advisory and investment management services in the United States, while domestic banks* (or a separately identifiable department or division of the bank) are exempt from registration unless they advise registered investment companies. The registration requirement involves record maintenance, inspections, submission of reports, and payment of a fee.

\* For greater clarity, "domestic banks" include U.S. bank subsidiaries of foreign banks.

**ANNEX III, Schedule of the United States, Section A**

<b>Sector:</b>	Financial Services
<b>Subsector:</b>	Banking and Other Financial Services (Excluding Insurance)
<b>Obligations Concerned:</b>	National Treatment (Article 12.2)
<b>Level of Government:</b>	Central
<b>Measures:</b>	12 U.S.C. §§ 221, 302, 321
<b>Description:</b>	Foreign banks cannot be members of the Federal Reserve System, and thus may not vote for directors of a Federal Reserve Bank. Foreign-owned bank subsidiaries are not subject to this measure.

**ANNEX III, Schedule of the United States, Section A**

<b>Sector:</b>	Financial Services
<b>Subsector:</b>	Banking and Other Financial Services (Excluding Insurance)
<b>Obligations Concerned:</b>	Market Access (Article 12.4)
<b>Level of Government:</b>	Central
<b>Measures:</b>	12 U.S.C. § 36(g); 12 U.S.C. § 1828(d)(4); 12 U.S.C. § 1831u(a)(4)
<b>Description:</b>	The United States undertakes no commitment with respect to Article 12.4(b) (Market Access) in relation to the expansion, via the establishment of a branch or the acquisition of one or more branches of a bank without acquisition of the entire bank, by a foreign bank into another state from its "home state," as that term is defined under applicable law. Except as provided elsewhere in this schedule, such expansion shall be accorded on a national treatment basis in accordance with headnote 2(a).

**ANNEX III, Schedule of the United States, Section A**

<b>Sector:</b>	Financial Services
<b>Subsector:</b>	Banking and Other Financial Services (Excluding Insurance)
<b>Obligations Concerned:</b>	Market Access (Article 12.4)
<b>Level of Government:</b>	Central
<b>Measures:</b>	12 U.S.C. § 1831u
<b>Description:</b>	Interstate expansion by a foreign bank through the establishment of branches by merger with a bank located outside the "home state," as that term is defined under applicable law, of a foreign bank shall be accorded on a national treatment basis in accordance with headnote 2(a), except as provided elsewhere in this schedule.

## ANNEX III, Schedule of the United States, Section A

<b>Sector:</b>	Financial Services
<b>Subsector:</b>	Banking and Other Financial Services (Excluding Insurance)
<b>Obligations Concerned:</b>	National Treatment (Article 12.2) Market Access (Article 12.4)
<b>Level of Government:</b>	Central
<b>Measures:</b>	12 U.S.C. § 3102(a)(1); 12 U.S.C. § 3103(a); 12 U.S.C. § 3102(d)
<b>Description:</b>	<p>Establishment of a federal branch or agency by a foreign bank is not available in the following states that may prohibit establishment of a branch or agency by a foreign bank:</p> <ul style="list-style-type: none"><li>• Branches and agencies may be prohibited in Alabama, Kansas, Maryland, North Dakota, and Wyoming.</li><li>• Branches, but not agencies, may be prohibited in Delaware, Florida, Georgia, Idaho, Louisiana, Mississippi, Missouri, Oklahoma, Texas, and West Virginia.</li></ul> <p>Certain restrictions on fiduciary powers apply to federal agencies.</p> <p>Note: The cited federal measures provide that certain state law restrictions shall apply to the establishment of federal branches or agencies.</p>

**ANNEX III, Schedule of the United States, Section A**

<b>Sector:</b>	Financial Services
<b>Subsector:</b>	Banking and Other Financial Services (Excluding Insurance)
<b>Obligations Concerned:</b>	Most-Favored-Nation Treatment (Article 12.3) Market Access (Article 12.4)
<b>Level of Government:</b>	Central
<b>Measures:</b>	15 U.S.C. § 77jjj(a)(1)
<b>Description:</b>	The authority to act as a sole trustee of an indenture for a bond offering in the United States is subject to a reciprocity test.

## ANNEX III, Schedule of the United States, Section A

<b>Sector:</b>	Financial Services
<b>Subsector:</b>	Banking and Other Financial Services (Excluding Insurance)
<b>Obligations Concerned:</b>	Most-Favored-Nation Treatment (Article 12.3) Market Access (Article 12.4)
<b>Level of Government:</b>	Central
<b>Measures:</b>	22 U.S.C. §§ 5341-5342
<b>Description:</b>	Designation as a primary dealer in U.S. government debt securities is conditioned on reciprocity.

**ANNEX III, Schedule of the United States, Section A**

<b>Sector:</b>	Financial Services
<b>Subsector:</b>	Banking and Other Financial Services (Excluding Insurance)
<b>Obligations Concerned:</b>	Most-Favored-Nation Treatment (Article 12.3)
<b>Level of Government:</b>	Central
<b>Measures:</b>	15 U.S.C. § 78o(c)
<b>Description:</b>	A broker-dealer registered under U.S. law that has its principal place of business in Canada may maintain its required reserves in a bank in Canada subject to the supervision of Canada.

## ANNEX III, Schedule of the United States, Section A

<b>Sector:</b>	Financial Services
<b>Subsector:</b>	Banking and Other Financial Services (Excluding Insurance)
<b>Obligations Concerned:</b>	National Treatment (Article 12.2)
<b>Level of Government:</b>	Central
<b>Measures:</b>	12 U.S.C. § 1421 <i>et seq.</i> (Federal Home Loan Banks); 12 U.S.C. § 1451 <i>et seq.</i> (Federal Home Loan Mortgage Corporation); 12 U.S.C. § 1717 <i>et seq.</i> (Federal National Mortgage Association); 12 U.S.C. § 2011 <i>et seq.</i> (Farm Credit Banks); 12 U.S.C. § 2279aa-1 <i>et seq.</i> (Federal Agricultural Mortgage Corporation); 20 U.S.C. § 1087-2 <i>et seq.</i> (Student Loan Marketing Association)
<b>Description:</b>	<p>The United States may grant advantages, including but not limited to the following, to one or more of the Government-Sponsored Enterprises (GSEs) listed above:</p> <ul style="list-style-type: none"> <li>• Capital, reserves and income of the GSE are exempt from certain taxation.</li> <li>• Securities issued by the GSE are exempt from registration and periodic reporting requirements under federal securities laws.</li> <li>• The U.S. Treasury may, in its discretion, purchase obligations issued by the GSE.</li> </ul>

**ANNEX III, Schedule of the United States, Section A**

<b>Sector:</b>	Financial Services
<b>Subsector:</b>	Banking and Other Financial Services (Excluding Insurance)
<b>Obligations Concerned:</b>	National Treatment (Article 12.2) Most-Favored-Nation Treatment (Article 12.3) Market Access (Article 12.4) Senior Management and Boards of Directors (Article 12.8)
<b>Level of Government:</b>	Regional
<b>Measures:</b>	All existing non-conforming measures of all states, the District of Columbia, and Puerto Rico
<b>Description:</b>	

**ANNEX III, Schedule of the United States, Section A**

<b>Sector:</b>	Financial Services
<b>Subsector:</b>	Insurance
<b>Obligations Concerned:</b>	National Treatment (Article 12.2) Cross-Border Trade (Article 12.5)
<b>Level of Government:</b>	Central
<b>Measures:</b>	31 U.S.C. § 9304
<b>Description:</b>	Branches of foreign insurance companies are not permitted to provide surety bonds for U.S. Government contracts.

**ANNEX III, Schedule of the United States, Section A**

<b>Sector:</b>	Financial Services
<b>Subsector</b>	Insurance
<b>Obligations Concerned:</b>	National Treatment (Article 12.2) Cross-Border Trade (Article 12.5)
<b>Level of Government:</b>	Central
<b>Measures:</b>	46 C.F.R. § 249.9
<b>Description:</b>	When more than 50 percent of the value of a maritime vessel whose hull was built under federally guaranteed mortgage funds is insured by a non-U.S. insurer, the insured must demonstrate that the risk was substantially first offered in the U.S. market.

**ANNEX III, Schedule of the United States, Section A**

<b>Sector:</b>	Financial Services
<b>Subsector:</b>	Insurance
<b>Obligations Concerned:</b>	National Treatment (Article 12.2) Most-Favored-Nation Treatment (Article 12.3) Cross-Border Trade (Article 12.5) Senior Management and Boards of Directors (Article 12.8)
<b>Level of Government:</b>	Regional
<b>Measures:</b>	All existing non-conforming measures of all states, the District of Columbia, and Puerto Rico
<b>Description:</b>	

**ANNEX III, Schedule of the United States, Section B**

<b>Sector:</b>	Financial Services
<b>Subsector:</b>	Insurance
<b>Obligations Concerned:</b>	Market Access (Article 12.4)
<b>Level of Government:</b>	All
<b>Description:</b>	The United States reserves the right to adopt or maintain any measure that is not inconsistent with the United States' obligations under Article XVI of the GATS.

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**Tab 2: Draft of an Implementing Bill Described in  
Section 2103(b)(3) of the Act**

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109TH CONGRESS  
1ST SESSION

**H. R.** \_\_\_\_\_

\_\_\_\_\_  
IN THE HOUSE OF REPRESENTATIVES

Mr. \_\_\_\_\_ (for himself and Mr. *Jefferson*) (by request) introduced the following bill; which was referred to the Committee on \_\_\_\_\_  
on \_\_\_\_\_

**A BILL**

To implement the Dominican Republic-Central America-United States Free Trade Agreement.

1 *Be it enacted by the Senate and House of Representa-*  
2 *tives of the United States of America in Congress assembled,*

3 **SECTION. 1. SHORT TITLE; TABLE OF CONTENTS.**

4 (a) SHORT TITLE.—This Act may be cited as the  
5 “Dominican Republic-Central America-United States Free  
6 Trade Agreement Implementation Act”.

7 (b) TABLE OF CONTENTS.—The table of contents for  
8 this Act is as follows:

- Sec. 1. Short title; table of contents.
- Sec. 2. Purposes.



Sec. 3. Definitions.

TITLE I—APPROVAL OF, AND GENERAL PROVISIONS RELATING  
TO, THE AGREEMENT

- Sec. 101. Approval and entry into force of the Agreement.  
 Sec. 102. Relationship of the Agreement to United States and State law.  
 Sec. 103. Implementing actions in anticipation of entry into force and initial regulations.  
 Sec. 104. Consultation and layover provisions for, and effective date of, proclaimed actions.  
 Sec. 105. Administration of dispute settlement proceedings.  
 Sec. 106. Arbitration of claims.  
 Sec. 107. Effective dates; effect of termination.

TITLE II—CUSTOMS PROVISIONS

- Sec. 201. Tariff modifications.  
 Sec. 202. Additional duties on certain agricultural goods.  
 Sec. 203. Rules of origin.  
 Sec. 204. Customs user fees.  
 Sec. 205. Retroactive application for certain liquidations and reliquidations of textile or apparel goods.  
 Sec. 206. Disclosure of incorrect information; false certifications of origin; denial of preferential tariff treatment.  
 Sec. 207. Reliquidation of entries.  
 Sec. 208. Recordkeeping requirements.  
 Sec. 209. Enforcement relating to trade in textile or apparel goods.  
 Sec. 210. Regulations.

TITLE III—RELIEF FROM IMPORTS

Sec. 301. Definitions.

Subtitle A—Relief From Imports Benefiting From the Agreement

- Sec. 311. Commencing of action for relief.  
 Sec. 312. Commission action on petition.  
 Sec. 313. Provision of relief.  
 Sec. 314. Termination of relief authority.  
 Sec. 315. Compensation authority.  
 Sec. 316. Confidential business information.

Subtitle B—Textile and Apparel Safeguard Measures

- Sec. 321. Commencement of action for relief.  
 Sec. 322. Determination and provision of relief.  
 Sec. 323. Period of relief.  
 Sec. 324. Articles exempt from relief.  
 Sec. 325. Rate after termination of import relief.  
 Sec. 326. Termination of relief authority.  
 Sec. 327. Compensation authority.  
 Sec. 328. Confidential business information.

Subtitle C—Cases Under Title II of the Trade Act of 1974

- Sec. 331. Findings and action on goods of CAFTA-DR countries.



TITLE IV—MISCELLANEOUS

- Sec. 401. Eligible products.
- Sec. 402. Modifications to the Caribbean Basin Economic Recovery Act.
- Sec. 403. Periodic reports and meetings on labor obligations and labor capacity-building provisions.

1 **SEC. 2. PURPOSES.**

2 The purposes of this Act are—

3 (1) to approve and implement the Free Trade  
 4 Agreement between the United States, Costa Rica,  
 5 the Dominican Republic, El Salvador, Guatemala,  
 6 Honduras, and Nicaragua entered into under the au-  
 7 thority of section 2103(b) of the Bipartisan Trade  
 8 Promotion Authority Act of 2002 (19 U.S.C.  
 9 3803(b));

10 (2) to strengthen and develop economic rela-  
 11 tions between the United States, Costa Rica, the  
 12 Dominican Republic, El Salvador, Guatemala, Hon-  
 13 duras, and Nicaragua for their mutual benefit;

14 (3) to establish free trade between the United  
 15 States, Costa Rica, the Dominican Republic, El Sal-  
 16 vador, Guatemala, Honduras, and Nicaragua  
 17 through the reduction and elimination of barriers to  
 18 trade in goods and services and to investment; and

19 (4) to lay the foundation for further coopera-  
 20 tion to expand and enhance the benefits of the  
 21 Agreement.



1 SEC. 3. DEFINITIONS.

2 In this Act:

3 (1) AGREEMENT.—The term “Agreement”  
4 means the Dominican Republic-Central America-  
5 United States Free Trade Agreement approved by  
6 the Congress under section 101(a)(1).

7 (2) CAFTA-DR COUNTRY.—Except as pro-  
8 vided in section 203, the term “CAFTA-DR coun-  
9 try” means—

10 (A) Costa Rica, for such time as the  
11 Agreement is in force between the United  
12 States and Costa Rica;

13 (B) the Dominican Republic, for such time  
14 as the Agreement is in force between the  
15 United States and the Dominican Republic;

16 (C) El Salvador, for such time as the  
17 Agreement is in force between the United  
18 States and El Salvador;

19 (D) Guatemala, for such time as the  
20 Agreement is in force between the United  
21 States and Guatemala;

22 (E) Honduras, for such time as the Agree-  
23 ment is in force between the United States and  
24 Honduras; and



1 (F) Nicaragua, for such time as the Agree-  
2 ment is in force between the United States and  
3 Nicaragua.

4 (3) COMMISSION.—The term “Commission”  
5 means the United States International Trade Com-  
6 mission.

7 (4) HTS.—The term “HTS” means the Har-  
8 monized Tariff Schedule of the United States.

9 (5) TEXTILE OR APPAREL GOOD.—The term  
10 “textile or apparel good” means a good listed in the  
11 Annex to the Agreement on Textiles and Clothing  
12 referred to in section 101(d)(4) of the Uruguay  
13 Round Agreements Act (19 U.S.C. 3511(d)(4)),  
14 other than a good listed in Annex 3.29 of the Agree-  
15 ment.

16 **TITLE I—APPROVAL OF, AND**  
17 **GENERAL PROVISIONS RE-**  
18 **LATING TO, THE AGREEMENT**

19 **SEC. 101. APPROVAL AND ENTRY INTO FORCE OF THE**  
20 **AGREEMENT.**

21 (a) APPROVAL OF AGREEMENT AND STATEMENT OF  
22 ADMINISTRATIVE ACTION.—Pursuant to section 2105 of  
23 the Bipartisan Trade Promotion Authority Act of 2002  
24 (19 U.S.C. 3805) and section 151 of the Trade Act of  
25 1974 (19 U.S.C. 2191), the Congress approves—



1 (1) the Dominican Republic-Central America-  
 2 United States Free Trade Agreement entered into  
 3 on August 5, 2004, with the Governments of Costa  
 4 Rica, the Dominican Republic, El Salvador, Guate-  
 5 mala, Honduras, and Nicaragua, and submitted to  
 6 the Congress on <sup>June 23</sup> [\_\_\_\_\_, 2005]; and

7 (2) the statement of administrative action pro-  
 8 posed to implement the Agreement that was sub-  
 9 mitted to the Congress on <sup>June 23</sup> [\_\_\_\_\_, 2005].

10 (b) CONDITIONS FOR ENTRY INTO FORCE OF THE  
 11 AGREEMENT.—At such time as the President determines  
 12 that countries listed in subsection (a)(1) have taken meas-  
 13 ures necessary to comply with the provisions of the Agree-  
 14 ment that are to take effect on the date on which the  
 15 Agreement enters into force, the President is authorized  
 16 to provide for the Agreement to enter into force with re-  
 17 spect to those countries that provide for the Agreement  
 18 to enter into force for them.

19 **SEC. 102. RELATIONSHIP OF THE AGREEMENT TO UNITED**  
 20 **STATES AND STATE LAW.**

21 (a) RELATIONSHIP OF AGREEMENT TO UNITED  
 22 STATES LAW.—

23 (1) UNITED STATES LAW TO PREVAIL IN CON-  
 24 FFLICT.—No provision of the Agreement, nor the ap-  
 25 plication of any such provision to any person or cir-



1        cumstance, which is inconsistent with any law of the  
2        United States shall have effect.

3               (2) CONSTRUCTION.—Nothing in this Act shall  
4        be construed—

5                (A) to amend or modify any law of the  
6                United States, or

7                (B) to limit any authority conferred under  
8                any law of the United States,

9        unless specifically provided for in this Act.

10       (b) RELATIONSHIP OF AGREEMENT TO STATE  
11       LAW.—

12               (1) LEGAL CHALLENGE.—No State law, or the  
13        application thereof, may be declared invalid as to  
14        any person or circumstance on the ground that the  
15        provision or application is inconsistent with the  
16        Agreement, except in an action brought by the  
17        United States for the purpose of declaring such law  
18        or application invalid.

19               (2) DEFINITION OF STATE LAW.—For purposes  
20        of this subsection, the term “State law” includes—

21                (A) any law of a political subdivision of a  
22                State; and

23                (B) any State law regulating or taxing the  
24                business of insurance.



1 (c) EFFECT OF AGREEMENT WITH RESPECT TO PRI-  
2 VATE REMEDIES.—No person other than the United  
3 States—

4 (1) shall have any cause of action or defense  
5 under the Agreement or by virtue of congressional  
6 approval thereof; or

7 (2) may challenge, in any action brought under  
8 any provision of law, any action or inaction by any  
9 department, agency, or other instrumentality of the  
10 United States, any State, or any political subdivision  
11 of a State, on the ground that such action or inac-  
12 tion is inconsistent with the Agreement.

13 **SEC. 103. IMPLEMENTING ACTIONS IN ANTICIPATION OF**  
14 **ENTRY INTO FORCE AND INITIAL REGULA-**  
15 **TIONS.**

16 (a) IMPLEMENTING ACTIONS.—

17 (1) PROCLAMATION AUTHORITY.—After the  
18 date of the enactment of this Act—

19 (A) the President may proclaim such ac-  
20 tions, and

21 (B) other appropriate officers of the  
22 United States Government may issue such reg-  
23 ulations,

24 as may be necessary to ensure that any provision of  
25 this Act, or amendment made by this Act, that takes



1 effect on the date the Agreement enters into force  
2 is appropriately implemented on such date, but no  
3 such proclamation or regulation may have an effec-  
4 tive date earlier than the date the Agreement enters  
5 into force.

6 (2) EFFECTIVE DATE OF CERTAIN PROCLAIMED  
7 ACTIONS.—Any action proclaimed by the President  
8 under the authority of this Act that is not subject  
9 to the consultation and layover provisions under sec-  
10 tion 104 may not take effect before the 15th day  
11 after the date on which the text of the proclamation  
12 is published in the Federal Register.

13 (3) WAIVER OF 15-DAY RESTRICTION.—The 15-  
14 day restriction contained in paragraph (2) on the  
15 taking effect of proclaimed actions is waived to the  
16 extent that the application of such restriction would  
17 prevent the taking effect on the date the Agreement  
18 enters into force of any action proclaimed under this  
19 section.

20 (b) INITIAL REGULATIONS.—Initial regulations nec-  
21 essary or appropriate to carry out the actions required by  
22 or authorized under this Act or proposed in the statement  
23 of administrative action submitted under section  
24 101(a)(2) to implement the Agreement shall, to the max-  
25 imum extent feasible, be issued within 1 year after the



1 date on which the Agreement enters into force. In the case  
 2 of any implementing action that takes effect on a date  
 3 after the date on which the Agreement enters into force,  
 4 initial regulations to carry out that action shall, to the  
 5 maximum extent feasible, be issued within 1 year after  
 6 such effective date.

7 **SEC. 104. CONSULTATION AND LAYOVER PROVISIONS FOR,**  
 8 **AND EFFECTIVE DATE OF, PROCLAIMED AC-**  
 9 **TIONS.**

10 If a provision of this Act provides that the implemen-  
 11 tation of an action by the President by proclamation is  
 12 subject to the consultation and layover requirements of  
 13 this section, such action may be proclaimed only if—

14 (1) the President has obtained advice regarding  
 15 the proposed action from—

16 (A) the appropriate advisory committees  
 17 established under section 135 of the Trade Act  
 18 of 1974 (19 U.S.C. 2155); and

19 (B) the Commission;

20 (2) the President has submitted to the Com-  
 21 mittee on Finance of the Senate and the Committee  
 22 on Ways and Means of the House of Representatives  
 23 a report that sets forth—

24 (A) the action proposed to be proclaimed  
 25 and the reasons therefor; and



1 (B) the advice obtained under paragraph  
2 (1);

3 (3) a period of 60 calendar days, beginning on  
4 the first day on which the requirements set forth in  
5 paragraphs (1) and (2) have been met has expired;  
6 and

7 (4) the President has consulted with such Com-  
8 mittees regarding the proposed action during the pe-  
9 riod referred to in paragraph (3).

10 **SEC. 105. ADMINISTRATION OF DISPUTE SETTLEMENT PRO-**  
11 **CEEDINGS.**

12 (a) ESTABLISHMENT OR DESIGNATION OF OFFICE.—  
13 The President is authorized to establish or designate with-  
14 in the Department of Commerce an office that shall be  
15 responsible for providing administrative assistance to pan-  
16 els established under chapter 20 of the Agreement. The  
17 office may not be considered to be an agency for purposes  
18 of section 552 of title 5, United States Code.

19 (b) AUTHORIZATION OF APPROPRIATIONS.—There  
20 are authorized to be appropriated for each fiscal year after  
21 fiscal year 2005 to the Department of Commerce such  
22 sums as may be necessary for the establishment and oper-  
23 ations of the office established or designated under sub-  
24 section (a) and for the payment of the United States share



1 of the expenses of panels established under chapter 20 of  
2 the Agreement.

3 **SEC. 106. ARBITRATION OF CLAIMS.**

4 The United States is authorized to resolve any claim  
5 against the United States covered by article  
6 10.16.1(a)(i)(C) or article 10.16.1(b)(i)(C) of the Agree-  
7 ment, pursuant to the Investor-State Dispute Settlement  
8 procedures set forth in section B of chapter 10 of the  
9 Agreement.

10 **SEC. 107. EFFECTIVE DATES; EFFECT OF TERMINATION.**

11 (a) **EFFECTIVE DATES.**—Except as provided in sub-  
12 section (b), the provisions of this Act and the amendments  
13 made by this Act take effect on the date the Agreement  
14 enters into force.

15 (b) **EXCEPTIONS.**—Sections 1 through 3 and this  
16 title take effect on the date of the enactment of this Act.

17 (c) **TERMINATION OF CAFTA-DR STATUS.**—During  
18 any period in which a country ceases to be a CAFTA-  
19 DR country, the provisions of this Act (other than this  
20 subsection) and the amendments made by this Act shall  
21 cease to have effect with respect to that country.

22 (d) **TERMINATION OF THE AGREEMENT.**—On the  
23 date on which the Agreement ceases to be in force with  
24 respect to the United States, the provisions of this Act



1 (other than this subsection) and the amendments made  
2 by this Act shall cease to have effect.

3 **TITLE II—CUSTOMS PROVISIONS**

4 **SEC. 201. TARIFF MODIFICATIONS.**

5 (a) TARIFF MODIFICATIONS PROVIDED FOR IN THE  
6 AGREEMENT.—

7 (1) PROCLAMATION AUTHORITY.—The Presi-  
8 dent may proclaim—

9 (A) such modifications or continuation of  
10 any duty,

11 (B) such continuation of duty-free or ex-  
12 cise treatment, or

13 (C) such additional duties,

14 as the President determines to be necessary or ap-  
15 propriate to carry out or apply articles 3.3, 3.5, 3.6,  
16 3.21, 3.26, 3.27, and 3.28, and Annexes 3.3, 3.27,  
17 and 3.28 of the Agreement.

18 (2) EFFECT ON GSP STATUS.—Notwithstanding  
19 section 502(a)(1) of the Trade Act of 1974 (19  
20 U.S.C. 2462(a)(1)), the President shall terminate  
21 the designation of each CAFTA-DR country as a  
22 beneficiary developing country for purposes of title V  
23 of the Trade Act of 1974 on the date the Agreement  
24 enters into force with respect to that country.

25 (3) EFFECT ON CBERA STATUS.—



1 (A) IN GENERAL.—Notwithstanding sec-  
 2 tion 212(a) of the Caribbean Basin Economic  
 3 Recovery Act (19 U.S.C. 2702(a)), the Presi-  
 4 dent shall terminate the designation of each  
 5 CAFTA-DR country as a beneficiary country  
 6 for purposes of that Act on the date the Agree-  
 7 ment enters into force with respect to that  
 8 country.

9 (B) EXCEPTION.—Notwithstanding sub-  
 10 paragraph (A), each such country shall be con-  
 11 sidered a beneficiary country under section  
 12 212(a) of the Caribbean Basin Economic Re-  
 13 covery Act, for purposes of—

14 (i) sections 771(7)(G)(ii)(III) and  
 15 771(7)(H) of the Tariff Act of 1930 (19  
 16 U.S.C. 1677(7)(G)(ii)(III) and  
 17 1677(7)(H));

18 (ii) the duty-free treatment provided  
 19 under paragraph 12 of Appendix I of the  
 20 General Notes to the Schedule of the  
 21 United States to Annex 3.3 of the Agree-  
 22 ment; and

23 (iii) section 274(h)(6)(B) of the Inter-  
 24 nal Revenue Code of 1986.



1 (b) OTHER TARIFF MODIFICATIONS.—Subject to the  
2 consultation and layover provisions of section 104, the  
3 President may proclaim—

4 (1) such modifications or continuation of any  
5 duty,

6 (2) such modifications as the United States  
7 may agree to with a CAFTA-DR country regarding  
8 the staging of any duty treatment set forth in Annex  
9 3.3 of the Agreement,

10 (3) such continuation of duty-free or excise  
11 treatment, or

12 (4) such additional duties,  
13 as the President determines to be necessary or appropriate  
14 to maintain the general level of reciprocal and mutually  
15 advantageous concessions provided for by the Agreement.

16 (c) CONVERSION TO AD VALOREM RATES.—For pur-  
17 poses of subsections (a) and (b), with respect to any good  
18 for which the base rate in the Schedule of the United  
19 States to Annex 3.3 of the Agreement is a specific or com-  
20 pound rate of duty, the President may substitute for the  
21 base rate an ad valorem rate that the President deter-  
22 mines to be equivalent to the base rate.

23 **SEC. 202. ADDITIONAL DUTIES ON CERTAIN AGRICUL-**  
24 **TURAL GOODS.**

25 (a) GENERAL PROVISIONS.—



1 (1) APPLICABILITY OF SUBSECTION.—This sub-  
2 section applies to additional duties assessed under  
3 subsection (b).

4 (2) APPLICABLE NTR (MFN) RATE OF DUTY.—  
5 For purposes of subsection (b), the term “applicable  
6 NTR (MFN) rate of duty” means, with respect to  
7 a safeguard good, a rate of duty that is the lesser  
8 of—

9 (A) the column 1 general rate of duty that  
10 would, at the time the additional duty is im-  
11 posed under subsection (b), apply to a good  
12 classifiable in the same 8-digit subheading of  
13 the HTS as the safeguard good; or

14 (B) the column 1 general rate of duty that  
15 would, on the day before the date on which the  
16 Agreement enters into force, apply to a good  
17 classifiable in the same 8-digit subheading of  
18 the HTS as the safeguard good.

19 (3) SCHEDULE RATE OF DUTY.—For purposes  
20 of subsection (b), the term “schedule rate of duty”  
21 means, with respect to a safeguard good, the rate of  
22 duty for that good that is set out in the Schedule  
23 of the United States to Annex 3.3 of the Agreement.

24 (4) SAFEGUARD GOOD.—In this section, the  
25 term “safeguard good” means a good—



1 (A) that is included in the Schedule of the  
2 United States to Annex 3.15 of the Agreement;

3 (B) that qualifies as an originating good  
4 under section 203, except that operations per-  
5 formed in or material obtained from the United  
6 States shall be considered as if the operations  
7 were performed in, and the material was ob-  
8 tained from, a country that is not a party to  
9 the Agreement; and

10 (C) for which a claim for preferential tariff  
11 treatment under the Agreement has been made.

12 (5) EXCEPTIONS.—No additional duty shall be  
13 assessed on a good under subsection (b) if, at the  
14 time of entry, the good is subject to import relief  
15 under—

16 (A) subtitle A of title III of this Act; or

17 (B) chapter 1 of title II of the Trade Act  
18 of 1974 (19 U.S.C. 2251 et seq.).

19 (6) TERMINATION.—The assessment of an ad-  
20 ditional duty on a good under subsection (b) shall  
21 cease to apply to that good on the date on which  
22 duty-free treatment must be provided to that good  
23 under the Schedule of the United States to Annex  
24 3.3 of the Agreement.



1 (7) NOTICE.—Not later than 60 days after the  
 2 Secretary of the Treasury first assesses an addi-  
 3 tional duty in a calendar year on a good under sub-  
 4 section (b), the Secretary shall notify the country  
 5 whose good is subject to the additional duty in writ-  
 6 ing of such action and shall provide to that country  
 7 data supporting the assessment of the additional  
 8 duty.

9 (b) ADDITIONAL DUTIES ON SAFEGUARD GOODS.—

10 (1) IN GENERAL.—In addition to any duty pro-  
 11 claimed under subsection (a) or (b) of section 201,  
 12 and subject to subsection (a), the Secretary of the  
 13 Treasury shall assess a duty, in the amount deter-  
 14 mined under paragraph (2), on a safeguard good of  
 15 a CAFTA–DR country imported into the United  
 16 States in a calendar year if the Secretary determines  
 17 that, prior to such importation, the total volume of  
 18 that safeguard good of such country that is imported  
 19 into the United States in that calendar year exceeds  
 20 130 percent of the volume that is set out for that  
 21 safeguard good in the corresponding year in the  
 22 table for that country contained in Appendix I of the  
 23 General Notes to the Schedule of the United States  
 24 to Annex 3.3 of the Agreement. For purposes of this  
 25 subsection, year 1 in that table corresponds to the



1 calendar year in which the Agreement enters into  
2 force.

3 (2) CALCULATION OF ADDITIONAL DUTY.—The  
4 additional duty on a safeguard good under this sub-  
5 section shall be—

6 (A) in the case of a good classified under  
7 subheading 1202.10.80, 1202.20.80,  
8 2008.11.15, 2008.11.35, or 2008.11.60 of the  
9 HTS—

10 (i) in years 1 through 5, an amount  
11 equal to 100 percent of the excess of the  
12 applicable NTR (MFN) rate of duty over  
13 the schedule rate of duty;

14 (ii) in years 6 through 10, an amount  
15 equal to 75 percent of the excess of the ap-  
16 plicable NTR (MFN) rate of duty over the  
17 schedule rate of duty; and

18 (iii) in years 11 through 14, an  
19 amount equal to 50 percent of the excess  
20 of the applicable NTR (MFN) rate of duty  
21 over the schedule rate of duty; and

22 (B) in the case of any other safeguard  
23 good—

24 (i) in years 1 through 14, an amount  
25 equal to 100 percent of the excess of the



1 applicable NTR (MFN) rate of duty over  
2 the schedule rate of duty;

3 (ii) in years 15 through 17, an  
4 amount equal to 75 percent of the excess  
5 of the applicable NTR (MFN) rate of duty  
6 over the schedule rate of duty; and

7 (iii) in years 18 and 19, an amount  
8 equal to 50 percent of the excess of the ap-  
9 plicable NTR (MFN) rate of duty over the  
10 schedule rate of duty.

11 **SEC. 203. RULES OF ORIGIN.**

12 (a) APPLICATION AND INTERPRETATION.—In this  
13 section:

14 (1) TARIFF CLASSIFICATION.—The basis for  
15 any tariff classification is the HTS.

16 (2) REFERENCE TO HTS.—Whenever in this  
17 section there is a reference to a chapter, heading, or  
18 subheading, such reference shall be a reference to a  
19 chapter, heading, or subheading of the HTS.

20 (3) COST OR VALUE.—Any cost or value re-  
21 ferred to in this section shall be recorded and main-  
22 tained in accordance with the generally accepted ac-  
23 counting principles applicable in the territory of the  
24 country in which the good is produced (whether the  
25 United States or another CAFTA-DR country).



1 (b) ORIGINATING GOODS.—For purposes of this Act  
2 and for purposes of implementing the preferential tariff  
3 treatment provided for under the Agreement, except as  
4 otherwise provided in this section, a good is an originating  
5 good if—

6 (1) the good is a good wholly obtained or pro-  
7 duced entirely in the territory of one or more of the  
8 CAFTA–DR countries;

9 (2) the good—

10 (A) is produced entirely in the territory of  
11 one or more of the CAFTA–DR countries,  
12 and—

13 (i) each of the nonoriginating mate-  
14 rials used in the production of the good  
15 undergoes an applicable change in tariff  
16 classification specified in Annex 4.1 of the  
17 Agreement; or

18 (ii) the good otherwise satisfies any  
19 applicable regional value-content or other  
20 requirements specified in Annex 4.1 of the  
21 Agreement; and

22 (B) satisfies all other applicable require-  
23 ments of this section; or

24 (3) the good is produced entirely in the terri-  
25 tory of one or more of the CAFTA–DR countries,



1 exclusively from materials described in paragraph  
2 (1) or (2).

3 (c) REGIONAL VALUE-CONTENT.—

4 (1) IN GENERAL.—For purposes of subsection  
5 (b)(2), the regional value-content of a good referred  
6 to in Annex 4.1 of the Agreement, except for goods  
7 to which paragraph (4) applies, shall be calculated  
8 by the importer, exporter, or producer of the good,  
9 on the basis of the build-down method described in  
10 paragraph (2) or the build-up method described in  
11 paragraph (3).

12 (2) BUILD-DOWN METHOD.—

13 (A) IN GENERAL.—The regional value-con-  
14 tent of a good may be calculated on the basis  
15 of the following build-down method:

$$\text{RVC} = \frac{\text{AV} - \text{VNM}}{\text{AV}} \times 100$$

16 (B) DEFINITIONS.—In subparagraph (A):

17 (i) RVC.—The term “RVC” means  
18 the regional value-content of the good, ex-  
19 pressed as a percentage.

20 (ii) AV.—The term “AV” means the  
21 adjusted value of the good.

22 (iii) VNM.—The term “VNM” means  
23 the value of nonoriginating materials that  
24 are acquired and used by the producer in



1 the production of the good, but does not  
2 include the value of a material that is self-  
3 produced.

4 (3) BUILD-UP METHOD.—

5 (A) IN GENERAL.—The regional value-con-  
6 tent of a good may be calculated on the basis  
7 of the following build-up method:

$$rvc = \frac{vom}{av} \times 100$$

8 (B) DEFINITIONS.—In subparagraph (A):

9 (i) RVC.—The term “RVC” means  
10 the regional value-content of the good, ex-  
11 pressed as a percentage.

12 (ii) AV.—The term “AV” means the  
13 adjusted value of the good.

14 (iii) VOM.—The term “VOM” means  
15 the value of originating materials that are  
16 acquired or self-produced, and used by the  
17 producer in the production of the good.

18 (4) SPECIAL RULE FOR CERTAIN AUTOMOTIVE  
19 GOODS.—

20 (A) IN GENERAL.—For purposes of sub-  
21 section (b)(2), the regional value-content of an  
22 automotive good referred to in Annex 4.1 of the  
23 Agreement may be calculated by the importer,



24

1 exporter, or producer of the good, on the basis  
 2 of the following net cost method:

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

3 (B) DEFINITIONS.—In subparagraph (A):

4 (i) AUTOMOTIVE GOOD.—The term  
 5 “automotive good” means a good provided  
 6 for in any of subheadings 8407.31 through  
 7 8407.34, subheading 8408.20, heading  
 8 8409, or in any of headings 8701 through  
 9 8708.

10 (ii) RVC.—The term “RVC” means  
 11 the regional value-content of the auto-  
 12 motive good, expressed as a percentage.

13 (iii) NC.—The term “NC” means the  
 14 net cost of the automotive good.

15 (iv) VNM.—The term “VNM” means  
 16 the value of nonoriginating materials that  
 17 are acquired and used by the producer in  
 18 the production of the automotive good, but  
 19 does not include the value of a material  
 20 that is self-produced.

21 (C) MOTOR VEHICLES.—

22 (i) BASIS OF CALCULATION.—For  
 23 purposes of determining the regional value-  
 24 content under subparagraph (A) for an



1 automotive good that is a motor vehicle  
 2 provided for in any of headings 8701  
 3 through 8705, an importer, exporter, or  
 4 producer may average the amounts cal-  
 5 culated under the formula contained in  
 6 subparagraph (A), over the producer's fis-  
 7 cal year—

8 (I) with respect to all motor vehi-  
 9 cles in any 1 of the categories de-  
 10 scribed in clause (ii); or

11 (II) with respect to all motor ve-  
 12 hicles in any such category that are  
 13 exported to the territory of one or  
 14 more of the CAFTA-DR countries.

15 (ii) CATEGORIES.—A category is de-  
 16 scribed in this clause if it—

17 (I) is the same model line of  
 18 motor vehicles, is in the same class of  
 19 vehicles, and is produced in the same  
 20 plant in the territory of a CAFTA-  
 21 DR country, as the good described in  
 22 clause (i) for which regional value-  
 23 content is being calculated;

24 (II) is the same class of motor  
 25 vehicles, and is produced in the same



26

1 plant in the territory of a CAFTA-  
 2 DR country, as the good described in  
 3 clause (i) for which regional value-  
 4 content is being calculated; or

5 (III) is the same model line of  
 6 motor vehicles produced in the terri-  
 7 tory of a CAFTA-DR country as the  
 8 good described in clause (i) for which  
 9 regional value-content is being cal-  
 10 culated.

11 (D) OTHER AUTOMOTIVE GOODS.—For  
 12 purposes of determining the regional value-con-  
 13 tent under subparagraph (A) for automotive  
 14 goods provided for in any of subheadings  
 15 8407.31 through 8407.34, in subheading  
 16 8408.20, or in heading 8409, 8706, 8707, or  
 17 8708, that are produced in the same plant, an  
 18 importer, exporter, or producer may—

19 (i) average the amounts calculated  
 20 under the formula contained in subpara-  
 21 graph (A) over—

22 (I) the fiscal year of the motor  
 23 vehicle producer to whom the auto-  
 24 motive goods are sold,

25 (II) any quarter or month, or



1 (III) its own fiscal year,  
 2 if the goods were produced during the fis-  
 3 cal year, quarter, or month that is the  
 4 basis for the calculation;

5 (ii) determine the average referred to  
 6 in clause (i) separately for such goods sold  
 7 to 1 or more motor vehicle producers; or

8 (iii) make a separate determination  
 9 under clause (i) or (ii) for automotive  
 10 goods that are exported to the territory of  
 11 one or more of the CAFTA-DR countries.

12 (E) CALCULATING NET COST.—The im-  
 13 porter, exporter, or producer shall, consistent  
 14 with the provisions regarding allocation of costs  
 15 set out in generally accepted accounting prin-  
 16 ciples, determine the net cost of an automotive  
 17 good under subparagraph (B) by—

18 (i) calculating the total cost incurred  
 19 with respect to all goods produced by the  
 20 producer of the automotive good, sub-  
 21 tracting any sales promotion, marketing  
 22 and after-sales service costs, royalties,  
 23 shipping and packing costs, and nonallow-  
 24 able interest costs that are included in the  
 25 total cost of all such goods, and then rea-



1 sonably allocating the resulting net cost of  
2 those goods to the automotive good;

3 (ii) calculating the total cost incurred  
4 with respect to all goods produced by that  
5 producer, reasonably allocating the total  
6 cost to the automotive good, and then sub-  
7 tracting any sales promotion, marketing  
8 and after-sales service costs, royalties,  
9 shipping and packing costs, and nonallow-  
10 able interest costs that are included in the  
11 portion of the total cost allocated to the  
12 automotive good; or

13 (iii) reasonably allocating each cost  
14 that forms part of the total cost incurred  
15 with respect to the automotive good so that  
16 the aggregate of all such costs does not in-  
17 clude any sales promotion, marketing and  
18 after-sales service costs, royalties, shipping  
19 and packing costs, or nonallowable interest  
20 costs.

21 (d) VALUE OF MATERIALS.—

22 (1) IN GENERAL.—For the purpose of calcu-  
23 lating the regional value-content of a good under  
24 subsection (c), and for purposes of applying the de



1 minimis rules under subsection (f), the value of a  
2 material is—

3 (A) in the case of a material that is im-  
4 ported by the producer of the good, the ad-  
5 justed value of the material;

6 (B) in the case of a material acquired in  
7 the territory in which the good is produced, the  
8 value, determined in accordance with Articles 1  
9 through 8, Article 15, and the corresponding in-  
10 terpretive notes of the Agreement on Implemen-  
11 tation of Article VII of the General Agreement  
12 on Tariffs and Trade 1994 referred to in sec-  
13 tion 101(d)(8) of the Uruguay Round Agree-  
14 ments Act, as set forth in regulations promul-  
15 gated by the Secretary of the Treasury pro-  
16 viding for the application of such Articles in the  
17 absence of an importation; or

18 (C) in the case of a material that is self-  
19 produced, the sum of—

20 (i) all expenses incurred in the pro-  
21 duction of the material, including general  
22 expenses; and

23 (ii) an amount for profit equivalent to  
24 the profit added in the normal course of  
25 trade.



1 (2) FURTHER ADJUSTMENTS TO THE VALUE OF  
2 MATERIALS.—

3 (A) ORIGINATING MATERIAL.—The fol-  
4 lowing expenses, if not included in the value of  
5 an originating material calculated under para-  
6 graph (1), may be added to the value of the  
7 originating material:

8 (i) The costs of freight, insurance,  
9 packing, and all other costs incurred in  
10 transporting the material within or be-  
11 tween the territory of one or more of the  
12 CAFTA-DR countries to the location of  
13 the producer.

14 (ii) Duties, taxes, and customs broker-  
15 age fees on the material paid in the terri-  
16 tory of one or more of the CAFTA-DR  
17 countries, other than duties or taxes that  
18 are waived, refunded, refundable, or other-  
19 wise recoverable, including credit against  
20 duty or tax paid or payable.

21 (iii) The cost of waste and spoilage re-  
22 sulting from the use of the material in the  
23 production of the good, less the value of  
24 renewable scrap or byproducts.



1 (B) NONORIGINATING MATERIAL.—The  
 2 following expenses, if included in the value of a  
 3 nonoriginating material calculated under para-  
 4 graph (1), may be deducted from the value of  
 5 the nonoriginating material:

6 (i) The costs of freight, insurance,  
 7 packing, and all other costs incurred in  
 8 transporting the material within or be-  
 9 tween the territory of one or more of the  
 10 CAFTA-DR countries to the location of  
 11 the producer.

12 (ii) Duties, taxes, and customs broker-  
 13 age fees on the material paid in the terri-  
 14 tory of one or more of the CAFTA-DR  
 15 countries, other than duties or taxes that  
 16 are waived, refunded, refundable, or other-  
 17 wise recoverable, including credit against  
 18 duty or tax paid or payable.

19 (iii) The cost of waste and spoilage re-  
 20 sulting from the use of the material in the  
 21 production of the good, less the value of  
 22 renewable scrap or byproducts.

23 (iv) The cost of originating materials  
 24 used in the production of the nonorigi-



1           nating material in the territory of one or  
2           more of the CAFTA-DR countries.

3           (e) ACCUMULATION.—

4           (1) ORIGINATING MATERIALS USED IN PRODUC-  
5           TION OF GOODS OF ANOTHER COUNTRY.—Origi-  
6           nating materials from the territory of one or more  
7           of the CAFTA-DR countries that are used in the  
8           production of a good in the territory of another  
9           CAFTA-DR country shall be considered to originate  
10          in the territory of that other country.

11          (2) MULTIPLE PROCEDURES.—A good that is  
12          produced in the territory of one or more of the  
13          CAFTA-DR countries by 1 or more producers is an  
14          originating good if the good satisfies the require-  
15          ments of subsection (b) and all other applicable re-  
16          quirements of this section.

17          (f) DE MINIMIS AMOUNTS OF NONORIGINATING MA-  
18          TERIALS.—

19          (1) IN GENERAL.—Except as provided in para-  
20          graphs (2) and (3), a good that does not undergo a  
21          change in tariff classification pursuant to Annex 4.1  
22          of the Agreement is an originating good if—

23                  (A) the value of all nonoriginating mate-  
24                  rials that—



1 (i) are used in the production of the  
2 good, and

3 (ii) do not undergo the applicable  
4 change in tariff classification (set out in  
5 Annex 4.1 of the Agreement),

6 does not exceed 10 percent of the adjusted  
7 value of the good;

8 (B) the good meets all other applicable re-  
9 quirements of this section; and

10 (C) the value of such nonoriginating mate-  
11 rials is included in the value of nonoriginating  
12 materials for any applicable regional value-con-  
13 tent requirement for the good.

14 (2) EXCEPTIONS.—Paragraph (1) does not  
15 apply to the following:

16 (A) A nonoriginating material provided for  
17 in chapter 4, or a nonoriginating dairy prepara-  
18 tion containing over 10 percent by weight of  
19 milk solids provided for in subheading 1901.90  
20 or 2106.90, that is used in the production of a  
21 good provided for in chapter 4.

22 (B) A nonoriginating material provided for  
23 in chapter 4, or a nonoriginating dairy prepara-  
24 tion containing over 10 percent by weight of  
25 milk solids provided for in subheading 1901.90,



1 that is used in the production of the following  
2 goods:

3 (i) Infant preparations containing  
4 over 10 percent by weight of milk solids  
5 provided for in subheading 1901.10.

6 (ii) Mixes and doughs, containing over  
7 25 percent by weight of butterfat, not put  
8 up for retail sale, provided for in sub-  
9 heading 1901.20.

10 (iii) Dairy preparations containing  
11 over 10 percent by weight of milk solids  
12 provided for in subheading 1901.90 or  
13 2106.90.

14 (iv) Goods provided for in heading  
15 2105.

16 (v) Beverages containing milk pro-  
17 vided for in subheading 2202.90.

18 (vi) Animal feeds containing over 10  
19 percent by weight of milk solids provided  
20 for in subheading 2309.90.

21 (C) A nonoriginating material provided for  
22 in heading 0805, or any of subheadings  
23 2009.11 through 2009.39, that is used in the  
24 production of a good provided for in any of sub-  
25 headings 2009.11 through 2009.39, or in fruit



1 or vegetable juice of any single fruit or vege-  
 2 table, fortified with minerals or vitamins, con-  
 3 centrated or unconcentrated, provided for in  
 4 subheading 2106.90 or 2202.90.

5 (D) A nonoriginating material provided for  
 6 in heading 0901 or 2101 that is used in the  
 7 production of a good provided for in heading  
 8 0901 or 2101.

9 (E) A nonoriginating material provided for  
 10 in heading 1006 that is used in the production  
 11 of a good provided for in heading 1102 or 1103  
 12 or subheading 1904.90.

13 (F) A nonoriginating material provided for  
 14 in chapter 15 that is used in the production of  
 15 a good provided for in chapter 15.

16 (G) A nonoriginating material provided for  
 17 in heading 1701 that is used in the production  
 18 of a good provided for in any of headings 1701  
 19 through 1703.

20 (H) A nonoriginating material provided for  
 21 in chapter 17 that is used in the production of  
 22 a good provided for in subheading 1806.10.

23 (I) Except as provided in subparagraphs  
 24 (A) through (H) and Annex 4.1 of the Agree-  
 25 ment, a nonoriginating material used in the



1 production of a good provided for in any of  
 2 chapters 1 through 24, unless the nonorigi-  
 3 nating material is provided for in a different  
 4 subheading than the good for which origin is  
 5 being determined under this section.

6 (3) TEXTILE OR APPAREL GOODS.—

7 (A) IN GENERAL.—Except as provided in  
 8 subparagraph (B), a textile or apparel good  
 9 that is not an originating good because certain  
 10 fibers or yarns used in the production of the  
 11 component of the good that determines the tar-  
 12 iff classification of the good do not undergo an  
 13 applicable change in tariff classification, set out  
 14 in Annex 4.1 of the Agreement, shall be consid-  
 15 ered to be an originating good if—

16 (i) the total weight of all such fibers  
 17 or yarns in that component is not more  
 18 than 10 percent of the total weight of that  
 19 component; or

20 (ii) the yarns are those described in  
 21 section 204(b)(3)(B)(vi)(IV) of the Andean  
 22 Trade Preference Act (19 U.S.C.  
 23 3203(b)(3)(B)(vi)(IV))(as in effect on the  
 24 date of the enactment of this Act).



1 (B) CERTAIN TEXTILE OR APPAREL  
 2 GOODS.—A textile or apparel good containing  
 3 elastomeric yarns in the component of the good  
 4 that determines the tariff classification of the  
 5 good shall be considered to be an originating  
 6 good only if such yarns are wholly formed in  
 7 the territory of a CAFTA-DR country.

8 (C) YARN, FABRIC, OR FIBER.—For pur-  
 9 poses of this paragraph, in the case of a good  
 10 that is a yarn, fabric, or fiber, the term “com-  
 11 ponent of the good that determines the tariff  
 12 classification of the good” means all of the fi-  
 13 bers in the good.

14 (g) FUNGIBLE GOODS AND MATERIALS.—

15 (1) IN GENERAL.—

16 (A) CLAIM FOR PREFERENTIAL TARIFF  
 17 TREATMENT.—A person claiming that a fun-  
 18 gible good or fungible material is an originating  
 19 good may base the claim either on the physical  
 20 segregation of the fungible good or fungible ma-  
 21 terial or by using an inventory management  
 22 method with respect to the fungible good or  
 23 fungible material.



1 (B) INVENTORY MANAGEMENT METHOD.—

2 In this subsection, the term “inventory manage-  
3 ment method” means—

4 (i) averaging;

5 (ii) “last-in, first-out”;

6 (iii) “first-in, first-out”; or

7 (iv) any other method—

8 (I) recognized in the generally  
9 accepted accounting principles of the  
10 CAFTA–DR country in which the  
11 production is performed; or

12 (II) otherwise accepted by that  
13 country.

14 (2) ELECTION OF INVENTORY METHOD.—A

15 person selecting an inventory management method  
16 under paragraph (1) for a particular fungible good  
17 or fungible material shall continue to use that meth-  
18 od for that fungible good or fungible material  
19 throughout the fiscal year of that person.

20 (h) ACCESSORIES, SPARE PARTS, OR TOOLS.—

21 (1) IN GENERAL.—Subject to paragraphs (2)  
22 and (3), accessories, spare parts, or tools delivered  
23 with a good that form part of the good’s standard  
24 accessories, spare parts, or tools shall—



1 (A) be treated as originating goods if the  
2 good is an originating good; and

3 (B) be disregarded in determining whether  
4 all the nonoriginating materials used in the pro-  
5 duction of the good undergo the applicable  
6 change in tariff classification set out in Annex  
7 4.1 of the Agreement.

8 (2) CONDITIONS.—Paragraph (1) shall apply  
9 only if—

10 (A) the accessories, spare parts, or tools  
11 are classified with and not invoiced separately  
12 from the good, regardless of whether they ap-  
13 pear specified or separately identified in the in-  
14 voice for the good; and

15 (B) the quantities and value of the acces-  
16 sories, spare parts, or tools are customary for  
17 the good.

18 (3) REGIONAL VALUE-CONTENT.—If the good is  
19 subject to a regional value-content requirement, the  
20 value of the accessories, spare parts, or tools shall  
21 be taken into account as originating or nonorigi-  
22 nating materials, as the case may be, in calculating  
23 the regional value-content of the good.

24 (i) PACKAGING MATERIALS AND CONTAINERS FOR  
25 RETAIL SALE.—Packaging materials and containers in



1 which a good is packaged for retail sale, if classified with  
 2 the good, shall be disregarded in determining whether all  
 3 the nonoriginating materials used in the production of the  
 4 good undergo the applicable change in tariff classification  
 5 set out in Annex 4.1 of the Agreement, and, if the good  
 6 is subject to a regional value-content requirement, the  
 7 value of such packaging materials and containers shall be  
 8 taken into account as originating or nonoriginating mate-  
 9 rials, as the case may be, in calculating the regional value-  
 10 content of the good.

11 (j) PACKING MATERIALS AND CONTAINERS FOR  
 12 SHIPMENT.—Packing materials and containers for ship-  
 13 ment shall be disregarded in determining whether a good  
 14 is an originating good.

15 (k) INDIRECT MATERIALS.—An indirect material  
 16 shall be treated as an originating material without regard  
 17 to where it is produced.

18 (l) TRANSIT AND TRANSHIPMENT.—A good that has  
 19 undergone production necessary to qualify as an origi-  
 20 nating good under subsection (b) shall not be considered  
 21 to be an originating good if, subsequent to that produc-  
 22 tion, the good—

23 (1) undergoes further production or any other  
 24 operation outside the territories of the CAFTA-DR  
 25 countries, other than unloading, reloading, or any



1 other operation necessary to preserve the good in  
 2 good condition or to transport the good to the terri-  
 3 tory of a CAFTA-DR country; or

4 (2) does not remain under the control of cus-  
 5 toms authorities in the territory of a country other  
 6 than a CAFTA-DR country.

7 (m) GOODS CLASSIFIABLE AS GOODS PUT UP IN  
 8 SETS.—Notwithstanding the rules set forth in Annex 4.1  
 9 of the Agreement, goods classifiable as goods put up in  
 10 sets for retail sale as provided for in General Rule of Inter-  
 11 pretation 3 of the HTS shall not be considered to be origi-  
 12 nating goods unless—

13 (1) each of the goods in the set is an origi-  
 14 nating good; or

15 (2) the total value of the nonoriginating goods  
 16 in the set does not exceed—

17 (A) in the case of textile or apparel goods,  
 18 10 percent of the adjusted value of the set; or

19 (B) in the case of a good, other than a tex-  
 20 tile or apparel good, 15 percent of the adjusted  
 21 value of the set.

22 (n) DEFINITIONS.—In this section:

23 (1) ADJUSTED VALUE.—The term “adjusted  
 24 value” means the value determined in accordance  
 25 with Articles 1 through 8, Article 15, and the cor-



1       responding interpretive notes of the Agreement on  
 2       Implementation of Article VII of the General Agree-  
 3       ment on Tariffs and Trade 1994 referred to in sec-  
 4       tion 101(d)(8) of the Uruguay Round Agreements  
 5       Act, adjusted, if necessary, to exclude any costs,  
 6       charges, or expenses incurred for transportation, in-  
 7       surance, and related services incident to the inter-  
 8       national shipment of the merchandise from the coun-  
 9       try of exportation to the place of importation.

10       (2) CAFTA-DR COUNTRY.—The term  
 11       “CAFTA-DR country” means—

12               (A) the United States; and

13               (B) Costa Rica, the Dominican Republic,  
 14       El Salvador, Guatemala, Honduras, or Nica-  
 15       ragua, for such time as the Agreement is in  
 16       force between the United States and that coun-  
 17       try.

18       (3) CLASS OF MOTOR VEHICLES.—The term  
 19       “class of motor vehicles” means any one of the fol-  
 20       lowing categories of motor vehicles:

21               (A) Motor vehicles provided for in sub-  
 22       heading 8701.20, 8704.10, 8704.22, 8704.23,  
 23       8704.32, or 8704.90, or heading 8705 or 8706,  
 24       or motor vehicles for the transport of 16 or



1 more persons provided for in subheading  
2 8702.10 or 8702.90.

3 (B) Motor vehicles provided for in sub-  
4 heading 8701.10 or any of subheadings  
5 8701.30 through 8701.90.

6 (C) Motor vehicles for the transport of 15  
7 or fewer persons provided for in subheading  
8 8702.10 or 8702.90, or motor vehicles provided  
9 for in subheading 8704.21 or 8704.31.

10 (D) Motor vehicles provided for in any of  
11 subheadings 8703.21 through 8703.90.

12 (4) FUNGIBLE GOOD OR FUNGIBLE MATE-  
13 RIAL.—The term “fungible good” or “fungible mate-  
14 rial” means a good or material, as the case may be,  
15 that is interchangeable with another good or mate-  
16 rial for commercial purposes and the properties of  
17 which are essentially identical to such other good or  
18 material.

19 (5) GENERALLY ACCEPTED ACCOUNTING PRIN-  
20 CIPLES.—The term “generally accepted accounting  
21 principles” means the recognized consensus or sub-  
22 stantial authoritative support in the territory of a  
23 CAFTA–DR country with respect to the recording  
24 of revenues, expenses, costs, assets, and liabilities,  
25 the disclosure of information, and the preparation of



1 financial statements. The principles may encompass  
2 broad guidelines of general application as well as de-  
3 tailed standards, practices, and procedures.

4 (6) GOODS WHOLLY OBTAINED OR PRODUCED  
5 ENTIRELY IN THE TERRITORY OF ONE OR MORE OF  
6 THE CAFTA-DR COUNTRIES.—The term “goods  
7 wholly obtained or produced entirely in the territory  
8 of one or more of the CAFTA-DR countries”  
9 means—

10 (A) plants and plant products harvested or  
11 gathered in the territory of one or more of the  
12 CAFTA-DR countries;

13 (B) live animals born and raised in the ter-  
14 ritory of one or more of the CAFTA-DR coun-  
15 tries;

16 (C) goods obtained in the territory of one  
17 or more of the CAFTA-DR countries from live  
18 animals;

19 (D) goods obtained from hunting, trap-  
20 ping, fishing or aquaculture conducted in the  
21 territory of one or more of the CAFTA-DR  
22 countries;

23 (E) minerals and other natural resources  
24 not included in subparagraphs (A) through (D)



1 that are extracted or taken in the territory of  
2 one or more of the CAFTA-DR countries;

3 (F) fish, shellfish, and other marine life  
4 taken from the sea, seabed, or subsoil outside  
5 the territory of one or more of the CAFTA-DR  
6 countries by vessels registered or recorded with  
7 a CAFTA-DR country and flying the flag of  
8 that country;

9 (G) goods produced on board factory ships  
10 from the goods referred to in subparagraph (F),  
11 if such factory ships are registered or recorded  
12 with that CAFTA-DR country and fly the flag  
13 of that country;

14 (H) goods taken by a CAFTA-DR country  
15 or a person of a CAFTA-DR country from the  
16 seabed or subsoil outside territorial waters, if a  
17 CAFTA-DR country has rights to exploit such  
18 seabed or subsoil;

19 (I) goods taken from outer space, if the  
20 goods are obtained by a CAFTA-DR country or  
21 a person of a CAFTA-DR country and not  
22 processed in the territory of a country other  
23 than a CAFTA-DR country;

24 (J) waste and scrap derived from—



1 (i) manufacturing or processing oper-  
2 ations in the territory of one or more of  
3 the CAFTA-DR countries; or

4 (ii) used goods collected in the terri-  
5 tory of one or more of the CAFTA-DR  
6 countries, if such goods are fit only for the  
7 recovery of raw materials;

8 (K) recovered goods derived in the terri-  
9 tory of one or more of the CAFTA-DR coun-  
10 tries from used goods, and used in the territory  
11 of a CAFTA-DR country in the production of  
12 remanufactured goods; and

13 (L) goods produced in the territory of one  
14 or more of the CAFTA-DR countries exclu-  
15 sively from—

16 (i) goods referred to in any of sub-  
17 paragraphs (A) through (J), or

18 (ii) the derivatives of goods referred  
19 to in clause (i),  
20 at any stage of production.

21 (7) IDENTICAL GOODS.—The term “identical  
22 goods” means identical goods as defined in the  
23 Agreement on Implementation of Article VII of the  
24 General Agreement on Tariffs and Trade 1994 re-



1       ferred to in section 101(d)(8) of the Uruguay Round  
2       Agreements Act;

3               (8) INDIRECT MATERIAL.—The term “indirect  
4       material” means a good used in the production, test-  
5       ing, or inspection of a good but not physically incor-  
6       porated into the good, or a good used in the mainte-  
7       nance of buildings or the operation of equipment as-  
8       sociated with the production of a good, including—

9               (A) fuel and energy;

10              (B) tools, dies, and molds;

11              (C) spare parts and materials used in the  
12       maintenance of equipment or buildings;

13              (D) lubricants, greases, compounding ma-  
14       terials, and other materials used in production  
15       or used to operate equipment or buildings;

16              (E) gloves, glasses, footwear, clothing,  
17       safety equipment, and supplies;

18              (F) equipment, devices, and supplies used  
19       for testing or inspecting the good;

20              (G) catalysts and solvents; and

21              (H) any other goods that are not incor-  
22       porated into the good but the use of which in  
23       the production of the good can reasonably be  
24       demonstrated to be a part of that production.



1 (9) MATERIAL.—The term “material” means a  
2 good that is used in the production of another good,  
3 including a part or an ingredient.

4 (10) MATERIAL THAT IS SELF-PRODUCED.—  
5 The term “material that is self-produced” means an  
6 originating material that is produced by a producer  
7 of a good and used in the production of that good.

8 (11) MODEL LINE.—The term “model line”  
9 means a group of motor vehicles having the same  
10 platform or model name.

11 (12) NET COST.—The term “net cost” means  
12 total cost minus sales promotion, marketing, and  
13 after-sales service costs, royalties, shipping and  
14 packing costs, and non-allowable interest costs that  
15 are included in the total cost.

16 (13) NONALLOWABLE INTEREST COSTS.—The  
17 term “nonallowable interest costs” means interest  
18 costs incurred by a producer that exceed 700 basis  
19 points above the applicable official interest rate for  
20 comparable maturities of the CAFTA–DR country  
21 in which the producer is located.

22 (14) NONORIGINATING GOOD OR NONORIGI-  
23 NATING MATERIAL.—The terms “nonoriginating  
24 good” and “nonoriginating material” mean a good



1 or material, as the case may be, that does not qual-  
2 ify as originating under this section.

3 (15) PACKING MATERIALS AND CONTAINERS  
4 FOR SHIPMENT.—The term “packing materials and  
5 containers for shipment” means the goods used to  
6 protect a good during its transportation and does  
7 not include the packaging materials and containers  
8 in which a good is packaged for retail sale.

9 (16) PREFERENTIAL TARIFF TREATMENT.—  
10 The term “preferential tariff treatment” means the  
11 customs duty rate, and the treatment under article  
12 3.10.4 of the Agreement, that are applicable to an  
13 originating good pursuant to the Agreement.

14 (17) PRODUCER.—The term “producer” means  
15 a person who engages in the production of a good  
16 in the territory of a CAFTA–DR country.

17 (18) PRODUCTION.—The term “production”  
18 means growing, mining, harvesting, fishing, raising,  
19 trapping, hunting, manufacturing, processing, as-  
20 sembling, or disassembling a good.

21 (19) REASONABLY ALLOCATE.—The term “rea-  
22 sonably allocate” means to apportion in a manner  
23 that would be appropriate under generally accepted  
24 accounting principles.



1 (20) RECOVERED GOODS.—The term “recov-  
2 ered goods” means materials in the form of indi-  
3 vidual parts that are the result of—

4 (A) the disassembly of used goods into in-  
5 dividual parts; and

6 (B) the cleaning, inspecting, testing, or  
7 other processing that is necessary for improve-  
8 ment to sound working condition of such indi-  
9 vidual parts.

10 (21) REMANUFACTURED GOOD.—The term “re-  
11 manufactured good” means a good that is classified  
12 under chapter 84, 85, or 87, or heading 9026, 9031,  
13 or 9032, other than a good classified under heading  
14 8418 or 8516, and that—

15 (A) is entirely or partially comprised of re-  
16 covered goods; and

17 (B) has a similar life expectancy and en-  
18 joys a factory warranty similar to such a new  
19 good.

20 (22) TOTAL COST.—The term “total cost”  
21 means all product costs, period costs, and other  
22 costs for a good incurred in the territory of one or  
23 more of the CAFTA–DR countries.

24 (23) USED.—The term “used” means used or  
25 consumed in the production of goods.



1 (o) PRESIDENTIAL PROCLAMATION AUTHORITY.—

2 (1) IN GENERAL.—The President is authorized  
3 to proclaim, as part of the HTS—

4 (A) the provisions set out in Annex 4.1 of  
5 the Agreement; and

6 (B) any additional subordinate category  
7 necessary to carry out this title consistent with  
8 the Agreement.

9 (2) FABRICS AND YARNS NOT AVAILABLE IN  
10 COMMERCIAL QUANTITIES IN THE UNITED  
11 STATES.—The President is authorized to proclaim  
12 that a fabric or yarn is added to the list in Annex  
13 3.25 of the Agreement in an unrestricted quantity,  
14 as provided in article 3.25.4(e) of the Agreement.

15 (3) MODIFICATIONS.—

16 (A) IN GENERAL.—Subject to the consulta-  
17 tion and layover provisions of section 104, the  
18 President may proclaim modifications to the  
19 provisions proclaimed under the authority of  
20 paragraph (1)(A), other than provisions of  
21 chapters 50 through 63, as included in Annex  
22 4.1 of the Agreement.

23 (B) ADDITIONAL PROCLAMATIONS.—Not-  
24 withstanding subparagraph (A), and subject to  
25 the consultation and layover provisions of sec-



1           tion 104, the President may proclaim before the  
 2           end of the 1-year period beginning on the date  
 3           of the enactment of this Act, modifications to  
 4           correct any typographical, clerical, or other non-  
 5           substantive technical error regarding the provi-  
 6           sions of chapters 50 through 63, as included in  
 7           Annex 4.1 of the Agreement.

8           (4) FABRICS, YARNS, OR FIBERS NOT AVAIL-  
 9           ABLE IN COMMERCIAL QUANTITIES IN THE CAFTA-  
 10          DR COUNTRIES.—

11           (A) IN GENERAL.—Notwithstanding para-  
 12          graph 3(A), the list of fabrics, yarns, and fibers  
 13          set out in Annex 3.25 of the Agreement may be  
 14          modified as provided for in this paragraph.

15           (B) DEFINITIONS.—In this paragraph:

16           (i) The term “interested entity”  
 17          means the government of a CAFTA-DR  
 18          country other than the United States, a  
 19          potential or actual purchaser of a textile or  
 20          apparel good, or a potential or actual sup-  
 21          plier of a textile or apparel good.

22           (ii) All references to “day” and  
 23          “days” exclude Saturdays, Sundays, and  
 24          legal holidays.



1 (C) REQUESTS TO ADD FABRICS, YARNS,  
 2 OR FIBERS.—(i) An interested entity may re-  
 3 quest the President to determine that a fabric,  
 4 yarn, or fiber is not available in commercial  
 5 quantities in a timely manner in the CAFTA-  
 6 DR countries and to add that fabric, yarn, or  
 7 fiber to the list in Annex 3.25 of the Agreement  
 8 in a restricted or unrestricted quantity.

9 (ii) After receiving a request under clause  
 10 (i), the President may determine whether—

11 (I) the fabric, yarn, or fiber is avail-  
 12 able in commercial quantities in a timely  
 13 manner in the CAFTA-DR countries; or

14 (II) any interested entity objects to  
 15 the request.

16 (iii) The President may, within the time  
 17 periods specified in clause (iv), proclaim that a  
 18 fabric, yarn, or fiber that is the subject of a re-  
 19 quest submitted under clause (i) is added to the  
 20 list in Annex 3.25 of the Agreement in an unre-  
 21 stricted quantity, or in any restricted quantity  
 22 that the President may establish, if the Presi-  
 23 dent determines under clause (ii) that—

24 (I) the fabric, yarn, or fiber is not  
 25 available in commercial quantities in a



1 timely manner in the CAFTA-DR coun-  
2 tries; or

3 (II) no interested entity has objected  
4 to the request.

5 (iv) The time periods within which the  
6 President may issue a proclamation under  
7 clause (iii) are—

8 (I) not later than 30 days after the  
9 date on which the request is submitted  
10 under clause (i); or

11 (II) not later than 44 days after the  
12 request is submitted, if the President de-  
13 termines, within 30 days after the date on  
14 which the request is submitted, that the  
15 President does not have sufficient informa-  
16 tion to make a determination under clause  
17 (ii).

18 (v) Notwithstanding section 103(a)(2), a  
19 proclamation made under clause (iii) shall take  
20 effect on the date on which the text of the pro-  
21 clamations is published in the Federal Register.

22 (vi) Not later than 6 months after pro-  
23 claiming under clause (iii) that a fabric, yarn,  
24 or fiber is added to the list in Annex 3.25 of  
25 the Agreement in a restricted quantity, the



1 President may eliminate the restriction if the  
 2 President determines that the fabric, yarn, or  
 3 fiber is not available in commercial quantities in  
 4 a timely manner in the CAFTA-DR countries.

5 (D) DEEMED APPROVAL OF REQUEST.—If,  
 6 after an interested entity submits a request  
 7 under subparagraph (C)(i), the President does  
 8 not, within the applicable time period specified  
 9 in subparagraph (C)(iv), make a determination  
 10 under subparagraph (C)(ii) regarding the re-  
 11 quest, the fabric, yarn, or fiber that is the sub-  
 12 ject of the request shall be considered to be  
 13 added, in an unrestricted quantity, to the list in  
 14 Annex 3.25 of the Agreement beginning—

15 (i) 45 days after the date on which  
 16 the request was submitted; or

17 (ii) 60 days after the date on which  
 18 the request was submitted, if the President  
 19 made a determination under subparagraph  
 20 (C)(iv)(II).

21 (E) REQUESTS TO RESTRICT OR REMOVE  
 22 FABRICS, YARNS, OR FIBERS.—(i) Subject to  
 23 clause (ii), an interested entity may request the  
 24 President to restrict the quantity of, or remove



1 from the list in Annex 3.25 of the Agreement,  
2 any fabric, yarn, or fiber—

3 (I) that has been added to that list in  
4 an unrestricted quantity pursuant to para-  
5 graph (2) or subparagraph (C)(iii) or (D);  
6 or

7 (II) with respect to which the Presi-  
8 dent has eliminated a restriction under  
9 subparagraph (C)(vi).

10 (ii) An interested entity may submit a re-  
11 quest under clause (i) at any time beginning 6  
12 months after the date of the action described in  
13 subclause (I) or (II) of that clause.

14 (iii) Not later than 30 days after the date  
15 on which a request under clause (i) is sub-  
16 mitted, the President may proclaim an action  
17 provided for under clause (i) if the President  
18 determines that the fabric, yarn, or fiber that  
19 is the subject of the request is available in com-  
20 mercial quantities in a timely manner in the  
21 CAFTA-DR countries.

22 (iv) A proclamation declared under clause  
23 (iii) shall take effect no earlier than the date  
24 that is 6 months after the date on which the



1 text of the proclamation is published in the  
2 Federal Register.

3 (F) PROCEDURES.—The President shall  
4 establish procedures—

5 (i) governing the submission of a re-  
6 quest under subparagraphs (C) and (E);  
7 and

8 (ii) providing an opportunity for inter-  
9 ested entities to submit comments and sup-  
10 porting evidence before the President  
11 makes a determination under subpara-  
12 graph (C) (ii) or (vi) or (E)(iii).

13 **SEC. 204. CUSTOMS USER FEES.**

14 Section 13031(b) of the Consolidated Omnibus Budg-  
15 et Reconciliation Act of 1985 (19 U.S.C. 58c(b)) is  
16 amended by adding after paragraph (14), the following:

17 “(15) No fee may be charged under subsection  
18 (a) (9) or (10) with respect to goods that qualify as  
19 originating goods under section 203 of the Domini-  
20 can Republic-Central America-United States Free  
21 Trade Agreement Implementation Act. Any service  
22 for which an exemption from such fee is provided by  
23 reason of this paragraph may not be funded with  
24 money contained in the Customs User Fee Ac-  
25 count.”.



1 **SEC. 205. RETROACTIVE APPLICATION FOR CERTAIN LIQ-**  
2 **UIDATIONS AND RELIQUIDATIONS OF TEX-**  
3 **TILE OR APPAREL GOODS.**

4 (a) IN GENERAL.—Notwithstanding section 514 of  
5 the Tariff Act of 1930 (19 U.S.C. 1514) or any other pro-  
6 vision of law, and subject to subsection (c), an entry—

7 (1) of a textile or apparel good—

8 (A) of a CAFTA–DR country that the  
9 United States Trade Representative has des-  
10 ignated as an eligible country under subsection  
11 (b), and

12 (B) that would have qualified as an origi-  
13 nating good under section 203 if the good had  
14 been entered after the date of entry into force  
15 of the Agreement for that country,

16 (2) that was made on or after January 1, 2004,  
17 and before the date of the entry into force of the  
18 Agreement with respect to that country, and

19 (3) for which customs duties in excess of the  
20 applicable rate of duty for that good set out in the  
21 Schedule of the United States to Annex 3.3 of the  
22 Agreement were paid,

23 shall be liquidated or reliquidated at the applicable rate  
24 of duty for that good set out in the Schedule of the United  
25 States to Annex 3.3 of the Agreement, and the Secretary



1 of the Treasury shall refund any excess customs duties  
2 paid with respect to such entry.

3 (b) ELIGIBLE COUNTRY.—The United States Trade  
4 Representative shall determine, in accordance with article  
5 3.20 of the Agreement, which CAFTA–DR countries are  
6 eligible countries for purposes of this section, and shall  
7 publish a list of all such countries in the Federal Register.

8 (c) REQUESTS.—Liquidation or reliquidation may be  
9 made under subsection (a) with respect to an entry of a  
10 textile or apparel good only if a request therefor is filed  
11 with the Bureau of Customs and Border Protection, with-  
12 in such period as the Bureau of Customs and Border Pro-  
13 tection shall establish by regulation in consultation with  
14 the Secretary of the Treasury, that contains sufficient in-  
15 formation to enable the Bureau of Customs and Border  
16 Protection—

17 (1)(A) to locate the entry; or

18 (B) to reconstruct the entry if it cannot be lo-  
19 cated; and

20 (2) to determine that the good satisfies the con-  
21 ditions set out in subsection (a).

22 (d) DEFINITION.—As used in this section, the term  
23 “entry” includes a withdrawal from warehouse for con-  
24 sumption.



1 **SEC. 206. DISCLOSURE OF INCORRECT INFORMATION;**  
2 **FALSE CERTIFICATIONS OF ORIGIN; DENIAL**  
3 **OF PREFERENTIAL TARIFF TREATMENT.**

4 (a) DISCLOSURE OF INCORRECT INFORMATION.—  
5 Section 592 of the Tariff Act of 1930 (19 U.S.C. 1592)  
6 is amended—

7 (1) in subsection (c)—

8 (A) by redesignating paragraph (9) as  
9 paragraph (10); and

10 (B) by inserting after paragraph (8) the  
11 following new paragraph:

12 “(9) PRIOR DISCLOSURE REGARDING CLAIMS  
13 UNDER THE DOMINICAN REPUBLIC-CENTRAL AMER-  
14 ICA-UNITED STATES FREE TRADE AGREEMENT.—An  
15 importer shall not be subject to penalties under sub-  
16 section (a) for making an incorrect claim that a  
17 good qualifies as an originating good under section  
18 203 of the Dominican Republic-Central America-  
19 United States Free Trade Agreement Implementa-  
20 tion Act if the importer, in accordance with regula-  
21 tions issued by the Secretary of the Treasury,  
22 promptly and voluntarily makes a corrected declara-  
23 tion and pays any duties owing.”; and

24 (2) by adding at the end the following new sub-  
25 section:



1       “(h) FALSE CERTIFICATIONS OF ORIGIN UNDER THE  
2 DOMINICAN   REPUBLIC-CENTRAL   AMERICA-UNITED  
3 STATES FREE TRADE AGREEMENT.—

4           “(1) IN GENERAL.—Subject to paragraph (2),  
5 it is unlawful for any person to certify falsely, by  
6 fraud, gross negligence, or negligence, in a CAFTA-  
7 DR certification of origin (as defined in section  
8 508(g)(1)(B) of this Act) that a good exported from  
9 the United States qualifies as an originating good  
10 under the rules of origin set out in section 203 of  
11 the Dominican Republic-Central America-United  
12 States Free Trade Agreement Implementation Act.  
13 The procedures and penalties of this section that  
14 apply to a violation of subsection (a) also apply to  
15 a violation of this subsection.

16           “(2) PROMPT AND VOLUNTARY DISCLOSURE OF  
17 INCORRECT INFORMATION.—No penalty shall be im-  
18 posed under this subsection if, promptly after an ex-  
19 porter or producer that issued a CAFTA-DR certifi-  
20 cation of origin has reason to believe that such cer-  
21 tification contains or is based on incorrect informa-  
22 tion, the exporter or producer voluntarily provides  
23 written notice of such incorrect information to every  
24 person to whom the certification was issued.



1           “(3) EXCEPTION.—A person may not be consid-  
2           ered to have violated paragraph (1) if—

3                   “(A) the information was correct at the  
4                   time it was provided in a CAFTA-DR certifi-  
5                   cation of origin but was later rendered incorrect  
6                   due to a change in circumstances; and

7                   “(B) the person promptly and voluntarily  
8                   provides written notice of the change in cir-  
9                   cumstances to all persons to whom the person  
10                  provided the certification.”.

11          (b) DENIAL OF PREFERENTIAL TARIFF TREAT-  
12          MENT.—Section 514 of the Tariff Act of 1930 (19 U.S.C.  
13          1514) is amended by adding at the end the following new  
14          subsection:

15          “(h) DENIAL OF PREFERENTIAL TARIFF TREAT-  
16          MENT UNDER THE DOMINICAN REPUBLIC-CENTRAL  
17          AMERICA-UNITED STATES FREE TRADE AGREEMENT.—  
18          If the Bureau of Customs and Border Protection or the  
19          Bureau of Immigration and Customs Enforcement finds  
20          indications of a pattern of conduct by an importer, ex-  
21          porter, or producer of false or unsupported representa-  
22          tions that goods qualify under the rules of origin set out  
23          in section 203 of the Dominican Republic-Central Amer-  
24          ica-United States Free Trade Agreement Implementation  
25          Act, the Bureau of Customs and Border Protection, in ac-



1 cordance with regulations issued by the Secretary of the  
2 Treasury, may suspend preferential tariff treatment under  
3 the Dominican Republic-Central America-United States  
4 Free Trade Agreement to entries of identical goods cov-  
5 ered by subsequent representations by that importer, ex-  
6 porter, or producer until the Bureau of Customs and Bor-  
7 der Protection determines that representations of that  
8 person are in conformity with such section 203.”.

9 **SEC. 207. RELIQUIDATION OF ENTRIES.**

10 Subsection (d) of section 520 of the Tariff Act of  
11 1930 (19 U.S.C. 1520(d)) is amended—

12 (1) in the matter preceding paragraph (1), by  
13 striking “or section 202 of the United States-Chile  
14 Free Trade Agreement Implementation Act” and in-  
15 serting “, section 202 of the United States-Chile  
16 Free Trade Agreement Implementation Act, or sec-  
17 tion 203 of the Dominican Republic-Central Amer-  
18 ica-United States Free Trade Agreement Implemen-  
19 tation Act”; and

20 (2) in paragraph (2), by inserting “or certifi-  
21 cations” after “other certificates”.

22 **SEC. 208. RECORDKEEPING REQUIREMENTS.**

23 Section 508 of the Tariff Act of 1930 (19 U.S.C.  
24 1508) is amended—



1 (1) by redesignating subsection (g) as sub-  
2 section (h);

3 (2) by inserting after subsection (f) the fol-  
4 lowing new subsection:

5 “(g) CERTIFICATIONS OF ORIGIN FOR GOODS EX-  
6 PORTED UNDER THE DOMINICAN REPUBLIC-CENTRAL  
7 AMERICA-UNITED STATES FREE TRADE AGREEMENT.—

8 “(1) DEFINITIONS.—In this subsection:

9 “(A) RECORDS AND SUPPORTING DOCU-  
10 MENTS.—The term ‘records and supporting  
11 documents’ means, with respect to an exported  
12 good under paragraph (2), records and docu-  
13 ments related to the origin of the good,  
14 including—

15 “(i) the purchase, cost, and value of,  
16 and payment for, the good;

17 “(ii) the purchase, cost, and value of,  
18 and payment for, all materials, including  
19 indirect materials, used in the production  
20 of the good; and

21 “(iii) the production of the good in  
22 the form in which it was exported.

23 “(B) CAFTA-DR CERTIFICATION OF ORI-  
24 GIN.—The term ‘CAFTA-DR certification of  
25 origin’ means the certification established under



1 article 4.16 of the Dominican Republic-Central  
 2 America-United States Free Trade Agreement  
 3 that a good qualifies as an originating good  
 4 under such Agreement.

5 “(2) EXPORTS TO CAFTA-DR COUNTRIES.—Any  
 6 person who completes and issues a CAFTA-DR cer-  
 7 tification of origin for a good exported from the  
 8 United States shall make, keep, and, pursuant to  
 9 rules and regulations promulgated by the Secretary  
 10 of the Treasury, render for examination and inspec-  
 11 tion all records and supporting documents related to  
 12 the origin of the good (including the certification or  
 13 copies thereof).

14 “(3) RETENTION PERIOD.—Records and sup-  
 15 porting documents shall be kept by the person who  
 16 issued a CAFTA-DR certification of origin for at  
 17 least 5 years after the date on which the certifi-  
 18 cation was issued.”; and

19 (3) in subsection (h), as so redesignated—

20 (A) by inserting “or (g)” after “(f)”; and

21 (B) by striking “that subsection” and in-  
 22 serting “either such subsection”.

23 **SEC. 209. ENFORCEMENT RELATING TO TRADE IN TEXTILE**  
 24 **OR APPAREL GOODS.**

25 (a) ACTION DURING VERIFICATION.—



1 (1) IN GENERAL.—If the Secretary of the  
 2 Treasury requests the government of a CAFTA–DR  
 3 country to conduct a verification pursuant to article  
 4 3.24 of the Agreement for purposes of making a de-  
 5 termination under paragraph (2), the President may  
 6 direct the Secretary to take appropriate action de-  
 7 scribed in subsection (b) while the verification is  
 8 being conducted.

9 (2) DETERMINATION.—A determination under  
 10 this paragraph is a determination—

11 (A) that an exporter or producer in that  
 12 country is complying with applicable customs  
 13 laws, regulations, and procedures regarding  
 14 trade in textile or apparel goods, or

15 (B) that a claim that a textile or apparel  
 16 good exported or produced by such exporter or  
 17 producer—

18 (i) qualifies as an originating good  
 19 under section 203 of this Act, or

20 (ii) is a good of a CAFTA–DR coun-  
 21 try,  
 22 is accurate.

23 (b) APPROPRIATE ACTION DESCRIBED.—Appropriate  
 24 action under subsection (a)(1) includes—



1 (1) suspension of preferential tariff treatment  
2 under the Agreement with respect to—

3 (A) any textile or apparel good exported or  
4 produced by the person that is the subject of a  
5 verification under subsection (a)(1) regarding  
6 compliance described in subsection (a)(2)(A), if  
7 the Secretary determines there is insufficient  
8 information to support any claim for pref-  
9 erential tariff treatment that has been made  
10 with respect to any such good; or

11 (B) the textile or apparel good for which a  
12 claim of preferential tariff treatment has been  
13 made that is the subject of a verification under  
14 subsection (a)(1) regarding a claim described in  
15 subsection (a)(2)(B), if the Secretary deter-  
16 mines there is insufficient information to sup-  
17 port that claim;

18 (2) denial of preferential tariff treatment under  
19 the Agreement with respect to—

20 (A) any textile or apparel good exported or  
21 produced by the person that is the subject of a  
22 verification under subsection (a)(1) regarding  
23 compliance described in subsection (a)(2)(A), if  
24 the Secretary determines that the person has  
25 provided incorrect information to support any



1 claim for preferential tariff treatment that has  
2 been made with respect to any such good; or

3 (B) the textile or apparel good for which a  
4 claim of preferential tariff treatment has been  
5 made that is the subject of a verification under  
6 subsection (a)(1) regarding a claim described in  
7 subsection (a)(2)(B), if the Secretary deter-  
8 mines that a person has provided incorrect in-  
9 formation to support that claim;

10 (3) detention of any textile or apparel good ex-  
11 ported or produced by the person that is the subject  
12 of a verification under subsection (a)(1) regarding  
13 compliance described in subsection (a)(2)(A) or a  
14 claim described in subsection (a)(2)(B), if the Sec-  
15 retary determines there is insufficient information to  
16 determine the country of origin of any such good;  
17 and

18 (4) denial of entry into the United States of  
19 any textile or apparel good exported or produced by  
20 the person that is the subject of a verification under  
21 subsection (a)(1) regarding compliance described in  
22 subsection (a)(2)(A) or a claim described in sub-  
23 section (a)(2)(B), if the Secretary determines that  
24 the person has provided incorrect information as to  
25 the country of origin of any such good.



1 (c) ACTION ON COMPLETION OF A VERIFICATION.—

2 On completion of a verification under subsection (a), the  
3 President may direct the Secretary to take appropriate ac-  
4 tion described in subsection (d) until such time as the Sec-  
5 retary receives information sufficient to make the deter-  
6 mination under subsection (a)(2) or until such earlier date  
7 as the President may direct.

8 (d) APPROPRIATE ACTION DESCRIBED.—Appro-  
9 priate action under subsection (c) includes—

10 (1) denial of preferential tariff treatment under  
11 the Agreement with respect to—

12 (A) any textile or apparel good exported or  
13 produced by the person that is the subject of a  
14 verification under subsection (a)(1) regarding  
15 compliance described in subsection (a)(2)(A), if  
16 the Secretary determines there is insufficient  
17 information to support, or that the person has  
18 provided incorrect information to support, any  
19 claim for preferential tariff treatment that has  
20 been made with respect to any such good; or

21 (B) the textile or apparel good for which a  
22 claim of preferential tariff treatment has been  
23 made that is the subject of a verification under  
24 subsection (a)(1) regarding a claim described in  
25 subsection (a)(2)(B), if the Secretary deter-



1           mines there is insufficient information to sup-  
 2           port, or that a person has provided incorrect in-  
 3           formation to support, that claim; and

4           (2) denial of entry into the United States of  
 5           any textile or apparel good exported or produced by  
 6           the person that is the subject of a verification under  
 7           subsection (a)(1) regarding compliance described in  
 8           subsection (a)(2)(A) or a claim described in sub-  
 9           section (a)(2)(B), if the Secretary determines there  
 10          is insufficient information to determine, or that the  
 11          person has provided incorrect information as to, the  
 12          country of origin of any such good.

13          (e) PUBLICATION OF NAME OF PERSON.—The Sec-  
 14          retary may publish the name of any person that the Sec-  
 15          retary has determined—

16               (1) is engaged in intentional circumvention of  
 17               applicable laws, regulations, or procedures affecting  
 18               trade in textile or apparel goods; or

19               (2) has failed to demonstrate that it produces,  
 20               or is capable of producing, textile or apparel goods.

21 **SEC. 210. REGULATIONS.**

22          The Secretary of the Treasury shall prescribe such  
 23          regulations as may be necessary to carry out—

24               (1) subsections (a) through (n) of section 203;

25               (2) the amendment made by section 204; and



1 (3) any proclamation issued under section  
2 203(o).

3 **TITLE III—RELIEF FROM**  
4 **IMPORTS**

5 **SEC. 301. DEFINITIONS.**

6 In this title:

7 (1) CAFTA-DR ARTICLE.—The term  
8 “CAFTA-DR article” means an article that quali-  
9 fies as an originating good under section 203(b).

10 (2) CAFTA-DR TEXTILE OR APPAREL ARTI-  
11 CLE.—The term “CAFTA-DR textile or apparel ar-  
12 ticle” means a textile or apparel good (as defined in  
13 section 3(5)) that is a CAFTA-DR article.

14 (3) DE MINIMIS SUPPLYING COUNTRY.—

15 (A) Subject to subparagraph (B), the term  
16 “de minimis supplying country” means a  
17 CAFTA-DR country whose share of imports of  
18 the relevant CAFTA-DR article into the United  
19 States does not exceed 3 percent of the aggre-  
20 gate volume of imports of the relevant CAFTA-  
21 DR article in the most recent 12-month period  
22 for which data are available that precedes the  
23 filing of the petition under section 311(a).

24 (B) A CAFTA-DR country shall not be  
25 considered to be a de minimis supplying country



1 if the aggregate share of imports of the relevant  
 2 CAFTA-DR article into the United States of  
 3 all CAFTA-DR countries that satisfy the con-  
 4 ditions of subparagraph (A) exceeds 9 percent  
 5 of the aggregate volume of imports of the rel-  
 6 evant CAFTA-DR article during the applicable  
 7 12-month period.

8 (4) RELEVANT CAFTA-DR ARTICLE.—The term  
 9 “relevant CAFTA-DR article” means the CAFTA-  
 10 DR article with respect to which a petition has been  
 11 filed under section 311(a).

12 **Subtitle A—Relief From Imports**  
 13 **Benefiting From the Agreement**

14 **SEC. 311. COMMENCING OF ACTION FOR RELIEF.**

15 (a) FILING OF PETITION.—A petition requesting ac-  
 16 tion under this subtitle for the purpose of adjusting to  
 17 the obligations of the United States under the Agreement  
 18 may be filed with the Commission by an entity, including  
 19 a trade association, firm, certified or recognized union, or  
 20 group of workers, that is representative of an industry.  
 21 The Commission shall transmit a copy of any petition filed  
 22 under this subsection to the United States Trade Rep-  
 23 resentative.

24 (b) INVESTIGATION AND DETERMINATION.—Upon  
 25 the filing of a petition under subsection (a), the Commis-



1 sion, unless subsection (d) applies, shall promptly initiate  
 2 an investigation to determine whether, as a result of the  
 3 reduction or elimination of a duty provided for under the  
 4 Agreement, a CAFTA-DR article is being imported into  
 5 the United States in such increased quantities, in absolute  
 6 terms or relative to domestic production, and under such  
 7 conditions that imports of the CAFTA-DR article con-  
 8 stitute a substantial cause of serious injury or threat  
 9 thereof to the domestic industry producing an article that  
 10 is like, or directly competitive with, the imported article.

11 (c) APPLICABLE PROVISIONS.—The following provi-  
 12 sions of section 202 of the Trade Act of 1974 (19 U.S.C.  
 13 2252) apply with respect to any investigation initiated  
 14 under subsection (b):

15 (1) Paragraphs (1)(B) and (3) of subsection  
 16 (b).

17 (2) Subsection (e).

18 (3) Subsection (i).

19 (d) ARTICLES EXEMPT FROM INVESTIGATION.—No  
 20 investigation may be initiated under this section with re-  
 21 spect to any CAFTA-DR article if, after the date that  
 22 the Agreement enters into force, import relief has been  
 23 provided with respect to that CAFTA-DR article under  
 24 this subtitle.



1 **SEC. 312. COMMISSION ACTION ON PETITION.**

2 (a) DETERMINATION.—Not later than 120 days after  
 3 the date on which an investigation is initiated under sec-  
 4 tion 311(b) with respect to a petition, the Commission  
 5 shall make the determination required under that section.  
 6 At that time, the Commission shall also determine whether  
 7 any CAFTA–DR country is a de minimis supplying coun-  
 8 try.

9 (b) APPLICABLE PROVISIONS.—For purposes of this  
 10 subtitle, the provisions of paragraphs (1), (2), and (3) of  
 11 section 330(d) of the Tariff Act of 1930 (19 U.S.C.  
 12 1330(d) (1), (2), and (3)) shall be applied with respect  
 13 to determinations and findings made under this section  
 14 as if such determinations and findings were made under  
 15 section 202 of the Trade Act of 1974 (19 U.S.C. 2252).

16 (c) ADDITIONAL FINDING AND RECOMMENDATION IF  
 17 DETERMINATION AFFIRMATIVE.—If the determination  
 18 made by the Commission under subsection (a) with respect  
 19 to imports of an article is affirmative, or if the President  
 20 may consider a determination of the Commission to be an  
 21 affirmative determination as provided for under paragraph  
 22 (1) of section 330(d) of the Tariff Act of 1930 (19 U.S.C.  
 23 1330(d)), the Commission shall find, and recommend to  
 24 the President in the report required under subsection (d),  
 25 the amount of import relief that is necessary to remedy  
 26 or prevent the injury found by the Commission in the de-



1 termination and to facilitate the efforts of the domestic  
2 industry to make a positive adjustment to import competi-  
3 tion. The import relief recommended by the Commission  
4 under this subsection shall be limited to the relief de-  
5 scribed in section 313(c). Only those members of the Com-  
6 mission who voted in the affirmative under subsection (a)  
7 are eligible to vote on the proposed action to remedy or  
8 prevent the injury found by the Commission. Members of  
9 the Commission who did not vote in the affirmative may  
10 submit, in the report required under subsection (d), sepa-  
11 rate views regarding what action, if any, should be taken  
12 to remedy or prevent the injury.

13 (d) REPORT TO PRESIDENT.—Not later than the  
14 date that is 30 days after the date on which a determina-  
15 tion is made under subsection (a) with respect to an inves-  
16 tigation, the Commission shall submit to the President a  
17 report that includes—

18 (1) the determination made under subsection  
19 (a) and an explanation of the basis for the deter-  
20 mination;

21 (2) if the determination under subsection (a) is  
22 affirmative, any findings and recommendations for  
23 import relief made under subsection (c) and an ex-  
24 planation of the basis for each recommendation; and



1 (3) any dissenting or separate views by mem-  
2 bers of the Commission regarding the determination  
3 and recommendation referred to in paragraphs (1)  
4 and (2).

5 (e) PUBLIC NOTICE.—Upon submitting a report to  
6 the President under subsection (d), the Commission shall  
7 promptly make public such report (with the exception of  
8 information which the Commission determines to be con-  
9 fidential) and shall cause a summary thereof to be pub-  
10 lished in the Federal Register.

11 **SEC. 313. PROVISION OF RELIEF.**

12 (a) IN GENERAL.—Not later than the date that is  
13 30 days after the date on which the President receives the  
14 report of the Commission in which the Commission's de-  
15 termination under section 312(a) is affirmative, or which  
16 contains a determination under section 312(a) that the  
17 President considers to be affirmative under paragraph (1)  
18 of section 330(d) of the Tariff Act of 1930 (19 U.S.C.  
19 1330(d)(1)), the President, subject to subsection (b), shall  
20 provide relief from imports of the article that is the subject  
21 of such determination to the extent that the President de-  
22 termines necessary to remedy or prevent the injury found  
23 by the Commission and to facilitate the efforts of the do-  
24 mestic industry to make a positive adjustment to import  
25 competition.



1 (b) EXCEPTION.—The President is not required to  
 2 provide import relief under this section if the President  
 3 determines that the provision of the import relief will not  
 4 provide greater economic and social benefits than costs.

5 (c) NATURE OF RELIEF.—

6 (1) IN GENERAL.—The import relief that the  
 7 President is authorized to provide under this section  
 8 with respect to imports of an article is as follows:

9 (A) The suspension of any further reduction  
 10 provided for under Annex 3.3 of the Agreement  
 11 in the duty imposed on such article.

12 (B) An increase in the rate of duty imposed  
 13 on such article to a level that does not  
 14 exceed the lesser of—

15 (i) the column 1 general rate of duty  
 16 imposed under the HTS on like articles at  
 17 the time the import relief is provided; or

18 (ii) the column 1 general rate of duty  
 19 imposed under the HTS on like articles on  
 20 the day before the date on which the  
 21 Agreement enters into force.

22 (2) PROGRESSIVE LIBERALIZATION.—If the period  
 23 for which import relief is provided under this  
 24 section is greater than 1 year, the President shall  
 25 provide for the progressive liberalization (described



1 in article 8.2.3 of the Agreement) of such relief at  
2 regular intervals during the period of its application.

3 (d) PERIOD OF RELIEF.—

4 (1) IN GENERAL.—Subject to paragraph (2),  
5 any import relief that the President is authorized to  
6 provide under this section may not, in the aggregate,  
7 be in effect for more than 4 years.

8 (2) EXTENSION.—

9 (A) IN GENERAL.—If the initial period for  
10 any import relief provided under this section is  
11 less than 4 years, the President, after receiving  
12 a determination from the Commission under  
13 subparagraph (B) that is affirmative, or which  
14 the President considers to be affirmative under  
15 paragraph (1) of section 330(d) of the Tariff  
16 Act of 1930 (19 U.S.C. 1330(d)(1)), may ex-  
17 tend the effective period of any import relief  
18 provided under this section, subject to the limi-  
19 tation under paragraph (1), if the President de-  
20 termines that—

21 (i) the import relief continues to be  
22 necessary to remedy or prevent serious in-  
23 jury and to facilitate adjustment by the do-  
24 mestic industry to import competition; and



1 (ii) there is evidence that the industry  
 2 is making a positive adjustment to import  
 3 competition.

4 (B) ACTION BY COMMISSION.—(i) Upon a  
 5 petition on behalf of the industry concerned  
 6 that is filed with the Commission not earlier  
 7 than the date which is 9 months, and not later  
 8 than the date which is 6 months, before the  
 9 date on which any action taken under sub-  
 10 section (a) is to terminate, the Commission  
 11 shall conduct an investigation to determine  
 12 whether action under this section continues to  
 13 be necessary to remedy or prevent serious in-  
 14 jury and whether there is evidence that the in-  
 15 dustry is making a positive adjustment to im-  
 16 port competition.

17 (ii) The Commission shall publish notice of  
 18 the commencement of any proceeding under  
 19 this subparagraph in the Federal Register and  
 20 shall, within a reasonable time thereafter, hold  
 21 a public hearing at which the Commission shall  
 22 afford interested parties and consumers an op-  
 23 portunity to be present, to present evidence,  
 24 and to respond to the presentations of other



1 parties and consumers, and otherwise to be  
2 heard.

3 (iii) The Commission shall transmit to the  
4 President a report on its investigation and de-  
5 termination under this subparagraph not later  
6 than 60 days before the action under subsection  
7 (a) is to terminate, unless the President speci-  
8 fies a different date.

9 (e) RATE AFTER TERMINATION OF IMPORT RE-  
10 LIEF.—When import relief under this section is termi-  
11 nated with respect to an article—

12 (1) the rate of duty on that article after such  
13 termination and on or before December 31 of the  
14 year in which such termination occurs shall be the  
15 rate that, according to the Schedule of the United  
16 States to Annex 3.3 of the Agreement would have  
17 been in effect 1 year after the provision of relief  
18 under subsection (a); and

19 (2) the rate of duty for that article after De-  
20 cember 31 of the year in which termination occurs  
21 shall be, at the discretion of the President, either—

22 (A) the applicable rate of duty for that ar-  
23 ticle set out in the Schedule of the United  
24 States to Annex 3.3 of the Agreement; or



1 (B) the rate of duty resulting from the  
2 elimination of the tariff in equal annual stages  
3 ending on the date set out in the Schedule of  
4 the United States to Annex 3.3 of the Agree-  
5 ment for the elimination of the tariff.

6 (f) ARTICLES EXEMPT FROM RELIEF.—No import  
7 relief may be provided under this section on—

8 (1) any article subject to import relief under  
9 chapter 1 of title II of the Trade Act of 1974 (19  
10 U.S.C. 2251 et seq.); or

11 (2) imports of a CAFTA–DR article of a  
12 CAFTA–DR country that is a de minimis supplying  
13 country with respect to that article.

14 **SEC. 314. TERMINATION OF RELIEF AUTHORITY.**

15 (a) GENERAL RULE.—Subject to subsection (b), no  
16 import relief may be provided under this subtitle after the  
17 date that is 10 years after the date on which the Agree-  
18 ment enters into force.

19 (b) EXCEPTION.—If an article for which relief is pro-  
20 vided under this subtitle is an article for which the period  
21 for tariff elimination, set out in the Schedule of the United  
22 States to Annex 3.3 of the Agreement, is greater than 10  
23 years, no relief under this subtitle may be provided for  
24 that article after the date on which that period ends.



1 **SEC. 315. COMPENSATION AUTHORITY.**

2 For purposes of section 123 of the Trade Act of 1974  
3 (19 U.S.C. 2133), any import relief provided by the Presi-  
4 dent under section 313 shall be treated as action taken  
5 under chapter 1 of title II of such Act.

6 **SEC. 316. CONFIDENTIAL BUSINESS INFORMATION.**

7 Section 202(a)(8) of the Trade Act of 1974 (19  
8 U.S.C. 2252(a)(8)) is amended in the first sentence—

9 (1) by striking “and”; and

10 (2) by inserting before the period at the end “,  
11 and title III of the Dominican Republic-Central  
12 America-United States Free Trade Agreement Im-  
13 plementation Act”.

14 **Subtitle B—Textile and Apparel**  
15 **Safeguard Measures**

16 **SEC. 321. COMMENCEMENT OF ACTION FOR RELIEF.**

17 (a) IN GENERAL.—A request under this subtitle for  
18 the purpose of adjusting to the obligations of the United  
19 States under the Agreement may be filed with the Presi-  
20 dent by an interested party. Upon the filing of a request,  
21 the President shall review the request to determine, from  
22 information presented in the request, whether to com-  
23 mence consideration of the request.

24 (b) PUBLICATION OF REQUEST.—If the President de-  
25 termines that the request under subsection (a) provides  
26 the information necessary for the request to be considered,



1 the President shall cause to be published in the Federal  
 2 Register a notice of commencement of consideration of the  
 3 request, and notice seeking public comments regarding the  
 4 request. The notice shall include a summary of the request  
 5 and the dates by which comments and rebuttals must be  
 6 received.

7 **SEC. 322. DETERMINATION AND PROVISION OF RELIEF.**

8 (a) DETERMINATION.—

9 (1) IN GENERAL.—If a positive determination is  
 10 made under section 321(b), the President shall de-  
 11 termine whether, as a result of the elimination of a  
 12 duty under the Agreement, a CAFTA-DR textile or  
 13 apparel article of a specified CAFTA-DR country is  
 14 being imported into the United States in such in-  
 15 creased quantities, in absolute terms or relative to  
 16 the domestic market for that article, and under such  
 17 conditions as to cause serious damage, or actual  
 18 threat thereof, to a domestic industry producing an  
 19 article that is like, or directly competitive with, the  
 20 imported article.

21 (2) SERIOUS DAMAGE.—In making a deter-  
 22 mination under paragraph (1), the President—

23 (A) shall examine the effect of increased  
 24 imports on the domestic industry, as reflected  
 25 in changes in such relevant economic factors as



1 output, productivity, utilization of capacity, in-  
 2 ventories, market share, exports, wages, em-  
 3 ployment, domestic prices, profits, and invest-  
 4 ment, none of which is necessarily decisive; and

5 (B) shall not consider changes in tech-  
 6 nology or consumer preference as factors sup-  
 7 porting a determination of serious damage or  
 8 actual threat thereof.

9 (3) DEADLINE FOR DETERMINATION.—The  
 10 President shall make the determination under para-  
 11 graph (1) no later than 30 days after the completion  
 12 of any consultations held pursuant to article 3.23.4  
 13 of the Agreement.

14 (b) PROVISION OF RELIEF.—

15 (1) IN GENERAL.—If a determination under  
 16 subsection (a) is affirmative, the President may pro-  
 17 vide relief from imports of the article that is the  
 18 subject of such determination, as provided in para-  
 19 graph (2), to the extent that the President deter-  
 20 mines necessary to remedy or prevent the serious  
 21 damage and to facilitate adjustment by the domestic  
 22 industry.

23 (2) NATURE OF RELIEF.—The relief that the  
 24 President is authorized to provide under this sub-  
 25 section with respect to imports of an article is an in-



1       crease in the rate of duty imposed on the article to  
2       a level that does not exceed the lesser of—

3               (A) the column 1 general rate of duty im-  
4       posed under the HTS on like articles at the  
5       time the import relief is provided; or

6               (B) the column 1 general rate of duty im-  
7       posed under the HTS on like articles on the  
8       day before the date on which the Agreement en-  
9       ters into force.

10 **SEC. 323. PERIOD OF RELIEF.**

11       (a) IN GENERAL.—Subject to subsection (b), any im-  
12       port relief that the President provides under subsection  
13       (b) of section 322 may not, in the aggregate, be in effect  
14       for more than 3 years.

15       (b) EXTENSION.—If the initial period for any import  
16       relief provided under section 322 is less than 3 years, the  
17       President may extend the effective period of any import  
18       relief provided under that section, subject to the limitation  
19       set forth in subsection (a), if the President determines  
20       that—

21               (1) the import relief continues to be necessary  
22       to remedy or prevent serious damage and to facili-  
23       tate adjustment by the domestic industry to import  
24       competition; and



1 (2) there is evidence that the industry is mak-  
2 ing a positive adjustment to import competition.

3 **SEC. 324. ARTICLES EXEMPT FROM RELIEF.**

4 The President may not provide import relief under  
5 this subtitle with respect to any article if—

6 (1) import relief previously has been provided  
7 under this subtitle with respect to that article; or

8 (2) the article is subject to import relief  
9 under—

10 (A) subtitle A; or

11 (B) chapter 1 of title II of the Trade Act  
12 of 1974.

13 **SEC. 325. RATE AFTER TERMINATION OF IMPORT RELIEF.**

14 When import relief under this subtitle is terminated  
15 with respect to an article, the rate of duty on that article  
16 shall be the rate that would have been in effect, but for  
17 the provision of such relief.

18 **SEC. 326. TERMINATION OF RELIEF AUTHORITY.**

19 No import relief may be provided under this subtitle  
20 with respect to any article after the date that is 5 years  
21 after the date on which the Agreement enters into force.

22 **SEC. 327. COMPENSATION AUTHORITY.**

23 For purposes of section 123 of the Trade Act of 1974  
24 (19 U.S.C. 2133), any import relief provided by the Presi-



1 dent under this subtitle shall be treated as action taken  
2 under chapter 1 of title II of that Act.

3 **SEC. 328. CONFIDENTIAL BUSINESS INFORMATION.**

4 The President may not release information received  
5 in connection with a review under this subtitle which the  
6 President considers to be confidential business informa-  
7 tion unless the party submitting the confidential business  
8 information had notice, at the time of submission, that  
9 such information would be released by the President, or  
10 such party subsequently consents to the release of the in-  
11 formation. To the extent a party submits confidential busi-  
12 ness information, it shall also provide a nonconfidential  
13 version of the information in which the confidential busi-  
14 ness information is summarized or, if necessary, deleted.

15 **Subtitle C—Cases Under Title II of**  
16 **the Trade Act of 1974**

17 **SEC. 331. FINDINGS AND ACTION ON GOODS OF CAFTA-DR**  
18 **COUNTRIES.**

19 (a) EFFECT OF IMPORTS.—If, in any investigation  
20 initiated under chapter 1 of title II of the Trade Act of  
21 1974, the Commission makes an affirmative determination  
22 (or a determination which the President may treat as an  
23 affirmative determination under such chapter by reason  
24 of section 330(d) of the Tariff Act of 1930), the Commis-  
25 sion shall also find (and report to the President at the



1 time such injury determination is submitted to the Presi-  
2 dent) whether imports of the article of each CAFTA-DR  
3 country that qualify as originating goods under section  
4 203(b) are a substantial cause of serious injury or threat  
5 thereof.

6 (b) PRESIDENTIAL DETERMINATION REGARDING IM-  
7 PORTS OF CAFTA-DR COUNTRIES.—In determining the  
8 nature and extent of action to be taken under chapter 1  
9 of title II of the Trade Act of 1974, the President may  
10 exclude from the action goods of a CAFTA-DR country  
11 with respect to which the Commission has made a negative  
12 finding under subsection (a).

13 **TITLE IV—MISCELLANEOUS**

14 **SEC. 401. ELIGIBLE PRODUCTS.**

15 Section 308(4)(A) of the Trade Agreements Act of  
16 1979 (19 U.S.C. 2518(4)(A)) is amended—

- 17 (1) by striking “or” at the end of clause (ii);
- 18 (2) by striking the period at the end of clause
- 19 (iii) and inserting “; or”; and
- 20 (3) by adding at the end the following new
- 21 clause:

22 “(iv) a party to the Dominican Re-  
23 public-Central America-United States Free  
24 Trade Agreement, a product or service of  
25 that country or instrumentality which is



1 covered under that Agreement for procure-  
2 ment by the United States.”.

3 **SEC. 402. MODIFICATIONS TO THE CARIBBEAN BASIN ECO-**  
4 **NOMIC RECOVERY ACT.**

5 (a) **FORMER BENEFICIARY COUNTRIES.**—Section  
6 212(a)(1) of the Caribbean Basin Economic Recovery Act  
7 (19 U.S.C. 2702(a)(1)) is amended by adding at the end  
8 the following new subparagraph:

9 “(F) The term ‘former beneficiary country’  
10 means a country that ceases to be designated as  
11 a beneficiary country under this title because  
12 the country has become a party to a free trade  
13 agreement with the United States.”.

14 (b) **COUNTRIES ELIGIBLE FOR DESIGNATION AS**  
15 **BENEFICIARY COUNTRIES.**—Section 212(b) of the Carib-  
16 bean Basin Economic Recovery Act (19 U.S.C. 2702(b))  
17 is amended by striking from the list of countries eligible  
18 for designation as beneficiary countries—

19 (1) “Costa Rica”, effective on the date the  
20 President terminates the designation of Costa Rica  
21 as a beneficiary country pursuant to section  
22 201(a)(3);

23 (2) “Dominican Republic”, effective on the date  
24 the President terminates the designation of the Do-



1 minican Republic as a beneficiary country pursuant  
2 to section 201(a)(3);

3 (3) "El Salvador", effective on the date the  
4 President terminates the designation of El Salvador  
5 as a beneficiary country pursuant to section  
6 201(a)(3);

7 (4) "Guatemala", effective on the date the  
8 President terminates the designation of Guatemala  
9 as a beneficiary country pursuant to section  
10 201(a)(3);

11 (5) "Honduras", effective on the date the Presi-  
12 dent terminates the designation of Honduras as a  
13 beneficiary country pursuant to section 201(a)(3);  
14 and.

15 (6) "Nicaragua", effective on the date the  
16 President terminates the designation of Nicaragua  
17 as a beneficiary country pursuant to section  
18 201(a)(3).

19 (c) MATERIALS OF, OR PROCESSING IN, FORMER  
20 BENEFICIARY COUNTRIES.—Section 213(a)(1) of the Car-  
21ibbean Basin Economic Recovery Act (19 U.S.C.  
22 2703(a)(1)) is amended by striking "the Commonwealth  
23 of Puerto Rico and the United States Virgin Islands" and  
24 inserting "the Commonwealth of Puerto Rico, the United



1 States Virgin Islands, and any former beneficiary coun-  
2 try”.

3 (d) DEFINITIONS AND SPECIAL RULES.—Section  
4 213(b)(5) of the Caribbean Basin Economic Recovery Act  
5 (19 U.S.C. 2703(b)(5)) is amended by adding at the end  
6 the following new subparagraphs:

7 “(G) FORMER CBTPA BENEFICIARY COUN-  
8 TRY.—The term ‘former CBTPA beneficiary  
9 country’ means a country that ceases to be des-  
10 ignated as a CBTPA beneficiary country under  
11 this title because the country has become a  
12 party to a free trade agreement with the United  
13 States.

14 “(H) ARTICLES THAT UNDERGO PRODUC-  
15 TION IN A CBTPA BENEFICIARY COUNTRY AND  
16 A FORMER CBTPA BENEFICIARY COUNTRY.—(i)  
17 For purposes of determining the eligibility of an  
18 article for preferential treatment under para-  
19 graph (2) or (3), references in either such para-  
20 graph, and in subparagraph (C) of this para-  
21 graph to—

22 “(I) a ‘CBTPA beneficiary country’  
23 shall be considered to include any former  
24 CPTPA beneficiary country, and



1                   “(II) ‘CBTPA beneficiary countries’  
 2                   shall be considered to include former  
 3                   CBTPA beneficiary countries,  
 4                   if the article, or a good used in the production  
 5                   of the article, undergoes production in a  
 6                   CBTPA beneficiary country.

7                   “(ii) An article that is eligible for pref-  
 8                   erential treatment under clause (i) shall not be  
 9                   ineligible for such treatment because the article  
 10                  is imported directly from a former CBTPA ben-  
 11                  eficiary country.

12                  “(iii) Notwithstanding clauses (i) and (ii),  
 13                  an article that is a good of a former CBTPA  
 14                  beneficiary country for purposes of section 304  
 15                  of the Tariff Act of 1930 (19 U.S.C. 1304) or  
 16                  section 334 of the Uruguay Round Agreements  
 17                  Act (19 U.S.C. 3592), as the case may be, shall  
 18                  not be eligible for preferential treatment under  
 19                  paragraph (2) or (3), unless—

20                  “(I) it is an article that is a good of  
 21                  the Dominican Republic under either such  
 22                  section 304 or 334; and

23                  “(II) the article, or a good used in the  
 24                  production of the article, undergoes pro-  
 25                  duction in Haiti.”.



1 **SEC. 403. PERIODIC REPORTS AND MEETINGS ON LABOR**  
 2 **OBLIGATIONS AND LABOR CAPACITY-BUILD-**  
 3 **ING PROVISIONS.**

4 (a) **REPORTS TO CONGRESS.—**

5 (1) **IN GENERAL.—**Not later than the end of  
 6 the 2-year period beginning on the date the Agree-  
 7 ment enters into force, and not later than the end  
 8 of each 2-year period thereafter during the suc-  
 9 ceeding 14-year period, the President shall report to  
 10 the Congress on the progress made by the CAFTA-  
 11 DR countries in—

12 (A) implementing Chapter Sixteen and  
 13 Annex 16.5 of the Agreement; and

14 (B) implementing the White Paper.

15 (2) **WHITE PAPER.—**In this section, the term  
 16 “White Paper” means the report of April 2005 of  
 17 the Working Group of the Vice Ministers Respon-  
 18 sible for Trade and Labor in the Countries of Cen-  
 19 tral America and the Dominican Republic entitled  
 20 “The Labor Dimension in Central America and the  
 21 Dominican Republic - Building on Progress:  
 22 Strengthening Compliance and Enhancing Capac-  
 23 ity”.

24 (3) **CONTENTS OF REPORTS.—**Each report  
 25 under paragraph (1) shall include the following:



1 (A) A description of the progress made by  
 2 the Labor Cooperation and Capacity Building  
 3 Mechanism established by article 16.5 and  
 4 Annex 16.5 of the Agreement, and the Labor  
 5 Affairs Council established by article 16.4 of  
 6 the Agreement, in achieving their stated goals,  
 7 including a description of the capacity-building  
 8 projects undertaken, funds received, and results  
 9 achieved, in each CAFTA-DR country.

10 (B) Recommendations on how the United  
 11 States can facilitate full implementation of the  
 12 recommendations contained in the White Paper.

13 (C) A description of the work done by the  
 14 CAFTA-DR countries with the International  
 15 Labor Organization to implement the rec-  
 16 ommendations contained in the White Paper,  
 17 and the efforts of the CAFTA-DR countries  
 18 with international organizations, through the  
 19 Labor Cooperation and Capacity Building  
 20 Mechanism referred to in subparagraph (A), to  
 21 advance common commitments regarding labor  
 22 matters.

23 (D) A summary of public comments re-  
 24 ceived on—



1 (i) capacity-building efforts by the  
 2 United States envisaged by article 16.5  
 3 and Annex 16.5 of the Agreement;

4 (ii) efforts by the United States to fa-  
 5 cilitate full implementation of the White  
 6 Paper recommendations; and

7 (iii) the efforts made by the CAFTA-  
 8 DR countries to comply with article 16.5  
 9 and Annex 16.5 of the Agreement and to  
 10 fully implement the White Paper rec-  
 11 ommendations, including the progress  
 12 made by the CAFTA-DR countries in af-  
 13 fording to workers internationally-recog-  
 14 nized worker rights through improved ca-  
 15 pacity.

16 (4) SOLICITATION OF PUBLIC COMMENTS.—The  
 17 President shall establish a mechanism to solicit pub-  
 18 lic comments for purposes of paragraph (3)(D).

19 (b) PERIODIC MEETINGS OF SECRETARY OF LABOR  
 20 WITH LABOR MINISTERS OF CAFTA-DR COUNTRIES.—

21 (1) PERIODIC MEETINGS.—The Secretary of  
 22 Labor should take the necessary steps to meet peri-  
 23 odically with the labor ministers of the CAFTA-DR  
 24 countries to discuss—



1 (A) the operation of the labor provisions of  
2 the Agreement;

3 (B) progress on the commitments made by  
4 the CAFTA-DR countries to implement the rec-  
5 ommendations contained in the White Paper;

6 (C) the work of the International Labor  
7 Organization in the CAFTA-DR countries, and  
8 other cooperative efforts, to afford to workers  
9 internationally-recognized worker rights; and

10 (D) such other matters as the Secretary of  
11 Labor and the labor ministers consider appro-  
12 priate.

13 (2) INCLUSION IN BIENNIAL REPORTS.—The  
14 President shall include in each report under sub-  
15 section (a), as the President deems appropriate,  
16 summaries of the meetings held pursuant to para-  
17 graph (1).



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**Tab 3: Statement of Administrative Action**

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THE DOMINICAN REPUBLIC – CENTRAL AMERICA – UNITED STATES  
FREE TRADE AGREEMENT IMPLEMENTATION ACT

STATEMENT OF ADMINISTRATIVE ACTION

This Statement of Administrative Action (“Statement”) is submitted to the Congress in compliance with section 2105(a)(1)(C)(ii) of the Bipartisan Trade Promotion Authority Act of 2002 (“TPA Act”) and accompanies the implementing bill for the free trade agreement that the United States has concluded with Costa Rica, El Salvador, Guatemala, Honduras, and Nicaragua (collectively “Central America” or “Central American countries”) and the Dominican Republic (“Agreement” or “CAFTA-DR”). The bill approves and makes statutory changes necessary or appropriate to implement the Agreement, which the United States Trade Representative signed on August 5, 2004.

This Statement describes significant administrative actions proposed to implement U.S. obligations under the Agreement.

In addition, incorporated into this Statement are two other statements required under section 2105(a) of the TPA Act: (1) an explanation of how the implementing bill and proposed administrative action will change or affect existing law; and (2) a statement setting forth the reasons why the implementing bill and proposed administrative action are necessary or appropriate to carry out the Agreement. The Agreement does not change the provisions of any agreement the United States has previously negotiated with the other parties to the Agreement.

For ease of reference, this Statement generally follows the organization of the Agreement, with the exception of grouping the general provisions of the Agreement (Chapters One, Two, and Eighteen through Twenty-Two) at the beginning of the discussion.

For each chapter of the Agreement, the Statement describes the pertinent provisions of the implementing bill, explaining how the bill changes or affects existing law, and stating why those provisions are necessary or appropriate to implement the Agreement. The Statement then describes the administrative action proposed to implement the particular chapter of the Agreement, explaining how the proposed action changes existing administrative practice or authorizes further action and stating why such actions are necessary or appropriate to implement the Agreement.

It should be noted that this Statement does not, for the most part, discuss those many instances in which U.S. law or administrative practice will remain unchanged under the Agreement. In many cases, U.S. laws and regulations are already in conformity with the obligations assumed under the Agreement.

Finally, references in this Statement to particular sections of U.S. statutes are based on those statutes in effect as of the date this Statement was submitted to the Congress.

**Chapters:**  
**One (Initial Provisions)**  
**Two (General Definitions)**  
**Eighteen (Transparency)**  
**Nineteen (Administration of the Agreement and Trade Capacity Building)**  
**Twenty (Dispute Settlement)**  
**Twenty-One (Exceptions)**  
**Twenty-Two (Final Provisions)**

**1. Implementing Bill**

**a. Congressional Approval**

Section 101(a) of the implementing bill provides Congressional approval for the Agreement and this Statement, as required by sections 2103(b)(3) and 2105(a)(1) of the TPA Act.

**b. Entry into Force**

Under Article 22.5, the Agreement will enter into force once the United States and at least one other country that has signed the Agreement notify the General Secretariat of the Organization of American States ("OAS"), which serves as the depositary for the Agreement, that they have fulfilled their internal procedures needed to implement the Agreement. Thereafter, the Agreement will enter into force between the United States and any remaining countries 90 days after they provide their notifications to the OAS.

Section 101(b) of the implementing bill provides that when the President determines that other countries that have signed the Agreement have taken measures necessary to comply with those obligations that are to take effect at the time the Agreement enters into force, the President is authorized to provide for the Agreement to enter into force with respect to those countries that provide for the Agreement to enter into force for them.

Certain provisions of the agreement become effective after the Agreement enters into force. For example, certain provisions relating to customs administration become effective with respect to the Central American countries and the Dominican Republic no later than three years after the Agreement enters into force. Certain procedural obligations relating to government procurement become effective with respect to the Central American countries and the Dominican Republic two years after the Agreement enters into force. For Costa Rica, certain commitments on insurance and telecommunications become effective at specified times after the Agreement enters into force. Certain provisions relating to intellectual property rights become effective with respect to the Central American countries and the Dominican Republic following transition periods ranging from six months to four years after the Agreement enters into force. In addition, obligations regarding the ratification of certain international agreements governing intellectual property rights take effect at prescribed times after the Agreement enters into force.

**c. Relationship to Federal Law**

Section 102(a) of the bill establishes the relationship between the Agreement and U.S. law. The implementing bill, including the authority granted to federal agencies to promulgate implementing regulations, is intended to bring U.S. law fully into compliance with U.S. obligations under the Agreement. The bill accomplishes that objective with respect to federal legislation by amending existing federal statutes that would otherwise be inconsistent with the Agreement and, in certain instances, by creating entirely new provisions of law.

Section 102(a) clarifies that no provision of the Agreement will be given effect under domestic law if it is inconsistent with federal law, including provisions of federal law enacted or amended by the bill. Section 102(a) will not prevent implementation of federal statutes consistent with the Agreement, where permissible under the terms of such statutes. Rather, the section reflects the Congressional view that necessary changes in federal statutes should be specifically enacted rather than provided for in a blanket preemption of federal statutes by the Agreement.

The Administration has made every effort to include all laws in the implementing bill and to identify all administrative actions in this Statement that must be changed in order to conform with the new U.S. rights and obligations arising from the Agreement. Those include both regulations resulting from statutory changes in the bill itself and changes in laws, regulations, rules, and orders that can be implemented without a change in the underlying U.S. statute.

Accordingly, at this time it is the expectation of the Administration that no changes in existing federal law, rules, regulations, or orders other than those specifically indicated in the implementing bill and this Statement will be required to implement the new international obligations that the United States will assume under the Agreement. This is without prejudice to the President's continuing responsibility and authority to carry out U.S. law and agreements. As experience under the Agreement is gained over time, other or different administrative actions may be taken in accordance with applicable law to implement the Agreement. If additional action is called for, the Administration will seek legislation from Congress or, if a change in regulation is required, follow normal agency procedures for amending regulations.

**d. Relationship to State Law**

The Agreement's rules generally cover state and local laws and regulations, as well as those at the federal level. There are a number of exceptions to, or limitations on, this general rule, however, particularly in the areas of government procurement, labor and environment, investment, and cross-border trade in services and financial services.

The Agreement does not automatically "preempt" or invalidate state laws that do not conform to the Agreement's rules, even if a dispute settlement panel were to find a state measure inconsistent with the Agreement. The United States is free under the Agreement to determine how it will conform with the Agreement's rules at the federal and non-federal level. The Administration is committed to carrying out U.S. obligations under the Agreement, as they apply

to the states, through the greatest possible degree of state-federal consultation and cooperation.

Section 102(b)(1) of the bill makes clear that only the United States is entitled to bring an action in court in the event that there is an unresolved conflict between a state law, or the application of a state law, and the Agreement. The authority conferred on the United States under this paragraph is intended to be used only as a “last resort,” in the unlikely event that efforts to achieve consistency through consultations have not succeeded.

The reference in section 102(b)(2) of the bill to the business of insurance is required by virtue of section 2 of the McCarran-Ferguson Act (15 U.S.C. 1012). That section states that no federal statute shall be construed to supersede any state law regulating or taxing the business of insurance unless the federal statute “specifically relates to the business of insurance.” Certain provisions of the Agreement (for example, Chapter Twelve, relating to financial services) do apply to state measures regulating the insurance business, although “grandfathering” provisions in Chapter Twelve exempt existing inconsistent (*i.e.*, “non-conforming”) measures.

Given the provision of the McCarran-Ferguson Act, the implementing act must make specific reference to the business of insurance in order for the Agreement’s provisions covering the insurance business to be given effect with respect to state insurance law. Insurance is otherwise treated in the same manner under the Agreement and the implementing bill as other financial services under the Agreement.

**e. Private Lawsuits**

Section 102(c) of the implementing bill precludes any private right of action or remedy against a federal, state, or local government, or against a private party, based on the provisions of the Agreement. A private party thus could not sue (or defend a suit against) the United States, a state, or a private party on grounds of consistency (or inconsistency) with the Agreement. The provision also precludes a private right of action attempting to require, preclude, or modify federal or state action on grounds such as an allegation that the government is required to exercise discretionary authority or general “public interest” authority under other provisions of law in conformity with the Agreement.

With respect to the states, section 102(c) represents a determination by the Congress and the Administration that private lawsuits are not an appropriate means for ensuring state compliance with the Agreement. Suits of this nature may interfere with the Administration’s conduct of trade and foreign relations and with suitable resolution of disagreements or disputes under the Agreement.

Section 102(c) does not preclude a private party from submitting a claim against the United States to arbitration under Chapter Ten (Investment) of the Agreement or seeking to enforce an award against the United States issued pursuant to such arbitration. The provision also would not preclude any agency of government from considering, or entertaining argument on, whether its action or proposed action is consistent with the Agreement, although any change in agency action would have to be consistent with domestic law.

**f. Implementing Regulations**

Section 103(a) of the bill provides the authority for new or amended regulations to be issued, and for the President to proclaim actions implementing the provisions of the Agreement, as of the date the Agreement enters into force. Section 103(b) of the bill requires that, whenever possible, all federal regulations required or authorized under the bill and those proposed in this Statement as necessary or appropriate to implement immediately applicable U.S. obligations under the Agreement are to be developed and promulgated within one year of the Agreement's entry into force. In practice, the Administration intends, wherever possible, to amend or issue the other regulations required to implement U.S. obligations under the Agreement at the time the Agreement enters into force. The process for issuing regulations pursuant to this authority will comply with the requirements of the Administrative Procedures Act, including requirements to provide notice of and an opportunity for public comment on such regulations. If issuance of any regulation will occur more than one year after the date provided in section 103(b), the officer responsible for issuing such regulation will notify the relevant committees of both Houses of Congress of the delay, the reasons for such delay, and the expected date for issuance of the regulation. Such notice will be provided at least 30 days prior to the end of the one-year period.

**g. Dispute Settlement**

Section 105(a) of the bill authorizes the President to establish within the Department of Commerce an office responsible for providing administrative assistance to dispute settlement panels established under Chapter Twenty of the Agreement. This provision enables the United States to implement its obligations under Article 19.3.1 of the Agreement. This office will not be an "agency" within the meaning of 5 U.S.C. 552, consistent with treatment provided under other U.S. free trade agreements, including the North American Free Trade Agreement ("NAFTA") and free trade agreements with Australia, Chile, and Singapore. Thus, for example, the office will not be subject to the Freedom of Information Act or the Government in the Sunshine Act. Since they are international bodies, panels established under Chapter Twenty are not subject to those acts.

Section 105(b) of the bill authorizes the appropriation of funds to support the office established pursuant to section 105(a).

**h. Effective Dates**

Section 107(b) of the bill provides that the first three sections of the bill as well as Title I of the bill go into effect when the bill is enacted into law.

Section 107(a) provides that the other provisions of the bill and the amendments to other statutes made by the bill take effect on the date on which the Agreement enters into force. Section 107(c) provides that the provisions of the bill (other than section 107(c) itself) and the amendments to other statutes made by the bill will cease to have effect with respect to a country during any period in which it ceases to be an Agreement country. (Note: for purposes of this

statement, the term “Agreement country” refers to a Party to the Agreement other than the United States.) Section 107(d) provides that the provisions of the bill (other than section 107(d) itself) and the amendments to other statutes made by the bill will cease to be effective if the United States withdraws from the Agreement or it terminates.

## **2. Administrative Action**

No administrative changes will be necessary to implement Chapters One, Two, Nineteen, Twenty-One, and Twenty-Two.

Article 18.1.1 of the Agreement requires each government to designate a contact point to facilitate communications regarding the Agreement. The Office of the United States Trade Representative (“USTR”) will serve as the U.S. contact point for this purpose.

The Agreement calls for the United States and the other Agreement countries to develop rosters of independent experts willing to serve as panelists to settle disputes between the parties that may arise under the Agreement. One roster will be available for most types of disputes, while specialized rosters will be established to address disputes regarding the Agreement’s financial services, labor, and environmental provisions. USTR will consult with the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate (“Trade Committees”) as it develops rosters of panelists.

### **Chapter Three (National Treatment and Market Access for Goods)**

#### **1. Implementing Bill**

##### **a. Proclamation Authority**

Section 201(a)(1) of the bill grants the President authority to implement by proclamation U.S. rights and obligations under Chapter Three of the Agreement through the application or elimination of customs duties and tariff-rate quotas (“TRQs”). Section 201(a)(1) authorizes the President to:

- modify or continue any duty;
- keep in place duty-free or excise treatment; or
- impose any duty

that the President determines to be necessary or appropriate to carry out or apply Articles 3.3, 3.5, 3.6, 3.21, 3.26, 3.27, and 3.28, and Annexes 3.3, 3.27, and 3.28 of the Agreement.

The proclamation authority with respect to Article 3.3 authorizes the President to provide for the continuation, phase-out, and elimination, according to the Schedule of the United States

to Annex 3.3 of the Agreement, of customs duties on imports from the other Agreement countries that meet the Agreement's rules of origin.

The proclamation authority with respect to Articles 3.5 and 3.6 authorizes the President to provide for the elimination of duties on particular categories of imports from the other Agreement countries. Article 3.5 pertains to the temporary admission of certain goods, such as commercial samples, goods intended for display at an exhibition, and goods necessary for carrying out the business activity of a person who qualifies for temporary entry into the United States. Article 3.6 pertains to the importation of goods: (i) returned to the United States after undergoing repair or alteration in another Agreement country; or (ii) sent from another Agreement country for repair or alteration in the United States.

The proclamation authority with respect to Article 3.21 authorizes the President to provide duty-free treatment for textile or apparel articles that the United States and another Agreement country agree are handloomed, handmade, or folklore articles, and are certified as such by that country's competent authority.

The proclamation authority with respect to Article 3.26 of the Agreement authorizes the President to reduce the amount of duty imposed on certain textile or apparel goods that are not "originating goods" for purposes of the Agreement, but that contain U.S.-origin components. The President is authorized to proclaim a duty rate equal to the applicable normal trade relations (most-favored-nation) ("NTR (MFN)") rate of duty applied to the value of the good minus the value of U.S. components (*e.g.*, fabric). To qualify for this duty treatment the good must be made with U.S. fabric or knit-to-shape components and assembled in an Agreement country with U.S. thread. The U.S. fabric may be cut in one or more Agreement countries.

The proclamation authority with respect to Articles 3.27 and 3.28 and Annexes 3.27 and 3.28 of the Agreement authorizes the President to provide preferential tariff treatment to certain apparel goods of Costa Rica and Nicaragua, respectively, that do not satisfy the Agreement's rules of origin. This treatment is limited to annual quantities specified in the annexes.

Sections 201(a)(2) and (3) of the bill address the status of Agreement countries as designated beneficiary countries under the following U.S. trade preference programs: (i) the Generalized System of Preferences; (ii) the Caribbean Basin Economic Recovery Act (19 U.S.C. 2701 *et seq.*) ("CBERA"); and (iii) the United States – Caribbean Basin Trade Partnership Act, Pub. Law 106-200 ("CBTPA"), which amended the CBERA to provide additional tariff preferences to beneficiary countries for certain goods, including certain textile and apparel goods.

Section 201(a)(2) of the bill requires the President to withdraw beneficiary country status under the Generalized System of Preferences from Agreement countries once the Agreement takes effect for them.

Section 201(a)(3) of the bill requires the President to withdraw beneficiary country status under the CBERA from Agreement countries once the Agreement takes effect for them. The

requirement to terminate CBERA beneficiary status is subject to three exceptions, however, which are set out in section 201(a)(3)(B).

The first exception implements Article 8.8.1 of the Agreement, which provides that the United States will continue to treat Agreement countries as CBERA beneficiary countries for purposes of Sections 771(7)(G)(ii)(III) and 771(7)(H) of the Tariff Act of 1930 (19 U.S.C. 1677(7)(G)(ii)(III) and 1677(7)(H)). Those provisions preclude the U.S. International Trade Commission ("ITC") from aggregating (or "cumulating") imports from CBERA beneficiary countries with imports from non-beneficiary countries in determining in antidumping and countervailing duty investigations whether a U.S. industry is materially injured or threatened with material injury by reason of dumped or subsidized imports of a particular product from such beneficiary countries.

The second exception will permit the President to implement the duty free treatment provided under paragraph 12 of Appendix I of the General Notes to the Schedule of the United States to Annex 3.3 of the Agreement.

The third exception provides that the Agreement countries will continue to be considered CBERA beneficiary countries for purposes of section 274(h)(6)(B) of the Internal Revenue Code (26 U.S.C. 274(h)(6)(B)). Section 274(h) limits taxpayer deductions for expenses incurred in attending conventions, seminars, or similar meetings abroad. The rule does not apply with respect to conventions, seminars, or similar meetings held in CBERA beneficiary countries if the countries meet certain tests. This third exception would maintain the status quo with respect to this tax provision, thereby preserving an existing benefit for the Agreement countries.

Section 213(b)(5)(D) of the CBERA, as amended by the CBTPA, provides that CBTPA benefits terminate with respect to any CBTPA beneficiary country on entry into force of a free trade agreement between that country and the United States. The President's proclamation implementing the Agreement will reflect the termination of CBTPA benefits for Agreement countries.

Section 402 of the bill makes several amendments to the CBERA in light of the fact that the Agreement countries will no longer be beneficiary countries for purposes of the CBERA or the CBTPA once the Agreement takes effect for them. Consistent with the commitment that the United States made during the course of the Agreement negotiations, the purpose of the amendments is to ensure, to the extent possible, that the remaining beneficiary countries under these preference programs are not adversely impacted as a consequence of the removal of the Agreement countries from the CBERA and CBTPA programs. To this end, the amendments generally will ensure that goods produced through a combination of operations in a beneficiary country and an Agreement country that would have qualified for preferential treatment under the CBERA or CBTPA before the Agreement took effect will continue to qualify for this treatment after the Agreement takes effect. The amendments do not provide new benefits for the remaining beneficiary countries or the Agreement countries; rather the amendments preserve benefits the remaining beneficiary countries already have under the CBERA and CBTPA.

*CBERA Program:* Subsection 402(b) of the bill amends section 212(b) of the CBERA to delete the Agreement countries from the list of countries that the President may designate as beneficiary countries. The amendment takes effect with respect to each country on the date on which the President terminates the country's designation as a beneficiary country pursuant to section 201(a)(3) of the bill. Section 402(a) of the bill amends section 212(a)(1) of the CBERA to define the term "former beneficiary country" to mean a country that ceases to be designated as a beneficiary country because the country has become a party to a free trade agreement with the United States.

Section 213(a)(1) of the CBERA provides that for a good to qualify for duty-free treatment, the sum of the cost or value of materials produced in one or more beneficiary countries and the direct costs of processing operations performed in one or more beneficiary countries must be at least 35 percent of the appraised value of the good at the time of entry into the United States. Puerto Rico and the U.S. Virgin Islands are included within the term "beneficiary country" for purposes of satisfying the 35 percent valued added requirement. Section 402(c) of the bill amends section 213(a)(1) of the CBERA to provide that the term "beneficiary country" also includes "any former beneficiary country" for purposes of determining whether the 35 percent value added test has been satisfied. This amendment will ensure that producers and exporters in the remaining CBERA beneficiary countries will be able to continue to use materials of, or processing performed in, the Agreement countries to satisfy the 35 percent value added test for establishing the eligibility of their goods for duty-free treatment under the CBERA.

*CBTPA Program:* Section 402(d) of the bill adds subparagraphs (G) and (H) to 213(b)(5) of the CBERA. Subparagraph (G) defines the term "former CBTPA beneficiary country" to mean a country that ceases to be designated as a CBTPA beneficiary country because the country has become a party to a free trade agreement with the United States. Subparagraph (H) provides that any reference to a CBTPA beneficiary country shall be considered to include a former CBTPA beneficiary country for purposes of determining the eligibility of a good for preferential treatment under section 213(b)(2) of the CBERA (for certain textile and apparel articles) and section 213(b)(3) of the CBERA (for certain other goods, including footwear, tuna, petroleum, watches and watch parts, and certain leather goods), provided that the good undergoes some production in one of the remaining beneficiary countries. This amendment ensures that the remaining CBTPA beneficiary countries may continue to obtain preferential treatment for their goods even if the goods contain inputs of an Agreement country or the goods undergo processing in an Agreement country. Subparagraph (H) also provides that a good that meets the requirements of the subparagraph will not be ineligible for preferential treatment under section 213(b)(2) or (3) because the good was imported directly from a former CBTPA beneficiary country. However, in light of the fact that the Agreement countries will no longer be CBTPA beneficiary countries, subparagraph (H) provides that a good that is a good of an Agreement country under U.S. non-preferential rules of origin is not eligible for preferential treatment pursuant to subparagraph (H). (This limitation does not apply to goods of the Dominican Republic that undergo production in Haiti, in order to maintain the status quo with respect to integrated production operations between those two countries.) See 19 U.S.C. 1304; 19 U.S.C. 3592; 19 C.F.R. 102.21; 19 C.F.R. 134.

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Section 201(b) of the bill authorizes the President, subject to the consultation and layover provisions of section 104 of the bill, to:

- modify or continue any duty;
- modify the staging of any duty elimination under the Agreement pursuant to an agreement under Annex 3.3 with one or more Agreement countries;
- keep in place duty-free or excise treatment; or
- impose any duty

by proclamation whenever the President determines it to be necessary or appropriate to maintain the general level of reciprocal and mutually advantageous concessions with respect to other Agreement countries provided by the Agreement.

Section 104 of the bill sets forth consultation and layover steps that must precede the President's implementation of any duty modification by proclamation. This would include, for example, modifications of duties under section 201(b) of the bill. Under the consultation and layover provisions, the President must obtain the advice of the appropriate private sector advisory committees (pursuant to section 135 of the Trade Act of 1974) and the ITC on the proposed action. The President must submit a report to the Trade Committees setting forth the action proposed, the reasons for the proposed action, and the advice of the private sector and the ITC. The bill sets aside a 60-day period following the date of transmittal of the report for the President to consult with the Trade Committees on the action. Following the expiration of the 60-day period, the President may proclaim the action.

The President may initiate the consultation and layover process under section 104 of the bill on enactment of the bill. However, under section 103(a), any modifying proclamation cannot take effect until the Agreement enters into force. In addition to modifications of customs duties, these provisions apply to other Presidential proclamation authority provided in the bill that is subject to consultation and layover, such as authority to implement a proposal to modify the Agreement's specific rules of origin pursuant to an agreement with the other Agreement countries under Article 4.14 of the Agreement.

Section 201(c) of the bill provides for the conversion of existing specific or compound rates of duty for various goods to *ad valorem* rates for purposes of implementing the Agreement's customs duty reductions. (A compound rate of duty for a good would be a rate of duty stated, for example, as the sum of X dollars per kilogram plus Y percent of the value of the good.)

**b. Agricultural Safeguard**

Section 202 of the bill implements the agricultural safeguard provisions of Article 3.15 and Annex 3.15 of the Agreement. Article 3.15 permits the United States to impose an “agricultural safeguard measure,” in the form of additional duties, on imports of certain goods of Agreement countries specified in the Schedule of the United States to Annex 3.15 of the Agreement that exceed the volume thresholds set out in that annex.

Section 202(a) of the bill provides the overall contour of the agricultural safeguard rules, including definitions of terms used in the agricultural safeguard provisions. Section 202(a)(2) defines the applicable NTR (MFN) rate of duty for purposes of the agricultural safeguard. Under the Agreement, the sum of the duties assessed under an agricultural safeguard and the applicable rate of duty in the Schedule of the United States to Annex 3.3 of the Agreement may not exceed the general NTR (MFN) rate of duty.

Section 202(a)(3) of the bill defines the “schedule rate of duty” for purposes of the agricultural safeguard as the rate of duty for a good set out in the Schedule of the United States to Annex 3.3 of the Agreement.

Section 202(a)(4) of the bill specifies the products that may be subject to an agricultural safeguard measure. These goods must qualify as originating goods under section 203, except that operations performed in or material obtained from the United States will be considered as if the operations were performed in, and the material was obtained from, a country that is not a party to the Agreement.

Section 202(a)(5) of the bill implements Article 3.15.4 of the Agreement by establishing that no additional duty may be applied on a good if, at the time of entry, the good is subject to a safeguard measure under the procedures set out in Subtitle A of Title III of the bill or under the safeguard procedures set out in chapter 1 of Title II of the Trade Act of 1974.

Section 202(a)(6) of the bill provides that the agricultural safeguard provision ceases to apply with respect to a good on the date on which duty-free treatment must be provided to that good under the Schedule of the United States to Annex 3.3 of the Agreement.

Section 202(a)(7) of the bill implements Article 3.15.6 of the Agreement by directing the Secretary of the Treasury (the “Secretary”) within 60 days of the date on which the Secretary first assesses an agricultural safeguard duty on a good to notify the country whose good is subject to the measure and provide that country with supporting data.

Section 202(b) of the bill provides for the Secretary to impose agricultural safeguard duties and explains how the additional duties are to be calculated. The additional duties are triggered in any year when the volume of imports of the good from an Agreement country exceeds 130 percent of the in-quota quantity allocated to that country for the good in that calendar year in the Schedule of the United States to Annex 3.3 of the Agreement. (The in-quota quantities for goods are set out in the Schedule of the United States to Annex 3.3 of the

Agreement on a calendar-year basis beginning with “year one.” Year one refers to the calendar year in which the Agreement enters into force, even with respect to any country that has signed the Agreement that becomes a Party in a subsequent calendar year.) The additional duties remain in effect only until the end of the calendar year in which they are imposed.

**c. Customs User Fees**

Section 204 of the bill implements U.S. commitments under Article 3.10.4 of the Agreement, regarding customs user fees on originating goods, by amending section 13031(b) of the Consolidated Omnibus Budget Reconciliation Act of 1985 (19 U.S.C. 58c(b)). The amendment provides for the immediate elimination of the merchandise processing fee for goods qualifying as originating goods under Chapter Four of the Agreement. Processing of goods qualifying as originating goods under the Agreement will be financed by money from the General Fund of the Treasury. This is necessary to ensure that the United States complies with obligations under the General Agreement on Tariffs and Trade 1994 by limiting fees charged for the processing of non-originating imports to amounts commensurate with the processing services provided. That is, fees charged on such non-originating imports will not be used to finance the processing of originating imports.

**d. Refund of Duties on Textile or Apparel Goods**

Article 3.20.1 of the Agreement establishes rules requiring each government to refund customs duties paid on textile or apparel goods imported prior to the entry into force of the Agreement. Specifically, Article 3.20.1 requires each government to refund customs duties paid on textile or apparel goods of an Agreement country that were imported between January 1, 2004 and the date of entry into force of the Agreement for that country, provided that the goods would have been considered originating goods if the Agreement had been in force when the goods were imported. The refund applies to the extent that the duties paid on the good exceed the applicable duty set out in that country’s Schedule to Annex 3.3 of the Agreement. Article 3.20.4 clarifies that the obligation to refund customs duties does not apply with respect to goods that qualify for preferential tariff treatment under Article 3.21, Article 3.27, or Article 3.28 of the Agreement.

Some Agreement countries may not have legal authority to refund duties retroactively. Hence, this obligation does not apply to any Agreement country, or to goods of any Agreement country, that notifies the other governments 90 days before the Agreement enters into force for that country that it will not refund duties under Article 3.20.1. However, Article 3.20.3 establishes an exception if the country agrees to provide benefits to imported textile or apparel goods that the exporting country agrees are equivalent to a refund of excess customs duties.

Section 205 of the bill implements Article 3.20 for the United States. Section 205(a) provides that, notwithstanding section 514 of the Tariff Act of 1930, the Secretary must liquidate or reliquidate entries of textile or apparel goods of an eligible Agreement country made between January 1, 2004, and the date the Agreement enters into force with respect to that country, provided that the goods would have been considered originating goods if the Agreement had been in force at that time. Such liquidations or reliquidations must be at the applicable rate of

duty under the Schedule of the United States to Annex 3.3 of the Agreement, and the Secretary will refund any excess customs duties paid on such entries. Section 205(b) provides that the United States Trade Representative will determine, in accordance with Article 3.20, which Agreement countries' goods are eligible for retroactive tariff treatment and will publish a list of such countries in the *Federal Register*. Section 205(c) provides that requests for liquidation or reliquidation under subsection (a) must be filed with the Bureau of Customs and Border Protection ("CBP") and must provide information sufficient for CBP to locate or reconstruct the entry and determine whether the goods in question are eligible for a duty refund.

**e. Textile or Apparel Safeguard**

Article 3.23 of the Agreement makes remedies available to domestic textile and apparel industries that have sustained or are threatened by serious damage from imports of textile or apparel goods for which duties have been reduced or eliminated under the Agreement. It also sets forth procedures for obtaining such remedies. The Administration does not anticipate that the Agreement will result in injurious increases in textile or apparel imports from the other Agreement countries. Nevertheless, the Agreement's textile or apparel safeguard procedure will ensure that relief is available if needed.

The safeguard mechanism applies when, as a result of the reduction or elimination of a customs duty under the Agreement, textile or apparel goods of an Agreement country are being imported into the United States in such increased quantities, in absolute or relative terms, and under such conditions as to cause serious damage or actual threat thereof to a U.S. industry producing like or directly competitive goods. In these circumstances, Article 3.23 permits the United States to increase duties on the imported goods to a level that does not exceed the lesser of the prevailing U.S. NTR (MFN) duty rate for the good or the U.S. NTR (MFN) duty rate in effect at the time the Agreement entered into force.

Subtitle B of Title III of the bill (sections 321 through 328) implements the Agreement's textile or apparel safeguard.

Section 321(a) establishes that an interested party may file a request for a textile or apparel safeguard measure with the President, who must review the request to determine whether to commence consideration of the request on its merits. Under section 321(b), if the President determines that the request contains information necessary to warrant consideration on the merits, the President must provide notice in the *Federal Register* stating that the request will be considered and seeking public comments on the request. The notice will contain a summary of the request itself and the dates by which comments and rebuttals must be received. Subject to protection of confidential business information, if any, the full text of the request will be made available on the Department of Commerce, International Trade Administration's website.

Section 322 sets out the procedures to be followed in considering the request. Section 322(a)(1) of the bill provides for the President to determine whether, as a result of the reduction or elimination of a duty provided for under the Agreement, a "CAFTA-DR textile or apparel article" of an Agreement country is being imported into the United States in such increased

quantities, in absolute terms or relative to the domestic market for that article, and under such conditions that imports of the article cause serious damage, or actual threat thereof, to a domestic industry producing an article that is like, or directly competitive with, the imported article. Section 301(2) of the bill defines “CAFTA-DR textile or apparel article” to mean an article listed in the Annex to the World Trade Organization (“WTO”) Agreement on Textiles and Clothing (other than a good listed in Annex 3.29 of the Agreement) that qualifies as an originating good under section 203(b) of the bill. The President’s determination corresponds to the determination required under Article 3.23.1 of the Agreement. Section 322(a)(2) of the bill includes criteria for determining serious damage or actual threat thereof, consistent with Article 3.23.2 of the Agreement. Section 322(a)(3) provides that the President must make his determination no later than 30 days after the conclusion of any consultations with the country that may be subject to the measure.

Section 322(b) of the bill identifies the relief that the President may provide to a U.S. industry that the President determines is facing serious damage or actual threat thereof. Such relief may consist of an increase in tariffs to the lesser of: (i) the NTR (MFN) duty rate in place for the textile or apparel article at the time the relief is granted; or (ii) the NTR (MFN) duty rate for that article on the day before the Agreement entered into force.

Section 323 of the bill provides that the maximum period of relief under the textile or apparel safeguard shall be three years. However, if the initial period of import relief is less than three years, the President may extend the relief (to a maximum of three years) if the President determines that continuation is necessary to remedy or prevent serious damage and to facilitate adjustment, and that the domestic industry is, in fact, adjusting to import competition.

Section 324 of the bill provides that relief may not be granted to an article under the textile or apparel safeguard if: (i) relief previously has been granted to that article under the textile or apparel safeguard; or (ii) the article is subject, or becomes subject, to a safeguard measure under (a) Chapter Eight of the Agreement (corresponding to Subtitle A of Title III of the bill), or (b) chapter 1 of Title II of the Trade Act of 1974.

Section 325 of the bill provides that on the date import relief terminates, imports of the textile or apparel article that was subject to the safeguard action will be subject to the rate of duty that would have been in effect on that date in the absence of the relief.

Section 326 of the bill provides that authority to provide relief under the textile or apparel safeguard will expire five years after the date on which the Agreement enters into force.

Under Article 3.23.6 of the Agreement, if the United States provides relief to a domestic industry under the textile or apparel safeguard, it must provide the country whose good is subject to the measure “mutually agreed trade liberalizing compensation in the form of concessions having substantially equivalent trade effects or equivalent to the value of the additional duties expected to result from the [safeguard].” If the United States and the pertinent country are unable to agree on trade liberalizing compensation, that country may increase tariffs equivalently

on U.S. goods. The obligation to provide compensation (and the right to increase tariffs absent agreement on compensation) terminates when the safeguard relief ends.

Section 123 of the Trade Act of 1974 (19 U.S.C. 2133), as amended, authorizes the President to provide trade compensation for global safeguard measures taken pursuant to chapter 1 of title II of the Trade Act of 1974. Section 327 of the implementing bill extends that authority to measures taken pursuant to the Agreement's textile or apparel safeguard provisions.

Finally, section 328 of the bill provides that confidential business information submitted in the course of consideration of a request for a textile or apparel safeguard may not be released absent the consent of the party providing the information. It also provides that a party submitting confidential business information in a textile or apparel safeguard proceeding must submit a non-confidential version of the information or a summary of the information.

**f. Enforcement of Textile and Apparel Rules of Origin**

In addition to lowering barriers to trade in textile and apparel goods, the Agreement includes anti-circumvention provisions designed to ensure the accuracy of claims of origin and to prevent circumvention of laws, regulations, and procedures affecting such trade. Article 3.24 of the Agreement provides for verifications to determine the accuracy of claims of origin for textile or apparel goods, and to determine that exporters and producers are complying with applicable laws, regulations, and procedures regarding trade in textile or apparel goods.

Under Articles 3.24.2 and 3.24.3 of the Agreement, at the request of the United States, the government of an Agreement country must conduct a verification. The object of a verification under Article 3.24.2(a)(i) is to determine whether a claim of origin for a textile or apparel good is accurate. The object of a verification under Article 3.24.2(a)(ii) is to determine whether an exporter or producer is complying with applicable customs laws, regulations, and procedures regarding trade in textile or apparel goods, including those implementing international agreements. The United States may assist in the verification or, at the request of the other government, conduct the verification itself. A verification may entail visits by officials of the other government and the United States to the premises of a textile or apparel exporter or producer in that country.

Pursuant to Article 3.24.6 of the Agreement, the United States may take appropriate action during and after a verification, including, depending on the nature of the verification, by suspending or denying preferential tariff treatment for textile or apparel goods exported or produced by the person subject to the verification, detaining the goods, or denying them entry into the United States.

Section 209 of the bill implements Article 3.24 of the Agreement. Under section 209(a), the President may direct the Secretary to take "appropriate action" while a verification that the Secretary has requested is being conducted. Section 209(b) provides that, depending on the nature of the verification, the action may include: (i) suspending preferential tariff treatment for textile or apparel goods that the person subject to the verification has produced or exported if the

Secretary believes there is insufficient information to sustain a claim for such treatment; (ii) denying preferential tariff treatment to such goods if the Secretary decides that a person has provided incorrect information to support a claim for such treatment; (iii) detaining such goods if the Secretary considers there is not enough information to determine their country of origin; and (iv) denying entry to such goods if the Secretary determines that a person has provided erroneous information on their origin.

Under section 209(c), the President may also direct the Secretary to take “appropriate action” after a verification has been completed. Under section 209(d), depending on the nature of the verification, the action may include: (i) denying preferential tariff treatment under the Agreement to textile or apparel goods that the person subject to the verification has exported or produced if the Secretary considers there is insufficient information to support a claim for such treatment or determines that a person has provided incorrect information to support a claim for such treatment; and (ii) denying entry to such goods if the Secretary decides that a person has provided erroneous information regarding their origin or that there is insufficient information to determine their origin. Unless the President sets an earlier date, any such action may remain in place until the Secretary obtains enough information to decide whether the exporter or producer that was subject to the verification is complying with applicable customs rules or whether a claim that the goods qualify for preferential tariff treatment or originate in an Agreement country is accurate.

Under section 209(e), the Secretary may publish the name of person that the Secretary has determined: (i) is engaged in intentional circumvention of applicable laws, regulations, or procedures affecting trade in textile or apparel goods; or (ii) has failed to demonstrate that it produces, or is capable of producing, textile or apparel goods.

**g. Fabrics, Yarns, or Fibers Not Available in Commercial Quantities**

Under the specific rules of origin for textile and apparel goods set out in Annex 4.1 of the Agreement, fabrics, yarns, or fibers that are not available in commercial quantities in a timely manner in the United States, Central America, and the Dominican Republic are treated as if they originate in an Agreement country, regardless of their actual origin, when used as inputs in the production of textile or apparel goods. Annex 3.25 lists certain fabrics, yarns, and fibers that the CAFTA-DR governments have collectively agreed are unavailable in the region.

In addition, Article 3.25.4 of the Agreement provides that the United States will add fabrics, yarns, or fibers to the list in certain circumstances. First, Article 3.25.4(e) of the Agreement provides that the United States will add any fabrics or yarns that it has determined under its regional trade preference programs prior to the Agreement’s entry into force are unavailable in the United States in commercial quantities in a timely manner. These regional trade preference program provisions are set out in: section 112(b)(5)(B) of the African Growth and Opportunity Act (19 U.S.C. § 3721(b)), section 204(b)(3)(B)(ii) of the Andean Trade Preference Act (19 U.S.C. § 3203(b)(3)(B)(ii)), and section 213(b)(2)(A)(v)(II) of the Caribbean Basin Economic Recovery Act (19 U.S.C. § 2703(b)(2)(A)(v)(II)).

Second, if the United States determines, at the request of an “interested entity” (a potential or actual purchaser or seller, or another CAFTA-DR government), that a fabric, yarn, or fiber is unavailable in commercial quantities in a timely manner in the CAFTA-DR region (i.e., in the territories of the Parties to the Agreement, collectively), or if it determines that no interested entity objects to the request, the United States will add the material to the list – in a restricted or unrestricted quantity. In addition, within six months of adding a material to the list in Annex 3.25, the United States may remove any restriction it has imposed on the product.

Article 3.25.5 authorizes the United States, in response to a request from an interested entity, either to remove a material from the list or impose a restriction on any material it has added to the list in an unrestricted quantity. The United States may take this action beginning six months after it determines, in response to a request, that the material has become commercially available in the CAFTA-DR region.

Section 203(o)(2) of the bill provides authority for the President to carry out the provision in Article 3.25.4(e) of the Agreement pursuant to which the United States will add materials to the list that it has determined are unavailable in commercial quantities in a timely manner in the United States under its regional trade preference programs (the African Growth and Opportunity Act, the Andean Trade Preference Act, and the Caribbean Basin Economic Recovery Act) before the Agreement enters into force.

Section 203(o)(4) of the bill implements those provisions of Article 3.25 that provide for the United States to modify the list of materials in Annex 3.25 after the Agreement enters into force.

Specifically, subparagraph (C) provides that an interested entity may request the President to determine that a fabric, yarn, or fiber is not available in commercial quantities in the CAFTA-DR region and to proclaim that the material is included in the list in Annex 3.25.

Subparagraph (C)(ii) authorizes the President to determine whether the material is commercially available in a timely manner in the CAFTA-DR region. Subparagraph (C)(iii) provides that if the President determines that the material is not commercially available in a timely manner in the region, or if no interested entity has objected, he may issue a proclamation adding the fabric, yarn, or fiber to the Annex 3.25 list in a restricted or unrestricted quantity. The President normally must issue the proclamation within 30 business days of receiving a request. However, subparagraph (C)(iv) provides that the President may take up to 44 business days if the President decides he lacks sufficient information to make the determination within 30 business days. Subparagraph (C)(v) provides for proclamations to take effect when published in the *Federal Register*.

Subparagraph (C)(vi) provides that within six months after adding a fabric, yarn, or fiber to the list in Annex 3.25 in a restricted quantity, the President may eliminate the restriction if he determines that the fabric, yarn, or fiber is not available in commercial quantities in a timely manner in the CAFTA-DR region.

Subparagraph (D) implements Article 3.25.4(c) of the Agreement. It provides that in the unlikely event that the President takes no action in response to a request to add a material to the list, the material is automatically added in an unrestricted quantity beginning 45 business days after the request was submitted, or 60 days after the request was submitted if the President has determined under subparagraph (C)(iv) that he lacks sufficient information to make the determination within 30 business days.

Under subparagraph (E)(i), an interested entity may request the President to limit the amount of any fabric, yarn, or fiber that the United States has included on the list in Annex 3.25 in an unrestricted quantity, or to remove such a material from the list entirely. Under subparagraph (E)(ii), an interested entity may submit such a request beginning six months after the product was placed on the list in an unrestricted amount. Subparagraph (E)(iii) provides for the President to issue a proclamation carrying out a request if he determines within 30 business days after the request is submitted that the material is available in commercial quantities in a timely manner in the CAFTA-DR region. Subparagraph (E)(iv) provides that this type of proclamation may take effect no earlier than six months after it is published in the *Federal Register*.

Subparagraph (F) calls for the President to establish procedures for interested entities to submit requests for changes in the Annex 3.25 list and to submit comments and supporting evidence before the President determines whether to change the list.

## **2. Administrative Action**

### **a. Temporary Admission of Goods and Goods Entered After Repair or Alteration**

As discussed above, section 201(a)(1) of the bill authorizes the President to proclaim duty-free treatment for certain goods to carry out Article 3.5 (temporary admission of certain goods) and Article 3.6 (repair or alteration of certain goods) of the Agreement. The Secretary will issue regulations to carry out this portion of the proclamation.

### **b. Handloomed, Handmade, or Folklore Articles**

The President will authorize the Committee for the Implementation of Textile Agreements (“CITA”), to consult with Agreement countries to determine which, if any, textile or apparel goods from Agreement countries will be treated as handloomed, handmade, or folklore articles. CITA is an interagency entity created by Executive Order 11651 that carries out U.S. textile trade policies, as directed by the President. The President will delegate to CITA his authority under the bill to provide duty-free treatment for these articles.

### **c. Agricultural Safeguard**

The Secretary will issue regulations implementing the agricultural safeguard provisions of section 202. It is the Administration’s intent that agricultural safeguard measures will be

applied whenever the volume thresholds specified in the Agreement have been met. As discussed below, the Administration expects that in determining the country of origin of goods for purposes of applying agricultural safeguard measures under the bill, CBP will apply the rules of origin that the United States applies in the normal course of trade. (See item 2 of Chapter Four, below.)

**d. Textile or Apparel Safeguard**

CITA will perform the function of receiving requests for textile or apparel safeguard measures under section 321 of the bill, making determinations of serious damage or actual threat thereof under section 322(a), and providing relief under section 322(b). CITA will issue procedures for requesting such safeguard measures, for making its determinations under section 322(a), and for providing relief under section 322(b). CITA will perform these functions pursuant to a delegation of the President's authority under the bill.

**e. Enforcement of Textile and Apparel Rules of Origin**

Section 209 of the bill provides that the Secretary may request Agreement countries to initiate verifications in order to determine whether claims of origin for textile or apparel goods are accurate or whether exporters and producers are complying with applicable laws, regulations, and procedures regarding trade in textile or apparel goods. The President will delegate to CITA his authority under the bill to direct appropriate U.S. officials to take an action described in section 209(b) of the bill while such a verification is being conducted. The President will also authorize CITA to direct pertinent U.S. officials to take an action described in section 209(d) after a verification is completed. If CITA decides that is appropriate to deny preferential tariff treatment or deny entry to particular goods, CITA will issue an appropriate directive to CBP.

Section 209 of the bill provides the exclusive basis in U.S. law for CITA to direct appropriate action implementing Article 3.24 of the Agreement.

**f. Fabrics, Yarns, or Fibers Not Available in Commercial Quantities**

The President will delegate to CITA his authority under section 203(o)(4) of the bill, which establishes procedures for changing the list of fabrics, yarns, or fibers not available in commercial quantities in a timely manner in Agreement countries set out in Annex 3.25 of the Agreement.

CITA will publish procedures under which interested entities may request that CITA: (i) add a fabric, yarn, or fiber to the list in Annex 3.25; (ii) eliminate a restriction on a fabric, yarn, or fiber within six months after the item was added to the list in a restricted quantity; (iii) remove a fabric, yarn, or fiber from the list; or (iv) restrict the quantity of a fabric, yarn, or fiber that was added to the list in an unrestricted quantity or with respect to which CITA previously eliminated a restriction. These procedures will set out the information required to be submitted with a request. CITA will publish notice of requests that meet these requirements. CITA will provide an opportunity for interested entities to submit comments and evidence regarding a request, and

to rebut evidence that other interested entities have submitted, before CITA makes a determination.

CITA will make determinations under section 203(o)(4) on a case-by-case basis taking into account factors relevant to the request. Such factors ordinarily would include the physical and technical specifications of the fabric, yarn, or fiber that is the subject of the request, as well as evidence demonstrating the extent to which regional manufacturers are able to supply the item in commercial quantities in a timely manner. CITA will provide public notice of its determinations.

#### **Chapter Four (Rules of Origin)**

##### **1. Implementing Bill**

###### **a. General**

Section 203 of the implementing bill codifies the general rules of origin set forth in Chapter Four of the Agreement. These rules apply only for the purposes of this bill and for the purposes of implementing the customs duty treatment provided under the Agreement. An originating good for the purposes of this bill would not necessarily be a good of or import from an Agreement country for the purposes of other U.S. laws or regulations.

Under the general rules, there are three basic ways for a good of an Agreement country to qualify as an “originating” good, and therefore be eligible for preferential treatment when it is imported into the United States. First, a good is originating if it is “wholly obtained or produced entirely in the territory of one or more of the CAFTA-DR countries.” The term “goods wholly obtained or produced entirely in the territory of one or more of the CAFTA-DR countries” is defined in section 203(n)(6) of the bill and includes, for example, minerals extracted in one or more of the CAFTA-DR countries, animals born and raised in one or more of the CAFTA-DR countries, and waste and scrap derived from production of goods that takes place in the territory of one or more of the CAFTA-DR countries. For purposes of section 203, the United States is defined (in section 203(n)(2) of the bill) as a “CAFTA-DR country.”

The term “goods wholly obtained or produced entirely in the territory of one or more of the CAFTA-DR countries” includes “recovered goods.” These are parts resulting from the disassembly of used goods that are brought into good working condition in order to be combined with other recovered goods and other materials to form a “remanufactured good.” The term “remanufactured good” is separately defined in section 203(n)(21) to mean an industrial good assembled in the territory of one or more of the CAFTA-DR countries and falling within Chapter 84, 85, or 87 of the HTS or heading 9026, 9031, or 9032 (with the exception of goods under heading 8418 or 8516) that: (i) is entirely or partially comprised of recovered goods; and (ii) has a similar life expectancy and enjoys a factory warranty similar to such a new good.

Second, the general rules of origin provide that a good is “originating” if the good is

produced in one or more of the CAFTA-DR countries, and the materials used to produce the good that are not themselves originating goods are transformed in such a way as to cause their tariff classification to change and to meet other requirements, as specified in Annex 4.1 of the Agreement. Such additional requirements include, for example, performing certain processes or operations related to textile or apparel goods in one or more of the CAFTA-DR countries or meeting regional value content requirements, sometimes in conjunction with changes in tariff classification.

Third, the general rules of origin provide that a good is “originating” if the good is produced entirely in the territory of one or more of the CAFTA-DR countries exclusively from materials that themselves qualify as originating goods.

The remainder of section 203 of the implementing bill sets forth specific rules related to determining whether a good meets the Agreement’s specific requirements to qualify as an originating good. For example, section 203(c) implements provisions in Annex 4.1 of the Agreement that require certain goods to have at least a specified percentage of “regional value content” to qualify as originating goods. It prescribes alternative methods for calculating regional value content, as well as a specific method that may be used in the case of certain automotive goods. Section 203(f) provides that a good is not disqualified as an originating good if it contains *de minimis* quantities of non-originating materials that do not undergo a change in tariff classification. Other provisions in section 203 address how materials are to be valued, how to determine whether fungible goods and materials qualify as originating or non-originating, as well as a variety of other matters.

**b. Proclamation Authority**

Section 203(o)(1) of the bill authorizes the President to proclaim the specific rules of origin in Annex 4.1 of the Agreement, as well as any additional subordinate rules necessary to carry out the customs duty provisions of the bill consistent with the Agreement. In addition, section 203(o)(3) gives authority to the President to modify certain of the Agreement’s specific origin rules by proclamation, subject to the consultation and layover provisions of section 104 of the bill. (See item 1.a of Chapter Three, above.)

Various provisions of the Agreement expressly contemplate that the CAFTA-DR governments may agree to modify the Agreement’s rules of origin. Article 4.14 calls for the CAFTA-DR governments to consult regularly after the Agreement’s entry into force to discuss proposed modifications to Annex 4.1. Article 19.1.3(b)(ii) of the Agreement authorizes the Free Trade Commission to approve proposed modifications to any of the Agreement’s origin rules. Such modifications are to be implemented in accordance with each country’s applicable legal procedures. In addition, Article 3.25.1 of the Agreement calls for the Parties to consult at the request of any Party to consider whether rules of origin for particular textile or apparel goods should be modified.

Section 203(o)(3) of the bill expressly limits the President’s authority to modify by proclamation specific rules of origin pertaining to textile or apparel goods (listed in Chapters 50

through 63 of the HTS and identified in Annex 4.1 of the Agreement). Those rules of origin may be modified by proclamation within one year of enactment of the implementing bill, to correct typographical, clerical, or other non-substantive technical errors.

**c. Disclosure of Incorrect Information and Denial of Preferential Treatment**

Article 4.15.3 of the Agreement provides that a Party may not impose a penalty on an importer who makes an invalid claim for preferential tariff treatment under the Agreement if the importer did not engage in negligence, gross negligence, or fraud in making the claim and, after discovering that the claim is invalid, promptly and voluntarily corrects the claim and pays any customs duty owing. Article 4.20.5 of the Agreement provides if an importing country determines through verification that an importer, exporter, or producer has provided false or unsupported certifications or other representations that a good qualifies as originating, it may suspend preferential tariff treatment under the Agreement for identical goods covered by any subsequent certifications or other representations that that person may make. The suspension may continue until the importing country determines that the importer, exporter, or producer is in compliance with applicable laws and regulations governing claims for preferential tariff treatment under the Agreement.

Section 206(a) of the bill implements Article 4.15.3 for the United States by amending section 592(c) of the Tariff Act of 1930 (19 U.S.C. 1592(c)). Section 206(b) of the bill implements Article 4.20.5 for the United States by amending section 514 of the Tariff Act of 1930 (19 U.S.C. 1514).

**d. Claims for Preferential Tariff Treatment**

Article 4.15.5 of the Agreement provides that an importer may claim preferential tariff treatment for an originating good within one year of importation, even if no such claim was made at the time of importation. In seeking a refund for excess duties paid, the importer must provide to the customs authorities information substantiating that the good was in fact an originating good at the time of importation.

Section 207 of the bill implements U.S. obligations under Article 4.15.5 of the Agreement by amending section 520(d) of the Tariff Act of 1930 (19 U.S.C. 1520(d)) to allow an importer to claim preferential tariff treatment for originating goods within one year of their importation.

**e. Exporter and Producer Certifications**

Article 4.16 of the Agreement provides that an importer may base a claim for preferential tariff treatment on either (i) a written or electronic certification by the importer, exporter, or producer, or (ii) the importer's knowledge that the good is an originating good, including through reasonable reliance on information in the importer's possession that the good is an originating good. (The Agreement allows certain exceptions, for example, for goods with a customs value less than or equal to \$1,500.) If an exporter issues a certification, it must either be based on the

person's knowledge that the good is originating or supported by a separate certification issued by the producer.

Article 4.18 of the Agreement sets out rules governing incorrect certifications of origin issued by exporters or producers. Where an exporter or producer becomes aware that a certification of origin contains or is based on incorrect information, it must promptly and voluntarily notify in writing every person to whom the exporter or producer issued the certification of any change that could affect the accuracy or validity of the certification. If it does so, no Agreement country may impose a penalty.

Section 206(a) of the bill implements U.S. obligations under Article 4.18 by amending section 592 of the Tariff Act of 1930 (19 U.S.C. 1592). New subsection (h) of section 592, as added by section 206(a), imposes penalties on exporters and producers that issue false CAFTA-DR certifications of origin through fraud, gross negligence, or negligence. These penalties do not apply where an exporter or producer corrects an error in the manner described above.

**f. Recordkeeping Requirements**

Article 4.19 of the Agreement sets forth record keeping requirements that each government must apply to its importers. U.S. obligations under Article 4.19 regarding importers are satisfied by current law, including the record keeping provisions in section 508 of the Tariff Act of 1930 (19 U.S.C. 1508).

Article 4.19 also sets forth record keeping requirements that each government must apply to exporters and producers issuing certifications of origin for goods exported under the Agreement. Section 208 of the bill implements Article 4.19 for the United States by amending the customs record keeping statute (section 508 of the Tariff Act of 1930).

As added by section 208 of the bill, subsection (g) of section 508 of the Tariff Act of 1930 defines the terms "CAFTA-DR certification of origin" and "records and supporting documents." It then provides that a U.S. exporter or producer that issues a CAFTA-DR certification of origin must make, keep, and, if requested pursuant to rules and regulations promulgated by the Secretary, render for examination and inspection a copy of the certification and such records and supporting documents. The exporter or producer must keep these records and supporting documents for five years from the date it issues the certification. New subsection (h) of section 508 of the Tariff Act of 1930 sets forth penalties for violations of this record keeping requirement.

**2. Administrative Action**

The rules of origin in Chapter Four of the Agreement are intended to direct the benefits of customs duty elimination under the Agreement principally to firms producing or manufacturing goods in CAFTA-DR countries. For this reason, the rules ensure that, in general, a good is eligible for benefits under the Agreement only if it is: (i) wholly produced or obtained in one or more of the CAFTA-DR countries; or (ii) undergoes substantial processing in one or more of

the CAFTA-DR countries.

The Agreement's rules of origin do not establish (or require identification of) the specific country of origin of originating goods or goods that otherwise qualify for preferential treatment. However, various provisions of the Agreement may require U.S. authorities to determine the specific country of origin of such goods. These provisions include, for example, those relating to: (i) the application of TRQs on agricultural goods; (ii) the application of agricultural safeguard measures; (iii) the retroactive refund of customs duties on textile or apparel goods pursuant to Article 3.20 of the Agreement; and (iv) the application of textile or apparel safeguard measures. The Administration intends that, where necessary, U.S. authorities will rely on the rules of origin that the United States applies in the normal course of trade to determine the country of origin identity of originating goods. See 19 U.S.C. 1304; 19 U.S.C. 3592; 19 C.F.R. 102.21; 19 C.F.R. 134.

**a. Claims for Preferential Treatment**

Section 210 of the bill authorizes the Secretary to prescribe regulations necessary to carry out the tariff-related provisions of the bill, including the rules of origin and customs user fee provisions. The Secretary will use this authority in part to promulgate any regulations necessary to implement the Agreement's provisions governing claims for preferential treatment. Under Article 4.16 of the Agreement, an importer may claim preferential treatment for a good based on either (i) a written or electronic certification by the importer, exporter, or producer, or (ii) the importer's knowledge, including through reasonable reliance on information in the importer's possession, that the good is originating. A certification need not be in a prescribed format, but must include the elements set out in Article 4.16.2 of the Agreement. Under Article 4.15 of the Agreement, an importing Party must grant a claim for preferential tariff treatment unless its customs officials issue a written determination that the claim is invalid as a matter of law or fact.

**b. Verification**

Under Article 4.20 of the Agreement, customs officials may use a variety of methods to verify claims that goods imported from other Agreement countries satisfy the Agreement's rules of origin. Article 3.24 sets out special procedures for verifying claims that textile or apparel goods imported from Agreement countries meet the Agreement's origin rules. (See item 1.f of Chapter Three, above.) U.S. officials will carry out verifications under Articles 4.20 and 3.24 of the Agreement pursuant to authorities under current law. For example, section 509 of the Tariff Act of 1930 (19 U.S.C. 1509) provides authority to examine records and issue summonses to determine liability for duty and ensure compliance with U.S. customs laws.

**Chapter Five (Customs Administration and Trade Facilitation)**

**1. Implementing Bill**

No statutory changes will be required to implement Chapter Five.

2. **Administrative Action**

a. **Inquiry Point**

Article 5.1.2 of the Agreement requires each government to designate an inquiry point for inquiries from interested persons on customs matters. CBP will serve as the U.S. inquiry point for this purpose. Consistent with Article 5.1.2, CBP will post information on the Internet at “www.cbp.gov” on how interested persons can make customs-related inquiries.

b. **Advance Rulings**

Treasury regulations for advance rulings under Article 5.10 of the Agreement (including on classification, valuation, origin, and qualification as an originating good) will parallel in most respects existing regulations in Part 177 of the Customs Regulations for obtaining advance rulings. For example, a ruling may be relied on provided that the facts and circumstances represented in the ruling are complete and do not change. The regulations will make provision for modifications and revocations as well as for delaying the effective date of a modification where the firm in question has relied on an existing ruling. Advance rulings under the Agreement will be issued within 150 days of receipt of all information reasonably required to process the application for the ruling.

**Chapter Six (Sanitary and Phytosanitary Measures)**

No statutory or administrative changes will be required to implement Chapter Six.

**Chapter Seven (Technical Barriers to Trade)**

1. **Implementing Bill**

No statutory changes will be required to implement Chapter Seven.

2. **Administrative Action**

Article 7.8 of the Agreement establishes an inter-governmental Committee on Technical Barriers to Trade (“TBT”). A USTR official responsible for TBT matters or trade relations with the Agreement countries will serve as the U.S. coordinator for the committee.

**Chapter Eight (Trade Remedies)**

**1. Implementing Bill**

Subtitle A of Title III of the bill implements in U.S. law the safeguard provisions set out in Chapter Eight of the Agreement. Subtitle C of Title III of the bill implements the global safeguard provisions set out in Chapter Eight of the Agreement. (As discussed under Chapter Three, above, Subtitle B of Title III of the bill implements the textile or apparel safeguard provisions of the Agreement.)

**a. Safeguard Measures**

Subtitle A of Title III of the bill, Sections 311 through 316, authorizes the President, after an investigation and affirmative determination by the ITC (or a determination that the President may consider to be an affirmative determination), to suspend duty reductions or impose duties temporarily up to NTR (MFN) rates on a “CAFTA-DR article” when, as a result of the reduction or elimination of a duty under the Agreement, the article is being imported into the United States in such increased quantities and under such conditions as to be a substantial cause of serious injury or threat of serious injury to a domestic industry that produces a like or directly competitive good. The standards and procedures set out in these provisions closely parallel the procedures set forth in sections 201 through 204 of the Trade Act of 1974 (19 U.S.C. 2251 – 2254).

Section 301(1) defines the term “CAFTA-DR article” to mean a good that qualifies as an originating good under section 203(b) of the bill, and section 301(4) defines the term “relevant CAFTA-DR article” to mean the CAFTA-DR article with respect to which a petition has been filed under section 311(a).

Section 301(3) defines the term “de minimis supplying country” as an Agreement country whose share of imports of a CAFTA-DR article into the United States does not exceed three percent of the aggregate volume of imports of the CAFTA-DR article in the most recent 12-month period for which data are available. However, the definition makes an exception in cases where the aggregate import share of all such Agreement countries exceeds nine percent of U.S. imports of the CAFTA-DR article during the applicable 12-month period. Unlike agricultural and textile or apparel safeguard measures, which will apply on a country-specific basis, general safeguard measures under Chapter Eight of the Agreement will apply with respect to all imports of an originating CAFTA-DR article, other than imports from de minimis supplying countries.

Section 311 of the bill provides for the filing of petitions with the ITC and for the ITC to conduct safeguard investigations initiated under Subtitle A. Section 311(a) provides that a petition requesting a safeguard action may be filed with the ITC by an entity that is “representative of an industry.” As under section 202(a)(1) of the Trade Act of 1974, the term “entity” is defined to include a trade association, firm, certified or recognized union, or a group of workers.

Section 311(b) sets out the standard to be used by the ITC in undertaking an investigation and making a determination in Subtitle A safeguard proceedings.

Section 311(c) makes applicable by reference several provisions of the Trade Act of 1974. These are the definition of “substantial cause” in section 202(b)(1)(B), the factors listed in section 202(c) applied in making determinations, the hearing requirement of section 202(b)(3), and the provisions of section 202(i) permitting confidential business information to be made available under protective order to authorized representatives of parties to a safeguard investigation.

Section 311(d) exempts from investigation under this section CAFTA-DR articles that have previously been the basis for according relief under Subtitle A to a domestic industry.

Section 312(a) establishes deadlines for ITC determinations following an investigation under section 311(b). The ITC must make its injury determination within 120 days of the date on which it initiates an investigation. If the ITC makes an affirmative injury determination it will determine at the same time whether any Agreement country is a de minimis supplying country.

Section 312(b) makes applicable the provisions of section 330(d) of the Tariff Act of 1930, which will apply when the ITC Commissioners are equally divided on the question of injury or remedy.

Under section 312(c), if the ITC makes an affirmative determination, or a determination that the President may consider to be an affirmative determination, under section 312(a), it must find and recommend to the President the amount of import relief that is necessary to remedy or prevent the serious injury and to facilitate the efforts of the domestic industry to make a positive adjustment to import competition. The relief that the ITC may recommend is limited to that authorized in section 313(c). Similar to procedures under the global safeguards provisions in current law, section 312(c) of the bill provides that only those members of the ITC who agreed to the affirmative determination under section 312(a) may vote on the recommendation of relief under section 312(c).

Under section 312(d), the ITC is required to transmit a report to the President not later than 30 days after making its injury determination. The ITC’s report must include: (i) the ITC’s determination(s) under section 312(a) and the reasons supporting the determination(s); (ii) if the determination under section 312(a) is affirmative or may be considered to be affirmative by the President, any findings and recommendations for import relief and an explanation of the basis for each recommendation; and (iii) any dissenting or separate views of ITC Commissioners. Section 312(e) requires the ITC to publish its report promptly and to publish a summary of the report in the *Federal Register*.

Section 313(a) of the bill directs the President, subject to section 313(b), to take action not later than 30 days after receiving a report from the ITC containing an affirmative

determination or a determination that the President may consider to be an affirmative determination. The President must provide import relief to the extent that the President determines is necessary to remedy or prevent the injury the ITC has found and to facilitate the efforts of the domestic industry to make a positive adjustment to import competition. Under section 313(b), the President is not required to provide import relief if the President determines that the relief will not provide greater economic and social benefits than costs.

Section 313(c)(1) sets forth the nature of the relief that the President may provide. In general, the President may take action in the form of:

- a suspension of further reductions in the rate of duty to be applied to the articles in question; or
- an increase in the rate of duty on the articles in question to a level that does not exceed the lesser of the existing NTR (MFN) rate or the NTR (MFN) rate of duty imposed on the day before the Agreement entered into force.

Under section 313(c)(2), if the relief the President provides has a duration greater than one year, the relief must be subject to progressive liberalization at regular intervals over the course of its application.

Section 313(d) provides that the period for import relief under a Subtitle A safeguard may not exceed four years. However, if the initial period of import relief is less than four years, the President may extend the period of import relief (to a maximum aggregate period of four years) if the President determines that continuation of relief is necessary to remedy or prevent serious injury and to facilitate adjustment to import competition, and that there is evidence that the industry is making a positive adjustment to import competition. That determination must follow an affirmative determination (or a determination that the President may consider to be an affirmative determination) by the ITC to the same effect.

Section 313(e) specifies the duty rate to be applied to CAFTA-DR articles after termination of a safeguard action. On the termination of relief, the rate of duty for the remainder of the calendar year is to be the rate that was scheduled to have been in effect one year after the initial provision of import relief. For the rest of the duty phase-out period, the President may set the duty:

- at the rate called for under the Schedule of the United States to Annex 3.3 of the Agreement; or
- in a manner that eliminates the duty in equal annual stages ending on the date set out in that Schedule.

Section 313(f) exempts from relief any article that is: (i) subject to import relief under the global safeguard provisions in U.S. law (chapter 1 of Title II of the Trade Act of 1974); or (ii) the product of a de minimis supplying country.

Section 314 provides that the President's authority to take action under Subtitle A expires ten years after the date on which the Agreement enters into force, unless the period for elimination of duties on a good exceeds ten years. In such case, relief may be provided until the expiration of the period for elimination of duties.

Section 315 allows the President to provide trade compensation to Agreement countries, as required under Article 8.5 of the Agreement, when the United States imposes relief through a Subtitle A safeguard action. Section 315 provides that for purposes of section 123 of the Trade Act of 1974, which allows the President to provide compensation for global safeguards, any relief provided under section 313 will be treated as an action taken under the global safeguard provisions of U.S. law (sections 201 through 204 of the Trade Act of 1974).

Section 316 amends section 202(a) of the Trade Act of 1974 to provide that the procedures in section 332(g) of the Tariff Act of 1930 with respect to the release of confidential business information are to apply to Subtitle A safeguard investigations.

The Administration has not provided classified information to the ITC in past safeguard proceedings and does not expect to provide such information in future proceedings. In the unlikely event that the Administration provides classified information to the ITC in such proceedings, that information would be protected from publication in accordance with Executive Order 12958.

#### **b. Global Safeguard Measures**

Section 331 of the bill implements the global safeguard provisions of Article 8.6.2 of the Agreement. It authorizes the President, in granting global import relief under sections 201 through 204 of the Trade Act of 1974, to exclude imports of originating articles from the relief when certain conditions are present.

Specifically, section 331(a) provides that if the ITC makes an affirmative determination, or a determination that the President may consider to be an affirmative determination, in a global safeguard investigation under section 202(b) of the Trade Act of 1974, the ITC must find and report to the President whether imports of the article of each Agreement country considered individually that qualify as originating goods under section 203(b) are a substantial cause of serious injury or threat thereof. Under section 331(b), if the ITC makes a negative finding under section 331(a) the President may exclude any imports that are covered by the ITC's finding from the global safeguard action.

2. **Administrative Action**

No administrative changes will be required to implement Chapter Eight.

**Chapter Nine (Government Procurement)**

1. **Implementing Bill**

Chapter Nine of the Agreement establishes rules that certain government entities, listed in Annex 9.1.2(b)(i) of the Agreement, must follow in procuring goods and services. The Chapter's rules will apply whenever these entities undertake procurements valued above thresholds specified in Annex 9.1.2(b)(i).

In order to comply with its obligations under Chapter Nine, the United States must waive the application of certain federal laws, regulations, procedures and practices that ordinarily treat foreign goods and services and suppliers of such goods and services less favorably than U.S. goods, services, and suppliers. Section 301(a) of the Trade Agreements Act of 1979 (19 U.S.C. 2511(a)) authorizes the President to waive the application of such laws, regulations, procedures, and practices with respect to "eligible products" of a foreign country designated under section 301(b) of that Act. By virtue of taking on the procurement-related obligations in Chapter Nine, Agreement countries are eligible to be designated under section 301(b) of the Trade Agreements Act and will be so designated.

The term "eligible product" in section 301(a) of the Trade Agreements Act is defined in section 308(4)(A) of that Act for goods and services of countries and instrumentalities that are parties to the WTO Agreement on Government Procurement and countries that are parties to the NAFTA and other recent free trade agreements. Section 401 of the bill amends the definition of "eligible product" in section 308(4)(A) of the Trade Agreements Act. As amended, section 308(4)(A) will provide that, for an Agreement country, an "eligible product" means a product or service of that country that is covered under the Agreement for procurement by the United States. This amended definition, coupled with the President's exercise of his authority under section 301(a) of the Trade Agreements Act, will allow U.S. government entities covered by the Agreement to purchase products and services from other Agreement countries.

2. **Administrative Action**

As noted above, Annex 9.1.2(b)(i) of the Agreement provides that U.S. government entities subject to Chapter Nine must apply the Chapter's rules to goods and services from other Agreement countries when they make purchases valued above certain dollar thresholds. USTR will notify the Federal Acquisition Regulatory Council ("FAR Council") of the thresholds that pertain to Agreement countries under the Agreement. The FAR Council will then incorporate those thresholds into the Federal Acquisition Regulation in accordance with applicable procedures under the Office of Federal Procurement Policy Act.

**Chapter Ten (Investment)****1. Implementing Bill**

Section 106 of the bill authorizes the United States to use binding arbitration to resolve claims by investors of Agreement countries under Article 10.16.1(a)(i)(C) or Article 10.16.1(b)(i)(C) of the Agreement. Those articles concern disputes over certain types of government contracts, and section 106 of the bill clarifies that the United States consents to the arbitration of such disputes. No statutory authorization is required for the United States to engage in binding arbitration for other claims covered by Article 10.16. Provisions allowing arbitration of contract claims have regularly been included in U.S. bilateral investment treaties over recent decades, and were included in the free trade agreements with Chile, Singapore, and Morocco.

**2. Administrative Action**

No administrative changes will be required to implement Chapter Ten.

**Chapter Eleven (Cross-Border Trade in Services)**

No statutory or administrative changes will be required to implement Chapter Eleven.

**Chapter Twelve (Financial Services)**

No statutory or administrative changes will be required to implement Chapter Twelve.

**Chapter Thirteen (Telecommunications)**

No statutory or administrative changes will be required to implement Chapter Thirteen.

**Chapter Fourteen (Electronic Commerce)**

No statutory or administrative changes will be required to implement Chapter Fourteen.

**Chapter Fifteen (Intellectual Property Rights)**

No statutory or administrative changes will be required to implement Chapter Fifteen.

**Chapter Sixteen (Labor)****1. Implementing Bill**

Section 403 of the bill establishes periodic reporting and meeting requirements on labor matters.

Section 403(a) provides that not later than two years after the Agreement enters into force, and not later than the end of each two-year period thereafter during the succeeding 14 years, the President shall report to the Congress on the progress made by the Agreement countries in implementing (i) Chapter Sixteen of the Agreement; and (ii) the April 2005 "White Paper" report prepared by the trade and labor Vice Ministers of the Agreement countries on labor matters in Central America and the Dominican Republic. The subsection specifies the contents that each report must include and requires the President to establish a mechanism to solicit public comments relating to the subject matter of the reports.

Section 403(b) provides that the Secretary of Labor should take the necessary steps to meet periodically with the labor ministers of the Agreement countries to discuss (i) the operation of the labor provisions of the Agreement; (ii) progress on commitments the Agreement countries made to implement the White Paper; (iii) the work of the International Labor Organization in the Agreement countries and other cooperative efforts to afford to workers internationally-recognized worker rights; and (iv) any other appropriate matters. Subsection (b)(2) provides that the biennial reports prepared under subsection (a) will, as the President deems appropriate, include summaries of those meetings.

**2. Administrative Action**

To carry out section 403(b), the Secretary of Labor will take the necessary steps to meet periodically with the labor ministers of the Agreement countries.

Article 16.4.3 of the Agreement calls for each government to designate an office to serve as the contact point for implementing the Agreement's labor provisions. The Department of Labor's Office of Trade Agreement Implementation will serve as the U.S. contact point for this purpose.

**Chapter Seventeen (Environment)****1. Implementing Bill**

No statutory or administrative changes will be required to implement Chapter Seventeen.

2. **Administrative Action**

Article 17.5.1 of the Agreement establishes an Environmental Affairs Council, comprising cabinet-level officials from each country, and provides that each government will designate a contact point for carrying out the Council's work. USTR's Office of Environment and Natural Resources will serve as the U.S. contact point for this purpose.



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**Tab 4: Statement Setting Forth the Reasons of the President Regarding How and to What Extent the Agreement Makes Progress in Achieving the Applicable Purposes, Policies, Objectives, and Priorities of the Act**

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**STATEMENT ON HOW  
THE DOMINICAN REPUBLIC – CENTRAL AMERICA – UNITED STATES  
FREE TRADE AGREEMENT  
MAKES PROGRESS IN ACHIEVING  
U.S. PURPOSES, POLICIES, OBJECTIVES, AND PRIORITIES**

**A. INTRODUCTION**

The Dominican Republic – Central America – United States Free Trade Agreement (“Agreement”) makes progress in achieving the applicable purposes, policies, objectives, and priorities of the Bipartisan Trade Promotion Authority Act of 2002 (“TPA Act”). This Statement describes how and to what extent the applicable purposes, policies, objectives, and priorities are achieved through the Agreement.

The Agreement represents an historic development in our relations with Costa Rica, El Salvador, Guatemala, Honduras, and Nicaragua (“Central America”) and the Dominican Republic. The Agreement reflects a commitment on the part of the United States to sustained engagement in support of democracy, peaceful regional integration, and economic growth and opportunity in a region where several countries only recently transitioned from civil war to peaceful, democratic societies.

The Agreement will create significant new opportunities for American workers, farmers, ranchers, businesses, and consumers by eliminating barriers to trade with Central America and the Dominican Republic. As detailed below, approximately 80 percent of U.S. exports of consumer and industrial goods will become duty-free immediately upon entry into force of the Agreement, with duties on other industrial and consumer goods eliminated over ten years. In particular, trade in nearly all textile and apparel goods meeting the Agreement’s origin requirements will become duty-free immediately, providing new opportunities for U.S. fiber, yarn, fabric, and apparel exporters. Other key sectors that will benefit from duty elimination under the Agreement are information technology products, agricultural and construction equipment, paper products, chemicals, and medical and scientific equipment.

Furthermore, Central America and the Dominican Republic will provide immediate duty-free access to more than half of all U.S. agricultural exports to the region. Certain agricultural goods will have longer periods for duty elimination (up to 20 years), or will be subject to other provisions, including, in some cases, the application of preferential tariff-rate quotas (“TRQs”) during the transition period. The Agreement addresses duty treatment for imports of sensitive agricultural products into the United States through transition periods (up to 20 years) and the use of TRQs.

The Central American countries and the Dominican Republic will substantially reduce barriers to trade in services, including financial services. The Agreement also includes state-of-

the-art provisions in such key areas as intellectual property rights, electronic commerce, telecommunications, customs and trade facilitation, dispute settlement, and labor and environmental protection.

The Agreement responds to Congress' direction, as expressed in the Caribbean Basin Trade Partnership Act, to conclude comprehensive, mutually advantageous trade agreements with beneficiary countries of the Caribbean Basin Initiative ("CBI") trade preference program. Since 1985, our trade relationship with Central America and the Dominican Republic has been driven by the unilateral trade preferences that the United States provides through the CBI program. This program has contributed to economic development and helped to alleviate poverty in the region. By moving from unilateral trade preferences to a reciprocal free trade agreement, we will build on the success of the CBI program by advancing economic development in the region through trade, as well as expanding U.S. access to markets in Central America and the Dominican Republic.

The Agreement forms an integral part of the Administration's larger strategy of opening markets around the world through negotiating and concluding global, regional, and bilateral trade initiatives. The Agreement provides the opportunity to strengthen our economic and political ties with the region, and underpins U.S. support for democracy and fundamental values, such as respect for internationally recognized worker rights and the elimination of the worst forms of child labor. The Agreement will also contribute to hemispheric integration and provide an impetus toward establishing the *Free Trade Area of the Americas*.

The Agreement meets or exceeds the applicable purposes, policies, objectives, and priorities that the Congress spelled out in the TPA Act. Accordingly, the President strongly believes that the Congress should approve the Agreement and enact the legislation needed to implement the Agreement.

#### **B. OVERALL TRADE NEGOTIATING OBJECTIVES**

The TPA Act sets out a variety of "overall trade negotiating objectives" that call for future U.S. trade agreements to: (1) open markets by eliminating or reducing barriers to and distortions of trade and creating market opportunities, in particular for small businesses; (2) further strengthen international trading disciplines; (3) foster economic growth in the United States and globally; and (4) promote environmental and worker rights policies in the context of trade. The Agreement builds on the foundation of existing trade agreements to make substantial progress in achieving each of these objectives.

##### **1. Market Opening**

The Agreement is comprehensive in scope. Each Party has agreed to liberalize trade in all goods, and to make significant market openings in services and government procurement.

*Consumer/Industrial Goods.* More than 80 percent of U.S. exports of consumer and industrial goods will enter Central America and the Dominican Republic duty-free when the Agreement enters into force, with remaining tariffs phased out over ten years. Average tariffs on these items in Central America and the Dominican Republic currently range from 4.1 percent to 7.8 percent, and tariffs on some products of export interest to U.S. firms are as high as 25 percent.

*Textiles and Apparel.* Nearly all trade in textile and apparel goods that satisfy the Agreement's rules of origin will be duty-free immediately. Moreover, duty elimination for textile and apparel goods may, on a reciprocal basis, be made retroactive to January 1, 2004. The Agreement also allows, if certain conditions are met, for the use of Canadian and Mexican materials as inputs in the production of textile or apparel goods, thereby contributing to the development of stronger, more integrated regional industries.

*Agriculture.* The Central American countries and the Dominican Republic currently maintain high tariffs on U.S. agricultural goods. The simple average tariff that these countries apply to imports of agricultural products from the United States exceeds 11 percent, and, on certain import-sensitive products, can exceed 150 percent. The average bound tariffs on agricultural products for these countries under their World Trade Organization ("WTO") commitments range from 35 percent in Honduras to 60 percent in Nicaragua. In contrast, the U.S. market is already largely open (through our unilateral preference programs) to agricultural imports from Central America and the Dominican Republic. Under the Agreement, over half of all U.S. agricultural exports to the region will be duty-free when the Agreement enters into force, including on important export interests such as prime and choice cuts of beef, soybeans, wheat, cotton, apples, peaches, pears, grapes, cherries, almonds, walnuts, pistachios, raisins, canned peaches and pears, frozen concentrated grapefruit juice, and frozen concentrated orange juice (except to the Dominican Republic). Tariffs on most other U.S. goods will be phased out within 15 years. For the most sensitive agricultural goods, tariffs will be eliminated over periods ranging from 15 to 20 years. For these goods, liberalization will be achieved through TRQs that will increase over time. Over-quota tariffs will be eliminated during the 15-20-year transition period on all such import-sensitive products with the exception of white corn (El Salvador, Guatemala, Honduras, and Nicaragua) and onions and potatoes (Costa Rica). (The United States will maintain its over-quota tariffs on sugar.)

*Services/Financial Services/Telecommunications.* The Agreement provides additional market opening in a broad range of service sectors, including express mail delivery, construction and engineering, computer and related services, advertising, professional services, distribution services, insurance, banking, and other financial services, and telecommunications.

*Government Procurement.* The Agreement opens the Central American and Dominican Republic government procurement markets to U.S. suppliers for the first time on transparent and non-discriminatory terms. As the Central American countries and the Dominican Republic are

not signatories to the WTO Agreement on Government Procurement, this constitutes a major benefit of the Agreement.

## **2. Stronger International Trade Disciplines**

The Agreement includes innovative commitments to promote trade in digital products such as software, music, images, videos, and text. It draws from traditional trade principles to fashion customized nondiscrimination rules that will apply specifically to electronic commerce. The Parties will not impose tariffs on digital products that are delivered over the Internet.

The Parties recognize that workers and firms can fully realize the Agreement's market-opening potential only if the Agreement builds on the disciplines that proceed from those currently in place through other agreements. Thus, the Agreement sets out rules on intellectual property rights ("IPR") that clarify and build on those in the WTO Agreement on Trade Related Aspects of Intellectual Property Rights (TRIPs Agreement) and provide for implementation of more recent World Intellectual Property Organization ("WIPO") treaties on protection of copyright and rights of performers and producers to strengthen enforcement and enhance rules protecting IPR.

The Agreement also includes detailed rules governing telecommunications services, under which the Parties will apply market-opening disciplines that extend beyond those in effect under the WTO. In addition, the Agreement contains innovative procedures for settling disputes that may arise under the Agreement, including provisions for monetary assessments to back up dispute panel decisions.

## **3. Foster Economic Growth**

According to an independent study using the Michigan Model of World Production and Trade (Michigan model) to estimate certain economic effects of various free trade agreements, the Agreement will boost annual net global welfare by \$15.7 billion when fully implemented. In absolute terms, a positive welfare effect will be enjoyed by the United States (\$17.3 billion, or 0.17 percent of GNP) and by Central America and the Dominican Republic collectively (\$5.3 billion, or 4.4 percent of GNP). Formal models, such as the Michigan model, however, tend to underestimate the benefits of free trade agreements because their scope is limited (*e.g.*, they fail to assess the impact of rules changes such as improved IPR protection and group many industries and products into a limited number of categories for analysis) and because not all the expected effects of the Agreement are necessarily measured (*e.g.*, they fail to estimate or fully estimate dynamic or intermediate growth gains from trade liberalization). It is clear, however, that the Agreement will make a positive contribution to U.S. economic welfare and the expansion of global trade.

#### 4. Labor Rights and Environmental Protection

Trade agreements can, and should, complement efforts to protect worker rights and enhance environmental protection. Accordingly, the Agreement includes meaningful commitments by each country on labor and environmental protection.

Each of the Parties reaffirms through the Agreement its obligations as a member of the International Labor Organization (“ILO”) and commitments under the 1998 ILO *Declaration on Fundamental Principles and Rights at Work*. The Agreement contains a binding commitment that each Party not fail to effectively enforce domestic labor laws, while recognizing each Party’s right to establish its own labor laws, exercise discretion in investigatory, regulatory, prosecutorial, and compliance matters, and allocate enforcement resources. The Agreement also commits each Party to strive to ensure it does not waive or derogate from its domestic labor laws in a manner that weakens or reduces its adherence to internationally recognized labor rights as an encouragement for trade or investment with another Party. The Chapter also creates a labor cooperation and capacity building mechanism through which the Parties will work together to strengthen each Party’s institutional capacity to fulfill the goals of the Labor Chapter.

Similarly, the Agreement commits each country to ensure that its laws and policies provide for and encourage high levels of environmental protection and to strive to improve those laws and policies. As is the case for labor law enforcement, the Agreement contains a binding commitment that each Party not fail to effectively enforce its domestic environmental laws, while recognizing each Party’s right to establish its own environmental laws and exercise discretion in regulatory, prosecutorial, and compliance matters. The Agreement also includes language similar to that on labor rights that requires each country to strive to ensure it does not waive or derogate from its environmental laws in a manner that weakens or reduces protections under those laws in order to seek investment or encourage trade with another Party. Finally, the countries agree to cooperate on an ongoing basis regarding environment matters and have entered into a related Environmental Cooperation Agreement to facilitate such cooperation.

#### C. PRINCIPAL TRADE NEGOTIATING OBJECTIVES

The TPA Act establishes a variety of “principal trade negotiating objectives.” The Agreement makes substantial progress toward each of the applicable goals set out in the act.

##### 1. Opening Markets for U.S. Goods

Under the Agreement, U.S. exporters will enjoy increased market opportunities and greater certainty regarding the terms for access to markets in Central America and the Dominican Republic. For example, in addition to cutting tariffs on agricultural goods, the United States and the other Parties will work together on sanitary and phytosanitary (“SPS”) matters, with a view to facilitating trade between the Parties, while appropriately protecting human, animal, and plant life and health. In addition, the Central American countries and the Dominican Republic are

working toward the recognition of the U.S. meat inspection and certification systems in order to facilitate U.S. exports. The Parties will also enhance cooperation on technical regulations, standards, and conformity assessment procedures to prevent unnecessary technical barriers to trade ("TBT") that hinder U.S. companies from taking advantage of open markets.

## **2. Opening Markets for U.S. Services**

The Agreement will create new market opportunities in Central America and the Dominican Republic for a range of key U.S. services suppliers and will lock in access in sectors where their services markets are already open. The Agreement includes a market-opening services framework based in substantial part on a trade-liberalizing "negative list" approach. This means that all services sectors are subject to the Agreement's rules unless a country has negotiated a specific exemption in that sector.

The Agreement will either open or lock in existing significant access to services markets in Central America and the Dominican Republic in such priority U.S. services export sectors as financial services, telecommunications, computer and related services, distribution services, professional services, advertising, audiovisual services, education and training, tourism, construction and engineering, energy services, and environmental services. The Agreement's market-opening provisions are complemented by state-of-the-art rules governing regulatory transparency – rules that are especially important given the highly regulated nature of many services industries.

Under the Agreement, the Central American countries and the Dominican Republic will improve or lock in existing levels of access for U.S. suppliers in another key services market – express delivery. The Agreement includes an innovative, comprehensive definition of express delivery services that requires each Party to provide national treatment, most-favored-nation ("MFN") treatment, and additional market access benefits to express delivery services of the other Parties. The Agreement also addresses the issue of postal monopolies directing revenues derived from monopoly postal services to confer an advantage on express delivery services.

Several of the Central American countries and the Dominican Republic also made commitments regarding their "dealer protection" regimes. Under existing "dealer protection" regimes, U.S. firms may be tied to exclusive or inefficient distributor arrangements. The commitments under the Agreement give U.S. firms and their Central American and Dominican Republic partners more freedom to contract the terms of their commercial relations and encourage the use of arbitration to resolve disputes between parties to dealer contracts.

## **3. Opening Markets for U.S. Investment**

The Agreement commits the Central American countries and the Dominican Republic to provide a strong and predictable legal framework for U.S. investors, including direct ownership by U.S. firms of companies, real estate, intellectual property rights, concessions, permits, and debt instruments in those countries. Except for certain specified exceptions, the Agreement will

give U.S. investors the opportunity to establish, acquire, and operate investments in the Central American countries and the Dominican Republic on the same basis as those countries' own investors or other foreign investors – across the full spectrum of economic activity.

Under the Agreement, the Central American countries and the Dominican Republic will provide U.S. investors due process rights, and recourse in the event of expropriations, that are consistent with U.S. legal principles and practice. For example, the Agreement includes protection against denials of justice in accordance with the principle of due process embodied in the principal legal systems of the world. The Agreement thus makes explicit that the treatment required by this obligation is grounded in, and does not extend beyond, the due process standards embraced by the United States and other major legal systems of the world.

With regard to recourse in the event of expropriations, the Agreement draws heavily from principles developed in U.S. takings law under the Fifth Amendment of the Constitution. The Agreement clarifies, for example, that takings are limited to property rights and property interests, not other types of interests, and incorporates tests used by the U.S. Supreme Court to determine whether a regulatory taking has occurred. The expropriation provisions also recognize that, as is the case in U.S. practice, nondiscriminatory regulatory actions designed and applied to protect legitimate public welfare objectives only rarely result in expropriation. While the Agreement commits the United States to continue to provide Central American and Dominican Republic investors a high level of protection and due process, it gives Central American and Dominican Republic firms no greater substantive rights than U.S. companies already enjoy in the United States.

The Agreement also commits the Central American countries and the Dominican Republic not to burden U.S. investors with protectionist “performance requirements” – such as rules requiring investors to buy local products – and ensures that the Central American countries and the Dominican Republic will allow U.S. investors to transfer funds related to their investments into and out of Central America and the Dominican Republic.

The Agreement provides a mechanism for an investor of a Party to pursue a claim against another Party. The investor may assert that the Party has breached a substantive obligation under the Investment Chapter or that the Party has breached an investment agreement with, or an investment authorization granted to, the investor or its investment. Innovative provisions afford public access to information on investor-State proceedings and ensure proper application of dispute settlement rules. For example, the Agreement requires the countries to make public key documents and hearings, with limited exceptions for business and other legally confidential information, and authorizes tribunals to accept *amicus* submissions from the public. The Agreement also includes provisions based on those used in U.S. courts to quickly dispose of frivolous claims.

Finally, the Agreement calls on the Parties, within three months of the date of entry into force of the Agreement, to initiate negotiations to develop an appellate body to review arbitral awards rendered by tribunals under the Investment Chapter.

#### **4. Intellectual Property Rights**

The Agreement clarifies and builds on existing international standards for the protection and enforcement of intellectual property rights, with an emphasis on new and emerging technologies. The Agreement ensures that the Central American countries and the Dominican Republic will provide a high level of IPR protection, similar to that provided under U.S. law. Key provisions of the Agreement, such as those on preventing circumvention of anti-piracy devices and establishing the scope of liability for copying works on the Internet, are modeled on U.S. statutes.

The Agreement includes state-of-the-art protection for trademarks and copyrights as well as expanded protection for patents and undisclosed information.

The Agreement requires each Central American country and the Dominican Republic to accede to certain international Internet treaties and to extend its term of protection for copyrighted works. Under the Agreement, these countries will ensure that copyright owners maintain rights to temporary copies of their works, which is vital for protecting copyrighted music, videos, software, and text from widespread unauthorized sharing over the Internet. The Agreement requires each government to direct its agencies to use only legitimate computer software, thus setting a positive example for private users. To prevent piracy of satellite television broadcasts, the Agreement will also require the Central American countries and the Dominican Republic to protect encrypted satellite signals as well as the programming those signals carry.

The Agreement commits the Central American countries and the Dominican Republic to make patent rights available, with certain exceptions, for inventions and provides for the extension of patent terms in the event of unreasonable delays in issuing patents or granting regulatory approval for marketing patented products. The Agreement will also require these countries to protect test data and other information that pharmaceutical and agricultural chemical companies submit to government regulators in order to secure regulatory approval for their patented products. Under the Agreement, these countries will protect information generated in connection with pharmaceutical and agricultural chemical product approvals for 5 and 10 years, respectively.

These standards are made more meaningful through requirements for tough enforcement measures and remedies to combat piracy and counterfeiting, including procedures in civil cases for seizure and destruction of pirated and counterfeit products, and the equipment used to produce these products. The Agreement also commits each Central American country and the Dominican Republic to ensure that its criminal law enforcement authorities are empowered to

seize, forfeit, and destroy counterfeit and pirated goods and, at least with respect to pirated goods, the equipment used to produce them. Each country must also authorize its enforcement officials to act on their own against counterfeit and pirated goods, either by stopping them at the border or initiating criminal cases, without receiving a formal complaint, thus providing more effective enforcement against these products.

#### **5. Transparency**

The Parties recognize that without a high standard of regulatory transparency, the benefits of market-opening trade commitments can be lost through arbitrary or unfair government regulations. Accordingly, the Agreement includes provisions that will ensure that each Party observes fundamental transparency principles. Those provisions are set out in a specific Chapter of the Agreement dealing with regulatory transparency as well as in provisions of the Agreement addressing customs administration, TBT, government procurement, investment, cross-border trade in services, financial services, telecommunications, and dispute settlement. The Agreement's principal transparency rules are based on U.S. practice under the Administrative Procedures Act.

Increased transparency is an effective tool in addressing government corruption in international trade. The Agreement contains innovative provisions on combating bribery and corruption. Under the Agreement, each country must adopt or maintain prohibitions on bribery in matters affecting international trade and investment, including bribery of foreign officials, and establish criminal penalties for such offenses. In addition, each country will strive to adopt appropriate measures to protect those who, in good faith, report acts of bribery. The Parties also will work jointly to encourage and support appropriate regional and multilateral initiatives to combat bribery and corruption.

#### **6. Regulatory Practices**

The Agreement addresses regulatory issues directly linked to the Agreement's market-opening provisions. This includes specific provisions in almost all Chapters, including those on customs administration, SPS, TBT, government procurement, cross-border trade in services, and telecommunications. In addition, the Agreement includes commitments on transparency, rights of appeal of administrative decisions, and access to information.

#### **7. Electronic Commerce**

Under the Agreement, the Parties must apply the principles of national treatment and MFN treatment to trade in electronically transmitted digital products (*e.g.*, computer programs, video, images, and sound recordings). The Agreement includes rules prohibiting duties on electronically transmitted digital products and limiting duties on digital products stored on a carrier medium to a duty based on the value of the carrier medium alone. In so doing, the

Agreement creates a strong foundation for wider efforts to bar duties and discriminatory treatment of digital products.

#### **8. Trade in Agricultural Products**

The Agreement includes several provisions designed to eliminate barriers to trade in agricultural products, while providing reasonable adjustment periods, TRQs, and other mechanisms for producers of import-sensitive agricultural goods. In addition, the United States and the other Parties have agreed to work together toward a multilateral agreement in the WTO to eliminate export subsidies and prevent their reintroduction in any form.

Under the Agreement, each Party will eliminate export subsidies on agricultural goods destined for another Party. If a third country subsidizes exports to a Party, an exporting Party may initiate consultations with the importing Party to develop measures the importing Party may adopt to counteract such subsidies. If the importing Party agrees to such measures, the exporting Party must refrain from applying export subsidies to its exports of the good to the importing Party. If the importing Party does not agree to such measures, the exporting Party may provide an export subsidy on its exports of the good to the importing Party, but only to the extent necessary to counteract the trade-distorting effect of the subsidized imports from the third country.

The Agreement also includes a safeguard procedure for certain agricultural goods to aid domestic industries that face imports above a specified quantitative threshold for such goods.

#### **9. Labor Rights and Environmental Protection**

Under the Agreement, the Central American countries, the Dominican Republic, and the United States reaffirm their obligations as members of the ILO and will strive to ensure that their laws provide for labor standards that are consistent with internationally recognized labor rights, as set forth in the Agreement. The Agreement makes clear that it is inappropriate for a Party to waive or derogate from domestic labor laws in a manner that weakens or reduces adherence to internationally recognized labor rights as an encouragement for trade with another Party or investment in its territory by investors of another Party. A key element of the Agreement's labor provisions, which is enforceable through the Agreement's dispute settlement procedures, is a commitment by each country not to fail to effectively enforce its labor laws through a sustained or recurring course of action or inaction in a manner affecting trade between the Parties. The Agreement defines labor laws specifically to include those related to the prohibition and elimination of the worst forms of child labor. The Agreement also commits the Agreement countries to cooperate on labor issues, in part through the Labor Cooperation and Capacity Building Mechanism described in an annex to the Labor Chapter.

Environmental commitments are also included in the core text of the Agreement. As is the case for labor rights, a key component of the Agreement's environmental provisions is an

enforceable commitment by each country that it will not fail to effectively enforce its domestic environmental laws through a sustained or recurring course of action or inaction in a manner affecting trade between the Parties. Under the Agreement, each Party also commits to ensure that its domestic laws and policies provide for and encourage high levels of environmental protection and to strive to continue to improve those laws and policies. Through the Agreement, the Parties expressly recognize that it is inappropriate to waive or derogate from their environmental laws in a manner that weakens or reduces protections under those laws in order to seek investment or encourage trade with another Party. In addition, the Agreement includes a public submissions mechanism that allows members of the public to raise concerns with an independent secretariat about a Party's enforcement of its environmental laws. In appropriate cases, the secretariat will develop a factual record related to the submission for consideration by the Agreement's Environmental Affairs Council. The Agreement also recognizes that the Parties negotiated an Environmental Cooperation Agreement under which they have identified certain priority areas of environmental cooperation.

#### **10. Dispute Settlement**

The Agreement includes innovative procedures for settling disputes that may arise between the Parties over its implementation. The Agreement's dispute settlement procedures rely principally on consultations and compliance rather than on imposition of trade sanctions or penalties. The procedures set high standards of openness and transparency. The Agreement calls for dispute settlement proceedings to be open to the public, for the disputing Parties to release their legal briefs and other filings to the public (except for confidential information), and for dispute settlement panels to have the authority to receive submissions from interested non-governmental groups.

The Agreement's dispute settlement rules also provide that where a Party is found to be in violation of an obligation under the Agreement, the remedies available to the complaining Party will be equivalent for disputes involving commercial matters, on the one hand, and disputes involving labor or environmental matters, on the other. The FTA achieves this result through an enforcement mechanism that provides for the use of monetary assessments. That mechanism allows a prevailing country to suspend tariff benefits under the Agreement if the losing country fails to pay such an assessment, while bearing in mind the Agreement's objective of eliminating barriers to bilateral trade and while seeking to avoid unduly affecting parties or interests not party to the dispute.

Dispute settlement is available under the Agreement for labor or environmental disputes relating to each Party's obligation not to fail to effectively enforce its labor or environmental laws. If a panel determines that a Party has failed to effectively enforce its labor or environmental laws and the disputing Parties cannot agree on how to resolve the dispute, or the complaining Party believes that the defending Party has failed to implement an agreed resolution, the complaining Party may ask the panel to determine the amount of an annual monetary assessment to be imposed on the defending Party. The Panel will establish the amount of the

assessment, subject to a \$15 million annual cap, taking into account relevant trade- and non-trade-related factors. The assessment will be paid into a fund for appropriate labor or environmental initiatives in the territory of the defending Party. If the defending Party fails to pay an assessment, the complaining Party may take other appropriate steps, which may include suspending tariff benefits, as necessary, to collect the assessment, while bearing in mind the Agreement's objective of eliminating barriers to trade and while seeking to avoid unduly affecting parties or interests not party to the dispute.

#### **11. Trade Remedies**

The Agreement includes a safeguard procedure, similar to the procedures in other U.S. free trade agreements, which will be available to aid domestic industries, in the unlikely event that an industry sustains or is threatened with serious injury due to increased imports resulting from the reduction or elimination of U.S. import duties under the Agreement. The Agreement also includes a special safeguard to address the possibility that duty reduction or elimination under the Agreement could result in damaging levels of textile or apparel imports.

The Agreement does not affect U.S. rights to take safeguard actions under section 201 of the Trade Act of 1974, which implements the WTO Safeguards Agreement and the General Agreement on Tariffs and Trade ("GATT") 1994. Under the Agreement, the President may, but is not required to, exempt imports of goods from Agreement countries from a WTO safeguard measure, if the goods are not a substantial cause of serious injury or threat thereof.

The Agreement provides that each country retains its rights and obligations under the WTO agreements relating to antidumping or countervailing duties. Thus, the Agreement does not affect U.S. rights and obligations regarding these trade remedies as they currently exist under the WTO. The United States agreed to maintain an advantage currently afforded to imports from the Central American countries and the Dominican Republic as a result of their status as beneficiary countries under the Caribbean Basin Economic Recovery Act ("CBERA"). Specifically, the United States agreed to continue to treat the other Agreement countries as CBERA beneficiary countries for purposes of Sections 771(7)(G)(ii)(III) and 771(7)(H) of the Tariff Act of 1930 (19 U.S.C. 1677(7)(G)(ii)(III) and 1677(7)(H)), which preclude the U.S. International Trade Commission from aggregating (or "cumulating") imports from CBERA beneficiary countries with imports from non-beneficiary countries in determining in antidumping and countervailing duty investigations whether imports of a particular product from such beneficiary countries are injuring or threaten to injure a U.S. industry.

#### **D. PRIORITIES FOR MAINTAINING GLOBAL COMPETITIVENESS**

The TPA Act also calls for the President to promote certain priorities to address and maintain U.S. competitiveness in the global economy. The Agreement makes progress in promoting each of these priorities.

### **1. Labor Cooperation**

The United States, the Central American countries, and the Dominican Republic are members of the ILO. The United States has a longstanding cooperative relationship with each of these countries on labor issues. During the negotiations, government labor experts from the Agreement countries consulted on their labor laws and how their respective systems operate. The Agreement includes a labor cooperation and capacity building mechanism to promote respect for the principles embodied in the *ILO Declaration on Fundamental Principles and Rights at Work and its Follow-up* and compliance with *ILO Convention 182 Concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour*. The Agreement establishes a framework for the labor cooperation and capacity building mechanism and lists a range of labor activities on which the Parties will cooperate. Officials of the U.S. Department of Labor and the labor ministries of the other Parties and other appropriate agencies will participate in this mechanism.

### **2. Domestic Policy Objectives**

The Agreement fully takes into account critical U.S. domestic policy objectives, such as the need to maintain flexibility in addressing U.S. national security and public health, safety, and consumer interests. The Agreement includes a broad set of general policy exceptions for measures governing trade in both goods and services to ensure that the United States remains fully free to safeguard the national and public interest, including specific exceptions for national security, public health and morals, conservation, taxation, and protection of confidential information. The Agreement also avoids disturbing existing state and local governmental measures that might run counter to the Agreement's services rules by including "grandfather" clauses that exempt those measures from challenge under the Agreement.

### **3. Multilateral Environmental Agreements and GATT Article XX**

As noted in the Administration's environmental review of the Agreement, the environment and sustainable development are important concerns for both the United States and the other Agreement countries. The Agreement expressly recognizes the importance of multilateral environmental agreements ("MEAs"), including appropriate use of trade measures in such agreements to achieve specific environmental goals. The Agreement commits the Parties to consult regularly with respect to the ongoing negotiations in the WTO concerning the relationship between MEAs and WTO rules. In addition, the Environmental Cooperation Agreement negotiated in parallel with the Agreement will provide further opportunities for the seven governments to cooperate in promoting effective implementation of MEAs to which they are all party.

### **4. Currency and Exchange Rate Manipulation**

Section 2102(c)(12) of the TPA Act states that "[i]n order to address and maintain United

States competitiveness in the global economy, the President shall ... seek to establish consultative mechanisms among parties to trade agreements to examine the trade consequences of significant and unanticipated currency movements and to scrutinize whether a foreign government engaged in a pattern of manipulating its currency to promote a competitive advantage in international trade.”

The Cross-Border Trade in Services and Financial Services Chapters of the Agreement promote and protect the freer international movement of capital and consequently make it more difficult to manipulate exchange rates to achieve levels inconsistent with levels set by market forces.

The currency movements mentioned in section 2102(c)(12) can arise from many conditions, particularly from macroeconomic developments, macroeconomic policy changes or the appearance of new information on fundamental economic conditions. The determination of whether any such movement reflects currency manipulation to promote a competitive advantage in international trade must therefore take into account a broad range of issues, institutions and market developments which will require a review mechanism with a larger scope than any specific trade agreement.

The Secretary of the Treasury is required, under the Omnibus Trade and Competitiveness Act of 1988, to analyze on an annual basis the exchange rate policies of foreign countries, in consultation with the International Monetary Fund (“IMF”), and to consider whether countries manipulate the rate of exchange between their currency and the United States dollar for purposes of preventing effective balance of payments adjustments or gaining an unfair competitive advantage in international trade. Each member of the IMF is obligated, under Article IV of the IMF Articles of Agreement, to avoid manipulation of exchange rates for such purposes.

The Department of the Treasury will ensure that currency movements mentioned in Section 2102(c)(12) are examined in its analysis of exchange rate policies of foreign countries and in consultations with the IMF concerning these policies. The Department of the Treasury will seek to resolve problems of currencies that are considered to be manipulated in the sense of 2102(c)(12) through discussions with the foreign authorities responsible for foreign exchange rate policies.

#### **5. Reporting Requirements**

As required under the TPA Act, the Administration has provided a report to the Congress describing the laws of the Central American countries and the Dominican Republic governing exploitative child labor. In addition, the Administration has reported to the appropriate Congressional committees as required under the TPA Act on: (1) the Administration’s environmental review of the Agreement; and (2) its review of the Agreement’s impact on U.S. employment. The Administration has also provided a meaningful labor rights report on the Central American countries and the Dominican Republic, which will be made available to the

public. Finally, the Administration has reported, as specified in the TPA Act, on U.S. efforts to establish consultative mechanisms to strengthen the Central American countries' and the Dominican Republic's capacity to promote respect for core labor standards and to develop and implement standards for the protection of human health based on sound science.



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**Tab 5: Statement Setting Forth the Reasons of the President Regarding How the Agreement Serves the Interest of U.S. Commerce**

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**STATEMENT OF WHY THE DOMINICAN REPUBLIC-CENTRAL  
AMERICA-UNITED STATES FREE TRADE AGREEMENT  
IS IN THE INTERESTS OF U.S. COMMERCE**

**INTRODUCTION**

The Dominican Republic-Central America-United States Free Trade Agreement ("CAFTA-DR" or "Agreement") provides for equitable and reciprocal trade liberalization among the United States, Costa Rica, the Dominican Republic, El Salvador, Guatemala, Honduras and Nicaragua. The CAFTA-DR is a comprehensive free trade agreement that will strip away barriers to trade, eliminate tariffs, open markets, and promote investment in the Parties. By promoting economic growth in Central America and the Dominican Republic, this cutting edge pact will expand U.S. opportunities in important regional markets and further U.S. commercial interests.

Negotiations with the five Central American countries of Costa Rica, El Salvador, Honduras, Guatemala and Nicaragua began in January 2003 and were completed one year later. The negotiations with the Dominican Republic were launched in January 2004 and concluded in March 2004. The CAFTA-DR is a regional trade agreement among all seven signatories, and will contribute to the transformation of a region that was consumed in internal strife and border disputes just two decades ago.

**WHY CENTRAL AMERICA AND THE DOMINICAN REPUBLIC?**

The CAFTA-DR countries are among the developing nations that already enjoy duty free access to the U.S. market for the majority of their exports through trade preference programs. These developing countries often have high tariff and non-tariff barriers to U.S. exports and impose restrictions on U.S. businesses. State-of-the-art free trade agreements like the CAFTA-DR not only reduce barriers to U.S. trade, but also require important reforms of the domestic legal and business environment that are key to encouraging business development and investment. Such reforms include providing greater transparency for government actions such as rule making and other steps to strengthen the rule of law, improving the protection and enforcement of intellectual property rights, and providing clear guidance on customs matters.

*Moving from One-way Preferences  
to Reciprocity*

For twenty years, most Central American and Dominican Republic exports to the United States benefited from duty-free treatment, primarily as a result of the Caribbean Basin Initiative (CBI). With the expansion of the CBI program in 2000 (under the Caribbean Basin Trade Partnership Act - CBTPA), about eighty percent of the region's exports enter the United States duty-free.

The CAFTA-DR moves beyond one-way preferences to full partnership and reciprocal commitments, under which U.S. exports also benefit from duty-free access.

*Expanding Economic Opportunities for U.S. Manufacturers, Workers, and Farmers*

Trade between the United States and the CAFTA-DR countries is significant for all the Parties. In 2004, such trade totaled over \$33 billion.<sup>1</sup> The United States exported almost \$16 billion in goods to the five Central American countries and the Dominican Republic in 2004, more than all exports to Russia, India, and Saudi Arabia combined. A free trade agreement with Central America and the Dominican Republic would effectively create the second-largest U.S. export market in Latin America (\$16 billion), behind only Mexico, and the 14<sup>th</sup> largest U.S. export market in the world. The market access and trade disciplines provided by the CAFTA-DR offer an opportunity to expand U.S. exports to a region that is already seeing high export growth rates. U.S. export growth to the CAFTA-DR region has outperformed overall U.S. exports. From 2000 to 2004, export shipments to CAFTA-DR destinations grew by almost 16 percent, compared with less than 5 percent for overall U.S. exports.

The Central American countries, as well as the Dominican Republic, are natural trading partners of the United States; U.S. firms already enjoy about a forty percent share of the Central American and Dominican import markets.<sup>2</sup> Geographic proximity and close cultural and family ties strengthen the economic relationship. The region, with a population of about 44 million,<sup>3</sup> is only a 2 - 2 ½ hour flight from either Miami or Houston.

Remittances from relatives in the United States to our CAFTA-DR partners are an important and rapidly growing source of foreign exchange throughout the region and help to fund imports of U.S. goods and services. Most U.S. firms that do business in the Caribbean Basin already operate on a regional basis. The CAFTA-DR would bring about additional opportunities to harmonize and integrate this market and allow U.S. businesses to better serve the region.

*Leveling the Playing Field*

The CAFTA-DR will level the playing field for U.S. businesses that sell to Central America and the Dominican Republic. In 2004, over 80 percent of the CAFTA-DR countries' goods exports to the United States came in duty-free under unilateral U.S. trade preference programs, such as the Caribbean Basin Initiative (CBI) and the Generalized System of Preferences (GSP), or under zero MFN tariffs. The CAFTA-DR will open reciprocal trade benefits, eliminating tariffs and reducing barriers, also, to U.S. exports to the region. In addition, U.S. products currently face a competitive disadvantage because Central American countries, as well as the Dominican Republic, have been active in negotiating free trade agreements with other countries. Central America grants preferences to products from Mexico, Canada, Chile, and other South American nations under more than twenty trade agreements. The Dominican Republic has signed free trade agreements with the Central American Common Market countries as well as the Caribbean Community countries. The CAFTA-DR would ensure that U.S. companies are no longer disadvantaged as a result of these trade agreements.

*Advancing the U.S. Trade Agenda*

The CAFTA-DR is a key part of America's regional and global efforts to open markets and enable U.S. businesses to sell goods and services around the world. The CAFTA-DR will lend momentum to the completion of complete the Free Trade Area of the Americas (FTAA) and signals that Central America and the Dominican Republic are ready to join the United States, Mexico, Canada, and Chile as free trade leaders in the hemisphere. As these countries' stake in the trading system expands, we will look for new opportunities to work together in other multilateral negotiations such as the World Trade Organization (WTO). The common disciplines

and trade objectives developed through the CAFTA-DR will enhance the ability of all parties to forge consensus in the WTO.

*Supporting Democracy, Economic Reform, and Regional Integration*

The CAFTA-DR promotes close cooperation among the Central American countries and with the Dominican Republic, thereby advancing regional integration and contributing to greater peace, economic cooperation, and stability in the region. During the past two decades, the Central American countries and the Dominican Republic have established democratic systems of government and have implemented economic reforms to promote privatization, competition, and open markets. The United States has supported this transition to democratic institutions, enhanced economic growth, and security for human rights through a number of programs, including the Caribbean Basin Initiative.

The CAFTA-DR commits the Central American countries and the Dominican Republic to adopt more open and transparent procedures, which should deepen the roots of democracy, civil society, and the rule of law in the region, as well as reinforce market reforms. These reforms, coupled with increased trade and investment flows, should promote expanded growth and openness in the region, as well as support common efforts to achieve stronger labor and environmental protection. The United States and the other CAFTA-DR Parties take an aggressive and cooperative approach to ongoing efforts to improve labor protections through 1) requiring effective enforcement of existing labor laws and 2) building local capacity to improve worker rights.

**SMALL AND MEDIUM-SIZED ENTERPRISES: KEY EXPORTERS TO CENTRAL AMERICA AND THE DOMINICAN REPUBLIC**

The CAFTA-DR will be of particular benefit to small and medium-sized enterprises (SME's). In 2002 small and medium-sized enterprises (enterprises with 500 or fewer employees) were responsible for an estimated thirty-seven percent of the value of U.S. merchandise exports to the Dominican Republic and Central America. This was considerably greater than the twenty-six percent SME share of global U.S. merchandise exports.<sup>4</sup>

Small and medium-sized enterprises particularly benefit from the tariff-eliminating provisions of free trade agreements, and should benefit from the significant tariff cuts required under the CAFTA-DR. The transparency obligations, particularly those contained in the customs chapters, are also very important to SME's, which may not have the resources to navigate customs and regulatory red tape.

The image shows a table with the following structure:

U.S. Merchandise Exports to Central America and the Dominican Republic	
Country	Value (Millions of Dollars)
Belize	1,000
Costa Rica	1,000
Dominican Republic	1,000
El Salvador	1,000
Guatemala	1,000
Honduras	1,000
Nicaragua	1,000
Panama	1,000
Paraguay	1,000
Peru	1,000
Uruguay	1,000
Venezuela	1,000
World	1,000

Small businesses have taken advantage of previous trade agreements designed to eliminate trade barriers. In 1992, SME's accounted for only twenty-four percent of exports to our NAFTA partners, Canada and Mexico. In 2002, the SME share of this growing export market rose to thirty percent.

## ENHANCED MARKET ACCESS TO THE DOMINICAN REPUBLIC AND CENTRAL AMERICA: LATIN AMERICA'S NEWEST EMERGING MARKETPLACE

More than eighty percent of U.S. exports of consumer and industrial products to Central America and the Dominican Republic will be duty-free immediately upon entry into force of the Agreement, with remaining tariffs phased out over ten years. Key U.S. exports, such as information technology products, agricultural and construction equipment, paper products, chemicals, and medical and scientific equipment will gain immediate duty-free access to Central America and the Dominican Republic.<sup>5</sup>

### *Best Prospects For Increased Market Growth For Non-Textile Industrial Goods*

#### Information Technology Products

All U.S. Information Technology Agreement (ITA) product exports to Central America and the Dominican Republic will be duty-free immediately upon implementation of the Agreement. U.S. exporters of information technology (best prospects include circuit switching equipment, computers and peripherals, cables, routers, and cellular services equipment, including base stations, radio trunking equipment, handsets) will all benefit from the Agreement. The CAFTA-DR countries are forging ahead into the digital age. In Guatemala, for instance, demand for telecommunications equipment is expected to grow at an annual rate of ten to fifteen percent over the next 2 to 3 years. U.S. exports of ITA products to the CAFTA-DR region in 2004 were \$1.8 billion.

#### Chemicals

U.S. exporters of chemical and related products will benefit from the CAFTA-DR tariff reductions, particularly with regard to exports of plastics and cosmetics, where tariffs range up to fifteen percent. Tariffs on nearly three-quarters of U.S. chemical exports will be eliminated immediately upon entry into force of the Agreement. For fertilizer and agro-chemical products, the news is even better. Ninety-one percent of U.S. fertilizers and agro-chemicals exports will be duty-free immediately upon entry into force of the Agreement, an important boost to a sub-sector that has seen declining exports to the region. U.S. chemical exports to Central America and the Dominican Republic reached \$1.4 billion in 2004.

*Eighty percent of U.S. imports from Central America and the Dominican Republic now enter the United States duty-free, while U.S. exporters to Central America and the Dominican Republic currently face significant tariffs.*

#### *Benchmark Central American/DR tariffs on imports of industrial goods from the United States*

Motor Vehicles and Parts	11 %
Wood Products	10 %
Textile, Apparel & Leather Products	10 %
Chemicals, Petroleum, Coal, Rubber	5 %
Ferrous Metals	6.3 %
Other Metals and Metal Products	3.5 %
Transport Equipment	3.5 %
Electronic Equipment	1.4 %
Other Machinery and Equipment	4 %
Other Manufactures	7.1 %

#### *The CAFTA-DR Eliminates Tariff Spikes, including*

- El Salvador's 30 % autos tariff.
- Guatemala's 23 % tariff on certain footwear.
- Plastics and cosmetics tariffs up to 15 %.
- Air conditioning and refrigeration equipment facing tariffs up to 15 %.
- 15 % percent tariffs on some building products such as valves and home construction accessories including fixtures, sinks and doors.

Source – Benchmark tariffs: USITC Publication 3717 *U.S.-Central America-Dominican Republic Free Trade Agreement: Potential Economywide and Selected Sectoral Effects*, Table 4.2

### Industrial Machinery

Ninety-two percent of U.S. capital goods exports to Central America and the Dominican Republic will be duty-free immediately upon implementation of the CAFTA-DR. U.S. exporters of food processing, storage and packaging equipment, agricultural machinery (including irrigation equipment) and heating and cooling equipment will benefit significantly from the Agreement. The construction and tourism boom, coupled with an increase in non-traditional agricultural production in Guatemala and Honduras and the increase in the processed food market, will continue to fuel demand for specialized machinery. The CAFTA-DR better positions U.S. exporters to take advantage of this expanding market, particularly in the heating and cooling equipment sub sectors where tariffs currently range up to fifteen percent. In 2004, U.S. exports of machinery to the CAFTA-DR region were \$935 million.

### Electrical Power Generation and Distribution Equipment

Electrical power generation and distribution equipment, including transmission and distribution-related equipment, meters, regulators, boxes, switchers, converters, pumps, etc., are best prospects for export to Central America and the Dominican Republic. Tariffs in the energy sector range up to twenty percent. Overall, ninety-six percent of U.S. exports of energy product exports to Central America and the Dominican Republic will receive duty-free treatment upon implementation of the CAFTA-DR. The Agreement will improve U.S. competitiveness in this sector at a key point in time. The Central American countries have launched an inter-regional energy trading system, which will present an opportunity for sales of energy equipment as the countries upgrade their systems. Increasing energy demand as well as investment in rural electrification projects will provide opportunities for increased export sales. Major projects, such as the Government of El Salvador's plans for a 100 MW thermal generation plant in the near future, a project estimated to cost \$100 million, as well as two major hydroelectric projects, will keep demand for energy-related products high. In 2004, U.S. exports of energy products to Central America and the Dominican Republic were approximately \$726 million.

### Environmental Technologies

Virtually all U.S. environmental technology product exports to Central America and the Dominican Republic, with the exception of miscellaneous plastic items, will receive immediate duty-free treatment. The Agreement includes environmental obligations as part of the core text of the Agreement and provides a cooperative framework for environmental capacity building. This should help spur demand for environmental technologies. The elimination of tariffs is an important competitive boost to a sector where ninety-nine percent of companies in the United States are small enterprises.

Central American and Dominican Republic tariffs on some environmental goods are as high as twenty percent. The Salvadoran Ministry of Environmental and Natural Resources, as well as private industries, are starting projects to recycle and treat solid waste material – other countries in the region need to address this and other environmental issues. U.S. exports of environmental technologies to Central America and the Dominican Republic were valued at \$307 million in 2004.

Medical Equipment

Ninety-eight percent of U.S. medical equipment exports to Central America and the Dominican Republic will receive duty-free treatment immediately upon entry into force of the Agreement. Tariffs on medical equipment range up to twenty percent on some medical and dental furniture. U.S. suppliers will be well positioned to take advantage of growing demand for medical equipment and supplies. In Costa Rica, for example, demand for medical equipment is expected to increase dramatically, as most hospitals need to replace obsolete equipment. The Costa Rican government has already approved several programs for large-scale purchases of modern medical equipment as part of an effort to upgrade the public and private health sectors. U.S. exports of medical equipment and supplies to the CAFTA-DR region in 2004 were \$213 million.

Construction Equipment and Building Supplies

Ninety-nine percent of U.S. construction equipment exports and over fifty-five percent of building supply exports will be duty-free immediately upon entry into force of the Agreement. Current tariffs on construction equipment range from zero to fifteen percent. Central American tariffs on building supplies are higher on average than for other products in the region, with the highest tariffs ranging up to fifteen percent for products such as valves and home construction accessories including fixtures, sinks and doors. Tractors, road building/paving equipment, items required for heavy infrastructure (hotels, roads, bridges), and residential housing (low, medium and high-end) are all best prospects for export under the CAFTA-DR. Construction is booming in both the Dominican Republic and Central America. In the Dominican Republic tourism-related construction is leading the boom. In Costa Rica, where the construction sector has been identified as one of the most dynamic sectors of the economy for the past three years, private sector construction (building of residences, warehouses, industrial plants, offices, shopping malls, supermarkets, schools and hospitals) is taking the lead. In 2004, U.S. exports of construction equipment to the CAFTA-DR region were approximately \$85 million, and building products exports were over \$136 million.

Automotive Parts and Services Equipment

The CAFTA-DR will eliminate Central American and Dominican tariffs on autos and parts that average from about four to nine percent and range as high as thirty percent for certain products. Automotive parts, accessories and service equipment are the best prospects for U.S. exports to the region.

U.S. exporters will also benefit from CAFTA-DR provisions that will allow remanufactured auto parts to receive benefits under the Agreement.

**AGRICULTURAL PRODUCTS**

Although the United States exported \$1.8 billion in farm products in 2004, CAFTA-DR countries continue to impose high tariffs and other barriers on most agricultural products. Removing existing trade barriers between the United States, the five Central American countries and the Dominican Republic will create important new export opportunities for U.S. farmers, ranchers and processors. Moreover, because the U.S. market is already largely open to agricultural imports from these countries, the CAFTA-DR will result in only limited increases in imports. With consumption stagnant for many agriculture products in the United States, access to growth

markets such as those in Central America and the Dominican Republic is critical for the expansion and profitability of U.S. agriculture.

The average WTO bound tariff on agricultural products is forty-two percent in Costa Rica, forty percent in the Dominican Republic, forty-one percent in El Salvador, forty-nine percent in Guatemala, thirty-five percent in Honduras, and sixty percent in Nicaragua. Applied tariffs may be lower on specific products, but in many cases these tariffs constrain U.S. exports. Moreover, without the CAFTA-DR, there is no assurance that the Dominican Republic and Central American countries will not raise these tariffs to their WTO bound rate. In contrast, under the Caribbean Basin Initiative, the United States allows over ninety-nine percent (trade weighted basis) of Central American and Dominican Republic exports to enter duty-free, effectively preserving tariff protection only for out-of-quota imports of products under U.S. tariff-rate quota ("TRQ") programs.

*Best Prospects For Market Growth For Agricultural Goods*

*Beef, Pork and Poultry*

U.S. poultry and livestock producers are among the most efficient in the world, producing high quality product at competitive prices. Under the Agreement, duties on all poultry and livestock products will be eliminated, either immediately or through tariff phase-outs. As a result, U.S. exports will benefit from access to the vibrant tourist industry in the region, where there is strong demand for high quality product, as well as the ability to sell into the growing domestic market in these countries.

Current import duties on U.S. beef exports are as high as thirty percent, and under WTO rules CAFTA-DR countries may charge duties as high as seventy-nine percent. From 2001 through 2003, U.S. suppliers annually shipped on average \$10.6 million worth of beef to all six countries combined. U.S. beef exports worldwide, including to CAFTA-DR countries, were severely impacted in 2004 by BSE-related bans. Under the Agreement, duties on the products most important to the U.S. beef industry – prime and choice cuts – will be eliminated immediately in the Central American countries, while the Dominican Republic will establish a zero duty TRQ on these products which expands annually as tariffs are eliminated. Duties currently applied to certain other beef products and beef offals will be phased-out in 5 to 10 years by the CAFTA-DR countries. In addition, some immediate duty-free access will be provided on other beef cuts through other TRQs, which will expand annually as tariffs are eliminated. The CAFTA-DR countries will eliminate all tariffs on beef and beef products within 15 years.

U.S. pork exports currently face duties as high as forty-seven percent, and the WTO permits duties as high as sixty percent. From 2002 through 2004, U.S. suppliers annually shipped on average \$20.5 million of pork to all six countries combined. Each CAFTA-DR country will provide immediate duty-free access on pork cuts through TRQs amounting to 13,613 metric tons which expand annually as tariffs are eliminated. Most countries will immediately eliminate tariffs on bacon and certain offal products. All CAFTA-DR tariffs on pork will be eliminated within 15 years.

Current import duties on U.S. poultry exports are as high as one hundred sixty-four percent, and WTO rules permit duties as high as two hundred fifty percent. From 2002 through 2004, U.S. poultry meat suppliers annually shipped on average \$51.4 million to all six countries combined, and chicken leg quarters accounted for approximately fifty-five percent (in value terms) of this total. Under the Agreement, each CAFTA-DR country will provide immediate duty-free access

on chicken leg quarters, a product where the United States is the world's most competitive exporter, through TRQs that expand annually as tariffs are eliminated. For example, El Salvador, Guatemala, Honduras and Nicaragua will establish a total initial regional duty-free TRQ of 21,810 metric tons, with individual country minimum TRQ levels, for the first 12 years of the Agreement. For years 13 through 17 of the Agreement, the level of the TRQ will be established through negotiations, but will not be less than the amount equal to five percent of regional chicken production. Costa Rica will establish a 300 metric ton duty-free TRQ for chicken leg quarters and the Dominican Republic one of 500 metric tons, each expanding by ten percent annually until duties are eliminated. In addition, many duties on other poultry products, such as wings, breast meat and mechanically de-boned poultry meat will be eliminated immediately or within 5 to 10 years in some countries. Full liberalization of all poultry and poultry products will occur within 17 to 20 years, depending on the country.

The Central American countries and the Dominican Republic are working toward the recognition of the U.S. meat and poultry inspection systems, and it is expected that this process will be brought to a favorable conclusion in the near future.

#### Dairy Products

U.S. dairy producers are very competitive with producers in the region and will benefit from opportunities to access a growing market. U.S. exports to the CAFTA-DR countries currently face duties as high as sixty-five percent, and the WTO permits duties as high as one hundred percent. From 2002 through 2004, U.S. suppliers annually shipped on average \$52.4 million of dairy products to all six countries combined, and the U.S. share of the import market was 10-15 percent.

The CAFTA-DR countries combined will permit immediate access to over 10,000 metric tons of U.S. dairy products through TRQs that expand annually as dairy tariffs are phased-out. Under the Agreement, all tariffs on dairy products will be eliminated, within 20 years for all countries, and sooner for some.

#### Soybeans and Soybean Products

From 2002 through 2004, U.S. suppliers annually shipped on average 203,359 metric tons of soybeans, 640,770 metric tons of soybean meal, and 76,286 metric tons of soybean oil, valued at \$50 million, \$140 million and \$38 million, respectively, to the CAFTA-DR countries. Current import duties on these products range from zero to twenty percent, but under WTO rules the Central American countries and the Dominican Republic could impose much higher duties. Under the Agreement, the CAFTA-DR countries will provide immediate duty-free access on soybeans. U.S. suppliers will face zero duties on soybean meal, soybean flour, and crude soybean oil in most CAFTA-DR countries. Improved access to these markets, which are expected to grow with rising incomes and population spurring expanded food consumption, will further expand export opportunities for competitive U.S. producers.

#### Fruits, Tree Nuts and Vegetables

Fruit and vegetable production in Central America and the Dominican Republic largely complements production in the United States -- climatic, seasonal and geographic differences serves to limit the direct competition between the regions and encourage trade in both directions. Removing tariffs on U.S. products will facilitate expanded sales in the region.

U.S. fruit and tree nuts face import tariffs ranging from fifteen to thirty percent in the six countries, while WTO bindings generally range from twenty to sixty percent, with some approaching one hundred fifty percent. From 2002 through 2004, U.S. suppliers annually shipped on average 43,540 metric tons of fruits and nuts valued at \$55.5 million to all six countries, and the U.S. share of their import market was approximately forty percent in 2002. Apples and grapes, which face tariffs ranging from fifteen to twenty percent, accounted for nearly half of these U.S. exports. Nearly seventy percent of U.S. fruit and nuts are eligible for immediate duty-free access under the Agreement, including apples, grapes, pears, cherries, raisins, peaches, almonds, walnuts, and pistachios. Processed horticultural products, such as wine, canned peaches and pears, mixed canned fruit, grapefruit and cranberry juice will receive duty-free treatment immediately in all six countries. Central American countries also will immediately eliminate tariffs on frozen concentrated orange juice. The CAFTA-DR countries will phase-out import tariffs on another twenty-six percent of all fruit and nut products over the first five to ten years of the Agreement.

WTO bound tariffs in the Central American countries and the Dominican Republic on vegetables range from thirty to eighty-nine percent, with applied rates generally fifteen to twenty-five percent. From 2002 through 2004, U.S. suppliers to the six countries annually shipped on average nearly \$11 million worth of pulses, and \$40.9 million worth of fresh and prepared vegetables, including \$4.4 million worth of frozen fries. The six countries will open their markets for pulses through a combination of tariff cuts (including immediate duty elimination on peas and lentils in certain countries and five-year phase-outs on lentils, peas and white beans in other countries) and zero duty TRQs which expand annually as tariffs are phased-out over 15 years. Import duties on frozen french fries will be immediately eliminated in four countries and phased-out over five or six years in the other two countries. U.S. suppliers obtain immediate duty-free access on fresh and canned sweet corn, lettuce, mushroom, tomato paste, mushrooms and canned asparagus in some countries, while tariffs on other vegetables, such as cauliflower, broccoli, and lettuce are phased-out in five to ten years in most countries.

### Grains

U.S. suppliers of grains (wheat, rice, corn and other feed grains) currently face applied tariffs as high as sixty percent in the CAFTA-DR countries. U.S. farmers and processors of grains are well positioned to compete in the CAFTA-DR countries, and the Agreement will open an already large and growing market to increased U.S. exports. As populations increase and diets adapt to reflect higher levels of economic development, demand for these products in the region will expand.

From 2002 through 2004, U.S. wheat suppliers annually shipped on average over 1.2 million metric tons of common wheat, valued at over \$204 million to the six CAFTA-DR countries. During the same period, U.S. suppliers shipped on average \$117 million worth of rice, \$303 million worth of corn, and \$7 million worth of other grains. U.S. grain suppliers will benefit from zero tariffs immediately on wheat, barley, barley malt in all six countries, as well as on some processed grain products. Costa Rica and the Dominican Republic will immediately eliminate the tariff on yellow corn, while the other four countries will provide access through zero-duty TRQs on yellow corn that total 1,151,259 metric tons initially and grow by five percent annually as tariffs are phased out. Zero duty TRQs will be established for milled rice by all countries, and rough rice in all countries except the Dominican Republic, which will have a TRQ for brown rice. The TRQ access totals over 400,000 metric tons immediately and grows through the tariff phase-out period.

Cotton

From 2002 through 2004, U.S. suppliers annually shipped on average \$73.1 million worth of cotton to all six countries combined, both to meet domestic demand and as inputs to further processing. Tariffs will be eliminated immediately for cotton, contributing to the integration of regional production to the benefit of U.S. cotton farmers and manufacturers.

Processed Products

Demand in Central America and the Dominican Republic for imported processed products has been expanding substantially in recent years, despite tariffs that can range as high as sixty-six percent. U.S. food manufacturers, benefiting from dependable commodity suppliers at home and production and marketing efficiencies, already compete well in the region. From 2002 through 2004, U.S. suppliers annually shipped on average \$180 million worth of candies, distilled spirits, breakfast cereals, soups, pet food, cookies and other prepared foods to the six CAFTA-DR countries. All CAFTA-DR countries will immediately eliminate tariffs on certain cookies and breakfast cereals. Most countries will immediately provide duty-free access on whisky and other distilled spirits. U.S. suppliers of pet food, other cereals, cookies and food preparations will benefit from immediate duty elimination in some countries, and tariff phase-outs, generally over five to ten years, in other countries.

**TEXTILES AND APPAREL**

The CAFTA-DR region is an important market for U.S. yarn and fabric manufacturers. In 2004, the United States sold \$4.15 billion worth of yarns and fabrics to CAFTA-DR countries and sixty-one percent of apparel shipped from Central America and the Dominican Republic qualified under the Caribbean Basin Trade Partnership Act (CBTPA) provision requiring the use of U.S. yarns and fabrics. In contrast, Asian apparel producers use very little U.S. yarn or fabric. The CAFTA-DR will help retain and promote textiles trade with Central America and the Dominican Republic, a benefit to U.S. exporters.

The following identifies the key textile and apparel features and benefits contained in the CAFTA-DR:

- Regional yarn forward rule of origin – over ninety percent of apparel must be made of regional yarns and fabrics in order to qualify for duty-free treatment. The vast majority of these yarns and fabrics are made in the United States.
- Immediate duty and quota-free trade for qualifying goods, retroactive to January 1, 2004, has helped induce apparel manufacturers in the region to place orders in 2004 prior to the implementation of the Agreement, and has helped maintain and strengthen regional business partnerships. Keeping assembly in Central America and the Dominican Republic, as quotas under the WTO ended on December 31, 2004, should continue to strengthen sales of U.S. yarns and fabrics to the region.
- Customs cooperation provisions will help prevent trans-shipment and circumvention of non-qualifying goods entering the United States.

- Streamlined commercial availability (short supply) process will allow use of other yarns or fabrics if yarns or fabrics are not commercially available in the region to be used in the production of apparel.
- Central America, the Dominican Republic and the United States will be able to source non-elastomeric nylon yarns from Israel, Mexico and Canada, retaining the current CBTPA provision.

## SERVICES SECTORS

The CAFTA-DR countries have made very substantial commitments to liberalization in cross-border services trade, telecommunications, and financial services. These commitments significantly improve upon their WTO commitments in terms of sectors covered and elimination of restrictions. The CAFTA-DR establishes a solid framework for trade in services by providing for the elimination of obstacles in most service sectors and regulatory transparency.

### *Why do services commitments matter?*

The service sector accounts for the majority of jobs – and most job growth – in the U.S. economy. In the United States, private services industries added almost 17 million new jobs to U.S. payrolls between 1993 and 2003, when they accounted for almost 86.5 million U.S. jobs, or eighty percent of private non-farm employment. U.S. service exports are a vital part of this picture. For example, commercial services exports of \$294 billion accounted for twenty-nine percent of total 2003 U.S. exports, generating a 2003 commercial services trade surplus of \$66 billion which helped to offset part of the U.S. merchandise trade deficit.<sup>6</sup>

U.S. services firms are well positioned relative to their competitors abroad to take advantage of free trade agreements. The intensity and vigor of the U.S. market give rise to high-quality companies prepared to meet stringent services demands at home and enables them to compete abroad. Consumers in the CAFTA-DR countries value services that help boost their own productivity and enhance their lives, and look to the United States as a model in terms of providing high-quality and cutting-edge services and technologies.

*CAFTA-DR Opens Services Markets Across the Region*

*Substantial market access provided.*

- The Central American countries and the Dominican Republic will accord substantial market access across their entire services regime, subject to very few exceptions, using the so-called "negative list" approach.

*Key sectors benefit, including:*

- Commerce and related services, tourism, telecommunications services, financial services, audiovisual services, advertising, education and training, engineering, express delivery, professional services (architects, engineers, accountants, legal services), distribution services (wholesaling, retailing, franchising), adult education and training services and environmental services, with very few limitations or restrictions.

*Local residency requirements eliminated.*

- CAFTA-DR removes most local residency requirements, which had imposed significant barriers to U.S. professionals.

*Regulatory transparency required.*

- Transparency in regulatory processes is absolutely essential for services industries because they generally are highly regulated. The CAFTA-DR requires regulatory authorities to use open and transparent administrative procedures, consult with interested parties before issuing regulations, provide advance notice and comment periods for proposed rules, and publish all regulations.

*The CAFTA-DR Allows Service Providers to Choose Mode of Delivery - a Key Provision for SME's*

The commitments in services cover both cross-border supply of services (such as services supplied through electronic means, or through the travel of nationals) as well as the right to establish a company in another CAFTA-DR country in order to supply services. The ability of service providers to choose their mode of providing a service becomes increasingly important as technology makes distance less of a service barrier. Distance learning, for example, has undergone a dramatic transformation due to technology. Satellites and the Internet are transforming the world into a borderless educational arena, benefiting both previously underserved citizenries and education entrepreneurs. Although many developing countries still have limited access to these new technologies, major new investments in telecommunications and information systems are going to dramatically improve their access, benefiting all "e-service" providers.

The CAFTA-DR governments are prohibited from requiring a U.S. company to incorporate or make any form of local investment when supplying their services on a cross-border basis. In other words, a U.S. company wishing to provide its service in a CAFTA-DR country is not required to have any formal presence there. This is a benefit to all U.S. service providers, especially SMEs, who may neither have the resources to maintain a presence outside of the United States nor conduct enough business to even need that kind of presence.

*The CAFTA-DR Liberalizes an Onerous Distribution Restriction: Agent-Distributor Laws*

The CAFTA-DR liberalizes restrictive agent-distributor regimes, eliminating laws in several Central American countries and the Dominican Republic that restrict U.S. companies' ability to choose distributors for their products. These laws, often called "dealer protection" laws were designed to protect citizens who work as agents or distributors for foreign companies. In practice, the rules are often very complicated and potentially costly to foreign suppliers, locking them into inefficient and exclusive distributor arrangements and making it difficult or impossible for them to modernize their distribution systems. Foreign companies have, in many cases, been forced to pay large fees or penalties to end distribution contracts, even if the contract had already reached its termination date or the distributor was not doing its job.

The Agreement will liberalize and modify the application of these laws for U.S. companies that wish to enter the CAFTA-DR marketplace, allowing U.S. businesses the freedom to contract the terms of new distributor relationships. It creates greater certainty that U.S. companies can enter into distribution arrangements without facing exorbitant penalties if it becomes necessary to modify or terminate the arrangement. The Agreement also recognizes international arbitration as an option for resolution of disputes relating to distributor relationships.

*Sector-specific Benefits for the Service Sector*

Generally speaking, sectoral coverage of the six CAFTA-DR countries is significantly broader than are the commitments these countries undertook in the WTO General Agreement on Trade in Services (GATS). One reason is that the CAFTA-DR uses a more inclusive method of sectoral coverage - the "negative list" approach. This means that every sector is covered unless an exception is listed and that trade disciplines are automatically extended to services that have yet

to be created or brought to market. Such automatic coverage of new services is especially important to industries where market development, technological advances and innovation continuously result in new service offerings and means of delivery. This is particularly important in sectors such as communications, express delivery, financial and computer related services. GATS uses a "positive list," which means that only those sectors that a country expressly lists are covered by the Agreement's national treatment and market access obligations. The CAFTA-DR countries listed relatively few of the possible 150 different sectors and subsectors in their GATS commitments, meaning that their GATS commitments are fairly limited.

U.S. service providers should immediately benefit from CAFTA-DR commitments in a number of key areas. Some examples are provided below.

#### Advertising

Nicaragua, Honduras, and Guatemala have committed to completely opening their market for this important sector. Although El Salvador maintains a local content quota for commercials, it does not apply this requirement to foreign-made commercials for imported U.S. goods and services, which substantially reduces the negative trade effect of this measure. In the GATS, the Dominican Republic made a partial commitment in advertising, and the remaining five CAFTA-DR countries made no commitments.

#### Construction and engineering services

Improved regulatory regimes and strong investment environments will stimulate growth opportunities for construction consultants and engineers. U.S. companies should benefit from a reduction in the percentage of Salvadorian ownership required for a construction project and the removal of a number of Guatemalan restrictions on U.S. suppliers of construction and engineering services.

#### Distribution Services, including retail and wholesale services, direct marketing, and direct selling

Retailers will benefit from the removal of barriers that inhibit the movement of industrial and consumer goods and agriculture products between manufacturers, wholesalers, retailers, and consumers. Intellectual property rights provisions will ensure the concept brands of franchise companies are protected. Retailers working with transportation, telecommunications, financial, computer and other service providers may be able to improve and streamline the supply chain to better serve consumers in the United States and throughout the hemisphere. Direct marketers should have increased opportunities as a result of improved wireless telecommunication services, Internet service, and commitments in specific sectors such as travel and tourism.

#### Franchising

The CAFTA-DR countries have not scheduled restrictions on market access for franchising. Furthermore, other CAFTA-DR commitments will benefit U.S. franchisers. Trademark provisions will protect the franchiser name, tariff liberalization will allow the lower-cost export of key equipment needed to supply the franchisee, and the elimination or modification of onerous "dealer act" provisions will allow U.S. companies to terminate a contract with a franchisee for just cause. The franchising market in the CAFTA-DR countries is very strong. It is particularly appealing to an emerging group of investors that includes young professionals who are familiar

with U.S. business practices and who seek to break away from their family businesses and start new undertakings of their own.

Entertainment, including audiovisual and broadcasting

The CAFTA-DR provides improved market access for U.S. films and television programs over a variety of media including cable, satellite, and the Internet. This market opening is in contrast with these countries' commitments under the GATS, where Costa Rica, El Salvador, Guatemala and Honduras made no commitments in this area. CAFTA-DR countries maintained some non-conforming measures in this sector (for example Costa Rica, El Salvador, and Nicaragua have local equity requirements for broadcast licenses). A number of other CAFTA-DR provisions will be beneficial to this sector. The CAFTA-DR provides state-of-the-art intellectual property protections and prohibits the unauthorized receipt or distribution of encrypted satellite signals, thus preventing piracy of satellite television programming. The CAFTA-DR also provides for non-discriminatory treatment for digital products such as U.S. software, music, text, and videos.

Environmental Services

CAFTA-DR countries did not include any restrictions on market access or national treatment in this area in contrast with the GATS where the six countries made no commitments in environmental services. CAFTA-DR countries have been putting a growing emphasis on environmental protection. U.S. environmental services providers should benefit from increased opportunities in this sector. Environmental technologies, for example, are a U.S. Commercial Service best prospect for export in El Salvador. El Salvador's 1998 Environmental Law requires environmental impact studies for major new investment, including public sector projects, and the Ministry of Environmental and Natural Resources as well as private industries are starting projects to recycle and treat solid waste material. Other countries in the region need to address this and other environmental issues.

Express delivery services

The CAFTA-DR services chapter includes an expansive definition reflecting the integrated nature of express services. The Agreement also affirms existing competitive opportunities in the CAFTA-DR region and prevents cross-subsidization from a postal monopoly. This is in contrast with the GATS, where no CAFTA-DR country made a commitment in either postal/courier services or in express delivery. Improved customs trade facilitation will help express delivery service companies provide better services to customers who are seeking to enhance their competitiveness in the hemisphere and global market place. Express delivery services are in demand from a wide range of companies--from high-tech to agriculture, and autos to retail services. Speed-to-market, just-in-time inventory processes and total quality management are critical to success in today's economy.

Energy Services

Energy demand in Central America and the Dominican Republic is increasing. The Central American countries are just beginning to establish a system for interregional energy trading and the CAFTA-DR countries are upgrading their systems. The initial connection between Central America's northern and southern energy grids was completed in May 2002. Over the next two years, energy trade will increase as upgrades to the regional transmission line are completed. New adjustments and reforms to regulations for the electric power sector are being prepared to

assure fair competition and to enable participation in the new Central American Energy Integration System. Increasing energy demand as well as investment in rural electrification will also provide opportunities for U.S. energy companies. CAFTA-DR provisions related to regulatory transparency and investment will also help enhance opportunities for U.S. energy services firms to provide energy services to Central America and the Dominican Republic. In the GATS, the CAFTA-DR countries made no commitments in energy services.

*Information Services, including computer related services*

The CAFTA-DR, which provides for full market access with no exceptions in this important sector, is an improvement over the GATS where only Honduras made such commitments. The CAFTA-DR covers all modes of delivery, including electronic delivery, such as via the Internet. The “negative” list approach also ensures that rapidly evolving computer services, driven by continual advances in technology, will be covered by commitments contained in the Agreement. Without such an approach, computer and related services definitions and commitments could quickly become obsolete as new services are introduced. The CAFTA-DR’s protections for “digital products” and other e-commerce commitments will also benefit U.S. technology service providers. In addition, as technology users are increasingly purchasing information technology solutions as a combination of goods and services, duty-free treatment of technology products under the CAFTA-DR will also benefit service providers in this sector. New access in such sectors as banking, financial services, and telecommunications as a result of the CAFTA-DR will increase demand for strong software development, data processing, and other information services.

*Legal Services*

As a result of the Agreement, there are no significant restrictions imposed in the CAFTA-DR countries on the ability of U.S. lawyers to serve as foreign legal consultants or otherwise to provide advice and assistance respecting the law they are authorized to practice in the United States.

*Professional Services, including accounting, legal services, and management consulting*

Liberalization in such sectors as banking, investment, and financial services will offer increased opportunities for professional service providers. However, licenses will continue to be required. The provisions in the cross-border services chapter provide further assurance that administrative decisions related to licensing are prompt and fair. This chapter also provides for the Parties to support agreements mutually recognizing their qualifications and standards for professional practice.

**FINANCIAL SERVICES**

Improving the conditions for financial institutions to provide services is a key component of the U.S. trade liberalization agenda. The financial sector is a critical component of a nation’s economy: it not only contributes directly to output and employment but also provides an essential infrastructure for the functioning of the entire economy.

The CAFTA-DR countries’ commitments in the financial services sector include core obligations of national treatment, most-favored nation treatment, and additional market access obligations for investment. The Agreement also includes provisions on cross-border trade in financial services,

new financial services, regulatory transparency, and objective and impartial administration of domestic regulation. In addition, the Agreement includes important commitments relating to branching, asset management and use of foreign-based portfolio managers by mutual funds.

#### Banking and Securities

The financial sectors of Central America and the Dominican Republic are generally quite open to foreign investment. The Agreement will lock in rights for U.S. financial service suppliers to establish wholly-owned subsidiaries or joint ventures. Also, banks will be ensured the ability to establish a direct branch from abroad in most countries. The Central American countries and the Dominican Republic have committed without reservation to allow their citizens to utilize banking and securities services abroad and will also allow U.S.-based firms to offer cross-border services in Central America and the Dominican Republic in areas such as financial information and data processing and financial advisory services.

#### Asset Management Services

Costa Rica, El Salvador, Guatemala, Honduras, Nicaragua and the Dominican Republic made no commitments in asset management in the 1997 GATS Financial Services Agreement. The CAFTA-DR provides legal certainty that U.S. asset management firms will be afforded national treatment, non-discrimination and the right of establishment in these countries. In addition, the Agreement includes a specific commitment to permit the cross-border provision of portfolio management services by asset managers located abroad to collective investment schemes located in the Central American countries and the Dominican Republic. This important commitment allows a U.S. firm to achieve economies of scale and use its global expertise in serving its clients in those countries. El Salvador and the Dominican Republic have agreed to adopt necessary laws and regulations within four years to implement this commitment, and Guatemala and Nicaragua will implement commitments as soon as the appropriate laws are passed and regulations established. The financial services transparency commitments in the Agreement also will benefit the asset management industry.

#### Insurance

The insurance commitments contained in the financial services chapter of the Agreement are comprehensive and generally provide good treatment for insurance providers. Commitments are similar among Nicaragua, Guatemala, El Salvador, Honduras, and the Dominican Republic with slight differences in terms of timing of implementation of commitments. Significant liberalization was achieved with the removal of economic needs tests and foreign equity limitations. These insurance commitments are significant improvements over current WTO obligations. For example, branching restrictions in El Salvador are to be lifted within three years; those in Guatemala, Nicaragua and the Dominican Republic will be eliminated within four years. Commitments on expedited availability of new products are also included.

Perhaps most significantly, Costa Rica's insurance sector, which is currently dominated by a monopoly, will be opened for the first time under this Agreement. This will occur in four phases. The first phase of liberalization begins on the date of entry into force of the Agreement. At that time, insurance may be provided on a cross-border basis. Costa Rica will permit the establishment of representative offices as of July 1, 2007. Full establishment will be permitted January 1, 2008, with choice of juridical form (branching, subsidiary, joint-venture). All lines of

insurance may be sold as of that date, except third-party auto liability and workman's compensation, which will be liberalized January 1, 2011.

All major aspects of insurance are covered, including life, non-life, reinsurance, intermediation and services auxiliary to insurance. Key cross-border insurance products and services are covered (marine, aviation and transport, reinsurance and intermediation), similar to those in the Chile and Singapore free trade agreements, with additional commitments to allow services necessary to support global accounts and surplus lines.

## INVESTMENT

The CAFTA-DR establishes a secure, predictable legal framework for U.S. investors in Central America and the Dominican Republic. Foreign direct investment can contribute significantly to the economic development and stability of this region. The Governments of Central America and the Dominican Republic have undertaken significant liberalization to their investment regimes over the past decade. U.S. investors, however, continue to cite complex and confusing laws and regulations, market restrictions, and red tape as disincentive to investment. The CAFTA-DR commitments improve transparency and remove barriers to investment. Previously, governments in the region have backed away from commitments to investors. For example, U.S. companies that have entered into contracts with the Costa Rican government have faced constitutional and legal challenges to the execution of their contracts.

Central America and the Dominican Republic have major infrastructure needs. Increased foreign direct investment in the CAFTA-DR region would greatly improve the development of efficient, reliable systems for power generation, water, sewage, transportation, and telecommunications.

Across the CAFTA-DR countries, energy demand is increasing. In Guatemala, for example, the government has stated that it is looking to the private sector to take the lead in expanding service capacity. Costa Rica has placed a priority on infrastructure development (roads, bridges, airport modernization, port improvements, and rehabilitation of the railroad), which has been offered to private companies and private consortiums under concession. In addition, the Government of El Salvador, as well as private industry, is starting projects to recycle and treat solid waste material and to develop water treatment facilities. These are just some examples of how the governments of Central America and the Dominican Republic can benefit from foreign investment.

### *Key Investment Provisions*

The agreement will establish a secure, predictable legal framework for U.S. investors operating in the Central American countries and the Dominican Republic.

All forms of investment are protected under the Agreement, including real property, enterprises, debt, concessions, and other similar contracts and intellectual property.

U.S. investors enjoy in most circumstances the right to establish, acquire and operate investments in the Central American countries and the Dominican Republic on an equal footing with local investors, and with investors of other countries.

The agreement draws from U.S. legal principles and practices to provide U.S. investors in the Central American countries and the Dominican Republic a basic set of substantive protections that Central American and Dominican Republic investors currently enjoy under the U.S. legal system. Among the rights afforded to U.S. investors (consistent with those found in U.S. law) are due process protections and the right to receive the fair market value for property that has been expropriated.

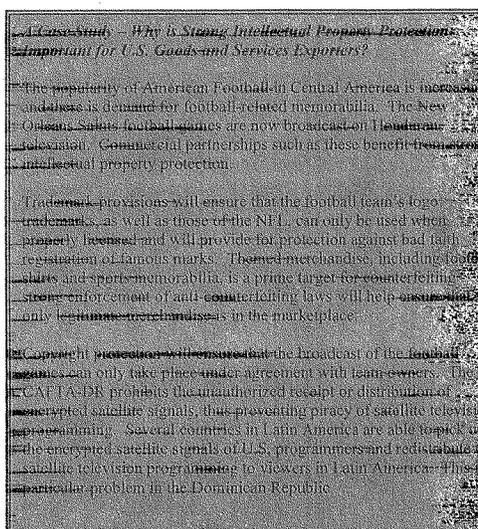
Investor rights are backed by an effective, impartial procedure for dispute settlement that provides for transparent panel hearings and allows interested parties to submit their views.

The CAFTA-DR includes an effective, impartial, and transparent investor-state dispute settlement procedure, which provides investors recourse outside of Central American and Dominican Republic courts. This is particularly important in a region where the slow pace and uncertainty of legal systems has been an impediment to investment (a commercial dispute within the Costa Rican legal system can take up to 10 years to be resolved). In addition, under the CAFTA-DR, investors will also have recourse to arbitration to enforce certain contractual rights, including any concessions that governments in Central America and the Dominican Republic may grant to U.S. investors.

## INTELLECTUAL PROPERTY RIGHTS

With the implementation of the CAFTA-DR, the level of intellectual property protection in Central America and the Dominican Republic is expected to improve. Although CAFTA-DR countries have already made improvements with regard to the modernization of their intellectual property laws, there are still shortcomings in the laws, and enforcement continues to be a challenge. Implementation of the significant new commitments made under the CAFTA-DR will reinforce national efforts to strengthen IP laws and enforcement. The CAFTA-DR, once fully implemented, will establish the highest level of intellectual property protection in the Latin American region and will support the growth of trade in valuable digital and other intellectual property-based products.

- All CAFTA-DR countries will improve their data protection regimes, provide for protection of plant varieties and institute stronger penalties for infringement. Honduras, for example, has already introduced laws that would provide patent protection for plant varieties and the design of integrated circuits before its National Congress.<sup>7</sup>
- Under the CAFTA-DR, governments must use only legitimate computer software, thus setting a positive example for private users. In El Salvador, for example, the government has taken significant steps to legitimize and modernize its software systems.<sup>8</sup> In Guatemala, while there is still pirated software in many offices, the Minister of Economy, who oversees the national IPR registry, has already committed to catalogue and properly license software in his ministry and will promote similar action by his cabinet colleagues.<sup>9</sup>



- The CAFTA-DR provides for tough penalties for piracy and counterfeiting. In Guatemala, the government has taken steps to root out the organized contraband and smuggling rings that have infiltrated the tax and customs administrations and that control much of the traffic in pirated goods.<sup>10</sup>

Enforcement remains a concern in the CAFTA-DR countries. As the economies of Central America and Dominican Republic strengthen, governments will have additional resources to face the challenges due to the lack of personnel and expertise necessary to wage more effective campaign against copyright and other IP violations. In addition, the regional integration that the CAFTA-DR promotes and CAFTA-DR provisions on customs administration should help CAFTA-DR customs authorities to operate more efficiently and transparently. This will decrease opportunities for corruption and free up resources that could be used to improve border measures to keep pirated materials out of the CAFTA-DR region.

#### *Key Intellectual Property Provisions*

##### *State of the art protection for U.S. trademarks*

- Procedures for registering and maintaining trademarks as well as resolving disputes should become more efficient and transparent and less subject to abuse. This will make trademark protection more accessible to small businesses interested in the CAFTA-DR marketplace.

##### *Protection for copyrighted works*

- Copyright-based industries are among the fastest growing and most productive of any sector of the U.S. economy. They employ new workers in higher-paying jobs at over three times the rate of the rest of the economy; create new revenue at over two times that rate; and contribute close to \$90 billion to the U.S. economy through foreign sales and exports. The industries' principal barrier to trade is the lack of effective protection and enforcement of intellectual property rights.

##### *Stronger protections for patents & trade secrets*

- Innovation has historically been a driving force in U.S. industry. Competitive advantage based on innovation needs to be protected and defended. U.S. companies need access to legal tools in all markets across the globe.

##### *Tough penalties for piracy and counterfeiting*

- The high level of enforcement required by the Agreement will benefit industry and set a precedent throughout the region.

## **GOVERNMENT PROCUREMENT**

Governments are typically the single largest purchasing entity in any market. Government procurement is generally ten to fifteen percent of a country's GDP. Total GDP of our six CAFTA-DR trading partners is over \$83 billion, thus total procurement for these countries is estimated to be between \$8 billion and \$12 billion.

The Agreement's government procurement provisions provide for non-discriminatory access to the procurements of the largest purchasing entities in the CAFTA-DR region. These procurements include sectors where U.S. goods and services companies are very competitive, including aerospace, energy, health care, construction, environmental technology, and information communication technology (ICT).

The Agreement covers the purchases of most Central American and Dominican Republic central government entities, including key ministries and state-owned enterprises. Central America and the Dominican Republic also agreed to include a vast majority of their provinces and municipalities. U.S. companies will immediately benefit as CAFTA-DR governments implement the Agreement's procurement obligations. Some of these benefits are highlighted below.

- Under the CAFTA-DR, Honduras will eliminate the requirement that foreign firms act through a local agent in order to participate in public tenders.

- The CAFTA-DR requires Parties to apply fair and transparent procurement procedures, and just as importantly, provide timely and effective bid review procedures, should there be concerns about award of the bids.
- The CAFTA-DR addresses current inadequate notification procedures and prescribes that bids be open for a minimum of forty days.
- The CAFTA-DR clarifies that build-operate-transfer contracts (BOTs) are within the scope of government procurement. BOTs act as financing vehicles for large-scale construction projects and the building or rehabilitation of public work facilities and figure prominently in CAFTA-DR governments' infrastructure financing plans. The Chile Free Trade Agreement was the first free trade agreement to contain this provision and it is significant that the CAFTA-DR also contains the guarantee that U.S. suppliers receive non-discriminatory and transparent treatment when competing for BOT contracts.
- The Dominican Republic will phase out association and participation requirements placed on foreign companies that want to do business with the government.

#### **Key CAFTA-DR Procurement Provisions**

- Central American governments, ministries and departments cannot apply "buy local" provisions that discriminate against U.S. suppliers and the Dominican Republic is phasing out such provisions. Low-value contracts are excluded and the U.S. small business set-asides program remains unchanged
- The CAFTA-DR imposes strong disciplines on government procurement procedures, such as requiring advance public notice of purchases, provision of information to all interested suppliers regarding covered procurement opportunities, as well as timely and effective bid review procedures.
- The Agreement contains strong provisions to ensure integrity in government procurement. CAFTA-DR governments must also institute debarment procedures to weed out suppliers that engage in fraudulent or illegal actions related to procurement. This is a groundbreaking provision.

Governments are particularly important customers in a number of sectors. For example, the Costa Rican Social Security System buys approximately eighty-five percent of the medical equipment in Costa Rica. El Salvador's 1998 Environmental Law requires environmental impact studies for major new investments, including public sector projects. Its Ministry of Environmental and Natural Resources as well as private industries are starting projects to recycle and treat solid waste material.

### **CUSTOMS ADMINISTRATION AND TRADE FACILITATION**

The CAFTA-DR requires transparency and efficiency in administering customs procedures. U.S. exporters to Central America and the Dominican Republic should realize significant gains once the Agreement's custom administration and trade facilitation provisions are fully implemented.

Businesspersons frequently face unclear rules, inconsistent interpretation of customs regulations and directives, and arbitrary clearance procedures that often delay the importation of merchandise for lengthy

Each day saved in shipping time is worth an estimated 0.8 percent add-value for manufactured goods. CAFTA-DR customs and trade facilitation measures will provide significant savings to U.S. exporters in terms of time and money.

*Time as a Trade Barrier* by Hummel, David, July 2001

periods. Furthermore, exporters to the Dominican Republic must obtain from a Dominican Republic consulate in the United States a "consular invoice" for their goods, and get related documents "legalized." This involves paying a fee and can result in exporting delays.

The Agreement's chapter on customs administration and trade facilitation address these and other customs-related exporter concerns.

- *Enhanced Transparency* - The CAFTA-DR governments must publish their customs laws, regulations and administrative procedures on the Internet, thereby greatly increasing transparency.
- *Elimination of the Consular Transaction* - The consular transaction requirement is eliminated for U.S. exports.
- *Heightened Predictability* - Currently U.S. exporters do not have the ability to interact with Central American Customs authorities prior to exporting goods. Under the CAFTA-DR, exporters may obtain binding advance rulings on tariff classification, origin determinations and other areas. This important provision will provide exporters predictability through eliminating varying interpretations of product classification and minimize related delays at the port of entry.
- *Greater Accountability* - Under the CAFTA-DR's customs administration provisions, U.S. companies have rights to a level of administrative review independent of the employee or office that made the decision, and they also have recourse to use judicial review as an alternative.
- *Improved Express Delivery Service* - The demand for express-delivery services is increasing rapidly as a result of the growth of electronic commerce, the internationalization of business, and rising demand by manufacturers for outsourced logistic services. The CAFTA-DR responds to that demand by requiring that, within one year after the date the Agreement takes effect, governments must provide a separate, expedited customs procedure for express shipments. They must also change their regulations to allow the processing of customs information related to the express shipment prior to the arrival of the shipment itself. Most importantly, the CAFTA-DR obligates the Agreement countries for the first time to clear express shipments from the port within six hours of submission of all necessary documents.
- *Greater Customs Efficiency Through Technology* - Responding to U.S. exporters' requests, the CAFTA-DR promotes the use of technology, including the electronic submission of information. This will help expedite procedures for the release of goods, thereby saving companies time and money.

The Agreement's customs-related obligations will phase in over three years. In anticipation of the entry into force of the Agreement, the Central American countries have already made progress on customs and trade facilitation. The countries are working together with the goal of harmonizing documentation and procedures, allowing electronic transmission of customs information, and permitting electronic prepayment of charges, tariffs and taxes.

## CONCLUSION

Approving and implementing the Dominican Republic-Central America-United States Free Trade Agreement is in the best interest of United States commerce. The comprehensive Agreement not only slashes tariffs, but also reduces barriers for services, provides for leading-edge protection and enforcement of intellectual property, keeps pace with new technologies, ensures regulatory transparency, and requires enforcement of domestic labor and environmental laws. With the Agreement in place, doing business in Central America and the Dominican Republic will be easier, faster, and more transparent.

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<sup>1</sup> Global Trade Atlas.

<sup>2</sup> IMF Direction of Trade.

<sup>3</sup> Population data – World Bank, 2003 *World Development Indicators Database*.

<sup>4</sup> USDOC/Office of Trade and Industry Information, Derived from Exporter Data Base, International Trade Administration and Bureau of the Census.

<sup>5</sup> Industry sector summaries drafted by USDOC, Office of Latin America and the Caribbean, with significant contribution by USDOC's Office of Trade Policy Analysis and Commercial Service.

<sup>6</sup> Services Trade Statistics provided by USDOC, ITA/Office of Service Industries, based on Bureau of Economic Analysis and Bureau of Labor Statistics data.

<sup>7</sup> U.S. Embassy reporting cable.

<sup>8</sup> U.S. Embassy reporting cable.

<sup>9</sup> U.S. Embassy reporting cable.

<sup>10</sup> U.S. Embassy reporting cable.

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**Tab 6: Summary of the Agreement**

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**THE DOMINICAN REPUBLIC – CENTRAL AMERICA – UNITED STATES  
FREE TRADE AGREEMENT**

**Summary of the Agreement**

This summary briefly describes key provisions of the Dominican Republic – Central America – United States Free Trade Agreement (“Agreement” or “CAFTA-DR”) that the United States has concluded with Costa Rica, El Salvador, Guatemala, Honduras, and Nicaragua (collectively “Central America”) and the Dominican Republic.

**Preamble**

The Preamble to the Agreement provides the Parties’ underlying objectives in entering into the Agreement and provides context for the provisions that follow.

**Chapter One: Initial Provisions**

Chapter One sets out provisions establishing a free trade area, describing the objectives of the Agreement, and providing that the Parties will interpret and apply the Agreement in light of these objectives. The Parties affirm their existing rights and obligations with respect to each other under the Marrakesh Agreement Establishing the World Trade Organization (WTO) and other agreements to which they are all party. The Parties also agree that they will give effect to the Agreement, including, in the case of the United States, by taking steps necessary to ensure observance of provisions applicable to state governments.

**Chapter Two: General Definitions**

Chapter Two defines certain terms that recur in various chapters of the Agreement.

**Chapter Three: National Treatment and Market Access for Goods**

Chapter Three and its relevant annexes and appendices set out the Agreement’s principal rules governing trade in goods. It requires each Party to treat products from another Party in a non-discriminatory manner, provides for the phase-out and elimination of tariffs on “originating” goods (as defined in Chapter Four) traded between the Parties, and requires the elimination of a wide variety of non-tariff trade barriers that restrict or distort trade flows.

*Tariff Elimination.* Chapter Three provides for the elimination of customs duties on originating goods traded between the Parties. Duties on most tariff lines covering industrial and consumer goods will be eliminated as soon as the Agreement enters into force. Duties on other goods will be phased out over periods of up to 10 years. Some agricultural goods will have longer periods for elimination of duties or be subject to other provisions, including, in some cases, the application of preferential tariff-rate quotas (TRQs). The General Notes to the U.S. Schedule to Annex 3.3 include detailed provisions on staging of tariff reductions and application of TRQs for certain agricultural goods. The Chapter provides that the Parties may agree to speed up tariff

phase-outs on a product-by-product basis after the Agreement takes effect. Annex 3.3.6 of the Agreement establishes additional tariff commitments that apply between the Central American Parties and the Dominican Republic. These commitments largely reflect tariff commitments these Parties have under an earlier free trade agreement between them.

*Waiver of Customs Duties.* Chapter Three provides that Parties may not adopt new duty waivers or expand existing duty waivers conditioned on the fulfillment of a performance requirement. However, Costa Rica, the Dominican Republic, El Salvador, and Guatemala are permitted to maintain such measures through 2009, provided they do so in accordance with the WTO Subsidies and Countervailing Measures (SCM) Agreement. Honduras and Nicaragua are permitted to maintain such measures indefinitely, provided they do so in accordance with the SCM Agreement. Chapter Three defines the term “performance requirements” so as not to restrict a Party’s ability to provide duty drawback on goods imported from the other Parties.

*Temporary Admission.* Chapter Three requires the Parties to provide duty-free temporary admission for certain products. Such items include professional equipment, goods for display or demonstration, and commercial samples. The Chapter also includes specific provisions on transit of vehicles and containers used in international traffic.

*Import/Export Restrictions, Fees, and Formalities.* The Agreement clarifies that restrictions prohibited under the General Agreement on Tariffs and Trade (GATT) 1994 and this Agreement include export and import price requirements (except under antidumping and countervailing duty orders) and import licensing conditioned on the fulfillment of a performance requirement. In addition, a Party must limit all fees and charges imposed on or in connection with importation or exportation to the approximate cost of services rendered. The United States agreed not to apply its merchandise processing fee on imports of originating goods. The Central American Parties and the Dominican Republic agreed not to require a person of another Party to have or maintain a relationship with a “dealer” as a condition for allowing the importation of a good. These Parties also agreed not to prohibit or restrict the importation of any good of another Party as a remedy for a violation or alleged violation of any law, regulation, or other measure relating to the relationship between a “dealer” in its territory and a person of another Party.

*Distinctive Products.* The Central American Parties and the Dominican Republic agreed to recognize Bourbon Whiskey and Tennessee Whiskey as “distinctive products” of the United States, meaning these Parties will not permit the sale of any product as Bourbon Whiskey or Tennessee Whiskey unless it was manufactured in the United States in accordance with applicable laws and regulations.

*Committee on Trade in Goods.* Chapter Three also establishes a Committee on the Trade in Goods to consider matters arising under Chapters Three, Four, and Five. The functions of the Committee are to promote and address barriers to trade in goods and to provide advice and recommendations on trade capacity building with respect to matters covered by Chapters Three, Four, and Five.

### *Agriculture*

*TRQs.* Chapter Three requires that TRQs be administered in a manner that is transparent, non-discriminatory, responsive to market conditions and minimally burdensome on trade and allows importers to fully utilize import quotas. In addition, the Chapter provides that Parties may not condition application for, or utilization of, import licenses or quota allocations on the re-export of an agricultural good.

*Export Subsidies.* Each Party will eliminate export subsidies on agricultural goods destined for another CAFTA-DR country. Under Article 3.14, no Party may introduce or maintain a subsidy on agricultural goods destined for another Party unless the exporting Party believes that a third country is subsidizing its exports to that other Party. In such a case, the exporting Party may initiate consultations with the importing Party to develop measures the importing Party may adopt to counteract such subsidies. If the importing Party agrees to such measures, the exporting Party must refrain from applying export subsidies to its exports of the good to the importing Party.

*Safeguards.* Chapter Three sets out a transitional agricultural safeguard mechanism that allows a Party to impose a temporary additional duty on specified agricultural products if imports exceed an established volume “trigger”. The safeguard measure will remain in force until the end of the calendar year in which the measure applies. A Party may not apply an agricultural safeguard on a good after the date that the good is subject to duty-free treatment under the Party’s Schedule to Annex 3.3 of the Agreement.

A Party may not apply a safeguard measure to a good that is already the subject of a safeguard measure under either Chapter Eight (Trade Remedies) of the Agreement or Article XIX of GATT 1994 and the WTO Safeguards Agreement. All agricultural safeguard measures must be applied and maintained in a transparent manner and the Party applying such a measure must, upon request, consult with the other Party concerning the application of the measure.

No Party may impose safeguard duties pursuant to the WTO Agreement on Agriculture on originating goods.

*Sugar.* The Agreement contains several unique features applicable to imports of sugar into the United States. First, imports under the TRQs created in the Agreement will be limited to the lesser of (i) the quantity established in the TRQ, or (ii) the exporting Party’s trade surplus in specific sugar goods. (A Party’s “trade surplus” is the amount by which its exports to all destinations exceed its imports from all sources in specified sugar and sweetener goods, except that a Party’s exports of sugar to the United States and its imports of high fructose corn syrup from the United States are not included in the calculation of its trade surplus.) The aggregate quantities established in the TRQs are modest – 107,000 metric tons in the first year. The maximum quantities increase to approximately 151,000 metric tons in year 15 of the Agreement. The United States will also establish a quota for specialty sugar goods of Costa Rica in the amount of 2,000 metric tons annually. Second, unlike other commodities, the United States will not eliminate its over-quota duty on sugar imports under the Agreement. Lastly, the Agreement

includes a mechanism that allows the United States, at its option, to provide some form of alternative compensation to CAFTA-DR country exporters in place of imports of sugar.

*Ethanol.* In the General Notes to the Schedule of the United States to Annex 3.3 of the Agreement, the United States agreed to continue to treat the Central American countries and the Dominican Republic as beneficiary countries under the Caribbean Basin Initiative (CBI) preference program with respect to ethanol imports. Accordingly, the Central American countries and the Dominican Republic will continue to share in the duty-free quota that the United States makes available to CBI beneficiary countries. The United States also agreed to establish country-specific allocations for Costa Rica and El Salvador, but did not increase the total quantity allowed under the CBI quota.

*Additional Provisions.* Chapter Three provides for the creation of a Committee on Agricultural Trade. The Committee will be established within 90 days of entry into force of the Agreement and will provide a forum for promoting cooperation in the implementation and administration of the Agreement, as well as for consultations on matters related to the agricultural provisions of the Agreement. The Chapter also provides for the establishment of an Agriculture Review Commission. The Commission will be established 14 years after entry into force of the Agreement and will review the implementation and operation of the Agreement as it relates to trade in agricultural goods, including whether to extend the agricultural safeguard mechanism. Further, the Chapter provides that the Parties will consult on and review the operation of the Agreement as it relates to trade in chicken nine years after entry into force of the Agreement.

#### *Textiles and Apparel*

Chapter Three also sets out various provisions specifically addressing trade in textile and apparel goods.

*Tariff Elimination.* Duties on nearly all originating textile or apparel goods will be eliminated when the Agreement enters into force. Moreover, the preferential duty treatment under the Agreement may, on a reciprocal basis, be made retroactive to January 1, 2004.

*Safeguards.* The Chapter establishes a transitional safeguard procedure for textile and apparel goods, under which an importing Party may temporarily impose additional duties up to the level of the normal trade relations/most-favored-nation (NTR/MFN) duty rates on imports of textile or apparel goods that cause, or threaten to cause, serious damage to a domestic industry as a result of the elimination or reduction of duties under the Agreement. An importing Party may impose a textile safeguard measure only once on the same textile or apparel good. The measure may not be in place for more than three years. The ability to impose textile safeguards lapses five years after the entry into force of the Agreement. A Party may not apply a textile safeguard measure to a good while the good is subject to a safeguard measure under (i) Chapter Eight (Trade Remedies), or (ii) Article XIX of the GATT 1994 and the WTO Agreement on Safeguards.

A Party imposing a safeguard measure must provide the exporting Party with mutually agreed-upon compensation in the form of trade concessions for textile or apparel goods that have

substantially equivalent value to the increased duties resulting from application of the safeguard measure. If the Parties cannot agree on compensation, the exporting Party may raise duties on any goods from the importing Party in an amount that has substantially equivalent value to the increased duties resulting from application of the safeguard measure.

*Rules of Origin and Related Matters.* Under the Agreement, a textile or apparel good will generally qualify as an “originating good” only if all processing after fiber formation (e.g., yarn-spinning, fabric production, cutting, and assembly) takes place in the territory of the United States or another CAFTA-DR Party, or if there is an applicable change in tariff classification under the specific rules of origin contained in Annex 4.1 of the Agreement.

Chapter Three sets out special rules for determining whether a textile or apparel good is an “originating good,” including a *de minimis* exception for non-originating yarns or fibers, a process for designating inputs not available in commercial quantities, a rule for treatment of sets, an exception for use of certain nylon filament yarn, and consultation provisions.

The *de minimis* rule applies to goods that ordinarily would not be considered originating goods because certain of their fibers or yarns do not undergo an applicable change in tariff classification. Under the rule, the Parties will consider a good to be originating if such fibers or yarns constitute ten percent or less of the total weight of the component of the good that determines origin. This special rule does not apply to elastomeric yarns.

Annex 3.25 of the Agreement sets out a list of fabrics, yarns, and fibers that the Parties have determined are not available in commercial quantities in a timely manner from producers in the United States or the other CAFTA-DR countries. A textile or apparel good that includes the fabrics, yarns, or fibers included in this list will be treated as if it is originating for purposes of the specific rules of origin in Annex 4.1 of the Agreement, regardless of the actual origin of those inputs. Chapter Three establishes procedures under which the United States will determine whether additional fabrics, yarns, or fibers are not available in commercial quantities in the United States or the other CAFTA-DR countries. The United States may also remove a fabric, yarn, or fiber from the list if it determines that the fabric, yarn, or fiber has become available in commercial quantities.

Appendix 4.1-B of the Agreement provides that for purposes of determining whether woven apparel (of chapter 62 of the HTS) is originating, materials used in the production of the article that are produced in Canada or Mexico will be treated as if the materials were produced in a CAFTA-DR country, provided that Canada and Mexico, respectively: (i) provide reciprocal treatment for U.S.-produced inputs under their free trade agreements with the other CAFTA-DR countries; and (ii) agree with the United States to textile verification procedures that are substantially similar to the procedures under the CAFTA-DR.

This treatment of woven apparel made with Canadian or Mexican materials is subject to an overall quantitative limit, which is set initially at 100 million square meter equivalents, and to sublimits for trousers and skirts, jeans, and tailored wool apparel. The overall limit may increase to a maximum of 200 square meter equivalents, with corresponding increases in the sublimits,

based on the percentage increase in U.S. imports of originating woven apparel from the other CAFTA-DR countries. The overall limit may also increase as a result of negotiations between the Parties following entry into force of the Agreement.

*Customs Cooperation.* Chapter Three commits each Party to cooperate to enforce or assist in enforcing laws related to trade in textile and apparel goods, to ensure the accuracy of claims of origin, and to prevent circumvention of laws of the Parties or agreements affecting trade in textile and apparel goods. The Parties also agreed that, under certain circumstances, the exporting Party must conduct a verification to determine that a claim of origin is accurate, or to determine compliance with relevant laws. Such a verification may include site visits to the premises of the exporter or producer of the goods in question. If there is insufficient information to make the relevant determination, or if an enterprise provides incorrect information, the importing Party may take appropriate action, which may include denying application of preferential tariff treatment or denying entry to the goods in question. Further, any Party may convene consultations to resolve technical or interpretive issues arising with respect to customs cooperation or may request technical assistance from another Party in implementing the customs cooperation provisions.

*Additional Provisions.* Chapter Three provides for duty-free treatment for goods that an importing Party and exporting Party agree qualify as handmade, hand-loomed, or traditional folklore goods. Separately, the Chapter establishes that, for the first two years of the Agreement, the United States will charge duties that are half the NTR/MFN rate for a limited quantity of tailored wool apparel goods assembled in Costa Rica regardless of the origin of the fabric used to make the goods. Moreover, for the first ten years of the Agreement, the United States shall provide preferential tariff treatment to cotton and man-made fiber apparel goods assembled in Nicaragua that do not qualify as “originating” goods. The United States also agreed that goods assembled in CAFTA-DR countries from U.S. components with U.S. thread that do not qualify as “originating” goods will be subject to NTR/MFN duties on only the value of the assembled good minus the value of U.S. components used in the good.

#### **Chapter Four: Rules of Origin and Origin Procedures**

To benefit from various trade preferences provided under the Agreement, including reduced duties, a good must qualify as an “originating good” under the rules of origin set out in Chapter Four and Annex 4.1. These rules ensure that the special tariff and other benefits of the Agreement accrue primarily to firms or individuals that produce or manufacture goods in the Parties’ territories.

*Key Concepts.* Chapter Four provides general criteria under which a good may qualify as an “originating good:”

- When the good is wholly obtained or produced in the territory of one or more of the Parties (*e.g.*, crops grown or minerals extracted in the United States); or

- When the good: (1) is manufactured or assembled from non-originating materials that undergo a specified change in tariff classification in one or more of the Parties; or (2) meets any applicable “regional value content” requirement (see below); and (3) satisfies all other requirements of Chapter Four, including Annex 4.1; or
- When the good is produced in one or more Parties entirely from “originating” materials.

*De Minimis.* Even if a good does not undergo a specified change in tariff classification, it will be treated as an originating good if the value of non-originating materials that do not undergo the required tariff shift does not exceed 10 percent of the adjusted value of the good, and the good otherwise meets the criteria of the Chapter. This *de minimis* requirement does not apply to certain agricultural and textile goods.

*Regional Value Content.* Some origin rules under the Agreement require that certain goods meet a regional value content test in order to qualify as “originating,” meaning that a specified percentage of the value of the good must be attributable to originating materials. In general, the Agreement provides two methods for calculating that percentage: (1) the “build-down method” (based on the value of non-originating materials used); and (2) the “build-up method” (based on the value of originating materials used). The regional value content of certain automotive goods, however, may be calculated on the basis of the net cost of the good. Finally, accessories, spare parts, and tools delivered with a good are considered part of the material making up the good so long as these items are not separately classified or invoiced and their quantities and values are customary. The *de minimis* rule does not apply in calculating regional value content.

*Claims for Preferential Treatment.* Under the Chapter, importers who wish to claim preferential tariff treatment for particular goods must be prepared to submit, on the request of the importing Party’s customs authority, a statement explaining why the good qualifies as an originating good. A Party may only deny preferential treatment in writing, and must provide legal and factual findings. The Chapter establishes a procedure for filing post-importation claims for preferential treatment up to one year from importation and for seeking a refund of any excess duties paid. Chapter Four also provides that a Party will not penalize an importer if the importer promptly and voluntarily corrects an incorrect claim and pays any duties owed within one year of submission of the claim.

*Verification.* For purposes of determining whether a good is an originating good, each Party must ensure that its customs authority may conduct verifications. Where an importing Party determines through verification that an importer, exporter, or producer has engaged in a pattern of conduct in providing false or unsupported statements, declarations, or certifications that a good is an originating good, the Party may suspend preferential tariff treatment to identical goods covered by subsequent statements, declarations, or certifications by that importer, exporter, or producer until the importing Party determines that the importer, exporter, or producer is in compliance with the Chapter.

*Additional Rules.* Chapter Four further delineates specific rules with respect to the treatment of (1) packing materials and containers; (2) indirect materials; (3) fungible goods; and (4) sets of

goods. The Chapter provides that Parties may not treat a good as originating if the good undergoes production outside the territories of the Parties or does not remain under the control of customs authorities in the territory of a non-Party. Chapter Four also calls for the Parties to publish guidelines for interpreting, applying, and administering Chapter Four and the relevant provisions of Chapter Three.

#### **Chapter Five: Customs Administration and Trade Facilitation**

Chapter Five establishes rules designed to encourage transparency, predictability, and efficiency in the operation of each Party's customs procedures and to provide for cooperation between the Parties on customs matters.

*General Principles.* Chapter Five commits each Party to observe certain transparency obligations. Each Party must promptly publish its customs measures, including on the Internet, and, where possible, solicit public comments before amending its customs regulations. Each Party must also provide written advance rulings, on request, to its importers and to exporters and producers of another Party, regarding whether a product qualifies as an "originating" good under the Agreement, as well as on other customs matters. In addition, each Party must guarantee importers access to both administrative and judicial review of customs decisions. The Parties must release goods from customs promptly and expeditiously clear express shipments. The Chapter provides a transition period of between one and three years to comply with several of these obligations in the case of the Central American Parties and the Dominican Republic.

*Cooperation.* Chapter Five also is designed to enhance customs cooperation. It encourages the Parties to give each other advance notice of customs developments likely to affect the Agreement. The Chapter calls for the Parties to cooperate in securing compliance with each other's customs measures related to the implementation and operation of the provisions of the Agreement governing importations and exportations. It includes specific provisions requiring the Parties to share customs information where a Party has a reasonable suspicion of unlawful activity relating to its laws and regulations governing the importation of goods.

#### **Chapter Six: Sanitary and Phytosanitary Measures**

Chapter Six defines the Parties' obligations to each other regarding sanitary and phytosanitary (SPS) matters. It reflects the Parties' understanding that implementation of existing obligations under the WTO Agreement on the Application of Sanitary and Phytosanitary Measures (SPS Agreement) is a shared objective.

*Key Concepts.* SPS measures are laws or regulations that protect human, animal, or plant life or health from certain risks, including plant- and animal-borne pests and diseases, additives, contaminants, toxins, or disease-causing organisms in food and beverages.

*Cooperation.* Under Chapter Six, the Parties will establish an SPS Committee consisting of relevant trade and regulatory officials. The objectives of the Committee are to (i) help each Party to implement the WTO SPS Agreement; (ii) assist each Party to protect human, animal, or plant

life or health; (iii) enhance consultation and cooperation between the Parties on SPS matters; and (iv) facilitate trade between the Parties. The Committee will also provide a forum for enhancing mutual understanding of each Party's SPS measures and the regulatory processes that relate to those measures; consulting on SPS matters that may affect trade between the Parties; and consulting on issues, agendas, and positions for meetings of certain international organizations.

*Dispute Settlement.* No Party may invoke the Agreement's dispute settlement procedures for a matter arising under Chapter Six. Instead, any SPS dispute between the Parties must be resolved under the applicable agreement(s) and rules of the WTO.

### **Chapter Seven: Technical Barriers to Trade**

Under Chapter Seven, the Parties will build on WTO rules related to technical barriers to trade to promote transparency, accountability, and cooperation between the Parties on regulatory issues.

*Key Concepts.* The term "technical barriers to trade" (TBT) refers to barriers that may arise in preparing, adopting, or applying voluntary product standards, mandatory product standards ("technical regulations"), and procedures used to determine whether a particular good meets such standards, *i.e.*, "conformity assessment" procedures.

*International Standards.* The principles articulated in the WTO TBT Committee Decision on Principles for the Development of International Standards, Guides and Recommendations emphasize the need for openness and consensus in the development of international standards. Under Chapter Seven, the Parties will apply these principles and consult on pertinent matters under consideration by international or regional bodies.

*Cooperation.* Chapter Seven sets out multiple means for cooperation between the Parties to reduce barriers and improve market access, and provides for a Committee on Technical Barriers to Trade to oversee implementation of the Chapter and facilitate cooperation. The Committee's specific functions include: (i) enhancing cooperation in the development and improvement of standards, technical regulations, and conformity assessment procedures; (ii) facilitating sectoral cooperation between governmental and non-governmental conformity assessment bodies; (iii) exchanging information on developments in non-governmental, regional, and multilateral fora engaged in activities related to standards, technical regulations; and conformity assessment procedures; and (iv) consulting, at a Party's request, on any matter arising under the Chapter.

*Conformity Assessment.* Chapter Seven provides for a dialogue between the Parties on ways to facilitate the acceptance of conformity assessment results. Chapter Seven further provides that Parties shall recognize conformity assessment bodies in the territories of the other Parties on no less favorable terms than it accords conformity assessment bodies in its own territory.

*Transparency.* Chapter Seven contains various transparency obligations, including obligations on each Party to: (i) allow persons of the other Parties to participate in the development of technical regulations, standards, and conformity assessment procedures on a non-discriminatory basis; (ii) transmit regulatory proposals notified under the TBT Agreement directly to the other

Parties; (iii) describe in writing the objectives of and reasons for regulatory proposals; and (iv) consider comments on regulatory proposals and respond in writing to significant comments it receives.

#### **Chapter Eight: Trade Remedies**

*Safeguards.* Chapter Eight establishes a safeguard procedure that will be available to aid domestic industries that sustain or are threatened with serious injury due to increased imports resulting from tariff reductions or elimination under the Agreement. The Chapter does not affect the Parties' rights or obligations under the WTO's safeguard provisions (global safeguards) or under other WTO trade remedy rules.

Chapter Eight authorizes each Party to impose temporary duties on an imported originating good if, as a result of the reduction or elimination of a duty under the Agreement, the good is being imported in such increased quantities and under such conditions as to constitute a substantial cause of serious injury, or threat of serious injury, to a domestic industry producing a "like" or "directly competitive" good. Unlike agricultural and textile or apparel safeguard measures, which will apply bilaterally, safeguard measures under Chapter Eight will apply with respect to all imports of an originating good, other than imports from a Party whose import market share is de minimis (*i.e.*, a market share of less than three percent of total imports of the originating good, unless the import market share of all such Parties exceeds nine percent).

A safeguard measure may be applied on a good only during the Agreement's "transition period" for phasing out duties on the good. A safeguard measure may take one of two forms – a temporary increase in duties to NTR/MFN levels or a temporary suspension of duty reductions called for under the Agreement. A Party may not impose a safeguard measure under Chapter Eight more than once on any good. A safeguard measure may be in place for a total of four years, including any extensions of the measure. A Party may extend a measure if it determines that the industry is adjusting and the measure remains necessary to facilitate adjustment and prevent or remedy serious injury. If a measure lasts more than one year, the Party must scale it back at regular intervals. Annex 8.3 sets out the procedural and substantive investigation requirements that Parties must follow in conducting safeguard investigations.

If a Party imposes a safeguard measure, Chapter Eight requires it to provide offsetting trade compensation to the other Parties whose goods are subject to the measure. If the Parties cannot agree on the amount or nature of the compensation, a Party entitled to compensation may unilaterally suspend "substantially equivalent" trade concessions that it has made to the importing Party.

*Global Safeguards.* Chapter Eight maintains each Party's right to take action against imports from all sources under Article XIX of GATT 1994 and the WTO Agreement on Safeguards. A Party may exclude imports of an originating good from another Party from a global safeguard measure if such imports are not a substantial cause of serious injury or threat thereof. A Party may not apply a safeguard measure under Chapter Eight at the same time that it applies a safeguard measure on the same good under the WTO Agreement on Safeguards.

*Antidumping and Countervailing Duties.* Chapter Eight confirms that the Parties retain their rights and obligations under the WTO agreements relating to the application of antidumping and countervailing duties. Antidumping and countervailing duty measures may not be challenged under the Agreement's dispute settlement procedures. The Chapter provides that the United States will continue to treat the other CAFTA-DR countries as CBI beneficiary countries for purposes of Sections 771(7)(G)(ii)(III) and 771(7)(H) of the Tariff Act of 1930 (19 U.S.C. 1677(7)(G)(ii)(III) and 1677(7)(H)), which preclude the U.S. International Trade Commission from aggregating (or "cumulating") imports from CBI beneficiary countries with imports from non-beneficiary countries in determining in antidumping and countervailing duty investigations whether imports of a particular product from such beneficiary countries are injuring or threaten to injure a U.S. industry.

#### **Chapter Nine: Government Procurement**

Chapter Nine provides comprehensive obligations requiring each Party to apply fair and transparent procurement procedures and rules and prohibiting each government and its procuring entities from discriminating in purchasing practices against goods, services, and suppliers from the other Parties. The rules of Chapter Nine are broadly based on the rules of the WTO Agreement on Government Procurement.

*General Principles.* Chapter Nine establishes a basic rule of "national treatment," meaning that each Party's procurement rules and the entities applying those rules must treat goods, services, and suppliers of such goods and services from the other Parties in a manner that is "no less favorable" than the domestic counterparts. The Chapter also bars discrimination against locally established suppliers on the basis of foreign affiliation or ownership. Chapter Nine also provides rules aimed at ensuring a fair and transparent procurement process.

*Coverage and Thresholds.* Chapter Nine applies to purchases and other means of obtaining goods and services valued above certain dollar thresholds by those government departments, agencies, and enterprises listed in each Party's schedule. Specifically, the Chapter applies to procurements by listed "central" (*i.e.*, national or U.S. Federal) government agencies of goods and services valued at \$58,550 or more and construction services valued at \$6,725,000 or more. The equivalent thresholds for purchases by listed "sub-central" government entities (*i.e.*, Central American and Dominican Republic municipalities and U.S. state government agencies) are \$477,000 and \$6,725,000, for goods and services and construction services, respectively. For the three-year period following entry into force of the Agreement, the Chapter applies, in the case of the Central American Parties and the Dominican Republic, to purchases of goods and services by central government agencies valued at \$117,100 or more and by sub-central government agencies valued at \$650,000 or more and purchases of construction services by either central or sub-central government agencies valued at \$8,000,000 or more. The Chapter's thresholds for listed "government enterprises" are either \$250,000 or \$538,000 for goods and services, and \$6,725,000 for construction services, except that for the three-year period following entry into force of the Agreement, the threshold for construction services in the Central American Parties and the Dominican Republic is \$8,000,000. All thresholds are subject to adjustment every two years for inflation. (Separate annexes to Chapter Nine establish special coverage rules with

respect to procurement between (i) the Central American Parties, and (ii) each Central American Party and the Dominican Republic.)

*Transparency.* Chapter Nine establishes rules designed to ensure transparency in procurement procedures. Each Party must publish its laws, regulations, and other measures governing procurement, along with any changes to those measures. Procuring entities must publish notices of procurement opportunities in advance. The Chapter also lists minimum information that such notices must include.

*Tendering Rules.* Chapter Nine provides rules for setting deadlines on “tendering” (bidding on government contracts). It requires procuring entities to give suppliers all the information they need to prepare tenders, including the criteria that procuring entities will use to evaluate tenders. Entities must also, where appropriate, base their technical specifications (*i.e.*, detailed descriptions of the goods or services to be procured) on performance-oriented criteria and international standards. Chapter Nine provides that procuring entities may not write technical specifications to favor a particular supplier, good, or service. It also sets out the circumstances under which procuring entities are allowed to use limited tendering, *i.e.*, award a contract to a supplier without opening the procurement to all interested suppliers.

*Award Rules.* Chapter Nine requires that to be considered for an award, a tender must be submitted by a qualified supplier. The tender must meet the criteria set out in the tender documentation, and procuring entities must base their award of contracts on those criteria. Procuring entities must publish information on awards, including the name of the supplier, a description of the goods or services procured, and the value of the contract. Chapter Nine also calls for each Party to ensure that suppliers may bring challenges against procurement decisions before independent reviewers.

*Additional Provisions.* Chapter Nine builds on the anti-corruption provisions of Chapter Eighteen, including by requiring each Party to maintain procedures to declare suppliers that have engaged in fraudulent or other illegal procurement actions ineligible for participation in the Party’s procurement. It establishes procedures under which a Party may modify its coverage under the Chapter, such as when a Party privatizes an entity whose purchases are covered under the Chapter. It also provides that Parties may adopt or maintain measures necessary to protect: (1) public morals, order, or safety; (2) human, animal, or plant life or health, including environmental measures necessary to protect human, animal, or plant life or health; or (3) intellectual property. Parties may also adopt measures relating to goods or services of handicapped persons, philanthropic institutions, or prison labor.

#### **Chapter Ten: Investment**

Chapter Ten establishes rules to protect investors from one Party against unfair or discriminatory government actions when they make or attempt to make investments in another Party’s territory. Its provisions reflect traditional standards incorporated in earlier U.S. investment agreements (including those in the North American Free Trade Agreement and U.S. bilateral investment

treaties) and in customary international law, and contain several innovations that were incorporated in the free trade agreements with Chile and Singapore as well as others.

*Key Concepts.* Under Chapter Ten, the term “investment” covers all forms of investment, including enterprises, securities, debt, intellectual property rights, licenses, and contracts. It includes both investments existing when the Agreement enters into force and future investments. The term “investor of a Party” encompasses U.S., Central American, and Dominican Republic nationals as well as firms (including branches) established in one of the Parties.

*General Principles.* Investors enjoy six basic protections: (1) non-discriminatory treatment relative to domestic investors as well as investors of non-Parties; (2) limits on “performance requirements”; (3) free transfer of funds related to an investment; (4) protection from expropriation other than in conformity with customary international law; (5) a “minimum standard of treatment” in conformity with customary international law; (6) and the ability to hire key managerial personnel without regard to nationality. (As to this last protection, a Party may require that a majority of the board of directors be of a particular nationality, as long as this does not prevent the investor from controlling its investment.)

*Sectoral Coverage and Non-Conforming Measures.* With the exception of investments in or by regulated financial institutions (which are treated in Chapter Twelve), Chapter Ten generally applies to all sectors, including service sectors. However, each Party has listed in annexes to the Chapter particular sectors or measures for which it negotiated an exemption from the Chapter’s rules relating to national treatment, most favored nation treatment, performance requirements, or senior management and boards of directors. All current state and local laws and regulations are exempted from these rules. A Party may liberalize a measure that it has exempted, but it may not make such measures more restrictive.

*Investor-State Disputes.* Chapter Ten provides a mechanism for an investor of a Party to submit to binding international arbitration a claim for damages against another Party. The investor may assert that the Party has breached a substantive obligation under the Chapter or that the Party has breached an investment agreement with, or an investment authorization granted to, the investor. “Investment agreements” and “investment authorizations” are particular types of arrangements between an investor and a host government based on contracts and authorizations, respectively. These terms are defined in Chapter 10.

Chapter Ten affords public access to information on the Chapter’s investor-State proceedings. For example, Chapter Ten requires that hearings will generally be open to the public and that key documents will be publicly available, with exceptions for confidential business information. The Chapter also authorizes tribunals to accept amicus submissions from the public. In addition, the Chapter includes provisions similar to those used in U.S. courts to dispose quickly of frivolous claims. Finally, an annex to Chapter Ten calls on the Parties, within three months of the date of entry into force of the Agreement, to initiate negotiations to develop an appellate body to review arbitral awards rendered by tribunals under the Chapter.

Chapter Ten also provides that, “except in rare circumstances,” nondiscriminatory regulatory actions designed and applied to meet legitimate public welfare objectives, such as public health and the environment, are not expropriatory.

#### **Chapter Eleven: Cross-Border Trade in Services**

Chapter Eleven governs measures affecting cross-border trade in services between the Parties. Certain provisions also apply to measures affecting investments to supply services. Chapter provisions are drawn in part from the services provisions of the NAFTA and the WTO General Agreement on Trade in Services (GATS), as well as priorities that have emerged since those agreements.

*Key Concepts.* Under the Agreement, cross-border trade in services covers supply of a service:

- § from the territory of one Party into the territory of another Party (e.g., electronic delivery of services from the United States to Costa Rica);
- § in the territory of a Party by a person of that Party to a person of another Party (e.g., a Guatemalan company provides services to U.S. visitors in Guatemala); and
- § by a national of a Party in the territory of another Party (e.g., a U.S. lawyer provides legal services in El Salvador).

Chapter Eleven should be read together with Chapter Ten (Investment), which establishes rules pertaining to the treatment of service firms that choose to provide their services through a local presence, rather than cross-border. Chapter Eleven applies where, for example, a service supplier is temporarily present in a territory of a Party and does not operate through a local investment.

*General Principles.* Among Chapter Eleven’s core obligations are requirements to provide national treatment and MFN treatment to service suppliers of the other Parties. Thus, each Party must treat service suppliers of another Party no less favorably than its own suppliers or those of any other country. This commitment applies to state and local governments as well as the federal government. Chapter provisions relate to the rights of existing service suppliers as well as those who seek to supply services, subject to any reservations by a Party. The Chapter also includes a provision prohibiting the Parties from requiring firms to establish a local presence as a condition for supplying a service on a cross-border basis. In addition, certain types of market access restrictions to the supply of services (e.g., that limit the number of firms that may offer a particular service or that restrict or require specific types of legal structures or joint ventures with local companies in order to supply a service) are also barred. The Chapter’s market access rules apply both to services supplied on a cross-border basis and through a local investment.

*Sectoral Coverage and Non-Conforming Measures.* Chapter Eleven applies across virtually all services sectors. The chapter excludes financial services (which are addressed in Chapter Twelve), except that certain provisions of Chapter Eleven apply to investments in unregulated

financial services that are covered by Chapter Ten (Investment). In addition, Chapter Eleven does not cover air transportation, although it does apply to specialty air services and aircraft repair and maintenance.

Each Party has listed in annexes measures in particular sectors for which it negotiated exemptions from the chapter's core obligations. All existing state and local laws and regulations are exempted from these obligations. Once a Party, including a state or local government, liberalizes a measure that it has exempted, however, it must, in most cases, thereafter maintain the measure at least at that level of openness.

*Specific Commitments.* Chapter Eleven includes a comprehensive definition of express delivery services that requires each Party to provide national treatment, MFN treatment, and additional benefits to express delivery services of the other Parties. The Chapter provides that the Central American Parties and the Dominican Republic may not adopt or maintain any restriction on express delivery services that was not in place on the date the Agreement was signed. The Chapter also addresses the issue of postal monopolies directing revenues derived from monopoly postal services to confer an advantage on express delivery services. Costa Rica, the Dominican Republic, El Salvador, Guatemala, and Honduras also made commitments regarding their "dealer protection" regimes. Under existing "dealer protection" regimes, U.S. firms may be tied to exclusive or inefficient distributor arrangements. The commitments under the Agreement give U.S. firms and their Central American and Dominican Republic partners more freedom to contract the terms of their commercial relations and encourage the use of arbitration to resolve disputes between parties to dealer contracts.

*Transparency and Domestic Regulation.* Provisions on transparency and domestic regulation complement the core rules of Chapter Eleven. The transparency rules apply to the development and application of regulations governing services. The Chapter's rules on domestic regulation govern the operation of approval and licensing systems for service suppliers. Like the Chapter's market access rules, its provisions on transparency and domestic regulation cover services supplied both on a cross-border basis and through a local investment. An annex to Chapter Eleven sets out specific commitments that individual Parties have agreed to undertake.

*Exclusions.* Chapter Eleven excludes any service supplied "in the exercise of governmental authority" – that is, a service that is provided on a non-commercial and non-competitive basis. Chapter Eleven also does not generally apply to government subsidies, although the Parties have undertaken a commitment relating to cross-subsidization of express delivery services.

#### **Chapter Twelve: Financial Services**

Chapter Twelve provides rules governing each Party's treatment of: (1) financial institutions of another Party; (2) investors of another Party, and their investments, in financial institutions; and (3) cross-border trade in financial services.

*Key Concepts.* The Chapter defines a "financial institution" as any financial intermediary or other institution authorized to do business and regulated or supervised as a financial institution

under the law of the Party where it is located. A “financial service” is any service of a financial nature, including, for example, insurance, banking, securities, asset management, financial information and data processing services, and financial advisory services.

*General Principles.* Chapter Twelve’s core obligations parallel those in Chapters Ten (Investment) and Eleven (Cross-Border Trade in Services). Specifically, Chapter Twelve imposes rules requiring national treatment and MFN treatment, prohibits certain quantitative restrictions on market access of financial institutions, and bars restrictions on the nationality of senior management. As appropriate, these rules apply to measures affecting financial institutions, investors and investments in financial institutions of another Party, and services companies that are currently supplying and that seek to supply financial services on a cross-border basis. As between the Central American Parties and the Dominican Republic, obligations pertaining to banking services, or as between Guatemala and the Dominican Republic, financial services generally, do not apply until two years after entry into force of the Agreement.

*Non-Conforming Measures.* Similar to Chapters Ten and Eleven, each Party has listed in an annex to Chapter Twelve particular financial services measures for which it negotiated exemptions from the Chapter’s core obligations. Existing non-conforming U.S. state and local laws and regulations are exempted from these obligations. Once a Party, including a state or local government, liberalizes one of these non-conforming measures, however, it must, in most cases, maintain the measure at least at that new level of openness.

*Other Provisions.* Chapter Twelve also includes provisions on regulatory transparency, “new” financial services, self-regulatory organizations, and the expedited availability of insurance products.

*Relationship to Other Chapters.* Measures that a Party applies to financial services suppliers of another Party, other than regulated financial institutions, that make or operate investments in the Party’s territory are covered principally by Chapter Ten (Investment) and certain provisions of Chapter Eleven (Cross-Border Trade in Services). In particular, the core obligations of Chapter Ten apply to such measures, as do the market access, transparency, and domestic regulation provisions of Chapter Eleven. Chapter Twelve incorporates by reference certain provisions of Chapter Ten, such as those relating to transfers and expropriation.

### **Chapter Thirteen: Telecommunications**

Chapter Thirteen creates disciplines beyond those imposed under Chapters Ten (Investment) and Eleven (Cross-Border Trade in Services) on regulatory measures affecting telecommunications trade and investment between the Parties. It is designed to ensure that service suppliers of each Party have non-discriminatory access to public telecommunications networks in the territories of the other Parties. In addition, the Chapter requires each Party to regulate its dominant telecommunications suppliers in ways that will ensure a level playing field for new entrants. Chapter Thirteen also seeks to ensure that telecommunications regulations are set by independent regulators applying transparent procedures, and is designed to encourage adherence to principles of deregulation and technological neutrality.

*Key Concepts.* Under Chapter Thirteen, a “public telecommunications service” is any telecommunications service that a Party requires to be offered to the public generally. The term includes voice and data transmission services. It does not include the offering of “information services” (e.g., services that enable users to create, store, or process information over a network). A “major supplier” is a company that, by virtue of its market position or control over certain facilities, can materially affect the terms of participation in the market.

*Competition.* Chapter Thirteen establishes rules promoting competition in telecommunications services. It also provides flexibility to account for changes that may occur through new legislation or regulatory decisions. The Chapter includes commitments by each Party to:

- ensure that all service suppliers of another Party that seek to access or use a public telecommunications network in the Party’s territory can do so on reasonable and non-discriminatory terms (e.g., El Salvador must ensure that its public phone companies do not provide preferential access to Salvadoran banks or Internet service providers, to the detriment of U.S. competitors);
- give another Party’s telecommunications suppliers, in particular, the right to interconnect their networks with public networks in the Party’s territory;
- ensure that telecommunications suppliers of another Party that seek to build physical networks in the Party’s territory have access to key physical facilities where they can install equipment, thus facilitating cost-effective investment;
- ensure that telecommunications suppliers of another Party enjoy the right to lease lines to supplement their own networks or, alternatively, purchase telecommunications services from domestic suppliers and resell them in order to build a customer base; and
- impose disciplines on the behavior of “major suppliers.”

*Regulation.* The Chapter addresses key regulatory concerns that may create barriers to trade and investment in telecommunications services. In particular, the Parties:

- will adopt procedures that will help ensure that they maintain open and transparent telecommunications regulatory regimes, including requirements to publish interconnection agreements and service tariffs;
- will require their telecommunications regulators to explain their rule-making decisions and provide foreign suppliers the right to challenge those decisions;
- may elect to deregulate telecommunications services when competition emerges and certain standards are met; and

- will avoid impeding telecommunications suppliers from choosing technologies they consider appropriate for supplying their services.

*Costa Rica.* Costa Rica's obligations with respect to telecommunications are contained in a separate annex to Chapter 13. The annex recognizes the unique nature of Costa Rica's social policy on telecommunications and commits Costa Rica to undertake certain obligations as of January 1, 2006. These obligations include ensuring that enterprises have access to, and use of, public telecommunications services, and that suppliers of public communications services are provided interconnection with major suppliers.

#### **Chapter Fourteen: Electronic Commerce**

Chapter Fourteen establishes rules designed to prohibit discriminatory regulation of electronic trade in digitally encoded products such as computer programs, video, images, and sound recordings. The Chapter represents a major advance over previous international understandings on this subject.

*Customs Duties.* Chapter Fourteen provides that a Party may not impose customs duties on digital products of another Party transmitted electronically and will determine the customs value of an imported carrier medium bearing a digital product based on the value of the carrier medium alone, without regard to the value of the digital product stored on the carrier medium.

*Non-Discrimination.* Chapter Fourteen requires the Parties to apply the principles of national treatment and MFN treatment to trade in electronically-transmitted digital products. Thus, a Party may not discriminate against electronically-transmitted digital products on the grounds that they have a nexus to another country, either because they have undergone certain specific activities (*e.g.*, creation, production, first sale) there or are associated with certain categories of persons of another Party or a non-Party (*e.g.*, authors, performers, producers). Nor may a Party provide less favorable treatment to digital products that have a nexus to another Party than it gives to like products that have a nexus to a third country. The non-discrimination rules do not apply to non-conforming measures adopted under Chapters Ten (Investment), Eleven (Cross-Border Trade in Services), or Twelve (Financial Services).

*Cooperation.* Chapter Fourteen provides for future cooperation between the Parties, including exchanging information in areas such as data privacy and cyber-security.

#### **Chapter Fifteen: Intellectual Property Rights**

Chapter Fifteen complements and enhances existing international standards for the protection of intellectual property and the enforcement of intellectual property rights, consistent with U.S. law.

*General Provisions.* Under Chapter Fifteen the Parties are obligated to ratify or accede to several agreements on intellectual property rights, including, by the date of entry into force of the Agreement, the WIPO Copyright Treaty and WIPO Performances and Phonograms Treaty, and, within specified time frames, the International Convention for the Protection of New Varieties of

Plants, the Trademark Law Treaty, the Brussels Convention Relating to the Distribution of Programme-Carrying Satellite Signals, and the Patent Cooperation Treaty. The United States is already a Party to these Agreements. National treatment requirements apply broadly.

*Trademarks and Geographical Indications.* Chapter Fifteen establishes that marks include marks in respect of goods and services, collective marks, and certification marks, and that geographical indications are eligible for protection as marks. It sets out rules with respect to the registration of marks and geographical indications. Each Party must provide protection for marks and geographical indications, including protecting preexisting trademarks against infringement by later geographical indications. Furthermore, the Parties must provide efficient and transparent procedures governing the application for protection of marks and geographical indications. The Chapter also provides for rules on domain name management that require a dispute resolution procedure to prevent trademark cyber-piracy.

*Copyright and Related Rights.* Chapter Fifteen provides broad protection of copyright and related rights, affirming and building on rights set out in several international agreements. For instance, each Party must provide copyright protection for the life of the author plus 70 years (for works measured by a person's life), or 70 years (for corporate works). The Chapter clarifies that the right to reproduce literary and artistic works, recordings, and performances encompasses temporary copies, an important principle in the digital realm. It also calls for each Party to provide a right of communication to the public, which will further ensure that right holders have the exclusive right to make their works available online. The Chapter specifically protects the rights of performers and producers of phonograms.

To curb copyright piracy, government agencies of the Parties must use only legitimate computer software, setting an example for the private sector. The Chapter also includes provisions on anti-circumvention, under which the Parties commit to prohibit tampering with technology used to protect copyrighted works. In addition, Chapter Fifteen sets out obligations with respect to the liability of Internet service providers in connection with copyright infringements that take place over their networks. Finally, recognizing the importance of satellite broadcasts, Chapter Fifteen ensures that each Party will protect encrypted program-carrying satellite signals. It obligates the Parties to extend protection to the signals themselves, as well as to the content contained in the signals.

*Patents.* Chapter Fifteen also includes a variety of provisions for the protection of patents. The Parties agree to make patents available for any invention, subject to limited exclusions, and confirm the availability of patents for new uses or methods of using a known product. The Chapter provides for protection to stop imports of patented products when the patent owner has placed restrictions on import by contract or other means. To guard against arbitrary revocation of patents, each Party must limit the grounds for revoking a patent to the grounds that would have justified a refusal to grant the patent. Under Chapter Fifteen, Parties must provide adjustments to the patent term to compensate for unreasonable delays that occur while granting the patent, as well as unreasonable curtailment of the effective patent term as a result of the marketing approval process for pharmaceutical products.

*Certain Regulated Products.* Chapter Fifteen includes specific measures relating to certain regulated products, including pharmaceuticals and agricultural chemicals. Among other things, it protects test data that a company submits in seeking marketing approval for such products by precluding other firms from relying on the data. It provides specific periods for such protection – five years for pharmaceuticals and ten years for agricultural chemicals. This means, for example, that during the period of protection, test data that a company submits for approval of a new agricultural chemical product could not be used without that company’s consent in granting approval to market a combination product. The Chapter also requires Parties to implement measures to prevent the marketing of pharmaceutical products that infringe patents.

*Enforcement Provisions.* Chapter Fifteen also creates obligations with respect to the enforcement of intellectual property rights. Among these, the Parties, in determining damages, must take into account the value of the legitimate goods as well as the infringer’s profits. The Chapter also provides for damages based on a fixed range (*i.e.*, “statutory damages”), at the option of the right holder or alternatively additional damages in cases involving copyright infringement

Chapter Fifteen provides that the Parties’ law enforcement agencies must have authority to seize suspected pirated and counterfeit goods, the equipment used to make or transmit them, and documentary evidence. Each Party must give its courts authority to order the forfeiture and/or destruction of such items. Chapter Fifteen also requires each Party to empower its law enforcement agencies to take enforcement action at the border against pirated or counterfeit goods without waiting for a formal complaint. Chapter Fifteen provides that each Party must apply criminal penalties against counterfeiting and piracy, including end-user piracy.

*Transition Periods.* Most obligations in the Chapter take effect upon the Agreement’s entry into force. However, the Central American Parties and the Dominican Republic may delay giving effect to certain specified obligations for periods ranging from six months to four years from the date of entry into force of the Agreement.

#### **Chapter Sixteen: Labor**

Chapter Sixteen sets out the Parties’ commitments and undertakings regarding trade-related labor rights. Chapter Sixteen draws on the North American Agreement on Labor Cooperation (the supplemental NAFTA labor agreement) and the labor provisions of other recent U.S. FTAs, including those with Jordan, Chile, Singapore, Australia, and Morocco. The Chapter goes further than these prior FTAs, however, in that it contains the most comprehensive set of commitments and undertakings regarding trade-related labor rights. As described below, the Chapter (i) includes detailed provisions to ensure that labor law enforcement is fair, equitable, and transparent; (ii) requires Parties to provide for public input on labor matters; and (iii) establishes a detailed framework that will assist Parties to develop the institutional capacity to fulfill the goals of the Chapter.

*General Principles.* Under Chapter Sixteen, the Parties reaffirm their obligations as members of the International Labor Organization (ILO) and under the 1998 ILO *Declaration on Fundamental Principles and Rights at Work*. Each Party must strive to ensure that its law recognizes and

protects the fundamental labor principles spelled out in the ILO Declaration as listed in the Chapter. Each Party also must strive to ensure that it does not derogate from or waive the protections of its labor laws to encourage trade with or investment from another Party. The Parties also commit to afford procedural guarantees that ensure workers and employers have access to fair, equitable, and transparent procedures in the enforcement of labor laws. While committing each Party to effective enforcement of its labor laws, the Chapter also recognizes each Party's right to establish its own labor laws, exercise discretion in investigatory, regulatory, prosecutorial, and compliance matters, and allocate enforcement resources.

*Effective Enforcement.* In Chapter Sixteen each Party commits not to fail to effectively enforce its labor laws on a sustained or recurring basis in a manner affecting trade between the Parties. The Chapter defines labor laws to include those related to: (1) the right of association; (2) the right to organize and bargain collectively; (3) a prohibition of forced or compulsory labor; (4) a minimum age for the employment of children and elimination of the worst forms of child labor; and (5) acceptable conditions of work with respect to wages, hours, and occupational safety and health. For the United States, "labor laws" includes federal statutes and regulations addressing these areas, but it does not cover state or local labor laws.

*Procedural Guarantees.* In Chapter Sixteen, the Parties also commit to afford procedural guarantees that ensure workers and employers have access to fair, equitable, and transparent procedures in the enforcement of labor laws. To this end, each Party must ensure that workers and employers have access to tribunals for the enforcement of its labor laws and that decisions of such tribunals are in writing, made publicly available, and based on information or evidence in respect of which the parties were offered the opportunity to be heard. In addition, hearings in such proceedings must be open to the public, except where the administration of justice otherwise requires. Chapter Sixteen also commits each Party to make remedies available to ensure the enforcement of its labor laws. Such remedies might include orders, fines, penalties, or temporary workplace closures.

*Dispute Settlement.* Chapter Sixteen provides for cooperative consultations if a Party believes that another Party is not complying with the obligations in this Chapter. If the matter concerns a Party's compliance with its obligation not to fail to effectively enforce its labor law, the complaining Party may, after an initial 60-day consultation period under Chapter Sixteen, invoke the provisions of Chapter Twenty (Dispute Settlement) by requesting additional consultations or a meeting of the Agreement's cabinet-level Free Trade Commission under that Chapter. If the Commission is unable to resolve the dispute, the matter may be referred to a dispute settlement panel. The Parties will maintain a roster of experts to serve on any dispute settlement panel convened to hear disputes regarding a Party's obligation to effectively enforce its labor laws.

*Cooperation and Capacity Building.* Chapter Sixteen establishes a cabinet-level Labor Affairs Council to oversee the Chapter's implementation and to provide a forum for consultations and cooperation on labor matters. The Chapter requires each Party to designate a contact point for communications with the other Parties and the public regarding the Chapter. Each Party's contact point must provide transparent procedures for the submission, receipt, and consideration of any communications from the public relating to the provisions of the Chapter.

The Chapter also creates a labor cooperation and capacity building mechanism through which the Parties will work together to strengthen each Party's institutional capacity to fulfill the goals of the Labor Chapter. In particular, the mechanism will assist the Parties to establish priorities for, and carry out, bilateral and regional cooperation and capacity building activities relating to such topics as: the effective application of fundamental labor rights; legislation and practice relating to compliance with ILO Convention 182 on the worst forms of child labor; strengthening labor inspection systems and the institutional capacity of labor administrations and tribunals; mechanisms for supervising compliance with laws and regulations pertaining to working conditions; and the elimination of gender discrimination in employment.

#### **Chapter Seventeen: Environment**

Chapter Seventeen sets out the Parties' commitments and undertakings regarding environmental protection. Chapter Seventeen draws on the North American Agreement on Environmental Cooperation and the environmental provisions of other recent U.S. FTAs, including those with Jordan, Chile, Singapore, Australia, and Morocco. The Chapter goes further than these prior FTAs, however. In particular, the CAFTA-DR is the first U.S. FTA that includes a process for public submissions on environmental enforcement matters in the body of the FTA.

*General Principles.* Under Chapter Seventeen, the Parties must ensure that their laws provide for high levels of environmental protection. Each Party also must strive not to weaken or reduce its environmental laws to encourage trade with or investment from another Party. Chapter Seventeen further includes commitments to enhance cooperation between the Parties in environmental matters and encourages the Parties to develop voluntary, market-based mechanisms as one means for achieving and sustaining high levels of environmental protection.

*Effective Enforcement.* In Chapter Seventeen each Party commits not to fail to effectively enforce its environmental laws on a sustained or recurring basis in a manner affecting trade between the Parties. At the same time, the Chapter recognizes the right of each Party to: (1) establish its own environmental laws; (2) exercise discretion in regulatory, prosecutorial, and compliance matters; and (3) allocate enforcement resources in a bona fide manner. For the United States, "environmental laws" includes federal environmental statutes and regulations enforceable by the federal government.

*Procedural Matters.* Chapter Seventeen commits each Party to make judicial, quasi-judicial, or administrative proceedings available to sanction or remedy violations of its environmental laws. Each Party must ensure that such proceedings are fair, equitable, and transparent, and, to this end, comply with due process of law and are open to the public, except where the administration of justice otherwise requires. The Chapter requires each Party to ensure that interested persons may request the Party's competent authorities to investigate alleged violations of its environmental laws and that each Party's competent authorities give such requests due consideration. Chapter Seventeen also commits each Party to make appropriate and effective remedies available for violations of its environmental laws. Such remedies may include, for example, fines, injunctions, or requirements to take remedial action or pay for damage to the environment.

*Public Submissions.* Chapter Seventeen commits each Party to provide for the receipt and consideration of public submissions on matters related to the Chapter. In addition, the Chapter provides that any person of a Party may file a submission with a secretariat asserting that a Party has failed to effectively enforce its environmental laws. The secretariat will review the submission according to specified criteria and in appropriate cases recommend to the Environmental Affairs Council that a factual record concerning the matter be developed. The secretariat will prepare a factual record if one member of the Environmental Affairs Council instructs it to do so. The Council will consider the record and, where appropriate, provide recommendations to an environmental cooperation commission that will be created under a related environmental cooperation agreement. U.S. persons who consider that the United States is failing to effectively enforce its environmental laws may invoke the comparable public submissions process under the North American Agreement on Environmental Cooperation. Pursuant to a separate understanding between the Parties, a new environmental unit within the Secretariat for Central American Economic Integration (SIECA) will serve as the secretariat for the receipt of public submissions.

*Dispute Settlement.* Chapter Seventeen provides for cooperative consultations if a Party believes that another Party is not complying with its obligations under the Chapter. If the matter concerns a Party's compliance with its obligation not to fail to effectively enforce its environmental law, the complaining Party may, after an initial 60-day consultation period under Chapter Seventeen, invoke the provisions of Chapter Twenty (Dispute Settlement) by requesting additional consultations or a meeting of the Agreement's cabinet-level Free Trade Commission under that Chapter. If the Commission is unable to resolve the dispute, the matter may be referred to a dispute settlement panel. The Parties will maintain a roster of experts to serve on any dispute settlement panel convened to hear disputes regarding a Party's obligation to effectively enforce its environmental laws.

*Institutional Arrangements and Cooperation.* Chapter Seventeen establishes a cabinet-level Environment Affairs Council to oversee the implementation and operation of the Chapter. Opportunities will be provided at Council meetings for the public to express views on the implementation of Chapter Seventeen and cooperative work between the Parties. The Parties also agree under Chapter Seventeen to continue to seek ways to enhance the mutual supportiveness of multilateral agreements and trade agreements to which they are all party, and to consult as appropriate on negotiations in the WTO regarding multilateral environmental agreements. In addition, to facilitate cooperation efforts, the Parties will enter into a separate environmental cooperation agreement.

#### **Chapter Eighteen: Transparency**

Chapter Eighteen sets out requirements designed to foster openness, transparency, and fairness in the adoption and application of administrative measures covered by the Agreement. For example, it requires that, to the extent possible, each Party must promptly publish all laws, regulations, procedures, and administrative rulings of general application concerning subjects covered by the Agreement, and give interested persons a reasonable opportunity to comment.

Wherever possible, each Party must provide reasonable notice to the other Parties' nationals and enterprises that are directly affected by an agency process, including an adjudication, rulemaking, licensing, determination, and approval process. A Party is to afford such persons a reasonable opportunity to present facts and arguments prior to any final administrative action, when time, the nature of the process, and the public interest permit.

Chapter Eighteen also provides for independent review and appeal of final administrative actions. Appeal rights must include a reasonable opportunity to present arguments and to obtain a decision based on evidence in the administrative record.

Chapter Eighteen also affirms the Parties' resolve to eliminate bribery and corruption in international trade and investment. To this end, Parties are obligated to make it a criminal offense to offer or accept a bribe in exchange for favorable government action in matters affecting international trade or investment. Parties must also endeavor to protect persons who, in good faith, report acts of bribery or corruption and to work together to encourage and support initiatives in relevant international fora to prevent bribery and corruption.

#### **Chapter Nineteen: Administration of the Agreement and Trade Capacity Building**

Chapter Nineteen creates a Free Trade Commission to supervise the implementation and overall operation of the Agreement. The Commission will be comprised of the Parties' trade ministers. It will meet annually and make decisions by consensus. The Commission will assist in the resolution of any disputes that may arise under the Agreement. The Commission may issue interpretations of the Agreement and agree to accelerate duty elimination on particular products and adjust the Agreement's product-specific rules of origin.

Chapter Nineteen requires each Party to designate an office to provide administrative assistance to dispute settlement panels and perform such other functions as the Commission may direct.

Chapter Nineteen also establishes a Committee on Trade Capacity Building, comprised of representatives of each Party. The overall objective of the Committee is to assist the Central American Parties and the Dominican Republic to implement the Agreement and adjust to liberalized trade. Particular functions of the Committee include: seeking the prioritization of trade capacity building projects at the national and regional level within Central America and the Dominican Republic; inviting international donor institutions, private sector entities, and non-governmental organizations to assist in the development and implementation of trade capacity building projects in accordance with each country's national trade capacity building strategy; and monitoring and assessing progress in implementing trade capacity building projects.

#### **Chapter Twenty: Dispute Settlement**

Chapter Twenty sets out detailed procedures for the resolution of disputes between the Parties over compliance with the Agreement. Those procedures emphasize amicable settlements, relying wherever possible on bilateral cooperation and consultations. When disputes arise under provisions common to the Agreement and other agreements (e.g., the WTO agreements), the

complaining government may choose a forum for resolving the matter that is set forth in any valid agreement between the Parties. The selected forum is the exclusive venue for resolving that dispute.

*Consultations.* A Party may request consultations with another Party on any actual or proposed measure that it believes might affect the operation of the Agreement. Any other Party having a substantial trade interest in the matter may participate in the consultations. If the Parties cannot resolve the matter through consultations within a specified period (normally 60 days), any consulting Party may refer the matter to the Free Trade Commission, which will attempt to resolve the dispute.

*Panel Procedures.* If the Commission cannot resolve the dispute within a specified period (normally 30 days), any consulting Party may refer the matter, if it involves an actual measure, to a panel comprising independent experts that the Parties select. Any party that participated in the consultations may participate in the panel proceedings as a complaining Party. Any other Party may participate in the panel proceedings as a third party.

The Parties will set rules to protect confidential information, provide for open hearings and public release of submissions, and allow an opportunity for the panel to accept submissions from non-governmental entities in the Parties' territories.

Unless the disputing Parties agree otherwise, a panel is to present its initial report within 120 days after the last panelist is selected. This period can be extended to 180 days in certain circumstances. Once the panel presents its initial report containing findings of fact and a determination on whether a Party has met its obligations, the Parties will have the opportunity to provide written comments to the panel. When the panel receives these comments, it may reconsider its report and make any further examination that it considers appropriate. Within 30 days after it presents its initial report, the panel will submit its final report. The Parties will then seek to agree on how to resolve the dispute, normally in a way that conforms to the panel's determinations and recommendations. Subject to protection of confidential information, the panel's final report will be made available to the public 15 days after the Parties receive it.

*Suspension of Benefits.* In disputes involving the Agreement's "commercial" obligations (*i.e.*, obligations other than enforcement of labor and environmental laws), if the disputing Parties cannot resolve the dispute after they receive the panel's final report, the disputing Parties will seek to agree on acceptable trade compensation. If they cannot agree on compensation, or if the complaining Party believes the defending Party has failed to implement an agreed resolution, the complaining Party may provide notice that it intends to suspend trade benefits equivalent in effect to those it considers were impaired, or may be impaired, as a result of the disputed measure.

If the defending Party considers that the proposed level of benefits to be suspended is "manifestly excessive," or believes that it has modified the disputed measure to make it conform to the Agreement, it may request the panel to reconvene and decide the matter. The panel must issue its

determination no later than 90 days after the request is made (or 120 days if the panel is reviewing both the level of the proposed suspension and a modification of the measure).

The complaining Party may suspend trade benefits up to the level that the panel sets or, if the panel has not been asked to determine the level, up to the amount that the complaining Party has proposed. The complaining Party cannot suspend benefits, however, if the defending Party provides notice that it will pay an annual monetary assessment to the other Party. The amount of the assessment will be established by agreement of the disputing Parties or, failing that, will be set at 50 percent of the level of trade concessions the complaining Party was authorized to suspend.

*Labor and Environment Disputes.* Equivalent compliance procedures apply to disputes over a Party's conformity with the labor and environmental law enforcement provisions of the Agreement. If a panel determines that a Party has not met its enforcement obligations and the disputing Parties cannot agree on how to resolve the dispute, or the complaining Party believes that the defending Party has failed to implement an agreed resolution, the complaining Party may ask the panel to determine the amount of an annual monetary assessment to be imposed on the defending Party. The Panel will establish the amount of the assessment, subject to a \$15 million annual cap, taking into account relevant trade- and non-trade-related factors. The assessment will be paid into a fund established by the Commission for appropriate labor and environmental initiatives. If the defending Party fails to pay an assessment, the complaining Party may take other appropriate steps, which may include suspending tariff benefits, as necessary to collect the assessment, while bearing in mind the Agreement's objective of eliminating barriers to trade and while seeking to avoid unduly affecting parties or interests not party to the dispute.

*Compliance Review Mechanism.* If, at any time, the defending Party believes it has made changes in its laws or regulations sufficient to comply with its obligations under the Agreement, it may refer the matter to the panel. If the panel agrees, the dispute ends and the complaining Party must withdraw any offsetting measures it has put in place. Concurrently, the defending government will be relieved of any obligation to pay a monetary assessment.

The Parties will review the operation of the compliance procedures for both commercial and labor and environment disputes either five years after the entry into force of the Agreement or within six months after benefits have been suspended or assessments paid in five proceedings initiated under this Agreement, whichever ever occurs first.

*Settlement of Private Disputes.* The Parties will encourage the use of arbitration and other alternative dispute resolution mechanisms to settle international commercial disputes between private parties. Each Party must provide appropriate procedures for the recognition and enforcement of arbitral awards, for example by complying with the 1958 United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards or the 1975 Inter-American Convention on International Commercial Arbitration.

#### **Chapter Twenty-One: Exceptions**

Chapter Twenty-One sets out general provisions that apply to the entire Agreement with the following exception. Article XX of the GATT 1994 and its interpretive notes are incorporated into and made part of the Agreement, *mutatis mutandis*, and apply to those Chapters related to treatment of goods. Likewise, for the purposes of Chapters Eleven (Cross-Border Trade in Services), Thirteen (Telecommunications), and Fourteen (Electronic Commerce), GATS Article XIV (including its footnotes) is incorporated into and made part of the Agreement. For both goods and services, the Parties understand that these exceptions include certain environmental measures.

*Essential Security.* Chapter Twenty-One allows each Party to take actions it considers necessary to protect its essential security interests.

*Taxation.* An exception for taxation limits the field of tax measures subject to the Agreement. For example, the exception generally provides that the Agreement does not affect a Party's rights or obligations under any tax convention. The exception sets out certain circumstances under which tax measures are subject to the Agreement's: (1) national treatment obligation for goods; (2) national treatment and MFN obligations for services; (3) prohibitions on performance requirements; and (4) expropriation rules.

*Balance of Payments.* Chapter Twenty-One establishes criteria that a Party must follow if it applies a balance-of-payments measure on trade in goods.

*Disclosure of Information.* The Chapter also provides that a Party may withhold information from another Party where such disclosure would impede domestic law enforcement, otherwise be contrary to the public interest, or prejudice the legitimate commercial interests of particular enterprises.

#### **Chapter Twenty-Two: Final Provisions**

Chapter Twenty-Two provides that (i) the annexes, appendices, and footnotes are part of the Agreement, (ii) the Parties may amend the Agreement subject to applicable domestic procedures, and (iii) the English and Spanish texts are both authentic. It also provides for consultations if any provision of the WTO Agreement that the Parties have incorporated into the Agreement is amended.

Chapter Twenty-Two provides for the entry into force of the Agreement, and establishes procedures under which a Party may withdraw from the Agreement. The Chapter provides that any other country or group of countries may accede to this agreement on terms and conditions that are agreed with the Parties and approved according to each Party's domestic procedures. Finally, the Chapter provides that the original texts of the Agreement shall be deposited with the Organization of American States.



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**Tab A**

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UNDERSTANDING REGARDING  
CERTAIN PUBLIC HEALTH MEASURES

August 5, 2004

The Governments of the Republic of Costa Rica, the Dominican Republic, the Republic of El Salvador, the Republic of Guatemala, the Republic of Honduras, the Republic of Nicaragua, and the United States of America have reached the following understandings regarding Chapter Fifteen (Intellectual Property Rights) of the Dominican Republic – Central America – United States Free Trade Agreement signed this day (the "Agreement"):

The obligations of Chapter Fifteen do not affect a Party's ability to take necessary measures to protect public health by promoting access to medicines for all, in particular concerning cases such as HIV/AIDS, tuberculosis, malaria, and other epidemics as well as circumstances of extreme urgency or national emergency.

In recognition of the commitment to access to medicines that are supplied in accordance with the Decision of the General Council of 30 August 2003 on the Implementation of Paragraph Six of the Doha Declaration on the TRIPS Agreement and public health (WT/L/540) and the WTO General Council Chairman's statement accompanying the Decision (JOB(03)/177, WT/GC/M/82) (collectively the "TRIPS/health solution"), Chapter Fifteen does not prevent the effective utilization of the TRIPS/health solution.

With respect to the aforementioned matters, if an amendment of a pertinent provision of the WTO Agreement on Trade-Related Aspects of Intellectual Property Rights (1994) enters into force with respect to the Parties and that amendment is incompatible with Chapter Fifteen, our Governments shall immediately consult in order to adapt Chapter Fifteen as appropriate in the light of the amendment.

FOR THE GOVERNMENT OF COSTA RICA:

FOR THE GOVERNMENT OF THE DOMINICAN REPUBLIC

FOR THE GOVERNMENT OF EL SALVADOR

FOR THE GOVERNMENT OF GUATEMALA:

FOR THE GOVERNMENT OF HONDURAS:

FOR THE GOVERNMENT OF NICARAGUA:

FOR THE GOVERNMENT OF THE UNITED STATES OF AMERICA:

UNDERSTANDING REGARDING IMMIGRATION MEASURES

August 5, 2004

The representatives of the Governments of the Republic of Costa Rica, the Dominican Republic, the Republic of El Salvador, the Republic of Guatemala, the Republic of Honduras, the Republic of Nicaragua, and the United States of America confirm the following understanding reached by our Governments in the course of negotiations regarding the Dominican Republic - Central America - United States Free Trade Agreement signed this day (the "Agreement"):

No provision of the Agreement shall be construed to impose any obligation on a Party regarding its immigration measures.

FOR THE GOVERNMENT OF COSTA RICA:



FOR THE GOVERNMENT OF THE DOMINICAN REPUBLIC



FOR THE GOVERNMENT OF EL SALVADOR:



FOR THE GOVERNMENT OF GUATEMALA:



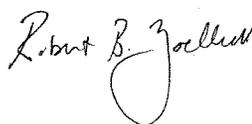
FOR THE GOVERNMENT OF HONDURAS:



FOR THE GOVERNMENT OF NICARAGUA:



FOR THE GOVERNMENT OF THE UNITED STATES OF AMERICA:



UNDERSTANDING REGARDING THE ESTABLISHMENT  
OF A SECRETARIAT FOR ENVIRONMENTAL MATTERS UNDER  
THE DOMINICAN REPUBLIC – CENTRAL AMERICA – UNITED STATES  
FREE TRADE AGREEMENT

February 18, 2005

The Governments of the Republic of Costa Rica, the Dominican Republic, the Republic of El Salvador, the Republic of Guatemala, the Republic of Honduras, the Republic of Nicaragua, and the United States of America (“FTA Governments”) have reached the following understandings regarding the implementation of Articles 17.7 (Submissions on Enforcement Matters) and 17.8 (Factual Records and Related Cooperation) of Chapter Seventeen (Environment) of the Dominican Republic – Central America – United States Free Trade Agreement signed on August 5, 2004 (“the Agreement”):

1. The FTA Governments shall request the Secretariat for Central American Economic Integration (“SIECA”) to establish a new unit within SIECA to serve as the “secretariat or other appropriate body” referred to in Article 17.7.1 of the Agreement and to undertake the functions set out in Articles 17.7 and 17.8 of the Agreement.<sup>1</sup>
2. On consent of SIECA to such a request, the FTA Governments, through an appropriate arrangement or agreement with SIECA, shall establish working arrangements, including, as appropriate, procedures and guidelines, under which the unit shall operate,<sup>2</sup> which shall provide, among other things, that:
  - (a) The Environmental Affairs Council (“the Council”) established under Article 17.5 of the Agreement shall appoint a General Coordinator and permanent professional staff of the unit. The unit shall be of appropriate size and comprise persons with relevant expertise in environmental law and its enforcement, including regional expertise, and having a demonstrated record of good judgment and objectivity;
  - (b) The unit shall function as an independent entity within SIECA and shall have appropriate environmental and regional expertise;
  - (c) The unit shall be under the sole direction and supervision of the Council, and shall perform only those functions set out in Articles 17.7 and 17.8 of the Agreement;
  - (d) The Council shall establish a roster of environmental experts, comprising persons with a demonstrated record of good judgment, objectivity, and environmental expertise, including regional expertise, from which the unit shall select, as appropriate, according to procedures established by the Council, individuals to assist the unit, under its direction, with the preparation of factual records pursuant to Article 17.8 of the Agreement;

<sup>1</sup> The FTA Governments shall also ensure that any recommendations by the Council under Article 17.8.8 of the Agreement shall be limited to matters in the context of potential environmental cooperation.

<sup>2</sup> Through a decision of the Council, based upon a specific request, governments and/or relevant organizations may share relevant experiences and expertise concerning the administration of procedures as set forth in Articles 17.7 and 17.8 of the Agreement.

- (e) The General Coordinator and unit staff members shall not receive instructions from any government, or from any authority other than the Council, and will report solely to the Council; and
- (f) The Council shall establish appropriate provisions for the protection and non-disclosure of confidential information received from submitters and governments.

3. Each FTA Government shall make every reasonable effort to provide information in a timely manner to the unit sufficient to enable it to perform its functions under Articles 17.7 and 17.8 of the Agreement, subject to the provisions established pursuant to paragraph 2(f) above.

This understanding shall enter into force on the date of entry into force of the Agreement.

FOR THE GOVERNMENT OF COSTA RICA:



FOR THE GOVERNMENT OF THE DOMINICAN REPUBLIC:



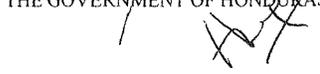
FOR THE GOVERNMENT OF EL SALVADOR:



FOR THE GOVERNMENT OF GUATEMALA:



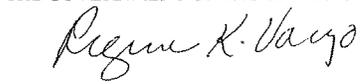
FOR THE GOVERNMENT OF HONDURAS:



FOR THE GOVERNMENT OF NICARAGUA:



FOR THE GOVERNMENT OF THE UNITED STATES OF AMERICA:



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**Tab B**

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EXECUTIVE OFFICE OF THE PRESIDENT  
THE UNITED STATES TRADE REPRESENTATIVE  
WASHINGTON, D.C. 20508

August 5, 2004

The Honorable Alberto Trejos  
Minister of Foreign Trade  
San Jose, Costa Rica

Dear Minister Trejos:

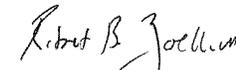
In connection with the signing of the Dominican Republic – Central America – United States Free Trade Agreement (the “Agreement”), I have the honor to propose that the letters dated May 28, 2004 that our Governments signed in connection with the signing of the United States – Central America Free Trade Agreement on that date are equally valid and applicable with respect to the Agreement. These letters are:

1. Letter on poultry trade
2. Letter on bank sales representatives
3. Letter on foreign bank branches and additional reserve requirements
4. Letter on contracts of representation, distribution, or fabrication
5. Letter on extraction, generation, and refining
6. Letter on gambling
7. Letter on mining activities
8. Letter on wildlife, forestry, and zoning
9. Letter on Costa Rica’s radio-electric spectrum
10. Letter on continuation of “807” program

A copy of each letter is enclosed.

I have the further honor to propose that this letter and your letter of confirmation in reply shall constitute an agreement between our two Governments.

Sincerely,

  
Robert B. Zoellick

Enclosures

1110



*Ministerio de Comercio Exterior*  
*Despacho del Ministro*

5 de Agosto, 2004

El Honorable Robert B. Zoellick  
Representante Comercial de Estados Unidos  
Washington, D.C.

Estimado Embajador Zoellick:

Me complace recibir su carta con fecha del día de hoy, que lee de la siguiente manera:

“En relación con la firma del Tratado de Libre Comercio República Dominicana – Centroamérica – Estados Unidos (el “Tratado”), tengo el honor de proponer que las cartas fechadas 28 de mayo de 2004, que firmaron nuestros Gobiernos en conexión con la firma del Tratado de Libre Comercio Centroamérica – Estados Unidos en esa misma fecha, son igualmente válidas y aplicables con respecto al Tratado. Estas cartas son:

1. Carta sobre carne de ave
2. Carta sobre representantes de ventas bancarias
3. Carta sobre sucursales de bancos extranjeros
4. Carta sobre contratos de representación, distribución, o fabricación
5. Carta sobre extracción de recursos naturales, generación de energía y refinaria
6. Carta sobre apuestas
7. Carta sobre actividades de minería
8. Carta sobre vida silvestre, recursos forestales y planificación urbana
9. Carta sobre espectro radioeléctrico de Costa Rica
10. Carta sobre continuación del programa 807

Se adjunta una copia de cada una de las cartas.

Tengo el honor de proponer que esta carta y su carta de confirmación en respuesta a ella constituirán un acuerdo entre nuestros dos Gobiernos.”

Tengo el honor de aceptar su propuesta en nombre de mi Gobierno y de confirmar que su carta y esta respuesta a la misma constituirán un acuerdo entre nuestros dos Gobiernos.

Sinceramente,

Alberto Trejos



Tel.: (506) 257-0705 / Fax: (506) 233-9176 / e-mail: [aut@comex](mailto:aut@comex.go.cr)  
San José, Costa Rica

1111

COURTESY TRANSLATION

The Honorable Robert B. Zoellick  
United States Trade Representative  
Washington, D.C.

Dear Ambassador Zoellick:

I am pleased to acknowledge your letter of today's date, which reads as follows:

"In connection with the signing of the Dominican Republic – Central America – United States Free Trade Agreement (the "Agreement"), I have the honor to propose that the letters dated May 28, 2004 that our Governments signed in connection with the signing of the United States – Central America Free Trade Agreement on that date are equally valid and applicable with respect to the Agreement. These letters are:

1. Letter on poultry trade
2. Letter on bank sales representatives
3. Letter on foreign bank branches and additional reserve requirements
4. Letter on contracts of representation, distribution, or fabrication
5. Letter on extraction, generation, and refining
6. Letter on gambling
7. Letter on mining activities
8. Letter on wildlife, forestry, and zoning
9. Letter on Costa Rica's radio-electric spectrum
10. Letter on continuation of "807" program

A copy of each letter is enclosed.

I have the further honor to propose that this letter and your letter of confirmation in reply shall constitute an agreement between our two Governments."

I have the honor to accept your proposal on behalf of my Government and to confirm that your letter and this reply shall constitute an agreement between our two Governments.

Sincerely,

Alberto Trejos

1112

EXECUTIVE OFFICE OF THE PRESIDENT  
THE UNITED STATES TRADE REPRESENTATIVE  
WASHINGTON, D.C. 20508

May 28, 2004

The Honorable Alberto Trejos  
Minister of Foreign Trade  
San Jose, Costa Rica

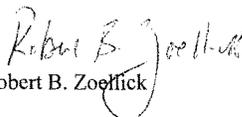
Dear Minister Trejos:

I have the honor to confirm the following understanding reached between the delegations of the United States and Costa Rica in the course of negotiations regarding the Free Trade Agreement between our Governments signed this day (the "Agreement"):

The United States and Costa Rica pledge to urge their specialized agencies to implement technical and scientific work dedicated to achieving market access to make trade in poultry products under the Agreement of mutual benefit.

I have the honor to propose that this letter and your letter of confirmation in reply shall constitute an agreement between our two Governments.

Sincerely,

  
Robert B. Zoellick

1113



*Ministerio de Comercio Exterior*  
*Despacho del Ministro*

28 de mayo de 2004

Honorable Robert B. Zoellick  
Representante Comercial de Estados Unidos  
Washington, D.C.

Estimado Embajador Zoellick:

Me complace recibir su carta con fecha del día de hoy, que lee de la siguiente manera:

“Tengo el honor de confirmar el siguiente entendimiento alcanzado entre las delegaciones de Estados Unidos y Costa Rica en el curso de las negociaciones del Tratado de Libre Comercio entre nuestros gobiernos, firmado en este día (el “Tratado”).

Estados Unidos y Costa Rica se comprometen a instar a sus agencias especializadas para que implementen un trabajo técnico y científico dedicado a lograr acceso a mercados para que el comercio de productos de carne de ave dentro del Tratado sea de mutuo beneficio.

Tengo el honor de proponer que esta carta y su carta de confirmación en respuesta a ella constituirán un acuerdo entre nuestros dos Gobiernos.”

Tengo el honor de confirmar que el entendimiento consignado en su carta es compartido por mi Gobierno y que su carta y esta respuesta a la misma constituirán un acuerdo entre nuestros Gobiernos.

Sinceramente,

Alberto Trejós



Tel.: (506) 257-0705 / Fax: (506) 233-9176 / e-mail: atrejos@comex.go.cr  
San José, Costa Rica

1114

COURTESY TRANSLATION

May 28, 2004

The Honorable Robert B. Zoellick  
United States Trade Representative  
Washington, D.C.

Dear Ambassador Zoellick:

I am pleased to acknowledge your letter of today's date, which reads as follows:

"I have the honor to confirm the following understanding reached between the delegations of the United States and Costa Rica in the course of negotiations regarding the Free Trade Agreement between our Governments signed this day (the "Agreement"):

The United States and Costa Rica pledge to urge their specialized agencies to implement technical and scientific work dedicated to achieving market access to make trade in poultry products under the Agreement of mutual benefit.

I have the honor to propose that this letter and your letter of confirmation in reply shall constitute an agreement between our two Governments."

I have the honor to confirm that the understanding referred to in your letter is shared by my Government, and that your letter and this reply shall constitute an agreement between our Governments.

Sincerely,

Alberto Trejos

1115

EXECUTIVE OFFICE OF THE PRESIDENT  
THE UNITED STATES TRADE REPRESENTATIVE  
WASHINGTON, D.C. 20508

May 28, 2004

The Honorable Alberto Trejos  
Minister of Foreign Trade  
San Jose, Costa Rica

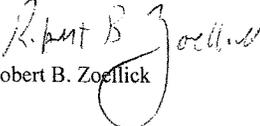
Dear Minister Trejos:

I have the honor to confirm the following understanding reached between the delegations of the United States and Costa Rica in the course of negotiations regarding the Specific Commitments of Costa Rica on Insurance in Annex 12.9.2 (Specific Commitments) of the Free Trade Agreement between our Governments signed this day (the "Agreement"):

An insurance company may supply insurance services in Costa Rica, subject to regulatory standards consistent with the Agreement, through a commercial relationship with banks provided that the insurance company is the underwriter of the insurance policy.

I have the honor to propose that this letter and your letter of confirmation in reply shall constitute an agreement between our two Governments.

Sincerely,

  
Robert B. Zoellick

1116



*Ministerio de Comercio Exterior*  
*Despacho del Ministro*

28 de mayo de 2004

El Honorable Robert B. Zoellick  
Representante de Comercio de Estados Unidos  
Washington, D.C.

Estimado Embajador Zoellick:

Me complace acusar recibo de su carta con fecha de hoy, en la que se consigna lo siguiente:

“Tengo el honor de confirmar el siguiente entendimiento alcanzado entre las delegaciones de los Estados Unidos y Costa Rica en el curso de las negociaciones relativas a los Compromisos Específicos de Costa Rica en materia de servicios de seguros en el Anexo 12.9.2 (Compromisos Específicos) del Tratado de Libre Comercio firmado entre nuestros gobiernos este día (el “Tratado”):

Una empresa de seguros podrá suministrar servicios de seguros en Costa Rica, sujeto a estándares regulatorios consistentes con el Tratado, a través de una relación comercial con los bancos, sujeto a que la empresa de seguros sea la suscriptora de la póliza de seguros.

Tengo el honor de proponer que esta carta y su carta de confirmación en respuesta constituirán un acuerdo entre nuestros dos Gobiernos.”

Tengo el honor de confirmar que el entendimiento referido en su carta es compartido por mi Gobierno y que su carta y esta carta de respuesta constituirán un acuerdo entre nuestros Gobiernos.

Sinceramente,

Alberto Trejos



Tel.: (506) 257-0705 / Fax: (506) 233-9176 / e-mail: atrejos@comex.go.cr  
San José, Costa Rica

1117

COURTESY TRANSLATION

May 28, 2004

The Honorable Robert B. Zoellick  
United States Trade Representative  
Washington, D.C.

Dear Ambassador Zoellick:

I am pleased to acknowledge your letter of today's date, which reads as follows:

"I have the honor to confirm the following understanding reached between the delegations of the United States and Costa Rica in the course of negotiations regarding the Specific Commitments of Costa Rica on Insurance in Annex 12.9.2 (Specific Commitments) of the Free Trade Agreement between our Governments signed this day (the "Agreement"):

An insurance company may supply insurance services in Costa Rica, subject to regulatory standards consistent with the Agreement, through a commercial relationship with banks provided that the insurance company is the underwriter of the insurance policy.

I have the honor to propose that this letter and your letter of confirmation in reply shall constitute an agreement between our two Governments."

I have the honor to confirm that the understanding referred to in your letter is shared by my Government, and that your letter and this reply shall constitute an agreement between our Governments.

Sincerely,

Alberto Trejos

1118



*Ministerio de Comercio Exterior*  
*Despacho del Ministro*

28 de mayo de 2004

Honorable Randal K. Quarles  
*Assistant Secretary for International Affairs*  
Departamento del Tesoro de Estados Unidos  
Washington, D.C.

Estimado Sr. Quarles:

En conexión con el Tratado de Libre Comercio entre nuestros gobiernos firmado este día (el "Tratado"), tengo el honor de confirmar que:

El Gobierno de Costa Rica ha estado discutiendo y apoya la idea de modificar su legislación bancaria actual con el fin de permitir a bancos extranjeros realizar actividades bancarias en Costa Rica por medio de sucursales locales, con sujeción a los mismos estándares regulatorios, de capital y de supervisión aplicables a los bancos locales, y hará esfuerzos razonables para promover esa modificación.

El Gobierno de Costa Rica ha estado discutiendo y apoya la idea de modificar su requisito para los bancos privados de mantener reservas adicionales en los bancos estatales al amparo del Artículo 59 de la Ley No. 1644 y hará esfuerzos razonables para promover esa modificación.

Confío en que esta carta provee la información que Estados Unidos ha buscado con respecto a la posibilidad de sucursales de bancos extranjeros en Costa Rica, así como con respecto a la posible modificación del requisito de reservas adicionales.

Sinceramente,

  
Alberto Trejos



Tel.: (506) 257-0705 / Fax: (506) 233-9176 / e-mail: [atrejos@comex.go.cr](mailto:atrejos@comex.go.cr)  
San José, Costa Rica

1119

COURTESY TRANSLATION

May 28, 2004

The Honorable Randal K. Quarles  
Assistant Secretary for International Affairs  
U.S. Department of the Treasury  
Washington, D.C.

Dear Mr. Quarles:

In connection with the Free Trade Agreement between our Governments signed this day (the "Agreement"), I have the honor to confirm that:

The Government of Costa Rica has been discussing and supports the idea of modifying its current banking law to allow foreign banks to carry out banking activities in Costa Rica through local branches, subject to the same regulatory, capital, and supervisory standards applicable to local banks, and will make reasonable efforts to promote such modification.

The Government of Costa Rica has been discussing and supports the idea of modifying its requirement for private banks to hold additional reserves with state banks under Article 59 of Law No. 1644, and will make reasonable efforts to promote such modification.

I trust that this letter provides the information the United States has sought with regard to the possibility of foreign bank branching in Costa Rica, as well as with regard to the possible modification of the additional reserve requirement.

Sincerely,

Alberto Trejos

1120

EXECUTIVE OFFICE OF THE PRESIDENT  
THE UNITED STATES TRADE REPRESENTATIVE  
WASHINGTON, D.C. 20508

May 28, 2004

The Honorable Alberto Trejos  
Minister of Foreign Trade  
San Jose, Costa Rica

Dear Minister Trejos:

I have the honor to refer to discussions between the delegations of the United States and Costa Rica in the course of negotiations regarding Annex 11.13 (Specific Commitments) of the Free Trade Agreement between our Governments signed this day (the "Agreement") and to propose the following:

In paragraph 2 of Section A: Costa Rica of Annex 11.13, Costa Rica has committed to develop a new legal regime applicable to contracts of representation, distribution, or production. In the development of that legal regime Costa Rica shall provide transparency in accordance with or equivalent to that required under Article 11.7 (Transparency in Developing and Applying Regulations) and Chapter Eighteen (Transparency) of the Agreement.

Paragraph 2(a) of Section A: Costa Rica of Annex 11.13 provides that the new legal regime shall apply principles of general contract law and of civil procedure, including the *Código Procesal Civil, Libro I, Título IV, Capítulo V*, to such contracts. The United States and Costa Rica understand that such principles include that, in a dispute, a court may attach the assets of, or require the posting of a guarantee (in the form of a bond or cash deposit) by, the representative, distributor, producer, or principal, as appropriate, in a reasonable amount based on evidence presented by both parties as to actual damages that are likely to be awarded in the final judgment. A representative, distributor, producer, or principal with sufficient assets in Costa Rica to cover all or part of such judgment may choose attachment, a guarantee, or both, if required.

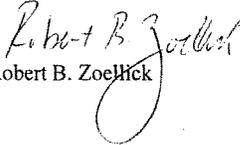
In the case of arbitration, the United States and Costa Rica reaffirm that, consistent with the *Convention on the Recognition and Enforcement of Foreign Arbitral Awards* of June 10, 1958, U.S. and Costa Rican courts shall recognize and enforce arbitral awards, except in certain limited circumstances specified in the Convention.

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The Honorable Alberto Trejos  
Page Two

I have the honor to propose that this letter and your letter of confirmation in reply shall constitute an agreement between our two Governments.

Sincerely,

  
Robert B. Zoellick



*Ministerio de Comercio Exterior*  
*Despacho del Ministro*

28 de mayo de 2004

Honorable Robert B. Zoellick  
Representante de Comercio de Estados Unidos  
Washington, D.C.

Estimado Embajador Zoellick:

Me complace acusar recibo de su carta con fecha de hoy, en la que se consigna lo siguiente:

“Tengo el honor de referirme a las discusiones entre las delegaciones de los Estados Unidos y Costa Rica en el curso de las negociaciones relativas al Anexo 11.13 (Compromisos Específicos) del Tratado de Libre Comercio entre nuestros gobiernos firmado esta día (el “Tratado”) y proponer lo siguiente:

En el párrafo 2 de la Sección A: Costa Rica del Anexo 11.13, Costa Rica ha asumido el compromiso de desarrollar un nuevo régimen legal aplicable a los contratos de representación, distribución o fabricación. En el desarrollo de ese régimen legal, Costa Rica proveerá transparencia de conformidad con o de forma equivalente con ese requisito bajo el Artículo 11.7 (Transparencia en el Desarrollo y Aplicación de Regulaciones) y el Capítulo Dieciocho (Transparencia) del Tratado.

El párrafo 2(a) de la Sección A: Costa Rica del Anexo 11.13, dispone que el nuevo régimen legal aplicará a dichos contratos los principios generales del derecho contractual y de procedimientos civiles, incluyendo el *Código Procesal Civil, Libro I, Título IV, Capítulo V*. Los Estados Unidos y Costa Rica entienden que tales principios incluyen que, en caso de una disputa, una Corte podrá embargar bienes o requerir el depósito de una garantía (en forma de un título valor o un depósito en efectivo) al representante, distribuidor, fabricante o el principal, según corresponda, de una cantidad razonable fundamentada en la prueba presentada por ambas partes, sobre los daños efectivos que probablemente sean



*Ministerio de Comercio Exterior*  
*Despacho del Ministro*

reconocidos en la resolución final. Un representante, distribuidor, fabricante o el principal que tenga suficientes bienes en Costa Rica que cubran todo o parte de dicha resolución, podrá escoger entre un embargo o una garantía, o ambos, si es requerido.

En caso de arbitraje, Estados Unidos y Costa Rica reafirman que, de conformidad con la *Convención sobre el Reconocimiento y Ejecución de Sentencias Arbitrales Extranjeras* del 10 de Junio de 1958, las Cortes de Estados Unidos y de Costa Rica reconocerán y harán cumplir las sentencias arbitrales, excepto en ciertas circunstancias limitadas, especificadas en dicha Convención.

Tengo el honor de proponer que esta carta y su carta de confirmación en respuesta constituirán un acuerdo entre nuestros dos Gobiernos.”

Tengo el honor de aceptar sus propuestas en nombre de mi Gobierno y de confirmar que su carta y esta carta de respuesta constituirán un acuerdo entre nuestros Gobiernos.

Sinceramente,

  
Alberto Trejos



COURTESY TRANSLATION

May 28, 2004

The Honorable Robert B. Zoellick  
United States Trade Representative  
Washington, D.C.

Dear Ambassador Zoellick:

I am pleased to acknowledge your letter of today's date, which reads as follows:

"I have the honor to refer to discussions between the delegations of the United States and Costa Rica in the course of negotiations regarding Annex 11.13 (Specific Commitments) of the Free Trade Agreement between our Governments signed this day (the "Agreement") and to propose the following:

In paragraph 2 of Section A: Costa Rica of Annex 11.13, Costa Rica has committed to develop a new legal regime applicable to contracts of representation, distribution, or production. In the development of that legal regime Costa Rica shall provide transparency in accordance with or equivalent to that required under Article 11.7 (Transparency in Developing and Applying Regulations) and Chapter Eighteen (Transparency) of the Agreement.

Paragraph 2(a) of Section A: Costa Rica of Annex 11.13 provides that the new legal regime shall apply principles of general contract law and of civil procedure, including the *Código Procesal Civil, Libro I, Título IV, Capítulo V*, to such contracts. The United States and Costa Rica understand that such principles include that, in a dispute, a court may attach the assets of, or require the posting of a guarantee (in the form of a bond or cash deposit) by, the representative, distributor, producer, or principal, as appropriate, in a reasonable amount based on evidence presented by both parties as to actual damages that are likely to be awarded in the final judgment. A representative, distributor, producer, or principal with sufficient assets in Costa Rica to cover all or part of such judgment may choose attachment, a guarantee, or both, if required.

In the case of arbitration, the United States and Costa Rica reaffirm that, consistent with the *Convention on the Recognition and Enforcement of Foreign Arbitral Awards* of June 10, 1958, U.S. and Costa Rican courts

1125

The Honorable Robert B. Zoellick  
Page Two

shall recognize and enforce arbitral awards, except in certain limited circumstances specified in the Convention.

I have the honor to propose that this letter and your letter of confirmation in reply shall constitute an agreement between our two Governments.”

I have the honor to accept your proposals on behalf of my Government and to confirm that your letter and this reply shall constitute an agreement between our Governments.

Sincerely,

Alberto Trejos

1126

EXECUTIVE OFFICE OF THE PRESIDENT  
THE UNITED STATES TRADE REPRESENTATIVE  
WASHINGTON, D.C. 20508

May 28, 2004

The Honorable Alberto Trejos  
Minister of Foreign Trade  
San Jose, Costa Rica

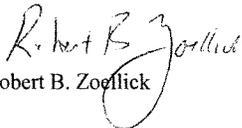
Dear Minister Trejos:

I have the honor to confirm the following understanding reached between the delegations of the United States and Costa Rica in the course of negotiations regarding Chapter Eleven (Cross-Border Trade in Services) of the Free Trade Agreement between our Governments signed this day (the "Agreement"):

The extraction of natural resources (mining), electricity generation, refining of crude oil and its derivatives, hunting, and fishing shall not be considered as services for purposes of the Agreement.

I have the honor to propose that this letter and your letter of confirmation in reply shall constitute an agreement between our two Governments.

Sincerely,

  
Robert B. Zoellick

1127



*Ministerio de Comercio Exterior*  
*Despacho del Ministro*

28 de mayo de 2004

El Honorable Robert B. Zoellick  
Representante Comercial de Estados Unidos  
Washington, D.C.

Estimado Embajador Zoellick:

Me complace recibir su carta con fecha del día de hoy, que lee de la siguiente manera:

“Tengo el honor de confirmar el siguiente entendimiento alcanzado entre las delegaciones de Estados Unidos y Costa Rica en el curso de las negociaciones sobre el Capítulo Once (Comercio Transfronterizo de Servicios) del Tratado de Libre Comercio entre nuestros gobiernos, firmado en este día (el “Tratado”):

La extracción de recursos naturales (extracción de minerales e hidrocarburos), la generación de electricidad, el refinamiento de petróleo crudo y sus derivados, caza y pesca no se considerarán servicios para los propósitos de este Tratado.

Tengo el honor de proponer que esta carta y su carta de confirmación en respuesta a ella constituirán un acuerdo entre nuestros dos Gobiernos.”

Tengo el honor de confirmar que el entendimiento consignado en su carta es compartido por mi Gobierno y que su carta y esta respuesta a la misma constituirán un acuerdo entre nuestros Gobiernos.

Sinceramente,

Alberto Trejos



Tel.: (506) 257-0705 / Fax: (506) 233-9176 / e-mail: atrejos@comex.go.cr  
San José, Costa Rica

COURTESY TRANSLATION

The Honorable Robert B. Zoellick  
United States Trade Representative  
Washington, D.C.

Dear Ambassador Zoellick:

I am pleased to acknowledge your letter of today's date, which reads as follows:

"I have the honor to confirm the following understanding reached between the delegations of the United States and Costa Rica in the course of negotiations regarding Chapter Eleven (Cross-Border Trade in Services) of the Free Trade Agreement between our Governments signed this day (the "Agreement"):

The extraction of natural resources (mining), electricity generation, refining of crude oil and its derivatives, hunting, and fishing shall not be considered as services for purposes of the Agreement.

I have the honor to propose that this letter and your letter of confirmation in reply shall constitute an agreement between our two Governments."

I have the honor to confirm that the understanding referred to in your letter is shared by my Government, and that your letter and this reply shall constitute an agreement between our Governments.

Sincerely,

Alberto Trejos

1129

EXECUTIVE OFFICE OF THE PRESIDENT  
THE UNITED STATES TRADE REPRESENTATIVE  
WASHINGTON, D.C. 20508

May 28, 2004

The Honorable Alberto Trejos  
Minister of Foreign Trade  
San Jose, Costa Rica

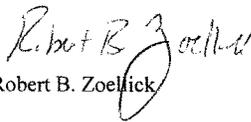
Dear Minister Trejos:

I have the honor to confirm the following understanding reached between the delegations of the United States and Costa Rica in the course of negotiations regarding Chapters Ten (Investment) and Eleven (Cross-Border Trade in Services) of the Free Trade Agreement between our Governments signed this day (the "Agreement"):

Nothing in Chapter Ten (Investment) or Eleven (Cross-Border Trade in Services) prevents the United States or Costa Rica from adopting, maintaining, or enforcing any measure consistent with the Agreement relating to sportsbooks or other gambling activities within their respective national territories.

I have the honor to propose that this letter and your letter of confirmation in reply shall constitute an agreement between our two Governments.

Sincerely,

  
Robert B. Zoellick

1130



*Ministerio de Comercio Exterior*  
*Despacho del Ministro*

28 de mayo de 2004

Honorable Robert B. Zoellick  
Representante Comercial de Estados Unidos  
Washington, D.C.

Estimado Embajador Zoellick:

Me complace recibir su carta con fecha del día de hoy, que lee de la siguiente manera:

“Tengo el honor de confirmar el siguiente entendimiento alcanzado entre las delegaciones de Estados Unidos y Costa Rica en el curso de las negociaciones sobre los Capítulos Diez (Inversión) y Once (Comercio Transfronterizo de Servicios) del Tratado de Libre Comercio entre nuestros gobiernos, firmado en este día (el “Tratado”):

Nada en los Capítulos Diez (Inversión) u Once (Comercio Transfronterizo de Servicios) impide que Estados Unidos o Costa Rica adopten, mantengan o apliquen cualquier medida que sea consistente con el Tratado, relacionada con apuestas electrónicas u otras actividades de juegos de azar dentro de sus respectivos territorios nacionales.

Tengo el honor de proponer que esta carta y su carta de confirmación en respuesta a ella constituirán un acuerdo entre nuestros dos Gobiernos.”

Tengo el honor de confirmar que el entendimiento consignado en su carta es compartido por mi Gobierno y que su carta y esta respuesta a la misma constituirán un acuerdo entre nuestros Gobiernos.

Sinceramente,



Alberto Trejos



Tel.: (506) 257-0705 / Fax: (506) 233-9176 / e-mail: atrejos@comex.go.cr  
San José, Costa Rica

COURTESY TRANSLATION

The Honorable Robert B. Zoellick  
United States Trade Representative  
Washington, D.C.

Dear Ambassador Zoellick:

I am pleased to acknowledge your letter of today's date, which reads as follows:

"I have the honor to confirm the following understanding reached between the delegations of the United States and Costa Rica in the course of negotiations regarding Chapters Ten (Investment) and Eleven (Cross-Border Trade in Services) of the Free Trade Agreement between our Governments signed this day (the "Agreement"):

Nothing in Chapter Ten (Investment) or Eleven (Cross-Border Trade in Services) prevents the United States or Costa Rica from adopting, maintaining, or enforcing any measure consistent with the Agreement relating to sportsbooks or other gambling activities within their respective national territories.

I have the honor to propose that this letter and your letter of confirmation in reply shall constitute an agreement between our two Governments."

I have the honor to confirm that the understanding referred to in your letter is shared by my Government, and that your letter and this reply shall constitute an agreement between our Governments.

Sincerely,

Alberto Trejos

1132

EXECUTIVE OFFICE OF THE PRESIDENT  
THE UNITED STATES TRADE REPRESENTATIVE  
WASHINGTON, D.C. 20508

May 28, 2004

The Honorable Alberto Trejos  
Minister of Foreign Trade  
San Jose, Costa Rica

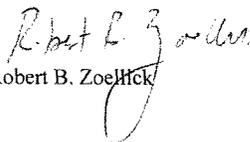
Dear Minister Trejos:

I have the honor to confirm the following understanding reached between the delegations of the United States and Costa Rica in the course of negotiations regarding Chapters Ten (Investment) and Eleven (Cross-Border Trade in Services) of the Free Trade Agreement between our Governments signed this day (the "Agreement"):

A nondiscriminatory indefinite moratorium on strip or open pit mining activities declared in the territory of Costa Rica shall not be deemed to be a non-conforming measure subject to the disciplines of Chapter Ten (Investment) or Eleven (Cross-Border Trade in Services).

I have the honor to propose that this letter and your letter of confirmation in reply shall constitute an agreement between our two Governments.

Sincerely,

  
Robert B. Zoellick

1133



*Ministerio de Comercio Exterior*  
*Despacho del Ministro*

28 de mayo de 2004

Honorable Robert B. Zoellick  
Representante Comercial de Estados Unidos  
Washington, D.C.

Estimado Embajador Zoellick:

Me complace recibir su carta con fecha del día de hoy, que lee de la siguiente manera:

“Tengo el honor de confirmar el siguiente entendimiento alcanzado entre las delegaciones de Estados Unidos y Costa Rica en el curso de las negociaciones sobre los Capítulos Diez (Inversión) y Once (Comercio Transfronterizo de Servicios) del Tratado de Libre Comercio entre nuestros gobiernos, firmado en este día (el “Tratado”):

Una moratoria indefinida no discriminatoria para las actividades de minería a cielo abierto declarada en el territorio de Costa Rica no se considerará una medida disconforme sujeta a las disciplinas de los Capítulos Diez (Inversión) u Once (Comercio Transfronterizo de Servicios).

Tengo el honor de proponer que esta carta y su carta de confirmación en respuesta a ella constituirán un acuerdo entre nuestros dos Gobiernos.”

Tengo el honor de confirmar que el entendimiento consignado en su carta es compartido por mi Gobierno y que su carta y esta respuesta a la misma constituirán un acuerdo entre nuestros Gobiernos.

Sinceramente,

Alberto Trejos



Tel.: (506) 257-0705 / Fax: (506) 233-9176 / e-mail: atrejos@comex.go.cr  
San José, Costa Rica

COURTESY TRANSLATION

The Honorable Robert B. Zoellick  
United States Trade Representative  
Washington, D.C.

Dear Ambassador Zoellick:

I am pleased to acknowledge your letter of today's date, which reads as follows:

“I have the honor to confirm the following understanding reached between the delegations of the United States and Costa Rica in the course of negotiations regarding Chapters Ten (Investment) and Eleven (Cross-Border Trade in Services) of the Free Trade Agreement between our Governments signed this day (the “Agreement”):

A nondiscriminatory indefinite moratorium on strip or open pit mining activities declared in the territory of Costa Rica shall not be deemed to be a non-conforming measure subject to the disciplines of Chapter Ten (Investment) or Eleven (Cross-Border Trade in Services).

I have the honor to propose that this letter and your letter of confirmation in reply shall constitute an agreement between our two Governments.”

I have the honor to confirm that the understanding referred to in your letter is shared by my Government, and that your letter and this reply shall constitute an agreement between our Governments.

Sincerely,

Alberto Trejos

1135

EXECUTIVE OFFICE OF THE PRESIDENT  
THE UNITED STATES TRADE REPRESENTATIVE  
WASHINGTON, D.C. 20508

May 28, 2004

The Honorable Alberto Trejos  
Minister of Foreign Trade  
San Jose, Costa Rica

Dear Minister Trejos:

I have the honor to confirm the following understanding reached between the delegations of the United States and Costa Rica in the course of negotiations regarding Chapters Ten (Investment) and Eleven (Cross-Border Trade in Services) of the Free Trade Agreement between our Governments signed this day (the "Agreement"):

Nothing in Chapter Ten (Investment) or Eleven (Cross-Border Trade in Services) prevents the United States or Costa Rica from adopting, maintaining, or enforcing any measure consistent with the Agreement relating to the following activities:

- the use of genetic material of wildlife (flora and fauna), wildlife products, and wildlife by-products;
- the exploration or use of forestry, hydrological, edaphological, archaeological, or zoological resources; and
- zoning and land use.

I have the honor to propose that this letter and your letter of confirmation in reply shall constitute an agreement between our two Governments.

Sincerely,

  
Robert B. Zoellick

1136



*Ministerio de Comercio Exterior*  
*Despacho del Ministro*

28 de mayo de 2004

El Honorable Robert B. Zoellick  
Representante Comercial de Estados Unidos  
Washington, D.C.

Estimado Embajador Zoellick:

Me complace recibir su carta con fecha del día de hoy, que lee de la siguiente manera:

“Tengo el honor de confirmar el siguiente entendimiento alcanzado entre las delegaciones de Estados Unidos y Costa Rica en el curso de las negociaciones sobre los Capítulos Diez (Inversión) y Once (Comercio Transfronterizo de Servicios) del Tratado de Libre Comercio entre nuestros gobiernos,, firmado en este día (el “Tratado”):

Nada en los Capítulos Diez (Inversión) u Once (Comercio Transfronterizo de Servicios) impide que Estados Unidos o Costa Rica adopten, mantengan o apliquen cualquier medida que sea consistente con el Tratado, relacionada con las siguientes actividades:

- el uso de material genético de vida silvestre (flora y fauna), productos de vida silvestre y subproductos de vida silvestre;
- la exploración o el uso de recursos forestales, hidrológicos, edafológicos, arqueológicos o zoológicos; y
- planificación urbana y uso de la tierra.

Tengo el honor de proponer que esta carta y su carta de confirmación en respuesta a ella constituirán un acuerdo entre nuestros dos Gobiernos.”

Tel.: (506) 257-0705 / Fax: (506) 233-9176 / e-mail: [atrejos@comex.go.cr](mailto:atrejos@comex.go.cr)  
San José, Costa Rica

1137



*Ministerio de Comercio Exterior*  
*Despacho del Ministro*

Tengo el honor de confirmar que el entendimiento consignado en su carta es compartido por mi Gobierno y que su carta y esta respuesta a la misma constituirán un acuerdo entre nuestros Gobiernos.

Sinceramente,

A handwritten signature in black ink, appearing to be 'A. Trejos'.

Alberto Trejos



COURTESY TRANSLATION

May 28, 2004

The Honorable Robert B. Zoellick  
United States Trade Representative  
Washington, D.C.

Dear Ambassador Zoellick:

I am pleased to acknowledge your letter of today's date, which reads as follows:

“I have the honor to confirm the following understanding reached between the delegations of the United States and Costa Rica in the course of negotiations regarding Chapters Ten (Investment) and Eleven (Cross-Border Trade in Services) of the Free Trade Agreement between our Governments signed this day (the “Agreement”):

Nothing in Chapter Ten (Investment) or Eleven (Cross-Border Trade in Services) prevents the United States or Costa Rica from adopting, maintaining, or enforcing any measure consistent with the Agreement relating to the following activities:

- the use of genetic material of wildlife (flora and fauna), wildlife products, and wildlife by-products;
- the exploration or use of forestry, hydrological, edaphological, archaeological, or zoological resources; and
- zoning and land use.

I have the honor to propose that this letter and your letter of confirmation in reply shall constitute an agreement between our two Governments.”

I have the honor to confirm that the understanding referred to in your letter is shared by my Government, and that your letter and this reply shall constitute an agreement between our Governments.

Sincerely,

Alberto Trejos



*Ministerio de Comercio Exterior*  
*Despacho del Ministro*

28 de mayo de 2004

Honorable Robert B. Zoellick  
Representante de Comercio de Estados Unidos  
Washington, D.C.

Estimado Embajador Zoellick:

Tengo el honor de referirme al Anexo 13 (Compromisos Específicos de Costa Rica en Materia de Servicios de Telecomunicaciones) del Tratado de Libre Comercio entre nuestros gobiernos firmado este día (el "Tratado") y proponer lo siguiente:

Costa Rica ha asumido una obligación en el Tratado de abrir su mercado para el suministro de servicios inalámbricos de telecomunicaciones. Una vez abierto el mercado, los proveedores competitivos de servicios inalámbricos necesitarán ser asignados con bloques del espectro para que puedan suministrar los servicios. La República de Costa Rica deberá, como mínimo, en cumplimiento con su política de asignación de espectro radioeléctrico para promover su uso más eficiente y de conformidad con las normas internacionales y regionales, asegurar que habrá suficientes frecuencias comercialmente relevantes disponibles en el espectro nacional para satisfacer los compromisos de acceso a mercado incluidos en la sección III.2 del Anexo 13. De acuerdo con las normas recomendadas por CITEL y UIT, las frecuencias comercialmente relevantes para el suministro de servicios inalámbricos móviles comerciales se entiende que incluyen los siguientes rangos: 800 – 900 MHz y 1700 – 1999 MHz.

Tengo el honor de proponer que esta carta y su carta de confirmación en respuesta constituirán un acuerdo entre nuestros Gobiernos.

Sinceramente;



Alberto Trejos



1140

COURTESY TRANSLATION

May 28, 2004

The Honorable Robert B. Zoellick  
United States Trade Representative  
Washington, D.C.

Dear Ambassador Zoellick:

I have the honor to refer to Annex 13 (Specific Commitments of Costa Rica on Telecommunications Services) of the Free Trade Agreement between our Governments signed this day (the "Agreement") and to propose the following:

Costa Rica has undertaken an obligation in the Agreement to open its market for the supply of wireless telecommunications services. Once the market is open, competitive wireless service suppliers will need to be assigned blocks of spectrum in order to supply services. The Republic of Costa Rica shall, at a minimum, in compliance with its policy to allocate radio-electric spectrum in a manner to promote its most efficient use, and in keeping with international and regional norms, ensure that there will be sufficient, commercially relevant frequencies available in the national spectrum in order to satisfy the market access commitments included in section III.2 of Annex 13. According to CITELE and ITU recommended norms, commercially relevant frequencies for the provision of commercial mobile wireless services are understood to include the following ranges: 800 – 900 MHz, and 1700 – 1999 MHz.

I have the honor to propose that this letter and your letter of confirmation in reply shall constitute an agreement between our Governments.

Sincerely,

Alberto Trejos

1141

EXECUTIVE OFFICE OF THE PRESIDENT  
THE UNITED STATES TRADE REPRESENTATIVE  
WASHINGTON, D.C. 20508

May 28, 2004

The Honorable Alberto Trejos  
Minister of Foreign Trade  
San Jose, Costa Rica

Dear Minister Trejos:

I am pleased to acknowledge your letter of today's date, which reads as follows:

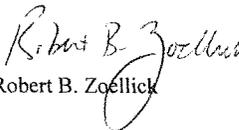
"I have the honor to refer to Annex 13 (Specific Commitments of Costa Rica on Telecommunications Services) of the Free Trade Agreement between our Governments signed this day (the "Agreement") and to propose the following:

Costa Rica has undertaken an obligation in the Agreement to open its market for the supply of wireless telecommunications services. Once the market is open, competitive wireless service suppliers will need to be assigned blocks of spectrum in order to supply services. The Republic of Costa Rica shall, at a minimum, in compliance with its policy to allocate radio-electric spectrum in a manner to promote its most efficient use, and in keeping with international and regional norms, ensure that there will be sufficient, commercially relevant frequencies available in the national spectrum in order to satisfy the market access commitments included in section III.2 of Annex 13. According to CITELE and ITU recommended norms, commercially relevant frequencies for the provision of commercial mobile wireless services are understood to include the following ranges: 800 – 900 MHz, and 1700 – 1999 MHz.

I have the honor to propose that this letter and your letters of confirmation in reply shall constitute an agreement between our Governments."

I have the honor to accept your proposal on behalf of my Government and to confirm that your letter and this reply shall constitute an agreement between our Governments.

Sincerely,

  
Robert B. Zoellick

1142

EXECUTIVE OFFICE OF THE PRESIDENT  
THE UNITED STATES TRADE REPRESENTATIVE  
WASHINGTON, D.C. 20508

May 28, 2004

The Honorable Alberto Trejos  
Minister of Foreign Trade  
San Jose, Costa Rica

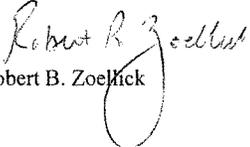
Dear Minister Trejos:

I have the honor to confirm the following understanding reached between the delegations of the United States and Costa Rica in the course of negotiations regarding Chapter Three, Section G (Textiles and Apparel) of the Free Trade Agreement between our Governments signed this day (the "Agreement"):

Under tariff item 9802.00.80 of the Harmonized Tariff Schedule of the United States (commonly referred to as the "807 program"), the United States assesses its most-favored-nation duties on imports of apparel goods assembled abroad from U.S.-formed and cut components only on the difference between the full value of the imported goods and the value of the U.S. components. Nothing in the Agreement modifies the availability of this program.

I have the honor to propose that this letter and your letter of confirmation in reply shall constitute an agreement between our two Governments.

Sincerely,

  
Robert B. Zoellick

1143



*Ministerio de Comercio Exterior*  
*Despacho del Ministro*

28 de mayo de 2004

Honorable Robert B. Zoellick  
Representante Comercial de los Estados Unidos  
Washington, D.C.

Estimado Embajador Zoellick:

Tengo el agrado de tener conocimiento de su carta con fecha de hoy, que dice lo siguiente:

“Tengo el honor de confirmar el siguiente entendimiento alcanzado entre las delegaciones de los Estados Unidos y Costa Rica en el curso de las negociaciones sobre el Capítulo Tres, Sección G (Textiles y Vestido) del Tratado de Libre Comercio entre nuestros Gobiernos firmado este día (el “Tratado”).

Bajo la fracción arancelaria 9802.00.80 del Sistema Armonizado (HTS) de los Estados Unidos (comúnmente llamado el “programa 807”), los Estados Unidos estiman sus aranceles NMF sobre las importaciones de prendas de vestir confeccionadas en el exterior a partir de componentes formados y cortados en los Estados Unidos únicamente sobre la diferencia entre el valor total de la mercancía importada y el valor del componente estadounidense. Nada en este Tratado modifica la disponibilidad de este programa.

Tengo el honor de proponer que esta carta y su carta de confirmación en respuesta constituyan un acuerdo entre nuestros dos Gobiernos. ”

Tengo el honor de confirmar que el entendimiento al que se hace referencia es su carta es compartido por mi Gobierno y que su carta y esta respuesta constituyan un acuerdo entre nuestros Gobiernos respectivos.

Atentamente,

  
Alberto Trejos



Tel.: (506) 257-0705 / Fax: (506) 233-9176 / e-mail: atrejos@comex.go.cr  
San José, Costa Rica

1144

COURTESY TRANSLATION

May 28, 2004

The Honorable Robert B. Zoellick  
United States Trade Representative  
Washington, D.C.

Dear Ambassador Zoellick:

I am pleased to acknowledge your letter of today's date, which reads as follows:

"I have the honor to confirm the following understanding reached between the delegations of the United States and Costa Rica in the course of negotiations regarding Chapter Three, Section G (Textiles and Apparel) of the Free Trade Agreement between our Governments signed this day (the "Agreement"):

Under tariff item 9802.00.80 of the Harmonized Tariff Schedule of the United States (commonly referred to as the "807 program"), the United States assesses its most-favored-nation duties on imports of apparel goods assembled abroad from U.S.-formed and cut components only on the difference between the full value of the imported goods and the value of the U.S. components. Nothing in the Agreement modifies the availability of this program.

I have the honor to propose that this letter and your letter of confirmation in reply shall constitute an agreement between our two Governments."

I have the honor to confirm that the understanding referred to in your letter is shared by my Government, and that your letter and this reply shall constitute an agreement between our respective Governments.

Sincerely,

Alberto Trejos

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**Tab C**

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Secretaría de Estado de Industria y Comercio  
Santo Domingo  
REPUBLICA DOMINICANA

05 de agosto del 2004

El Honorable Robert B. Zoellick  
Representante Comercial de Estados Unidos,  
Washington, D.C.

Estimado Embajador Zoellick:

Por medio de la presente tengo el honor de confirmar el siguiente entendimiento logrado entre las delegaciones de la República Dominicana y los Estados Unidos en el curso de las negociaciones del Tratado de Libre Comercio República Dominicana-Centroamérica-Estados Unidos que se suscribe en el día de hoy (el "Tratado"):

La República Dominicana deberá asegurar que, para la fecha de entrada en vigor del Tratado, su sistema de licencias de importación para los productos agrícolas de los Estados Unidos sea transparente y que las licencias de importación sean emitidas de manera no discriminatoria y en tiempo oportuno. En particular, la República Dominicana no deberá otorgar o denegar licencias de importación basadas en preocupaciones sanitarias o fitosanitarias, requisitos de compras domesticas o criterios discrecionales. La República Dominicana deberá aplicar cualquier medida sanitaria y fitosanitaria que imponga de manera separada a su sistema de licencias de importación.

Tengo el honor de proponer que esta carta y su carta de confirmación en respuesta a ella constituirán un acuerdo entre nuestros dos Gobiernos.

Sinceramente,

Sonia Guzmán de Hernández

1148

COURTESY TRANSLATION

August 5, 2004

The Honorable Robert B. Zoellick  
United States Trade Representative  
Washington, D.C.

Dear Ambassador Zoellick:

I have the honor to confirm the following understanding reached between the delegations of the United States and the Dominican Republic in the course of negotiations regarding the Dominican Republic – Central America – United States Free Trade Agreement signed this day (the “Agreement”):

The Dominican Republic shall ensure that, by the date of entry into force of the Agreement, its import licensing system for U.S. agricultural goods is transparent and that import licenses are issued in a timely and nondiscriminatory manner. In particular, the Dominican Republic shall not grant or deny import licenses based on sanitary or phytosanitary concerns, domestic purchasing requirements, or discretionary criteria. The Dominican Republic shall enforce any sanitary or phytosanitary measures that it imposes separately from its import-licensing system.

I have the honor to propose that this letter and your letter of confirmation in reply shall constitute an agreement between our two Governments.

Sincerely,

Sonia Guzmán de Hernández

1149

EXECUTIVE OFFICE OF THE PRESIDENT  
THE UNITED STATES TRADE REPRESENTATIVE  
WASHINGTON, D.C. 20508

August 5, 2004

The Honorable Sonia Guzmán de Hernández  
Secretary of State of Industry and Commerce  
Santo Domingo, Dominican Republic

Dear Secretary Guzmán:

I am pleased to acknowledge your letter of today's date, which reads as follows:

"I have the honor to confirm the following understanding reached between the delegations of the United States and the Dominican Republic in the course of negotiations regarding the Dominican Republic – Central America – United States Free Trade Agreement signed this day (the "Agreement"):

The Dominican Republic shall ensure that, by the date of entry into force of the Agreement, its import licensing system for U.S. agricultural goods is transparent and that import licenses are issued in a timely and nondiscriminatory manner. In particular, the Dominican Republic shall not grant or deny import licenses based on sanitary or phytosanitary concerns, domestic purchasing requirements, or discretionary criteria. The Dominican Republic shall enforce any sanitary or phytosanitary measures that it imposes separately from its import-licensing system.

I have the honor to propose that this letter and your letter of confirmation in reply shall constitute an agreement between our two Governments."

I have the honor to confirm that the understanding referred to in your letter is shared by my Government, and that your letter and this reply shall constitute an agreement between our two Governments.

Sincerely,

  
Robert B. Zoellick

1150

EXECUTIVE OFFICE OF THE PRESIDENT  
THE UNITED STATES TRADE REPRESENTATIVE  
WASHINGTON, D.C. 20508

August 5, 2004

The Honorable Sonia Guzmán de Hernández  
Secretary of State of Industry and Commerce  
Santo Domingo, Dominican Republic

Dear Secretary Guzmán:

I have the honor to confirm the following understanding reached between the delegations of the United States and the Dominican Republic in the course of negotiations regarding Article 11.2 (National Treatment) of the Dominican Republic – Central America – United States Free Trade Agreement signed this day (the “Agreement”):

Articles 135, 137, and 141 of the Labor Code of the Dominican Republic:

- treat as employees only natural persons under the dependency and immediate or delegated direction of the employer;
- do not apply to enterprises organized under the laws of a foreign country or their employees;
- do not apply to services supplied from the territory of a foreign country into the territory of the Dominican Republic;
- do not govern services provided by a liberal professional who practices independently; and
- do not apply to services supplied on a temporary basis.

I have the further honor to confirm, for greater certainty, our shared understanding that nothing in the preceding statements regarding the cited articles of the Labor Code is inconsistent with application of these articles to natural persons under the dependency and immediate or delegated direction of enterprises established in the Dominican Republic.

I have the honor to propose that this letter and your letter of confirmation in reply shall constitute and agreement between our two Governments.

Sincerely,

  
Robert B. Zoellick

1151



Secretaría de Estado de Industria y Comercio  
Santo Domingo  
REPUBLICA DOMINICANA

05 de agosto del 2004

Honorable Robert B. Zoellick  
Representante Comercial de  
los Estados Unidos de América  
Washington, D.C.

Estimado Embajador Zoellick:

Me complace reconocer su carta fechada en el día de hoy, que lee de la siguiente manera:

“Tengo el honor de confirmar el entendimiento alcanzado entre las delegaciones de los Estados Unidos y de la República Dominicana en el curso de las negociaciones acerca del Artículo 11.2 (Trato Nacional) del Tratado de Libre Comercio República Dominicana-Centroamérica- Estados Unidos firmado el día de hoy (el “Tratado”).

Los Artículos 135, 137 y 141 del Código Laboral de la República Dominicana:

- tratan como empleados solo a las personas naturales bajo dependencia o dirección inmediata o delegada del empleador;
- no aplican a las empresas organizadas bajo leyes extranjeras o a sus empleados;
- no aplican a los servicios suministrados desde el territorio de un país extranjero al territorio de la República Dominicana;
- no rigen para los servicios suministrados por un profesional liberal que ejerce de manera independiente; y
- no aplican a los servicios suministrados de forma temporal.

Tengo además el honor de confirmar, para mayor certeza, nuestro entendimiento común de que nada en las declaraciones anteriores relativas a los artículos citados del Código Laboral es inconsistente con la aplicación de esos artículos a las personas naturales bajo la dependencia o dirección inmediata o delegada de empresas establecidas en la República Dominicana.

A handwritten signature in black ink, appearing to read 'S. S. S.', located below the main text.

1152



Secretaría de Estado de Industria y Comercio  
Santo Domingo  
REPUBLICA DOMINICANA

Tengo el honor de proponer que esta carta y su carta de confirmación en respuesta constituyan un acuerdo entre nuestros dos Gobiernos.”

Tengo el honor de confirmar que el entendimiento a que se refiere en su carta es compartido por mi Gobierno, y que su carta y esta respuesta constituirán un acuerdo entre nuestros dos Gobiernos.

Sinceramente,

A handwritten signature in black ink, appearing to read 'Sonia Guzmán de Hernández', written over a horizontal line.

Sonia Guzmán de Hernández

1153

COURTESY TRANSLATION

August 5, 2004

The Honorable Robert B. Zoellick  
United States Trade Representative  
Washington, D.C.

Dear Ambassador Zoellick:

I am pleased to acknowledge your letter of today's date, which reads as follows:

"I have the honor to confirm the following understanding reached between the delegations of the United States and the Dominican Republic in the course of negotiations regarding Article 11.2 (National Treatment) of the Dominican Republic – Central America – United States Free Trade Agreement signed this day (the "Agreement"):

Articles 135, 137, and 141 of the Labor Code of the Dominican Republic:

- treat as employees only natural persons under the dependency and immediate or delegated direction of the employer;
- do not apply to enterprises organized under the laws of a foreign country or their employees;
- do not apply to services supplied from the territory of a foreign country into the territory of the Dominican Republic;
- do not govern services provided by a liberal professional who practices independently; and
- do not apply to services supplied on a temporary basis.

I have the further honor to confirm, for greater certainty, our shared understanding that nothing in the preceding statements regarding the cited articles of the Labor Code is inconsistent with application of these articles to natural persons under the dependency and immediate or delegated direction of enterprises established in the Dominican Republic.

I have the honor to propose that this letter and your letter of confirmation in reply shall constitute and agreement between our two Governments."

1154

I have the honor to confirm that the understanding referred to in your letter is shared by my Government, and that your letter and this reply shall constitute an agreement between our two Governments.

Sincerely,

Sonia Guzmán de Hernández

1155



Secretaría de Estado de Industria y Comercio  
Santo Domingo  
REPUBLICA DOMINICANA

05 de agosto del 2004

El Honorable Robert B. Zoellick  
Representante Comercial de Estados Unidos,  
Washington, D.C.

Estimado Embajador Zoellick:

Por medio de la presente tengo el honor de confirmar los siguientes entendimientos logrados entre las delegaciones de la República Dominicana y los Estados Unidos en el curso de las negociaciones sobre el Capítulo Quince (Derechos de Propiedad Intelectual) del Tratado de Libre Comercio República Dominicana-Centroamérica-Estados Unidos que se suscribe en el día de hoy (el "Tratado"):

En el cumplimiento de las obligaciones incurridas por virtud del Artículo 15.11.26 (Ejecución del Cumplimiento de los Derechos de Propiedad Intelectual), la República Dominicana tomará todas las medidas necesarias para frenar la piratería de transmisión televisiva (la transmisión no autorizada de materiales protegidos por el derecho de autor) por parte de estaciones de transmisión propietarias de licencias, y de garantizar un impedimento a incumplimientos en el futuro, según lo requiera el Capítulo Quince. Dentro de los próximos 60 días a partir del día de hoy, y finalizando en el momento que nuestros Gobiernos posteriormente puedan convenir, la República Dominicana presentará un informe trimestral por escrito a los Estados Unidos que describa los avances logrados por la República Dominicana en la persecución de la piratería de la transmisión televisiva, incluyendo investigaciones y acciones criminales, administrativas y civiles específicas. Dichos informes servirán para complementar el cumplimiento del Artículo 15.11.3, que dispone que las Partes pongan a disposición del público información sobre la ejecución de los derechos de propiedad intelectual.

Al implementar el Artículo 15.11.26 y el Artículo 15.11.6 al 15.11.16, la República Dominicana hará todo esfuerzo por lograr inmediatamente la resolución expedita de casos criminales pendientes de violación al derecho de autor, incluyendo aquellos casos que están pendientes en el tribunal de primera instancia además de los que se encuentren en apelación a la fecha de hoy. A pesar de que la República Dominicana respeta la independencia de la judicatura, el Gobierno reconoce el hecho de que existe una necesidad significativa de mejorar la agilidad de la acción judicial para cumplir todas las obligaciones del Capítulo Quince.

*Sedra*

1156



Secretaría de Estado de Industria y Comercio  
Santo Domingo  
REPUBLICA DOMINICANA

Tengo el honor de proponer que esta carta y su carta de confirmación en respuesta a ella constituirán un acuerdo entre nuestros dos Gobiernos.

Muy atentamente,

A handwritten signature in black ink, appearing to be 'Sonia Guzmán de Hernández', written over a horizontal line.

Sonia Guzmán de Hernández

1157

COURTESY TRANSLATION

August 5, 2004

The Honorable Robert B. Zoellick  
United States Trade Representative  
Washington, D.C.

Dear Ambassador Zoellick:

I have the honor to confirm the following understandings reached between the delegations of the Dominican Republic and the United States in the course of negotiations regarding Chapter Fifteen (Intellectual Property Rights) of the Dominican Republic – Central America – United States Free Trade Agreement signed this day (the "Agreement"):

In fulfilling its obligations under Article 15.11.26 (Enforcement of Intellectual Property Rights), the Dominican Republic will take all necessary steps to halt television broadcasting piracy (the unauthorized broadcasting of copyrighted materials) by licensed broadcasting stations and to provide a deterrent to future infringements, as required by Chapter Fifteen. Beginning within 60 days from today and ending at such time as our Governments may later agree, the Dominican Republic shall provide a written quarterly report to the United States describing progress that the Dominican Republic has made in pursuing television broadcasting piracy, including specific criminal, administrative, and civil investigations and actions. These reports will serve to complement compliance with Article 15.11.3, which calls on the Parties to make information on intellectual property rights enforcement publicly available.

In implementing Article 15.11.26 and Article 15.11.6 through 15.11.16, the Dominican Republic shall make every effort to immediately achieve the expeditious resolution of pending criminal copyright infringement cases, including those pending in the court of first instance as well as those on appeal as of today's date. While the Dominican Republic respects the independence of the judiciary, the Government acknowledges that there is a significant need for improvement in the promptness of judicial action in order to meet all the obligations of Chapter Fifteen.

I have the honor to propose that this letter and your letter of confirmation in reply shall constitute an agreement between our two Governments.

Sincerely,

Sonia Guzmán de Hernández

1158

EXECUTIVE OFFICE OF THE PRESIDENT  
THE UNITED STATES TRADE REPRESENTATIVE  
WASHINGTON, D.C. 20508

August 5, 2004

The Honorable Sonia Guzmán de Hernández  
Secretary of State of Industry and Commerce  
Santo Domingo, Dominican Republic

Dear Secretary Guzmán:

I am pleased to acknowledge your letter of today's date, which reads as follows:

"I have the honor to confirm the following understandings reached between the delegations of the Dominican Republic and the United States in the course of negotiations regarding Chapter Fifteen (Intellectual Property Rights) of the Dominican Republic – Central America – United States Free Trade Agreement signed this day (the "Agreement"):

In fulfilling its obligations under Article 15.11.26 (Enforcement of Intellectual Property Rights), the Dominican Republic will take all necessary steps to halt television broadcasting piracy (the unauthorized broadcasting of copyrighted materials) by licensed broadcasting stations and to provide a deterrent to future infringements, as required by Chapter Fifteen. Beginning within 60 days from today and ending at such time as our Governments may later agree, the Dominican Republic shall provide a written quarterly report to the United States describing progress that the Dominican Republic has made in pursuing television broadcasting piracy, including specific criminal, administrative, and civil investigations and actions. These reports will serve to complement compliance with Article 15.11.3, which calls on the Parties to make information on intellectual property rights enforcement publicly available.

In implementing Article 15.11.26 and Article 15.11.6 through 15.11.16, the Dominican Republic shall make every effort to immediately achieve the expeditious resolution of pending criminal copyright infringement cases, including those pending in the court of first instance as well as those on appeal as of today's date. While the Dominican Republic respects the independence of the judiciary, the Government acknowledges that there is a significant need for improvement in the promptness of judicial action in order to meet all the obligations of Chapter Fifteen.

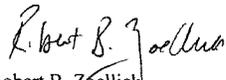
I have the honor to propose that this letter and your letter of confirmation in reply shall constitute an agreement between our two Governments."

1159

The Honorable Robert B. Zoellick  
Page Two

I have the honor to confirm that the understandings referred to in your letter are shared by my Government, and that your letter and this reply shall constitute an agreement between our two Governments.

Sincerely,

  
Robert B. Zoellick

1160

EXECUTIVE OFFICE OF THE PRESIDENT  
THE UNITED STATES TRADE REPRESENTATIVE  
WASHINGTON, D.C. 20508

August 5, 2004

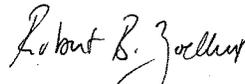
The Honorable Sonia Guzmán de Hernández  
Secretary of State of Industry and Commerce  
Santo Domingo, Dominican Republic

Dear Secretary Guzmán:

In the course of negotiations between the United States and the Dominican Republic regarding the Dominican Republic – Central America – United States Free Trade Agreement signed this day (the “Agreement”), representatives of the Dominican Republic noted that, under the Caribbean Basin Trade Partnership Act (CBTPA), articles produced in the Dominican Republic that are currently eligible for CBTPA benefits will no longer be eligible for these benefits once the Agreement enters into force. The Dominican representatives expressed concern that, as a result, articles that are co-produced by enterprises in the Dominican Republic and the Republic of Haiti will also become ineligible for CBTPA benefits.

I am pleased to confirm that the Administration intends to work with the Congress to amend the CBTPA to allow articles currently eligible for CBTPA benefits that are co-produced by enterprises located in the territory of a Party to the Agreement and in a CBTPA beneficiary country to continue to be eligible for such benefits after the Agreement enters into force.

Sincerely,



Robert B. Zoellick



05 de agosto del 2004

Señora  
Regina K. Vargo  
Representante Comercial Adjunto  
de Estados Unidos,  
Washington, D.C.

Estimada Señora Vargo:

En el curso de las negociaciones entre los Estados Unidos y la República Dominicana con respecto al Tratado de Libre Comercio República Dominicana-Centroamérica-Estados Unidos que se suscribe en el día de hoy (el "Tratado"), las delegaciones de la República Dominicana y los Estados Unidos discutieron la manera en que la República Dominicana regula su industria de las telecomunicaciones, y cómo el enfoque de la República Dominicana en cuanto a la regulación del sector cumple con las obligaciones establecidas en el Capítulo Trece (Telecomunicaciones) del Tratado.

Ambas delegaciones reconocieron el hecho de que la República Dominicana otorga mucha importancia al desarrollo y a la modernización de su infraestructura de telecomunicaciones. La delegación de la República Dominicana indicó lo siguiente:

- La Ley General de Telecomunicaciones No. 153-98 dispone que la industria de las telecomunicaciones de la República Dominicana opere en base a los principios de servicio universal, del ingreso al mercado sin restricciones, de la libertad de negociación tarifaria, la libertad de contratación, la mínima regulación, y a un ente regulador fuerte y autónomo.
- La Ley No. 153-98 está concebida para promover la competencia abierta, leal y sostenible, con el objetivo de aumentar la teledensidad, mejorar el servicio, y promover la innovación.
- Las políticas regulatorias del Gobierno han beneficiado el crecimiento del sector de las telecomunicaciones de la República Dominicana; han logrado atraer a nuevas operadoras, han aumentado la inversión por parte de las operadoras establecidas, han promovido el impresionante crecimiento de la teledensidad inalámbrica, y han elevado tanto el volumen como la variedad de los servicios de telecomunicaciones.

Av. Abraham Lincoln, No. 962, Edificio Osiris  
Santo Domingo, República Dominicana  
Tel.: (809) 732-3555 • Fax: (809) 732-3904  
E-mail: [indotel@indotel.org.do](mailto:indotel@indotel.org.do)  
Web: [www.indotel.org.do](http://www.indotel.org.do)



- El enfoque de la República Dominicana de promover la competencia y limitar la regulación innecesaria ha dado como resultado que el sector se convirtiera en la segunda fuente más importante de inversión extranjera.

La República Dominicana planea continuar aplicando una estrategia de desarrollo para su sector de telecomunicaciones que promueva el servicio universal, mejore la teledensidad, y promueva la competencia – objetivos plenamente compatibles con los del Capítulo Trece del Tratado. El capítulo no establece un solo enfoque a la regulación, sino que permite que cada una de las Partes disponga de un elevado nivel de flexibilidad para determinar cómo cumplir los requerimientos del capítulo. La República Dominicana se propone cumplir varias obligaciones claves establecidas por el capítulo a través de la competencia en base al mercado, negociaciones entre suplidores y otras empresas, y negociaciones entre los suplidores mismos. En ese sentido, las negociaciones comerciales constituyen una valiosa herramienta en la formulación de un mercado competitivo de comunicaciones. La República Dominicana, tal como lo dispone su legislación nacional, se propone utilizar medidas regulatorias cuando la competencia y otras fuerzas del mercado y las negociaciones comerciales no logren cumplir con sus obligaciones bajo el capítulo.

La presente carta de ninguna manera modifica los derechos y las obligaciones de la República Dominicana y de los Estados Unidos bajo el Tratado.

Mucho le agradeceré su confirmación de que su Gobierno comparta las opiniones con respecto a los objetivos y las obligaciones establecidas en el Capítulo Trece según se indica en la presente carta.

Sinceramente,



Orlando Jorge Mera

Av. Abraham Lincoln, No. 962, Edificio Osiris  
Santo Domingo, República Dominicana  
Tel.: (809) 732-5555 • Fax: (809) 732-3904  
E-mail: [indotel@indotel.org.do](mailto:indotel@indotel.org.do)  
Web: [www.indotel.org.do](http://www.indotel.org.do)

COURTESY TRANSLATION

August 5, 2004

Ms. Regina K. Vargo  
Assistant U.S. Trade Representative  
Washington, D.C.

Dear Ms. Vargo:

In the course of negotiations between the United States and the Dominican Republic regarding the Dominican Republic – Central America – United States Free Trade Agreement signed this day (the "Agreement"), the delegations of the Dominican Republic and the United States discussed the manner in which the Dominican Republic regulates its telecommunications industry and how the Dominican Republic's approach to regulation in the sector comports with the obligations set out in Chapter Thirteen (Telecommunications) of the Agreement.

Both delegations recognized that the Dominican Republic attaches great importance to the development and modernization of its telecommunications infrastructure. The delegation of the Dominican Republic noted that:

- General Telecommunication Law No. 153-98 provides for the Dominican Republic's telecommunications industry to operate based on principles of universal service, unrestricted market entrance, freely negotiated tariffs, freedom of contract, minimum regulation, and a strong and autonomous regulatory body.
- Law No. 153-98 is designed to promote open, fair, and sustainable competition, with the objective of increasing teledensity, improving service, and spurring innovation.
- The Government's regulatory policies have helped the Dominican Republic's telecommunications sector grow, attract new operators, increase investment by established operators, promote impressive growth in wireless teledensity, and boost both the volume and variety of telecommunications services.
- The Dominican Republic's approach of encouraging competition and limiting unnecessary regulation has resulted in the sector becoming the country's second most important source of foreign investment.

The Dominican Republic plans to continue to apply a development strategy for its telecommunications sector that fosters universal service, improves teledensity, and promotes competition – objectives that are fully compatible with those of Chapter Thirteen of the Agreement. The chapter does not prescribe a single approach to regulation, but rather allows each Party a substantial degree of flexibility in determining how to meet the chapter's

Ms. Regina K. Vargo  
Page Two

requirements. The Dominican Republic intends to satisfy several key obligations established by the chapter through market-based competition, negotiations between suppliers and other enterprises, and negotiations between suppliers themselves. Thus, commercial negotiations constitute a valuable tool in shaping a competitive communications marketplace. The Dominican Republic, as provided under its domestic law, intends to use regulatory measures when competition and other market forces and commercial negotiations cannot satisfy its obligations under the chapter.

This letter in no way modifies the rights and obligations of the Dominican Republic and the United States under the Agreement.

I would be grateful if you could confirm that your Government shares the views regarding the objectives and obligations of Chapter Thirteen set out in this letter.

Sincerely,

Orlando Jorge Mera

1165

EXECUTIVE OFFICE OF THE PRESIDENT  
OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE  
WASHINGTON, D.C. 20508

August 5, 2004

Lic. Orlando Jorge Mera  
Secretary of State  
President of the Council of Directors  
INDOTEL  
Santo Domingo, Dominican Republic

Dear Mr. Mera:

I am pleased to acknowledge your letter of today's date, which reads as follows:

"In the course of negotiations between the United States and the Dominican Republic regarding the Dominican Republic – Central America – United States Free Trade Agreement signed this day (the "Agreement"), the delegations of the Dominican Republic and the United States discussed the manner in which the Dominican Republic regulates its telecommunications industry and how the Dominican Republic's approach to regulation in the sector comports with the obligations set out in Chapter Thirteen (Telecommunications) of the Agreement.

Both delegations recognized that the Dominican Republic attaches great importance to the development and modernization of its telecommunications infrastructure. The delegation of the Dominican Republic noted that:

- General Telecommunication Law No. 153-98 provides for the Dominican Republic's telecommunications industry to operate based on principles of universal service, unrestricted market entrance, freely negotiated tariffs, freedom of contract, minimum regulation, and a strong and autonomous regulatory body.
- Law No. 153-98 is designed to promote open, fair, and sustainable competition, with the objective of increasing teledensity, improving service, and spurring innovation.
- The Government's regulatory policies have helped the Dominican Republic's telecommunications sector grow, attract new operators, increase investment by established operators, promote impressive growth in wireless teledensity, and boost both the volume and variety of telecommunications services.
- The Dominican Republic's approach of encouraging competition and limiting unnecessary regulation has resulted in the sector becoming the country's second most important source of foreign investment.

Mr. Orlando Jorge Mera  
Page Two

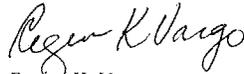
The Dominican Republic plans to continue to apply a development strategy for its telecommunications sector that fosters universal service, improves teledensity, and promotes competition -- objectives that are fully compatible with those of Chapter Thirteen of the Agreement. The chapter does not prescribe a single approach to regulation, but rather allows each Party a substantial degree of flexibility in determining how to meet the chapter's requirements. The Dominican Republic intends to satisfy several key obligations established by the chapter through market-based competition, negotiations between suppliers and other enterprises, and negotiations between suppliers themselves. Thus, commercial negotiations constitute a valuable tool in shaping a competitive communications marketplace. The Dominican Republic, as provided under its domestic law, intends to use regulatory measures when competition and other market forces and commercial negotiations cannot satisfy its obligations under the chapter.

This letter in no way modifies the rights and obligations of the Dominican Republic and the United States under the Agreement.

I would be grateful if you could confirm that your Government shares the views regarding the objectives and obligations of Chapter Thirteen set out in this letter."

I have the honor to confirm that my Government shares the views regarding the objectives and obligations of Chapter Thirteen set out in your letter.

Sincerely,



Regina K. Vargo

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**Tab D**

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EXECUTIVE OFFICE OF THE PRESIDENT  
THE UNITED STATES TRADE REPRESENTATIVE  
WASHINGTON, D. C. 20508

August 5, 2004

The Honorable Eduardo Ayala Grimaldi  
Vice Minister of Economy  
San Salvador, El Salvador

Dear Vice Minister Ayala Grimaldi:

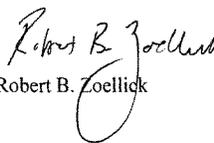
In connection with the signing of the Dominican Republic – Central America – United States Free Trade Agreement (the “Agreement”), I have the honor to propose that the letters dated May 28, 2004 that our Governments signed in connection with the signing of the United States – Central America Free Trade Agreement on that date are equally valid and applicable with respect to the Agreement. These letters are:

1. Letter on poultry trade
2. Letter on Labor Code
3. Letter on public utility services

A copy of each letter is enclosed.

I have the further honor to propose that this letter and your letter of confirmation in reply shall constitute an agreement between our two Governments.

Sincerely,

  
Robert B. Zoellick

Enclosures

1170

*Secretaría de Estado  
Despacho Señor Ministro*



*Ministerio de Economía*

05 de agosto de 2004

El Honorable Robert B. Zoellick  
Representante Comercial de Estados Unidos  
Washington, D.C.

Estimado Embajador Zoellick:

Me complace recibir su carta con fecha del día de hoy, que lee de la siguiente manera:

“En relación con la firma del Tratado de Libre Comercio República Dominicana – Centro América – Estados Unidos (el “Tratado”), tengo el honor de proponer que las cartas fechadas 28 de mayo de 2004, que firmaron nuestros gobiernos en conexión con la firma del Tratado de Libre Comercio Centroamérica – Estados Unidos en esa misma fecha, son igualmente válidas y aplicables con respecto al Tratado. Estas cartas son:

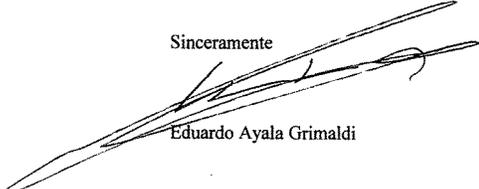
1. Carta sobre productos avícolas
2. Carta sobre el Código de Trabajo
3. Carta sobre Servicios Públicos

Se adjunta una copia de cada una de las cartas.

Tengo el honor de proponer que esta carta y su carta de confirmación en respuesta a ella constituirán un acuerdo entre nuestros dos Gobiernos.”

Tengo el honor de aceptar su propuesta en nombre de mi Gobierno y de confirmar que su carta y esta respuesta a la misma constituirán un acuerdo entre nuestros dos Gobiernos.

Sinceramente

  
Eduardo Ayala Grimaldi

1171

COURTESY TRANSLATION

August 5, 2004

The Honorable Robert B. Zoellick  
United States Trade Representative  
Washington, D.C.

Dear Ambassador Zoellick:

I am pleased to acknowledge your letter of today's date, which reads as follows:

"In connection with the signing of the Dominican Republic – Central America – United States Free Trade Agreement (the "Agreement"), I have the honor to propose that the letters dated May 28, 2004 that our Governments signed in connection with the signing of the United States – Central America Free Trade Agreement on that date are equally valid and applicable with respect to the Agreement. These letters are:

1. Letter on poultry trade
2. Letter on Labor Code
3. Letter on public utility services

A copy of each letter is enclosed.

I have the further honor to propose that this letter and your letter of confirmation in reply shall constitute an agreement between our two Governments."

I have the honor to accept your proposal on behalf of my Government and to confirm that your letter and this reply shall constitute an agreement between our two Governments.

Sincerely,

Eduardo Ayala Grimaldi

1172

EXECUTIVE OFFICE OF THE PRESIDENT  
THE UNITED STATES TRADE REPRESENTATIVE  
WASHINGTON, D.C. 20508

May 28, 2004

The Honorable Miguel Lacayo  
Minister of Economy  
San Salvador, El Salvador

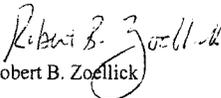
Dear Minister Lacayo:

I have the honor to confirm the following understanding reached between the delegations of the United States and El Salvador in the course of negotiations regarding the Free Trade Agreement between our Governments signed this day (the "Agreement"):

The United States and El Salvador pledge to urge their specialized agencies to implement technical and scientific work dedicated to achieving market access to make trade in poultry products under the Agreement of mutual benefit.

I have the honor to propose that this letter and your letter of confirmation in reply shall constitute an agreement between our two Governments.

Sincerely,

  
Robert B. Zoellick

1173

*Secretaría de Estado  
Despacho Señor Ministro*



*Ministerio de Economía*

28 de Mayo de 2004

Honorable Robert B. Zoellick  
Representante de Comercio de los Estados Unidos  
Washington, D.C.

Estimado Embajador Zoellick:

Tengo el agrado de reconocer vuestra carta de fecha de hoy, la cual se lee como sigue:

“Tengo el honor de confirmar el siguiente entendimiento alcanzado entre las delegaciones de los Estados Unidos y El Salvador en el curso de las negociaciones relativas al Tratado de Libre Comercio entre nuestros Gobiernos firmado este día (el “Tratado”):

“Los Estados Unidos y El Salvador se comprometen a instar a sus agencias especializadas a implementar el trabajo técnico y científico orientado a lograr un acceso a mercados para que el comercio de productos avícolas bajo este Tratado, sea de beneficio mutuo.”

Tengo el honor de proponer que esta carta y vuestra carta de confirmación en respuesta, constituyan un acuerdo entre nuestros Gobiernos.”

Tengo el honor de confirmar que mi Gobierno comparte el entendimiento referido en vuestra carta, y que dicha carta y esta carta de respuesta constituyen un acuerdo entre nuestros Gobiernos.

Sinceramente,

A handwritten signature in black ink, appearing to read "Miguel Laeayo".

Miguel Laeayo

1174

COURTESY TRANSLATION

May 28, 2004

The Honorable Robert B. Zoellick  
United States Trade Representative  
Washington, D.C.

Dear Ambassador Zoellick:

I am pleased to acknowledge your letter of today's date, which reads as follows:

“I have the honor to confirm the following understanding reached between the delegations of the United States and El Salvador in the course of negotiations regarding the Free Trade Agreement between our Governments signed this day (the “Agreement”):

The United States and El Salvador pledge to urge their specialized agencies to implement technical and scientific work dedicated to achieving market access to make trade in poultry products under the Agreement of mutual benefit.

I have the honor to propose that this letter and your letter of confirmation in reply shall constitute an agreement between our two Governments.”

I have the honor to confirm that the understanding referred to in your letter is shared by my Government, and that your letter and this reply shall constitute an agreement between our Governments.

Sincerely,

Miguel Lacayo

1175

EXECUTIVE OFFICE OF THE PRESIDENT  
THE UNITED STATES TRADE REPRESENTATIVE  
WASHINGTON, D.C. 20508

May 28, 2004

The Honorable Miguel Lacayo  
Minister of Economy  
San Salvador, El Salvador

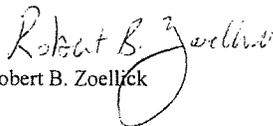
Dear Minister Lacayo:

I have the honor to confirm the following understanding reached between the delegations of the United States and El Salvador in the course of negotiations regarding Chapter Eleven (Cross-Border Trade in Services) and Annex I of the Free Trade Agreement between our Governments signed this day (the "Agreement"):

Articles 7 and 10 of the *Código de Trabajo* are not inconsistent with Chapter Eleven (Cross-Border Trade in Services) of the Agreement.

I have the honor to propose that this letter and your letter of confirmation in reply shall constitute an agreement between our two Governments.

Sincerely,

  
Robert B. Zoellick

1176

Secretaría de Estado  
Despacho Señor Ministro



Ministerio de Economía

28 de mayo de 2004

Honorable Robert B. Zoellick  
Representante de Comercio de los Estados Unidos  
Washington, D.C.

Estimado Embajador Zoellick:

Tengo el agrado de reconocer vuestra carta de fecha de hoy, la cual se lee como sigue:

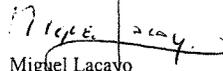
"Tengo el honor de confirmar el siguiente entendimiento alcanzado entre las delegaciones de los Estados Unidos y El Salvador en el curso de las negociaciones relativas al Capítulo Once (Comercio Transfronterizo de Servicios) y el Anexo I del Tratado de Libre Comercio entre nuestros Gobiernos firmado este día (el "Tratado"):

Los Artículos 7 y 10 del Código de Trabajo no son inconsistentes con el Capítulo Once (Comercio Transfronterizo de Servicios) del Tratado.

Tengo el honor de proponer que esta carta y vuestra carta de confirmación en respuesta, constituyan un acuerdo entre nuestros Gobiernos."

Tengo el honor de confirmar que mi Gobierno comparte el entendimiento referido en vuestra carta, y que dicha carta y esta carta de respuesta constituyen un acuerdo entre nuestros Gobiernos.

Sinceramente,

  
Miguel Lacayo

1177

COURTESY TRANSLATION

May 28, 2004

The Honorable Robert B. Zoellick  
United States Trade Representative  
Washington, D.C.

Dear Ambassador Zoellick:

I am pleased to acknowledge your letter of today's date, which reads as follows:

“I have the honor to confirm the following understanding reached between the delegations of the United States and El Salvador in the course of negotiations regarding Chapter Eleven (Cross-Border Trade in Services) and Annex I of the Free Trade Agreement between our Governments signed this day (the “Agreement”):

Articles 7 and 10 of the *Código de Trabajo* are not inconsistent with Chapter Eleven (Cross-Border Trade in Services) of the Agreement.

I have the honor to propose that this letter and your letter of confirmation in reply shall constitute an agreement between our two Governments.”

I have the honor to confirm that the understanding referred to in your letter is shared by my Government, and that your letter and this reply shall constitute an agreement between our Governments.

Sincerely,

Miguel Lacayo

1178

EXECUTIVE OFFICE OF THE PRESIDENT  
THE UNITED STATES TRADE REPRESENTATIVE  
WASHINGTON, D. C. 20508

May 28, 2004

The Honorable Miguel Lacayo  
Minister of Economy  
San Salvador, El Salvador

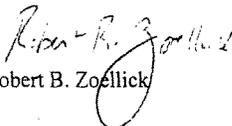
Dear Minister Lacayo:

I have the honor to confirm the following understanding reached between the delegations of the United States and El Salvador in the course of negotiations regarding Chapter Ten of the Free Trade Agreement between our Governments signed this day (the "Agreement"):

For greater certainty, nothing in the Agreement shall be construed to require a Party to privatize public utility services supplied in the exercise of governmental authority.

I have the honor to propose that this letter and your letter of confirmation in reply shall constitute an agreement between our two Governments.

Sincerely,

  
Robert B. Zoellick

1179

*Secretaría de Estado  
Despacho Señor Ministro*



*Ministerio de Economía*

28 de Mayo de 2004

Honorable Robert B. Zoellick  
Representante de Comercio de los Estados Unidos  
Washington, D.C.

Estimado Embajador Zoellick:

Tengo el agrado de reconocer vuestra carta de fecha de hoy, la cual se lee como sigue:

“Tengo el honor de confirmar el siguiente entendimiento alcanzado entre las delegaciones de los Estados Unidos y El Salvador en el curso de las negociaciones relativas al Capítulo Diez del Tratado de Libre Comercio entre nuestros Gobiernos firmado este día (el “Tratado”):

Para mayor certeza, nada en este Tratado se interpretará en el sentido de requerir a una Parte privatizar los servicios públicos suministrados en el ejercicio de facultades gubernamentales.

Tengo el honor de proponer esta carta y vuestra carta de confirmación en respuesta, constituirán un acuerdo entre nuestros Gobiernos.”

Tengo el honor de confirmar que mi Gobierno comparte el entendimiento referido en vuestra carta, y que dicha carta y esta carta de respuesta constituyen un acuerdo entre nuestros Gobiernos.

Sinceramente,

A handwritten signature in black ink, appearing to read "Miguel Lacayo".  
Miguel Lacayo

1180

COURTESY TRANSLATION

May 28, 2004

The Honorable Robert B. Zoellick  
United States Trade Representative  
Washington, D.C.

Dear Ambassador Zoellick:

I am pleased to acknowledge your letter of today's date, which reads as follows:

"I have the honor to confirm the following understanding reached between the delegations of the United States and El Salvador in the course of negotiations regarding Chapter Ten of the Free Trade Agreement between our Governments signed this day (the "Agreement"):

For greater certainty, nothing in the Agreement shall be construed to require a Party to privatize public utility services supplied in the exercise of governmental authority.

I have the honor to propose that this letter and your letter of confirmation in reply shall constitute an agreement between our two Governments."

I have the honor to confirm that the understanding referred to in your letter is shared by my Government, and that your letter and this reply shall constitute an agreement between our Governments.

Sincerely,

Miguel Lacayo

1181

EXECUTIVE OFFICE OF THE PRESIDENT  
THE UNITED STATES TRADE REPRESENTATIVE  
WASHINGTON, D.C. 20508

August 5, 2004

The Honorable Eduardo Ayala Grimaldi  
Vice Minister of Economy  
San Salvador, El Salvador

Dear Vice Minister Ayala Grimaldi:

This letter describes the tariff treatment to be applied by the United States to certain finished confectionery products under the Dominican Republic – Central America – United States Free Trade Agreement signed this day (the “Agreement”).

Finished confectionery products classified in headings 1704 and 1806 of the Harmonized Tariff Schedule of the United States (“HTSUS”) that are excluded from Additional U.S. Note 2 to chapter 17 of the HTSUS, Additional U.S. Note 3 to chapter 17 of the HTSUS, and Additional U.S. Notes 2 and 3 to chapter 18 of the HTSUS are not subject to the tariff-rate quota on sugar goods established in subparagraph 3 of Appendix I to the Schedule of the United States to Annex 3.3. Instead, such goods will be treated in accordance with the provisions of staging category A of Annex 3.3.

Additional U.S. Note 2 to chapter 17 of the HTSUS, which covers articles containing over 65 percent sugar, excludes products “prepared for marketing to the ultimate consumer in the identical form and package in which imported.”

Additional U.S. Note 3 to chapter 17 of the HTSUS, which covers articles containing over 10 percent sugar, excludes articles that are prepared for marketing to the ultimate consumer in the identical form and package in which imported provided they are “not principally of crystalline structure or not in dry amorphous form.”

Additional U.S. Notes 2 and 3 to chapter 18 of the HTSUS, which cover chocolate preparations, exclude “articles for consumption at retail as candy or confection.”

I trust that this explanation clarifies the tariff treatment to be applied by the United States to these confectionery goods under the Agreement.

Sincerely,

  
Robert B. Zoellick

1182

EXECUTIVE OFFICE OF THE PRESIDENT  
THE UNITED STATES TRADE REPRESENTATIVE  
WASHINGTON, D.C. 20508

August 5, 2004

The Honorable Eduardo Ayala Grimaldi  
Vice Minister of Economy  
San Salvador, El Salvador

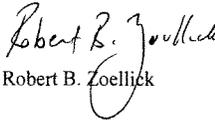
Dear Vice Minister Ayala Grimaldi:

I have the honor to refer to discussions between the delegations of the United States and El Salvador in the course of negotiations regarding Article 13.4.5(a)(iv) of the Dominican Republic – Central America – United States Free Trade Agreement signed this day (the “Agreement”) and to propose the following:

Provided that any major supplier of public telecommunications services in the territory of El Salvador does not charge rates above the rates it charged to suppliers of public telecommunications services of the United States as of December 31, 2003 for interconnection of cross-border services, the United States will forego, until the earlier of (a) the date that is two years after the date of entry into force of the Agreement, or (b) January 1, 2007, use of the dispute settlement procedures of the Agreement with respect to El Salvador’s obligation to ensure the provision of cost-oriented rates.

I have the honor to propose that this letter and your letter of confirmation in reply shall constitute an agreement between our two Governments, which shall enter into force on the date of entry into force of the Agreement.

Sincerely,

  
Robert B. Zoellick

1183

*Secretaría de Estado*  
*Despacho Señor Ministro*



*Ministerio de Economía*

05 de agosto de 2004

El Honorable Robert B. Zoellick  
Representante de Comercio de los Estados Unidos  
Washington, D.C.

Estimado Embajador Zoellick:

Tengo el agrado de reconocer vuestra carta de hoy, la cual se lee como sigue:

“Tengo el honor de referirme a las discusiones entre las delegaciones de los Estados Unidos y El Salvador, en el curso de las negociaciones relativas al Artículo 13.4.5.(a) (iv) del Tratado de Libre Comercio República Dominicana-Centroamérica-Estados Unidos firmado este día (el “Tratado”) y proponemos lo siguiente:

Siempre que cualquier proveedor dominante de servicios públicos de telecomunicaciones en el territorio de El Salvador no cobre las tarifas por encima de las tarifas cobradas a los proveedores de servicios públicos de telecomunicaciones de los Estados Unidos al 31 de diciembre de 2003, por servicios de interconexión transfronteriza, los Estados Unidos renunciará, hasta que ocurra el primero de (a) dos años posteriores a la fecha de entrada en vigor del Tratado, o (b) el 1 de enero de 2007, a utilizar los procedimientos de solución de controversias del Tratado con respecto a la obligación de El Salvador de asegurar la provisión de tarifas basadas en costos.

Tengo el honor de proponer que esta carta y vuestra carta de confirmación en respuesta, constituyan un acuerdo entre nuestros Gobiernos, las cuales entrarán en vigor en la fecha de entrada en vigor este Tratado.”

Tengo el honor de aceptar su propuesta en nombre de mi Gobierno y confirmar que su carta y esta respuesta constituyen un acuerdo entre nuestros Gobiernos, las cuales entrarán en vigor en la fecha de entrada en vigor este Tratado.

Sinceramente,



Eduardo Ayala Grimaldi

1184

COURTESY TRANSLATION

August 5, 2004

The Honorable Robert B. Zoellick  
United States Trade Representative  
Washington, D.C.

Dear Ambassador Zoellick:

I am pleased to acknowledge your letter of today's date, which reads as follows:

"I have the honor to refer to discussions between the delegations of the United States and El Salvador in the course of negotiations regarding Article 13.4.5(a)(iv) of the Dominican Republic – Central America – United States Free Trade Agreement signed this day (the "Agreement") and to propose the following:

Provided that any major supplier of public telecommunications services in the territory of El Salvador does not charge rates above the rates it charged to suppliers of public telecommunications services of the United States as of December 31, 2003 for interconnection of cross-border services, the United States will forego, until the earlier of (a) the date that is two years after the date of entry into force of the Agreement, or (b) January 1, 2007, use of the dispute settlement procedures of the Agreement with respect to El Salvador's obligation to ensure the provision of cost-oriented rates.

I have the honor to propose that this letter and your letter of confirmation in reply shall constitute an agreement between our two Governments, which shall enter into force on the date of entry into force of the Agreement."

I have the honor to accept your proposal on behalf of my Government and to confirm that your letter and this reply shall constitute an agreement between our Governments, which shall enter into force on the date of entry into force of the Agreement.

Sincerely,

Eduardo Ayala Grimaldi

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**Tab E**

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EXECUTIVE OFFICE OF THE PRESIDENT  
THE UNITED STATES TRADE REPRESENTATIVE  
WASHINGTON, D. C. 20508

August 5, 2004

The Honorable Eduardo Sperisen Yurt  
Vice Minister of Integration and Foreign Trade  
Guatemala City, Guatemala

Dear Vice Minister Sperisen:

In connection with the signing of the Dominican Republic – Central America – United States Free Trade Agreement (the “Agreement”), I have the honor to propose that the letters dated May 28, 2004 that our Governments signed in connection with the signing of the United States – Central America Free Trade Agreement on that date are equally valid and applicable with respect to the Agreement. These letters are:

1. Letter on tariff treatment of certain confectionery products
2. Letter on insurance branching commitments
3. Letter on establishment of foreign financial institutions in the United States

A copy of each letter is enclosed.

I have the further honor to propose that this letter and your letter of confirmation in reply shall constitute an agreement between our two Governments.

Sincerely,

  
Robert B. Zoellick

Enclosures

1188



República de Guatemala  
Ministerio de Economía

5 de agosto de 2004

Honorable Robert B. Zoellick  
Representante de Comercio de los Estados Unidos  
Washington, D.C.

Estimado Embajador Zoellick:

Estoy complacido de acusar recibo de su carta del día de hoy, que dice lo siguiente:

“Con relación a la suscripción del Tratado de Libre Comercio República Dominicana – Centroamérica-Estados Unidos (el “Tratado”), tengo el honor de proponer que las cartas, con fecha de 28 de mayo, que nuestros Gobiernos suscribieron en conexión con la firma del Tratado de Libre Comercio Estados Unidos – Centroamérica en la misma fecha, sean igualmente válidas y aplicables con respecto al Acuerdo. Estas cartas son:

1. Carta sobre el tratamiento arancelario para algunos productos de confitería
2. Carta sobre compromisos de sucursales de aseguradores
3. Carta sobre el establecimiento de instituciones financieras extranjeras en los Estados Unidos.

Se adjunta una copia de cada carta.

Tengo el honor de proponer que esta carta y su carta de confirmación en respuesta, constituirá un acuerdo entre nuestros dos Gobiernos.”

Tengo el honor de aceptar su propuesta en nombre de mi Gobierno y confirmar que su carta y esta respuesta constituirán un acuerdo entre nuestros dos Gobiernos.

Atentamente,

A handwritten signature in black ink, appearing to read 'Eduardo Sperisen Yurt', written over a horizontal line.

Eduardo Sperisen Yurt

1189

COURTESY TRANSLATION

August 5, 2004

The Honorable Robert B. Zoellick  
United States Trade Representative  
Washington, D.C.

Dear Ambassador Zoellick:

I am pleased to acknowledge your letter of today's date, which reads as follows:

"In connection with the signing of the Dominican Republic – Central America – United States Free Trade Agreement (the "Agreement"), I have the honor to propose that the letters dated May 28, 2004 that our Governments signed in connection with the signing of the United States – Central America Free Trade Agreement on that date are equally valid and applicable with respect to the Agreement. These letters are:

1. Letter on tariff treatment of certain confectionery products
2. Letter on insurance branching commitments
3. Letter on establishment of foreign financial institutions in the United States

A copy of each letter is enclosed.

I have the further honor to propose that this letter and your letter of confirmation in reply shall constitute an agreement between our two Governments."

I have the honor to accept your proposal on behalf of my Government and to confirm that your letter and this reply shall constitute an agreement between our two Governments.

Sincerely,

Eduardo Sperisen Yurt

1190

EXECUTIVE OFFICE OF THE PRESIDENT  
THE UNITED STATES TRADE REPRESENTATIVE  
WASHINGTON, D.C. 20508

May 28, 2004

The Honorable Marcio Cuevas  
Minister of Economy  
Guatemala City, Guatemala

Dear Minister Cuevas:

This letter describes the tariff treatment to be applied by the United States to certain finished confectionery products under the Free Trade Agreement between our Governments signed this day (the "Agreement").

Finished confectionery products classified in headings 1704 and 1806 of the Harmonized Tariff Schedule of the United States ("HTSUS") that are excluded from Additional U.S. Note 2 to chapter 17 of the HTSUS, Additional U.S. Note 3 to chapter 17 of the HTSUS, and Additional U.S. Notes 2 and 3 to chapter 18 of the HTSUS are not subject to the tariff-rate quota on sugar goods established in subparagraph 3 of Appendix I to the Schedule of the United States to Annex 3.3. Instead, such goods will be treated in accordance with the provisions of staging category A of Annex 3.3.

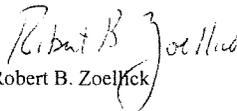
Additional U.S. Note 2 to chapter 17 of the HTSUS, which covers articles containing over 65 percent sugar, excludes products "prepared for marketing to the ultimate consumer in the identical form and package in which imported."

Additional U.S. Note 3 to chapter 17 of the HTSUS, which covers articles containing over 10 percent sugar, excludes articles that are prepared for marketing to the ultimate consumer in the identical form and package in which imported provided they are "not principally of crystalline structure or not in dry amorphous form."

Additional U.S. Notes 2 and 3 to chapter 18 of the HTSUS, which cover chocolate preparations, exclude "articles for consumption at retail as candy or confection."

I trust that this explanation clarifies the tariff treatment to be applied by the United States to these confectionery goods under the Agreement.

Sincerely,

  
Robert B. Zoellick

1191

EXECUTIVE OFFICE OF THE PRESIDENT  
THE UNITED STATES TRADE REPRESENTATIVE  
WASHINGTON, D.C. 20508

May 28, 2004

The Honorable Marcio Cuevas  
Minister of Economy  
Guatemala City, Guatemala

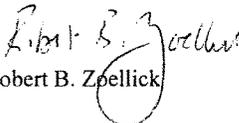
Dear Minister Cuevas:

I have the honor to confirm the following understanding reached between the delegations of the United States and Guatemala in the course of negotiations regarding the Insurance entry in Section A of Guatemala's Schedule to Annex III (Financial Services) of the Free Trade Agreement between our Governments signed this day (the "Agreement"):

Insurance branches, when permitted, shall be subject to the requirements established in Guatemala's insurance legislation.

I have the honor to propose that this letter and your letter of confirmation in reply shall constitute an agreement between our two Governments.

Sincerely,

  
Robert B. Zoellick

1192



República de Guatemala  
Ministerio de Economía

28 de mayo 2004

Honorable Robert B. Zoellick  
Representante de Comercio de Estados Unidos  
Washington, D.C.

Estimado Embajador Zoellick:

Estoy complacido de acusar recibo de su nota del día de hoy, que dice lo siguiente:

“Tengo el honor de confirmar el siguiente entendimiento entre las delegaciones de Estados Unidos y Guatemala, en el curso de las negociaciones acerca del tema de Seguros en la Sección A de la lista de Guatemala al anexo III (Servicios Financieros) del Tratado de Libre Comercio entre nuestros Gobiernos, firmado éste día (El “Tratado”).

Quando se permita el establecimiento de sucursales de Aseguradoras extranjeras en Guatemala, éstas deberán sujetarse a los requisitos establecidos en la legislación guatemalteca.

Tengo el honor de proponer que esta nota y su carta de respuesta en confirmación deberá constituir un acuerdo entre nuestros dos Gobiernos.”

Tengo el honor de confirmar el entendimiento referido en su nota que es compartida por mi Gobierno, y que la misma y su respuesta deberán constituir un acuerdo entre nuestros Gobiernos.

Atentamente,

A handwritten signature in black ink, appearing to read 'Marcio Cuevas', written over a horizontal line.

Marcio Cuevas  
Ministro de Economía

1193

COURTESY TRANSLATION

May 28, 2004

The Honorable Robert B. Zoellick  
United States Trade Representative  
Washington, D.C.

Dear Ambassador Zoellick:

I am pleased to acknowledge your letter of today's date, which reads as follows:

"I have the honor to confirm the following understanding reached between the delegations of the United States and Guatemala in the course of negotiations regarding the Insurance entry in Section A of Guatemala's Schedule to Annex III (Financial Services) of the Free Trade Agreement between our Governments signed this day (the "Agreement"):

Insurance branches, when permitted, shall be subject to the requirements established in Guatemala's insurance legislation.

I have the honor to propose that this letter and your letter of confirmation in reply shall constitute an agreement between our two Governments."

I have the honor to confirm that the understanding referred to in your letter is shared by my Government, and that your letter and this reply shall constitute an agreement between our Governments.

Sincerely,

Marcio Cuevas

1194

EXECUTIVE OFFICE OF THE PRESIDENT  
THE UNITED STATES TRADE REPRESENTATIVE  
WASHINGTON, D.C. 20508

May 28, 2004

The Honorable Marcio Cuevas  
Minister of Economy  
Guatemala City, Guatemala

Dear Minister Cuevas:

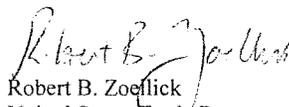
During the course of negotiations regarding Chapter Twelve (Financial Services) of the Free Trade Agreement between our Governments signed this day (the "Agreement"), the delegation of Guatemala expressed interest in the ability of Guatemalan financial institutions to establish operations in the United States.

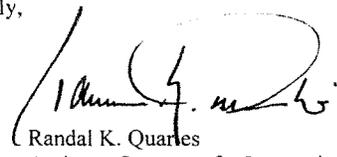
The United States takes note of Guatemala's interest and affirms its policy of maintaining open markets in financial services. A large number of foreign financial institutions have established operations in the United States. In particular, a large number of foreign banks and insurance companies have offices in the United States and foreign banks and insurance companies, including Guatemalan banks and insurance companies, have the opportunity to establish operations in every state, provided that such entities meet the relevant prudential criteria.

Along with open markets, strong regulatory and supervisory standards promote a robust financial system. In this regard, the Agreement does not restrict the ability of the United States to apply prudential measures governing the supply of financial services in the United States, including with respect to the establishment of financial institutions in the United States. The United States remains ready to help Guatemalan financial institutions to continue making progress toward meeting federal and state prudential requirements through technical assistance to Guatemala concerning the regulation and supervision of financial institutions.

I trust that this letter provides further evidence of the importance the United States attaches to open markets and its commitment to maintaining an open environment for foreign financial institutions.

Sincerely,

  
Robert B. Zoellick  
United States Trade Representative

  
Randal K. Quarles  
Assistant Secretary for International Affairs  
U.S. Department of the Treasury

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**Tab F**

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EXECUTIVE OFFICE OF THE PRESIDENT  
THE UNITED STATES TRADE REPRESENTATIVE  
WASHINGTON, D. C. 20508

August 5, 2004

The Honorable Norman Garcia  
Minister of Industry and Trade  
Tegucigalpa, Honduras

Dear Minister Garcia:

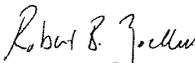
In connection with the signing of the Dominican Republic – Central America – United States Free Trade Agreement (the “Agreement”), I have the honor to propose that the letters dated May 28, 2004 that our Governments signed in connection with the signing of the United States – Central America Free Trade Agreement on that date are equally valid and applicable with respect to the Agreement. These letters are:

1. Letter on nurses
2. Letter on textile fabrics study

A copy of each letter is enclosed.

I have the further honor to propose that this letter and your letter of confirmation in reply shall constitute an agreement between our two Governments.

Sincerely,

  
Robert B. Zoellick

Enclosures

1198



*República de Honduras*  
*Secretaría de Industria y Comercio*

5 de agosto de 2004

El Honorable Robert B. Zoellick  
Representante Comercial de Estados Unidos  
Washington, DC

Estimado Embajador Zoellick:

Me complace recibir su carta con fecha del día de hoy, que lee de la siguiente manera:

“En relación con la firma del Tratado de Libre Comercio República Dominicana-Centroamérica-Estados Unidos (el “Tratado”), tengo el honor de proponer que las cartas fechadas 28 de mayo de 2004, que firmaron nuestros gobiernos en conexión con la firma del Tratado de Libre Comercio Centroamérica-Estados Unidos en esa misma fecha, son igualmente válidas y aplicables con respecto al Tratado. Estas cartas son:

1. Carta sobre las enfermeras
2. Carta sobre el estudio de ciertas telas textiles

Se adjunta una copia de cada una de las cartas.

Tengo el honor de proponer que esta carta y su carta de confirmación en respuesta a ella constituirán un acuerdo entre nuestros dos Gobiernos.”

Tengo el honor de aceptar su propuesta en nombre de mi Gobierno y de confirmar que su carta y esta respuesta a la misma constituirán un acuerdo entre nuestros dos Gobiernos.

Sinceramente,

Norman García



1199

COURTESY TRANSLATION

August 5, 2004

The Honorable Robert B. Zoellick  
United States Trade Representative  
Washington, D.C.

Dear Ambassador Zoellick:

I am pleased to acknowledge your letter of today's date, which reads as follows:

“In connection with the signing of the Dominican Republic – Central America – United States Free Trade Agreement (the “Agreement”), I have the honor to propose that the letters dated May 28, 2004 that our Governments signed in connection with the signing of the United States – Central America Free Trade Agreement on that date are equally valid and applicable with respect to the Agreement. These letters are:

1. Letter on nurses
2. Letter on textile fabrics study

A copy of each letter is enclosed.

I have the further honor to propose that this letter and your letter of confirmation in reply shall constitute an agreement between our two Governments.”

I have the honor to accept your proposal on behalf of my Government and to confirm that your letter and this reply shall constitute an agreement between our two Governments.

Sincerely,

Norman Garcia

1200

EXECUTIVE OFFICE OF THE PRESIDENT  
THE UNITED STATES TRADE REPRESENTATIVE  
WASHINGTON, D.C. 20508

May 28, 2004

The Honorable Norman Garcia  
Minister of Industry and Trade  
Tegucigalpa, Honduras

Dear Minister Garcia:

I have the honor to confirm the following understanding reached between the delegations of the United States and Honduras in the course of negotiations regarding Chapter Eleven (Cross-Border Trade in Services) of the Free Trade Agreement between our Governments signed this day (the "Agreement"):

The requirement under Honduran law that no more than five percent of the nurses employed at a given medical facility may be foreign nationals is not inconsistent with the Market Access obligation (Article 11.4) of Chapter Eleven (Cross-Border Trade in Services).

I have the honor to propose that this letter and your letter of confirmation in reply shall constitute an agreement between our two Governments.

Sincerely,

  
Robert B. Zoellick

1201



*República de Honduras*  
*Secretaría de Industria y Comercio*

28 de mayo 2004

Honorable Robert B. Zoellick  
Representante Comercial de los Estados Unidos  
Washington, D.C.

Estimado Embajador Zoellick:

Tengo el agrado de tener conocimiento de su carta con fecha de hoy, que dice lo siguiente:

“Tengo el honor de confirmarle el siguiente entendimiento alcanzado entre las delegaciones de los Estados Unidos y Honduras en el curso de las negociaciones en relación al Capítulo Once (Comercio Transfronterizo de Servicios) del Tratado de Libre Comercio entre nuestros Gobiernos, firmado este día (el “Acuerdo”):

El requisito bajo la ley de Honduras de que no más del cinco por ciento de las enfermeras empleadas en un centro hospitalario pueden ser nacionales extranjeros no es inconsistente con la obligación de Acceso a Mercado (Artículo 11.4) del Capítulo Once (Comercio Transfronterizo en Servicios).

Tengo el honor de proponer que esta carta y su carta de confirmación en respuesta, constituyan un acuerdo entre nuestros Gobiernos.”

Tengo el honor de confirmar que mi Gobierno comparte el entendimiento referido en nuestra carta, y que dicha carta y esta carta de respuesta constituyen un acuerdo entre nuestros Gobiernos.

Sinceramente,

  
Norman García



1202

COURTESY TRANSLATION

The Honorable Robert B. Zoellick  
United States Trade Representative  
Washington, D.C.

Dear Ambassador Zoellick:

I am pleased to acknowledge your letter of today's date, which reads as follows:

"I have the honor to confirm the following understanding reached between the delegations of the United States and Honduras in the course of negotiations regarding Chapter Eleven (Cross-Border Trade in Services) of the Free Trade Agreement between our Governments signed this day (the "Agreement"):

The requirement under Honduran law that no more than five percent of the nurses employed at a given medical facility may be foreign nationals is not inconsistent with the Market Access obligation (Article 11.4) of Chapter Eleven (Cross-Border Trade in Services).

I have the honor to propose that this letter and your letter of confirmation in reply shall constitute an agreement between our two Governments."

I have the honor to confirm that the understanding referred to in your letter is shared by my Government, and that your letter and this reply shall constitute an agreement between our Governments.

Sincerely,

Norman Garcia

1203

EXECUTIVE OFFICE OF THE PRESIDENT  
THE UNITED STATES TRADE REPRESENTATIVE  
WASHINGTON, D.C. 20508

May 28, 2004

The Honorable Norman Garcia  
Minister of Industry and Trade  
Tegucigalpa, Honduras

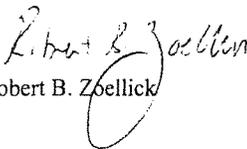
Dear Minister Garcia:

I have the honor to confirm the following understanding reached between the delegations of the United States and Honduras in the course of negotiations regarding Chapter Three, Section G (Textiles and Apparel) of the Free Trade Agreement between our Governments signed this day (the "Agreement"):

The United States will conduct an investigation to determine whether certain shirting fabrics are available in commercial quantities in a timely matter in the territory of any of the Parties to the Agreement, and will make the results of the investigation available to the Parties before the date of entry into force of the Agreement.

I have the honor to propose that this letter and your letter of confirmation in reply shall constitute an agreement between our two Governments.

Sincerely,

  
Robert B. Zoellick

1204



*República de Honduras*  
*Secretaría de Estado en los Despachos de Industria y Comercio*

28 de mayo de 2004

Honorable Robert B. Zoellick  
Representante Comercial de los Estados Unidos  
Washington, D.C.

Estimado Embajador Zoellick:

Tengo el agrado de tener conocimiento de su carta con fecha de hoy, que dice lo siguiente:

“Tengo el honor de confirmarle el siguiente entendimiento alcanzado entre las delegaciones de los Estados Unidos y Honduras en el curso de las negociaciones en relación al Capítulo Tres, Sección G (Textiles y Vestido) del Tratado de Libre Comercio entre nuestros Gobiernos, firmado este día (el “Acuerdo”):

Los Estados Unidos realizarán una investigación para determinar si ciertos tejidos para camisería están disponibles en cantidades comerciales de manera oportuna en el territorio de cualquiera de las Partes de este Tratado y harán disponibles a las Partes los resultados de la investigación antes de la fecha de entrada en vigor del Acuerdo.

Tengo el honor de proponer que esta carta y su carta de confirmación en respuesta, constituyan un acuerdo entre nuestros Gobiernos.”

Tengo el honor de confirmar que el entendimiento al que se hace referencia en su carta es compartido por mi Gobierno y que su carta y esta respuesta constituyan un acuerdo entre nuestros Gobiernos.

Sinceramente,

Norman García

A handwritten signature in black ink, appearing to read 'Norman García', written over a horizontal line.

1205

COURTESY TRANSLATION

May 28, 2004

The Honorable Robert B. Zoellick  
United States Trade Representative  
Washington, D.C.

Dear Ambassador Zoellick:

I am pleased to acknowledge your letter of today's date, which reads as follows:

"I have the honor to confirm the following understanding reached between the delegations of the United States and Honduras in the course of negotiations regarding Chapter Three, Section G (Textiles and Apparel) of the Free Trade Agreement between our Governments signed this day (the "Agreement"):

The United States will conduct an investigation to determine whether certain shirting fabrics are available in commercial quantities in a timely matter in the territory of any of the Parties to the Agreement, and will make the results of the investigation available to the Parties before the date of entry into force of the Agreement.

I have the honor to propose that this letter and your letter of confirmation in reply shall constitute an agreement between our two Governments."

I have the honor to confirm that the understanding referred to in your letter is shared by my Government, and that your letter and this reply shall constitute an agreement between our Governments.

Sincerely,

Norman Garcia



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**Tab G**

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EXECUTIVE OFFICE OF THE PRESIDENT  
THE UNITED STATES TRADE REPRESENTATIVE  
WASHINGTON, D.C. 20508

August 5, 2004

The Honorable Mario Arana Sevilla  
Minister of Development, Industry and Commerce  
Managua, Nicaragua

Dear Minister Arana:

I have the honor to refer to discussions between the delegations of the United States and Nicaragua in the course of negotiations regarding paragraph 7 of Section F: Nicaragua of Annex 12.9.2 of the Dominican Republic – Central America – United States Free Trade Agreement signed this day (the “Agreement”) and to propose the following:

Nicaragua may establish the following requirements, among others:

- (a) that capital and reserves that foreign insurance companies assign to their branches must be effectively transferred and converted into domestic currency in conformity with Nicaraguan law;
- (b) that the increases of capital and reserves that do not come from capitalization of other reserves will have the same treatment as initial capital and reserves;
- (c) that in the transactions between a branch and its parent or other related companies, each shall be considered as independent entities;
- (d) that the branch owners or shareholders meet the solvency and integrity requirements established in Nicaragua’s insurance legislation; and
- (e) that branches of foreign insurance companies that operate in Nicaragua may transfer liquid profits only if they do not have an investment deficit in their technical reserves and risk patrimony, nor a deficit of risk patrimony.

I have the honor to propose that this letter and your letter of confirmation in reply shall constitute an agreement between our two Governments, which shall enter into force on the date of entry into force of the Agreement.

Sincerely,

  
Robert B. Zdellick

1210



MINISTERIO DE FOMENTO, INDUSTRIA Y COMERCIO

MARIO ARANA SEVILLA  
MINISTRO

5 de Agosto de 2004

*Estimado Embajador Zoellick:*

*Me complace acusar recibo de su carta del día de hoy, la cual se lee de la siguiente manera:*

*Tengo el agrado de referirme a las discusiones entre la delegación de los Estados Unidos y Nicaragua en el curso de las negociaciones relacionadas al párrafo 7 de la Sección F: Nicaragua del Anexo 12.9.2 del Tratado de Libre Comercio entre República Dominicana-Centroamérica-Estados Unidos, firmado este día (el "Tratado") y para proponer lo siguiente:*

- a.) Que el capital y las reservas que compañías aseguradoras extranjeras asignen a sus sucursales deben de ser efectivamente transferidas y convertidas a moneda nacional de conformidad con la Ley Nicaragüense;*
- b.) Que el incremento de capital y reservas que no provengan de la capitalización de otras reservas tendrán el mismo tratamiento como si fueran capitales y reservas iniciales;*
- c.) Que en las transacciones entre una sucursal y su casa matriz u otras compañías relacionadas, cada una deberá considerarse como una entidad o compañía independiente;*
- d.) Que los dueños de las sucursales o accionistas cumplan con los requisitos de integridad y solvencia que las legislación nicaragüense establece en materia de seguros; y*
- e.) Que las sucursales de compañías aseguradoras extranjeras que operen en Nicaragua pueden transferir sus márgenes de ganancias solamente si las mismas no tienen un déficit de inversión en sus reservas técnicas y patrimonio riesgo, no cuando tengan un déficit de patrimonio riesgo.*

1211



MINISTERIO DE FOMENTO, INDUSTRIA Y COMERCIO

*Tengo el honor de aceptar su propuesta en nombre de mi Gobierno y confirmar que su carta y esta respuesta constituirán un acuerdo entre nuestros Gobiernos, el cual entrará en vigencia en la fecha de entrada de vigor del Tratado.*

*Honorable Robert B. Zoellick  
Representante Comercial de Estados Unidos  
Washington D.C.*

cc.: Archivo

MAS/

COURTESY TRANSLATION

August 5, 2004

The Honorable Robert B. Zoellick  
United States Trade Representative  
Washington, D.C.

Dear Ambassador Zoellick:

I am pleased to acknowledge your letter of today's date, which reads as follows:

"I have the honor to refer to discussions between the delegations of the United States and Nicaragua in the course of negotiations regarding paragraph 7 of Section F: Nicaragua of Annex 12.9.2 of the Dominican Republic – Central America – United States Free Trade Agreement signed this day (the "Agreement") and to propose the following:

Nicaragua may establish the following requirements, among others:

- (a) that capital and reserves that foreign insurance companies assign to their branches must be effectively transferred and converted into domestic currency in conformity with Nicaraguan law;
- (b) that the increases of capital and reserves that do not come from capitalization of other reserves will have the same treatment as initial capital and reserves;
- (c) that in the transactions between a branch and its parent or other related companies, each shall be considered as independent entities;
- (d) that the branch owners or shareholders meet the solvency and integrity requirements established in Nicaragua's insurance legislation; and
- (e) that branches of foreign insurance companies that operate in Nicaragua may transfer liquid profits only if they do not have an investment deficit in their technical reserves and risk patrimony, nor a deficit of risk patrimony.

I have the honor to propose that this letter and your letter of confirmation in reply shall constitute an agreement between our two Governments, which shall enter into force on the date of entry into force of the Agreement."

1213

I have the honor to accept your proposal on behalf of my Government and to confirm that your letter and this reply shall constitute an agreement between our two Governments, which shall enter into force on the date of entry into force of the Agreement.

Sincerely,

Mario Arana Sevilla

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