Council of the European Union

Brussels, 5 July 2023
(OR. en)

Interinstitutional File: 2023/0259(NLE)

11506/23
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POLCOM 152
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PROPOSAL

From:	Secretary-General of the European Commission, signed by Ms Martine DEPREZ, Director
date of receipt:	5 July 2023
To:	Ms Thérèse BLANCHET, Secretary-General of the Council of the European Union
No. Cion doc.:	COM(2023) 435 final - ANNEX 1 - PART 1/3
Subject:	ANNEX to the Proposal for a Council Decision on the conclusion, on behalf of the European Union, of the Interim Agreement on Trade between the European Union and the Republic of Chile

Delegations will find attached document COM(2023) 435 final - ANNEX 1 - PART 1/3.

Encl.: COM(2023) 435 final - ANNEX 1 - PART 1/3

EUROPEAN
COMMISSION

Brussels, 5.7.2023
COM(2023) 435 final

ANNEX 1 – PART 1/3

ANNEX

to the

Proposal for a Council Decision

on the conclusion, on behalf of the European Union, of the Interim Agreement on Trade between the European Union and the Republic of Chile

INTERIM AGREEMENT ON TRADE
BETWEEN THE EUROPEAN UNION, OF THE ONE PART,
AND THE REPUBLIC OF CHILE, OF THE OTHER PART

PREAMBLE

THE EUROPEAN UNION,

of the one part,

and

THE REPUBLIC OF CHILE, hereinafter referred to as "Chile",

of the other part,

hereinafter jointly referred to as "the Parties",

CONSIDERING the strong cultural, political, economic and cooperation ties which unite them;

MINDFUL of the significant contribution to strengthen these ties made by the Association Agreement;

EMPHASISING the comprehensive nature of their relationship;

CONSIDERING their commitment to modernise the Association Agreement to reflect new political and economic realities and the advancements made in their partnership;

ACKNOWLEDGING the importance of a strong and effective multilateral system, based upon international law, in preserving peace, preventing conflicts and strengthening international security and in tackling common challenges;

AFFIRMING their commitment to strengthen cooperation on bilateral, regional and global issues of common concern and to use all available tools to promote activities designed to develop an active and reciprocal international cooperation;

RECOGNISING the interim character of this Agreement, which will strengthen bilateral economic and trade relations between the Parties, which will cease to have effect and be replaced by the Advanced Framework Agreement upon the entry into force of that Agreement;

WELCOMING the adoption and calling for the implementation of the Sendai Framework for Disaster Risk Reduction 2015 – 2030, adopted at the Third UN World Conference in Sendai on 18 March 2015, the Addis Ababa Action Agenda of the Third International Conference on Financing for Development, adopted at Addis Ababa on 13-16 July 2015, the Resolution 70/1 adopted by the General Assembly of the United Nations on 25 September 2015 containing the outcome document "Transforming our world: the 2030 Agenda for Sustainable Development and the 17 Sustainable Development Goals" ("2030 Agenda"), the Paris Agreement under the United Nations Framework Convention on Climate Change, done at Paris on 12 December 2015 ("Paris Agreement"), the New Urban Agenda, adopted during the UN Conference on Housing and Sustainable Urban Development (Habitat III) in Quito on 20 October 2016 ("New Urban Agenda") and the World Humanitarian Summit Commitments, adopted at the World Humanitarian Summit in Istanbul on 23-24 May 2016;

REAFFIRMING their commitment to promote sustainable development in its economic, social and environmental dimensions, their commitment to the development of international trade in such a way as to contribute to sustainable development in these three dimensions, which are recognised as deeply interlinked and mutually reinforcing, and their commitment to promote the achievement of the objectives of the 2030 Agenda;

REAFFIRMING their commitment to expand and diversify their trade relations in conformity with the WTO Agreement and the specific objectives and provisions set out in this Agreement;

DESIRING to strengthen their economic relations, in particular their trade and investment relations, by strengthening and improving market access, and contributing to economic growth, while remaining mindful of the need to raise awareness of the economic and social impact of environmental damage, unsustainable patterns of production and consumption and their associated impact on human well-being;

CONVINCED that this Agreement will create a climate conducive to the growth of sustainable economic relations between them, in particular in the trade and investment sectors which are essential to the realisation of economic and social development, technological innovation and modernisation;

RECOGNISING that the provisions of this Agreement are intended to stimulate mutually beneficial economic activity without undermining the right of each Party to regulate in the public interest within its territory;

RECOGNISING the close relationship between innovation and trade, as well as the relevance of innovation for economic growth and social development; and

RECALLING the importance of the various agreements signed by the European Union and Chile, which have fostered cooperation across the sectoral areas of the relationship between the Parties, and increased trade and investment,

HAVE AGREED AS FOLLOWS:

CHAPTER 1

GENERAL PROVISIONS

ARTICLE 1.1

Establishment of a free trade area

The Parties hereby establish a free trade area, in conformity with Article XXIV of GATT 1994 and Article V of GATS.

ARTICLE 1.2

Objectives

The objectives of this Agreement are:

(a) the expansion and the diversification of trade in goods, in conformity with Article XXIV of GATT 1994, between the Parties through the reduction or elimination of tariff and non-tariff barriers to trade;

(b) the facilitation of trade in goods, in particular through the provisions regarding customs and trade facilitation, standards, technical regulations, conformity assessment procedures, and sanitary and phytosanitary measures, while preserving the right of each Party to regulate to achieve public policy objectives;

(c) the liberalisation of trade in services, in conformity with Article V of GATS;

(d) the development of an economic climate which is conducive to increased investment flows, the improvement of the conditions of establishment on the basis of the principle of non-discrimination while preserving the right of each Party to adopt and enforce measures necessary to pursue legitimate policy objectives;

(e) the facilitation of trade and investment between the Parties, including through the free transfer of current payments and capital movements;

(f) the effective and reciprocal opening of public procurement markets of the Parties;

(g) the promotion of innovation and creativity by ensuring the adequate and effective protection of intellectual property rights in accordance with the international obligations applicable between the Parties;

(h) the promotion of conditions fostering undistorted competition, in particular with regard to trade and investment between the Parties;

(i) the development of international trade in a manner that contributes to sustainable development in its economic, social and environmental dimensions; and

(j) the establishment of an effective, fair and predictable dispute settlement mechanism to resolve disputes regarding the interpretation and application of this Agreement.

ARTICLE 1.3

Definitions of general application

For the purposes of this Agreement:

(a) "Advanced Framework Agreement" means the Advanced Framework Agreement between the European Union and its Member States, of the one part, and the Republic of Chile, of the other part, to be concluded;

(b) "Agreement on Agriculture" means the Agreement on Agriculture in Annex 1A to the WTO Agreement;

(c) "Anti-Dumping Agreement" means the Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade in Annex 1A to the WTO Agreement;

(d) "Association Agreement" means the Agreement establishing an association between the European Community and its Member States, of the one part, and the Republic of Chile, of the other part, signed in Brussels on 18 November 2002;

(e) "customs duty" means any duty or charge of any kind imposed on or in connection with the importation of a good, not including any:

(i) charge equivalent to an internal tax imposed in accordance with Article 2.4 of this Agreement;

(ii) anti-dumping, special safeguard, countervailing or safeguard duty applied in conformity with GATT 1994, the Anti-Dumping Agreement, the Agreement on Agriculture, the SCM Agreement and the Safeguards Agreement, as appropriate; and

(iii) fee or other charge imposed on or in connection with the importation that is limited in amount to the approximate cost of services rendered;

(f) "CPC" means the Provisional Central Product Classification (Statistical Papers Series M No.77, Department of International Economic and Social Affairs, Statistical Office of the United Nations, New York, 1991);

(g) "days" means calendar days, including weekends and holidays;

(h) "existing" means in effect on the date of entry into force of this Agreement;

(i) "GATS" means the General Agreement on Trade in Services in Annex 1B to the WTO Agreement;

(j) "GATT 1994" means the General Agreement on Tariffs and Trade 1994 in Annex 1A to the WTO Agreement;

(k) "good of a Party" means a domestic good as that is understood in GATT 1994, and includes originating goods of that Party;

(l) "Harmonized System" or "HS" means the Harmonized Commodity Description and Coding System, including its General Rules of Interpretation, Section Notes, Chapter Notes and Subheading Notes, developed by the World Customs Organization;

(m) "heading" means the first four digits in the tariff classification number under the Harmonized System;

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

(o) "measure" means any measure in the form of a law, regulation, rule, procedure, decision, administrative action, requirement, practice or any other form;

(p) "measure of a Party" means any measure adopted or maintained by:[1]

(i) governments and authorities at all levels;

(ii) non-governmental bodies in the exercise of powers delegated by governments or authorities at all levels[2]; or

(iii) any entity which is in fact acting on the instructions of or under the direction or the control of a Party with regard to the measure[3];

(q) "Member State" means a Member State of the European Union;

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1 For greater certainty, "measure" includes omissions of a Party to take actions that are necessary to fulfil its obligations under this Agreement.

2 For greater certainty, if a Party claims that an entity is acting as referred to in subparagraph (iii), that Party bears the burden of proof and at least must provide solid indicia.

3 For the purposes of Chapters 10 to 20, the definition of a "natural person" also includes a natural person permanently residing in the Republic of Latvia who is not a citizen of the Republic of Latvia or any other State but who is entitled, under the law of the Republic of Latvia, to receive a non-citizen passport.

(r) "natural person" means:

(i) for the European Union, a national of a Member State, according to its law[1]; and

(ii) for Chile, a national of Chile, according to its law;

(s) "originating good" means a good qualifying under the rules of origin set out in Chapter 3;

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

(u) "personal data" means any information relating to an identified or identifiable natural person;

(v) "Safeguards Agreement" means the Agreement on Safeguards in Annex 1A to the WTO Agreement;

(w) "sanitary or phytosanitary measure" means any measure referred to in paragraph 1 of Annex A to the SPS Agreement;

(x) "SCM Agreement" means the Agreement on Subsidies and Countervailing Measures in Annex 1A to the WTO Agreement;

[1] For the purposes of Chapters 10 to 20, the definition of a "natural person" also includes a natural person permanently residing in the Republic of Latvia who is not a citizen of the Republic of Latvia or any other State but who is entitled, under the law of the Republic of Latvia, to receive a non-citizen passport.

(y) "SPS Agreement" means the Agreement on the Application of Sanitary and Phytosanitary Measures in Annex 1A to the WTO Agreement;

(z) "TBT Agreement" means the Agreement on Technical Barriers to Trade in Annex 1 to the WTO Agreement;

(aa) "third country" means a country or territory outside the territorial scope of application of this Agreement as set out in Article 33.8;

(ab) "TRIPS Agreement" means the Agreement on Trade-Related Aspects of Intellectual Property Rights in Annex 1C to the WTO Agreement;

(ac) "Vienna Convention on the Law of Treaties" means the Vienna Convention on the Law of Treaties, done at Vienna on 23 May 1969; and

(ad) "WTO Agreement" means the Marrakesh Agreement Establishing the World Trade Organization, done at Marrakesh on 15 April 1994.

ARTICLE 1.4

Relation to the WTO Agreement and other existing agreements

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

2. Nothing in this Agreement shall be construed as requiring either Party to act in a manner which is inconsistent with its obligations under the WTO Agreement.

3. In the event of any inconsistency between this Agreement and any existing agreement other than the WTO Agreement to which both Parties are party, the Parties shall immediately consult with each other with a view to finding a mutually satisfactory solution.

ARTICLE 1.5

References to laws and other agreements

1. Unless otherwise provided, where reference is made in this Agreement to the laws and regulations of a Party, those laws and regulations shall be understood to include any amendments thereto.

2. Unless otherwise provided for in this Agreement, where international agreements are referred to or incorporated, in whole or in part, into this Agreement, they shall be understood to include any amendments thereto or successor agreements which enter into force for both Parties on or after the date of signature of this Agreement.

3. If any matter arises regarding the implementation or application of this Agreement as a result of any amendment or successor agreement as referred to in paragraph 2, the Parties may, on request of either Party, consult with each other with a view to finding a mutually satisfactory solution.

ARTICLE 1.6

Fulfilment of obligations

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

2. If a Party considers that the other Party has failed to fulfil any of the obligations that are described as essential elements in Article 1.2(2) or Article 2.2(1) of the Advanced Framework Agreement, it may take appropriate measures. "Appropriate measures" shall be taken in full respect of international law and shall be proportionate to the failure to fulfil the obligations referred to in this paragraph. Priority must be given to those which least disturb the functioning of this Agreement. For the purposes of this paragraph, "appropriate measures" may include the suspension, in part or in full, of this Agreement.

3. The measures referred to in paragraph 2 may be taken irrespective of whether the relevant provisions of the Advanced Framework Agreement are being provisionally applied.

CHAPTER 2

TRADE IN GOODS

ARTICLE 2.1

Objective

The Parties shall progressively and reciprocally liberalise trade in goods in accordance with this Agreement.

ARTICLE 2.2

Scope

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

ARTICLE 2.3

Definitions

For the purposes of this Chapter and Annex 2:

(a) "Agreement on Import Licensing Procedures" means the Agreement on Import Licensing Procedures in Annex 1A to the WTO Agreement;

(b) "consular transactions" means the procedure for obtaining from a consul of the importing Party in the territory of the exporting Party, or in the territory of a third party, a consular invoice or a consular visa for a commercial invoice, certificate of origin, manifest, shipper's export declaration or any other customs documentation connected with the importation of a good;

(c) "Customs Valuation Agreement" means the Agreement on Implementation of Article VII of GATT 1994 in Annex 1A to the WTO Agreement;

(d) "export licensing procedure" 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 or bodies as a prior condition for exportation from the territory of the exporting Party;

(e) "import licensing procedure" 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 or bodies as a prior condition for importation into the territory of the importing Party;

(f) "remanufactured good" means a good classified in HS Chapters 84 to 90 or under heading 94.02, except a good classified under HS headings 84.18, 85.09, 85.10, 85.16 and 87.03 or subheadings 8414.51, 8450.11, 8450.12, 8508.1 and 8517.11, that:

(i) is entirely or partially comprised of parts obtained from goods that have been used;

(ii) has similar performance and working condition compared to an equivalent good in new condition; and

(iii) is given the same warranty as an equivalent good in new condition;

(g) "repair" means any processing operation undertaken on a good to remedy operating defects or material damage and entailing the re-establishment of the good to its original function or to ensure compliance with technical requirements for its use, without which the good could no longer be used in the normal way for the purposes for which it was intended; repair of a good includes restoration and maintenance, but does not include an operation or process that:

(i) destroys the essential characteristics of a good, or creates a new or commercially different good;

(ii) transforms an unfinished good into a finished good; or

(iii) is used to improve or upgrade the technical performance of a good;

(h) "staging category" means the timeframe for the elimination of customs duties ranging from zero to seven years, after which a good is free of customs duty (unless otherwise specified in the schedules in Annex 2.

ARTICLE 2.4

National treatment on internal taxation and regulation

Each Party shall accord national treatment to the goods of the other Party in accordance with Article III of GATT 1994, including its Notes and Supplementary Provisions. To that end, Article III of GATT 1994 and its Notes and Supplementary Provisions are incorporated into and made part of this Agreement, *mutatis mutandis*.

ARTICLE 2.5

Reduction or elimination of customs duties

1. Unless otherwise provided for in this Agreement, each Party shall reduce or eliminate customs duties on goods originating in the other Party in accordance with its schedule in Annex 2.

2. For the purposes of paragraph 1, the base rate of customs duties shall be the one specified for each good in the schedules in Annex 2.

3. If a Party reduces its applied most-favoured-nation customs duty rate ("MFN rate"), the schedule in Annex 2 of that Party shall apply to the reduced rates. If a Party lowers its applied MFN rate to a level below the base rate in relation to a particular tariff line, that Party shall calculate the preferential applicable rate effecting the tariff reduction on the lowered applied MFN rate, maintaining the relative margin of preference for that particular tariff line for as long as the applied MFN rate is lower than the base rate. The relative margin of preference for any given tariff line in each staging period corresponds to the difference between the base rate set out in the schedule in Annex 2 of that Party and the applied duty rate for that tariff line in accordance with that schedule, divided by that base rate, and expressed in percentage terms.

4. On the request of a Party, the Parties shall consult each other in order to consider accelerating the reduction or elimination of customs duties set out in the schedules in Annex 2. Having regard to such consultation, the Trade Council may adopt a decision to amend Annex 2 to accelerate that tariff reduction or elimination.

ARTICLE 2.6

Standstill

1. Unless otherwise provided for in this Agreement, a Party shall not increase any customs duty that is set as the base rate in Annex 2 or adopt any new customs duty on a good originating in the other Party.

2. For greater certainty, a Party may raise a customs duty to the level set out in Annex 2 for the respective staging period following a unilateral reduction.

ARTICLE 2.7

Export duties, taxes and other charges

1. A Party shall not introduce or maintain any duty, tax or other charge of any kind imposed on, or in connection with, the exportation of a good to the other Party; or any internal tax or other charge on a good exported to the other Party that is in excess of the tax or charge that would be imposed on like goods when destined for domestic consumption.

2. Nothing in this Article shall prevent a Party from imposing on the exportation of a good a fee or charge that is permitted pursuant to Article 2.8.

ARTICLE 2.8

Fees and formalities

1. Fees and other charges imposed by a Party on, or in connection with, the importation or exportation of a good of the other Party shall be limited in amount to the approximate cost of the services rendered, and shall not represent an indirect protection of domestic goods or a taxation of imports or exports for fiscal purposes.

2. A Party shall not levy fees or other charges on, or in connection with, importation or exportation on an *ad valorem* basis.

3. Each Party may impose charges or recover costs only where specific services are rendered, including the following:

(a) attendance, where requested, by customs staff outside official office hours or at premises other than customs premises;

(b) analyses or expert reports on goods and postal fees for the return of goods to an applicant, in particular in respect of decisions relating to binding information or the provision of information concerning the application of customs legislation;

(c) the examination or sampling of goods for verification purposes, or the destruction of goods, where costs other than the cost of using customs staff are involved; or

(d) exceptional control measures, where these are necessary due to the nature of the goods or to a potential risk.

4. Each Party shall promptly publish all fees and charges that it imposes in connection with importation or exportation in such a manner as to enable governments, traders and other interested parties to become acquainted with them.

5. A Party shall not require consular transactions, including related fees and charges, in connection with the importation of any good of the other Party.

ARTICLE 2.9

Repaired goods

1. A Party shall not apply a customs duty to a good, regardless of its origin, that re-enters its customs territory after that good has been temporarily exported from its customs territory to the customs territory of the other Party for repair.

2. Paragraph 1 does not apply to a good imported in bond, into free-trade zones, or in similar status, that is then exported for repair and is not re-imported in bond, into free-trade zones, or in similar status.

3. A Party shall not apply a customs duty to a good, regardless of its origin, imported temporarily from the customs territory of the other Party for repair.[1]

ARTICLE 2.10

Remanufactured goods

1. Unless otherwise provided for in this Agreement, a Party shall not accord to remanufactured goods of the other Party treatment that is less favourable than that which it accords to like goods in new condition.

2. For greater certainty, Article 2.11 applies to import and export prohibitions or restrictions on remanufactured goods. If a Party adopts or maintains import and export prohibitions or restrictions on used goods, it shall not apply those measures to remanufactured goods.

3. A Party may require that remanufactured goods be identified as such for distribution or sale in its territory and that such goods meet all applicable technical requirements that apply to like goods in new condition.

[1] In the European Union, the inward processing procedure as laid down in Regulation (EU) No 952/2013 is used for the purposes of this paragraph.

ARTICLE 2.11

Import and export restrictions

Article XI of GATT 1994 and its Notes and Supplementary Provisions are incorporated into and made part of this Agreement, *mutatis mutandis*. Accordingly, a Party shall not adopt or maintain any prohibition or restriction on the importation of any good of the other Party or on the exportation or sale for export of any good destined for the territory of the other Party, except in accordance with Article XI of GATT 1994, including its Notes and Supplementary Provisions.

ARTICLE 2.12

Origin marking

If Chile applies mandatory country-of-origin marking requirements to goods of the European Union, the Trade Committee may decide that goods marked "Made in EU", or bearing a similar marking in the local language, fulfil such requirements upon importation into Chile. This Article does not affect either Party's right to specify the type of products for which country-of-origin marking requirements are mandatory. Chapter 3 does not apply to this Article.

ARTICLE 2.13

Import licensing procedures

1. Each Party shall ensure that all import licensing procedures applicable to trade in goods between the Parties are neutral in application and are administered in a fair, equitable, non-discriminatory and transparent manner.

2. A Party shall only adopt or maintain import licensing procedures as a condition for importation into its territory from the territory of the other Party if other appropriate procedures to achieve an administrative purpose are not reasonably available.

3. A Party shall not adopt or maintain any non-automatic import licensing procedure as a condition for importation into its territory from the territory of the other Party unless it is necessary to implement a measure that is consistent with this Agreement. A Party adopting such a non-automatic import licensing procedure shall indicate clearly to the other Party the measure being implemented through that procedure.

4. Each Party shall adopt and administer any import licensing procedures in accordance with Articles 1, 2 and 3 of the Agreement on Import Licensing Procedures. To this end, Articles 1, 2 and 3 of that Agreement are incorporated into and made part of this Agreement, *mutatis mutandis*.

5. A Party that adopts new import licensing procedures, or modifies existing import licensing procedures, shall notify the other Party within 60 days of the date of publication of such new import licensing procedures or modifications of existing import licensing procedures. The notification shall include the information specified in paragraph 3 of this Article and in Article 5(2) of the Agreement on Import Licensing Procedures. A Party shall be deemed to be in compliance with this provision if it has notified the relevant new import licensing procedure, or any modifications to existing import licensing procedures, to the Committee on Import Licensing established in accordance with Article 4 of the Agreement on Import Licensing Procedures, including the information specified in Article 5(2) of that Agreement.

6. Upon request of a Party, the other Party shall promptly provide any relevant information, including the information specified in Article 5(2) of the Agreement on Import Licensing Procedures, regarding any import licensing procedure that it intends to adopt, has adopted or maintains, or any modification to existing import licensing procedures.

ARTICLE 2.14

Export licensing procedures

1. Each Party shall publish any new export licensing procedure, or any modification to an existing export licensing procedure, in such a manner as to enable governments, traders and other interested parties to become acquainted with them. Such publication shall take place, where practicable, 30 days before the procedure or modification takes effect, and in any event no later than the date on which such procedure or modification takes effect.

2. Each Party shall ensure that the publication of export licensing procedures includes the following information:

(a) the texts of its export licensing procedures, or of any modifications that it makes to those procedures;

(b) the goods subject to each export licensing procedure;

(c) for each export licensing procedure, a description of the process for applying for an export licence and any criteria that an applicant must fulfil in order to be eligible to apply for an export licence, such as possessing an activity licence, establishing or maintaining an investment, or operating through a particular form of establishment in a Party's territory;

(d) one or more contact points from which interested persons can obtain further information on the conditions for obtaining an export licence;

(e) the administrative body or bodies to which an application or other relevant documentation must be submitted;

(f) a description of any measure or measures that the export licensing procedure is designed to implement;

(g) the period during which each export licensing procedure will be in effect, unless the procedure will remain in effect until withdrawn or revised in a new publication;

(h) if the Party intends to use an export licensing procedure to administer an export quota, the overall quantity and, if applicable, the value of the quota and the opening and closing dates of the quota; and

(i) any exemptions or exceptions that replace the requirement to obtain an export licence, information on how to request or use those exemptions or exceptions, and the criteria for granting them.

3. Within 30 days of the date of entry into force of this Agreement, each Party shall notify the other Party of its existing export licensing procedures. A Party that adopts new export licensing procedures, or modifies existing export licensing procedures, shall notify the other Party within 60 days of the date of publication of those new export licensing procedures or modifications to existing export licensing procedures. The notification shall include the reference to the source or sources where the information required pursuant to paragraph 2 is published and include, where appropriate, the address of the relevant government Internet website or websites.

4. For greater certainty, nothing in this Article requires a Party to grant an export licence, or prevents a Party from implementing its obligations or commitments under United Nations Security Council Resolutions, or under multilateral non-proliferation regimes and export control arrangements.

ARTICLE 2.15

Customs valuation

Each Party shall determine the customs value of goods of the other Party that are imported into its territory in accordance with Article VII of GATT 1994 and the Customs Valuation Agreement. To this end, Article VII of GATT 1994, including its Notes and Supplementary Provisions, and Articles 1 to 17 of the Customs Valuation Agreement, including its Interpretative Notes, are incorporated into and made part of this Agreement, *mutatis mutandis*.

ARTICLE 2.16

Preference utilisation

1. For the purpose of monitoring the functioning of the Agreement and calculating preference utilisation rates, the Parties shall annually exchange import statistics for a period starting one year after the entry into force of this Agreement and expiring 10 years after the tariff elimination is completed for all goods according to the schedules in Annex 2. Unless the Trade Committee decides otherwise, that period shall be automatically extended for five years, and thereafter the Trade Committee may decide to extend it further.

2. The exchange of import statistics referred to in paragraph 1 shall cover data pertaining to the most recent year available, including value and, where applicable, volume, at the tariff line level for imports of goods of the other Party benefitting from preferential duty treatment under this Agreement and for imports of those goods that received non-preferential treatment.

ARTICLE 2.17

Specific measures concerning the management of preferential treatment

1. The Parties shall cooperate in preventing, detecting and combating breaches of customs legislation related to the preferential treatment granted under this Chapter, in accordance with their obligations under Chapter 3 and the Protocol to this Agreement on Mutual Administrative Assistance in Customs Matters.

2. A Party may, in accordance with the procedure laid down in paragraph 3, temporarily suspend the relevant preferential treatment of the goods concerned when that Party has made a finding, based on objective, compelling and verifiable information, that the other Party has committed large-scale systematic breaches of customs legislation in order to obtain the preferential treatment granted under this Chapter, and has made a finding of:

(a) a systematic lack or inadequacy of action by the other Party in verifying the originating status of goods and the fulfilment of the other requirements of the Protocol to this Agreement on Mutual Administrative Assistance in Customs Matters, when identifying or preventing contravention of the rules of origin;

(b) a systematic refusal by the other Party to carry out subsequent verification of the proof of origin on request of the other Party or to communicate its results in time, or undue delay carrying out such verification or communication; or

(c) a systematic refusal or failure by the other Party to cooperate or assist in compliance with its obligations under the Protocol to this Agreement on Mutual Administrative Assistance in Customs Matters in relation to the preferential treatment.

3. The Party which has made a finding as referred to in paragraph 2 shall, without undue delay, notify the Trade Committee thereof and enter into consultations with the other Party within the Trade Committee with a view to reaching a solution acceptable to both Parties.

If the Parties fail to agree on a mutually acceptable solution within three months of the date of notification, the Party which has made the finding may decide to temporarily suspend the relevant preferential treatment of the goods concerned. A temporary suspension shall be notified to the Trade Committee without undue delay.

Temporary suspensions shall apply only for the period necessary to protect the financial interests of the Party concerned, and for no longer than six months. Where the conditions that gave rise to the initial suspension persist at the expiry of the six-month period, the Party concerned may decide to renew the suspension. Any temporary suspension shall be subject to periodic consultations within the Trade Committee.

4. Each Party shall publish, in accordance with its internal procedures, notices to importers about any notification and decision concerning temporary suspensions as referred to in paragraph 3.

ARTICLE 2.18

Sub-Committee on Trade in Goods

The Sub-Committee on Trade in Goods established pursuant to Article 33.4(1) shall:

(a) monitor the implementation and administration of this Chapter and Annex 2;

(b) promote trade in goods between the Parties, including through consultations on improving market-access tariff treatment pursuant to Article 2.5(4) and other issues, as appropriate;

(c) provide a forum to discuss and resolve any issues related to this Chapter;

(d) promptly address barriers to trade in goods between the Parties, especially those related to the application of non-tariff measures, and, if appropriate, refer such matters to the Trade Committee for its consideration;

(e) recommend to the Parties any modification or addition to this Chapter;

(f) coordinate the exchange of data for preference utilisation or of any other information on trade in goods between the Parties that it may decide;

(g) review any future amendments to the Harmonized System to ensure that each Party's obligations under this Agreement are not altered, and consult to resolve any related conflict;

(h) perform the functions set out in Article 8.17.

CHAPTER 3

RULES OF ORIGIN AND ORIGIN PROCEDURES

SECTION A

RULES OF ORIGIN

ARTICLE 3.1

Definitions

For the purposes of this Chapter and Annexes 3-A to 3-E:

(a) "classification" means the classification of a product or material under a particular chapter, heading or sub-heading of the Harmonized System;

(b) "consignment" means products which are either sent simultaneously from one exporter to one consignee or covered by a single transport document covering their shipment from the exporter to the consignee or, in the absence of such a document, by a single invoice;

(c) "customs authority" means:

(i) for Chile, the National Customs Service; and

(ii) for the European Union, the services of the European Commission responsible for customs matters and the customs administrations and any other authorities of the Member States of the European Union responsible for the application and enforcement of customs law.

(d) "exporter" means a person located in a Party who, in accordance with the laws and regulations of that Party, exports or produces the originating product and makes out a statement on origin;

(e) "identical products" means products which in every respect correspond to those described in the product description; the product description on the commercial document used for making out a statement on origin for multiple shipments must be precise enough to clearly identify that product, but also the identical products to be subsequently imported based on that statement;

(f) "importer" means a person who imports the originating product and claims preferential tariff treatment for it;

(g) "material" means any substance used in the production of a product, including any ingredients, raw materials, components or parts;

(h) "product" means the result of production, even if it is intended for later use as a material in the production of another product; and

(i) "production" means any kind of working or processing, including assembly.

ARTICLE 3.2

General requirements

1. For the purposes of applying the preferential tariff treatment by a Party to an originating good of the other Party in accordance with this Agreement, provided that the product meets all other applicable requirements set out in this Chapter, the following products shall be considered as originating in the other Party:

(a) products wholly obtained in that Party as provided for in Article 3.4;

(b) products produced exclusively from materials originating in that Party; and

(c) products produced in that Party using non-originating materials provided that they meet the requirements set out in Annex 3-B.

2. If a product has acquired originating status in accordance with paragraph 1, the non-originating materials used in the production of that product shall not be considered non-originating when that product is incorporated as a material in another product.

3. The acquisition of originating status shall be fulfilled without interruption in the territory of a Party.

ARTICLE 3.3

Cumulation of origin

1. A product originating in a Party shall be considered as originating in the other Party if used as a material in the production of another product in that other Party, provided that the working and processing carried out goes beyond one or more of the operations referred to in Article 3.6.

2. Materials classified in Chapter 3 of the Harmonized System originating in the countries referred to in subparagraph (b) of paragraph 4 and used in the production of canned tuna products classified in subheading 1604.14 of the Harmonized System, may be considered as originating in a Party provided that the conditions in subparagraphs (a) to (e) of paragraph 3 are fulfilled, and that that Party sends a notification for examination by the Sub-Committee referred to in Article 3.31.

3. The Trade Committee may decide, following a recommendation by the Sub-Committee, that certain materials originating in the third countries[1] referred to in paragraph 4 of this Article may be considered as originating in a Party if used in the production of a product in that Party provided that:

(a) each Party has a trade agreement in force that forms a free trade area with that third country, within the meaning of Article XXIV of GATT 1994;

(b) the origin of the materials referred to in this paragraph is determined in accordance with the rules of origin applicable under:

(i) the European Union's trade agreement forming a free trade area with that third country, if the material concerned is used in the production of a product in Chile; and

(ii) Chile's trade agreement forming a free trade area with that third country, if the material concerned is used in the production of a product in the European Union;

(c) an arrangement is in force between the Party and that third country on adequate administrative cooperation ensuring full implementation of this Chapter, including provisions on the use of appropriate documentation on the origin of materials, and that the Party notifies the other Party of that arrangement;

[1] For reference, "third country" is defined in subparagraph (aa) of Article 1.3.

(d) the production or processing of the materials undertaken in that Party goes beyond one or more of the operations referred to in Article 3.6; and

(e) the Parties agree on any other applicable conditions.

4. The third countries referred to in paragraph 3 are:

(a) the Central American countries of Costa Rica, El Salvador, Guatemala, Honduras, Nicaragua and Panama; and

(b) the Andean countries of Colombia, Ecuador and Peru.

ARTICLE 3.4

Wholly obtained products

1. The following products shall be considered as wholly obtained in a Party:

(a) plants and vegetable products grown or harvested there;

(b) live animals born and raised there;

(c) products obtained from live animals raised there;

(d) products obtained from hunting, trapping, fishing, gathering or capturing there, but not beyond the outer limits of that Party's territorial sea;

(e) products obtained from slaughtered animals born and raised there;

(f) products obtained from aquaculture there, if aquatic organisms, including fish, molluscs, crustaceans, other aquatic invertebrates and aquatic plants, are born or raised from seed stock such as eggs, roes, fry, fingerlings or larvae, by intervention in the rearing or growth processes to enhance production, such as regular stocking, feeding or protection from predators;

(g) minerals or other naturally occurring substances, not included in subparagraphs (a) to (f), extracted or taken there;

(h) products of sea fishing and other products taken from the sea outside any territorial sea by a vessel of that Party;

(i) products made aboard a factory ship of that Party exclusively from products referred to in subparagraph (h);

(j) products extracted by a Party or a person of that Party from marine soil or subsoil outside any territorial sea provided that they have rights to work that soil or subsoil;

(k) waste or scrap derived from production there or from used products collected there, provided that those products are fit only for the recovery of raw materials; and

(l) products produced there exclusively from those products specified in subparagraphs (a) to (k).

2. The terms "vessel of a Party" and "factory ship of a Party" in subparagraphs (h) and (i) of paragraph 1 mean a vessel and a factory ship, respectively, which:

(a) is registered in a Member State or in Chile;

(b) sails under the flag of a Member State or of Chile; and

(c) meets one of the following conditions:

(i) it is to more than 50 % owned by natural persons of a Member State or of Chile; or

(ii) it is owned by a juridical person which:

(A) has its head office and its main place of business in a Member State or in Chile, and

(B) is to more than 50 % owned by persons of one of those Parties.

ARTICLE 3.5

Tolerances

1. If a non-originating material used in the production of a product does not meet the requirements set out in Annex 3-B, that product shall be considered as originating in a Party, provided that:

(a) for all products[1] except those classified under Chapters 50 to 63 of the Harmonized System, the total value of non-originating materials does not exceed 10 % of the ex-works price of the product;

(b) for products classified under Chapters 50 to 63 of the Harmonized System, tolerances apply as stipulated in Notes 6 to 8 of Annex 3-A.

2. Paragraph 1 does not apply if the value or weight of non-originating materials used in the production of a product exceeds any of the percentages for the maximum value or weight of non-originating materials as specified in the requirements set out in Annex 3-B.

3. Paragraph 1 does not apply to products wholly obtained in a Party within the meaning of Article 3.4. If Annex 3-B requires that the materials used in the production of a product are wholly obtained, paragraphs 1 and 2 apply.

[1] Chapters 1 to 24 of the Harmonized System, in accordance with Note 9 of Annex 3-A.

ARTICLE 3.6

Insufficient working or processing

1. Notwithstanding subparagraph (c) of Article 3.2(1), a product shall not be considered as originating in a Party if solely one or more of the following operations are conducted on non-originating materials in that Party:

(a) preserving operations such as drying, freezing, keeping in brine or other similar operations, if the sole purpose is to ensure that the product remains in good condition during transport and storage;

(b) breaking-up and assembly of packages;

(c) washing, cleaning, removing dust, oxide, oil, paint or other coverings;

(d) ironing or pressing of textiles and textile articles;

(e) simple painting and polishing operations;

(f) husking and partial or total milling of rice, polishing and glazing of cereals and rice;

(g) operations to colour or flavour sugar or form sugar lumps, partial or total milling of crystal sugar in solid form;

(h) peeling, stoning and shelling of fruits, nuts and vegetables;

(i) sharpening, simple grinding or simple cutting;

(j) sifting, screening, sorting, classifying, grading or matching;

(k) simple placing in bottles, cans, flasks, bags, cases, boxes, fixing on cards or boards and all other simple packaging operations;

(l) affixing or printing marks, labels, logos and other like distinguishing signs on products or their packaging;

(m) simple mixing of products, whether or not of different kinds, including mixing of sugar with any material;

(n) simple assembly of parts of articles to constitute a complete article or disassembly of products into parts;

(o) simple addition of water or dilution or dehydration or denaturation of products; or

(p) slaughter of animals.

2. For the purposes of paragraph 1, an operation shall be considered simple if neither special skills nor machines, apparatus or equipment especially produced or installed are needed for carrying out that operation.

ARTICLE 3.7

Unit of qualification

1. For the purposes of this Chapter, the unit of qualification shall be the product which is considered as the basic unit when classifying the product under the Harmonized System.

2. If a consignment consists of a number of identical products classified under the same heading of the Harmonized System, each individual product shall be taken into account when applying this Chapter.

ARTICLE 3.8

Accessories, spare parts and tools

1. Accessories, spare parts and tools dispatched with a piece of equipment, machine, apparatus or vehicle, which are part of the normal equipment and included in the price thereof or which are not separately invoiced, shall be regarded as one with the piece of equipment, machine, apparatus or vehicle in question.

2. Accessories, spare parts and tools referred to in paragraph 1 shall be disregarded in determining the origin of the product, except for the purposes of calculating the maximum value of non-originating materials, if a product is subject to a maximum value of non-originating materials as set out in Annex 3-B.

ARTICLE 3.9

Sets

Sets, as defined in General Rule 3 for the Interpretation of the Harmonized System, shall be regarded as originating in a Party if all their components are originating products. If a set is composed of originating and non-originating products, the set as a whole shall be regarded as originating in a Party, provided that the value of the non-originating products does not exceed 15 % of the ex-works price of the set.

ARTICLE 3.10

Neutral elements

In order to determine whether a product qualifies as originating in a Party, it is not necessary to determine the origin of the following elements, which might be used in the production of the product:

(a) fuel, energy, catalysts and solvents;

(b) equipment, devices and supplies used for testing or inspecting the products;

(c) machines tools, dies and moulds;

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

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

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

(g) any other material that is not incorporated into the product but the use of which can be demonstrated to be part of the production of the product.

ARTICLE 3.11

Packaging and packing materials and containers

1. If, under General Rule 5 for the Interpretation of the Harmonized System, packaging materials and containers in which a product is packed for retail sale are classified together with the product, those packaging materials and containers shall be disregarded in determining the origin of the product, except for the purposes of calculating the maximum value of non-originating materials if a product is subject to a maximum value of non-originating materials in accordance with Annex 3-B.

2. Packing materials and containers that are used to protect a product during transportation shall be disregarded in determining whether a product is originating in a Party.

ARTICLE 3.12

Accounting segregation for fungible materials

1. Fungible originating and non-originating materials shall be physically segregated during storage in order for them to maintain their originating or non-originating status, as the case may be. Those materials may be used in the production of a product without being physically segregated during storage provided that an accounting segregation method is used.

2. The accounting segregation method referred to in paragraph 1 shall be applied in conformity with a stock management method under accounting principles which are generally accepted in the Party. The accounting segregation method shall ensure that at any time the number of products which could be considered as originating in a Party does not exceed the number that would have been obtained by physical segregation of the stocks during storage.

3. For the purposes of paragraph 1, "fungible materials" means materials that are of the same kind and commercial quality, with the same technical and physical characteristics, and which cannot be distinguished from one another once they are incorporated into the finished product.

ARTICLE 3.13

Returned products

If a product originating in a Party that is exported from that Party to a third country and that returns to that Party, it shall be considered as non-originating, unless it can be demonstrated to the satisfaction of the customs authority of that Party that the returning product:

(a) is the same as that exported; and

(b) has not undergone any operation other than that necessary to preserve it in good condition while in the third country or while being exported.

ARTICLE 3.14

Non-alteration

1. An originating product declared for home use in the importing Party shall not, after exportation and prior to being declared for home use, be altered, transformed in any way or subjected to operations other than to preserve it in good condition or than adding or affixing marks, labels, seals or any other documentation to ensure compliance with specific domestic requirements of the importing Party.

2. Storage or exhibition of a product may take place in a third country provided it remains under customs supervision in that third country.

3. Without prejudice to Section B, the splitting of consignments may take place in the territory of a third country if it is carried out by the exporter or under its responsibility and provided that those consignments remain under customs supervision in the third country.

4. In case of doubt as to whether the conditions provided for in paragraphs 1 to 3 are complied with, the customs authority of the importing Party may request the importer to provide evidence of compliance. Such evidence may be given by any means, including contractual transport documents such as bills of lading or factual or concrete evidence based on marking or numbering of packages or any evidence related to the product itself.

ARTICLE 3.15

Exhibitions

1. Originating products sent for exhibition in a third country and sold after the exhibition for importation in a Party, shall benefit on importation in accordance with this Agreement provided that it is shown to the satisfaction of the customs authorities that:

(a) an exporter has consigned these products from a Party to the third country in which the exhibition was held and has exhibited them there;

(b) the products have been sold or otherwise disposed of by that exporter to a person in a Party;

(c) the products have been consigned during the exhibition or immediately thereafter in the state in which they were sent for exhibition; and

(d) the products have not, since they were consigned for exhibition, been used for any purpose other than demonstration at the exhibition.

2. A statement on origin shall be made out in accordance with Section B and submitted to the customs authorities in accordance with the customs procedures of the importing Party. The name and address of the exhibition shall be indicated thereon.

3. Paragraph 1 applies to any trade, industrial, agricultural or crafts exhibition, fair or similar public show or display, which is not organised for private purposes in shops or business premises with a view to the sale of foreign products, and during which the products remain under customs control.

4. The customs authorities of the importing Party may require evidence that the products have remained under customs control in the country of exhibition, as well as additional documentary evidence of the conditions under which they have been exhibited.

SECTION B

ORIGIN PROCEDURES

ARTICLE 3.16

Claim for preferential tariff treatment

1. The importing Party shall grant preferential tariff treatment to a product originating in the other Party within the meaning of this Chapter on the basis of a claim by the importer for preferential tariff treatment. The importer shall bear the responsibility for the correctness of the claim for preferential tariff treatment and for the compliance with the requirements set out in this Chapter.

2. The claim for preferential tariff treatment shall be based on one of the following:

(a) a statement on origin made out by the exporter in accordance with Article 3.17;

(b) the importer's knowledge subject to the conditions set out in Article 3.19.

3. The claim for preferential tariff treatment and the basis for that claim as referred to in paragraph 2 shall be included in the customs declaration, in accordance with the laws and regulations of the importing Party.

4. An importer making a claim for preferential treatment based on a statement on origin in accordance with subparagraph (a) of paragraph 2 shall keep the statement and shall present it to the customs authority of the importing Party upon request.

ARTICLE 3.17

Statement on origin

1. An exporter of a product shall make out a statement on origin on the basis of information demonstrating that the product is originating, including, if applicable, information on the originating status of materials used in the production of the product.

2. The exporter shall be responsible for the correctness of the statement on origin made out and the information provided pursuant to paragraph 1. If the exporter has reason to believe that the statement on origin contains or is based on incorrect information, the exporter shall immediately notify the importer of any change affecting the originating status of the product. In this case, the importer shall correct the import declaration and pay any applicable customs duty owing.

3. The exporter shall make out a statement on origin in one of the linguistic versions included in Annex 3-C on an invoice or on any other commercial document that describes the originating product in sufficient detail so as to enable its identification in the Harmonized System nomenclature. The importing Party shall not require the importer to submit a translation of the statement on origin.

4. A statement on origin shall be valid for one year from the date it was made out.

5. A statement on origin may be made out for:

(a) a single shipment of one or more products into a Party; or

(b) multiple shipments of identical products into a Party within the period specified in the statement on origin not exceeding 12 months.

6. The importing Party shall, on request of the importer and subject to any requirements imposed by the importer Party, allow a single statement on origin to be used for unassembled or disassembled products, within the meaning of General Rule 2(a) of the Harmonized System, classified under Sections XV to XXI of the Harmonized System if imported by instalments.

ARTICLE 3.18

Minor discrepancies and minor errors

The customs authority of the importing Party shall not reject a claim for preferential tariff treatment due to minor discrepancies between the statement on origin and the documents submitted to the customs office or minor errors in the statement on origin.

ARTICLE 3.19

Importer's knowledge

1. The importing Party may, in its laws and regulations, set conditions to determine which importers may base a claim for preferential tariff treatment on the importer's knowledge.

2. Notwithstanding paragraph 1, the importer's knowledge that a product is originating shall be based on information demonstrating that the product effectively qualifies as originating and meets the requirements set out in this Chapter to obtain originating status.

ARTICLE 3.20

Record-keeping requirements

1. An importer claiming preferential tariff treatment for a product imported into a Party shall:

(a) if the claim for preferential treatment is based on a statement on origin, keep the statement on origin made out by the exporter for a minimum of three years from the date of the claim of preference of the product; and

(b) if the claim for preferential treatment is based on the importer's knowledge, keep the information demonstrating that the product meets the requirements set out in this Chapter to obtain originating status for a minimum of three years from the date of the claim for preferential treatment.

2. An exporter who made out a statement on origin shall, for a minimum of four years following the making out of that statement on origin, keep copies of the statement on origin and all other records demonstrating that the product meets the requirements set out in this Chapter to obtain originating status.

3. The records to be kept in accordance with this Article may be held in electronic form in accordance with the laws and regulations of the importing or exporting Party, as appropriate.

ARTICLE 3.21

Exemptions from the requirements regarding statements on origin

1. Products sent as packages from private persons to private persons or forming part of the personal luggage of travellers shall be admitted as originating products, without a statement on origin being required provided that such products are not imported by way of trade and have been declared as meeting the requirements of this Chapter and that there is no doubt as to the veracity of that declaration.

2. Imports which are occasional and consist solely of products for the personal use of the recipients or travellers or their families shall not be considered as imports by way of trade, if it is evident from the nature and quantity of the goods that no commercial purpose is intended, provided that the importation does not form part of a series of importations that may reasonably be considered to have been made separately for the purpose of avoiding the requirement for an statement on origin.

3. The total value of the products referred to in paragraph 1 shall not exceed EUR 500 or its equivalent amount in the currency of the Party in the case of packages, or EUR 1 200 or its equivalent amount in the currency of the Party in the case of products forming part of the personal luggage of travellers.

ARTICLE 3.22

Verification

1. The customs authority of the importing Party may verify the originating status of a product or whether the other requirements set out in this Chapter are met on the basis of risk assessment methods, which may include random selection. For the purposes of such verification the customs authority of the importing Party may send of a request for information to the importer who made the claim for preferential treatment pursuant to Article 3.16.

2. The customs authority of the importing Party sending a request pursuant to paragraph 1 shall not request more than the following information in relation to the origin of a product:

(a) the statement on origin if the claim for preferential treatment was based on a statement on origin; and

(b) information pertaining to the fulfilment of origin criteria, which is:

(i) if the origin criterion is "wholly obtained", the applicable category (such as harvesting, mining, fishing) and place of production;

(ii) if the origin criterion is based on change in tariff classification, a list of all the non-originating materials including their tariff classification (in 2-, 4- or 6-digit format, depending on the origin criteria);

(iii) if the origin criterion is based on a value method, the value of the final product as well as the value of all the non-originating materials used in the production;

(iv) if the origin criterion is based on weight, the weight of the final product as well as the weight of the relevant non-originating materials used in the final product; and

(v) if the origin criterion is based on a specific production process, a description of that specific process.

3. When providing the requested information, the importer may add any other information that it considers relevant for the purposes of verification.

4. If the claim for preferential tariff treatment is based on a statement on origin in accordance with subparagraph (a) of Article 3.16(2) issued by the exporter, the importer shall provide that statement on origin but may reply to the customs authority of the importing Party that the information referred to in subparagraph (b) of paragraph 2 of this Article cannot be provided.

5. Where the claim for preferential tariff treatment is based on the importer's knowledge referred to in subparagraph (b) of Article 3.16(2), the customs authority of the importing Party conducting the verification may, after having requested information pursuant to paragraph 1 of this Article, send an additional request for information to the importer if that customs authority considers that additional information is required in order to verify the originating status of the product or whether the other requirements set out in this Chapter are met. The customs authority of the importing Party may request the importer for specific documentation and information, if appropriate.

6. If the customs authority of the importing Party decides to suspend the granting of preferential tariff treatment to the products concerned while awaiting the results of a verification, it may offer the importer to release the products. As a condition for such release, the importing Party may require a guarantee or other appropriate precautionary measure. Any suspension of preferential tariff treatment shall be terminated as soon as possible after the customs authority of the importing Party has ascertained the originating status of the products concerned, or that the other requirements set out in this Chapter are met.

ARTICLE 3.23

Administrative cooperation

1. In order to ensure the proper application of this Chapter, the Parties shall cooperate with each other, through their respective customs authorities, in order to verify the originating status of a product or whether the other requirements set out in this Chapter are met.

2. If a claim for preferential tariff treatment is based on a statement on origin in accordance with subparagraph (a) of Article 3.16(2) the customs authority of the importing Party conducting the verification may, after having requested information from the importer pursuant to Article 3.22(1), send a request for information to the customs authority of the exporting Party within a period of two years following the date of the claim for preferential treatment, if the customs authority of the importing Party considers that additional information is needed in order to verify the originating status of the product or whether the other requirements set out in this Chapter are met. The customs authority of the importing Party may request the customs authority of the exporting Party for specific documentation and information, if appropriate.

3. The customs authority of the importing Party shall include the following information in the request referred to in paragraph 2:

(a) the statement on origin or a copy thereof;

(b) the identity of the customs authority issuing the request;

(c) the name of the exporter to be verified;

(d) the subject and scope of the verification; and

(e) if applicable, any relevant documentation.

4. The customs authority of the exporting Party may, in accordance with the laws and regulations of that Party, conduct its verification by requesting documentation from the exporter and calling for any evidence, or by visiting the premises of the exporter to review records and observe the facilities used in the production of the product.

5. Following the request referred to in paragraph 2, the customs authority of the exporting Party shall provide the customs authority of the importing Party with the following information:

(a) the requested documentation, if available;

(b) an opinion regarding the originating status of the product;

(c) the description of the product subject to verification and the tariff classification relevant to the application of the rules of origin;

(d) a description and explanation of the production process to support the originating status of the product;

(e) information on the manner in which the verification of the originating status of the product pursuant to paragraph 4 was conducted; and

(f) supporting documentation, if appropriate.

6. The customs authority of the exporting Party shall not transmit information to the customs authority of the importing Party referred to in subparagraphs (a) or (f) of paragraph 5 without the consent of the exporter.

7. All the information requested, including any supporting documents and all other related information regarding verification should preferably be exchanged between the customs authorities of the Parties electronically.

8. The Parties shall, via the coordinators designated in accordance with this Agreement, provide each other with the contact details of their respective customs authorities and any modification thereto within 30 days of such modification.

ARTICLE 3.24

Mutual assistance in the fight against fraud

In case of a suspected breach of this Chapter, the Parties shall provide each other with mutual assistance, in accordance with the Protocol to this Agreement on Mutual Administrative Assistance in Customs Matters.

ARTICLE 3.25

Denial of claims for preferential tariff treatment

1. Subject to the requirements set out in paragraphs 3 to 5, the customs authority of the importing Party may deny a claim for preferential tariff treatment if:

(a) within a period of three months following the request for information pursuant to Article 3.22(1):

(i) no reply is provided by the importer;

(ii) in cases where claim for preferential tariff treatment is based on a statement on origin in accordance with subparagraph (a) of Article 3.16(2), the statement on origin was not provided; or

(iii) in cases where the claim for preferential tariff treatment is based on the importer's knowledge as referred to in subparagraph (b) of Article 3.16(2), the information provided by the importer is inadequate to confirm the originating status of the product;

(b) within a period of three months following the request for additional information pursuant to Article 3.22(5):

(i) no reply is provided by the importer; or

(ii) the information provided by the importer is inadequate to confirm that the product is originating;

(c) within a period of 10 months following the request for information pursuant to of Article 3.23(2):

(i) no reply is provided by the customs authority of the exporting Party; or

(ii) the information provided by the customs authority of the exporting Party is inadequate to confirm the originating status of the product.

2. The customs authority of the importing Party may deny a claim for preferential tariff treatment if the importer which has made that claim fails to comply with other requirements set out in this Chapter than those relating to the originating status of products.

3. If the customs authority of the importing Party has sufficient justification to deny a claim for preferential tariff treatment in accordance with paragraph 1 of this Article and where the customs authority of the exporting Party has provided an opinion pursuant to subparagraph (b) of Article 3.23(5) confirming the originating status of the products, the customs authority of the importing Party shall notify the customs authority of the exporting Party of its intention to deny the claim for preferential treatment within two months of the receipt of that opinion.

4. If the notification referred to in paragraph 3 has been made, consultations shall be held at the request of either Party, within three months after the date of that notification. The time period for consultation may be extended on a case-by-case basis by mutual agreement between the customs authorities of the Parties. The consultation may take place in line with the procedure set by the Sub-Committee.

5. At the expiry of the time period for consultation, the customs authority of the importing Party shall deny the claim for preferential tariff treatment only if it is not able to confirm the originating status of the product and after having granted the importer the right to be heard.

ARTICLE 3.26

Confidentiality

1. Each Party shall maintain, in accordance with its laws and regulations, the confidentiality of information provided to it by the other Party pursuant to this Chapter, and shall protect that information from disclosure.

2. Information obtained by the authorities of the importing Party shall only be used by those authorities for the purposes of this Chapter.

3. Each Party shall ensure that confidential information collected pursuant to this Chapter is not used for purposes other than the administration and enforcement of decisions and determinations relating to products origin and customs matters, except with the permission of the person or Party who provided the confidential information.

4. Notwithstanding paragraph 3, a Party may allow information collected pursuant to this Chapter to be used in any administrative, judicial or quasi-judicial proceedings initiated for failure to comply with customs-related laws and regulations implementing this Chapter. A Party shall notify the person or Party that provided the information concerned of any such use in advance.

ARTICLE 3.27

Refunds and claims for preferential tariff treatment after importation

1. Each Party shall provide that an importer may make, after importation, a claim for preferential tariff treatment and for a refund of any excess duties paid for a product if:

(a) the importer did not make a claim for preferential tariff treatment at the time of importation;

(b) the claim is made no later than two years after the date of importation; and

(c) the product concerned was eligible for preferential tariff treatment when it was imported into the territory of the Party.

2. As a condition for preferential tariff treatment on the basis of a claim made pursuant to paragraph 1, the importing Party may require that the importer:

(a) makes a claim for preferential tariff treatment in accordance with the laws and regulations of the importing Party;

(b) provides the statement on origin, as appropriate; and

(c) satisfies all other applicable requirements set out in this Chapter as if preferential tariff treatment had been claimed at the time of importation.

ARTICLE 3.28

Administrative measures and sanctions

1. A Party shall impose administrative measures and sanctions where appropriate, in accordance with its respective laws and regulations, on a person which draws up a document, or causes a document to be drawn up, which contains incorrect information for the purposes of obtaining preferential tariff treatment to a product, or which does not comply with the requirements set out in:

(a) Article 3.20;

(b) Article 3.23(4) by not providing evidence or refusing a visit; or

(c) Article 3.17(2) by not correcting a claim for preferential tariff treatment made in the customs declaration and paying the custom duty as appropriate, if the initial claim for preference was based on incorrect information.

2. The Party shall take into account paragraph 3.6 of Article 6 of the WTO Agreement on Trade Facilitation in cases where an importer voluntarily discloses a correction to a claim for preferential treatment prior to receiving a verification request, in accordance with the laws and regulations of that Party.

SECTION C

FINAL PROVISIONS

ARTICLE 3.29

Ceuta and Melilla

1. For the purposes of this Chapter, for the European Union, the term "Party" does not include Ceuta and Melilla.

2. Products originating in Chile shall, when imported into Ceuta and Melilla, in all respects be granted the same customs treatment under this Agreement as that which is granted to products originating in the customs territory of the European Union under Protocol 2 of the Act of Accession of the Kingdom of Spain and the Portuguese Republic to the European Union. Chile shall grant to imports of products covered by this Agreement and originating in Ceuta and Melilla the same customs treatment as that which is granted to products imported from and originating in the European Union.

3. The rules of origin and origin procedures under this Chapter apply *mutatis mutandis* to products exported from Chile to Ceuta and Melilla and to products exported from Ceuta and Melilla to Chile.

4. Ceuta and Melilla shall be considered as a single territory.

5. Article 3.3 applies to import and exports of products between the European Union, Chile and Ceuta and Melilla.

6. The exporter shall enter "Chile" and "Ceuta and Melilla" in field 3 of the text of the statement on origin in Annex 3-C, depending on the origin of the product.

7. The customs authority of the Kingdom of Spain shall be responsible for the application of this Article in Ceuta and Melilla.

ARTICLE 3.30

Amendments

The Trade Council may adopt decisions to amend this Chapter and Annexes 3-A to 3-E, pursuant to subparagraph (a) of Article 33.1(6).

ARTICLE 3.31

Sub-Committee on Customs, Trade Facilitation and Rules of Origin

1. The Sub-Committee on Customs, Trade Facilitation and Rules of Origin ("Sub-Committee"), established pursuant to Article 33.4(1), shall be composed of representatives of the Parties with responsibility for customs.

2. The Sub-Committee shall be responsible for the effective implementation and application of this Chapter.

3. For the purposes of this Chapter, the Sub-Committee shall have the following functions:

(a) reviewing and making appropriate recommendations, as necessary, to the Trade Committee on:

(i) the implementation and application of this Chapter; and

(ii) any amendments to this Chapter and Annexes 3-A to 3-E proposed by a Party;

(b) making suggestions to the Trade Committee concerning the adoption of explanatory notes to facilitate the implementation of this Chapter; and

(c) considering any other matter related to this Chapter as agreed by the Parties.

ARTICLE 3.32

Products in transit or storage

The Parties may apply this Agreement to products which comply with this Chapter and which, on the date of entry into force of this Agreement, are either in transit or are in temporary storage in bonded warehouse or in free zones in the European Union or in Chile, subject to the submission to the customs authorities of the importing Party of a statement on origin.

ARTICLE 3.33

Explanatory notes

Explanatory notes regarding the interpretation, application and administration of this Chapter are set out in Annex 3-E.

CHAPTER 4

CUSTOMS AND TRADE FACILITATION

ARTICLE 4.1

Objectives

1. The Parties recognise the importance of customs and trade facilitation in the evolving global trading environment.

2. The Parties recognise that international trade and customs instruments and standards are the basis for import, export and transit requirements and procedures.

3. The Parties recognise that customs laws and regulations shall be non-discriminatory and that customs procedures shall be based upon the use of modern methods and effective controls to combat fraud, protect consumer health and safety and promote legitimate trade. Each Party should periodically review its customs laws, regulations and procedures. The Parties also recognise that their customs procedures shall be no more administratively burdensome or trade restrictive than necessary to achieve legitimate objectives and that they shall be applied in a manner that is predictable, consistent and transparent.

4. The Parties agree to reinforce their cooperation with a view to ensuring that the relevant customs laws, regulations and procedures, as well as the administrative capacity of the relevant administrations, fulfil the objectives of promoting trade facilitation while ensuring effective customs control.

ARTICLE 4.2

Definitions

For the purposes of this Chapter "customs authority" means:

(a) for Chile, the *Servicio Nacional de Aduanas* (National Customs Service), or its successor; and

(b) for the European Union, those services of the European Commission responsible for customs matters and the customs administrations and any other authorities in the Member States responsible for the application and enforcement of customs laws and regulations.

ARTICLE 4.3

Customs cooperation

1. The Parties shall cooperate on customs matters between their respective customs authorities in order to ensure that the objectives set out in Article 4.1 are attained.

2. The Parties shall develop cooperation, including by:

(a) exchanging information concerning customs laws and regulations and their implementation, and customs procedures, particularly in the following areas:

(i) simplification and modernisation of customs procedures;

(ii) enforcement of intellectual property rights by the customs authorities;

(iii) facilitation of transit movements and transhipment;

(iv) relations with the business community; and

(v) supply chain security and risk management;

(b) working together on the customs-related aspects of securing and facilitating international trade supply chains in accordance with the SAFE Framework of Standards to Secure and Facilitate Global Trade of the World Customs Organization ("WCO") adopted in June 2005;

(c) considering the development of joint initiatives relating to import, export and other customs procedures, including the exchange of best practices and technical assistance, and ensuring the provision of an effective service to the business community; such cooperation may include exchanges on customs laboratories, the training of customs officers and on new technologies for customs controls and procedures;

(d) strengthening their cooperation in the field of customs in international organisations such as the WTO and the WCO;

(e) establishing, if relevant and appropriate, the mutual recognition of authorised economic operator programmes, including equivalent trade facilitation measures;

(f) carrying out exchanges on risk management techniques, risk standards and security controls, in order to establish, to the extent practicable, minimum standards for risk management techniques and related requirements and programmes;

(g) endeavouring to harmonise their data requirements for import, export and other customs procedures, by implementing common standards and data elements in accordance with the WCO Data Model;

(h) sharing their respective experiences in developing and deploying their single window systems, and, if appropriate, developing common sets of data elements for those systems;

(i) maintaining a dialogue between their respective policy experts to promote the utility, efficiency, and applicability of advance rulings for customs authorities and traders; and

(j) exchanging, if relevant and appropriate, through a structured and recurrent communication between their customs authorities, certain categories of customs-related information for specific purposes, namely improving risk management and the effectiveness of customs controls, targeting goods at risk in terms of revenue collections or safety and security, and facilitating legitimate trade; such exchange shall be without prejudice to exchanges of information that may take place between the Parties in accordance with the Protocol to this Agreement on Mutual Administrative Assistance in Customs Matters.

3. Any exchange of information between the Parties under this Chapter shall be subject, *mutatis mutandis*, to the confidentiality of information and personal data protection requirements set out in Article 12 of the Protocol to this Agreement on Mutual Administrative Assistance in Customs Matters, as well as to any confidentiality and privacy requirements set out in the laws and regulations of the Parties.

ARTICLE 4.4

Mutual administrative assistance

The Parties shall provide each other with mutual administrative assistance in customs matters in accordance with the Protocol to this Agreement on Mutual Administrative Assistance in Customs Matters.

ARTICLE 4.5

Customs laws, regulations and procedures

1. Each Party shall ensure that its customs laws, regulations and procedures are:

(a) based upon international instruments and standards in the area of customs and trade, including the International Convention on the Harmonized Commodity Description and Coding System done at Brussels on 14 June 1983, as well as the SAFE Framework of Standards to Secure and Facilitate Global Trade of the WCO and the WCO Data Model, and if applicable, the substantive elements of the Revised Kyoto Convention on the Simplification and Harmonisation of Customs Procedures done at Kyoto on the 18 May 1973 and adopted by the World Customs Organization Council in June 1999;

(b) based upon the protection and facilitation of legitimate trade through effective enforcement of and compliance with legislative requirements; and

(c) proportionate and non-discriminatory to avoid unnecessary burdens on economic operators, provide for further facilitation for operators with high levels of compliance, including favourable treatment with respect to customs controls prior to the release of goods, and ensure safeguards against fraud and illicit or damaging activities.

2. In order to improve working methods, as well as to ensure non-discrimination, transparency, efficiency, integrity and accountability in custom operations, each Party shall:

(a) simplify and review requirements and formalities, if possible, with a view to the rapid release and clearance of goods;

(b) work towards the further simplification and standardisation of data and documentation required by customs and other agencies in order to reduce the time and costs burdens for operators, including small and medium-sized enterprises; and

(c) ensure that the highest standards of integrity be maintained through the application of measures reflecting the principles of the relevant international conventions and instruments in this field.

ARTICLE 4.6

Release of goods

Each Party shall ensure that its customs authorities, border agencies or other competent authorities:

(a) provide for the prompt release of goods within a period no longer than required to ensure compliance with its customs and other trade-related laws and regulations and formalities;

(b) provide for advance electronic submission and processing of documentation and any other required information prior to the arrival of the goods;

(c) allow for the release of goods prior to the final determination of customs duties, taxes, fees and charges, subject to the provision of a guarantee, if required by its laws and regulations, in order to secure their final payment; and

(d) give appropriate priority to perishable goods when scheduling and performing any examinations that may be required.

ARTICLE 4.7

Simplified customs procedures

Each Party shall adopt or maintain measures allowing operators that are fulfilling criteria specified in its laws and regulations to benefit from further simplification of customs procedures. Such measures may include customs declarations containing reduced sets of data or supporting documents, or periodical customs declarations for the determination and payment of customs duties and taxes covering multiple imports within a given period after the release of those imported goods, or other procedures that provide for the expedited release of certain shipments.

ARTICLE 4.8

Authorised economic operators

1. Each Party shall establish or maintain a trade facilitation partnership programme for economic operators who meet specified criteria, ("authorised economic operators").

2. The specified criteria to qualify as authorised economic operators shall be related to compliance, or the risk of non-compliance, with requirements specified in laws, regulations or procedures of each Party. The specified criteria shall be published and it may include:

(a) the absence of any serious infringement or repeated infringements of customs legislation and taxation rules, including no record of serious criminal offences relating to the economic activity of the applicant;

(b) the demonstration by the applicant of a high level of control of its operations and of the flow of goods, by means of a system of managing commercial and, where appropriate, transport records, which allows appropriate customs controls;

(c) financial solvency, which shall be deemed to be proven if the applicant has good financial standing, which enables it to fulfil its commitments, with due regard to the characteristics of the type of business activity concerned;

(d) proven competences or professional qualifications directly related to the activity carried out; and

(e) appropriate security and safety standards.

3. The specified criteria referred to in paragraph 2 shall not be designed or applied so as to afford or create arbitrary or unjustifiable discrimination between economic operators where the same conditions prevail and shall allow the participation of small and medium-sized enterprises.

4. The trade facilitation partnership programme referred to in paragraph 1shall include the following benefits:

(a) low documentary and data requirements, as appropriate;

(b) lower rate of physical inspections or expedited examinations, as appropriate;

(c) simplified release procedures and rapid release time, as appropriate;

(d) use of guarantees, including, if applicable, comprehensive guarantees or reduced guarantees; and

(e) control of the goods at the premises of the authorised economic operator or another place authorised by customs authorities.

5. The trade facilitation partnership programme referred to in paragraph 1 may also include additional benefits, such as:

(a) deferred payment of duties, taxes, fees and charges;

(b) a single customs declaration for all imports or exports in a given period; or

(c) availability of a dedicated contact point to provide assistance in customs matters.

ARTICLE 4.9

Data and documentation requirements

1. Each Party shall ensure that import, export and transit formalities, data and documentation requirements are:

(a) adopted and applied with a view to the rapid release of goods, provided the conditions for the release are fulfilled;

(b) adopted and applied in a manner that aims to reduce the time and cost of compliance for traders or operators;

(c) the least trade-restrictive alternative, if two or more alternatives were reasonably available for fulfilling the policy objective or objectives in question; and

(d) not maintained, including parts thereof, if no longer required.

2. Each Party shall apply common customs procedures and use uniform customs documents for the release of goods throughout its customs territory.

ARTICLE 4.10

Use of information technology and electronic payment

1. Each Party shall use information technologies that expedite procedures for the release of goods in order to facilitate trade between the Parties.

2. Each Party shall:

(a) make available, by electronic means, a customs declaration that is required for the import, export or transit of goods;

(b) allow a customs declaration to be submitted in electronic format;

(c) establish a means of providing for the electronic exchange of customs information with its trading community;

(d) promote the electronic exchange of data between operators and customs authorities, as well as other related agencies; and

(e) use electronic risk management systems for assessment and targeting that enable its customs authorities to focus their inspections on high-risk goods and that facilitate the release and movement of low-risk goods.

3. Each Party shall adopt or maintain procedures allowing the option of electronic payment for duties, taxes, fees and charges collected by customs authorities incurred upon importation and exportation.

ARTICLE 4.11

Risk management

1. Each Party shall adopt or maintain a risk management system for customs control.

2. Each Party shall design and apply risk management in a manner as to avoid arbitrary or unjustifiable discrimination, or disguised restrictions on international trade.

3. Each Party shall concentrate customs control and other relevant border controls on high-risk consignments and expedite the release of low-risk consignments. Each Party may also select, on a random basis, consignments for those controls as part of its risk management.

4. Each Party shall base risk management on assessment of risk through appropriate selectivity criteria.

ARTICLE 4.12

Post-clearance audit

1. With a view to expediting the release of goods, each Party shall adopt or maintain post-clearance audit to ensure compliance with its customs and other trade-related laws and regulations.

2. Each Party shall conduct post-clearance audits in a risk-based manner.

3. Each Party shall conduct post-clearance audits in a transparent manner. If an audit is conducted and conclusive results have been achieved, the Party shall, without delay, notify the person, whose record is audited, of the results, the reasons for the results and the rights and obligations of that person.

4. The Parties acknowledge that the information obtained in a post-clearance audit may be used in further administrative or judicial proceedings.

5. Each Party shall, wherever practicable, use the result of post-clearance audit in applying risk management.

ARTICLE 4.13

Transparency

1. The Parties recognise the importance of timely consultations with trade representatives on legislative proposals and general procedures related to customs and trade matters. To that end, each Party shall provide for appropriate consultations between administrations and the business community.

2. Each Party shall ensure that their respective customs and related requirements and procedures continue to meet the needs of the business community, follow best practices, and remain less trade restrictive as possible.

3. Each Party shall provide for appropriate regular consultations between border agencies and traders or other stakeholders within its territory.

4. Each Party shall publish promptly in a non-discriminatory and accessible manner, including online, and prior to their application new laws and regulations related to customs and trade facilitation matters, as well as amendments of, and interpretations of, those laws and regulations. Such laws and regulations, as well as their amendments and interpretations, shall include those relating to:

(a) importation, exportation and transit procedures, including port, airport, and other entry-point procedures, and required forms and documents;

(b) applied rates of duties and taxes of any kind imposed on, or in connection with, importation or exportation;

(c) fees and charges imposed by or for governmental agencies on or in connection with importation, exportation or transit;

(d) rules for the classification or valuation of products for customs purposes;

(e) laws, regulations and administrative rulings of general application relating to rules of origin;

(f) import, export or transit restrictions or prohibitions;

(g) penalty provisions against breaches of import, export or transit formalities;

(h) agreements or parts thereof with any country or countries relating to importation, exportation or transit;

(i) procedures related to the administration of tariff quotas;

(j) operating hours and procedures for customs offices at ports and border crossing points;

(k) contact points for information enquiries; and

(l) other relevant notices of an administrative nature in relation to the above.

5. Each Party shall ensure that there is a reasonable period of time between the publication[1] of new or amended laws, regulations and procedures and fees or charges and their entry into force.

6. Each Party shall establish or maintain one or more enquiry points to respond reasonable enquiries from governments, operators and other interested parties on customs and other trade-related matters. The enquiry points shall respond to enquiries within a reasonable period of time set by each Party, which may vary depending on the nature or complexity of the request. A Party shall not require the payment of a fee for responding to enquiries or providing required forms and documents.

[1] For greater certainty, publication refers to making laws and regulations publicly available.

ARTICLE 4.14

Advance rulings

1. For the purposes of this Article, an "advance ruling" means a written decision provided to an applicant prior to the importation of a good covered by the application that sets out the treatment that the Party shall provide to the good at the time of importation with regard to:

(a) the tariff classification of the good;

(b) the origin of the good; and

(c) any other matters as the Parties may agree.

2. Each Party shall issue an advance ruling through its customs authorities. That advance ruling shall be issued in a reasonable and time limited manner to the applicant that has submitted a written request, including in electronic format, containing all necessary information in accordance with the laws and regulations of the issuing Party.

3. The advance ruling shall be valid for a period of at least three-years from the date in which it takes effect, unless the law, facts or circumstances supporting the original advance ruling have changed.

4. A Party may decline to issue an advance ruling if the facts and circumstances which form the basis of the advance ruling are under administrative or judicial review or if the application does not relate to any intended use of the advance ruling. If a Party declines to issue an advance ruling, it shall promptly notify the applicant in writing, setting out the relevant facts and the basis for its decision.

5. Each Party shall publish, at least:

(a) the requirements for the application for an advance ruling, including the information to be provided and the format;

(b) the time period by which it will issue an advance ruling; and

(c) the length of time for which the advance ruling is valid.

6. If a Party revokes or modifies or invalidates an advance ruling, it shall provide written notice to the applicant setting out the relevant facts and the basis for its decision. A Party may only revoke, modify or invalidate an advance ruling with retroactive effect, if the ruling was based on incomplete, incorrect, false or misleading information provided by the applicant.

7. An advance ruling issued by a Party shall be binding on that Party with respect to the applicant that sought it. The advance ruling shall also be binding on the applicant.

8. Each Party shall provide, upon written request of an applicant, a review of the advance ruling or of the decision to revoke, modify or invalidate that advance ruling.

9. Subject to confidentiality requirements in its laws and regulations, each Party shall make publicly available, including online, the substantive elements of its advance rulings.

ARTICLE 4.15

Transit and transhipment

1. Each Party shall ensure the facilitation and effective control of transit movements and transhipment operations through its territory.

2. Each Party shall promote and implement regional transit arrangements with a view to facilitating trade.

3. Each Party shall ensure cooperation and coordination of its concerned authorities and relevant agencies to facilitate traffic in transit.

4. Each Party shall allow goods intended for import to be moved within its territory under customs control from a customs office of entry to another customs office in its territory from where the goods are to be released or cleared, provided all regulatory requirements are met.

ARTICLE 4.16

Customs brokers

1. A Party shall not introduce the mandatory use of customs brokers as a requirement for operators to fulfil their obligations with respect to the importation, exportation and transit of goods.

2. Each Party shall publish its measures on the use of customs brokers.

3. The Parties shall apply transparent, non-discriminatory and proportionate rules if and when licensing customs brokers.

ARTICLE 4.17

Pre-shipment inspections

The Parties shall not require the mandatory use of pre-shipment inspections, as defined in the Agreement on Pre-shipment Inspection, contained in Annex 1A to the WTO Agreement, or any other inspection activity performed at destination, before customs clearance, by private companies.

ARTICLE 4.18

Appeals

1. Each Party shall provide effective, prompt, non-discriminatory and easily accessible procedures to guarantee the right of appeal against the administrative actions, rulings and decisions of customs authorities or other competent authorities affecting import or export of goods or goods in transit.

2. Appeal procedures may include administrative review by the supervising authority and judicial review of decisions taken at the administrative level in accordance with the laws and regulations of a Party.

3. Any person who has applied to the customs authorities or other competent authorities or a decision and has not obtained a decision on that application within the relevant time frames limit shall also be entitled to exercise the right of appeal.

4. Each Party shall ensure that its customs authorities or other competent authorities provide to persons to whom administrative decisions are issued, the reasons for those decisions to facilitate, where necessary, recourse to appeal procedures.

ARTICLE 4.19

Penalties

1. Each Party shall ensure that its customs laws and regulations provide that any penalties imposed for breaches of customs laws, regulations or procedural requirements are proportionate and non-discriminatory.

2. Each Party shall ensure that any penalty imposed for a breach of its customs laws, regulations, or procedural requirements is imposed only on the person legally responsible for the breach.

3. Each Party shall ensure that the penalty imposed depends on the facts and circumstances of the case and is commensurate with the degree and severity of the breach. Each Party shall avoid incentives for, or conflicts of interest in, the assessment and collection of penalties.

4. Each Party is encouraged to consider prior disclosure to a customs authority of the circumstances of a breach of customs laws, regulations, or procedural requirements as a potential mitigating factor when establishing a penalty.

5. If a Party imposes a penalty for a breach of its customs laws, regulations, or procedural requirements, it shall provide an explanation in writing to the person upon whom it imposes the penalty, specifying the nature of the breach and the applicable laws, regulations, or procedures pursuant to which the amount or range of penalty for the breach has been imposed.

ARTICLE 4.20

Sub-Committee on Customs, Trade Facilitation and Rules of Origin

1. The Sub-Committee on Customs, Trade Facilitation and Rules of Origin ("Sub-Committee") is established pursuant to Article 33.4(1).

2. The Sub-Committee shall ensure the proper implementation of this Chapter, the border enforcement of intellectual property rights by competent authorities in accordance with Sub-Section 2 of Section C of Chapter 25, the Protocol to this Agreement on Mutual Administrative Assistance in Customs Matters and any additional customs-related provisions agreed between the Parties and examine all matters arising from their application.

3. The functions of the Sub-Committee shall include:

(a) monitoring the implementation and administration of this Chapter and of Chapter 3;

(b) providing a forum to consult and discuss all matters concerning customs, including, in particular, customs procedures, customs valuation, tariff regimes, customs nomenclature, customs cooperation and mutual administrative assistance in customs matters;

(c) providing a forum to consult and discuss issues relating to rules of origin and administrative cooperation, and border measures for intellectual property rights; and

(d) enhancing cooperation on the development, application and enforcement of customs procedures, mutual administrative assistance in customs matters, rules of origin and administrative cooperation.

4. The Sub-Committee may make recommendations on the matters covered by paragraph 2. The Trade Council or the Trade Committee shall have the power to adopt decisions on mutual recognition of risk management techniques, risk standards, security controls and trade facilitation partnership programmes, including aspects such as data transmission and mutually agreed benefits.

ARTICLE 4.21

Temporary admission

1. For the purposes of this Article, "temporary admission" means the customs procedure under which certain goods, including means of transport, can be brought into a customs territory conditionally relieved from payment of import duties and taxes and without application of import prohibitions or restrictions of economic character. Those goods must be imported for a specific purpose and must be intended for re-exportation within a specified period of time and without having undergone any change except normal depreciation due to the use made of them.

2. Each Party shall grant temporary admission, with total conditional relief from import duties and taxes and without application of import restrictions or prohibitions of economic character[1], as provided for in its laws and regulations, to the following goods:

(a) goods for display or use at exhibitions, fairs, meetings or similar events, which means goods intended for display or demonstration at an event, goods intended for use in connection with the display of foreign products at an event, and equipment including interpretation equipment, sound and image recording apparatus and films of an educational, scientific or cultural character intended for use at international meetings, conferences or congresses; and goods obtained at such events from goods placed under temporarily admission; each Party may require a governmental authorisation or a guarantee or deposit to be issued before the event takes place;

[1] For greater certainty, the temporary admission of goods referred to in paragraphs 1 and 2 of this Article and brought into Chile from the European Union, shall not be subject to payment of the fee established in Article 107 of the Customs Ordinance of Chile (*Ordenanza de Aduanas*) contained in Decree 30 of the Ministry of Finance, Official Gazette, 4 June 2005 (*Decreto con Fuerza de Ley 30 del Ministerio de Hacienda, Diario Oficial, 4 de junio de 2005*).

(b) professional equipment, which means equipment for the press or for sound or television broadcasting which is necessary for representatives of the press or of broadcasting or television organisations visiting the territory of another country for purposes of reporting or in order to transmit or record material for specified programmes, cinematographic equipment necessary for a person visiting the territory of another country in order to make a specified film or films, any other equipment necessary for the exercise of the calling, trade or profession of a person visiting the territory of another country to perform a specified task, insofar as it is not to be used for the industrial manufacture or packaging of goods or, except in the case of hand tools, for the exploitation of natural resources, for the construction, repair or maintenance of buildings or for earth moving and like projects, ancillary apparatus for the equipment mentioned above, and accessories therefor; and component parts imported for repair of professional equipment temporarily admitted;

(c) goods imported in connection with a commercial operation but whose importation does not in itself constitute a commercial operation, such as: packings which are imported filled for re-exportation empty or filled, or are imported empty for re-exportation filled; containers, whether or not filled with goods, and accessories and equipment for temporarily admitted containers, which are either imported with a container to be re-exported separately or with another container, or are imported separately to be re-exported with a container and component parts intended for the repair of containers granted temporary admission; pallets; samples; advertising films;

(d) goods imported exclusively for educational, scientific or cultural purposes, such as scientific equipment, pedagogic material, welfare material for seafarers, and any other goods imported in connection with educational, scientific or cultural activities; spare parts for scientific equipment and pedagogic material which has been granted temporary admission; and tools specially designed for the maintenance, checking, gauging or repair of such equipment;

(e) personal effects, which means all articles, new or used, which a traveller may reasonably require for his or her personal use during the journey, taking into account all the circumstances of the journey, but excluding any goods imported for commercial purposes; and goods imported for sports purposes, such as sports requisites and other articles for use by travellers in sports contests or demonstrations or for training in the territory of temporary admission;

(f) tourist publicity material, which means goods imported for the purpose of encouraging the public to visit another foreign country, in particular in order to attend cultural, religious, touristic, sporting or professional meetings or demonstrations held there, each Party may require a guarantee or deposit to be provided for these goods;

(g) goods imported for humanitarian purposes, which means medical, surgical and laboratory equipment and relief consignments, such as vehicles and other means of transport, blankets, tents, prefabricated houses or other goods of prime necessity, forwarded as aid to those affected by natural disaster and similar catastrophes; and

(h) animals imported for specific purposes, such as: police dogs or horses, detector dogs, dogs for the blind, rescue dogs, participation in shows, exhibitions, contests, competitions or demonstrations, entertainment, such as circus animals, touring, including pet animals of travellers, performance of work or transport, medical purposes, such as delivery of snake poison.

3. Each Party shall accept, in accordance with its laws and regulations[1], the temporary admission of the goods referred to in paragraph 2 as well as, regardless of their origin, A.T.A. carnets issued in accordance with the Convention on temporary admission, done at Istanbul on 26 June 1990 in the other Party, endorsed in the other Party and guaranteed by an association forming part of the international guarantee chain, certified by the competent authorities and valid in the customs territory of the importing Party.

[1] For greater certainty, in the case of Chile, the A.T.A carnets shall be accepted as established by the Decree N° 103 of 2004 of the Ministry of Foreign Affairs (*Decreto N°103 de 2004 del Ministerio de Relaciones Exteriores*), that enacts the "Convention on Temporary Admission and its Annexes A, B1, B2 and B3, with the reservations duly indicated", and its amendments thereof.

ARTICLE 4.22

Repaired goods

1. For the purposes of this Article, "repair" means any processing operation undertaken in respect of a good to remedy an operating defect or material damage and entailing the re-establishment of the good to its original function or to ensure compliance with technical requirements for its use, without which the good could no longer be used in the normal way for the purposes for which it was intended. The repair includes restoration and maintenance but does not include an operation or process that:

(a) destroys the essential characteristics of a good, or creates a new or commercially different good;

(b) transforms an unfinished good into a finished good; or

(c) is used to improve or upgrade the technical performance of a good.

2. A Party shall not apply a customs duty to a good, regardless of its origin, that re-enters its customs territory, after that good has been temporarily exported from its customs territory to the customs territory of the other Party for repair.

3. Paragraph 2 does not apply to a good, imported in bond, into free trade zones, or in similar status, which is thereafter exported for repair and is not re-imported in bond, into free trade zones, or in similar status.

4. A Party shall not apply a customs duty to a good, regardless of its origin, imported temporarily from the customs territory of the other Party for repair.

ARTICLE 4.23

Fees and formalities

1. Fees and other charges that a Party imposes on or in connection with the importation or exportation of a good of the other Party shall be limited in amount to the approximate cost of services rendered, and shall not represent an indirect protection in respect of domestic goods or taxation of imports or exports for fiscal purposes.

2. A Party shall not levy fees or other charges on or in connection with the importation or exportation of a good of the other Party on an *ad valorem* basis.

3. Each Party may impose charges or recover costs only if specific services are rendered, including the following:

(a) attendance, where requested, by customs staff outside official office hours or at premises other than customs premises;

(b) analyses or expert reports on goods and postal fees for the return of goods to an applicant, particularly in respect of decisions relating to binding information or the provision of information concerning the application of the customs legislation;

(c) examination or sampling of goods for verification purposes, or the destruction of goods, where costs other than the cost of using customs staff are involved; or

(d) exceptional control measures, where these are necessary due to the nature of the goods or to a potential risk.

4. Each Party shall promptly publish all fees and charges it may impose in connection with importation or exportation in such a manner as to enable governments, traders and other interested parties, to become acquainted with them.

5. A Party shall not require consular transactions, including related fees and charges, in connection with the importation of any good of the other Party.

CHAPTER 5

TRADE REMEDIES

SECTION A

ANTI-DUMPING AND COUNTERVAILING DUTIES

ARTICLE 5.1

General provisions

1. The Parties affirm their rights and obligations under the Anti-dumping Agreement and the SCM Agreement.

2. For the purposes of this Section, the preferential rules of origin under Chapter 3 (Rules of origin) do not apply.

ARTICLE 5.2

Transparency

1. Anti-dumping and anti-subsidy investigations and measures should be used in full compliance with the relevant WTO requirements set out in the Anti-dumping Agreement and the SCM Agreement and should be based on a fair and transparent system.

2. Each Party shall ensure, as soon as practicable after any imposition of provisional measures and in any case before final determination is made, full disclosure of all essential facts and considerations on which it bases a decision to apply definitive measures. Such disclosure is without prejudice to Article 6.5 of the Anti-Dumping Agreement and Article 12.4 of the SCM Agreement. Each Party shall disclose such essential facts and considerations in writing, and allow interested parties sufficient time to submit comments thereon.

3. Each interested party shall be granted the possibility to be heard in order to express its views during an anti-dumping or anti-subsidy investigation, provided that this does not unnecessarily delay the conduct of the investigation.

ARTICLE 5.3

Consideration of public interest

Each Party shall take into account the situation of its domestic industry, importers and their representative associations, representative users and representative consumer organisations to the extent that they have provided relevant information to the investigating authorities within the relevant timeframe. A Party may decide not to apply anti-dumping or countervailing measures on the basis of such information.

ARTICLE 5.4

Lesser duty rule

If a Party imposes an anti-dumping duty on the goods of the other Party, the amount of such duty shall not exceed the margin of dumping. Whenever possible, the anti-dumping duty should be less than that margin if such lesser duty would be adequate to remove the injury to the domestic industry.

ARTICLE 5.5

Non-application of dispute settlement

Chapter 31 does not apply to this Section.

SECTION B

GLOBAL SAFEGUARD MEASURES

ARTICLE 5.6

General provisions

The Parties affirm their rights and obligations pursuant to Article XIX of GATT 1994, the Safeguards Agreement and Article 5 of the Agreement on Agriculture.

ARTICLE 5.7

Transparency and imposition of definitive measures

1. Notwithstanding Article 5.6, the Party initiating a global safeguard investigation or intending to apply global safeguard measures shall, on request of the other Party and provided that the latter has a substantial interest, immediately provide a written notification containing all pertinent information leading to the initiation of a global safeguard investigation or the application of global safeguard measures, including on the provisional findings, if relevant. Such notification is without prejudice to Article 3(2) of the Safeguards Agreement.

2. When imposing definitive global safeguard measures, each Party shall endeavour to impose them in a way that least affects bilateral trade, provided that the Party affected by the measures has a substantial interest as defined in paragraph 4.

3. For the purposes of paragraph 2, if a Party considers that the legal requirements for the imposition of definitive global safeguard measures are met, and intends to apply such measures, it shall notify the other Party and grant the possibility of holding bilateral consultations, provided that the other Party has a substantial interest as defined in paragraph 4. If no satisfactory solution has been reached within 15 days of the notification, the importing Party may adopt the appropriate global safeguard measures to remedy the problem.

4. For the purposes of this Article, a Party shall be considered to have a substantial interest when it is among the five largest suppliers of the imported good during the most recent three-year time period, measured in terms of either absolute volume or value.

ARTICLE 5.8

Non-application of dispute settlement

Chapter 31 (State-to-State dispute settlement) does not apply to this Section.

SECTION C

BILATERAL SAFEGUARD MEASURES

SUB-SECTION 1

GENERAL PROVISIONS

ARTICLE 5.9

Definitions

For the purposes of this Section:

(a) "domestic industry" means, with respect to an imported good, the producers as a whole of like or directly competitive goods operating within the territory of a Party, or the producers whose collective output of like or directly competitive goods constitutes a major proportion of the total domestic production of those goods.

(b) "transition period" means:

(i) a period of seven years from the date of entry into force of this Agreement; or

(ii) for any good for which the schedule in Annex 2 of the Party applying a bilateral safeguard measure provides for a tariff elimination period of seven years, the tariff elimination period for that good plus two years.

ARTICLE 5.10

Application of a bilateral safeguard measure

1. Notwithstanding Section B, if, as a result of the reduction or elimination of a customs duty under this Agreement, a good originating in a Party is being imported into the territory of the other Party in such increased quantities, in absolute terms or relative to domestic production, and under such conditions as to cause or threaten to cause serious injury to domestic producers of like or directly competitive goods, the importing Party may take appropriate bilateral safeguard measures under the conditions and in accordance with the procedures laid down in this Section.

2. If the conditions in paragraph 1 are met, the importing Party may apply one of the following bilateral safeguard measures:

(a) the suspension of any further reduction of the rate of customs duty on the good concerned as provided for under this Agreement; or

(b) the increase in the rate of customs duty on the good concerned to a level which does not exceed the lesser of:

(i) the most-favoured-nation applied rate of customs duty on the good in effect at the time of application of the measure; or

(ii) the most-favoured-nation applied rate of customs duty on the good in effect on the day immediately preceding the date of entry into force of this Agreement.

ARTICLE 5.11

Standards for bilateral safeguard measures

1. A bilateral safeguard measure shall not be applied:

(a) except to the extent, and for such time, as may be necessary to prevent or remedy serious injury or threat thereof to the domestic industry;

(b) for a period exceeding two years; the period may be extended by another two years, if the competent investigating authority of the importing Party determines, in conformity with the procedures specified in this Section, that the measure continues to be necessary to prevent or remedy serious injury or threat thereof to the domestic industry, provided that the total period of application of the bilateral safeguard measure, including the period of initial application and any extension thereof, does not exceed four years; or

(c) beyond the expiration of the transition period as defined in subparagraph (b) of Article 5.9.

2. When a Party ceases to apply a bilateral safeguard measure, the rate of customs duty shall be the rate that would have been in effect for the good in accordance with its schedule in Annex 2.

3. In order to facilitate adjustment of the industry concerned in a situation where the expected duration of a bilateral safeguard measure exceeds one year, the Party applying the measure shall progressively liberalise it at regular intervals during the period of application.

ARTICLE 5.12

Provisional bilateral safeguard measures

1. In critical circumstances where delay would cause damage that would be difficult to repair, a Party may apply a bilateral safeguard measure on a provisional basis, without complying with the requirements of Article 5.21(1) pursuant to a preliminary determination that there is clear evidence that imports of a good originating in the other Party have increased as the result of the reduction or elimination of a customs duty under this Agreement, and that such imports cause or threaten to cause serious injury to the domestic industry.

2. The duration of any provisional bilateral safeguard measure shall not exceed 200 days, during which time the Party applying the measure shall comply with the relevant procedural rules laid down in Sub-Section 2. The Party applying the provisional bilateral safeguard measure shall promptly refund any tariff increases if the investigation described in Sub-Section 2 does not result in a finding that the conditions of Article 5.10(1) are met. The duration of the provisional bilateral safeguard measure shall be counted as part of the period described in subparagraph (b) of Article 5.11(1).

3. The Party applying a provisional bilateral safeguard measure shall inform the other Party upon taking such provisional measures and shall immediately refer the matter to the Trade Committee for examination if the other Party so requests.

ARTICLE 5.13

Compensation and suspension of concessions

1. A Party applying a bilateral safeguard measure shall consult with the other Party whose products are subject to the measure in order to agree on appropriate trade liberalising compensation in the form of concessions having substantially equivalent trade effects. The Party applying a bilateral safeguard measure shall provide an opportunity for such consultations no later than 30 days after the application of the bilateral safeguard measure.

2. If the consultations referred to in paragraph 1 do not result in an agreement on trade liberalising compensation within 30 days after the start of the consultations, the Party whose goods are subject to the bilateral safeguard measure may suspend the application of concessions having substantially equivalent effects on the trade of the other Party.

3. The Party whose goods are subject to the bilateral safeguard measure shall notify the other Party in writing at least 30 days before it suspends the application of concessions in accordance with paragraph 2.

4. The obligation to provide compensation pursuant to paragraph 1 and the right to suspend the application of concessions pursuant to paragraph 2 shall:

(a) not be exercised for the first 24 months during which a bilateral safeguard measure is in effect, provided that the bilateral safeguard measure has been applied as a result of an absolute increase in imports; and

(b) cease on the date of termination of the bilateral safeguard measure.

ARTICLE 5.14

Time lapse between two safeguard measures and non-parallel application of safeguard measures

1. A Party shall not apply a safeguard measure as referred to in this Section to the import of a good that has previously been subject to such a measure, unless a period of time equal to half of the time during which the safeguard measure was applied for the immediately preceding period has elapsed. A safeguard measure that has been applied more than once on the same good may not be extended by another two years as set out in subparagraph (b) of Article 5.11(1).

2. A Party shall not apply, with respect to the same good and during the same period:

(a) a bilateral safeguard measure or a provisional bilateral safeguard measure under this Agreement; and

(b) a global safeguard measure pursuant to Article XIX of GATT 1994 and the Safeguards Agreement.

ARTICLE 5.15

Outermost regions[1] of the European Union

1. If any good originating in Chile is being imported into the territory of one or more of the outermost regions of the European Union in such increased quantities and under such conditions as to cause or threaten to cause serious deterioration in the economic situation of the outermost region concerned, the European Union, after having examined alternative solutions, may exceptionally apply bilateral safeguard measures limited to the territory of the region concerned.

2. For the purposes of paragraph 1, "serious deterioration" means major difficulties in a sector of the economy producing like or directly competitive goods. The determination of serious deterioration shall be based on objective factors, including the following:

(a) the increase in the volume of imports, in absolute terms or relative to domestic production and to imports from other sources; and

[1] On the date of entry into force of this Agreement, the outermost regions of the European Union are: Guadeloupe, French Guiana, Martinique, Reunion, Mayotte, St. Martin, the Azores, Madeira and the Canary Islands. This Article also applies to a country or an overseas territory that changes its status into that of an outermost region by way of a decision of the European Council in accordance with the procedure set out in Article 355 (6) of the Treaty on the Functionning of the European Union as from the date of adoption of that decision. In the event that an outermost region of the European Union, following that procedure, ceases to be an outermost region, this Article shall cease to be applicable to that country or overseas territory as from the date of the decision of the European Council in that regard. The European Union shall notify Chile of any change in the territories considered as outermost regions of the European Union.

(b) the effect of the imports referred to in paragraph 1 on the situation of the industry or economic sector concerned, including on the levels of sales, production, financial situation and employment.

3. Without prejudice to paragraph 1, other provisions of this Section applicable to bilateral safeguard measures are also applicable to any safeguard measures adopted under this Article. Any reference to "serious injury" in other provisions of this Section shall be understood as "serious deterioration" when applied in relation to outermost regions of the European Union.

SUB-SECTION 2

PROCEDURAL RULES APPLICABLE TO BILATERAL SAFEGUARD MEASURES

ARTICLE 5.16

Applicable law

For the application of bilateral safeguard measures, the competent investigating authority of each Party shall comply with the provisions of this Sub-Section. In cases not covered by this Sub-Section, the competent investigating authority shall apply the rules established under the law of the Party of that authority.

ARTICLE 5.17

Initiation of a safeguard procedure

1. A competent investigating authority of a Party may initiate a procedure regarding bilateral safeguard measures ("safeguard procedure") upon a written application[1] by or on behalf of the domestic industry, or in exceptional circumstances on its own initiative.

2. The application shall be considered to have been made by or on behalf of the domestic industry if it is supported by domestic producers whose collective output constitutes more than 50 % of the total domestic production of the like or directly competitive goods produced by the portion of the domestic industry expressing either support for or opposition to the application. However, a competent investigating authority shall not initiate an investigation if the domestic producers expressing support for the application account for less than 25 % of the total domestic production of the like or directly competitive goods produced by the domestic industry.

3. Once a competent investigating authority has initiated the investigation, the written application referred to in paragraph 1 shall be made available to interested parties, except for any confidential information contained therein.

[1] For the European Union, that application may be filed by one or more Member States on behalf of the domestic industry.

4. Upon initiation of a safeguard procedure, the competent investigating authority shall publish a notice of initiation of the safeguard procedure in the official journal of the Party. The notice shall identify:

(a) the entity which filed the written application, if applicable;

(b) the imported good subject to the safeguard procedure;

(c) the subheading and tariff item number under which the imported good is classified;

(d) the type of proposed measure to be applied;

(e) the public hearing pursuant to subparagraph (a) of Article 5.20 or the period within which interested parties may submit a request to be heard pursuant to subparagraph (b) of Article 5.20;

(f) the place where the written application and any other non-confidential documents filed in the course of the proceeding may be inspected; and

(g) the name, address and telephone number of the office to be contacted for more information.

5. With respect to a safeguard procedure initiated pursuant to paragraph 1 on the basis of a written application, the competent investigating authority concerned shall not publish the notice required by paragraph 3 without first assessing carefully whether the written application meets the requirements of its domestic legislation and the requirements of paragraph 1 and 2 and includes reasonable evidence that imports of a good originating in the other Party have increased as the result of the reduction or elimination of a customs duty under this Agreement, and that such imports cause or threaten to cause the alleged serious injury.

ARTICLE 5.18

Investigation

1. A Party shall apply a bilateral safeguard measure only after an investigation has been carried out by its competent investigating authority in accordance with Article 3(1) and subparagraph (c) of Article 4(2) of the Safeguards Agreement; to this end, Article 3(1) and subparagraph (c) of Article 4(2) of the Safeguards Agreement are incorporated into and made part of this Agreement, *mutatis mutandis*.

2. In the investigation referred to in paragraph 1, the Party shall comply with the requirements of subparagraph (a) of Article 4(2) of the Safeguards Agreement. To this end, subparagraph (a) of Article 4(2) of the Safeguards Agreement is incorporated into and made part of this Agreement, *mutatis mutandis*.

3. If a Party makes a notification pursuant to paragraph 1 of this Article and Article 3(1) of the Safeguards Agreement that it is applying or extending a bilateral safeguard measure, that notification shall include:

(a) evidence of serious injury, or threat of serious injury, caused by increased imports of a good originating in the other Party, as a result of the reduction or elimination of a customs duties under this Agreement; the investigation shall demonstrate, on the basis of objective evidence, the existence of a causal link between the increased imports of the good concerned and the serious injury or threat thereof. Known factors other than the increased imports shall also be examined to ensure that the serious injury or the threat of serious injury caused by these other factors is not attributed to the increased imports.

(b) a precise description of the originating good subject to the bilateral safeguard measure, including its heading or subheading under the HS Code, on which the schedules of tariff commitments in Annex 2 are based;

(c) a precise description of the bilateral safeguard measure;

(d) the date of the introduction of the bilateral safeguard measure, its expected duration and, if applicable, a timetable for progressive liberalisation of the measure in accordance with Article 5.11(3); and

(e) in case of an extension of the bilateral safeguard measure, evidence that the domestic industry concerned is adjusting.

4. On request of a Party whose good is subject to a safeguard procedure under this Section, the Party conducting that procedure 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 relation to the safeguard procedure.

5. Each Party shall ensure that its competent investigating authority completes any investigation pursuant to this Article within 12 months after the date of its initiation.

ARTICLE 5.19

Confidential information

1. Any information which is by nature confidential or which is provided on a confidential basis shall, upon good cause being shown, be treated as confidential by the competent investigating authority. Such information shall not be disclosed without permission of the interested party submitting it.

2. Interested parties providing confidential information are requested to furnish non-confidential summaries thereof or, if such parties indicate that the information cannot be summarised, the reasons therefor. The summaries shall be sufficiently detailed to permit a reasonable understanding of the substance of the information submitted in confidence. However, if the competent investigating authority finds that a request for confidentiality is not warranted and if the interested party concerned is either unwilling to make the information public or to authorise its disclosure in generalised or summary form, the competent investigating authority may disregard such information, unless it can be demonstrated to the satisfaction of that authority, in view of information from appropriate sources, that the information is correct.

ARTICLE 5.20

Hearings

In the course of each safeguard procedure, the competent investigating authority shall:

(a) hold a public hearing, after providing reasonable notice, to allow all interested parties and any representative consumer association to appear in person or by counsel in order to present evidence and to be heard regarding serious injury or threat of serious injury, and the appropriate remedy; or

(b) provide an opportunity to all interested parties to be heard if they have submitted a written request, within the period laid down in the notice of initiation referred to in Article 5.17(4), showing that they are likely to be affected by the outcome of the investigation and that there are special reasons for them to be heard orally.

ARTICLE 5.21

Notifications, examination in the Trade Committee and publications

1. If a Party considers that one of the circumstances set out in Article 5.10(1) or 5.15(1) exists, it shall immediately refer the matter to the Trade Committee for examination. The Trade Committee may make any recommendation needed to remedy the circumstances which have arisen. If no recommendation has been made by the Trade Committee aimed at remedying the circumstances, or no other satisfactory solution has been reached within 30 days after the date on which the Party refers the matter to the Trade Committee, the importing Party may adopt the appropriate bilateral safeguard measures to remedy the circumstance in accordance with this Section.

2. For the purposes of paragraph 1, the importing Party shall provide the exporting Party with all relevant information, including evidence of serious injury or threat thereof to domestic producers of the like and directly competitive good, caused by increased imports, a precise description of the good involved, and the proposed bilateral safeguard measure, its proposed date of imposition and expected duration.

3. The Party that adopts the bilateral safeguard measure shall publish its findings and reasoned conclusions reached on all pertinent issues of fact and law in the official journal of that Party, including the description of the imported good and the situation which has given rise to the imposition of measures in accordance with Articles 5.10(1) or 5.15(1), the causal link between such situation and the increased imports, and the form, level and duration of the measures.

ARTICLE 5.22

Acceptance of English documents in safeguard procedures

In order to facilitate the submission of documents in safeguard procedures, the competent investigating authority of the Party in charge of the procedure shall accept documents submitted in English by interested parties, provided that those parties submit later, within a longer deadline set by the competent authority, a translation of the documents into the language of the safeguard procedure.

CHAPTER 6

SANITARY AND PHYTOSANITARY MEASURES

ARTICLE 6.1

Objectives

The objectives of this Chapter are:

(a) to safeguard human, animal and plant health in the territories of the Parties whilst facilitating trade in animals, animal products, plants, plant products and other products covered by sanitary and phytosanitary ("SPS") measures, between the Parties, by:

(i) improving transparency, communication and cooperation on SPS measures between the Parties;

(ii) establishing mechanisms and procedures for trade facilitation; and

(iii) further implementing the principles of the SPS Agreement;

(b) to cooperate in multilateral fora and on food safety, animal health and plant protection science; and

(c) to cooperate on other sanitary or phytosanitary matters or in other fora.

ARTICLE 6.2

Multilateral obligations

The Parties reaffirm their rights and obligations under the WTO Agreement and, in particular, the SPS Agreement. Those rights and obligations shall underpin the activities of the Parties under this Chapter.

ARTICLE 6.3

Scope

This Chapter applies to:

(a) all SPS measures as defined in Annex A to the SPS Agreement in so far as they affect trade between the Parties;

(b) cooperation in multilateral fora recognised in the framework of the SPS Agreement;

(c) cooperation on food safety, animal health and plant protection science; and

(d) cooperation on any other sanitary or phytosanitary matter in any other fora, as the Parties may agree.

ARTICLE 6.4

Definitions

For the purposes of this Chapter and Annexes 6-A to 6-H:

(a) the definitions in Annex A of the SPS Agreement, as well as those of the *Codex Alimentarius*, the World Organisation for Animal Health and the International Plant Protection Convention, done at Rome on 17 November 1997 apply; and

(b) "protected zone" means, for a specific regulated pest, an officially defined geographical part of the territory of a Party in which that pest is known not to be established in spite of favourable conditions and its presence in other parts of the territory of that Party.

ARTICLE 6.5

Competent authorities

1. The competent authorities of the Parties are the authorities responsible for the implementation of the measures referred to in this Chapter, as set out in Annex 6-A.

2. In accordance with Article 6.12, the Parties shall inform each other of any significant changes in the structure, organisation or division of competences of their competent authorities.

ARTICLE 6.6

Recognition of status in respect of animal diseases and infections in animals, and of pests

1. The following applies to status in respect of animal diseases and infections in animals, including zoonoses:

(a) the importing Party shall recognise for trade purposes the animal health status of the exporting Party or its regions, as determined by the exporting Party in accordance with subparagraph (a)(i) of paragraph 1 of Annex 6-C, in respect of the animal diseases specified in Annex 6-B;

(b) where a Party considers that its territory or any of its regions has a special status in respect of a specific animal disease other than the animal diseases set out in Annex 6-B, it may request recognition of that status in accordance with the criteria set out in paragraph 3 of Annex 6-C; the importing Party may require guarantees in respect of imports of live animals and animal products which are appropriate to the agreed status of that Party;

(c) the Parties recognise that the status of the territories or regions, or the status of a sector or sub-sector of the Parties, related to the prevalence or incidence of an animal disease other than the animal diseases set out in Annex 6-B, or of infections in animals, or their associated risk, as appropriate, as defined by the international standard setting organisations recognised in the framework of the SPS Agreement constitutes the basis of trade between them; the importing Party may, as appropriate, request guarantees in respect of imports of live animals and animal products which are appropriate to the defined status of that Party in accordance with the recommendations of the standard setting organisations; and

(d) without prejudice to Articles 6.9 and 6.15, and unless the importing Party raises an explicit objection and requests supportive or additional information, consultations or verification in accordance with Articles 6.11 and 6.14, each Party shall adopt, without undue delay, the legislative and administrative measures necessary to allow trade on the basis of subparagraphs (a), (b) and (c) of this paragraph.

2. The following applies to pests:

(a) the Parties recognise for trade purposes the pest status with regard to the pests specified in Annex 6-B; and

(b) without prejudice to Articles 6.9 and 6.15, and unless the importing Party raises an explicit objection and requests supportive or additional information, consultations or verification in accordance with Articles 6.11 and 6.14, each Party shall, without undue delay, take the legislative and administrative measures necessary to allow trade on the basis of subparagraph (a) of this paragraph.

ARTICLE 6.7

Recognition of regionalisation decisions in respect of animal diseases and infections in animals and of pests

1. The Parties recognise the concept of regionalisation, and shall apply it to trade between them.

2. Regionalisation decisions in respect of terrestrial and aquatic animal diseases listed in Appendix 6-B-1 and pests listed in Appendix 6-B-2, shall be adopted in accordance with Annex 6-C.

3. As regards animal diseases, and in accordance with Article 6.14, the exporting Party seeking recognition by the importing Party of a regionalisation decision shall notify its measures establishing regionalisation with a full explanation and supporting data for its determinations and decisions.

4. Without prejudice to Article 6.15, and unless the importing Party raises an explicit objection and requests additional information, consultations or verification in accordance with Articles 6.11 and 6.14 within 15 working days of the receipt of the regionalisation decision, the Parties shall consider that decision as accepted.

5. Consultations referred to in paragraph 4 of this Article shall take place in accordance with Article 6.14(2). The importing Party shall assess the additional information within 15 working days of the receipt of the additional information. The verification referred to in paragraph 4 of this Article shall be carried out in accordance with Article 6.11 and within 25 working days of the receipt of the request for verification.

6. As regards pests, each Party shall ensure that trade in plants, plant products and other products takes account of the pest status recognised by the other Party. The exporting Party seeking recognition of a regionalisation decision by the other Party shall notify the other Party of its measures and decisions, as guided by the relevant International Standards for Phytosanitary Measures of the Food and Agriculture Organisation of the United Nations ("FAO"), including 4 "Requirements for the establishment of Pest Free Areas", 8 "Determination of Pest Status in an area", and other international standards for phytosanitary measures as the Parties deem appropriate. Without prejudice to Article 6.15, and unless a Party raises an explicit objection and requests additional information, consultations or verification in accordance with Articles 6.11 and 6.14 within three months of the receipt of the regionalisation decision, the Parties shall consider that decision as accepted.

7. Consultations referred to in paragraph 4 of this Article shall take place in accordance with Article 6.14(2). The importing Party shall assess any additional information within three months following receipt of the additional information. Each Party shall carry out the verification referred to in paragraph 4 of this Article in accordance with Article 6.11 and within 12 months of the receipt of a request for verification, taking into account the biology of the pest and the crop concerned.

8. After finalisation of the procedures set out in paragraphs 2 to 7 of this Article, and without prejudice to Article 6.15, each Party shall, without undue delay, take the legislative and administrative measures necessary to allow trade on that basis.

ARTICLE 6.8

Recognition of equivalence

1. The Parties may recognise equivalence in relation to an individual measure, a group of measures or systems applicable to a sector or sub-sector.

2. In view of the recognition of equivalence, the Parties shall follow the consultation process referred to in paragraph 3. That process shall include the objective demonstration of equivalence by the exporting Party and the objective assessment of that demonstration by the importing Party with a view to the possible recognition of equivalence by the importing Party.

3. The Parties shall, within three months of the receipt by the importing Party of a request by the exporting Party for recognition of equivalence of one or more measures affecting one or more sectors or sub-sectors, initiate a consultation process, which shall include the steps set out in Annex 6-E. In the case of multiple requests from the exporting Party, the Parties shall, on request of the importing Party, agree within the Sub-Committee referred to in Article 6.16 on a time schedule in accordance with which they shall initiate the process referred to in this paragraph.

4. Unless otherwise agreed, the importing Party shall finalise the assessment of equivalence, as set out in Annex 6-E, no later than 180 days after having received from the exporting Party its demonstration of equivalence as set out in that Annex. As an exception in the case of seasonal crops, it is justifiable to finalise the assessment of equivalence at a later time, if necessary in order to allow for the verification of phytosanitary measures during a suitable period of growth of a crop.

5. The priority sectors or sub-sectors of each Party for which a consultation process as referred to in paragraph 3 of this Article may be initiated, are to be set out, where appropriate in order of priority in Appendix 6-E-1. The Sub-Committee referred to in Article 6.16 may recommend that the Trade Council amend that list, including the order of priority.

6. The importing Party may withdraw or suspend a recognition of equivalence on the basis of an amendment by one of the Parties of measures affecting the equivalence concerned, provided that the following procedures are followed:

(a) in accordance with Article 6.13, the exporting Party shall inform the importing Party of any proposed amendment to a measure of the exporting Party for which equivalence is recognised and the likely effect of the proposed amendment on that equivalence; within 30 working days of the receipt of that information, the importing Party shall inform the exporting Party whether or not that equivalence would continue to be recognised on the basis of the proposed amendment; and

(b) in accordance with Article 6.13, the importing Party shall inform the exporting Party of any proposed amendment to a measure of the importing Party on which a recognition of equivalence has been based and the likely effect of the proposed amendment on that recognition of equivalence; if the importing Party does not continue to recognise that equivalence, the Parties may jointly establish the conditions for reinitiating the process referred to in paragraph 3 of this Article on the basis of the proposed amendment.

7. Without prejudice to Article 6.15, the importing Party shall not withdraw or suspend a recognition of equivalence before the proposed amendment of either Party enters into force.

8. The recognition or the withdrawal or suspension of a recognition of equivalence rests solely with the importing Party acting in accordance with its administrative and legislative framework including, as regards plants, plant products and other goods, appropriate communications in accordance with the FAO International Standard for Phytosanitary Measures 13 "Guidelines for the notification of non-compliances and emergency action" and other international standards for phytosanitary measures, as appropriate. The importing Party shall provide the exporting Party with a full written explanation and the supporting data in respect of the determinations and decisions covered by this Article. In case of non-recognition, or withdrawal or suspension of a recognition of equivalence, the importing Party shall inform the exporting Party of the conditions for reinitiating the process referred to in paragraph 3.

ARTICLE 6.9

Transparency and trade conditions

1. The Parties shall apply general import conditions. Without prejudice to the decisions taken in accordance with Article 6.7, the import conditions of the importing Party shall be applicable to the territory of the exporting Party. In accordance with Article 6.13, the importing Party shall inform the exporting Party of its SPS import requirements. That information shall include, as appropriate, the models for any official certificates or attestations required by the importing Party.

2. Each Party shall, for the notification of amendments or proposed amendments to the conditions referred to in paragraph 1 of this Article, comply with Article 7 and Annex B of the SPS Agreement and subsequent decisions adopted by the WTO SPS Committee. Without prejudice to Article 6.15, the importing Party shall take into account the transport time between the territories of the Parties when establishing the date of entering into force of any amendments to the conditions referred to in paragraph 1 of this Article.

3. If the importing Party fails to comply with the notification requirements referred to in paragraph 2, it shall continue to accept, for 30 days after the date of entry into force of the amendment concerned, any certificate or attestation guaranteeing the import conditions applicable prior to that amendment.

4. When Chile grants market access to one or more European Union sectors or sub-sectors in accordance to the conditions referred to in paragraph 1, Chile shall approve any subsequent export requests submitted by the Member States on the basis of a comprehensive dossier of information available to the European Commission, known as the Country profile, unless Chile requests additional information in limited specific circumstances when deemed appropriate.

5. Within 90 days of a recognition of equivalence in accordance with Article 6.8, a Party shall take the legislative and administrative measures necessary to implement that recognition of equivalence in order to allow trade between the Parties in sectors and sub-sectors in which the importing Party recognises all SPS measures of the exporting Party as equivalent. For the animals, animal products, plants, plant products and other products covered by the SPS measures concerned, the model for the official certificate or official document required by the importing Party may be replaced by a certificate as provided for in Annex 6-H.

6. For products referred to in paragraph 5 in sectors or sub-sectors for which one or some but not all measures are recognised as equivalent, the Parties shall continue trade between them on the basis of compliance with the conditions referred to in paragraph 1. On request of the exporting Party, paragraph 8 shall apply.

7. For the purposes of this Chapter, the importing Party shall not subject imports of products of the other Party to import licences.

8. As regards general import conditions affecting trade between the Parties, the Parties shall, on request of the exporting Party, enter into consultations in accordance with Article 6.14, in order to establish alternative or additional import conditions of the importing Party. The Parties shall, if appropriate, base those alternative or additional import conditions on measures of the exporting Party recognised as equivalent by the importing Party. If the Parties agree on alternative or additional import conditions, the importing Party shall, within 90 days of their establishment, take the legislative or administrative measures necessary to allow imports on that basis.

9. As regards imports of animals, animal products, products of animal origin and animal by-products, the importing Party shall, on request of the exporting Party accompanied by the appropriate guarantees, approve, without prior inspection, and in accordance with Annex 6-D, establishments which are situated on the territory of the exporting Party. Unless the exporting Party requests additional information, the importing Party shall, within 30 working days of the receipt of the request for approval accompanied by the appropriate guarantees, take the legislative or administrative measures necessary to allow imports on that basis.

10. The initial list of establishments shall be approved by a Party in accordance with Annex 6-D.

11. On request of a Party, the other Party shall provide a full explanation and supporting data for the determinations and decisions covered by this Article.

ARTICLE 6.10

Certification procedures

1. For the purposes of certification procedures, the Parties shall comply with the principles and criteria set out in Annex 6-H.

2. A Party shall issue the certificates or official documents referred to in paragraphs 1 and 4 of Article 6.9 as set out in Annex 6-H.

3. The Sub-Committee referred to in Article 6.16 may recommend that the Trade Committee or Trade Council adopt a decision establishing rules to be followed in case of electronic certification, or withdrawal or replacement of certificates.

ARTICLE 6.11

Verification

1. For the purposes of the effective implementation of this Chapter, each Party shall have the right:

(a) to carry out, in accordance with the guidelines set out in Annex 6-F, a verification of all or a part of the total control programme of the competent authorities of the other Party; the expenses of that verification shall be borne by the Party carrying out the verification;

(b) as from a date to be determined by the Parties, to request from the other Party all or a part of that Party's total control programme and a report concerning the results of the controls carried out under that programme; and

(c) for laboratory tests related to products of animal origin, to request the participation of the other Party in the periodical inter-comparative test programme for specific tests organised by the reference laboratory of the requesting Party; the costs related to that participation shall be borne by the participating Party.

2. Each Party may share the results and conclusions of its verifications with third countries and make them publicly available.

3. The Sub-Committee referred to in Article 6.16 may recommend that the Trade Council amends Annex 6-F, taking due account of relevant work carried out by international organisations.

4. The results of verifications referred to in this Article may contribute to measures by a Party or the Parties referred to in Articles 6.6, 6.7, 6.8, 6.9 and 6.12.

ARTICLE 6.12

Import checks and inspection fees

1. Import checks conducted by the importing Party on consignments from the exporting Party shall respect the principles set out in Annex 6-G. The results of these checks may contribute to the verification process referred to in Article 6.11.

2. The frequency rates of physical import checks applied by each Party are set out in Annex 6-G. The Sub-Committee referred to in Article 6.16 may recommend to the Trade Council to amend Annex 6-G.

3. A Party may deviate from the frequency rates set out in the Annex 6-G within its competences and in accordance with its laws and regulations, as a result of progress made in accordance with Articles 6.8 and 6.9, or as a result of verifications, consultations or other measures provided for in this Chapter.

4. Inspection fees shall not exceed the costs incurred by the competent authority for performing import checks and shall be equitable in relation to fees charged for the inspection of similar domestic products.

5. The importing Party shall inform the exporting Party of any amendment, including the reasons for that amendment, to the measures affecting import checks and inspection fees and of any significant changes in the administrative procedure for those checks.

6. For the products referred to in Article 6.9(5), the Parties may agree to reciprocally reduce the frequency of physical import checks.

7. The Sub-Committee may recommend to the Trade Council the conditions for approval of each Party's import checks, with a view to adapting their frequency or replacing them, to be applicable as of a certain date. Those conditions shall be included in Annex 6-G by a decision of the Trade Council. As from that date, the Parties may approve each other's import checks for certain products with a view to reducing their frequency or replacing them.

ARTICLE 6.13

Information exchange

1. The Parties shall exchange information relevant to the implementation of this Chapter on a systematic basis, with a view to developing standards, providing assurance, engendering mutual confidence and demonstrating the effectiveness of the programmes controlled. If appropriate, the exchange of information may include exchange of officials.

2. The Parties shall also exchange information on other relevant topics, including:

(a) significant events concerning products covered by this Chapter, including information exchange provided for in Articles 6.8 and 6.9;

(b) the results of the verification procedures provided for in Article 6.11;

(c) the results of the import checks provided for in Article 6.12 in the case of rejected or non-compliant consignments of animals and animal products;

(d) scientific opinions relevant to this Chapter and produced under the responsibility of a Party; and

(e) rapid alerts relevant to trade within the scope of this Chapter.

3. A Party shall submit scientific papers or data to the relevant scientific forum to substantiate any views or claims made in respect of a matter arising under this Chapter for evaluation in a timely manner. The results of that evaluation shall be made available to the Parties.

4. When the information referred to in this Article has been made available by a Party by notification to the WTO in accordance with Article 7 and Annex B of the SPS Agreement, or on its official, publicly accessible and fee-free website, the information provided for in this Article shall be considered as exchanged.

5. For pests of known and immediate danger to a Party, direct communication to that Party shall be sent by mail or e-mail. The Parties shall follow the guidance provided by the FAO International Standard for Phytosanitary Measures 17 "Pest reporting".

6. The Parties shall exchange the information referred to in this Article via e-mail, fax or mail.

ARTICLE 6.14

Notification and consultations

1. A Party shall, within two working days of any serious or significant human, animal or plant health risk, including food control emergencies or situations where there is a clearly identified risk of serious health effects associated with the consumption of animal or plant products, notify the other Party of that risk and in particular of the following:

(a) measures affecting regionalisation decisions as referred to in Articles 6.7;

(b) the presence or evolution of an animal disease or pest listed in Annex 6-B;

(c) findings of epidemiological importance or important associated risks with respect to animal diseases and pests which are not listed in Annex 6-B, or which are new animal diseases or pests; and

(d) additional measures beyond the basic requirements of their respective measures taken to control or eradicate animal diseases or pests or protect public health, and any changes in prophylactic policies, including vaccination policies.

2. Where a Party has serious concerns regarding a risk to human, animal or plant health, that Party may request consultations with the other Party regarding the situation. Those consultations shall take place as soon as possible and, in any case, within 13 working days of the request. In those consultations, each Party shall endeavour to provide all the information necessary to avoid a disruption in trade, and to reach a mutually acceptable solution consistent with the protection of human, animal or plant health.

3. A Party may request that the consultations referred to in paragraph 2 of this Article shall be held by video or audio conference. The requesting Party shall prepare the minutes of the consultations, which shall be subject approval by the Parties. For the purposes of that approval, Article 6.13(6) applies.

ARTICLE 6.15

Safeguard clause

1. If the exporting Party takes domestic measures to control a cause likely to constitute a serious risk to human, animal or plant health, that Party shall, without prejudice to paragraph 2, take equivalent measures to prevent the introduction of the risk into the territory of the importing Party.

2. The importing Party may, on the grounds of serious risk to human, animal or plant health, take provisional measures necessary for the protection of human, animal or plant health. For consignments that are in transport between the Parties when such provisional measures apply, the importing Party shall consider the most suitable and proportional solution to avoid unnecessary disruptions to trade.

3. The Party taking measures as referred to in this Article shall notify the other Party thereof within one working day of the decision to implement those measures. Upon request of a Party and in accordance with Article 6.14(2), the Parties shall hold consultations regarding the situation within 13 working days of the notification. The Parties shall take due account of any information provided during those consultations and shall endeavour to avoid unnecessary disruption to trade, considering, if applicable, the outcome of consultations under Article 6.14(2).

ARTICLE 6.16

Sub-Committee on Sanitary and Phytosanitary Measures

1. The Sub-Committee on Sanitary and Phytosanitary Measures ("Sub-Committee"), established pursuant to Article 33.4(1), shall be composed of representatives of the Parties with responsibility for SPS matters.

2. The Sub-Committee shall:

(a) monitor the implementation and consider matters relating to this Chapter, and examine all matters which may arise in relation to its implementation; and

(b) make recommendations to the Trade Council for amendments to Annexes pursuant to subparagraph (a) of Article 33.1(6), in particular in the light of progress made under the consultations and procedures provided for under this Chapter.

3. The Sub-Committee shall agree on the actions to take in pursuing the objectives of this Chapter. The Sub-Committee shall establish objectives and milestones for those actions. The Sub-Committee shall evaluate the results of those actions.

4. The Sub-Committee may recommend that the Trade Council or Trade Committee, pursuant to Article 33.4(2), establish technical working groups, when appropriate, consisting of expert-level representatives of each Party, which shall identify and address technical and scientific issues arising from the application of this Chapter.

5. The Sub-Committee may recommend that the Trade Council or Trade Committee adopt a decision on specific rules of procedures for this Sub-Committee in view of the specificity of SPS matters.

ARTICLE 6.17

Cooperation in multilateral fora

1. The Parties shall promote cooperation in multilateral fora relevant for SPS matters, in particular in international standard-setting bodies recognised in the framework of the SPS Agreement.

2. The Sub-Committee established in Article 6.16 shall be the relevant forum for exchange of information and cooperation on matters referred to in paragraph 1 of this Article.

ARTICLE 6.18

Cooperation on food safety, animal health and plant protection science

1. The Parties shall endeavour to facilitate scientific cooperation between bodies of the Parties responsible for scientific evaluation in the areas of food safety, animal health and plant protection.

2. The Sub-Committee may recommend that the Trade Council or Trade Committee, pursuant to paragraph 2 of Article 33.4, establish a technical working group on scientific cooperation as referred to in paragraph 1 of this Article ("the working group"), consisting of expert-level representatives of the scientific bodies referred to in paragraph 1, appointed by each Party.

3. The Trade Council or Trade Committee establishing the working group shall define the mandate, scope and work programme of that working group.

4. The working group may exchange information, including on:

(a) scientific and technical information; and

(b) data collection.

5. The work carried out by the working group shall not affect the independence of the national or regional agencies of each Party.

6. Each Party shall ensure that the representatives appointed pursuant to paragraph 2 are not affected by conflicts of interests under each Party's law.

ARTICLE 6.19

Territorial application for the European Union

1. By way of derogation from Article 33.8, for the European Union this Chapter applies to the territories of Member States as laid down in Annex I to Regulation (EU) 2017/625[1], and as regards plants, plant products and other goods, as laid down in Article 1(3) of Regulation (EU) 2016/2031[2].

2. The Parties understand that as regards the territory of the European Union, its specificity shall be taken into account and the European Union shall be recognised as a single entity.

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[1] Regulation (EU) 2017/625 of the European Parliament and of the Council of 15 March 2017 on official controls and other official activities performed to ensure the application of food and feed law, rules on animal health and welfare, plant health and plant protection products, amending Regulations (EC) No 999/2001, (EC) No 396/2005, (EC) No 1069/2009, (EC) No 1107/2009, (EU) No 1151/2012, (EU) No 652/2014, (EU) 2016/429 and (EU) 2016/2031 of the European Parliament and of the Council, Council Regulations (EC) No 1/2005 and (EC) No 1099/2009 and Council Directives 98/58/EC, 1999/74/EC, 2007/43/EC, 2008/119/EC and 2008/120/EC, and repealing Regulations (EC) No 854/2004 and (EC) No 882/2004 of the European Parliament and of the Council, Council Directives 89/608/EEC, 89/662/EEC, 90/425/EEC, 91/496/EEC, 96/23/EC, 96/93/EC and 97/78/EC and Council Decision 92/438/EEC (Official Controls Regulation) (OJ EU L 95, 7.4.2017, p.1).

[2] Regulation (EU) 2016/2031 of the European Parliament of the Council of 26 October 2016 on protective measures against pests of plants, amending Regulations (EU) No 228/2013, (EU) No 652/2014 and (EU) No 1143/2014 of the European Parliament and of the Council and repealing Council Directives 69/464/EEC, 74/647/EEC, 93/85/EEC, 98/57/EC, 2000/29/EC, 2006/91/EC and 2007/33/EC (OJ EU L 317, 23.11.2016, p. 4).

CHAPTER 7

COOPERATION ON SUSTAINABLE FOOD SYSTEMS

ARTICLE 7.1

Objective

The objective of this Chapter is to establish close cooperation to engage in the transition towards sustainability of their respective food systems. The Parties recognise the importance of strengthening policies and defining programmes that contribute to the development of sustainable, inclusive, healthy and resilient food systems and of the role of trade in pursuing this objective.

ARTICLE 7.2

Scope

1. This Chapter applies to cooperation between the Parties to improve the sustainability of their respective food systems.

2. This Chapter sets out provisions for cooperation on specific aspects of sustainable food systems, including:

(a) the sustainability of the food chain and reduction of food loss and waste;

(b) the fight against food fraud in the food chain;

(c) animal welfare;

(d) the fight against antimicrobial resistance; and

(e) the reduction of the use of fertilizers and chemical pesticides for which a risk assessment has shown that they cause unacceptable risks for health or the environment.

3. This Chapter also applies to the cooperation of the Parties in multilateral fora.

4. This Chapter applies without prejudice to the application of other Chapters related to food systems or to sustainability, in particular Chapters 6, 9 and 26.

ARTICLE 7.3

Definitions

1. For the purposes of this Chapter:

(a) "food chain" means all the steps from primary production to sale to the final consumer, including production, processing, manufacturing, transport, import, storage, distribution and sale to the final consumer;

(b) "primary production" means the production, rearing or growing of primary products, including harvesting, milking and farm animal production prior to slaughter, as well as hunting and fishing and the harvesting of wild products; and

(c) "sustainable food system" means a food system that provides safe, nutritious and sufficient food for all without compromising the economic, social and environmental bases required to generate food security and nutrition for future generations; such a sustainable food system:

(i) is profitable (economic sustainability);

(ii) has broad-based benefits for society (social sustainability); and

(iii) has a positive or neutral impact on the natural environment, including on climate change (environmental sustainability).

ARTICLE 7.4

Sustainability of food chain and reduction in food loss and waste

1. The Parties recognise the interlinkage between current food systems and climate change. The Parties shall cooperate to reduce the adverse environmental and climate effects of food systems as well as to strengthen their resilience.

2. The Parties recognise that food loss and waste have a negative impact on the social, economic, and environmental dimensions of food systems.

3. The Parties shall cooperate in the areas which may include:

(a) sustainable food production, including agriculture, the improvement of animal welfare, the promotion of organic farming and the reduction of the use of antimicrobials, fertilizers and chemical pesticides for which a risk assessment shows that they pose an unacceptable risk for health or the environment;

(b) sustainability of the food chain, including food production, processing methods and practices;

(c) healthy and sustainable diets, reducing the carbon footprint of consumption;

(d) decrease of the greenhouse gas emissions of food systems, increase of carbon sinks, and the reversal of biodiversity loss;

(e) innovation and technologies that contribute to adaptation and resilience to the impacts of climate change;

(f) development of contingency plans to ensure security of food supply in times of crisis; and

(g) reduction of food loss and waste in line with the Sustainable Development Goal target 12.3, defined in 2030 Agenda.

4. Cooperation pursuant to this Article may include exchange of information, expertise and experiences, as well as cooperation in research and innovation.

ARTICLE 7.5

Fight against fraud in the food chain

1. The Parties recognise that fraud may affect the safety of the food chain, jeopardise the sustainability of food systems and undermine fair commercial practice, consumer confidence and the resilience of food markets.

2. The Parties shall cooperate to detect and avoid fraud in the food chain by:

(a) exchanging information and experiences to improve the detection and countering of fraud in the food chain; and

(b) providing assistance necessary to gather evidence of practices that are or appear to be non-compliant with their rules or that pose a risk to the human, animal or plant health or to the environment or that mislead customers.

ARTICLE 7.6

Animal welfare

1. The Parties recognise that animals are sentient beings and that the use of animals in food production systems comes with a responsibility for their wellbeing. The Parties shall respect trade conditions for farmed animals and animal products that are aimed to protect animal welfare.

2. The Parties aim at reaching a common understanding on the international animal welfare standards of the World Organisation for Animal Health ("WOAH").

3. The Parties shall cooperate on the development and implementation of animal welfare standards on the farm, during transport, and at slaughter and killing of animals, in accordance with their law.

4. The Parties shall strengthen their research collaboration in the area of animal welfare to further develop science-based animal welfare standards.

5. The Sub-Committee referred to in Article 7.8 may address other matters in the area of animal welfare.

6. The Parties shall exchange information, expertise and experiences in the area of animal welfare.

7. The Parties shall cooperate in WOAH and may cooperate in other international fora, with the aim of promoting the further development of animal welfare standards and best practices and their implementation.

8. Pursuant to Article 33.4(2), the Trade Council or Trade Committee may establish a technical working group to support the Sub-Committee referred to in Article 7.8 in the implementation of this Article.

ARTICLE 7.7

Fight against antimicrobial resistance

1. The Parties recognise that antimicrobial resistance is a serious threat to human and animal health and that the use, especially the misuse and overuse of antimicrobials in animals, contributes to the overall development of antimicrobial resistance and represents a major risk to public health. The Parties recognise that the nature of the threat requires a transnational approach.

2. Each Party shall phase out the use of antimicrobial medicinal products as growth promoters.

3. Each Party shall, in accordance with the One Health approach:

(a) have regard to existing and future guidelines, standards, recommendations and actions developed in relevant international organisations in the development of initiatives and national plans aiming to promote the prudent and responsible use of antimicrobials in animal production and in veterinary practice;

(b) promote, on instances that the Parties jointly decide, responsible and prudent use of antimicrobials, including reducing the use of antimicrobials in animal production and phasing out the use of antimicrobials as growth promoters in animal production; and

(c) support the development and implementation of international action plans on the fight against antimicrobial resistance, if the Parties consider that appropriate.

4. Pursuant to Article 33.4(2), the Trade Council or Trade Committee may establish a technical working group to support the Sub-Committee referred to in Article 7.8 in the implementation of this Article.

ARTICLE 7.8

Sub-Committee on Sustainable Food Systems

1. The Sub-Committee on Sustainable Food Systems ("Sub-Committee"), established pursuant to Article 33.4(1), shall be composed of representatives of the Parties with responsibility for sustainable food systems.

2. The Sub-Committee shall monitor the implementation of this Chapter and examine all matters, which may arise in relation to its implementation.

3. The Sub-Committee shall agree on the actions to take in pursuing the objectives of this Chapter. The Sub-Committee shall establish objectives and milestones for those actions and monitor the progress of the Parties in establishing sustainable food systems. The Sub-Committee shall evaluate every period the results of the implementation of those actions.

4. The Sub-Committee may recommend to the Trade Council or Trade Committee, pursuant to Article 33.4(2), the establishment of technical working groups consisting of expert-level representatives of each Party to identify and address technical and scientific issues arising from the application of this Chapter.

5. The Sub-Committee shall recommend to the Trade Committee to establish rules to mitigate potential conflicts of interest for the participants of the meetings of the Sub-Committee and those of any technical working group referred to in this Chapter. The Trade Committee shall adopt a decision establishing those rules.

ARTICLE 7.9

Cooperation in multilateral fora

1. The Parties shall cooperate, as appropriate, in multilateral fora to foster the global transition towards sustainable food systems that contribute to the achievement of internationally agreed objectives on the environment, nature and climate protection.

2. The Sub-Committee shall be the forum to exchange information and cooperate in the matters covered by paragraph 1 of this Article.

ARTICLE 7.10

Additional provisions

1. The activities of the Sub-Committee referred to in Article 7.8 shall not affect the independence of the national or regional agencies of the Parties.

2. Nothing in this Chapter shall affect the rights or obligations of each Party to protect confidential information, in accordance with the law of each Party. When a Party submits information considered confidential under its law to the other Party pursuant to this Chapter, that other Party shall treat that information as confidential, unless the submitting Party agrees otherwise.

3. Fully respecting each Party's right to regulate nothing in this Chapter shall be construed to oblige a Party to:

(a) modify its import requirements;

(b) deviate from domestic procedures on the preparation and adoption of regulatory measures;

(c) take action that would undermine or impede the timely adoption of regulatory measures to achieve public policy objectives; or

(d) adopt any particular regulatory outcome.

CHAPTER 8

ENERGY AND RAW MATERIALS

ARTICLE 8.1

Objective

The objective of this Chapter is to promote dialogue and cooperation in the energy and raw materials sectors to the mutual benefit of the Parties, to foster sustainable and fair trade and investment ensuring a level playing field in those sectors, and to strengthen the competitiveness of related value chains, including value addition, in accordance with this Agreement.

ARTICLE 8.2

Principles

1. Each Party retains the sovereign right to determine whether areas within its territory, as well as in the exclusive economic zone, are available for exploration, production and transportation of energy goods and raw materials.

2. In accordance with this Chapter, the Parties reaffirm their right to regulate within their respective territories in order to achieve legitimate policy objectives in the areas of energy and raw materials.

ARTICLE 8.3

Definitions

For the purposes of this Chapter and Annexes 8-A and 8-B:

(a) "authorisation" means the permission, licence, concession or similar administrative or contractual instrument by which the competent authority of a Party entitles an entity to exercise a certain economic activity in its territory in compliance with the requirements set out in the authorisation;

(b) " balancing" means all actions and processes, in all timelines, through which system operators ensure, in a continuous way, maintenance of the system frequency within a predefined stability range and compliance with the amount of reserves needed with respect to the required quality;

(c) "energy goods" means the goods from which energy is generated and that are listed by the corresponding HS code in Annex 8-A;

(d) " hydrocarbons" means the goods listed by the corresponding HS code in Annex 8-A;

(e) "raw materials" means substances used in the manufacturing of industrial products; including ores, concentrates, slags, ashes and chemicals; unwrought, processed and refined materials; metal waste; scrap and remelting scrap; covered by the HS chapters included in Annex 8-A ;

(f) "renewable energy" means energy produced from solar, wind, hydro, geothermal, biological or ocean sources or other renewable ambient sources;

(g) "renewable fuels" means biofuels, bioliquids, biomass fuels and renewable fuels of non-biological origin, including renewable synthetic fuels and renewable hydrogen;

(h) "standards" means standards as defined in Chapter 9;

(i) "system operator" means:

(i) for the European Union: a person that is responsible for operating, ensuring the maintenance and development of the electricity distribution or transmission system in a given area and for ensuring the long-term ability of such systems; and

(ii) for Chile: an independent body responsible for coordinating the operation of interconnected electrical systems, that ensures the efficient economic performance and safety and reliability of the electric system, and provides open access to the transmission system; and

(j) "technical regulations" means technical regulations as defined in Chapter 9.

ARTICLE 8.4

Import and export monopolies

A Party shall not designate or maintain a designated import or export monopoly. For the purposes of this Article, the term "import or export monopoly" means the exclusive right or grant of authority by a Party to an entity to import energy goods or raw materials from, or export energy goods or raw materials to, the other Party[1].

ARTICLE 8.5

Export pricing[2]

1. A Party shall not impose a higher price for exports of energy goods or raw materials to the other Party than the price charged for such goods when destined for the domestic market, by means of any measure, such as licences or minimum price requirements.

[1] For greater certainty, this Article is without prejudice to Chapters 10, 11 and 22 and their respective schedules, and does not include a right that results from granting an intellectual property right.

[2] For greater certainty, this Article is without prejudice to Annex 22.

2. Notwithstanding paragraph 1 of this Article, Chile may introduce or maintain measures with the objective to foster value addition, by supplying raw materials to industrial sectors at preferential prices so that they can emerge within Chile, provided that such measures satisfy the conditions set out in Annex 8-B.

ARTICLE 8.6

Domestic regulated prices

1. The Parties recognise the importance of competitive energy markets to deliver a wide choice in the supply of energy goods and to enhance consumer welfare. The Parties also recognise that regulatory needs and approaches may differ between markets.

2. Further to paragraph 1, each Party shall, in accordance with its laws and regulations, ensure that the supply of energy goods is based on market principles.

3. A Party may only regulate the price charged for the supply of energy goods by imposing a public service obligation.

4. If a Party imposes a public service obligation, it shall ensure that such obligation is clearly defined, transparent and non-discriminatory, and does not go beyond what is necessary to achieve the objectives of the public service obligation.

ARTICLE 8.7

Authorisation for exploration and production of energy goods and raw materials

1. Without prejudice to Chapter 13, if a Party requires an authorisation to explore or produce energy goods and raw materials, that Party shall ensure that such authorisation is granted following a public and non-discriminatory procedure[1].

2. That Party shall publish, *inter alia*, the type of authorisation, the relevant area or part thereof, and the proposed date or time limit for granting the authorisation, in such a manner as to enable potentially interested applicants to submit applications.

3. A Party may derogate from paragraph 2 of this Article and Article 13.3 in any of the following cases relating to hydrocarbons:

(a) the area has been subject to a previous procedure which has not resulted in an authorisation being granted;

(b) the area is available on a permanent basis for the exploration or production of energy goods and raw materials; or

[1] For greater certainty, in the event of any inconsistency between this Article and Chapters 10 and 11 and Annexes 10-A, 10-B and 10-C, those Chapters and Annexes shall prevail to the extent of the inconsistency.

(c) an authorisation granted has been relinquished before its expiration date.

4. Each Party may require an entity which has been granted an authorisation to pay a financial contribution or a contribution in kind. The financial contribution or contribution in kind shall be fixed in such a manner that does not interfere with the management and the decision-making process of such entity.

5. Each Party shall ensure that the applicant is provided with the reasons for the rejection of its application so as to enable that applicant to have recourse to procedures for appeal or review where necessary. The procedures for appeal or review shall be made public in advance.

ARTICLE 8.8

Assessment of environmental impact

1. A Party shall ensure that an assessment of environmental impact[1] is carried out prior to granting authorisation for a project or activity relating to energy or raw materials that may have a significant impact on population, human health, biodiversity, land, soil, water, air or climate, or cultural heritage or landscape. This assessment shall identify and assess such significant impacts.

[1] For Chile, "assessment of environmental impact" means the study of the environmental impact, as defined in Law 19.300 Title 1, Article 2, literal (i), or its successor, and as regulated by Article 11 of the same Law.

2. Each Party shall ensure that relevant information is available to the public as part of the process for the assessment of environmental impact, and give time and opportunities to the public to participate in that process and to provide comments.

3. Each Party shall publish and take into account the findings of the assessment of environmental impact prior to granting the authorisation for the project or activity.

ARTICLE 8.9

Third-party access to energy transport infrastructure

1. Each Party shall ensure that system operators in its territory grant non-discriminatory access to the energy infrastructure for the transport of electricity to any entity of a Party. To the furthest extent possible, access to the electricity infrastructure shall be granted within a reasonable period of time of the date of the request for access by that entity.

2. Each Party shall enable, in accordance with its laws and regulations, an entity of a Party to access, and use, electricity transport infrastructure for the transport of electricity on reasonable and non-discriminatory terms and conditions, including non-discrimination between types of electricity sources, and at cost-reflective tariffs. Each Party shall publish the terms and conditions for the access to and use of electricity transport infrastructure.

3. Notwithstanding paragraph 1, a Party may introduce or maintain in its laws and regulations specific derogations from the right to third-party access based on objective criteria provided that they are necessary to fulfil a legitimate policy objective. Such derogations shall be published before they start to apply.

4. The Parties recognise the relevance of the rules set out in paragraphs 1, 2 and 3 also for gas infrastructure. A Party that does not apply such rules with regard to gas infrastructure shall endeavour to do so, in particular, with regard to transport of renewable fuels, while acknowledging differences in market maturity and organisation.

ARTICLE 8.10

Access to infrastructure for suppliers of electricity generated from renewable energy sources

1. Without prejudice to Articles 8.7, 8.9 and 8.11, each Party shall ensure that renewable energy suppliers of the other Party are accorded access to, and use of, the electricity network for renewable electricity generation facilities located within its territory on reasonable and non-discriminatory terms and conditions.

2. For the purposes of paragraph 1, each Party shall ensure, in accordance with its laws and regulations, that its transmission undertakings and system operators, with respect to renewable electricity suppliers of the other Party:

(a) enable a connection between new renewable electricity generation facilities and the electricity network without imposing discriminatory terms and conditions;

(b) enable the reliable use of the electricity network;

(c) provide balancing services; and

(d) ensure that appropriate grid and market-related operational measures are in place in order to minimise the curtailment of electricity produced from renewable energy sources.

3. Paragraph 2 is without prejudice to each Party's legitimate right to regulate within its territory in order to achieve legitimate policy objectives, such as the need to maintain the secure operation and stability of the electricity system, based on objective and non-discriminatory criteria.

ARTICLE 8.11

Independent body

1. Each Party shall maintain or establish a functionally independent body or bodies that:

(a) fix or approve the terms and conditions and tariffs of access to, and use of, the electricity network; and

(b) resolve disputes regarding appropriate terms and conditions and tariffs of access to, and use of, the electricity network, within a reasonable period of time.

2. In performing their duties and exercising their powers set out in paragraph 1, the body or bodies shall act transparently and impartially with regard to users, owners and system operators of the electricity network.

ARTICLE 8.12

Cooperation on standards

1. With a view to preventing, identifying and eliminating unnecessary technical barriers to trade in energy goods and raw materials, Chapter 9 shall apply to those goods and materials.

2. In accordance with Articles 9.4 and 9.6, the Parties shall, as appropriate, promote cooperation between their relevant regulatory and standardising bodies in areas such as energy efficiency, sustainable energy and raw materials, with a view to contributing to trade, investment, and sustainable development, *inter alia*, through:

(a) the convergence or harmonisation, if possible, of their respective current standards, based on mutual interest and reciprocity, and according to modalities to be agreed by the regulators and the standardising bodies concerned;

(b) joint analyses, methodologies and approaches, if possible, to assist and facilitate the development of relevant tests and measurement standards, in cooperation with their relevant standardising bodies;

(c) the development of common standards, if possible, on energy efficiency and renewable energy; and

(d) the promotion of standards on raw materials, renewable energy generation and energy efficiency equipment, including product design and labelling, if appropriate, through existing international cooperation initiatives.

3. For the purposes of implementing this Chapter, the Parties aim to encourage the development and use of open standards and interoperability of networks, systems, devices, applications or components in the energy and raw materials sectors.

ARTICLE 8.13

Research, development and innovation

The Parties recognise that research, development and innovation are key elements to further develop efficiency, sustainability and competitiveness in the energy and raw materials sectors. The Parties shall cooperate, as appropriate, *inter alia*, in:

(a) promoting the research, development, innovation and dissemination of environmentally sound and cost-effective technologies, processes and practices in the areas of energy and raw materials;

(b) promoting value addition to the mutual benefit of the Parties and enhancement of productive capacity in energy and raw materials; and

(c) strengthening capacity building in the context of research, development and innovation initiatives.

ARTICLE 8.14

Cooperation on energy and raw materials

1. The Parties shall cooperate, as appropriate, in the areas of energy and raw materials with a view to, *inter alia*:

(a) reducing or eliminating measures that in themselves or together with other measures could distort trade and investment, including of a technical, regulatory and economic nature affecting energy or raw materials sectors;

(b) discussing, whenever possible, their positions in international fora where relevant trade and investment issues are discussed, and fostering international programmes in the areas of energy efficiency, renewable energy and raw materials; and

(c) promoting responsible business conduct in accordance with international standards that have been endorsed or are supported by the Parties, such as the OECD Guidelines for Multinational Enterprises and, in particular, Chapter IX thereof on Science and Technology.

Thematic cooperation on energy

2. The Parties recognise the need to accelerate the deployment of renewable and low carbon energy sources, increase energy efficiency and promote innovation, to ensure access to safe, sustainable and affordable energy. The Parties shall cooperate on any relevant issue of mutual interest, such as:

(a) renewable energy particularly with regards to technologies, integration into, and access to, the electricity system, storage and flexibility, and the whole renewable hydrogen supply chain;

(b) energy efficiency, including regulation, best practices, and efficient and sustainable heating and cooling systems;

(c) electromobility and charging infrastructure deployment; and

(d) open and competitive energy markets.

Thematic cooperation on raw materials

3. The Parties recognise their shared commitment to responsible sourcing and sustainable production of raw materials and their mutual interest to facilitate the integration of raw materials value chains. The Parties shall cooperate on any relevant issue of mutual interest, such as:

(a) responsible mining practices and sustainability of raw materials value chains, including the contribution of raw materials value chains to the fulfilment of the UN Sustainable Development Goals;

(b) raw materials value chains, including value addition; and

(c) identification of areas of mutual interest for cooperation on research, development and innovation activities covering the entire raw materials value chain, including cutting-edge technologies, smart mining and digital mines.

4. When developing cooperation activities, the Parties shall take into account available resources. Activities can be carried out in person or by any technological means available to the Parties.

5. Cooperation activities can be developed and implemented with the participation of international organisations, global fora and research institutions, as agreed between the Parties.

ARTICLE 8.15

Energy transition and renewable fuels

1. For the purpose of implementing this Chapter, the Parties recognise the important contribution of renewable fuels, *inter alia*, renewable hydrogen, including their derivatives, and renewable synthetic fuels, in reducing greenhouse gas emissions to address climate change.

2. In accordance with Article 8.12(2), the Parties shall, as appropriate, cooperate on convergence or harmonization, if possible, of certification schemes for renewable fuels, such as with regard to lifecycle emissions and safety standards.

3. Regarding renewable fuels, the Parties shall also cooperate with a view to:

(a) identifying, reducing and eliminating, as appropriate, measures that may distort bilateral trade, including measures of a technical, regulatory and economic nature;

(b) fostering initiatives that facilitate bilateral trade, to promote the production of renewable hydrogen; and

(c) promoting the use of renewable fuels considering their contribution to the reduction of greenhouse gas emissions.

4. The Parties shall, as appropriate, encourage the development and implementation of international standards and regulatory cooperation with respect to renewable fuels and cooperate in relevant international fora with a view to developing relevant certification schemes that avoid the emergence of unjustified barriers to trade.

ARTICLE 8.16

Exception for small and isolated electricity systems

1. For the purpose of implementing this Chapter, the Parties recognise that their laws and regulations may provide for special regimes for small and isolated electricity systems.

2. Pursuant to paragraph 1, a Party may maintain, adopt or enforce measures with regard to small and isolated electricity systems that derogate from Articles 8.6, 8.7, 8.9, 8.10 and 8.11, provided that such measures do not constitute disguised restrictions to trade or investment between the Parties.

ARTICLE 8.17

Sub-Committee on Trade in Goods

1. The Sub-Committee on Trade in Goods ("Sub-Committee"), established pursuant to Article 33.4(1), shall be responsible for the implementation of this Chapter and Annexes 8-A and 8-B. The functions set out in subparagraphs (a), (c), (d) and (e) of Article 2.18 apply to this Chapter, *mutatis mutandis*.

2. Consistently with Articles 8.12, 8.13, Article 8.14 and Article 8.15 the Sub-Committee may recommend to the Parties to establish or facilitate other means of cooperation between them in the areas of energy and raw materials.

3. If mutually agreed by the Parties, the Sub-Committee shall meet in sessions dedicated to the implementation of this Chapter. When preparing such sessions, each Party may consider, as appropriate, inputs from relevant stakeholders or experts.

4. Each Party shall designate a contact point to facilitate the implementation of this Chapter, including by ensuring the appropriate involvement of representatives of a Party, notify the other Party of its contact details and promptly notify the other Party of any changes to those contact details. For Chile, the contact point shall be from the Under-Secretariat of International Economic Relations of the Ministry of Foreign Affairs or its successor.

CHAPTER 9

TECHNICAL BARRIERS TO TRADE

ARTICLE 9.1

Objective

The objective of this Chapter is to enhance and facilitate trade in goods between the Parties by preventing, identifying and eliminating unnecessary technical barriers to trade and by promoting greater regulatory cooperation.

ARTICLE 9.2

Scope

1. This Chapter applies to the preparation, adoption and application of all standards, technical regulations and conformity assessment procedures as defined in Annex 1 of the TBT Agreement which may affect trade in goods between the Parties.

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

(a) purchasing specifications prepared by governmental bodies for production or consumption requirements of such bodies which are covered by Chapter 21; or

(b) sanitary and phytosanitary measures which are covered by Chapter 6.

ARTICLE 9.3

Incorporation of certain provisions of the TBT Agreement

Articles 2 to 9 and Annexes 1 and 3 of the TBT Agreement are incorporated into and made part of this Agreement, *mutatis mutandis*.

ARTICLE 9.4

International standards

1. International standards developed by the organisations listed in Annex 9-A shall be considered to be the relevant international standards within the meaning of Articles 2 and 5 and Annex 3 of the TBT Agreement provided that in their development these organisations have complied with the principles and procedures set out in the Decision of the WTO Committee on Technical Barriers to Trade on Principles for the Development of International Standards, Guides and Recommendations with Relation to Articles 2, 5 and Annex 3 of the TBT Agreement.[1]

2. Upon request of a Party the Trade Council may adopt a decision to amend Annex 9-A, pursuant to subparagraph (a) of Article 33.1 (6).

ARTICLE 9.5

Technical regulations

1. The Parties recognise the importance of carrying out, in accordance with each Party's respective rules and procedures, a regulatory impact assessment of planned technical regulations.

[1] G/TBT/9, 13 November 2000, Annex 4.

2. Each Party shall assess the available regulatory and non-regulatory alternatives to the proposed technical regulation that may fulfil the Party's legitimate objectives, in accordance with Article 2.2 of the TBT Agreement.

3. Each Party shall use relevant international standards as a basis for its technical regulations except when the Party developing the technical regulation can demonstrate that such international standards would be an ineffective or inappropriate means for the fulfilment of the legitimate objectives pursued.

4. If a Party does not use international standards as a basis for a technical regulation, it shall, upon request of the other Party, identify any substantial deviation from the relevant international standard and explain the reasons why such standards have been judged inappropriate or ineffective for the aim pursued, and provide the scientific or technical evidence on which this assessment is based.

5. Further to the obligation of each Party pursuant to Article 2.3 of the TBT Agreement, each Party shall review, in accordance with its respective rules and procedures, its technical regulations with a view to increasing the convergence of those technical regulations with relevant international standards. A Party shall, *inter alia*, take into account any new development in the relevant international standards and whether the circumstances that have given rise to divergences from any relevant international standard continue to exist.

ARTICLE 9.6

Regulatory cooperation

1. The Parties recognise that a broad range of regulatory cooperation mechanisms exist that can help to eliminate or avoid the creation of technical barriers to trade.

2. A Party may propose to the other Party sector specific regulatory cooperation activities in areas covered by this Chapter. Those proposals shall be transmitted to the contact point referred to in Article 9.13, and shall consist of:

(a) information exchanges on regulatory approaches and practices; or

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

The other Party shall reply to the proposal in a reasonable time.

3. The contact points referred to in Article 9.13 shall inform the Trade Committee about the cooperation activities carried out pursuant to this Article.

4. The Parties shall endeavour to exchange and collaborate on mechanisms to facilitate the acceptance of conformity assessment results, in order to eliminate unnecessary technical barriers to trade.

5. The Parties shall encourage cooperation between their respective organisations responsible for technical regulation, standardisation, conformity assessment, accreditation and metrology, whether they are governmental or non-governmental, with a view to addressing diverse issues covered by this Chapter.

6. Nothing in this Article shall be construed as requiring a Party to:

(a) deviate from its procedures for preparing and adopting regulatory measures;

(b) take actions that would undermine or impede the timely adoption of regulatory measures to achieve its public policy objectives; or

(c) achieve a particular regulatory outcome.

7. For the purposes of this Article and the provisions on cooperation under Annexes 9-A to 9-E to this Chapter, the European Commission shall act on behalf of the European Union.

ARTICLE 9.7

Cooperation on market surveillance, compliance and safety of non-food products

1. The Parties recognise the importance of cooperation on market surveillance, compliance and the safety of non-food products for the facilitation of trade and for the protection of consumers and other users, and the importance of building mutual trust based on shared information.

2. For the purposes of this Article:

(a) "consumer products" means goods intended for or likely to be used by consumers, with the exclusion of food, medical devices and medicinal products; and

(b) "market surveillance" means activities conducted and measures taken by public authorities including activities conducted and measures taken in cooperation with economic operators, on the basis of procedures of a Party to enable that Party to monitor or address compliance of products with the requirements set out in its laws and regulations or their safety.

3. To guarantee independent and impartial functioning of market surveillance, each Party shall ensure:

(a) the separation of market surveillance functions from conformity assessment functions; and

(b) the absence of any interest that would affect the impartiality of market surveillance authorities in the performance of control or supervision of economic operators.

4. The Parties may cooperate and exchange information in the area of non-food product safety and compliance, in particular with respect to the following:

(a) market surveillance and enforcement activities and measures;

(b) risk assessment methods and product testing;

(c) coordinated product recalls or other similar actions;

(d) scientific, technical and regulatory matters, aiming to improve non-food product safety and compliance;

(e) emerging issues of significant health and safety relevance;

(f) standardisation-related activities; and

(g) exchange of officials.

5. The European Union may provide Chile with selected information from its Rapid Alert System with respect to consumer products as referred to in Directive 2001/95/EC[1] or its successor, and Chile may provide the European Union with selected information on the safety of consumer products and on preventive, restrictive and corrective measures taken with respect to consumer products. The information exchange may take the form of:

(a) non-systematic exchange, in duly justified specific cases, excluding personal data; and

(b) systematic exchange based on an arrangement established by decision of the Trade Council to be set out in Annex 9-D.

6. The Trade Council may establish by decision an arrangement on the regular exchange of information, including by electronic means, on measures taken with respect to non-compliant non-food products, other than those covered by paragraph 5 of this Article, to be set out in Annex 9-E.

7. Each Party shall use the information obtained pursuant to paragraphs 4, 5 and 6 for the sole purpose of protection of consumers, health, safety or the environment.

8. Each Party shall treat the information obtained pursuant to paragraphs 4, 5 and 6 as confidential.

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[1] Directive 2001/95/EC of the European Parliament and of the Council of 3 December 2001 on general product safety (OJ EU L 11, 15.1.2002, p. 4).

9. The arrangements referred to in subparagraph (b) of paragraph 5 and in paragraph 6 shall specify the product scope, type of information to be exchanged, the modalities for the exchange and the application of confidentiality and personal data protection rules.

10. Pursuant to subparagraph (a) of Article 33.1(6), the Trade Council shall have the power to adopt decisions in order to determine or amend arrangements set out in Annexes 9-D and 9-E.

ARTICLE 9.8

Standards

1. With a view to harmonising standards on as wide a basis as possible, each Party shall encourage the standardising bodies established within its territory, as well as the regional standardising bodies of which a Party or the standardising bodies established within its territory are members:

(a) to participate, within the limits of their resources, in the preparation of international standards by relevant international standardising bodies;

(b) to use relevant international standards as a basis for the standards they develop, except if such international standards would be ineffective or inappropriate, for example because of an insufficient level of protection, fundamental climatic or geographical factors or fundamental technological problems;

(c) to avoid duplication of, or overlap with, the work of international standardising bodies;

(d) to review national and regional standards not based on relevant international standards at regular intervals, with a view to increasing their convergence with relevant international standards;

(e) to cooperate with the relevant standardising bodies of the other Party in international standardisation activities, including in the international standardising bodies or at regional level; and

(f) to foster bilateral cooperation between themselves and with the standardising bodies of the other Party.

2. The Parties should exchange information on:

(a) their use of standards in support of technical regulations; and

(b) their standardisation processes and the extent of use of international, regional or subregional standards as a basis or their national standards.

3. If standards are made mandatory through incorporation or referencing in a draft technical regulation or conformity assessment procedure, the transparency obligations set out in Article 9.10 of this Agreement and in Articles 2 or 5 of the TBT Agreement shall be fulfilled.

ARTICLE 9.9

Conformity assessment

1. The provisions set out in Article 9.5 with respect to the preparation, adoption and application of technical regulations shall also apply, *mutatis mutandis*, to conformity assessment procedures.

2. If a Party requires conformity assessment as a positive assurance that a product conforms with a technical regulation, it shall:

(a) select conformity assessment procedures that are proportionate to the risks involved;

(b) consider, subject to its laws and regulations, the use of a supplier's declaration of conformity, to be one of the possible ways of showing compliance with a technical regulation; and

(c) if requested by the other Party, provide information on the criteria used to select the conformity assessment procedures for specific products.

3. If a Party requires third party conformity assessment as a positive assurance that a product conforms with a technical regulation, and it has not reserved this task to a governmental authority as specified in paragraph 4, it shall:

(a) preferentially use accreditation to qualify conformity assessment bodies;

(b) preferentially use international standards for accreditation and conformity assessment, as well as international agreements involving the Parties' accreditation bodies, for example through the mechanisms of the International Laboratory Accreditation Cooperation ("ILAC") and the International Accreditation Forum ("IAF");

(c) join or, as applicable, encourage its conformity assessment bodies to join any functioning international agreements or arrangements for harmonisation or facilitation of acceptance of conformity assessment results;

(d) ensure that, if more than one conformity assessment body has been designated for a particular product or set of products, economic operators have a choice amongst them to carry out the conformity assessment procedure;

(e) ensure that conformity assessment bodies are independent of manufacturers, importers and economic operators in general and that there are no conflicts of interest between accreditation bodies and conformity assessment bodies;

(f) allow conformity assessment bodies to use subcontractors to perform testing or inspections in relation to the conformity assessment, including subcontractors located in the territory of the other Party; nothing in this subparagraph shall be construed to prohibit a Party from requiring subcontractors to meet the same requirements that the conformity assessment body to which it is contracted would be required to meet in order to perform the contracted tests or inspection itself; and

(g) publish on official websites a list of the bodies that it has designated to perform such conformity assessments and the relevant information on the scope of designation of each such body.

4. Nothing in this Article shall preclude a Party from requesting that conformity assessment in relation to specific products is performed by its specified governmental authorities. In those cases, the Party shall:

(a) limit the conformity assessment fees to the approximate cost of the services rendered and, upon request of an applicant for conformity assessment, explain how any fees it imposes for such conformity assessment are limited in amount to the approximate cost of the services rendered; and

(b) make the conformity assessment fees publicly available or provide them upon request.

5. Notwithstanding paragraphs 2, 3 and 4, in the cases in which the European Union accepts supplier's declaration of conformity in the fields listed in Annex 9-B, Chile shall provide, in accordance with its laws and regulations, for an efficient and transparent procedure for the acceptance of certificates and test reports issued by conformity assessment bodies that are located in the territory of the European Union and that have been accredited by an accreditation body that is a member of the international arrangements for mutual recognition of the ILAC and the IAF as an assurance that a product conforms with the requirements of Chile's technical regulations.

6. For the purposes of this Article "supplier's declaration of conformity" means a first-party attestation issued by the manufacturer on the sole responsibility of that manufacturer based on the results of an appropriate type of conformity assessment activity and excluding mandatory third party assessment, as assurance that a product conforms to a technical regulation that sets out such conformity assessment procedures.

7. On request of either Party the Sub-Committee referred to in Article 9.14 shall review the list of fields in paragraph 1 of Annex 9-B. The Sub-Committee may recommend to the Trade Council to amend Annex 9-B, pursuant to subparagraph (a) of Article 33.1(6).

ARTICLE 9.10

Transparency

1. In accordance with its respective rules and procedures and without prejudice to Chapter 29 when developing major technical regulations which may have a significant effect on trade in goods each Party shall ensure that transparency procedures exist that allow persons of the Parties to provide input through a public consultation process, except where urgent problems of safety, health, environmental protection or national security arise or threaten to arise.

2. Each Party shall allow persons of the other Party to participate in the consultation process referred to in paragraph 1 on terms no less favourable than those accorded to its own persons and make the results of that consultation process public.

3. Each Party shall allow a period of at least 60 days following its notification to the WTO Central Registry of Notifications of proposed technical regulations and conformity assessment procedures for the other Party to provide written comments, except where urgent problems of safety, health, environmental protection or national security arise or threaten to arise. A Party shall consider any reasonable request from the other Party to extend that comment period.

4. In the event that the notified text is not in one of the official WTO languages, the notifying Party shall provide a detailed and comprehensive description of the content of the proposed technical regulations and conformity assessment procedures in the WTO notification format.

5. If a Party receives written comments as referred to in paragraph 3, it shall:

(a) if requested by the other Party, discuss the written comments with the participation of its competent regulatory authority, at a time when they can be taken into account; and

(b) reply in writing to the comments no later than on the date of publication of the adopted technical regulation or conformity assessment procedure.

6. Each Party shall endeavour to publish on a website its responses to written comments as referred to in paragraph 3 that it receives from the other Party no later than on the date of publication of the adopted technical regulation or conformity assessment procedure.

7. A Party shall, if requested by the other Party, provide information regarding the objectives of, and the legal basis and rationale for, a technical regulation or conformity assessment procedure that the Party has adopted or is proposing to adopt.

8. Each Party shall ensure that the technical regulations and conformity assessment procedures it has adopted are accessible through official websites or online official journals free of charge.

9. Each Party shall provide information on the adoption and the entry into force of the technical regulation or conformity assessment procedure and the adopted final text through an addendum to the original notification to the WTO Central Registry of Notifications.

10. Each Party shall allow a reasonable interval between the publication of the technical regulations and their entry into force, subject to the conditions specified in Article 2.12 of the TBT Agreement. For the purposes of this Article "reasonable interval" normally means a period of not less than six months, except when this would be ineffective for the fulfilment of the legitimate objectives pursued.

11. A Party shall consider any reasonable request from the other Party, received prior to the end of the comment period referred to in paragraph 3, to extend the period between the publication of the technical regulation and its entry into force, except when the delay would be ineffective for the fulfilment of the legitimate objectives pursued.

ARTICLE 9.11

Marking and labelling

1. The Parties affirm that their technical regulations that include or address exclusively marking or labelling shall observe the principles of Article 2.2 of the TBT Agreement.

2. Unless it is necessary for the fulfilment of the legitimate objectives referred to in Article 2.2 of the TBT Agreement, a Party that requires mandatory marking or labelling of products shall:

(a) only require information which is relevant for consumers or users of the product or information that indicates the product's conformity with the mandatory technical requirements;

(b) not require any prior approval, registration or certification of the markings or labels of products, nor any fee disbursement, as a precondition for placing on its market products that otherwise comply with its mandatory technical requirements;

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

(d) provided it is not misleading, contradictory or confusing in relation to the information required in the importing Party of the goods, permit the following:

(i) information in other languages in addition to the language required in the importing Party of the goods;

(ii) internationally accepted nomenclatures, pictograms, symbols or graphics; and

(iii) additional information to that required in the importing Party of the goods;

(e) accept that labelling, including supplementary labelling or corrections to labelling, take place, in customs warehouses or other designated areas in the country of import as an alternative to labelling in the country of origin, unless such labelling is required to be carried out by approved persons for reasons of public health or safety; and

(f) endeavour to accept non-permanent or detachable labels, or the inclusion of relevant information in the accompanying documentation, rather than labels physically attached to the product.

ARTICLE 9.12

Technical discussions and consultations

1. A Party may request the other Party to provide information on any matter covered by this Chapter. The other Party shall provide that information within a reasonable period of time.

2. If a Party considers that any draft or proposed technical regulation or conformity assessment procedure of the other Party might have a significant adverse effect on trade between the Parties, it may request technical discussions on the matter. The request shall be made in writing and identify:

(a) the measure;

(b) the provisions of this Chapter to which the concerns relate; and

(c) the reasons for the request, including a description of the requesting Party's concerns regarding the measure.

3. The Party shall deliver a request pursuant to this Article to the contact point of the other Party designated pursuant to Article 9.13.

4. Upon request of a Party, the Parties shall meet to discuss the concerns raised in the request referred to in paragraph 2, in person or via video or teleconference, within 60 days of the date of the request. The Parties shall make every attempt to arrive at a mutually satisfactory resolution of the matter as expeditiously as possible.

5. If the requesting Party considers the matter to be urgent, it may request from the other Party that a meeting take place within a shorter timeframe. The other Party shall consider that request.

6. For greater certainty, this Article is without prejudice to either Party's rights and obligations under Chapter 31.

ARTICLE 9.13

Contact points

1. Each Party shall designate a contact point to facilitate cooperation and coordination under this Chapter, and notify the other Party of its contact details. A Party shall promptly notify the other Party of any changes to those contact details.

2. The contact points shall work jointly to facilitate the implementation of this Chapter and cooperation between the Parties on all matters concerning technical barriers to trade. The contact points shall:

(a) organise technical discussions and consultations referred to in Article 9.12;

(b) promptly address any issue that a Party raises related to the development, adoption, application or enforcement of standards, technical regulations or conformity assessment procedures;

(c) on request of a Party, arrange discussions on any matter arising under this Chapter; and

(d) exchange information on developments in non-governmental, regional and multilateral fora related to standards, technical regulations and conformity assessment procedures.

3. The contact points shall communicate with one another by any agreed method that is appropriate to carry out their functions.

ARTICLE 9.14

Sub-Committee on Technical Barriers to Trade

The Sub-Committee on Technical Barriers to Trade ("Sub-Committee") established pursuant to Article 33.4(1) shall:

(a) monitor the implementation and administration of this Chapter;

(b) enhance cooperation as regards the development and improvement of standards, technical regulations and conformity assessment procedures;

(c) establish priority areas of mutual interest for future work under this Chapter and consider proposals for new initiatives;

(d) monitor and discuss developments under the TBT Agreement; and

(e) take any other steps that the Parties consider will assist them in implementing this Chapter and the TBT Agreement.